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**REPORT  
OF  
THE  
TASK FORCE  
TO  
ENHANCE THE ENFORCEMENT  
OF  
CIVIL AND CRIMINAL  
VIOLATIONS**

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RECEIVED

FEB 02 1999

January 29, 1999

OPLA

To the Members of the Judiciary Committee  
and  
To the Members of the Legislative Council

Re: Resolve 1997, chapter 103, to Establish a Plan to Enhance the  
Enforcement of Civil and Criminal Violations.

Dear members of the Judiciary Committee and the Legislative Council:

The above entitled resolve created a Task Force charged with developing a plan to enhance the enforcement of civil and criminal violations and the collection of fines, penalties, forfeitures and other charges. The resolve identifies a number of elements to be included in the plan. The Task Force has met, subcommittees were formed, and they too have met and reported back to the full Task Force. A subgroup was established to summarize the findings of the Task Force in order to develop the recommendations stated below. As Chair of the Task Force, it is my privilege to present the enclosed report which represents the work of the Task Force to date. As you will see there is more to be done and, therefore, the Task Force looks forward to your response to the recommendations being made.

The Task Force will continue its work while we await your response. As you will read, the recommendations address the parameters for future work. The Task Force members are prepared to respond to any questions that you might have, and we look forward to working with you on this important initiative.

Sincerely,



James T. Glessner  
State Court Administrator

cc: Planning Task Force

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# **INTRODUCTION**

**Resolve 1997, chapter 103: To Establish a Plan to Enhance  
the Enforcement of Civil and Criminal Violations**

**Introduction**

The Task Force created by the above named resolve has met both as an entire Task Force and through its various sub-groups, to address the development of a plan and to consider the essential elements of that plan. The Task Force has divided its work into three areas which are described as legal and policy issues, remedies and technology.

Task Force discussions have centered on the required plan elements as defined by the resolve. Each of those elements was placed into one of the three categories listed above and sub-groups were established to address each area. The subgroups reported back to the full Task Force where there was further discussion of their findings and recommendations.

Meeting the requirements of the resolve has proven to be difficult for several reasons. First, there are conflicting opinions on some of the issues under consideration. The Task Force has provided a forum for discussion of those opinions and this has provided an opportunity to consider the ideas presented by the participants. To their credit, those involved approached the issues with a willingness to consider the ideas of others in order to come away with the best possible conclusions. As a result members have been able to offer some compromise and achieve consensus on important points, so that we now have a series of recommendations for your review and consideration.

A second difficulty was the scope of the essential elements of the resolve. In part the Task Force is charged with considering:

".....**any** license, certification or registration...."

".....**all** fines, penalties, forfeitures, fees, assessments...."

".....**each** department and agency that issues licenses, certification or registrations...."

**(emphasis added)**

The all inclusive nature of these elements results in some situations which are extremely difficult to address, at least in the short term. For that reason in our recommendations you will find proposed modifications which we believe will make the system more workable, while achieving the objectives which are the basis of the resolve.

Neither the resolve nor this report address time lines for implementation. We believe that is best taken up in the details of the plan yet to be developed. Some portions of the plan will take longer than others, most notably the creation of an interactive database to be used by the various participants. Identification of at least some crimes that could be classified as civil violations can be achieved more quickly.

**FINDINGS  
AND  
RECOMMENDATIONS**

## **Findings and Recommendations**

Stated below in bold print are the seven required elements as stated in the resolve. Following each of the seven elements is a brief summary statement of the discussion by the Task Force, followed by specific recommendations, where applicable.

**1. Prohibition of the renewal or reissuance of any license, certification or registration by any department or agency of the State if the applicant has not paid in full all fines, penalties, forfeitures, fees, assessments or any other charges imposed by a court in this State.**

Limiting the scope of this plan to renewal or reissuance of licenses, certifications or registrations results in an unfair distinction. There could be two individuals who owe identical amounts of money for precisely the same reason seeking the same type of license. As proposed, if one person is seeking a new license they would be eligible to receive it but if the other person is seeking a renewal, they would be denied. While there are some procedural benefits to including only renewals or reissuances, the apparent inconsistency raises public policy concerns.

**Recommendation #1 - The Task Force recommends that the prohibition on licenses, certifications or registrations be expanded to include issuance as well as renewal or reissuance.**

Requiring the prohibition of the renewal or reissuance of "any" license, certification or registration raises a number of concerns regarding issues of control, access and cost. There are significant differences in where, how and by whom these licenses are renewed all of which affect the system's ability to prohibit renewal or reissuance. As examples:

- fishing licenses are sold at numerous retail outlets
- automobile registration is done through municipalities
- drivers licenses are renewed by the State Dept of Motor Vehicle

In the case of the fishing licenses, private retailers throughout the state would have to be provided access to the computer system which will indicate those persons who are not eligible for license renewal. That access would result in both initial and ongoing costs to the retailers and/or the state. If the technical and financial issues can be overcome, and the access provided, the retailers would have to be able to verify that the person requesting the renewal is the person identified by the system. At this time such an identification system doesn't exist although there has been discussion about the possibility of using social security numbers for this purpose. If, however, positive identification could be achieved, and the requestor is denied a renewal, that person can simply go to another retailer. They can then request a new license, rather than a renewal, thereby circumventing the system. This example demonstrates that there are some licenses which would simply be impractical to include in this effort at this time.



In the case of automobile registrations, the renewal process is carried out by municipal employees as opposed to private retailers. In addition, an automobile registration carries with it greater controls than does something like a fishing license. Nonetheless there are impediments in that the linkages with the computer systems have not yet been developed with the municipalities, as they are currently being developed within the state network. As with the example of the private retailers there are technical and financial issues to be overcome. There will be both initial and ongoing costs to the municipalities and/or the state.

In the case of drivers licenses the currently evolving state computer systems can be enhanced to achieve necessary levels of communication, thereby controlling costs. Limiting access to employees of state agencies ensures needed controls over access and reduces concerns regarding confidentiality.

**Recommendation #2 - The Task Force recommends that the prohibition of the renewal or reissuance of licenses, certifications or registrations be limited at this time to those directly administered by state departments or agencies.**

It is important for all concerned to define precisely which licenses, certifications and registrations are covered by this plan. Recommendation #2 would limit those that are included. At the same time consideration should be given to whether there are similar documents referred to by other titles, such as permits, that should be included. The titles are not necessarily specific enough to provide the needed guidance to both the general public and the state agencies. In addition provision should be made for future licenses, certifications or registrations which may be authorized by the Legislature.

**Recommendation #3 - The Task Force recommends that each department and agency of the state prepare a listing of those licenses, certifications or registrations which they administer and which they believe could be covered by this plan. Those lists will be reviewed by this Task Force in order to make recommendations to the Judiciary Committee.**

Requiring the prohibition of the renewal or reissuance of licenses, certifications or registrations if the applicant has not "paid in full" all fines, penalties, forfeitures, fees, assessments or any other charges imposed by a court in this State also raises some concerns.

It is not uncommon for a person to be given by the court some amount of time to make payment for monies owed. This commonly happens in recognition of the individual's inability to pay in whole or in part at the time the cost is imposed. Individuals often have payment plans whereby payment is made over a period of time. Experience shows that such an approach results in a higher amount of collections than would a requirement that the entire amount be paid immediately at the time of the imposition of costs. The courts should be allowed to determine when an individual is overdue in

making required payments and only then should additional sanctions be imposed.

**Recommendation #4** - The Task Force recommends that the prohibition of the issuance, renewal or reissuance of licenses, certifications or registrations be limited to those applicants who are found by the court to be overdue in the payment of any fines, penalties, forfeitures, fees, assessments or any other charges imposed by a court in this State.

The Department of Human Services' Division of Child Support Enforcement and Recovery has had considerable experience in the use of license revocation as a means to compel overdue child support payments. Rather than automatic license revocation, the Department informs delinquent child support obligors that they are in jeopardy of having their occupational/professional and drivers licenses revoked. The results of their efforts include the following:

Between August 1993 and May 1998:

- 23,456 individuals have been notified that they are in danger of license revocation.
- 18,156 of those individuals have paid a total of nearly \$87 million.
- 1,471 licenses have actually been revoked
- 686 of those who have had licenses revoked have come into compliance

The approach used by the Department contains the following advantages:

- Prior notification allows the individual to pay without having the license suspended, thereby saving the state the administrative time and cost associated with the suspension, and in many cases reinstatement, process. In these cases the objective of having payment made is met.
- Prior notification allows the Department to consider the individual's financial circumstances. If certain criteria are met, the Department will not pursue license revocation.
- Prior notification allows for due process considerations. Individuals are given the right to present their position as to why their license should not be revoked.

The Department's experience demonstrates the advantages of notification prior to license revocation and the Task Force believes that such notification would be equally advantageous where the prohibition of the renewal or reissuance of licenses, certifications or registrations is appropriate.

**Recommendation #5** - The Task Force recommends that a system of prior notification be instituted to inform individuals who have been identified for non-renewal or reissuance of licenses, certifications or registrations.

**2. The creation of a single, current database of all persons who have not paid in full any fines, penalties, forfeitures, fees, assessments or any other charges imposed by a court in this State, including:**

- a. An update process to ensure accuracy and timeliness of information to the greatest extent possible; and,
- b. A means for each department and agency that issues licenses, certification or registrations to obtain information in the database within the time period that meets that department's or agency's needs.

Acceptance of the recommendations contained in section 1 above have a major impact on the creation of the required database. Those recommendations limit the number of users of the database and require that the users be representatives of state departments or agencies. This reduces concerns about access, security and cost and facilitates the creation of the required database.

The Maine Judicial Information System (MEJIS) is currently being developed and the first modules for the criminal portion of the system have been installed in all Superior Courts in the state. Those same modules, along with the financial portion of the system, will be installed in all District Courts before the end of calendar year 1999. The financial portion, which is an essential component of this plan, could be installed in the Superior Courts before the end of the calendar year. MEJIS has been designed to function as the courts' case management system and it will process information on fines, penalties, forfeitures, fees, assessments or any other charges imposed by a court in this State. That information will be updated as changes occur regarding the status of money owed. Enhancements to the current design will be required to meet the requirements of this plan.

**Recommendation #6- The Task Force recommends that the Maine Judicial Information System (MEJIS) serve as the single, current database of all persons owing money as defined by this plan.**

The Technology Subcommittee of this Task Force has identified a number of technology related issues including options for access to the database. If the recommendations above are adopted, a large number of the questions they have raised will have been answered and a more specific plan for developing the electronic interface between MEJIS and the departments can be developed.

**Recommendation #7 - The Task Force recommends that the Technology Subcommittee of this Task Force devise an implementation plan to create the means by which each department and agency covered by this plan will be able to obtain information from the database in order to meet the agency's needs. That will include the system of prior notification included in recommendation #5 above.**

**3. Revision of license, certification and registration applications that includes appropriate questions to be answered by the applicant to provide the information necessary for the department or agency to determine whether the applicant has paid in full all fines, penalties, forfeitures, fees, assessments or any other charges imposed by a court in this State.**

With the approval of the above recommendation that each department and agency of the state prepare a listing of their licenses, etc which are covered by this plan, those departments and agencies can then review their application materials and determine how best to include a standard disclosure statement which would become a requirement for all such applications. This disclosure would require the applicant to indicate any payments owed as a result of a court order. There would be a warning that falsification could lead to prosecution.

**Recommendation #8 - The Task Force recommends that each department and agency of the state which issues licenses, certifications or registrations covered by this plan be required to include on all application forms space for disclosure of any payments owed as a result of a court order, as well as a warning regarding falsification.**

**4. The ability and capacity to compare applications with the database.**

The recommendations above envision the development of an implementation plan by which departments will be able to obtain needed information from the database. As part of that plan, it will be necessary to determine what information will be needed on the application forms to be able to compare them to the database and existing applications will have to be revised accordingly.

Once the database and its electronic links are in place, and department and agency applications have been revised to provide the required information, staff who will be using the system will have to be trained to ensure that users of the system have the ability to use it.

In addition, departments will have to assess the impact of this system on their operations to ensure that they have the capacity, both in terms of technology and staffing, to support it.

**Recommendation #9 - The Task Force recommends that standard information be included on all license application forms to allow inquiries into the database. It is further recommended that staff be provided training on the use of the system. Departments will also be expected to identify resources, if any, needed to support the system, including technology and staffing.**

**5. Revision of the Uniform Summons and Complaint and the Violation Summons and Complaint consistent with the remainder of the plan.**

Forms revision will be addressed within the plan.

**6. Coordination with existing or planned information systems within departments and agencies. The plan must include consideration of the use of federal resources to implement information systems, including child support collections.**

As indicated above, it is recommended that the Maine Judicial Information System (MEJIS) serve as the single, current database of all persons owing money as defined by this plan. This system exists in part and is still under further development. Connections with other state agencies would utilize existing systems including the state's wide area network. Nonetheless it will be necessary for some programming and other expenses to be incurred to create new or enhance existing linkages.

**Recommendation #10 - The Task Force recommends that the implementation plan to be developed by the Technology Subcommittee of this Task Force include cost information as well as time estimates.**

The reference to "child support collections" seems to be misplaced. The Task Forces believes that this might have been intended to refer to the computer system used by DHS for child support collections.

**Recommendation #11 - The Task Force recommends that the reference to child support collections be deleted.**

**7. A method of identifying violations that are currently crimes that would be more appropriately classified as civil violations.**

The Task Force has discussed numerous issues raised by the question of whether certain violations should be civil rather than criminal. Those issues relate to:

- finances
- enforceability
- impact on Maine's citizens versus those "from away"
- the nature of the offense (is it serious enough to be a crime)

The Task Force concluded that there are some violations currently classified as crimes that could appropriately be changed to civil violations. The Task Force did not determine which crimes they are but agreed that the appropriate expertise for making those decisions lies in the departments and agencies now dealing with those crimes, and their legislative committees of jurisdiction.

The Task Force discussed the possibility of departments and agencies identifying matters that might be decriminalized and reviewing them with committees of jurisdiction by February 15, after which a subcommittee of the Judiciary Committee could work with members of those committees to finalize the list of those to be decriminalized. The Task Force defers to the Judiciary Committee to determine whether that approach should be

adopted.

**Recommendation #12** - The Task Force recommends that each department and agency now enforcing criminal matters develop recommendations as to those which could be decriminalized. These recommendations will be discussed with their committees of jurisdiction to finalize a list which will go to the Judiciary Committee. The Judiciary Committee will then prepare a single bill to address these changes.

In addition to the seven required elements addressed above, the resolves provides for additional elements and states:

**That the plan may include any other elements the planning task force determines appropriate including but not limited to an analysis of the benefits and disadvantages of expanding the jurisdiction of the District Court Violations Bureau to include all civil violations.**

The Task Force has discussed the expansion of the jurisdiction of the Violations Bureau. Some members prefer dealing directly with individual District Courts. At the same time there is recognition that the Violations Bureau is efficient and can process payments on high volumes of cases. The Violations Bureau has already established electronic links with the Secretary of State for transferring information regarding motor vehicle violations.

**Recommendation #13** - The Task Force recommends that the jurisdiction of the Violations Bureau be expanded to include any violations which are decriminalized as part of this plan.

One of the concerns that has been raised whenever this issue has been discussed is that some departments or agencies could lose dedicated revenue as well as enforcement powers as a result of decriminalization. If that it occurs, they would be unintended consequences of this effort. Departments should identify the effects of these changes and report them to the legislature along with recommended remedies. As an example, if a department is losing revenue which is then be collected through the Violations Bureau and deposited in the General Fund, the Legislature could consider dedicating that revenue or increasing appropriations.

**Recommendation #14** - The Task Force recommends that departments and agencies assess the impact of these changes and report same to the Judiciary Committee and/or their committees of jurisdiction.

# **PLAN OUTLINE**

## **Plan Outline**

If the recommendations above are adopted, the plan can be finalized. In outline form it would contain the following steps:

- The Task Force will consider the elements contained in the resolve. A report and recommendations will be submitted to the Judiciary Committee and the Legislative Council describing the proposed approach for achieving compliance with the goals of the resolve.
- Departments and agencies will work with legislative committees of jurisdiction to recommend crimes which can be decriminalized and these will be submitted to the Judiciary Committee for inclusion in a single bill.
- A listing of those licenses, certifications or registrations covered by this plan will be drafted. Application forms used in conjunction with these documents will be revised:
  - a) to capture all information needed to access the database
  - b) to include disclosure requirements and a warning regarding falsification.
- A technology implementation plan will be drafted containing the following elements:
  - a) a description of existing information systems and the way in which they will be linked to provide the necessary exchange of information.
  - b) a statement of resource requirements and time lines for building the connections between the departments and agencies.
- Procedures for the use of the system will be developed. The procedures will include a process for prior notification to allow those owing money to pay before sanctions are imposed and to meet due process requirements. A training program on the use of the system will be developed.
- The Task Force will submit a more detailed plan to the Judiciary Committee and the Legislative Council including cost information for the development and maintenance of the system.



# **APPENDIX A**

APPROVED

CHAPTER

APR 01 '98

103

BY GOVERNOR

RESOLVES

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-EIGHT

—  
S.P. 480 - L.D. 1482

Resolve, to Establish a Plan to Enhance the Enforcement of  
Civil and Criminal Violations

Sec. 1. Plan; joint responsibility. Resolved: That the Secretary of State, the Chief Justice of the Supreme Judicial Court, the Commissioner of Inland Fisheries and Wildlife, the Commissioner of Marine Resources, the Commissioner of Human Services, the Commissioner of Public Safety and the Governor, referred to as the "planning task force," shall jointly develop a plan to enhance the enforcement of civil and criminal violations and the collection of fines, penalties, forfeitures and other charges. The plan must implement a central credentialing registry and may include an expansion of the jurisdiction of the District Court Violations Bureau. The plan must include the following elements:

1. Prohibition of the renewal or reissuance of any license, certification or registration by any department or agency of the State if the applicant has not paid in full all fines, penalties, forfeitures, fees, assessments or any other charges imposed by a court in this State;

2. A single, current database of all persons who have not paid in full any fines, penalties, forfeitures, fees, assessments or any other charges imposed by a court in this State, including:

A. An update process to ensure accuracy and timeliness of information to the greatest extent possible; and

B. A means for each department and agency that issues licenses, certification or registrations to obtain information in the database within the time period that meets that department's or agency's needs;

3. Revision of license, certification and registration applications that includes appropriate questions to be answered by the applicant to provide the information necessary for the department or agency to determine whether the applicant has paid in full all fines, penalties, forfeitures, fees, assessments or any other charges imposed by a court in this State;

4. The ability and capacity to compare applications with the database;

5. Revision of the Uniform Summons and Complaint and the Violation Summons and Complaint consistent with the remainder of the plan;

6. Coordination with existing or planned information systems within departments and agencies. The plan must include consideration of the use of federal resources to implement information systems, including child support collections; and

7. A method of identifying violations that are currently crimes that would be more appropriately classified as civil violations; and be it further

**Sec. 2. Additional elements. Resolved:** That the plan may include any other elements the planning task force determines appropriate including but not limited to an analysis of the benefits and disadvantages of expanding the jurisdiction of the District Court Violations Bureau to include all civil violations; and be it further

**Sec. 3. Cooperation. Resolved:** That other state departments and agencies shall provide assistance as requested by the planning task force; and be it further

**Sec. 4. Participants. Resolved:** That each member of the planning task force may designate an individual within that member's department or office to serve on the planning task force as that member's designee. The planning task force may request additional state employees, policymakers and legislators to participate in carrying out this resolve; and be it further

**Sec. 5. Drafting assistance. Resolved:** That the Legislative Council shall provide assistance in drafting legislation to implement

the planning task force's recommendations; and be it further

**Sec. 6. Report. Resolved:** That the planning task force shall submit a report, including any implementing legislation, to the joint standing committee of the Legislature having jurisdiction over judiciary matters and to the Legislative Council of the 119th Legislature by December 15, 1998.

# **APPENDIX B**

**Notes from 8/28/98 Technology Subcommittee**  
(SWC 9/3/98)

The types of documents covered by the law vary greatly as do the agencies the method of sale and ability to plan for this law. The subcommittee reviewed a number of topics that will impact the project as a whole and the computer systems specifically. There are several issues that must be resolved before we can determine the ability of each agency to participate.

**Agency** - State or local government entity with authority to issue a license.

This includes private sector vendors acting as agents of the State.

**Agent** - person selling license.

**AOC** - Administrative Office of the Courts

**Debtor** - Person who owes money to the Judicial Department

**Debtor Database** - the database of overdue fines, fees and other money owed the courts.

**Debtor Information** - details about the amount of the debt and the location the debt is owed to.

**IFW** - Inland Fish and Wildlife

**License** - License, registration, certificate covered by the resolve.

**MEJIS** - Maine Judicial Information System, the courts new case management system

**MRS** - Maine Revenue Services (fka Bureau of Taxation)

**OIT** - Office of information Technology, a division of the AOC.

**WAN** - Wide Area Network used to connect offices on a full time, no dial in basis.

**Technology related issues.**

**Basic features of the system:**

**Keys to identify the debtors**

Name, Date of Birth, License Number, Social Security Number.

The name would include a soundex feature to retrieve sound alike and spelling variations.

**Information about the money owed - how much, why and to which court.**

**Other case information about the debt**

**Options for access to the system include:**

**Batch** - a licensing agent would send a file containing identification information about their customers. The system would check each customer against the debtor database. Those with matching records would have the debt information added to the batch file. When complete the updated batch file would be sent back to the agency.

**Online** - an agency would enter identification information into a screen. That information would be sent to the debtor database. Those with matching records would have the debt information sent back to the online screen. This method could include a secure Internet type of access.

**Interactive over the phone** - an agency would call into the debtor database using a phone. The agent would enter identification information using the phone keypad. The debtor database would respond with a spoken message about debt information.

**Call in center** - an agency would call into the center with identification information and a person would look it up using the online access method.

**Questions and comments**

**Identification**

*What means does an agency have to determine the identity of the customer to make the query?*

*How do we get positive ID?*

Impacts the access method (keys) to the debtor database, the design of forms etc.

SSN can be a problem -  
they are not part of all request forms (IFW does not get a SSN)  
there are legal issues on it collection, storage and use  
they are not always accurate, people give false numbers  
SSN could be added to UTT and VSAC (tickets)

#### **Response time**

*How quickly does the customer expect the license?*

*How much warning will the customer get that they are denied?*

*Is there an appeal process for denials? How and how quickly?*

*How does the look up procedure fit in the agencies workflow for renewals?*

Some agencies know the person is coming because their license is about to expire. The agency sends a notice reminding them of renewals. There are at least two groups of people in this category. Those with exact appointment times and others who have a window of several days to show up. This is the easiest group. The system could allow a batch of renewal notices to be compared to the debtor database overnight in advance. Those renewal notices for people having a match in the debtor database could receive ample warning of the denial and how to resolve it.

That reminder could tell them of the need to pay a court debt before the renewal is granted.

Some agencies do not know the person is coming. A person randomly decides today is the day I will buy a fishing license.

#### **Impacted agencies**

*Does this apply to all agents of the state? This would include groups like local stores selling fishing licenses and municipalities registering cars, ATVs, trailers, boats, etc.*

What type of point of sale system is used at the agency?

How can the point of sale system be linked to the Debtor Database?

#### **Resolution of the debt**

*What if the person is on a payment plan from the court or MRS?*

*How fast should a payment be credited and be available to the agencies?*

*Is there consideration of ability to pay? Guidelines*

*Is that determined by the court and noted in the debtor information (exclude people from being reported as a debtor)?*

*Is that determined by the agent?*

*What is the difference between bad debt and current debt?*

*Are there cutoffs of low amounts (\$5.00, \$20.00)?*

*Should the agency add the debt to the license fee and collect it for the court?*

People will be upset if they are denied a renewal. They will want to argue with someone that they do not owe or will want to pay now.

#### **Other thoughts**

This should wait until the MEJIS has been completed.

In addition to the courts, many agencies would need time to develop systems and procedures to handle a project like this.

There should be a specific list of licenses in the statute to avoid confusion. The Resolve does not list permits, but many of those are like licenses (i.e. concealed weapon). There is a "slang" to some of these licenses, certificates, registrations and permits.

Agents in small and/or remote locations could be at risk if they deny a license. This would be aggravated if it were a license that is typically requested and obtained in minutes. For

example: What if I want to use my ATV or snowmobile this weekend. On Friday at 3:30 the town clerk denies my registration due to an unpaid fine.

**Other questions**

Should we expect agencies to collect the money for the courts?  
Should credit cards be allowed and how do they fit in to the process?  
Agencies should decide if and how to implement the link to the system?  
Is there an expectation of reciprocity agreements with other states?

**Thoughts about cost:**

A model that includes only those agencies that can batch the requests and send warnings to people up for license renewals is the least expensive.

Online access from office space with access to the Executive Departments WAN from remote locations would also be relatively inexpensive.

Agencies collecting money for the courts would create clerical and accounting work.



## **APPENDIX C**

**Planning Task Force  
Legal and Policy Subcommittee**

Minutes of 10/28/98 meeting

The Legal and Policy Subcommittee met on 10/28/98 to review the proposal to impose license suspensions upon persons delinquent in their obligations to pay outstanding fines, penalties and assessments arising from civil infractions or criminal violations and establish a single database for outstanding fines, penalties and assessments. Present were Debbie Willis DHS, Errol Dearborn/Maine Revenue Services, Col. Tim Peabody/ Inland Fisheries and Wildlife, Bill Dowling/ Secretary of State, and Cheryl Moreau/Court Administrators Office.

The Subcommittee expressed concerns about the policy implications of suspension of licenses, registrations, certifications and permits upon inexcusable failure to pay outstanding civil assessments or penalties and criminal fines. Foremost amongst the concerns expressed were:

- ✓ the primary impact of a suspension/revocation system would be upon Maine residents.
- ✓ Imposition of license, permit and registration suspensions and revocations would have an adverse impact upon the personal property tax receipts of municipal governments
- ✓ Delinquent parties could frustrate the suspension/revocation system by registering their motor vehicles under the names of other persons.
- v License suspension may result in loss of excise revenue or dedicated revenue and deprive the state of matching funds to draw down federal dollars.

The Subcommittee discussed the desirability of establishing a relationship between the nature of the underlying violation and the proposed suspension/revocation. The public supports the notion of motor vehicle registration or operator's license suspension relating to delinquent fines or penalties arising from the operation of motor vehicles. Public support for a system of permit or license suspension unrelated to the conduct giving rise to the delinquent fine was considered problematic.

From an operational standpoint, Subcommittee members supported development of a pilot project restricted to a single state agency. Ideally, the licenses or permits subject to suspension/revocation would be personal to the delinquent party. For example, permits or licenses issued by the Warden's Service or Marine Resources are to be used solely by the permit holder. This situation contrasts with the issuance of motor vehicle licenses whose loss would likely affect all members of a family, regardless of their responsibility for the delinquent fine. Moreover, it is desirable to restrict the pilot project to an agency which limits the period of its license or permit to one or two years. The licenses and permits issued by the Inland Fisheries and

Wildlife and Marine Resources are limited to one year. Moreover it would be desirable to develop the pilot project in an agency with a restricted point of access. Applications for Warden's Service permits are processed in municipalities and sporting goods stores. This contrasts with Marine Resources permits which are issued by the agency directly. Furthermore the records of the state agency which is chosen as the pilot should be computerized and stored in a single database.

Subcommittee members also discussed the legal implications of a suspension system. The Administrative Procedures Act generally prohibits the suspension or modification of a license, permit or registration without the opportunity for a fair hearing. 5 M.R.S.A. §1003. Any proposal to suspend or revoke licenses must factor in the costs of administering a fair hearing system in the cost/benefit analysis. The public might be more inclined to challenge suspensions unrelated to the conduct giving rise to the underlying fine or assessment. Data from the Maine Department of Human Services license suspension initiative was reviewed. In August, 1993, the Support Enforcement Unit of DHS issued 17,400 notices informing delinquent child support obligors of their potential exposure to motor vehicle license suspension. In the following five years over 5,000 additional child support obligors were so notified. The overwhelming majority of obligors voluntarily tendered child support payments. DHS actually suspended only 1475 driver's licenses and 252 business and professional licenses. The DHS experience indicated that the threat of license suspension might be sufficient to exact substantial compliance with outstanding fine obligations.

The issue of confidentiality must be carefully considered in any program of license suspension or revocation. The Secretary of State and Department of Human Services are advised of the social security numbers of delinquent motorists and child support obligors. Federal legislation generally prohibits the public dissemination of this data. In the event the State adopts a program of license suspension/revocation, companion legislation must be enacted to assure the State is in compliance with federal confidentiality requirements. Consideration to a program of encryption is merited.

Subcommittee members discussed the potential for abuse of a system of personal identification. Persons could transpose the digits on their date of birth or social security number in order to avoid a computer match. The State should enforce penalties for intentionally fraudulent statements in this regard.

It was agreed that license suspension would be an inappropriate method to enforce outstanding municipal fines and assessments.

Subcommittee members discussed the need for interlocking computer databases to be compatible. At present, the Department of Motor Vehicles Data Base is linked to the Secretary of State licensure and registration database. However this situation is an anomaly in Maine government and most state agencies are unable to communicate with one another via computer.

The District Court system has begun the process of conversion to a common management information system, but the conversion will not be complete for another year.

The Subcommittee approved a graduated sanctions approach, with license revocation or suspension a remedy of last resort. Under present law, the Court must consider the financial resources of the offender and the nature of the burden payment of a fine would impose upon the offender. The Court has authority to order the fine be paid in installments. In the event a convicted person fails to pay a fine, the attorney for the state or the court may require the person to come into court to show cause why he or she should not be committed to the custody of the sheriff. After hearing, a court may require a convicted person who has not demonstrated good cause for nonpayment of a fine to be committed to the custody of the sheriff and work off the fine at a rate of \$5/day up to six months. Upon an unexcused default in the payment of a fine, execution may be levied and such measures as are authorized to secure payment of an unpaid civil judgment may be ordered. These remedies include the imposition of judgment liens, wage attachment, trustee process, and income tax withholding. The enforcement tools available to courts to compel payment of delinquent fines are set forth in Chapter 53 of the Maine Criminal Code, and represent the work product of a study group chaired by Assistant Attorney General William Stokes.

The Subcommittee also supported the use of credit cards to pay outstanding fines. Presently credit card service charges are assessed against the respective state agency which receives payment via credit card. Legislation may be required to pass the credit card cost onto the consumer/delinquent party.

The Subcommittee agreed to meet again prior to the convening of the full Planning Task Force.

# **APPENDIX D**

HIGHLIGHTS OF LICENSE REVOCATION INITIATIVE

>

- > On August 24, 1993, DHS issued 17,400 notices informing delinquent child support obligors of the enactment of the new License Revocation Law and of the fact that they were in jeopardy of having their occupational/professional and drivers' licenses revoked.
- > Between August 24, 1993 and November 16, 1993, individuals in the target group paid \$3,496,168.33.
- > On November 16, 1993, a follow-up notice was issued to the same group which acknowledges receipt of payments from those who had paid and reminded non-payors of the possibility of license revocation.
- > In March, 1994, 2,030 additional delinquent obligors who were out of compliance since November 19, 1993, were also notified.
- > On May 9, 1994, the Department began issuing formal notices of noncompliance and intent to revoke license to individuals who had not taken action to comply with their child support orders.
- > On October 14, 1994, 1,588 additional delinquent obligors, who were out of compliance since July of 1994, were also notified.
- > On December 20, 1995, 2,438 additional delinquent obligors were notified of the possibility of license revocation.
- > Between August 24, 1993 and May 9, 1998, 18,156 individuals in the target groups of 23,456 have paid \$86,959,399.27.
- > As of May 19, 1998, license issuing authorities have been notified to revoke one thousand two hundred fifty (1,250) driver's licenses, two (2) attorney's license, two (2) master electrician's licenses, one (1) journeyman's electrician license, one (1) designated broker license, two (2) real estate licenses, two (2) electrician's helper license, two (2) motor vehicle inspector's license, two (2) Maine Guide licenses, one (1) veterinarian's license, five (5) plumbing licenses, one (1) apprentice plumber trainee's license, one (1) plumber's trainee license, one (1) apprentice oil and solid fuel license, one (1) master oil license, two (2) Certified Nurses Aide certification, one (1) horserace driver/trainer license, one (1) horserace owner, driver, trainer license, one (1) denturist permit, one (1) engineer's license, twenty-four(24) lobster and crab catching/selling licenses, twenty-three (23) commercial fishing licenses, one (1) wildlife propagation permit, eleven (11) scallop dragger/diver licenses, thirty-one (31) commercial shellfishing licenses, sixteen (16) worm digging licenses, twenty-five (25) elver dip net and/or fyke net licenses, two (2) bait wholesale licenses, two (2) seaweed license, one (1) smelting wholesale license, ten (10) sea urchin and scallop tender licenses, two (2) mussel dragger/hand licenses, one (1) eel license and twelve (12) sea urchin dragger/diver licenses. <sup>1</sup>

> Total number of driver's licenses revoked (including Class A, B, or C):	1250
Total number of business and professional licenses revoked:	<u>221</u>
> Total number of licenses revoked:	1471

- >
- > As of May 20, 1998, six hundred eighty-eight (688) of the one thousand two hundred sixty-four (1,264) individuals subject to license revocation have come into compliance with their child support responsibility. <sup>1</sup>

<sup>1</sup> The difference between the total number of licenses revoked (paragraph 9) and the total number of individuals subject to license revocation (paragraph 10) is due to the fact that many of the individuals possess more than one type of license. Therefore, more licenses were actually revoked than the number of individuals involved.

# **APPENDIX E**



MAINE  
JMAN SERVICES  
11 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0011

ANGUS S. KING, JR.  
GOVERNOR

KEVIN W. CONCANNON  
COMMISSIONER

DIVISION OF SUPPORT ENFORCEMENT AND RECOVERY  
INSTRUCTIONAL MEMORANDUM  
11/03/97 - SLH-134

To: All DSER Staff  
From: Stephen L. Hussey, Director  
Subject: License revocation

The purpose of this instructional memorandum is to advise all DSER staff of policies and procedures for implementing state laws that provide for revocation of driver's, occupational and recreational licenses for nonpayment of child support. These policies and procedures are effective immediately and are to be followed in all license revocation proceedings until further notice. All DSER staff are to review these instructions and the attached materials thoroughly. Additional training, instructional materials and forms will be made available on an as needed basis.

I. INTRODUCTION AND PURPOSE

It is important for all staff to understand the nature and purpose of a license revocation proceeding. A license revocation proceeding is an administrative remedy that is intended to enable DSER to collect child support from chronic nonpayers who do not have a steady source of garnishable income. The purpose of the proceeding is to compel payment, not revoke the obligor's license, or punish the obligor for past periods of nonpayment. A revoked license and no child support payment obviously does not satisfy any of the needs of the obligee and dependent child to whom support is due.





The license revocation remedy is an additional enforcement tool that is to be used in conjunction with existing remedies and methods for determining assets and sources of income. The license revocation remedy is not a substitute for existing remedies or an end in itself. The availability of the remedy does not lessen the need to conduct investigations in difficult, nonpaying cases.

The license revocation remedy is an administrative enforcement tool intended to be used when all other reasonably available collection methods have proven unsuccessful or inadequate. Cases in which it may be appropriate to initiate a license revocation proceeding are those in which the obligor has illegally transferred assets, works covertly, is self-employed or works on a cash basis.

The remainder of this instructional memorandum describes the various aspects of the license revocation process and outlines the procedures to be followed at each stage of the proceedings.

## II. DUE PROCESS CONSIDERATIONS

Procedural fairness in license revocation proceedings is required by the United States and Maine Constitutions. This is a basic constitutional principle that has been affirmed repeatedly by the courts. For purposes of the child support license revocation laws, an obligor's constitutional right to due process of law necessarily includes adequate prior notice, a meaningful opportunity to be heard, and the right to judicial review before the state deprives the obligor of driver's, occupational or recreational license(s).

In addition to understanding how the basic elements of due process are incorporated into the law, the rules, and the forms, all staff must be aware of the following due process considerations as they relate to use of the license revocation remedies.

Any valid state action to deprive an obligor of a license for nonpayment of child support must be based on a specific finding of the obligor's ability to pay. In cases where the obligor is under a court or administrative order to make periodic child support payments, it is the Department's position that a finding was made by the fact-finder when the obligation was established. In cases where an ongoing order has been entered by default, it is the Department's position that the obligor waived his right to present evidence on the issue of ability to pay when the order was established, and that the order for current support is enforceable until it is amended. The proper remedy for an obligor who claims that he is unable to comply with his support order because of an inability to pay is to move to amend the order in the forum in which it was established. This situation is discussed in detail in section V of this memorandum. (Note: If an administrative order has been entered by default, the obligor is entitled to a hearing to have the ongoing amount amended to reflect his current income, regardless of whether the request for a hearing is within one year of when the order was issued).

### III. NOTICE THAT DHS SEEKS TO REVOKE YOUR LICENSE(S)

A license revocation proceeding is started by serving the obligor with a Notice That DHS Seeks To Revoke Your License(s) (IMSEL 425 R1097) (Notice). A Notice may be served only if the obligor is subject to a support order and has not complied with the order in the past 60 days.

The Notice must inform the obligor of the specific allegations of noncompliance as related to the obligor's support order. By law, DSER must attach a copy of the support order to the Notice. The Notice also must inform the obligor of what he or she can do to comply with the support order to avoid license revocation. Other notices concerning hearing rights, the right to seek an amendment of the support order and procedures for exercising those rights are included as provided for by law.

Before a determination is made as to whether it is appropriate to issue a Notice, the agent first must review the obligor's support order and determine whether the Department's records show that the obligor is in compliance with the order for purposes of the license revocation remedies. The law and the rules provide that the remedy is available to enforce a court or administrative support order issued by this state or any other state.

A. Compliance. An obligor complies with a support order by paying current support; paying all past-due support or, if unable to pay all past-due support and a periodic payment has not been ordered by the court, by making periodic payments in accordance with a written payment agreement with the Department; and meeting the obligor's health insurance obligation. Compliance with a support order means that the obligor is no more than 60 days in arrears in making payments in full for current support, in making periodic payments on a support arrearage pursuant to a written agreement with the Department or in making periodic payments as set forth in a support order and has obtained or maintained health insurance coverage if required by a support order.

An obligor who is presently unable to pay all past-due support may come into compliance with the support order by executing a written payment agreement with the Department (Acknowledgment of Debt and Agreement to Pay Past-due Support - (IMSEL 816 R1097) (Payment Agreement) and by complying with that Payment Agreement. A condition of a Payment Agreement must be that the obligor pay the current support when due. Before a Payment Agreement is executed the obligor must disclose fully to the Department in writing on a Statement of Resources (IMSEL 357) the obligor's financial circumstances, including income from all sources, assets, liabilities and work history for the past year. The obligor must provide documentation to the Department concerning the obligor's financial circumstances including copies of the most recent State and federal income tax returns, both personal and business, a copy of a recent pay stub representative of current income and copies of other records that show the obligor's income and the present value of assets held by the obligor. After full disclosure, the Department shall determine the obligor's ability to pay past-due support and request the obligor to execute

a Payment Agreement consistent with the obligor's ability to pay, not to exceed the normal limits on income withholding. The agent must obtain a fully completed Statement of Resources and accompanying documents from the obligor before completing a Payment Agreement with the obligor. Failure to comply with the Payment Agreement is grounds for license revocation unless the obligor notifies the Department that the obligor is unable to comply with the Payment Agreement and provides the Department with evidence of the obligor's financial circumstances to support the claim.

B. License information. The agent must attempt to determine the type, status and issuing authority or board of each license held by the obligor, if any. If the obligor holds more than one valid driver's, occupational or recreational license, include each issuing authority or board in the Certification To Revoke License(s) (IMSEL 429 R1097). How this information is obtained will depend in part on the source of the license.

The Division has obtained some licensee information through a computer tape match with the Department of Professional and Financial Regulation. The Department of PFR regulates a number of occupational licensing boards. These tape matches will be run periodically and the information provided to agents and supervisors. Print-outs have been developed and are published in two forms; those that match, and those that are a probable match with the information on NECSES. Samples of these print-outs are attached to this memorandum. Efforts to obtain similar information from other occupational licensing sources will be made on an ongoing basis. Efforts are also underway to automate this process.

Until further procedures are established, occupational licensing information must be obtained from existing sources. Do not contact occupational licensing authorities directly to request information without supervisory approval. The Department has a substantial interest in not creating unreasonable burdens for other state agencies and licensing boards. There is no change currently as to the manner of obtaining information from the Department of Motor Vehicle. Preliminary work is underway to establish protocols for obtaining information from the Department of Inland Fisheries and Wildlife about recreational licenses.

C. Financial investigation. Agents must obtain all readily available information about the obligor's overall financial situation before recommending initiation of a license revocation action. This includes, but is not limited to, review of credit reports, property tax records, employment information available through the Department of Labor, Bureau of Motor Vehicle records, and information that is stored in and made available through NECSES.

If the agent has reason to believe that the child support owed may be collected through income withholding, the agent must attempt enforcement by income withholding before recommending that a license revocation action be initiated.

The agent also must determine whether the obligor receives TANF, SSI, general assistance or social security disability benefits, and whether the obligor has filed for bankruptcy protection or is paying child support under a Chapter 13 wage earner plan. Under no circumstances is it acceptable to initiate a license revocation proceeding if any of these conditions are present. Such an action is contrary to legislative intent and could serve no valid State purpose. Initiating a license revocation action under any of these conditions is an abuse of discretion, a possible violation of the obligor's due process rights, and may be a violation of other laws. It is the responsibility of the agent and supervisor to determine whether these conditions are present before initiating a license revocation action.

D. Supervisory review and approval. District Supervisors must review each case identified for possible license revocation proceedings before a Notice is served. The Supervisor is to determine whether it is appropriate to begin the action based on all applicable legal requirements, the particular facts of the case and the contents of these instructions.

Before recommending that a supervisor review a case for possible action, a License Revocation Fact Sheet (IMSEL 427 R1097) must be completed. This serves several important purposes: it provides a written track for making an initial determination as to whether a license revocation remedy may be appropriate; it helps the supervisor to review cases systematically and efficiently; it provides a standardized procedure statewide; and it serves as a basis for further review before the obligor is certified for noncompliance to the Secretary of State, an occupational licensing board or a recreational licensing authority. It is also an important part of the agency record that is subject to judicial review. It is essential that the information provided in the fact sheet is accurate, complete and supported by documentation in the record. A client affidavit will be sent to the client when the Notice is sent. If the client affidavit is not returned, a supervisor will determine if one is required based on case history and debt type before the obligor is certified.

E. Service. Once a case is reviewed and approved by the District Supervisor, a properly completed Notice may be served on the obligor. It is the issuing agent's responsibility to verify that the Notice is completed correctly before authorizing service. The agent may serve the Notice personally or by certified mail. Service by a civil process server is also permitted.

#### IV. RIGHT TO HEARING

The Enforcement Agent will be responsible for preparing the record and presenting the evidence at hearing. This will be done in consultation with and at the direction of the District Supervisor. In addition, Supervisors and other staff members will be called on to appear at hearings as needed.

1. Written request. An obligor who is served Notice may request an administrative hearing. A request for hearing must be in writing and must be received by DSER within 20 days of service.

a. Requests directed to issuing agent. The Notice informs the obligor to direct any request for hearing to the agent who issued the Notice. By law the address and telephone number of the local DSER office must appear on the Notice. These procedures do not mean that DSER staff other than the issuing agent cannot accept a request for hearing. Under no circumstances may staff refuse to accept a request for hearing.

b. Scheduling. The agent is responsible for forwarding any request for hearing to the Central Office Hearings Coordinator for processing and scheduling. This must be done promptly. A copy of page one of the Notice (IMSEL 425 R1097) must be attached to the request.

c. Time. For purposes of counting the time limit for a request for hearing, do not count the day of service. Count the day after service as day one. Also, a request for hearing is deemed timely if the 20th day after service is a weekend, holiday or other non-business day for the Department and the request is received by DSER on the next business day.

2. Issues at hearing. The issues at hearing are whether the obligor is required to pay child support by the terms of the support order, and if so, whether the obligor is in compliance with the order. The Division has the burden of proving these essential elements. Other issues may be raised by the obligor for purposes of preserving them for appeal, but are not within the jurisdiction of the hearing officer. This means that the hearing officer may make limited findings of fact on other issues (which may include taking testimony, receiving evidence, and providing for cross examination), but cannot make a legal determination on the merits. The scope of the hearing is limited by law to whether the obligor is required to pay child support by the terms of the support order and, if so, whether the obligor is in compliance with the order. Other issues must be addressed by the court on a petition for review of final agency action.

3. Evidence. The evidence that must be presented to support a finding of noncompliance with a support order generally consists of a copy of the Notice, proof of service of the Notice, a copy of the support order (which would be attached to the copy of the Notice), the Department's payment records from the period 60 days prior to the date on the Notice, copies of any relevant payment agreements entered into between DSER and the obligor, and some evidence that shows it is more likely than not that the individual who has been served Notice is the obligor named in the support order.

a. Obligated to pay. As a practical matter, in many cases the individual will concede the issue of identity. It is therefore, good practice simply to ask the individual (on the record) whether he or she is the obligor named in the support order. An individual who is initially reluctant to admit that he is the obligor named in the order, may concede the issue quickly upon close questioning by the agent.

Areas for questioning include the obligor's full name, social security number, date of birth, address, employer, occupation, property, questions about the custodial parent, names and dates of birth of children, whether the obligor has made child support payments to DSER in the past, facts surrounding a divorce judgment, acknowledgment of paternity, or past actions by DSER involving the obligor, etc.

If the custodial parent is present at the hearing, always ask the custodial parent to identify the obligor on direct examination.

Documentary evidence also may be presented at the hearing to prove that the individual served is the obligor named in the support order. This may be accomplished by presenting copies of licensing records that contain identifying information that match DSER records, or records from any other sources that serve to identify the individual as the obligor, including information that is contained in DSER's casefile and computer system.

b. Noncompliance. Proof of noncompliance is made by presenting copies of the Department's payment records for the obligor's case. If the obligor has signed a Payment Agreement this will be presented. Present as evidence at the hearing a current copy of the NECSES CFIN screen to show the date the obligor last paid and also complete copies of the TRNL screens from the period 60 days prior to the date on the Notice.

In order to prove that the obligor is not in compliance with a support order because the obligor has not provided health insurance coverage, the agent must show that the obligor is required to provide such coverage by the terms of the order and that the obligor had not done so in the 60 days prior to the date on the Notice. Again, an obligor who is not in compliance with respect to health insurance may freely acknowledge the noncompliance when questioned. The agent also may ask the obligor whether he or she has provided proof of insurance to the Department or the custodial parent, if required to do so by the terms of the support order. If the DSER case record does not reflect that the obligor has provided proof of insurance to the Department, the agent may testify to that effect to prove that the obligor is not in compliance. If the obligor contends that he or she has provided the insurance, the agent should ask the obligor to provide credible evidence that supports the claim.

c. **Defenses.** The only valid defenses at the administrative hearing to determine whether an obligor is in compliance with a support order are that the individual is not the obligor named in the support order, the support order does not require the obligor to pay child support by its terms, or that the obligor is in compliance with the order.

Other issues and defenses that are raised must be addressed by the court in either a separate action for relief filed by the obligor, or in a petition for judicial review of final agency action. The purpose of the hearing is to determine whether the obligor is in compliance with the support order. Its purpose is not to determine whether the amount of the obligation is consistent with the obligor's ability to pay, whether the Department's records accurately reflect the amount of the obligor's debt, or to provide the obligor with a forum in which to request equitable relief. This does not mean that the obligor is in any way prevented from raising these and other issues to preserve them for argument on appeal.

4. **Decision after hearing.** When issued, a decision after hearing is sent to the obligor by regular mail. The obligor has no right to an administrative appeal hearing, but may request the court to review the decision as final agency action. If in its decision, the Department finds that the obligor is not in compliance with a support order, DSER may certify the obligor to any appropriate licensing authority or board for noncompliance with a support order 30 days after the decision is mailed to the obligor, provided that the obligor has not come into compliance with his support order, initiated an action to amend his support order, or filed a petition for judicial review in Superior Court. It is essential that the person who mails the decision to the obligor, document the date of mailing in the DSER case record.

## V. **PROCEEDINGS TO MODIFY OR AMEND THE SUPPORT ORDER**

The law and the rules provide that an obligor is not prevented from filing a motion to modify support in court, or from requesting the Department to amend a support obligation established by an administrative decision, in response to service of a Notice. The law and rules further provide that, subject to the conditions outlined below, such an action on the obligor's part results in a stay of the license revocation proceeding. This mechanism provides an obligor who claims that his support order is too high, with an opportunity to obtain relief and comply with the amended order, if any, before being subject to certification and loss of license.

Whenever an obligor takes action to amend his support order in response to a Notice, the agent must document this in the case record and note that a stay is in effect.

In its Notice, the obligor is instructed to provide the agent who issues the Notice with copies of any requests for hearings to amend or motions to modify support that are filed with the court.

Requests for hearings to amend administrative decisions and motions to modify support orders in court that are received by DSER in response to a Notice, are to be processed promptly as in all other cases.

## VI. STAY

The Division may not certify an obligor for noncompliance with a support order at any time that a stay of any kind is in effect. The stay provisions of the law are an essential component of the obligor's due process rights. The stay provisions that pertain to an appeal of a Notice guarantee the obligor's constitutional rights to a full and fair hearing and an opportunity for judicial review, before the state can deprive him of a driver's, occupational or recreational license. It is absolutely essential that DSER know whether a stay is in effect before certification is considered at any level. It is at no time permissible for any DSER staff member to indicate in any manner to an obligor that certification or loss of license is possible while a stay is in effect.

It is very important for the agent who initiates service of a Notice to monitor the case to determine whether at any point in the proceeding a stay is in effect and, if so, to document that fact in the case record. The agent also must inform other staff of any stays that are in effect, as is necessary and appropriate.

The specific stages of the license revocation process when a stay can be in effect are outlined below.

A. Request for hearing. Any action by DSER to certify an obligor to a licensing authority, or board for noncompliance with a support order is stayed if the obligor makes a timely request for hearing in response to service of a Notice. The stay remains in effect pending a decision after hearing.

B. Decision after hearing. By rule, DSER may not certify an obligor to a licensing authority for noncompliance with a support order until 30 days after a decision after hearing is mailed to the obligor. Certification after the thirty day period may only proceed if there is a finding of noncompliance in the decision and the obligor has not since come into compliance.

C. Motion to modify or request to amend. A stay is effective when, in response to service of a Notice, the obligor takes action to amend his support order. If the obligor's action to amend his support order results in no change or an increase in the amount of the support order, the stay ends.



D. **Judicial review.** An obligor has the right to petition the court for review of final agency action. If the obligor files a petition for judicial review within 30 days of the date of a decision after hearing, the Department may only certify the obligor for noncompliance with his support order if the matter is resolved by the court in the Department's favor.

## VII. JUDICIAL REVIEW

A petition for review of final agency action is governed by 5 M.R.S.A. §§ 11001-11008 and Rule 80C of the Maine Rules of Civil Procedure. When a Rule 80C petition is filed, the Department is required to compile a complete record of the proceeding and submit it to the court, where the agency's action will be reviewed for error by a Superior Court Justice. The Superior Court Justice can rule on issues the Hearings Officer cannot. Therefore the agent must retain all relevant evidence. This a major reason why it is necessary for staff to document all aspects of a license revocation proceeding.

Upon review of the record and argument by both parties, the law provides that:

The court may:

- A. Affirm, modify or reverse the decision of the agency; or
- B. Remand the case for further proceedings, findings of fact or conclusions of law or direct the agency to hold such proceedings or take such action as the court deems necessary.

Either party may appeal an 80C decision to the Maine Supreme Court.

## VIII. CERTIFICATION OF NONCOMPLIANCE

If the agent determines that it is appropriate to certify an obligor for noncompliance, the agent is to complete the Pre-certification Fact Sheet (IMSEL 428 R1097) and review the case with the District Supervisor.

If after carefully reviewing the case, the Supervisor determines that certification for noncompliance is appropriate, the Supervisor shall instruct the agent to prepare a record of the case that consists of the following:

- A. Notice and proof of service (with copy of the attached support order);
- B. Completed Pre-certification Fact Sheet;
- C. Concise written narrative by agent that provides any additional details that should be considered; and

D. Copies of all supporting documentation, including, but not limited to, payment records, licensee information, hearing decisions and payment agreements.

The supervisor shall determine the adequacy of the record and shall transmit the complete record to DSER Assistant Director.

All certifications will be issued by Central Office staff. This will include sending a copy of the certification to the obligor with a letter of explanation. Copies of all documents and correspondence issued from Central Office will be sent to the field.

**IX. STATEMENT OF COMPLIANCE**

When an obligor who has been served a Notice subsequently complies with the support order, DSER must provide the obligor with a Statement of Compliance (IMSEL 426 R1097). This form must be completed and provided to the obligor without delay. This can be done by presenting it to the obligor in person or by mailing. A copy of the Statement of Compliance is sent by facsimile to the Central Office for their further processing. The obligor must present his copy to the licensing authority or board which issued the license.

**X. NOTICES ISSUED BEFORE 10/1/97**

Effective 10/1/97 the law changed. If the license revocation process was started prior to 10/1/97 or done on forms printed prior to 10/1/97 and a Statement of Compliance has not already been given to the obligor a new Notice must be sent. Service on the obligor is the same and the agent may serve the new Notice. In order for the Department to avail itself of the changes in the law, the obligor must receive a new Notice. The new Notice clearly informs the obligor that his driver's, occupational and recreational licenses are subject to revocation. The Notice also informs the obligor that if he is unable to pay his debt in full he may make a written agreement with the Department and that failure to comply with the agreement is grounds for license revocation. If the Department seeks to revoke an obligor's license for failure to comply with a written agreement to make periodic payments on a debt the agreement must clearly state that "*failure to comply with the agreement is grounds for license revocation.*" This statement does not appear in materials used prior to 10/1/97. If the statement does not appear in the Notice and in the agreement the Department cannot seek to revoke a license based solely on the grounds the obligor has failed to comply with the written agreement. Revocation will only be possible if obligor has not paid current support, paid all past-due support or provided health insurance for the past 60 days.

Obligor Parent: \_\_\_\_\_ Case ID: \_\_\_\_\_  
\_\_\_\_\_ Member ID: \_\_\_\_\_  
\_\_\_\_\_

## NOTICE THAT DHS SEEKS TO REVOKE YOUR LICENSE(S)

*(19-A M.R.S.A. Sections 2201 and 2202)*

**Notice:** DHS must receive your response to this Notice within 20 days of the date of service of this Notice. If not, your driver's, occupational and recreational license(s) may be revoked.

**Explanation:** DHS records verify that you have not followed terms of a child support order against you. A copy of the order is attached to this Notice.

You have not:

- \_\_\_\_\_ Made a full current child support payment in the past 60 days;
- \_\_\_\_\_ Paid on a past due child support debt according to a support order or a written agreement with DHS, or;
- \_\_\_\_\_ Provided health insurance for your child(ren) as ordered in the past 60 days.

**What you must do:** If you do nothing, your license(s) may be revoked or cancelled. If you do any of the following, your license(s) may not be revoked.

- A. Ask for an Administrative Hearing.** If you believe that you have followed your child support order or that this Notice is wrong, ask in writing for a DHS hearing. DHS must receive your written request for a hearing within 20 days of the date of service of this Notice. Send your written request to the following Child Support Enforcement Office:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Telephone: \_\_\_\_\_