

Child Support

CSE

Child Support Enforcement

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September 14, 1994

Ms. Kathi Way
Domestic Policy Council
Old Executive Office Building
Washington, DC 20201

Dear Ms. Way:

This past July, I was invited to appear at hearings held before the Ways and Means Committee of the U.S. House of Representatives. Three child support enforcement professionals, with experience in the private and public sector and representing different regions of the country, gave testimony on the child support provisions in the Welfare Reform Bills pending in the Congress.

Although there were differing points of view expressed, there was universal agreement that our present system is not able to accomplish the goals of legislation passed over the last 20 years and that our government programs are overwhelmed by the ever increasing caseload.

My testimony focused on a strategic plan that would take care of the children who were most in need of help. I hope you have a moment to look over the enclosed materials.

If you care for a copy of the tape of the *Today Show* discussed in the enclosed article, please call my office and we would be pleased to mail it to you.

Thank you for your continued interest in this national problem.

Sincerely,



Casey Hoffman

CH/me
enclosures

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REINVENTING CHILD SUPPORT ENFORCEMENT

STATEMENT OF RICHARD (CASEY) HOFFMAN, PRESIDENT
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TESTIFYING BEFORE THE U.S. HOUSE OF REPRESENTATIVES, WAYS AND
MEANS SUBCOMMITTEE ON HUMAN RESOURCES

THURSDAY, JULY 28, 1994

Mr. Chairman, and distinguished members of the committee, thank you for inviting me to speak to you on the subject of welfare reform. I am President of Child Support Enforcement * CSE, a private company that was established to collect child support on behalf of private clients.

By way of background, I practiced family law for eighteen years in Massachusetts, during which time I also served as President of the Massachusetts State Bar Association and on the Governor's Child Support Commission. In 1986, I was appointed Special Assistant Attorney General, to direct the Texas child support program. I served as IV-D Director for five years when Bob Romanow, a distinguished and successful businessman from Massachusetts, decided to support the privatization of the government's effort to collect child support.

During the years in which I headed the Texas IV-D agency, we were recognized by this committee, and by the National Child Support Enforcement Association (NCSEA), as the "Most Improved" child support enforcement program in the nation. I was also honored to receive from the National Child Support Enforcement Association a personal award for "Outstanding Individual Achievement" as the IV-D Director of the state child support program.

My company is a founding member of the Child Support Council, a non-profit association of businesses organized by Darryll W. Grubbs to improve child support enforcement in the United States, and I am a member of the Board of Directors of NCSEA.

Because of my experience in family law and child support enforcement in particular, I feel competent to discuss the government child support enforcement program operated under Title IV-D and the legislation before this committee that contains sweeping changes to this program.

Let me begin my remarks by saying that the Title IV-D program has failed millions of families who are dependent upon it for child support services. As I am sure you know, government estimates are that \$27 billion in child support went uncollected in 1992. It is also estimated that there are 10 million families in our country who are not getting the child support they deserve.

The mounting backlog of cases, and the ever increasing number of new cases, overwhelm the best efforts of all state child support enforcement agencies to fully serve their clients. The Administration's plan is proposing solutions that are well thought out and would make a difference in solving the problem if the taxpayers could afford them. In fact, their proposal is so thorough that it exacerbates one problem. It perpetuates the myth that the government can solve all the cases when it can't. Congress and the states could never afford to fund all the jobs and computer projects that they are proposing.

Despite all the innovative legislation passed by the Congress in the last ten years, government-funded agencies have never collected child support for more than one out of every five families. Over the last 14 years of reported statistics, we have seen an increase of less than two percent in the percentage of paying child support cases. In the most recent year of reported statistics, 1992, the number actually decreased, from 19.3 to 18.7 percent.

Although Paul Legler has done an admirable job developing an innovative, far-reaching plan and Judge David Ross is doing an outstanding job at OCSE, the Title IV-D Program as designed will continue to fail if the caseload can't be reduced to manageable levels. We must focus on the important role of the private sector in solving the problem and how to reduce the government caseload to manageable levels.

The one question that we get asked over and over again is how it is that you are able to find 85% of the people you go after and collect on 60% of those cases. Why can't the government do that? Part of the answer is simple. Although we hire former government investigators, we keep their caseload at less than three to five times that of their government counterparts. We do not allow our dedicated, hardworking staff to be overrun by the caseload which is exactly what happens in each and every state program.

Legislation Can Be Passed Which Would Significantly Reduce the Government Caseload

First, there must be more voluntary compliance in our country. This can only happen if the penalties for non-support are swift, sure, severe and rarely forgiven. Imposing hefty

interest charges as well as monetary penalties that can't be waived would be an excellent start. Parents who don't pay child support are penalized less frequently than people who are late on their electric bill. It's time we got tough and it's time we gave the taxpayers a fair shake. If you work in this country and pay taxes, you pay child support for deadbeats. It's that simple, and furthermore, why shouldn't a working parent who fails to pay child support at least face mandatory weekend jail time the second time he is found in contempt for not paying child support. The Administration's plan does not address these issues.

Second, case prioritization must be imposed through a two-tiered case management system described later in my testimony. In the first tier, the government must serve the needs of families who are on welfare or in danger of having to turn to the welfare system. Only after a state has certified that this caseload has been worked can they begin to work on the tier-two cases. The Administration's plan assumes that all of the cases can be worked successfully without any form of prioritization. The historical evidence suggests that this is not just unlikely but downright impossible given their resources.

Third, the Administration's plan does not encourage private sector involvement as part of the solution for effectively working the caseload. Consistent with Vice President Gore's public statements, competition by the private sector can be viewed as essential to reinventing government and have it be more effective. On a very practical level, each case worked by the private sector is one less case for the government to work.

The private sector also creates jobs. It comes as no surprise to those who know of our commitment to solve the problem, that over the last two years at least 25% of the people we hired were former clients who initially came to us to help collect their child support. Who better knows the struggle of a parent raising children without child support. With the consent of the Committee, I am submitting the remainder of my testimony in written form which was extracted from a paper I wrote with Darryll Grubbs and Patrick Sullivan entitled "Reinventing Child Support Enforcement".

The Government Child Support Enforcement Program Lacks a Comprehensive Strategic Plan

It was nearly twenty years ago that Congress established a national program to deal with the failure of parents to pay child support. Yet today, in spite of a current expenditure of over \$2 billion per year on administrative costs and the dedicated efforts of more than 40,000 workers, this state and federal partnership is failing millions of families who are dependent on it for the delivery of urgently needed services. In 1992 alone, \$27 billion in child support went uncollected in the government system alone, and that amount continues to increase every year. In addition, millions of paternity cases and requests for child support orders never even get heard in court. Mounting backlogs of cases, and the ever increasing number of new cases, overwhelm the best efforts of all state child

support enforcement agencies to fully serve their clients.

At the heart of the problem is the fact that the government program begun twenty years ago evolved without a comprehensive strategic plan. It was established with no fundamental mechanism for dealing with the great diversity of child support enforcement laws and procedures among the states. Over the years Congress has attempted to achieve uniformity by imposing more and more federal mandates on the states. State child support enforcement programs are thus forced to devote a large proportion of their limited resources to complying with the multitude of complex federal regulations -- rather than to delivering needed services to collect support for children. Unfortunately, as a result of the threat of federal penalties, meeting the needs of the federal bureaucracy has become a more pressing concern than meeting the needs of our nation's families.¹ The lack of a strategic plan, however, procedures among the states.

The Government Child Support Enforcement Program Lacks Coherence and Consistency

Without a controlling vision, the national program has also lacked ongoing coherence and consistency. Created originally as an adjunct of the welfare program Aid to Families with Dependent Children (AFDC), the child support enforcement system developed haphazardly, by accretion rather than by design. Piece after piece of federal legislation has been tacked on to the original statutory structure of the government child support enforcement program, but these successive additions of underfunded federal requirements have done little to strengthen the original structure. It is as if you started with a Volkswagen and then over the years added layer after layer of heavy metal body parts from Cadillacs. You would still have a Volkswagen engine, but it would hardly be able to move the massive body built upon it. With no increase in horsepower, the slow-moving, hard-to-steer vehicle that is the government child support enforcement system has failed 80 percent of the families requesting assistance.

The Government Child Support Enforcement Program is Outmoded

While American society and the American family have changed greatly over the past twenty years, the government program's basic orientation to the establishment and enforcement of child support has changed very little. The current program is, quite simply, outmoded. It continues to attack the problem of non-support using methods appropriate to a former time, a time when the American family was predominantly nuclear and geographically rooted. Whereas families used to stay in one place generation after generation, today they are increasingly on the move. With the nation's divorce rate at 50 percent, one out of every two children born to married parents will live in a single-parent household before he or she reaches the age of eighteen. Thirty percent of all births take place outside marriage, and that percentage continues to rise each year. The "traditional" intact American family has become more an idealized concept than a reflection of reality.

The effect of these changes in American society has been a dramatic increase in both the number of children who need child support and the number of interstate child support cases, now 30 percent of the total caseload.

I am advocating a total restructuring -- a reinvention -- of child support enforcement in this country to meet the overwhelming demand for government services. Instead of continuing this process of accretion without an overall design, we need to put into place a strategic plan for the future development of the child support enforcement enterprise for the next twenty years.

The Historical Background of the Government's Failure to Meet the Needs of Children

The state-federal child support enforcement program was established in 1975 under a new Part IV of Title D of the Social Security Act. The "IV-D" program was the first acknowledgment by Congress that non-payment of child support had a direct, and deleterious, impact upon the welfare system. Before the 1975 legislation, the impoverishing effects of the abandonment of children, mostly by fathers, had received little attention. Indeed, welfare reform had focused primarily upon maintaining the stability of the two-parent family and enhancing its economic well-being. Many welfare advocates even doubted that there was anything to be gained from a nationwide program of paternity establishment and child support enforcement.

With the establishment of the IV-D program, however, came the recognition that non-support of children by "absent" parents means economic hardship for single-parent households. Non-support results in a significantly lower standard of living and often forces people to turn to the welfare system for assistance. A number of studies have now amply documented this effect of non-support, showing that the dissolution or non-formation of a family almost inevitably means substantially lower levels of income and a precarious financial situation for custodial mothers and their dependent children. By some estimates, mothers who separate or divorce experience an initial 25 to 50 percent reduction in income, with stagnant incomes for many years following. Poverty rates for these women -- particularly for minority women -- typically rise considerably in the five years following separation or divorce. As for never-married mothers with dependent children, the poverty rate is upwards of 60 percent. Child support awards, paid on time and for the amount due, can spell the critical difference between some degree of financial independence and dependence upon public welfare. Establishing and enforcing child support orders and medical expenses is one of the keys to ending the feminization of poverty.²

At the outset the IV-D program was directed primarily toward serving the needs of welfare and low-income families. However, the awareness of the adverse economic impact of non-support on non-welfare families brought about a change in the focus of the national child support enforcement program. Over the years, as a result of a succession of

congressional acts, it became a universal program, offering enforcement services to anyone who wanted them, regardless of financial need. This evolution has resulted in a dramatic explosion of the caseload and, correspondingly, in growing skepticism and frustration among advocates, caseworkers, and clients regarding the program's ability to deal with the ever-worsening problem of non-support.³ While opening the door of the government program to an overwhelming influx of non-welfare cases, Congress created a funding scheme for the program that promoted unequal treatment of welfare and non-welfare cases by state enforcement agencies.⁴ Because of the financial incentives built into the system, state enforcement agencies tended to give non-welfare cases secondhand treatment. This meant that poor and middle-class non-welfare clients felt that their needs were not being well served, and, in fact, they weren't. Soaring caseloads, coupled with limited human and financial resources and a lopsided federal funding scheme, ensured that neither the welfare nor the non-welfare constituency of the program would be well served.

As the government caseload grew from 4.1 million cases in 1979 to 15.2 million cases in 1992, the limitations of the current program became evident.⁵ In 1979, when the government program was still fairly new, there were collections on only 17.1 percent of the caseload nationwide. In 1992, the rate of collections had risen to only 18.7 percent. This is an increase of just 1.6 percent in a fourteen-year period, in spite of improved enforcement techniques. The limitations of the current program are best illustrated by the mounting amounts of due but uncollected child support in government cases. According to the federal Office of Child Support Enforcement, of the reported \$34.8 billion in both current and prior-years child support owed by non-custodial parents in government cases in 1992, only 22.8 percent was actually collected, leaving \$27 billion uncollected. Predicting the future with respect to the growing amounts of uncollected support is not difficult since the amount of "current-year support" owed and unpaid in 1993 increased significantly over the amount owed in 1992. Because of the ever-increasing government caseload, the net effect is that the cumulative amounts of uncollected past-due support added each year to current support will continue to outstrip the ability of the program to collect child support effectively.

The Demographic Evidence

Recognizing the need for an even stronger enforcement program, the Clinton administration has recommended, as part of its welfare reform proposal, the implementation of additional federal mandates for state child support enforcement programs. While these new requirements should improve the effectiveness and productivity of the government child support enforcement program, even they will not make a dent in the backlog. In fact, all demographic signs indicate that the situation will get worse.

The number of female-headed families with children under the age of eighteen is growing

every year. From 1970 to 1990 there was a 146 percent increase in the number of such families. By 1990, one out of every five children in this country lived in a family in which the mother had never been married or the father was otherwise absent. In that same twenty-year period, the number of children with a divorced parent more than doubled. While the divorce rate in the United States remains at 50 percent, the rate of births outside marriage will most likely increase from 30 to 40 percent by the end of this decade.

Over a million children are born outside marriage each year, but paternity is established in only one-third of the cases. The 600,000-plus cases that have no paternity established are added to the backlog from previous years. This caseload is especially difficult to work because establishing paternity is only the first step in the government agency's efforts to meet its goal of collecting child support. The subsequent tasks of entering a support order and collecting the amount owed are difficult and time-consuming processes as well. More than 10 million women -- nearly 3 million of them never married -- are currently raising children as single parents. More than 16 million children in this country are living without their fathers in the home, and nearly 50 percent of these children live in poverty. Not surprisingly, almost 80 percent of the children born to unmarried teenage mothers who drop out of high school live in poverty. The majority of these mothers end up on welfare, with an estimated annual cost to taxpayers of about \$34 billion in assistance. According to federal government statistics, 80 percent of the growth in welfare cases over the past ten years, from 3.86 million families in 1983 to 4.97 million families in 1993, is attributable largely to unwed mothers. Moreover, the 2.1 million increase in welfare recipients from 1990 to 1992 reflected not only a weak economy but also a surge in the number of female-headed families seeking assistance.

Though the number of households headed by custodial mothers has continued to grow over the years, the record of success in the collection of child support has changed very little. As of spring 1990, according to a U.S. Bureau of Census survey, only 57.7 percent of the 10 million women with children from an absent father had even been awarded child support (down from 59.1 percent in the spring of 1987). Of those custodial mothers who had the possibility of receiving child support because a court had ordered it, only half actually received the full amount due, while 24 percent received only partial support and 25 percent received nothing. The larger picture shows that only 37.4 percent of all custodial mothers received any amount of child support. Of the never-married women, only 15 percent received support, and the poverty rate for this group was 53.9 percent, compared with 23.1 percent for women who had been married.

The Existing System: Overworked and Overextended

The simple fact is that state and federal governments cannot by themselves turn the situation around.⁶ Significant budget deficits limit the ability of state and federal governments to deal with the demands of the growing child support caseload. While

Congress mandates more requirements for state child support enforcement programs in an effort to improve their performance, these same state programs find themselves overwhelmed by the needs of their current clients, burdened by more and more federal regulations, and strapped by inadequate financial resources to meet either client needs or federal requirements.

Many current legislative proposals to improve the child support enforcement system are designed to fix a system that is simply outmoded and incapable of dealing effectively with the worsening situation of non-support in this country. While the enactment of some of the administration's proposals will clearly improve aspects of the existing system, its fundamental defect remains: there are still too many cases for the government system as presently designed. While attempting to function as an adjunct of the welfare system by recovering and reducing mounting welfare costs, the system also attempts to serve the needs of increasing numbers of non-welfare families. The result is that the current child support enforcement program fails to do either task well.

From 1985 to 1992 the number of non-welfare cases in the IV-D system rose by 200 percent -- far outstripping the increase in the number of welfare cases, which rose only 21 percent. The significant disparity in the growth rate between welfare and non-welfare caseloads came about through the enactment of the Child Support Amendments of 1984, which imposed many new program requirements upon state IV-D agencies. In addition, the IV-D agencies are required to provide services equally to welfare and non-welfare families. These requirements initiated the backlog of cases and continue to prevent states from prioritizing their caseloads.

With respect to the 8.7 million welfare child support cases, which account for 58 percent of the 1992 caseload, collections were made in only 12.3 percent of the cases, an increase of 0.1 percent from 1991 and just slightly over 1 percent since 1985. In 1992, the collections in these welfare cases represented a recovery of only 11.4 percent of the AFDC paid out during the year, an improvement of just 0.7 percent from 1991 and only 1.6 percent since 1985. The current government child support enforcement program must work much harder to reduce the costs of welfare by recovering directly from the parent ordered to support the children the welfare dollars paid to the custodial parent. The government cannot even take full credit for the small amount of AFDC recovery that is attributable to its efforts because all AFDC recipients must assign their child support to the state IV-D agencies. Clearly, some of the support paid on those cases was paid voluntarily, without any government work on the case.

In 1992 the IV-D caseload alone consisted of 15.2 million cases. This number was nearly double what it had been ten years earlier, and it did not include statistics for custodial parents who sought help from private agencies and private attorneys. Of the 15.2 million cases, only 56 percent have child support orders, leaving nearly 7 million cases needing establishment of paternity and/or support orders. In 1992, according to the federal Office of Child Support Enforcement, support order establishment grew by 9 percent over the

previous year, while the number of cases needing establishment of an order grew by 13 percent.

With the growth in the number of non-welfare cases in the IV-D caseload and the expansion of the enforcement services that are mandated in those cases, administrative expenditures for non-welfare cases have risen 475 percent since 1985. This accelerated growth of the non-welfare component of the government caseload and the accompanying administrative costs have significantly limited the ability of the state child support agencies to address effectively the needs of the welfare and low-income families for which Congress originally intended the child support enforcement program. So significant was the increase in the non-welfare caseload in a relatively short time that even reassigning personnel from the welfare caseload to the non-welfare caseload did not produce positive results. In 1985 the percentage of non-AFDC cases with collections was 30.3 percent; by 1992 that percentage had dropped to 27.1.

The Necessity for Transformation

What all these statistics clearly indicate is that the current child support enforcement program operated by state and federal agencies cannot adequately work both a welfare and a non-welfare caseload. The resources available are simply insufficient for the task. This means that state child support enforcement programs will continue to limp along, attempting to serve an already overwhelming, and always growing, caseload with increasingly inadequate resources. We will see even more frustration among the millions of custodial parents whom the programs are mandated to serve. The state programs themselves, already unable to cope, will be doomed to greater failure and will likely be subject to more and more unmanageable federal mandates as Congress demands compliance and attempts to improve program performance. State administrators for these programs lament the time spent answering complaints and questions from clients who demand to know why their cases are not being worked. The same person who answers those complaints could be working cases if it were not for the huge backlog.

There is a critical necessity to reinvent the child support enforcement system in this country, to ensure that our neediest children receive assistance. Designing and implementing such a plan will be a formidable task in light of the budget constraints facing both the federal and the state governments that administer the program.

A NEW MODEL

Tier One of a Two-Tiered Case Management System

I recommend a two-tiered case management system to break the vicious cycle caused by the overwhelming caseload in the present system. In the first tier, state and federal

resources will be focused on the children most in need of help, those for whom the IV-D program was originally designed. For these children the government's tasks will be: (1) to collect the support due their family so they can leave the welfare rolls or (2) to prevent their family from having to turn to welfare at all.

The first tier includes families who receive welfare benefits of any kind, as well as families with incomes below 175 percent of the federal poverty level. It is obvious that the system must serve the needs of families who are on welfare and who are striving to achieve financial autonomy. However, we must also include in the first tier those families who are struggling to preserve their financial independence and to remain off the welfare rolls.

Benefits to the Taxpayer

Focusing our efforts on the first tier of cases is also consistent with the original intent of Congress to recover tax dollars spent on welfare payments. Not only will we be removing families from the welfare rolls but, as fiscal conservatives point out, we can save tax dollars by keeping families from entering the welfare system. It has been estimated that if, in 1989, parents who were raising children alone on incomes below the poverty level had received the full amount of support due them, some 140,000 families would have been able to rise above poverty. Welfare recipients who have job skills and tax credits may not escape poverty at the end of two years on welfare, but they surely will if they are receiving child support payments in a timely manner and for the full amount.

In 1992, although only 12.3 percent of the welfare cases showed a collection, those payments allowed nearly a quarter of a million families to be removed from AFDC, according to the federal Office of Child Support Enforcement. The impact of child support collection upon the poverty of single-parent families would be even greater if the 57 percent of custodial mothers who do not have a support award were to receive one -- and if the amount of the awards were consistent with state guidelines.

The potential for cost savings through reduction of welfare expenditures by effective child support enforcement is undisputed by the budget and policy experts in the White House. As Bruce Reed, President Clinton's advisor on domestic policy, noted, "Up to 40 percent of our welfare dollars go toward children whose fathers could afford to pay child support." Professor Irwin Garfinkle of Columbia University estimates that the current welfare population could be reduced by one-quarter if child support were fully and regularly paid. Given the average monthly caseload of about 4.8 million families (in 1992), that could mean an annual savings of \$6 billion in AFDC alone -- perhaps as much as \$14 billion in total welfare expenditures. A study by the inspector general of the U.S. Department of Health and Human Services found that most state agencies do not systematically pursue delinquent child support and that welfare collections could increase by up to 20 percent a year if aggressive efforts were undertaken. Savings of that magnitude could be translated into a funding source for the kinds of welfare reforms being proposed by both political parties.

Added to the reduction in the amount of actual expenditures for welfare is "cost avoidance" -- that is, helping families to keep from having to turn to welfare in the first place. Although we don't know exactly how much savings cost avoidance would provide, a 1987 study sponsored by the federal government estimated that every \$5 in non-welfare child support collected yielded \$1 in indirect savings of AFDC, food stamps, and Medicaid that might otherwise have had to be paid out. Although admittedly speculative, that estimated cost-avoidance factor of 20 percent might translate into another savings in potential welfare expenditures of more than \$1 billion. Those interested in this national problem have for many years urged the federal government to complete the work necessary for them to measure cost-avoidance savings. Determining in hard numbers the total cost savings achieved in the IV-D program would allow lawmakers to make informed business decisions as to how much to invest in the child support program and where to invest it.

Prioritization of Enforcement in the First Tier

Since some states do not have sufficient resources even to work all the cases in the first tier and since it is essential to remain focused on cost-effectiveness, we believe that prioritization of the cases in the first tier is also required. The starting point should be an assessment of the client's income and the welfare benefits paid to that family over the most recent three years.

Those cases in which the custodial parent is currently receiving AFDC benefits of any kind would be given top priority. Second priority would be assigned to cases in which the custodial parent is not presently receiving welfare benefits but was on AFDC or Medicaid for three or more months at some point within the most recent three years. The assumption here is that such families are still precariously close to returning to welfare. The third priority within this tier would be those families whose household income has averaged 175 percent or less of the federal poverty level figure over the last three years. This group would encompass those families who have never received welfare benefits but who are clearly at risk of becoming dependent on the welfare system.

After identifying the children most in need of help, we would then want to ensure that the government IV-D program would invest its limited resources in the cases that are most likely to produce results, those that are relatively "fresh." Therefore, in any state that could not effectively work all the cases in the first tier, an additional prioritization plan would be put into effect. The cases to be prioritized would be those in which: (1) paternity needs to be established or a support order entered for a child born within the last three years, (2) cases in which a child support order has been entered within the previous three years but no collection of support has been received, and (3) cases in which a child support order has been entered prior to the last three years and some collections have been recorded during that time. The assumption here is that an older case should not take precedence over a more recent welfare or low-income case that

may hold a much greater promise of welfare cost recovery and cost avoidance over a longer period of time. Again, from a cost-effective standpoint, it is much less time-consuming and less costly to be working fresh cases than older cases.

Second-Tier Cases

All cases that do not meet the eligibility requirements of the first tier can be worked by states that have decided to invest sufficient resources into their program. These second-tier cases will be worked only when it has been certified that a state has effectively worked the cases in tier one. Redirecting the activities of the government program to serve primarily the needs of welfare and low-income families does not necessarily mean ignoring the child support enforcement needs of those whose incomes place them in tier two. Depending upon the changes in the funding structure proposed by the Clinton administration, there will be states that not only choose to work tier two cases but have the resources to do so effectively. Most important, it will be left to each state to make a proper determination of the level of service to be provided. Under one suggested proposal, some states may qualify for as much as 90 percent reimbursement from the federal government, and thus they will not find the cost exorbitant. More than likely, many states will want to prioritize their resources on tier two cases by using the methodology of income means testing and "freshness" assessments previously described for tier one cases.

Those state IV-D programs that do not have adequate funding from their state legislatures may also choose to follow some critical recommendations set forth in a 1992 United States General Accounting Office study. Federal law allows state child support enforcement programs to charge applicants who are not on welfare fees for services rendered. State programs could, if they chose, establish a sliding scale based on family income. They may also charge a percentage of the child support they collect, against either the custodial parent or the non-custodial parent. The General Accounting Office's report found that if all states charged a service fee on support collections, the total administrative costs could be recovered from the parents. The Clinton plan fails to support the GAO recommendations and ignores the possibility of saving taxpayers' money. Adoption of a fee schedule would mean that the government child support program would stop functioning as virtually a free legal clinic and enforcement service for all families irrespective of their financial resources.

In cases where the failure of the non-custodial parent to pay child support forced the custodial parent to turn to the state agency or to a private agency for help, it would certainly be appropriate to charge the non-custodial parent a fee to recover enforcement costs. Parents who don't pay child support are penalized less frequently than people who are late on their electric bill. One way to enforce a fee or late charge would be to have added to the child support orders of the court a specific provision that if the obligated parent fails to make payment by a specified day of the month, the amount of the support automatically increases by a specified amount. For example, a parent who has not paid by the tenth day of the month becomes liable for an automatic increase of \$50 in his or,

in rare instances, her payment. An increase is assessed for each month he or she fails to pay in full and on time. In cases of hardship, when a parent has a legitimate reason for not paying on time, the penalty could be waived. This principle of "pay now (on time) or pay more later"⁷ has proved effective in ensuring the timely payment of utility bills, credit card balances, car loans, and mortgage installments. There is no reason that it could not be applied to the far more serious obligation of child support payments. However, for the strategy to work successfully, it would be essential that all support orders in every state uniformly include such a provision and that the provision be strictly enforced.

The Limitations of Government Resources

The government child support program currently employs more than 42,000 persons nationwide. These dedicated individuals struggle each day to try to keep up with the influx of new cases. They cannot at the same time effectively work the backlog of cases and collect the billions of dollars in overdue child support. To pursue the tough cases as aggressively as possible takes a great deal of time. The limited resources of the government are adequate for only a finite number of clients. The remaining parents in need of services will have to seek help from resources outside of government. The need for moving beyond government becomes more obvious when we consider that in addition to the millions of non-welfare families who have asked the government for help and have not received one payment, it is believed that two to three times as many non-welfare parents who needed help either did not file an application with the government or had their cases closed by the government. If these estimates are valid, the total number of non-welfare parents in need of services is at least 10 million families.

The Private Sector

Redirecting the activities of the government program under the two-tiered case management system should not mean that some parents are left without assistance. The notion among some advocacy groups seems to be that child support enforcement, like the collection of taxes, is government's job and that government services are both free and selfless. As one governor stated the issue: "[i]t is not government's obligation to provide services but to see that they're provided." Critics of privatization also stress that the private sector is suspect merely because of the profit motive, and they label it as untrustworthy. Lastly, they argue that by virtue of its authority and power, government can get the job done more effectively than private entities can. None of these arguments have been proved valid by reality, as private companies, private attorneys, and private enforcement agencies have shown in the past few years.

Certainly evidence exists that nothing intrinsic to child support enforcement requires that it be purely a government enterprise, and clearly there is no foundation to the belief that the services of the government program are free. In FY 1992, state and federal governments spent nearly \$2 billion on the government child support enforcement program,

\$850 million of it on non-welfare cases. Although in most states, services are available in government cases virtually without cost to the user and regardless of financial need, they are paid for by the taxpayers as a whole, users and non-users alike. As for the overall effectiveness of the government program, the statistics cited thus far in this paper clearly demonstrate that the government cannot solve this problem alone. In spite of these statistics, the Clinton plan does not encourage private sector involvement as part of the solution.

One of the operating principles of certain child support advocacy groups appears to be "if it isn't provided by the government free of charge to clients, then it must be "bad." The few state and county government agencies that charge fees to custodial parents are also criticized for taking advantage of non-welfare clients. In spite of lingering distrust, however, people are becoming increasingly aware that what traditionally have been considered government monopolies can be operated more efficiently and effectively by the private sector. Private companies can bring to tasks economies of scale, well-honed specialized ability, freedom from bureaucratic encumbrances, and greater cost-efficiency through lower administrative overhead and smaller workforces. For these reasons, competition by the private sector can be viewed as essential to "reinventing government." Government cannot -- and need not -- do it all. These principles are consistent with Vice President Gore's public statements on improving government services and President Clinton's support for small businesses.

Child support enforcement is an area in which the need for more resources than the government can possibly provide is particularly evident. The private sector can introduce into the child support enforcement effort an urgently needed additional workforce. Moreover, competition by the private sector may result in the government program's becoming more efficient and more cost-effective. Concerns that private vendors will provide fewer services, with lower quality, or that they will act unscrupulously can be addressed effectively through an appropriate arrangement for government oversight. The possibility is that the involvement of the private sector in the following essential aspects of child support enforcement will actually greatly improve services with no greater expenditure of taxpayer dollars.

Establishing Paternity

The legal establishment of paternity is a prerequisite for establishing a child support obligation. It is also the indispensable basis upon which to build a continuing relationship between the child and the father, as well as to ensure that the child has all the benefits of his or her birthright.

Recognizing the need for more aggressive paternity establishment programs, particularly in light of soaring rates of out-of-wedlock births, Congress has laid out a number of procedures that states are required to use in determining parentage for child support

purposes. These requirements include expedited and administrative processes for establishing paternity, efforts to achieve the early establishment of paternity, opportunities for voluntary establishment of paternity -- including outreach programs in hospitals -- and extensive use of genetic testing.

The mandatory procedures for establishing paternity cut across welfare and non-welfare populations. Clearly, the establishment of paternity can and will save many families from having to turn to welfare. But despite significant improvements in the paternity establishment rate by the government program, according to the federal Office of Child Support Enforcement, paternity was established in only 17 percent of the nearly 3.1 million cases in the FY 1992 caseload.

Nearly 1 million of the cases in the government program's FY 1992 caseload that required paternity establishment were non-welfare cases, and paternity was established in just 14 percent of them. Unfortunately, with an overwhelming caseload of millions of cases that have unenforced support orders and millions more that need support orders to be established, the national IV-D program will be hard-pressed to realize any dramatic increases in the rate of paternity establishment without neglecting enforcement and support modification cases. Increases become even less likely if the government works all of the medical support and Medicaid cases that Congress has mandated to be worked.

The private sector can step into this arena and make an immediate difference. Genetic testing laboratories throughout the country provide the government child support enforcement program with essential evidence in contested paternity cases. Even though such facilities already play a prominent role in the establishment of paternity, they could and should play a greater role. For example, provisions of the Omnibus Budget Reconciliation Act of 1993 require states to use more aggressive methods to achieve early establishment of paternity, including in-hospital programs to obtain voluntary declarations of paternity, which would create a rebuttable or a conclusive presumption of paternity. The Clinton administration supports the expansion and simplification of the process for voluntary establishment and will hold state enforcement agencies accountable should they fail to meet stated goals. Indeed, one suggested proposal makes states completely liable for all welfare assistance given a mother who has fully cooperated in the procedure for establishment of paternity but for whose child the state agency has not been able to establish paternity within a fixed period of time.

While these new goals should significantly improve the rate of paternity establishment, they do not go far enough or provide relief to the taxpayer. Scientists now have developed a DNA analysis procedure that can be used instead of blood samples. A technician uses a cotton swab to collect cells from the cheek area inside the mouth. Given the simplicity and low cost of this non-invasive buccal swab test, voluntary declarations should always be accompanied by the confirmation of genetic testing results to ensure against possible fraud or later contestation. A positive test result provides a more sound legal basis upon which to impose the weighty obligation of child support, as well as certainty in the mind of the father, so as to encourage the father-child relationship. At no more cost than the government program currently pays out, these private entities could train personnel for the

paternity establishment programs, obtain the voluntary declarations -- confirmed by genetic test results -- and file the validated acknowledgments. Private agencies that provide paternity establishment would receive payment directly from the state agency for in-hospital establishment programs that they operate on behalf of the agency, but the costs of genetic tests could be collected from the parents. Apparently the Clinton administration understands the value of genetic testing: its welfare reform proposal looks to the use of a more streamlined legal process that uses such test results.

Other important services could be provided by the private sector in paternity establishment. Just as there are now private enforcement services that collect and distribute child support, there could be private agencies to establish paternity. Such agencies could relieve the government program of a significant part of its current workload by operating paternity establishment programs. The private sector could also employ private attorneys on an as-needed basis to handle cases requiring litigation. Private agencies could make their services available not only to new paternity clients but also to clients whose cases are part of the backlog. The employment of the private attorneys in this way would augment government efforts to reduce the backlog of paternity establishment cases and to deal with the continuing influx of new cases. Along with the responsibility for litigating paternity establishment cases in the state agency's caseload, private agencies would receive payment for legal services directly from the state agency in an amount equal to what it would have cost the state agency to pursue those cases successfully.

Monitoring Delinquency

Most experts embrace delinquency monitoring of support payments by state registries as an extraordinarily effective tool as long as there is immediate enforcement action once a delinquency occurs. At the present time non-compliance may occur with no enforcement action being taken. A state IV-D agency, for example, takes an enforcement action in non-welfare cases only when a parent applies for services. Frequently, this means that by the time a case comes to the IV-D agency for enforcement, delinquency in payments may have gone on for a long time. Large amounts of child support owed, coupled with an absent parent who may be on the move, make for very difficult enforcement.

Such delayed enforcement clearly defeats congressional intent in creating the IV-D program to deter welfare dependency and to avoid increased welfare costs. Many families might never become welfare applicants or seek government services if court orders for child support were monitored for compliance from the time they were rendered and if enforcement action took place immediately after a delinquency occurred. Delaying the initiation of enforcement action until long after a delinquency occurs makes the cases unnecessarily time-consuming, and welfare too often becomes a virtual certainty.

Monitoring compliance of court orders could be handled by creating a central or integrated registry of support orders within each state, to process and/or record child support payments received. Copies or abstracts of all new or modified support orders signed by

a judge would be entered into the state registry of orders. Once entered, support orders would be monitored each month for compliance. Each state registry would be linked by computer with all other state registries. By such computerized linkage of support registries, state enforcement agencies would be able to share information about the support obligations of "absent" parents who owe support. It is anticipated that this computer network would be built upon the new automated systems for data information that states are currently establishing in fulfillment of a federal mandate. The completion of these new computer systems is scheduled for 1995, but most states will not be able to meet that deadline.

The success of such "delinquency monitoring" is evident in pilot projects started in two Texas counties more than four years ago. In those counties all new or modified court orders for support in non-welfare cases, once rendered, are entered in the automated systems. The local registries receive and monitor payments made in compliance with the court orders. When a case is put into the local monitoring system, the obligor and the obligee each receive a computer-generated letter informing them that payment of the ordered support is being monitored for compliance and that if a delinquency occurs appropriate enforcement action will be taken immediately by the state child support enforcement agency. If, in fact, a delinquency does occur, the obligor receives a letter demanding payment and warning of impending legal action.

Delinquency monitoring of support orders, as part of the new computer system, is an essential component of an effective child support enforcement system and should be made a priority. However, without the necessary increases in resources to monitor each and every support order in the country, we will only exacerbate the fundamental problem of our present system -- an overwhelming caseload. The high cost may well be worth it when you look at the statistics. In Texas, the compliance rate on support orders that have been monitored has been approximately 73 percent, which is five times greater than compliance rates in the other, unmonitored, child support enforcement offices in the state. In addition, cost-effectiveness analysis of the pilot projects showed that \$25 of support money was collected for each \$1 of administrative expenditures, compared with a statewide average cost-effectiveness of \$3.21 of support collected for each \$1 of administrative expenditures. The private sector could support widespread implementation of this type of delinquency monitoring process in the other 252 counties in Texas, as well as in other states, if federal, state, and local governments were to facilitate development.

Enforcing Court-Ordered Support

Wage withholding for child support accounted for approximately 36 percent of all collections made by the IV-D program in FY 1988. Five years later, wage withholding made up nearly 50 percent of all collections nationwide. First mandated by Congress in the Child Support Enforcement Amendments of 1984, wage withholding was significantly strengthened as an enforcement tool by the Family Support Act of 1988. That act required that, beginning in November 1990, all new or modified support orders in the IV-D caseload be subject to

wage withholding immediately upon being issued and that beginning January 1, 1994, all support orders initially issued on or after that date contain provision for immediate wage withholding, except where the parties agree in writing to a different arrangement or where the court finds good cause not to implement wage withholding. For these exceptions, wage withholding must commence if, and when, an arrearage of no more than thirty days occurs.

Already very effective, wage withholding will become a stronger enforcement tool if Congress enacts proposals incorporated in several pieces of pending legislation. The proposals call for the use of the W-4 form in all new employee hirings as a way of keeping track of child support obligations. The law would require all new or rehired employees to record on the form any child support obligations. The employer would then send the W-4 form to the state enforcement agency to confirm the information given by the employee. The employer would subsequently withhold amounts for child support, sending the withheld amounts to the designated state registry for distribution. Last, but even more important, if the parent who owes support moves to another state, the legislation calls for a wage withholding order issued in one state to be honored in all other states. There are also proposals pending requiring that a lien against assets to secure the payment of back child support be honored across state lines. As soon as these valuable enforcement tools are in place, there will be an impact on the backlog of non-paying cases. Not only will we see more cases receiving payment but it will be collected at a much reduced cost.

While enhanced wage withholding and delinquency monitoring will significantly improve child support collections, they will not eliminate the need for the resources of the private sector in attacking the remaining backlog of unpaid support cases. The full involvement of the private sector in collecting on these cases would bring desperately needed resources to bear upon an otherwise unmanageable problem. Having private attorneys and private agencies collect and distribute support in the cases that fall outside the priority scheme would allow the state program to direct more of its resources to the priority cases. Individual custodial parents could be encouraged to exercise the option of using private child support agencies, which is available to them under federal regulations. This is particularly important for cases in which the obligated parent has failed to make regular and full payments over an extended period of time.

Families whose cases did not get worked successfully under the proposed priority order of the state enforcement agency or who did not, in the first place, apply for the services of the government program should feel protected in choosing services from private enforcement agencies, which could be approved or certified by a state agency using uniform standards and simple regulations formulated by the federal government. Such approval or certification would ensure families of reputable services. Private agencies that violated the standards could be decertified and would lose access to information and tools made available to them from government agencies.

Government programs might also use private agencies to help recover uncollected support in cases by paying the private agencies a fee for services if and only if the government

program is guaranteed a "return." First, it should have to pay the fee to a private agency only if a collection is actually made. Second, there would be a return or savings, since each delinquent parent brought into compliance would represent one less case that the government would have to pursue at a cost. Third, the state would benefit by reducing the chance that the custodial parent would need to turn to welfare. The chance of a more stable and wholesome family life for that parent and his or her children also offers intangible benefits that cannot be measured. For example, far too often the children in effect lose two parents when one flees and the other has to work two or even three jobs to take care of the family. The parent who receives timely payments will be able to devote more time to the preservation of the family and the well-being of the children.

The additional resources from the private sector could double -- or even triple -- the workforce available to attack the enormous backlog of cases. The government could retain and enlist the services of the private sector on an as-needed basis and be guaranteed a return on the case, since payment would be issued only upon achievement of a successful result. Instead of hiring more employees for child support enforcement and creating an infrastructure to support them, the state and federal governments would be able to control and perhaps even reduce costs, while ensuring that non-welfare families receive the enforcement services they need. The combination of government and private agencies would have a powerful positive impact upon the problem of non-support.

Identifying and Using Locate Services

Public and private agencies would need to cooperate with each other in locating the absent parent and collecting the money owed for the children. Credit bureaus have already demonstrated the importance of such cooperation. If private agencies and the government were to share information and leads, justice could be achieved for more children. As databases in the private sector and public sector come on-line, we will see more effective enforcement. Among the child support enforcement proposals currently before Congress - - and also supported by the Clinton administration -- is the strengthening of the federal-state computer network for locating absent parents and putative parents. Since interstate cases make up 30 percent of the government program's current caseload and only one out of every ten dollars owed is collected, it is imperative that there be an effective interstate system for locating absent and putative parents as well as their income sources and assets.

If the private sector is to make the fullest possible contribution to the child support enforcement enterprise, it is essential that use of the state-federal locate network be available to private enforcement agencies and private attorneys. This use, of course, would have to be regulated and monitored to ensure that there was no breach of confidentiality or improper use of information. Private agencies and attorneys would have to be approved or certified by the state enforcement agency. With the proper safeguards in place, access by both government agencies and private agencies to the information would result in a dramatic change in how child support enforcement is carried out in this country.

Voluntary Compliance

For any strategic plan to be successful, a significant increase in the rate of "voluntary compliance" must be achieved. As the Internal Revenue Service knows, "voluntary compliance" with the tax code increases in direct proportion to an increase in the odds of getting caught and being punished economically or through criminal indictment. The penalty imposed for non-support needs to be swift, sure, severe, and rarely forgiven. Mandatory weekend jail time for second offenders, hefty interest payments, and costly penalties under the "pay now or pay more later" system would be an excellent start. Over the past few years, we have also learned that public embarrassment and revocation of various licenses has proved effective. The Clinton plan has not adequately addressed the importance of voluntary compliance.

Ideally, every parent obligated to pay child support would pay the designated amount in full and on time, out of love or, at the very least, out of a sense of responsibility for his or her child. Resorting to strong enforcement and stiff penalties does not mean we have to abandon our idealism. We should be doing all we can to change social attitudes about this problem. The non-support of dependent children is as much of an outrage to society as is the presence of drunk drivers on our highways. The May 22, 1994, New York Times reported the success that MADD (Mothers Against Drunk Driving) has had not only in changing our attitudes but in decreasing the loss of life. We need to have an immediate change take place in the civics lesson experienced by more than 25 million children in our country each day. The first lesson should be, if you run out on your children, you will be caught and brought to justice. The next would follow: if you don't obey court orders, you will be prosecuted and punished. The third and final lesson should be that government works and agencies that promise help do in fact provide effective assistance.

An example of the failure of government to keep its promise is legislation passed as part of the Child Support Recovery Act of 1992. It was to be the beginning of our "get-tough attitude" with child support deadbeats who crossed state lines. Almost two years later, fewer than twenty people have been prosecuted under this statute. The Justice Department was never provided the necessary resources, and it responded by establishing regulations that make it virtually impossible to get help. It is very clear that the Justice Department has its own priorities and wants nothing to do with this problem irrespective of the good intentions of Senator David Shelby. In the history of the IV-D program, there are other examples of expectations raised through legislation that went unfulfilled for lack of funding. The Justice Department, unlike the IV-D program, wasn't willing to be the sacrificial lamb for a program destined to fail for lack of proper funding.

Conclusion: Designing for the Future

Before designing a strategic plan for the future we will have to dispel the myth that government can effectively serve all those who require and request child support services. We do not lightly give up this idealized vision of solving this problem. From 1987 to 1990 we sought full funding for government agencies and publicly declared this to be our

position in seeking the necessary tools to win the child support war. But no matter who requested such full funding, the result was always the same. Instead of full funding, we got more work and inadequate funding for the additional work. The reality is that we now have a government child support system with millions of cases marked "No Payment Received". A conservative estimate is that there are at least 10 million families who need child support collected. The needs are simply growing exponentially, and not even the most dedicated state agency can fully meet those needs. After having written articles, testified before legislative bodies, and given hundreds of speeches all over the country urging full funding, I believe it is time to move ahead with a different plan for the next twenty years.

I ask those who are not ready to give up on urging full funding and providing free services for all who apply to assume the responsibility of providing a detailed plan of how they are going to work these millions of cases, determine the cost of working them, and identify the taxpayer dollars that will pay for it. I am not by any means suggesting that we give up the fight for every dollar we can squeeze out of the budgeting process for government programs. I just don't believe that the level of funding will ever be sufficient to meet the needs of all the parents who are owed child support.

My vision for a strategic plan is grounded in reducing the government caseload to manageable levels. Efforts for the short term should be concentrated on case prioritization and voluntary compliance. After the national computer network is in place, I believe that W-4 reporting, central registries with delinquency monitoring, and improved locate resources will allow for the prioritized caseload to be worked more effectively. Legislation should be passed immediately requiring that wage-withholding orders and liens issued by one state will be recognized in all states. Encouraging the private sector to complement the government's work will be another necessary key for both the short term and the long term. Finally, at every possible turn we must work to pass the cost of enforcement on to the parents who caused the problem by failing to pay child support in the first place - and not to the taxpayer.

We need not wait very long to implement some of the short-term goals. Over the next few months, by using federal waivers, the U.S. Department of Health and Human Services could grant exemptions to states to begin prioritization of the caseload. Public attention to support voluntary compliance could be undertaken immediately by our leaders in and out of government if they were to speak out forcefully and demand changes. Judges could begin to get even tougher and send the message that we won't tolerate our children's suffering such economic abuse. Congress could pass needed legislation that is now pending. Most important, with the development of a strategic plan and the full mobilization of a greatly enlarged workforce, the current spectacle of billions of dollars in uncollected support could become a thing of the past.

Thank you, Mr. Chairman, and members, for this opportunity to present my views. I hope they are of help to you as you continue your efforts to solve the child support problem.

FOOTNOTES

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Retired officer held over child support

San Antonio Express-News

Thursday, June 2, 1994

By Jerry Needham
Express-News Staff Writer

A retired U.S. Army Reserve lieutenant colonel who allegedly failed to pay child support for four years has become the latest to suffer at the hands of a private agency that tracks down so-called dead-beat parents.

Frederick Wiegand, 48, was arrested Friday at his home in Lockhart and transferred Tuesday to Bexar County Jail.

He was being held on a contempt of court warrant with a cash bond set at \$12,610.90, the amount of unpaid child support at the time the warrant was issued in March 1993. A court hearing has not yet been set.

The information that led to Wiegand's arrest was provided by Child Support Enforcement, a 3-year-old Austin-based private company that tries to locate people who fail to make court-ordered child-support payments.

"It's been very frustrating," Pat Wiegand said of her efforts to collect from her ex-husband for her son, now 18.

"Since 1990, I've sought the services of attorneys who were successful in getting court orders to have his wages garnished, but since he was self-employed, there was no way to get that."

Frederick Wiegand, a self-em-

ployed geophysicist who retired with 20 years of service from the Army Reserve two years ago, was difficult to catch up to because he "travels throughout the state and the country," said Al James, an investigator for Child Support Enforcement.

Wiegand said she initially tried to let the court system and the Texas Attorney General's Office handle the collection.

But with no progress after four months, a billboard ad convinced her to call CSE.

"If it hadn't been for the amount of time, detective work and legal work they've performed, there is no way I could have held down my job and done all that," Wiegand said. "We're talking about an individual who has actively avoided service" of legal papers.

Bexar County Family Law Master Judge James A. Rausch defended the system, blaming many of the non-payment ills on a heavy workload and lack of resources.

"A lot of people may get frustrated with the system, but nevertheless the system is working and collecting a lot of child support," Rausch said.

"One problem is people who don't show up in court," Rausch said. "I'm all for these private col-

"It's time-consuming work because those who don't want to pay make it as difficult as possible."

— Ron Dusek,
Attorney General's Office

lection agencies. There's enough business to go around."

Indeed, federal statistics show that money is actually collected in only about 20 percent of child-support cases nationwide.

Ron Dusek, spokesman for the Texas attorney general, said the rate here was similar.

"The state has 800,000 cases, and our attorneys and caseworkers each have thousands of cases they have to deal with," Dusek said. "It's time-consuming work because those who don't want to pay make it as difficult as possible."

Many of the custodial parents receive federal Aid to Families with Dependent Children, he said.

"It's important that persons on AFDC start receiving child support so the taxpayers don't have to pay," Dusek said.

"There is room for private collection agencies, and even though we welcome and need the help, we do have concerns about the business being unregulated," Dusek said, adding that he thinks the Legislature will take a look at this new industry during its next session.

An estimated 100 private agencies specializing in child-support collections have sprung up in the United States over the past five years, about six of them in Texas.

CSE founder Casey Hoffman said the company gets thousands of calls a month inquiring about the service. Prospective clients must have a court order for child support and not be receiving welfare payments, he said.

Wiegand will end up forking over about a third of any money collected to CSE, but she said it would be worth it.

"Sixty (percent) or 70 percent of something would be better for my kids than 100 percent of nothing," Wiegand said. "It gets expensive going through attorneys, and it was incredibly frustrating trying to do the things necessary to try to collect it on my own. It gives a measure of hope to have someone familiar with how the legal system functions to be an advocate on your behalf."

Retired Army officer ordered to pay \$15,000 child support

Friday, June 10, 1994

By Gloria Padilla
Express-News Staff Writer

A retired lieutenant colonel who owes more than \$15,000 in back child support must pay up or spend the next six months in jail, a district judge ruled Thursday.

Frederick Wiegand, 48, of Lockhart appeared before District Judge John Specia and asked to be released from Bexar County Jail so he could arrange for the sale of personal and business property in order to pay his past due account.

Wiegand, a retired Army Reserve officer, remained in jail late Thursday.

According to court records, Wiegand owes child support dating back to 1990 for a son. The arrears include \$3,492 for 1990, \$3,600 for each year from 1991-1993, and \$1,500 so far this year.

Wiegand testified that he can't coordinate the sales from his jail cell because access to telephones is limited, and all calls must be made collect.

He also testified he owned land and has on-hand equipment he could sell. Further, he said he was owed money that he could attempt to collect if released from jail.

Specia said he might reconsider the case in 30 days if the child sup-

port is paid.

Wiegand's case was one of dozens of child-support cases heard Thursday at the Bexar County Courthouse. Wiegand was mentioned in a recent San Antonio Express-News article about the use of private companies that help collect child support.

Wiegand's wife, Patricia, who lives in San Marcos and works in San Antonio, hired Child Support Enforcement, an Austin-based company, to find her husband. He was arrested May 31 and has been in jail since on a contempt of court warrant issued more than a year ago.

UNLEASH THE BILL COLLECTORS ON DEADBEAT DADS

BY GARY S. BECKER



Clinton's proposals for stiffer rules to enforce support payments are fine, as far as they go. But private collection outfits have a better track record than state agencies in getting money from recalcitrant fathers

More than one in five U.S. children live in poverty. This is mainly because of a spectacular growth in the number of families headed by unmarried mothers, compounded by low or nonexistent child-support payments by noncustodial fathers. Fortunately for the children, as well as the mothers, it is possible to greatly increase the number of fathers who meet their obligations.

It is far too easy for fathers to dump the financial as well as the emotional burdens of raising children on mothers. More men will hesitate to father children if they know they'll have a tougher time evading the duty to support them.

Children can benefit emotionally as well as materially when their fathers support them. And if more dads were forced to pay up, they might be more likely to spend time with their kids—since they would no longer be avoiding detection.

A 1993 Urban Institute study estimates that incomes of many one-parent families would rise above the poverty level if all child-support obligations were met. But the American Fathers Coalition—a group of child-support payers—claims the delinquency figures are inflated by mothers' failure to report the payments they receive. This coalition also believes fathers sometimes fall into arrears because child-support awards are excessive.

This group makes some valid points, but it is still important to improve compliance with child-support obligations. Congress passed legislation in 1984 and 1988 requiring states to make stronger collection efforts, with the Federal government footing most of the bill. It is now easier to garnishee wages, even when fathers have moved to other states, and to jail those who refuse to pay. Computer systems allow states to keep better track of where fathers live and how much they owe.

PATERNITY WARDS. As part of his welfare-reform package, President Clinton recently proposed stiffening these laws by establishing national clearinghouses to track interstate cases, by denying occupational permits and driver's licenses to fathers who don't pay up (some states already have such rules), and by requiring hospitals to establish and record who the father is for every baby born.

Although federal laws and state efforts have increased the numbers of fathers who pay up, statistics compiled by the Health & Human Services Dept.'s Office of Child Support Enforcement show that state agencies are collecting money in less than 19% of their child-support cases. Many fathers continue to successfully avoid detection by state gov-

ernments—in some cases by fleeing to another state.

One reason for the low figure is that state collection agencies concentrate on helping mothers on welfare, including efforts to establish the identity of the fathers. States emphasize welfare cases because public spending is reduced when families receive enough child support to go off welfare.

But many women not on welfare are also failing to get the support due them. Some women who were not being helped by state agencies have turned to private collectors to track down the fathers of their children. These collectors have often been quite successful: They may garnishee the wages of fathers or get local authorities to jail deadbeats until they pay up.

BOUNTY HUNTERS? Private collectors usually charge a small nonrefundable fee, but their main source of revenue is a contingency payment that usually ranges from one-quarter to one-third of what they collect. This may seem like a big cut, but these fractions are not out of line with fees charged by companies collecting other kinds of debt. Yet some children's advocacy groups oppose the involvement of for-profit collection companies, because they hate to see large sums being siphoned off that should be going to the children. But mothers usually turn to private companies only after they fail to get what is due them through ordinary channels. And after all, 67% of what is collected privately is a lot better than 100% of nothing.

Private collectors often succeed where state agencies fail, because government officials lack financial incentives to track down fathers who are in arrears. Therefore, state agencies should take a cue from what some mothers are doing: Hire private companies to locate and collect from recalcitrant fathers.

Private collectors hunting down deadbeat fathers for state governments may evoke the notorious bounty-hunter system of the Old West, but it would be an effective response to the failure of state agencies. Privatization of state collection efforts has precedents in other kinds of debt: States have hired private companies to collect unpaid traffic fines, for example.

Congress should adopt most of the President's recommendations to strengthen the government's hand in collecting child support. But the laws already on the books would be much more effective in reducing the number of children raised in poverty if state governments and more mothers hired private collectors to track down deadbeat fathers.

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PAGE 1

Parents turn to hired guns in support fight

BY PAMELA WARD
American-Statesman Staff

Everywhere they looked, she says, there were symbols of a father's neglect. They saw it in the back-to-school fliers advertising clothing they couldn't afford, in the rent that couldn't be paid, even in the golden arches that beckoned.

"There were years we drove by McDonald's and I couldn't afford to buy my son a hamburger," she says. Tears well in her eyes as she describes those times.

Ten years ago, Peggy Kasparek Leverett was divorced and her ex-husband was ordered by a court to pay child support of \$600 per month. She says she left behind a successful wholesale jewelry business in Dallas and came home to Austin to start a new career and life with her son. It wasn't long, she said, before the child support payments dwindled. She says the debt has grown, with interest, to almost \$90,000. Her ex-husband, who has resumed making child support payments, disputes the past-due amount.

With no money to hire a lawyer and no time to travel to Dallas to enforce the child support order in court, Leverett looked to the Texas attorney general's child support enforcement division for help. There, she said, she found little as-

sistance and years of frustration.

That's when she turned to the private enterprise system to do what the government could not, or would not, do — force her ex-husband to pay child support. Private collection of child support is a new phenomenon, with only about 100 companies nationally providing a new breed of bounty hunter who will track down absent parents and collect child support for a fee.

Twenty months ago, Leverett hired an Austin company, Child Support Enforcement Inc., one of five such companies in Texas. There was no up-front charge, just a promise to try to collect the outstanding debt. The company, she figured, had an incentive to work on her behalf. It would keep 30 percent of anything collected from her son's father.

"I thought, if they get anything, compared to nothing it would be better than what we have," Leverett said. "From the day they took the case, things started happening. Payments come much more regularly now."

An attorney for Mike Leverett, Leon Breeden of San Marcos, confirmed that his client has been behind in his child support payments. But he said his client has been paying child support "for some time," and said the \$90,000 back debt claimed by Peggy Leverett is disputed. "There are discrepancies in the record-keeping," Breeden said.

CSE went into business 3½ years ago, started by a man who said he knows plenty about the inadequacies of government's ability to solve the national child support problem. Casey Hoffman practiced family law and headed the Massachusetts bar associa-

tion before coming to Texas in 1985 to lead the attorney general's child support division for former Texas Attorney General Jim Mattox.

Even so, he saw that government, under the current system, could not solve the national child support problem. Millions of children are going without the financial support that courts have ordered, and the numbers are escalating.

Hoffman, whose firm was one of the first in the nation, is considered a national expert in the field. He has testified before Congress, appeared on network television and traveled the country speaking on the issue.

He says unpaid child support is a crucial reason for one in five American children living in poverty. Nationally, overburdened state agencies collected money in only 18.7 percent of their child support cases in the fiscal year that ended Sept. 30, 1992, according to the U.S. Department of Health and Human Services. Five years ago, the collection figure was 17 percent.

In Texas, the attorney general's office collected only 15 percent of its 800,000 cases for the 12 months ending Aug. 31, 1993. The other 85 percent of its clients received nothing.

Statistics like those paved the way for entrepreneurs to enter the business.

The new breed of bounty hunters has its critics who say it is possible for a custodial parent to make the system work and collect what is due. But Hoffman says until the system is changed, there will be thousands of parents who don't have the know-how, the persistence or the time to make state

collection offices do their jobs.

The new industry remains unregulated. While there now are about 100 private businesses nationally, others have come and gone — some folding after taking application fees up-front from potential clients and delivering nothing. Consumer advocates recommend that clients carefully check the track records and professional qualifications of the private businesses.

Critics of private bounty hunter firms are fond of asking if the approximate one-third commission is taking breakfast, lunch or dinner from the mouths of babes.

"Why not have private collection agencies push for legislation that would require their fees to be collected from the nonpayer, as opposed to the children," said Lynda Milot Benson, president of the Association of Children for Enforcement of Support (ACES) of Texas. "We'd happily support them in that effort."

"Talk to our clients who are getting child support who were getting 100 percent of nothing for years," Hoffman replies. "Ask the government what it's not doing that pushes people to go to the private sector."

"People don't come to us because they've been successful with the government or with private attorneys. They come to us because they've hit a stone wall."

CSE, an attorney-led firm, claims to find 85 percent of the parents it hunts, collecting money from 60 percent, compared with the state's 15 percent success rate. There is no mystery, Hoffman says. "Finding the people is not difficult. We have the time to find them."

But comparing the collection

rates of private firms and the attorney general's office can be misleading.

"In general, private attorneys can often provide faster services simply because they don't have the enormous caseload we have at the attorney general's office," said spokesman Ward Tisdale. The attorney general had about 800,000 cases last year; Hoffman declined to reveal his caseload.

"Also, private attorneys can obviously pick and choose their clients, based on cases they feel they can be successful on, while we are obligated by law to take any case that's presented to us," Tisdale said.

A substantial portion of the state's cases are those where the custodial parent is on welfare. And many of those cases are complicated because the parent has not gotten a court order requiring support be paid.

Hoffman's firm, on the other hand, is selective in its choice of cases: no collections, no profits.

CSE has two major requirements of potential clients. There must be a court order for child support and the amount that is past due must be at least \$4,000.

CSE assumes all the costs, including court costs, associated with enforcing a court order and obtaining back debts for clients. In return, the clients agree to pay one-third of the debt to CSE as the past-due child support is collected.

Hoffman says there is little way of discerning, going in, whether the case will pay off for the firm. Some investigations turn up absent parents with no job or property.

The company won't divulge the number of cases it has or its earnings. Still, the fact that the compa-

ny remains in business is a reflection of investigations that pay.

CSE, which started with three employees in 1991, now has eight investigators, is looking to hire another, and has 20 employees on staff.

Sometimes, support payments are collected simply by tracking down the absent parent — usually a father — and getting him to comply voluntarily. If that doesn't work, CSE's lawyers will get wages garnished against the absent parent's will, a common tactic also used by the attorney general. The last resort, Hoffman said, is persuading law enforcement to make an arrest.

Although her ex-husband resumed paying child support in recent months, Leverett said the \$90,000 in back debt remains an issue — and CSE is pressing the issue. Next month, Mike Leverett is due in court in Hays County on a criminal charge of nonpayment of support, according to both sides.

After years of trying to work through the attorney general's office to collect the child support, Leverett said she had all but given up hope. Through Hoffman's firm, she finally found cooperation from government. She said state investigator Kim Matthews has been immensely helpful working with CSE to enforce the case, as has Hays County District Attorney Marcus Hernandez, who was willing to file criminal charges against her ex-husband.

Twenty months after hiring CSE, Leverett has regained a fighting spirit. "They justified my feelings. I no longer feel like the bad guy. It's OK for us to collect this money. I'm not wavering now."

Luck, perseverance help investigators find absent parents

BY PAMELA WARD
AND STUART ESKENAZI
American-Statesman Staff

Armed with powerful computers and dogged determination, investigators — whether they are at Child Support Enforcement Inc. (CSE) or the Texas attorney general's office — track absent parents day in, day out. Many of the cases have similarities, but now and then there's a case that stands out. Some investigators' favorites:

■ An engineer with a major oil company was fighting court-ordered child support payments. Herbert Cohen with CSE discovered the man was planning to retire, checked with the company and learned he was eligible to take his retirement in a \$300,000 lump sum the day he turned 50.

■ The day the check was issued, Cohen was ready: Child Support Enforcement officials were able to freeze the check and his bank account. In order to get his retirement, the father had to pay the child support debt.

"We got our client \$60,000," Co-

hen said.

■ Another Cohen favorite: "The state looked for one father for 12 years and couldn't find him. We found him working for the U.S. government."

The father was a teacher; that much was known. Cohen thought he was teaching in Colorado. By badgering relatives, he finally heard from the man's attorney. The attorney happened to mention that the man was overseas. That's when investigators were able to track him down through the U.S. Department of Defense and get \$750 monthly for their client.

■ Jim Harrelston with CSE took the case of a father who was self-employed and was known to have interests in oil wells. When contacted, the father told Harrelston to call his attorney, but refused to give the attorney's name. Later, he told the investigator he was down on his luck and hadn't been able to find a job for two years.

Harrelston started a search for assets, looking for records of royalties paid on oil and gas leases.

When the man realized his interests in several oil companies were discovered, he began closing them.

CSE placed liens on four wells. Then it obtained copies of financial statements the man had filed as a requirement of being a licensed security broker. The statements showed he had a net worth of more than \$500,000, Harrelston said.

CSE placed liens on large blocks of real estate the man owned.

He paid his debt after being arrested.

■ Shepherd Green with CSE said he is saddened at the fact that children too often are used as pawns in their parents' divorces.

He traced from Texas to Pennsylvania and to Ohio a man who had a teen-ager he hadn't seen since he was 3. "He had no relationship with the child. None. And he had an arrearage of something like \$30,000.

"I found the guy and got him to

start paying without even doing a wage-withholding."

Green also encouraged the father to try to build a relationship with the child he no longer knew.

■ Another Green favorite: "I chased this guy for about six months. I stayed on it and never gave up on it." From a neighbor, he learned the absent dad was visiting his father.

Green got him to start paying child support voluntarily. "He wanted to do the right thing. He hadn't seen his child in seven or eight years."

Both the man and his ex-wife had remarried since their divorce — the man having divorced for a second time.

The father sent his child a birthday card, and later, a few letters.

After paying child support for about nine months, he called his first wife — the child's mother — and they started communicating again.

Then Green got a call. "'Hey, we're getting married!'" they told him. The couple took him to lunch and invited him to their wedding.

■ A mother and her two daughters, ages 17 and 15, were moving from home to home between friends and relatives over the past three months. Through the work of Elizabeth Hernandez, special enforcement officer for the attorney general, the father was forced to pay a \$26,000 lump sum payment to the children — all that was owed. The case has been with the office since 1981. The payment was made Aug. 10. The attorney general had filed a lien to ensure that when the father's workers' compensation settlement was paid, the first cut went to the children.

■ The estranged father of a 5-year-old boy owed \$3,000 in back child support, but he bolted to California after an arrest warrant was issued in April for missing a

child support enforcement hearing. The child's mother tipped attorney general enforcement officer Chris Gola that the man was going to have to return to Travis County to appear in court for a hearing related to an assault charge. When he arrived for the hearing, county constables nabbed him and put him in jail. He is not to be released until he pays the \$3,000.

■ Attorney general officers were finding the father of a 5-year-old girl to be a slippery character. Over two year's time, they had traced him to 12 different employers and addresses. But when attorney general enforcement officer Staci Reichmanis thought she had him, he was gone. Finally, she hit pay dirt and the child received her first \$300 payment this month. The court ordered the father to pay \$8,000 in retroactive support, dating back to the child's birth — even though no support order had been established at that time.

Expert offers tips for parents seeking to recover child support

BY PAMELA WARD
American-Statesman Staff

Casey Hoffman, who pioneered Child Support Enforcement Inc., one of the nation's first private companies that collects child support payments for a contingency fee, said not every collection case is suitable for his company. He outlines different scenarios and his recommendations.

Situation: The custodial parent's ex-spouse isn't obeying a court order to pay \$200 in monthly child support. The parent is receiving \$183 monthly in welfare, along with benefits such as food stamps and Medicaid. If the ex-spouse were to pay the \$200 as ordered, the custodial parent would become ineligible for welfare, losing Medicaid, and still be as poor.

Recommendation: Ask the Texas attorney general to seek a modified court order to increase the monthly child support payment so the custodial parent won't lose money.

Situation: A custodial parent, never on welfare, is owed back child support. She knows where the ex-spouse lives and has some idea of where the ex-spouse works. He owes a significant amount of money. He is working or has assets to pay what is owed. The custodial parent has some expendable income, but because of a job, not enough time to pursue the case.

Recommendation: See a lawyer if the ex-spouse lives in the same jurisdiction as that lawyer.

Private service tips

Some do's and don'ts in choosing a private child support enforcement service:

■ **DO** beware of application fees because there might be no guarantee of follow-up work. A qualified company should be able to assess your case without requiring an administrative fee upfront.

■ **DO** make sure the company has staff with child support experience. A company should be able to provide client references and be in good standing with organizations such as the Better Business Bureau.

■ **DO** make sure the company is bonded and your child support payment is processed for distribution on the day it is received.

■ **DO** make sure the company has legal staff. The company should be familiar with state and federal laws and regulations and be able to use tools such as wage withholdings and liens.

■ **DO** ask questions. Beware of frequent name changes, loose affiliations with subcontractors or referral relationships. Ask the company to identify every link in the chain by corporate and individual name and check them out, including any company they might be referring the account to for enforcement.

■ **DO** make sure your contract states in simple language how the company gets paid for its work and how it calculates charges. Look for any hidden legal fees or costs that will be assessed against the child support collected.

■ **DON'T** agree to an "estimated" percentage in contingency agreements.

■ **DON'T** agree to cancel any case you have pending with a government agency. Such enforcement agencies have special capabilities including interception of IRS refunds.

The lawyer probably will require a retainer and charge an hourly rate.

Situation: A custodial parent is owed back child support. It's a fairly new debt. The parent knows where the ex-spouse is living in Texas. The parent has time to devote to getting what is due, but no money to hire a lawyer.

Recommendation: Go to the Texas attorney general's office. The service is free, but expect to spend time filling out forms and insisting on the case being worked. Set aside time to call legislators and senators and ask their assistance in getting the go-

vernment to work your case.

Situation: A custodial parent is not on welfare and is owed back child support of at least \$4,000. The parent has a court order for the support. The ex-spouse need not live in Texas. The custodial parent has tried the attorney general's office and is dissatisfied with the progress of the case.

Recommendation: See a private child support collection company that will take the case on a contingency basis, charging no up-front fee. Their incentive to work the case is in keeping a percentage of whatever is collected — usually one-third.

The politics of child support

Child support enforcement takes new tack

BY STUART ESKENAZI

American-Statesman Capitol Staff

Bad habits are hard to break. That postulate is behind a push by child support enforcement officials to fix their damaged system. They seek to train estranged parents early on to get into the routine of paying court-ordered support to their children.

Simple sounding perhaps, but the system's engine now begins to tug only after bad habits already have formed. Cases currently are brought to state enforcement offices by complaining parents rather than the state beginning to pursue collections the first time a payment is delinquent — like a credit card company might. As a result, the state ends to get cases in which large sums of back support payments are owed due to several consecutive months of delinquency.

The more in arrears, the more difficult to collect.

"If you get this guy into the habit of paying and he knows he is going to be watched — if someone taps him on the shoulder within the first 10 days of being late — the chances are he's going to stay a payer," said Darryll Grubbs, who was director of state and federal relations in the attorney general's child support enforcement division from 1987 to 1992.

In Texas, an experimental program began in Bexar County in the late 1980s in which every new court order for child support, which a judge often enters concurrently with the divorce decree, is recorded into a sophisticated computer registry. The automated system allows for constant monitoring of payments. If a payment is late, the attorney general immediately asks if the custodial parent wants the state to pursue collection. If the answer is yes, an

Child support tools

American-Statesman Staff

How the attorney general can help you collect your child support:

The attorney general's greatest weapon to enforce child support is to garnishee the wages of the nonpaying parent. All employers are required by law to allow an employee's wages to be garnisheed to pay for child support. The process can take about three months.

Paternity of a child is implied if the child was born to a married couple. If the child was born out of wedlock, paternity can be established by the father signing an affidavit. If the paternity is in dispute, the attorney general can represent you in court.

The chances of the attorney general collecting support for your child are enhanced if the

following applies to your case:

■ A court order for child support already is in place. If it is not, the attorney general will represent you for free to get one established.

■ You know the full name, Social Security number, birth date, current home address and work address of the noncustodial parent.

■ The noncustodial parent is employed by a company — not self-employed or a contract laborer.

■ The noncustodial parent works and lives in Texas — ideally in the same county as you.

■ The amount in arrears is low.

To contact the child support division, call 463-2181 in Austin, or statewide toll free at (800) 252-8014.

enforcement letter is sent to the nonpaying parent.

"We need to marshal all the assets possible at getting these payers to know somebody is going to stay on top of them and that action will be taken," said Sen. Chris Harris, R-Arlington, a legislative leader on family law issues.

Cecilia Burke, program director for the attorney general's child support division, said collections of delinquent child support payments in Bexar County are made in 65 percent to 85 percent of the cases compared with 35 percent in cases with support orders in place currently worked by the attorney general.

"Early intervention is key," Burke said.

President Clinton's welfare reform proposals would require

states to set up programs similar to that in Bexar County, although Burke said the funding source remains a mystery.

A Bexar County-style program, however, does not address those cases without child support orders already in place. About 95 percent of the cases that come to the attorney general need a child support order established. Of those, about 60 percent need paternity established. Congress passed a law in 1993 that requires hospitals to try to get fathers of children born to unwed mothers to acknowledge paternity at the time of birth.

The more paternities established and the fewer parents who get into the habit of nonpayment will take some of the work away from the attorney general.

Harris wants to take away the agency's work altogether. As he has in past legislative sessions, Harris plans to introduce a bill next year to move the child support enforcement division from the attorney general's office.

"That's no reflection on (Attorney General Dan) Morales," Harris said. "It's a matter of the way we have the system structured. It's inherently broke."

"It doesn't need to be in a political office. We don't need a situation where the attorney general says how great everything is and his opponents say how terrible everything is," he said. "To me, I believe we need to put it in a different agency all together so the Legislature could evaluate performance in as much of a nonpartisan, nonpolitical atmosphere as possible."

Morales, who would lose more than half of his staff if the division was moved, said he would oppose Harris' bill.

"I think it makes sense to have this function housed in a state office where there is an enforcement bite," he said. "I believe there's nothing like direct public accountability to encourage a function to be performed adequately and ably."

National child support advocacy groups, such as the Association of Children for Enforcement of Support and the Children's Defense Fund, say the only way for the function to be performed well is to take it from the states. They want Congress to put it under the Internal Revenue Service.

"They've had 20 years, and in 20 years, states are collecting on only 20 percent of their cases (15 percent in Texas)," said Lynda Milot Benson, president of ACES of Texas. "They've had their chance."

Thursday, August 18, 1994

Austin American- Statesman



■
The *Today* show periodically profiles "people who are making a difference."

And last Thursday a six-minute segment featured Austinite **Casey Hoffman** and his firm, Child Support Enforcement, which locates spouses who don't meet their child-support payments.

Today characterized Casey as "a family lawyer turned modern-day bounty hunter who tracks down deadbeat parents." Also quoted were **Jim Harrelston**, an investigator for the organization, and Texas Attorney General **Dan Morales**.

Today highlighted these statistics: "The government estimates that \$27 billion in child support went uncollected in 1992, with more than 12 million cases clogging the public child-support system and state agencies collecting in fewer than 19 percent of those cases."



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DATE: October 7, 1994

PAGES: 25 (including cover)

NOTE: WELFARE REFORM: Status of HR 4570 (Schroeder) and related end-of-session child support legislation

CHILD SUPPORT ENFORCEMENT LEGISLATION 103RD CONGRESS

Action Completed/Cleared for the President

S.922 -- Full Faith and Credit for Child Support Order Act

The Senate completed action on this bill October 4, and the House on October 5. This bill provides that a State court may not modify an order of another State court requiring the payment of child support unless the recipient of child support consents to seeking the modification.

S.2060 -- Small Business Administration Reauthorization

This Conference Report passed the House on October 4. The Senate completed action on October 5. This bill contains a small provision that would require applicants for SBA financial assistance to certify that they are not in violation of the terms of any administrative order, court order, or repayment agreement under which the applicant is required to pay child support.

H.R. 5116 -- Bankruptcy Reform Act of 1994

This bill passed the House on October 5 and passed the Senate on October 6. This bill contains a small provision (Section 304, Protection of Child Support and Alimony) intended to provide greater protection for alimony, maintenance and support obligations owed to a spouse, former spouse or child of a debtor in bankruptcy.

Pending/Unlikely to Pass

H.R. 5140 -- Enforcement of Child Support Obligations of Members of the Armed Services

The House completed action on this bill October 5. This legislation is now pending in the Senate. It is unlikely that the Senate will act on this legislation before Congress adjourns. This bill would establish a centralized personnel locator service containing the residential address of each member of the Armed Forces; assist in the granting of leave for attendance and hearings to establish paternity or to determine child support obligations; and facilitate the court-ordered payment of child support from retirement pay.

H.R. 5177 -- Denial of Passports to Noncustodial Parents Subject to State Arrest Warrants in Cases of Nonpayment of Child Support.

This bill was introduced in the House by Rep. Snowe on October 5. It has been referred to the House Foreign Affairs Committee. These provisions are also included in H.R. 5179 as described below. House floor action on this legislation is unclear. This bill would authorize the Secretary of State to refuse a passport or revoke, restrict, or limit a passport in any case in which the Secretary of State determines or is informed that the applicant is a noncustodial parent who in delinquent is his/her child.

support payments.

H.R. 5179 - Child Support Reform Amendments Act of 1994

This bill was introduced in the House by Rep. Norton on October 5. House floor action is unclear. This bill incorporates several child support provisions approved by the Post Office and Civil Service Committee that would provide garnishment of pay for federal employees to pay child support; attachment of public and private retirement funds to pay child support; denial of federal benefits, loans, guarantees, and employment to any person with large child support arrearage; and would deny passports to noncustodial parents subject to State arrests warrants in case of nonpayment of child support. The passport provision is identical to that contained in H.R. 5177.

- Child Support Responsibility Act of 1994

This bill was introduced in the Senate on October 6 by Senators Feinstein, Pell, and Sasser. This legislation is identical to H.R. 4570, the omnibus Child Support bill introduced by House Women's Caucus members earlier this year. Senate action this Congress is unlikely.

S 13436

CONGRESSIONAL RECORD—SENATE

September 27, 1994

Whereas the practice of female genital mutilation represents a threat to the health of girls and young women who undergo the procedure; and

FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT

Mr. METZENBAUM. Mr. President, I make unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 604, S. 922, a bill relating to State Court modifications to orders requiring payment of child support.

The PRESIDING OFFICER. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 922) to provide that a State court may not modify an order of another State court requiring the payment of child support unless the recipient of child consents to the seeking of the modification in that court support payments resides in the State in which the modification is sought or consents to the seeking of the modification in that court.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on the Judiciary, with an amendment to strike out all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Full Faith and Credit for Child Support Orders Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

(1) there is a large and growing number of child support cases annually involving disputes between parents who reside in different States;

(2) the laws by which the courts of different jurisdictions determine their authority to establish child support orders are not uniform;

(3) those laws, along with the limits imposed by the Federal system on the authority of each State to take certain actions outside its own boundaries—

(A) encourage noncustodial parents to relocate outside the States where their children and the custodial parents reside to avoid the jurisdiction of the courts of such States, resulting in an increase in the amount of interstate travel and communication required to establish and collect on child support orders and a burden on custodial parents that is expensive, time consuming, and disruptive of occupational and commercial activity;

(B) contribute to the pressing problem of relatively low levels of child support payments in interstate cases and to inequities in child support payments levels that are based solely on the noncustodial parent's choice of residence;

(C) encourage a disregard of court orders resulting in massive arrearages nationwide;

(D) allow noncustodial parents to avoid the payment of regularly scheduled child support payments for extensive periods of time, resulting in substantial hardship for the children for whom support is due and for their custodians; and

(E) lead to the excessive relitigation of cases and to the establishment of conflicting orders by the courts of various jurisdictions, resulting in confusion, waste of judicial re-

sources, and erosion of public confidence in the rule of law; and

(4) among the results of the conditions described in this subsection are—

(A) the failure of the courts of the States to give full faith and credit to the judicial proceedings of the other States;

(B) the deprivation of rights of liberty and property without due process of law;

(C) burdens on commerce among the States; and

(D) burdens on children and their parents and other custodians.

(b) STATEMENT OF POLICY.—In view of the findings made in subsection (a), it is necessary to establish national standards under which the courts of the various States shall determine their jurisdiction to issue a child support order and the effect to be given by each State to child support orders issued by the courts of other States.

(c) PURPOSES.—The purposes of this Act are—

(1) to facilitate the enforcement of child support orders among the States;

(2) to discourage continuing interstate controversies over child support in the interest of greater financial stability and secure family relationships for the child; and

(3) to avoid jurisdictional competition and conflict among State courts in the establishment of child support orders.

SEC. 3. FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS.

(a) IN GENERAL.—Chapter 115 of title 28, United States Code, is amended by inserting after section 1738A the following new section:

"§1738B. Full faith and credit for child support orders

"(a) GENERAL RULE.—The appropriate authorities of each State—

"(1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and

"(2) shall not seek or make a modification of such an order except in accordance with subsection (e).

"(b) DEFINITIONS.—In this section:

"'child' means—

"(A) a person under 18 years of age; and

"(B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

"'child's State' means the State in which a child resides.

"'child support' means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

"'child support order'—

"(A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

"(B) includes—

"(i) a permanent or temporary order; and

"(ii) an initial order or a modification of an order.

"'contestant' means—

"(A) a person (including a parent) who—

"(i) claims a right to receive child support;

"(ii) is a party to a proceeding that may result in the issuance of a child support order; or

"(iii) is under a child support order; and

"(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.

"'Court' means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

"'Modification' means a change in a child

or duration of the order and modifies, replaces, expedites, or otherwise is made subsequent to the child support order.

"'State' means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

"(c) RESPONSIBILITIES OF CHILD SUPPORT ORDERS.—A child support order made in

consistency with this section is—

"(1) a court that makes the order, pursuant to the laws of the State in which the court is located—

"(A) has subject matter jurisdiction to hear the matter and enter such an order;

"(B) has personal jurisdiction over the contestant; and

"(7) reasonable notice and opportunity to be heard is given to the contestant.

"(d) CONTINUING JURISDICTION.—A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the

denom of any contestant unless the court of another State, acting in accordance with subsection (e), has made a modification of the order.

"(e) AUTHORITY TO MODIFY ORDERS.—A court of a State may make a modification of a child support order with respect to a child that is made by a court of another State if—

"(1) the court has jurisdiction to make such a child support order; and

"(2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the

denom of any contestant; or

"(B) each contestant has filed written

consent to that court's making the modification and assuming continuing, exclusive jurisdiction over the order.

"(f) ENFORCEMENT OF PRIOR ORDERS.—A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is

under subsection (e).

"(g) CHOICE OF LAW.—

"(1) IN GENERAL.—In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

"(2) LAW OF STATE OF RESIDENCE OF ORDER.—In interpreting a child support order, a court shall apply the law of the State of the court that issued the order.

"(3) PERIOD OF LIMITATION.—In an action to enforce a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.

"(b) TECHNICAL AMENDMENT.—The chapter analysis for chapter 115 of title 28, United States Code, is amended by inserting after the item relating to section 1738A the following new item:

"1738B. Full faith and credit for child support orders."

Mr. METZENBAUM. Mr. President, I

make unanimous consent that the committee substitute amendment be

agreed to; that the bill be deemed read a third time; passed; that the motion

to reconsider be laid upon the table; and any statements thereon be placed

in the RECORD at the appropriate place and as if read.

The PRESIDING OFFICER. Without

September 21, 1994

CONGRESSIONAL RECORD—HOUSE

H9367

Mrs. MEYERS of Kansas. Mr. Chairman, I rise in strong support of the amendment offered by Mr. KNOLLENBERG. The Microloan Program is an excellent program aimed at aiding the smallest of small businesses—mostly startups—in urban and rural areas. The administration had proposed moving the entire Microloan Program from a direct to a guaranteed basis. H.R. 4901 initiates a pilot program to start a gradual move in that direction. The Knollenberg amendment simply increases the levels of pilot program in fiscal years 1994 and 1995, decreasing the Microloan Direct Program by identical amounts in those same years.

The Knollenberg amendment just increases our commitment to making microloans on a guaranteed basis, and gives it every opportunity for success. I hope that these efforts will be successful, allowing us to assist even more small businesses with limited funds.

Mr. KNOLLENBERG. Mr. Chairman, I yield myself such time as I may

Mr. Chairman, I want to again thank the chairman, the gentleman from New York [Mr. LAFALCE], for his work and his spirit of cooperation, and the ranking member, the gentleman from Kansas [Mrs. MEYERS].

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. KNOLLENBERG].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in part 2 of House Report 103-527.

AMENDMENT OFFERED BY MR. BILIRAKIS

Mr. BILIRAKIS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. BILIRAKIS: Page 34, after line 21, insert the following:
SEC. 704. CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT OBLIGATIONS.

The Small Business Act (15 U.S.C. 631 et seq.) is amended by inserting after section 31, as added by section 705 of this Act, the following:

SEC. 704. CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT OBLIGATIONS.

"Each applicant for financial assistance under this Act, including applicants for direct loans and loan guarantees, shall certify, as a condition for receiving such assistance, that the applicant is not in violation of the terms of any administrative order, court order, or repayment agreement entered into between the applicant and the custodial parent or the State agency providing child support enforcement services which requires the applicant to pay child support, as such term is defined by section 462(b) of the Social Security Act."

The CHAIRMAN. The gentleman from Florida [Mr. BILIRAKIS] will be recognized for 5 minutes, and a Member opposed will be recognized for 5 minutes.

The Chair recognizes the gentleman from Florida [Mr. BILIRAKIS].

Mr. BILIRAKIS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I want to first extend my thanks to the distinguished chairman of the Small Business Committee, Mr. LAFALCE, and the distinguished ranking member, Mrs. MEYERS, as well as their staffs, for their willingness to work with me on this amendment. I know they share my desire to improve the enforcement of child support, and I appreciate their efforts.

I would further extend my appreciation and commendations to my L.A. Todd Tuten. I said to him, "Todd, find some way in which we might be able to address this very abysmal picture regarding child support in this country." He came upon this method, and worked with the staffs of the committee, and we were able to come up with this amendment.

My amendment is not designed to address the fundamental flaws in our Nation's child support enforcement system. Rather, it is intended to send a clear message—that paying child support is a fundamental civic responsibility. Parents who neglect that obligation simply transfer the costs to the rest of society, and they should not be rewarded for such action.

My staff and I have worked carefully to draft language which will achieve this policy objective without being excessively broad in scope. We want to ensure that the amendment will not exclude individuals who should rightfully receive assistance, and that it will not impose any hardship on the Small Business Administration.

In that regard, the Small Business Administration has informed me that the amendment would not impose a significant administrative burden on the agency.

Briefly, the amendment would require applicants for financial assistance to certify that they are not in violation of the terms of any administrative order, court order, or repayment agreement under which the applicant is required to pay child support.

Applicants will only be required to sign an affirmative statement—they will not be asked to present documentation from the court or administrative body. This requirement would be enforced through an existing provision of the Small Business Act, which establishes penalties for fraud in obtaining financial assistance.

My amendment will prevent the use of taxpayers' dollars to assist those who refuse to satisfy their most basic parental obligation—providing adequate support for their child. However, my primary intent is to encourage payment of child support. In that respect, the amendment can be likened to a "carrot and stick" approach.

By denying assistance only to those individuals who are currently in violation of an order or repayment agreement, the amendment provides an incentive for noncustodial parents to pay their past-due child support. Once the

terms of the order or repayment agreement are met, the individual is no longer precluded from applying for such assistance.

Mr. Chairman, failure to pay child support is not merely being late or forgetful of one's obligations. It is a violation of a lawful court order. It may also be considered contempt of court. Thus, it is not unreasonable to require applicants for SBA assistance to comply with their legal duties.

I believe we must also look to the end result of failure to pay support: A lack of financial assistance designed to ensure the health and well-being of children, who are, by definition, innocent victims of the delinquency.

In conclusion, Mr. Chairman, my amendment is designed to send a simple message—that we as a society place a high value on the health and well-being of our children. I remain willing to work with my colleagues on any necessary refinements to the language of this proposal, and I urge Members to support this important amendment.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The gentleman from New York [Mr. LAFALCE] will be recognized for 5 minutes.

Mr. LAFALCE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, everyone wants fathers to assume financial responsibility for their children, and this includes compliance with court-ordered child support.

The gentleman's amendment would preclude the SBA loan assistance to any applicant who was more than 1 month in arrears in these payments. This does sound good, but it could create problems. For example, a father remarries and establishes a second family. If the new family's home is damaged by disaster, do we want to deny them a loan to repair or replace it? Should the new wife and possible children be denied disaster loan assistance?

There could be countless other examples. I could go on, but I will not.

□ 1110

The point is I do agree with the intent of the gentleman's amendment.

Mr. Chairman, since the gentleman first brought the amendment to my attention, he has revised it to mitigate some of the harshness by removing the prohibition if the applicant enters into some type of a repayment agreement to eliminate the delinquency. I believe the language solves most of the problems. Therefore, I am willing to accept the amendment and hope that as other problems are pointed out we can further refine the amendment to solve those problems in conference.

Therefore, Mr. Chairman, in that spirit I would accept the amendment.

Mr. BILIRAKIS. Mr. Chairman, I appreciate the comments of the chairman. I believe, I say to the gentleman, I know that we have worked with his staff to try to get that worked out, and I think it has been satisfactorily

H 9368

CONGRESSIONAL RECORD—HOUSE

September 21, 1994

worked out. If not, as I have already indicated, we are willing to work with the gentleman from New York [Mr. LAFALCE] further on it.

Mr. LAFALCE. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Colorado [Mrs. SCHROEDER].

Mrs. SCHROEDER. I thank the gentleman for yielding.

I thank the gentleman from Florida [Mr. BILIRAKIS] for his amendment.

I think this is a very important amendment. Many of us have been working hard to make sure the Federal Government is doing everything it can to make sure that parents do not run away from their kids. The most important decision anybody makes is to be a parent. These responsibilities should not be treated lightly. I think the taxpayers get tired of both giving people some money to get started in business and also pay for their first family that they wish to shed.

So the gentleman is absolutely correct. I thank him for bringing this amendment up. I am delighted it has been accepted. I think we have to do everything we can to make sure it is enforced, and enforced rigorously. I think the compromise is the way to go, and that is that anyone who is in arrears gets no Federal money until they show a plan for how they are going to repay their arrears. I think that makes sense. That is a compromise, and that says you cannot just throw families away the way you throw bottles or the way you throw away trash. These are not trash, they are children. I thank the gentleman for his compassion and for bringing this up.

Mr. Chairman, I thank the gentleman from New York [Mr. LAFALCE] for working this all out.

Mr. BILIRAKIS. Mr. Chairman, I thank the gentlewoman for her kind remarks and assistance in this regard.

Mr. Chairman, I yield such time as she may consume to the gentlewoman from New Jersey [Mrs. ROUKEMA].

Mrs. ROUKEMA asked and was given permission to revise and extend her remarks.

Mrs. ROUKEMA. Mr. Chairman, I rise in support of the Bilirakis amendment, and I want to commend the gentleman for his leadership and foresight on this issue.

Mr. Chairman, simply put, the state of our child support enforcement system is a national shame, and a scandal of epidemic proportion. Despite years of efforts and reforms we have undertaken in the past, billions of dollars of child support still go unpaid every year.

And make no mistake: this is not a victimless crime. The children who go without the support to which they are legally and morally entitled are the first victims. But ultimately, the American taxpayers are the victim as these children fall onto the welfare rolls.

As we in Congress prepare to debate welfare reform, we should not lose

sight of this simple fact: child support enforcement is welfare prevention. A tough and effective child support title must be a component of any effective reform legislation.

The gentleman's amendment would prohibit the SBA from using taxpayer dollars for the deadbeats who do not live up to their moral and legal obligations. It requires SBA applicants to certify that they are not in violation of any existing child support order, and uses the existing fraud and abuse enforcement mechanisms already in place under SBA statute.

In fact, this amendment mirrors and is consistent with a provision in comprehensive child support legislation I have introduced, as well as the Child Support Responsibility Act recently introduced by the Caucus on Women's Issues.

Under that legislation, we would apply these commonsense prohibitions in Mr. Bilirakis' amendment to all Federal programs or guarantees. Our bill would once and for all prohibit the Federal Government from aiding and abetting those who refuse to pay child support, through a job, benefits, subsidies, or loan guarantee.

Be it a federally guaranteed mortgage, a government-backed student loan, or a cash or benefits program like food stamps, our bill will definitively prohibit payment to those who fail to make their child support payments, unless they show they are in compliance with a plan to repay their legal and financial obligations.

As we move toward adopting these reforms for all Federal programs, we should start here and now with the Bilirakis amendment, and the Small Business Administration.

Mr. Chairman, let this be a first step. It has become crystal clear over the past several weeks that an omnibus welfare reform package is not going to be enacted this year. That's exactly why this Congress should move quickly to approve tough child support enforcement reforms now.

The Speaker has indicated his support. The majority leader has indicated his support. The Republican leadership is on board. The chairman of the subcommittee has indicated his support. Let's get on with it.

Do not make the children wait another year. Do not let the deadbeats escape their moral and legal obligation another day. Let us pass comprehensive child support reforms now.

Support the Bilirakis amendment. The Bilirakis amendment paves the way for more comprehensive reforms.

Mr. BILIRAKIS. Mr. Chairman, I am informed the gentlewoman from Kansas [Mrs. MEYERS], the ranking member of the committee, would like to speak on this matter. I realize I have no further time. Possibly the gentleman from New York may have.

Mr. LAFALCE. Mr. Chairman, I believe I have some remaining time, and I yield such time as she may consume to the distinguished ranking member,

the gentlewoman from Kansas [Mrs. MEYERS].

The CHAIRMAN. The gentlewoman from Kansas [Mrs. MEYERS] is recognized for up to 14 minutes.

Mrs. MEYERS of Kansas. Mr. Chairman, I thank the gentleman from Florida [Mr. BILIRAKIS] for offering the amendment, and I thank the gentleman from New York [Mr. LAFALCE] for yielding this time.

Mr. Chairman, I rise in support of this amendment. I appreciate the effort of the gentleman from Florida to make this amendment effective and yet not place an overwhelming burden on the Small Business Administration.

I agree with the gentleman it is clear unpaid child support and single-parent families are creating a disastrous situation in our Nation, and I appreciate his efforts to remedy this appalling problem and support the amendment.

Mr. LAFALCE. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for debate on this amendment has expired.

The question is on the amendment offered by the gentleman from Florida [Mr. BILIRAKIS].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 4. Does the sponsor of amendment No. 4 wish to proceed?

If not, it is now in order to consider amendment No. 5. Does the sponsor of that amendment wish to proceed?

If not, the question is on the committee amendment in the nature of a substitute, as modified, as amended.

The committee amendment in the nature of a substitute, as modified, as amended, was agreed to.

The CHAIRMAN. Under the rule, the committee rises.

Accordingly, the Committee rose, and the Speaker pro tempore (Mr. KLECKA) having assumed the chair, Mr. WATT, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4501) to amend the Small Business Act, and for other purposes, pursuant to House Resolution 494, reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute, as modified, as amended?

If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

NOTICE TO RECESSMENT DEFERRED BY MR. WATT
Mr. WATT. Mr. Speaker, I offer a motion to recess.

which it was senior to a nonavoidable mortgage and the mortgages on the property exceeded the value of the property. The position of the dissent in that case is adopted.

*** Section 304. Protection of child support and alimony.**

This section is intended to provide greater protection for alimony, maintenance, and support obligations owing to a spouse, former spouse or child of a debtor in bankruptcy. The Committee believes that a debtor should not use the protection of a bankruptcy filing in order to avoid legitimate marital and child support obligations.

The section modifies several provisions of the Bankruptcy Code. Subsection (b) specifies that the automatic stay does not apply to a proceeding that seeks only the establishment of paternity or the establishment or modification of an order for alimony, maintenance, and support. Subsection (c) provides a new bankruptcy priority relating to debts for alimony, maintenance or support obligations. Subsection (d) provides that section 522(f) (1) of the Bankruptcy Code may not be used to avoid judicial liens securing alimony, maintenance, or support obligations. (This subsection is intended to supplement the reach of Farrey v. Sanderfoot, 111 S.Ct. 1825, 114 L.Ed.2d 337 (1991), which held that a former husband could not avoid a judicial lien on a house previously owned with his wife.)

Subsection (e) adds a new exception to discharge for some debts arising out of a divorce decree or separation agreement that are not in the nature of alimony, maintenance or support. In some instances, divorcing spouses have agreed to make payments of marital debts, holding the other spouse harmless from those debts, in exchange for a reduction in alimony payments. In other cases, spouses have agreed to lower alimony based on a larger property settlement. If such "hold harmless" and property settlement obligations are not found to be in the nature of alimony, maintenance, or support, they are dischargeable under

38

current law. The nondebtor spouse may be saddled with substantial debt and little or no alimony or support. This subsection will make such obligations nondischargeable in cases where the debtor has the ability to pay them and the detriment to the nondebtor spouse from their nonpayment outweighs the benefit to the debtor of discharging such debts. In other words, the debt will remain dischargeable if paying the debt would reduce the debtor's income below that necessary for the support of the debtor and the debtor's dependents. The Committee believes that payment of support needs must take precedence over property settlement debts. The debt will also be discharged if the benefit to the debtor of discharging it outweighs the harm to the obligee. For example, if a nondebtor spouse would suffer little detriment from the debtor's nonpayment of an obligation required to be paid under a hold harmless agreement (perhaps because it could not be collected from the nondebtor spouse or because the nondebtor spouse could easily pay it) the obligation would be discharged. The benefits of the debtor's discharge should be sacrificed only if there would be substantial detriment to the nondebtor spouse that outweighs the debtor's need for a fresh start.

The new exception to discharge, like the exceptions under Bankruptcy Code section 523(a)(2), (4), and (6) must be raised in an adversary proceeding during the bankruptcy case within the time permitted by the Federal Rules of Bankruptcy Procedure. Otherwise the debt in question is discharged. The exception applies only to debts incurred in a divorce or separation that are owed to a spouse or former spouse, and can be asserted only by the other party to the divorce or separation. If the debtor agrees to pay marital debts that were owed to third parties, those third parties do not have standing to assert this exception, since the obligations to them were incurred prior to the divorce or separation agreement. It is only the obligation owed to the spouse former spouse -- an obligation to hold the spouse former

39

spouse harmless -- which is within the scope of this section. See In re MacDonald, 69 B.R. 259, 278 (Bankr.D.N.J. 1986).

Subsection (f) specifies that bona fide alimony, maintenance or support payments are not subject to avoidance under section 547 of the Bankruptcy Code. Subsection (g) provides that child support creditors or their representatives are permitted to appear at bankruptcy court proceedings.

Section 305. Interest on interest.

This section will have the effect of overruling the decision of the Supreme Court in Rake v. Wade, 113 S.Ct. 2187 (1993). In that case, the Court held that the Bankruptcy Code required that interest be paid on mortgage arrearages paid by debtors curing defaults on their mortgages. Notwithstanding State law, this case has had the effect of providing a windfall to secured creditors at the expense of unsecured creditors by forcing debtors to pay the bulk of their income to satisfy the secured creditors' claims. This had the effect of giving secured creditors interest on interest payments, and interest on the late charges and other fees, even where applicable law prohibits such interest and even when it was something that was not contemplated by either party in the original transaction. This provision will be applicable prospectively only, i.e., it will be applicable to all future contracts, including transactions that refinance existing contracts. It will limit the secured creditor to the benefit of the initial bargain with no court contrived windfall. It is the Committee's intention that a cure pursuant to a plan should operate to put the debtor in the same position as if the default had never occurred.

Section 306. Exception to discharge.

Helen Mathis

SEC. 303. IMPAIRMENT OF EXEMPTIONS.

Section 522(f) of title 11, United States Code, is amended--

- (1) by inserting "(1)" before "Notwithstanding",
- (2) by redesignating paragraph (1) as subparagraph (A),
- (3) by redesignating paragraph (2) as subparagraph (B) and subparagraphs (A), (B), and (C) of that paragraph as clauses (i), (ii), and (iii), and
- (4) by adding at the end the following:

"(2) (A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of--

"(1) the lien,

"(ii) all other liens on the property that are equal or greater in seniority to the lien; and

"(iii) the amount of the exemption that the debtor could claim if there were no liens on the property,

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

"(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens."

SEC. 304. PROTECTION OF CHILD SUPPORT AND ALIMONY.

(a) Relief From Automatic Stay.--Section 362(b)(2) of title 11, United States Code, is amended to read as follows:

"(2) under subsection (a) of this section--

"(A) of the commencement or continuation of an action or proceeding for--

"(i) the establishment of paternity; or

"(ii) the establishment or modification of an order for alimony, maintenance, or support; or

"(B) of the collection of alimony, maintenance, or support from property that is not property of the estate,".

(b) Priority of Claims.--Section 507(a) of title 11, United States Code, is amended--

(1) in paragraph (8) by striking "(8) Eighth" and inserting "(9) Ninth",

(2) in paragraph (7) by striking "(7) Seventh" and inserting "(8) Eighth", and



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November 5, 1993

Ms. Kathi Way
Special Assistant to the President
for Domestic Policy
The White House
Washington, DC 20500

Dear Ms. Way:

I write to you in your role as a member of the Working Group on Welfare Reform, Family Support and Independence.

With all the talk about "child support assurance" I think it important to examine carefully our current scheme of Social Security benefits for children and their caretakers. It presents a strong challenge from the perspective of horizontal equity among needy children. It offers a model of program design. It may even provide the best location for a new scheme aimed at current AFDC users.

To that end, I enclose a copy of a new piece of mine titled "Reforming Welfare Through Social Security."

Not emphasized in my article is the fact that my plan could also do a great deal of good in tackling the problem of inadequate child support for single mothers not on welfare.

Yours sincerely,

Stephen D. Sugarman
Agnes Roddy Robb Professor of Law

REFORMING WELFARE THROUGH SOCIAL SECURITY

Stephen D. Sugarman*

INTRODUCTION

Discussions of “welfare” reform almost never mention Social Security. This is unfortunate. While Social Security is an important contributing cause of the “welfare mess,” it may also be used to solve the “welfare problem.”

When Americans talk about “welfare” they usually envision poor single mothers who receive cash aid from the program widely known as Aid to Families with Dependent Children (AFDC). The main reason that Social Security is not mentioned is that most people are unaware of the large cash assistance program for dependent children and their caretakers that Social Security provides. A second reason is that most people who are aware of this role played by Social Security do not imagine that it is connected to the welfare problem.

In this essay, I first want to make the connection between Social Security and AFDC—to explain the Social Security program, to show how large it is, and to demonstrate how it contributes to the welfare problem. Then, and more importantly, I want to offer a reform proposal that builds on Social Security as a way to begin to eliminate AFDC and our current welfare mess. Simply put, Social Security would add a child’s benefit for children with absent parents on the same basic terms on which it now provides benefits for children with deceased, disabled or retired parents.

I. COMPARING SOCIAL SECURITY AND WELFARE

Consider two hypothetical scenarios. The first explains how Social Security’s existing benefits for children and their caretaker parents work. Suppose Jane and Bob are married and have a two year old child, Rachel. Bob, who works full

* Agnes Roddy Robb Professor of Law, University of California, Berkeley (Boalt Hall). I would like to thank Nicole Ryan for providing valuable research assistance.

time, dies suddenly.¹ Although few people seem to realize it, regardless of whether Bob and Jane had purchased sufficient private life insurance to replace Bob's earnings on which the family depended, Social Security provides Bob's survivors with a life insurance annuity benefit, assuming that he was "insured" for Social Security purposes at the time of his death.²

This public life insurance benefit is divided into two parts. First, Social Security would pay a monthly cash benefit to Jane for Rachel's support ("child's benefit").³ The benefit amount would be based on Bob's previous wages,⁴ and would continue, generally speaking, until Rachel becomes eighteen years old.⁵

Second, Social Security would make the following benefit offers to Jane ("caretaker parent's benefit"): (1) If you previously were not in the paid labor force, you may continue to stay at home and care for Rachel and Social Security will provide you with a monthly cash benefit in addition to Rachel's.⁶ (2) If you previously worked full time in the paid labor force, you have the option to quit your job and stay home to take care of Rachel; if so, Social Security will provide you with the same caretaker parent's benefit. (3) If you choose to continue working in the paid labor force or decide to do so in the future, Social Security will still pay your full caretaker parent's benefit so long as you do not earn more than approximately \$600 a month; if you exceed this amount, Social Security will reduce your benefit by one dollar a month for every two dollars you earn until the

1. In these scenarios and in the discussion generally, the basic assumption is that the child has lost the support of her father and now depends upon her mother because this is overwhelmingly the common pattern.

2. This requires that Bob was either "fully" or "currently" insured, 42 U.S.C. § 414. In order to attain either status, Bob must have a certain number of "quarters of coverage," in covered employment. 42 U.S.C. § 413. Although it was not true in the early years of Social Security, today nearly all employment is covered, including self-employment, 42 U.S.C. §§ 410-411.

3. 42 U.S.C. § 402(d).

4. First, Bob's average indexed monthly earnings (AIME) would be calculated; then, this figure would be put into a formula which determines his principal insurance amount (PIA). 42 U.S.C. § 415. As a child of a deceased worker, Rachel's benefit would be 75 percent of Bob's PIA, *id.* § 402(d)(2), subject to a family maximum. *Id.* § 403(a).

5. 42 U.S.C. § 402(d)(1)(E). The benefits are terminated earlier if Rachel marries before reaching 18, and may be continued beyond age 18 under certain special circumstances, for example if Rachel herself is disabled. 42 U.S.C. § 402(d)(1).

6. 42 U.S.C. 402(g)(1). This benefit also would be based on Bob's previous earnings. As with the child's benefit, the widowed caretaker parent's benefit is 75 percent of the wage earner's PIA, 42 U.S.C. § 402(g)(2), subject to a family maximum, and will continue until Rachel is sixteen years old. 42 U.S.C. § 402(s)(1). Note that when Rachel is between ages 16 and 18, ordinarily *only* Rachel would receive benefits. Jane's benefit would terminate earlier if she remarried before Rachel reached 16. 42 U.S.C. 402(g)(1).

benefit disappears entirely.⁷ Nevertheless, no matter how much you earn, Rachel's child's benefit will continue unabated.

Social Security would provide the same sort of child's benefit to Rachel and would provide Jane with similar caretaker parent options if Bob became totally disabled or was at least sixty-two and retired.⁸ These benefits would be paid regardless of whether Bob and Jane previously purchased disability insurance to deal with the risk of Bob's disability or saved funds (through a pension plan, for example) for the support of the family in anticipation of Bob's retirement.

Having illustrated how Social Security's dependent child program works at the individual family level, I next provide some recent national data on the program's operation. As of April 1992, Social Security was paying benefits to more than 1.8 million children of deceased workers,⁹ and to nearly 300,000 of those children's widowed mothers (and a small number of widowed fathers);¹⁰ it was paying benefits to almost 1.1 million children of disabled workers¹¹ and to around 200,000 spouses who care for the beneficiary children;¹² and it was paying benefits to more than 400,000 children of retired workers¹³ and approximately 100,000 spouses of those workers who care for the beneficiary children.¹⁴ In sum, nearly four million children and their caretaker parents are current beneficiaries of the Social Security program.¹⁵ In dollar terms, as of April 1992, monthly child benefit awards alone amounted to more than one billion dollars, for a yearly total of more than twelve billion dollars a year.¹⁶ About three-quarters of that sum was paid to children of deceased workers.¹⁷ Benefits to caretaker parents

7. 42 U.S.C. § 403(b).

8. Payments for a child of an individual entitled to disability or old-age (i.e., retirement) benefits are provided by 42 U.S.C. § 402(d)(1). Assistance for a wife of a retired or disabled beneficiary who has an eligible child in her care are provided by 42 U.S.C. 402(b)(1)(B); parallel benefits for husbands are provided by 42 U.S.C. § 402(c)(1)(B) (date). The amount of the benefit paid to Rachel and to Jane would, in each case, be 50 percent of Bob's PIA, 42 U.S.C. § 402(d)(2) and 42 U.S.C. § 402(b)(2). Note that the percentage used to calculate the benefits is less where Bob is alive. See *supra* note 4.

9. 55 Social Security Bulletin No. 2, Table 1.B4 (Summer 1992).

10. *Id.* at Table 1.B5.

11. *Id.* at Table 1.B4.

12. Social Security Bulletin, Annual Statistical Supplement 1991, Table 5.H2.

13. Social Security Bulletin, *supra* note 9, Table 1.B4.

14. Annual Statistical Supplement, *supra* note 12, Table 5.H2.

15. Of the 3.3 million child beneficiaries as of April 1992, more than 600,000 were disabled children over the age of 18. Social Security Bulletin, *supra* note 9, Table 1.B4.

16. *Id.*

17. *Id.*

total an additional two billion dollars a year.¹⁸ Hence, the combined annual cost of Social Security payments to children and caretakers is approximately fourteen billion dollars.

Now consider an alternative scenario, which contrasts the fate of children who lose the support of a parent through absence (e.g., divorce). Suppose Bob and Jane divorce or separate and Jane obtains custody of Rachel. At present, no Social Security benefit would be available for Rachel and Jane. Bob would likely be ordered to pay child support to Jane for Rachel's benefit. He might also be ordered to pay spousal support to Jane. The two payments together might suffice to support Jane and Rachel adequately, even if Jane stays at home and cares for Rachel; although, typically, they would require Rachel and Jane to accept a sharply reduced standard of living. Moreover, even if the amount of the award is sufficient, there is a considerable chance that Bob will not actually pay the full amount ordered, or even part of it.¹⁹ He may disappear from Jane's and Rachel's lives; he may stop working; he may pay initially but then stop paying; or he may start a new family to which he will devote his time and money.

In the event that Jane does not obtain sufficient support from Bob, she will probably have to enter (or remain in) the paid labor force even if she does not think that is in Rachel's best interest. Because Social Security will not pay Rachel or Jane any benefits, Jane will not have the same choices she would have had if Bob had died. If Jane does work, her earnings will not supplement Rachel's social security benefits, and may well be Jane and Rachel's primary means of support. If Jane cannot find paid work, or if she wants to stay home and care for Rachel, then her only other option may be to apply for welfare.

In order to qualify for AFDC, Jane first may be required to deplete any liquid assets which she may have after her divorce or separation from Bob.²⁰ An "assets" test such as this is not imposed as a requirement to obtain Social Security benefits. Assuming that Jane and Rachel qualify for AFDC, the benefits

18. Social Security does not report clearly the amount paid to parental caretakers of child beneficiaries, yet estimates can be derived from the Annual Statistical Supplement, *supra* note 12, Tables 5.F1 and 5.F12.

19. It has been recently estimated that about half of the children with support orders receive the amount that has been awarded, and about a quarter received partial payments. Bureau of the Census, U.S. Dept. of Commerce, Child Support and Alimony: 1987, Current Population Reports, Special Studies, Series P-23, No. 167, at 4 (1990).

20. States may not permit AFDC recipients to have assets of more than \$1000, apart from a home and a modest automobile. 42 U.S.C. § 602(a)(7)(B).

they receive will vary from state to state but certainly will be less than the official poverty level for a single mother with one child.²¹ By contrast, if Bob died, their Social Security benefits would be a nationally uniform amount related to Bob's past earnings—and might well be above the poverty level. For example, the average individual benefit paid by Social Security to children of deceased workers was more than \$400 a month in 1991 and 1992²²—the equivalent of the average monthly payment to an entire AFDC family.²³ To put the contrast differently, rather than receiving an average of about \$400 a month from AFDC, the family benefit for widowed caretakers and children receiving survivor benefits under Social Security averaged more than \$1100 a month at the end of 1991; the family benefit for children who alone receive survivor benefits (for example, if their mother remarried) averaged more than \$570 a month at the end of 1991.²⁴

The relative generosity of the Social Security programs may be viewed from yet another perspective. Whereas Social Security is now paying about fourteen billion dollars a year to almost four million dependent children and their caretaker parents, AFDC paid out nearly twenty-one billion dollars to more than eleven million recipients in 1991, including about eight million children.²⁵ In other words, AFDC's budget was only fifty percent greater, even though its caseload was almost three times as great.

Additionally, if Jane receives AFDC benefits, the prospect of combining public benefits and wages from work is much less attractive than if Bob had died and she received Social Security benefits. Instead of being able to earn about \$600 a month before Social Security starts to reduce her benefits, Jane and Rachel would start to lose their AFDC benefits nearly from the outset.²⁶ Moreover, AFDC benefits are reduced for the first year

21. Committee on Ways and Means, U.S. House of Representatives, Overview of Entitlement Programs ("1991 Green Book"), Tables 7 and 8, pp. 597–600.

22. Social Security Bulletin, *supra* note 9, Table 1.B2.

23. Green Book, *supra* note 21, Table 11, p. 606.

24. Annual Statistical Supplement, *supra* note 12, Table 5.H2. The average family benefit varies substantially depending on the number of children in the family. For example, the combined benefits for two children averaged over \$900 a month at the end of 1991. *Id.*

25. Green Book, *supra* note 21, Table 17, p. 614 and Table 21, p. 620.

26. Under current law, AFDC claimants may disregard income of \$90 per month (as deemed "work expenses") plus child care expenses (of up to \$175 per month). For the first year on the program they may also disregard an additional \$30. Green Book, *supra* note 21, at 568. 42 U.S.C. § 602 (a)(8)(A)(iv).

at a rate of two dollars for every three dollars earned and then one dollar for every dollar earned the following years.²⁷ Recall, this is in contrast to Social Security's rules which only reduce benefits by one dollar for every two dollars earned. Put differently, Social Security presents wage-earning recipients like Jane with what is commonly called an "implicit marginal tax rate" of fifty percent (you give back fifty cents in benefits for each dollar earned), whereas AFDC's implicit marginal tax rate begins at sixty-seven percent and increases to one hundred percent after twelve months (you lose a dollar in benefits for each dollar earned).

Another way that Jane might improve her and Rachel's standard of living is to remarry. Indeed, many divorced mothers and many widowed mothers do remarry.²⁸ If Jane is divorced and receives AFDC benefits, the price of remarriage is that Rachel and Jane would no longer receive benefits under the program.²⁹ By contrast, if Jane remarries while under Social Security, although she would lose any benefit she was receiving as Rachel's parent,³⁰ Rachel would continue to receive her Social Security child's benefit. Thus, other things being equal, marrying divorced-Jane imposes a considerably larger financial obligation for the new husband than does marrying widowed-Jane, even though in most states the new husband does not have any formal, legal obligation to support Rachel unless he adopts her.³¹

In sum, if a child does not obtain sufficient financial support from her absent father and the child and her mother are poor enough, they can qualify for AFDC; but they will be forced to live on an amount of income that is less than the poverty level. By contrast, if a child's working father dies, becomes disabled or retires, then the child and her mother can qualify for Social Security benefits, and will probably live above the poverty level

27. *Id.* 42 U.S.C. § 602(a)(8)(A)(iv).

28. Studies have found that more than one third of divorced women remarry within three years of divorce, and 70% of women with children in their custody remarry within six years of divorce. David Chambers, *Stepparents, Biologic Parents, and the Law's Perceptions of "Family" After Divorce*, in *DIVORCE REFORM AT THE CROSSROADS* 103, nn. 1 & 2 (Stephen Sugarman and Herma Hill Kay, eds. 1990).

29. Depending upon her new husband's circumstances, the couple may, in rare cases, qualify for AFDC under the provisions governing children deprived of the support of an incapacitated or unemployed (AFDC-U) parent. Because of the restrictive provisions, fewer than five percent of AFDC families were in the AFDC-U category in 1989. Green Book, *supra* note 21, at Table 31, p. 639.

30. 42 U.S.C. § 402(g)(1).

31. Chambers, *supra* note 28, at 108.

either from Social Security alone or from a combination of Social Security, the mother's earnings, and/or private insurance and savings.

A. Historical Background

America hasn't always treated children with absent fathers so differently from those with deceased, disabled or retired fathers. Before 1935 neither Social Security nor AFDC existed, although there were state level precursors to AFDC typically called "mothers' pensions" programs.³² During the Depression, many of these mothers' pensions plans had long waiting lists for eligible participants, were depleted of funds, and/or functioned in only a portion of the state.³³ Title IV of the Social Security Act of 1935 created AFDC,³⁴ which was essentially a partial, federal, financial bail-out of the state mothers' pensions plans.

Simply put, if a state enacted a scheme of aid for poor children who were deprived of the support of a parent that met minimum federal requirements, then pursuant to Title IV the federal government agreed to pay for a portion of the cost of the state program through a matching grant. This was a sufficiently attractive arrangement so that all states enacted qualifying AFDC plans soon after the adoption of the Social Security Act.³⁵

Title II of that same Act established what we now call Social Security. At the outset, Social Security was restricted to a program for retirees (and their estates) then called Old Age Insurance (OAI).³⁶ The act did not provide benefits for workers' dependents.

Hence, if our first scenario involving Bob, Jane and Rachel had occurred in the late 1930s, no Social Security survivor

32. WINIFRED BELL, *AID TO DEPENDENT CHILDREN 3-19* (1965); ROY LUBOVE, *THE STRUGGLE FOR SOCIAL SECURITY 1900-1935*, 92-112 (1968); JOEL HANDLER, *REFORMING THE POOR* 11-16 (1972).

33. *See generally*, Committee on Economic Security, *Social Security in America* 233-50 (1937).

34. 42 U.S.C. § 601.

35. 1938 Advisory Council on Social Security, 75th Congress, 2d Session, Report 3 (Comm. Print 1938).

36. Stephen D. Sugarman, *Children's Benefits in Social Security*, 65 CORNELL L. REV. 836, 837-44 (1980).

benefits would have been paid to Bob's family upon his death.³⁷ However, after 1935, if Jane was poor enough, she may have qualified for AFDC and obtained an amount determined by her state of residence. At AFDC's inception, it was anticipated that AFDC would mainly support poor widows and their children, and in fact, it functioned initially in this way.³⁸

In principle, under the federal program rules, AFDC would also help support children whose fathers divorced or separated from their mothers (whether or not they were ever married) or whose fathers were incapacitated.³⁹ In those early years of the program, however, there simply were few such cases. One explanation is that divorce, separation, and birth outside of marriage were far less common than they are today. A second reason is that states were permitted at the time to impose their own moral requirements in determining who was eligible for AFDC. Many states adopted the same practices used for mothers' pensions plans, which largely restricted benefits to "gilt edged widows"—those behaving in a morally upright manner that suited their assigned social worker.⁴⁰

This scheme implies that if the second Bob, Jane and Rachel scenario had occurred in the late 1930s, it is not certain that Jane and Rachel would have been deemed eligible to receive AFDC benefits after Bob and Jane divorced regardless of their financial need. As a last resort, Jane and Rachel might have been able to obtain some cash aid from their state or county's residual general relief scheme (sometimes called general assistance).

In any event, the 1939 Amendments to the Social Security Act changed the picture dramatically. OAI was sharply modified to emphasize "social adequacy" as much as "individual equity." Dependent benefits were added for spouses and children of retirees and for widows and children of deceased former workers. The program was more appropriately retitled

37. A lump sum might have been payable to Bob's estate, as would also have been true in the case of a single deceased worker. *Id.* at 842.

38. In the earliest years, more than half of the cases were deceased father claims. Deceased father and incapacitated father cases together amounted to more than three quarters of the cases. Stephen D. Sugarman, *Roe v. Norton: Coerced Maternal Cooperation*, in R. MNOOKIN ET AL, *IN THE INTEREST OF CHILDREN* 371 (1985).

39. The basic statute defines a needy child as one who "has been deprived of parental support or care by reason of the death, continued absence from the home or physical or mental incapacity of a parent . . ." 42 U.S.C. § 606(a).

40. BELL, *supra* note 32.

Old Age and Survivors Insurance (OASI).⁴¹ Through a series of amendments starting in the 1950s, the plan was expanded further to cover totally disabled former workers and their dependents and yet again renamed—Old Age Survivors and Disability Insurance (OASDI).⁴²

With respect to children and their mothers, the clear objective of the 1939 Amendments was to elevate widowed mothers and their children from AFDC to Social Security. That goal has been largely achieved. As discussed previously, about 2.1 million children and their caretakers received Social Security benefits in 1992. Formally, these women and their children are still eligible for AFDC if they don't qualify for Social Security.⁴³ Despite this potential eligibility, however, cases involving widows and their children now comprise less than two percent of the AFDC caseload,⁴⁴ which in absolute numbers—a total of approximately 200,000 mothers and their children—is far fewer than the number of widowed mothers and survivor children now on OASDI.

In 1939, many believed that, as a result of moving widows and their children onto Social Security, AFDC would largely wither away. This, of course, has not happened. Cases involving "incapacitated" fathers represented a significant percentage of the AFDC caseload until 1960, when totally disabled workers, their children and spouses first qualified for Social Security. As a result, the incapacitated parent AFDC caseload currently is fairly small, comprising only three percent of the total, which equals approximately 300,000 caretakers and children),⁴⁵ as compared to the 1.3 million caretakers and children whose disabled fathers are on OASDI.

Much more significant for AFDC's continuation, however, is the explosion of the caseload of participants who are divorced, separated, and never married. Today about eighty-five percent of AFDC cases are comprised of women and their children in this category—usually called "absent father" (or occasionally "absent mother") cases.⁴⁶

41. See also Sugarman, *supra* note 36, at 847–66.

42. Disability benefits are provided by 42 U.S.C. § 423(a).

43. For example, if the husband did not work in covered employment or had insufficient quarters of covered wages at the time of his death; or if their Social Security benefits are less than they could obtain from AFDC, they can collect from both.

44. Green Book, *supra* note 21, Table 31, pp. 638–39.

45. *Id.*

46. *Id.*

During the 1940s and 1950s, cultural patterns and state policies limited the number of absent parent cases, but since the 1960s enormous changes have occurred. First, the divorce rate has increased dramatically from thirty years ago. Second, out of wedlock births are significantly higher. Third, in my judgment, the poor are much more willing and able to ask for and obtain AFDC than they were in the past, as a result of several important developments of the 1960s: the ideology of the War on Poverty; the civil rights movements; the welfare rights movement (now largely moribund); and the introduction of federally funded legal services for the poor. Finally, changes in state laws have made many more "absent father" claimants eligible than in the past.⁴⁷

In sum, Social Security has created two classes of presumptively needy children—those with deceased, disabled or retired fathers who no longer must look to means-tested AFDC for support, and those with absent fathers who remain dependent on welfare.

B. Expanding Social Security's "Social Adequacy" Function

Comparing these two classes, it must be emphasized that in all of these instances where a child is at risk of poverty, the private economy and private law may make it unnecessary for the child and his mother to seek any public income transfers. The deceased father may have adequate life insurance; the disabled father may have adequate disability insurance; the retired father may have adequate savings or an adequate pension; and the absent father may have adequate earnings and actually pay adequate child support.

The "social adequacy" provisions of Social Security are founded on the social reality that many fathers simply do not have

47. For example, during the 1960's many states had rules that denied women and their children AFDC benefits if the child's home was "unsuitable"—that is, a home was often deemed unsuitable because the state disapproved of the mother's sexual behavior, *King v. Smith*, 392 U.S. 309 (1968); Sugarman, *supra* note 38, at 374-76. A later modification in the same vein denied AFDC benefits to children when their mother lived with a "man assuming the role of spouse." Some states sought simply to deny benefits to women whose children were "illegitimate" or who had babies out of wedlock while on welfare (sometimes on the ground that this proved their unsuitability as mothers). In simplified terms, states may no longer employ "suitable home" and "man in the house" standards as conditions of eligibility.

adequate life insurance, disability insurance, savings, or pensions. While it is true that the shortfall in all these respects is less today than it was in 1935, the shortfall is still substantial, and almost surely would continue to be if Social Security's dependent benefits were eliminated. Recognizing this clear social need, Congress provided a social insurance benefit through Social Security. As a result, Social Security provides a reasonable floor for the children and spouses of deceased, disabled and retired workers. The benefit amount is progressive in the sense that, other things being equal, it replaces a larger proportion of a low-wage-earner's salary than of a person whose earnings are relatively higher.⁴⁸ At the same time it helps maintain consistency in children's relative standard of living after the event that triggers the loss in earnings by paying benefits related to the worker's past wages. In other words, while Social Security children's benefits are not individually tailored to an absolute need for subsistence income, the benefits plainly do serve the need for substitute income when children can no longer depend on their fathers' earnings.

Fathers, of course, still can arrange life insurance, disability insurance, savings, and pensions, but these serve to benefit their children beyond the base Social Security provides. Obviously, some men provide less privately because they are aware of the role Social Security will play; but, as already indicated, it is the nature of American lifestyles that many fathers would not provide for their children at all, if Social Security did not exist.

When the child is deprived of the support of a father due to absence and the failure to pay child support, the governmental arrangements are altogether different. From the child's perspective, however, the risk and subsequent need are similar. Just as we know that men will die without sufficient insurance, we also know that men will father children, divorce, or leave the children's mothers, and not pay the child support required of them. Some don't pay because they become financially unable to do so, or never were able to pay an adequate sum in the first place. Many don't pay simply because they don't want to—they would rather spend the money on themselves or on a new partner (and perhaps new children), or they are so angry with the custodial spouse that they resist paying. Still other men, for a range of reasons, are never identified as the fathers of the

48. For a discussion of the changes in the Social Security benefit formula over time, see Sugarman, *supra* note 36, at 866–68, 876–81.

needy children, or even if they are, have never had a support order entered against them and do not pay voluntarily.⁴⁹

Since 1974, the federal government has increasingly expanded its efforts to force states to adopt and operate more effective child support enforcement programs.⁵⁰ The enforcement programs have enlisted increasing support from local law enforcement officers; they have sought to create higher and more standardized support awards; and they have tried to implement a wide variety of child support withholding mechanisms (e.g., from the father's wages and from income tax refunds). The child support shortfall, however, remains extremely large.⁵¹

The result for children with absent fathers is very troubling. Other children who are similarly needy are rescued by the largely invisible Social Security scheme. The fact that AFDC no longer serves children of deceased and disabled fathers surely has contributed to the stigmatization and political weakness of those who must continue to depend on the AFDC program. That is to say, if widows and incapacitated breadwinners formed a larger portion of the AFDC rolls and if absent breadwinner cases were a much smaller portion, then opponents of AFDC could less effectively characterize it as a plan for irresponsible women who bear illegitimate children or who cannot keep their marriages together.⁵² It is in this way, I believe, that Social Security has contributed to the welfare problem.

Given my description of the basic structure of Social Security benefits for children and their caretakers, the reader should begin to see how that approach might be used for many, possibly most, of those children now on AFDC. To make the point more clearly, the following section will propose the reformation of welfare through Social Security. The goal is to continue the trend established by the 1939 and 1960 Social Security Amendments—moving even more needy children and their mothers off of AFDC and onto Social Security.

49. Sugarman, *supra* note 38, at 372–73, 429–33. It is estimated that no child support is awarded to about two in five children with absent fathers. Green Book, *supra* note 21, Table 3 at p. 667.

50. Harry Krause, *Child Support Reassessed*, in *DIVORCE REFORM AT THE CROSSROADS*, *supra* note 28, 169–76; Green Book, *supra* note 21, Section 8, at 658–729.

51. Perhaps a third of awarded support is not paid, amounting to around five billion dollars a year. Green Book, *supra* note 21, at 699. This does not account for the forty percent of children who were not awarded support.

52. More than fifty percent of the AFDC caseload is in the not married (i.e., child born outside of marriage) category. Green Book, *supra* note 21, Table 31, pp. 638–39.

II. THE PROPOSED PLAN

Suppose that when a child is deprived of the regular presence of a parent in the home the child could qualify for Social Security benefits calculated in the same manner as if the child's parent had died. And suppose further that the child's caretaker parent could also qualify for Social Security parenting benefits determined in the same manner as if the wage-earning parent had died.⁵³ This is the system I propose to create. This section will focus initially on how this proposed new benefit would function and explain the financial and psychological advantages it would provide for its beneficiaries. The section will then consider whether the new benefit can be understood coherently as an appropriate object of Social Security, and how it would be financed. Finally, attention will be given to the welfare problem that would remain after the adoption of the proposal and the plan's political prospects.

A. *Financial Advantages for AFDC Claimants*

A large proportion of current AFDC recipients would qualify for the new Social Security benefit. Basically, what would be required is that the absent parent, typically the father, have sufficient recent attachment to the work force to be "insured" for Social Security purposes at the time of the divorce or separation, or at the child's birth if the parents are not married or living together at the time. I will assume for now that "insured" status to qualify a child for absent parent benefits will require the same past labor force attachment of the wage earner as is currently required for children's survivor benefits.⁵⁴

I have yet to estimate what proportion of AFDC recipients would be eligible for Social Security under this proposal, but it is likely to be a large share. Admittedly, however, for two primary reasons, it would probably be a lower proportion than the proportion of widowed mothers otherwise eligible for AFDC

53. For earlier proposals in a somewhat similar vein, see ALVIN SCHORR, *POOR KIDS* (1966) and U.S. President's Commission on Income Maintenance Programs, *Background Papers* 442-45 (1970). For my own earlier, less enthusiastic views, see Sugarman, *supra* note 36, at 900-04.

54. See *supra* note 2.

who are currently receiving Social Security instead. First there is certainly a higher proportion of absent fathers than deceased fathers who are not insured for Social Security purposes. Included in this category are teen fathers who have never worked and young fathers who have not yet established a sufficient earnings record to qualify as insured. Secondly, children born outside of marriage are able to identify who their fathers ~~are~~ at a lower rate than children whose fathers have died.⁵⁵

As with Social Security death benefits, the child and the caretaker parent would be eligible for sums based upon the absent parent's prior wages. From data already presented with respect to Social Security survivor benefits, it seems fair to conclude that in a large number of cases, the new Social Security benefit would amount to more than the mother and child now receive from AFDC, thereby improving their financial status. (Let us assume that in cases where the Social Security benefit is less than their current AFDC benefit, the mother and child would be eligible to apply for AFDC to "top up" their benefits to the AFDC level.) The caretaker parent then could stay at home with the child, or enter into (or stay in) the paid labor force at her option, and face the same Social Security benefit loss rules that apply in death cases. As under existing Social Security policy, the child's benefit would not be reduced regardless of the mother's earnings,⁵⁶ which, of course, is in sharp contrast to AFDC. And similarly the mother's benefit would be reduced using the current Social Security rate of one dollar for every two dollars earned after approximately the first \$600 in monthly earnings. Hence women currently on AFDC would find it far more financially attractive to combine Social Security and wages than they now find trying to combine AFDC and wages.

Notice the irony presented by the current welfare situation. Much of the public seems to want AFDC mothers to work, while they are less keen to pressure Social Security mothers to do the same. Yet, because of its higher implicit marginal tax rate, the

55. As is true in the case of AFDC benefits, some unmarried mothers will choose not to name the father of their child, even if known, in which case those children would not qualify for the new Social Security benefit. For a general discussion of the problem of identifying absent fathers, see Sugarman, *supra* note 38.

56. *Id.* Perhaps this rule should be reconsidered in cases where the mother earns substantial sums and the social adequacy basis for paying the child's benefit is no longer served. Sugarman, *supra* note 36, at 888.

AFDC program discourages voluntary work much more than the Social Security program. Because the proposed plan would end this perverse work incentive pattern, there is good reason to hope that many women now dependent solely on AFDC would choose a combination of Social Security and paid work. It is also worth noting that those people currently receiving AFDC benefits who earn modest wages and illegally fail to report those earnings to AFDC officials might simply combine Social Security with their earnings and cease to be lawbreakers.⁵⁷

For many women now receiving AFDC benefits, transferring to Social Security would carry the additional prospect of combining that benefit with supplemental private support from the child's absent parent. As a condition of eligibility, AFDC recipients currently are required, when necessary, to help establish the paternity of the child's absent father, obtain an order of child support against the father, and assign that support award over to the state. Hence, the AFDC child hardly benefits at all if the father actually pays support. At present, in the ordinary case, the state collects the child support and sends only fifty dollars a month of that support payment to the mother, keeping the remainder, in effect, to pay for the AFDC benefit the mother is receiving.⁵⁸ On the other hand, just as children and their caretakers can supplement Social Security death benefits with any private life insurance or estate assets left by the deceased parent, Social Security absent father benefits could be supplemented by private child support payments. This would give mothers a greater incentive than under AFDC to make sure that the fathers pay the required support. Later I will address how this new Social Security benefit and its financing should affect an absent parent's child support obligation. In any event, because caretaker parents would have these various ways of supplementing their household's Social Security benefits, there would be less need for AFDC to "top up" Social Security in cases where the Social Security benefit would be less than the AFDC benefit.

With the proposed plan likely to cause a large number of women to transfer from, or never apply for AFDC in order to better their financial position, AFDC may eventually become a very small residual program relative to what it is today.

57. See generally, JOHN GARDINER AND THEODORE LYMAN, *THE FRAUD CONTROL GAME* (1984).

58. Green Book, *supra* note 21, at 689-90.

Shortly, I will address concerns we might have about those who, absent further changes, would remain on AFDC, but only after I address other important features of the proposal. Next, I want to emphasize its psychological benefits.

B. Psychological Advantages

Those mothers who transfer from AFDC to Social Security should, in general, gain a great deal in self-respect. First, there would be an end to AFDC's intrusion into their lives in the form of school and work requirements, routine social worker supervision (to the extent this still exists in AFDC), and inquiry into their assets. None of these things are part of Social Security. To be sure, public agencies still could offer social, vocational and educational services to these mothers—but they would have to be quality services in order to attract the voluntary involvement of caretaker parents. Obviously, coercive intrusion would be appropriate in cases of child abuse or neglect, but under the proposed plan single mothers would no longer be presumed to be incompetent or unfit in the way that AFDC, in effect, now presumes them to be.⁵⁹

At the same time, because caretaker parents under the proposed plan would not have to face coercive AFDC requirements, they would no longer suffer one of the main consequences of these requirements today—restricted access to the benefits. Rather than actually helping recipients to finish school or enter into the paid labor force, as the AFDC requirements purport to intend, these rules often simply serve as insurmountable hurdles, which purge from the rolls or otherwise penalize decidedly needy children and their mothers.⁶⁰

Additionally, under the proposed plan, beneficiaries could come to see themselves as recipients of an earned benefit and not the “hand out” that AFDC is viewed as, despite its formal status as a legal “entitlement”. This stronger sense of right holds some promise of generating greater self-confidence in dealing with, and better treatment by, the administering

59. I have long wondered whether the U.S. Supreme Court would tolerate mandatory public social worker visits to all parents on the ground that such visits are not “searches,” even though the Court has approved of compelled visits to AFDC mothers on this ground. *Wyman v. James*, 400 U.S. 309 (1971).

60. Sugarman, *supra* note 38, at 403.

bureaucracy. At the same time, I am assuming that there would be sharply reduced public criticism of these mothers because instead of claiming from a program with a bad reputation, they would obtain their benefit through a part of the Social Security program that currently does not receive significant public opposition.

The psychologically appealing quality of Social Security as compared with AFDC would be important to another group as well. Some women who have not applied for AFDC because of the stigma attached to it will presumably apply for Social Security. At a minimum these women and their children could improve their financial position because of the addition of the child's Social Security benefit. Some of these women now work in the paid labor force instead of receiving AFDC. They might reduce their employment or quit altogether when the new Social Security benefit becomes available; but in this respect they are simply making the same choice now offered to caretaker mothers on Social Security whose husbands have died.

Finally, because Social Security would permit combining the benefit with wages and/or private additional child support, fewer of the women who are now receiving AFDC would feel the same need to remarry in order to get off the rolls, when they are not otherwise interested in remarriage. Again, this would put the woman on a par with widowed mothers now on Social Security. By the same token, recent single mothers who now promptly remarry solely to avoid dependence on AFDC, would have a third, perhaps more appealing choice.

C. Financial Advantages for Non-AFDC Claimants

So far the focus has been on moving people off AFDC and on to Social Security. But another large group of children would also be affected by the proposal. The new Social Security benefit would not be limited to only eligible AFDC children and their mothers—just as Social Security death benefits for children and their caretaker parents are not restricted to eligible AFDC claimants. All children in single-parent homes plus their caretaker parents would be potentially eligible. Simply put, most mainstream, working class, middle class, and upper class couples who divorce or separate could be affected.

Of course, today, many women and their children actually

apply for AFDC following divorce, separation, or bearing a child outside of marriage, even though they did not consider themselves poor before. But many other single mothers do not apply for AFDC. Through a combination of their earnings, the child and spousal support they receive, and/or other resources, these mothers simply do not find it necessary to turn to AFDC for assistance.

This does not mean, however, that single mothers as a class are financially well off. To the contrary, the studies of the economic consequences of divorce make vivid that a substantial proportion of women and their children clearly suffer financially following divorce.⁶¹ Therefore, in addition to its promise to solve much of the welfare problem, the proposed plan may well also protect nonimpoverished women and their children from the sharp declines in living standards they face at the time of divorce, especially in cases where divorced and separated fathers fail to pay child support.

Notice that the structure of Social Security children's benefits would broadly fit existing moral and legal norms governing the financial relationships between children and their absent parents. Just as child support is calculated to reflect the absent parent's ability to pay based on his past earnings, so too would the new Social Security benefit reflect the absent parent's past income. In other words, Social Security's commitment to wage replacement dovetails with the notion that child support should maintain the child's past living standard to some degree.

D. The Impact of the New Social Security Benefit on Support Obligations

A critical issue raised by the proposal concerns the interaction of the new Social Security benefit with the child support obligation of the absent parent. To be consistent with Social Security practice generally, the new absent parent benefit would not be reduced even if child support is actually received. Rather, any private support that is paid would supplement the new benefit in the same way that life insurance now supplements Social Security survivor benefits.

61. Marsha Garrison, *The Economics of Divorce*, in *DIVORCE REFORM AT THE CROSSROADS*, *supra* note 28, at 75.

But, just because child support payments would supplement the new Social Security benefit, it does not follow that states would keep their private child support obligation at current levels. To the contrary, if states believe that the support levels now imposed are appropriate, it seems likely that states would reduce the initial support obligation by an equivalent amount in response to the new benefits. In the alternative, states could count the new Social Security benefits toward the satisfaction of the support obligation. These two solutions are simply two different accounting methods which achieve the same end.

Under either method, both the child's Social Security benefit and the caretaker's benefit should be accounted for when calculating the absent parent's child support obligation, because the benefits together would be provided by Social Security for the purpose of supporting the child. In some households, this would mean that the absent parent's child support obligation is fully covered by the Social Security payment; that is, depending upon the accounting method adopted by the state, either the support obligation would be fully discharged or the initial support obligation would be reduced to zero.

Indeed, some households would receive more from Social Security than from child support. In that event, even though the absent parent would not pay anything directly to the child for her support, the child and the custodial parent would still fare better. Such households are most likely to be those in which the absent parent has low earnings, where Social Security would replace those earnings at a higher rate than they would traditionally be tapped for child support.

In these situations, states should not treat any Social Security paid beyond the absent parent's child support obligation as serving to reduce the spousal support award, or on the alternative accounting approach, to treat the excess Social Security benefit as discharging the spousal support obligation to the extent of the excess. This is because, unlike the Social Security caretaker's benefit, it should not be the purpose of spousal support to care for children, nor should its amount depend upon the presence of children. Rather, spousal support should be based upon just claims of the spouse that are independent of current parenting status—even though it may be theorized that the underlying justification for spousal support rests on women's traditional role in caring for children, or upon this specific spouse's prior parenting behavior that might have ceased by the time of the divorce or separation. Because the

entire basis for spousal support is now very much in conflict, I will not further address that topic here.

In some situations, the new Social Security benefit would not fully cover the child support obligation and the absent parent would have the duty to make up the difference. That shortfall would likely be especially large in cases of earners whose wages are well beyond the maximum covered by Social Security (about \$55,000 in 1992).⁶²

What should happen if the custodial parent earns wages and hence the Social Security caretaker benefit to which she would otherwise be entitled is reduced at the rate of one of two dollars earned after about \$600 a month? This loss of Social Security benefits should not increase the support obligation of the absent parent. After all, the child is already better off because the custodial parent's extra earnings will increase the household's financial position despite a partial offsetting loss in Social Security benefits. In other words, depending upon which accounting approach they take, states should either reduce or treat as discharged the absent parent's child support obligation by the full amount of the Social Security benefits to which the child and the caretaker parent would be entitled were the caretaker not employed.

At the same time, the fact that the custodial parent earns money should not reduce the absent parent's child support obligation—at least not until the custodial parent has earned a sufficiently large sum as to exhaust her own right to caretaker benefits from Social Security. Otherwise, the implicit marginal tax on the custodial parent's earnings would be sufficiently large—a fifty percent loss of the Social Security benefit, plus positive income tax and Social Security tax obligations, plus the loss of child support—as to make it financially pointless for the custodial parent to earn moderate wages beyond \$600 a month.

The principles proposed in the prior two paragraphs imply that states should look primarily to the absent parent's earnings to determine the child support obligation. While some states now do this, others have adopted formulae that focus on the earnings of both parents.⁶³ Hence, were the new Social Security benefit adopted, states may want to re-think the basic calculation for child support.

62. CCH Unemployment Insurance Reporter, Vol. 1, para. 12,001, pp. 1017, 1029.

63. Murphy, *Eroding the Myth of Discretionary Justice in Family Law: The Child Support Experiment*, 70 N.C. L. REV. 209, 229–30 (1991).

This solution seems fair to the child and the caretaker parent. In effect, the states would treat the Social Security benefit as a guarantor of a certain level of child support, and the child and caretaker parent would, in any event, be financially no worse off than under the present welfare structure.

But because the absent parent's state-imposed support obligation is to be reduced because of the Social Security benefit (or, in the alternative, treated as discharged by it) two new questions arise. First, is the new scheme fair to the absent parent, or does he get off too easily? Second, should the state use the availability of the Social Security benefit to increase the support rights of the child and caretaker parent? The answers to these questions depend in part upon how the new Social Security benefit is to be financed; and hence further discussion of these questions should be put off until that issue is addressed.

Relatively minor technical questions arise in cases where the divorced couple takes substantially equal joint physical custody of their child and where the higher earner of the two takes primary custody and no child support would normally be imposed on the other parent. While these matters require additional thought, for now it seems sufficient to assume that where custody is exactly shared the couple could choose the account on which the benefit is to be based, and that the plan would generate benefits from an absent parent regardless of the couple's relative earnings.⁶⁴

E. Is the Proposed Social Security Benefit Coherent Social Insurance?

The argument for a new Social Security benefit has rested from the start on equal treatment of claims made on behalf of children of absent parents—children whose innocence and potential need is the same as that faced by children of deceased, disabled and retired parents. In other words, from the child's perspective, there is a need for financial support when a parent has left the household whether because of death, divorce, or separation.

64. In fact, exact joint physical custody is rare; indeed, so is primary custody by fathers. Robert Mnookin, et al., *Private Ordering Revisited*, in *DIVORCE REFORM AT THE CROSSROADS*, *supra* note 28, at 52–55.

Nevertheless, thinking about this new benefit as insurance reveals at least three potentially significant differences between the risk guarded against by the proposed benefit and the other risks that Social Security may be said to insure under current rules—the fact that the absent parent is still working, the possible “market hazard” the proposal creates, and the arguably different desires of wage-earners who pay Social Security “premiums.”

First, whereas deceased, disabled, and retired workers are not expected to, and usually are unable to, continue to earn wages, this is plainly not true of worker-parents who are absent. In other words, in the divorced or separated parent situation, there is no risk of earnings loss for which insurance is required. Some may believe that this difference alone is fatal to the whole idea of having Social Security cover the risk of absent parents. There is still a risk here, however—the potential loss of income coming into the household now comprised of the child and the caretaker parent. The policy question is whether Social Security’s social adequacy objective should include dealing with this risk.

Of course, it may be argued that there is no real need for earnings replacement when earnings are not interrupted, as is ordinarily the case in absent parent settings. But, from the child’s perspective, there is indeed a risk of interruption. That the absent parent might take care of the support responsibility privately is hardly determinative.

After all, as noted earlier, each of the risks covered by Social Security could, in principle, be covered privately. But we know as a society that many workers simply will not buy any or enough life or disability insurance and will not save enough to support themselves and their families in their retirement. Social insurance responds then, not so much to market failure, but to human failure. The case for the new Social Security benefit when there is an absent parent also rests on our social awareness of a human failure—many absent fathers simply do not pay enough child support.

Consider the situation under the present regime in which parents separate or divorce, the absent father pays no child support, and then later he dies. At the time of his death, the child is nonetheless entitled to a Social Security child’s benefit, and the caretaker mother to a Social Security parenting benefit. There is a certain irony in this situation; only now that the absent father has died does the child finally start to receive the

support he should have received all along. Under the proposed regime both types of parental duties to the child will be partially satisfied through Social Security—to provide support when the father is living and to provide life insurance at his death.

A second potential difference between the Social Security benefits for children and the proposed benefit concerns what in insurance parlance is usually termed “moral hazard;” that is, the tendency of insurance availability to lead to behavioral change that causes the loss. Although it is possible that some people cause their own deaths or disability because they know Social Security benefits will be available (through deliberate suicide or other intentional risk-taking that leads to death or disability), this probably does not happen very often. Most people want to live and live without disability. The prospect that Social Security would pay money if either happened is not sufficiently enticing to overturn their preference for life and health.⁶⁵

There may be a greater concern, however, that people will be encouraged to separate because of the existence of Social Security absent parent insurance. There are two ways to think about this possibility. First, consider it from the father’s viewpoint. If today he is somewhat discouraged from leaving his wife and child because of the child support obligation he would have to pay if he left, a reduction in his support obligation will, all things being equal, increase the likelihood of his departure. In short, the existence of the insurance may change conduct so as to increase the likelihood that the insurance will be used—a moral hazard.

If this behavioral response by fathers is considered socially undesirable, it may be possible to counteract the behavior through the way the new Social Security benefit is to be funded, as explained below. On the other hand, it is not entirely clear whether men who wish to terminate their marriage and who would do so but for the financial burdens that leaving will impose on them ought to be encouraged to stay. This quite different perspective has, in turn, different implications for the funding of the new Social Security benefit.

Second, consider the mother’s viewpoint. If mothers currently remain in marriages because of the fear that child support will

65. Social Security retirement benefits are another matter; here, historically at least, one purpose of Social Security was precisely to encourage people to retire so as to make room in the labor force for younger people.

not be paid, even if ordered, the new Social Security benefit may encourage more mothers to end their marriages. Once again, the existence of the insurance may increase the occurrence of the insurance-triggering event. But, as with fathers, it is by no means clear that this is socially undesirable. How healthy is it for women to be tied to marriage because of fear of poverty? Thus, what some may term a moral hazard risk, can be redefined. Instead, at least from the mother's viewpoint, the new benefit can be seen to provide her with some insurance against the financial risk that, upon their separation, the father of her child will not pay child support.

A quite different concern is that couples who would otherwise prefer to stay together will be enticed to separate because of the financial attractions of the Social Security benefit. While this would be socially undesirable, such behavior is unlikely to happen often given the benefits couples gain by living together—both emotional and the financial economies of scale. In addition, financial incentives already exist under the AFDC regime for couples to separate (since AFDC usually requires an absent parent), so that it is unlikely that large behavioral changes, at least among the poor, would occur with the introduction of the proposed new Social Security benefit.

Parallel analyses can also be made with respect to the decision to bear children. For example, a pregnant woman living alone might have a greater incentive, other things being equal, to bear additional children rather than abort the fetus if the new Social Security benefit were available. But this possibility also now exists in the AFDC program—a charge frequently levelled against the scheme by its critics.⁶⁶ Yet, the empirical evidence suggests that in fact AFDC does not have any significant impact on the birth rate,⁶⁷ and so it would be unlikely that the new Social Security benefit, even though larger, would have a substantial effect either.

A third difference between the existing Social Security children's benefits and the proposed absent parent benefits concerns the desires of workers. Plainly, as workers become disabled or are about to die, they typically would regret not having bought private insurance for their children and,

66. *E.g.*, CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-80* (1984).

67. DAVID ELLWOOD AND MARY JO BANE, *THE IMPACT OF AFDC ON FAMILY STRUCTURE AND LIVING ARRANGEMENTS* (1984); Ellwood and Summers, *Is Welfare Really the Problem?*, *PUBLIC INTEREST*, Spring 1986, at 57.

therefore, would be grateful for having been required to arrange for it through Social Security. But for parents who live apart from their children the picture is more complicated. Some, of course, will be happy to have the Social Security insurance so as to assure that their child's financial needs are being met. Others would just as soon forget about their children and their financial well being and hence one might at first think they would not want the new benefit; yet, once we add the absent parents' legal duty to those children and increasingly effective child support enforcement mechanisms to the analysis, then even uncaring absent parents seemingly would be pleased to be part of a system that at least helps discharge that duty.

The greater objection to this form of insurance, therefore, would seem to come from those who do not anticipate becoming divorced or separated from the mother of their children when the children are still minors. Those workers might well object to the idea of having to insure against a risk they aren't worried about, especially when they have to pay the same "premium rates" as others do. The objection would be especially strong from those who haven't fathered any children at all, and do not intend to become fathers.

Yet, it is essential to see that this sort of objection has carried absolutely no weight with respect to the other Social Security children's benefits. Regardless as to whether you have children at all or, if so, want to insure them against the risk of your death, disability or retirement, you are required to have that protection as part of your Social Security package for the same cost and on the same terms as those who have many young children and engage in extremely dangerous activities. Hence, the unlikelihood of personal need for the insurance would seem to be an insufficient objection by itself to the idea of Social Security-provided, divorce/separation insurance. (Anyway, when you start working as a young single person, you probably vastly underestimate the risk that you will at sometime in the future wind up separated from the mother or father of your children.)

At a deeper level, however, some people will find it personally offensive to have Social Security provide financial protection for the risk of divorce and of single parenthood outside of marriage when they have moral objections to such lifestyles. They would not want to be part of a system that to them symbolizes society's acceptance or endorsement of divorce and parenthood without marriage.

While this outlook cannot be rejected as illegitimate, this

same objection, of course, could be made to AFDC. Perhaps the reply from these objectors would be that at least with AFDC, we stigmatize claimants who behave in these socially deviant ways. Of course, one goal of the new program is to end that stigma. This is a clash of values which can hardly be expected to lead to consensus, and hence signals at least one source of likely opposition to absent parent benefits through Social Security.

A less passionate objection is that it is wrong to provide insurance against risks that people voluntarily cause to occur, not simply because of the moral hazard reasons discussed above, but more broadly because the program no longer functions like insurance. Divorce and separation, in this analysis, just seem too willful, as compared with disability and death. Indeed, whereas life and disability insurance are available in the private market, divorce insurance is not. But again, it must be emphasized that from the viewpoint of the child, having an absent parent is rarely voluntary—and hence is something that children, if they had the money and could decide rationally, might well wish to insure against. Therefore, this objection really comes down to the notion that the Social Security absent parent benefit should not be seen as “insurance,” but as a “transfer payment”—and one that non-recipients should not be required to help pay for, at least when absent parents can financially bear the burden themselves. Dealing with this concern requires an analysis of how the new Social Security benefit would be funded.

F. Financing the New Absent Parent Benefit

If Social Security were to add children's and caretaker's benefits in absent parent cases, difficult choices will have to be made about the funding of those benefits. There are three basic alternatives. First, this benefit could be funded as are other Social Security children's benefits—through a uniform payroll tax imposed on employees and employers. This approach would make the scheme most like insurance. At the time of need, the absent parent would be asked to pay no more than does any other working person.

An opposing approach would be to disconnect the funding of this new benefit from the usual OASDI scheme and to try to

require individual absent fathers to reimburse Social Security for the benefits paid out to their children. The justification for this approach would be that, although we may need social insurance from the children's viewpoint, it is not right to socialize the cost of the insurance—because the triggering event (absence) is under the absent parents' control and is not connected to their loss of earnings. Under this approach, Social Security would function more like AFDC. In effect, society would agree to advance the amount necessary for the new Social Security benefit, but then would seek reimbursement from the absent parent, dollar for dollar, to the extent feasible.

A third approach would fall somewhere in between the other two. Absent parents whose children obtain Social Security benefits would, either individually or as a group, pay more into the system than would the ordinary contributor to Social Security, but not the full amount of the new Social Security benefits paid out. For example, all absent parents whose earnings records were the basis of a benefit payment could have their earnings subjected to an extra percentage of tax; or, individual absent parents could be required to repay Social Security for a percent of the benefits that were paid out based upon their earnings. Other intermediary funding arrangements could also be imagined.

As indicated earlier, the choice among funding alternatives may be influenced by projected behavioral responses. For example, focusing the cost on individual absent parents where benefits are claimed would counter the fear that the new benefit would stimulate couples to break-up their marriages—both genuine break-ups and separations feigned for the purpose of obtaining benefits.

A different way to consider the funding issue is from the perspective of gender. But, on balance, I find the "solution" from this viewpoint indeterminate. In one sense it might seem fair that women workers, as part of the mass of all workers, should contribute through regular payroll tax contributions to the funding of the new absent parent benefit, because in practice women will be the main recipients of the new caretaker benefit. In another sense however, it may seem unfair to require women to contribute to the funding of a benefit that will rarely replace their wages (because most children have absent fathers not mothers), but will primarily serve instead to satisfy what is now understood to be men's obligations. Yet that same objection could be made to what I take to be the existing practical reality

when it comes to Social Security survivor benefits, which replace the earnings of a higher proportion of men than women workers.

In the end, faced with the wide variety of considerations raised by the funding issue, it may be preferable to await reaction to the proposal in general before making a choice among the alternatives, realizing that until a decision is made on that question, it is not clear that states can decide sensibly whether to increase the support obligations they impose on absent parents. Specifically, although it has been assumed that the states consider current support levels to be appropriate, if the new Social Security benefit were not funded primarily by payments from individual absent parents, the states might well conclude that higher support levels were desirable. Nonetheless, these are issues which may be appropriately left open for now.

A broader question about funding is the likely "cost" of the proposal. Before the plan becomes a serious political possibility, the cost would have to be examined in much greater detail. Nevertheless, some preliminary points can be made. First, although OASDI costs would increase, AFDC costs would decrease. Admittedly, the net would almost surely be a substantial increase, absent unexpectedly large earning behavior by single parent caretakers. A substantial increase in public spending, however, does not necessarily imply either an increase in the federal deficit or a danger to the financial solvency of Social Security. In the first place, a reduction in AFDC costs would, by itself, have a positive impact on federal and state budget deficits. Although the OASI fund is now running an enormous surplus of tens of billions of dollars a year,⁶⁸ this surplus should not be viewed as available to fund the new benefit. Rather, this surplus will be needed in the future to pay for the retirement benefits of the baby-boomers, and, therefore, should be left to accumulate.⁶⁹

Nevertheless, a variety of income sources might be tapped to provide the money Social Security would need to pay the new benefit. Indeed, were individual dollar-for-dollar payments required from absent parents, then, at least for many families

68. Actuarial Status of the Social Security and Medicare Programs, 55 Social Security Bulletin No. 2, 36 (Summer, 1992).

69. Whether it is a good idea to accumulate this fund, and whether the fund is in any sense meaningfully being accumulated when Social Security "invests" the fund in the national debt by acquiring governmental securities, are complex issues which I will not explore here.

not currently on AFDC, there would be no significant net financial difference from the current status. For those families, Social Security would function essentially as a collection and disbursement agency. For AFDC families and others in which absent parents are not now paying what they owe, one question is whether Social Security would be more effective at collecting money from absent fathers than are existing state agencies. This is quite uncertain, yet in any event, there are sure to be some shortfalls that would probably have to be funded by Social Security taxes generally, unless we shift to complete general revenue financing for this part of the plan—on the ground that we are producing savings in AFDC costs. If the new benefit was entirely funded by a general Social Security tax, the key issue, of course, would be just how large that new tax would be—something which yet cannot be answered.

G. Which Children?

On the assumption that the new benefit is adopted, some brief comments are in order here concerning its availability to illegitimate, adopted, and stepchildren. Under the Social Security rules applicable to children of deceased, retired, and disabled workers, a child whose biological parents divorce, or who are married but separate, would qualify with no further showing that he or she had been actually dependent upon the absent parent at the time of the divorce or separation.⁷⁰ So-called “illegitimate” children, that is, children born outside of marriage, qualify for Social Security benefits today if they meet one of several tests.⁷¹ There is never a problem in recovering appropriate benefits based upon their mother’s earnings. Claims based upon a father’s earnings, however, require either that the child be able to inherit under state law,⁷² that the parents have gone through an invalid marriage ceremony,⁷³ that the father has acknowledged the child in writing, or that a paternity determination or child support order has been entered against the father. If none of these tests is met, the child may still claim the appropriate benefit if he or she can show actual

70. 42 U.S.C. §§ 402(d)(3) and 416(e)(1).

71. 42 U.S.C. § 416(h)(2) and (3).

72. Something that varies from place to place.

73. *E.g.*, one was already married.

dependency through proof of either actual support from the father or by living with the father. The same general requirements presumptively would apply to the new absent parent benefit.

Are there respects in which these rules would seem unfair? There are two rather different situations to consider in cases where the parents never married. In one situation, the father has lived with the child for some time and then left. In that event, claims probably would be similar to those made in Social Security disability or death cases where the father had acknowledged paternity in writing, or had a paternity or support obligation entered against him during the time he had lived with the child.

The second situation is one in which the father never lived, nor will live, with the child. In this event, an absent parent benefit would be sought starting from the time of birth, which, of course, is rarely the case in death cases, and not usually the case in retirement and disability cases, although "afterborns" are entitled to benefits. As indicated above, the normal Social Security principles would permit the child born outside of marriage to claim the new absent parent benefits if he or she can inherit under state law, there was a ceremonial marriage, or the father was supporting the child at the time of the birth. This seems right to me. What if none of those elements are met, but instead, sometime after the child's birth when the paternity of the absent parent is determined, a support order is entered or a written acknowledgement is signed? Although the parallels to other Social Security children's benefits are not exact here, I nevertheless believe that the child should be able to draw absent parent benefits starting at such time and should not suffer unduly from a delayed legal identification of her father.

In cases where the parents never married, the focus thus far has been on the child's benefit. Certainly, as a policy matter, when the child qualifies for benefits, the caretaker mother should as well. This would be a break from current Social Security practice, in which parenting benefits are available only to legal spouses.⁷⁴ This discriminatory treatment of unmarried mothers was attacked unsuccessfully in *Califano v. Boles*.⁷⁵ If

74. 42 U.S.C. § 416(h)(1). Wives and widows are defined as those who are recognized as wives or widows under state law, can inherit under state law, or, in certain circumstances, went through a ceremonial marriage in good faith even though the marriage is invalid. A cohabitant does not meet any of these tests.

75. 443 U.S. 282 (1979).

the adoption of the new absent parent benefit was the occasion for overturning the rule upheld in the *Boles* case, a decided social gain, in my judgment, will have occurred.

With respect to stepchildren and adopted children, under the current regime, adopted children claiming on their adopting parent's earnings are treated like biological children.⁷⁶ Stepchildren (of their mother's new husband) are entitled to claim on their biological father's account.⁷⁷ This would, of course, remain true under the proposed plan. After all, this is central to the proposal. Under the current regime for other Social Security children's benefits, if a child is adopted by a stepfather before the child's biological father dies, retires, or becomes disabled, then the child's future entitlement to Social Security benefits based upon the biological father's earnings is cut off; on the other hand, once the child starts drawing benefits based upon the biological father's earnings, subsequent adoption by a step-father does not terminate those benefits.⁷⁸ It is a difficult question as to whether stepparent adoption should cut off the absent parent benefit. Under the current rules, since the father necessarily will be absent and the child presumably will be drawing benefits before the stepparent adopts, that adoption would not terminate the benefits. The policy reason for this result is not to discourage such adoptions. On the other hand, since state law traditionally curtails the biological father's support obligation at the time of adoption by the stepparent,⁷⁹ a policy favoring parallel treatment would call for terminating the absent parent benefit. This issue will remain open for now.

Children today also may claim Social Security benefits based upon their stepfather's account—provided that they are living with or supported by the stepfather at the time of his death, disability or retirement.⁸⁰ Should they also be allowed to claim benefits based on their stepfather's account when their stepfather divorces or separates from their mother? On the one hand, although empirical studies show that residential stepfathers do generally support their stepchildren,⁸¹ neither

76. 42 U.S.C. §§ 402(d) and 416(e).

77. *Id.*

78. 42 U.S.C. § 402(d)(3).

79. Ird Ellman, Paul Kurtz and Katherine Bartlett, *Family Law: Cases, Text, Problems* 361 (2nd ed. 1991).

80. 42 U.S.C. § 402(d)(4).

81. Chambers, *supra* note 28.

law nor custom supports the notion that they must provide support following the break-up of their marriage with the stepchild's mother.⁸² On this view, stepchildren should probably not be allowed to claim absent parent benefits on their absent step-father's earnings. Yet, there is a growing belief in some quarters (and a few state laws) that stepfathers, at least those who have taken on a strong parenting role, should have support duties, and perhaps even visitation and/or custodial rights, with respect to their stepchildren after the end of their marriage to the child's mother, whether a result of divorce or the mother's death.⁸³ Consistent with this outlook, absent parent benefits perhaps ought to be allowed in the event of the separation or divorce of a child's mother from his stepfather.⁸⁴ This issue is yet another which remains open.

H. The Remaining "Welfare" Problem

Lastly, I turn to those poor children with absent parents who would not be adequately served by the proposal advanced here. As indicated earlier, some poor single parents will not qualify for the new Social Security benefit because of "insured status" problems or because of an inability to link the child to a specific earner; others will qualify for only a very low benefit. What might be done about them?

One solution, of course, is simply to leave them dependent upon, or partly dependent upon, a more residual AFDC program. While this is the easiest and most straightforward solution, it may not be the most desirable one. Those families remaining on AFDC may be even more stigmatized based upon the earlier pattern of moving "more deserving" single mothers and their children off of AFDC and onto Social Security. In any event,

82. Ramsey and Masson, *Stepparent Support of Stepchildren: A Comparative Analysis of Policies and Problems in the American and English Experience*, 36 SYRACUSE L. REV. 659 (1985).

83. *Id.*

84. To be consistent with the usual rule governing other Social Security children's benefits in these situations, the child would have to choose between benefits based on his absent biological father's earnings and benefits based on his absent stepfather's earnings. CCH Unemployment Insurance Reporter, Vol. 1, para. 12,331 p. 1093-5 and para. 12,367, p. 1157-5. In any case, were benefits to be based upon a stepparent's earnings, I assume that the current regime's durational marriage requirements would apply. See 42 U.S.C. §§ 416(e) and (k).

there currently is widespread dissatisfaction with long-term dependence on AFDC.

Perhaps these families could qualify for some new scheme, such as transitional aid with financial, vocational, and educational benefits provided, for a limited period of time (perhaps three years) and intended to prompt greater long term independence. President Clinton advocated a similar proposal during the 1992 presidential campaign.

Another approach would be to provide these families with a uniform minimum Social Security benefit based on family size instead of the past earnings of an absent parent. This strategy is sometimes called "blanketing in." Its core aim would be to reduce stigma by having all absent parent claimants deal with the same bureaucracy. In effect, under this approach Social Security would provide a guaranteed level of child support for all children with an absent parent.⁸⁵

If this alternative proved successful, then it might also be adopted with respect to all children with disabled or deceased parents, thereby also blanketing in to Social Security most of the relatively small number of AFDC cases where the breadwinner is dead or incapacitated (and the family either does not now qualify for Social Security disability or survivor benefits, or qualifies for so small a benefit as to also need AFDC).

These reforms admittedly would not eliminate the problem of child poverty. Some children, for example, would continue to suffer because of the unemployment or low earnings of the able-bodied parent(s) with whom they live. While in principle, unemployment insurance, the minimum wage laws, and the earned income tax credit are supposed to deal with these needs, they fall short in practice. We could possibly try to deal with the needs of these children too through Social Security—which would make the child's benefit more like a universal children's allowance of the sort provided in most industrialized nations, except in the United States.⁸⁶ Such an analysis is beyond the scope of this article.

85. For a different, but related, proposal for publicly guaranteed child support, see Irwin Garfinkel and Margo Melli, *Maintenance through the Tax System: The Proposed Wisconsin Child Support Assurance Program*, 1 AUSTRALIAN JOURNAL OF FAMILY LAW 152 (January 1987).

86. Sugarman, *supra* note 36, at 904-05.

CONCLUSION

Three final concerns must be considered. First, adding this proposed new benefit to the Social Security system potentially risks stigmatizing all Social Security children's benefits, or indeed all of Social Security. Moreover, that risk is probably increased as the Social Security Administration becomes more involved in what is, in effect, child support enforcement. It is really a question of how much social adequacy freight the OASDI train can carry. On balance, while it ought to be able to carry the added burden of the absent parent benefit, whether it can in reality remains to be seen.

This brings to the fore a second point—the politics of the proposal. On the one hand, poor single mothers are generally thought to be politically weak. Yet, divorced women with children, with and through their advocates, seem to be an increasingly organized, vociferous, and effective lobby. Furthermore, many believe that, despite recent federal law changes in the AFDC system, the welfare problem is far from solved. Add to this the desirability of removing AFDC costs from state and federal budgets, and there is potential for a powerful political alliance in favor of the plan.

Moreover, because generally increasing the Social Security tax rate will be unpopular with business, some methods of funding the new benefit would generate more opposition than others. Perhaps, unlike past practice, any addition to the Social Security payroll tax could be imposed solely upon employees—a solution that might make further sense if differential obligations were established for absent parents. Additionally, advocates of the elderly, who are most concerned about the financial stability/integrity of Social Security's obligations to retirees, might be concerned about adding any new Social Security benefits. On the other hand, child welfare groups which have long pushed for a broader "children's allowance" might well embrace the plan. What is needed now is public discussion and further policy evaluation of the general idea.

This brings up a the third and final point—that the Social Security benefit formula for the proposed absent parent benefit need not be exactly the same as that used for calculating benefits where there is a deceased parent. Perhaps on closer examination, when all factors are taken into account, the current formula might be considered too generous or too modest. To endorse the proposal in general certainly does not require

a commitment to all the details.⁸⁷

Rather, what is important now is to see whether arguments presented here convince thoughtful people that the core idea is both attractive and imaginable—that in Social Security reform may lie the key to welfare reform.

87. For example, perhaps Social Security children's benefits should not be based upon the earnings of the parent, but should instead be uniform in amount. Alternatively, perhaps (for the same cost to the system) it would be desirable to reduce the amount of the benefit paid when there are one or two children, but in return increase the amount paid when there are more children by also raising the family maximum. For discussions of these issues, see Sugarman, *supra* note 36, at 868–71 and 888–98.

MEMORANDUM

May 27, 1994

TO: Kathi Way
FROM: Jessica Aldrich
RE: Child Support Fact Sheet

CHILD SUPPORT ENFORCEMENT PROPOSAL

Too often today non-custodial parents are not held responsible for their children. This occurs for three reasons:

1. A child support order is never established for children born out-of-wedlock. Paternity, necessary to establish the reward, is not established in half the cases.
2. Awards, when established, are too low.
3. Awards, when established, are fully collected in only half of the cases.

The Child Support Enforcement Proposal has three major elements:

1. Establish Awards in Every Case
2. Ensure Fair Award Levels
3. Collect Awards that are Owed

ESTABLISH AWARDS IN EVERY CASE

Currently, States establish paternity for approximately one-third of out-of-wedlock births a year. Typically, States attempt to establish paternity for only those women who apply for welfare. States are hampered by lack of incentives and cumbersome procedures.

Paternity Performance and Measurement Standards

- States will receive Federal funding to establish paternity. As a condition of the funding, **States will be required to calculate a State paternity establishment percentage based upon all cases where children are born to an unmarried mother in a given year.**

Financial Incentives for Paternity Establishment

- Performance-based incentive payments (in the form of increased FFP of 1 to 5 percent) based upon improvement in a State's paternity establishment percentage will **encourage States to improve paternity establishment records.** The Secretary will issue revised timeframes to establish paternity. Incentives will reward early establishment of paternity because the longer the delay the more difficult to establish paternity. States may implement programs (eligible for FFP) that provide incentives to parents to establish paternity.

Streamlining the Paternity Establishment Process

- *Encouraging Early Establishment of Paternity:* **States must inform unwed parents about the benefits and opportunities for establishing paternity.** Hospitals and other health facilities must implement in-house paternity establishment programs as condition of Medicaid reimbursement. Paternity actions can begin prior to birth.
- *Simplifying Paternity Establishment:* **Each State must allow either a rebuttable or conclusive presumption of paternity.** A rebuttable presumption will become conclusive after 12 months, but States may allow fathers, for good cause, to reopen a case. Putative fathers may also initiate their own paternity actions. The IV-D agency can order a genetic test when only one parent requests it. **States must advance the costs of the test, but**

federal funding will continue at 90% for tests, however, the father, if determined to be the biological father, must repay. The IV-D agency can enter default orders without resorting to the courts. **States must also enact laws to abolish trial by jury for paternity cases unless required by State constitution.**

- ***Paternity Outreach:*** States will be required to implement outreach programs promoting voluntary acknowledgement of paternity and providing information on establishing a child support order and applying for child support. States will be required to follow up individuals who do not establish paternity in the hospital. Upon Secretary approval, Federal funding will be provided at an increased matching rate of 90 percent for paternity outreach programs.

Improving Cooperation among AFDC Mothers in the Establishment of Paternity

- ***Cooperation Standards and Good Cause Exceptions:*** New cooperation standards will apply to all AFDC applicants or appropriate Medicaid cases for women with children born on or after 10 months following the date of enactment. The cooperation requirement is met only after the mother has provided names of all possible fathers and identifying information, appears at required proceedings, and submits to genetic tests. **IV-D workers must inform applicants of good cause exceptions.**
- ***Cooperation Prior to Receipt of Benefits:*** Applicants must cooperate in establishing paternity prior to receiving benefits. **Determination of cooperation must be made within 10 days of AFDC and/or Medicaid application**, if it is not, the applicant cannot be denied eligibility. Those qualifying for emergency assistance can receive benefits before a determination is made.
- Failure to cooperate with the IV-D agency will result in immediate sanction. **States must inform individuals of their right to appeal the determination.** If a mother initially fails to cooperate and is determined ineligible, she may later cooperate and benefits will be reinstated. The applicant may appeal a finding of noncooperation.
- ***State Paternity Cooperation Responsibilities and Standards:*** **State IV-D agencies must establish paternity or impose a sanction within one year from the date the initial cooperation requirement is met, or if the mother has met the cooperation requirements, but the State has failed to establish paternity within one year, the State will not be eligible for FFP of the AFDC grant.** The Secretary will prescribe a tolerance level, not to exceed 10 percent of cases, for which there will be no penalty.

Accreditation of Genetic Testing Laboratories

- **States are required to use labs for genetic testing that have been accredited by a U.S. agency specified by the Secretary.**

Administrative Authority to Establish Orders Based on Guidelines

- IV-D agencies will have the authority to issue the child support award. States may extend such authority to separation and divorce.

ENSURE FAIR AWARD LEVELS

National Commission on Child Support Guidelines

- A debate exists regarding the adequacy of support awards resulting from State guidelines. Individual State guidelines result in disparate treatment between States and encourage forum shopping. Congress shall create a twelve-member National Commission on Child

Support Guidelines to determine both the necessity of a uniform guideline and adequate award levels.

Modifications of Child Support Orders

- **States shall have laws requiring the review and adjustment of child support orders in the State Central Registry every three years by State or local child support agency. Downward and upward modifications can be made. Interstate modification cases must follow the Uniform Interstate Family Support Act (also see Interstate Enforcement) (UIFSA) to determine which state has modification jurisdiction. Further, HHS shall determine if IRS income data can be used to facilitate the process.**

Distribution of Child Support Payments

- ***Priority of Child Support Distribution:* States shall distribute payments of all non-AFDC family child support collected in the following priority: child support obligation, debts owed the family. If noncustodial or custodial parents unite/reunite in a legitimate marriage, the State must suspend/forgive collection of arrearages owed the State if family's joint income is less than twice federal poverty guideline. When a parent owes more than one family, all States must use a standard allocation method determined by the Secretary.**
- ***Treatment of Child Support for AFDC Families - State Option:* States may allow child support payments that are made for an AFDC family to be paid directly to the family and not the State as has been the rule. The Secretary shall establish regulations to minimize irregular monthly payments.**
- ***Priority of Federal Income Tax Refund Offset:* Federal income tax code to be revised to satisfy debts in following priority: child support or alimony, Federal tax debts, AFDC arrearages, remaining debts.**

COLLECT AWARDS THAT ARE OWED

State Role

- ***Central State Registry:* To receive Federal funding for child support enforcement, each State must establish an automated central state registry of child support orders.**
- ***Option for Integrated State Registry:* States may maintain a unified, integrated registry by connecting local registries through computer linkage at a cost not to exceed a new single registry.**
- ***Automated Mass Case Processing and Administrative Enforcement Remedies:* As a condition of State plan approval, a State must have sufficient State staff, authority, and automated procedures to monitor cases and impose enforcement measures to obtain child support monies.**
- ***Centralized Collection and Disbursement Through a State Central Payment Center:* All child support payments must be processed through a Central Payment Center. Payments may be disbursed, in most cases within 24 hours, in a manner acceptable to the States. States must be able to provide parents up-to-date information. Further, States must enact procedures, where a change in payee does not require a court hearing.**
- ***Eligibility for IV-D Enforcement Services:* Currently, child support services are provided automatically to AFDC and Medicaid recipients, and all others must seek services on their**

own through an application procedure requiring a fee. Under the proposal, **all cases included in the State's central registry shall receive child support services. A State may not deny access to State child support services based solely on nonresidency or require any fee by the custodial parent for inclusion in the registry.**

- *Opportunity to Opt-Out:* As long as support is paid, parents with orders listed in the State registry may opt-out of payment through the central payment center if they are not subject to wage withholding .

Federal Role

- *National Clearinghouse:* To consist of four registries to improve child support enforcement:
National Child Support Registry: to maintain current records, of minimum information, of all child support cases.

National Directory of New Hires: to maintain a current date base of all new U.S. employees as they are hired. Employers are required to submit W-4 information within 10 days of hire. State Employment Security Agencies shall submit extracts of their quarterly wage reporting data to the Directory.

- National Locate Registry: to expand the scope of State and Federal parent locate efforts. Additionally, the Secretary shall authorize a study to determine whether access to this registry should be extended to noncustodial parents and whether parents fearful of domestic violence could be protected; and a study to assess the feasibility of contracting with the largest credit reporting agencies for an FPLS interchange that is accessible to the States. Demonstration grants for States to improve interface with State data bases.

[The National Welfare Receipt Registry is not discussed in this document.]

- *Expanded Role of Internal Revenue Service:* The IRS is currently involved in child support enforcement as a source of valuable information in locating noncustodial parents. This proposal seeks to strengthen this role. States can readily obtain IRS data through new procedures instituted by the Treasury. Disparities between AFDC and non-AFDC income tax refund offsets for child support collection will be eliminated. A simplified and streamlined full IRS collection process will be initiated.

Interstate Enforcement

- Currently, child support efforts are hampered by the inability to locate noncustodial parents and secure support orders across State lines. States now handle interstate cases through the Uniform Reciprocal Enforcement of Support Act (URESA) which has resulted in the creation of different support orders in different States for different amounts. **States must adopt URESA'S replacement UIFSA which will ensure that as many cases stay in one State as possible.**
- To facilitate child support enforcement **States must: provide long-arm jurisdiction over nonresidents; allow intrastate transfers of cases to city, county, or district where the child resides without the need of refiling for the plaintiff or reserving the defendant; give full faith and credit to liens imposed in another state if the noncustodial parent has property in the second State; honor out-of-state subpoenas.**
- The Federal government will make a Congressional finding, through expedited Federal appeal to the Supreme Court, that due process is satisfied when the State where the child lives asserts jurisdiction over a nonresident (parental) party. If no State has continuing

exclusive jurisdiction, the last State where the child resided for six consecutive months can claim jurisdiction. Further, the Social Security Act will be amended to ensure uniform income withholding processes.

Other Enforcement Measures

- *Administrative liens:* To make the lien process less cumbersome, **States must have laws that allow administrative impositions of liens on nonexempt real and titled property where there are two or more months of child arrears.**
- *Universal Wage Withholding:* To give States a jump on collection, **withholding should be implemented automatically for IV-D and non-IV-D parents without need of prior notice (in arrearage-triggered cases).**
- *Access to Records:* To provide timely and systematic access to information, **States must routinely make records (including case-related financial institution records) available to the child support agency.**
- *Reducing Fraudulent Transfer of Assets:* The Uniform Fraudulent Conveyance Act and the Uniform Fraudulent Transfer Act protect the States from fraudulent transfer of assets. Applying these laws to child support will help protect the rights of custodial parents.
- *License Revocations:* **This proposal requires States, who have not yet done so, to adopt license revocation laws for those owing past-due child support.**
- *Statute of Limitation for Child Support Arrearages:* **A uniform and extended statute of limitations for collecting child support debts of 30 years after the child's birth must be implemented.**
- *Interest on Arrearages:* Few States, although given the authority, apply interest to delinquent payments. To raise the priority of child support debts, **States must collect interest or late penalties on arrearages.**
- *Expanded Use of Credit Reporting:* Currently, credit report information may only be used for locate and enforcement purposes, and States need only report arrearages exceeding \$1,000 for credit bureau requests. This proposal will amend the Fair Credit Act allowing IV-D agencies access to all credit bureau information helpful in determining award levels. To encourage parents to stay current in payments, **all States must also report child support arrearages of more than one month.**
- *Bankruptcy:* The ability to collect amounts due is hampered by current bankruptcy practices that forbid the collection of past-due support. The proposal will amend the Bankruptcy Code to eliminate bankruptcy related obstacles to collecting child support.
- *Federal Garnishment:* Amend sections 459, 461, 462, and 465 of the Social Security Act to make the garnishment of Federal employees' salaries consistent with the terms of IV-D withholding statute. Federal employee wage garnishment will be brought up-to-date with non-Federal garnishment which can be done without court or administrative authorization.
- *Veterans Benefits:* Under the proposal all veterans' benefits will be subject to child support withholding.
- *Passports:* Because it is extremely difficult to collect child support from those who have left the country, passports and visas will not be issued to those owing over \$5,000 in past support.
- *Tax Deduction Coordination:* Currently, a non-custodial parent can claim a deduction for dependents who do not live with the parent. Now, a parent will only be able to take the

deduction if all child support has been paid during that tax year.

- *Verification of Social Security Numbers:* All State DMVs will be guaranteed access to SSA's system for verification of numbers.

Privacy Protection

- Under current Federal and State regulation information obtained for child support purposes is protected from unwarranted disclosure. Under the proposal, States must extend their data safeguarding requirements to all newly accessible information. Self-audits and penalties must be initiated. The Secretary will issue regulations setting minimum privacy safeguards.

Funding

- *Federal Financial Participation and Incentives:* The Child Support Enforcement Program is funded through direct matching, incentive payments to States, and States' share of child support collections made on behalf of AFDC recipients. Direct matching, or FFP, provides 66 percent of State IV-D program costs, 90 percent of genetic testing costs, and, until October 1, 1995, pays for State automated data processing (ADP) systems. Federal incentives are paid annually based on collections and cost effectiveness equalling 6-10 percent from Federal AFDC-related collections. Currently, States may profit regardless of performance.
- Under the proposal, the FFP will be raised from 66 to 75 percent. States will be eligible for incentive payments for paternity establishment, overall performance to be based on a formula determined by the Secretary. **All incentive payments must be reinvested into the child support system.**
- *Unified State System FFP Enhancement:* Currently, States may operate their child support program as state-administered or county-based. The latter has resulted in decentralized decision-making creating havoc in intrastate enforcement efforts. The current proposal will reward States for unifying decision making by increasing a State's FFP by 5 percent.
- *Registry and Clearinghouse Start-up Enhanced FFP:* States will receive enhanced FFP at 90%/10% Federal/State match for automated central registries and centralized collection distribution systems. States converting to this system will be held harmless from Federal sanctions for systems certification.
- *State/Federal Maintenance of Effort:* The Federal government will require States to maintain at least their current level of contribution to the program.
- *Revolving Loan Fund:* To encourage ongoing innovations in IV-D programs, a revolving loan fund will be created. The Federal government shall appropriate \$100 million for short-term, high-payoff improvements in States; child support programs will be chosen on a competitive basis by the Secretary. Funding will be limited to \$5 million per State or \$1 million per project for a maximum of three years. The Federal government will offset, beginning the fiscal year after the end of the project, half of the increase in the State's performance incentives each year until funds are repaid.

Program Management

The proposal includes the following provisions designed to better program performance:

- *Training:* Currently, no mandate exists for States to have minimum standards for persons involved in the child support program. Under the proposal, **States must have minimum standards in their training plans.** The Federal government will increase funding for

training by 4 percent of the Federal share of child support collections made for AFDC families. Additional funds under Title IV-D of the SSA will be available to States for training of child support workers. OCSE will develop a training program for State IV-D directors.

- *Technical Assistance:* Currently, States complain about the minimum level of technical assistance they receive from the Federal government. Under the proposal, OCSE will take an active role in developing model laws, reviewing State laws, procedures, and organizational structure, and providing enhanced technical assistance.
- *Audit and Reporting:* States now contend that mandated Federal audits focus more on administrative procedures than outcome, but it is agreed that the audits are a driving force behind increased State performance. This proposal will simplify Federal audit requirements to focus primarily on performance outcomes. **States must perform a self-review in accordance with Federal regulations to be evaluated based upon GAO Auditing Standards every three years. Each State will also be subject to periodic financial audits. Penalties will be imposed immediately following a corrective action period with one-half of penalties placed in escrow subject to return upon passing an audit.**
- *Staffing Study:* Staffing studies will be conducted by the Secretary because insufficient staff levels have been cited as the greatest barrier to inefficiency.
- *Expanded Outreach:* In addition to paternity outreach described earlier, **each State will be required to develop an outreach plan to inform families of services and provide better access to services through flexible office hours and sensitivity to the non-English speaking population.** To aid State efforts, OCSE will develop prototype brochures, public announcements, and news releases.
- *Customer Accountability:* OCSE has few requirements regarding IV-D interaction with the "customer." Under the proposal, **State agencies must notify parents in a timely manner of all meetings; provide to the parent, within 14 days, any order that modifies a child support obligation.** Those receiving IV-D services shall have timely access to complaint-review processes and will be able to seek redress in Federal court when injured by a State's failure to comply with Federal law.
- *Effective Date:* The amendments stated in this Act shall take effect on October 1, 1994.

GUARANTEEING SOME LEVEL OF SUPPORT - CHILD SUPPORT ASSURANCE DEMONSTRATIONS

- *Child Support Assurance (CSA)* will provide a minimum insured child support payment to the custodial parent even if the noncustodial parent is unable to pay (in laid-off or low-income cases, for example). Congress will authorize funds for three CSA demonstration programs to be based on a 90%/10% Federal/State match rate. The program, to last seven to ten years, will be administered by a IV-D agency. **States are provided flexibility in designing benefit scales in keeping with Federal parameters.** Benefits will be: counted as child support; deducted from an AFDC grant; limited to children who have established paternity and support; and treated as income for the custodial parent for tax purposes. States will also be given the option to create work programs for noncustodial parents with no income to work off the support.

- *Additional Demonstrations:* Two additional demonstrations will be approved for an advanced minimum child support payment program. A State must establish a minimum child support obligation of at least \$50 a child for AFDC and non-AFDC recipients. States may require the noncustodial parent to work off support due.
- *Waivers:* Section 1115(3)(c) under AFDC prohibiting child support enforcement demonstrations that increase costs to the Federal government is repealed.

ENHANCING RESPONSIBILITY AND OPPORTUNITY FOR NON-CUSTODIAL PARENTS

Many reasons exist as to why emotional and financial support are not provided to children by both parents. Willful denial to provide financial support, inadequate parenting skills, and difficulty understanding parental rights are destructive to developing parental support.

- *Access and Visitation Grants to States:* To supplement State efforts initiated through the Family Support Act to provide increased support for access and visitation projects that reinforce the necessity of continued parental access for children.
- *Training and Employment for Noncustodial Parents:* Approximately 29 percent of non-custodial fathers under age 30 live below the poverty level. This proposal provides States with the option of developing JOBS and WORK programs for these parents who receive AFDC or have child support arrearages from prior AFDC receipt. Under the proposal:
 - * Up to 10 percent of JOBS and WORK funding may be used for this program.
 - * Participation may be mandatory or voluntary, but the children of the participant must be receiving AFDC or WORK services at the time of the referral.
 - * Participation may continue even when the child(ren) become AFDC ineligible.
 - * The same JOBS/WORK services need not be provided to custodial and non-custodial parents.
 - * The child support obligation may be reduced/suspended during JOBS/WORK participation when wages do not meet the obligation.
 - * State-wideness requirements will not apply.
- *Demonstration Grants for Paternity and Parenting Programs:* To help fathers focus on parenting responsibilities demonstration grants, of three years, will be made to States or community based organizations to implement non-custodial parenting training within existing programs (e.g. Head Start, Healthy Start, Family Preservation, Teen Pregnancy and Prevention). Within WORK, funding appropriation will be a capped set-aside at \$10 million for the first 5 years.

[NOTE: Appendix A of this document outlines effective dates for implementing hypothetical reforms.]