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DEPARTMENT OF HEALTH & HUMAN SERVICES

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Date: 1/4 Total number of pages sent: 3

Comments:

FYI → this will be released tomorrow

HHS NEWS

REVISED
DRAFT

#276

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOR IMMEDIATE RELEASE

Contact: David H. Siegel
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**REPORT SHOWS INCREASE IN CHILD SUPPORT COLLECTIONS,
BUT "MUCH MORE NEEDS TO BE DONE," SHALALA SAYS**

Nearly \$8 billion in child support payments was collected in fiscal year 1992, almost 16 percent over the previous fiscal year, according to the 17th Annual Report to Congress on Child Support Enforcement released today.

But "much more needs to be done to assure that all parents are providing the support their children deserve," HHS Secretary Donna E. Shalala said in releasing the report.

"We must strengthen the current system for identifying parents who are not meeting their responsibilities, and we must take new steps to ensure that children get the support they need," Secretary Shalala said. "That is why President Clinton has charged the Working Group on Welfare Reform, Family Support and Independence with suggesting ways to dramatically improve child support enforcement."

The report released today describes collections and other child support activities nationwide. According to the report, during fiscal year 1992, 895,000 child support orders were established -- an increase of 9 percent over the prior year, and 516,949 paternities were established -- an increase of 9.5 percent over the prior year. The Federal Parent Locator Service processed 3.9 million requests to locate absent parents during fiscal year 1992.

- MORE -

"These findings indicate better results from continued efforts by state and local child support offices to vigorously assist families in obtaining support from a parent living outside of the home," said Mary Jo Bane, assistant secretary for children and families. "The quality of life of our nation's children will greatly improve as more parents meet their emotional and financial responsibilities to their children."

With states' full implementation of the Family Support Act, collections are expected to continue increasing. For example, states must now use guidelines for determining the amount of child support to be awarded, unless the guidelines can be shown to be unjust or inappropriate in a particular case. In addition, states must review and modify (if appropriate) Aid to Families with Dependent Children child support cases every three years to keep award amounts at a fair level. Non-AFDC cases must be reviewed every three years at the request of either parent.

Immediate wage withholding is also required for all child support cases being enforced through the child support program, unless both parents and/or the court agree to a different plan. For every \$1 spent by the program, \$4 was collected in 1992.

Of the 15.2 million child support cases in the public support enforcement system in fiscal year 1992, only 8.5 million, or 56 percent, had support orders. That left more than 6.6 million cases without orders to pay child support. Even when support orders were in place, enforcement to the point of an actual collection was by no means ensured. States reported collecting only about one-fourth of the child support due for fiscal year 1992 and prior years.

"Children need the emotional and financial support of both of their parents," Bane said. "Parents who are not meeting their financial obligations to their children must be required to do so and we must find ways to enable non-custodial parents to participate in raising their children."

The child support enforcement program is administered by state and local governments with oversight and financial support given by HHS' Administration for Children and Families.

The Working Group on Welfare Reform, Family Support and Independence, appointed by President Clinton in June, is developing strategies to improve child support enforcement as part of its recommendations to reform the welfare system. Bane is a co-chair of the working group.

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NEED FOR STUDY OF USE OF INFORMATION TECHNOLOGY IN CHILD SUPPORT
ENFORCEMENT REFORM

- o The child support enforcement proposals under consideration will markedly change the collection and use of information. For instance, central registries of child support orders could be created that would eventually contain a record of all child support obligations. Centralized collections and disbursement could use technology now used by banks and financial institutions, such as advanced remittance processing machines or electronic funds transfer, to record all collections and the disbursements to custodial parents. Employers may report the hiring of all new employees to a government agency. Matches could be made on a frequent and massive scale against state and federal data bases to find location, income, and asset information.
- o Child support assurance, whether adopted nationally or on a demonstration basis, will require automated systems to record collections and disbursements on a much larger scale.
- o The automated systems required under the Family Support Act by 1995 could serve as a basis for much of the present proposals. Still, significant questions remain about the ability of the automated systems to deal with the increased caseloads and functions. Major enhancements may be needed to handle the increased processing and storage requirements. Expanding to a more universal caseload may require data conversion costs and "clean-up" of existing case data on a significant scale.
- o Major questions concern the feasibility and cost of various centralized or decentralized operations. Central registries, directories of new hires, or central collection and disbursement clearinghouses could be maintained at federal, regional, or state locations. Each option has its own costs and benefits.
- o In addition, there are many other possibilities for using emergent technology. Plastic card and "electronic id's", EBT and smart cards, expert systems, neural networks, and relational data bases and gateways, have all been suggested as having possible applications.
- o We need to determine how information technology can best be used for the most efficient delivery of services. Consideration of state-of-the-art technology is important to ensure that the program redesign can be supported by the appropriate technology and to provide insight into how it can "shape" the child support enforcement improvements and maximize productivity and effectiveness.

0 There are two possible avenues to pursue. One would be to consult with a contractor. This would probably best ensure that the requisite experience and expertise would be applied. A rough estimate is that this could possibly be done at a cost of \$300,000 to \$600,000. The downside to this approach is that it could take several months to get a contract placed and then another couple of months to get the full benefit of an informed consultation. This would mean that the information would not arrive when it could most optimally be used, during the program design discussions.

0 The second possibility is to create a team within the administration to devote the next month or two to a study. If this option was chosen, it would be critical to find someone with the necessary experience for this type of study. Neither the present OCSE staff nor the systems division probably have the level of necessary expertise. However, there is someone in SSA who reportedly has the expertise and has worked on state child support automated system previously. Someone of that nature would have to be obtained, along with a number of other experts from various agencies, to proceed with this option.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

June 9, 1993

LEGISLATIVE REFERRAL MEMORANDUM

URGENT

19 pgs

LRM #M-365

File:
Child
Support
Enforcement

TO: Legislative Liaison Officer -

JUSTICE - Faith Burton - (202)514-2141 - 217
LABOR - Robert A. Shapiro - (202)219-8201 - 330
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FROM: JANET R. FORSGREN (for) *Janet R. Forsgren*
Assistant Director for Legislative Reference

OMB CONTACT: Ingrid SCHROEDER (395-7362)
Secretary's line (for simple responses): 395-7362

SUBJECT: HHS Proposed Testimony on Child Support
Enforcement

DEADLINE: 3pm June 9, 1993

COMMENTS: The attached testimony is for a 6/10/93 oversight
hearing before the HUMAN RESOURCES Subcommittee of the Ways
and Means Committee.

OMB requests the views of your agency on the above subject before
advising on its relationship to the program of the President, in
accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or
receipts for purposes of the the "Pay-As-You-Go" provisions of
Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
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B. Selfridge
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Bruce
*Kathi Way has
a copy*

STATEMENT BY
 DAVID T. ELLWOOD
 ASSISTANT SECRETARY FOR
 PLANNING AND EVALUATION
 U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
 BEFORE THE
 HOUSE COMMITTEE ON WAYS AND MEANS
 SUBCOMMITTEE ON HUMAN RESOURCES

JUNE 10, 1993
 DRAFT

Good morning, Mr. Chairman and members of the Subcommittee. Thank you for your invitation to appear before you today. I am encouraged by the Committee's long-standing interest in improving the nation's child support system and I look forward to working with you as we develop the President's welfare reform proposal.

Child support is a critical component in ensuring economic stability for millions of middle and low-income single-parent families. However, the current state of the nation's child support system is dismal, at best. While many substantial improvements have been made in recent years as the result of the 1988 Family Support Act and the efforts of a number of committed states, we still have a long way to go.

Child Support Enforcement and Welfare Reform

President Clinton, underlying his pledge to 'end welfare as we know it,' has developed a vision for reform which is guided by the following four principles:

Make Work Pay -- people who work should not be poor. They must get the support they need so they can both work and adequately support their families. Incentives must be made available through the economic support system that encourage families to work and not discourage them from leaving welfare.

Dramatically Improve Child Support Enforcement -- The message is simple. Both parents have a responsibility to support their children. One parent should not have to do the work of two. However, only one-third of single parents currently receive any court-ordered support. In his speech before the National Governors' Association in February, President Clinton stated that we need to make sure that parents who owe unpaid child support pay it. This money would cut welfare rolls, lift single parents out of poverty and contribute to controlling government expenditures and reducing the debt.

Provide Education, Training, and Other Services to Help People Get Off and Stay Off Welfare -- To reduce the need for welfare support, people should have access to basic education and training necessary to get and hold onto a job. Existing programs encouraged by the Family Support Act of 1988 need to be expanded, improved and better coordinated.

Create a Time Limited Transitional Support System Followed by Work -- With the first three steps in place, assistance through welfare can be made truly transitional as it was originally intended. Those who are healthy and able to work will be expected to move off welfare quickly and those who cannot find jobs should be provided with them and expected to support their families.

President Clinton was clearly right in making child support enforcement a high priority. It is something that the Working Group on Welfare Reform, Family Support and Independence is giving a great deal of attention. We are examining a vast array of options and enforcement techniques to improve the existing system.

LRM #M-365

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is simple (e.g., concur/no comment) we prefer that you respond by faxing us this response sheet. If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a secretary.

You may also respond by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please include the LRM number shown above, and the subject shown below.

TO: Ingrid SCHROEDER (395-7362)
Office of Management and Budget
Fax Number: (202) 395-6148
Analyst/Attorney's Direct Number: (202) 395-7362
Branch-Wide Line (to reach secretary): (202) 395-7362

FROM: _____ (Date)
_____ (Name)
_____ (Agency)
_____ (Telephone)

SUBJECT: HHS Proposed Testimony on Child Support Enforcement

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No objection
- _____ No comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

I know that the goal of improving child support enforcement is also a high priority of many members of Congress. A number of notable bills are currently pending in both the House and the Senate. We would very much like to work with Congress on addressing this problem during this next year. I look forward to working closely with this Subcommittee in particular on this issue.

Background

The last three decades have witnessed an increasing number of children living in single-parent families. Most of these families -- 86 percent -- are headed by women. In fact, as Table I (attached hereto) shows, 14.5 million children under age 18 lived in a female-headed family in 1991 -- a number which has more than doubled since 1960. More than half of these children live in poverty.

Recent estimates now indicate that about half of all children born in the 1980s will spend some time in a single-parent family. The numbers are even higher for certain children -- at least 80 percent of all African American children and 43 percent of all Mexican-American children, compared to 16 percent of all white children will spend at least some time in a single-parent home before reaching age 18.

While female-headed families are formed either by divorce or by births to unwed mothers, much of the increase in female-headed families is due to the unprecedented growth of out-of-wedlock births during the 1980s. Table II shows the annual additions from both divorce and unwed births. Currently more than one million children are born to unwed mothers -- a 64 percent increase from 1980. Of all babies born in the United States, more than one out of every four births will be to a single mother. Contrary to what many believe, however, most of these births are not to teen mothers. The number of births to unmarried teens, age 17 and younger, was only 133,000 in 1990.

The number of children who become part of a single-parent family due to divorce has actually fallen over the last decade. When remarriages are taken into account, the number of children in single-parent families due to divorce has dropped since the mid-seventies, a sharp contrast to the growing number of out-of-wedlock births.

The most disturbing aspect of these trends is that children in single-parent families are much more likely to be poor. In 1991, 26 percent of children in female-headed families lived in poverty compared to only 11 percent of children in families with a male present.

Household characteristics greatly affect the income status of families. According to the National Commission on Children, three out of every four children growing up in a single-parent family will live in poverty at some point during their first 10 years of life.

The low income status of female-headed families is not surprising when one parent is expected to do the job of two. Single parents are expected to fulfill the difficult and dual role as both nurturer and provider. As Table III shows, 91 percent of the fathers in husband-wife families contribute more than \$2,500 in earnings annually, and 64 percent have earnings greater than \$20,000. But in female-headed families only 5.5 percent of all fathers contribute more than \$2,500 annually. So the mothers in many cases are the sole contributors to the income of the family. A typical single mother only receives a total of \$1,070 in child support and alimony. The result is often a life of poverty for the children in that female-headed family.

The Child Support Enforcement System

Child support enforcement was historically a function solely of the states. The government's interest in child support was minimal and chiefly based on a desire to reduce or eliminate the public burden of supporting the child when the father failed to do so. Apart from this desire, however, it was often given a low priority by the states and the social system. It was not a major concern of the federal government because of the low percentage of births to unwed mothers and low divorce rates and the fact that little federal support was provided for the children in the cases that did exist.

As the number of AFDC recipients grew in the 1960s and 1970s, the desire to collect from the absent parent also grew. Since the motivation stemmed from the desire to reduce welfare costs while leaving other cases unrequited, a dual system of support emerged. One system was for welfare recipients and was compulsory. Beginning in 1967, Congress took action to push states to collect support. But it was in 1975 that the federal government began to seriously influence state laws in the areas of paternity establishment and child support enforcement. Legislation in 1975 added a new part D to title IV of the Social Security Act which required the states to establish state offices for child support enforcement (called IV-D agencies) and implement a child support enforcement system as a condition of receipt of federal funds for AFDC. The legislation also created a national office of Child Support Enforcement to monitor the states.

Cases that were not IV-D cases, that is, not welfare cases, were left in the private sphere. This changed somewhat when the Child Support Enforcement Amendments of 1984 required states to offer IV-D services to non-AFDC parents as well, perhaps as much as one half or more of all collections now come through the IV-D (government) collection system. We don't know for sure because there is no tracking of cases outside the IV-D system. Still, the focus remains clearly on welfare recipients and, according to many observers, the present funding and incentives are heavily weighted towards the AFDC cases, so that non-AFDC cases get less attention.

For the most part, the system is reactive rather than proactive. The custodial parent (usually the mother) often has the burden to ensure enforcement. Thus, she has the burden of initiating enforcement actions when the father fails to pay. In many cases, especially non-AFDC or non-IV-D cases, nothing is done until the mother takes action. In non-IV-D cases there is generally no monitoring of payments at all by the government or courts. Mothers are not infrequently in an unequal power relationship and they can be subject to intimidation, threats and abuse if they assert their right to support. As a result, they often go without rather than taking the chance of rocking-the-boat.

Child Support Enforcement and the Family Support Act

The Family Support Act in 1988 was clearly a step in the right direction. It contained a number of significant provisions to improve child support enforcement. A recognition of the paternity establishment problem and a focus on measuring paternities established through the IV-D system has helped. Requiring guidelines as a rebuttable presumption is generally felt to have resulted in higher and more equitable awards. Wage withholding is being increasingly implemented and now constitutes 47 percent of the collections within the IV-D system. The requirement that states have automated systems is considered a clear step towards a more efficient system, though the 1995 deadline for automated systems is looming with only a fraction of the states currently being certified and ten or more states who may have serious difficulty meeting the deadline.

In some cases, such as periodic review and adjustment of support orders and extension of immediate wage withholding to cases outside the IV-D program, the statutory requirements of the Family Support Act are not effective until later this year or the beginning of 1994. When fully implemented, the child support provisions in the Family Support Act will likely lead to further increased collections. Yet, we probably can't expect the improvements to significantly alter the picture of non-payment. More fundamental changes in addressing the problems outlined below is required.

Through the Family Support Act, Congress also created the U.S. Commission on Interstate Child Support. Its charge was to report to Congress on recommendations to improve the interstate establishment and enforcement of child support awards. In August, 1992 it submitted a 444 page report to Congress, entitled, "Supporting Our Children: A Blueprint for Reform", detailing 120 recommendations. The majority report took a comprehensive approach that made recommendations that impact solely on interstate cases as well as interstate cases. The Commission should be commended with producing an excellent set of recommendations upon which we can build.

The Current State of Child Support Enforcement

Given the increasing number of children potentially eligible for child support, more and more families will face a need for adequate and consistent child support payments from non-custodial parents. Yet the record of enforcement has remained dismal and most critically, the record, as a whole, is not improving to any significant extent. As Table III b indicates, very few receive consistent child support payments. Of the 10 million women potentially eligible for support, 42 percent have no child support award at all. Only 26 percent had an award in place and received the full amount they were due, while 12 percent actually had an award but received nothing. Over half of all women potentially eligible for a child support award receive no support.

Child support awards, and support actually received, vary dramatically by marital status. Among never-married mothers, the fastest growing segment of the single-parent population, only 24 percent had awards, 13 percent received child support and the average amount received (of those that received support) was only \$1,488. Divorced women fare much better, but still only 77 percent had an award in place, only 44 percent actually received support and the average amount received was only \$3,322.

The lack of adequate support enforcement means that there is an immense gap between what is currently due in child support and what is actually received -- \$ billion dollars annually. The potential gap, if all those eligible received an adequate award which was updated to reflect the non-custodial parents' current ability to pay, is estimated to be 75 billion dollars annually. (See Table V a).

I want to be clear that I am not critical of people working in child support enforcement at either the federal or state level. For the most part, they are highly dedicated people trying to do the best they can at a very difficult task. The problem is with the child support enforcement system itself -- a system that thwarts the best efforts of the staff to make progress. In relative terms, the numbers show that progress has really only been modest. As Table V b shows, total child support collected by the child support enforcement agencies have risen dramatically, but primarily because more people are availing themselves of the government collection service rather than passing the child support privately.

Problems With the Child Support Enforcement System

Improving the child support enforcement system will take more than slight incremental changes. The problems are imbedded in the very way we think about the nature of the child support obligation. Child support much more to be seen as a central element in social policy, not because it will save welfare dollars, though it will, but because it is the right thing to do. It is central to a new concept of government, one where the role of government is to aid and reinforce the proper efforts of parents to provide for their children, rather than the government substituting for them. Child support is an essential part of a system of supports for single parents that will enable themselves to provide for their family's needs adequately and without relying upon welfare.

We have to rethink the way we do enforcement. Payment of child support must be even more inescapable. And we have to create a new sense of responsibility so that all parents realize the importance of providing adequate support for children. Changing the way we think about child support requires that we understand some of the fundamental problems with the current system.

Lack of Paternity Establishment

There are over one million children born to unwed mothers in this country every year and yet we are only establishing paternity for about 30 percent of them. In the past this was because paternity establishment was a low priority. Recently, however, we have begun to pay more attention. The Family Support Act in 1988 set paternity establishment rates for states. As a result of the increased attention, we are establishing more paternities. In 1991 the child support system established 479,688 paternities, up from 369,161 in 1987. Yet, the percentage of paternities established increased only modestly. (See Table VI)

The rise in unwed births is only part of the reason we still establish paternity for only about a third of unwed births. Another major factor is the nature of the current paternity establishment process, including timing, legal process and incentives.

One reason that the paternity establishment rate is so low is that paternity establishment does not generally begin until the mother applies for welfare. As a condition of receipt of AFDC a mother has to assign her right to support to the state so that the state can seek reimbursement for the financial support provided to the mother. In many instances, however, the child is several years old or older by the time the mother applies for welfare. Finding the father is then much harder. Time is of the essence in establishing paternity so that the longer the delay after the birth, the less likely it is that paternity will ever be established.

Evidence strongly suggests that paternity establishment ought to begin at the birth of the child. That is when the ties between the mother and father are the strongest and there is a real desire to acknowledge the connection with the father. Research shows that two thirds of fathers in cases of unwed births actually come to the hospital at birth and a large percentage of fathers and mothers in these cases feel it is important that the father's name appear on the birth certificate. These ties between the unwed mother and father often diminish after birth. Contact between the mother and the father falls off rapidly so that the further removed from the time of birth the more difficult it is to establish paternity. Yet, only in a few states, such as Washington and Virginia, is any effort made to establish paternity at birth.

One question people often ask is whether it does any good to establish more paternities when most young fathers are poor themselves. While it is true that many young fathers have low

income, a surprising percentage can contribute something towards the support of their child. Most importantly, recent research has shown that young fathers' incomes generally increase after the birth of the child so that in a few years their incomes nearly match that of other fathers. Table VII shows this increasing ability to contribute to support. It is important to establish paternity quickly and to set some support obligation, even if initially it is a small amount, so fathers realize they have a responsibility for the child that begins at birth. Then the child support obligation can be increased when the father's income increases. Concern about poor fathers should be directed towards helping them increase their earnings, not to escape their obligations to their children. It is encouraging to know that this subcommittee has already seriously considered the need for in-hospital paternity establishment in connection with the budget.

Another problem is that paternity establishment laws and procedures are deeply rooted in genetic laws that have not kept up with changes in genetic testing technology. With current technology it is possible to either exclude the alleged father or link to a level of 99 percent or higher in virtually every case. The deliberative aspects of paternity establishment are now minimal, yet the procedures to establish paternity have not kept pace. In many cases, several court hearings are necessary even for simple paternity cases. These problems, combined with poor incentives for the mothers and agencies to seek paternity establishment, means that too many fathers escape their obligations.

Inadequate Awards/Insufficient Updating

Child support awards are often inadequate. In most states until very recently, the amount of the child support award was largely discretionary with each judge. Now every state uses guidelines to determine the amount of the child support obligation. This is a big improvement, but we need to continue to assess the adequacy of the present guidelines which vary from state to state. The major problem, however, is the failure of awards to be updated to reflect changed circumstances. Guidelines are used to determine a "fair" amount of support at the time that the support is set, based, in large part, upon the non-custodial parent's income at the time. Circumstances of the parents and child change over time, however. The non-custodial parent's income typically increases after the award is set and inflation also reduces the value of awards. Yet, many awards are never increased once they are set.

Periodic updating of child support awards would generally increase awards so that they reflect the current ability of the non-custodial parent to contribute to the support of their child. In most cases this means much more support becomes available for the child, but when the non-custodial parent's income has declined, the award needs to be adjusted downwards. Updating would increase the integrity and fairness of the system. Non-custodial parents would not be faced with obligations they cannot pay, and there would be less enforcement problems because less people would be in arrears.

The Family Support Act addressed the issue of updating awards through a requirement that beginning in October, 1993 all orders must be updated every three years for AFDC cases and at the request of the parties in non-AFDC cases. This was a good start at addressing the problem although it falls short in two regards. First, it did not deal with the issue of how states are going to implement the requirement given court-based systems that will have difficulty handling the volume of cases. Complying with this requirement will be troublesome for some states unless they dramatically change their procedures for updating and move to more streamlined, administrative systems. Second, non-AFDC parents will have to "request" review. This puts the burden on the custodial parent, usually the mother, to initiate the review process. Many

simply go without, an increase because of fear of upsetting the other parents or because the present process is so adversarial.

enforcement is Not Tough Enough or Fast Enough

Enforcement of child support obligations is often totally lacking or inadequate. This leads to a perception that the system can be beat. There are a number of reasons why enforcement is weak: states are often slow to adopt necessary enforcement procedures and techniques. Automated systems are only being slowly adopted. There is poor medical support enforcement. Wage withholding is not fully used and it is often not instituted immediately at time of hire.

There are a myriad of ways that the system can eliminate loopholes and get tough so that payment of support becomes as inescapable as death and taxes. These range from increased use of liens and reporting to credit bureaus to publishing lists of the tax not yet wanted for child support. A system of reporting of new hires, which has been tried successfully in the state of Washington, could be used to start wage withholding at the first paycheck. We need to implement many such changes in order to change the perception of the system.

Let me say a word about this business of getting tough. However, we should also recognize and commend the fact that millions of non-custodial parents do pay their child support obligations regularly. The focus should be positive wherever possible. We need to stress the fact that the child support is ultimately to improve the lives of children. It does little good to label all absent parents as 'deadbeat dads'. And children need the love and caring of the absent non-custodial parent as well as the financial support, so we should also work towards improving child visitation and amiable relationships of parents.

Fragmentation

The present child support enforcement system involves every level and branch of government. It involves fifty separate state systems for paternity establishment, setting awards and collection. Each state has its own unique laws and procedures. Since thirty percent of the cases are interstate cases, enforcement across state lines poses severe collection problems.

There is a further lack of centralization at the state level and some programs are county based. Payment, collection and disbursement is rarely centralized. Cases are treated differently depending upon whether they are IV-D cases or non-IV-D, AFDC cases or non-AFDC. Because of the present incentive system, non-AFDC cases often receive second-hand treatment. As a result, many women do not enter the IV-D system at all and either go without or handle the matter privately.

Over-reliance on an overburdened court system also means that many of the establishment and enforcement steps are slow and inefficient. A very few states, such as Michigan, have a court-based system that has, in the past, done a good job in enforcement. But, many of these court-based systems have long delays and are inefficiently run. Most are ill equipped by their nature to deal with the expanding volume of cases. Table VIII shows the steps necessary to just establish a support order in a paternity case in a court-based system. Clearly, the complexity involved is enormous. States that use administrative processes, such as the Oregon and Washington, feel that the process makes their collection efforts much more efficient than a court-based system. Many IV-D directors reportedly would prefer a similar simply administrative process.

Lack of Staff and Resources

Child support enforcement agencies and custodial parents seeking help in getting their support both cite the lack of staff and resources as a major reason why service is so poor. The lack of staff and resources is blamed, in part, on the fiscal problems of states. But under the present federal-state funding arrangement, virtually every state makes a profit on child support enforcement. The contributing problem seems to be the shortsightedness of many states. States often look toward the immediate year's impact on the budget rather than investing in improving the program which would pay dividends in the long term.

Child Support Enforcement and Insurance

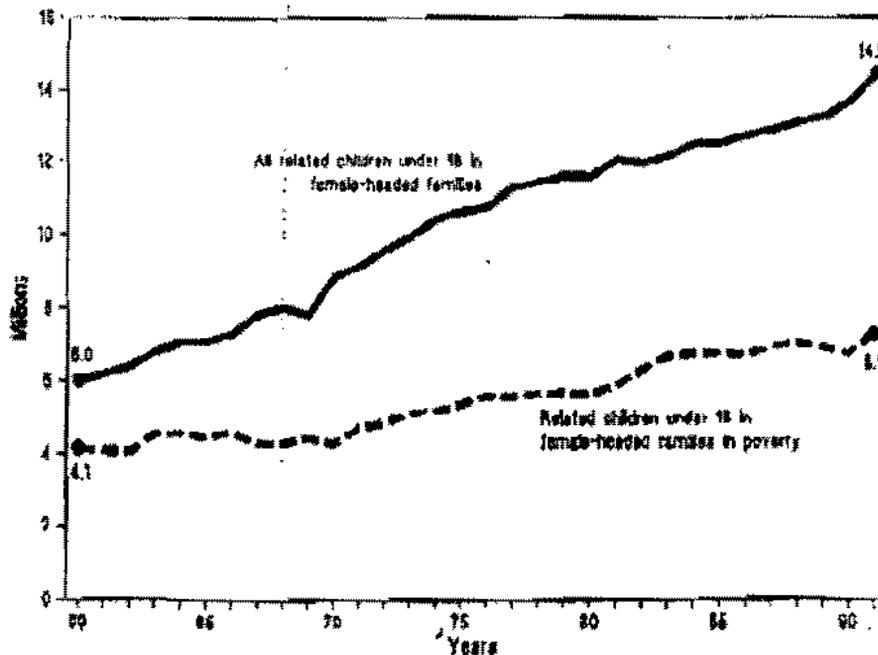
One area that is beginning to receive more and more attention is Child Support Enforcement and Insurance (or Child Support Assurance, as it is also called). This is a program that would couple dramatic improvements in the child support collection system with an insured minimum child support payment so that the single parent could count on some child support money even when the father was unable to pay.

Child support enforcement is a key part of this proposal. The government should not provide a minimum insured benefit unless it has first done everything possible to collect support from the absent parent. But still, there will be cases where the non-custodial parent has little or no income. The theory behind the proposal is that just as we have a system of unemployment insurance for workers who lose their jobs, we could adopt a kind of child support insurance to ensure that every child gets some support. Unlike traditional welfare, a Child Support Enforcement and Insurance program could be designed to better encourage work because it could allow single parents to combine earnings with the child support payment without penalty. Entitlement to benefits would likely not depend upon income as welfare does. Eligibility could be dependent solely on a simple legal determination: that the parent has a child support award in place (possibly with waivers granted only in narrow circumstances such as cases of rape, abuse, incest or when paternity cannot be determined due to circumstances beyond the control of the mother).

The program has received much attention. A number of states are interested in trying such an approach. However, this is an area that needs more study and careful analysis. The President has not taken a position on this subject. As part of the welfare reform effort, we will be taking a careful look at this idea as well as many other possibilities.

Thank you Mr. Chairman and members of the Subcommittee.

Table I
Children in Female-Headed Families
"All Related" and "In Poverty"

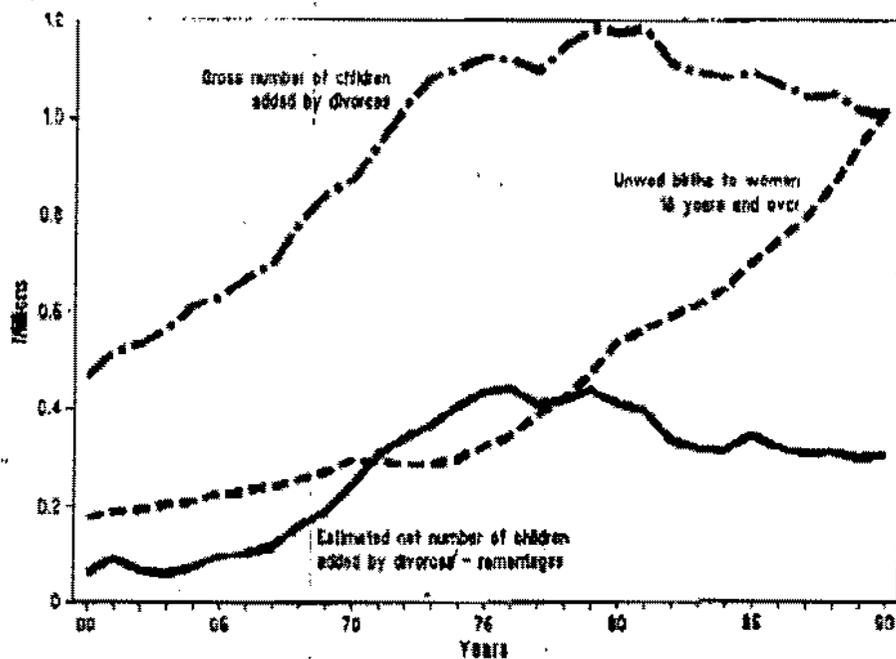


SOURCE: U.S. BUREAU OF THE CENSUS, Current Population Reports, series P-40, No. 161 and earlier reports

- There is a large and increasing number of children in female-headed families
- A substantial proportion of the children in female-headed families is poor

Table II Gross Additions to Children in Mother-Only Families

Annual Additions from Unwed Childbearing and Divorce
Net of Remarriage



SOURCE: NATIONAL CENTER OF HUMAN DEVELOPMENT, Year Statistics of the United States, annual and Monthly Vital Statistics Report, Vol. 61 No. 8, Supplement, February 22, 1993.

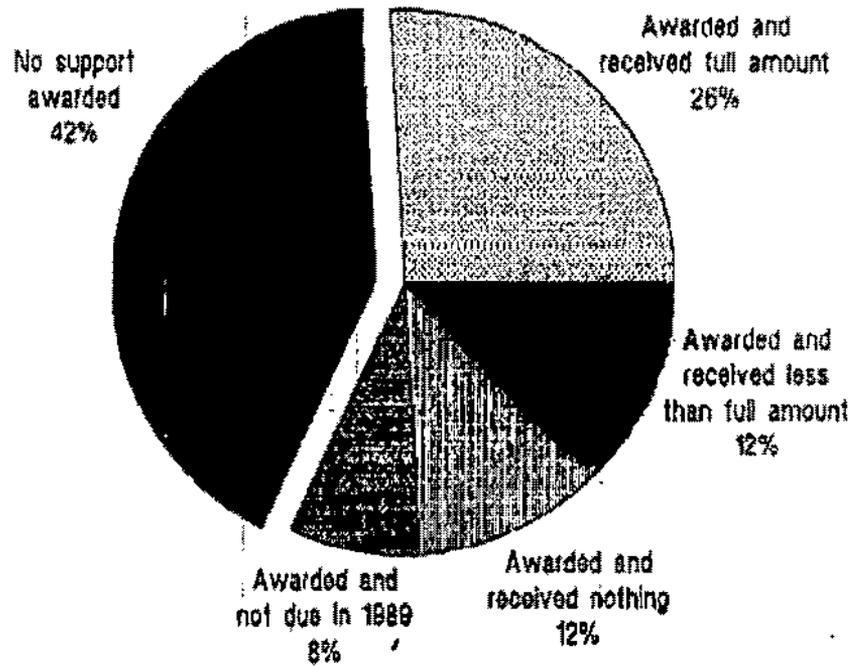
- Female-headed families are formed by divorce and by birth to unmarried mothers, but in recent years births to unmarried mothers have become the major contributor to the growth of female-headed families
- The trend is even more dramatic when remarriage is taken into account

Table III a
Distribution of Financial Contributions by Fathers & Mothers in Families with Children by Type of Family
 In Some Cases, The Husband, Wife, or Female-Head Will Not Be the Biological Parent of the Children

Contribution	Father's earnings in husband-wife families	Child support and alimony in female-headed families	Mother's earnings in husband-wife families	Mother's earnings in female-headed families
None	6.2%	35.4%	30.1%	31.4%
\$1 - \$2,499	1.9%	21.0%	11.2%	8.0%
\$2,500 - \$4,999	1.9%	8.0%	7.4%	5.5%
\$5,000 - \$9,999	5.8%	3.8%	14.2%	11.5%
\$10,000 - \$14,999	10.1%	1.0%	12.8%	13.1%
\$15,000 - \$19,999	11.1%	0.5%	9.7%	10.3%
\$20,000 - \$24,999	12.5%	0.2%	6.4%	7.1%
\$25,000 or over	31.0%	0.2%	2.0%	12.2%
Total	100.0%	100.0%	100.0%	100.0%
Overall average	\$27,983	\$1,070	\$9,680	\$10,402

- A primary reason for the low income status of female-headed families is that income is coming basically from only one parent

**Table III b
Award and Recipiency Rates of Women**



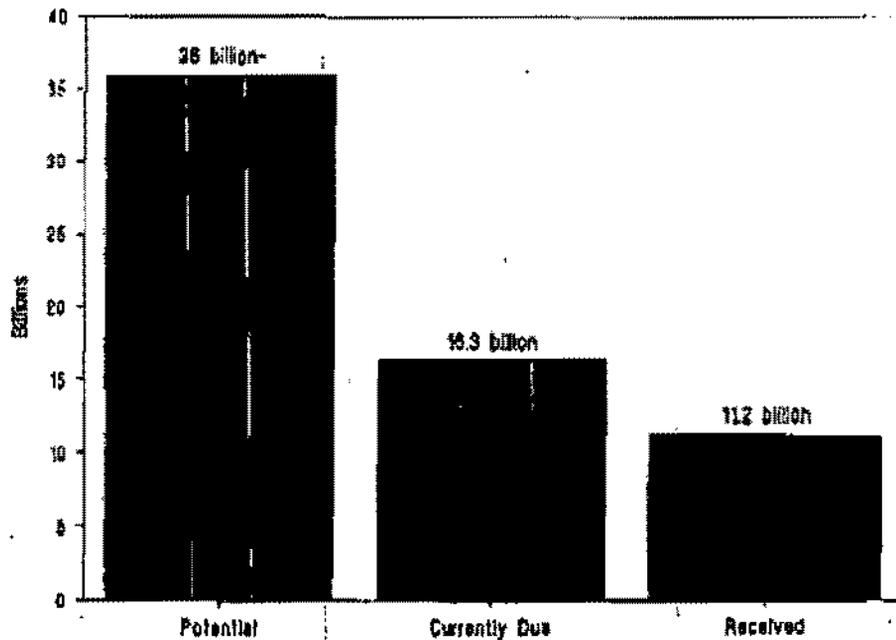
10 million women in 1989 lived with children and the father was not present

SOURCE: U.S. Bureau of the Census, Current Population Reports, series P-60, No. 178

Of the 10 million women theoretically eligible for child support

- 42% had no award
- Only 26% had an award in place and received the full amount due

Table V a The Collection Gap

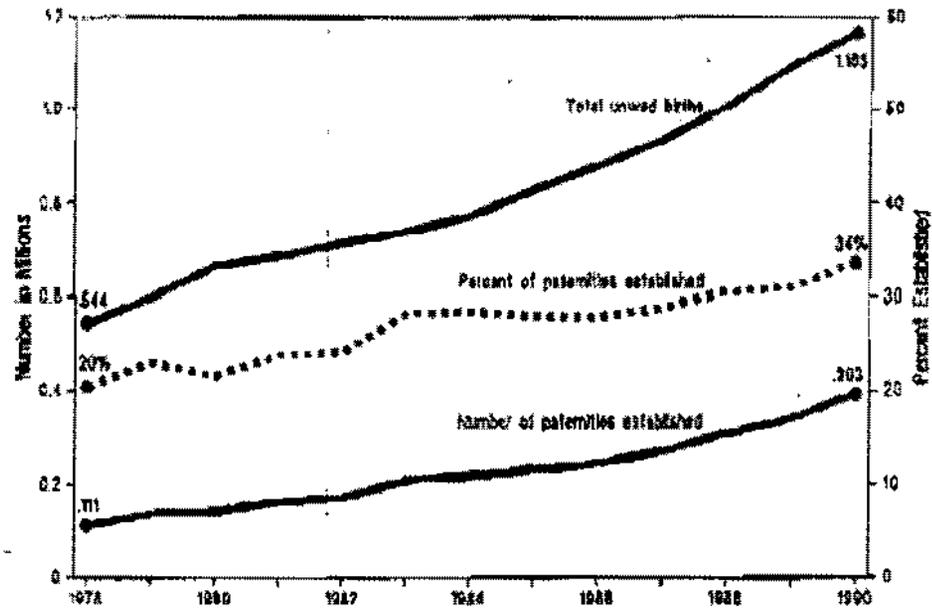


- 1992 estimate adjusted by OPM

SOURCE: U.S. Bureau of the Census, Current Population Reports, series P-20, No. 42

■ The potential for increased child support is very large

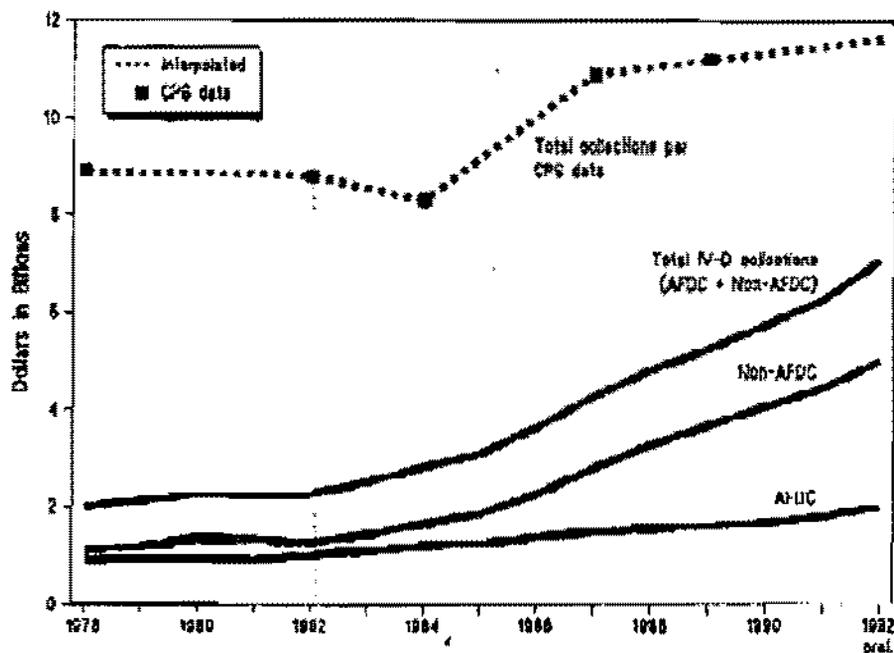
Table VI
Unwed Births & Paternities Established



SOURCE: National Center for Health Statistics, *Vital Statistics of the United States, annual and Monthly Vital Statistics Report, Vol. 18, No. 4, Supplement, December 12, 1991*; Committee on Ways and Means, *Overview of Entitlement Programs, 1992 Green Book*.

- A major problem in child support is the establishment of paternity in cases of births to unmarried mothers
- Currently, paternity is established for only about a third of unmarried births; the percentage has risen only modestly in the last few years

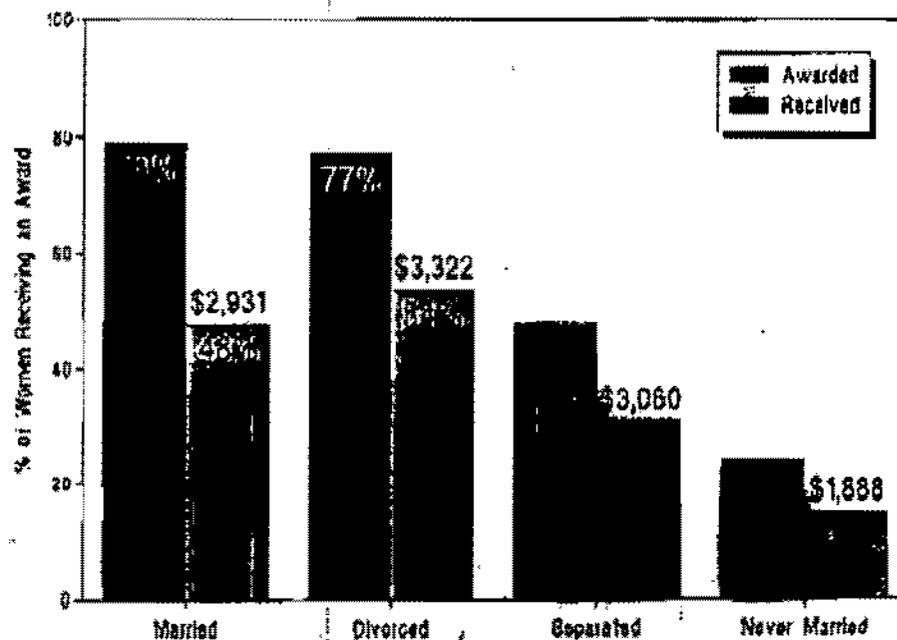
Table V b
Total Distributed Collections
 Total & IV-D Collections (1989 dollars)



SOURCE: U.S. Bureau of the Census, Current Population Reports, series P-60, No. 173.

- Child support is collected both inside and outside the IV-D system
- Total child support collections have risen, but only modestly in the last few years
- Child support collections through the IV-D system have risen dramatically, but that appears to result mostly from a movement of non-AFDC cases into the system

Table IV
**Child Support Payments Awarded and
 Received by Marital Status**

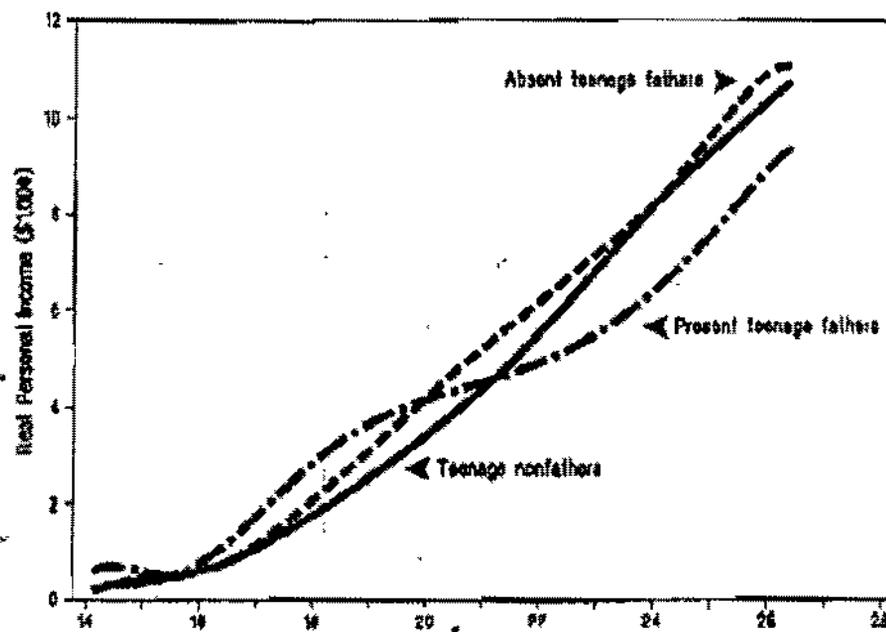


Women 18 years and older with one child(ren) under 21 years of age present from absent fathers as of spring 1990

SOURCE: U.S. Bureau of the Census, Current Population Reports, series P-65, No. 176

- Child support awards and amounts received vary dramatically by marital status
- Among never married mothers, the fastest growing segment of the single parent population, only 24% had awards, 15% received support and the average amount received was only \$1,888

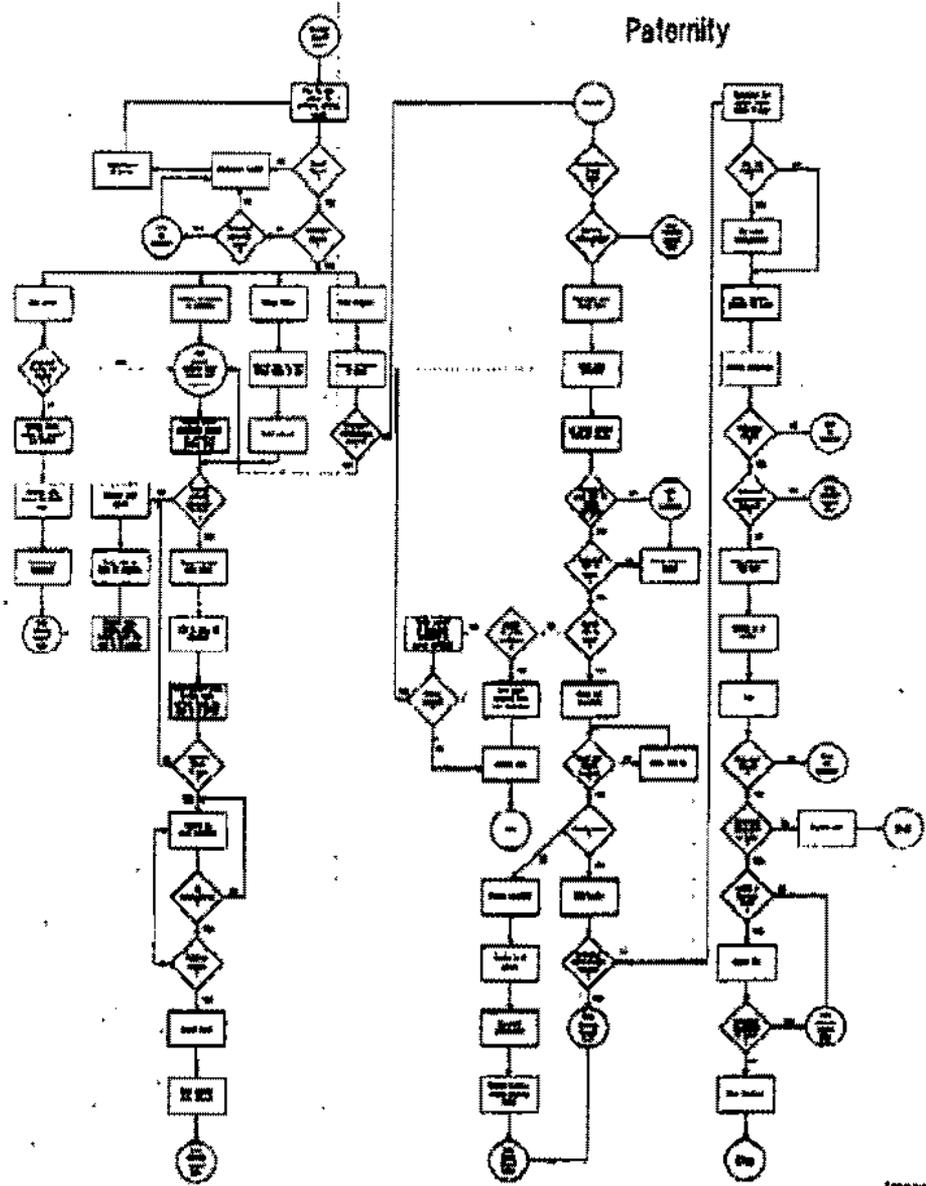
Table VII
Age-Earnings Profile for Teen Fathers



SOURCE: MURRAY A. FRUG-BROD, "Teen Fathers and the Child Support Enforcement System" (1992)

- The child support system has historically paid little attention to unmarried fathers, especially teen fathers, because current earnings are so low
- Over time, however, even teen fathers develop the earning capacity to make contributions

Table VIII Establish Support Order



7/1/93

Congressional and Federal Update



January 1, 1993

Of the several bills affecting child support enforcement which were introduced in the 102nd Congress (which commenced in January 1991 and adjourned on October 9, 1992) only two - the "Child Support Recovery Act of 1992" (Shelby, D-AL) and the "Ted Weiss Child Support Enforcement Act of 1992" (LaRocco, D-ID) (discussed below) - were passed by both Houses and signed into law by President Bush. Many - if not all - of the other, unsuccessful, legislative proposals will be reintroduced when the 103rd Congress convenes on January 5, 1993. Among these will be House and Senate companion bills, which contain the major recommendations proposed by the U.S. Commission on Interstate Child Support in its final report to Congress, and were introduced late in the 102nd Congress by **Congresswoman Marge Roukema (R-NJ)** and **Senator Bill Bradley (D-NJ)** - both members of the Commission.

I. Recommendations of the U.S. Commission on Interstate Child Support.

On August 4, 1992 the U.S. Commission on Interstate Child Support, established under the Family Support Act of 1988, submitted its final report to Congress, thereby concluding two years of work on ways to

improve interstate child support enforcement. On August 11, 1992, **Congressman Thomas Downey (D-NY)**, Acting Chairman of the Human Resources Subcommittee of the House Ways and Means Committee, conducted a hearing on the Commission's report, and on October 1, 1992 **Senator Bill Bradley** introduced **S.3291** in the Senate and **Congresswoman Marge Roukema (R-NJ)** introduced a companion bill, **H.R.6091**, in the House to bring before the Congress, as a single legislative proposal, the Commission's recommendations for reforming interstate child support enforcement.

In pursuing its congressional mandate to examine the issues of interstate child support enforcement and to identify ways to improve it, the Commission held hearings around the country and received testimony from representatives of federal and state child support enforcement agencies and professional organizations, advocacy groups, the judiciary, and the private bar. Its final recommendations display the broad sweep of the Commission's investigations into virtually every aspect of child support enforcement, both interstate and intrastate. Indeed, three of the Commissioners, in minority reports, while affirming most of the recommendations, expressed concern that the Commission had exceeded its mandate by entering upon areas

properly reserved for state law and legal processes.

A. S.3291 by Bradley (D-NJ)/H.R.6091 by Roukema (R-NJ).

The Bradley and Roukema bills, reflecting the dozens of recommendations contained in the final report of the Interstate Commission, have some sixty-three separate provisions affecting both interstate and intrastate child support enforcement. Many of the provisions, if enacted, would strengthen the national child support program; others are problematical and will not be universally welcomed by child support enforcement professionals. Indeed, overall the Commission's recommendations - and hence the provisions of these bills - will impose greater work burdens on the already overworked state IV-D programs. Moreover, they make heavy demands with little indication of how - and to what extent - the needed additional funding will be provided for this currently underfunded, but critically important national program.

The provisions of the proposed legislation are topically arranged in the following manner:

1. Locate and Case Tracking:
Building upon the Federal Parent Locator System and the automated data retrieval and processing systems which all states must have fully operational by October, 1995, a new national network for the location of parents would be established by the Department of Health and Human Services through the federal Office of Child Support Enforcement (OCSE). This network would enable each state's IV-D agency to have direct, automated on-line or batch access, not only to federal data bases for locate purposes, but also to the

data bases of all other states. State data bases would include all sources of information concerning residential addresses, employers and employer addresses, income and assets, and medical insurance benefits of absent parents - e.g., state revenue or taxation departments, state motor vehicle registration departments, state crime information systems, state professional/recreational/occupational licensing departments, credit reporting agencies located in the state, and publicly regulated utility companies. Federal matching funds at a rate of 90 percent would be available to states to develop the capacity to participate in the new network.

Perhaps the most important of the state data bases is the state employment security department. To make effective use of this source of information, the Commission recommended - and the legislation provides - that a modified W-4 form be used to report all new hires, as well as the child support obligations of all new employees, promptly to the state child support agency. A new employee would be required to identify on the W-4 form any support obligation owed, the payee of that obligation, and if the employee has health insurance available. If a support amount was owed, the employer would begin immediate wage withholding and remit the amount to the designated payee and report the total amount of withheld support on the W-2 form. The employer would also promptly (the Commission recommended within 10 days of the first payroll cycle) send the W-4 to the state employment security agency which in turn would provide information on the form to the state child support enforcement agency. The enforcement agency would check the information against its registry of child support orders, which all states would be required to maintain, and broadcast the information over the national

network to the child support agencies and registries of support orders in all the other states. The information on the W-4 form could, thus, be verified: whether or not a new employee did or did not owe a support obligation anywhere in the country and whether the amount of any support obligation declared on the form was correctly stated. Where an employee gave incorrect or incomplete information, the state child support agency would immediately notify the employer. The designated payee would be promptly notified when a match had been made between information on a W-4 form and an order in a state child support registry.

Access to the Federal Parent Locator Service would be made available to both parents for child support purposes (not just, as currently, to the custodial parent), subject to appropriate safeguards for the proper use of locate information, and private attorneys and pro se obligees would have access to state locator resources, tax refund offsets, and "other public enforcement techniques" for child support enforcement actions. Federal, state and local child support agencies would be able to access information contained in the systems of the National Crime Information Center, the National Law Enforcement Telecommunications Network and other similar national or regional systems. Information on failure-to-appear warrants, capiases, and bench warrants issued by courts in parentage and child support cases would be broadcast over state crime information systems.

2. Establishment: Perhaps the most challenging of the tasks undertaken by the Interstate Commission was the attempt to resolve the complex issues of jurisdiction in interstate enforcement. The Commission's

proposals on jurisdiction - incorporated in the legislation - adhere to the principle that only one support order be effective at any one time in order to avoid the sorts of confusion which currently attend the establishment and enforcement of interstate support. (The Commission's proposals on jurisdiction are in accord with provisions of the new Uniform Interstate Family Support Act which was adopted on August 5, 1992 by the National Conference of Commissioners on Uniform State Laws to replace the Uniform Reciprocal Enforcement Support Act - URESA - and its revisions.)

All states would be required to adopt a uniform long-arm statute - with eight specific bases identified in the legislation - to exercise personal jurisdiction over a non-resident defendant. Moreover, it would be the sense of Congress that a state in which a child resides could exercise personal jurisdiction over a nonresident parent, regardless of that parent's contacts with the forum state. States must treat out-of-state service of process in parentage and child support actions in the same manner as in-state service of process, and, furthermore, they must provide for service by personal delivery, mail, or publication in a manner reasonably calculated to give actual notice and to provide sufficient time for response. In any action, other than an initial action to establish paternity and support, the last address which a party is required to give to a court or agency is presumed to be the correct address for providing sufficient notice of an action, unless the obligee in a case, in good faith, provides a different address.

An order for parentage and/or child support rendered in one state would be recognized and enforced, without modification, by any other state.

Furthermore, the state which established a support order would ordinarily retain continuing, exclusive jurisdiction - including jurisdiction to modify - unless both parents and the child have left that state or both parents agree in writing to the exercise of jurisdiction by another state. In any case, the law of the forum state would be the law which applies in the establishment and modification of support orders. Custodial parents owed child support would be notified of any hearings in which the support obligation might be established, modified, or enforced, so as to be given the opportunity to appear and present evidence. In addition, custodial parents must be provided with a copy of any order that establishes, modifies, or enforces a support obligation within 14 days of the date of the issuance of the order.

States would be required to have uniform laws and practices respecting: the joining of parentage adjudication and child support establishment in a single cause of action; venue for parentage adjudication in the county of the child's residence; the continuing jurisdiction within the state of the court which originally entered a parentage or child support order; the transfer of cases to the city, county, or district where the child resides, for the purpose of modification or enforcement, without the need for re-filing by the plaintiff or re-serving the defendant; the statewide jurisdiction of any child support or state court that hears child support claims and the statewide effect of any order issued by that agency or court; and the separation of support and visitation claims, so that visitation denial is not a defense to child support enforcement and the defense of nonsupport is not available when visitation is at issue.

State child support agencies would have access to information available from a

credit reporting agency relevant to the setting of a support amount, without the need, as currently, of obtaining a court order to authorize access. Moreover, state and local support agencies would have available for their use a national subpoena duces tecum to reach all information regarding private, federal, state, and local government employees, and state IV-D agencies, and, by state law, would be empowered to issue intrastate subpoenas to compel personal appearance of parties and the production and delivery of documents in support actions. Certified copies of out-of-state orders and decrees and judgments would be admissible if regular on their face, and states would be required to introduce electronically transmitted information and faxed documents - as well as written, audiotaped, or videotaped evidence - in child support or parentage cases. Nonresidential litigants would be allowed to participate in interstate parentage or child support cases by telephonic means.

With respect to the setting of child support amounts, states would be required to make the application of the mandatory support guidelines a sufficient reason for modification of the support obligation without the necessity of showing any other change in circumstance. By 1995, when all states must have fully operational automated systems, they must be able to make automatic calculations of the amount of support owed a child on the basis of the support guidelines. The state guidelines must take into account work-related or job-training related child care expenses of either parent, health insurance and related uninsured health care expenses, the remarried parent's spouse's income and school expenses incurred on behalf of the child. Moreover, state law must provide for a continuing support obligation until the child's eighteenth birthday or is no longer enrolled in secondary

school or its equivalent, whichever is later. In order to study the desirability of national child support guidelines, Congress would create, no later than 1995, a National Child Support Guideline Commission.

States would use a uniform abstract of a child support order, in a form developed by the Department of Health and Human Services, to record the facts of a child support order in the state registries of support orders. These abstracts would be used in various interstate actions where information about the child support order is required.

Finally, by state law, social security numbers of parents would be recorded on marriage licenses and child support orders.

3. Parentage: In the light of some successful state programs to promote early, voluntary acknowledgement of paternity, the Commission recommended - and the legislation requires - that all states use paternity acknowledgement programs at hospitals and establish other kinds of paternity outreach programs (e.g., through prenatal clinics and parent training programs) in order to achieve voluntary acknowledgement of paternity. For these activities states would receive federal matching funds at the rate of 90 percent.

Along with programs for the early acknowledgement of paternity, states must also develop simple civil consent procedures for the voluntary acknowledgement of paternity, including having the putative father sign his name as father on the birth certificate, thereby creating a rebuttable presumption of paternity with the birth certificate being admitted as evidence. States must use civil, instead of criminal, procedures

for parentage actions, without joinder of the named child in the action, using a preponderance of the evidence standard. In using genetic testing, states must establish threshold standards of probability of paternity or exclusion in order to create a rebuttable presumption of paternity. Where a party refuses to submit to a court order for parentage testing, state law must provide for the resolution of parentage against that party. A finding of paternity must be treated as res judicata to the same extent as any other civil judgment and must, where appropriate, provide for temporary support orders. States must have procedures by which a default order in parentage cases may be entered against the defendant upon a showing of evidence and service of process on the defendant, without requiring the personal presence of the petitioner.

4. Enforcement: Among the many provisions affecting the enforcement of child support obligations are several concerning wage withholding, which has proved to be a valuable enforcement tool but which in interstate cases is not always easily or effectively applied. The legislation provides that any individual or entity doing business in a state must honor income withholding notices or orders issued by a court of any other state, regardless of the location of the employee's workplace. Such notices or orders may be served directly or by first class mail upon the employer, without the requirement of registration with the child support agency in the employer's state, and copies of the notices must be given by the employer to the affected employees. If any contest arises concerning the correctness of a notice or there is a refusal to honor it, the state requesting withholding must then send an "informational copy" of the notice or order to the registry of

support orders in the state in which the employee is employed or the employer is located.

If the employee contests the order on the basis of error of fact, a hearing must be held in the employee's or employer's state, with that state providing any necessary enforcement services to ensure that the interests of the payee are adequately represented. To simplify both interstate and intrastate wage withholding, the Secretary of Health and Human Services is to develop a uniform withholding notice to be used by states in all withholding actions. Finally, the definition of income subject to withholding is to be expanded to include workers' compensation benefits, and the priority of withholding of wages shall be first to current support obligations, next to payments of premiums on health insurance for dependent children, and then to past due support and unreimbursed health-care expenses. Where there are multiple withholding orders for the same employee, payments from withholding shall be made to each child on a pro rata basis.

Another set of provisions relating to enforcement and taken from the Commission's recommendations has to do with the issuing or renewal of occupational, professional, and business licenses where an individual is delinquent in child support payments. State and federal agencies responsible for issuing or renewing such licenses may not do so in the case of a delinquent obligor until the obligee, the obligee's attorney, or a state prosecutor releases the hold on the license or an expedited review is conducted, during which time the obligor may have a temporary 30-day license. Also, state agencies must deny licenses to any noncustodial parent whose

name appears on the state's crime information system because of outstanding failure to appear warrants, capiases, and bench warrants related to a child support proceeding, until the parent's name is removed from the system. Similar restraints apply to issuing and renewing driver's licenses and motor vehicle registration, except that if the state licensing agency receives notice that someone already holding a driver's license or vehicle registration is the subject of a warrant related to a child support proceeding, that agency may issue a show cause order asking why the license or registration ought not to be suspended until the state issuing the warrant withdraws it.

Mindful that one of every five obligors does not receive regular wages from which an amount for child support can be withheld, the Commission recommended that there be stronger enforcement tools to reach the assets of the self-employed and others for whom wage withholding is not possible. Reflecting the Commission's recommendations, the legislation requires states to have procedures by which liens can systematically be placed on vehicle titles for child support arrearages, with such liens taking precedence over all other encumbrances other than a purchase money security interest. Furthermore, by state law bank accounts must be subject to post-judgment seizure, without the need to obtain a separate court order for the attachment. Winnings from lotteries, insurance settlements, awards and judgments from lawsuits, and proceeds from property seized and forfeited because of criminal conviction must all be directly available to the state child support agency for the enforcement of a support obligation. Public and private retirement funds may be attached by individuals owed child support, even if the distribution would cause a penalty or tax to

the obligor for early withdrawal. States must make information about delinquent obligors available, upon request, to credit reporting agencies if more than one month's worth of support is past due. Obligor's not making timely payments of support will be required to post cash bonds, security deposits, or personal undertaking with the state child support enforcement agency, with refund of funds only after regular payments have been resumed for a specified period of time. Finally, the legislation calls for a simplified procedure for the use of full collection services of the Internal Revenue Service (where child support arrearage is treated as though it were federal income tax indebtedness, against which all enforcement tools of the IRS may be used) and conveys the sense of the Congress that the IRS should give high priority to full collection activities in support cases.

Following the Commission's recommendations regarding the criminal prosecution of nonsupport, the legislation requires all states to have procedures under which criminal nonsupport penalties may be imposed. It also provides for an amendment of the federal code to impose a criminal penalty upon anyone convicted of leaving or remaining outside a state for the purpose of avoiding payment of child support arrearage arising from an order rendered in that state. (This provision for criminal flight to avoid payment of support arrearage has now been superseded by the enactment into law of the "Child Support Recovery Act of 1992," discussed later.)

Other provisions for enforcement of child support include several amendments to the Bankruptcy Code to ensure that a child support action - including the establishment of paternity and of a support obligation, as well

as the enforcement of an obligation - will proceed without interruption in case of a bankruptcy action. The legislation also provides that state child support enforcement agencies assess and collect interest on all child support judgments, in addition to any late payment fees, and that state laws permit the enforcement of any child support obligation until at least the child's 30th birthday.

With respect to the enforcement of health care for dependent children, the legislation, following Commission recommendations, requires state IV-D agencies to adopt a number of new procedures. First, it must be a rebuttable presumption that the obligee has the right to choose the appropriate health care insurance for the children, on the assumption that the custodial parent would have a better sense of the health care needs of the dependent child(ren). The cost of the insurance premium, however, and any unreimbursed medical costs must be shared proportionately between the parents, according to a formula in the state child support guidelines and any insurance premium or sum-certain health care expenses to be paid by the noncustodial parent must be included in the support order.

In order to ensure that the custodial parent receive the medical insurance coverage needed for the child(ren), the custodial parent must, by state law, be able to act in the place of the insured, including making direct application for insurance and making claims and signing claim forms. If the obligated parent secures the medical insurance coverage, that parent must provide the custodial parent proof of coverage within 30 days of the time the insurance coverage has been obtained or an application for insurance made. The employer offering an employee

benefit plan in the state must provide the child support agency or the obligee, upon request, information on the insurance coverage. The employer, also, must make available to the custodial parent all necessary claim and reimbursement forms and must notify the custodial parent of any termination or change in the insurance coverage for the dependent child(ren).

The legislation, also, provides several measures to facilitate the enforcement of child support obligations against members of the armed forces and other persons entitled to payments by the federal government - an area of enforcement which currently presents a number of impediments to effective action by state child support agencies.

Finally, again following the Commission's recommendations, the bills would require that, as a condition of receiving federal funding for their IV-D programs, all states adopt verbatim the Uniform Interstate Family Support Act (UIFSA) adopted by the National Conference of Commissioners on Uniform State Laws on August 5, 1992. This requirement would void the current Uniform Reciprocal Enforcement of Support Act (and its revisions and state versions) and would ensure that states adhere to the jurisdictional principles laid out in the legislation, inasmuch as these conform to the jurisdictional principles of UIFSA.

5. Collection and Distribution of Support: The Commission recommended a significant change in the way collected support is distributed so that states would no longer have the option of directing amounts in excess of the current month's support obligation to either debts owed the family or to the state and federal governments as

recovery of public assistance already paid to the family. Under the Commission's recommendation - incorporated in the legislation - the second tier of distribution, after the current month's support obligation, would be to the family for any support arrearage owed the family. The Comptroller General of the United States is authorized to analyze the existing child support distribution system and authorize pilot projects for the new distribution scheme.

6. Federal Role in the Child Support Enforcement Program: In an attempt to respond to the various concerns voiced by state IV-D agencies about the placement of the federal Office of Child Support Enforcement (OCSE) within the Department of Health and Human Services, and about the deficiencies in the leadership role exercised by OCSE, the Commission made several proposals to make needed changes, all of which are contained as provisions of the bills. First, OCSE would be restructured so that it is headed by an assistant secretary appointed by the President and confirmed by the Senate who would report directly to the Secretary of Health and Human Services. This would provide OCSE with the separate and distinct status intended for it in the founding legislation of the IV-D program. Moreover, OCSE would have its own legal counsel, which it currently lacks. Also, in figuring the costs of operating the IV-D program, OCSE would consider the factor of "cost-avoidance" - i.e., the savings realized for the taxpayer in helping families avoid having to turn to public assistance because of the successful enforcement of support obligations.

In addition to providing states with technical assistance in their IV-D programs,

OCSE would be required to provide state IV-D agencies with assistance in establishing and operating training programs for their personnel. The Department of Health and Human Services is to report annually to Congress on training activities. Also, the Secretary must study the staffing needs of state IV-D agencies and report the results of the study to Congress and the states.

Other matters of imperative concern to state IV-D agencies are the federal funding formula for the IV-D program and the federal audit of state programs. The Commission recommended - and the legislation provides - that a study be conducted of alternative ways to fund the program, including the provision of incentives tied to performance criteria which are not solely based upon "cost-effectiveness" criteria. As for the audit, the Secretary would be required to commission a study of the audit process to improve the criteria and methodology for the audit process and to report to Congress the results of the study. This study would also seek to redefine the penalty process so that a state failing to comply substantially with the audit criteria would not be penalized, as now, in its AFDC program, but that the penalty would involve the escrowing of funds to be used by the states in a federally approved program of improvement.

The Secretary would oversee the establishment of pilot projects to determine the feasibility and usefulness of "child support assurance" as a way to assure a minimum level of child support whether or not an obligated parent is able or willing to meet an ordered support obligation. These projects would test alternative procedures and funding processes.

Finally, the legislation would establish a Children's Trust Fund funded by voluntary contributions of taxpayers as indicated on their federal tax returns. This Fund would be dedicated to programs aimed at the prevention of child poverty and limited to the federal programs of AFDC and child support.

7. State Role in the Child Support Enforcement Program: The legislation incorporates several Commission recommendations affecting the operation of state IV-D programs. Perhaps the most radical of these is that a state IV-D agency must accept applications for services from nonresidents of that state, a requirement which seems inimical to the purposes of UIFSA and the existence of a state-based national IV-D program as originally intended by Congress.

Other provisions seek to clarify the mission of the state IV-D agencies to promote the economic security of children and the duty of the state agencies to serve the concerns of custodial parents, although OCSE has asserted that non-custodial parents in non-public assistance cases may also apply for IV-D services and that the state agency does not stand in a traditional attorney-client relationship. Also, state and local child support enforcement agencies are called upon to provide a number of amenities for parents, including convenient hours and locations for parents and office environments conducive to discussion of legal and personal matters in privacy, e.g., individual interview rooms and child care facilities. Finally, states are required to develop procedures whereby the designation of the child support payee may be changed without the requirement of a court hearing or order.

B. "The Child Support Recovery Act of 1992" - S. 1002 by Shelby (D-AL).

Following testimony before the Interstate Commission, **Congressman Henry Hyde (R-IL)** introduced **H.R. 1241** on March 5, 1991, imposing a federal criminal penalty for failure to pay child support in interstate cases. H.R. 1241 and a companion bill - **S. 1002** - introduced on May 8, 1991 by **Senator Richard Shelby (D-AL)** received considerable media attention when hearings on it were conducted in January, 1992 by **Congressman Charles Schumer (D-NY)**, chair of the House Judiciary Committee's Subcommittee on Criminal Justice. Subsequent to these hearings, Congressman Schumer moved a subcommittee amendment in the nature of a substitute to H.R. 1241. This substitute was accepted by the subcommittee, and the amended bill - the "**Child Support Recovery Act of 1992**" - was approved for full committee action on April 9, 1992, and on July 1, 1992 the House Judiciary Committee voted, by voice vote, to report the bill to the House for action. The bill passed the House of Representatives without dissent by voice vote on August 4, 1992.

On July 29, 1992 the Senate Judiciary Committee's Subcommittee on Juvenile Justice held hearings on the companion bill, S.1002 by Shelby. On September 17, 1992 the Senate Judiciary Committee considered the bill and reported it to the Senate, where the following day an amended version of the bill passed the Senate by unanimous consent. On October 3, 1992 the bill was considered by the House and an amended version, combining provisions from the Hyde and Shelby bills, was passed by voice vote. On October 7, 1992 the Senate concurred in the House amendment, and on October 25, 1992

President Bush signed the bill into law as Public Law 102-521.

The new law imposes a federal criminal penalty for the wilful failure to pay a past due child support obligation that has remained unpaid for longer than a year or is greater than \$5000 with respect to a child who resides in another state. Thus, for example, if the custodial parent were to leave a state with a child owed support and the noncustodial parent owing the support were to remain in the first state (or, conversely, if the noncustodial parent were to leave the state in which the child and custodial parent resided) and either accrue arrearage amounting to \$5,000 or more or become delinquent in payments for a year or longer, the obligated parent could be found guilty, under the provisions of this bill, of wilful failure to pay past due support - a federal crime. For a first conviction the penalty would be a fine of \$5,000 and/or imprisonment for not more than 6 months; for a second conviction, a fine of \$250,000 and/or imprisonment for up to 2 years. The court would also order restitution in an amount equal to the amount of child support past due at the time of conviction.

The Act also amends Title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3711 et.seq.) to authorize the Director of the Bureau of Justice Assistance to make grants to states "to develop, implement, and enforce criminal interstate child support legislation and coordinate criminal interstate child support enforcement efforts." The grants would provide for 75 percent of the total costs of a demonstration project, with no more than \$10 million in federal funds being appropriated for them for each of the fiscal years of 1994, 1995, and 1996.

7 | Finally, the law provides for the establishment of a Commission on Child and Family Welfare, composed of fifteen members jointly appointed by the President and Congress. The members will be individuals with expertise in laws and policies related to child and family welfare and others who represent organizations concerned with the civil rights of children and advocacy groups which work for the interests of children and both custodial and noncustodial parents. The task of the new commission will be to study issues affecting the best interests of children (e.g., abuse, family relations, services and agencies for children and families, family and juvenile courts) and the strengths and weaknesses of the court systems as they relate to visitation, custody, and child support enforcement. With the expectation that the membership of the Commission will be appointed by no later than June 1, 1993, the Commission will submit an interim report to Congress by not later than January 1, 1994 and a final report by January 1, 1995 containing the Commission's findings and its recommendations for legislation and administrative action.

The new law draws upon federal tax statutes which impose a criminal penalty for willful failure to collect or pay taxes. The standard, then, of the tax statutes is applied to a willful failure to pay past due child support for a child residing in another state. Under the felony tax provisions the government must prove beyond a reasonable doubt that at the time the taxes were due, the taxpayer possessed the means to meet his obligation or voluntarily and intentionally depleted his funds so as not to pay the tax obligation. Thus, failure to pay child support, like failure to pay taxes, is a specific intent crime, requiring proof of an intentional violation of a known legal duty.

While the threat of a federal criminal penalty may help deter child support delinquency, the new law leaves unaddressed most of the fundamental problems in interstate support enforcement and may prove very difficult to enforce. As for the proposed grants to states to promote criminal interstate enforcement, the \$30 million to be allocated over the three fiscal years might be better spent assisting states to develop, and participate in, more effective, automated parent locator networks. Indeed, instead of this kind of federal criminal remedy, the problem of interstate support enforcement could be more effectively addressed if there were enhanced federal funding (federal financial participation at the rate of 90 percent) for the participation of state child support agencies in locator networks and if there were (1) federally mandated state long-arm statutes and (2) provision for the uniform, reciprocal recognition and enforcement among states of income withholding orders, such as the Bradley and Roukema bills provide.

C. H.R. 5123 by Schroeder (D-CO).

On May 7, 1992 Congresswoman Patricia Schroeder (D-CO) introduced H.R. 5123 containing provisions to implement certain recommendations of the Interstate Commission.

The first part of the bill contains fourteen provisions amending Title IV-D law, while the provisions in the bill's second part amends federal bankruptcy law with respect to spousal and child support. Among the provisions of the first part are requirements: that states have uniform statewide child support enforcement programs; that the state IV-D agency have automated access to all appropriate state data bases; that enforcement

of a child support order continue until the child attains the age of 18 or completes (or abandons) secondary school education or, if disabled, until the child marries or is emancipated by a court of competent jurisdiction; that all income, of whatever kind or from whatever source, be subject to withholding; that states prohibit the issuance of professional licenses to any individual owing past-due child support exceeding \$1,000; that there be no state time limits to the period during which a child support order may be enforced; that social security numbers appear on all marriage licenses and child support orders; that issues of visitation and custody be kept separate from any adjudication of child support, and vice versa; that there be federally mandated time frames for responses to interstate locate requests; and that there be federal standards and procedures for processing interstate cases.

Unlike the Interstate Commission's recommendations and the Bradley and Roukema bills' provisions for a study of possible changes to the federal funding scheme for the IV-D program, the Schroeder bill actually proposes a new funding structure whereby federal incentive payments to states for the performance of their IV-D programs would be eliminated, with federal financial participation (FFP) being increased from the current 66 percent to 90 percent. As recommended by the Commission, penalties for audited noncompliance with federal IV-D requirements would fall upon the state IV-D program and not, as now, upon the IV-A (AFDC) program. Like the Bradley and Roukema bills it also provides that all states be required to adopt verbatim, by a time certain, the proposed Uniform Interstate Family Support Act and that Congress establish a commission on child support guidelines to devise recommendations for

national guidelines for child support. The second part of the Schroeder bill contains amendments to bankruptcy law - of the sort recommended by the Commission and found in the Bradley and Roukema bills - to preserve and protect the support rights of spouses (and ex-spouses) and dependent children during bankruptcy proceedings.

II. Child Support Enforcement and Consumer Credit Reporting Agencies.

Following the recommendation of the Interstate Commission, the Bradley and Roukema bills contain provisions amending the Consumer Credit Protection Act to enable a child support enforcement agency to gain information from a credit reporting bureau relevant to the setting of an initial or modified child support award, without the necessity, as currently, of obtaining a court order. Other legislative proposals introduced during the 102nd Congress sought to make the reporting of child support delinquencies to consumer credit reporting agencies a more effective tool for enforcing child support obligations than it is under existing federal IV-D law.

A. H.R. 3986 by Levine (D-CA)/H.R. 3596 by Torres (D-CA).

On November 26, 1991 Congressman Mel Levine (D-CA) introduced H.R. 3986 amending the Consumer Credit Protection Act (15 U.S.C. 1681b) to require consumer credit reporting agencies to include in credit reports information on child support delinquencies in Title IV-D cases. The bill also required state Title IV-D agencies to routinely provide the consumer credit reporting agencies with information on support delinquencies, without (as currently) waiting for a request for this

information or requiring the payment of a fee for providing it. (A companion bill, S.2896 was introduced in the Senate by Senator Jay Rockefeller (D-WV).)

The provisions of the Levine bill were added on March 5, 1992, to H.R. 3596 by Torres (D-CA) by voice vote of the Subcommittee on Consumer Affairs of the House Banking, Finance, and Urban Affairs Committee. The Torres bill was crafted as a major overhaul of the Fair Credit Reporting Act "to insure the completeness and accuracy of consumer information maintained by credit reporting agencies, to better inform consumers of their rights under the act, and to improve enforcement, and for other purposes," as the bill's official title indicated. On September 24, 1992 the bill was considered by the House and withdrawn by Torres when an amendment to delete certain federal preemption clauses, which would have voided stronger state laws and which had been added to the original bill, was defeated.

B. "Ted Weiss Child Support Enforcement Act of 1992," H.R.6022 by LaRocco (D-ID).

In an effort to rescue some of the Levine/Torres provisions regarding the reporting of child support delinquencies to consumer credit reporting agencies, Congressman Larry LaRocco (D-ID) introduced H.R.6022 on September 24, 1992. Named after Congressman Ted Weiss, who died on September 14, 1992, LaRocco's bill amended the Fair Credit Reporting Act to require consumer credit reporting agencies to include in any consumer report information on child support delinquency provided or verified by state or local child support enforcement agencies, which antedates the report by 7 years or less. (A companion bill,

S.3306, by Senator Richard Bryan (D-NV), was introduced on October 2, 1992.)

On September 29, 1992 the LaRocco bill passed in the House by voice vote and on September 30, 1992 referred to the Senate Committee on Banking, Housing and Urban Affairs. On October 5, 1992 the bill was passed by the Senate, and on October 27, 1992 it was signed into law by President Bush as Public Law 102-537.

C. Revenue Act of 1992, H.R.11 by Rostenkowski (D-IL).

H.R.11, introduced on January 1, 1991 by Congressman Dan Rostenkowski (D-IL) was amended on June 25, 1992 by the House Ways and Means Committee to include a provision offered by Representative Michael Andrews (D-TX) requiring state IV-D agencies "to report monthly to any consumer credit reporting agency the name of any parent who owes overdue support and is at least 2 months delinquent in the payment of such support and the amount of such delinquency unless the agency requests not to receive such information." However, the state IV-D agency would not have been required to provide information to any consumer reporting agency "which the State determines does not have sufficient capability to systematically and timely make accurate use of such information, or [to] an entity which has not furnished evidence satisfactory to the State that the entity is a consumer reporting agency". This provision, however, along with other child support enforcement provisions, was stricken from H.R. 11 when the bill was amended by the Senate Finance Committee before being reported by the committee to the full Senate on August 3, 1992.

III. Child Support and Wage Withholding and Access to Financial Information.

H.R. 3151 and H.R. 3677 by Snowe (R-ME).

H.R. 3151, introduced on July 31, 1991 by Congresswoman Olympia Snowe (R-ME), provides that states require employers who withhold wages from absent parents owing child support to remit the withheld amounts to the appropriate state agency within 10 days after the payment of the wages. H.R. 3677, introduced on October 30, 1991, would facilitate access to information about the financial assets of noncustodial parents by protecting banks and other financial institutions which cooperate with state child support enforcement agencies from any liability for releasing financial information. To safeguard the confidentiality and limited use of such information by the child support enforcement agency, the bill calls for civil damages for unauthorized disclosure by any state officer or employee. The bill also provides that, as a condition of federal IV-D funding, states have procedures requiring absent parents, within 30 days of a new or modified support order, to provide medical insurance coverage for dependent children or otherwise cover the costs of medical care (including any insurance premiums paid for the dependent child by the custodial parent). Moreover, if a dependent child is enrolled in the noncustodial parent's insurance plan, insurers would be required to make payments directly to the custodial parent upon the submission of claims. Finally, state child support enforcement agencies would receive federal incentive payments for medical support enforcement.

Other provisions of H.R. 3677 address the IRS income tax refund intercept, the annual report of the Secretary of Health and Human Services on the Title IV-D program to Congress, wage garnishment, and the creation of a new, national parent locate network. States with central depositories and the ability to verify arrearage would be required to take all past-due child support into account (not just delinquency from the time a case becomes a IV-D case) in pursuing the income tax refund intercept. The Secretary would be required to report annually to Congress on states' compliance with performance standards articulated in the Family Support Act of 1988. Employers who fail to remit to the state child support agency within 10 days wages garnished for child support would be subject to a \$1,000 fine, which penalty must be reinvested by the state in its child support enforcement program. Finally, the federal Office of Child Support Enforcement would be required to develop a national parent locate network, incorporating state child support enforcement systems, to allow direct access by one state to another state's locator system, as well as to federal locator sources.

While laudable in their intent to strengthen the national child support enforcement program, the two bills by Congresswoman Snowe - at least in their introduced form - contain some troubling provisions. For example, it is doubtful whether H.R. 3677 really adds to the authority of current federal and states laws with respect to the accessibility of a depositor's financial records by governmental agencies. Under state law, financial records of a depository institution can probably already be obtained by child support enforcement agencies upon issuance of judicial subpoena, search warrant, service of citation or other appropriate process. The

federal "Right to Privacy Act" [12 U.S.C. §3401 et seq.] gives federal agencies specific and limited access to the financial records of individuals for enforcement of federal law. The Snowe provision, however, amends no existing federal law, and it is difficult to see from the bill, as written, the federal statutory authority for requiring state and local depository institutions to relinquish financial records to state agencies for child support enforcement purposes. Because of the particularity of the Snowe provision, the effect it seeks could better be obtained by amending Part IV of Title D of the Social Security Act to provide that states with child support enforcement programs, established pursuant to Title IV-D, enact appropriate laws to ensure the accessibility to a depositor's financial records for the purposes of IV-D child support enforcement.

Other well intentioned provisions of the Snowe bills similarly have problems, and it is likely that, if the bill is reintroduced in the 103rd Congress, particular wrinkles will be ironed out in the course of committee hearings and amendments.

IV. Child Support Enforcement Through Federal Income Tax Intercept.

H.R. 124 by Kanjorski (D-PA).

On January 3, 1991, Congressman Paul Kanjorski (D-PA) introduced H.R. 124, amending section 464(c) of the Social Security Act [42 U.S.C. 664(c)] to permit requests for collections of past-due child support by use of federal income tax refund offset (or "intercept") beyond the time the child to whom the support is owed attains the legal age of majority. The current federal statute permits

the use of the offset in the case of past-due support "owed to or on behalf of a minor child." This bill permits the use of the offset to recover any past-due support (as determined under a court or administrative order) "without regard to whether or not the child involved is still a minor or is otherwise still currently entitled to such support from the noncustodial parent."

The legislative history of the existing provision shows that it was the intent of Congress in authorizing the collection of past due child support from federal income tax refunds [P.L. 97-35, 2331(a), 1981] to limit the use of the federal income tax intercept to past due child support owed minor children, however "minority" might be defined in state statute. The Child Support Amendments of 1984 extended the use of the income tax intercept to non-AFDC cases but still restricted its use to support owed minor children. The amendment which the Kanjorski bill proposes is an eminently equitable and reasonable modification of the current law. There is no good reason why the recovery of past-due support from federal income tax refunds should terminate once the child has reached majority, but there is every compelling reason why all legal avenues to collect past-due support should remain open and available to the obligee. :

V. Child Support Payments and Federal Income Tax.

A. S. 2514 by Bumpers (D-AR).

Although not directly tied into the IV-D child support enforcement program, another bill, S. 2514, introduced by Senator Dale Bumpers (D-AR) on April 2, 1992, provides some degree of tax relief to custodial

parents to whom child support is owed but not paid. Specifically, the bill - the "Child Support Tax Equity Act of 1992" - amends the Internal Revenue Code of 1986 to allow a bad debt deduction, in certain cases, for owed, but unpaid, child support payments and to require the delinquent obligor to include the unpaid support amounts as taxable income on their federal income tax returns in the year the payments were due but not paid. In addition to a standard or itemized deduction, a custodial parent owed child support would be able to claim between \$500 and \$10,000 in unpaid support as a personal bad debt, if less than half of the required payments of ordered, periodic child support (including amounts for medical support or educational expenses) had been paid during the taxable year and if the custodial parent's adjusted gross income for the taxable year had not exceeded \$40,000. The obligated parent would be informed that the custodial parent had claimed the bad debt deduction and that the obligated parent was required to treat the amount of the deduction (the unpaid child support) as taxable income. If and when, however, the custodial parent is paid the past due support, that amount would have to be declared as taxable income by the custodial parent, and the obligated parent would then be able to claim the same amount as a deduction in the year in which it was paid. x

Senator Bumpers' bill underscores the seriousness of delinquency in the payment of child support, especially for those custodial parents to whom the regular payment of the full amount of ordered child support can spell the difference between some degree of financial independence and poverty and welfare-dependence. It does, however, contain some potential problems. For example, there is the adjudication of arrearage, particularly when there is

disagreement between the obligated parent and the custodial parent about what support has, or has not, been paid. Also, upon payment of overdue support and its declaration as taxable income, the custodial parent might be pushed into a higher tax bracket and be faced with an unmanageable tax burden. While the legislation may provide an effective way not only to remind obligated parents of their support obligations, but also to keep them current in their payments, careful consideration needs to be given to the bill's impact and ramifications.

On June 30, 1992 the provisions of the Bumpers bill were incorporated into an amended H.R. 11 by the Senate Finance Committee. Although H.R.11 passed both the Senate and the House, it was ultimately vetoed by the President. It is possible that Senator Bumpers will re-introduce his original bill in the 103rd Congress. (Another provision of H.R.11 would have created a private right of action against any program, including Title IV-D, to which federal funds are paid under a title of the Social Security Act. This amendment to H.R. 11 was offered in reaction to a decision of the Supreme Court (Suter v. Artist M., ___ U.S. ___, 112 S.Ct. 1360 (1992)) that beneficiaries of the Title IV-E program do not have a private right under provisions of the Social Security Act. This provision of H.R.11 may have had the potential of making state IV-D agencies defendants in costly suits brought by aggrieved recipients of IV-D services who do not believe that the agencies are acting effectively in pursuing child support enforcement actions.)

B. H.R. by McCollum (R-FL).

On May 7, 1992 Congressman Bill McCollum (R-FL) introduced H.R. 5114 to

amend the Internal Revenue Code of 1986 to permit the deduction of an amount equal to five percent of ordered child support payments, plus any alimony or separate maintenance payments, paid to a taxpayer during the taxable year. In addition, the bill provides for an increase of 10 percent in the federal income tax liability of any individual who owes, but fails to pay, ordered child support for periods aggregating 6 months or more during any taxable year.

The purpose of the bill is two-fold: to provide a degree of tax relief for custodial parents who receive ordered child support; and to impose a penalty upon child support obligors who fail to make ordered payments. The first purpose does not bespeak sound public policy: there is no equitable reason to provide special tax benefits to custodial parents raising children who receive ordered support from absent parents. It would be equitable, however, to provide a tax credit for all minor children (as proposed, for example, by Senator John Rockefeller in S. 2237, discussed later). The second purpose is not workable: there would have to be confirmed arrearage and clear evidence of non-payment. Unless payments were required to have been paid through a court or state child support enforcement registry, which kept payment records, and the registry were to provide evidence of non-payment to the Internal Revenue Service - or the obligee were required to report non-payment to the IRS, together with documentary proof of non-payment - there would be no easy or effective way to enforce the penalty. Certainly, there can be little expectation that delinquent obligors will freely and responsibly report their delinquencies to the IRS.

VI. International Child Support Agreements.

H.R. 3248 by Kennelly (D-CT).

On August 2, 1991 Congresswoman Barbara Kennelly introduced H.R. 3248, providing for Congress to consent to the entry by states into unilateral or multilateral agreements with foreign countries (or their political subdivisions) for the recognition and enforcement of spousal and child support orders. It also calls upon the Secretary of State to examine the several international conventions - including the 1956 United Nations Convention on the Recovery Abroad of Maintenance, the 1958 Hague Convention Concerning the Recognition and Enforcement of Decisions Concerning Maintenance Towards Children, the 1973 Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations, and the 1989 Inter-American Convention on Support Obligation - upon which some 57 other nations have established frameworks to ensure the international enforcement of spousal and child support obligations. Finally, it calls upon the President to submit to the Senate for consent to ratification any of the international conventions the President determines appropriate for ratification.

The bill helps focus attention on the important matter of child support enforcement across national boundaries. Currently international child support enforcement is not part of the Title IV-D program, and the provision of federal financial participation for unilateral or multilateral agreements between states and foreign governments - at least to the extent state IV-D agencies would be involved in enforcement activities - would require a further act of Congress.

VII. Interstate Child Support Jurisdiction.

"Full Faith and Credit for Child Support Orders Act." H.R. 5304 by Frank (D-MA).

On June 6, 1992 Congressman Barney Frank (D-MA) introduced H.R. 5304 to provide that a state court may not modify an order for child support which has been rendered by a court of competent jurisdiction of another state unless the party to whom the support is due resides in the state in which the modification is being sought or expressly consents to seeking the modification in the other state. On August 12, 1992 hearings on the bill were held before the Subcommittee on Administrative Law and Governmental Relations of the House Committee on the Judiciary. On September 30, 1992, the full Committee considered the bill and accepted an amendment in the nature of a substitute which was offered by Congressman A. Mazzoli (D-KY). The substitute significantly changed the character of the legislation to amend Chapter 115 of Title 28, United States Code, to provide for full faith and credit to be given child support orders so that one state shall not modify a child support order of another state unless: (1) it has jurisdiction to make such a support order; and (2) the court of the other state no longer has continuing exclusive jurisdiction of the order because the other state is no longer the residence of the child or of any party to the order or because all parties have filed written consent for the second state to modify the order and assume continuing, exclusive jurisdiction of the order. On October 2, 1992 the amended bill was reported to the House and on October 3, 1992 passed in the House. On October 8, 1992 it was sent to the Senate Committee on the

Judiciary, but it was not considered by the Senate.

The bill in its original form seemed to favor the concerns of custodial parents in interstate enforcement of support orders. The amended bill reflects the jurisdictional principles of the U.S. Commission on Interstate Child Support, now provided for in the Bradley and Roukema bills. These principles accord, as well, with the provisions of the new Uniform Interstate Family Support Act (UIFSA) which seek to eliminate the possibility (as is currently the case in interstate enforcement) of the prospective modification of a child support order rendered by a court in one state by a court in a state in which that order has been registered for enforcement. UIFSA strives to establish a "one-order" system for child support, after the model of the Uniform Child Custody Jurisdiction Act for custody determination. Full faith and credit would, thus, be extended to an out-of-state support order in spite of its lack of "finality."

VIII. Child Support Enforcement and Child Support Assurance.

In addition to legislative proposals for strengthening the enforcement of child support obligations, there was a lively interest both inside and outside the 102nd Congress in dramatically changing aspects of the basic structure of child support in the nation. "Child support assurance" of some type has been discussed as a way to guarantee a minimum child support benefit to all custodial parents. While the government would continue to enforce support obligations, it would make up any difference between the amount of support collected and a predetermined minimum benefit level. Thus, the

custodial parent would receive an established amount of child support, regardless of the absent parent's ability or willingness to pay. It is hoped that such an assured amount of support would save a family from financial disruption resulting from the obligor's loss of income due to, for example, job loss, illness, or periods of unemployment. Unlike welfare, the assured benefit would be universal, without means-testing eligibility, and would not be reduced by any earnings of the custodial parent. The only condition of eligibility for receipt of the benefit (in most child support assurance schemes) would be paternity and order establishment. The premise is that with stable and consistent payments of support, custodial parents would be able to pursue gainful employment in order to raise the standard of living of their children and to avoid having to turn to welfare.

A. S. 1411/S.2343 by Dodd (D-CT).

In June, 1991 Senator Christopher Dodd (D-CT) introduced a bill - S. 1411 - which, in addition to providing income tax relief to middle income families, would establish child support assurance demonstration projects in six states "in order to improve the economic circumstances of children who do not receive a minimum level of child support from the noncustodial parents of such children and to strengthen the establishment and enforcement of child support awards" [SEC. 201(b) of S. 1411, "Middle-Income Tax Relief and Family Preservation Act"]. The bill also contained provisions to amend the Internal Revenue Code of 1986 to increase tax benefits for middle income families (including a refundable tax credit of \$800 for each dependent child and the restoration of prior law exclusion from income taxes for scholarships and fellowships for post-

secondary education) and to increase tax liabilities for higher income earners and for corporations. Finally, the bill provided for the creation of a "National Commission on Family Strengths" for the purpose of studying ways "to strengthen and preserve families and noneconomic status of children."

On March 11, 1992 Senator Dodd introduced S. 2343, the "Child Support Assurance Act of 1992," the child support assurance provisions of which were extracted from his earlier bill (S. 1411). (These provisions, under the same title - "Child Support Assurance Act of 1992" - were also contained in a bill, S. 2677, introduced by Senator Alan Cranston (D-CA) on May 7, 1992.) The provisions for child support assurance demonstration projects require the submission of proposals by state Governors specifying, among other matters, whether the proposed project will be carried out statewide or in limited areas of the state, the number of children who will be eligible for assured minimum child support payments under the project and the amounts to which they will be entitled, and the guidelines and review procedures in use in the state. States selected by the Secretary for participation in the demonstration projects would have to commit to the projects for a period of three to five consecutive fiscal years beginning with FFY 1993 and offer assurances that, at the time of their selection, they are at, or above, the median paternity establishment rate (as defined by 42 U.S.C 652(g)(2)) and that they will improve their performance, by at least 4 percent each year of its demonstration project, in: (1) the number of cases in which paternity is established, (2) the number of cases in which support orders are obtained, and (3) the number of obligated cases in which collections are made. Moreover, the selected states must commit to using federal, state, and local

job training programs to assist individuals in meeting their child support obligations and involve both the IV-A and IV-D agencies in the design and operation of the child support assurance project.

In Senator Dodd's plan, the assured minimum support will be \$3,000 per year for the first child and \$1,000 per year for the second and each subsequent child (indexed annually for inflation) - offset and reduced, of course, to the extent that the custodial parent receives ordered child support from the noncustodial parent. Such benefit would be available to any child for whom a support order has been "sought" (that is, for whom an application for IV-D services has been made or for whom an order has been sought through representation by public or private counsel or pro se) or obtained or for whom a "good cause" exception has been given for not seeking or enforcing a support order. In AFDC cases, one half of the assured benefit would be disregarded from income until the total amount of child support and AFDC received equals the federal poverty level. If the family as a whole becomes ineligible for AFDC because of the assured support benefits, the eligibility of the caretaker would be calculated without regard to the assured child support benefits. In non-AFDC cases, participation in the assured benefits program would require that the caretaker apply for IV-D services.

The Dodd bill further specifies that two or more of the selected states be required to provide intensive integrated social services for low-income participants (employment, housing, health, and education), and two or more of the selected states plan to cooperate among themselves to integrate interstate establishment and enforcement of child support awards. Finally, all selected states would be

required to make interim and final evaluations of the effectiveness of their projects, showing, among other matters, the impact of the project on the economic and noneconomic well-being of the participants and on the state's work force and AFDC participation rates.

Senator Dodd's proposal is ambitious, but offers a promising way to test the feasibility of a child support assurance program. What is especially noteworthy about his scheme is the integration of the IV-A (AFDC) program into a support assurance plan, as well as the provision for the inclusion of those children for whom (for "good cause") it may not be possible to establish a support obligation. However, the performance goals required of participating states (e.g., a 4 percent annual improvement in paternity and support order establishment) may be daunting for states already struggling to meet current requirements and may, in fact, exclude their participation.

Another concern for all participating states will be the matter of funding the assurance projects. A state which meets the performance goals will receive up to 90 percent federal funding for the assurance project, while a state which fails to meet the goals will receive up to 80 percent federal funding. Thus, a state must provide either not less than 20 percent or 10 percent of the costs of what will likely be a costly program. At the same time, a state must continue to maintain its level of expenditures for its IV-D program at, or above, its level of expenditures prior to participation in the assurance project.

On June 6, 1992 Senator Dodd conducted hearings on his bill as chair of the Subcommittee on Children, Family, Drugs, and Alcoholism of the Senate Labor and

* states may object to CSA

Human Resources Committee. Among those invited to present testimony were Senator John Rockefeller, Margaret Campbell Haynes, the chair of the U.S. Commission on Interstate Child Support, and Professor Irwin Garfinkle, the leading academic proponent of child support assurance in this country.

B. S. 2237 by Rockefeller (D-WVA).

A bill, S. 2237, similar in intent to Senator Dodd's, was introduced on February 20, 1992 by Senator John Rockefeller (D-WVA). Rockefeller's bill reflects the work of the National Commission on Children, a bipartisan study which he chaired, and which submitted, to the President and Congress, its findings in 1991. Established by Public Law 100-203 in 1989, the 34-member Commission was "to serve as a forum on behalf of the children of the nation." Among the many recommendations put forth by the Commission at the end of more than two years of hearings, site visits, and forums were some which found their way into Senator Rockefeller's bill.

The major components of the bill are: a \$1,000 refundable tax credit for all children, regardless of family income, to replace the personal exemption for dependent children; simplification of the Earned Income Credit for federal income taxes and further adjustments for family size; and child support "insurance" demonstration grants for four to six states, selected on the basis of their records of performance in child support enforcement, particularly paternity establishment. The level of support assurance provided for in the Rockefeller bill, however, is significantly lower than in the Dodd bill - only \$1,500 for the first child, as compared with \$3,000 in the Dodd bill, and \$1,000 for

the second and \$500 for all subsequent children. In AFDC cases, the amount of child support insurance received would reduce by some percentage (as determined by the Secretary) the amount of AFDC paid a family, except that if the family as a whole becomes ineligible for AFDC because of insurance benefits, the caretaker may continue AFDC eligibility. As in the Dodd bill, non-AFDC custodial parents would be required to apply for IV-D services to qualify for the insurance program.

The Secretary would select states of which at least 2 provide intensive integrated social services for low-income participants, 2 plan to cooperate in integrated interstate enforcement activities, 2 contain large urban areas, and 1 contains large rural areas. Each state would make interim and final evaluations of the effectiveness of the project with respect to several, specified factors, and the Secretary would make interim and final reports on the projects to Congress. The participating states would provide not less than 20 percent of the costs of the child support insurance projects, unless they met performance goals in their IV-D programs, in which case they would provide not less than 10 percent of the costs. Finally, the bill provides for the creation of community employment demonstration projects in economically depressed communities to create employment opportunities for parents receiving welfare assistance.

Like Dodd's bill, the Rockefeller bill would require of participating states considerable expenditures for what will be costly "insurance" or "assurance" projects. Perhaps, as a first step to testing the usefulness of such programs of "assured" or "insured" child support benefits, participating states ought to be granted (as has been done in New York) a waiver to use AFDC funds,

in AFDC cases, to finance a program of assured benefits in which AFDC benefits supplement child support paid by an obligated parent (to an assured minimum level of support).

IX. Changes to Health Insurance, Audit, and Review and Modification Requirements.

"Child Support Amendments of 1992," S.3361 by Moynihan (D-NY).

On September 16, 1991 Senator Daniel Patrick Moynihan, chair of the Senate Finance Committee's Subcommittee on Social Security and Family Policy, conducted hearings to consider concerns of state IV-D programs and others, particularly in efforts to carry out the requirements of the Family Support Act of 1988. As one of the architects of the Act, which introduced a number of significant changes in the Title IV-D program, Senator Moynihan was especially interested in learning first-hand from state IV-D directors, representatives of national social welfare organizations, and the federal Office of Child Support Enforcement (OCSE) about problems confronting the national child support enforcement program.

Testimony at the hearings focused upon several key concerns shared widely by state child support enforcement programs. They included concerns about the pace and magnitude of changes in federal IV-D statutes and regulations which, especially since the passage of the 1984 Child Support Amendments, have nearly outstripped the ability of state IV-D programs to implement fully and effectively all the changes. Related to this were concerns about the strain upon the

available resources of state programs (including not yet fully developed automated systems) imposed by the new requirement of periodic review and adjustment of all IV-D support orders, as well as of the mandatory provision of full IV-D services to non-AFDC Medicaid applicants and recipients. Finally, concerns were expressed about the daunting difficulties experienced by state IV-D programs in trying to satisfy the myriad requirements of the federal triennial audit.

As a result of the hearings, Senator Moynihan asked the National Council of State Child Support Enforcement Administrators, together with the American Public Welfare Association and the National Governors' Association to help him prepare legislation which he could sponsor to correct some of the perceived weaknesses in the current IV-D program. On October 5, 1992 Senator Moynihan introduced S.3361, the "Child Support Amendments of 1992," which was then referred to the Senate Committee on Finance.

This omnibus bill contains provisions for health insurance coverage for the dependent children - and where specified in a child support order, the custodial parent of those children - of employees of both the federal government and of private employers. Employers would have to enroll the children (as well as the custodial parent) in an employee's health insurance plan and would be liable for any medical costs incurred because of the employer's failure to obtain or maintain the health insurance for the dependents.

The bill also has provisions clarifying and simplifying the process for the periodic review and adjustment of support orders, as mandated by the Family Support Act of 1988.

According to these provisions, a state would not be responsible for reviewing all support orders at least once every 36 months until it had a fully operational, certified automated system - which all states are required to have by October 1, 1995. With respect to the new automated systems, the bill provides for an extension of enhanced federal matchings funds at 90 percent for the development of such systems until September 30, 2000 - a full five years beyond the current statutory cutoff point for such funding. This would enable states to cover continuing design and implementation costs.

The bill also specifies a period of 18 months within which states are to achieve substantial compliance in their IV-D programs, from the time a corrective action plan is submitted after a finding of noncompliance arising from the triennial program audit. Moreover, the bill provides for the creation of a study committee, appointed by the Secretary of Health and Human Services, to make specific recommendations to improve the audit process. Finally, the legislation amends the Employee Retirement Income Security Act of 1974 (ERISA) so that state laws requiring an employer to enroll an employee's child in any health insurance plan (including ERISA governed plans which account for nearly half the employee benefit plans in the nation) cannot be preempted by ERISA, as they currently are.

X. Reinvestment of Recovered Support and Federal Incentives in State IV-D Programs.

"Child Support Reinvestment Act," S.3343 by Kohl (D-WI).

On October 5, 1992 Senator Herb Kohl (D-WI) introduced S.3343 to amend Title IV-D of the Social Security Act to require states to reinvest in their IV-D programs the state share of recovered public assistance and federal incentive payments. If the state's IV-D program is collecting over 50 percent of the child support owed in its caseload, the state may request of the Secretary of Health and Human Services that up to 30 percent of its federal incentive payments and its share of retained AFDC collections be used to offset the state's AFDC costs. However, if the state uses its share of retained collections and incentive payments to fund its IV-D program, it must invest an equivalent sum to fund other established or pilot social service programs, such as the AFDC program or a child support assurance program.

Senator Kohl's legislative proposal goes well beyond a requirement contained in the Bush Administration's budget proposal (contained in H.R. 4150 by Congressman Robert Michel (R-IL), introduced on February 4, 1992) that states reinvest their federal IV-D incentive payments in programs "to improve or protect the welfare of children within the State," which could include the enhancement of the state's child support enforcement program. While not unreasonable, Senator Kohl's proposal will likely meet as much resistance from state governments as did the Bush Administration's proposal.

XI. The Bush Administration's Budget and Legislative Proposals for the Title IV-D Program.

The Bush Administration's proposed budget for FFY 1993, as it affected the Title

IV-D program, contained provisions with potentially significant impact upon the IV-D program. These provisions were incorporated in a bill - **H.R. 4150** by **Congressman Robert Michel (R-IL)** - which was introduced on February 4, 1992. (A companion bill, **S. 2217**, was introduced in the Senate by **Senator Robert Dole (R-KS)** on March 6, 1992.) The bill never came out of committee.

Application and Services Fees:

There would be a mandatory \$25 application fee and \$25 services fee for non-AFDC constituents, with the state having the option of increasing the charge to \$50 for each fee, except that if the state chooses to charge \$50 fees, these fees may not be charged to those non-AFDC IV-D applicants or recipients who have incomes below 185 percent of the poverty line, as adjusted annually by the Secretary. The fees may be paid by the individual seeking and receiving services or from the individual obligated to pay child support or by the state itself. If paid by the states, the fees would not be regarded as administrative costs to the states but as program income.

These two fee structures were contained in the Bush proposed budget for FFY 1992 and were built into the Administration's proposed budget for FFY 1993. They were part of a new funding scheme (the other part being a new incentive payment structure, described below) intended to reduce the level of federal funding for the Title IV-D program by some \$686 million over the next three fiscal years. The proposed fee structure - in particular allowing a doubling of the fee for those non-AFDC applicants/recipients with incomes in excess of 185 percent of the poverty level - drew attention to the fact that, with the ever

expanding IV-D caseload and statutory and regulatory requirements, the federal and state governments cannot afford any longer to provide IV-D services free of charge, especially to those who might have the financial means to afford private counsel. From the standpoint of the states, however, the proposed new fee structure did not point to any significant increase in program revenues simply because such fees would have been considered program income offsetting, dollar for dollar, program expenditures eligible for federal financial participation (FFP). What might make such a fee structure attractive to states would be a split between federal and state governments, with the state share not reducing the amount of available FFP.

While the means test with respect to the optional doubling of the two fees was not inequitable, it would have required of state programs another administrative step (determining income levels) in the processing of non-AFDC applications, which, in turn, would have meant higher administrative costs for both the state and federal governments. The question, then, was whether or not income from the optional doubling of the fee would have outweighed the additional administrative expense. If there is going to be a means test of any kind for the IV-D program, perhaps it ought to be for the purpose of making ineligible those non-AFDC individuals who can truly afford private counsel.

The proposed fee structure would have had a damaging impact upon those states which currently elect not to charge an application fee - that is, which pay the fee themselves rather than charging it to either the obligee or obligor. While currently these states may charge a nominal fee (say, 1 cent),

under the proposed fee structure they would have been required to charge at least \$25 for each of the two fees. If, under the proposed fee structure, they were to continue to pay these fees themselves, not only would the outlay not have been regarded as program administrative costs eligible for FFP, it would have been treated as program income [42 U.S.C. 654(6)(B)] which would, dollar for dollar, have reduced administrative costs eligible for FFP. Thus, the states electing to absorb the fees would have experienced a double loss.

* Performance Based Incentives:

First, current cost-effectiveness performance measures would be augmented by new performance measures based upon (1) paternity establishment, (2) the establishment or modification of support orders, (3) the termination of AFDC cases through successful child support collections, and (4) any other performance standards which the Secretary may find appropriate. The Secretary would set a schedule of incentive payments for the new performance measures, with a limit on the amount of incentive payments for these new measures equal to 10 percent of the state's total AFDC child support collections in a fiscal year. Second, the amount of incentives for cost-effectiveness would be reduced from the current range of 6 to 10 percent - depending upon the numerical value of a state's cost-effectiveness ratio - to a range of 3 to 5 percent, in quarter-percent increments. Finally, any incentive payment received by the state would have to be used "to improve or protect the welfare of children within the State," which could include the enhancement of the state's child support enforcement program.

If incentive payments are to be retained as part of the federal funding of the

IV-D program, then there should be a broader basis than just cost-effectiveness for awarding the incentives. The establishment of paternity and support obligations clearly provide two areas of performance which can - and ought to be - measured. It is unfortunate - and somewhat troubling - that, besides the modification of support obligations and the removal of families from AFDC through support collections, the proposal left unidentified other performance standards which might be applied to the state programs. The indefiniteness of this part of the proposal left open the possibility that unreasonable or onerous performance standards might be imposed solely because the Secretary of HHS found them appropriate.

Of greater concern in the proposal was (1) the limiting of the amount of incentive payments for the new performance measures to 10 percent of the state's AFDC collections and (2) the reduction, by half, of the incentive payments for cost-effectiveness. In gearing the incentive payments for performance in various program activities (e.g., paternity and support obligation establishment) to a percentage of AFDC collections alone, the Bush Administration once again showed the same sort of AFDC bias which informs the "capping" of non-AFDC collections to be included in the computation of incentives based upon cost-effectiveness. The reduction of incentive payments for cost-effectiveness by 50 percent would have delivered a serious financial blow to those state programs which fund their child support enforcement programs largely (or even totally) from incentive payments together with retained AFDC collections and FFP.

The full impact of the proposal for new incentive payments would not have been fully known, however, until the Secretary set

a schedule for numerically rating the new performance measures. But even if, under this scheme, a state were able to score so well in these new measures as to be awarded an incentive payment equal to 10 percent of its AFDC collections, the halving of the current level of incentive payments for cost-effectiveness might have dramatically affected its overall amount of federal incentive payments.

It is easy to see, then, why the Bush Administration perceived in the adoption of the proposed incentive scheme considerable "savings" to the federal government over the next three fiscal years. Not only did this Administration proposal meet the "pay-as-you-go" requirements of the Omnibus Budget Reconciliation Act of 1990 (i.e., that no bill should result in an increase in the federal deficit), it greatly exceeded those requirements by actually decreasing the federal costs for the IV-D program.

Cooperation of food stamp applicants/recipients with state IV-D child support enforcement agencies: As a condition of eligibility for the receipt of food stamps, a natural or adoptive parent or any other individual having parental control over a child under the age of 18 years would have to cooperate with the state IV-D agency to establish, as needed, paternity and/or child support obligations and to enforce such obligations, unless there was a showing of good cause not to cooperate, as determined by the state agency administering the food stamp program. The IV-D agency would be required to provide full child support services to such food stamp applicants/recipients without the requirement of an application or payment of fees or the recovery of costs for these services. The food stamp agency would provide the IV-D agency with information

required by the IV-D agency to undertake enforcement activities in those cases in which food stamp recipients are not already receiving IV-D services because they are also applying for or receiving AFDC or foster care benefits.

The mandatory provision of full IV-D services to those food stamp recipients not also receiving AFDC or foster care benefits could only have had a damaging impact upon the ability of the already overworked and understaffed state IV-D agencies to deal effectively with ever-growing caseloads. Although it is not known just how greatly this requirement might have increased these caseloads, there can be no doubt that the administrative burden and cost would have undercut the efforts of the state IV-D programs to address the needs of their current public assistance and non-public assistance constituents. The actual benefits to the federal government by way of helping families leave the food stamp program or avoid having to turn to AFDC would have been, by the Bush Administration's own admission, "modest" - although, in fact, they would have likely been negligible, inasmuch as food stamp recipients are in that program because of their poverty, or near-poverty, level of income.

Mandatory Services for Recipients of Certain Need-Based Federal or Federally Assisted Programs: The proposed legislation would have added to the workload of state IV-D programs by requiring - in addition to AFDC, Foster Care, and non-AFDC Medicaid cases - the mandatory provision of full IV-D services to individuals receiving need-based federal assistance in those programs in which cooperation with the state IV-D agency would be a condition of eligibility for such assistance, except as the

agency administering the need-based federal assistance program determined there was good cause for non-cooperation.

* This provision, as HHS Secretary Louis Sullivan acknowledged in a letter to House Speaker Foley, which accompanied the legislative proposal, "is structured to interact with complementary HUD and USDA proposals in the President's Budget." What was intended, of course, was that besides food stamp applicants and recipients, recipients of other federal programs - like federally subsidized housing - would have been required, as a condition of eligibility for benefits, to cooperate with the IV-D agency in establishing paternity and securing child support. The Bush Administration allowed that such new eligibility requirements in these federal assistance program would yield only "modest" savings. What was not figured into this proposal was the additional administrative cost to both state and federal governments to implement the requirement. More than that, there seems to have been no recognition of the potentially damaging effects this proposed requirement could have upon already overworked and underfunded state IV-D programs. It is simply unrealistic to heap yet more responsibilities upon state IV-D programs when they are already struggling to respond to statutory requirement of providing full services to non-AFDC Medicaid applicants and recipients, as well as to meet all of the many demands imposed upon them by provisions of the Family Support Act of 1988.

* Incentives for families with absent parents to cooperate with state IV-D agencies: The United States Housing Act of 1937 would be amended to impute up to \$550 a year as family income (thereby affecting need-based eligibility for federal housing) to

Bar from federal programs if you owe CSE

those families with an absent parent and dependent children which have an established obligation for child and spousal support payable to the resident parent and which have failed, absent good cause, to cooperate with the state IV-D agency to collect such support from the absent parent.

While the intent was to provide "incentives" for families receiving housing benefits to cooperate with the IV-D agency, likely many of those families with dependent children living in public housing projects are already receiving IV-D services because they are AFDC recipients. Still, there may be many other single-parent families which have not applied for IV-D services and which, to avoid the penalty contained in this provision, would have joined the IV-D caseload. What is not clear from the bill provision is just how families with established child and spousal support obligations would have been identified and referred to the IV-D agency or whether, unlike food stamp recipients and Medicaid-only recipients, they would have had to apply for the IV-D services and pay the proposed mandatory application and services fees.

XII. Restructuring the National IV-D Program.

The "Downey/Hyde Child Support Enforcement and Assurance Proposal. Although never developed as a bill, a legislative proposal was developed during the 102nd Congress by Congressman Thomas Downey (D-NY) and Congressman Henry Hyde (R-IL) to establish a national program of child support assurance and restructure and federalize the national child support enforcement program. Hearings on the "Downey/Hyde Child Support Enforcement and Assurance Proposal," which was released on May 12, 1992, were held on July 1-2,

1992 before the Subcommittee on Human Resources of the House Committee on Ways and Means, of which Congressman Downey was Acting Chairman.

"The Child Support Enforcement and Assurance Proposal" called for the abolition of the current Title IV-D program and the creation of a new enforcement program affecting all existing and new child support orders in the country. A new federal child support enforcement agency would be created, housed in both the Internal Revenue Service (IRS) and the Social Security Administration (SSA). The primary responsibility of state enforcement agencies would be the initial locate of absent parents and the establishment of paternity and support obligations. After that, the enforcement, collection, and distribution of support would fall to the new federal office, using the resources of the IRS and the SSA. States would receive federal funding (in a range of 70 to 90 percent, depending upon the quality of a state's performance) for the "aggressive pursuit" of the establishment of paternity and child support orders. All child support awards would be reviewed for modification every two or three years (or earlier at the request of either parent) by the IRS, based upon national guidelines and information on the parents' federal income tax returns. (All parents making and receiving support payments would be required to file an annual tax return, regardless of their actual income.) The collection and distribution of support payments would be handled by a component of the federal Internal Revenue Service, which would establish and maintain a centralized, national registry of all child support orders and payments. (Employees would be required to report their support obligations on the W-4 form for new hiring, and employers would be responsible for withholding from

wages the required amounts to meet support obligations, as they currently withhold for federal taxes.) Support payments would be monitored for on-going compliance and would be enforced using the enforcement tools of the Internal Revenue Service. Failure to pay ordered support in a timely manner would be prosecuted to the same extent as failure to pay federal taxes and, moreover, could result in the additional penalty of the imposition of the requirement that the delinquent obligor participate in "work-related activities."

The proposal contained a number of other provisions, including medical support establishment and enforcement, advance payment of the earned income tax credit (as well as child support assurance benefits), and certain changes to the AFDC eligibility and benefit levels.

XIII. Conclusion

In the end, the 102nd Congress made few changes to child support laws in its two year session. It was, however, very active in considering and debating new legislative ideas that could, when picked up and carried forward by members of the 103rd Congress, lead to many changes in the child support program of the future.

One fourth of the members of the 103rd Congress that convenes on January 5, 1993 will be new. About two weeks later, the 42nd President of the United States will take office, bringing with him to Washington even more new faces, many of whom will be moving from state governments into key positions in federal agencies, including HHS.

What impact will this tremendous change in leadership in Washington have on the child support program in 1993?

It is fairly certain that President Clinton and his new administration will be urged by some advocates to scrap the entire Title IV-D program as it is presently structured and start over again using a federal model that shifts enforcement and collection responsibilities to a federal agency, such as the Internal Revenue Service.

Support for such a restructuring might tempt some state and local child support officials who, having faced increasing workloads and new regulatory demands from Washington over the last decade, may now be ready to "turn the tables" and let the federal government try its hand at an effort for which the states have been so constantly criticized.

Fortunately or unfortunately, depending upon one's point of view, these sweeping proposals to restructure the child support program come at a time of growing concern by the electorate with the federal budget deficit. The new members of Congress are very aware that they were elected with a mandate to reduce the deficit and hold the line on expensive new federal programs.

Consequently, with estimates ranging from several billions to tens of billions of dollars to implement a federal child support collection and enforcement program and a child support "assurance" plan, it is doubtful that such an expensive restructuring of the IV-D program will occur in the near future.

Instead, in 1993 and beyond, Congress and the Clinton Administration are likely to focus on ways to improve the existing IV-D structure, with states and counties continuing to be largely responsible for child support establishment and enforcement. This also means the recommendations of the U.S. Commission on Interstate Child Support will

be given careful consideration and legislation to implement the Commission's proposals are likely to be the center of Congressional child support debate during 1993.

It also seems safe to assume that the federal child support role may be expanded in certain areas, such as improving coordination with, and providing more technical support and training to, state and local child support agencies. Authorization for some pilot projects for federal enforcement in certain interstate cases and demonstration projects to test child support assurance is also likely to be approved by Congress in the next year or two.

Finally, as federal, state and local budgets strain under the expense of providing services to an increasingly economically disadvantaged and needy population, more attention will be given to the role of the private sector. Private businesses will be encouraged through legislation to bring their resources and new technologies to support and supplement public sector efforts in a number of different social service programs, including child support establishment and enforcement.

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Austin, Texas
1993**

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Child support
enforcement*

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

March 22, 1993

LEGISLATIVE REFERRAL MEMORANDUM

LRM #D-74
DRAFT #122

TO: Legislative Liaison Officer -

JUSTICE - Faith Burton - (202)514-2141 - 217

FROM: JANET R. FORSGREN (for) *Janet R. Forsgren*
Assistant Director for Legislative Reference

OMB CONTACT: CHRIS MUSTAIN (393-3923)
Secretary's line (for simple responses): 393-7362

SUBJECT: HHS Draft Bill-Child-Support-Enforcement
Amendments

DEADLINE: 2:00 PM March 29, 1993

COMMENTS: The attached provisions will probably be transmitted as part of an Administration reconciliation bill.

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB circular A-19.

Please advise us if this item will effect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
Barbara Selfridge
Keith Fontenot
Miko Ruffner
Shannah Koss
Laura Oliven
Richard Bavier
Art Stigile
Carole Rasco
Bob Danus
Delphine Motley
Janet Forsgren

SEC. STATE PATERNITY ESTABLISHMENT PROGRAMS.

(a) PERFORMANCE STANDARDS FOR STATE PATERNITY ESTABLISHMENT PROGRAMS.--Section 452(g) of the Social Security Act (42 U.S.C. 652(g)) is amended --

(1) in paragraph (1) --

(A) by striking out "October 1, 1991" and inserting instead "October 1, 1994";

(B) by inserting "is based on reliable data and" before "equals or exceeds"; and

(C) by striking out subparagraphs (A), (B), and (C) and inserting instead:

"(A) 75 percent;

"(B) for a State with a paternity establishment percentage between 50 and 75 percent for such fiscal year, 3 percentage points over the previous fiscal year; or

"(C) for a State with a paternity establishment percentage under 50 percent for such fiscal year, 6 percentage points over the previous fiscal year."; and

(2) in paragraph (2) --

(A) by striking out "(or under all such plans)" each time it appears;

(B) by inserting "or part (E)" after "under part A" each time it appears;

(C) by amending subparagraph (B) to read as follows:

"(B) the term 'reliable data' means the most recent data available which are found by the Secretary to be reliable for purposes of this section.";

(D) by inserting "unless paternity is established for such child" after "the death of a parent"; and

(E) by inserting "or any child with respect to whom the State agency administering the plan under part E determines (as provided in section 454(4)(B)) that it is against the best interest of such child to do so" after "cooperate under section 402(a)(26)".

(E) STATE PLAN REQUIREMENTS FOR THE ESTABLISHMENT OF PATERNITY.--

(1) Section 466(a) of the Social Security Act (42 U.S.C. 666(a)) is amended --

(A) in paragraph (2) --

(i) by striking out "at the option of the State,"; and

(ii) by inserting "or paternity establishment" after "support order issuance and enforcement";

(B) in paragraph (5) by adding after and below subparagraph (B) the following new subparagraphs:

"(C) Procedures for a simple civil process for voluntarily acknowledging paternity under which the State

must provide that the rights and responsibilities of acknowledging paternity are explained and ensure that due process safeguards are afforded. Such procedures must include (i) a hospital-based program for the voluntary acknowledgment of paternity during the period immediately preceding or following the birth of a child, and (ii) the inclusion of signature lines on applications for official birth certificates which, once signed by the father and the mother, constitute a voluntary acknowledgment of paternity.

"(D) Procedures under which the voluntary acknowledgment of paternity creates a rebuttable, or at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgments are admissible as evidence of paternity.

"(E) Procedures under which the voluntary acknowledgment of paternity must be recognized as a basis for seeking a support order without first requiring any further proceedings to establish paternity.

"(F) Procedures which provide that (i) any objection to genetic testing results must be made in writing within a specified number of days prior to any hearing at which such results may be introduced in evidence, and (ii) if no objection is made, the test results are admissible as

evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

"(G) Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability of the alleged father being the father of the child.

"(H) Procedures under which State tribunals must enter default orders in paternity cases upon a showing of service of process and whatever additional showing may be required by State law."; and

(C) by adding the following new paragraph after and below section 466(a)(10) and before the sentence beginning "Notwithstanding section 454(20)(B)":

"(11) Procedures under which a State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes."

(2) Section 205(c)(2)(C)(ii) of the Social Security Act (42 U.S.C. 405(c)(2)(C)(ii)) is redesignated as section 466(a)(12) and relocated after and below section 466(a)(11) and before the sentence beginning "Notwithstanding section 454(20)(B)" and amended --

(A) by striking out "In the administration of any law involving the issuance" and inserting instead "Procedures under which, in the administration of any law involving the issuance, reissuance, or amendment"; and

(B) by striking out "any purpose other than for the enforcement of child support orders in effect in the State" and inserting instead "other than child support purposes".

(c) CONFORMING AMENDMENTS.--

(1) Section 468 of the Social Security Act (42 U.S.C. 668) is repealed.

(2) Section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) is amended by redesignating clause (iii) beginning "In the administration of section 9" as clause (ii).

(d) EFFECTIVE DATE.--The amendments made by this section shall become effective with respect to a State --

(1) on October 1, 1993 or, if later

(2) upon enactment by the legislature of such State of all laws required by such amendments,

but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of

this Act. For purposes of the previous sentence, in the case of a State that has a two year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SECTION-BY-SECTION SUMMARY

SEC. . . STATE PATERNITY ESTABLISHMENT PROGRAMS.

Section 2(a) would amend section 452(g) of the Social Security Act (the Act) to establish new paternity performance standards. The proposed new standard would require that a State's paternity establishment percentage be based on the most recent data available which are found by the Secretary to be reliable, and must (1) be 75 percent, or (2) have increased by 3 percentage points over the previous fiscal year for a State with a percentage between 50 and 75 percent, or by 6 percentage points over the previous fiscal year for a State with a percentage below 50 percent. The 75 percent standard has been used in federal audits for some time in assessing substantial compliance with the child support enforcement requirements.

Section 2(b) would amend section 466(a) of the Act, requiring each State to have in effect laws requiring the use of certain additional procedures to improve the effectiveness of paternity establishment, including procedures --

(1) for a simple civil process for voluntarily acknowledging paternity under which the rights and responsibilities of acknowledging paternity are explained and due process safeguards are afforded and which must include (A) a hospital-based program for the voluntary acknowledgment of paternity during the period immediately preceding or following the birth of a child, and (B) the inclusion of signature lines on applications for official birth certificates which, once signed by the father and the mother, constitute a voluntary acknowledgment of paternity;

(2) under which the voluntary acknowledgment of paternity creates a rebuttable, or at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgments are admissible as evidence of paternity;

(3) under which the voluntary acknowledgment of paternity must be recognized as a basis for seeking a support order without first requiring any further proceedings to establish paternity;

(4) which provide that any objection to genetic testing results must be made in writing within a specified number of days prior to any hearing at which such results may be introduced in evidence, and if no objection is made, the test results are admissible as evidence of paternity

without the need for foundation testimony or other proof of authenticity or accuracy;

(5) which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability of the alleged father being the father of the child; and

(6) under which State tribunals must enter default orders in paternity cases upon a showing of service of process and whatever additional showing may be required by State law.

Section 2(b) would also amend section 466(a) of the Act to require States to have expedited processes for paternity establishment in contested cases and to require that a State give full faith and credit to determinations of paternity made by other States. The state plan requirements are further amended by requiring States to have in effect procedures under which, in the administration of any law involving the issuance, reissuance, or amendment of a birth certificate, the State must require each parent to furnish his social security number (SSN) to assist in identifying the parents of the child. The SSN could not appear on the birth certificate, and the use of the SSN is restricted to child support purposes.

Section 2(c) would make conforming amendments.

Section 2(d) provides that amendments made by this section would be effective (1) on October 1, 1993, or (2) if later, upon enactment by the State legislature of all laws required by such amendments, but in no event later than the first calendar quarter beginning after the close of the first regular session of the State legislature after enactment of this bill.

Child Support Enforcement

Child Support Recovery Has Gone Up 20 Percent

HHS Says Collection Gains Prove 1996 Law Is Working

By JUDITH HAVEMANN
Washington Post Staff Writer

Nearly three years after Congress ordered states to get tough on child support by revoking driver's licenses and tracking down deadbeat parents on the job, collections have increased by about 20 percent, according to new federal figures.

The Department of Health and Human Services hailed the record collection amounts as proof that the child support sections of the 1996 welfare reform law are beginning to work. And because some of the strongest provisions are just starting to take effect, state officials are predicting greater gains in the future.

Child support collections have increased from \$12 billion in 1996 to \$14.4 billion in 1998. The percentage of cases where some money was collected grew from 20.5 percent in 1996 to 22.1 percent in 1997.

Despite such gains, most children are still not receiving the child support they are due from their absent father or mother, the figures show. Olivia A. Golden, Health and Human Services assistant secretary, cautioned that more progress is needed for "the millions of children who don't receive child support."

While all states have passed laws allowing child support agencies to revoke drivers', professional, and even hunting and fishing licenses, most states have used their new powers sparingly, taking licenses only in rare cases.

"We do not want to revoke people's licenses," said Wallace Dutkowsky, director of child support in Michigan. "We just want to get people's attention." He said the state has revoked fewer than a thousand licenses, "more than we want to, because they just drive without it."

One of the strangest features of the new national law—a computerized national child support clearinghouse—took effect only last October but may produce more results than any other single change.

Eventually, the clearinghouse will contain 150 million employment records and about 16 million court orders for child support. Every night, Department of Health and Human Services employees feed lists of workers' Social Security numbers into computers in Baltimore, which spit out matches with outstanding child support court orders across the country.

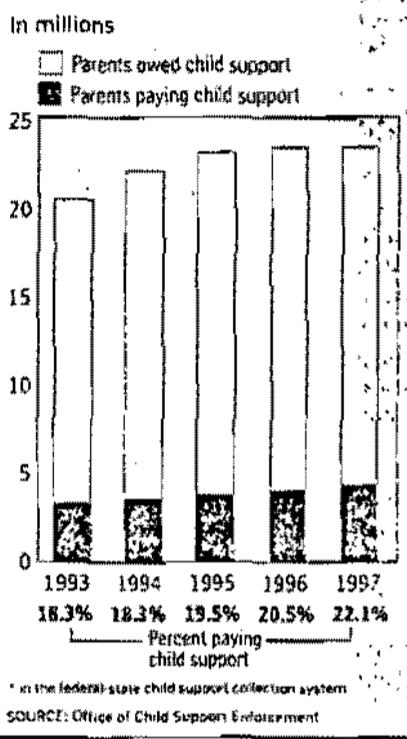
These matches are automatically forwarded back to the states, triggering a system under which employers will eventually be required to withhold child support payments from deadbeat workers, and then mail checks to be used for the workers' children.

Fragmentary reports from scattered states suggest that the clearinghouse may boost the collection rate significantly when all 50 states are in full compliance. Nine states, including the most populous, California, still lack statewide computerized child support systems.

New Jersey state child support officials say they have increased collections by 8.5 percent in the past

Paying Up

The percentage of parents* who owe child support and are actually paying it has increased.



four months. Nearly half of the increase came from matches identified by the new computerized clearinghouse for child support orders.

Arizona also has reported improvement in its system. Since Oct. 1, it has processed roughly 15,000 computerized orders to withhold child support payments from employees' checks after the employee was identified by a computer match.

"We call it the look-no-hands" wage deduction process, said Patrick F. Harrington, deputy child support enforcement director for the state of Arizona.

Still, advocacy groups remain skeptical of the new law. "I don't see anything that shows me it is working," said Geraldine Jensen, head of the Association for Children for Enforcement of Support. She said that while federal and state officials cite the many parents tracked down through the computerized new-hire directory, they are unable to say how many of those parents have begun to pay.

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Indian Trust Papers Missing, Interior Aide Says

Lawyer, a Grievant Against Department, Tells Court He Had Refused to Dispose of the Records

By WILLIAM CLAIBORNE
Washington Post Staff Writer

An Interior Department lawyer who says he refused an order to get rid of Indian trust records involved in a class action lawsuit against the government has testified that more than half the documents are now missing.

The lawyer, Ralph Williams, who had the job of reconciling discrepancies in the trust accounts, said in a deposition that he refused to dispose of the material because he believed that doing so would be illegal. But when the documents—which he said he returned to the department when he left the project in January 1998—were shown to him Wednesday as part of the deposition, Williams said, "That's not even half of it," according to a transcript made public yesterday.

The allegation by Williams, who is under a court order protecting him as a whistleblower from retaliation by the Interior Department, came just six weeks after Interior Secretary Bruce Babbitt was cited for contempt by U.S. District Judge Royce C. Lamberth for failing to produce documents sought by Indian trust account holders as evidence in their lawsuit against the government.

Lamberth is presiding over the suit against Interior for its management of 300,000 Native American land trust accounts worth more than \$500 million. In addition to the \$500 million in trusts owned by individual Indians, the department is responsible for \$2.5 billion in tribal lease revenue, mineral royalties and court settlements that Native Americans allege have been mismanaged for decades.

Williams, who still works in the department solicitor's office, said in the deposition and in an affidavit released by Lamberth last week that Interior Deputy Solicitor Edward Cohen told him that once he had reconciled payments to and disbursements from the trust accounts, "any other information which was inconsistent from my findings could be purged from the files." Williams said he believed that complying with Cohen's directive "could have resulted in the destruction or removal of information relating to payments" to Indians and pertinent to the lawsuit.

At another point in his testimony, Williams said Cohen "did not want anything I produced ... [that] would not support the numbers that I was supposed to pull together after spending five weeks on this project. Everything

else, he said, we could get rid of if it doesn't support this."

Cohen did not return a call requesting comment and Interior

"I am confident that employees of the Office of the Solicitor who have worked on this case have never instructed anyone to destroy any records relevant to this case."

— Interior Solicitor John Leshy

Solicitor John Leshy said he had not read the deposition transcript and had no comment. He referred to an earlier statement in which he said, "I am confident that employees of the Office of the Solicitor

who have worked on this case have never instructed anyone to destroy any records relevant to this case. In my years of working closely with [Cohen], I have found him to hold the highest ethical standards and I am certain this allegation will be proved false."

Cohen's private attorney, W. Neil Eggleston, said it was "inconceivable that Mr. Cohen would have asked Mr. Williams to engage in illegal or unethical conduct, and Mr. Cohen did not do so." Eggleston said Cohen knew that Williams was a "disgruntled employee" who had filed grievances against another member of the solicitor's office and that he had asked Williams to reconcile the tribal trust accounts as a temporary task while awaiting his transfer to the U.S. Attorney's Office in the District.

In his deposition, Williams, who is black, said he filed Equal Employment Opportunity Commission and Merit Systems Protection Board discrimination complaints against the solicitor's office because of grievances against his superiors. He said when he was working on the trust funds project he believed "they were setting me up to drop my EEOC complaint off the table, fire me."

His lawyer, Phillip E. Thompson, said yesterday his client's allegations had led to "a very tense situation" in the office, where Williams currently is working on offshore minerals matters and issues relating to Year 2000 computer glitches.

Thompson said the trust documents shown to Williams Wednesday were in a file folder only one inch thick, while the stack of documents Williams returned to his project supervisor last year was at least six inches high. "The order from the judge was to turn over all of the documents my client delivered. This isn't it," Thompson said.

The Interior Department released a transcript of a voice-mail message Williams left for his project supervisor, David Moran, last April 13 in which Williams said he had not produced anything of substance in his trust fund work because he had "never really got a grip on the requirements of the project."

The department also released an affidavit by Moran stating that Williams never had any "unique source documents" whose loss would have been irretrievable and that the reconciliation project never could have placed anyone in a position to alter or destroy trust fund account data.

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