SJR

30

COMMITTEE REPORT

SENATE

FURTHER:

Date: _____

Mr. President:

The Committee on _____ has had _____

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

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MEMBERS HAVING
OTHER RECOMMENDATIONS:

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_____

CHAIRMAN

S 60 (Rev. 12/78)

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF REVENUE

CHILD SUPPORT ENFORCEMENT DIVISION

201 E. 9TH AVENUE, SUITE 202
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3441
TOLL FREE: ZENITH 3300

February 8, 1984

Senate Joint Resolution 30
Intercept of IRS Refunds
Non-AFDC Cases

Testimony Provided by:
Dan R Copeland

Good Afternoon,

My name is Dan R Copeland. I am the Director of the state Child Support Enforcement Division, and during 1984 I also served as the President of the National Council of State Child Support Enforcement Administrators. This National Council is committed to the principle that all enforcement tools should be available equally to both AFDC and non-AFDC child support casework.

This very basic principle was and still is a national program objective that has yet to be firmly established. Many of the bills that were presented to Congress included purpose statement amendments that addressed this concept. These changes sound good, but they do not impact the day to day operation in any state. Requiring that this IRS offset process be made available to both AFDC and non-AFDC cases on an equal basis would be the most tangible change in this regard.

In Alaska offsetting IRS refunds for the AFDC caseload was very effective. Significant collection totals were noted, but there was a more important aspect to the process. Many of the absent parents that would not have paid anything were caught by the IRS network. One of the reasons for this is that this offset process is one of the few effective ways to collect on an interstate case or deal with self-employed people.

Alaska has had the following governmental reimbursement results:

Calendar Year	Cases Submitted	Collections	Arrearages Submitted
1982	227	$85,000	$1,582,500
1983	927	$186,000	$6,092,500
1984	1,148	$230,000*	$6,741,500

*Estimated

At the national level the following governmental reimbursement results have been noted:

Calendar Year	Cases Submitted	Collections	Number of Collections	Average
1982	561,000	$168,915,000	279,000	$605.00
1983	872,000	$169,353,500	323,000	$524.00

The national significance in pursuing the intercept of IRS refunds for the non-AFDC caseload becomes very clear when comparing Alaska and other states. Here in the state of Alaska the process was an important tool. Adding the non-AFDC caseload to this process would improve the whole effort. However, in other states this process in the non-AFDC area would be the catalyst to force a major policy change. There are many states that still attempt to steer their workload away from the non-AFDC areas so that they may concentrate on AFDC or governmental reimbursement. Once this process is required for the non-AFDC caseload, the states that concentrate on just the AFDC work would be forced to change and work all cases. This policy change would be the most significant and positive improvement for the child support program.

I would urge each of you to support this resolution and recommend that it be changed to include sending personal copies to President Reagan and the Secretary of Health and Human Services, Margaret Heckler.

FILE WITH SJR 30

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date

REQUEST
Bill/Resolution No: SJR-30
Title: Relating to the Enforcement of Child Support Obligations
Sponsor: Halford
Requestor: Senate Judiciary
Date of Request: 1-17-84

FISCAL DETAIL
Agency Affected: Revenue
Program Category Affected: Revenue Collection & Management
BRU, Program of Subprogram(s) Affected: Child Support Enforcement Division

EXPENDITURES/REVENUES: (Thousands of Dollars)

		FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
	OPERATING						
100	PERSONAL SERVICES	-	-	-	-	-	-
200	TRAVEL	-	-	-	-	-	-
300	CONTRACTUAL	-	-	-	-	-	-
400	SUPPLIES	-	-	-	-	-	-
500	EQUIPMENT	-	-	-	-	-	-
600	LANDS & STRUCTURES	-	-	-	-	-	-
700	GRANTS, CLAIMS	-	-	-	-	-	-
800	MISCELLANEOUS	-	-	-	-	-	-
	TOTAL OPERATING	-	N/A	N/A	N/A	N/A	N/A
	CAPITAL	N/A	N/A	N/A	N/A	N/A	N/A
	REVENUE	N/A	N/A	N/A	N/A	N/A	N/A

FUNDING: (Thousands of Dollars)

	GENERAL FUND	-	-	-	-	-	-
	FEDERAL FUNDS	-	-	-	-	-	-
	OTHER	-	-	-	-	-	-
	TOTAL	N/A	N/A	N/A	N/A	N/A	N/A

POSITIONS:

	FULL-TIME	-	-	-	-	-	-
	PART-TIME N/A	-	-	-	-	-	-
	TEMPORARY	-	-	-	-	-	-

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis.

1. One page analysis attached.
2. One document attached.

Prepared By: Dan R Copeland Phone: 276-3441
Division: Child Support Enforcement Division Date: 1-19-84

Approved by Commissioner: Robert Heath Date: 2/6/84
Agency: Revenue Phone: 465-2300

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

FISCAL NOTE ANALYSIS
SJR-30, January 19, 1984

In Alaska offsetting IRS refunds for the AFDC caseload was very effective. Significant collection totals were noted, but there was a more important aspect to the process. Many of the absent parents that would not have paid anything were caught by the IRS network. One of the reasons for this is that this offset process is one of the few effective ways to collect on an interstate case or deal with self-employed people.

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This decline in the average amount of each offset has been the cause for concern. IRS and the Administration's Office of child Support Enforcement (OCSE) are doing formal studies in this area. IRS has stated that their opinion is that the taxpayers are changing their tax status to avoid refunds which are subject to offset. This is part of their rationale for opposing further entry in this area.

Here in the State of Alaska the process has been an extremely important tool. Adding the non-AFDC caseload to this process would greatly improve the whole effort. However, in other states this process in the non-AFDC area would be the catalyst to force a major policy change. There are many states that attempt to steer their workload away from the non-AFDC areas so that they may concentrate on AFDC or governmental reimbursement. Once this process is required for the non-AFDC caseload, the states that concentrate on just he AFDC work would be forced to change and work all cases. This policy change would be the most significant and positive improvement for the child support program.

National Council of State Child Support Enforcement Administrators

Committee on Finance
Subcommittee on Oversight of
the Internal Revenue Service
Tax Refund Offset Program and S-150
September 16, 1983

Testimony Provided by:
Dan R Copeland
President

Good Morning, I am Dan R Copeland, President of the National Council of State Child Support Enforcement Administrators. I also serve as the Director of the Alaska Child Support Agency. Our National Council includes the operational head of each state child support agency.

The Council is committed to the principle that all enforcement tools should be available equally to all child support cases. This should include AFDC and non-AFDC or instate and interstate casework. It is imperative that all absent parents recognize that all collection methods will apply to their own individual obligation to pay without regard to the economic status or location of the custodial parent with their child.

Many of the bills now facing Congress include a purpose statement that would imply this type of universal approach. The offset of IRS refunds for all cases rather than just the AFDC situations would be one of the most tangible statements made in this regard. In opening the IRS refund offset process to the non-AFDC caseload it must be recognized that this has the potential for greatly expanding the number of custodial parents that will want to use the child support system. Many custodial parents that have given up any thought of receiving child support will see this process as one last hope. It is most important that we make sure their hopes are not lost.

Many substantial barriers stand in the way of allowing the IRS refund offset process to work to its fullest extent. The first and most significant factor is in the basic program intent. While child support and the non-AFDC caseload is currently receiving a lot of attention many of the state and local political jurisdictions need assurances that child support services and not government AFDC reimbursement is the program objective. This very basic message, that child support is to be viewed as a service to the public will take time to be accepted. Acceptance of this will have a substantial impact in how the state and local jurisdictions implement the process of offsetting IRS refunds for non-AFDC cases. Once the basic program intent is established nationwide down through each county and local child support operations, the offset process will become one of the most effective collection tools available.

The success of the AFDC IRS offset process is one of the driving factors in the push to expand the program to include the non-AFDC caseload. During FY 82, better than 547,000 AFDC arrearage cases were submitted to IRS and 262,030 or 48% of these cases produced an actual cash response. In this first year of operation over $166,000,000 was collected and distributed to the state and federal governments. The figures are indicators of success but a more important fact is that many of the cases that proved to be uncollectable in in the past now produced amazing results.

-over-

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STATE OF ALASKA
DEPARTMENT OF REVENUE
CHILD SUPPORT ENFORCEMENT DIVISION

BILL SHEFFIELD, GOVERNOR

201 E. 9TH AVENUE, SUITE 202
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3441

December 30, 1983

Elizabeth Hickerson
Senate Advisory Council
1024 W. 6th Ave., Suite 203
Anchorage, AK 99501

Dear Elizabeth:

Attached is Press Release #83-205 for HR 4325 from the Senate Finance Committee. I am extremely pleased to note that Senator Dole views the most important feature of the bill to be the encouragement to states to improve collections for the non-welfare as well as welfare caseload.

The text for the resolution on the non-AFDC IRS refund intercept may be something that could be included in written testimony for this hearing. All indications are that this bill has the best chance to make it into law this next year. If I can be of any further help, please let me know.

Sincerely,

Dan R Copeland
Director

DRC:tg

Enclosure

04-D91,H

Press Release No. 83-205

DEC 2[illegible]

PRESS RELEASE

FOR IMMEDIATE RELEASE
December 12, 1983

UNITED STATES SENATE
COMMITTEE ON FINANCE
SD-219 Dirksen Senate
Office Building

SENATE FINANCE COMMITTEE SETS HEARING ON CHILD SUPPORT ENFORCEMENT PROGRAM REFORM PROPOSALS

Senator Robert J. Dole (R., Kans.), Chairman of the Senate Finance Committee, announced today that the Committee will hold a hearing on Tuesday, January 24, 1984, on pending legislation dealing with the Child Support Enforcement Program.

The hearings will begin at 2:00 p.m. on January 24, 1984 in Room SD-215 of the Dirksen Senate Office Building.

In announcing the hearing, Senator Dole said "the Finance Committee and two of its subcommittees received testimony earlier this year on the Child Support Enforcement Program. Most recently, in September, the Secretary of Health and Human Services, the Honorable Margaret M. Heckler, appeared before the Subcommittee on Social Security and Income Maintenance Programs. Secretary Heckler's statement focused on S. 1691, the Administration bill which is aimed at refining the child support program and improving its effectiveness and efficiency. S. 1691 was introduced in July and cosponsored by every majority member of the Finance Committee along with several other Senators," Senator Dole continued.

"The Finance Committee has set child support enforcement reform as a top priority for the Second Session of the 98th Congress. Therefore, it is important to move quickly to conduct a hearing on the pending legislation in preparation for a speedy mark-up," Senator Dole said. "It is my hope that an Administration representative will appear to comment on the House bill(H.R. 4325), as well as the several bills pending in the Senate."

The Finance Committee is especially interested in comments regarding the financial incentive formula included in the Administration bill and the one included in the House bill. Both formulas are intended to encourage States to improve collections for the nonwelfare cases as well as the welfare caseload. "This is one of the most important features of the various reform bills," Senator Dole concluded.

A number of interested individuals and organizations have already submitted statements to Senator Bill Armstrong's Subcommittee on Social Security and Income Maintenance Programs. Those statements will be distributed to the members of the Committee and included in the record of this hearing. Should these individuals or organizations wish to expand their earlier statements to include specific comments on the House bill, those additions will be included in the record of this hearing.

Requests to testify.--Witnesses who wish to testify at the hearing must submit a written request to Roderick A. DeArment, Chief Counsel, Committee on Finance, Room SD-219 Dirksen Senate

Office Building, Washington, D.C. 20510, to be received not later than the close of business on Tuesday, January 10, 1984. Witnesses will be notified as soon as practicable thereafter whether it has been possible to schedule them to present oral testimony. If, for some reason, a witness is unable to appear at the time scheduled, he may file a written statement for the record in lieu of the personal appearance. In such a case, a witness should notify the Committee of his inability to appear as soon as possible.

Consolidated testimony.--Senator Dole urges all witnesses who have a common position or who have the same general interest to consolidate their testimony and to designate a single spokesman to present their common viewpoint orally to the Committee. This procedure will enable the Committee to receive a wider expression of views than it might otherwise obtain. Senator Dole urges that all witnesses exert a maximum effort to consolidate and to coordinate their statements.

Legislative Reorganization Act.--Senator Dole stated that the Legislative Reorganization Act of 1946, as amended, requires all witnesses appearing before the Committees of Congress "to file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument."

Witnesses scheduled to testify should comply with the following rules:

(1) All witnesses must submit written statements of their testimony.

(2) Written statements must be typed on letter-size paper (not legal size) and at least 100 copies must be delivered not later than close of business on Friday, January, 20, 1984.

(3) All witnesses must include with their written statements a one-page summary of the principal points included in the statement.

(4) Oral presentations should be limited to a short discussion of principal points included in the summary. Witnesses must not read their written statements. The entire prepared statement will be included in the record of the hearing.

(5) Not more than 1 minute will be allowed for the oral summary.

(6) Each witness will be permitted four additional minutes to answer questions from the members of the Committee.

Written statements.--Witnesses who are not scheduled to make oral presentations, and others who desire to present their views to the Committee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearing. These written statements should be typewritten, not more than 25 double-spaced pages in length, and mailed with five copies to Roderick A. DeArment, Chief Counsel, Committee on Finance, Room SD-219 Dirksen Senate Office Building, Washington, D.C. 20510, not later than Tuesday, February 7, 1984. On the first page of your written statement, please indicate the date and subject of the hearing.

P.R. #83-205

98TH CONGRESS | HOUSE OF REPRESENTATIVES | REPORT
1st Session | | No. 98-527

CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1983

NOVEMBER 10, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 4325]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means to whom was referred the bill (H.R. 4325) to amend part D of title IV of the Social Security Act to assure, through mandatory income withholding, incentive payments to States, and other improvements in the child support enforcement program, that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstances, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

In the table of contents on page 2, strike out the item relating to section 16 and insert in lieu thereof the following:

31-006 O

Page 5, lines 19 and 20, strike out "(under applicable State paternity laws)".

Page 6, lines 2 and 3, strike out "past-due" and insert in lieu thereof "overdue".

Page 7, line 3 after "agency" insert "or other entity".

Page 8, lines 2 and 3, strike out "portion thereof which represents arrearages" and insert in lieu thereof "amounts to be withheld to satisfy arrearages".

Page 14, lines 10 and 11, strike out "average support collections, and any other actual or estimated data which" and insert in lieu thereof "and average support collections, and such other actual data or estimates as".

Page 18, lines 8 and 9, strike out "the dollar amount" and insert in lieu thereof "125 percent of the dollar amount".

Page 20, lines 3 and 4, strike out "participates" and insert in lieu thereof "participate".

Page 20, lines 20 through 23, strike out "as in effect prior to such amendment (in connection with the administration of the State's child support enforcement plan approved under section 454 of such Act)".

Page 22, line 17, strike out "7(a)" and insert in lieu thereof "6(a)".

Page 22, line 23, strike out "1984" and insert in lieu thereof "1985".

Page 24, lines 17 and 18, strike out "Effective upon the enactment of this Act, section" and insert in lieu thereof "Section".

Strike out line 19 on page 28 and all that follows down through line 7 on page 33 and insert in lieu thereof the following:

MODIFICATIONS IN CONTENT OF SECRETARY'S ANNUAL REPORT

SEC. 12. (a) Section 452(a)(10) (C) of the social security Act is amended—

(1) by inserting "(i)" immediately after "(C)"; and

(2) by adding at the end thereof the following new clause:

"(ii) the payment status of all active child support cases in each State at the time the report is submitted (with a separate description of those cases which are interstate in nature), as more particularly set forth in subsection (f);".

(b) Section 452 of such Act is further amended by adding at the end thereof the following new subsection:

"(f)(1) The information with respect to active child support cases in each State which is required by subparagraph (C) (i) of subsection (a)(10) to be contained in any report submitted under such subsection shall specifically include the following, separately stated for each of the 12 categories of cases specified in paragraph (2):

"(A)(i) The total number of such child support cases filed with the State agency of such State under this

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ETARY'S ANNUAL REPORT

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PART) in which the full amount of the support obligation has been paid for all months in the particular fiscal year to which the report relates, with the amounts of the support obligations involved in those cases;

"(ii) the total number of such cases in which at least 90 percent but less than the full amount of the support obligation has been so paid, with the amounts of the support obligations established and support collections made in those cases;

"(iii) the total number of such cases in which at least 66⅔ percent but less than 90 percent of the support obligation has been so paid, with the amounts of the support obligations established and support collections made in those cases;

"(iv) The total number of such cases in which at least 33⅓ percent but less than 66⅔ percent of the support obligation has been so paid, with the amounts of the support obligations established and support collections made in those cases;

"(v) the total number of such cases in which some but less than 33⅓ percent of the support obligation has been so paid, with the amounts of the support obligations established and support collections made in those cases; and

"(vi) the total number of such cases in which no part of the support obligation has been paid, with the amounts of the obligations involved in those cases; and

"(B) the number of such child support cases (filed with the State agency of such State under this part), in each of the six subclasses described in clauses (i) through (vi) of subparagraph (A) within each of such categories, which were filed in such State on behalf of children residing in another State or against parents residing in another State in the particular fiscal year to which the report relates, specifying (for each such subclass)—

"(i) the total number of such cases which were initiated in the State of filing, with the amounts of the support obligations established and support collections made in those cases,

"(ii) the number of such cases which were initiated in another State (identifying each such State by name) in which State of filing was requested to take action to establish paternity, obtain support obligations, or collect support,

"(iii) the number of the cases described in clause (ii) in which action was taken in response to the request, and

"(iv) the actions (described in clause (ii)) which were so taken.

Such information shall also include any other matter which the Secretary may deem necessary for an effective

assessment of the current status of interstate child support collections.

"(2) The categories of child support cases (filed with the State agency of a State under this part) with respect to which information is to be provided in the report, under subparagraphs (A) and (B) of paragraph (1), shall include—

"(A) four categories of cases in which the support rights involved are assigned to the State under section 402(a)(26) and in which the child is currently receiving aid to families with dependent children, as follows:

"(i) all such cases in which a support obligation has been established,

"(ii) all such cases in which a new or increased support obligation was so established during the particular fiscal year to which the report relates,

"(iii) those cases described in clause (i) in which support was collected under this part during such fiscal year, and

"(iv) those cases described in clause (ii) in which support was collected under this part during such fiscal year;

"(B) four categories of cases in which the support rights involved are assigned to the State under section 402(a)(26) but in which the child is not currently receiving aid to families with dependent children, as follows:

"(i) all such cases in which a support obligation has been established,

"(ii) all such cases in which a new or increased support obligation was so established during the particular fiscal year to which the report relates,

"(iii) those cases described in clause (i) in which support was collected under this part during such fiscal year, and

"(iv) those cases described in clause (ii) in which support was collected under this part during such fiscal year; and

"(C) four categories of cases to which neither subparagraph (A) nor subparagraph (B) applies, as follows:

"(i) all such cases in which a support obligation has been established,

"(ii) all such cases in which a new or increased support obligation was so established during the particular fiscal year to which the report relates,

"(iii) those cases described in clause (i) in which support was collected under this part during such fiscal year, and

"(iv) those cases described in clause (ii) in which support was collected under this part during such fiscal year.".

(c) The amendments made by this section shall apply with respect to reports (under section 452(a)(10) of the Social Security Act) for fiscal years beginning on or after October 1, 1986.

Page 35, before the period in line 21, insert the following: "; except that costs incurred by such a Commission or its members for transportation within the State, and such other costs incurred by the Commission or its members as may be specifically allowed by the Secretary in regulations, shall be considered for purposes of section 455(a)(1) of the Social Security Act to be expenditures for the operation of the State's plan approved under section 454 of such Act".

Page 38, line 4, strike out the period and insert in lieu thereof a comma.

Page 39, after line 2, insert the following new section:

INCLUSION OF MEDICAL SUPPORT IN CHILD SUPPORT ORDERS

SEC. 16. The Secretary of Health and Human Services shall issue regulations to require that State agencies administering the child support enforcement program under part D of title IV of the Social Security Act petition for the inclusion of medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. Such regulations shall also provide for improved information exchange between such State agencies and the State agencies administering the State medicaid programs under title XIX of such Act with respect to the availability of health insurance coverage.

Page 39, after line 2, insert the following new section:

INCREASED AVAILABILITY OF FEDERAL PARENT LOCATOR SERVICE TO STATE AGENCIES

SEC. 17. Section 453(f) of the Social Security Act is amended by striking out ", after determining that the absent parent cannot be located through the procedures under the control of such State agencies,".

Page 39, after line 2, insert the following new section:

EXTENSION OF ELIGIBILITY UNDER TITLE XIX WHEN SUPPORT COLLECTION RESULTS IN TERMINATION OF AFDC ELIGIBILITY

SEC. 18. Section 406 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(h) Each dependent child, and each relative with whom such a child is living (including the spouse of such relative as described in subsection (b)), who becomes ineligible for aid to families with dependent children as a result (wholly or partly) of the collection or increased collection of child or spousal support under part D, and who has received such aid in at least three of the six months immediately preceding the month in which such ineligibility begins, shall be deemed to be a recipient of aid to families with dependent children for purposes of title XIX for an additional four calendar months beginning with the month in which such ineligibility begins.".

Page 39, line 4, strike out "Sec. 16." and insert in lieu thereof "Sec. 19.".

I. Summary Explanation of H.R. 4325: The Child Support Enforcement Amendments of 1983

I. STATEMENT OF PURPOSE FOR THE TITLE IV-D CHILD SUPPORT ENFORCEMENT (CSE) PROGRAM

A "Purpose" section would be added stating that assistance in obtaining support be made available to all AFDC and non-AFDC children for whom such assistance from the IV-D program is requested. (Report language will make clear that this has always been the intent of the IV-D program.)

II. STATE REQUIREMENTS

The following requirements would be effective October 1, 1985; however, if the State can show with detailed evidence that any of the requirements in A through H below would not be effective or efficient in that State, the Secretary may waive that requirement for a specified period of time.

A. Income withholding

1. (a) In the case of any noncustodial parent against whom a support order is or has been issued in the State, whenever child support arrearages occur (or earlier at State option), the State must provide for the withholding of wages for AFDC and non-AFDC IV-D cases, or for anyone who applies for IV-D services in order to initiate withholding, under conditions and procedures established in accordance with the requirements summarized in 2-10 below. (b) The amount withheld, subject to Consumer Credit Protection Act limitations, must be the amount of current support that is owed, plus any arrearages (the amount withheld for arrearages may be subject to limitations provided under State law), plus a fee (the amount to be established by the State) to be paid to the employer.

2. Withholding must begin when the arrearage reaches an amount equal to one month of support payments. A State may begin withholding at some earlier point; and must begin withholding earlier if requested by the absent parent.

3. (a) The initiation of withholding procedures must be automatic in the case of IV-D (AFDC and non-AFDC) cases that meet the conditions summarized below, and can be triggered for other families by the obligee filing an application for services with the IV-D agency. (b) The execution of withholding orders must occur without the need for amendment of the support order.

4. The withholding of income for child support payments must be administered by a public agency designated by the State (such as the IV-D agency). The State may establish or allow procedures which provide for the collection from employers of withheld support payments and disbursement to obligee families through other than a public agency, so long as such procedures are publicly accountable, allow prompt disbursement, and permit the keeping of records to monitor and document the payment of support.

16." and insert in lieu thereof

L. 4325: THE CHILD SUPPORT
MENTS OF 1983

TITLE IV-D CHILD SUPPORT
D) PROGRAM

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5. (a) The obligor must get prior notice of withholding action and notification of procedures to be followed to contest the proposed withholding because of mistakes of fact; and the notification and other procedures must comport with the due process procedures of the State. (b) The final decision as to whether or not withholding will occur must be made no later than 30 days after the date the obligor parent is notified of proposed income withholding actions.

6. Employers of individuals for whom withholding proceedings have been established, upon receiving proper notice from the State to begin withholding for child support payments (which must be a separate document containing no information other than the amount to be withhheld and the amount of the fee to be retained by the employer, or other information necessary for the employer to comply with the withholding order), must be (a) required to withhold from wages and forward to the appropriate agency (or comply with state approved alternative procedures summarized in II.A.(5) above) the amount specified in the notice plus a fee to be paid to the employer (unless any such fee is waived by the employer); (b) allowed to combine all amounts witheld from employees for child support into one check to the appropriate agency, and otherwise simplify the withholding process; (c) held liable to the State (on behalf of the State in AFDC cases and on behalf of the obligee in non-AFDC cases) for any amount they fail to withhold, and (d) subject to a fine if an employee is discharged from employment, refused employment or subjected to disciplinary action because of withholding for child support even if there are other withholdings for the same employee for other purposes.

7. Withholding for child support payment must take priority over any legal process against the same wage.

8. Wages must be subject to withholding; and, the State may make other income subject to withholding, such as, but not limited to, commissions and bonuses, retirement benefits, pensions, workers compensation, dividends, royalties and trust accounts.

9. The state must make provision for withholding on interstate cases.

10. There must be provision for terminating withholding.

11. All child support orders issued or modified in the State after October 1, 1985 must include provision for withholding of wages if arrearages occur. Withholding must be applied under the conditions and procedures established by the State for cases that are not IV-D cases in accordance with the requirements and procedures summarized in items 1-10 above for IV-D cases.

B. Procedures to improve establishment of, compliance with, and enforcement of court order

States must make reasonable efforts to expedite and otherwise improve the establishment of, compliance with, and enforcement of obligations resulting from a court or administrative order. States should make reasonable efforts to reduce adversary nature of support proceedings; to achieve better understanding and communication between obligee and obligor regarding the support obligation and visitation rights, agreements and arrangements (in order to obtain greater assurance of compliance with all obligations, rights and agreements arising under or related to the court or adminis-

trative order); to reduce court backlogs so that support decisions can be made promptly.

C. State income tax refund offsets

States that have State income taxes must provide for the withholding of any State tax refund payable to a non-custodial parent who owes past-due child support payments. These tax refund withholding procedures must be applicable to AFDC and, at the option of the State, to non-AFDC cases and must be used for interstate as well as intrastate cases. The obligor must get prior notice of the proposed offset and notification of procedures to be followed to contest the amount of past-due support; and the offset procedure must comport with the due process procedures of the State.

D. Liens against property

States must es[illegible]ocedures for imposing liens against both real and persona[illegible]r amounts of past-due support owed by a State residen[illegible]idual who owns such property in the State.

E. Paternity statu[illegible]ns

State paternity l[illegible]ermit the establishment of paternity for both AFDC and n[illegible]DC children until a child's 18th birthday.

F. Imposition of security or bond

States must provide for the imposition of security, a bond, or other guarantee to secure payment in the case of absent parents who have a pattern of past-due support payments. The obligor must get prior notice and notification of procedures to be followed to contest the proposed security or bond; the procedure must comport with the due process procedures of the State.

G. Providing information on past-due support to credit agencies

States must make available to consumer credit agencies, at the request of such agencies, information regarding child support arrearages. The State must make available information on arrearages in excess of $1,000 and may make available information on smaller arrearages. The obligor must receive prior notice of the release of such information which indicates the procedures to be followed to contest the proposed release of information. The notification and procedures for contesting the proposed release of information to credit agencies must comport with the due process procedures in the State. The State may charge a fee to the credit agencies who request and receive this information which cannot exceed the cost to the State of providing the information.

H. Tracking and monitoring support payments

When a State has instituted the income withholding requirements and procedures, and established the public agency or alternative publicly accountable procedures that will administer income withholding, summarized in II(A) above, the State must provide that, at the request of the absent or custodial parent, child support payments must be made through the agency that administers

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custodial parent, child support
the agency that administers

income withholding, even though there are no arrearages and income withholding procedures have not been applied. In such a case, the State must charge a fee equal to any cost incurred by the State, up to a maximum of $25 per year.

I. Continue child support enforcement services for families that lose AFDC eligibility

In order to provide for the continuation of child support enforcement services, the State must provide that AFDC recipients whose eligibility for AFDC is terminated due to the receipt of (or an increase in) child support payment or for other reasons will be automatically transferred from AFDC to non-AFDC status under the State IV-D program, without requiring reapplication or the payment of fees; and will be provided child support enforcement services on the same basis and under the same conditions as other non-AFDC cases.

J. Enforcement of both child and spousal support

States must pursue the enforcement and collection of spousal support as well as child support when amounts for both are combined in a single order. (This is presently a State option.)

K. Publicize the availability of child support enforcement services

States must frequently publicize, through public service announcements and other means, the availability of child support enforcement services, together with information as to the application fee for such services, if any, and a telephone number or postal address to be used to obtain additional information.

III. STATE CHILD SUPPORT MONITORING AND INCOME WITHHOLDING PROCEDURES

The provisions in current law under which 90 percent Federal matching funds are available for the development of automated management systems will be amended to made clear that, if a State meets the requirements in current law, these matching funds can be used by States for the development and improvement of procedures necessary to implement and effectively carry out the income withholding and other requirements contained in this bill pertaining to the monitoring of child support payments, keeping accurate records regarding the payment of child support, and providing prompt notification to appropriate officials of any arrearages that occur.

IV. FEDERAL CHILD SUPPORT FINANCING PROVISIONS

A. Incentive payments

1. The current 12 percent incentive payment, which is based solely on collections made on behalf of AFDC families, will be repealed as of October 1, 1985. The new incentive payment described below, which is based on collections for both AFDC and non-AFDC families, will be effective October 1, 1985. However, for FY 1986 only, States will receive the higher of the amount due them under

the new incentive structure or 80 percent of what they would have received under current law.

2. The basic incentive payment will be 4 percent of a State's AFDC collections and 4 percent of a State's non-AFDC collections.

3. To the extent that AFDC or non-AFDC collections exceed combined administrative costs for both AFDC and non-AFDC, higher incentives will be paid on a sliding scale up to 10 percent of AFDC and 10 percent of non-AFDC collections, as follows:

AFDC incentive		Non-AFDC incentive	
Ratio of AFDC collections to combined AFDC/non-AFDC administrative costs	Incentive equal to this percent of AFDC collections	Ratio of non-AFDC collections to combined AFDC/non-AFDC administrative costs	Incentive equal to this percent of non-AFDC collections
1.0:1	50	1.0:1	50
1.1:1	55	1.1:1	55
1.2:1	60	1.2:1	60
1.3:1	65	1.3:1	65
1.4:1	70	1.4:1	70
1.5:1	75	1.5:1	75
1.6:1	80	1.6:1	80
1.7:1	85	1.7:1	85
1.8:1	90	1.8:1	90
1.9:1	95	1.9:1	95
2.0:1	100	2.0:1	100

4. The total dollar amount of incentive paid for non-AFDC collections will be capped at an amount equal to 125 percent of the state's incentive payment for AFDC collections.

5. At state option, the laboratory costs of determining paternity may be deducted from combined administrative costs for purposes of computing incentive payments.

6. Where part of the cost of child support operations is borne by local governments, incentive payments must be passed through to local levels.

7. Incentive funds must be estimated and projected on an annual basis so that States will have an estimate in advance as to the amount of their incentive payments.

8. Amounts collected in interstate cases will be credited, for purposes of computing incentive payments, to both initiating and responding states.

B. Special funds for Interstate collections

For each fiscal year beginning with fiscal 1985, $15 million will be available to the Secretary of HHS to fund special projects developed by States with the objective of utilizing innovative techniques or procedures for, and otherwise improving, child support collections in interstate cases.

C. Administrative match:

The Federal IV-D matching rate will remain at 70 percent.

D. Audit and penalties

1. Graduated penalties of 2, 3, and 5 percent of AFDC matching, with correction periods provided to improve performance, will replace current penalty provisions effective October 1, 1983.

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DC collections exceed com-
DC and non-AFDC, higher
e up to 10 percent of AFDC
as follows:

Non-AFDC incentive	
AFDC collections to combined AFDC/ non-AFDC administrative costs	Incentive equal to this percent of non-AFDC collections
	5.0
	5.5
	6.0
	6.5
	7.0
	7.5
	8.0
	8.5
	9.0
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	10.0

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percent of AFDC matching,
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e October 1, 1983.

2. The audit schedule will be put on a 3-year cycle

V. OTHER PROVISIONS

A. Effective upon enactment, the Secretary of HHS is directed to issue regulations requiring State IV-D agencies to petition for inclusion of medical support as part of any child support order whenever such health care coverage is available to the absent parent at a reasonable cost.

B. Effective upon enactment, AFDC recipients who have received AFDC for at least three of the last six months, and who lose eligibility for AFDC due to an increase in child support payments, will continue to the eligible for Medicaid for four months following their loss of AFDC eligibility.

C. Effective upon enactment, the requirement that States, in effect, must exhaust all State child support locator resources before they may request the assistance of the Federal parent locator service is repealed. In other words, States will be able to request the assistance of the Federal parent locator service without the requirement that they first exhaust all State resources.

D. The content of the annual CSE report by Secretary will be modified, effective beginning FY 1987, to include the following information:

(1.) The number of AFDC and non-AFDC cases in which there are preexisting or newly established support obligations, the amount of those obligations, the number of such cases with collections and the amount collected;

(2.) the number of cases with support obligations in which 33-66%, under 33% and 0% was paid; and

(3.) data regarding interstate collections.

E. Current law will be amended to provide that, effective October 1, 1983, the support rights of children living in foster care homes under title IV-E of the Social Security Act be assigned to the State where appropriate, and collected by the State IV-D agency as was provided for children in foster care under IV-A prior to the enactment of the Adoption Assistance and Child Welfare Act of 1980.

F. Current law will be amended to provide for waiver authority for the IV-D Child Support Enforcement (CSE) program under section 1115 of the Social Security Act, under the following conditions: (a) the intent of the requested waiver must be to test modifications that will improve the financial well-being of children; (b) a waiver will not be allowed for any modification that would disadvantage children in need of support; and (c) the requested waiver will not result in an increase in Federal AFDC cost.

G. The Department of HHS will be required to approve requests from the State of Wisconsin for waivers of Federal IV-D CSE and IV-A AFDC requirements that will allow the State to continue to receive Federal CSE and AFDC matching funds while testing modifications in both programs contained in its "Child Support Initiative," if the requested waivers meet the conditions summarized in 1 and 2 below.

1. The purposes of the requested waiver authority should be (a) to improve the financial well-being of children; (b) to obtain flexibility in the manner and procedures to be used in provid-

ing IV-D CSE assistance to single parent households in gaining adequate child support, including the provision of IV-D services whether or not a family formally applies for such services; (c) to permit the State to test alternative IV-D and AFDC procedures in different sub-state areas wthout being out of compliance with "statewideness" requirements; (d) to permit the State to establish alternative arrangements for the payment of child support in order to reinforce parental responsibility for the child; and (e) to permit the State to use Federal AFDC matcing funds to insure that there is an adequate level of support when the contibution fo the absent parent, by itself, is inadequate (including the provision of such support to non-AFDC families without requiring them to reduce income and assets to the prevailing AFDC eligibility level);

2. The alternative IV-D CSE and AFDC procedures or modifications allowed under the requested waivers must not disadvantage children in need of child support or make children in the State worse off financially than they would be without the modifications in the State AFDC and IV-D program. The State can receive no more Federal AFDC funds than they would without the modifications.

VI. STATE COMMISSIONS ON CHILD SUPPORT

1. The Governor of each State will be required to appoint a State Commission on Child Support. The Commission must include representation from all aspects of the child support system, including custodial and non-custodial parents, the IV-D agency, the judiciary, the governor, the legislature, child welfare and social services agencies, and others.

2. Each State Commission should examine the functioning of the State child support system with regard to securing support and parental involvement for both AFDC and non-AFDC children, including but not limited to such specific problems as:

Visitation;

Establishment of appropriate objective standards for support;

Enforcement of interstate obligations; and

Additional federal or state legislation needed to obtain support for all children.

3. The Commissions should be established promptly and should make reports on their findings available to the public by October 1, 1985.

4. Cost of operating the commissions will not be eligible for federal administrative match; except for costs incurred by the Commission or its members for transportation within the State, and such other costs incurred as may be specifically allowed by the Secretary of HHS, which will be matched as State IV-D administrative expenses.

5. Any state which has in place objective standards for child support obligations or which has had a commission or council within the last five years is not required to establish a commission under this legislation. Furthermore, the Secretary may waive the requirement for a Commission at the request of a State if the Secretary determines the State is making reasonable progress in improving its child support enforcement program.

Alaska State Legislature

Advisory Council Members
Senator Kerttula, Chairman
Senator Bennett
Senator Fahrenkamp
Senator Vic Fischer

1024 W. 6th Avenue, Suite 203
Anchorage, Alaska 99501
Phone: (907) 274-1426

SENATE ADVISORY COUNCIL

MEMORANDUM

TO: Senator Rick Halford
FROM: Elizabeth Hickerson
RE: DEPARTMENT OF LAW/CHILD SUPPORT ENFORCEMENT CASELOAD STATISTICS
DATE: DECEMBER 23, 1983

Beverly Haywood, Legal Administrator Office of the AG, provided the following caseload information for the Human Services Section of the Department of Law. In addition to the child support enforcement (CSE) proceedings and the legal work for the Department of Health and Social Services, this section is responsible for legal services to the Departments of Education and Labor. Human service-type cases can be assigned to attorneys in other sections; for example, work for the Division of Corrections is usually done by the criminal attorneys rather than the civil attorneys. According to Ms. Haywood the number of cases, other than Corrections cases, assigned outside the section is statistically insignificant.

STATEWIDE LIST OF ALL ATTORNEYS AND PARALEGALS IN THE HUMAN SERVICES SECTION

Anchorage
Barry, Elizabeth
DeYoung, Jan Hart
Edwards, Donald
Fites, Deborah (paralegal)
Janidlo, Thomas
Landau, Robert
Olsen, Dianne
Stahl, Paul
Stillner, Walt

Juneau
Bomengen, Kristen (paralegal)
Robertson, Rick
Scoccia, Linda
Shaw, Elizabeth

Fairbanks
Alderman, Karol (paralegal)
Munson, Myra
Olson, Randy
Snow, Rebecca

CASELOAD FY83 (1,964 closed cases only, open cases not included)

Cases for Department of Education - 81
Cases for Department of H&SS/CORRECTIONS - 41
Cases for Department of H&SS/CHILDREN'S PROCEEDINGS - 545
Cases for Department of H&SS/MENTAL - 239
Cases for Department of H&SS/GUARDIANSHIPS - 66

Cases for Department of H&SS/OTHER - 126
Cases for Department of Labor/ESD - 50
Cases for Department of Labor/OSHA - 44
Cases for Department of Labor/WG & HR - 121
Cases for Department of Labor/WORKERS' COMP. - 38
Cases for Department of Labor/OTHER - 13
Cases for Department of Revenue/CHILD SUPPORT ENFORCEMENT - 600

OPEN CASELOAD AS OF NOVEMBER 1983 (1,373 cases)

Cases for Department of Education - 53
Cases for Department of H&SS/CORRECTIONS - 35
Cases for Department of H&SS/CHILDREN'S PROCEEDINGS - 359
Cases for Department of H&SS/MENTAL - 34
Cases for Department of H&SS/GUARDIANSHIPS - 61
Cases for Department of H&SS/OTHER - 77
Cases for Department of Labor/EDS - 35
Cases for Department of Labor/OSHA - 49
Cases for Department of Labor/WG & HR - 123
Cases for Department of Labor/WORKERS' COMP. - 91
Cases for Department of Labor/OTHER - 9
Cases for Department of Revenue/CHILD SUPPORT ENFORCEMENT - 447

MSG 83-00024803 PRTY 1 12/30/83 12:34 C4 ORIG: LA24 IN= 0002 OUT= 0004
FROM: E.HICKERSON/SAC TO: BILLY BERRIER
TOPICT: LA14 SUBJ: SEN. HALFORD'S REQUEST FOR DRAFT RESOL.

SENATOR HALFORD REQUESTED THAT I FORWARD THE FOLLOWING FOR DRAFT:

SENATE JOINT RESOLUTION

WHEREAS MILLIONS OF AMERICA'S CHILDREN ARE BEING ECONOMICALLY DEPRIVED AND CANNOT ACHIEVE TRUE POTENTIAL IF FINANCIAL SUPPORT IS WITHHELD BY ONE OR BOTH PARENTS, AND

WHEREAS CONGRESS ESTABLISHED THE CHILD SUPPORT PROGRAM (TITLE IV-D OF THE SOCIAL SECURITY ACT) TO PROVIDE AN OPPORTUNITY FOR ALL CHILDREN TO RECEIVE SUPPORT FROM THEIR PARENTS THROUGH MORE EFFECTIVE ENFORCEMENT OF STATE AND FEDERAL CHILD SUPPORT LAWS; AND

WHEREAS THE PURPOSE OF THE PROGRAM WAS TO ASSURE COMPLIANCE WITH OBLIGATIONS TO PAY CHILD SUPPORT TO EACH CHILD IN THE UNITED STATES LIVING WITH ONE PARENT, WHETHER OR NOT ELIGIBLE FOR AID TO FAMILIES WITH DEPENDENT CHILDREN (AFDC); AND

WHEREAS ALL ENFORCEMENT TOOLS SHOULD BE AVAILABLE EQUALLY TO ALL CHILD SUPPORT CASES; AND

WHEREAS FEDERAL LAW HAS MANDATED ALL STATES TO ATTACH TAX REFUNDS THROUGH THE INTERNAL REVENUE SERVICE FOR GOVERNMENTAL REIMBURSEMENT OF PAYMENTS MADE FOR AFDC CASES ONLY; AND

WHEREAS NONPAYMENT OF SUPPORT TO CHILDREN OFTEN FORCES THE CUSTODIAL PARENT TO SEEK PUBLIC ASSISTANCE FOR THE MAINTENANCE OF THE CHILD;

BE IT RESOLVED BY THE ALASKA STATE LEGISLATURE THAT CONGRESS IS RESPECTFULLY REQUESTED TO AMEND PART D OF TITLE IV OF THE SOCIAL SECURITY ACT TO PROVIDE THAT THE PROCEDURES WHICH ARE PRESENTLY AVAILABLE TO AFDC FAMILIES FOR THE COLLECTION OF PAST DUE CHILD SUPPORT FROM FEDERAL TAX REFUNDS SHALL ALSO BE AVAILABLE TO CHILDREN OF NON-AFDC FAMILIES.

COPIES OF THIS RESOLUTION SHALL BE SENT TO THE HONORABLE GEORGE BUSH, VICE-PRESIDENT OF THE UNITED STATES AND PRESIDENT OF THE U.S. SENATE; THE HONORABLE THOMAS P. O'NEILL, JR., SPEAKER OF THE U.S. HOUSE OF REPRESENTATIVES; AND TO THE HONORABLE TED STEVENS AND THE HONORABLE FRANK MURKOWSKI, U.S. SENATORS; AND TO THE HONORABLE DON YOUNG, U.S. REPRESENTATIVE, MEMBERS OF THE ALASKA DELEGATION IN CONGRESS.

[illegible] YOU HAVE QUESTIONS ABOUT THIS REQUEST. LA14 OUT

Alaska State Legislature

Advisory Council Members
Senator Kerttula, Chairman
Senator Bennett
Senator Fahrenkamp
Senator Vic Fischer

1024 W. 6th Avenue, Suite 203
Anchorage, Alaska 99501
Phone: (907) 274-1426

SENATE ADVISORY COUNCIL

MEMORANDUM

TO: SENATOR RICK HALFORD
FROM: ELIZABETH J. HICKERSON
RE: CHILD SUPPORT ENFORCEMENT
DATE: JANUARY 9, 1984

In response to your request for information on the federal tax intercept program for child support, I offer the following memorandum. Attachments include:

correspondence received from Dan Copeland, Child Support Director and President of the National State Directors' Association;

correspondence received from Senator Ted Stevens;

legislation pending before the U. S. Congress;

memo on the child support enforcement caseload in the Attorney General's office; and

articles on child support.

The federal law mandates all states to attach tax refunds through the Internal Revenue Service (IRS) for reimbursement of child support in Aid to Families with Dependent Children (AFDC) cases only. Monies collected in AFDC cases go to the federal or state government for reimbursement of public assistance payments made to the custodial parent and children, whereas, monies collected in non-AFDC cases would go to the custodial parent and children for their support, as ordered by the court.

In FY 83 the Child Support Enforcement Agency in Alaska certified and submitted $6.1 million in arrearages to the IRS for collection. The attachment process netted $186,000 in collections which is a 3.1% return. Dan Copeland, Director of the Agency, estimates that in FY 84, $6.7 million will be submitted with a collection of $230,000. Mr. Copeland believes that the low collection rate is due to the lack of or incomplete record of the nonpaying parent with the IRS. (see attached correspondence)

Efforts are underway to extend this collection procedure to non-AFDC cases. Pending bills are attached. Senator Ted Stevens has indicated that he supports measures that would strengthen the collection of past due child support payments in non-AFDC cases. (letter attached) HR 4325 is scheduled to be heard before the Senate Finance Committee on January 24, 1984. (notice and bill attached)

According to testimony presented by the IRS on these bills, the IRS is hesitant to become a child support collection agency. They advocate that the primary purpose of the agency is to enforce the tax code.

Major arguments favoring intercept for non-AFDC cases include the following.

1. It is an excellent collection tool for arrearages, particularly where the noncustodial parent lives in another state or has not been located through standard procedures.

2. Intercept of tax refunds is an incentive to the nonpaying parent to begin making regular support payments.

3. Expansion of the intercept program emphasizes the commitment made by the federal and state to non-AFDC cases.

4. Collection of support obligations often makes it possible for custodial parents to remain economically secure, without resorting to public assistance.

5. With funding levels for federal and state assistant programs on the decline, it becomes necessary for the true obligor to be located and force to comply with the moral and legal obligations that accompany parenthood.

I have forwarded a draft resolution to Legal Services urging Congress to pass legislation extending the intercept program to non-AFDC cases. You should have received the resolution at your Juneau office.

In addition to extending the intercept program to non-AFDC cases, the state should consider sponsoring a multi-media campaign aimed at making parents responsible for the support of their children. This idea is not new, yet the Child Support Enforcement Agency has not designed such or even request assistance.

Further the Attorney General's office does not prosecute the criminal nonsupport laws found at AS 11.51.120.

If I can be of further assistance to you on this issue please contact me.

STATE OF ALASKA
DEPARTMENT OF REVENUE

CHILD SUPPORT ENFORCEMENT DIVISION

BILL SHEFFIELD, GOVERNOR

201 E. 9TH AVENUE, SUITE 202
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3441

November 30, 1983

Elizabeth Hickerson
Senate Advisory Council
1024 West 6th Ave.
Anchorage, AK 99501

Re: Intercept of IRS Refunds, Non-AFDC Child Support

Dear Ms. Hickerson:

In response to Senator Halford's request for information about intercepting IRS refunds for non-AFDC child support cases, I would like to offer the following:

As Alaska's state Child Support Director and as the President of the National State Directors' Association, I was one of the leading supporters of the concept and the various pieces of Congressional legislation to require the IRS intercept process be made available for the non-AFDC caseload. This effort has included testifying before committees in both Houses of Congress and numerous work sessions with Congressional aides. At all times I had full support from the Commissioner and Governor's office.

There are two primary reasons for supporting the IRS non-AFDC intercept process.

1. It is an excellent collection tool for arrearages and frequently is a factor in getting the absent parent to start paying ongoing support again. While there are a number of administrative requirements, the process reaches a great number of cases that otherwise may not have a collection. All of the ongoing collection procedures continue while the IRS mechanism is at work. Once a collection is made, the contact with the absent parent often makes them consider paying again.

In a number of cases, this intercept process is one of the most effective interstate collection techniques. It is the only process that effectively solves one of the most complicated problems where the absent parent lives in one state and works in another.

The results from the AFDC intercept process have been as follows:

NATIONAL

Fiscal Year	Cases Submitted	Arrearages Submitted	Number of Collections	Dollars Collected	Average per Case
82	561,000	$2,163,679,400	273,090	$158,915,280	618
83	872,320	$3,053,150,000	323,130*	$169,353,500*	524

ALASKA

Fiscal Year	Cases Submitted	Arrearages Submitted	Number of Collections	Dollars Collected	Average
82	227	$1,582,500	99	$35,000	858
83	927	$6,092,500	211*	$186,000*	881
84	1,148	$6,741,500	-	-	-

*Collections through 8-31-83.

To get a better understanding as to why the dollars collected as compared to the arrearages submitted are so low, the 1,148 cases submitted in 1983 for 1984 intercept were reviewed. The results indicated the latest filing date for those cases were as follows:

Latest Filing Date	Number of Cases	
1982	396	34.5%
1981	200	17.4%
1980	82	7.1%
1979	20	1.7%
1978	12	1.0%
1977	4	.4%
Unaccountable record w/IRS	162	14.1%
No record on file w/IRS	181	15.8%
SSN not on file w/IRS	91	8.0%
	1,148	100.0%

2. Possibly more important than the impact as a major collection tool, support for this process would make it clear that the program intent included the non-AFDC caseload. The availability of this process would expand the child support program to a number of non-AFDC custodial parents that have almost given up.

In the past the Reagan Administration has made every effort to steer the program away from all aspects of the non-AFDC caseload. In testimony before a Ways and Means subcommittee on 7-14-83, this narrow program emphasis was completely reversed by the Health and Human Services Secretary, Margaret Heckler. The State Directors' Association was pleased with this turn of events because they had been admittedly opposing that effort. Many of the child support agencies in the lower 49 are still reluctant to accept the Administration's new found interest in this area. Support for this concept from the Administration would be one of the most tangible and believable statements for the non-AFDC program.

Several bills that provide for the IRS intercept have been introduced in Congress. They are as follows:

HR 2090	S-888
HR 2374	S-1708
HR 3545	
HR 216	

Each of them allows the states to intercept the IRS refunds for the non-AFDC cases in a manner similar to the way it is done for the AFDC cases. Generally, the states were to limit the arrearage submitted for intercept to the past due amounts which accrued after the date the case was filed with the state agency. This limitation was an item that was discussed as a way to resolve the problem of incorrect arrearages. Many of the objections to the process centered around the point that a custodial parent could falsely claim there was a past arrearage. The limitation concept came up after most of the bills were introduced, and it helped resolve several of the challenges. All of the bills require that the absent parent be given notice, and an opportunity to respond before any amount is withheld.

One of the problems that came up in discussing the process was the matter of intercepting that portion of the refund that was due to the current spouse of an absent parent. This problem currently exists for the AFDC intercept, and numerous lawsuits were filed to stop the process. So far it would appear that all of these will be settled without damaging the intercept effort. On an individual case basis, the problem develops after the refund has been intercepted and at a later date the unobligated spouse files an IRS form, 1040X. This form is used when one spouse proves that a particular portion of the refund was theirs. Under the current AFDC situation a refund or reimbursement is possible because the funds were sent on to the state and federal government. However, in some cases the states had trouble funding the reimbursement because different fiscal years were normally involved. Due process and the constitutional rights of the unobligated spouse were the concerns in this area. The potential for the problem becomes much more

complicated in the non-AFDC cases as the funds are sent on to the custodial parent. For example when the 1040X is filed and a refund needs to be made, the custodial parent may not have the money or inclination to send the funds back to an absent parent that may still be delinquent. At this point the IRS is considering this aspect of the problem, and attempts to resolve it for the AFDC part of the program were made. Representative William Thomas of California in the Ways and Means Committee attempted to work out a provision which would require the absent parent to make the 1040X declaration upon filing their tax return. The attempt did not make it into draft legislation. Solving the 1040X problem for the AFDC area would also resolve the issue without pointing out the complications that would develop in the non-AFDC area.

The opposition to the process is in two areas:

As a matter of principle IRS opposes using their agency for anything except the strict enforcement of the tax code. Since a large part of the funds collected on the AFDC cases go to the Federal government, IRS has accepted the AFDC intercept. In the first year of operation the IRS received a $17 per case payment for handling. This has been changed to $11 per case, and the funds have been used to automate the refund process. While this payment has been helpful to them, they still are making every effort to stop what they see as a further intrusion into their tax enforcement role. IRS points out that their job is to handle the 71.6 million individual income tax refunds rather than process the potential for about 280,000 child support intercepts.

I spoke with Roscoe Eggers, Commissioner of the IRS, about the non AFDC intercept. He made it very clear that he personally opposed all attempts to use the IRS files for anything except tax enforcement. His testimony indicated the same thing. His staff has continued to discuss and oppose the proposal with a number of the Congressional staff aides in the various Finance committees with particular impact in the tax authorization areas. It is my understanding that many of the aides in these committees are ex-IRS employees so the avenue of opposition is difficult to track.

Both IRS and the Federal Office of Child Support Enforcement (OCSE) have testified that the amounts of the refunds are decreasing. Neither have directly attributed this to the Child Support intercept, but they have strongly hinted at it. Studies are underway by IRS and OCSE to determine why refunds are declining, and IRS has expressed concern that the delinquent child support taxpayers may change their deductions to avoid the possibility of a refund. The IRS study may attempt to support this as they are quick to point out that the interest earned on the refund float is considerable.

The second area where the non-AFDC intercept process is hitting opposition is coming from the Reagan Administration. Secretary Heckler has testified that she thinks "it creates a very serious administrative burden." In her

testimony before a Senate finance committee she expressed her reservations in this area. It is my opinion that the Administration recognizes that the IRS intercept for the non-AFDC caseload will force them into making a real commitment to the non-AFDC work.

I have included a copy of Secretary Heckler's testimony about the non-AFDC intercept. All of the problems she refers to are problems that are the everyday work of doing the non-AFDC caseload. Any forced asset seizure or interruption, whether through IRS intercept, wage attachment or credit bureau filing requires an accurate record of debt, notice of delinquencies, rights to a hearing and then proper disbursement of the assets seized. Every seizure in the non-AFDC caseload started with an arrearage record that may be incorrect because the custodial parent has remained silent about a direct payment. The real question is not "can an agency do the IRS intercept for the non-AFDC caseload?" The real question is "can an agency do reliable non-AFDC work?" This non-AFDC IRS intercept process will force every state in the nation and the Administration to make a major commitment to the non-AFDC program.

All of the bills as mentioned earlier in this letter began to stall for various reasons. To capitalize on the momentum that had developed by their introduction, the staff within the Public Assistance subcommittee within Ways and Means captured all of the ideas in a draft proposal. Somewhere late during this summer it was accepted that this proposal would become the vehicle for moving child support legislation. The State Directors' Association reviewed and made suggestions for the proposal at a number of different stages.

The non-AFDC intercept was included, but various problems related to the process continued to surface. As a result the tax refund intercept slid back to a point that it is only a requirement to do a state tax refund intercept for AFDC cases. The language goes on to make it optional for non-AFDC. This proposal was passed by the House and is HR 4325. Senate staff was involved in the proposal and the preparation of the bill and have indicated the bill will pass as it stands. The bill does include a number of other very good procedures that need to become law, but every effort should continue with regard to the non-AFDC IRS intercept.

Please do thank Senator Halford for his continued interest in the child support program.

Sincerely,

Dan R Copeland

Dan R Copeland
Director

DRC:tg

Enclosures

cc: Robert Heath, Commissioner

STATE OF ALASKA
DEPARTMENT OF REVENUE

CHILD SUPPORT ENFORCEMENT DIVISION

BILL SHEFFIELD, GOVERNOR

201 E. 9TH AVENUE, SUITE 202
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3441

November 8, 1983

Elizabeth Hickerson
Senate Advisory Council
1029 W. 6th Ave., Suite 203
Anchorage, AK 99501

Dear Elizabeth:

Your question about Maryland intercepting IRS refunds is one that many people ask. Maryland and many other states like Alaska intercept state income tax refunds or PFD checks. The explanations as to why the process does not extend to the Federal level have not been adequate. In response to this a number of Congressional people have offered amendments to correct this, but IRS has a strong lobbiest effort to stop the process.

Included with this letter are copies of the procedures used to intercept the refunds for the AFDC cases. A copy of an overview section (page 4 of 6) includes a statement about the three years CSED has been doing the intercept. The last two pages of that overview indicates our dependency on Federal funds.

A copy of a NRFSEA Legislative Bulletin is also included. The hearing of 10/4/83 to take testimony from other witnesses was delayed until late October and then cancelled. A bill in the Ways and Means Committee has taken the spotlight, and all future effort appears to be centered on the House proposal.

I will let you know as soon as something is resolved there.

Sincerely,

Dan R Copeland
Director

Attachments

DRC:tg

NATIONAL RECIPROCAL AND FAMILY SUPPORT ENFORCEMENT ASSOCIATION'S

LEGISLATIVE BULLETIN

Vol. 1 October 1983 No. 4

Laurel
Deb
Dan

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SEPT

Senate Finance Committee Hearing on Administration Bill, H.R. 3546 and S. 1691

Hearings were held September 15th with Secretary Heckler testifying on the Administration bill. In addition to her comments on the success and failure of the program, she pointed out her desire to meet with and discuss the program with leadership from the House Ways and Means and Senate Finance Committees. She also made it very clear to all present that she is very supportive and interested in the program. She was emphatic in her testimony that funding should be based on performance and stated that the President wanted a bill signed by the end of this congressional session.

Due to time limitation, other witnesses will be heard on October 4th.

NRFSEA will have a four-member panel testify before the Senate Finance Committee on October 4th. Wanda Raich, President of NRFSEA, will be providing a total overview of the organization's position; however, due to the time limitations placed on testifying, it was decided that the remaining panel members would restrict their comments to a particular subject matter. Therefore, Sue Hunter, President, Louisiana Child Support Association, will be testifying on the funding issues within the bill; Ray Weaver, Past President, Colorado Family Support Council, will be testifying on the mandatory laws; and Bill Snyder, President, Missouri Child Support Enforcement Association, will be addressing mandatory fees. We would also like to encourage the membership to provide written comments on the Administration's bill.

Those who wish to submit written statements on the Administration's bill need to do the following:

1. Written statement should be typewritten, not more than 25 double-spaced pages in length;
2. Send five copies to:

   Roderick DeArment, Chief Counsel
   Committee on Finance
   Room SD-219, Dirksen Senate Office Bldg.
   Washington, DC 20510

3. Deadline for written statements - Tuesday, October 18, 1983; and
4. On the cover sheet to the written statement, refer to:

   Finance Subcommittee on Social Security
   and Income Maintenance Programs
   October 4, 1983 - Second Hearing on Proposals to
   Restructure the Child Support Enforcement Program

Senate Finance Committee Hearing on IRS

Senator Grassley (Iowa), Chairman of the Senate Finance Subcommittee on Oversight of the IRS, conducted hearings on September 16th. The purpose of the hearing was to review and evaluate the present Intercept project and examine the possibility of expanding the project to non-AFDC clients. Testifying on behalf of NRFSEA was John Abbott, President-Elect. Also offering testimony was Dan Copeland, Alaska; Dennis Becker, Minnesota; Mike Carter, California; Fred Schuteman, OCSE; Senator Charles Percy, Illinois; and Roscoe L. Egger, Commissioner of I.R.S. All spoke in favor of expanding services to non-AFDC clients and other areas except for Mr. Schuteman and Commissioner Egger.

Commissioner Egger absolutely did not wish to expand the program. He stated that a study is being done, which should be completed by mid-October, for which the Committee could use to access the feasibility of further expansion. His main concern was with what irregular tax withholding patterns were already developing due to the Intercept program and how expanding the program would affect these patterns.

Congressional Action Timetable

Every day that goes by makes it less likely any bill will be passed that reduces funding this fiscal year, i.e., for-ral fiscal year beginning 10/1/83. While a bill may be passed, it will probably address some of the less controversial issues; however, there is always the possibility that the funding issue will be addressed with the effective date being October 1, 1984. NRFSEA and others have worked hard to inform Congress of the many pitfalls that exist with some of the proposals being offered.

To assist you with planning for the forthcoming year, these items appear likely, at this point:

- House Ways and Means Committee bill markup beginning the week of September 25, 1983;
- Senate Finance Committee markup in mid-October; and
- A Conference Committee between the House and Senate Committees could meet sometime in late October or mar November.

Both the Senate and House Committees are extremely interested in the program and wish to make program improvement heretofore, the final bill will probably contain many of the following points:

- Increase emphasis on non-AFDC with changes in the purpose statement and the inclusion of non-AFDC in the incenti payment section of the funding formula;
- Depending on the IRS study concerning the tax intercept program, there is a strong possibility that non-AF cllents will be included if the amounts of the arrearages are reduced to judgment or documented through centr registry files (note that the first possible tax year for this mandate will be the tax year starting 1/1/85);
- Mandatory wage withholding with an effective date of no earlier than 10/1/84, and a possibility of an effecti date of 10/1/85, thus giving the states additional time to implement this requirement;
- Mandatory state tax intercept effective date - same as state mandatory wage withholding;
- Mandatory expedited establishment and enforcement of orders (states to establish an administrative or quasi-jud cial process) - effective date - same as mandatory wage withholding;
- Waiver provisions for the mandated three laws are the same as found currently in the Administration's bill;
- Audit and penalty requirements as set forth in the Administration's bill (however, we are still trying to pursue OCSE to exclude third party liability and paternity costs);
- Funding for clearinghouses and automated systems at 90% FFP rate (It should be understood that this will be f state systems only and we are hoping to increase the $20 million to at least $40 million.);
- Medical support provision (We would like these activities limited to information gathering only and prefer not do enforcement activities.);
- Reporting arrearages to the credit bureau;
- Lien against real property (We are hoping not to limit this to real property only.); and
- Funding...It is difficult at this time to forecast what final action will be taken on this issue; however, poin that are under consideration are:
  1. Some type of incentive for non-AFDC cases;
  2. Reduction in present AFDC incentive rate to offset incentives being paid for non-AFDC work;
  3. Some type of rededuction in the FFP rate if states do not pass the mandatory laws within the time frame s forth;
  4. An overall reduction in FFP with an effective date after 10/1/84 and the reduction of FFP might be phased o incrementally over several years;
  5. An additional bonus through increasing FFP to those states that demonstrates an improvement in their non-AF program, interstate program, and good faith implementation of mandated laws; and
  6. Some type of incentive split on interstate cases that insures some payment to both states involved.

General Information

It was announced by Secretary Heckler that Ms. Martha McSteen had been named Director of the Social Security Admi stration. As you recall, a vacancy occurred when Mr. Jack Svahn left the Department to join the President's staff th ast summer.

If you are not familiar with the medical liability activities which will be required, information is available he Federal Register in the Thursday, August 4th, Vol. 48, No. 515 issue. Sections referred to are 45 CFR 302, 304 a 06.

Members of this year's Legislative Committee from NAFSEA are listed below. Should you have any concerns or ques tions concerning proposals, please contact any member of the Legislative Committee and they will all try to assist you ' very way possible. In addition to the Legislative Committee, once again this year the Committee will be expanded t nclude a member from each of the State Family Support Councils that are affiliated with NAFSEA. Hopefully, by networ ng information out through the Family Support Councils, information will be more readily available at the local level.

Betty A. Holiday, Chairperson
Kansas
(913)296-3237

Sue P. Hunter
Louisiana
(504)568-1070

John P. Abbott
Utah
(801)538-1812, Ex. 101

Carolyn K. Kastner
Colorado (NCSL)
(303)292-6600

Dan R. Copeland
Alaska
(907)276-3441

Ray L. Weaver
Colorado
(303)795-3910

Margaret Malone from the Library of Congress compiled a comparative analysis on the major bills before Congres he has given her permission for us to share this information with our membership. Therefore, attached to this news ulter is the document which she developed.

Also enclosed for your information is a copy of the "Legislative Recommendations" passed by the NAFSEA Board o rectors in St. Louis in August.

Child Support Enforcement Overview

The short term objectives of increasing the AFDC recovery and the non-AFDC collection rate both drive at returning the financial responsibility of the minor children to both of the responsible parents. The long term effect of the return of this responsibility will lessen the family's dependence on the taxpayer supported AFDC and other welfare related programs. The ultimate goal is to have the community at large enforce an ongoing ethic in which all responsible parents provide the needed support to their minor children without any governmental intrusion.

OPERATIONAL STATEMENTS

The immediate objective is to increase the amount of reimbursement on AFDC recovery cases and increase both the collection rate and reliability of payment on non-AFDC cases. Over the past five years the collections have more than doubled. The following depicts the degree of success that the Division has had in achieving the goal of collecting child support for women and children.

	$ Collected	%Increase Over Previous Year	Employees	Collections Per Employee	Population Census (7/1)	CSED Caseload (6/30)
FY 79	5,100,000		54	94,444	413,700	5,947
FY 80	5,600,000	10%	55 (2%)*	101,818	419,700	6,774
FY 81	6,800,000	21%	62 (13%)*	109,677	435,200	6,511
FY 82	8,700,000	28%	67 (8%)*	129,850	460,300	6,266
FY 83	11,700,000	34%	76 (13%)*	153,947	Unpublished	6,887

* % of Increase over the Previous Year

The continued impetus of the Child Support Division is directly related to several factors. The team concept contributes greatly to the collection increases. The team concept coupled with continued improvements in the on-line computer system and staff increases, have created the environment necessary to manage the caseload which has resulted in significant collection increases.

TEAM CONCEPT

The team concept was introduced in March 1979 with minimal staff. By 1981 the entire Division had reorganized to take full advantage of the team approach. Each collection team has approximately 1,200 cases to control. These cases are distributed among the teams based upon the first two letters of an obligor's last name. With this type of distribution there is no case transfer when an obligor moves and each team has a similar mix of tough and easy collection cases. With sufficient staff to monitor all correspondence and action both coming and going on all cases, the officer can assign routine collection work to one section of the team. The paraprofessional can then handle the next level of difficult cases. The officer in charge is able to handle the more difficult cases while supervising the team as a whole. The officer is now close enough to both the caseload and the work performance of the team members on a daily basis to plan and direct the team's resources.

The office works towards making the routine collection work the major part of the team's workload. This would mean that all cases are paying regularly and only need a reminder on an occasional missed payment. Unfortunately, some cases have a tendency to lean towards non-payment even after reminders. This requires the officer to apply an appropriate collection action which could be an attachment of wages or assets, liens upon property, or referral to the Department of Law for legal action. In all cases the officer is responsible to see that the action is done correctly and that the end results are steady payments.

The establishment teams follow a similar pattern where responsibility for all actions on a case are assigned to one team. The case does not leave the team until an order has been established or the officer has determined that the case should be closed.

The team approach has greatly improved the agency's ability to manage the caseload and the related activity. As a direct result of the team concept, collections have risen significantly. Additional positions are being requested in this budget to establish a new collection team in response to the need of women and children to further increase the collection rate and reliability of their child support payments.

FIELD OFFICES

Field offices were established in Fairbanks and Juneau in FY 83. The advent of the field offices allows specialized

contact of residents of these vicinities in seeking and applying for child support services. The parties to a child support case have more immediate access to case status information. The field offices allow for more speedy services and are able to get the appropriate information necessary at the point of initial contact instead of via the mail system. The field offices enhance enforcement efforts in these areas.

COMPUTER SUPPORT

The Division has been implementing and consistently improving an on-line data base computer system. The on-line system provides a good accounting network and has greatly enhanced the amount of work and the number of cases upon which the Division can do active collection work. It is the major case management tool, providing an automatic case by case suspense and tracking mechanism with full automated correspondence capacities. The system will streamline the clerical burdens while providing near instant notice and appropriate correspondence upon delinquency to help keep greater portions of the caseload current with less effort. Thus more time is made available for the more difficult collection cases.

IRS DEBT OFFSET - AFDC CASES ONLY

Federal law has mandated all states to attach tax refunds through the Internal Revenue Service for reimbursement of child support on AFDC cases. Specific criteria has been regulated which limits the usage of the law, but it does provide a very usable mechanism to pursue arrears on the AFDC caseload. In FY 83 the Division certified and submitted 6.1 million in arrearages. The attachment process netted $186,000 in collections which is a 3.1% return. Efforts are underway at the national level to make this intercept process available for non-AFDC cases.

Calendar Year	Collections	Cases Submitted	Arrearages
1982	$ 85,000	227	$1,582,500
1983	$186,000	927	$6,092,500
1984	$230,000**	1,148	$6,741,500

** Estimate

PERMANENT FUND DISTRIBUTION

The agency has actively pursued the attachment of permanent fund dividends. Collections were approximately 1.6 million in FY 83. Further distributions in the forthcoming years will also be subject to attachment to satisfy payment of past due arrearages owed in benefit of children of the responsible parent, or to satisfy state subrogated claims for AFDC cases.

PENALTY & INTEREST

Effective January 1, 1983 penalty and interest is to be collected on all payments 10 days past due and arrears accruing after 1/1/83. This is providing incentive to the obligor to make full and timely child support payments. It is projected that the collections of penalties will reduce the federal funds available to the agency.

FEES FOR NON-AFDC SERVICES

Current Federal law allows the decisions of charging a collection fee to remain with the states. However, there is a growing possibility that Federal law may change to require a mandatory fee chargeable to both parents.

DEFINITIONS

Agency

Refers to the Child Support Enforcement Division.

Custodial Parent or Obligee

After one or both of the parents abandon the family, the custodial parent or obligee is the person charged with the immediate care and responsibility of the minor children's physical custody.

Absent Parent or obligor

After one or both of the parents abandon the family, the absent parent or obligor is the person who is no longer living with and providing the immediate care and responsibility to the minor children. This does not in any way relieve the absent parent of the financial responsibility .

AFDC

(Aid to Families with Dependent Children). This aid granted to the custodial parent creates an obligation due and payable to the State of Alaska from the absent parent.

Non-AFDC Case

This type of case involves a custodial parent who is not on any f[illegible] of welfare. Continued collections in this case help keep the family out of the welfare structure.

AFDC Recovery

CSED collects AFDC reimbursements from the absent parents and distributes the funds to the State and Federal governments. In addition to this, some funds may be distributed back to the families, thus taking them off of AFDC.

Federal Financial Participation (FFP)

The Federal government shares the cost of running the child support program by paying a percentage of the Division expenditures on a match basis. The current match rate for expenditures is 70% Federal, 30% State. The Federal deficits which created pressure to move the program toward an AFDC caseload are still growing. However, the attention that the program has been receiving has stopped the immediate attempts to move the program in the AFDC direction.

Child Support Enforcement Division
Revenue/Expenditure Report FY 82

	Federal Funds	State Funds	Total
Actual Expenditures for FY 82	$1,963.4	$ 654.5	$2,617.9
Incentives Paid to Alaska (Program Receipts)	168.3	(168.3)	-0-
FY 82 Actual Expenditures Total by Funding Source	$2,131.7	$ 486.2	$2,617.9
Other Funds:			
Personal Service Allow. (9.1%)	$ 131.2	$ (131.2)	$ -0-
AFDC Recoupment	(454.9)	(455.0)	(909.9)
Incentives to Other States for Alaska	29.8	-0-	29.8
Interest Income	(24.1)	(8.0)	(32.1)
Total Cost of Child Support Program	(1) $1,813.7	(2) $ (108.0)	$1,705.7

(1) FEDERAL EXPENDITURES -

This represents the total expenditures required on a federal level to fund Alaska's Child Support Enforcement Program.

(2) STATE NET PROFIT -

This represents the direct cash received over the costs to run the program.

Child Support Enforcement Division
Revenue/Expenditure Report FY 83

	Federal Funds	State Funds	Total
Actual & Estimated Expenditures for FY 83	$2,376.0	$978.8	$3,354.8
Incentives Paid to Alaska (Program Receipts)	239.4	(239.4)	-0-
FY 83 Estimated Expenditure Cost by Funding Source	$2,615.4	$739.4	$3,354.8
Other Funds:			
Personal Service Allow. (29.3%)	$ 468.7	$(468.7)	$ -0-
AFDC Recoupment	(850.5)	(849.0)	(1,699.5)
Incentives to Other States for Alaska	29.3	-0-	29.3
Interest Income	(17.5)	(7.5)	(25.0)
Total Cost of the Child Support Program	(1) $2,245.4	(2) $(585.8)	$1,659.6

(1) FEDERAL EXPENDITURES -

This represents the total expenditures required on a federal level to fund Alaska's Child Support Enforcement Program.

(2) STATE NET PROFIT -

This represents the direct cash received over the costs to run the program.

Cross-Reference

8440 ATTACHMENT OF FEDERAL INCOME TAX RETURNS

Congress has passed legislation which allows collection of delinquent Child Support obligations by the attachment of Federal Income Tax returns. Requests for collection by refund offset may be made for cases which involve delinquent court or administratively ordered amount of child support which has been assigned to the state under the Assignment of Rights. Case selection and submission to the IRS intercept shall be made according to federal regulation. The case criteria for using this method includes the following:

1. The support obligation must have been established by a court order or by an order of an administrative process and currently must be a domestic Court Case.

2. The payee must be currently receiving public assistance or there is a subrogated debt.

3. The payor must be three (3) months or more in arrears.

4. The minimum amount of arrears must equal $150 or more.

5. The social security number of the obligor must have been received and entered into the computer record.

6. Reasonable efforts to collect must have been undertaken prior to submittal.

Cases where there is an amount of past due support owed to the state, but which are not current IV-A cases, are eligible for submittal under the tax refund offset program.

Each enforcement team is responsible for:

1. Reviewing their respective cases.

2. Selecting the cases that meet the criteria.

3. Verifying the social security number of the payor and ensuring its entry into the computer system.

4. Code the respective cases into the tract system with code IRS.

5. Submit the list of cases to the section supervisor prior to September 1.

Cross-Reference

The respective cases will be compiled on a magnetic tape in late September of each year and will include the following:

1. Case number
2. Case code name
3. Social Security number of the payor
4. Total arrears (3 months or more in arrears and $150 or more).

8441 Upon completion of the magnetic tape by the Systems Section, a report cover letter will be prepared and signed, by the CSEO IV or the Director, to be forwarded with the tapes to the OCSE Central Office.

The enforcement teams will periodically check for payments being made on these cases. Should a payment be received on a case prior to the receipt of any attached federal income tax refund, coordinate with the section supervisor. A tape update must be provided to IRS on a scheduled basis or announced.

8442 PRE-OFFSET NOTICES

Following submittal of the certified cases, CSED shall issue a pre-offset notice to the obligor for each case submitted. Notice shall be sent to the last known address containing the arrearage amount to be offset and a Division contact person for inquiries.

8443 DELETIONS AND (DOWNWARD) MODIFICATIONS

Each Enforcement Team shall notify the Accounting Supervisor of any deletions and modifications required. Deletions and modifications shall be submitted to OCSE Central office according to OCSE instructions, by the Accounting Supervisor.

8444 REFUND OF OFFSET COLLECTIONS

CSED shall make prompt refund to the taxpayer of amounts improperly offset. Reimbursement shall be made upon notification from the Enforcement team to the Accounting Supervisor and supported by a memo that states the obligor's tax refund was improperly offset (and reason) and accompanied by the Notice of Offset from IRS to the obligor. Reimbursement shall be made from the Revolving Fund. AFDC Accounting will reimburse the Revolving Fund upon receipt of the tax refund remittance from OCSE.

Cross-Reference

8445 DISTRIBUTION OF COLLECTIONS FROM OFFSETS

Collections received by CSED as a result of refund offset, shall be distributed as past-due support as under CFR Section 302.51 (b) (4) and (5). Amounts collected in excess of the total unreimbursed AFDC payments but not in excess of the assigned support arrearage must be paid to the family. If amounts collected exceed the total assigned support arrearage, that excess amount must be refunded to the taxpayer. Amounts collected in error must be refunded to the taxpayer.

Any monies collected by CSED through the tax refund offset process must be applied only to the original arrearages which were certified. That amount is the debt which was claimed in the pre-offset notice. Arrearage amounts accumulated after the certification for IRS tax refund intercept may not be satisfied by offset of the income tax refund just received.

This does not preclude CSED from negotiating with the absent parent to apply any excess amount of the offset toward satisfaction of any arrearage accrued after the certification date.

8450 BANKRUPTCY

When the Bankruptcy Court sends a Notice to the Division, which declares that an obligor has filed for bankruptcy and has claimed child support as a debt, the respective enforcement team should immediately do the following:

1. Determine if there are assets to be attached. If assets are available, file a copy of an existing judgment or Administrative Lien on the Bankruptcy Court.

2. If the matter is coded IV-A or IV-B, request an accounting of the debt due the State of Alaska from the AFDC accounting supervisor and [illegible] compliance.

3. Upon comple[illegible] the compliance and an accounting of the debt due the s[illegible] refer the case to the Department of Law.

Upon receipt of the matter, the Department of Law will file the appropriate papers with the Bankruptcy Court.

Should the payee contact the Division and advise that the Bankruptcy Court has discharged the child support debt, we should contact the Department of Law, advise one of the attorneys of the circumstances, and inquire as to how the Bankruptcy Court should be approached.

National Council of State Child Support Enforcement Administrators

Committee on Finance
Subcommittee on Oversight of
the Internal Revenue Service
Tax Refund Offset Program and S-150
September 16, 1983

Testimony Provided by:
Dan R Copeland
President

Good Morning, I am Dan R Copeland, President of the National Council of State Child Support Enforcement Administrators. I also serve as the Director of the Alaska Child Support Agency. Our National Council includes the operational head of each state child support agency.

The Council is committed to the principle that all enforcement tools should be available equally to all child support cases. This should include AFDC and non-AFDC or instate and interstate casework. It is imperative that all absent parents recognize that all collection methods will apply to their own individual obligation to pay without regard to the economic status or location of the custodial parent with their child.

Many of the bills now facing Congress include a purpose statement that would imply this type of universal approach. The offset of IRS refunds for all cases rather than just the AFDC situations would be one of the most tangible statements made in this regard. In opening the IRS refund offset process to the non-AFDC caseload it must be recognized that this has the potential for greatly expanding the number of custodial parents that will want to use the child support system. Many custodial parents that have given up any thought of receiving child support will see this process as one last hope. It is most important that we make sure their hopes are not lost.

Many substantial barriers stand in the way of allowing the IRS refund offset process to work to its fullest extent. The first and most significant factor is in the basic program intent. While child support and the non-AFDC caseload is currently receiving a lot of attention many of the state and local political jurisdictions need assurances that child support services and not government AFDC reimbursement is the program objective. This very basic message, that child support is to be viewed as a service to the public will take time to be accepted. Acceptance of this will have a substantial impact in how the state and local jurisdictions implement the process of offsetting IRS refunds for non-AFDC cases. Once the basic program intent is established nationwide down through each county and local child support operations, the offset process will become one of the most effective collection tools available.

The success of the AFDC IRS offset process is one of the driving factors in the push to expand the program to include the non-AFDC caseload. During FY 82, better than 547,000 AFDC arrearage cases were submitted to IRS and 262,030 or 48% of these cases produced an actual cash response. In this first year of operation over $166,000,000 was collected and distributed to the state and federal governments. The figures are indicators of success but a more important fact is that many of the cases that proved to be uncollectable in in the past now produced amazing results.

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In many instances the process of offsetting the refunds is declared to be a simple and inexpensive process. When compared to some of the routine child support problems this may be true but in fact there is considerable effort involved. The states, counties and federal governments all go through a notice process which insures due process prior to attachment. Once the notice is sent out on all of the cases a great number of the absent parents contact the appropriate agency to work out payment arrangements. The phone calls and office contact continue to create extensive workload requirements at the local operational level. Naturally this notice process will find some cases where the arrearages are incorrect and adjustments are required. These adjustments are made timely and without serious problems in most cases.

During June 1982 the Federal Office of Child Support Enforcement conducted a review of selected state 1981 IRS submissions. These reviews were instrumental in refining the process with quality assurance mechanisms, additional pre-offset notices, and quicker deletions or releases. All indications are that the operations of the 1982 tax year refund process will be more efficient than the previous year.

One of the first questions that often develops when looking at the IRS offset process for non-AFDC cases is whether or not it can be done. This question is asked because there are numerous problems associated with the non-AFDC caseload that are not common to the AFDC cases. Doing the IRS offset process on the non-AFDC caseload forces people to recognize these difficult situations on a large number of cases as a group. However, it is important to recognize that each of these problems is a part of every enforcement action on each individual non-AFDC case. For example, in every instance there is the possibility that the absent parent has sent the money directly to the custodial parent and the arrearages as stated are incorrect. If this is the case, the due process requirements for all seizure actions protect the absent parent with notice and time to respond. This is currently a routine part of every agency that handles non-AFDC cases. It it is used in filing liens attaching wages, offsetting state refunds, seizing bank accounts, and will be a requirement in any IRS offset process. While using the IRS offset process for the non-AFDC cases will cause certain problems, all of these problems are resolvable and the process should become law.

The real question to be asked is not whether or not a state could operate a non-AFDC IRS offset program. In actual practice the bottom line question is whether or not the states and local operations have the ability to accept the additional non-AFDC service requirements in all areas.

National Council of State Child Support Enforcement Administrators

Senate Finance Committee
Fiscal Year 1984 Budget Proposals
June 15 & 16, 1983

Testimony Provided By:
Dan R Copeland
President

Good afternoon, I am Dan R Copeland, President of the National Council of State Child Support Enforcement Administrators. I also serve as the Director of the Alaska State Child Support agency. The National Council includes the operational head of each state Child Support agency. The Council members get a first hand working view of the child support program and its impact on public entitlements.

Each of us recognize that over the years the public entitlement expenditures have increased at an alarming rate. In response to this, the Administration, through their current budget proposal, is attempting to redefine what Congress set up in 1975 with the original Child Support Legislation. This proposal includes two distinctly different sections which are not related in any manner. However, they are presented together and this tends to cover certain policy changes.

At this point, the proposal has not been reduced to legislation but the Federal Office of Child Support Enforcement has explained it to the Council. The first part of the budget proposal, known last year as restructuring and known this year as performance funding, redirects the program to the AFDC governmental reimbursement work. The emphasis is on collections which are sent on to the state and federal government. Doing collection work for the custodial parent and child or non-AFDC work is merely tolerated and does not have direct or sufficient funding.

The National Council is opposed to the funding proposal. I have included a survey summary clearly indicating that opposition. The reasons for opposition are also summarized.

The proposal is narrow and shortsighted in light of the long term problem. A transition period from the current funding mechanism is offered but that does not alter the proposal's basic premise.

In addition to the basic policy defficiencies, the proposal has numerous operational defects. To begin with, the term "total collections" is redefined to include only AFDC collections as retained within each state. This will force many states to discourage or significantly reduce their interstate work. Under the proposal, any effort spent on the non-AFDC caseload will have a punitive financial impact. The proposal's non-AFDC 18 million dollar bonus payments, when spread over 50 states, is not adequate in concept or amount.

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Doing paternity establishment work does not produce an immediate collection. Under this proposal the states will be forced to reduce the paternity work. The majority of collections come from states that are dominated by local or county level operations. The proposal does not allow for stable funding which is essential to county participation.

The second part of the proposal is not a matter of funding but deals with legislation for operational improvements like wage assignments, administrative process and income tax refund intercepts. It is important to recognize that this part of the proposal is separate and totally unrelated to the funding issue. Many of the states are already working on the same type of improvements in their own state.

The Council recognizes that the Child Support process appears simple on the surface but in fact it is extremely complicated. To provide an overview from the practitioners point of view the attached Status Report is offered for general review.

In closing the Council is requesting this committee to consider the extreme defects in the funding proposal and then totally reject this part of the Administration's budget presentation.

The issue is fairly simple. Does Congress want the Child Support Program to be a Child Support service or source of government revenue. The National Council is committed to doing both. The Administrations proposal is an attempt to limit our efforts to the governmental reimbursement work.

Please reject this narrow concept.

National Council of State Child Support Enforcement Administrators

Ways & Means Committee
Program Financing
Economic Equity Act of 1993
July 14, 1993

Testimony Provided by:
Dan R Copeland
President

Good Morning, I am Dan R Copeland, President of the National Council of State Child Support Enforcement Administrators. I also serve as the Director of the Alaska Child Support Agency. Our National Council includes the operational head of each state child support agency. This provides the Council with a unique view of the program. We see the day-to-day destructive impact that the lack of child support creates. We also see and work with the state legislative bodies, Congress and the Administration. All of these form the direction for the program.

With the original legislation, direction from Congress was straightforward. This body wanted the program to address all child support. However, the consistent direction from the Administration has been that the program should aim at that child support which the government can keep and use to make a profit. This narrow focus has created a massive hue and cry from the custodial parents. As bad as it may seem from their view point, it can also be very hard on the absent parent.

First the welfare programs lead the absent parent to believe that the government will take care of his children. While there are millions of children currently receiving some form of assistance, there are more that start out above the poverty level. Their loss from the lack of child support is in their standard of living, self esteem and eventually some type of welfare or delinquency program. By the time the child requires government involvement, the father has developed two significant items. First he is facing an arrearage that appears too large and unfair in his mind. Second he is well into the habit of not paying child support. Even in the best of circumstances we all find changing an established pattern to be very difficult. The children are the ultimate losers but as he sees less of them that is less and less apparent to him.

From the custodial parents' view point, each day the hard financial facts of life force her to at least consider applying for welfare. She must constantly decide whether or not it is bad enough to give up and apply for the services. Her inner sense tells her that getting out of the welfare cycle is almost impossible, but the immediate needs of her children often leave her with no other choice.

In any event the two separated parents find themselves in adversarial positions. With child support in a delinquent and bitter status, visitation or anything requiring adult-like communication becomes virtually impossible. Once things reach this stage (and they usually do) enforcement or collection work is far more expensive, both parents feel rotten about the situation and the children are the ultimate losers.

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To correct the situation as it stands now, as the enclosed survey response indicates the Administrations current child support funding proposal must be scrapped. It must be replaced with a funding plan that is in line with the Child Support Purpose Statement in the Economic Equity Act. This plan should include funding for paternity establishment, interstate collections and all aspects of non-AFDC and AFDC work. To stimulate performance the Administration's proposed collections to cost ratios for audit criteria could be used. These ratios would have to exclude the paternity establishment costs and include all interstate collections. In an effort to reemphasize the importance of paternity establishment and non-AFDC work, the administrative match for these activities should be raised from 70 to 75 percent. Separate cost centers could be required or the lower 70% would be used. The increase in required federal funds would be minimal while the impact would be substantial.

The second part of the Administration's proposal includes mandatory laws for collection work. The proposed changes are very similar to the enforcement enhancements in the Economic Equity Act. Each of these changes is discussed in the enclosed Status Report and the Council urges this committee to support them.

In closing, I would like to point out that there are alot of children waiting to see what we are going to do.

National Council of State Child Support Enforcement Administrators

Senate Finance Committee
Economic Equity Act of 1983
S-888/Child Support Enforcement
June 20 & 21, 1983

Testimony Provided By:
Dan R Copeland
President

Good afternoon, I am Dan R Copeland, President of the National Council of State Child Support Enforcement Administrators. I also serve as the Director of the Alaska State Child Support agency. The National Council includes the operational head of each state Child Support agency. This provides the Council members with a first hand working view of the child support program and its impact on public entitlements.

The National Council is extremely pleased with the attention the Economic Equity Act has brought to the Child Support Program. The Act offers a number of technical and operational improvements that the Council supports. Many of the more effective states already have these provisions in their statutes.

While these improvements are significant, the most far reaching and important aspect of the Act is in the change of the Purpose Statement as in Title V, Part A, Section 501(a). This change reads as follows:

> "The purpose of the program authorized by this part is to assure compliance with obligations to pay child support to each child in the United States living with one parent."

In looking at that statement, I feel compelled to point out that there are many people in the child support network that have thought the current statute language makes this same requirement. In spite of this, this Administration, through the Federal Office of Child Support Enforcement (OCSE), has consistently offered funding changes that direct the program in a manner that would limit our efforts to the AFDC child support work.

This inconsistency between Statute language and OCSE funding direction has been a major point of question for the people doing the collection work. Conflict in the basic program direction has been one of the most significant factors in limiting the program's overall effectiveness. For example, many very effective state programs are declared inefficient when in reality they meet all program requirements and do an excellent job. Obviously the reverse can also be true. Then there are states that are truely ineffective and these are shielded by the differences in program direction. Unfortunately, the state Directors find themselves working with OCSE over program direction rather than improvement.

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The National Council prepared a Program Status Report and this policy inconsistency is raised throughout the report. On page 19 of the report, the Council calls for the following basic policy decision to be made.

> "Should the Child Support Program be viewed as a service or a revenue generated oriented program?"

The Economic Equity Act makes it clear that all child support is important and both objectives can be met.

Please do understand that the Purpose Statement in the Act will require more than an approval vote from Congress. It is a major commitment to do child support work for more than government reimbursement. The long term benefits in financial and social impact will be far greater than the short term financial requirement. The Council strongly recommends that this Committee recognize the benefits of supporting the Economic Equity Act with your vote and adequate, stable funding.

National Council of State Child Support Enforcement Administrators

Testimony provided to the House Appropriations Committee May 10, 1983

Good afternoon, I am Dan R Copeland, President of the National Council of State Child Support Enforcement Administrators. I also serve as the Director of the Alaska State Child Support agency. The National Council includes the operational head of each state Child Support agency. The Council members get a first hand working view of the child support program and its impact on public entitlements.

Each of us recognize that over the years the public entitlement expenditures have increased at an alarming rate. In response to this, the Administration, through their current budget proposal, is attempting to redefine what Congress set up in 1975 with the original Child Support Legislation. This proposal includes two distinctly different sections which are not related in any manner. However, they are presented together and this tends to cover certain policy changes.

The first part of the budget proposal, known last year as restructuring and known this year as performance funding, redirects the program to the AFDC governmental reimbursement work. The emphasis is on collections which are sent on to the state and federal government. Doing collection work for the custodial parent and child or non-AFDC work is merely tolerated and has insignificant funding.

The National Council is opposed to the funding proposal. I have included a survey summary clearly indicating that opposition. The reasons for opposition are also summarized.

The proposal is a narrow, shortsighted fix to a long term problem. A transition period from the current funding mechanism is offered but that does not alter the fact that the proposal's basic premise is limited and incorrect.

In addition to the basic policy defficiencies, the proposal has numerous operational defects. To begin with, the term "total collections" is redefined to include only AFDC collections as retained within each state. This will force many states to discourage or significantly reduce their interstate work. Any effort spent on the non-AFDC caseload will have a punitive financial impact under the proposal's bonus plan. When spread over 50 states the 18 million dollar payment for non-AFDC work is not adequate in concept or amount. Doing paternity establishment work does not produce an immediate collection. Under this proposal the states will be forced to reduce the paternity work. The majority of collections come from states that are dominated by local or county level operations. The proposal does not allow for stable funding which is essential to county participation.

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The second part of the proposal is not a matter of funding but deals with legislation for operational improvements like wage assignments, administrative process and income tax refund intercepts. It is important to recognize that this part of the proposal is separate and totally unrelated to the funding issue. Many of the states are already working on the same type of improvements in their own state.

The Council recognizes that the Child Support process appears simple on the surface but in fact it is extremely complicated. To provide an overview from the practitioners point of view the attached Status Report is offered for general review.

In closing the Council is requesting this committee to consider the extreme defects in the funding proposal and then totally reject this part of the Administration's budget presentation.

The issue is fairly simple. Does Congress want the Child Support Program to be a Child Support service or source of government revenue. The National Council is committed to doing both. The Administrations proposal is a poor attempt to limit our efforts to the governmental reimbursement work.

Please reject this narrow concept.

National Council of State Child Support Enforcement Administrators

September 30, 1983

Good Morning:

This wrap-up letter will be the last Presidential correspondence that you will be receiving via the dog sleds. Without a doubt the past year has been one of the most challenging and satisfying experiences I have been through. We have helped the Reagan Administration go through a near complete change of heart in looking at the program. Your input has been a major factor in that change.

During the St. Louis NRFSEA meeting, August 19 to 25, the Council was very active with the Administration, Congressional Staff, Council and NRFSEA members. The affiliation with NRFSEA has been strengthened to our mutual benefit. In the future I would ask each of you to encourage everyone in your state to put more into both organizations.

Tuesday Afternoon Round Table Discussion

In light of all the divergent ideas and changing concepts that are under consideration for the program, I wanted to get a number of the people involved all in the same room to discuss their views.

With this in mind we held a round table discussion with the clear understanding that many of the ideas were not finalized and would not be finalized in this meeting. The concept was that the discussion would help in the compromising and understanding necessary to help the program. The following were included or listened to in the discussion:

About twenty state directors
A number of NRFSEA members
LaVonn Bliesner of HHS
Martha Phillips of Ways & Means
Fred Schutzman of OCSE
Bob Harris of OCSE
Keith Basset of OCSE
Dave Smith of OCSE

Fred began the session with a general discussion about the current status of the Administration's proposal. He indicated the Administration supported the concepts in the Economic Equity Act but thought some parts of it, with regard to Child Support, were too extensive to implement. He talked of the general problem that Performance Funding was attempting to address in that the FFP concept was based on spending.

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The Council presented their concern with the FFP cut and the program instability that the cut would create even if replaced in some other fashion. A second and near overriding concern was that the attention being brought to the program would greatly increase the service requirements. All of the funding proposals and the discussions to support each of them seem to miss the fact that this increased service requirement is coming.

Martha and LaVonn seemed to be in general agreement that improvement to the program would come through "putting teeth into legislation". These improvements and Secretary Heckler's continued involvement would make the funding available go a lot farther and help to get additional funding.

Keith Basset presented a quick history of the audit criteria changes. He began with the original 19 compliance points and moved through the various performance criteria that OCSE and the Council have worked out.

At times the meeting was a bit tense for we all understood that we could not get to a point that anything could be called resolved. However the session helped everyone get a clearer picture of other view points.

Wednesday - Directors Meeting

The Directors meeting was attended by representatives of 26 states. Topics of discussion were as follows:

a) NRFSEA Nominations for Officers

The slate of nominees for the NRFSEA officers included John Abbott of Utah as their President Elect. John is currently the Council's Past President and was elected to be next year's Secretary-treasurer.

b) Re-election Process

Just prior to the meeting, Mr. Abbott expressed his concern to me in that he did not think it was appropriate for him to hold officer positions in both organizations. As such he submitted his resignation to the Council as the Secretary-treasurer. There was discussion about requesting that he retract his resignation and serve in both positions. He declined the offer and this raised the question as to the Council's official re-election process. Sam Ashdown, Florida and Tony DiNallo, Connecticut, agreed to review the by-laws. Further review is underway but at this point it was moved and seconded that the Council would trust the judgment of the incoming President Jerry Brockmyre, Michigan. He would appoint someone to fill the position.

c) Council Status Report

A general discussion of the Council's first Status Report included the concept of who the report was prepared for, the time involved in the writing and publishing. Suggestions for doing a second report were considered and President Elect, Brockmyre has indicated that he will pick this project up when he takes office on 10/1/83.

One of the primary subjects for the report will be the non-AFDC area but Mr. Brockmyre has requested that each of you consider other areas. Involvement from each of you would be most helpful. Once all the subjects are selected and a general theme has been established he will appoint various members to draft language on the topics. The review, redrafting and final editing will take considerable time and effort. He is anticipating a final product for the congressional session by Spring 1984. Please do provide him with every assistance you can.

Ways & Means Mark-Up

At that point we were anticipating a Ways and Means Mark-up session on 9/13/83. As it turned out this session did not start until 9/29/83 and then it got cut off before it could finish. The attached letter of 9/6/83 was sent to each member. The general intent of the letter was to express our concerns over the lack of additional funds for the program while there is a major effort in process to expand the program. The mark-up session of 9/29/83 produced a five page document that Mr. Brockmyre is sending to each of you. It appears that the mark-up session will start again in late October.

Annual Meeting - May 1984

Luis Rumbaut of the District of Columbia was appointed to select the site for next year's Council meeting. As discussed in the May '83 meeting the President will poll the Directors as to their preference on weekend meetings.

Long Range Planning Document

The long range planning document to include incorporation, state dues, an office in Washington and other items were discussed. I assigned this task to the Executive Committee and Mr. Brockmyre will follow through with this.

Senate Finance Hearings

Two Finance Hearings were scheduled for September 15 and 16, 1983. Senator Armstrong's subcommittee on Social Security and Income Maintenance anticipated a full hearing on Child Support on the 15th. As the witness list grew, the subcommittee decided to have only Secretary Heckler provide testimony and a second hearing was set for October 4, 1983. A copy of the testimony as she presented it, and the questions and answers are included for your review. Her complete lack of detail with regard to the bonus payments was noted by the Committee members. The questions and answers were of particular interest. Since that time the October 4 hearing has also been cancelled to be rescheduled at a later date. Again the target is late October.

Senator Grassley's Oversight of the IRS Subcommittee held a hearing on the Refund Intercept Process. Roscoe Eggers of the IRS testified in opposition to the intercept process. Fred Schutzman testified as to the general success and problems as experienced by the previous offset experience. Several other Congressional members supported the concept. For the council, Bonnie Becker, Minnesota, Jerry Brockmyre and myself testified in support of the concept. Copies of our testimony are available to each of you. Since that time IRS has brought considerable pressure to the Congress and many of the members that were supporting the intercept are backing down. The major problems seem to rest on the potential for incorrect arrearage statements and the subsequent amendment process through the 1040X. In the Ways & Means Committee, Representative William Thomas of California is trying to work out something that will resolve these problems. At this point there is no final answer but it looks bleak for the non-AFDC intercept.

In light of the fact that you will get this letter when Jerry Brockmyre has assumed his position as President, please do not hesitate to call him for anything. In spite of the fact that he says "Good Afternoon" to me every time I say "Good Morning" I think he will do a fine job. Once again, thanks for everything and please give your all to Mr. Brockmyre.

Sincerely yours,

Dan R Copeland
President

DRC:Dm

enclosures

United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

November 28, 1983

Elizabeth Hickerson
Senior Advisory Council
1024 West 6th, Suite 203
Anchorage, Alaska 99501

Dear Elizabeth:

Thanks for calling my Anchorage office about legislation pending in the Senate to reform the Child Support Enforcement Program. I'm glad to know of your interest in this issue.

Several bills have been introduced in the Senate to upgrade the program's effectiveness. Less than 50% of the women due child support payments receive the full payment, and 28% of these women receive nothing. Senator Armstrong's bill, S. 1691, is pending in the Senate Finance Committee, where subcommittee hearings were held in September. S. 1708, introduced by Senator Grassley, and S. 1777, sponsored by Senator Trible, are also pending in the Finance Committee. The Economic Equity Act, which I am cosponsoring, also includes a section to strengthen and expand the Child Support Enforcement program. I also cosponsored National Child Support Enforcement Month, now PL98-68. For your review, enclosed are copies of these bills.

Thanks again for sharing with me your interest in this program.

With best Wishes,

Cordially,

Ted Stevens

TED STEVENS

Enclosure

HR 2374 - House EEA
D. Kennelly
3-24-83

98TH CONGRESS
1ST SESSION

H. R. 2374

To amend part D of title IV of the Social Security Act and title 11 of the United States Code to provide for improvements in the child support enforcement program.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1983

Mrs. KENNELLY (for herself, Mrs. SCHROEDER, Mr. STARK, Mr. MATSUI, Mr. HEFTEL of Hawaii, Mr. GUARINI, Mr. CONABLE, Mr. BIAGGI, Ms. FERRARO, and Ms. MIKULSKI) introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To amend part D of title IV of the Social Security Act and title 11 of the United States Code to provide for improvements in the child support enforcement program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Child Support Enforcement Improvements Act of 1983".

PURPOSE OF THE PROGRAM

SEC. 2. (a) Section 451 of the Social Security Act is amended by striking out "For the purpose of enforcing" and inserting in lieu thereof the following:

"(a) The purpose of the program authorized by this part is to assure compliance with obligations to pay child support to each child in the United States living with one parent.

"(b) In order to achieve the purpose set forth in subsection (a), by enforcing".

(b) The section heading of section 451 of such Act is amended to read as follows:

"PURPOSE OF PROGRAM; APPROPRIATIONS".

COLLECTION OF PAST-DUE SUPPORT FROM FEDERAL TAX REFUNDS

SEC. 3. (a) Section 464(a) of the Social Security Act is amended—

(1) by inserting "or which such State has agreed to collect under section 454(6)," after "402(a)(26),"; and

(2) by inserting before the period at the end thereof the following: "in the case of past-due support assigned to such State pursuant to section 402(a)(26), or, in the case of past-due support which such State has agreed to collect under section 454(6), shall pay such amount to the State agency for distribution, after de-

duction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed".

(b) Section 6402(c) of the Internal Revenue Code of 1954 is amended by inserting "or which has agreed to collect such support under section 454(6) of such Act" after "the State to which such support has been assigned".

(c) The amendments made by this section shall become effective 90 days after the date of the enactment of this Act.

CHILD SUPPORT CLEARINGHOUSE

SEC. 4. (a) Section 454(10) of the Social Security Act is amended to read as follows:

"(10) provide that the State will maintain a child support clearinghouse or comparable procedure—

"(A) through which all payments for the support and maintenance of a child, and payments for the support and maintenance of a child and the parent with whom the child is living, which are owed by absent parents residing or employed in such State, pursuant to any support order which is issued, modified, or enforced after December 31, 1983, will be recorded;

"(B) into which any such support payments shall be paid, recorded, and forwarded—

HR 216 1
IRS Intercept - Non AFDC
1-3-83

98TH CONGRESS
1ST SESSION

H. R. 216

To amend part D of title IV of the Social Security Act to provide that the procedures which are presently available to AFDC families for the collection of past-due child and spousal support from Federal tax refunds shall also be available to non-AFDC families.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 1983

Mr. LONG of Maryland introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend part D of title IV of the Social Security Act to provide that the procedures which are presently available to AFDC families for the collection of past-due child and spousal support from Federal tax refunds shall also be available to non-AFDC families.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 464(a) of the Social Security Act is amended by inserting "or which such State has undertaken to collect under section 454(6)," after "which has been assigned to such State pursuant to section 402(a)(26),".

(b) Section 6402(c) of the Internal Revenue Code of 1954 is amended by inserting "(or which has undertaken to collect such support under section 454(6) of such Act)" after "the State to which such support has been assigned".

SEC. 2. The amendments made by the first section of this Act shall take effect on the date of the enactment of this Act.

O

Union Calendar No. 300

98TH CONGRESS
1ST SESSION

H. R. 4325

[Report No. 98–527]

To amend part D of title IV of the Social Security Act to assure, through mandatory income withholding, incentive payments to States, and other improvements in the child support enforcement program, that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstances, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 8, 1983

Mrs. KENNELLY (for herself, Mr. FORD of Tennessee, Mr. CAMPBELL, Mr. STARK, Mr. MOORE, Mr. PEASE, Mr. FRENZEL, Mr. HANCE, Mr. THOMAS of California, Mr. MATSUI, and Mr. FOWLER) introduced the following bill; which was referred to the Committee on Ways and Means

NOVEMBER 10, 1983

Additional sponsors: Mrs. SCHROEDER, Ms SNOWE, Ms. FERRARO, Ms. KAPTUR, Mrs. HALL of Indiana, Mr. FLIPPO, Mr. ANTHONY, Mr. WHEAT, Mr. SHANNON, Mr. DOWNEY of New York, Mr. LELAND, Mr. HEFTEL of Hawaii, Mrs. ROUKEMA, Mrs. BOXER, Mrs. JOHNSON, Mr. GUARINI, Mr. SWIFT, and Mr. CONABLE

NOVEMBER 10, 1983

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part ~~struck through~~ and insert the part printed in italic]

purpose of enforcing a support order of that or any other jurisdiction—

"(A) any refurd of State income tax which would otherwise be payable to an individual will be reduced, after notice to that individual of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any past-due support (as defined in section 464(c)) owed by such individual, in every case where the support ouligation involved has been assigned to the State pursuant to section 402(a)(26), and in any other case at the option of the State; and

"(B) the amount by which such refund is reduced will be retained by the State for distribution in accordance with section 457(b)(3), and notice of the individual's home address will be furnished to the State agency administering the plan approved under this part.

The Secretary may prescribe regulations specifying the minimum amount of a refund, and the minimum amount of past-due support, to which the procedures required by this paragraph may apply.

98TH CONGRESS | HOUSE OF REPRESENTATIVES | REPORT
1st Session | No. 98-527

CHILD SUPPORT ENFORCEMENT AMENDMENTS OF 1983

NOVEMBER 10, 1983.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 4325]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means to whom was referred the bill (H.R. 4325) to amend part D of title IV of the Social Security Act to assure, through mandatory income withholding, incentive payments to States, and other improvements in the child support enforcement program, that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstances, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

CONTENTS

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

In the table of contents on page 2, strike out the item relating to section 16 and insert in lieu thereof the following:

31-006 O

trative order); to reduce court backlogs so that support decisions can be made promptly.

C. State income tax refund offsets

States that have State income taxes must provide for the withholding of any State tax refund payable to a non-custodial parent who owes past-due child support payments. These tax refund withholding procedures must be applicable to AFDC and, at the option of the State, to non-AFDC cases and must be used for interstate as well as intrastate cases. The obligor must get prior notice of the proposed offset and notification of procedures to be followed to contest the amount of past-due support; and the offset procedure must comport with the due process procedures of the State.

D. Liens against property

States must establish procedures for imposing liens against both real and personal property for amounts of past-due support owed by a State resident or an individual who owns such property in the State.

E. Paternity statute of limitations

State paternity laws must permit the establishment of paternity for both AFDC and non-AFDC children until a child's 18th birthday.

F. Imposition of security or bond

States must provide for the imposition of security, a bond, or other guarantee to secure payment in the case of absent parents who have a pattern of past-due support payments. The obligor must get prior notice and notification of procedures to be followed to contest the proposed security or bond; the procedure must comport with the due process procedures of the State.

G. Providing information on past-due support to credit agencies

States must make available to consumer credit agencies, at the request of such agencies, information regarding child support arrearages. The State must make available information on arrearages in excess of $1,000 and may make available information on smaller arrearages. The obligor must receive prior notice of the release of such information which indicates the procedures to be followed to contest the proposed release of information. The notification and procedures for contesting the proposed release of information to credit agencies must comport with the due process procedures in the State. The State may charge a fee to the credit agencies who request and receive this information which cannot exceed the cost to the State of providing the information.

H. Tracking and monitoring support payments

When a State has instituted the income withholding requirements and procedures, and established the public agency or alternative publicly accountable procedures that will administer income withholding, summarized in II(A) above, the State must provide that, at the request of the absent or custodial parent, child support payments must be made through the agency that administers

98TH CONGRESS
1ST SESSION

H. R. 4325

IN THE SENATE OF THE UNITED STATES

NOVEMBER 16 (legislative day, NOVEMBER 14), 1983
Received; read twice and referred to the Committee on Finance

AN ACT

To amend part D of title IV of the Social Security Act to assure, through mandatory income withholding, incentive payments to States, and other improvements in the child support enforcement program, that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstances, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Child Support Enforcement Amendments of 1983".

TABLE OF CONTENTS

PURPOSE OF THE PROGRAM

SEC. 2. Section 451 of the Social Security Act is amended by striking out "and obtaining child and spousal support," and inserting in lieu thereof "obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A) for whom such assistance is requested,".

IMPROVED CHILD SUPPORT ENFORCEMENT THROUGH REQUIRED STATE LAWS AND PROCEDURES

SEC. 3. (a) Section 454 of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (18);

(2) by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; and"; and

(3) by adding after paragraph (19) the following new paragraph:

"(20) provide that (subject to section 466(d)) the State (A) will have in effect all of the laws required by section 466, and (B) will implement the procedures (designed to improve child support enforcement effectiveness) which are embodied or prescribed in such laws.".

(b) Part D of title IV of such Act is further amended by adding at the end thereof the following new section:

"REQUIREMENT OF STATUTORILY PRESCRIBED PROCEDURES TO IMPROVE EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT

"SEC. 466. (a) In order to be in compliance with the provisions of section 454(20)(A) at any time, each State must have enacted (and have in effect at that time) laws establishing, embodying, or requiring the use of the following procedures, consistent with regulations of the Secretary, to increase the effectiveness of the program it administers under this part:

"(1) Procedures (more particularly set forth in subsection (b)) for the withholding from income of amounts payable as support.

"(2) Procedures assuring (in accordance with regulations of the Secretary) that the State will make all reasonable efforts to expedite and otherwise improve the establishment of, compliance with, and enforcement of child support obligations and any related obligations arising under or in connection with the support orders involved.

"(3) Procedures under which, at the request of the State child support enforcement agency, for the purpose of enforcing a support order of that or any other jurisdiction—

"(A) any refund of State income tax which would otherwise be payable to an individual will be reduced, after notice to that individual of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any past-due support (as defined in section 464(c)) owed by such individual, in every case where the support obligation involved has been assigned to the State pursuant to

section 402(a)(26), and in any other case at the option of the State; and

"(B) the amount by which such refund is reduced will be retained by the State for distribution in accordance with section 457(b)(3), and notice of the individual's home address will be furnished to the State agency administering the plan approved under this part.

The Secretary may prescribe regulations specifying the minimum amount of a refund, and the minimum amount of past-due support, to which the procedures required by this paragraph may apply.

"(4) Procedures under which liens are imposed against real and personal property for amounts of past-due support (as so defined) owed by an absent parent who resides or owns property in the State.

"(5) Procedures which permit the establishment of an individual's paternity for any child at any time prior to such child's eighteenth birthday.

"(6) Procedures which require in appropriate cases that an individual give security, post a bond, or give some other guarantee to secure payment of past-due support (as so defined) if such individual is an absent parent who has a demonstrated pattern of overdue support payments, after notice to such individual of

the proposed requirement and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

"(7) Procedures by which information regarding the amount of past-due support (as so defined) owed by an absent parent residing in the State will be made available to any consumer credit bureau organization (as defined in section 416 of Public Law 96–374) upon the request of such organization; except that (A) if the amount of the past-due support involved in any case is less than $1,000, information regarding such amount shall be made available only at the option of the State, (B) any information with respect to an absent parent shall be made available under such procedures only after such parent has been notified of the proposed action and given a reasonable opportunity to contest the accuracy of such information (and after full compliance with all procedural due process requirements of the State), and (C) a fee for furnishing such information, in an amount not exceeding the actual cost thereof, may be imposed on the requesting organization by the State.

"(8) Procedures under which child support payments under this part will be made through the State agency or other entity which administers the State's

income withholding system (described in paragraph (1) and subsection (b)) in any case where either the absent parent or the custodial parent requests it, even though no arrearages in child support payments are involved and no income withholding procedures have been instituted; but in any such case an annual fee for handling and processing such payments, in an amount not exceeding the actual costs incurred by the State in connection therewith or $25, whichever is less, shall be imposed on the requesting parent by the State.".

"(b) Under the procedures referred to in subsection (a)(1) (relating to the withholding from income of amounts payable as support)—

"(1) in the case of each absent parent against whom a support order is or has been issued or modified in the State, so much of his or her wages must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and to provide for the payment of any fee to the employer which may be required under paragraph (6)(A) (except that the amounts withheld shall not exceed the amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)), and the amounts to be withheld to satisfy ar-

rearages may be appropriately limited by the State law);

"(2) such withholding must be initiated without the necessity of any application therefor in the case of a child (whether or not eligible for aid under part A) with respect to whom services are already being provided under this part, and will be initiated upon the filing of an application for services under this part with the State agency in the case of any other child in whose behalf a support order has been issued or modified in the State; and in either case such withholding must occur without the need for any amendment to the support order involved or for any further action by the court or other entity which issued it;

"(3) such withholding must be carried out in full compliance with all procedural due process requirements of the State and must begin as soon as is administratively feasible, in any event by the earliest of (A) the date on which such procedures become effective, the date on which such order becomes effective, the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month, or (if the absent parent contests the withholding) the date specified in the notice given such parent under paragraph (5)(B),

whichever of the four is latest, (B) the date as of which the absent parent requests that such withholding begin, or (C) such earlier date as the State may select;

"(4) such withholding must be administered by a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency in accordance with section 457 under procedures (specified by the State) which provide for the keeping of adequate records to document payments of support and permit the tracking and monitoring of such payments, except that the State may establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the administration of such public agency) otherwise than through such public agency so long as the entity making such collection and distribution is publicly accountable for its actions taken in carrying out such procedures, and so long as such procedures will assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments;

"(5) the State (A) must provide advance notice to each individual to whom paragraph (1) applies regarding the proposed withholding and the procedures the

individual should follow if he or she desires to contest such withholding on the grounds that withholding (including the amount to be withheld) is not proper in the case involved because of mistakes of fact, and (B) if the individual contests such withholding on the grounds specified in clause (A), shall determine whether such withholding will actually occur, and (if so) shall notify the individual of the date on which such withholding is to begin, within no more than 30 days after the provision of such advance notice;

"(6)(A)(i) the employer of any individual to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such individual's wages the amount specified by such notice (which shall include a fee, established by the State in accordance with criteria prescribed by the Secretary, to be paid to the employer unless waived by him or her) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the appropriate State agency (or other entity authorized to collect the amounts withheld under the alternative procedures described in paragraph (4)) for distribution in accordance with section 457; and

"(ii) the notice given to the employer must be a separate and distinct document, containing no matter other than the amounts to be withheld from the employee's wages, the date on which the withholding is to begin, the amount to be retained by the employer as a fee for effectuating the withholding, and such other information as may be necessary for the employer to comply with the withholding order;

"(B) methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to the appropriate State agency (with the portion thereof which is attributable to each individual employee being separately designated);

"(C) the employer must be held liable to the State for any amount which such employer fails to withhold from wages due an employee when such amount is required under this subsection to be so withheld (up to the amount of the arrearage) following receipt by such employer of proper notice under subparagraph (A); and

"(D) provision must be made for the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any individual subject to wage withhold-

ing because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer;

"(7) provision must be made under State law for the priority of support collection under this subsection over any other legal process under State law against the same wages;

"(8) the State may take such actions as may be necessary to extend its system of wage withholding under this subsection so that such system will include withholding from forms of income other than wages, or will include the imposition of bonding or other requirements in cases involving individuals whose income is from sources other than wages, in order to assure that child support owed by individuals in the State will be collected without regard to the types of such individuals' income or the nature of their income-producing activities;

"(9) the State must make such arrangements and enter into such agreements with other States as may be necessary—

"(A) to extend its withholding system under this subsection so that such system will include withholding from income derived within such

State in cases where the applicable support orders were issued in other States, and

"(B) to encourage the extension of the withholding systems of other States under this subsection so that such systems will include withholding from income derived in those States in cases where the applicable support orders were issued in such State,

in order to assure insofar as is possible that child support owed by individuals in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent; and

"(10) provision must be made for terminating withholding.

In order to assure that income withholding as a means of collecting child support is available without the necessity of filing application for services under this part, the laws referred to in subsection (a) must require in the case of any State that all child support orders which are issued or modified in such State on or after the effective date of this section shall include provision for withholding from income whenever arrearages occur.

"(c) As used in this section, the term 'wages' means any and all cash remuneration for employment, determined with-

out regard to any exclusions from or limitations on such term (or the term 'employment') which may be applicable under other provisions of this Act or under other Federal, State, or local laws.

"(d) If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other actual data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State for a specified period of time, subject to the Secretary's continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.".

(c) The amendments made by this section shall become effective October 1, 1985.

90-PERCENT MATCHING FOR AUTOMATED MANAGEMENT SYSTEMS USED IN INCOME WITHHOLDING AND OTHER REQUIRED PROCEDURES

SEC. 4. (a) Section 454(16) of the Social Security Act is amended by striking out "and (D)" and inserting in lieu thereof the following: "(D) to facilitate the development and

improvement of the income withholding and other procedures required under section 466(a) through the monitoring of child support payments, the maintenance of accurate records regarding the payment of child support, and the provision of prompt notification to appropriate officials with respect to any arrearages in child support payments which may occur, and (E)".

(b) Section 455(a)(3) of such Act is amended—

(1) by inserting after "automatic data processing and information retrieval system" the following: "(including the hardware components thereof)"; and

(2) by inserting before the semicolon at the end thereof the following: ", or meets such requirements without regard to clause (D) thereof".

(c) The amendments made by this section shall apply with respect to quarters beginning after the date of the enactment of this Act.

CONTINUATION OF SUPPORT ENFORCEMENT FOR AFDC RECIPIENTS WHOSE BENEFITS ARE BEING TERMINATED

SEC. 5. (a) Section 457(c) of the Social Security Act is amended—

(1) by striking out "may" in the matter preceding paragraph (1) and inserting in lieu thereof "shall"; and

(2) by striking out "the net amount of" in paragraph (2), and by striking out "to the family" and all

that follows in such paragraph and inserting in lieu thereof "to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this title,".

(b) The amendments made by subsection (a) shall become effective October 1, 1985.

FINANCIAL INCENTIVES FOR BALANCED AND EFFICIENT STATE PROGRAMS

SEC. 6. (a) Section 458 of the Social Security Act is amended to read as follows:

"INCENTIVE PAYMENTS TO STATES

"SEC. 458. (a) In order to encourage and reward State child support programs which perform in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support, whether such children reside within the State or elsewhere and whether they are eligible or ineligible for aid to families with dependent children under a State plan approved under part A of this title (and regardless of the economic circumstances of their parents), the Secretary (subject to section 6(b) of the Child Support Enforcement Amendments of 1983) shall pay to each State for each fiscal year, on a quarterly basis (as described

in subsection (d)) beginning with the quarter commencing October 1, 1985, an incentive payment equal to—

"(1) 4 per centum of the total amount of support collected during the fiscal year in cases (filed with the State agency under this part) in which the support obligation involved is assigned to the State pursuant to section 402(a)(26) (with such total amount for any fiscal year being hereafter referred to in this section as the State's 'AFDC collections' for that year), plus

"(2) 4 per centum of the total amount of support collected during the fiscal year in all other cases filed with the State agency under this part (with such total amount for any fiscal year being hereafter referred to in this section as the State's 'non-AFDC collections' for that year);

except that (A) if subsection (b) applies with respect to a State's AFDC collections or non-AFDC collections for any fiscal year, the percent specified in paragraph (1) or (2) (with respect to such collections) shall be increased to the higher percent determined under such subsection (with respect to such collections) in determining the State's incentive payment under this subsection for that year, and (B) the dollar amount of the portion of the State's incentive payment for any fiscal year which is determined on the basis of its non-AFDC collections under paragraph (2) (with or without the

application of subsection (b)) shall in no case exceed 125 per centum of the dollar amount of the portion of such payment which is determined on the basis of its AFDC collections under paragraph (1) (with or without the application of such subsection).

"(b) If the total amount of a State's AFDC collections or non-AFDC collections for any fiscal year bears a ratio to the total amount expended by the State in that year for the operation of its plan approved under section 454 (with the total amount so expended in any fiscal year being hereafter referred to in this section as the State's 'combined AFDC/non-AFDC administrative costs' for that year) which is equal to or greater than one, the percent specified in paragraph (1) or (2) of subsection (a) (with respect to such collections) shall be increased to—

"(1) 5 per centum, plus

"(2) one-half of 1 per centum for each full one-tenth by which such ratio exceeds one;

except that the percent so specified shall in no event be increased (for either AFDC collections or non-AFDC collections) to more than 10 per centum. For purposes of the preceding sentence, laboratory costs incurred in determining paternity in any fiscal year may at the option of the State be excluded from the State's combined AFDC/non-AFDC administrative costs for that year.

"(c) In computing incentive payments under this section, support which is collected by one State on behalf of children residing in another State shall be treated as having been collected in full by each such State.

"(d) The amounts of the incentive payments to be made to the various States under this section for any fiscal year shall be estimated by the Secretary at or before the beginning of such year on the basis of the best information available; and the Secretary shall make such payments for such year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section shall be deemed obligated.

"(e) If one or more political subdivisions of a State participate in the costs of enforcement and collection of support in cases filed with the State agency of such State during any period, such subdivision or subdivisions shall be entitled to receive an appropriate share (as determined under regulations prescribed by the Secretary) of any incentive payments

made to the State under this section with respect to that period, and the State's right to receive such incentive payments shall be conditional upon its execution of an agreement satisfactory to the Secretary to pay such share to such subdivision or subdivisions.".

(b) The amendment made by subsection (a) shall become effective October 1, 1985; but if the total amount of the incentive payments to which any State is entitled under section 458 of the Social Security Act as amended by subsection (a) for the fiscal year 1986 is less than 80 per centum of the amount that would have been payable to such State for that fiscal year under section 458 of such Act if such section as in effect prior to such amendment had remained in effect and its provisions had been applied to collections made by such State in that fiscal year, the Secretary of Health and Human Services shall make such additional payments to the State under section 458 of such Act (as amended by subsection (a)), for quarters in the fiscal year 1986, as may be necessary to assure that the total amount of such incentive payments for that fiscal year is no less than 80 per centum of the amount that would have been so payable under section 458 of such Act as in effect prior to such amendment.

SPECIAL PROJECT GRANTS TO PROMOTE IMPROVEMENTS IN INTERSTATE ENFORCEMENT

SEC. 7. Section 455 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(e)(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part in cases where either the children on whose behalf the support is sought or their absent parents do not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection in such cases and which will use the proceeds of such grants to carry out special projects designed to demonstrate and test such methods.

"(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.

"(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the Secretary may specify.

"(4) Amounts expended by a State in carrying out a special project assisted under this section shall be considered, for purposes of section 458(b) (as amended by section 6(a) of the Child Support Enforcement Amendments of 1983), to have been expended for the operation of the State's plan approved under section 454.

"(5) There is authorized to be appropriated the sum of $15,000,000 for each fiscal year beginning with the fiscal year 1985, to be used by the Secretary in making grants under this subsection.".

PERIODIC REVIEW OF EFFECTIVENESS OF STATE PROGRAMS; MODIFICATION OF PENALTY

SEC. 8. (a)(1) Section 452(a)(4) of the Social Security Act is amended to read as follows:

"(4) conduct a review of such State's program pursuant to such plan, no less frequently than once every three years, in order to determine whether such program substantially complies with the requirements

of this part and to evaluate its effectiveness in carrying out the purposes of this part;".

(2) Section 402(a)(27) of such Act is amended by striking out "operate a child support program in conformity with such plan" and inserting in lieu thereof "operate a child support program in substantial compliance with such plan".

(b) Section 403(h) of such Act is amended to read as follows:

"(h) In any case where a State's program operated under part D is found by the Secretary as a result of a review conducted under section 452(a)(4) not to meet the requirements of such part, and where corrective action within such period or periods as the Secretary may by regulation prescribe has not been adequate to place the program (after such period or periods) in substantial compliance with all such requirements, the amount otherwise payable to such State under this part for any quarter beginning after September 30, 1983, and after the close of the applicable period for corrective action, shall be reduced by—

"(1) not more than 2 per centum, or

"(2) not more than 3 per centum, if the finding is the second consecutive such finding made as a result of such a review, or

"(3) not more than 5 per centum, if the finding is the third or a subsequent consecutive such finding made as a result of such a review;

and such reduction shall continue until the first subsequent quarter throughout which the program is found to meet all such requirements.".

(c) The amendments made by this section shall become effective October 1, 1983.

EXTENSION OF SECTION 1115 DEMONSTRATION AUTHORITY TO CHILD SUPPORT ENFORCEMENT PROGRAM

SEC. 9. (a) Section 1115(a) of the Social Security Act is amended—

(1) by striking out "part A" in the matter preceding paragraph (1) and inserting in lieu thereof "part A or D";

(2) by striking out "402," in paragraph (1) and inserting in lieu thereof "402, 454,"; and

(3) by striking out "403," in paragraph (2) and inserting in lieu thereof "403, 455,".

(b) Section 1115 of such Act is further amended by adding at the end thereof the following new subsection:

"(c) In the case of any experimental, pilot, or demonstration project undertaken under subsection (a) to assist in promoting the objectives of part D of title IV, the project—

"(1) must be designed to improve the financial well-being of children, and may not permit modifications in the child support program which would have the effect of disadvantaging children in need of support; and

"(2) must not result in increased cost to the Federal Government under the program of aid to families with dependent children.".

CHILD SUPPORT ENFORCEMENT FOR CERTAIN CHILDREN IN FOSTER CARE

SEC. 10. (a)(1) Section 457 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(d) Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E—

"(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

"(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and

"(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of aid to families with dependent children) which were made with respect to the child (and with respect to which past collections have not previously been retained);

and any balance shall be paid to the State agency responsible for supervising the child care placement, for use by such agency in accordance with paragraph (2).".

(2) Section 457(b) of such Act is amended by inserting "(subject to subsection (d))" after "shall" in the matter preceding paragraph (1).

(b) Part D of title IV of such Act is further amended—

(1) in section 454(4)(B), by inserting "including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E," immediately after "such assignment is effective,", and by inserting "or E" immediately after "part A"; and

(2) in section 456(a), by inserting "or secured on behalf of a child receiving foster care maintenance payments" immediately after "section 402(a)(26)".

(c) Section 471(a) of such Act is amended—

(1) by striking out "and" at the end of paragraph (15);

(2) by striking out the period at the end of paragraph (16) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the

State agencies administering the plans approved under parts A and D, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part.".

(d) The amendments made by this section shall become effective October 1, 1983, and shall apply to collections made on or after that date.

ENFORCEMENT WITH RESPECT TO BOTH CHILD AND SPOUSAL SUPPORT

SEC. 11. (a) Section 454(4)(B) of the Social Security Act is amended by striking out "and, at the option of the State," and inserting in lieu thereof ", and".

(b) The amendment made by subsection (a) shall become effective October 1, 1985.

MODIFICATIONS IN CONTENT OF SECRETARY'S ANNUAL REPORT

SEC. 12. (a) Section 452(a)(10)(C) of the Social Security Act is amended—

(1) by inserting "(i)" immediately after "(C)"; and

(2) by adding at the end thereof the following new clause:

"(ii) the payment status of all child support cases in each State for which an obligation has been established at the time the report is submitted (with a separate description of those cases which are interstate in

nature), as more particularly set forth in subsection (f);".

(b) Section 452 of such Act is further amended by adding at the end thereof the following new subsection:

"(f)(1) The information with respect to child support cases in each State which is required by subparagraph (C)(i) of subsection (a)(10) to be contained in any report submitted under such subsection shall specifically include the following, separately stated for each of the 12 categories of cases specified in paragraph (2):

"(A)(i) The total number of such child support cases (filed with the State agency of such State under this part) in which the full amount of the support obligation has been paid for all months in the particular fiscal year to which the report relates, with the amounts of the support obligations involved in those cases;

"(ii) the total number of such cases in which at least 90 percent but less than the full amount of the support obligation has been so paid, with the amounts of the support obligations established and support collections made in those cases;

"(iii) the total number of such cases in which at least 66⅔ percent but less than 90 percent of the support obligation has been so paid, with the amounts of

the support obligations established and support collections made in those cases;

"(iv) the total number of such cases in which at least 33⅓ percent but less than 66⅔ percent of the support obligation has been so paid, with the amounts of the support obligations established and support collections made in those cases;

"(v) the total number of such cases in which some but less than 33⅓ percent of the support obligation has been so paid, with the amounts of the support obligations established and support collections made in those cases; and

"(vi) the total number of such cases in which no part of the support obligation has been paid, with the amounts of the obligations involved in those cases; and

"(B) the number of such child support cases (filed with the State agency of such State under this part), in each of the six subclasses described in clauses (i) through (vi) of subparagraph (A) within each of such categories, which were filed in such State on behalf of children residing in another State or against parents residing in another State in the particular fiscal year to which the report relates, specifying (for each such subclass)—

"(i) the total number of such cases which were initiated in the State of filing, with the amounts of the support obligations established and support collections made in those cases,

"(ii) the number of such cases which were initiated in another State (identifying each such State by name) and in which the State of filing was requested to take action to establish paternity, obtain support obligations, or collect support,

"(iii) the number of the cases described in clause (ii) in which action was taken in response to the request, and

"(iv) the actions (described in clause (ii)) which were so taken.

Such information shall also include any other matter which the Secretary may deem necessary for an effective assessment of the current status of interstate child support collections.

"(2) The categories of child support cases (filed with the State agency of a State under this part) with respect to which information is to be provided in the report, under subparagraphs (A) and (B) of paragraph (1), shall include—

"(A) four categories of cases in which the support rights involved are assigned to the State under section

402(a)(26) and in which the child is currently receiving aid to families with dependent children, as follows:

"(i) all such cases in which a support obligation has been established,

"(ii) all such cases in which a new or increased support obligation was so established during the particular fiscal year to which the report relates,

"(iii) those cases described in clause (i) in which support was collected under this part during such fiscal year, and

"(iv) those cases described in clause (ii) in which support was collected under this part during such fiscal year;

"(B) four categories of cases in which the support rights involved are assigned to the State under section 402(a)(26) but in which the child is not currently receiving aid to families with dependent children, as follows:

"(i) all such cases in which a support obligation has been established,

"(ii) all such cases in which a new or increased support obligation was so established during the particular fiscal year to which the report relates,

"(iii) those cases described in clause (i) in which support was collected under this part during such fiscal year, and

"(iv) those cases described in clause (ii) in which support was collected under this part during such fiscal year; and

"(C) four categories of cases to which neither subparagraph (A) nor subparagraph (B) applies, as follows:

"(i) all such cases in which a support obligation has been established,

"(ii) all such cases in which a new or increased support obligation was so established during the particular fiscal year to which the report relates,

"(iii) those cases described in clause (i) in which support was collected under this part during such fiscal year, and

"(iv) those cases described in clause (ii) in which support was collected under this part during such fiscal year.".

(c) The amendments made by this section shall apply with respect to reports (under section 452(a)(10) of the Social Security Act) for fiscal years beginning on or after October 1, 1986.

REQUIREMENT THAT AVAILABILITY OF CHILD SUPPORT ENFORCEMENT SERVICES BE PUBLICIZED

SEC. 13. (a) Section 454 of the Social Security Act (as amended by sections 3(a) of this Act) is further amended—

(1) by striking out "and" at the end of paragraph (19);

(2) by striking out the period at the end of paragraph (20) and inserting in lieu thereof "; and"; and

(3) by adding after paragraph (20) the following new paragraph:

"(21) provide that the State will regularly and frequently publicize, through public service announcements and other means, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees which may be imposed for such services and a telephone number or postal address at which further information may be obtained.".

(b) The amendments made by subsection (a) shall become effective October 1, 1985.

STATE COMMISSIONS ON CHILD SUPPORT

SEC. 14. (a) As a condition of the State's eligibility for Federal payments under part A or D of title IV of the Social Security Act for quarters beginning more than 90 days after the date of the enactment of this Act and ending prior to

October 1, 1985, the Governor of each State, within 30 days after such date, shall (subject to subsection (f)) appoint a State Commission on Child Support.

(b) Each State Commission appointed under subsection (a) shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the agency or organizational unit administering the State's plan under part D of such title IV, the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

(c) It shall be the function of each State Commission to examine, investigate, and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State plan approved under part A of title IV of such Act and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this section. The Governor shall transmit such report to the Secretary along with his comments thereon.

(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under subsections (c) and (d), shall be considered as expenditures qualifying for Federal payments under part A or D of title IV of the Social Security Act or be otherwise payable or reimbursable by the United States or any agency thereof; except that costs incurred by such a Commission or its members for transportation within the State, and such other costs incurred by the Commission or its members as may be specifically allowed by the Secretary in regulations, shall be considered for purposes of section 455(a)(1) of the Social Security Act to be expenditures for the operation of the State's plan approved under section 454 of such Act.

(f) If the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

(1) has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations,

(2) has established within the five years prior to the enactment of this Act a commission or council with substantially the same functions as the State Commissions provided for under this section, or

(3) is making satisfactory progress toward fully effective child support enforcement and will continue to do so,

then such State shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply.

WISCONSIN CHILD SUPPORT INITIATIVE

SEC. 15. (a) If the State of Wisconsin requests the Secretary of Health and Human Services to waive any requirement or requirements of part A or D of title IV of the Social Security Act which would otherwise be applicable, so as to permit modifications in such State's programs under parts A and D of such title IV for the purpose of enabling such State to make an adequate test of its Child Support Initiative, the Secretary shall approve such request upon a determination that—

(1) the purposes of the requested waivers are—

(A) to provide the State with flexibility in the methods and procedures to be used to assist single-parent households in obtaining adequate child support (including the provision of such assistance where no application has been made for services under part D of such title IV),

(B) to permit the State to limit the testing of such Initiative to specified areas of the State, or to test alternatives in different sub-State areas, notwithstanding sections 402(a)(1) and 454(1) of such Act,

(C) to permit the State to establish payment methods or procedures designed to reinforce parental responsibility for the child, and

(D) to permit the State to use Federal payments made to it under section 403 of the Social Security Act to ensure that there is an adequate level of support in cases where the contribution of the absent parent, by itself, is inadequate (including cases where the family is ineligible for aid to families with dependent children, without requiring such family to reduce its income or assets to the prevailing level of eligibility for such aid); and

(2) the modifications in and alternative procedures under parts A and D of such title IV which would be

allowed pursuant to the requested waivers will improve the financial well-being of children in the State, and will not have the effect of disadvantaging children in need of support,

and upon the approval of such request the State of Wisconsin shall be entitled (with respect to such Initiative) to receive Federal payments under parts A and D of title IV of the Social Security Act as though such Initiative, and the standards, requirements, and procedures thereunder, were in complete conformity with parts A and D of such title IV without the need for any waivers under this section; except that the modifications and alternative procedures which would be allowed pursuant to the requested waivers shall not result in total costs to the Federal Government in connection with the State's program under part A of such title IV during the period of the Initiative which are higher than the costs which would be incurred by the Federal Government during such period in connection with the State's program under part A of such title IV as that program was in effect immediately prior to the approval of the request.

(b) Amounts expended by the State of Wisconsin in carrying out its Child Support Initiative with waivers approved under subsection (a) shall be considered, for purposes of section 458(b) of the Social Security Act (as amended by section

6(a) of this Act), to have been expended for the operation of the State's plan approved under section 402.

INCLUSION OF MEDICAL SUPPORT IN CHILD SUPPORT ORDERS

SEC. 16. The Secretary of Health and Human Services shall issue regulations to require that State agencies administering the child support enforcement program under part D of title IV of the Social Security Act petition for the inclusion of medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. Such regulations shall also provide for improved information exchange between such State agencies and the State agencies administering the State medicaid programs under title XIX of such Act with respect to the availability of health insurance coverage.

INCREASED AVAILABILITY OF FEDERAL PARENT LOCATOR SERVICE TO STATE AGENCIES

SEC. 17. Section 453(f) of the Social Security Act is amended by striking out ", after determining that the absent parent cannot be located through the procedures under the control of such State agencies,".

EXTENSION OF ELIGIBILITY UNDER TITLE XIX WHEN SUPPORT COLLECTION RESULTS IN TERMINATION OF AFDC ELIGIBILITY

SEC. 18. Section 406 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(h) Each dependent child, and each relative with whom such a child is living (including the spouse of such relative as described in subsection (b)), who becomes ineligible for aid to families with dependent children as a result (wholly or partly) of the collection or increased collection of child or spousal support under part D, and who has received such aid in at least three of the six months immediately preceding the month in which such ineligibility begins, shall be deemed to be a recipient of aid to families with dependent children for purposes of title XIX for an additional four calendar months beginning with the month in which such ineligibility begins.".

GENERAL EFFECTIVE DATE

SEC. 19. Except where otherwise specifically provided, the provisions of this Act and the amendments made thereby

shall become effective on the date of the enactment of this Act.

Passed the House of Representatives November 16, 1983.

Attest: BENJAMIN J. GUTHRIE,

Clerk.

Public Law 98-68
98th Congress

Joint Resolution

To designate the month of August 1983 as "National Child Support Enforcement Month".

Aug. 5, 1983
[S.J. Res. 56]

Whereas significant progress has been made toward improving laws and regulations dealing with child support enforcement by the States;

Whereas the provisions of part D of title IV of the Social Security Act have provided a needed response in alleviating problems that exist within and among States as to legal rights and financial needs of their citizens;

Whereas the child support program's ultimate goal is to reduce financial deprivation among America's children by ensuring that the responsibility of support rests with the responsible parent, thereby diminishing the need for welfare dependency by women and children;

Whereas the dedicated service of family support enforcement personnel, the judiciary and the legal community has contributed to increased child support collections, paternity establishments and the location of absent parents;

Whereas the growth and success of child support programs have resulted from and continue to rely on increased cooperation of Federal, State and local agencies: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the month of August 1983 is designated "National Child Support Enforcement Month" and that the President of the United States is authorized and requested to issue a proclamation calling upon all government agencies and the people of the United States to observe the month with appropriate programs, ceremonies and activities.

National Child Support Enforcement Month.

Approved August 5, 1983.

LEGISLATIVE HISTORY—S.J. Res. 56

CONGRESSIONAL RECORD, Vol. 129 (1983):
July 16, considered and passed Senate.
July 27, considered and passed House.

11-139 O - 83 (60)

98TH CONGRESS
1ST SESSION

S. 1708

To amend part D of title IV of the Social Security Act to assure that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of the economic status of their parents and that parents prevent their children from becoming a burden on taxpayers by fulfilling, to the best of their ability, their financial obligations on behalf of their children.

IN THE SENATE OF THE UNITED STATES

JULY 29 (legislative day, JULY 25), 1983

Mr. GRASSLEY (for himself, Mr. DOLE, Mr. DURENBERGER, Mr. WALLOP, and Mr. HEINZ) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend part D of title IV of the Social Security Act to assure that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of the economic status of their parents and that parents prevent their children from becoming a burden on taxpayers by fulfilling, to the best of their ability, their financial obligations on behalf of their children.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Child Support Enforcement Act of 1983".

PURPOSE OF THE PROGRAM

SEC. 2. (a) Section 451 of the Social Security Act is amended by striking out "For the purpose of enforcing" and inserting in lieu thereof the following:

"(a) The purpose of the program authorized by this part is to assure that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of the economic status of their parents and that parents will prevent their children from becoming a burden on taxpayers by fulfilling to the best of their ability their financial obligations on behalf of their children.

"(b) In order to achieve the purpose set forth in subsection (a), by enforcing".

(b) The heading of section 451 of such Act is amended to read as follows:

"PURPOSE OF PROGRAM; APPROPRIATIONS".

FINANCIAL INCENTIVES FOR BALANCED AND EFFICIENT STATE PROGRAMS

SEC. 3. (a) Section 455 of the Social Security Act is amended by adding after subsection (d) the following new subsection:

"(e) In order to encourage and reward State child support programs which perform in a cost effective and efficient manner to secure support for all children who have sought assistance in securing support, whether such children reside within the State or elsewhere and regardless of the economic circumstances of their parents, the Secretary (subject to section 3(b) of the Child Support Enforcement Act of 1983) shall pay to each State for each quarter, beginning with the quarter commencing October 1, 1985—

"(1) if the full amount of the support sought in cases filed (after June 1984) with the State agency administering the State's plan approved under this part was paid in more than 30 percent of such cases for each month during the 12-month period ending with the fourth month before the beginning of such quarter, an incentive payment equal to—

"(A) 0.2 percent of the total amount expended by the State during such quarter for the operation of its plan approved under section 454, multiplied by

"(B) the difference (to the nearest whole number of percentage points) between (i) the percentage of such cases in which the full amount of the support sought was paid for the 12 months involved, and (ii) 30 percent,

except that if the average amount collected per case was less than the payment for a family of two which was in effect (in the months involved) under the State's plan approved under section 402, the incentive payment otherwise determined under this paragraph shall be reduced to an amount which bears the same ratio to the payment so determined as such average amount collected bears to such standard of need; and

"(2) if at least 80 percent of the support sought in cases filed (after June 1984) with the State agency under this part was paid in more than 70 percent of such cases for each month during the 12-month period ending with the fourth month before the beginning of such quarter, an incentive payment equal to—

"(A) 0.4 percent of the total amount expended by the State during such quarter for the operation of its plan approved under section 454, multiplied by

"(B) the difference (to the nearest whole number of percentage points) between (i) the percentage of such cases in which at least 80 percent of the support sought was paid for the 12 months involved, and (ii) 70 percent,

except that if the average amount collected per case was less than the payment for a family of two which

was in effect (in the months involved) under the State's plan approved under section 402, the incentive payment otherwise determined under this paragraph shall be reduced to an amount which bears the same ratio to the payment so determined as such average amount collected bears to such standard of need; and

"(3) if at least 80 percent of the support sought in cases filed (after June 1984) with the State agency under this part on behalf of children not residing in the State, or against parents not residing in the State, was paid in more than 50 percent of such cases for each month during the 12-month period ending with the fourth month before the beginning of such quarter, an incentive payment equal to—

"(A) 0.4 percent of the total amount expended by the State during such quarter for the operation of its plan approved under section 454, multiplied by

"(B) the difference (to the nearest whole number of percentage points) between (i) the percentage of such cases in which at least 80 percent of the support sought was paid for the 12 months involved, and (ii) 50 percent; and

"(4) if the total amount of the support collected in cases filed with the State agency under this part on

behalf of children receiving aid to families with dependent children (otherwise than pursuant to section 407) under a State plan approved under section 402, during the 12-month period ending with the fourth month before the beginning of such quarter, exceeded 5 percent of the total amount of the aid to families with dependent children which was payable with respect to all such children during that period, an incentive payment equal to—

"(A) 1 percent of the total amount so collected, multiplied by

"(B) the difference (to the nearest whole number of percentage points) between (i) the percentage of the total amount of the aid to families with dependent children, payable with respect to children on whose behalf such support was collected during the 12-month period involved, which is represented by the total amount of the support so collected, and (ii) 5 percent;

except that if one or more political subdivisions of a State participates in the enforcement and collection of support in cases filed with the State agency of such State during the period involved, such subdivision or subdivisions shall be entitled to receive a proportionate share of any incentive payments made to the State under this subsection with respect to

that period, and the State's right to receive such incentive payments shall be conditional upon its execution of an agreement satisfactory to the Secretary to pay such proportionate share to such subdivision or subdivisions.".

(b)(1) Section 458 of such Act is repealed effective October 1, 1985; but if the total amount of the incentive payments to which any State is entitled under section 455(e) of such Act (as added by subsection (a) of this section) for the fiscal year 1986, 1987, or 1988 is less than the applicable percentage (determined under paragraph (2)) of the amount that would have been payable to such State for that fiscal year under such section 458, in connection with the administration of its child support enforcement plan approved under section 454 of such Act, if such section (as in effect prior to October 1, 1985) had remained in effect and its provisions had been applied to collections made by such State in that fiscal year, the Secretary of Health and Human Services shall make such additional payments to the State under section 455(e) of such Act as may be necessary to assure that the total amount of such incentive payments is no less than the applicable percentage of the amount that would have been so payable under such section 458.

(2) For purposes of paragraph (1), the "applicable percentage" of the amount that would have been payable to a

State under section 458 of the Social Security Act for a fiscal year is—

(A) 80 percent of such amount in the case of the fiscal year 1986,

(B) 60 percent of such amount in the case of the fiscal year 1987, and

(C) 40 percent of such amount in the case of the fiscal year 1988.

COLLECTION OF PAST-DUE SUPPORT FROM FEDERAL TAX REFUNDS

SEC. 4. (a) Section 464(a) of the Social Security Act is amended—

(1) by inserting "or which such State has undertaken to collect under section 454(6) and which has become past due since such undertaking commenced," after "402(a)(26)," in the first sentence;

(2) by striking out "he shall withhold" in the second sentence and inserting in lieu thereof "he shall (subject to subsection (c)) withhold";

(3) by inserting "shall" before "pay such amount" in the second sentence;

(4) by inserting before the period at the end of the second sentence the following: "in the case of past-due support assigned to the State pursuant to section 402(a)(26), or in the case of past-due support which

the State has undertaken to collect under section 454(6), shall pay such amount to the State agency for distribution, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed"; and

(5) by adding at the end thereof the following new sentence: "In specifying the amount of past-due support which an individual owes in its notice under the first sentence of this subsection, the State agency may limit such notice to past-due support which accrued on and after the date on which the case involved was filed with it under this part or may at its option include past-due support which accrued during any period before that date.".

(b) Section 464 of such Act is further amended by redesignating subsection (c) as subsection (d), and by inserting after subsection (b) the following new subsection:

"(c) Before any amount is withheld from a refund otherwise due an individual under subsection (a), such individual shall be notified of the proposed action and shall be given a reasonable opportunity to contest it if such individual believes that the withholding (including the amount proposed to be withheld) is not proper in this case because of mistakes of fact or, if applicable, because of payments by him or her of the arrearage involved.".

(c) Section 6402(c) of the Internal Revenue Code of 1954 is amended by inserting "or which has agreed to collect such support under section 454(6) of such Act" after "the State to which such support has been assigned".

(d) The amendments made by this section shall apply with respect to notices received from State agencies (with respect to individuals owing past-due support) on or after the 180th day following the date of the enactment of this Act.

IMPROVED ENFORCEMENT TECHNIQUES

SEC. 5. (a) Section 454 of the Social Security Act is amended—

(1) by striking out "and" at the end of paragraph (18);

(2) by striking out the period at the end of paragraph (19) and inserting in lieu thereof "; and"; and

(3) by adding after paragraph (19) the following new paragraph:

"(20) provide that the State will adopt and fully implement the procedures designed to increase program effectiveness which are set forth in section 466.".

(b) Part D of title IV of such Act is further amended by adding at the end thereof the following new section:

"PROCEDURES TO IMPROVE EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT

"SEC. 466. (a) In order to comply with the provisions of section 454(20), each State shall adopt and use the following procedures, consistent with regulations of the Secretary and in accordance with State law, to increase the effectiveness of the program it administers under this part:

"Withholding From Wages

"(1) Procedures for carrying out a program of withholding from wages of amounts payable as support. Under such procedures—

"(A) in the case of each absent parent against whom a support order is or has been entered by a State, so much of his or her wages must be withheld as is necessary to comply with the order (but not in excess of amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)), and such withholding must begin as soon as is adminstratively feasible and without the need for amendment of such order, not later than (i) the date on which such program becomes effective, such order becomes effective, or the payments which the absent parent has failed to make under such order equal the support payable for two months or longer, whichever of the three is latest, (ii) the date on which the absent

parent requests that such withholding begin, or (iii) such earlier date as the State may select;

"(B) the State must provide advance notice to each individual to whom subparagraph (A) applies regarding the withholding that will occur and the procedures such parent must follow if he or she believes that withholding (including the amount to be withheld) is not proper in this case because of mistakes of fact or, if applicable, payments by such parent of the arrearage;

"(C)(i) the employer of any individual to whom subparagraph (A) applies, upon the State giving notice, must be required to withhold from the individual's wages the amount specified by such notice (which shall include a fee to be paid to the employer unless waived by him or her) and pay it instead (after deducting and retaining any portion of such amount designated by the State as a fee for the employer) to the State (unless the State directs that payment be made to another public entity for distribution in accordance with section 457);

"(ii) the notice given by the State to the employer must specify the amount to be withheld from the employee's wages and the amount to be retained by the employer as a fee for effectuating the withholding, which in the case of withholding to satisfy an arrear-

age shall include an amount equal to the fee in addition to the amount withheld to satisfy such arrearage, the amount of such fee to be established by the State in accordance with criteria prescribed by the Secretary; and

"(iii) methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to the State;

"(D) provision for terminating withholding must be made, consistent with such circumstances as the Secretary may by regulation prescribe;

"(E) provision must be made for the imposition of a fine against any employer who discharges from employment or refuses to employ such an individual because of the existence of the wage withholding and the obligations which it imposes upon the employer;

"(F) the employer must be held liable to the State for any amount he fails to withhold (up to the amount of the arrearage) from wages following his receipt of proper notice;

"(G) provision must be made for giving notice to, and requesting the enforcement of a State support order entered against an individual by, the child sup-

port enforcement agency of any other State in which such individual is employed; and

"(H) provision must be made under State law for the priority of support collection under this subsection over any other legal process against the same wages.

"Quasi-Judicial or Administrative Procedures

"(2) Quasi-judicial or administrative procedures for entering child support orders which have the same force and effect under the State's law as orders entered by a court, for enforcing support orders entered through the use of judicial, quasi-judicial, or administrative procedures whether under the procedures of that or any other State, and for limiting the use of the State's generally applicable judicial procedures to review of the orders entered or enforcement action taken only upon request by a party or by the parent with whom the child is living.

"Procedures for Collection of Past-Due Support From State Tax Refunds

"(3) Procedures under which, at the request of the State child support enforcement agency to enforce a support order of that or any other jurisdiction—

"(A) refunds (if any) of State income tax which would otherwise be payable to an individual are reduced, after notice to that individual of the proposed reduction and the procedures to be followed to contest

the reduction, by the amount of any past-due support (as defined in section 464(c)) owed by such individual for any child with respect to whom collection services under any other provision of this part are made available, and

"(B) the amount by which such refund is reduced is paid to such State for distribution in accordance with section 457 (unless the State directs that payment be made to another public entity), and notice of the individual's home address is furnished to the State agency administering the plan approved under this part.

"Procedures for Imposing Liens Against Property for Past-Due Support

"(4) Procedures under which liens are imposed against real property for amounts of past-due support (as defined in section 464(c)) owed by an absent parent who resides in or owns property in the State.

"Procedures for Reporting of Past-Due Support to Credit Agencies

"(5) Procedures by which information regarding the amounts of past-due support owed by absent parents residing in the State will be periodically shared with consumer credit bureau organizations (as defined in section 416 of Public Law 96-374); except that before any such information with respect to an absent parent is furnished to any such network

such parent shall be notified of the proposed action and given a reasonable opportunity to contest the accuracy of the information involved.

"Procedures for Medical Support

"(3) Procedures under which the State will seek medical support for children for whom it is seeking financial support when such medical support would be available at a reasonable cost through employment-related health care or health insurance and when such health care or insurance could not otherwise be provided by the custodial parent.

"(b) If a State demonstrates to the satisfaction of the Secretary, through the presentation to him of such data pertaining to caseloads, processing times, administrative costs, average support collections, and any other actual or estimated data he may specify, that the use of any one or more of the procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, he may exempt the State for a specified period of time or, in the case of the procedures required by subsection (a)(2), with respect to a specified political subdivision of the State, and subject to his continuing review should circumstances change, from the requirement to use such procedure or procedures.".

(c) The amendments made by this section shall become effective on October 1, 1984; except that if the enactment of

new or additional legislation is required in any State in order for such State to comply with such amendments they shall become effective at the close of the first session of the legislature of such State which ends on or after January 1, 1985.

CHILD SUPPORT CLEARINGHOUSES AND CENTRAL REGISTRIES

SEC. 6. (a) Section 455 of the Social Security Act (as amended by section 3 of this Act) is further amended by adding after subsection (e) the following new subsection:

"(f)(1) The Secretary is authorized to make grants to States to assist in the development or improvement of clearinghouses and other information management systems to aid in the enforcement of support by facilitating the collection and exchange, both within a State or locality and among States and localities, of child support information, including information concerning—

"(A) amounts of support ordered (or agreed between the parties) to be paid with respect to children residing in the State;

"(B) amounts of support ordered (or agreed) to be paid by parents residing or employed in the State;

"(C) amounts of support collected or paid with respect to such children or from such parents and the dates upon which it was paid (either to the State or to the child's custodial parent or guardian); and

"(D) amounts of past-due support owed to each child residing in the State and to be paid by each parent residing or employed in the State and the duration of such arrearages;

and to provide for the orderly receipt and dissemination, both within a State and to the appropriate agencies of cooperating States, of information relating to support obligations of and payments from parents residing or employed in the State.

"(2) The Secretary shall by regulation prescribe the required characteristics and capabilities of an information management system to be funded under this section. Any State desiring to receive a grant hereunder shall submit an application, in such form and containing such information as the Secretary may require, and including a description of the proposed system and the planning and analysis necessary to establish that system.

"(3)(A) Grants under this section may be made for such period as is specified in the grant award; grants for the continuation of the project in subsequent years may be made but only if the State has provided such information as the Secretary may require on the development or improvement of the system over the period for which funding had previously been provided.

"(B) The Secretary shall specify the share of the project costs, over the period for which the grant is made, to be

required in the form of a financial contribution from the State (other than in the form of goods, services, use of facilities, or similar inkind contributions) in an amount at least equal to 10 percent, but no more than 20 percent, of the total cost of the project for such period. Payments under this section may be made at such time or times as the Secretary may determine, and may be made in advance or by way of reimbursement (with necessary adjustments on account of previously made overpayments or underpayments), and in such installments and on such conditions as he may prescribe.

"(4) There is authorized to be appropriated the sum of $20,000,000 to carry out the purposes of this section for each of fiscal years 1984 through 1989. Amounts appropriated pursuant to this subsection shall remain available until expended.".

(b) Section 452(a)(10) of such Act is amended by striking out "and" at the end of subparagraph (G), by redesignating subparagraph (H) as subparagraph (I), and by inserting after subparagraph (G) the following new paragraph:

"(H) data showing the number of cases by State filed on behalf of children seeking support in which all support owed was fully paid in each of the preceding 12 months, the number of such cases in which at least 80 percent of the support owed was paid in each of the preceding 12 months, the number of such cases in

which less than half the support owed was paid, and the number of such cases in which no support was paid; and".

QUARTERLY SYSTEM OF INDIVIDUAL WAGE REPORTING

SEC. 7. (a)(1) Subsection (a) of section 303 of the Social Security Act is amended by striking out the period at the end of paragraph (9) and inserting in lieu thereof "; and", and by adding at the end thereof the following new paragraph:

"(10) Requiring all persons paying remuneration subject to contributions under the State law (determined without regard to any limitation on the amount of remuneration so subject) to submit, not less frequently than quarterly, reports to the State agency charged with the administration of the State law which show—

"(A) the name and address of each individual to whom such remuneration is paid,

"(B) the amount of such remuneration paid to each individual, and

"(C) such other information as such State agency may deem appropriate to administer the State law;".

(2) The amendment made by subsection (a) shall apply with respect to services performed after December 31, 1984.

(b)(1)(A) Subparagraph (A) of section 303(e)(1) of such Act is amended to read as follows:

"(A) shall disclose, upon request and on a reimbursable basis, to officers or employees of any State or local child support enforcement agency, any of the following information contained in the records of such State agency—

"(i) wage information,

"(ii) whether an individual is receiving, has received, or has made application for unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual,

"(iii) the current (or most recent) home address of such individual, and

"(iv) whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay thereof, and".

(B) Subsection (e) of section 303 of such Act is amended by adding at the end thereof the following new paragraph:

"(5) For purposes of section 455 of this Act, expenses incurred to reimburse a State agency for furnishing information or services pursuant to this subsection shall be consid-

ered to constitute expenses incurred in the administration of the plan described in the last sentence of paragraph (1).".

(2) Section 303 of such Act is further amended by adding at the end thereof the following new subsections:

"(f)(1) The State agency charged with the administration of the State law—

"(A) shall disclose, upon request and on a reimbursable basis, to officers or employees of a State or a political subdivision charged with the administration of a State plan for aid and services to needy families with children approved under part A of title IV of this Act, any of the following information contained in the records of such State agency—

"(i) wage information,

"(ii) whether an individual is receiving, has received, or has made application for unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual,

"(iii) the current (or most recent) home address of such individual, and,

"(iv) whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor, and

"(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used for purposes of determining an individual's eligibility for aid or services, or the amount of such aid or services, under State plans approved under part A of title IV of this Act.

"(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirement of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, the Secretary shall make no further certification to the Secretary of the Treasury with respect to such State.

"(3) For purposes of section 403 of this Act, expenses incurred to reimburse a State agency for furnishing information pursuant to paragraph (1) shall be considered to constitute expenses incurred in the administration of the State plan approved under part A of title IV of this Act.

"(g) The State agency charged with the administration of the State law shall be furnished, upon request and on a reimbursable basis, any information contained in the records

of any agency or office referred to in subsection (d), (e), or (f) to which the State agency has furnished any information under such subsection relating to an individual and the earnings, employment, health, and address of such individual. Any information furnished to the State agency under this subsection shall be used only for purposes of determining an individual's eligibility for unemployment compensation or the amount of unemployment compensation payable to an individual. No finding of a failure to comply substantially with any of the requirements of subsection (d), (e), or (f) shall be made or enforced with respect to any such agency or office which is failing to comply with this subsection.".

(3)(A) Paragraph (2) of section 304(a) of such Act is amended to read as follows:

"(2) makes a finding with respect to a State or a State agency under subsection (b), (c), (d), (e), or (f) of section 303,".

(B) Section 454(19)(A) of the Social Security Act is amended by striking out "section 508 of the Unemployment Compensation Amendments of 1976" and inserting in lieu thereof "section 303(e) of this Act".

(C) Subsection (a) of section 3304 of the Internal Revenue Code of 1954 is amended by striking out paragraph (16) and by redesignating paragraphs (17) and (18) as paragraphs (16) and (17), respectively.

(D)(i) Subsection (b) of section 3 of the Wagner-Peyser Act (as amended by the Job Training Partnership Act) is hereby repealed.

(ii) Subsection (b) of section 508 of the Unemployment Compensation Amendments of 1976 is hereby repealed.

(4) The amendments made by this subsection shall take effect on the date of the enactment of this Act.

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98TH CONGRESS
1ST SESSION

S. 1691

To amend the Social Security Act to recognize effective program administration in the financing of State programs of child support enforcement, to improve the ability of States to collect child support for non-AFDC families, and otherwise strengthen and improve such programs and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 27 (legislative day, JULY 25), 1983

Mr. ARMSTRONG (for himself, Mr. DOLE, Mr. WALLOP, Mr. GRASSLEY, Mr. SYMMS, Mr. CHAFEE, Mr. ROTH, Mr. DURENBERGER, Mrs. HAWKINS, Mr. PACKWOOD, Mr. DANFORTH, Mrs. KASSEBAUM, and Mr. HEINZ) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Social Security Act to recognize effective program administration in the financing of State programs of child support enforcement, to improve the ability of States to collect child support for non-AFDC families, and otherwise strengthen and improve such programs and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Child Support Enforcement Amendments of 1983".

PAYMENTS IN RECOGNITION OF EFFECTIVE PROGRAM ADMINISTRATION; FEDERAL PARTICIPATION IN STATE ADMINISTRATIVE COSTS

SEC. 2. (a) Section 455 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(e) The Secretary shall prescribe by regulation criteria pursuant to which he will from time to time make payments, in addition to amounts authorized under subsection (a), to each State agency administering a plan approved under this part whose program is found to be exemplary in the amount of collections made, the cost efficiency with which the program is operated, or the magnitude of the costs to other assistance programs that the Secretary finds could reasonably have been expected to occur but for the operation and the effective performance of the State's program. The Secretary, in recognizing such performance, may consider factors such as the amount of a State's collections in a prior or base period and the cost efficiency of a State's program as compared to other State programs (or to the national average of such programs). The total amount paid by the Secretary under this subsection for any fiscal year with respect to collections on behalf of individuals receiving aid to families with dependent children shall be equal to the amount paid under this subsection with respect to collections on behalf of indi-

viduals for whom services are provided under section 454(6). The Secretary shall, not less frequently than biennially, review and, if necessary, revise the criteria in order to further encourage and recognize effective child support enforcement programs.".

(b) Section 455(a) of the Act is amended—

(1) by striking out "70 percent" in paragraph (1) and inserting instead "60 percent", and by adding "and" at the end of such paragraph,

(2) by striking out ", and" after paragraph (2) and inserting a semicolon instead,

(3) by striking out paragraph (3), and

(4) by adding at the end of section 455(a) the following new sentence: "In determining the total amounts expended by any State during a quarter, for purposes of this subsection, there shall be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.".

(c) Section 455(b) of the Act is amended—

(1) by striking out in paragraph (1) "under subsection (a)" and inserting instead "under subsections (a) and (e)", and

(2) by striking out "investigation" in paragraph (1)(B) and inserting instead "information".

(d)(1) Section 457(a) of the Act is amended to read as follows:

"SEC. 457. (a) The amounts collected by a State pursuant to a plan approved under this part as support for one or more members of a family receiving aid to families with dependent children pursuant to a plan approved under part A shall be paid to the family to the extent that such amounts, from collections made periodically which represent monthly support payments, exceed the amount of such aid paid to the family during such period but do not exceed the amount required by a judicial, quasi-judicial, or administrative order to be paid during such period to the family. Amounts in excess of those required to be paid to the family under the preceding sentence shall be retained by the State to the extent they do not exceed the total amount of such aid previously paid to the family (and with respect to which past collections have not been retained); any balance shall be paid to the family.".

(2) Subsection (b) of section 457 is repealed.

(3) Subsection (c) of section 457 is redesignated as subsection (b) and is amended by striking out "subsection (b)(3)(A) and (B) with respect to excess amounts described in subsection (b)" and inserting instead "subsection (a)".

(4)(A) Section 452(d)(2) (A) and (B) are each amended by striking out "section 455(a)(3)" and inserting instead "section 454(16)".

(B) The last sentence of section 453(a) is repealed.

(C) Section 454(5) of the Act is amended by striking out "section 457(c)" and inserting instead "section 457(b)".

(D) Section 464(a) of the Act is amended by striking out "section 457(b)(3)" and inserting instead "section 457(a)".

(e) Section 458 of the Act is repealed.

(f)(1) Part D of title IV of the Act is amended by adding after section 457 the following new section:

"GRANTS TO STATES FOR CHILD SUPPORT CLEARINGHOUSES AND OTHER INFORMATION MANAGEMENT SYSTEMS

"SEC. 458. (a) The Secretary is authorized to make grants to States to assist in the development or improvement of clearinghouses and other information management systems to aid in the enforcement of support by facilitating the collection and exchange, both within a State and among States, of child support information, including information concerning—

"(1) amounts of support ordered (or agreed between the parties) to be paid with respect to children residing in the State;

"(2) amounts of support ordered (or agreed) to be paid by parents employed in the State: and

"(3) amounts of support collected or paid with respect to such children or from such parents and the

dates upon which it was paid (either to the State or to the child's custodial parent or guardian);

and to provide for the orderly receipt and dissemination, both within a State and to the appropriate agencies of cooperating States, of information relating to support obligations of and payments from, parents residing or employed in the State.

"(b) The Secretary shall by regulation prescribe the required characteristics and capabilities of an information management system to be funded under this section. Any State desiring to receive a grant hereunder shall submit an application, in such form and containing such information as the Secretary may require, and including a description of the proposed system, and the planning and analysis necessary to establish that system.

"(c)(1) Grants under this section may be made for such period as is specified in the grant award; grants for the continuation of the project in subsequent years may be made, but only if the State has provided such information as the Secretary may require on the development or improvement of the system over the period for which funding had previously been provided.

"(2) The Secretary shall specify the share of the project costs, over the period for which the grant is made, to be required in the form of a financial contribution from the State (other than in the form of goods, services, use of facilities, or

similar inkind contributions) in an amount at least equal to 10 percent, but no more than 30 percent, of the total cost of the project for such period. Payments under this section may be made at such time or times as the Secretary may determine, and may be made in advance or by way of reimbursement (with necessary adjustments on account of previously made overpayments or underpayments), and in such installments ·d on such conditions as he may prescribe.

"(d) There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this section. Amounts appropriated pursuant to this subsection shall remain available until expended.".

(2)(A) Section 452(d) of the Act is repealed.

(B) Section 452(e) of the Act is amended by—

(i) redesignating it as section 452(d), and

(ii) striking out "section 455(a)(3)" and inserting instead "section 458".

(C) Section 454 of the Act is amended—

(i) by repealing paragraph (16) thereof, and

(ii) redesignating paragraphs (17), (18), and (19) as paragraph, (16), (17), and (18), respectively.

(g) The amendments made by this section shall become effective October 1, 1983.

IMPROVED EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT PROGRAMS

SEC. 3. (a)(1) Section 454(6) of the Social Security Act is amended by striking out all after subparagraph (A) and inserting instead: "(B)(i) an application fee of at least $25 shall be imposed for furnishing such services, except that such fee shall not exceed such amount greater that $25 as determined to be reasonable under regulations of the Secretary, and (ii) the State plan shall specify the class or classes of cases in which the fee will be paid by the State, and those in which it will be imposed upon the individual applying for such services, (C) any costs of providing collection services may be collected (or, if the absent parent owes past-due support (as defined in section 464(c)), such costs shall be collected) by the imposition of charges, in accordance with regulations of the Secretary, equal to at least 3 percent but not more than 10 percent of the current month's support obligation, or of the current month's obligation and such past-due support, against the absent parent, and (D) the State may continue to collect support and impose collection charges for such period of time as the Secretary may by regulation prescribe (and State law shall provide for the imposition of liability for such collection charges upon the absent parent owing past-due support with respect to support payable for months after the enactment of the Child Support Enforcement

Amendments of 1983, and for the provision to such parent of advance notice of that liability), except that, in establishing the amount of support for which the absent parent is obligated, or in collecting charges from the absent parent, the State shall take no action which would have the effect, directly or indirectly, of reducing the support which would otherwise be distributed, in accordance with the provisions of this part, to or on behalf of the child with respect to whom the support is owned;".

(2) Section 455(a)(1)(B) of the Act (as amended by section 2 of this Act) is amended by striking out "fees collected" and inserting instead "fees collected (including fees paid by the State pursuant to section 454(6)(B)(ii))".

(b)(1) Section 454 of the Social Security Act is amended—

(A) by striking out "and" after paragraph (18);

(B) by striking out the period at the end of paragraph (19) and inserting instead "; and"; and

(C) by adding at the end the following new paragraph;

"(20) provide that the State will adopt and fully implement the procedures designed to increase program effectiveness, as set out in section 467.".

(2)(A) Part D of title IV of such Act is further amended by adding at the end the following new section:

"PROCEDURES TO IMPROVE EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT

"SEC. 467. In order to comply with the provisions of section 454(20), each State shall adopt and use the following procedures, consistent with regulations of the Secretary and in accordance with State law, to increase the effectiveness of the program it administers under this part:

"(1) Procedures for carrying out a program of withholding from wages amounts payable as support under which—

"(A) in the case of each absent parent against whom a support order is or has been entered by a State, so much of his wages are withheld as are necessary to comply with the order (but not in excess of amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)), and such withholding begins as soon as is administratively feasible and without the need for amendment of such order not later than the date the (i) such program becomes effective, (ii) such support order becomes effective, or (iii) the payments which the absent parent has failed to make under such order equal the support payable for two months or longer, whichever of

the three is latest, or (iv) such earlier date as the State may select;

"(B) the State provides advance notice to each individual to whom subparagraph (A) applies regarding the withholding that will occur and the procedures he must follow if he believes that withholding (including the amount to be withheld) is not proper in his case because of mistake of fact or, if applicable, payment by him of the arrearage;

"(C)(i) the employer of an individual to whom subparagraph (A) applies, upon the State giving notice, is required to withhold from the individual's wage the amount specified by such notice (which shall include a fee to be paid to the employer unless waived by him) and pay it instead (after deducting and retaining any portion of such amount designated by the State as a fee for the employer) to the State (unless the State directs that payment be made to another public entity);

"(ii) the notice given by the State to the employer will specify the amount to be withheld from the employee's wages and the amount to be retained by the employer as a fee for effectuating the withholding, which, in the case of withholding

to satisfy an arrearage shall in addition to the amount withheld to satisfy such arrearage, the amount of such fee to be established by the State in accordance with criteria prescribed by the Secretary;

"(D) provision for terminating withholding is made, consistent with such circumstances as the Secretary may by regulation prescribe;

"(E) provision is made for the imposition of a fine against an employer who discharges such an individual from his employment because of the existence of the wage withholding and obligations which it imposes upon the employer;

"(F) the employer is liable for the amount he fails to withhold (up to the amount of the arrearage) from wages following his receipt of proper notice;

"(G) provision is made for giving notice to, and requesting the enforcement of a State support order entered against an individual by, the child support enforcement agency of any other State in which such individual is employed;

"(H) provision is made under State law for the priority of support collection under this sub-

section over any other legal process against the same wages;

"(2) Quasi-judicial or administrative procedures for entering child support orders in the State, which orders shall have the same force and effect under such State's law as orders entered by a court, and for enforcing support orders entered through the use of judicial, quasi-judicial, or administrative procedures, whether under the procedures of that or any other State, and for limiting the use of the State's generally applicable judicial procedures to review of the orders entered or enforcement action taken only upon request by a party or by the parent with whom the child is living;

"(3) Procedures under which, at the request of the State child support enforcement agency to enforce a support order of that or any other jurisdiction, refunds (if any) of State income tax which would othewise be payable to an individual are reduced, after notice to him of the proposed reduction and the procedures he must follow if he wishes to contest the reduction, by the amount of any past-due support (as defined in section 464(c)) owed by such individual for the benefit of a child receiving aid to families with dependent children (or, at the option of the State, any child with

respect to whom collection services under any other provision of this part are made available) and the amount by which such refund is reduced is paid, for distribution in accordance with section 457, to such State (unless the State directs that payment be made to another public entity) and notice of the individual's home address is furnished to the State agency administering the plan approved under this part.

If a State demonstrates to the satisfaction of the Secretary, through the presentation to him of such data pertaining to caseloads, processing times, administrative costs, average support collections, and any other actual or estimated data he may specify, that the use of any one or more of the procedures required by or pursuant to this section will not increase the effectiveness and the efficiency of the State child support enforcement program, he may exempt the State, for a specified period of time or, in the case of paragraph (2), with respect to a specified political subdivision of the State, and subject to his continuing review should circumstances change, from the requirement to use such procedure or procedures.".

(B) Section 454(9)(C) of the Act is amended by striking out "a court of competent jurisdiction" and inserting instead "judicial, quasi-judicial, or administrative process".

(c) The amendments made by this section shall become effective October 1, 1983, except that if a State agency ad-

ministering a plan approved under part D of title IV of the Social Security Act demonstrates to the satisfaction of the Secretary of Health and Human Services that it cannot, by reason of State law comply, with the requirements of one or more of such amendments, the Secretary may prescribe that in the case of such State such amendment or amendments, as the case may be, will become effective with (1) the first month beginning after the close of the first session of such State's legislature beginning after September 30, 1983 (or, which began prior to October 1, 1983, and remained in session at least twenty-five calendar days after such date), or (2) the date upon which the State enacts enabling legislation, whichever is earlier. For purposes of this subsection, the term "session of a State's legislature" includes any regular, special, budget, or other session of such State's legislature.

PERIODIC REVIEW OF EFFECTIVENESS OF STATE PROGRAMS; MODIFICATION OF PENALTY

SEC. 4. (a)(1) Section 452(a)(4) of the Social Security Act is amended to read as follows:

"(4)(A) conduct a review of each State's program pursuant to such plan, no less frequently than once every three years, in order to determine whether such program substantially complies with the requirements of this part and to evaluate its effectiveness in carrying out the purposes of this part;".

(2) Section 402(a)(27) of the Act is amended by striking out "operate a child support program in conformity" and inserting instead "operate a child support program in substantial compliance".

(3) The amendments made by this subsection shall be effective with respect to years beginning after September 30, 1982.

(b)(1) Section 403(h) of the Act is amended to read as follows:

"(h) In the case of any State whose program operated under part D was found by the Secretary not to meet the requirements of such part, and with respect to which corrective action, within such period or periods as the Secretary may by regulation prescribe, has not been adequate to result in the program, after such period or periods, substantially complying with all such requirements, the amount payable under this part for any quarter beginning after September 30, 1983, and after the close of the applicable period for corrective action, shall be reduced by—

"(A) not more than 2 per centum, or

"(B) not more than 3 per centum, if the finding is the second consecutive such finding made, or

"(C) not more than 5 per centum, if the finding is the third or subsequent consecutive such finding made,

and such reduction shall continue until the first quarter throughout which the program is found to meet such requirements.".

(2) The amendment made by this subsection shall become effective October 1, 1983.

INCREASED AVAILABILITY OF FEDERAL PARENT LOCATOR SERVICE TO STATE AGENCIES

SEC. 5. (a) Section 453(f) of the Social Security Act is amended by striking out ", after determining that the absent parent cannot be located through the procedures under the control of such State agencies,".

(b) The amendment made by subsection (a) shall become effective upon enactment.

EXTENSION OF SECTION 1115 DEMONSTRATION AUTHORITY TO CHILD SUPPORT ENFORCEMENT PROGRAM

SEC. 6. Effective upon enactment, section 1115(a) of the Social Security Act is amended—

(1) by striking out "part A" in the material proceding paragraph (1) and inserting instead "part A or D",

(2) by striking out "402" in paragraph (1) and inserting instead, "402, 454", and

(3) by striking out "403" in paragraph (2) and inserting instead "403, 455".

MODIFICATIONS IN TIMING AND CONTENT OF REPORT BY SECRETARY

SEC. 7. (a) Section 452(a)(10) of the Act is amended—

(1) in the matter preceding subparagraph (A), by striking out "three" and inserting instead "six" and by striking out "beginning with the year 1977";

(2) in subparagraph (A), by striking out "and local";

(3) in subparagraph (C), by striking out "collection of spousal support" and inserting instead "interstate child support enforcement" and by striking out "(including the transitional period beginning July 1, 1976, and ending September 30, 1976, in the case of the first report to which this subparagraph applies)"; and

(4) in the matter following subparagraph (H), by striking out "(A)" and inserting instead "(A) or (C)".

(b) The amendments made by subsection (a) shall apply to reports due after September 30, 1982.

CHILD SUPPORT ENFORCEMENT FOR CERTAIN CHILDREN IN FOSTER CARE

SEC. 8. (a) Section 457 of the Social Security Act is amended by adding at the end thereof the following new subsection:

"(c) Notwithstanding the preceding provisions of this section, amounts collected by the State as child support for a month on behalf of a child for whom a public agency is making foster care maintenance payments under part E shall be paid to the public agency responsible for supervising the placement of such child, to the extent that the amounts collected exceed the monthly foster care maintenance payments but not the monthly amount required by a court or administrative order to be paid on behalf of the child or agreed to by one or both parents of such child. The responsible agency may use the payment in the manner it determines will serve the best interests of the child, including setting aside such amounts for his future needs or making all or part thereof available to the person responsible for meeting the child's day-to-day needs. Amounts in excess of those required to be paid monthly shall be retained by the State to the extent they do not exceed the total of past foster care maintenance payments (or payments of aid to families with dependent children) made on behalf of such child (and with respect to which past collections have not previously been retained); any balance shall be paid to the State agency responsible for supervising the child care placement.".

(b) Part D of title IV of the Act is amended—

(1) by inserting immediately after "such an assignment is effective", in section 454(4)(B), ", includ-

ing an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E", and by inserting "or E" immediately after "part A";

(2) by inserting ", in the case of an assignment under section 402(a)(26)," immediately after "except that" in section 454(5); and

(3) by inserting immediately after "section 402(a)(26)", in section 456(a), "or secured on behalf of a child receiving foster care maintenance payments".

(c) Section 471(a) of the Social Security Act is amended—

(1) by striking out "and" following paragraph (15);

(2) by striking out the period at the end of paragraph (16) and inserting instead "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(17) provides that all steps will be taken including, where appropriate, cooperative efforts with the State agencies administering the plans approved under parts A and D, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part.".

(d) The amendments made by this section shall become effective October 1, 1983 and apply to collections made on or after that date.

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98TH CONGRESS
1ST SESSION

S. 1777

To amend part D of title IV of the Social Security Act to require each State to develop, implement, and enforce a system of mandatory and immediate deductions from wages for the collection of child-support payments.

IN THE SENATE OF THE UNITED STATES

AUGUST 4 (legislative day, AUGUST 1), 1983

Mr. TRIBLE introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend part D of title IV of the Social Security Act to require each State to develop, implement, and enforce a system of mandatory and immediate deductions from wages for the collection of child-support payments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Immediate Child-Support Enforcement Act".

FINDINGS AND PURPOSE

SEC. 2. The Congress finds and declares that—

(1) the "feminization of poverty" is an urgent and increasing problem as the ranks of our Nation's poor are increasingly filled by women and children;

(2) divorce and single-parent families account for much of the flow into and out of poverty in our Nation; and

(3) our present child-support enforcement is inadequate, and the Federal Government should accept the basic duty of enforcing family-support obligations.

STRENGTHENING STATE CHILD-SUPPORT PROCEDURES

SEC. 3. Part D of title IV of the Social Security Act is amended by adding at the end thereof the following new section:

"COLLECTION OF CHILD SUPPORT THROUGH MANDATORY DEDUCTIONS FROM WAGES UNDER STATE LAW

"SEC. 466. (a) In order for any State to be eligible for payments pursuant to this title or title XIX for any calendar quarter, such State must have enacted and implemented a State law providing for the collection of child support through a system of mandatory deductions from wages which satisfies the requirements of this section, and must be effectively enforcing such law throughout the State during that quarter as determined in accordance with regulations prescribed by the Secretary.

"(b) A State system of mandatory deductions from wages shall satisfy the requirements of this section only if—

"(1) the system applies in every case where an individual residing in the State owes child support (as defined in subsection (c)) under an order of a court of such State, or under an order of an administrative process established by a law of such State, whether or not the obligation involved is one which has been assigned to the State under section 402(a)(26) or which has been (or could upon application have been) undertaken to be collected by the State under section 454(6);

"(2) the system provides for the deduction from the wages of the individual involved in any pay period (without regard to the nature of his or her employment or the manner in which the wages are paid) of an amount equal to any child-support payment or payments due from the individual during such pay period, plus an additional amount, if the individual owes any past-due child support, equal to 100 percent of such past-due child support or 25 percent of the individual's gross wages for such pay period (whichever is less); plus a reasonable amount to cover the costs of collection incurred by the employer and the State;

"(3) the system provides for the distribution of all amounts deducted from wages or otherwise collected pursuant to this section, under regulations which shall be prescribed by the Secretary within 60 days after the date of the enactment of this section, in the same manner as would have been required under the preceding provisions of this part if the support involved had been collected under those provisions and without regard to wage deductions; except that any fees or charges imposed to cover the costs of collection shall be paid by the individual from whom the amounts involved were deducted or otherwise collected;

"(4) the system provides for the utilization of the services and facilities which are otherwise available under this part in locating such individual, in administering the deduction process, and in distributing the amounts deducted, and for the establishment of such additional administrative requirements and procedures as may be necessary or appropriate (as determined under regulations of the Secretary) to carry out the purposes and objectives of this section;

"(5) the system provides for advance notice to each individual from whose wages deductions are to be made regarding the deduction that will occur and the procedures such parent must follow if he or she be-

lieves that the deduction (including the amount to be deducted) is not proper because of mistakes of fact or, if applicable, payment by such parent of the arrearage;

"(6) the system provides for adequate notice to the employer of the specific amount to be deducted and the additional amount which may be retained by the employer as a fee for administrative costs in accordance with criteria established by the Secretary;

"(7) the system provides for as simple a deduction and payment process as possible, including permitting an employer to combine all deducted amounts into a single payment to the State or designated agency;

"(8) the system provides for procedures to notify employers that deductions are to be terminated when child support is no longer payable, consistent with such circumstances as the Secretary by regulation may prescribe;

"(9) the system provides for protection of the employee's privacy against disclosure of the deduction, and provides for a fine against any employer who discharges from employment or refuses to employ an individual because of the existence of the wage deduction requirement and the obligations it imposes upon the employer;

"(10) the system provides that the employer must be held liable to the State for any amount which such employer failed to deduct (up to the amount of the arrearage) from wages following the employer's receipt of proper notice;

"(11) the system provides for giving notice to, and requesting the enforcement of a State support order entered against an individual by, the child support enforcement agency of any other State in which such individual is employed;

"(12) the system provides that under State law the support collection under this section has priority over any other legal process applied against the same wages;

"(13) the system provides for a minimum subsistence amount which shall be established by each State, based upon such State's determination, which shall be the minimum amount ordered as child support;

"(14) the system provides for administrative procedures for—

"(A) entering child support orders which shall have the same force and effect under the State's law as orders entered by a court,

"(B) enforcing support orders entered through the use of judicial, quasi-judicial or ad-

ministration procedures whether under the procedures of that or any other State, and

"(C) utilizing the State's generally applicable judicial procedures only for review of the orders entered or enforcement action taken, upon request for such review by a party or by the parent or guardian with whom the child is living; and

"(15) the State demonstrates to the satisfaction of the Secretary that it has taken all of the actions, made all of the arrangements, and entered into all of the agreements, which are necessary to extend its wage deduction system as described in subsection (d).

"(e) For purposes of this section—

"(1) the term 'child support' with respect to any individual means payments which are due from such individual under a court order (or an order of an administrative process established under State law) for the support and maintenance of a child or of a child and the parent with whom the child is living;

"(2) the term 'past-due child support' with respect to any period means any amount of child support which was due for a prior period but which remains unpaid; and

"(3) the term 'wages' means any and all remuneration for employment, determined without regard to

any exclusions from or limitations on such term (or the term 'employment') which may be applicable under other provisions of this Act or under other Federal, State, or local laws.

"(d) Consistent with the preceding provisions of this section, each State shall—

"(1) take such actions as may be necessary to extend its wage deduction system so that such system will include deductions of child support from forms of income other than wages, or will include the imposition of bonding, the use of State tax collection or refund procedures, or other requirements in cases involving individuals whose income is from sources other than wages, in order to assure that child support owed by individuals in the State will be collected without regard to the types of such individuals' income or the nature of their income-producing activities; and

"(2) make such arrangements and enter into such agreements with other States as may be necessary to extend its wage deduction system so that such system will include deductions of child support owed by an individual residing in such State where the applicable court order or administrative order was issued in another State, in order to assure that child support owed by individuals in the State will be collected without

regard to the residence of the child or spouse to whom the support is payable.".

EFFECTIVE DATE

SEC. 4. The amendment made by this Act shall become effective on the first day of the eighteenth month which begins after the date of the enactment of this Act; but any State may at its option place such amendment in effect at any time prior to such first day.

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Alaska State Legislature

Advisory Council Members
Senator Kerttula, Chairman
Senator Bennett
Senator Fahrenkamp
Senator Vic Fischer

1024 W. 6th Avenue, Suite 203
Anchorage, Alaska 99501
Phone: (907) 274-1426

SENATE ADVISORY COUNCIL

MEMORANDUM

TO: Senator Rick Halford
FROM: Elizabeth Hickerson
RE: DEPARTMENT OF LAW/CHILD SUPPORT ENFORCEMENT CASELOAD STATISTICS
DATE: DECEMBER 23, 1983

Beverly Haywood, Legal Administrator Office of the AG, provided the following caseload information for the Human Services Section of the Department of Law. In addition to the child support enforcement (CSE) proceedings and the legal work for the Department of Health and Social Services, this section is responsible for legal services to the Departments of Education and Labor. Human service-type cases can be assigned to attorneys in other sections; for example, work for the Division of Corrections is usually done by the criminal attorneys rather than the civil attorneys. According to Ms. Haywood the number of cases, other than Corrections cases, assigned outside the section is statistically insignificant.

STATEWIDE LIST OF ALL ATTORNEYS AND PARALEGALS IN THE HUMAN SERVICES SECTION

Anchorage
Barry, Elizabeth
DeYoung, Jan Hart
Edwards, Donald
Fites, Deborah (paralegal)
Janidlo, Thomas
Landau, Robert
Olsen, Dianne
Stahl, Paul
Stillner, Walt

Juneau
Bomengen, Kristen (paralegal)
Robertson, Rick
Scoccia, Linda
Shaw, Elizabeth

Fairbanks
Alderman, Karol (paralegal)
Munson, Myra
Olson, Randy
Snow, Rebecca

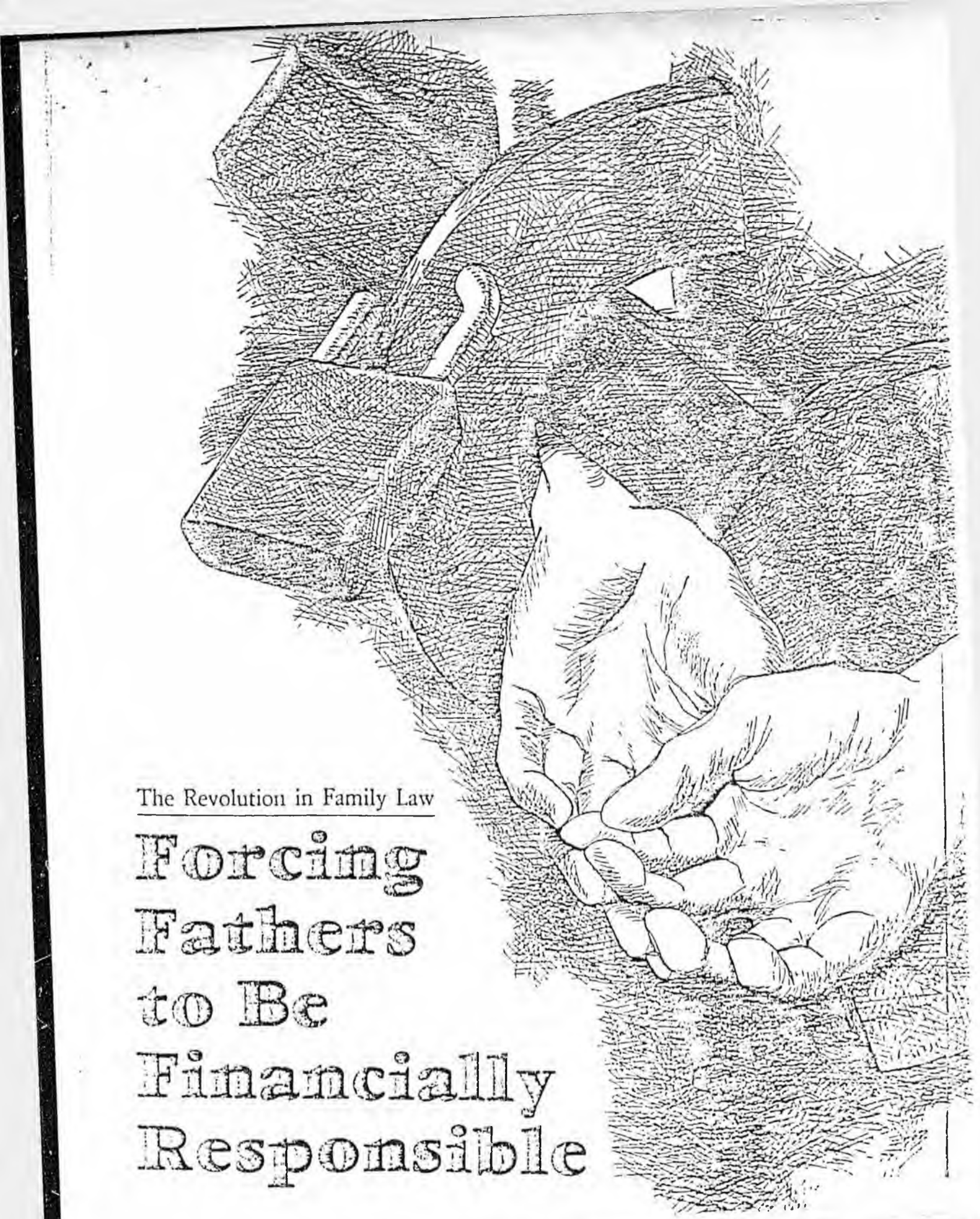
CASELOAD FY83 (1,964 closed cases only, open cases not included)

Cases for Department of Education - 81
Cases for Department of H&SS/CORRECTIONS - 41
Cases for Department of H&SS/CHILDREN'S PROCEEDINGS - 545
Cases for Department of H&SS/MENTAL - 239
Cases for Department of H&SS/GUARDIANSHIPS - 66

Cases for Department of H&SS/OTHER - 126
Cases for Department of Labor/ESD - 50
Cases for Department of Labor/OSHA - 44
Cases for Department of Labor/WG & HR - 121
Cases for Department of Labor/WORKERS' COMP. - 38
Cases for Department of Labor/OTHER - 13
Cases for Department of Revenue/CHILD SUPPORT ENFORCEMENT - 600

OPEN CASELOAD AS OF NOVEMBER 1983 (1,373 cases)

Cases for Department of Education - 53
Cases for Department of H&SS/CORRECTIONS - 35
Cases for Department of H&SS/CHILDREN'S PROCEEDINGS - 359
Cases for Department of H&SS/MENTAL - 34
Cases for Department of H&SS/GUARDIANSHIPS - 61
Cases for Department of H&SS/OTHER - 77
Cases for Department of Labor/EDS - 35
Cases for Department of Labor/OSHA - 49
Cases for Department of Labor/WG & HR - 123
Cases for Department of Labor/WORKERS' COMP. - 91
Cases for Department of Labor/OTHER - 9
Cases for Department of Revenue/CHILD SUPPORT ENFORCEMENT - 447



The Revolution in Family Law

Forcing Fathers to Be Financially Responsible

A Review of the Progress Made in Child Support, Paternity, Illegitimacy, and Child Welfare

BY HARRY D. KRAUSE

In 1974, child support enforcement lay in shambles. Inadequate laws were producing low returns at prohibitive expense. Studies of the subject, even those commissioned by the federal government, were met with apathy.

Aggravating the practical neglect was the spreading notion in the welfare community that the state, rather than absent fathers, should support abandoned children. The feeble attempts made to bring deserting fathers to accept responsibility were discounted by the argument that funds thus collected would not benefit the children, because collections would be offset against Aid to Families with Dependent Children (AFDC) entitlements.

In Congress, the Senate Finance Committee, chaired by Senator Long, had concerned itself with child support legislation since the early 1970s. On several occasions, the Senate had passed significant child support amendments which ultimately failed in the House.

Congress finally moved to strengthen enforcement of child support obligations across the nation in an effort to reduce the cost of AFDC programs significantly. Effective August 1, 1975, sweeping amendments changed the AFDC Title of the Social Security Act, and a new Child Support Title (IV-D) was added. A broad base of regulations was soon developed to implement the new legislation.

INCREASED EFFICIENCY

Today, the federal child support enforcement legislation of 1975 is well on its way to success. Early critics are becoming convinced of its viability, and most now believe that the future will bring greatly increased efficiency and corresponding results. In 1974 the influential *Washington Post* characterized the proposed program as "an unwarranted intrusion of the federal government [into personal lives that] would yield little while costing a great deal. . . . [T]he benefits to be derived are minimal at

Harry D. Krause is Alumni Distinguished Professor of Law, University of Illinois. Portions of this article draw on his book, Child Support in America: The Legal Perspective *(Michie, 1981) which provides full sources.*

All children should stand on an equal footing and have

best. The dangers are incalculable." By March 1978, the *Washington Post* had been converted:

> About 1 million parents who otherwise would pay nothing are now making payments. And the more than $1 billion anticipated this fiscal year in child-support payments obtained for welfare mothers or other families where the father has disappeared or refused to support the children is equal to about 10 percent of the entire national cost of the Aid to Families with Dependent Children program.

Even under this federal initiative, state authority and state laws remain the primary vehicles for establishing paternity and child support collection. What is new is that the federal government has become an active stimulator, overseer, and financier of state collection systems. Each state enforcement agency—commonly known as a "IV-D Agency," reflecting its statutory location—must meet standards imposed by Health and Human Services' (HHS) Office of Child Support Enforcement (OCSE) or lose five percent of its federal AFDC funding. If, on the other hand, the enforcement program meets federal standards, the state receives 75 percent of the program's cost from HHS.

In summary, the amendments impose on state AFDC programs the additional function of acting as intake agencies for child support enforcement programs and require them to collect data. Specific new rules include the following: state AFDC agencies must use the Social Security numbers of all its applicants as identification; the AFDC agency must notify the state child support enforcement agency whenever it grants benefits to deserted children and must open its records to support enforcement officials; applicants must assign their right to uncollected child support to the state and must agree to cooperate in locating the absent parent, establishing paternity, obtaining a support judgment if none is outstanding, and securing payments.

Limited exceptions are authorized to the duty to cooperate, but not to the assignment requirement. In case of an applicant's unjustified failure to cooperate, AFDC benefits are withheld from the applicant, but not from the child or children.

PARENT LOCATOR SERVICE

Each state IV-D agency maintains a state parent locator service equipped to search state and local records for information regarding the whereabouts of an absent parent. The agency may also call on the sophisticated, computerized federal parent locator service based in Washington with access to social security and IRS records or other federal data resources.

Once the absent or alleged parent is located, the state (if necessary and possible) establishes paternity, obtains support judgement, and enforces the obligations through either in-state or interstate proceedings with access to the federal courts as a last resort. All states are bound to cooperate with the enforcement efforts of other states.

In *extremis*, HHS may request the Internal Revenue Service to collect outstanding judgments as though they were a tax liability. Finally, anyone with support rights against a federal employee or beneficiary may garnish the absent parent's federal money under a statutory waiver of sovereign immunity.

After collection, the state disburses child support payments, keeping detailed records and reporting to OCSE. To encourage local participation in child support enforcement, a portion of the proceeds is turned over to the collecting unit of local government.

The program also is available to non-AFDC parents who pay an application fee and agree to pay the cost of collection from payments obtained for them.

Experience is developing rapidly and favorably. The federal parent locator service was initiated in late March 1975. In its very first year, the new service was able to find addresses for almost 90 percent of the names with which the states sought help.

During fiscal year 1977, child support enforcement programs yielded IV-D agencies a total of $818 million, composed of $409.5 million for AFDC recipients plus $408.5 million for non-AFDC claimants. The stated cost in 1977 amounted to $258.8 million for an average return of $3.16 for each dollar spent. An additional estimated $21.3 million in support payments went directly to AFDC families and thereby reduced AFDC assistance payments. The fiscal 1977 program located 341,111 persons, established paternity in 68,263 cases, and established support obligations in 183,073 cases.

More recent figures show continuing acceleration. In fiscal year 1980, 642,000 absent parents were located, support obligations were established in more than 373,000 cases, paternity was ascertained in more than 144,000 cases, and more than $1.5 billion were collected, including $874 million in non-AFDC collections.

So far, OSCE has been lenient in allowing the states time to gear up for the program. Federal audits of state programs ultimately will pinpoint problems and help provide solutions, by assistance and by the threat of federal sanctions. Interestingly, two of the more controversial remedies have not seen much use: as of late 1979, federal court enforcement had not yet been tried and IRS collection had been used sparingly.

If a verdict regarding the support enforcement program may be attempted at this stage, the overall impression is good—even excellent. Enormous progress has been made toward alleviating a serious social problem.

However, this verdict is conditional. These accomplishments should be seen as the first stage of the program. The initial period of successfully putting the basic program into place, prodding reluctant states to cooperate, and improving the mechanics of collecting support at the national, state, and local levels, is over.

The time has come for a qualitative leap forward. A good program must now become better—not necessarily

qual legal claims for their father's support

that reflect more of the underlying social values sought. (*See* Krause, "Child Support Enforcement: Legislative Tasks for the Early 1980s," Winter 1981 *Family Law Quarterly*, Vol. 15, p. 349.)

A cynic may hypothesize that state child support laws, both in terms of substance and enforcement procedures, have been permitted to survive in their present state of disarray, unevenness, and consequent unfairness only because they have *not* been enforced with any degree of regularity. Indeed, the seeming irresponsibility of American fathers may at least partly be explained in terms of unrealistic obligations being imposed and unrealistic laws for enforcement.

The federal initiative that now causes the sudden activation of these laws carries a corresponding responsibility on the federal authorities to assure that the states develop more sensible, more uniform, and more predictable support laws. So far, OCSE has failed to provide leadership regarding this crucial point.

DEFINING STANDARDS

With all reasonable respect for state sovereignty regarding family law, current federal law provides adequate room for OCSE to play an important role in defining standards for acceptable state law on these questions. If OCSE believes that this goal requires more specific federal legislation, it should work toward that. At the very minimum, in the context of OCSE-sponsored support enforcement, federal standards ultimately must assure less arbitrary and diverse conceptions of the "needs of the child" and the "father's ability to pay." The standard should also encourage more productive methods of support enforcement, such as wage deduction to avoid default, rather than jail—and loss of job—after default.

From the standpoint of sound policy, it should be an important goal of federal involvement to assure that state enforcement efforts will not reach the point of increasing, rather than reducing, social disorganization. Aside from reasonable enforcement methods, this involves manageable, live-and-let-live, levels of support. The extent of the child support obligation, however, remains largely undefined.

Section 15(e) of the Uniform Parentage Act summarizes the factors commonly used by the courts to determine obligation as follows:

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

The Uniform Marriage and Divorce Act contains a similar listing. It appears, however, that courts do not adhere consistently to these common sense factors which seek to put some ground under their otherwise unbridled discretion. Principled methods of defining a child support formula—fairly weighing the child's need against the father's ability to pay—are needed.

ADDITIONAL QUESTIONS

The national picture thus remains one of great diversity, divergence, and confusion. The most basic questions remain unanswered: just what *are* necessities, how should the child's *need* be defined once necessities are taken care of, what is the father's *ability to pay*, especially if he chooses not to work or is underemployed? The bottom line is that a father must retain enough to live on after making support payments. But how much is enough? At the welfare level, token awards such as $10 per week have been the rule, although the new federal involvement may change this custom.

Support orders, as well as child support obligations agreed on in separation agreements, generally remain modifiable to respond to a significant change in circumstances. But, as in the case of setting the initial award, statutory or judicial guidelines defining a *significant change in circumstances* generally are lacking. Once again, judicial discretion reigns nearly supreme.

In an effort to reduce the uncertainty—which often leads to unwarranted harassment of the supporting parent by the custodial parent and wasteful use of court facilities—the Uniform Marriage and Divorce Act requires "a showing of changed circumstances so substantial and continuing as to make the terms [previously set] unconscionable." Whether this language will produce significantly greater certainty remains to be seen. As a legal term of art, the word *unconscionable* has had a long and checkered history.

More questions arise when the father remarries. Traditionally, courts have ruled that the father's prior child support obligations take absolute precedence over the needs of his new family. More recently, however, some courts have considered the interests of both families and have attempted a fair apportionment. This approach seems more realistic.

Arguably, the balance of social interest (though not necessarily individual equity) might even weigh in favor of the father's current family because that family might flounder if earlier obligations were enforced beyond the father's means, with the possible result of two families drawing welfare payments rather than one. Whatever the policy, current equal protection reasoning makes it difficult to defend blanket discrimination in favor of or against the children of one or the other marriage or, for that matter, nonmarital children. All children should stand on an equal footing and have equal legal claims for their father's support.

(Continued on next page)

Too many important issues remain and cannot be discussed in the limited space available here. But many questions remain: Should the father's support be reduced if his former wife remarries and his children receive some support from the mother's new husband? What is the extent of the father's freedom to change his occupation or professional status for one less lucrative or to quit work altogether? Should arrears continue to accrue even when the father loses his employment involuntarily? What should be the role of support judgments with automatic adjustment clauses? Should child support orders be self-reducing or self-terminating when, for instance, the father takes over custody, some or all children reach majority or are emancipated, or social security benefits apply to the children? Should a support-delinquent father's arrears be credited with voluntary payments made to or on behalf of his children, especially during visitation or vacations? Should the parental support obligation end at the parent's death or should a liquidated support obligation be enforced against the parent's estate?

Ultimately, we must confront the question of where the proper dividing line is between parents' and society's responsibility for the cost of raising a child—whether the child support obligation should be maintained at traditional levels or whether social mechanisms should carry a greater part of the "freight" than they now do. In the United States, we accept as a matter of course that the state will provide education for our children, even for those of illegal aliens. But in many other Western countries, the state also assumes the burdens of health care, higher education, and even an allowance for each child, which reduces the private obligation for child support. In those states, however, that obligation, no matter how reduced, is enforced without question. We may not be ready for such a system here, but we must start thinking.

The Changing View of Child Support

BY MARYGOLD S. MELLI

A generation ago the American public seemed to accept the notion that the duty to support a child rested on the custodial parent. Only minimal effort was exerted to enforce child support orders.

One study in the 1960s found that 62 percent of the parents ordered to pay support failed to comply fully in the first year and 42 percent did not make even a single payment. Legal action to enforce collection, however, was taken in only 19 percent of the cases. Ten years later, 79 percent of the fathers were not paying, and legal action to collect was taken in only one percent of the cases. (K. Eckhardt, "Deviance, Visibility, and Legal Action: The Duty to Support," *Social Problems*, Vol. 15, p. 470, 1968.)

In the 1970s, we began to take a second look at these policies of nonenforcement. The women's movement lead to recognition that placing support on the custodial parent meant women, who are overwhelmingly the custodial parents, had the burden of child support although their earning ability was much less than that of the absent fathers. (L. Weitzman, "Legal Regulation of Marriage: Tradition and Change," *California Law Review*, Vol. 62, p. 1169, 1974.)

When the mother was unable to meet the burden of support herself, she was forced to face the stigma of public assistance. But contrary to public belief, mothers on welfare contribute more to the support of their children than absent fathers. In Wisconsin, for example, the state director of economic assistance programs pointed out recently that the mothers receiving Aid to Families of Dependent Children (AFDC) who worked contributed $83.2 million per year to the support of their children while all the fathers of these children contributed only $28 million per year. *See* Day, J., dissenting, *Edwards v. Edwards*, 93 N.W.2d 160 (1980).

In addition to women recognizing the unequal burden placed on them by the policy of nonenforcement, the taxpayers began to realize they were not being fairly treated either. As the number of single-parent families grew dramatically from nine percent of the population in 1960 to 20 percent in the 1980s, the costs of the AFDC program escalated. A congressional study summarized the situation: "The problem of welfare in the United States is, to a considerable extent, a problem of the nonsupport of children by their absent parents." *See* Staff of Senate Committee on Finance, 94th Cong., 1st Sess., Child Support Data and Materials (Comm. Print 1975).

By 1982, the problem of child support had gone from being a low visibility problem of the 1950s to a major social issue. Both the federal government and the states took steps to help solve the problem through legislation and the courts. (*See* Krause, "Forcing Fathers to be Financially Responsible," p. 13.) But given the crisis dimensions of nonsupport, major legislative reform is clearly called for.

NEW SUPPORT SYSTEM

The child support system of the future may be radically different from today's. Traditionally, child support has been collected under a system that consisted of, first, the establishment of an amount of child support in an individualized judicial hearing and, second, collection of that amount

Marygold S. Melli is a professor of law at the University of Wisconsin, Madison, Wisconsin.

ILLEGITIMACY

Despite declining birth rates, the problem of illegitimacy remains a national crisis. More than 6 million *minor* children born out of wedlock live in the United States today. There not only has been an increase in the absolute number of births out of wedlock, but by 1977 the rate had reached more than 15.5 percent of total births. In many urban areas, illegitimacy has exceeded 50 percent for years and continues to rise.

In addition to the terrible personal problems, even tragedies, that affect the mother and illegitimate child, the public welfare dimensions of illegitimacy have become alarming. Between 1961 and 1973, the percentage of nonmarital children in the total AFDC load increased from 24.2 to 32.7 percent, and there was a 292 percent increase in nonmarital children receiving AFDC.

Yet that is not the whole story. According to common custom (and, indeed, law), married mothers continue to report any births as legitimate even if their husbands left them long ago. And that suggests that the official figures on out-of-wedlock births probably are significantly understated, both in absolute terms and in the text of welfare statistics.

The time has come to adapt our law and legal practices to the increasing incidence and acceptability of nonmarital relationships, while recognizing that a child's right to and need of a *legal* relationship with the father remains unchanged.

Fortunately, our institutions have responded. Since 1968, the U.S. Supreme Court has applied the Equal Protection Clause to a long series of illegitimacy cases. Today, in nearly all substantive areas of the law, the nonmarital child is entitled to legal equality with the child of married parents. Common law and statutes disadvantageous to nonmarital children have been declared unconstitutional, and nearly all remaining discriminatory

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ing the legal machinery for the enforcement of judicial orders.

A proposal introduced into Congress by Senator Wallop (S. 2437) and another one under preliminary consideration in Wisconsin would replace the present system with a new one consisting of a child support benefit payable on behalf of all children with legally liable absent parents and a child support tax payable by absent parents and collected by a procedure similar to the income tax withholding system.

The new child support tax would replace the present case by case determination of support, noted for its uncertainties and inequities, with a predetermined percentage of income of the absent parent to be paid in child support. This amount (adjusted for the number of children to be supported) would be assessed against the supporter's wages before they are paid.

Under the Wallop bill, any child with one or more absent parents liable for his or her support may apply for a child support benefit. This benefit would be paid only up to the amount of tax collected from the absent parent.

The Wisconsin proposal is more radical. It recognizes that the goals of the child support system are twofold: (1) to provide adequate support for children who live with only one parent, and (2) to require absent parents to share in the cost of supporting their children.

It also recognizes that efficient collection from absent parents is not the complete answer to achievement of adequate child support. Many absent parents have acquired support obligations to new families. If they support the children with whom they now live, they are often not financially able to provide adequate support for the children of a prior relationship.

Therefore, the Wisconsin proposal provides a child support benefit available to all children who have an absent living parent who is legally liable for their support.

This means that children with a deceased parent are not included: They are usually eligible for Social Security payments provided by the deceased parent's work-related Social Security tax.

Children of unmarried parents are also not eligible unless paternity has been established. If paternity is not established, they will be eligible—as they are now—for an income-tested benefit under Aid to Families of Dependent Children.

All eligible children would receive the minimum benefit regardless of the amount paid by the absent parent and regardless of the income of the custodial parent. Differences between the basic benefit and what the absent parent pays would be provided out of general revenues. This, of course, is the source of current welfare benefits.

The objective is to replace the present welfare program with the opportunity for a nonwelfare benefit that, when combined with at least part-time work, will be superior to welfare. To avoid public subsidies to families with no need, custodial parents who earn above a certain amount will be subject to a special surtax on income over a certain amount if the absent parent pays less in tax than the minimum benefit.

If the absent parent pays more in taxes than the minimum benefit, the additional amounts will go to the children of that parent. Therefore, for those children whose absent parent can provide adequate support, the Wisconsin proposal would provide equity and certainty on the amount of support and efficiency in the collection. For children whose absent parents can provide less than minimal support, the plan proposes a rational, efficient means of apportioning the support of these children among the custodial parent, the absent parent, and the public.

In the past quarter of a century, the problems of child support have remained unchanged and unsolved. What has changed is the public's perception of the problems. The latter part of the twentieth century may see some major reform of the child support system. ◻

legislation is under severe constitutional doubt.

The Court applied the Equal Protection Clause in *Levy v. Louisiana*, 391 U.S. 68 (1968), allowing illegitimate children to recover for their mother's wrongful death and also in *Glona v. American Guarantee and Liability Insurance Co.*, 391 U.S. 73 (1968), allowing the mother to recover for the wrongful death of her nonmarital child. Changing course, however, the Court, in *Labine v. Vincent*, 401 U.S. 532 (1971) refused to permit a nonmarital child to inherit from her intestate father under Louisiana law, even though her father had acknowledged her during his lifetime.

Back on track, the Court held in *Weber v. Aetna Cas. & Surety Co.*, 406 U.S. 164 (1972), that workman's compensation benefits related to the death of their father *are* due dependent, nonmarital children even if unacknowledged. Continuing in a forward direction, in *Gomez v. Perez*, 409 U.S. 535 (1973), the Court granted the right to paternal support to the nonmarital child, holding:

> Once a state posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child simply because its natural father has not married its mother.

Shortly thereafter, in *New Jersey Welfare Rights Organization v. Cahill*, 411 U.S. 619 (1973), a state welfare statute discriminating against nonmarital children was struck down. Consistent with that holding, in *Jimenez v. Weinberger*, 417 U.S. 628 (1974), the Court held unconstitutional a provision of the Social Security Act relating to disability benefits because it discriminated between two supposedly distinguishable classes of nonmarital children.

The Court slid backwards, however, in *Mathews v. Lucas*, 427 U.S. 495 (1976), when it upheld a provision of the Social Security Act that presumed dependency with respect to marital children and as various categories of nonmarital children with ascertained paternity but left the task of proving actual dependency to nonmarital children who did not fall into the defined categories. The dissenters convincingly found *Mathews* too difficult to distinguish from *Jimenez* to warrant the dissimilar holding.

Switching course again, in *Trimble v. Gordon*, 430 U.S. 762 (1977), the Court allowed the nonmarital child intestate succession rights involving its father, thus more or less overruling *Labine v. Vincent*, although not quite admitting that much. Seemingly for balance, *Fiallo v. Bell*, 430 U.S. 787 (1977), (decided simultaneously with *Trimble*), held that U.S. immigration laws *may* express a preference for foreign-born nonmarital children of *female* U.S. citizens over foreign-born nonmarital children of *male* citizens.

In *Lalli v. Lalli*, 439 U.S. 259 (1978), the Court upheld a New York statute that conditioned nonmarital children's rights to intestate succession upon having paternity judicially established during the father's lifetime, thus limiting the *Trimble* decision significantly and all but reinstating most of *Labine*. Remaining on a somewhat negative track, *Califano v. Boles*, 443 U.S. 282 (1979), upheld the provisions of the Social Security Act that limited "mother's insurance benefits" to divorced wives or widows of deceased wage earners and denied them to unmarried mothers of nonmarital children of deceased wage earners.

THE FATHER'S RELATIONSHIP

Another line of cases dealt with the relationship between the father and his nonmarital child. In *Stanley v. Illinois*, 405 U.S. 645 (1972), *Rothstein v. Lutheran Social Services of Wisconsin and Upper Michigan*, 405 U.S. 1051 (1972), and *Vanderlaan v. Vanderlaan*, 405 U.S. 1051 (1972), the U.S. Supreme Court essentially held that a father who had lived with the mother and his nonmarital children in a *de facto* family unit is entitled to receive notice and have a hearing in proceedings involving the custody of his children, that he may possibly challenge a completed adoption, and that he may have visitation rights with his nonmarital children.

After six years of confusion about what these cases meant in terms of adoption practices, *Quilloin v. Walcott*, 434 U.S. 246 (1978), *denied* an unmarried father a "veto power" over the adoption of his child. *Quilloin*, however, involved sufficiently unusual facts that it did not do much to clarify the precarious situation in which the adoption industry had found itself after *Stanley*. One important distinction was that, in *Quilloin*, the children had always been in the mother's custody and never had been a member of the father's *de facto* family. Other differences were that the father had not regularly supported the child, that he had had the opportunity to "legitimate" the child and had not done so, and that it was the mother's current husband who sought to adopt the child.

A year later, the Court decided *Caban v. Mohammed*, 441 U.S. 380 (1979), which involved a natural father who had lived with the mother for five years and, for the next two years, had contributed to the children's support and had seen them frequently. Emphasizing the natural father's *de facto* relationship with his children, the Court permitted him to block the attempted adoption by the mother's new husband. Finally, in *Parham v. Hughes*, 441 U.S. 347 (1979), the Court—seemingly in direct conflict with the *Glona* case—decided that a father may *not* sue for the wrongful death of his nonmarital child whom he had supported and with whom he had maintained continuous contact by visitation.

Two analytical points are of major interest. First, the issue of whether or not illegitimacy is a status that invokes "strict scrutiny" under the Equal Protection Clause was never clearly settled. Justice Rehnquist, criticizing the majority in *Trimble*, concluded that illegitimacy "was not sufficient to require 'our most exacting scrutiny' " and pointed out that "Despite the conclusion that classifications based on illegitimacy fall in a 'realm of less than strictest scrutiny,' . . . that scrutiny 'is not a toothless one.' "

Elsewhere, especially in *Mathews*, the Court had

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for children were rarely seen in juvenile courts. But that case which held that court-appointed counsel for children in delinquency proceedings is essential as a matter of constitutional law, failed to state whether legal representation would also be required for children in abuse and neglect cases. As a result, many children who are the subjects of maltreatment or related termination of parental rights proceedings do not have a lawyer as a matter of right; it is within the discretion of the trial judge to appoint counsel.

Although a growing number of states are, through statutes, court rules, or judicial decisions, assuring that abused and neglected children have independent representation, a court-appointed advocate for the child often faces both resentment and hostility from others involved in the case as well as confusion over his or her proper role. But no one would question a criminal defendant's need for a lawyer or that of a corporation being sued. Yet many people believe that the child protection agency and the judge are themselves fully capable of protecting the interests of the parties in child maltreatment cases.

Whether or not the child's court-appointed advocate is a lawyer, he or she needs to clearly understand the parameters of his or her responsibilities. But only a few state laws or court rules, as well as the ABA Juvenile Justice Standards, provide any guidance. Questions continue to be raised throughout the country concerning the proper function of a child's lawyer, guardian *ad litem*, or court-appointed special advocate.

We need to create a new field of specialization for those concerned with representation of children, in order to provide a focus for the resolution of such difficult questions. We also need an acceptable code of ethics or professional conduct for those who would undertake the task of advocating for children in court. Don Bross, founder and executive director of the National Association of Counsel for Children, has suggested the creation of a legal specialization called "pediatric law," in which lawyers would be well versed in all children-related areas of the law. This organization has become a leading force in the improvement of legal skills relating to child protection.

ROOM FOR REFORM

The ABA has been instrumental in creating, and pointing appropriate criticism at, the system of state intervention and has proposed elaborate remedies for many of the system's ills. The Association also has been at the forefront of legal efforts to assure the protection of children from serious abuse and neglect.

But the profession also should become more involved in community-based interdisciplinary councils and other local activities related to child abuse and neglect. Special bar committees can be created to formally examine state intervention issues, explore law reform options, and develop legislative proposals. We also need a concerted approach by the bar towards improving the legal representation of parties in child maltreatment cases. Finally, the bar can monitor compliance with federal child welfare laws, such as the Adoption Assistance of Child Welfare Act (P.L. 96-272), to assure full implementation at the state and local levels.

The protection of children through the legal system, however, only can be achieved if we aggressively pursue our responsibilities to children, parents, and child protective agencies alike. ☐

Forcing Fathers

(Continued from page 18)

created the impression that illegitimacy classifications impinging on *familial relationships*, specifically, the custody/adoption/visitation issue, may merit stricter scrutiny than would be given other classifications based on illegitimacy. In *Boles*, four dissenting justices spoke in terms of the now familiar test of "a close and substantial relationship to a permissible government interest" being required to uphold a classification based on illegitimacy. *Caveat emptor!*

SEX DISCRIMINATION

The second point is that the Court seems to have accidentally veered off the "illegitimacy discrimination issue" and landed in the maze of sex discrimination. In *Caban*, for instance, instead of continuing to decide illegitimacy cases on the basis of comparing the relevance of legal distinctions between *married and unmarried fathers* in their relationship to their children, or between *married and unmarital children* in their relationship with their fathers, the Court (foregoing this analysis in a little footnote) compared *mothers and fathers*. Suddenly, the issue was seen as the rationality of legally distinguishing between male and female parents!

Besides unnecessarily drawing the many uncertainties the Supreme Court has introduced into the subject of sex discrimination into the context of illegitimacy, this new approach to illegitimacy is logically faulty. It pursues the more remote rather than the nearer comparison.

The child is not and should not be concerned whether the father, for rational legislative purposes, is the equal of the mother. The child is concerned whether his or her legal position rationally differs from that of a legitimate (half-)sibling. Similarly, the unmarried father should be compared with the married father, not with the unmarried mother.

Foreshadowing this lapse, Justice Marshall, in *Quilloin*, had alluded to the potential of the sex-discrimination approach: "In the last paragraph of his brief, appellant raises the claim that the statutes make gender-based distinctions that violate the Equal Protection Clause. Since this claim was not presented in appellant's Jurisdictional Statement, we do not consider it."

In *Parham*, Justice Powell's separate concurrence reemphasized the gender-based approach he had pioneered in *Caban*. Worse, even the four dissenters (Justices White, Brennan, Marshall and Blackmun)

chose to view this case primarily in terms of sex discrimination.

If "sex discrimination" is to be the Court's new approach to illegitimacy, it is fraught with danger for the nonmarital child. Mothers, especially unmarried mothers, *are* different from fathers. If a distinction between mothers and fathers were the proper touchstone of permissible discrimination in this field, a variety of distinctions might become justifiable. Indeed, several early decisions that did not like the message of *Levy v. Louisiana* distinguished *Levy* on precisely that ground and, for a time and in some places, halted the nonmarital child's progress toward legal equality.

In early 1980, Justice Marshall, seemingly despairing of the mess the Court has made of constitutional argument in these cases, strained to reach a decision on *statutory grounds* favoring a nonmarital child's recovery under the Civil Service Retirement Act, protesting against excessive use of the Equal Protection Clause.

Thus, in a relatively short span, the U.S. Supreme Court has expended an enormous amount of time and effort on this narrow topic. The Court's engagement is remarkable because it runs counter to the long-standing "hands-off" tradition regarding family law invoked by Justices Black and Harlan in early illegitimacy cases and more recently by Justice Rehnquist in a variety of contexts.

It is all the more remarkable in view of the Court's heavy schedule. Was it really necessary to take on many cases to decide the simple proposition that there shall be "hardly any" legal discrimination against the child of unmarried parents?

By now, the confusion stirred up by the Supreme Court's vacillation literally has cost a fortune in wasteful litigation at all levels. Chief Justice Burger's frequent complaints regarding the "inefficiency" of the bar might well be turned around. One well-reasoned case at the outset and *per curiam* decisions in several of the later cases could have avoided the confusion we now face. Nevertheless (and however tortuous the road behind or ahead), we may fairly conclude from these decisions that state and federal law may not significantly discriminate between children on the basis of their parents' marital status in any significant substantive area.

ESTABLISHING PATERNITY

It may be said that the typical state's paternity statute is not yet history, but should no longer be law. Unless state law makes fair provision for the child to find his or her father, the Supreme Court's talk about equality will have been an academic exercise. Accordingly, the question is what is the permissible range of state regulation of procedures to ascertain paternity. A second question is whether the state should initiate an action to establish paternity if the mother fails to do so.

So far, cases have not significantly come to grips with these questions. Similarly, not enough legislatures have reviewed their paternity statutes to see what amendments are needed to conform to the new situation.

In *S. v. D.*, 410 U.S. 614, (1973), the Supreme Court denied itself an opportunity to speak out on this subject. It refused to compel enforcement of a criminal nonsupport statute against the father of a nonmarital child, although the act in question was routinely enforced against fathers of legitimate children. While the case was decided on the narrow issue of the mother's lack of standing (which was technically correct), the Court might have provided guidance to the judiciary and legislatures regarding the right to bring paternity actions.

In several other cases that were directly or remotely related to the issue of ascertainment of paternity such as *Trimble*, *Lalli*, *Quilloin*, *Parham* and *Caban*, the Supreme Court accepted existing state processes without question. In *Lalli*, for instance, no inquiry was directed at the possible unconstitutionality of New York's paternity statute. In *Quilloin* and *Parham*, the Court did not question the procedure by which the unmarried father may legitimate his child in Georgia, nor did it recognize the fact that most states do *not* give unmarried fathers the opportunity to legitimate their children short of marrying the mother. Accordingly, the question remains open whether state laws dealing with adoption or wrongful death would be upheld or struck down in the absence of a procedure for legitimation.

In April 1982, the Supreme Court decided *Mills v. Habluetzel*, 50 U.S.L.W. 4372, (1982), which struck down Texas' one-year statute of limitations on paternity actions as unduly short. This case might have settled the important issue of whether the right to bring the paternity action "belongs" to the mother or to the child, the former being the "owner" under traditional statutes. Regrettably, the Court did not seem to recognize that issue. At one point Justice Rehnquist writes: "[T]he period for obtaining support . . . must be sufficiently long in duration to present a reasonable opportunity *for those with an interest in such children to assert claims on their behalf*" (emphasis added). Yet shortly thereafter, Rehnquist continues as follows: ". . . by granting *illegitimate children* only one year to establish paternity, Texas has failed to provide *them* with an adequate opportunity to obtain support" (emphasis added).

Mills holds that "the support opportunity provided by the State to illegitimate children must be more than illusory" and that it "would hardly satisfy the demands of equal protection . . . to remove an 'impenetrable barrier' to support, only to replace it with an opportunity so truncated that few could utilize it effectively." On the other hand, providing "illegitimate children with a bona fide opportunity to obtain paternal support does not mean . . . that [Texas] must adopt procedures . . . that are coterminous with those accorded legitimate children" and the State may "impose greater restrictions on the former than it imposes on the latter."

A full assessment of this case cannot be provided in this short space. The case is significant in that it was decided unanimously, a rare event in this turbulent area, although there were two separate concurrences.

Mills makes absolutely clear that a one-year statute of limitations on paternity actions is too short. It leaves considerable doubt regarding the appropriate minimum

period of limitations, with the five concurring justices agreeing that Texas' current four-year statute may not be long enough either, but not quite saying so.

Most important, one may hope, is the fact that all five concurring justices are expressly impressed with the idea that statutes of limitations generally are tolled during a person's minority, the paternity action being the prominent exception in Texas. Justice O'Connor ends her concurring opinion with the words "the risk that the child will find himself without financial support from his natural father seems as likely throughout his minority as during the first year of his life." On the basis of that line of analysis, the Uniform Parentage Act long ago "decided" that, on *constitutional* grounds, a nonmarital child on whose behalf no action had ever been brought should not be barred until after he or she has reached the age of majority. (*See* H. Krause, *Illegitimacy: Law and Social Policy*, 151, (1971), *also see* reporter's comments to § 7 of the Act.)

Given the substantive legal equality mandated by the U.S. Supreme Court—with or without adequate direction on how to achieve it—fundamental reform of the paternity action has become the most pressing task in the area of illegitimacy. Reform is needed as much to facilitate finding a responsible father for the nonmarital child as it is needed to protect the possibly great number of men who are falsely accused of paternity in vigorous pursuit of the federal child support enforcement program.

THE STATES' RESPONSE

Many state legislatures have not yet enacted new laws to conform with the constitutional mandate of equality. This failing may be forgiveable in view of the confusing Supreme Court signals. As a consequence, however, the gulf between the abstract constitutional principle and the practical realization of legal equality between marital and nonmarital children continues to loom wide. All gains in substantive rights—including support—will mean little or nothing if our procedures for ascertaining paternity are not improved. Because of antiquated paternity and child support enforcement statutes, only a fraction of nonmarital children now achieve legal status vis-à-vis their fathers and actually collect the support they are owed.

Reform must provide a new procedural framework for the paternity action that improves the quality and volume of adjudication. Streamlined, more efficient and speedier proceedings must nevertheless provide fuller safeguards for falsely accused men. Within that new framework and to achieve both objectives, medical evidence must play a central role.

The Uniform Parentage Act was developed specifically to fill the legislative void created by the Supreme Court's venture into this arena and to provide the procedure by which to secure the nonmarital child's substantive rights. The act establishes a framework in which traditional paternity practice is superseded by a more efficient and constitutionally sound process. The central goal is fairness to the child as well as to the accused man.

The Uniform Parentage Act abandons the concept of illegitimacy. All children are equal in terms of their relationship with their parents. An elaborate network of presumptions identifies circumstances in which it is more likely than not that a particular man is the child's father, thus reducing the need for litigation. Specifically defined interested parties—in some circumstances limited to the mother, her husband, and the child—may bring a formal action to affirm or disaffirm any of the formal presumptions.

A proceeding to establish paternity is available when no circumstances exist that presumptively identify the probable father. The first stage of that proceeding is an informal pretrial hearing before a judge or referee who is not bound by formal rules of evidence and who does not render a binding judgment. Instead, on the basis of all the evidence, whenever possible including blood tests, the judge or referee makes a *recommendation* to the parties concerning settlement. The recommended settlement may involve dismissal of the action, the voluntary acknowledgement of the child by the putative father, or may be a compromise which does not establish paternity but fixes a specific economic obligation.

If all parties accept the recommendation made to them, judgment is entered accordingly. If they do not, the matter is set for trial. It is expected that wide-scale use of sophisticated blood typing evidence in these administrative (pretrial) proceedings will greatly stimulate acceptance of recommended settlements so that relatively few cases will need to be tried in court.

By 1980, the Uniform Parentage Act had been enacted in nine states and had left its mark on reform legislation in others. Important courts have prodded their legislatures to adopt the act. (*E.g., Hepfel v. Bashaw*, 279 N.W. 2d 342, 346 (1979)).

The road has not been smooth, however. In several states successful opposition has been generated by the act's concern for the *falsely* accused man. It is clear, however, that the protections in question are a necessary corollary of ascertaining paternity for the benefit of the child. Quite aside from the man, not even the child is served fairly if a biological stranger is tagged as the father.

A stronger stimulus to the implementation of necessary reforms should have come from the federal child support enforcement legislation enacted in 1975. Even before that legislation was enacted, the Senate Finance Committee repeatedly recommended that "in evaluating state child support programs, the Secretary [of HEW] should take into account the Uniform Parentage Act." HEW's (now HHS's) Office of Child Support Enforcement, however, has not yet used its influence to move the act toward wider adoption.

BLOOD TESTS IN THE COURTS

State legislatures and state courts have barely begun to adapt the decision-making processes in disputed paternity cases to rapid advances in blood typing science and technology. Much of this lag is due to an information and communication gap between the legal and medical professions,

a gap which recent efforts on the part of the ABA's Family Law Section working with the AMA have helped to bridge. (*See* Miale, Jennings, Rettberg, Sell, Krause, "Joint AMA-ABA Guidelines: Present Status of Serologic Testing in Problems of Disputed Parentage," Fall 1976 *Family Law Quarterly*, Vol. 10, pp. 247-85.)

The scientific fact is that blood typing in its various forms now is capable of establishing nonpaternity in the vast majority of cases (95 to 99 percent) in which the man named by the mother actually is not the father. Beyond that, significant statistical evidence may be derived in many circumstances from blood tests and may indicate persuasive probabilities (or improbabilities) of paternity. With further scientific advances, the time may come (but has not yet arrived) when the father of the child can be identified positively through medical expertise.

To understand this better, one must remember the infamous case involving Charlie Chaplin. There a jury chose to disregard blood test results which excluded Mr. Chaplin; instead, the jurors held him to be the father. And one should know that as recently as 1974 the North Carolina Supreme Court went the same route. (The North Carolina statute was amended in 1975 to provide that blood tests excluding paternity be given conclusive effect).

Nevertheless, the smug confidence with which commentators excoriate cases which give less than total credence to blood typing evidence is not always justified. There has been poor work in this area, and the chance of error (indeed, the likelihood of error) is considerable if blood grouping tests are conducted inexpertly.

Specific case studies make a convincing case in favor of stringent quality control of blood grouping tests. Lawyers and courts have not been adequately warned about insisting on full assurance that blood typing tests have been conducted in accordance with the highest standards of care and expertise. More effort is needed from both the medical and legal professions to develop a responsible, knowledgeable, reliable, and cost-effective approach to blood typing in disputed paternity cases.

The possibility of error could be all but eliminated if appropriate medical procedures were agreed on and then required to be followed. Detailed recommendations concerning this are the subject of the joint guidelines prepared by the Committee of the American Medical Association and the American Bar Association referred to above. The guidelines are being welcomed warmly in the courts (*e.g. Little v. Streater*, 452 U.S. 1, (1981); *Mills v. Habluetzel*, 102 S.Ct. 1549, 1554, 1557 (1982)).

This brief discussion highlights the interplay of law and science in terms of the fundamental substantive question of what weight a court will give to blood test evidence. Not to be forgotten are the equally important *technical* aspects of the law of evidence regarding the admissibility of blood tests in court. Space limitations prevent these from being considered here.

The crucial importance of blood testing to the fair and efficient settlement of disputed paternity proceedings is increasingly documented by important court decisions. Two particularly significant decisions may be singled out.

In *State v. Meacham*, 612 P.2d 795, (1980), the Supreme Court of Washington held that court orders under the Uniform Parentage Act requiring putative fathers to submit to the withdrawal of blood for blood typing tests cannot be challenged under the constitutional right to privacy. It also held that taking blood is not an unconstitutional or otherwise illegal search and seizure and that the interests of the minor children and the state outweigh the men's religious objections asserted under the First Amendment.

In *Little v. Streater*, 452 U.S. 1 (1981), the U.S. Supreme Court held that Connecticut denied due process to an indigent man accused in a paternity proceeding when the state refused to pay for blood grouping tests. The Court found that the failure to provide blood tests is tantamount to the lack of "a meaningful opportunity to be heard."

BLOOD TESTS AS EVIDENCE

The question concerning the evidentiary effect of blood test evidence breaks down into four subsidiary issues. While these should be distinguished carefully, their interrelationship must be recognized:

(1) What is the weight and effect of blood typing test

results once they have been admitted by the court?

(2) May the test results be used solely for *exclusionary* or also for *inclusionary* purposes?

(3) How valid is the specific test that is involved and how is that to be proved to the court?

(4) Was proper expertise employed in the actual performance and evaluation of the test?

For the record, let us remind ourselves that state law applies. Fifty states, the District of Columbia, and assorted other U.S. jurisdictions have provided a broad range of legal opinion in answer to any of these questions. Through the federal child support enforcement legislation of 1975, however, federal influence is beginning to be felt and ultimately should have a unifying and modernizing influence.

The first question—the weight and effect to be given to blood test evidence in disputed paternity cases—has been dealt with in some states expressly by statute, while in others it has been left to the courts. Whether the blood typing evidence comes into court under a statute or by judicial discretion, the weight that it will be accorded may differ. On the basis of older cases that have not yet been overruled, a few states may still allow even exclusionary results to be given no more than the same weight as any other evidence—thus, at least theoretically, permitting a jury to overrule a clear exclusion. A somewhat better informed group of states holds that, even though test results excluding paternity are not conclusive, they should be given considerable weight. In the "fully informed" states the rule is that a blood grouping test which excludes paternity is conclusive, if conducted properly.

These three views concern exclusionary evidence and a large number of states permit *only* such evidence to be introduced. To complicate the picture further, the admissibility (and, if admissible, the weight) of statistical evidence attempting to show *probability* or *likelihood* of paternity remains in much greater dispute. What is meant by "probability" or "likelihood" of paternity?

It stands to reason that as more and more reliable blood typing tests (for exclusions) become available and are applied, certain positive inferences become attractive. The question is what does it really mean if: (1) the blood tests run on the alleged father would exclude, say, 95 percent of the general population as possible fathers of the "average" child, and this alleged father is not excluded; (2) the tests run on the mother and the child show that, say, 95 percent of the general population of men would be excluded as possible fathers, and the tests run on the alleged father show that he is not excluded; (3) the tests run on the alleged father, the mother, and the child show that *this* alleged father (given his genetic make-up and focusing on that part of the child's genetic make-up that must stem from its father because the mother could not have passed on what she does not have) is, say, 20 times more likely to have fathered the child than a man picked at random out of the general population?

It is quite obvious that some sort of positive inference can be drawn from such results. What is not so obvious, however, is how the weight of that inference might be properly or most appropriately expressed in a percentage statement of probability of paternity and communicated to the court. Not helping the situation, many physicians who are experts in blood typing confess to being insufficiently conversant with mathematics to work effectively with complex statistical formulae. (Worse, some do not "confess," do not understand, and do the work anyway). This being so, we can assume with confidence that the typical judge, lawyer, or jury (who have less reason to be conversant with the mathematics of statistics and probability) may never fully understand what is involved.

The courts will have to operate on faith. But whom or what to believe? Some calculations of "probability" that have been accepted by some courts abuse common sense. More often, the matter is not so clear. Worse, a drawn-out dispute among experts has not finally resolved what data base is to be employed, what conclusions may fairly be drawn, how these should be communicated to the court, and what weight they may be given there. An international group of experts will seek to settle these questions this year under the auspices of the American Association of Blood Banks, the ABA and the AMA, with the financial sponsorship of HHS's Office of Child Support. Their report will be an update to and extension of the AMA-ABA Guidelines on bloodtyping, which should help them gain new currency and influence.

CONCLUSION

The significance of the federal support enforcement legislation—above and beyond the welfare context—cannot be overemphasized. To date, this legislation represents the most important federal *legislative* venture into family law.

Of special importance are the provisions encouraging support enforcement for those not receiving welfare. These provisions alleviate the common lot of the abandoned mother who has sufficient productive capacity to keep herself and her children above the line of welfare eligibility, but whose earning capacity does not match that of the father. The typical father's earnings enable him to make a reasonable contribution to child support, but few earn enough to do that without some pain. Unless "encouraged," many fathers are unwilling to make their proper contributions which, although significant in terms of their children's needs, seldom are large enough to make it economical to involve lawyers in repeated enforcement proceedings.

On quite another level, the federal child support legislation ranks along with the judicial development of equal rights for the nonmarital child under federal constitutional law. Both developments represent significant breaks with the American tradition of federal abstention in the area of family law—previously the preserve of state sovereignty. In terms of results acheived, both developments must be welcomed, but some doubts may be raised as to the long-term implications for our federal-state structure. □

NOTES

A REVIEW OF THE CHILD SUPPORT ENFORCEMENT PROGRAM

I. INTRODUCTION

A specter is haunting American fathers who fail to support their children, the specter of the Child Support Enforcement Program. The program is a nationwide effort to increase the availability and improve the effectiveness of services for child support enforcement. As a precondition to obtaining support, the program has also undertaken the establishment of paternity in a massive volume of cases. Although created by congressional initiative, the program functions through a web of cooperative federalism extending from the Department of Health and Human Services, through state welfare and social service agencies, down to every county welfare department and local prosecutor's office. Its influence has become pervasive. Its effects have become controversial, both from a social policy and a legal perspective. This Note will attempt a survey of developments generated by this major federal initiative in the field of family law.

Part II of this Note examines the conditions leading up to adoption of the Child Support Enforcement Program. Part III briefly describes how the program operates. Part IV summarizes a number of criticisms and warnings which appeared in legal literature when the program was still in its infancy. Part V examines subsequent cases and administrative developments in light of those criticisms and warnings. Particular attention is paid to the privacy rights of welfare mothers required to cooperate with the program and to the

due process rights of indigent putative fathers who commonly become its targets. Part VI, the conclusion, describes emerging challenges and suggests additional elements for inclusion in the cost-benefit analysis of the program.

II. Background

A. *The Impetus: The Welfare Explosion of 1965-1975*

Beginning in the mid 1960's the percentage of children dependent on the Aid to Families with Dependent Children (AFDC) program exploded. In 1950 thirty-four children out of every thousand were supported by AFDC. By 1960 the proportion had hardly changed, rising to only thirty-five per thousand. By 1965, however, in the midst of an era of relative national prosperity, the proportion had risen to forty-five per thousand. By 1970 it had zoomed to eighty-seven per thousand. By 1975, the year in which the Child Support Enforcement Program went into effect, one-hundred twenty-two out of every thousand children were supported by the AFDC program.[1] The absolute numbers of AFDC recipients and the costs of the program had correspondingly skyrocketed.

The reasons for the 1965-1975 "welfare explosion" were and are hotly debated. Presidential adviser, later Senator, Daniel P. Moynihan ascribed it primarily to a breakdown of the black family and focused on rising rates of illegitimacy.[2] Frances Fox Piven and Richard Cloward in their influential study of public welfare policy, *Regulating the Poor*, ascribed the explosion to a massive change in the attitudes of poor people. People who had always been eligible for public assistance but nad never sought it were no longer ashamed to come forward and demand their "welfare

[1] Staff of Senate Comm. on Finance, 96th Cong., 1st Sess., Staff Data and Materials on Child Support 53 (Comm. Print 1979) [hereinafter cited as Staff Data].

[2] U.S. Dep't of Labor, The Negro Family: The Case for National Action (1965).

rights."[3]

This shift in attitude was reflected in calculations indicating that in 1966 more than one-third of female-headed households which would have been eligible for AFDC upon application were not receiving it. By 1971 only ten percent of such potentially eligible households were not actually receiving AFDC benefits.[4] Adherents of this view of the welfare explosion saw it not as a catastrophe to taxpayers but as a positive development in the War on Poverty, promoting a more equitable distribution of wealth.

The general public was not so pleased by the explosion of the welfare rolls and was more inclined to ascribe it to shirking of responsibilities by the parents of the children on AFDC.[5] Statistics supportive of this view were not wanting.

Families become categorically eligible for AFDC when one parent is dead, incapacitated, or absent from the home. Absent from the home means divorced, separated, deserted, or never married. The proportion of the AFDC caseload eligible because of the death or incapacity of a parent has consistently declined while the proportion eligible because of the absence of one parent from the home has consistently risen. In 1961, 66.7 percent of the AFDC caseload was eligible due to the parental absence factor; in 1969, 75.4 percent was so eligible. In 1973 the corresponding figure had risen to 83 percent.[6] AFDC families must also meet financial eligibility criteria. It is therefore implicit in the above data that in 83 percent of families on AFDC in 1973 one parent was absent from the home *and* failing to provide financial support to his children in an amount adequate to prevent their dependency on public welfare.

One element of the absent from the home category drew particular attention. According to the analysis of the

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[3] F. PIVEN & R. CLOWARD, REGULATING THE POOR (1971).

[4] Doolittle, Levy & Wiseman, *The Mirage of Welfare Reform*, THE PUBLIC INTEREST, Spring 1977, at 66.

[5] *See, e.g.*, W. RYAN, BLAMING THE VICTIM (1971).

[6] STAFF DATA, *supra* note 1, at 4.

Senate Finance Committee staff:

> The largest single factor accounting for the increase in the AFDC rolls, related to those families in which the father never married the mother. In 1961, in 21.3 percent of the families receiving AFDC the mother was not married to the father. This grew to 27.9 percent by 1969. The proportion of children whose parents were never married increased from 22.6 percent in 1970 to 33.8 percent in 1977.[7]

The Child Support Enforcement Program may be viewed as the reaction of a reluctant welfare state to the growing imposition of dependency represented by these trends.

B. *Early Efforts to Stem the Tide*

Even before the welfare explosion, Congress had made some efforts to curb problems associated with illegitimacy and nonsupport. In 1949 legislation was proposed to make desertion a federal crime and require welfare workers to inform law enforcement officials of any cases in which aid was required because of desertion or abandonment. The criminal provision was dropped. The reporting requirement became law in 1950.[8] It had virtually no impact other than to set in motion a procession of forms from welfare departments to prosecutors' offices.[9] No funds were provided for any enforcement staff. Few prosecutors had the resources to keep up with the enormous volume of notices generated by AFDC applications.

In 1968 Congress amended the Social Security Act to require states to set up their own paternity and child support programs with fifty percent federal financing. Provision was also made for state access to federal information sources in seeking to locate missing parents.[10] HEW, by its own admission, did not give the implementation of these

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[7] *Id.*

[8] Social Security Act Amendments of 1950, ch. 809, § 321 (b), 64 Stat. 549 (codified as amended at 42 U.S.C. § 602(a)(11) (1976)).

[9] 1 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 5 (1976).

[10] Social Security Act Amendments of 1967, Pub. L. No. 90-248, 81 Stat. 886 (codified at 42 U.S.C. § 602(a)(17) (1976)).

amendments high priority. The states generally were unable or unwilling to come up with adequate matching funds to establish effective programs.[11]

Those states which did attempt to establish paternity and enforce support on behalf of their AFDC recipients found that they were unable to require cooperation. Because Congress had not amended the Social Security Act to [illegible] cooperation an AFDC eligibility requirement, the federal courts consistently struck down state cooperation requirements as attempts to restrict AFDC eligibility more [illegible] than the Act allowed.[12] Finally, in 1972 a General [illegible]ing Office study found that many absent parents of [illegible] recipient children were not paying support, although financially able, because of lax enforcement efforts by the states and HEW.[13]

C. *Beginning of the IV-D Program*

With the experience of these ineffective precedents and in light of the continuing AFDC caseload explosion, both houses of Congress on December 20, 1974 amended the Social Security Act, adding Title IV Part D—Child Support and Establishment of Paternity. President Ford signed the legislation into law on January 4, 1975 with July 1, 1975 set as the effective date.[14]

The 1974 Amendment resulted in the current Child Support Enforcement Program. It differed from the 1967 Amendment both in holding out a larger carrot to the states and in giving the Secretary of HEW a bigger stick with

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[11] 1 Office of Child Support Enforcement Ann. Rep. 5 (1976).

[12] *See* Doe v. Swank, 332 F. Supp. 61 (N.D. Ill. 1971), *summarily aff'd sub nom.* Weaver v. Doe, 404 U.S. 987 (1971); Meyers v. Juras, 327 F. Supp. 759 (D. Or. 1971), *summarily aff'd*, 404 U.S. 803 (1971); Taylor v. Martin, 330 F. Supp. 85 (N.D. Cal. 1971), *summarily aff'd sub nom.* Carleson v. Taylor, 404 U.S. 950 (1971).

[13] U.S. General Accounting Office, Collection of Child Support Under the Program of Aid to Families with Dependent Children (1972).

[14] Act of Jan. 4, 1975, Pub. L. No. 93-647, 88 Stat. 2337 (codified as amended at scattered sections of 42 U.S.C.).

which to hit them in the event they failed to act. Federal funding for child support enforcement and paternity establishment efforts was made available to cover 75 percent of the costs. The Secretary was empowered to audit state program operations and withhold five percent of the AFDC funds otherwise payable if the state's efforts failed to meet minimum standards. Federal technical assistance was also made available to the states and a Federal Parent Locator Service was established.

Most significantly for AFDC recipients, the Social Security Act was explicitly amended to require their assignment of support rights and cooperation in establishing paternity and securing support.[15] As originally enacted, Title IV Part D included no provision whereby an AFDC recipient could be excused from the duty to cooperate.

The effective date of the program was later postponed to August 1, 1975 and a provision was added whereby an AFDC recipient could be exempted from the duty of cooperation if the state determined that establishing paternity and securing support would not be in the best interest of the child.[16] HEW was directed to adopt standards defining such circumstances. As initially defined, those circumstances were limited to cases involving forcible rape, incest, and pending adoption.[17] AFDC recipients who refused to cooperate for other reasons were faced with the choice of yielding to the will of the state or forfeiting their own portion of the welfare grant. The stage was set for a collision of interests.

III. Program Operation

Since the beginning of the Child Support Enforcement Program, applicants for AFDC have been obliged to assign

[15] 42 U.S.C. § 602(a)(26) (1976).
[16] Act of Aug. 9, 1975, Pub. L. No. 94-88, 89 Stat. 433 (codified at 42 U.S.C. § 602(a)(26)(B) (1976)).
[17] 45 C.F.R. § 303.5(b) (1976).

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[18] 42 U.S.C. § 602(a)(26)
[19] 42 U.S.C. § 602(a)(26)
[20] *Id.*
[21] *Id.* § 654(4)-(5).
[22] *Id.* § 654(5).
[23] *Id.* § 657(b).
[24] *Id.* § 657(c)(1) (1976 &

their rights to child support to the state.[18] Additionally, adult applicants for AFDC are required to cooperate in establishing paternity and securing support.[19] Cooperation may be excused in exceptional circumstances. Otherwise, in the event of the applicant's refusal to cooperate she may either withdraw her application or her children may receive benefits, excluding any funds for her own needs, issued through a "protective payee," such as a grandparent or friend of the family.[20]

Once the assignment of support rights to the state has been made, and assuming cooperation by the recipient, Child Support Enforcement Program staff will work to: locate the noncustodial parent if his whereabouts are unknown, establish paternity if the paternal support obligation is unclear, establish an appropriate support order if there is none in effect, enforce the support order if it is not being paid, and monitor the performance of paying support obligors to ensure continued compliance with the order.[21]

Pursuant to the AFDC recipient's assignment, any support which is paid, whether voluntarily or as a result of enforcement efforts, is paid to the state.[22] The state retains as much of the current monthly support as is required to reimburse the state and federal government for the AFDC paid the recipient that month. Any excess in the current monthly support is then forwarded to the AFDC recipient.[23] When a stable pattern of monthly support payments in excess of the AFDC benefit has been established, the AFDC is discontinued. The assignment is then cancelled. The entirety of the, hopefully still forthcoming, support payments are then made directly available to the former AFDC recipient.[24]

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[18] 42 U.S.C. § 602(a)(26)(A) (1976).
[19] 42 U.S.C. § 602(a)(26)(B) (1976).
[20] *Id.*
[21] *Id.* § 654(4)-(5).
[22] *Id.* § 654(5).
[23] *Id.* § 657(b).
[24] *Id.* § 657(c)(1) (1976 & Supp. III 1979).

The program also provides services to custodial parents whose families are not on AFDC. A small initial fee is generally charged and minimal processing costs are deducted from the collected support before disbursement to the custodial parent.[25] This aspect of the program was intended to serve a deterrent effect. A family might never have to resort to AFDC if a steady flow of child support could be assured.[26] This non-AFDC component of the program has generated few complaints from those who use it. Indeed, complaints that have arisen have come from custodial parents who wanted to use the service but were unable because of their state's preoccupation with pursuing the fathers of children already on AFDC.[27]

These operations, both AFDC and non-AFDC related, have yielded some undeniably impressive results. From the beginning of fiscal year (FY) 1976 through FY 1980, a total of $5,415,194,214.00 in child support has been processed through the system.[28] During the same period, program efforts have resulted in the establishment of paternity in 464,750 cases;[29] and 1,693,118 "missing" noncustodial parents have been located.[30] In FY 1980 alone, federal, state, and local governments retained $593,192,982.00 of the support paid for children on AFDC as reimbursement for the

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[25] 42 U.S.C. § 654(6) (1976).

[26] [1974] U.S. CODE CONG. & AD. NEWS 8153.

[27] *See, e.g.*, New Jersey v. Department of Health and Human Services, No's 80-2809, 81-1400, 81-1445, 81-2147, 81-2240 (3rd Cir. Dec. 23, 1981) (available March 16, 1982, on LEXIS, Genfed Library, Cir. file).

[28] 5 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 56 (1980).

[29] 1 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 133 (1976); OFFICE OF CHILD SUPPORT ENFORCEMENT, SUPPLEMENTAL REPORT 155 (1977); 2 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 107 (1977); 3 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 107 (1978); 4 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 113 (1979); 5 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 86 (1980).

[30] 1 OFFICE OF CHILD SUPPORT ENFORCEMENT 133 (1976); OFFICE OF CHILD SUPPORT ENFORCEMENT, SUPPLEMENTAL REPORTS 154 (1977); 2 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 106 (1977); 3 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 106 (1978); 4 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 112 (1979); 5 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 85 (1980).

amount of welfare expended on those children.[31] There is small wonder that U.S. News and World Report has hailed the program as "saving taxpayers hundreds of millions of dollars a year."[32]

IV. Early Critics

From its inception the program has had critics as well as boosters. In 1976 a number of notes and articles appeared in law journals describing the then new Child Support Enforcement Program and focusing on constitutional ramifications of its mandatory provisions.

One observer noted that the requirement that the recipient assign her rights to child support to the state might be viewed as denial of a property right without due process.[33] It was also contended that the sanction for noncooperation, deletion of any funds for the uncooperative adult applicant, would in actual effect reduce the amount available to the child, thus denying that child equal protection with other AFDC supported children because of an irrelevant factor beyond his control.[34] Just what constituted "cooperation" was found to be so poorly defined as to leave local welfare departments with little guidance and unwarranted discretion in determining who should be sanctioned.[35]

HEW's regulation limiting the good cause circum-

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[31] 5 Office of Child Support Enforcement Ann. Rep. 65, 66, 67 (1980).

[32] U.S. News and World Report, Feb. 12, 1979, at 50.

[33] Note, *Civil Liberties Versus Governmental Interest: A Constitutional Context For The Impact Of Title IV-D Of The Social Security Act On Ohio Families In The Aid To Families With Dependent Children Program*, 5 Cap. U.L. Rev. 245, 257 (1976) [hereinafter cited as *Civil Liberties*].

[34] *Id.* at 257-58. *See also* Note, *The 1974 Child Support Provisions: Constitutional Ramifications*, 6 Cap. U.L. Rev. 275, 292 (1976) [hereinafter cited as *Constitutional Ramifications*]; Note, *Federal Law And The Enforcement Of Child Support Orders: A Critical Look At Subchapter IV Part D Of The Social Services Amendments of 1974*, 6 N.Y.U. Rev. L. & Soc. Change 23, 30 (1976) [hereinafter cited as *A Critical Look*].

[35] *Constitutional Ramifications*, *supra* note 34, at 293. *Civil Liberties*, *supra* note 33, at 254-55.

stances for exemption from the cooperation requirement was criticized as creating both overinclusive and underinclusive class distinctions. The class of recipients to be exempted from cooperation was underinclusive in that one could readily postulate other legitimate circumstances in which cooperation would not be in the best interest of the child. The class to be sanctioned was for the same reason overinclusive.[36] Requiring an unmarried AFDC recipient to name the putative father of her children was also viewed as creating self-incrimination problems in states still maintaining criminal laws against adultery and fornication.[37]

One analysis focused upon the problems of invasion of family privacy.[38] Not only was the AFDC recipient's personal privacy violated by requiring her to, in effect, reveal the identity of her sex partners, her right to privacy as head of her family and her right to privacy in making family related decisions on behalf of her children was also threatened.[39]

HEW's limitation of good cause circumstances for exemption to forcible rape, incest, and adoption excluded many factors which the AFDC recipient as head of her family might take into account in deciding whether to cooperate.[40] If the recipient were unmarried, she might fear that her cooperation in pursuing paternity would so alienate the putative father as to dash hopes of future marriage. She might fear that a putative father who provided at least intermittent financial and emotional support to herself and her child would sever those ties. Although the state might assess the worth of the putative father's ties only in terms

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[36] *Constitutional Ramifications*, *supra* note 34, at 290-91.

[37] *Id.* at 288. *Civil Liberties*, *supra* note 33, at 254-55. *See* Grant v. State, 83 Wis. 2d 77, 264 N.W.2d 587 (1978).

[38] Poulin, *Illegitimacy And Family Privacy: A Note On Maternal Cooperation In Paternity Suits*, 70 N.W. U.L. REV. 910 (1976).

[39] *Id.* at 922-24.

[40] *Id.*; *see also* discussion of the drawbacks to cooperation in *Civil Liberties*, *supra* note 33, at 262-63 and *Constitutional Ramifications*, *supra* note 34, at 287-88.

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[42] Note, *Child Support: E
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§§ 651-60 (Supp. V, 1975)*, 52
supra note 34, at 34-35.

of his potential support contributions, the AFDC recipient might be more concerned about preserving a functioning emotional relationship between her children and the putative father.

Alternatively, the putative father might be of such character that, regardless of his support potential, the AFDC recipient would not wish him to have any legal or psychological ties to her children. If the putative father were a criminal, for instance, the AFDC recipient might prefer to shield the child from knowledge of his father's identity. Cases were also posited in which the putative father would react violently towards the AFDC recipient and her child because of the recipient's cooperation in bringing a paternity or nonsupport suit against him.

The author of the article focusing on the privacy and integrity of the family concluded the mother, not the state, should have the ultimate say in deciding whether establishing paternity and securing support would be in the best interest of her children. She argued that cooperation should be voluntary and that such a revision would have little impact on the effectiveness of the program.[41]

The 1976 articles also noted that invasion of the putative father's privacy rights might be involved in the operation of the Federal Parent Locator Service with its provision for information sharing between federal agencies on persons not accused of any crime.[42] A 1978 article dealing directly with the impact of the Child Support Enforcement Program on putative fathers noted that under pressure to name someone as the father of her child an AFDC recipient

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[41] Poulin, *supra* note 38, at 930-32. Poulin takes the position that compelling cooperation emasculates the cultural characteristics of groups especially dependent on welfare and infringes respect for cultural pluralism. However, her argument that little harm would be done by making cooperation voluntary draws on experience in the homogenous society of Norway.

[42] Note, *Child Support Enforcement And Establishment Of Paternity As Tools Of Welfare Reform—Social Services Amendments of 1974, pt. B, 42 U.S.C. §§ 651-60 (Supp. V, 1975)*, 52 WASH. L. REV. 169, 184 (1976); *A Critical Look*, *supra* note 34, at 34-35.

might name an innocent man in order to protect the true father and avoid alienating him. In such circumstances it was noted that the defendant would be up against all the legal resources of the state, with a possibility of prejudice against him because of the strong state interest in securing support to offset its welfare costs. Greater reliance on advanced blood testing techniques was suggested as a means of preventing the railroading of innocent men in the state's rush to garner maximum support payments.[43]

The overall tone of the early notes and articles was critical. They tended to portray the nascent Child Support Enforcement Program as a repressive measure aimed at providing relief to the taxpayer at the expense of the civil liberties of welfare recipients.

V. Cases and Program Developments

In the time the Child Support Enforcement Program has been operative, since August 1, 1975, not all of the issues raised by these earlier observers have been litigated or otherwise resolved. Two developments are, however, traceable. First, the AFDC recipient's duty to cooperate has been clarified and the circumstances under which she may legitimately decline to cooperate have been expanded. While in a sense a victory for AFDC recipients, the limited expansion of circumstances under which noncooperation may be excused can also be viewed as "stealing the thunder" of critics who predicted oppressive consequences from making cooperation mandatory. Having become more reasonable, the mandate may also have become invulnerable to charges that it violates privacy rights. Second, there has emerged a recognition that the increased state involvment and strong state interest in the outcome of paternity and support en-

[43] Note, *Requiring An AFDC Applicant To Name Her Child's Father: Are The Rights Of The Putative Fathers Being Protected*, 23 S.D.L. Rev. 379 (1979) (hereinafter cited as *Putative Fathers*). For a view of how the program was working in one state after nearly three years of operation, *see* McClelland & Eby, *Child Support Enforcement: The New Mexico Experience*, 9 N.M.L. Rev. 25 (1978).

forcement cases makes the provision of counsel and blood testing services to indigent defendants in such actions a matter of due process.

A. *The Good Cause Exemption*

1. A Long Search for Standards

As amended on August 1, 1975, Title IV Part D of the Social Security Act provided that every state's plan for AFDC administration must include the requirement that, as a condition of eligibility, recipients must cooperate in establishing paternity and securing support:

> unless (in either case) such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency *in accordance with standards prescribed by the Secretary*, which standards shall take into consideration the best interests of the child on whose behalf aid is claimed . . .[44]

Problems arose for AFDC recipients and AFDC administrators alike in that the Secretary did not prescribe those standards in final form until October 3, 1978, to be effective December 4, 1978,[45] more than three years after they had become a practical necessity.

The effects of the Secretary's delay were mirrored in a number of cases. In *Coe v. Mathews*,[46] the National Welfare Rights Organization, five AFDC recipients from various parts of the country, and the State of Alaska banded together to seek resolution of the predicament caused by the Secretary's failure to prescribe standards for exemption. They sought an order in the nature of mandamus requiring the Secretary to issue standards within twenty days. Alternatively, they sought declaratory and injunctive relief suspending enforcement of the mandatory cooperation requirement until such time as the standards for exemption were issued.

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[44] 42 U.S.C. § 602(a)(26)(B) (1976) (emphasis added).
[45] 43 Fed. Reg. 45,742 (1978) (codified at 45 C.F.R. § 232.40 to .49 (1980)).
[46] 426 F. Supp. 774 (D.D.C. 1976).

At the time of the litigation, the only circumstances officially recognized by HEW as excusing noncooperation were instances of forcible rape, incest, and pending adoption. HEW's recognition of those circumstances did not, however, constitute a full prescription of standards of good cause for noncooperation.

The court noted that the acting Secretary of HEW had issued a notice of proposed rulemaking on the exemption standards on August 6, 1976, and held that this action rendered the mandamus request moot.[47] The court further held that the mandatory cooperation requirement was in effect as of August 1, 1975, even though the exemption provision could not be effective until HEW promulgated its standards in final form.[48] The court based its decision on what it found to be the congressional intent that cooperation be made mandatory as of August 1, 1975, manifested on that very date, which was also the date that the good cause exemption provision was added. Clearly, Congress must have foreseen that there would be an hiatus between the effective date of the requirement and HEW's implementation of the exception standards.

The court's conclusion that Congress had expected some hiatus between the effective date of the requirement and the implementation of the exception appears evident. But, one wonders if either Congress or the court, in finding the mandamus request moot, foresaw just how long that hiatus would be. While it continued, AFDC recipients remained subject to a requirement to which there was an explicit exception, the extent of which no one could determine. State welfare officials remained charged with enforcing a requirement on persons whom they might later discover were properly exempt.

The legal tangle caused by the absence of HEW standards also served to sidetrack what otherwise would have

[47] *Id.* at 776-77.
[48] *Id.* at 778-79.

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[49] 365 F. Supp. 65 (D. C
[50] *Id.* at 84-86.

likely been a decisive Supreme Court review of the constitutionality of the cooperation requirement.

Doe v. Norton[49] was originally decided by the U.S. District Court for the District of Connecticut in 1973, prior to the Child Support Enforcement Program legislation. It represented a challenge to a Connecticut statute which obliged all unwed mothers, whether or not on AFDC, to reveal the name of the putative father and cooperate in a paternity action. The applicable sanction for noncooperation was not AFDC ineligibility but a civil contempt citation. The statute was nevertheless challenged as being contrary to the Social Security Act in that it was considered likely to result in the incarceration of AFDC recipients, denying children dependent on AFDC the companionship and guidance of their mothers. The provision was also claimed to violate plaintiff's right of privacy and to represent a discriminatory classification based on illegitimacy. Denial of due process was also asserted based on the state's failure to provide for a case-by-case determination of whether the mother's refusal to cooperate in establishing paternity was in the best interest of her child.

In the original decision of the district court each of plaintiff's constitutional arguments, particularly those relating to privacy, was carefully considered and rejected. In a concurring opinion, Judge Newman referred to special privacy rights incident to the unwed mother's role as head of her family. Her right to privacy in making family decisions, such as whether to shield her child from knowledge of incestuous parentage, might, according to Judge Newman, override the state interest in particular situations.[50]

On appeal to the Supreme Court in 1975, the decision was vacated and remanded for reconsideration in light of the intervening passage of the Child Support Enforcement

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[49] 365 F. Supp. 65 (D. Conn. 1973).
[50] *Id.* at 84-86.

Program Amendment to the Social Security Act.[51] The Amendment required cooperation as a condition of eligibility but without such sanctions as would flow from application of the Connecticut statute.

On remand in 1976, the district court held that the Child Support Amendment did not preempt the state law but that the good cause for noncooperation exception provided in the new legislation would have to be applied before any state contempt proceedings would be appropriate.[52]

The state then appealed claiming, as Alaska had in *Coe*, that since the good cause exception could not be implemented until the Secretary of HEW adopted standards, the state could not enforce cooperation until those standards were promulgated.

The Supreme Court in 1977 again vacated and remanded for the district court to consider whether Connecticut could make its own good cause determination in the absence of HEW regulations defining good cause standards.[53] No further action was reported. Thus the Supreme Court never ruled on the constitutional issues, particularly the privacy question, so well presented in the original decision of the district court.

In *Harer v. Commonwealth*[54] and *Martella v. Commonwealth*,[55] the Commonwealth Court of Pennsylvania answered in the negative the question which the Supreme Court had presented to the Connecticut district court on remand. In the absence of HEW regulations implementing the good cause exception, it was held that the state could not adopt and enforce its own good cause standards. In *Harer* the court held the state could impose no sanction for noncooperation in the absence of HEW regulations. In *Martella* it was held that the state was similarly precluded

[51] *Sub nom.* Roe v. Norton, 442 U.S. 391 (1975).
[52] *Sub nom.* Doe v. Maher, 414 F. Supp. 1368 (1976).
[53] Maher v. Doe, 432 U.S. 52t (1977).
[54] ___ Pa. Commw. Ct. ___, 375 A.2d 865 (1977).
[55] ___ Pa. Commw. Ct. ___, 375 A.2d 869 (1977).

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[56] 31 Or. App. 631, 571 P.2d
[57] 35 Or. App. 493, 582 P.2d
[58] 43 Fed. Reg. 2170 (1978).
[59] *Id.* at 45,742-52.
[60] *Id.* at 45,743.

from applying sanctions when the AFDC recipient refused to assign her rights to support. However, in *Hansen v. McKay*[56] and *Gibson v. Johnson*,[57] the Court of Appeals of Oregon held that the good cause exception applied only to the requirement of cooperation in establishing paternity and securing support. It did not apply to the requirement that AFDC recipients assign their support rights to the state. Thus, in Oregon the state could impose the sanction for failure to execute an assignment even in the absence of HEW regulations defining the good cause standard.

HEW finally published the final form of its good cause regulations on January 16, 1978, to be effective March 17, 1978.[58] However, these regulations were subject to a comment period. When these regulations were superseded by regulations published on October 3, 1978, to be effective December 4, 1978,[59] the supplementary information included in the publication gave some insight into the balancing problems which had caused so much delay. HEW had been required to strike a balance between client interest groups, psychiatric professional associations, and children's rights groups on the one hand and welfare officials and district attorneys on the other.

The client and child advocate groups and the psychiatric professional associations were supportive of the original regulations which had included the prevention of emotional harm to either mother or child as a legitimate reason for noncooperation. The welfare administrators and district attorneys criticized that provision as creating a loophole which would permit unjustified noncooperation and impose administrative burdens.[60] In its final regulations published October 3, 1978, HEW attempted to balance these concerns by retaining the exception for circumstances which would

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[56] 31 Or. App. 631, 571 P.2d 166 (1977).
[57] 35 Or. App. 493, 582 P.2d 452 (1978).
[58] 43 Fed. Reg. 2170 (1978).
[59] *Id.* at 45,742-52.
[60] *Id.* at 45,743.

cause emotional harm to the child and also maintaining the exception where cooperation would cause emotional harm to the mother, but, in her case, only where such harm would be "of such nature or degree that it reduces such person's capacity to care for the child adequately."[61] HEW further added a section to the regulations defining "emotional harm." It specified, "A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning."[62]

Besides qualified exceptions where physical or emotional harm was reasonably anticipated to befall the child or caretaker relative in the event of cooperation, the final regulations continued the provision for excusing noncooperation where the child was conceived as the result of incest or forcible rape, where legal proceedings for the adoption of the child were pending, or where the mother was currently being assisted by a competent agency to determine whether or not to surrender the child for adoption.[63]

Client interest groups and welfare administrators also differed over a provision in the original regulations which had appeared to place upon the welfare agency the burden of documenting the noncooperating recipient's case for a good cause exemption.[64] In the final regulations published October 3, 1978, it was specified that the burden of providing all necessary documentation for a good cause exemption was on the AFDC recipient seeking such exemption, but that the welfare agency would advise her as to how she might obtain such documentation and make requests on her behalf in limited circumstances where the recipient could not reasonably be expected to obtain the documentation on her own.[65]

[61] 45 C.F.R. § 232.42(a)(1)(iv) (1980).
[62] *Id.* § 232.42(b).
[63] *Id.* § 232.42(a)(2).
[64] 43 Fed. Reg. 45,745 (1978).
[65] 45 C.F.R. § 232.43(e) (1980).

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[66] 45 C.F.R. § 232.43
[67] 43 Fed. Reg. 45,74
[68] Vasquez v. Brezen
(available March 18, 1982
[69] *Id.* at n3.
[70] *Id.* at n4.

The final regulations also permitted a finding of good cause based on reasonable anticipation of physical harm without any documentation in the event that an investigation indicated the credibility of claims of past beatings and such findings were approved by supervisory personnel.[66] Although every other sort of claim had to be documented, an exception was made in this case on behalf of battered women who, it was reported, often concealed their beatings out of shame and thus never established any police or other documentary record to substantiate the basis of their fears.[67]

2. *Application of the Standards*

The application of the cooperation requirement, as modified by the final regulations defining good cause for exemption, was challenged in *Vasquez v. Brezenoff*.[68] There, AFDC recipients sought an injuction forbidding welfare administrators from invoking the sanction for noncooperation where recipients denied knowledge of facts concerning the missing or putative father. Welfare administrators were invoking the sanction when they considered the recipient's denial of knowledge to be less than credible.

The court held defendant welfare administrators were entitled to summary judgment dismissing plaintiff's claim that the administrators were flatly barred from making credibility determinations.[69] However, the court did not dismiss plaintiff's claim in its entirety because it noted that part of the claim could be read as an assertion that administrators were making their credibility determinations in an irrational and arbitrary way.[70] The court noted, "A showing that defendants were using the cooperation requirement in a manner which detracted from the statutory purpose of

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[66] 45 C.F.R. § 232.43(f) (1980).

[67] 43 Fed. Reg. 45,745 (1978).

[68] Vasquez v. Brezenoff, No. 80 Civ. 0045 (PNL) (S.D.N.Y. April 9, 1981) (available March 18, 1982, on LEXIS, Genfed Library, Dist. file).

[69] *Id.* at n3.

[70] *Id.* at n4.

finding and obtaining support from the absent parent might establish the invalidity of defendants' policy."[71] In other words, the cooperation requirement could not be used as a vehicle for harassing recipients off the welfare roles. The court deferred decision on class action certification noting that review of results from administrative hearings indicated the state hearing officers were generally siding with recipients whose credibility had been questioned by local officials.[72]

No other cases have yet been reported challenging the cooperation requirement and the application of the good cause standards which became effective December 4, 1978. It appears that future challenges to the cooperation requirement will be shunted off into the realm of administrative hearings. The judicial review would likely present a narrow issue of whether one of the exception provisions applied. It also seems likely that any case in which cooperation would pose a truly serious harm to the child or AFDC recipient caretaker would be settled to the recipient's satisfaction in the administrative process. Such a result should follow under the current regulations unless the documentation standard required in most cases by the HEW regulations proves impractical. The practicality of this standard would also present a narrow issue on review.

In short it now appears unlikely that the courts will be faced with the full-blown confrontation between state interest and family privacy which appeared so likely when the cooperation requirement was adopted. The regulations do not provide an exception where the AFDC recipient wishes not to cooperate so as to avoid alienating the putative father. However, if the recipient can make out a case that such alienation can be "reasonably anticipated" to result in "serious emotional harm" to her child or such emotional harm to herself as to "reduce her capacity to care for the child adequately," she can gain an exemption. If the recipi-

[71] *Id.* at n5.
[72] *Id.* at n6.

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ent fails to make out such a case in the administrative process, a judge on review may well be inclined to view the claimed potential deprivation as inconsequential when balanced against the state interest. The HEW regulations, though long in coming, have done their job well. They have stolen the thunder of critics of the cooperation requirement and rendered a judicial invalidation most unlikely.

3. Administration of the Standards

The Office of Child Support Enforcement first began reporting the number of cases in which the custodial parent refused to cooperate and the number of cases in which good cause was found for such noncooperation in its Third Annual Report to the Congress for the Period Ending September 30, 1978. The statistics reported therein and in the fourth and fifth annual reports indicate that inadequate attention may be being paid to consistency in application of the exemption at the administrative hearing level.

A number of jurisdictions have consistently failed to report statistics relevant to refusals to cooperate or findings of good cause. Hawaii, Iowa, Maine, Massachusetts, New York, Puerto Rico, and Washington have never reported these figures.[73] Other states have reported in some years but not in others or have reported only partial or inconsistent data. Oklahoma for example reports only thirty-seven refusals to cooperate in fiscal year 1980 but forty-two findings of good cause.[74]

Where the reports are adequate to allow comparison, significant variations appear. In Utah 100% of the recipients refusing to cooperate in FY 1980 were found to have

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[73] 3 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 113 (1978); 4 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 119 (1979); 5 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 90 (1980).

[74] This may represent a carryover of refusals from 1979 on which there was no good cause determination until 1980. However, the report does not clarify the seeming inconsistency, 5 OFFICE OF CHILD SUPPORT ENFORCEMENT ANN. REP. 90 (1980).

good cause and were exempted.[75] In the District of Columbia only 1% of the recipients refusing to cooperate in FY 1980 were found to have good cause and were exempted.[76] In Tennessee 69% of recipients refusing to cooperate were exempted in FY 1980.[77] In North Carolina only 4% of recipients refusing to cooperate were exempted in that period.[78] The standards for granting an exemption as contained in the Code of Federal Regulations[79] are applicable to every state. Yet the magnitude of these variations suggest that, in practice, significantly different standards are being applied in different jurisdictions.

Responsibility for administering the good cause exemption is vested in the Office of Family Assistance (OFA) within the Department of Health and Human Services rather than the Office of Child Support Enforcement.[80] The OFA has stated that significant variations will be looked into but noted that none of the regional offices have reported any gross inconsistencies in application of the exemption.[81] However, reliance by the central office of OFA on regional office perceptions leaves the central office blind to interregional variations. OFA also reports that reviews are conducted of state good cause determinations by regional office staff on an "as needed" basis, but review findings are not routinely reported to the central office.[82] Finally, OFA reports that it does not compile or disseminate to the states any digest or reporting service concerning administrative and judicial interpretations of the good cause

[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] 45 C.F.R. § 232.42 to .43 (1980).
[80] Letter from Fred Schutzman, Deputy Director, Office of Child Support Enforcement, Dep't of Health and Human Services, to the author (Dec. 28, 1981) [hereinafter cited as Schutzman Letter].
[81] Letter from Linda S. McMahon, Associate Commissioner for Family Assistance, Dep't of Health and Human Services, to the author (Mar. 1, 1982).
[82] *Id.*

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[83] *Id.*
[84] *Putative Fathers, supr*
[85] 101 S. Ct. 2202 (1981)
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standard.[83]

In the absence of coordination by the OFA, a body of possibly inconsistent administrative rulings applying a uniform standard is developing in each state. Advocates for AFDC recipients declining to cooperate should be aware of these variations. The central office of OFA should penetrate the vacuum in which each state's hearing officers are now working by more closely monitoring state administrative good cause determinations and disseminating reports of decisions which OFA would endorse as precedent.

B. Due Process For Putative Fathers

1. Provision of Blood Group Testing

The only early comment on the Child Support Enforcement Program which focused exclusively on the problems raised for defendant putative fathers concluded the best safeguard for such men would be wider use of exclusionary blood group tests.[84] Recently, the Supreme Court appeared to hold such tests must be provided to indigent defendants at state expense when the accusing mother is assisted by the power of the prosecutor.

In *Little v. Streater*,[85] an unmarried mother named an incarcerated man as the father of her child, pursuant to her obligation as a recipient of AFDC. Defendant obtained the assistance of a legal aid attorney and moved for an order requiring mother and her child to undergo blood tests. He claimed he could not pay the costs and asked the court to order the state to pay.[86] The Connecticut trial court authorized tests but refused to provide them at state expense. Consequently, no tests were made, defendant was found to be the father, and a judgment and support order were en-

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[83] *Id.*

[84] *Putative Fathers*, *supra* note 43, at 402.

[85] 101 S. Ct. 2202 (1981).

[86] As an inmate of a state prison, defendant had weekly income and expenses of $5.00. He had no assets. *Id.* at 2204 n.3.

tered against him.[87] The Appellate Session of the Connecticut Superior Court affirmed, holding there had been no denial of due process or equal protection. The Connecticut Supreme Court denied certiorari and defendant appealed to the U.S. Supreme Court.

Chief Justice Burger, writing for a unanimous Court, applied the three-pronged *Mathews v. Eldridge*[88] test to determine whether due process required provision of the tests at state expense. First, the private interest affected was held to be substantial:

> Apart from the putative father's pecuniary interest in avoiding a substantial support obligation and liberty interest threatened by the possible sanction for non-compliance, at issue is the creation of a parent-child relationship. . . . Just as the termination of such bonds demands procedural fairness, . . . so too does their imposition. . . . Obviously, both the child and the defendant in a paternity action have a compelling interest in the accuracy of such a determination.[89]

Second, the risk that the procedures used would lead to erroneous results was large and the value of the suggested procedural safeguard was great. Connecticut law provided that the mother made out a prima facie case merely by persistently claiming that the accused was the father. Defendant then had the burden of showing his innocence. Further, even if defendant's testimony was found to be the more credible by the trier of fact, it was not adequate to overcome the mother's prima facie case.[90] The Chief Justice further noted the strong social pressures which often color testimony in paternity cases.[91] In contrast a properly administered battery of blood tests offered defendant a means of scientifically and conclusively disproving his paternity.[92]

[87] The Child Support Enforcement Program gained an order that defendant pay $2.00 per month child support to the state, $1.00 as arrearage on a judgment of $6,974.48 and $1.00 on a current monthly award of $163.58. *Id.* at 2205.

[88] 424 U.S. 319 (1976).

[89] 101 S. Ct. at 2209.

[90] *Id.* at 2207-08.

[91] *Id.* at 2206-07.

[92] *Id.* at 2209.

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[94] *Id.* at 2210.

[95] *Id.*

Finally, the governmental interest would not be substantially impaired by provision of the blood test safeguard. The state has a legitimate interest in securing child support to offset welfare costs. However, this is not an interest in indiscriminately fixing paternity and support obligations. It is an interest in securing "an accurate and just determination of paternity."[93] The state interest in avoiding the expense of blood group testing is slight since the Child Support Enforcement Program provides the federal government will pick up 75% of the costs of such tests.[94]

Application of the *Eldridge* test thus led to the conclusion:

> Without aid in obtaining blood test evidence in a paternity case, an indigent defendant, who faces the State as an adversary when the child is a recipient of public assistance and who must overcome the evidentiary burden Connecticut imposes, lacks "a meaningful opportunity to be heard." . . . Therefore, "the requirement of 'fundamental fairness'" expressed by the Due Process Clause was not satisfied here.[95]

The judgment of the Appellate Session of the Connecticut Superior Court was therefore reversed.

Although the Court paid particular attention to the unusual evidentiary burden imposed by Connecticut, it seems the decision would be the same for jurisdictions lacking such a provison. Neither the substantial private interest at stake nor the relative insignificance of the state interest in avoiding testing costs would be affected. The great value of blood tests in disproving paternity would be undiminished, and the need for them would be little less given the inherently high risks of erroneous results in paternity cases.

Before *Little*, a number of state courts had held that due process and equal protection require provision of blood tests at state expense for indigent paternity defendants, especially when confronting accusers supported by the Child

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[93] *Id.*
[94] *Id.* at 2210.
[95] *Id.*

Support Enforcement Program.[96] After *Little*, provision of this element of due process appears guaranteed. The right to counsel provided at state expense is not presently so clear.

2. *Right To Counsel*

A previous *Journal of Family Law* Note focused on the recognition that due process requires appointment of counsel for indigent defendants in paternity proceedings, at least where the state appears as a party or appears on behalf of the mother or child.[97] The main case enunciating that requirement was *Salas v. Cortez*.[98]

Salas was clearly a product of the Child Support Enforcement Program. The decision takes explicit note of the changed nature of the paternity proceedings brought about by the 1974 Child Support Amendment to the Social Security Act[99] and draws heavily on this changed nature in formulating the rationale of its holding. Thus, while the Child Support Enforcement Program has and will continue to exert great pressure on putative fathers, it has also served to heighten awareness of the need for procedural safeguards on behalf of indigent defendants in paternity actions.

Because the Child Support Enforcement Program is a pervasive national force, changing the nature of the paternity proceeding in every state no less than in California,[100] it may well serve to enhance the persuasive force of the holding in *Salas*. The very volume of paternity actions

[96] *See, e.g.*, Franklin v. District Court, 194 Colo. 189, 571 P.2d 1072 (1977); Commonwealth v. Possehl, 355 Mass. 575, 246 N.E.2d [illegible] (1969); Walker v. Stokes, 45 Ohio App. 2d 275, 344 N.E.2d 159 (1975); State *ex rel.* Graves v. Daugherty, 266 S.E.2d 142 (W. Va. 1980).

[97] Note, *The Right To Appointed Counsel In Paternity Actions*, 19 J. FAM. L. 497 (1981).

[98] 24 Cal. 3d 22, 593 P.2d 226, 154 Cal. Rptr. 529 (1979).

[99] *Id.* at 29-30, 593 P.2d at 231, 154 Cal. Rptr. at 534-35.

[100] Concerning the quasi-criminal nature of paternity actions and due process problems arising from failure to recognize the full implications of such a proceeding for the defendant, see Note, *The Nature of Paternity Actions*, 19 J. FAM. L. 475 (1981).

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[101] 524 F. Supp. 242 (
[102] *Id.* at 246.
[103] *Id.* at 243.
[104] 101 S. Ct. 2153 (19
[105] *Id.* at 2160.

against indigents produced by the Child Support Enforcement Program must, it seems, hasten the day when appointment of counsel for indigent defendants in paternity proceedings is recognized as standard due process nationwide.

One recent decision appears to deal this growing recognition a setback. In *Nordgren v. Mitchell*,[101] indigent state prison inmates sought a declaratory judgment in federal district court ordering the state to furnish them with counsel. The inmates were defendants in paternity actions brought by the state pursuant to the Child Support Enforcement Program. The court granted summary judgment to defendant state officials.[102]

The court distinguished *Salas* and similar state court decisions, viewing them as based on state constitutional guarantees of due process which were broader than those contained in the federal Constitution.[103] Since plaintiffs here relied exclusively on the federal Constitution, the court looked instead to the Supreme Court decisions in *Little* and *Lassiter v. Department of Social Services*.[104]

In *Lassiter*, the Court refused to establish a rule that all indigent parents faced with a proceeding to terminate parental rights were entitled to counsel. The determination of whether appointment of counsel was required to assure due process was to be made by the trial court in light of the circumstances of each case and subject to appellate review.[105]

The *Nordgren* court noted that *Lassiter* added another step to the *Mathews v. Eldridge* test applied in *Little*. After all other factors had been balanced, the *Lassiter* decision held their "net weight" had to be further balanced against the "presumption that an indigent litigant has a

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[101] 524 F. Supp. 242 (D. Utah 1981).
[102] *Id.* at 246.
[103] *Id.* at 243.
[104] 101 S. Ct. 2153 (1981).
[105] *Id.* at 2160.

right to appointed counsel only when, if he loses, he may be deprived of his physical liberty."[106] The court stated, "Many paternity actions do not involve complicated legal or evidentiary problems."[107] Further, the court noted that defendants were assured by state statute of the benefit of blood group tests to be paid for by the state.[108]

In light of these factors, *Lassiter* was found to be controlling. The court would not make a prospective rule that counsel be appointed. Plaintiffs were left with the possibility of making an appeal at the conclusion of the paternity proceedings.[109]

Clearly, the *Nordgren* decision cannot be viewed as the last word. It represents a response to the posture of plaintiffs' claim rather than to their substantive arguments. It overlooks the quasi-criminal nature of paternity proceedings and the "liberty interest threatened by the possible sanction for noncompliance"[110] [with a support order] which was explicitly recognized in *Little*. It assumes that a "simple" paternity case can be safely tried without defense counsel, when, in fact, only by providing such counsel can latent complexities and proper defense strategies be properly identified. Worst of all, it condones the creation of a parent-child relationship subject to almost certain appeal. The psychological welfare of the child will not be served by quickly and cheaply establishing such a fundamental relationship only to have it torn asunder on review. The best interest of the child as well as the due process rights of the indigent putative father require a full measure of fairness at the initial paternity determination.

VI. Conclusion

The chances of key provisions of the Child Support

[106] 524 F. Supp. at 244.
[107] *Id.* at 245.
[108] *Id.*
[109] *Id.*
[110] 101 S. Ct. at 2209.

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[115] *Id.*

Enforcement Program being invalidated on constitutional grounds now appear remote. The standards for good cause exemption from the cooperation requirement should, if properly administered, prevent any case from reaching the courts where the privacy interest of the mother outweighs the allied interests of the child and the state in establishing paternity and securing support. Any case which reaches the courts with the interests of mother and child allied against the state will indicate something amiss in the administrative process. The inconsistency among the states in the proportion of applicants refusing to cooperate who receive good cause exemptions may indicate that something is indeed amiss in the application of the uniform standard for exemption.[111] However, this raises curable administrative rather than fatal constitutional problems.

The Supreme Court decision in *Little v. Streater* and the tendency of state court decisions such as *Salas v. Cortez* indicate that the point of maximum danger for indigent putative fathers may have passed. As war compels advances in technology, so the government's war on nonpaying fathers has compelled advances in our definition of due process.

Fear must remain, however, that the due process decisions of higher courts will have inadequate influence on actual practice. The deputy prosecutor as child support collection agent is subject to role conflicts and temptations which may result in abuses of power at the local level.[112] The question of how to provide counsel to a large volume of indigent paternity defendants remains unclear as the Reagan administration moves to dismantle the Legal Services Organization,[113] the ABA points to the impracticality of lawyers absorbing all indigent work pro bono,[114] and the Of-

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[111] *See* appendix to this Note.

[112] *See* Lee, *District Attorney Collection of Child Support: The Need for Reform*, 55 CAL. ST. B.J. 156 (1980).

[113] Editorial Opinion & Comment, 68 A.B.A.J. 236 (1982).

[114] *Id.*

fice of Child Support Enforcement (OCSE) stoutly resists charging the costs of defense counsel to the program[115] (although as previously noted, reimbursement is available to the states for 75% of the costs of providing blood tests).

The resistance of OCSE to charging the costs of defense counsel to the Child Support Enforcement Program might be seen as an effort to preserve a favorable cost-benefit ratio. An assessment of the program in the journal of American Public Welfare Association has praised its cost effectiveness, noting that the program nationwide brings in $3.27 for every dollar it expends in administrative costs.[116]

This measure is deficient in two respects. First, it gives the Child Support Enforcement Program credit for bringing in all of the support collections which are funneled through the system. In fact, a significant percentage of the support money paid in would have been paid whether or not the program existed. Prior to the program, support payments on behalf of children on AFDC were less than they might have been but they were not non-existent. Many fathers of AFDC children did regularly make support payments. Because these payments were assigned to the state, they all now pass through the Child Support Enforcement Program accounting process and are treated as if generated by the enforcement efforts of the program. It would be more accurate to rely on the amount of increase realized in support

[115] Schutzman Letter, *supra* note 80. Mr. Schutzman states:

> The cost of providing legal representation to indigent paternity defendants is not included in IV-D program expenditures. It is our firm policy that the Federal government should not pay both the costs of prosecuting and defending a paternity suit. Payment of defendants' legal fees has never been considered by OCSE to be an expenditure for the *establishment* of paternity.
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> We recognize that a few States require as a matter of due process that indigent paternity defendants be entitled to court-appointed counsel. . . . Payment of fees, however, must be borne by the State or local jurisdiction and not by the IV-D agency (emphasis in original).

[116] Schossler, *An Assessment of IV-D's First Four Years*, PUB. WELFARE, Fall 1979, at 22. However, a companion article, Cassetty, *Program Conflicts and Human Considerations*, *id.* at 33, was critical of the program. Neither article represented the official view of the American Public Welfare Association.

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The present favorable cost-benefit ratio may also be seriously impaired if, following *Little*, many more indigent defendants begin to insist on blood tests, particularly the highly accurate though expensive HLA test.[117] Adding the cost of defense counsel to mushrooming blood testing expenses while at the same time trimming the number of collections credited to program efforts could conceivably result in an unfavorable cost-benefit ratio. Yet, such an accounting system seems the best way to gain a true picture of the costs of the program. The price of due process should not be externalized.

In the view of this author, the program should not be scuttled even if a marginally unfavorable cost-benefit ratio were to emerge. The program yields benefits which cannot be quantified. It reinforces socially essential attitudes toward parental responsibility. It counters a casual attitude toward imposing dependency on the state. Even the most socialistic societies must elicit from their citizens an irreduceable minimum of self-responsibility. Requiring a father, in so far as possible, to help support his offspring and requiring a mother, except in extraordinary circumstances,

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[117] The Deputy Director of the Office of Child Support Enforcement recently wrote: "OCSE generally endorses the use of serologic testing to increase the accuracy of paternity determination. . . . We anticipate that serologic testing will be used more extensively as State legislatures and courts recognize the value of inclusionary blood test reports for the determination of paternity." Schutzman Letter, *supra* note 80. Mr. Schutzman further stated OCSE was unaware of any study estimating the total cost of providing legal representation and/or serologic testing to indigent paternity defendants in Child Support Enforcement Program related suits. *Id.* A footnote in Little v. Streater refers to a 1977 study by the Office of Child Support Enforcement which found an average cost of $245.00 for a battery of tests leading to a minimum exclusion rate of 80%. The costs for the tests successfully sought by the putative father in *Little* had risen to $460.00 by the time of the decision. 101 S. Ct. at 2210 n.10. This cost for blood testing alone contrasts sharply with the meager $2.00 per month the putative father was ordered to pay by the trial court. 101 S. Ct. at 2205.

to cooperate in obtaining support is not repression; it is the self-defense of society.[118]

STEVEN M. FLEECE

Appendix
Administration of The Good Cause Exceptions to Requirement of Cooperation in Establishing Paternity And Obtaining Support.

	Average AFDC Caseload FY1980[1]	Number Of AFDC Cases In Which Custodial Parent Refused To Cooperate[2]	Number Of Refusals As Percent Of Avg. Caseload	Number Of Cases In Which Good Cause Found[3]	Number Of Cases In Which Good Cause Was Found As Percent Of Number of Refusals
Alabama	76,512	1,500	1.96%	157	10%
Alaska	14,818	20	13%	5	25%

[118] For a more comprehensive review of the Child Support Enforcement Program, *see* H. KRAUSE, CHILD SUPPORT IN AMERICA: THE LEGAL PERSPECTIVE (1981), reviewed elsewhere in this issue. *See also* Krause, *Child Support Enforcement: Legislative Tasks for the Early 1980s*, 15 FAM. L.Q. 349 (1982).

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Alabama	76,512	1,500	1.96%	157	10%
Alaska	14,818	20	.13%	5	25%
Arizona	3,917	315	8.00%	*	*
Arkansas	42,295	20	.05%	16	80%
California	850,077	673	.08%	249	37%
Colorado	59,950	69	.11%	23	33%
Connecticut	30,821	*	*	*	*
Delaware	9,527	1,449	15.00%	*	*
Dist. of Columbia	47,236	1,843	.04%	18	1%
Florida	176,612	*	*	46	*
Georgia	108,152	*	*	0	*
Guam	1,614	4	.00%	3	75%
Hawaii	23,005	*	*	*	*
Idaho	15,947	30	.00%	6	20%
Illinois	153,215	14,945	.10%	*	*
Indiana	107,057	63	.00%	20	32%
Iowa	42,744	*	*	*	*
Kansas	81,772	325	.00%	21	6%
Kentucky	117,465	209	.00%	65	31%
Louisiana	56,906	150	.00%	*	*
Maine	21,519	*	*	*	*
Maryland	113,671	298	.00%	22	7%

		*	*	*	*	*	*	*	*
Massachusetts	48,558	*	*	*	*	*	*	*	8%
Michigan	303,776	3,135	.01%	258	258	0	0	0	11%
Minnesota	61,655	2,554	.04%	274	274	0	0	0	28%
Mississippi	12,037	35	.00%	10	10	0	0	0	2%
Missouri	88,404	5,259	.06%	112	112	0	0	0	37%
Montana	19,515	186	.01%	66	66	0	0	0	104%
Nebraska	13,593	24	.00%	25	25	0	0	0	312%
Nevada	11,720	16	.00%	50	50	0	0	0	*
New Hampshire	4,190	*	*	*	*	*	*	*	*
New Jersey	213,516	1,174	.00%	111	111	0	0	0	9%
New Mexico	56,334	*	*	*	*	*	*	*	*
New York	484,944	*	*	*	*	*	*	*	*
North Carolina	83,286	772	.01%	31	31	0	0	0	4%
North Dakota	9,727	221	.02%	54	54	0	0	0	24%
Ohio	241,947	295	.00%	152	152	0	0	0	51%
Oklahoma	34,795	37	.00%	42	42	0	0	0	113%
Oregon	15,593	135	.01%	*	*	*	*	*	*
Pennsylvania	110,432	2,810	.02%	228	228	0	0	0	8%
Puerto Rico	42,149	*	*	*	*	*	*	*	*
Rhode Island	15,644	0	.00%	0	0	0	0	0	*
South Carolina	16,614	561	.03%	43	43	0	0	0	8%
South Dakota	19,468	25	.00%	5	5	0	0	0	20%
Tennessee	95,914	303	.00%	208	208	0	0	0	67%
Texas	120,481	86	.00%	62	62	0	0	0	72%
Utah	27,587	41	.00%	41	41	0	0	0	100%
Vermont	8,721	*	*	21	21	0	0	0	*
Virgin Islands	1,589	1	.00%	0	0	0	0	0	0%
Virginia	61,281	922	.02%	49	49	0	0	0	5%
Washington	62,106	*	*	*	*	*	*	*	*
West Virginia	40,596	379	.01%	282	282	0	0	0	74%
Wisconsin	110,112	192	.00%	61	61	0	0	0	32%
Wyoming	8,623	44	.02%	1	1	0	0	0	2%

*Information not reported or could not be compiled

NINE MONTH
AND THE PRE

I.

Female prisoners
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of a serious nature.[3] T
the number of females

Presently the size
the allocation of mone
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lack of financial supp
block, and as an excu
The feeling among pri
not afford programs f
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This attitude refl
trends in prisons toc
aimed at women as p
men.[6] In particular, fe

[1] In 1973 less than 6000
prisons were women. Note, *Th*
LJ. 1229, 1231 (1973).

[2] The ratio of men's arre
dropped to 6:1. Price, *The For*
102 (1977).

[3] Fabian, *Toward the Be*
Working!, 6 New Eng. J. Pris

[4] Note, *Women's Prisons:*
210, 219.

[5] *Id.* at 219 n.68.

[6] Note, *Female Offenders*

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A REVIEW OF SOME PROPOSED MEASURES FOR THE IMPROVEMENT OF CHILD SUPPORT DELIVERY

by Lynn Nakamoto, Charlotte Owens-Wise and Laurie Woods

(This article is the conclusion of "Child Support—A National Disgrace" which appeared in the September issue of this newsletter)

RECENT FEDERAL PROPOSALS

During 1983 several bills concerned with various aspects of child support have been submitted for Congressional consideration: The Child Support Tax Act S 1398 (Sen. Wallop); HR 1014 (Rep. Biaggi), to create a National Commission on improved child support; Child Support Enforcement Amendments of 1983, HR 3546 (Rep. Conable); The Economic Equity Act, (HR 2090 and S 888) and related bills in the house such as the Child Support Enforcement Improvement Act, HR 2374 (Rep. Kennelly) and HR 2411 (Rep. Schroeder); The National Child Support Enforcement Act, HR 3354 (Rep. Roukema); and the Child Support Enforcement Act of 1983, HR 3545 (Rep. Campbell).

HR 1014 would create a bipartisan national commission to study ways of improving federal and state efforts to enforce support obligations. The commission would study the factors currently impeding effective support enforcement; it would examine the feasibility of establishing a nationally applicable formula for assessing the amount of child support to be ordered; and would consider the feasibility of a federal wage-deduction system. (Several states have recently established such commissions.)[1]

The Kennelly initiative and Title V of the proposed Economic Equity Act contain several provisions relating to child support: The bills propose that each state must 1) have a clearinghouse through which payments are made and forwarded; 2) provide for mandatory wage withholding of past-due support; 3) provide for state withholding of state tax refunds; 4) develop administrative procedures for determining paternity and establishing and collecting child support; 5) seek medical support for children; and 6) impose property liens. States must also establish three of the following: 1) The requirement of security from absent parents with a pattern of past-due support; 2) a procedure to continue paternity determination even if alleged father refuses to participate; 3) voluntary wage assignments; 4) the use of new, highly accurate paternity tests; and 5) an objective standard measuring the amount of support needed and the ability of the absent parent to pay. The principle behind this standard for determining support amounts is disadvantageous to the custodial parent, as will be explained later. The bill would also clarify Congress' intent to secure child support enforcement for non-AFDC cases as well as AFDC cases.

The Child Support Tax Act (S 1398), introduced by Senator Wallop, would replace the present support collection efforts with a new system of child support benefits payable on behalf of all children with legally liable absent parents and a child support tax payable by absent parents and collected through a procedure similar to the income tax withholding system. The new child support tax would provide that a pre-determined percentage of the income of the absent parent be paid for child support. This amount, adjusted for the number of children to be supported, would be assessed against the supporter's wages. Under the Wallop bill, any child with one or more absent parents liable for his or her support would be able to apply for a child support benefit from the federal government. This benefit would be paid only up to the amount of tax collected from the absent parent.[2] Such a system

(Cont'd on p. 2)

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[1] E.g. New York, Temporary Commission to Recodify the Family Court Act and California's Commission on Child Support Development and Enforcement. 9 FLR, May 17, 1983.

[2] A similar proposal is suggested by Prof. Judith Cassetty in *Child Support and Public Policy: Securing Support from Absent Fathers*.

A REVIEW OF SOME PROPOSED MEASURES FOR THE IMPROVEMENT OF CHILD SUPPORT DELIVERY

(Cont'd from p. 1)

would eliminate the inequities and uncertainties existing under the present system of case by case determination of child support.

HR 3354 (Roukema) requires all states to impose automatic mandatory wage withholding, without waiting for a delinquency to occur. The provisions in the other bills require withholding only after default. However, the bill does not provide for collection from non-wage earners.

HR 3546 (Conable) is the Administration's bill. It would require states to implement mandatory wage withholding laws (either immediately as the support order becomes effective or automatically with the accumulation of two months' arrearages), to put in place quasi-judicial or administrative procedures for establishing support, and direct states with a state income tax to develop a refund intercept for past due support. There is no authority for a federal income tax intercept in this bill. Finally, the bill would create a system of incentives which would be distributed in the form of bonuses to reward states for collecting support from both non-AFDC and AFDC families. A $200 million fund would be established through the reduction of the federal payment of administrative costs from 70% to 60%, and by instituting two fees for enforcement services. In addition to providing financial incentives, HR 3546 would also encourage states to focus their energies on improving collection rates by creating a graduated penalty scale instead of the current 5% fixed penalty provision to punish those states which are lax in their collection efforts.

HR 3545 (Campbell) contains provisions on state wage withholding after default, state *and* federal income tax refund intercept, and property liens. It proposes another four-part incentive plan for federal reimbursement to the states. The bill requires states to report outstanding past due support obligations to consumer credit agencies. Absent parents would have to pay arrearages to clear their credit rating.

The Kennelly, Campbell, and Conable proposals provide grants to states to computerize their systems. However, only Rep. Kennelly's bill requires the establishment of state clearinghouses to monitor payments and automatically trigger enforcement mechanisms.

HR 2411 and Title V of the Economic Equity Act would create automatic assignment of federal civilian employee's wages when child support is ordered, modified or enforced by states.

Of the bills mentioned above, only Senator Wallop's bill seeks fundamental reforms, and even his bill may not provide the best answers to the problems of child support. The other bills would merely increase federal direction of state efforts, but would leave enforcement to the 50 states with their widely varying interpretations of their responsibilities. It is important that we address the child support problem on a national basis. Fundamental changes in our approach are needed if we are to achieve a fair and enforceable child support system that will protect the rights and well-being of America's children.

There are many other new and innovative proposals for dealing with the problem of child support currently being discussed by policy makers. These include the proposal for proportionate income sharing rather than the present system of cost sharing as the basis for apportioning child support, cost of living adjustments in child support awards, and a floating federal wage garnishment or withholding system.

AUTOMATIC COST OF LIVING ADJUSTMENT SHOULD BE ENACTED

The introduction of automatic cost-of-living increases (COLA's or "escalation clauses") in child support awards would protect these awards from the erosive effects of inflation. It has also been suggested that there should be automatic increases in the awards as the children get older to meet the increased costs of raising older children. Without such automatic escalation clauses, the burden for securing modification of support awards rests with the recipient parent (usually the mother) who must return to court on behalf of the child and petition for modification based on "changed circumstances." A claim of "changed circumstances" should put her in a favorable position for winning modification, but some courts have held that inflation alone is not sufficient evidence for claiming "changed circumstances." The present modification process involves many other difficulties for the recipient mother. Many such mothers lack funds to pay for legal expenses, cannot lose time from work to go to court, or find the emotional costs of returning to court too severe. Some mothers justifiably fear retaliation by the non-custodial parent if they initiate upward modification proceedings. Ironical as it may seem, such retaliation has taken the form of

IN THIS ISSUE

withholding child support or requesting custody not because it was really wanted but solely as a weapon to force the mother to lower her financial demands. The custodial mother is thus left with two equally unsatisfactory alternatives. Either she must absorb the impact of the deteriorating purchasing power of the initial award, or she must incur substantial delays, distress and legal expenses with the attendant risk of loss of custody. A cost of living escalation clause would not infringe upon either parent's right to petition for modification on a showing of "changed circumstances." However, in cases of "unchanged circumstances" (based on inflation) it would shift to the paying parent the burden of proving inability to pay cost of living increases when these are due rather than having it the responsibility of the custodial parent to initiate legal action to secure cost of living increases.

Since modification proceedings and automatic escalation clauses seek the same result, i.e., increasing child support to conform with the growing needs of children, the adoption of automatic escalation clauses as the means to that end would promote judicial economy, eliminate the need to incur additional legal expenses, and would result in more timely increases.

Similar cost-of-living increases in labor contracts, leases, and other private sector agreements are considered an efficient means of mitigating the effects of inflation and assuring economic stability to the parties concerned. Automatic escalation clauses in child support orders would help to assure economic stability to women and children by objectively and realistically measuring and responding to their ongoing and increasing needs.

NEW STANDARDS FOR SETTING AWARDS NEEDED

The standards that are in use for the amount of support to be awarded are, at present, unfavorable to custodial mothers because they are based on the minimal amount on which they and their children can subsist. Almost all courts employ some kind of cost-sharing system which attempts to compute the minimum costs of rearing the particular children in question and allocates these costs between the parents.

Most courts use a simple cost-division system, basing awards on information supplied by parents about the net earnings of each parent.[4] The judge usually uses this information to calculate a figure said to represent a reasonable share of child support expenses for the particular father to pay, considering the father's salary. But unofficially, many judges adopt a "cap" on child support amounts, above which they almost never go.[5]

In some jurisdictions tables have been adopted setting specific award amounts based on a limited percentage of the father's income and the "cost." Although unstated, such a system necessarily assigns a fixed cost to the care of the child or children and does not deal with the amount of money that will actually be needed since that sum is not known at the time the award is fixed. The burden is then placed on the mother to supply the difference between the estimated and actual costs. This unfair financial burden on the mother is omitted from the award question as it is currently figured. This present system does, however, provide predictable awards and this predictability decreases the need for litigation.

There is no universally acceptable standard for establishing the cost of rearing a child. The cost of child rearing cannot be determined except by reference to the economic status of the parents. The setting of a more uniform formula for the cost of child rearing might eliminate gross discrepancies among cases, but for the measures stated above would not be equitable as between custodial mothers and fathers. A more equitable system in this regard would be the application of an income-sharing or equalization principle, which would seek to equalize the financial burden so that each family member would experience roughly the same proportional change in living standards.[6]

For further information on child support and child support enforcement, including the legislation discussed above, please request NCOWFL's Child Support Resource List which lists materials on the subject available from NCOWFL and other resource organizations. ■

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[4] Cassetty, Emerging Issues in Child Support Policy and Practice *The Parental Child-Support Obligation*, Research, Practice & Policy 3, 1983

[5] Weitzman, The Economics of Divorce: Social and Economic Consequences of Property, Alimony, and Child Support Awards, 28 *U.C.L.A. Law Review*; Yee, What Really Happens in Child Support Cases: An Empirical Study of the Establishment and Enforcement of Child Support Orders in the Denver District Courts, 57 *Denver L.J.* 21 (1979) at p. 6

[6] Hunter, N., Child Support Law & Policy: The Systematic Imposition of Costs on Women, *Harvard Women's Law Journal Vol. 6 No. 1, 1983 pp 9-13, reviewed in The Women's Advocate* Vol. IV No. 3, July 1983, p. 1

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Editor: Ellen Max

SHENANDOAH WOMEN'S CENTER AND WEST VIRGINIA LEGAL SERVICES PLAN, INC. WIN A SIGNIFICANT VICTORY

by William T. Wertman, Jr., Managing Attorney
West Virginia Legal Services Plan, Inc.

An intense legal battle involving the Shenandoah Women's Center (SWC), in Martinsburg, West Virginia, is nearing an end as a result of a federal judge's dismissal on July 6, 1983, of the $10,000,000.00 lawsuit against the Center. The problems which led to the abbreviated suit began when the SWC, a shelter and counseling center for abused spouses, sheltered a woman and her two children in October 1982, after she had been abused by her husband.

Gene Bennett, the husband, a prominent local realtor, discovered that his wife was being sheltered at the SWC. Thereafter, according to SWC affidavits, he repeatedly phoned the Center, sometimes monopolizing incoming phone lines; he trespassed on SWC property; and he threatened the lives of Center workers and volunteers.

A disturbing incident occurred when Mr. Bennett first called the Center. A new volunteer worker, who later was named as a defendant in the case, answered Bennett's call. He threatened to come to the SWC with a shotgun to kill her and then kill himself. This bizarre dialogue lasted for nearly an hour.

According to the volunteer, shortly afterward, Bennett called again. After the volunteer had successfully arranged to include a Mental Health Center representative in the conversation, Bennett fired two shots, leaving the impression that he had committed suicide. A police officer went to the scene and found that Bennett had not shot himself. This incident provided the setting for the ensuing lawsuit.

In the meantime Mrs. Bennett obtained a protective order under the West Virginia Prevention of Domestic Violence Act, yet Mr. Bennett persisted in harassing her. His actions resulted in at least two criminal warrants being brought against him and his wife twice charged him with violation of the Prevention of Domestic Violence Act Order.

The staff was afraid that Mr. Bennett might become violent and his activites were notably hampering their ability to function. The Center therefore contacted the West Virginia Legal Services Plan, which sought an injunction on their behalf against Gene Bennett. When the local Circuit Court refused to hear the action, the injunction was presented to the West Virginia Supreme Court of Appeals which granted it, enjoining Bennett from harassing the Center, its employees, volunteers, and clients, and from otherwise impeding the Center's efforts to offer and provide services to those in needs of its services. That injunction remains in effect.

While the Center was pursuing the injunction, Gene Bennett initiated his lawsuit against the SWC, three of its employees, and one of its volunteers; the County Board of Education and one of its employees; the City Police Department and three of its officers; as well as the United Way and the State of West Virginia, seeking $10,000,000.00 against each defendant. The focuses of his complaint were his claims that the defendants had discriminated against him on the basis of his sex and had conspired to deprive him of his right to associate freely with his wife and children. His claims also included pendent state claims of false arrest, malicious prosecution, assault and battery, negligence, defamation of character, intentional infliction of emotional distress, and harassment.

The Center sought to strike the complaint on the basis that Bennett's claims were flagrantly impertinent, scandalous and false. They also moved to dismiss the case *in toto* based on the Court's lack of jurisdiction and the plaintiff's failure to state a constitutional claim.

Numerous motions followed, including a motion by Bennett's counsel to stay the proceeding or to disqualify myself and the West Virginia Legal Services Plan from representing the SWC. The motion was based on a complaint plaintiff's counsel had filed with the Legal Services Corporation, claiming that the SWC, as well as its employees and volunteers, were not eligible for Legal Services representation. The complaint failed to state any basis for this conclusion.

In the meantime, on behalf of the Center, we pursued efforts to obtain discovery from the plaintiff, some of which were resisted until plaintiff was compelled by the Court to provide the discovery requested.

The next major development involved an effort by Bennett's attorney to amend the complaint to include as other plaintiffs, Linda Miller, a woman who had been sheltered at the Center, and her husband, David Miller. We obtained the information which confirmed that Linda Miller had been abused repeatedly by her husband and was now being coerced by him to participate in the action.

Thereafter, Linda Miller apparently returned to her husband and informed him of her conversation with us. As a result, Bennett's attorney brought a Motion for Injunction and Admonition against myself and Dana Dales, a counselor at the Center, claiming we had threatened and coerced Linda Miller to prevent her from participating in the lawsuit. In the motion Bennett sought sanctions against Ms. Dales and

PLEASE SEND BACK THIS QUESTIONNAIRE ON POLICY SETTING FOR NCOWFL

Each year NCOWFL engages in a priority-setting process to determine what issues or areas of concern we will address. We are now beginning the priority setting process for 1984. We encourage your input into this process. Please complete the form below. Then fold the form below in thirds, staple it closed and stamp and mail it to us. We will tabulate the responses and the Board of Directors of NCOWFL will use the results in its decision making.

Name _____

Title (if any) _____

Program/Organization/Employer (if any) _____

Address _____ City _____

State _____ Zip _____

Telephone ( ) _____
area code number

Is your program funded by LSC? ☐ yes ☐ no

Are you eligible for Legal Services? ☐ yes ☐ no

What part of your overall caseload/program is family law issues?

___ Substantial ___ Moderate ___ Small

Please indicate and rate which family law issues you or your office are most active on. Give a #1 (one) to the issues in which the office maintains a heavy involvement; #2 (two) to those in which the involvement is moderate; and, a #3 (three) to those which arise occasionally.

_____ Adoption

_____ Battered Women Impact Litigation

_____ Battered Women Individual Advocacy

_____ Child Support/Enforcement

_____ Child Care

_____ Discrimination Against Single Mothers

_____ Displaced Homemakers, Alimony, Wife Support

_____ Divorce/Division of Property

_____ Illegitimacy/Paternity

_____ Intra Family Custody

_____ Names

_____ Pregnancy and Parental Rights in Employment

_____ Rape, Marital Rape, Incest

_____ Women in Prisons

_____ Other _____

Please list in priority order the issues which you believe NCOWFL should emphasize in the coming year.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

Please indicate and rate the ways in which NCOWFL can be most helpful to your program over the next year. Give a #1 (one) to the services which would be most beneficial, a #2 (two) to those moderately useful and a #3 (three) to those desirable, but only occasionally useful.

_____ Technical Assistance on Special Cases or Issues

_____ Substantial Support on Impact Litigation (co-counsel, amicus)

_____ Training Manuals

_____ Updates on Priority Issues

_____ Networking/Coalition Building

_____ Consultation on Legal Strategies

_____ Back-up/Consultation on Impact Litigation

_____ Training on Family Law Strategies

_____ Training Sessions on Family Law

_____ Issues Articles/Papers

_____ Other (please specify as your input is helpful)

_____

Do you have a family law specialist (s) in your organization? If yes, please give name and address _____

_____

Does your state have a family law task force coordinator? If so, please give name and address _____

_____

What other networks and coalitions active on family law issues are you tied into? _____

_____

What special conditions in the communities serviced by your office/project are making an impact on your work?

_____

→

including a monetary award of 000,000.00 and disqualification of myself from ...ner representating any of the defendants.

...rder to confirm to the Court's satisfaction that ...nda Miller was indeed an unwilling participant in ...orts to include her as a plaintiff, we deposed two ...ounselors of CASA, a counselling organization in ...agerstown, Md., which had also assisted Ms. Miller. They testified under oath that Linda Miller had informed them before contacting Ms. Dales or myself, that she had been beaten and was not a willing party to any legal action against the Center.

In the meantime Bennett attacked the SWC in the media. In June he held a press conference in which he accused the SWC of harassing him and of discriminating against him on the basis of his sex, and made various other extreme and false charges. Bennett noted at the press conference that the case might be pursued as a class action on behalf of men and "brainwashed women."

There being numerous motions pending before the Court, most of which had not been heard or ruled upon, the presiding Judge, Robert Maxwell of the U.S. District Court for the Northern District of W.Va., scheduled pending motions to dismiss for hearing on July 6th. On that date, he heard oral arguments of counsel for nearly three hours, after which time he ruled from the bench in favor of all defendants and orcered that the action be dismissed, referring to the insubstantial nature of Bennett's case.

With respect to the SWC and the defendants associated with it, the Court noted, *inter alia:* Bennett's wife apparently left him willingly and under a state court Prevention of Domestic Violence Act order to which a presumption of propriety attaches; since Bennett failed to allege any substantial constitutional claim, the court is without subject matter jurisdiction; Bennett failed to allege a link of defendants with state action and deprivation of his constitutional rights sufficient to allow him to proceed under 42 U.S.C. §1983; the fact that a minority percentage of the Center's funds comes from the state is insufficient alone to establish state action. Bennett's complaint is a collection of legal conclusions insufficient to establish a deprivation of any constitutional right; Bennett failed to allege that the Center refused him services or that he ever sought them; Bennett failed to allege the necessary elements of a conspiracy claim under 42 U.S.C. §1985, nor read in a light most favorable to Bennett can his complaint be read to allege conspiracy.

The Court then took up the matter of imposing sanctions, including attorney's fees, against litigants and their attorneys who act in bad faith. Judge Maxwell noted that prevailing defendants may be entitled to attorney's fees as well as costs and that this action may be an instance of abuse of civil process in which the court has a responsibility to impose sanctions.

The Court accordingly directed counsel for all defendants to submit a statement of their costs and attorney's fees, accompanied by a memorandum regarding the propriety of imposing sanctions against Bennett and his attorney. The Court closed by emphasizing that there is a "tremendous amount of frivolous and insubstantial litigation being filed" which is "choking the court system."

The SWC is seeking an order requiring Bennett to give security for costs and attorney's fees, which are calculated to be in excess of $15,000. The motion is necessary because Bennett has moved to Florida and has disposed of his locally owned property.

After the ruling of dismissal, Bennett's attorney moved for reconsideration of the ruling and (for the third time) for leave to file an amended complaint. That motion has been denied. Bennett's attorney also moved to withdraw as counsel; that motion has been denied.

Despite this significant victory, final resolution remains elusive, and the Center is working hard to rebound from the adverse impact of the litigation and the unwelcome publicity surrounding it, which has resulted in a drop in funding contributions.

Since dismissal of the case, Mr. Bennett has filed notice of his intent to appeal. The appeal was docketed by the Fourth Circuit Court of Appeals on August 17th. Mr. Bennett has contacted yet another attorney to represent him in the appeal.

Despite the Court's forceful ruling in favor of the defendants, Bennett shows little sign of conceding defeat. He has filed a complaint against the Center with the West Virginia Human Rights Commission based on alleged sex discrimination; he has called for an IRS investigation into the Center's nonprofit tax status; and he has reportedly stated his intention to write a book about the "Martinsburg conspiracy" against him.

Though none of these approaches is likely to succeed, the conflict is not yet over. It is hoped that the Center's success will be the subject of a future article in this newsletter. ■

The writer of this article wishes to thank the National Center on Women and Family Law and Ilene Klein, Esq., of Fairmont, West Virginia for their suggestions and encouragement during the course of the litigation. The pleadings are available from Clearinghouse, No. 35,035.

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BOOKS, PERIODICALS AND ARTICLES OF INTEREST TO WOMEN'S ADVOCATES

Law and Inequality: A Journal of Theory and Practice, Volume I, Number 1, June, 1983. University of Minnesota Law School, 229 19th Avenue South, Minneapolis, Minnesota 55455. Subscription Price: $6.00.

This new law journal to be published twice yearly by law students of the University of Minnesota has taken as its focus the subject of inequality as it is dealt with in legal theory and practice as well as its manifestations in the society at large. The editors felt that existing journalistic formats did not permit analyzing the subject in sufficient depth and scope and therefore have adopted a more broadly based approach which will add to legal writing experiential, literary and community based articles by lawyers and non-lawyers, scholars, organizers, and writers from a variety of disciplines.

Each issue of **Law & Inequality** will concentrate on a single aspect of the problem. Volume I, Number 1 is devoted to gender inequality and contains a thorough retrospective on the fight for E.R.A. with suggestions for future new directions for women's struggle for equality, an economic analysis of the earning gap between men and women which is attributed more to the exclusion of women from many male dominated occupations than to unequal pay within the same occupation, and analysis of abortion policy and law as it relates to forced sex.

The Parental Child-Support Obligation, Edited by Judith Cassetty. Published by Lexington Books, D.C. Heath and Company, Lexington, MA. 300 pp. Price: $28.95.

Twenty percent of all the children in the United States have absent parents from whom they are entitled to financial support.[1] Due to now widely recognized inequities, inefficiencies, and defaults in our current child support enforcement systems, many of these children will suffer economic hardship (often unnecessary) and/or impoverishment.

Judith Cassetty's **The Parental Child-Support Obligation** is one of the first comprehensive interdisciplinary efforts to identify the fundamental problems relating to child support, present a variety of views about them, and outline corrective remedies.

Some of the issues under scrutiny include the standards to be used for setting child support (cost-sharing or income-sharing); the liability for child support (parental obligation and the role of the public sector); undersupport; inequities in amounts set based on varying attitudes of local judges, district attorneys, and welfare officials; minimum standards and the danger that they will become the norm; the rights of a first family and a family of re-marriage; the development of normative standards and the setting of appropriate levels of support.

Of particular interest is the chapter devoted to a plan developed in Wisconsin by the Institute for Research on Poverty (under contract with the Wisconsin Department of Health and Human Services). This plan proposes a tax-withholding system through wage deductions by employers on the earnings of all parents under court orders of support. The Wisconsin proposal has the triple advantages of establishing parental responsibility, providing machinery for collecting parental support, and providing funds from the public sector in cases where parental collections are not sufficient to meet state standards for child support.

Responsibility for the administration of the child support withholding tax would be shifted from the courts to the Wisconsin Department of Health and Human Services (the State IV-D agency). Supplementation of income up to the minimum stipulated would come from general revenues that might otherwise have had to be spent on welfare. Thus the necessity to be on welfare would be avoided and a woman head-of-household, working even part-time, could have a higher income than she would receive on welfare where outside earnings are penalized. Although the Wisconsin plan has many positive features including adjustments to growth in the economy (GNP), it also contains arguable features which space forbids discussing here. All in all, the Wisconsin model, while not perfect, offers a good basis for further planning and action.

Another alternative to our present inadequate approach to child support is a proposal from Harold W. Watts, a widely experienced economist now at Columbia University, who puts forward a Child Support Insurance plan. He suggests that a commission be established to study the status of children in single-parent households and to set appropriate support levels for them consistent with prevailing standards in our society. These standards are to be periodically reviewed and updated. Where there is a shortfall between the prescribed standard

[1] Child Support and Alimony: 1978 (Advance Report), Bureau of Census, Table 1.

[2] The Parental Child Support Obligation, Judith Cassetty, p. 261.

(Cont'd. on p. 7)

[illegible] the amount actually received by the child, the child could collect insurance to cover 80% of the basic standard.

The plan also suggests changes in the income tax form so that it includes a listing of all minor children and information on how their support needs are met. There would be a schedule of penalty taxes and surtaxes for default of parental obligations, audited like other income tax information. Collections of defaulted obligations would go into the insurance fund which would be further supported from general revenues. Benefit payments would be taxable to the custodial parent.

Our present unsatisfactory voluntary system for providing for the many children in single parent households is plagued by serious problems of parental irresponsibility regarding support, gross inequities in payment amounts, inadequate enforcement of court orders of support, and unrealistically low support awards. *The Parental Child-Support Obligation* provides theory, statistical analysis and a variety of suggestions for solving many of these problems.

Your Children Should Know: Teach Your Children the Strategies That Will Keep Them Safe from Assault and Crime, by Flora Colao and Tamar Hosansky. Bobbs Merrill Co., Inc., 4300 West 62nd Street, P.O. Box 7083, Indianapolis, Indiana 46206, 265 pp. Price: $16.95.

This book is a guide to teaching personal safety to kids. It teaches parents how to talk with children about their personal safety. The authors show parents how to explain the situations in words children can understand. The book corrects the stereotypes that the perpetrator will always be a stranger, that the attempt will occur in an isolated place and that there will be overt violence. The authors teach the parents to encourage children to develop a sense of physical integrity and privacy, such as letting them say no to any unwanted physical affection, even a kiss from grandma. It is also an assertiveness training manual that empowers a child to pinpoint and avert manipulative behavior. Children learn how and when to say no to danger by practicing verbal exercises that equip them with ready responses designed to throw off a perpetrator. The authors are organizers of SAFE (Safety and Fitness Exchange), a New York City program which is a model children's awareness program. ■

BETTER POLICE TECHNIQUES FOR HANDLING BATTERY CALLS ARE BEING WON THROUGH LITIGATION AND NEGOTIATED EFFORTS

A VICTORY FOR BATTERED WOMEN IN DOE V. CITY OF BELLEVILLE

A settlement decree in *Doe v. Belleville* in favor of the women plaintiffs and on behalf of the class of women residents of East St. Louis, Illinois, has been approved by the United State District Court, Southern District of Illinois.

The plaintiffs had charged that the Belleville and East St. Louis Police Departments discriminated against women by not intervening or by responding with delay to domestic violence calls and by advising a "cooling off" period before making complaints. While not admitting to the allegations of the complaint, the defendants agreed that it was "in the public interest and in the interest of the orderly and effective administration of justice" that the police will immediately respond to requests for assistance from victims of domestic violence, that they will advise women that they can file a complaint without a waiting period and that police officers shall not refrain from making arrests based on the relationship of the victim and the accuser.

Nancy Molland of the Land of Lincoln Legal Assistance Foundation represented the women. The suit was filed two years ago after discussions with the defendants proved fruitless. Copies of the consent decree are available from Clearinghouse, Number 31,780.

IMPROVEMENTS IN POLICE PROCEDURES WON IN A COLORADO BATTERY SETTLEMENT

After the refusal by the police in a small Colorado city to arrest the batterer/husband of one of their clients, the Colorado Rural Legal Services, Inc. (CRLS) was successful in negotiating a new set of procedures with the Police Department of Alamosa which will result in better protection of the rights and safety of battered women. In addition, CRLS won a settlement of $5,000 to be paid by the city to their client.

The 16-point policy agreement with the Alamosa Police Department was negotiated by Alice Price of the CRLS Women's Law Project, with assistance from Pete Peters, an attorney formerly with CRLS. The agreement provides that there shall be no policy of "arrest avoidance"; that domestic violence shall be treated as a crime, not merely as a civil matter; that abusers shall be removed from the premises; that officers shall arrest if probable cause exists whether or not they saw the offense committed; and that officers shall assist victims to temporary out-of-home shelters.

Copies of this agreement are available from NCOWFL. ■

PRIORITY SETTING PROCESS: PLEASE HELP US IDENTIFY PRIORITIES

Each year the National Center on Women and Family Law redetermines our subtstantive and service priorities. Our priorities are based on what legal services staff, poor women, and attorneys and advocates for poor women indicate are your needs. Because of our limited funding we can't possibly meet all the substantive needs, nor can we provide all the services you require. Therefore we must identify the most needed areas and services and focus our attention on them. Our major source of information about your needs is your responses on our annual priority setting questionnaire. The priority setting questionnaire is enclosed in this newsletter. Please take the time to complete and return this form. Any additional thoughts or comments are welcome. ■

NEW PROJECT

The Child Care Law Center, a project of the San Francisco Lawyers' Committee for Urban Affairs, recently initiated the National Child Care Project.

The National Child Care Project will provide legal services, education and policy analysis to the national child care community. The Project will also stimulate *pro bono* attorney involvement in child care legal issues. This Project is funded through a two year grant from the Carnegie Corporation of New York.

Their address is the National Child Care Project, Child Care Law Center, 625 Market Street, Suite 815, San Francisco, CA 94105; (415) 495-5498.

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Thanks to Gender Politics, Federal Child Support Aid Is No Longer a Stepchild

The Reagan Administration is now asking that some of its proposed cuts in the program be restored; even so, states say they will get less federal money.

BY DAN FAGIN

Dity Margaret M. Heckler. As President Reagan's Health and Human Services Secretary since March, she must wrestle with the perhaps unresolvable financial crises of those HHS programs that seem almost cosmic in scope: programs such as medicare, social security and welfare.

It's no wonder then that Heckler has seized upon a relatively minor but highly visible issue, enforcement of child support payments, to make her mark upon the department. Helped by both the growing clout of women voters and the increasing awareness that the enforcement system is ineffective, Heckler is trying to push a bill through a skeptical Congress and a wary Administration that would overhaul the management and financing of the system. But there are alternatives on Capitol Hill, and Heckler's proposal has been drawing fire from Members of Congress and state administrators who complain that there will be less federal money to pay for an expanded program.

In the past, the child support enforcement program has not been a priority item with Congress or the Administration; neither, in fact, have hesitated to cut it in the name of balancing the budget. Last year, concerned about skyrocketing federal costs, $344.3 million in fiscal 1982, up 50 per cent in four years—the Administration proposed a bill that would have changed the aid formula and thus effectively reduce the federal share of state administrative expenses from 75 per cent to approximately 50 per cent. Instead, Congress decided to retain the existing formula but cut the federal share to 70 per cent.

Another major drain on federal child-support spending, a bonus to the states for collecting payments on behalf of families receiving aid under the state-federal program of aid to families with dependent children (AFDC), was also quietly reduced, from 15 per cent to 12 per cent of such collections.

But this year, no one is treating the program as a stepchild. There are four major House-Senate pairs of bills before Congress to strengthen the program, including one offered by the Administration, and there appears to be a consensus to deliver legislation to the President quickly. "There's a lot of pressure on this subcommittee from a lot of groups, including the Administration, to come up with something soon," said an aide to the House Ways and Means Subcommittee on Public Assistance and Unemployment Compensation.

On Sept. 30, the subcommittee appeared ready to approve a compromise proposal drawn up by the subcommittee staff, but was unable to complete its work because of a pending unemployment compensation bill. The staff proposal, drafted with the unofficial participation of HHS, contained elements from all four bills. The compromise, which would retain 70 per cent federal financing, provide state performance incentives and attempt to stiffen enforcement, is expected to be approved by the subcommittee before the end of the month. In the Senate, the Finance Subcommittee on Social Security and Income Maintenance Programs held hearings on Sept. 15 and is planning to mark up the bill this month.

LAGGING PERFORMANCE

Congress and the Administration both agree that the program needs to be changed. "I've been very unhappy with the program," Heckler said in an interview. "Performance has fallen behind promise." But, she added, "I have a sense of relish about this program because it's one that I am delighted to work to perfect. It's just so long overdue and so deserving, and the facts are compelling."

Heckler and others now interested in the issue have based their conclusions upon data that have powerful social and political ramifications. According to a recent Census Bureau report, only 47 per cent of the four million American women who were due child support in 1981 received the full amount they were legally entitled to, and 28 per cent got nothing at all. Meanwhile the real value of support received declined 16 per cent between 1978 and 1981. *(See box, p. 2116.)*

According to Heckler, the failure to receive adequate child support has become an important contributing factor to the broad social phenomenon of the "feminization of poverty" because 96 per cent of the time the mother is the parent owed the support. The system of child support enforcement has taken much of the blame.

Because of the peculiar nature of the present program, middle-class women are especially ill-served. Assignment of child support rights to the state and federal government is a condition of eligibility for benefits under the AFDC program, and in 1975 the government seized the opportunity to increase federal costs by encouraging the states to collect child support for welfare mothers. The federal government had a double incentive for encouraging AFDC collections. Not only would the revenue go directly to the government, the increased income would also push some of the families off of the welfare rolls. The AFDC bonus payment was created to encourage the states to make welfare collections.

The Office of Child Support Enforcement, created in 1975 to administer the new federal financial role in the program, set enforcement standards that the states would have to fulfill to qualify for the AFDC bonus. In practice, however, the

bonus has never been withheld. Consequently, most of the state child support enforcement agencies concentrate on AFDC mothers, while some, especially in the South, virtually ignore non-welfare cases. The result is that under the current system, it is difficult in many states for non-AFDC parents to collect the full support they are owed to them and nearly impossible for mothers to collect payments from a father residing in another state.

Patty Kelly, a divorced mother from Flint, Mich., said that "within two weeks of when my ex-husband stopped paying child support, I was on welfare." Frustrated with her inability to compel him to pay up, she co-founded KINDER, among the largest of the grassroots child support groups springing up across the country, to push for tougher enforcement laws.

Support from the National Organization for Women (NOW), the largest of the national women's advocacy groups, was not forthcoming, however. "NOW has been absolutely not supportive," Kelly said. "They weren't really concerned with the issues that hit us hardest." Other national groups were more interested, Kelly said, but the fact that the issue is more crucial to poorer women and housewives made it unattractive to many of the national groups. Martha Phillips, a member of the minority staff of the Ways and Means Committee, agreed that "in the past, many of the women's groups didn't perceive it as a front-burner issue." But last year, a child support provision was attached to the Economic Equity Act, a package of bills on women's issues, and interest began to grow. Although the measure was not enacted, "We've made it an issue," Kelly said, "and it's something they have to address."

Health and Human Services Secretary Margaret M. Heckler says that many of the state child support enforcement administrators are opposed to the changes she has proposed for altering the way the program is financed because "they're going to be held accountable for their performance in a way they never have been before."

REVISING THE BILL

For an Administration battling to overcome a gender gap, and a Congress increasingly responsive to the agendas of women's groups, a program that appears [illegible] to work to the disadvantage of [illegible] women may have become politically intolerable. The political sensitivity that the issue has now attained can be readily measured by the battle within the Administration to come up with a comprehensive proposal. The Administration originally submitted legislation earlier in the year that would have continued the pattern of deep cuts in federal support. The bill, similar to the proposal the Administration failed to get through Congress last year, would have discontinued federal reimbursement as a percentage of state administrative costs and substituted a new system that would have the effect of lowering federal matching to approximately 50 per cent.

The bill received a chilly reception in Congress, however. Rep. Barber B. Conable Jr. of New York, the senior Republican on the Ways and Means Committee, refused to sponsor it, telling the Administration he would introduce the bill only by request, according to several congressional staff members. Other Republicans also refused to sponsor the bill.

Within the Administration, Heckler and Transportation Secretary Elizabeth H. Dole strongly opposed the proposal, arguing that the new formula would have based the federal matching contribution almost exclusively on how successful the states were at collecting payments for AFDC parents, thus giving states even less of an incentive to enforce non-AFDC collections.

"The proposal was shaped without my involvement, during the tenure of my predecessor, Richard Schweiker," Heckler said. "My greatest concern was to broaden the scope of the bill to include non-AFDC families, and to do so without increasing the cost of the program."

She and Dole had pressed their case with deputy White House chief of staff Michael K. Deaver and others and thought that a consensus had been reached to submit a new financing package. "The first rewrite of the bill occurred at the Cabinet council level," Heckler said. "It still had not gone as far as I wanted, and in the interim I benefited from the visit of the Republican Congresswomen to the President, since this was one of the priorities they established which reinforced my position."

But opposition within the Office of Management and Budget and the child-support office delayed the change, and it was not until July 12, two days before the first scheduled congressional hearing, that a last-minute phone call from Dole to Deaver prompted the drafting of an entirely new financing package. The new bill would retain the present matching formula but cut the federal share from 70 per cent to 60 per cent. It would also set up incentives to reward states for "exemplary performance" and attempt to improve collections of non-AFDC cases by replacing the current 12 per cent incentive fee for collecting payments for AFDC cases and using the $500 million savings to set up an incentive pool to reward states equally for AFDC and non-

Taking Up a Collection

Since 1975, when the federal child-support enforcement program began, the federal financial commitment to the program has rapidly increased, as these statistics from the federal Office of Child Support Enforcement show. While collections have also increased, they have failed to keep pace with rising administrative costs (in thousands of dollars).

	FY 1978	FY 1982	Per cent change
Total child-support collections	$1,046,690.00	$1,771,482.00	+69%
Total administrative expenses	312,339.00	592,368.00	+90
Total child-support collections per dollar of administrative expenses	3.35	2.99	−11

Nor have increasing collections decreased the percentage of women receiving only partial or no child support, according to a recent Census Bureau report (in thousands of people). The same report showed that the average amount of child support actually received declined, in terms of real value, from $2,510 in 1978 to $2,166 in 1981.

	1978	Per cent	1981	Per cent
Women with children under 21 from an absent father	7,094	100%	8,357	100%
Women supposed to receive child support payments	3,424	48.3	4,043	48.2
Women due support who received the full amount	1,675	48.9	1,888	46.7
Women due support who received a partial amount	777	22.7	1,014	25.1
Women who received nothing	971	28.4	1,140	28.2

AFDC collection, at the HHS Secretary's discretion.

Heckler wants to use the $200 million pool to prod the states to improve their programs. She thinks that many states have grown complacent under the present system of guaranteed matching of administrative and AFDC costs. In testimony before the Finance Committee, she noted that seven states collect 75 per cent of non-AFDC funds nationwide and six collect 68 per cent of AFDC savings. Pointing out that "the flow of federal dollars to the states is based on what states spend, not on the results they achieve," Heckler said that the states have no real incentive to improve their performance.

The Administration proposal to cut the guaranteed administrative match has drawn the most fire, but Heckler defends the reduction. "I don't think that the level of funding going from 70 per cent to 50 per cent is at all destroying the program's base. It's certainly modifying it a little," she said, adding that "there has been no correlation between the amount of money that funded a program and the collection of child support."

STATE REACTIONS

Accordingly, most directors of the state programs take a different view. Michael Hanson, director of Nebraska's enforcement program, said a reduction "would have a really severe impact on the states," and Sandra Gilmore, the director of West Virginia's program, predicted that if the Administration bill passes, "we will see even less cooperation, both intra and interstate."

Dan Copeland, the president of the National Council of State Child Support Enforcement Administrators, has been flying back and forth between Washington and Alaska, where he heads that state's program, to plead the states' case. He applauds the Administration's avowed goal of expanding non-AFDC enforcement, but points out that the Administration bottom line is that there will be less federal money to go around.

"Everyone says that they want to see the program expanded," Copeland said, "but you can't give the states less money to work both caseloads instead of one." Nor is he eager to trade the 12 per cent AFDC match, a guaranteed source of funds for the state programs, for a system of bonuses to be rewarded at the HHS Secretary's discretion. "Some of the state directors are wondering how much of the money will actually come out," he said.

Fred Schuetzman, deputy director of the federal child support office, counters that the federal commitment to the program is expanded because it is based on matching state spending, albeit at a reduced percentage. "We are not holding the funding in any way," he said. "If the states spend more, we will spend more."

Heckler suggested that much of the state resistance is coming from the fact that the state directors "are going to be in the spotlight, and they're going to be held accountable for their performance in a way they never have been before, and there are comparisons that will be drawn between the activities of one state and the potential apathy of another. There's going to be a new challenge to the state directors, there's no doubt about that, but really, one has to ask why the 70 per cent funding has not yielded better results."

The state directors have some powerful allies on Capitol Hill, however. Of the four bills currently being considered, only the Administration's would decrease the federal administrative match. There is also widespread opposition to allowing incentive payments to be disbursed at the Secretary's discretion.

The Administration appears ready to bend, as HHS unofficial participation in the Ways and Means staff compromise proposal indicates. "I don't think the variations in the proposals are vast," Heckler said, adding, "I would not preclude any other approach."

The Ways and Means staff compromise would retain the 70 per cent federal share and offer the states guaranteed 4 per cent incentives for both AFDC and non-AFDC collections and up to 10 per cent extra for excellent performance in each collection area. Although the bill would replace HHS discretion with a formula for determining how much extra each state would receive, the compromise still incorporates the Administration's idea of giving the states an incentive to run programs that are both effective and cost-effective.

In response to complaints from fathers that child support payments are often late because the mother refuses to let her ex-husband visit the children, the staff proposal would compel each state to set up a commission to examine child support and visitation issues in one forum. In the Senate, it is likely that a resolution will be introduced to express concern over visitation rights. There are no plans to attach any substantive changes in visitation laws to child support legislation, however, and the Administration wants to keep the two issues separate. "I really am sympathetic to fathers' rights," Heckler said, "but on the other hand, I think that that issue can not be used to demean or disparage the issue of financial support. They're separable."

BARGAINING ON THE HILL

Although the Administration has made child support bill a high priority, Democratic members of the Ways and Means

subcommittee say they are not planning to attach any other issues to the legislation as a way to avoid a veto on an issue that is more controversial. Members of the Administration's legislative liaison office have met with subcommittee and committee members, urging them to keep the bill unencumbered. Rep. Barbara B. Kennelly, D-Conn., a member of the subcommittee, and Ken Bohler, the subcommittee staff director, agreed that there are no plans to attach any other legislation to the bill.

The House subcommittee appears likely to approve the staff compromise unanimously. The price of unanimity, however, may be a watered-down bill. "The changes may not be as drastic as some people have proposed," Bohler said. "This is a lowest common denominator," another staff member said.

In the Senate, committee aides are also optimistic that a consensus may be found and that the Administration is willing to compromise. Testifying before the Finance Committee, Heckler reinforced this contention when she departed from her prepared text to say that the President would like to sign legislation based on the Administration bill "with whatever additions or subtractions the committee feels appropriate."

Republicans on the subcommittee are unlikely to approve the Administration bill as a whole. "I'm not sure the financing plan will get out of committee," a Republican aide said. Instead, the subcommittee will likely follow the House's lead and assemble a bill containing elements of all four proposals. Joseph R. Humphreys, a member of the full committee's minority staff, predicted that "what the committee does will look somewhat different from any of the individual bills." Committee chairman Robert Dole, R-Kan., has shown a willingness to work closely with ranking minority member Russell B. Long, D-La., in hammering out a compromise. Long, as committee chairman in 1975, was instrumental in pushing the original legislation through a reluctant Congress.

ENFORCEMENT

Although the financing formula appears to be the main area of contention, many of the women's groups involved in the issue say that the most important component of a new bill will be the enforcement tools. They say that the law allows or compels the states to employ. Ann [illegible], a policy analyst with the National Women's Law Center, said, "I don't think that changing the federal-state match is the way to improve the system; improving enforcement is." Kelly of KINDER said that under the present enforcement procedures, "the states have proven that they're not capable of doing the job."

Ann Kolker of the National Women's Law Center: "I don't think that changing the federal-state match is the way to improve the [child support] system, improving enforcement is."

Kolker and Kelly favor the child support proposals of the Economic Equity Act, but all of the bills would allow or compel the states to take advantage of some powerful and controversial tools to enforce collection. Some of the enforcement techniques that may be included in a new law are:

- Wage withholding. The enforcement provision that proponents of a tougher program are most enthusiastic about is withholding of overdue support from wages. All four pairs of bills, including the Administration's, would institute some degree of involuntary withholding. The final bill is likely to allow two months of arrears to accumulate before withholding would begin, although one of the bills would permit no such grace period.
- Clearinghouses. Two of the bills would require the states to set up information clearinghouses to assure that support withheld from wages due from out-of-state parents would be paid, and all of the bills would also require the states to create quasi-judicial or administrative procedures to speed up collections. The Administration's bill would not require clearinghouses, but would continue the present method of offering to pay 70/80 per cent of a state's costs if it chose to set up a clearinghouse. The Ways and Means staff's compromise proposal would make clearinghouses optional and set the federal matching rate at 90 per cent.
- State tax withholding. All of the bills would require withholding of past-due support from state income tax refunds, but the Administration bill and the Ways and Means staff compromise, with the enthusiastic support of some state directors, would limit it to AFDC collections. Huston, director of the Nebraska program, said he is "scared to death" of extending the program to non-AFDC collections, and Heckler agrees that increasing the scope of the program would be too expensive.
- Federal tax withholding. Withholding for overdue payments owed to AFDC families is now required, but the proposal in three of the bills to extend this to non-AFDC families is among the stickiest of the unresolved issues. Heckler's position is that the Internal Revenue Service, which is preparing to release a study on the proposal to extend tax withholding to non-AFDC cases, does not have the capacity to make institution of such a massive program worth the expense. Neither the Administration bill nor the Ways and Means staff's proposal would extend withholding.
- Property liens. Three bills, including the Ways and Means staff proposal, would require states to impose liens equal to the amounts of past-due support on property of delinquent individuals.

No matter which enforcement techniques are adopted, the measure of the legislation's success will come at the state level, and Heckler said she will keep the pressure on governors and state directors to make child support a priority. She plans to meet with many of the governors, and wants to make child support a political issue in state campaigns. "The commitment of a governor to a program in any state, or lack thereof, could make the difference in terms of creating an effective program," she said. "Failure to have a program that kept pace with the other states could create a political issue that I think the women's groups and others could well point to."

Heckler also warned: "If there have been any instances of making the program a discipline ground for political cronies, this will have to stop.... It's not going to be a political haven for any nonperformer." □

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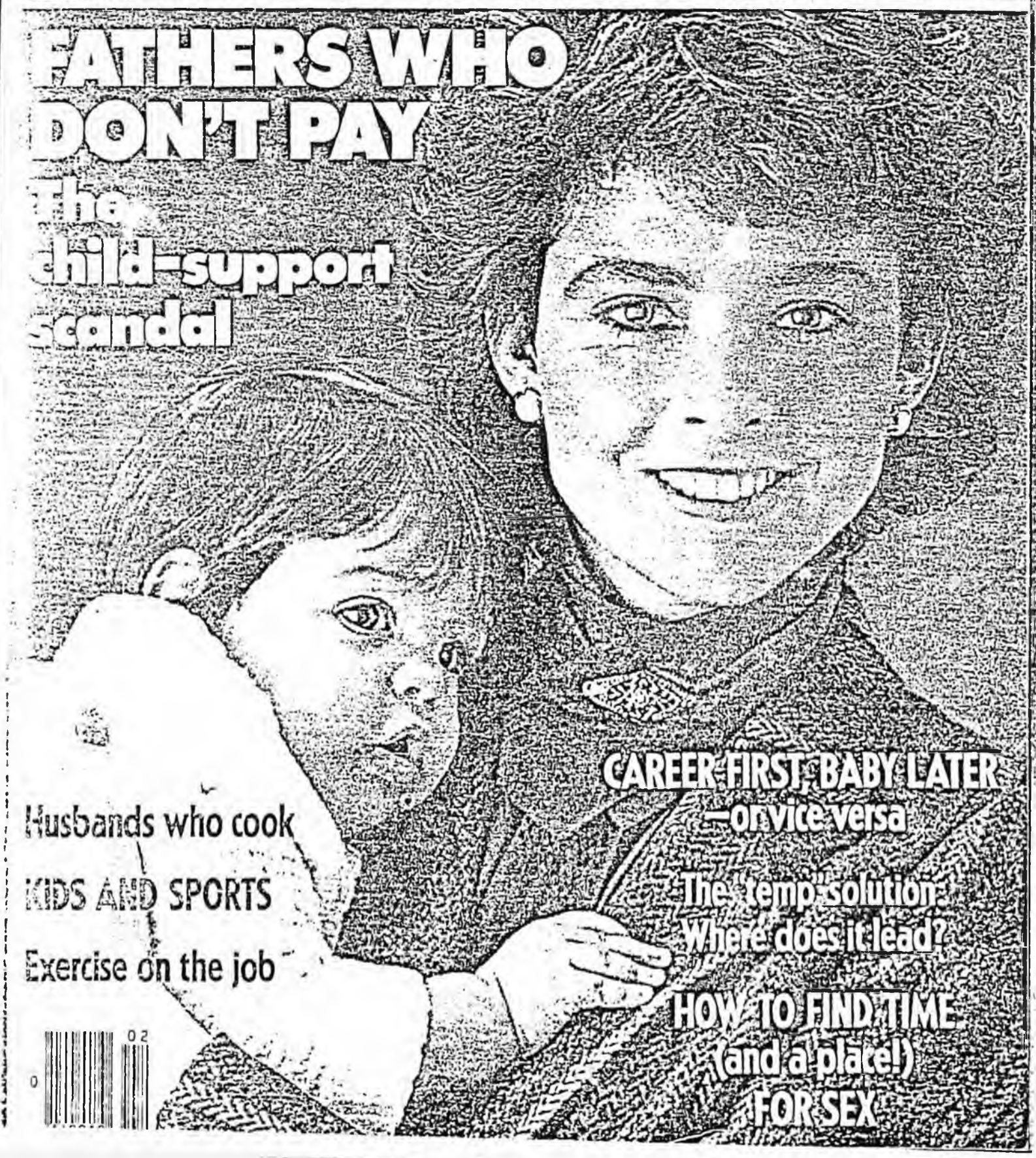


CHILD SUPPORT? FORGET IT!

BY FERN MARJA ECKMAN

One mother is talking, but 1.7 million women in the United States, as well as hundreds of thousands still to be officially counted, share her predicament. Listen:

"My divorce was so traumatic that at first I couldn't bring myself to go back to court about child support even though my former husband stopped paying me after the first month," says a nurse we'll call Elizabeth Weston. She lives in a small town on Long Island, New York, and has a son, Luke, who is eight.

"When I finally forced myself to file a petition for the money that Steve—my ex—owed me, he was eight thousand dollars in arrears. I was then making fifteen thousand a year and he was earning over thirty thousand. But he kept finding excuses not to pay me the three hundred dollars a month ordered by the judge for Luke's support. I had to borrow from my relatives. It was humiliating.

"I've been to court so many times in the last five years that I've lost count. Each time I go back I lose at least half a day's work and usually a full day. I worry about using up all my vacation and sick days so that if Luke gets sick and I have to stay home with him, I won't get paid. And my bills won't get paid. I'm a head nurse now, so I worry about my staff too.

"Right now Steve hasn't paid me anything in two months. This time I think he's lost his job. My rent bill is coming due—four hundred dollars—but I don't want to go to court again. I get so uptight each time that I can't sleep and my stomach's in knots. A lot of pain in my marriage, in my divorce, resurfaces.

"I feel this tremendous surge of resentment and frustration. I wonder, should I just forget about child support and try to make it on my own? But as Luke grows older, my expenses grow too. You can't imagine the anxiety. It's hard to handle."

Today, in this country, child support is more often than not an ironic synonym for child *non*-support. Only 49 percent of the 3.4 million women known to have been due child support in 1978 were actually receiving the full amount, according to the most recent study of the federal Bureau of the Census. (Note, please, that "the full amount" averaged $1,800 a year.) Twenty-three percent of the mothers received partial payment, ranging from a single check to 90 percent of the payments awarded by the court (anything over 90 percent is considered full payment). And 28 percent received no payment at all. Zero.

NATIONALLY, ENFORCEMENT IS A PATCHWORK OF CONFUSION, APATHY AND NEGLECT. THERE ARE, HOWEVER, A FEW BRIGHT SPOTS ON THE HORIZON

Some authorities regard even those disheartening figures as far too roseate. Harry Wiggin, chief of the New Jersey Bureau of Child Support, told the *New York Times* a few months ago that a divorced woman in his state has "a ten-percent chance of being paid on time and in full."

Keep in mind that these figures do not include women who, out of a mixture of despair and exhaustion, have given up trying to collect, nor those who are trying to collect through private channels, such as their own attorneys, and you begin to get a glimmer of the dimensions of the fadeaway-father problem.

Since 95 percent of custodial parents are women, delinquent payments mean an additional drop in economic power for post-divorce mothers, a group already experiencing a dramatic decline in average income.

"Divorce is a financial catastrophe for most women," Dr. Lenore J. Weitzman, a sociologist at Stanford University, wrote in an article published in *The Family Law Reporter* last August.

Dr. Weitzman, director of the California Divorce Law Research Project for the past 10 years, drew the following conclusions from the data compiled in her state:

"First, the amount of child support ordered is typically quite modest in terms of the husband's ability to pay. Second, the amount of child support ordered typically does not cover even half of the cost of actually raising the children. Third, the major burden of child support is typically placed on the wife even though normally she has fewer resources and an inferior 'ability to pay.' " *(continued)*

(continued)

California is hardly unique.

"From the data I have seen, I would endorse the statement that nonpayment is an economic disaster for custodial mothers," Fred Schutzman, deputy director of the federal Office of Child Support Enforcement (OCSE), said. "The absentee father is usually much better off economically than the mother—and probably will remain so.

"The problem of nonpayment is extremely serious and still growing because of the high divorce rate. A million divorces a year—many involving children and child support—compounds itself, even if the divorce rate remains level. We're predicting that more than forty percent of American marriages will end in divorce and that only fifty-six percent of all children will spend their entire childhood living with both natural parents."

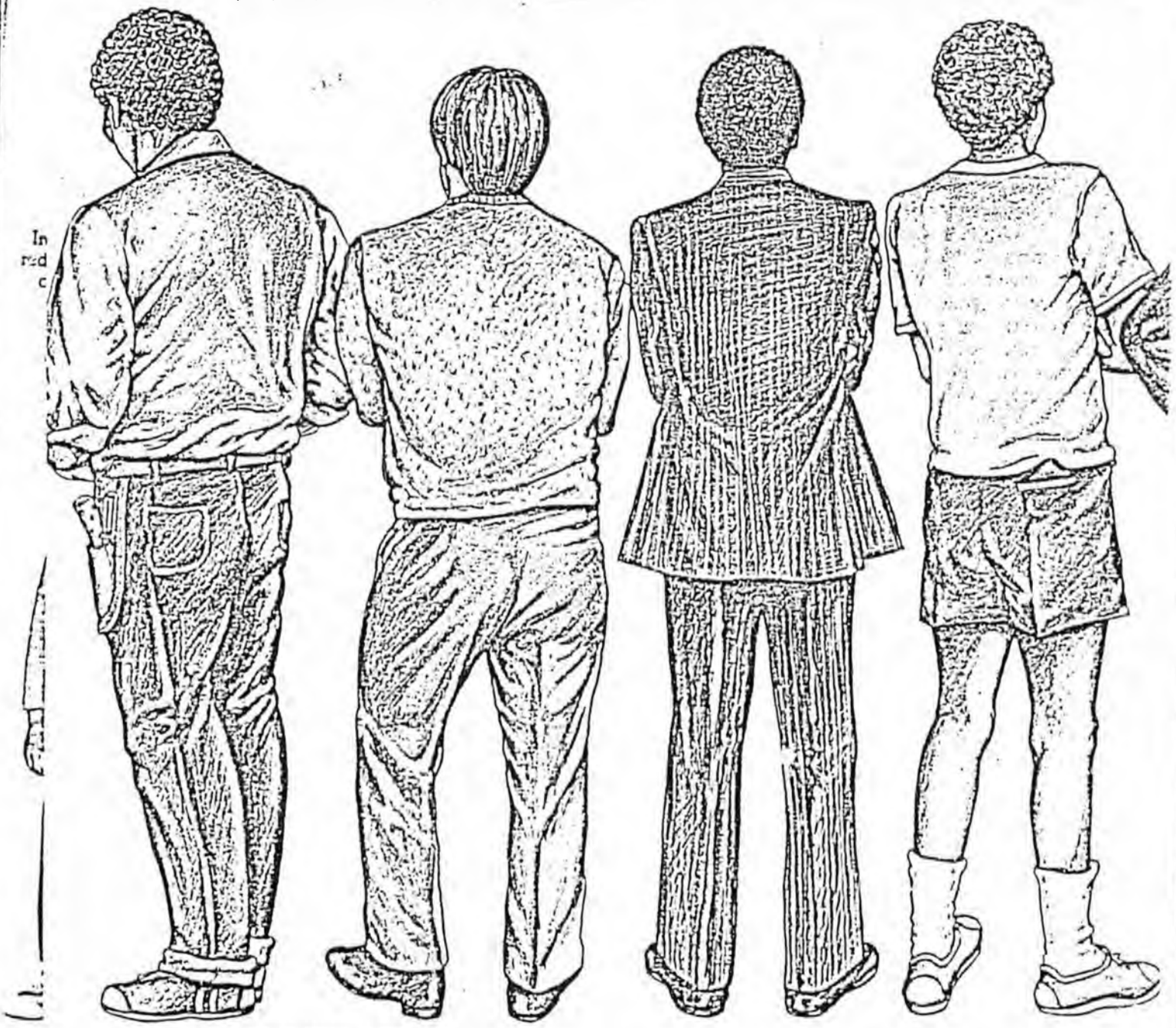
Nationally, child-support enforcement is a patchwork of confusion, apathy and neglect.

True, new legislation has belatedly been adopted by Congress, with promising results. The federal government is now more enthusiastically undertaking the business of pursuing fathers whose failure to pay child support costs the government money. Mothers with only a marginal income of their own, unable to survive without child-support payments, may be eligible for public assistance. To reimburse the welfare agencies that subsidize such mothers through Aid to Families with Dependent Children (popularly dubbed AFDC or ADC), Schutzman's OCSE has in recent years set up a federal-state alliance to collect back payments from the fathers.

The OCSE, which comes under the federal Department of Health and Human Services, has an increasingly impressive collection record: $1.65 billion in 1981. A solid $975 million of that sum went to custodial mothers who were not receiving AFDC.

The Federal Locator Service, an arm of the OCSE with unprecedented access to the files of the Internal Revenue Service and the Social Security Administration, last year tracked down more than 70 percent of one million runaway fathers who had moved to other states without leaving forwarding addresses.

Encouraging as this machinery is, it works better on paper than in practice. Not all custodial parents know it exists,



and many are unaware that even though OCSE's primary purpose is to relieve the taxpayer of some of the burden of the AFDC programs, its services are also available to non-welfare parents. The OCSE prides itself on being "one of the few government programs that helps needy families while also saving tax dollars."

Each state operates its own child-support enforcement bureau and locator service, usually as part of the state or county welfare or social-service units. Reimbursed by the federal government for a major portion of their expenses, these local agencies are known as IV-D agencies, a name derived from their statutory designation: Child Support Title (IV-D)

However, the IV-D network lacks consistency. Services and fees (which are modest, when charged at all) vary from state to state. Some agencies are efficient, some are lackadaisical. Moreover, interstate cooperation, which in theory flourishes, in reality leaves a great deal to be desired.

"FOR CUSTODIAL MOTHERS, NONPAYMENT OF CHILD SUPPORT IS AN ECONOMIC DISASTER"

Paul Cummings

Harry D. Krause, alumni distinguished professor of law at the University of Illinois, applauds the federal government's role as "an active stimulator, overseer and financier of state collection systems." But, in an article last summer in the American Bar Association's publication, *The Family Advocate*, Krause sharply criticized the OCSE for its failure to provide leadership in developing "more sensible, more uniform and more predictable support laws," which he views as "crucial."

Krause has gone so far as to suggest somewhat tartly that the existing child-support laws have been tolerated this long "in their present state of disarray, unevenness and consequent unfairness only because they have *not* been enforced with any degree of regularity." (His italics.)

Ferreting out errant fathers for maintenance checks is a formidable task for IV-D. New Jersey and New York have passed new laws authorizing automatic confiscation of the wages of noncustodial parents who are in arrears.

"We collect for women who are on ADC and women who are not," said Irwin Brooks, director of New York City's Bureau of Child Support, which has a superior collection record. Unfortunately, as Brooks pointed out, the mothers who manage to squeeze by without resorting to public aid are in effect penalized for their independence.

For welfare families, Brooks's staff can tap the computer system of the state's Department of Taxation and Finance, which stores employers' reports of the Social Security number, quarterly earnings and address of each employee. Once the nonpaying father is traced, it's a comparatively simple matter to authorize his employer to deduct the arrears from the man's paycheck before he gets it. That money then goes to welfare to offset the ADC subsidy paid to the family.

"But," Brooks explained, "we don't have access to the computer for non-welfare cases. Those women have to go into court on their own. We don't represent them. The judge will then issue a support order, payable through our collection unit. We monitor the payments, sending the full amount to the family.

"Talk to women in the non-welfare group and you find them bitter and frustrated. A hard look has to be taken at what can be done for that group. The system has to be restructured to put teeth into the program for the non-welfare population, which would ultimately save the government money."

In virtually every state, cases in family courts can drag on for weeks, even months. Judges, confronted with overcrowded dockets and reduced personnel, tend to give priority to child abuse and neglect, leaving support applications for another day. One official, who requested anonymity, bluntly described the family courts in his area as "a mess."

Although some states sporadically jail deserting parents, usually for weekends only, a number of judges lean to the side of the deserting father. They reason that support payments present "an undue hardship" for the man, who has probably remarried, while the needs of his first family will be shouldered by welfare.

That judicial philosophy inevitably swells the welfare rolls. "A little over eighty percent of families receiving AFDC are there because of nonpayment of child support," said Michelle D. Jefferson, OCSE information officer.

Add all of this together and it's easy to see why noncustodial parents feel it's safe to shrug off their financial commitments. "I do not need to tell you," a New York State legislator summed up, "that men who have been ordered to pay child support learn all too quickly and easily that nonpayment is likely to be ignored, both by the courts and by the law-enforcement authorities."

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CHILD SUPPORT? FORGET IT!

(continued from page 65)

The impact on the mothers is overwhelming. "We see mothers entitled to child support who are worn out by the process of trying to collect," said Sue Jones, director of The Single Parent Family Project in New York City. "We see it all the time. One woman told us: 'I've been in court seventeen times this year. I've used up all my vacation time, all my sick leave, all my personal days. I am going to risk losing my job if I continue this way. So I'm throwing in the towel. I give up.'"

According to Mrs. Jones, even periodic lapses in support payments create a chronic sense of panic in the custodial mother: "Let's say a man really tries to keep up with his payments but is hospitalized. There's a gap of three months before he can pay all his arrears. Meantime, she has to borrow from relatives and friends. She takes out a bank loan, if the bank will give her one. Her phone may be cut off. She can't provide dental care for her children. Any little luxury must be sacrificed. Her credit rating is shot and none of her friends wants to see her coming.

"When she finally gets the money, it all has to go to pay off her debts. We're not talking here about account executives with healthy bank balances. We're talking about secretaries, bank tellers, lower-management kinds of people who have no accumulated savings. Long-range planning is impossible for these women. Learning to budget your money—that's a joke when your income is erratic."

The mothers' anxiety overshadows the children's lives, of course. "When a family splits up," said Marilyn Gordon, case-work supervisor at the Mid-Brooklyn Office of the Jewish Board of Family and Children's Services, "the man can walk away. *He* doesn't get up at three in the morning if the child has a fever. *He* doesn't take time off to see the teacher when there's a school problem.

"It's incredibly difficult for one parent. If you then pull out the security blanket of child support, the women often feel they can't cope. They react first with anger, then with feelings of hopelessness and helplessness, then get very depressed and frightened—though I'm amazed at how strong many of these women are.

"There's another aspect, too. Kids are very much in the middle. A seven-year-old doesn't understand why his mother,

THE MATTER OF MOTIVE

David L. Chambers is the author of *Making Fathers Pay* (University of Chicago Press, 1979), a book frequently quoted by members of child-support activist groups. In fact, Chambers might almost be called the guru of the movement, an honorific that made him chuckle.

Soft-voiced, erudite, accessible and eminently reasonable, Chambers is a professor of law at the University of Michigan Law School. His in-depth study of child-support enforcement in 28 counties in Michigan, the state that has been most successful in inducing fathers to pay, illuminates the entire process of maintenance collection in the United States.

Before he knew "too much," Chambers admitted, he would have guessed that most parents—except those who were unemployed or who earned so little that they could barely survive—would pay without prodding. Now sadder and wiser, he attributes failure to pay not only to anger and depression, but to darker motivations:

"The man who used his wife's access to money during marriage as a way of keeping her servile and dependent may maintain this pattern after divorce for the same purpose." And:

"Unpredictability in payments induces anxiety in the woman and is thus a source of power for the male, assuring him at once of her dependence on him and her comparative lesser worth."

Michigan is one of many states that jail fathers for nonpayment, a debtor's prison kind of deterrent that Chambers does not endorse. "Jailing works not so much on people who are actually sent to jail, but rather by scaring those who aren't," he said in a telephone interview.

The maximum sentence for support-dodging fathers in Michigan is one year. "But for first offenders, this has just been changed by statute to forty-five days," Chambers said. "I think that's a very healthy move. There is evidence that jailing people works if it's part of a well-organized system of collection. But there's no evidence that holding people for long terms is helpful."

On the whole, Chambers would prefer a system that relied on wage assignments rather than bars. "And if we really wanted to increase payments in this country," he said, "we would largely chuck the present system.

"Now," he explained, "an employer pays a man his check every week or two weeks. And the man has to remember to write that support check and send it to his former wife. The state tries to scare him into remembering to do that. If we really want to improve the child-support operation, we have to deduct support payments regularly at the source—*before* the employee gets the paycheck."

"Like Social Security?"

"Exactly," Chambers said. "Many states permit wage assignments, but no state has the power to bind an employer in another state. So for that reason, among others, only a national wage-assignment system would work. One that Congress could implement. But my guess is that it wouldn't pass Congress."

"Why not?"

"The principal reason is that we're in a stage of history in which the President and Congress are primarily thinking in terms of returning programs to the states. They're not interested in creating new, large federal systems for any purpose.

"A further reason is that Congress may appropriately be reluctant to set up a national computer system that knows all about people's broken marriages and illegitimate children."

"You said 'appropriately.' If that reluctance is appropriate, why do you favor such a national system?"

"I believe in tough choices," Chambers said. "If it comes down to choosing between low collections and lots of jailing on the one hand and high collections and intrusion into privacy on the other, on balance I prefer high collections."

Not everyone, of course, is willing to make that compromise.

who is worried because she can't pay the rent, blows up when he asks her for a new pair of sneakers. It's very hard for the mother not to let her anger spill over, so the children feel it's wrong for them to love their father because the mother's so angry with him.

"It's also very hard for a mother not to say to the kids, 'We wouldn't be in this rotten place if your father hadn't abandoned us.' What sometimes happens is that the mother tells the father, 'Listen, if you're not going to give support, you're not going to see the kids.' So what looks like a dollars-and-cents issue has far-reaching implications for everybody in the family."

The bottom line, then, is that child-support payments are largely what Dr. Judith H. Cassetty of the University of Texas calls "a voluntary phenomenon and one which cuts across income classes."

Why do so many fathers evade their responsibilities to their children? That question produced a variety of answers from the experts we consulted.

Lloyd Cutsumpas of Danbury, Connecticut, a lawyer specializing exclusively in matrimonial cases, clicked off three basic reasons.

"First, financial pressures," he said. "When you split one household into two households, the shelter expense is al-

MOTHERS' GROUPS

Grass-roots affirmative-action groups are springing up around the country to lobby for effective enforcement of child maintenance; to share legal information and to help their members with emotional support.

The organizations have names like KINDER (Kids in Need Deserve Equal Rights, in Flint, Michigan), PECOS (Parents Enforcing Court Ordered Support, in Enfield, Connecticut), POSE (Parents' Organization for Support Enforcement, in Bakersfield, California), FOCUS (For Our Children's Unpaid Support, in Vienna, Virginia), and OECS (Organization for the Enforcement of Child Support, in Baltimore County, Maryland).

Some, like OECS, hold regular meetings, send out newsletters and make referrals to other sources.

Elaine Fromm, who is now happily remarried and operates one of OECS's four hotlines, spent 10 years on welfare after her first husband walked out on her: "I was eight months pregnant and had three small children when he left. After a few payments, he never gave me another penny. My kids wouldn't know him if they met him on the street."

Founded three years ago, OECS now has two chapters and 450 members, including a sprinkling of men ("brothers, second husbands, a couple of custodial fathers"). The organization hopes to expand into a national crusading force.

"The very existence of our organization and others like it shows that the child-support system isn't working," said Mrs. Fromm. "Most Americans don't realize that child support is everyone's problem. When absent parents don't support their children, in many cases taxpayers do."

OECS has a Legislative Committee that has given testimony before the Maryland General Assembly in Annapolis. A Public Relations Committee reaches out to the media and participates in the production and distribution of literature. "All of the information learned," an OECS fact sheet states, "is freely dispensed, either verbally or printed."

Mrs. Fromm has a list of 11 action groups that she will mail to anyone who requests it. Write to her at 119 Nicodemus Road, Reisterstown, MD 21136. Enclose a stamped, self-addressed envelope. In an emergency only, call her at 301-833-2458.

PECOS, much smaller, less than a year old, has about 30 members. Yvonne Prestwich, the co-founder and an editorial assistant for three weekly newspapers, was also forced to turn to public assistance when child-support payments for her three youngsters faltered. She found welfare "a demeaning experience," as did Mrs. Fromm.

This reporter asked Mrs. Prestwich if she could give us the name of a custodial mother who has won her battle for child support, so that we could interview her for "a success story."

"A success story lasts only from check to check," she countered. "I now receive child support every two weeks. But it's a waiting game. I never know when the payments will stop. The week I receive the check, I am successful. But I don't know if I will be successful two weeks from now. Everyone receiving child-support payments feels the same way."

THE FACT IS THAT AT ALL INCOME LEVELS, CHILD-SUPPORT PAYMENTS ARE LARGELY A "VOLUNTARY PHENOMENON"

ways doubled. You now have two units, with new light, heat, telephone and maintenance bills, as well as a new mortgage or an additional rent to pay. So the father's ability to pay is constricted.

"Second, with diminished contact, the fathers lose interest in their children. The man may transfer to a job in another city, his ex-wife may remarry and move to another jurisdiction. Out of sight, out of mind, maybe.

"Third, he may himself remarry and incur other financial obligations, which leads him to fall short on his original obligation. If he's hauled into court for arrears, he says, 'Well, I'm remarried and now I have a baby who has to eat too.' Judges are faced with this all the time. Legally, the father's obligation is still to the first family."

But don't these fathers continue to feel love and concern for the children of that first marriage?

"I suppose they do," Cutsumpas said. "They express it to me all the time—*verbally*. But I also hear women saying to me over and over again, 'He never comes around to see the kids, never sends them a card, never buys them a gift, never telephones. And he never sends support.'

"Let's say a man works at a pharmaceutical company in Danbury. He and his wife grew up here. Their extended family is here. He makes, say, thirty thousand a year, she makes sixteen, and there are two children. If there's a divorce, he's going to pay because he's a stable person. He cares about his children. There are rarely problems with that kind of individual, even if he remarries.

"But now mix in a little of mobile America—someone who works for Union Carbide here but was in Atlanta last year, and next year is going to Cleveland. His wife's from Arkansas. After the divorce, she goes back there to be with her family. He still lives here, and it's easier for him to forget his kids, particularly if there are financial constraints. Now he gets married again. You mix that in. The new wife's right there, looking at him and saying, 'You've got to take care of *this* obligation.' And it's easy for him to slough off his other obligations."

From OCSE chief Schutzman came statistical confirmation: "Five out of six fathers remarry and start a second family within a few years. That second family takes precedence in terms of money."

The nation's soaring unemployment has thrown a monkey wrench into some of the best-intentioned fathers' capacity to pay. "I'm not discounting the fact that joblessness has really contributed a great deal to the widespread rate of nonpayment. You can't get blood from a turnip," said Dr. Doris Jonas Freed, family-law specialist and chairperson of the American Bar Association's Child Custody and Support Committee. "But dissatisfied or disinterested fathers and ex-husbands would just be stubborn enough not to pay, even if they had the money.

"A great many fathers engage lawyers who stall the courts. Lots of those dodging fathers are not satisfied with the custody arrangement. They claim they don't get to see the kids, except on Sunday. I have found that when both parents have input into the whole decision-making process—what the support figure will be, when he'll see the kids, what schools they'll go to, what the vacation arrangements will be—the fathers will pay on time if it's humanly possible."

Anger and depression were cited by several authorities as strong motives for delinquency in payment: anger at former wives, anger at judges, anger at being denied the pleasure of their children's daily company. Such men feel like outsiders, deprived of the domestic comforts they previously enjoyed.

Remembering the past can prove painful, even for men who initiated the divorce suit. If writing a support check is a jolting reminder of the contrast between then and now, fathers are apt to avoid both the pain and the payment. Not infrequently, men justify these acts of omission by charging that their ex-wives would have spent the money on themselves instead of on the children.

Although our American system of support enforcement is heavily stacked

A TAX BREAK

An important tax law favors the noncustodial father. With it, lawyers representing husbands try to structure divorce settlements so that their clients pay to their wives and children what is legally referred to as "unallocated alimony and child support," rather than simple "child support."

" 'Child support' has no tax consequences," explained Lloyd Cutsumpas, a Connecticut matrimonial attorney. "It has neither tax benefits for the payer nor adverse consequences for the recipient. However, payment of 'unallocated alimony and child support' has very substantial tax benefits for the payer and is detrimental to the recipient, who pays taxes as though the amount received were earned income."

However, another matrimonial specialist in the same state, Roland F. Moots Jr., said this tax break for the husband "enables him to pay his former family more money and still have enough to live on himself."

Moots added: "To that extent, the federal government is underwriting the expenses of a lot of these divorce settlements."

FATHERS FIGHT BACK

In the past year, the federal Office of Child Support Enforcement (OCSE) has been authorized to deliver to the Internal Revenue Service a list of parents three months and at least $150 behind in child-support payments. The IRS is then empowered to deduct the amount of the arrears from any tax refunds to which the recalcitrant payers are entitled.

OCSE deputy director Fred Schutzman reported that the agency offset 260,000 cases for a total of $165,000,000 in 1981. "But," he added, "we can do that in welfare cases only."

From outraged fathers, there have thundered charges of invasion of privacy. And, in Philadelphia, six couples are bringing a class-action suit against the federal government to bar it from confiscating refunds from jointly filed income-tax returns. Their lawyer, Stephen F. Gold, contends such action is unconstitutional since the wives cannot be held legally liable for the support obligations of their husbands' previous marriages.

THE VACATION QUESTION

Should child-support payments continue to be made to the custodial mother during the summer weeks or months that the children spend with their father?

"That's one of the pitfalls," Roland F. Moots Jr., a Connecticut matrimonial lawyer, explained. "Attorneys sometimes forget to include a provision about vacation time in the separation and divorce agreements.

"The father traditionally takes the attitude, 'Well, I've got the children for three weeks and I'm paying all their expenses, so I should not pay child support to their mother for that period.'

"And her position is: 'Many of my expenses are fixed. It doesn't matter whether you have the children with you or not. I'm still paying more rent because I have to maintain a three-bedroom apartment instead of the one-bedroom apartment that is all I would need for myself.'"

A heated argument follows—and perhaps another courtroom scene, with more legal fees on both sides. All that can be avoided, Moots said, by settling the issue in advance and spelling it out in the agreement.

against the custodial mother, glaring inequities can also be meted out to the divorced father by what Professor Krause terms "the unbridled discretion" of the judiciary.

Two judges sitting in the same court on the same day can order two men with the same income to pay drastically different amounts of child maintenance. Conversely, an unskilled worker whose wages barely lift him above the poverty level may be required to make the same support payment as a doctor or a lawyer. The injustice of these decisions does not encourage—or sometimes even permit—the smooth transfer of maintenance checks to ex-wives and children.

Surprisingly, the professionals and custodial mothers we interviewed displayed very little outrage toward support-evading fathers. From the experts, there was concern for the mothers and kids, and a detached attitude toward the men. Even the women whose payments are, at best, irregular confined themselves to their own dilemma. From all quarters, there was, to be sure, strong disapproval of the pattern of paternal callousness. But the disapproval was implicit, not explicit, and seemed to stem from a kind of resigned acceptance.

The notable exception was Roland F. Moots Jr., matrimonial attorney and former town counsel of New Milford, Connecticut. His indictment of the runaway father was direct, impassioned and unsparing.

At 38, Moots has witnessed "a tremendous shift" from housewives to working mothers among his clients. "The women I feel sorriest for," he said, "are those who, at thirty or thirty-five, have to go untrained into today's economy. They've got to work a forty-hour week, and so they've got babysitting expenses they don't have enough money to pay for—especially if the husband cuts out on them and takes off."

How can that be prevented?

"Well-ll! There ought to be some type of streamlined procedure that would go interstate in chasing these individuals who are"—one hand slapped the desk—"totally, *totally* irresponsible toward their children! We've tried the Uniform Reciprocal Enforcement of Support Act [URESA, which makes it possible to sue for child support when parents are living in different states].

"But that's a very cumbersome process that takes forever. Because you're dealing with bureaucracy—*two* bureaucracies. And there's nothing to prevent the man, once he gets served the papers in the state where he's relocated, from just taking off again."

Moots leaned forward. "There's a certain element of men who are totally irresponsible," he said. "This is most infuriating to me. Just absolutely the *most* infuriating to me!" His voice billowed, like a sail in high wind.

"A case in point. I represented a woman—it had to be six or seven years ago. She wound up with the house, the kids and child support. Her husband took off for New York City. We have not found him yet. We did track him once to New Jersey and then he disappeared again. At this point, he owes her well over thirty thousand dollars in child support.

"It is the most *frustrating* and, to me, the most *unfair* thing in the world!" Moots's baritone bounced off the back wall of his office. "This man has two kids that he's totally turned his *back* on! He will take no responsibility for raising them; he won't share the emotional problems that she goes through in raising them. And he will not even give her ONE DIME!" The last two words were an explosion of almost biblical wrath. "It's just unfair! Moots said. "It's totally *unfair!*" ■

CURTAILED RESOURCES

The 1981 report of the federal Office of Child Support Enforcement (OCSE) to Congress warned that economic conditions across the nation are hampering the efforts of the child-support enforcement bureaus (IV-D agencies) of each state to increase their support collections. The report also listed these major problems:

"Many states are laboring under severe budget limitations, hiring cutbacks and staff shortages. Therefore work loads have increased as resources decrease. In addition, several states reported that lengthy internal reorganizations were hampering operations."

DOWN THE ROAD

"The likelihood of remarriage is largely a function of the woman's age at the time of divorce. If a woman is under thirty, she has a seventy-five-percent chance of remarrying. But her chances are significantly lower if she is older: between thirty and forty, it's closer to fifty percent, and if she is forty or more she has only a twenty-eight-percent chance of remarriage," according to Dr. Lenore J. Weitzman, director of the California Divorce Law Research Project.