



Bruce,

This is the child support enforcement proposal draft. I would be glad to talk to you about it and answer any questions. I would be very interested in your reactions. My # is 690-7148.

Thanks,

Pat W. J.

**BACKGROUND PAPERS**

*Prepared for the Working Group on*

*Welfare Reform, Family Support and Independence*

**CHILD SUPPORT ENFORCEMENT AND ASSURANCE**

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***PATERNITY ESTABLISHMENT:***

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**UNIVERSAL OPPORTUNITY**

**Welfare Reform Task Force:**  
**Paternity Subcommittee**

**prepared by:**

**Mary Cohen, Debra Pontisso, & Susan Young**  
**June 29, 1993**  
**(revised)**

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## PURPOSE:

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The purpose of this paper is to discuss a "continuum of options" for establishing paternity for all children born out-of-wedlock by comparing two approaches or a combination thereof: 1) Conditional Approach: this approach would encourage parents to establish paternity establishment based on financial incentives and/or disincentives; and 2) Outreach Approach: this approach would explore a broad range of options designed to promote, on a national scale, the voluntary acknowledgment of paternity. The issue of whether or not paternity establishment should be decoupled from a child support order and/or welfare is also examined in addition to the due process and legal rights of unwed parents.

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## BASIC ASSUMPTIONS:

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- Child support is a two-parent responsibility.
- Paternity should be established for all children born out-of-wedlock unless it can be proven that the biological father poses a real threat to the mother's or child's physical well-being.
- Paternities should be established at birth for as many children as possible.
- Children are entitled, by law, to a certain level of financial support from their biological parents regardless of whether they are divorced, separated, or unwed.
- The government has a responsibility to encourage and, in some instances, require that a child's paternity be established as a possible first step toward child support and financial security.
- The government has a responsibility to provide basic information to unwed mothers regarding the economic benefits that their children are entitled to -- under the law -- from their biological fathers once paternity has been established.

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# A SUMMARY OF PROPOSALS

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## "CONDITIONAL APPROACH"

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### Fiscal Incentives:

- #1: Revise tax structure to provide a paternity establishment tax credit for parents.
- #2: Pay a flat incentive for cooperation.
- #3: Provide incentives for hospitals to take an aggressive role.
- #4: Pay a percentage of hospital costs or co-payments.
- #5: Provide government financed or subsidized costs for all expenses associated with establishment.

### Fiscal Disincentives:

- #6: Lost dependent exemption for tax purposes.
- #7: Lost child care tax credit.
- #8: Lost Earned Income Tax Credit.
- #9: Sanction hospitals in the form of lost Medicaid and Medicare funding for not participating in a national, in-hospital paternity establishment program.

### Strategies to Influence Participation:

- #10. A presumption is made that paternity will be established and all out-of-wedlock births automatically entered into a State system of paternity establishment. Cases are not eliminated from the system until the party(ies) fully understand the benefits they are withholding from their children.
- #11: All States are required to enact laws separating the issues of paternity establishment from custody and visitation issues.

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## A SUMMARY OF PROPOSALS

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### Condition of Federal Assistance

- #12. As a condition of receipt of any form of government assistance, parties (mother and/or putative father) must cooperate in the establishment of paternity.
- #13. Receipt of public assistance hinges on applicant's immediate cooperation.
- #14. Loss of benefit for non-cooperation.
- #15. Incremental benefit reductions to the extent that cooperation is not completely forthcoming, (i.e., missed interviews).
- #16. Rethink and redefine "good cause" - rules need to be tightened up; penalties should be assessed when perjury found.
- #17. Train in-take workers on optimal interview techniques and benefits of paternity establishment.
- #18. Provide payments to informers with information leading to paternity establishment.

### "OUTREACH" APPROACH

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#### Hospital-Related Paternity

(based on the presumed passage of the Administration's proposed legislation on paternity establishment)

- #19. Fiscal incentives/reimbursements to hospitals per paternity established for each out-of-wedlock child born.
- #20. Paternity establishment in all birthing centers.
- #21. Senior-level Administration briefings with national hospital, health-related, and vital statistics organizations on the new law's requirements on in-hospital paternity establishment.

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## A SUMMARY OF PROPOSALS

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- #22. Comprehensive public education / public affairs strategy for dissemination information on the availability of in-hospital paternity establishment.
- #23. Development of a model training guide or curriculum on hospital-based paternity establishment.
- #24. Development of a Federal brochure on in-hospital paternity establishment.

### Creating Additional Opportunities

- #25. As a condition of funding, the Federal government could require that other health-related facilities or programs (e.g., pre-natal clinics, "well baby" programs, family planning centers, etc.) provide unwed mothers and fathers the opportunity to establish or initiate paternity establishment proceedings.
- #26. State child support agencies could be encouraged or required to unwed mothers -- who were unable or unwilling to establish paternity in the hospital -- with information on paternity establishment and an application for child support services.
- #27. Information on the benefits of paternity establishment and an application for child support services could be included along with the automatic issuance of a child's social security number following birth.
- #28. Pediatrician's could be encouraged or required to display information materials on paternity establishment/child support -- as provided by the State IV-D office -- in a visible place in their waiting rooms.
- #29. Obstetricians and/or gynecologists could be encouraged to inform pregnant, unwed mothers of the option of establishing or expediting paternity establishment via genetic testing at the time of their child's birth.
- #30. Efforts could be undertaken by the ACF Assistant Secretary to establish a focal point within the organization that would be responsible for "marketing" the Administration's welfare reform initiative, ensuring coordination between child support and other Federal programs, and developing national outreach strategies.

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## **A SUMMARY OF PROPOSALS**

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- #31. The Administration for Children and Families -- in conjunction with the Department of Education -- could assume a leadership role in developing a national model that would encourage paternity and child support education via the schools.
- #32. The Department of Health and Human Services, via the Administration for Children and Families, could take the lead in developing a comprehensive media campaign to reinforce the importance of having a child's paternity established and that child support is a "two parent" responsibility.
- #33. The Administration could develop an Executive Order or proposed legislation which would designate one month of every year as "National Child Support Month" in order to underscore the national importance of paternity establishment and child support.

### **DECOUPLING PATERNITY FROM WELFARE / CHILD SUPPORT**

- #34. Could establish a separate administrative component for paternity establishment services which is independent of the welfare and child support office and which serves all families equally. The entity's focus would be purely to provide paternity establishment services. However, referral would be made to the child support agency to the extent that such services are desired or participation required.
- #35. A related option would be to establish a paternity establishment-only function within the current child support agency.
- #36. A third option would be a hybrid of the first two. A separate entity could be established to pursue paternity in cases of voluntary acknowledgement perhaps in the form of some simple registration or paternity stipulation process but all other actions would remain with the child support agency (or courts). This would incorporate the hospital based program advanced by the Administration in Budget Reconciliation as well as parents who decide to pursue paternity establishment at some point after the birth.

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## A SUMMARY OF PROPOSALS

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### DUE PROCESS ISSUES AND LEGAL RIGHTS

- #37. The Federal Government could require states to have legislation which would allow natural fathers to bring a paternity action. This would be accomplished through Federal legislation.
- #38. The Federal Government could encourage (rather than require) states to have laws which allow the father to bring a paternity action.
- #39. The Federal Government could require states to have laws which require all paternity acknowledgement programs have procedures in effect that require fathers to sign a written statement acknowledging he understands his rights and waives them. This would be accomplished through Federal legislation.
- #40. The Federal Government could require states to have laws which specify that all paternity voluntary establishment programs must require mothers to sign a form stating that they clearly and knowingly understand their rights and the consequences of paternity establishment. This would be accomplished through Federal legislation.
- #41. The Federal Government could require states to have laws in effect which require that the parent who has been the child's primary caretaker prior to the determination of paternity shall receive a custody order when a paternity acknowledgement is made. This would be accomplished through Federal legislation.

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## **OUT-OF-WEDLOCK BIRTHS: STATEMENT OF THE PROBLEM**

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### **INTRODUCTION**

As we embark upon the 21st century, we find that the American family -- as we once knew it -- is undergoing phenomenal, structural change. The dramatic rise in out-of-wedlock births and an increase in the number divorces has (and will continue to have) a profound impact on the social and economic well-being of our nation's children and, in the long term, the health of our nation.

Unfortunately for millions of American children, these very same changes have subjected them to a **childhood of poverty** as many adults reject their basic parental responsibility to financially provide for their children.

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**In 1991, there were 65.9 million children under the age of 18 living in the U.S.; 14.6 million of these children lived in single parent homes headed by a female. These children are also more likely to experience poverty. In 1991, the poverty rate for children (under 18) living in a female-headed home was 55.5% compared to a poverty rate of 10.6% for children under 18 in married couple families.**

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**Sidenote:** In 1973, children surpassed the elderly (65 years +) in terms of percentages and actual numbers living in poverty.

Children of unwed mothers, as compared to divorced mothers, are particularly vulnerable to a life of poverty. When a child is born outside of marriage, the child's legal paternity must first be established before a claim for financial assistance or child support from the other biological parent can be pursued via the courts or the state. Unfortunately (and for a variety of reasons that will be discussed in greater depth later in this report) the best data available indicates that only 20 - 40 percent of children born out of wedlock have paternity established. According to 1989 data, 14.5% of unwed mothers receive child support compared to 53.5% of divorced mothers.

The point of this discussion is not to pass judgment on the morality of an individual's personal decision on family-related matters but rather to focus on the need - on behalf of the child and the general public -- to protect a child's needs. While our society has grown more permissive of alternative family lifestyles, we have yet to establish a social intolerance for those parents who abandon their parental responsibilities for the legal establishment of paternity and support for children born outside of marriage.

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## **OUT-OF-WEDLOCK BIRTHS: STATEMENT OF THE PROBLEM**

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Across the face of America, 15.5 million children are being raised in households where only one of two natural parents is residing. Eighty-seven percent (or 14 million) of these households are headed by the mother; approximately 13 percent are headed by the father. In 1990, 4.4 million children under 18 were living with a never-married mother.

As mentioned before, the dramatic increase in the number of out-of-wedlock births and the number of divorces during the last couple of decades is largely responsible for this social phenomenon.

### **OUT-OF-WEDLOCK BIRTHS**

- #1: In 1990, the number of children born to unwed mothers in the United States soared to an all-time record high -- 28% percent of all live births.**

On February 25, 1993, the National Center for Health Statistics (NCHS) reported that 28 percent (1.2 million) of all live births (4.2 million) in 1990 were to unwed mothers. These figures have more than tripled over the past 30 years. In 1960, less than 5.5 percent of all births occurred outside of marriage.

- #2: In 1990, the majority of black mothers (67%) gave birth to children outside of marriage compared to 20% for white mothers and 37% for Hispanic mothers.**

Despite the large number of out-of-wedlock births among black women, NCHS figures reveal that births to unmarried women rose faster for white rather than black women during the 1980's -- doubling for white women during the decade while rising 43 percent for black women (see Table A).

A breakout of the Hispanic population, by ethnicity, shows that there is also wide variance in the out-of-wedlock birth rate. For example, the out-of-wedlock birth rate was highest among Puerto Rican (56%) and Central/South American women (41%); mid-range were Mexican mothers at 33%; and the lowest out-of-wedlock birth rate among Hispanics was maintained by Cuban mothers at 18%. Last, Native Americans show a high out-of-wedlock birth rate of 54% followed by a 45% unwed birth rate among Hawaiian mothers.

This information will be important to keep in mind if and when efforts are undertaken to develop a National Child Support Education/Outreach Initiative.

**TABLE A: FAMILIES WITH CHILDREN UNDER 18 YEARS:  
CHANGING TRENDS, OUT-OF-WEDLOCK BIRTHS, AND DIVORCE RATES,  
1960, 1970, 1980, 1988, AND 1990**

Year and No. of Children in U.S.	Family Composition			Unwed Mothers: % of Total Births	Divorces (actual no.)
	Two Parent	One Parent	Other		
1960  63.7 million	White 90.9% Black 67.0% Hispanic *no data	White 7.1% Black 21.9% Hispanic *no data	White 1.9% Black 11.1% Hispanic *no data	5.5%	393,000
1970  69.3 million	White 89.5% Black 58.5% Hispanic *no data	White 8.7% Black 31.8% Hispanic *no data	White 1.8% Black 9.7% Hispanic *no data	10.7%	708,000
1980  63.4 million	White 82.7% Black 42.2% Hispanic 75.4%	White 15.1% Black 45.8% Hispanic 21.1%	White 2.2% Black 12.0% Hispanic 3.5%	18.4%	1,189,000
1988  63.2 million	White 78.9% Black 38.6% Hispanic 66.3%	White 18.9% Black 54.1% Hispanic 30.2%	White 2.2% Black 7.4% Hispanic 3.5%	25.7%	1,183,000
1990  69.3 million	White 20.0% Black 67.0% Hispanic 37.0%			28.0%	1,175,000

Sources: Census Bureau's Current Population Reports (Series P-23, No. 163) and "Statistical Abstract of the United States: 1991".

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## **OUT-OF-WEDLOCK BIRTHS: STATEMENT OF THE PROBLEM**

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- #3: An increase in poverty is related to an increase in female, single-parent families. In 1991, the overall poverty rate for children in female-headed households was 55.5%.**

Poverty rates among black and Hispanic children living in female-headed households is higher than for white children in similar homes. In 1991, 68.2% of all black children (under 18) living in a home headed by a single woman were poor. The rate for Hispanic children in these households was 68.6% where as the rate for white children in single-parent, female-headed households was 47.2% (see Table B).

- #4: Unwed mothers are less likely to receive child support than divorced or separated mothers.**

Poverty among unwed mothers is also associated with the appallingly small number who actually receive child support. Based on 1989 data, only 14.5% of never-married mothers received child support compared to 54% of divorced mothers (see Table C). According to Ellwood and Legler, "...for the majority of never-married mothers who do not get support, there is no award in place. And for the vast majority of those, paternity has never been established."

- #5: Unwed teen mothers are likely to end up on AFDC and/or other assistance programs.**

According to a 1988 report issued by the Childrens Defense Fund, 73 percent of unmarried teens receive welfare within 4 years of giving birth. In 1988, AFDC, food stamps, and Medicaid for families that were formed as the result of births to unwed teen mothers cost nearly \$20 billion.

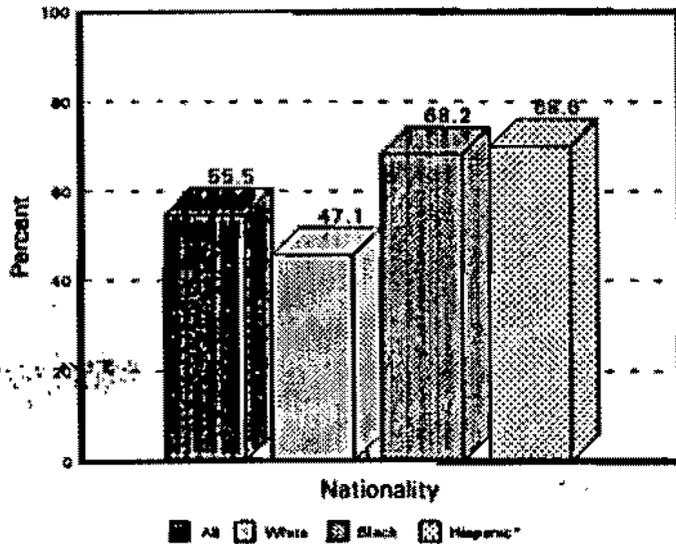
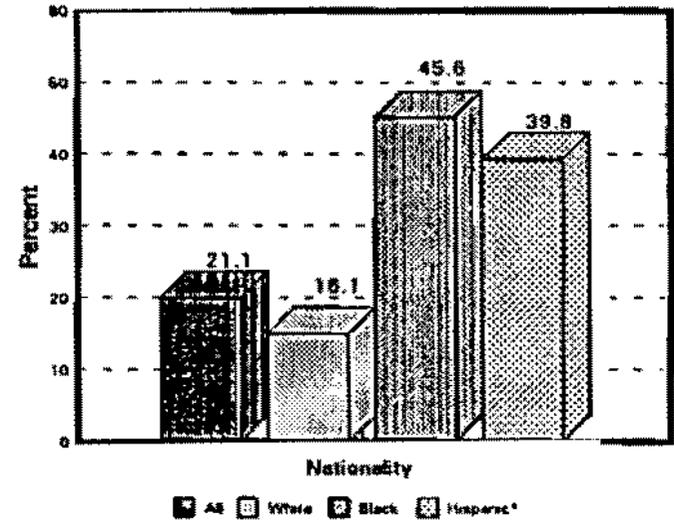
- #6: Unwed teen mothers have been documented as the least likely group of women to receive child support and paternity services.**

The results of a Wisconsin study (as cited in the final report of the U.S. Interstate Commission on Child Support) reveals that only 20 percent of young mothers who are single when their child is born pursue paternity establishment. The study also found that only 1 in 10 young mothers ever receives child support compared with 1 in 4 for older mothers.

# Table B: Poverty Status of Related Children Under 18 Years in Families, by Type of Family, Race, and Hispanic Origin: 1991

## Point #1: Children in Poverty

Approximately 21.1% of all children in all families were in poverty in 1991; 45.6% of the children in all Black families were in poverty and 39.8% of children in all Hispanic families were living in poverty.

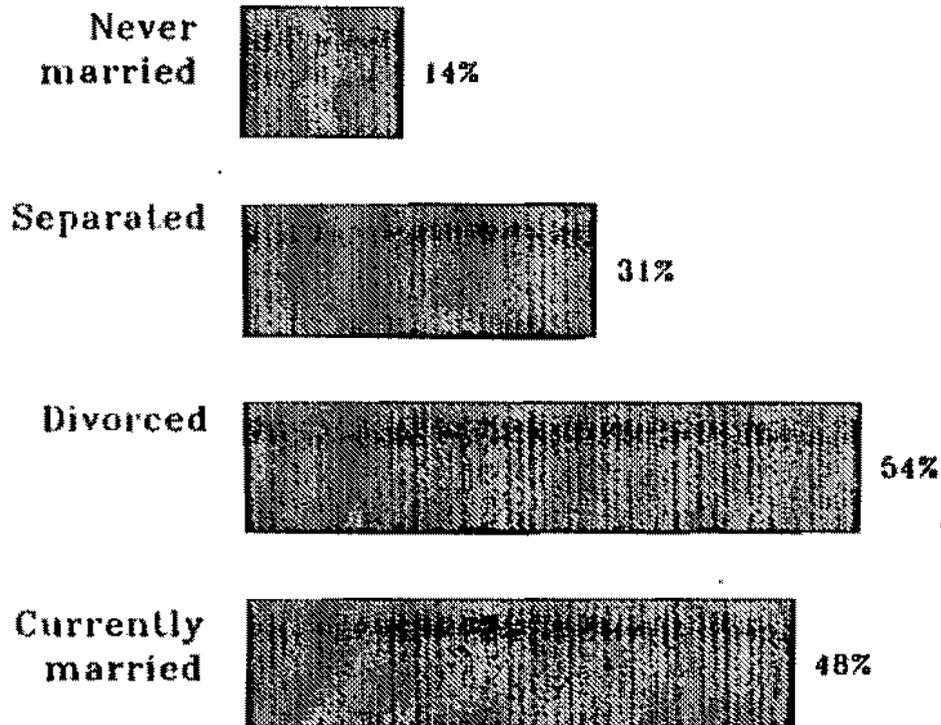


## Point #2: Female-Headed Households

More than half (55.5% under age 18; 65.9% under age 6) of all children in families headed by a woman with no husband were living in poverty.

\* Persons of Hispanic origin may be any race.

Percent of Custodial Mothers Receiving  
Child Support Payments from Absent Fathers,  
by Current Marital Status, 1989



Source: Kristin A. Moore, "Our Nation's Children: Trends." Testimony before the U.S. House of Representatives Committee on Post Office and Civil Service, Subcommittee on Census and Population, June 23, 1992. Compiled by Child Trends, Inc., Washington, DC, from data from the US Bureau of the Census.

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## OUT-OF-WEDLOCK BIRTHS: STATEMENT OF THE PROBLEM

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- #7:** Out-of-wedlock births are more likely to occur among teens whose mothers have less education, whose mothers received welfare, and who experience stressful events (i.e., parental separation and geographic moves) while growing up.

Based on twenty years of longitudinal data on nearly 900 children, researchers with the University of Wisconsin's Institute for Research on Poverty are measuring the influence of family background, individual characteristics, the availability of economic resources while growing up, and particular disruptive family events on the probability of both teen out-of-wedlock births and the receipt of AFDC if such births occur. Their analysis and results, to date, highlights: 1) the potentially important roles of parental education and separations in influencing teen behavior; and 2) that policies intended to reduce the incidence of women dropping out of school would reduce the incidence of out-of-wedlock births for the next generation.

- #8.** More older mothers are having children outside of marriage. In 1990, only 25% of unmarried women who had a child were under 20, while another 39% were 20 - 24, and the remaining 36% were 25 and over.

While the actual number of out-of-wedlock births among teenage mothers have remained consistently high over the years, there has been a dramatic increase in the birth rates among older mothers which surpasses the increase in birth rates among the 15-19 year olds. For example:

### Births to Unmarried Women (in thousands)

<u>Age Group</u>	<u>1970</u>	<u>1989</u>	<u>Percentage Difference</u>
Under 15 years	9.5	10.6	+ 12%
15 - 19 years	190.4	337.3	+ 77%
20 - 24 years	126.7	378.1	+ 198%
25 - 29 years	40.6	215.5	+ 431%
30 - 34 years	19.1	106.3	+ 457%
35 years and over	12.4	46.3	+ 273%

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**OUT-OF-WEDLOCK BIRTHS:  
STATEMENT OF THE PROBLEM**

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- #9: After birth, the chances of successful paternity establishment decline as the child grows older.**

There is mounting evidence that while virtually every mother knows the identity of the father, and the vast majority are still in contact with him at the time of birth, the intensity and frequency of contact falls off rapidly in many cases (Ellwood and Legler). For example, in the State of Washington, the courts have traditionally succeeded in establishing paternity in 32 percent of cases where the child is under six months old. That percentage decreases to 14 percent by the time the child reaches age 4. This information underscores the importance of paternity establishment at birth or shortly thereafter.

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## **UNIVERSAL PATERNITY, IN GENERAL: PROS / CONS**

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The concept of **UNIVERSAL PATERNITY** is based upon the belief that:

1. children born outside of marriage are entitled to a decent standard-of-living that both biological parents can provide, to the extent possible, despite the fact they are not married;
2. a child's paternity should be established at birth or even earlier;
3. paternity establishment (and subsequent child support) is an important strategy to combat the high incidence of poverty among children born out of wedlock;
4. the Federal government and States must expand their efforts to encourage parental responsibility for out-of-wedlock children;
5. the Federal government, in conjunction with the States, must make a concerted effort to dramatically increase the number of paternities established for out-of-wedlock children. Currently, paternities are established for only 20% - 40% of the total number of children born outside of marriage;
6. the Federal government and States must provide a "continuum of opportunities" -- outside of the traditional child support (IV-D) network -- for mothers and/or fathers to establish paternity in the simplest possible manner while protecting a father's due process and rights;
7. the public, at large, should be educated on the legal and financial consequences and responsibilities of having a child outside of marriage; and
8. States are held to a high standard of paternity performance based on the total number of out-of-wedlock births.

### **PROS:**

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- o Would potentially result in a significant reduction in number of out-of-wedlock children living in poverty.

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## UNIVERSAL PATERNITY, IN GENERAL: PROS / CONS

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- o Would likely result in a greater number of child support orders once paternity is established, thereby increasing the possibility for an out-of-wedlock child to experience a more financially secure future.
- o Would likely result in a reduction in the number of unwed mothers dependent upon the government for financial assistance and social services and, as a consequence, a reduction in taxpayer funds used to support these programs;
- o Could alter public attitudes which, in turn, could have a positive effect upon a number of factors attributable to poverty including teen pregnancy, family violence, child abuse, and crime.
- o Put a halt to the disenfranchisement of the father from the American family by examining, reinforcing, and enhancing the notion that America's children need their fathers for their emotional as well as financial support.

### CONS:

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- o Custody: Often times, there are incidences when a biological, unwed father will deter the biological mother from seeking child support services based on the threat the he will seek custody of their child in retaliation. A universal approach to paternity establishment may exacerbate this kind of behavior.

However, this potential "threat" could be countered by publicizing the facts that the vast majority of unwed mothers who have physical custody of the child, are the child's primary caretaker, are granted legal custody unless it can be proven that a mother is unfit to care for the child (see Section VI on Due Process Rights and Legal Issues for further discussion). While most State laws are neutral on their face regarding the custody rights of each parents, courts -- in the best interest of the child -- lean heavily in favor of the parent who has done the majority of the nurturing.

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**UNIVERSAL PATERNITY, IN GENERAL:  
PROS / CONS**

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- o **Potential for Physical Violence:** In extreme instances, the pursuit of paternity establishment could provoke a biological father -- who is emotionally or psychologically unstable -- to threaten or actually carry out acts of physical violence towards the biological mother and/or child. If universal paternity establishment is promoted on a national level, it would be critical to publicize the "good cause" provision which exempts a custodial parent from custody or visitation by the non-custodial parent in cases where there is potential harm to either mother or child.
  
- o **Due Process Issues and Rights:** Both parents may not be adequately informed about the advantages and disadvantages of establishing paternity although many States have developed routine procedures for advising putative fathers of the rights and obligations that accrue from the establishment of paternity (see Section VI on Due Process/Rights for further discussion).
  
- o **Additional Fiscal Costs:** In FY 1992, there were an estimated 1.3 million out-of-wedlock births. To the best of our estimates, paternities for 40% of these births were established via the child support (IV-D) program. If paternity is to be established for, let's say, 70% of all children born out of wedlock, we would need to establish an additional 400,000 paternities per year. There are obvious cost implications in promoting "universal paternity" which may require additional Federal funds.
  
- o **Incentive Payments to Hospitals:** A number of States which have hospital-based paternity programs reimburse their hospitals \$20 per paternity established. Should the Administration's proposal on in-hospital paternity clear be enacted, additional costs might be incurred.
  
- o **Incentive Payments to Unwed Parents:** It has been suggested that in order to encourage paternity establishment, unwed parents be "rewarded" with a small cash payment.

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**UNIVERSAL PATERNITY, IN GENERAL:  
PROS / CONS**

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- o **Improvement Awards to States Based on Performance:** It has been suggested that the Federal government provide States with financial rewards for improvements made and/or performance outcomes in the area of paternity establishment. This could be accomplished through a new financial incentive program for paternity establishment or through the restructuring of the current child support incentive grants to States.
  
- o **Organizational Impact:** The impact of universal paternity establishment upon the State-administered child support (IV-D) program is unknown at this time and dependent, in part, upon the resolution of a number of issues (i.e., whether or not paternity establishment is decoupled from welfare and/or child support; whether or not the existent IV-D program would be the designated state agency responsible for paternity cases -- both within and outside the IV-D program, etc.). It is also not clear there is the infrastructure to handle the increased number of genetic testings which may result.
  
- o **Perception of Government Interference:** There will be those who view any Administration policy (and practices) advocating universal paternity establishment as an example of government intrusion into the personal affairs of private citizens.

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## **UNIVERSAL PATERNITY: "Conditional" Approach**

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### **CURRENT ENVIRONMENT**

The advent of Government involvement in paternity establishment was driven by growing welfare rolls directly attributable to the rise in single parent families and the lack of parental support. Enacted in 1975, title IV-D of the Social Security Act created a federal-state program for the location of absent parents, establishment of paternity and support, and enforcement and collection of support.

All families receiving Aid to Families with Dependent Children (AFDC) payments due to the absence of a parent from the home are required to cooperate in the establishment of paternity and the collection of child support and to assign their rights to such support to the State. Since 1987, applicants and recipients of Medicaid have been similarly required to cooperate in the establishment of paternity as a condition of eligibility. However, these cooperation rules were later relaxed to exclude pregnant women and women with newborns of less than two months old. This action was taken because of concern that women would not obtain essential prenatal and early infant care if forced to cooperate with child support agencies.

In FY 1991, of those required to cooperate as a condition of Federal assistance, paternity was established on behalf of 346,007 children.

### **EXPANSION OF PATERNITY COOPERATION TO OTHER FEDERAL AND FEDERALLY-ASSISTED PROGRAMS**

In the last few years several proposals extending the requirement to cooperate with child support enforcement agencies as a condition of eligibility for other Federal and Federally assisted programs have surfaced. Food Stamp benefits and HUD subsidies are the two most frequently mentioned. (SSI has also been mentioned but because the vast majority of these children are eligible for Medicaid and thus would for the most part be receiving services, these proposals have been largely disregarded).

Similar to the concerns prompting the relaxation of the requirement for Medicaid cooperation, past proposals before Congress to extend the requirement for cooperation as a condition of Food Stamp benefits have met with substantial opposition from Food

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## **UNIVERSAL PATERNITY: "Conditional" Approach**

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Stamp advocacy groups. These groups were concerned that the nutritional needs of pregnant women and children would suffer in cases where custodial parents chose to do without Food Stamp benefits rather than cooperate with the Child Support agency.

However, the Food and Nutrition Services (FNS) of the Department of Agriculture has undertaken a study to evaluate options for increasing the use of child support enforcement services among food stamp households, focusing on cases which do not receive AFDC. The study was conducted in five States and will concentrate on current patterns of child support among food stamp households; reasons for non-participation among child support eligible non-AFDC food stamp households; and the benefits and costs of actions that FNS might take to promote child support participation among non-AFDC food stamp households. Their draft report is expected sometime during the summer.

In addition to the mandated participation of families receiving public assistance, any other family may obtain paternity establishment services from the state Child Support agency by making application and payment of an application fee. States may also charge fees for services and recover costs not otherwise covered by such fees.

### **Private Actions**

All remaining nonmarried mothers must rely on the willingness of the putative father to assert paternity or seek private assistance in its establishment. Pursuing paternity through private avenues can be expensive. There are attorney's fees, court filing costs and possibly genetic tests to pay for which could cost several hundred dollars.

Included in this group are those parents who have no inclination for whatever reason to initiate paternity establishment proceedings on behalf of their children. Although we know very little about these parents and their apprehension to initiate paternity proceedings, this option will focus primarily on what actions the government could take to effectuate cooperation of these parents in the establishment of paternity for their children.

### **Move toward universal services**

The Administration's 1994 proposal for in-hospital paternity establishment takes a big step forward in removing the distinction between public and private paternity cases (refer to Appendix for summary of legislation).

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## **UNIVERSAL PATERNITY: "Conditional" Approach**

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Under the proposal, States will be required to establish in-hospital paternity establishment programs aimed at securing the voluntary establishment of paternity of all children. Recognizing that often public assistance is not needed or sought until sometime after the birth of a child, the proposal was not limited to current public support cases but rather is directed at all out of wedlock births in the State.

### **Discussion**

Child support can make the difference between a childhood in poverty and a better quality of life. Paternity establishment, alone, can be of lasting value to the children by creating a greater sense of identity, providing important health-related information, and conferring rights to dependents' benefits and inheritance. While public policy cannot address the emotional and behavioral effects changes in family structure have on children, it can lessen the consequences by insuring that parents acknowledge their children and take responsibility for their needs.

Before family structure underwent dramatic change in the 60's, out-of-wedlock birth and other forms of family disruption were held in check by social and legal sanctions. Marriages at the end of a shotgun and hushed adoptions were common responses to nonmarital birth at that time. They carried a strong message about the risks of premarital sex and created an intact family for the child.

While few would want to return to a time when individuals were forced by society to redress individual choices in behavior by such a draconian response, the effects of such choices may in fact be hurting children by not providing them with what should perhaps be a universal right to know both of their parents.

Following are options for taking a forceful approach in extending paternity establishment services to the maximum incidents of nonmarital birth.

There will always remain those cases which cannot be captured under an alleged universal system. Clearly, when a child is conceived by a single woman as a result of artificial insemination or where a mother, not dependent on any form of government assistance, will fight the system at all costs and refuse to cooperate, action by the state is foreclosed. However, to the extent that a forceful approach can be taken under which society embraces the message that failure to establish paternity hurts the child and cannot not be dismissed by a blind eyed approach, universal paternity acknowledgement and establishment can become more of a reality.

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## UNIVERSAL PATERNITY: "Conditional" Approach

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However, care must be exercised that the message we are sending is not one which questions choices in family structure but one which protects the child regardless of family structure.

The approaches are broken down between those which may influence the establishment of paternity in the private community (those with no ties to government assistance) and those which would expand and clarify the connection between paternity establishment and the receipt of public assistance.

### Private Community

With respect to the private community, the Federal government has very limited leverage to influence the behavior of parents who would otherwise ignore the paternity establishment rights of their children. While these children would clearly benefit from the non-financial benefits of paternity establishment to the same extent as children in families receiving public assistance (and may in fact benefit from the financial aspects as well), the only clear attachments their parents may have to the government is through the tax system. Thus, the options addressed with respect to these families focus primarily on a tax-based strategy to paternity establishment. Options include elimination of the dependent exemption and the dependent care tax credit when paternity is not established and the introduction of a tax credit when paternity is established.

Some rationale currently exists, however tenuous, between failure to establish paternity and the tax policies of the United States, given the high costs to taxpayers associated with out of wedlock birth and failure to establish paternity. Limiting the tax benefits associated with dependents to those who have sought paternity establishment for their children could produce a two-pronged benefit -- first, the risk of losing tax benefits may induce a greater number of families to seek paternity establishment services on behalf of their children, and second, savings to the Federal government resulting from the higher tax liabilities of families unwilling to pursue paternity establishment could be targeted to reduce costs of providing assistance to such at-risk families. Such a strategy may also produce an indirect benefit by sending a strong message that parents are expected to protect the rights of their children by establishing paternity on their behalf.

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## UNIVERSAL PATERNITY: "Conditional" Approach

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However, consideration must be given to the relative effects such tax policy changes would actually have in influencing the incidence of paternity establishment. Families living on the margin may have a relatively greater financial interest in protecting their right to claim dependent exemptions and child care credits than higher income families who may view such sanctions as meaningless in view of their overall income and tax liability. Analysis by Treasury Department tax policy staff may be necessary to insure that an approach is not advanced which treats lower income families unfairly while doing little to assist children in other families, or which ultimately hurts those the government is attempting most to protect in this arena--at-risk children.

### Recipients of Federal Assistance

While the Government has some leverage over families receiving Government assistance, the scope and breadth of such leverage is not clear on its face. As previously indicated, families receiving AFDC and Medicaid are currently required to cooperate with the State Child Support Enforcement agency in establishing paternity and securing support. However, cooperation in the AFDC and Medicaid programs is generally a subjective determination made by the caseworker.

The statute provides for purposes of AFDC eligibility that applicants and recipients are required to cooperate in establishing paternity and obtaining support unless good cause for refusing to cooperate is found, as determined by the State agency in accordance with standards prescribed by the Secretary which take into consideration the best interests of the child.

The implementing regulations interpret cooperation to mean: appearing at a child support office to provide information or documentary evidence; appearing as a witness; providing information or attesting to the lack of information under the penalty of perjury; and payment of any support received directly from the noncustodial parent to the child support agency. Good cause for refusal to cooperate is provided in circumstances indicating that cooperation would be "against the best interests of the child" including: reasonable anticipation of physical or emotional harm to the child; physical harm to the parent or caretaker relative, emotional harm to the parent or caretaker relative of such nature or degree it reduces such persons capacity to care for the child; cases where the child was conceived as a result of rape or incest; or, situations where adoption proceedings or adoption considerations are pending.

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## **UNIVERSAL PATERNITY: "Conditional" Approach**

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In the limited number of cases sanctioned for refusal to cooperate, the caretaker's needs are excluded from the grant award and protective payments are made on behalf of the child.

The above definition of cooperation and the related sanction for failure to do so have been criticized as being so weak and inconsistent that they are of questionable value in promoting the establishment of paternity and the pursuit of child support. The options provided in this paper with respect to recipients of Federal benefits thus speak to a tighter cooperation standard and suggest a tougher sanction and perhaps incremental benefit reductions when cooperation is not completely forthcoming.

It is worth noting that a stricter cooperation requirement is, in fact, provided in Senator Bradley's Interstate Child Support Act of 1993, with respect to child support assurance demonstration projects. Under that proposal which links paternity establishment to eligibility, good cause for noncooperation is limited to the danger of physical abuse to the custodial parent. The only other exception provided are cases in which failure to establish paternity result from circumstances which are beyond the control of the custodial parent.

Cooperation is defined specifically in the bill as naming the father, providing information to verify his identity, including address, employment, and education information, the identity of relatives and friends, his telephone number, SSN, date of birth, or any other specific information that with reasonable effort could lead to the identity of such person to serve with process. Further, the custodial parent would be required to continue to provide all relevant information required by the State, appear at required interviews, conferences, hearings or legal proceedings if notified in advance and unless illness or injury doesn't prevent attendance and, submission to genetic tests.

While this appears to be a stricter standard than provided under the AFDC program and one which may produce better results in establishing paternity, it is important to keep in mind that under such demonstrations, a safety net is provided if such parent fails to meet this standard, i.e., AFDC. No such safety net currently exists should a harsher sanction than exclusion of the caretaker relatives needs in the AFDC grant be established. A separate issue paper addresses the issue of noncooperation, however, very little information is currently available on the actual magnitude of the problem.

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## **UNIVERSAL PATERNITY: "Conditional" Approach**

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Also provided under the options for an aggressive approach to paternity establishment is an option for extending the requirement to cooperate with the child support agency as a condition of eligibility for other forms of government assistance, like food stamps and housing assistance.

However, the breadth of such an expansion is worth considering in terms of current program capacity as well as potential increases in the number of paternities established. It has been estimated that approximately 700,000 - 750,000 custodial parents who receive Food Stamp and Housing assistance benefits may benefit from the establishment of paternity and the receipt of child support services, after excluding recipients who are already receiving services from the State child support agencies because of AFDC eligibility or because they have voluntarily sought such services.

This number, however, includes families who are currently or may become eligible for Medicaid benefits (but not AFDC) and thus have been or would be automatically referred to State child support agencies. Further, the Medicaid expansions enacted between 1988 and 1990 will mean, according to a Special Report on Children and Health Insurance, that by the year 2002, all poor children under age 19 will be eligible for benefits (Rosenbaum, Hughes, Harris and Leiu, January 1992). Since cooperation with the child support agency is a condition of Medicaid eligibility, the overlap between these families and food stamp and housing assistance recipients can be expected to be substantial and to grow over the next ten years. The tax policy staff needs to look at relative increases and decreases to both segments of the populations.

### **AGGRESSIVE ACTION TO INFLUENCE UNIVERSAL PATERNITY ESTABLISHMENT**

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#### **PRIVATE COMMUNITY**

(i.e., families receiving no form of government assistance, private institutions, hospitals, etc.)

##### **Incentives**

- #1: Revise tax structure to provide a paternity establishment tax credit for parents
- #2: Pay a flat incentive for cooperation

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## **UNIVERSAL PATERNITY: "Conditional" Approach**

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- #3: Provide incentives for hospitals to take an aggressive role
- #4: Pay for a percentage of hospital costs or co-payments
- #5: Provide government financed or subsidized costs for all expenses associated with establishment

### Sanctions (or Disincentives)

- #6: Lost dependent exemption for tax purposes
- #7: Lost child care tax credit
- #8: Lost EITC
- #9: Sanction hospitals in the form of lost Medicare and Medicaid funding for not participating (separately, could also do this to enforce hospital cooperation with voluntary paternity establishment legislation)

### Strategies to Influence Participation

- #10: A presumption is made that paternity will be established and all out-of-wedlock births automatically entered into a State system of paternity establishment. Cases are not eliminated from the system until the party(ies) fully understand the benefits they are withholding from their children
- #11: All States are required to enact laws separating the issues of paternity establishment from custody and visitation issues (advance detail later in the paper)

### PROS

- o Tax incentives/losses apply regardless of the age of the child when paternity is established, benefiting older children as well as newborns. Message is sent that all families -- regardless of their economic circumstances or tax bracket -- have a responsibility to establish the paternity of their children

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## **UNIVERSAL PATERNITY: "Conditional" Approach**

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- o Payment of a cash incentive, particularly if the amount is substantial, or a portion of the birthing costs could induce families already concerned about the costs of hospitalization and caring for their newborn to participate
- o Offering to pay costs of testing combined with information that such costs would be borne by the putative father later if initial offer was refused could compel some to cooperate
- o Aggressive hospital involvement has been shown to have significant impact.
- o Opening a "case" immediately and putting burden on parent to reject services could send message that society expects paternity to be established and that paternity establishment is a routine step in all cases of out-of-wedlock births. Message that paternity establishment is routine next step after nonmarital birth could diminish putative father's ability to exert control over mother to not apply for services
- o Eliminates immediate concerns regarding custody and visitation, especially if decoupled from other child support services
- o Sends message that paternity establishment is not a gender-specific issue but a child's right - mothers as well as fathers will be pursued to uphold this right for their children
- o Opposition may be overcome through education and growing public experience

### **CONS**

- o Significant costs may be associated with providing additional tax benefits, incentive and hospital payments, and costs of paternity establishment
- o Lost dependent's tax exemption or child care credit or EITC could hurt people on the margin while having little effect on those in higher income brackets
- o May be viewed as discriminating against cases of marital birth. Could produce perverse incentive of causing families to delay marriage or to delay paternity establishment until family can receive benefits

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## **UNIVERSAL PATERNITY: "Conditional" Approach**

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- o Costs and resources that would be necessary to operate a system of presumed cooperation may be significant
- o Would undoubtedly be controversial and may be viewed as coercive
- o Sanctions against hospitals may cause them to drop from Medicaid program participation resulting in decreased accessibility of needy families to medical care
- o May induce paternity establishment in cases where it is not in the child's best interest
- o Paternity will still not be established for all children
- o Attitudinal changes take time, benefits will not be immediate
- o Exacerbates current problems associated with lack of staffing/funding

### **As a Condition of Receipt of Federal Assistance**

#### **Incentive**

- #12: As a condition of receipt of any form of government assistance, parties must cooperate in the establishment of paternity

—this includes the mother and a putative father who is being sought for paternity establishment

—assistance includes food stamps, housing assistance, and if implemented, child support insurance

- #13: Receipt of assistance hinges on applicant's immediate cooperation (could be viewed as sanction)

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## UNIVERSAL PATERNITY: "Conditional" Approach

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### Sanctions

- #14: Loss of benefit for noncooperation - With respect to cash assistance, may want to think of a sanction with more monetary influence than denial of caretakers needs
- #15: Incremental benefit reductions to the extent that cooperation is not completely forthcoming, i.e., missed interviews

### Strategies to Influence

- #16: Rethink and redefine good cause - rules need to be tightened up. Penalties should be assessed when perjury found
- #17: Train in-take workers on optimal interview techniques and benefits of paternity establishment
- #18: Provide payments to informers with information leading to paternity establishment

### PROS

- o To the extent that cooperation in paternity establishment is made a condition of receipt of other benefits, incidence of paternity establishment should increase
- o Similarly, to the extent that sanctions are directed at putative fathers who have failed to cooperate in State actions to establish paternity (contempt cases), incidence of paternity establishment could increase
- o Interview technique has been shown to have a positive impact on outcome
- o Unemployment compensation program has found the use of informants to be a valuable method in determining fraud

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## **UNIVERSAL PATERNITY: "Conditional" Approach**

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### **CONS**

- o Harsher sanctions could diminish family's ability to meet the needs of the child
- o To the extent that caseworker discretion remains in determining "cooperation" and "good cause", effectiveness can be lost

### **REFERENCES**

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## **UNIVERSAL PATERNITY: "Outreach" Approach**

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The "outreach" approach to paternity establishment encourages the voluntary acknowledgment of paternity via public education, incentives, and expanded opportunities for establishing paternity within and outside of the IV-D program.

The objectives of this approach are:

1. to change public attitudes and behavior towards paternity establishment and child support for out-of-wedlock children;
2. to underscore the legal and financial consequences of out-of-wedlock births;
3. to make the system more "user friendly" for establishing paternity;
4. to create a climate of social intolerance for those parents who neglect their responsibilities; and, most importantly,
5. to reinforce and publicly recognize the efforts of all unwed parents -- particularly non-custodial fathers -- who assume responsibility for their children.

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## **IN-HOSPITAL PATERNITY ESTABLISHMENT**

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Paternity establishment should begin at birth for the single most important reason that an unwed father is likely to be present at the time of his child's birth. In a study conducted by Esther Wattenberg, over two-thirds of unwed fathers were present for the birth of their children.

Unfortunately, as time goes on and the novelty of a child's birth wears thin, the contact between the unwed mother and father rapidly deteriorates. Consider the following data compiled by researchers Price and Williams:

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## UNIVERSAL PATERNITY: "Outreach" Approach

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<u>Time Frame</u>	<u>Contact Between Parents Maintained</u>
Prior to Birth	84 percent
26 months after birth	64 percent
36 months after birth	55 percent

When the unwed mother is no longer in contact with the unwed father, the State has a more difficult job in locating the father. Locating the father in paternity establishment proceedings is the biggest obstacle encountered by the child support agency.

It is for precisely this reason that a number of States are providing unwed parents with the opportunity to establish paternity in the hospital at the time of birth. As of December, 1992, an estimated 15 States had in-hospital programs that were fully operational, pending legislative approval, and/or in the planning stages. Washington State, which pioneered the concept of in-hospital paternity, has one of the highest in-hospital paternity establishment rates at 40 percent.

And it is for precisely this reason that the Administration has before Congress a legislative proposal which would require that all States provide unwed mothers and unwed fathers with the opportunity to establish paternity at the time of their child's birth. If this legislation is approved, as drafted, by Congress, it would take effect October 1, 1993.

Therefore, the assumption has been made that the aforementioned legislation will be approved by Congress -- along with procedures for expediting paternity establishment -- and will not be singled out as a separate option.

What will be explored are options that could be undertaken by the Federal government and/or States in terms of facilitating a smooth transition to and acceptance of a national, hospital-based paternity establishment program.

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## **UNIVERSAL PATERNITY: "Outreach" Approach**

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- #19:** A number of States which have hospital-based paternity programs reimburse their hospitals \$20 per paternity established. One option would be to consider adopting this policy on a national level.

Hospitals tend to be large, conservative, strapped-for-cash institutions, especially the ones which serve low-income populations. We have noted in a handful of the hospital based programs that there has been a traditional, institutional resistance to change. They are also experiencing staff shortages. Nurses, social workers and Vital Statistics staff are overworked and with a Federal mandate and universal program of paternity establishment, their workload will increase. A cash reimbursement for each paternity established may ease the tendency to resist efforts of a new hospital-based program initiative.

The cost of paying hospitals \$20 per paternity establishment could be significant. For purposes of discussion, if you assume the Federal government would pay the entire \$20 for each paternity established and that, on average, you would establish 40% of the out-of-wedlock births (using Washington State's experience), the cost could be substantial.

- #20:** Given the growth in the number of women electing to deliver their children at birthing centers vs. the hospital, the Administration might want to consider extending the reach of the proposed legislation to birthing centers via program regulations or guidelines once paternity legislation is approved by Congress.
- #21:** The Federal government could take the lead in briefing all relevant national organizations (i.e., American Hospital Association, National Association of Nurse Practitioners, National Association of Public Hospitals, Vital Statistics Association, National Association of Hospital Admitting Managers, etc.) regarding a national hospital-based paternity program, to thwart initial resistance, and to elicit their support in disseminating critical information to their affiliates at the local level on the benefits and requirements of the new paternity legislation.

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## **UNIVERSAL PATERNITY: "Outreach" Approach**

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According to reports from the States, many of the hospital-based programs have encountered resistance in start-up phases. Part of this resistance has been attitudinal on the part of staff. Nurses, social workers and others are concerned about driving away the mother by mentioning the father in context of child support.

- #22.** Immediately following passage of the Administration's proposed legislation requiring in-hospital paternity programs, the Federal government could develop a comprehensive media strategy that would provide information on the new law, and for unwed parents, the opportunity to establish a child's paternity at the hospital.

An "information blitz" on the opportunity to establish paternity in the hospital via the mainstream media (print and radio), State and local public organizations, national associations, and other government programs (i.e., Head Start, Maternal and Child Health Services, etc.), may assist in maximizing the legislation's potential impact.

- #23.** The Federal government could develop appropriate training curricula and information materials that States could use in working with hospital staff, notary publics, vital statistics staff, etc., in the development of a hospital-based paternity program.

- #24.** The Federal government could develop a national brochure on "in-hospital" paternity designed for unwed mothers and unwed fathers on what to expect when either IV-D staff, social workers, hospital personnel, and/or notary publics approach them regarding their option to establish paternity immediately following the birth of their child.

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## **CREATING ADDITIONAL OPPORTUNITIES**

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As mentioned previously, the best of the in-hospital paternity establishment programs -- Washington State -- has a success rate of about 40 percent. They are also getting 20 percent of their affidavits from parents outside of the hospital setting (which means they waited more than 10 days to sign or that the affidavits were for older children).

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## UNIVERSAL PATERNITY: "Outreach" Approach

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Washington's experiences in the paternity establishment arena are encouraging since they provide evidence that the paternity of older children can be picked up under the program. Likewise, research conducted by Esther Wattenberg points to the fact that teen mothers need help about three years after the birth of their children -- a time when the father is gone and they are no longer living with parents.

Even if all States were able to replicate Washington State's success rate for in-hospital paternity establishments, we have to recognize the reality that 60 percent of the unwed mothers and unwed fathers are choosing NOT to establish paternity at the time of their child's birth.

The point of this discussion, thus far, is to emphasize the importance of providing an unwed mother/father a "continuum of opportunities" to establish paternity at birth AND to maintain a high level of program efforts directed to unwed parents of older children as well.

Federal and State governments can expand their "point-of-contacts" with unwed parents in order provide maximum opportunity for paternity establishment AND to promote the norm that paternity establishment is "doing the right thing" for their children.

**#25:** As a condition of funding, the Federal government could require that other health-related facilities (i.e., pre-natal clinics, "well-baby" programs, family planning centers, etc.) inform and provide unwed parents with the opportunity to establish legal or initiate paternity establishment proceedings.

There is a dearth of information, as well as experience, on the potential impact that other health-related facilities might have on the rate of paternities established for out-of-wedlock children.

The State of Delaware is currently experimenting with one such approach. In a cooperative effort between Delaware Health and Social Services Divisions of Public Health (DPH) and Child Support Enforcement (DCSE), a pilot project was implemented at the Northeast State Service Center on January 2, 1992. The project involves integrating the paternity establishment process into the education component of DPH's comprehensive prenatal care program. This pilot was envisioned as providing another non-adversarial, voluntary consent opportunity in the process of paternity establishment.

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## **UNIVERSAL PATERNITY: "Outreach" Approach**

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While the pilot was overwhelming successful in disseminating information on the benefits of paternity establishment and child support, it was less successful in producing actual outcomes. Within the first year of the pilot, 84 percent of the 125 women receiving pre-natal services agreed to accept counseling on paternity establishment/child support. However, there were only three admissions of paternity out of 62 actual births.

This simply indicates that more information is may be needed with regard to alternative sites for voluntary paternity establishment. National demonstration projects might be warranted before a final decision is made as to whether this should be a mandatory requirement of health-related programs and facilities.

### **AFTER BIRTH: DEVELOPING STRATEGIES FOR IMMEDIATE FOLLOW-UP AND LONG-TERM OUTREACH**

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It can be argued that a woman, immediately following the birth of her child, is not always in the best physical or emotional state to be exercising her best judgment in making major decisions such as her child's legal paternity status.

She also may resist any attempts made to persuade her to initiate action on her child's paternity for three important reasons: 1) the likelihood that the biological father of her child is present at the time of birth; 2) the likelihood that she is hoping for a permanent commitment from the father; and 3) that custody and visitation rights will be raised by the father.

Unfortunately, as the data indicates, relationships between over half of unwed mothers and unwed fathers (see page 24) begins to deteriorate within the first year of their child's life.

Six months, a year, or two years following the birth of her child, an unwed mother may be in a totally different frame of mind and circumstances compared to the time of her child's birth. This is typically applicable to teen mothers. The realities of single parenting may make her think twice about paternity establishment and child support. It is at this point that the State IV-D agencies could seize upon this "window of opportunity" by providing follow-up information on paternity establishment and, should she so desire, access to child support services. Despite the current emphasis on paternity at birth, we must not curtail our efforts to reach unwed mothers of older children and/or to take advantage of those "windows of opportunity" for conducting targeted outreach.

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## **UNIVERSAL PATERNITY: "Outreach" Approach**

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- #26: State Child Support (IV-D Agencies) could be encouraged or required to contact unwed mothers, who were unable or chose not to establish paternity in the hospital, with information on the benefits of paternity establishment and child support along with an application for services.**

It could be left up to the discretion of States as to how this contact would take place (i.e., mail, in-home visits). However, in order to ensure a uniform effort nationwide, the Federal government might want to specify the exact time-lines for follow-up with an unwed mothers (i.e., 6 months, 1 year, or 2 years) after her child's birth.

- #27: Information on the benefits of paternity establishment and an application for child support services could be included along with the automatic issuance of a child's social security number following birth.**

In today's society, 60 percent of America's children will experience life in single parent home before they reach the age of 18 years. Including information on paternity establishment and child support services along with the issuance of SSN's may be an extremely practical action to take -- one that holds the potential for a wide-range impact.

- #28: Pediatricians could either be encouraged or required to display information materials on paternity establishment/child support -- as provided by the State IV-D office -- in a visible place in their waiting rooms.**

After birth, the next sure point-of-contact with an unwed mother is the pediatrician's office. Voluntary cooperation rather than a mandate would probably be the preferred route to follow in this instance. The American Academy of Pediatricians might be able to coalesce support for this option.

- #29: Obstetricians and/or gynecologists could be encouraged or required to advise unwed mothers of the possibility of establishing or expediting paternity establishment via genetic testing at the time of their child's birth.**

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## **UNIVERSAL PATERNITY: "Outreach" Approach**

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This option is geared primarily to those unwed mothers who are either estranged from the biological father of their unborn child and/or those who have a good idea that efforts to have her child's paternity established will be contested after birth. Genetic testing at birth speeds up the paternity process by a minimum of 6 months -- the minimum age that a child must be before most labs are willing to analyze blood samples.

- #30. Efforts could be undertaken by the ACF Assistant Secretary to establish a focal point within the organization that would be responsible for "marketing" the Administration's welfare reform initiative, ensuring coordination between child support and other Federal programs, and developing national outreach strategies.**

There is an overwhelming need to reach and inform unwed mothers about the benefits of paternity establishment and child support.

As cited in a 1992 focus group study conducted by the Women's Legal Defense Fund, one of the major reasons why a significant number of female single-parents do not receive child support and/or have paternity established for their children is based on the widespread absence of information or misinformation on child support services.

There exist innumerable opportunities to disseminate information on paternity establishment and child support services to potential IV-D clients through existing Federal programs (i.e., DHHS programs, WIC, Food Stamps, etc.). Yet, there is an institutional barrier or professional mind-set that we sometimes encounter when coordination attempts are made which underscores the need to "educate" professional staff as well. A focal point in the Assistant Secretary's office would provide the leadership necessary to implement an effective program coordination and outreach strategy.

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## **PATERNITY / CHILD SUPPORT EDUCATION VIA THE SCHOOLS**

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- #31. The Administration for Children and Families, in conjunction with the Department of Education, could assume a leadership role in developing a national model that would encourage paternity and child support education via schools for State and local communities to emulate.**

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## UNIVERSAL PATERNITY: "Outreach" Approach

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The purpose of this outreach effort is two-fold: 1) prevention -- to reach adolescents before they become parents; and 2) intervention -- to engage a greater number of unwed parents as recipients of paternity and child support services. Development of this proposed model could build upon existing educational programs such as "family life education curriculums" and "teen pregnancy services."

The bottom line is that unwed teen mothers are more likely to end up on AFDC than older unwed mothers. According to a 1988 report issued by the Childrens Defense Fund, 73 percent of unmarried teens receive welfare within 4 years. In 1988, AFDC, Food Stamps, and Medicaid for families that were formed as the result of a birth to unwed teen mothers cost nearly \$20 billion in taxpayer funds.

Unwed teen mothers also have been the least likely to receive child support and paternity services. For example, the results of a Wisconsin study (as cited in the final report of the U.S. Interstate Commission on Child Support) reveals that only 20 percent of young mothers who are single when their child is born pursue paternity. The study also found that only 1 in 10 young mothers ever received child support compared with 1 in 4 for older mothers. Most young mothers never reach a child support agency.

Part of the explanation for the low participation rates of teen mothers in the child support program could possibly be attributed to a general feeling on the part of the IV-D network that teen fathers aren't worth pursuing since they have very little to no earning power at the time of their child's birth. However, according to the results of research findings compiled by David Ellwood and Paul Legler in a draft paper entitled "Getting Serious About Paternity", this is no excuse. Apparently, several bodies of research studies strongly suggest that "...incomes of fathers, particularly young fathers, are often low initially, but that the incomes often grow dramatically over time."

### NATIONAL PATERNITY AND CHILD SUPPORT MEDIA CAMPAIGN

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Most would argue that today's record number of out-of-wedlock births is symptomatic of a much larger social disorder. This disorder entails a weakening of social responsibility and individual accountability, crime and poverty, and the waning influence of our social institutions to teach and encourage responsible behavior.

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## **UNIVERSAL PATERNITY: "Outreach" Approach**

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The time has come to reverse this trend by having government hold biological parents accountable for the children they create. As President Clinton has remarked, "Governments don't raise children, people do. And even people who aren't around ought to do their part to raise the children they bring into the world".

It is also time to create an atmosphere of social intolerance for those individuals who intentionally avoid their responsibilities to their children. Unfortunately, public attitudes do not "change overnight". Nonetheless, we have evidence that long-term efforts which continuously repeat a social message (e.g., anti-cigarette smoking, Mothers Against Drunk Driving, etc.). can produce dramatic changes in behavior and attitudes.

**#32: The Department of Health and Human Services, via the Administration for Children and Families, could take the lead in developing a comprehensive media campaign to reinforce the importance of having a child's paternity established and that child support is a "two parent" responsibility. Other "sub-messages" that could be communicated are as follows:**

- o Do the Right Thing! Avoiding parental responsibility is not socially acceptable.
- o Consequences of teen pregnancy mean legal and financial responsibilities whether you are married or not.
- o Put the needs of your child first, **ESTABLISH PATERNITY!**
- o Children are entitled, by law, to a certain level of financial support until they reach at least 18 years of age.
- o Society really does value the important role that fathers can and do play in the lives of their children!
- o Societal recognition of the hundreds of thousands of "good dads" who fulfill their parental responsibilities.
- o Child support services, including paternity establishment, is **NOT** a welfare program – it is a public service!

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## **UNIVERSAL PATERNITY: "Outreach" Approach**

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### **NATIONAL CHILD SUPPORT MONTH**

**#33: The Administration could develop an Executive Order or proposed legislation which would designate one month of every year as "National Child Support Month" in order to underscore the national importance of paternity establishment and child support.**

The advantages of establishing a National Child Support Month would:

- o enable the Administration and OCSE to launch a major media campaign on the importance of paternity establishment and the availability of child support services; the President and/or cabinet officials could use their offices as the bully pulpit from which to direct public attention to the plight of single parent families and the importance of parental responsibility;
- o enable State and local communities to launch, simultaneously, public affairs campaigns including outreach activities via the schools; OCSE could make this a part of it's state plan requirements for child support funds; and
- o draw media and public attention to the fact that the Administration on Children and families, DHHS, is the focal point in the Federal government primarily responsible for the welfare of the American family.

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## DECOUPLING PATERNITY FROM CHILD SUPPORT / WELFARE

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### DECOUPLING FROM WELFARE

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The benefits of paternity establishment to society are nearly always couched in terms of reducing taxpayer liability rather than protecting the needs of children. While inarguably a respectable goal, the message which has been sent is that paternity establishment is only important and expected when indigent children are involved and then only to the extent that government coffers can be replenished. The non-financial benefits of paternity in this environment as well as the benefits to children not reliant on public assistance, while well established, are often viewed as secondary or nonexistent.

Some believe that the link between paternity establishment and welfare, or more generally paternity establishment and financial liability have served to create a serious obstacle to more universal paternity establishment, effectively ignoring the needs of children born out of wedlock unless or until government assistance is required. Families that have no connection to government assistance are isolated from the process and in turn perceive establishment of paternity as a link to the welfare community to which they have no interest or as a combative process whose primary goal is to exact a financial return.

In turn, the message received by welfare families is that paternity establishment is not a social norm or benefit which is automatically provided to their child through the welfare system but rather a repercussion of their reliance on public assistance and a tool to alleviate the government from providing such assistance.

Esther Wattenberg has been a major proponent of decoupling the issue of paternity establishment from the strategy of financial inducement. Her studies find that 80 percent of parents believe that it is important to have both names on the birth certificate and that selling paternity establishment as a first step to financial responsibility alienates many who would otherwise willingly acknowledge. Since public assistance in many cases may not be necessary until some time after birth, decoupling the financial aspects may better provide for paternity establishment early in the child's life when it is easiest to secure while also providing for immediate support order establishment if it is later sought.

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## DECOUPLING PATERNITY FROM CHILD SUPPORT / WELFARE

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These and other research findings suggest that paternity establishment efforts would be better received and more productive if decoupled from the issue of welfare. The approach as presented most often is two-fold:

- o first, to refocus the goal of paternity establishment from one that benefits the government to one which benefits the child and,
- o second, to separate and eliminate the adversarial approach associated with a system that is sanction-based and non-friendly.

These strategies are not independent but causal -- to the extent that attitudinal and institutional changes are made to focus on the needs of the child rather than to recoup government assistance, the less the program will be viewed as adversarial and legalistic. Similarly, to the extent that a less antagonistic approach is pursued, the more those involved will perceive that they are benefiting their child, rather than the bureaucracy.

Following are options which could be pursued to effectuate the decoupling process. A more extensive list of pros and cons has been provided for option 1 which is the most extreme approach. Many of these would also apply, to a more limited extent, to the other two options.

- #34. **Could establish a separate administrative component for paternity establishment services which is independent of the welfare and child support office and which serves all families equally. The entity's focus would be purely to provide paternity establishment services. However, referral would be made to the child support agency to the extent that such services are desired or participation required.**

### Advantages

- o Eliminating the focus of the financial aspects of paternity establishment may invite greater voluntary acknowledgement. In cases where the parents are still intimate, advocating protection of the child's financial needs may be meaningless since they would undoubtedly view their child as having the support of both parents.

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## **DECOUPLING PATERNITY FROM CHILD SUPPORT / WELFARE**

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Similarly, may invite the cooperation of fathers who do not currently have the means to provide financial support for their child but who want to remain involved with the child.

- o Would create a more positive attitude about paternity establishment which does not alienate the father or induce his withdrawal from the child.
- o Research evidence indicates that the most powerful incentive for getting paternity established may not be financial. Especially at birth, when hopes for the child's future are the focal point, the benefits of establishing lineage and providing a commitment and connection between father and child may be the most compelling incentive. To the extent that action is perceived to be legalistic and evasive may undermine the connection between the child and the concern and pride of parents.
- o Providing a universal and centralized response to paternity establishment sends the message that paternity establishment is a routine and fundamental next-step to nonmarital birth rather than a responsibility limited to those dependent on government assistance.
- o Would remove paternity from an adversarial bureaucratic structure under which fathers typically become defendants and mothers plaintiffs. Some contend that the more the process looks and feels like an adversarial one, as opposed to one designed to help and protect the child, the less willing fathers and mothers may be to cooperate.
- o May receive more respect and invite better cooperation from the hospital community. All of the hospital-based paternity establishment programs have encountered resistance in start-up phases. Part of this resistance has been attitudinal on the part of staff. Nurses, social workers and others are concerned about driving away the mother by mentioning the father in the context of child support.

### **Disadvantages**

- o Problems currently encountered because of fragmentation in paternity establishment may be magnified.
- o Many advocate establishment of paternity and support as a single action. Congresswoman Kennelly's, Interstate Child Support Act of 1993 would require such a single action, with provision for temporary support.

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## DECOUPLING PATERNITY FROM CHILD SUPPORT / WELFARE

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- o Would be resisted by those who believe in a diametrically opposed approach to welfare and paternity establishment, i.e., co-location. Utah developed a pilot project in Ogden and Provo to increase the number and timeliness of paternity establishment through co-location of the IV-D and AFDC offices.

They cite numerous cases where a welfare applicant appears with the alleged father and can be referred directly to the IV-D offices one floor below where the couple can stipulate to paternity. Staff believe that the instant referral to the IV-D agency which can do the more probing interviews necessary to paternity establishment, the strong encouragement they offer (including holding the welfare form), the immediate review of the stipulation, and the interaction between programs helps immensely.

- o Link between welfare and paternity establishment provides additional power and incentive for inducing cooperation. If completely decoupled, sticks may be lost for cooperation, (though rules could be changed to require that such families first receive 'referral' from office of paternity signaling cooperation).
- o May raise due process issues if parents are not fully and clearly advised of the financial liability which may later result from paternity stipulation. In two States' voluntary establishment programs, no link was made between child support and paternity to avoid resistance. However, the approach has been viewed as deceptive or misleading and one which violates the fathers rights.

- #35. A related option would be to establish a paternity establishment-only function within the current child support agency.

### Advantages

- o As discussed above, if support order establishment was decoupled from paternity, additional parents may actively seek such services or be willing to stipulate.
- o To a more limited extent than the first option, may establish the perception that the primary objective is to benefit and protect the child.

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## **DECOUPLING PATERNITY FROM CHILD SUPPORT / WELFARE**

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### Disadvantages

- o Effectiveness of attitudinal changes may be lost. A paternity establishment program which remains closely tied to welfare receipt, continues to send the message that the real beneficiary is not the parents or the child but the government.
- o May require States to establish a dual approach to paternity establishment, particularly to the extent that paternity establishment and support order establishment involve a single hearing/action.
- o May have very little effect since parents can now apply for services and request case closure prior to the State's pursuit of support award establishment or enforcement action.

36. A third option would be a hybrid of the first two. A separate entity could be established to pursue paternity in cases of voluntary acknowledgement perhaps in the form of some simple registration or paternity stipulation process but all other actions would remain with the child support agency (or courts). This would incorporate the hospital based program advanced by the Administration in Budget Reconciliation as well as parents who decide to pursue paternity establishment at some point after the birth.

### Advantages

- o May influence increased voluntary acknowledgment as provided under option 1.
- o May provide for better cooperation of hospitals (also discussed in option 1).

### Disadvantages

- o Would continue dual approach to paternity establishment.
- o Does not send strong message for universality. May only ease process for those who would have established paternity anyway (through child support agency or privately).

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## **DUE PROCESS ISSUES AND LEGAL RIGHTS**

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### **Introduction**

The following is a discussion of some of the legal concerns that arise when considering a universal paternity establishment system. After highlighting the issues, the discussion turns to a review of each issue in more depth and identifies options or potential actions to address these issues.

### **Overview of Major Issues**

There are a number of issues related to the legal rights of both the biological father and mother when discussing paternity establishment programs or procedures. These include the following:

- o Who is or should be entitled to bring a paternity establishment action?
- o How are the due process rights of fathers protected in a paternity establishment program?
- o Should mothers have the right to refuse to participate in a universal paternity establishment system?
- o How does paternity establishment affect the visitation and custody rights of parents? What protection, if any, should custodial parents have with regard to visitation and custody?

### **RIGHT TO BRING A PATERNITY ACTION**

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State law defines who has legal standing to bring a paternity action. The U.S. Commission on Interstate Child Support indicates that almost all states have laws which allow a person claiming to be the father to bring a parentage action to determine if he is the child's father. In addition, 17 states have adopted the Uniform Parentage Act (UPA), which specifies that the child, the natural mother, all presumptive fathers, and all alleged fathers have standing to bring a paternity action. The UPA also grants "any interested party" (i.e., a state agency or another

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## DUE PROCESS ISSUES AND LEGAL RIGHTS

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third party acting on behalf of the mother or child) the right to bring action where a presumption arises because the alleged father has held the child out to be his.

An issue related to who has standing to bring a paternity action is that of joinder. Joinder is a legal concept related to parties who are involved in an action which results in litigation and whether these parties can or should file suit together. In the case of a paternity proceeding, the issue is whether the mother, the child, and the state agency can and should jointly file suit against the alleged father. State laws vary as to whether the child must be joined in the case and whether a child who is not joined as a party is bound in the outcome of the case.

In many states, "privity" can be established between the suing party (the mother and/or the state agency) and the child. Privity is a legal doctrine that prohibits a party from being named in the case because there is sufficient commonality of interest between the parties. Privity findings can bar a child from bringing a separate action if the mother or state agency has already initiated a paternity action, regardless of whether the child is joined in the action.

The U.S. Commission on Interstate Child Support has recommended that states bring action against an alleged father without joinder of the child and that state privity laws govern the effect of nonjoinder. The Commission noted that the child should be given a chance to relitigate the parentage issue if his or her interests are not adequately represented and the state tribunal does not find privity.

With regard to children born while the mother is married, state law generally presumes that the husband is the child's father. In situations where the child's natural father is not the husband, state law varies about the ability of the natural parent to bring a paternity action. For example, California law includes a conclusive presumption that a child born in wedlock is a child of the marriage. This law was upheld in a 1989 U.S. Supreme Court decision. In *Michael H. v. Gerald D.*, the U.S. Supreme Court upheld the California statute which specifies that a child born to a married woman cohabitating with her husband, who is not impotent or sterile, is conclusively presumed to be a child of the marriage. A plurality of the court ruled that it is not unconstitutional for California to prefer the husband over the biological father as the child's legal father and to prohibit inquiries into the child's paternity.

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## DUE PROCESS ISSUES AND LEGAL RIGHTS

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While California's law makes it a conclusive presumption, most states still have a rebuttable presumption which may be challenged with clear and convincing evidence that the husband is not the biological father. In these cases, courts may examine what is in the best interests of the child with regard to changing legal paternity.

- #37. The Federal Government could require states to have legislation which would allow natural fathers to bring a paternity action. This would be accomplished through Federal legislation.

### PROS:

- o This would ensure that all states allow alleged fathers standing to bring a paternity action and give alleged fathers the same legal rights and opportunities as mothers.
- o Allowing alleged fathers to bring a paternity suit may increase the number of voluntary paternities established because some mothers who may have been hesitant to voluntarily establish paternity may be more willing to do so, rather than be drawn into a paternity suit.
- o Overall, more paternities (voluntary and non-voluntary) may be established because fathers prohibited from bringing suit will now be able to do so.

### CONS:

- o While it is not clear how many paternities will actually be established as a result of giving alleged fathers standing to bring suit in the states which currently prohibit him from doing so, it may not be a large number since there are only a few states which currently prohibit a father from bringing suit.
- o States without such laws may consider this an intrusion into their authority to determine state law and policy according to state needs and interests.
- o This may not resolve the issue in all cases because courts can still rule in individual cases that it may not be "in the best interests of the child" to determine or change paternity.

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## **DUE PROCESS ISSUES AND LEGAL RIGHTS**

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- #38. The Federal Government could encourage (rather than require) states to have laws which allow the father to bring a paternity action.

### **PROS:**

- o In addition to the pros outlined in the first option, this would eliminate the issue of the Federal Government intruding into state authority.

### **CONS:**

- o In addition to those specified above, the additional problem with only encouraging states to change their laws is that states may not change them.

## **RIGHTS AND PROTECTION OF ALLEGED FATHERS IN UNIVERSAL PATERNITY ESTABLISHMENT**

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There are two basic types of protection for fathers which must be addressed when developing a universal paternity acknowledgment program. First, it is essential that any universal paternity establishment system, whether it is a mandatory or voluntary system, guarantee protection of the alleged father's due process rights. Second, paternity acknowledgment programs must clearly explain to the father the financial and other responsibilities he will assume and rights he may have as a result of legally establishing paternity.

Many states operating voluntary acknowledgment programs have developed procedures to ensure that fathers are both fully informed of their due process rights and clearly understand the implication of admitting paternity prior to his voluntarily acknowledging paternity. Due process rights include the right to be notified of paternity proceedings, the right to be represented by an attorney, the right to genetic testing, and, in some states, the right to trial by jury. Some states also guarantee the alleged father the right for a court appointed attorney if he cannot afford one on his own.

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## DUE PROCESS ISSUES AND LEGAL RIGHTS

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Some states require the father to sign a document indicating that he is aware of his rights and that he agrees to waive them when voluntarily acknowledging paternity. A 1979 California Court of Appeals decision re-enforces the necessity of clearly presenting and explaining to the alleged father his rights before asking him to waive these rights.

In *County of Ventura v. Castro*, the California Court of Appeals concluded that alleged fathers must clearly and knowingly understand their statutory and due process rights before being asked to waive them. Specifically, the court found the state's law unconstitutional because it did not adequately provide for the protection of due process rights of the noncustodial parent and it did not address the manner in which the alleged father may waive those rights.

In addition, some states require a judicial determination to establish paternity even after the father signs a waiver, while other states require testimony from both parents before the court enters a judgment of paternity. This judgment, or "consent judgment" is the final resolution of the question of paternity. By signing the consent form, the alleged father is acknowledging paternity and agreeing to pay support.

The HHS legislative proposal to improve paternity establishment, currently before the Congress, would ensure that all states provide for the protection of the alleged father's due process rights. The HHS proposal requires states to have 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.

- #39. The Federal Government could require states to have laws which require all paternity acknowledgement programs have procedures in effect that require fathers to sign a written statement acknowledging he understands his rights and waives them. This would be accomplished through Federal legislation.

### PROS:

- o This would ensure that alleged fathers are properly informed of, and clearly understand their rights in all paternity acknowledgment programs.

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## **DUE PROCESS ISSUES AND LEGAL RIGHTS**

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- o This could speed up the actual acknowledgment process because alleged fathers would know at the front end of a case what they are being asked to do and would not be able to delay the process later by bringing litigation for lack of understanding their rights.

### **CONS:**

- o Careful implementation and enforcement is necessary to ensure that fathers really are being informed of the rights in a manner which they understand them. This could require the Federal Government to be in the position of telling states what specific rights they must guarantee fathers and force the Department into trying to define due process and what guarantees due process in drafting the legislation and/or in implementing guidance to states?
- o Litigation may not decrease because a father could still challenge the acknowledgment on grounds that he was denied due process prior to signing the waiver.

## **RIGHTS OF MOTHERS IN UNIVERSAL PATERNITY ESTABLISHMENT**

When establishing a universal paternity establishment system, it is just as important to protect the rights of the mother as those of the father. However, the current approach to establishing paternity does not necessarily protect mothers' rights. Nor does it ensure that mothers clearly understand the consequences of having paternity legally established. Instead, emphasis is placed on showing the mother why it is in her and the child's best interests to acknowledge paternity and on protecting the father's due process rights.

Current AFDC policy feeds into this emphasis on the positives and lack of attention to the negatives of paternity establishment. When a mother applies for AEDC, she is required by Federal law and regulations to cooperate in establishing paternity. There are a limited number of good cause exceptions, including the threat of physical or emotional harm to her or the child.

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## **DUE PROCESS ISSUES AND LEGAL RIGHTS**

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In many states, these good cause exemptions may not be clearly described in a manner that the mother can understand them. If the mother refuses to cooperate, her case is reviewed for good cause and she is reminded of the penalty for noncooperation. If good cause is not found, the state agency may impose sanctions on the mother's AFDC benefits. While the state agency may not vigorously enforce the cooperation requirement or may use a broad definition of "good cause," emphasis still placed on convincing the mother to cooperate and not on ensuring she understand the results of legally establishing paternity.

- #40. The Federal Government could require states to have laws which specify that all paternity voluntary establishment programs must require mothers to sign a form stating that they clearly and knowingly understand their rights and the consequences of paternity establishment. This would be accomplished through Federal legislation.

### **PROS:**

- o This would ensure that all women clearly understand their rights in a paternity acknowledgement case and the consequences resulting from establishing paternity.

### **CONS:**

- o If this step is taken without further action related to child custody issues (see discussion below), specifying the consequences of paternity establishment may decrease the number of paternities voluntarily established.

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## **CHILD CUSTODY AND VISITATION ISSUES**

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A separate paper prepared by the Paternity Work Group is focusing on the issue of maternal noncooperation in paternity establishment. However, one barrier to participation by some mothers is the fear that when paternity is legally established, the father will be entitled to visitation and custody. In some cases, alleged fathers use the threat of a custody battle as a way of intimidating mothers.

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## DUE PROCESS ISSUES AND LEGAL RIGHTS

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In many states, state law does not adequately protect an unwed mother's custody rights. According to the National Center on Women and Family Law, Inc., if a father petitions for custody, the mother is not entitled to a court-appointed attorney if she cannot afford one.

The National Center also reports that in virtually all states, the fact that the unwed mother has the child with her since birth does not create a presumption or other advantage in a custody dispute. Rather, in many states, when a father sues for change of custody, the court views the case as an initial custody decision. An initial custody decision requires the father to show "the best interests of the child" rather than showing "a change in circumstances" which is used in a change of custody case and the mother could lose custody. It should be noted that some states do presume that custody is with the natural mother unless otherwise declared.

Visitation rights another pose a problem for some mothers. This is particularly true in situations where the father has been or continues to be abusive to her and/or the children. The National Center on Women and Family Law notes that in many cases, it is virtually impossible for a mother to persuade a court to limit a father's visitation rights. The National Center suggests that in many cases, the mother has to wait until the father physically harms her or the child to end or restrict paternal visitation.

Current IV-D policy is to separate the IV-D agency from issues related to visitation and custody. At least two courts have dealt with visitation and custody in IV-D cases. In one case, a Michigan Court of Appeals ruled that a trial court in an URESA paternity action was not authorized to address or determine custody (*Lucas County (Ohio) Department of Human Services ex rel, Pollzie v. Wayne*). In another case, the California Court of Appeals ruled that a visitation agreement which was included in a stipulation drafted by the district attorney and entered into by both parents was not valid. The Court held that California law limited action by the district attorney to only paternity establishment and child support (*San Joaquin County (Calif.) v. Woods*).

In order to increase maternal cooperation in paternity establishment and to alleviate women's concerns regarding custody and visitation, some have argued for the adoption of the primary caretaker presumption as a remedy. The primary caretaker presumption is a presumption currently used by judges in some states when making custody determinations in divorce proceedings. Under this presumption, the court assigns custody to the natural or adoptive parent determined by the court to be the

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## **DUE PROCESS ISSUES AND LEGAL RIGHTS**

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primary caretaker of the child during the marriage. Under this recommendation, the parent who has been the child's the primary caretaker prior to the establishment of paternity would receive a custody order when paternity is legally established.

Currently, in many states, judges use the notion of a primary caretaker when making custody determinations in divorce proceedings. However, West Virginia is the only state which calls for a firm primary caretaker presumption. The West Virginia State Supreme Court has ruled as recently as 1990 that the state's law presumes that it is in the best interests of children of tender years (loosely defined as children under age of 14 but may vary according to a child's maturity level) to be awarded custody to the primary caretaker. The state court has defined the primary caretaker as the "natural or adoptive parent who, until the initiation of the divorce proceedings, has been primarily responsible for the caring and nurturing of the child." The court has also identified a series of duties to define caretaking, including a set of basic functions such as meal preparation, medical care, grooming, discipline, and education.

While West Virginia is the only state to require that the primary caretaker presumption be the sole presuming factor in custody decisions, a number of other states are using the notion of a primary caretaker as one of several factors. Courts in at least 16 state have shown some favor to the parent who has been deemed the primary caretaker before the divorce, while at least seven state courts have ruled that primary caretaking is a significant factor in assessing the child's best interests. At the same time, while courts in five states have noted the importance of primary caretaking, they have rejected it as the sole presumptive determinant in custody.

- #41. The Federal Government could require states to have laws in effect which require that the parent who has been the child's primary caretaker prior to the determination of paternity shall receive a custody order when a paternity acknowledgement is made. This would be accomplished through Federal legislation.

### **PROS:**

- o This would relieve custodial parents' fears of losing custody. Adoption of this presumption would provide custody of the child to the primary caregiver who would, most likely, be the custodial parent.

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## DUE PROCESS ISSUES AND LEGAL RIGHTS

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- o Removes the arbitrariness of court custody decisions and relieves fears of custodial parents who live in states where there is no primary caretaker presumption.
- o Removing the threat of a custody battle may increase the number of paternitys established. This is true in situations where the custodial parent is either the mother or the father because the presumption is gender neutral. Where the mother is the custodial parent, the presumption provides her with some assurance that she, as the custodial parent who has been most responsible for the child's care, will retain custody despite potential pressure from the noncustodial father, who in many cases is more financially secure and can afford to threaten the mother with litigation. Where the father is the custodial parent, he may be more willing to establish paternity because, as the custodial parent, he is likely to be determined the primary caretaker and retain custody.
- o Other side benefits may accrue as well, such as:
  - Awarding custody to the primary caretaker provides stability children child because they would stay with the parent who has been responsible for their care;
  - Awarding custody to the parent who has been primarily responsible for raising the child rewards the parent who has provided the nurture and care of the child in the past rather than the parent who has been absent.

### CONS:

- o Adoption of this presumption may not clarify the matter of custody if the term "primary caretaker" is vaguely defined. Defining the term is difficult and then, once a standard definition is made, determining which parent has been the primary caretaker may be even more difficult.

States which use the primary caretaker notion as one of many factors in determining custody in divorce proceedings have identified a series specific parental responsibilities or actions to define primary caretaker. However, in Minnesota, where the state supreme court attempted to use the primary caretaker preference as the only presumption, custody litigation increased after adoption of the standard as the primary presumption. This was because

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## DUE PROCESS ISSUES AND LEGAL RIGHTS

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parents were suing each other over which parent should be determined the primary caretaker. (In 1989 and 1990, the Minnesota state legislature passed legislation requiring the state court to use the primary caretaker preference as one of many factors in determining child custody.)

It is worth noting that this may not be a major issue in adopting the presumption for unwed parents (as opposed to divorcing parents) because in most situations, the child will be a new born or young baby who has probably lived with only one parent and that one parent has been the primary caretaker.

- o Adoption of presumption removes discretion from courts to determine custody based on the specific facts of individual cases. As a result, the best interests of the child may not be met. For example, in a paternity case, it is highly possible that the noncustodial parent may be prevented having visiting the child or having physical custody of the child by the custodial parent. Therefore, because he/she was not able to have custody of the child, they automatically would lose custody.
- o Using the primary caretaker presumption assumes that either the mother or the father is the primary caretaker and does not deal with those situations in which the primary caretaker is a relative, such as a grandmother or aunt.
- o In reality, use of this presumption will result in mothers receiving custody of the children in a majority of the cases and many would argue that it tips the scale too far in favor of the mother. This may be especially true in situations where the father has been prevented from seeing his child.

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# **APPENDIX**

## **Summary of the Administration's Proposed Legislation on Paternity Establishment**

## I. STARTING POINT

A legislative proposal regarding paternity establishment is moving forward on a separate track as part of the Administration's deficit reduction strategy.

### **Summary of the Legislation**

The proposed legislation would establish a new paternity performance standard. The 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.

In addition, the legislation would require that, as a IV-D State plan requirement, States adopt procedures to improve the effectiveness of paternity establishment, including procedures:

- 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;
- 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;
- 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;
- 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;
- 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;

- 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;
- for expedited processes for paternity establishment in contested IV-D cases;
- that require that a State give full faith and credit to determinations of paternity made by other States; and
- 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.

These amendments 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.

#### Where Do We Go From Here?

There are several issues which remain for consideration as part of the welfare reform process. The legislation provides a starting point for even more extensive reforms. For instance:

- Many of the provisions of the proposed legislation apply to non-IV-D cases. Further reforms can be made to create a universal system.
- The proposal mandates expedited process for IV-D cases. Further reforms could require administrative processes and extend use of such processes to non-IV-D cases.
- The proposed legislation provides a technical fix that corrects problems with the existing standard. However, the standard could be changed to include non-IV-D cases, and State performance under the standard could be tied to incentives.

**APPENDIX: OVERVIEW OF PATERNITY PROPOSALS IN  
INTERSTATE COMMISSION REPORT AND ADMINISTRATION'S LEGISLATION**

<b>Proposal</b>	<b>Interstate Commission Recommendation</b>	<b>Administration's Legislative Proposal</b>
Time limit for objections to genetic test results; otherwise results admissible without foundation	X	X
Presumption of paternity based on genetic test results	X	X
Use of default orders	X	X
Expedited processes for paternity establishment		X
Immunity from prosecution in connection with an acknowledgment of paternity; decriminalization of nonmarital parentage	X	
Civil proceeding; preponderance of the evidence	X	
Putative father given standing to bring action	X	
Joinder of child not necessary; privity law governs res judicata effect	X	
Use of temporary support orders	X	
Admissibility of taped admissions and birth-related bills	X	
Party with paternity previously determined cannot plead non-paternity in support action	X	
Revised paternity performance standard		X
Simple civil process for voluntarily acknowledging paternity	X	X
Hospital-based acknowledgment programs	X	X
Voluntary acknowledgment creates presumption of paternity and is admissible as evidence		X
Acknowledgment basis for seeking support		X
Hearing to ratify acknowledgment unnecessary	X	
Paternity determinations made by another State entitled to full faith and credit		X
Paternity outreach programs with 90% FFP	X	



## MEASURING PATERNITY ESTABLISHMENT PERFORMANCE

### EXECUTIVE SUMMARY

What would a measurement system for universal paternity establishment look like and what would have to be taken into consideration in order to implement such a system? This paper centers around a number of questions and considers options for each question:

1. How can it be determined who is in need of paternity?
2. How can all of the paternities established in a state be accurately captured?
3. How can old paternity cases on the rolls still awaiting establishment be tracked and accounted for in a universal system?
4. How can an accurate pool of eligibles for paternity be set up and maintained?
5. How can women who refuse to cooperate with paternity establishment be treated in the measure?

These questions are explored in terms of options, pros, and cons, and from them a measurement system based on in-hospital paternity establishments opportunities approached through the birth registration system is developed as an option.

After the birth registration option is described, the paper looks at three alternative theoretical systems for measuring a state's progress in a system of universal paternity. These alternative options are:

1. Using a national survey to measure state paternity performance. This system would greatly augment the Survey of Income and Program Participation (SIPP) so that it would be capable of yielding state specific data on out-of-wedlock birth and paternity establishment.
2. A national system based on social security numbers. This system builds on the requirement already in place for assignment of social security numbers to all children. The Social Security Administration would act as a clearing house, and essentially the system operates very much like the one built on the vital statistics model.
3. Using on the OCSE audit process to measure paternity performance. This system is built on the same model as the one presently in force - i.e., unmarried mothers are asked if they want help to establish paternity, and if they say yes, they are made "paternity only" IV-D cases that are treated for paternity as any other case, closed when paternity is established, and turn

up in samples when a state OCSE audit is done. The state is held to the audit standards for paternity as it is now except that there are a number of cases turning up in the sample that are women who responded affirmatively when asked if they wanted paternity established for them.

All of these systems will depend upon the setting of some standards that are deemed appropriate for the measurement system being used. All such standards will be arbitrary in that there is no scientific way to determine standards. There are serious problems and drawbacks for every method of measurement and these are described in the "cons" associated with each.

The paper ends with a discussion of the problems associated with measurement systems of state performance in general terms.

## MEASURING PATERNITY ESTABLISHMENT PERFORMANCE

### I. BACKGROUND AND PROBLEM STATEMENT

In 1970, 10.7 percent of the 3,731,000 U.S. births were out-of-wedlock. By 1990, 28 percent of the 4,179,000 births were out-of-wedlock. The absolute numbers are also revealing: in 1970 there were 398,700 out-of-wedlock births, by 1990 there were 1,168,384 such births. Clearly, there has been a huge increase in out-of-wedlock births in the last twenty years. Out-of-wedlock birth is now a major reason for welfare reciprocity. Children from such unions are least likely to receive child support and when they do the amounts are smaller than for children from former marital unions. In 1990, of the 4.2 million women living with children with fathers not present in the home and who have not been awarded child support 2.2 million (53 percent) were never married to the father. Out-of-wedlock birth is a major cause of child poverty.

Paternities are established in a number of different ways, but the principal institution responsible for this activity at the state level is the Child Support Enforcement (IV-D) Agency. IV-D sponsored establishment activity has increased greatly in a short period of time: from 1987 to 1991, the number of paternities established rose from 269,161 to 479,088 for an increase of 78 percent. Dramatic as this establishment effort has been, clearly it does not come close to solving the problem of establishing paternity, which is the gateway to support order establishment and collection of child support, and which in turn can alleviate child poverty.

Congress (in the Family Support Act of 1988) sought to hold states more accountable for establishing paternities. Thus, a performance measurement system was mandated for paternity cases within the IV-D system to check the progress and performance of states in paternity establishment. The implementation of that measurement system was problematic and new legislation has been proposed that essentially removes the competitive quality of the 1988 system and pits a state's performance in one year against its own performance during the previous year, as reported by its own data subject to audit. The new system works by measuring improvement from year to year, rather than by comparing a state to that of the average of all states or to the best states, as the old system did.

### II. UNIVERSAL PATERNITY ESTABLISHMENT

This paper lays out a system for measuring state performance in a context of universal paternity establishment. What is meant by "universal" paternity establishment as a working ideal? As used here the concept signifies that unmarried parents will be given every possible opportunity to establish paternity for their newborn children. Medical and genetic and inheritance reasons will be stressed as well as the right of every child to have its

parentage fully established. Paternity establishment could still remain the gateway into certain income and in-kind transfer programs such as AFDC and Food Stamps, and into Child Support Insurance, should that program be implemented. The same good cause and sanctioning system can be kept in place or even strengthened for recipient applicants, but the major focus would likely be on opportunists.

The term has the greatest implications for parents outside the welfare or child support systems. A serious attempt at education, persuasion, and the provision of opportunity to establish paternity shortly after birth, preferably in the hospital, would be implemented, the "working ideal" of which program would be the establishment of paternity for virtually every child born out of wedlock. Any new system has to take into account that a number of mothers will choose not to establish paternity regardless of how persuasive the reasons are for doing so, and that furthermore these women will not make demands on any public system for welfare or aid in obtaining child support. It is not known how many such women there are in a typical year. Nevertheless, the challenge will be to convince these women that it is desirable to get paternity established.

It is also important to note that of all out of wedlock births a certain number of these babies are adopted, their parents marry after the birth is registered, the mother marries another man who acts as father to the child and may even subsequently adopt it, and a few die. It cannot be a goal to establish paternity for every out-of-wedlock birth in a given birth cohort. There is a need to determine a workable percentage establishment goal short of 100 percent for each birth cohort. A measure of the paternity system's success will be how many new births short of the "exempted" categories named above can be established.

### III. THE GOAL OF A NEW MEASUREMENT SYSTEM

One possibility is to construct a system of near universal paternity establishment with an attendant measurement of results and a sanctioning/incentive system that holds the states accountable for results. The measure should identify and count a pool of eligibles for whom paternity needs to be established and a count of those for whom paternity has been established within some window of time after birth. The fraction of those who have been established from among those who need establishment is the basis of the standard for the states. What the standard should be is beyond the scope of this paper, which covers mainly measurement issues.

The system also assumes that the paternity establishment performance is being measured state by state in order to hold the states accountable for the successful operation of the paternity function. There will exist some standard that the states will

have to reach in order to satisfy the requirement to establish paternities, and depending on the option, states could be rewarded or penalized on the basis of the results of the measure of their performance. The percentage, the time frame within which establishment will occur after birth, and the nature of any rewards or penalties attendant upon the measure can be determined independently from determination of the measurement's form, the subject of this paper. The operating agency is assumed to be the state child support enforcement systems whose responsibility it will be gather data on paternity establishments and report them.

Some systems of paternity establishment measurement under universal paternity conditions will require that the measurement start with new cases only, since there is no way to capture appropriate data on older cases. Other suggested systems (e.g., the survey method and the audit method) would not particularly require starting the measurement of paternities from scratch at the beginning of a particular year.

#### IV. A SIMPLE PATERNITY ESTABLISHMENT MEASUREMENT SYSTEM

##### Option 1: Measuring paternity using the birth registration system

It is assumed that an in-hospital system will approach unmarried mothers, as determined by the questions asked by birth registrars about the mother's marital status and that those women saying they have an interest in paternity services will become IV-D cases, if only for paternity establishment. In order to generate from this method a performance measure, a number of steps requiring decisions are necessary.

The first question is how to determine who is in need of paternity. When the IV-D population comes in for voluntary or mandatory services, it quickly becomes obvious whether a child is in need of paternity establishment. In an expanded system, where paternity establishment is encouraged for every non-marital birth, IV-D will simply treat all cases for paternity establishment the same, except that they will have more tools to deal with them in an expedited manner, and there will be many more IV-D cases than there now are coming from the out-of-wedlock birth population as a whole.

Federal legislation may be needed to require all states to ascertain via the birth registration process all children who are born out of wedlock. Six states have laws on their books that prohibit the asking of the question about marital status of the mother as part of the vital statistics collection process, even though the form used by most states asks the marital status of the mother. For those states the marital status of the mother is now inferred by a process of name comparison. It is also possible to leave the system as it is and accept the estimates that the six states now make as accurate. Using the birth registration system as a basis for establishment measurement would be a possible first step in the process.

## Pros:

- o Simple system basically already in place, and respected
- o Would make birth registration process uniform across states
- o Quality of data would be improved (no estimation)

## Cons:

- o Birth registration is a state function with no federal financial participation
- o Might require federal expenditures to change
- o Would be opposed by National Center for Health Statistics on political grounds
- o Could be seen as anti-child protection of privacy in the states where marital status of mother is not recorded on birth registration information forms

The second question is how all of the paternities established in a state can be accurately captured. This is not problematic within the IV-D system. A universal system, however, will include non-IV-D cases where paternity has been established in different ways in a particular state, and some of those ways may have nothing to do with IV-D. It is, however, fairly clear that virtually all events that legally normalize a child's birth status eventually end up being registered in the court.

Birth can be normalized through a court process that is either adversarial or voluntary, with or without the IV-D system; through adoption; or through voluntary acknowledgement of paternity after the birth of the child through the birth registration process. All three of these events involve either the courts or state vital statistics or both. These two relevant reporting agencies should be able to capture almost 100 percent of all paternity establishments that IV-D does not already know about.

The state will have to devise ways to capture paternity establishments done outside of the IV-D system from these sources. It would seem feasible for courts handling adoption cases and vital statistics offices to report all such "legitimizing" actions to the state IV-D agency on a simple form, completed and filled in as part of the process. There are similar arrangements in most states connected with the divorce process and this type of simple exchange of information between two state agencies should not pose a formidable problem.

The third question is how can the system keep track of old cases, i.e., cases already on the books or coming into the system, but born before the initiation of universal paternity, and new cases, i.e., those that become part of the pool of eligibles upon the initiation of universal paternity. There is no way to avoid separating old and new cases if there is to be a strict measurement of performance of paternity establishment at the state level under a system of universal paternity. There simply is no system in place or is there one that can be constructed to measure the proper numerator and denominator for a paternity establishment fraction for old cases.

Options:

1. The system would start with new cases, those born and established after the initiation of a system that can capture the data. Meanwhile, states would continue to be responsible for these old cases through the audit standards and requirements.

Pros:

- o This is a simple system that builds on that already in place and adds elements where necessary to accommodate universal paternity
- o No paternity cases are left outside of the system with disincentives to work them

Cons:

- o Cases, depending on when the child was born, are assigned to two different systems for state accounting
2. Mandate minimum standards only for new cases, but reward the states with cash incentives for establishing old cases.

Pros:

- o Gives states financial incentives to establish paternities for old cases that have been difficult to work
- o Rewards states for penetrating their caseload, while not allowing a backlog of new cases to become more difficult old cases

Cons:

- o There is no way to predict with accuracy that this arrangement would prevent the slighting of old cases

The fourth question is how to set up and maintain an accurate pool of eligibles. A state will be interested in setting up and maintaining an accurate pool of paternity eligibles. Thus, once the out-of-wedlock births are counted, this number must be "refined" so as to reflect only those cases for which the state has a true and realistic responsibility and expectation of paternity establishment.

The following are events that would normalize an out-of-wedlock birth and thereby remove it from the state's remaining pool of eligibles: death of the child or father, adoption, subsequent marriage of the mother either to the child's father or another man who becomes de facto father, or the movement out of the state of the child's birth all affect the true size of the pool of eligibles and the state may want to try to adjust for these factors in order to pursue a more realistic paternity establishment responsibility.

Pros:

- o Allowing states to remove these children from the pool of eligibles will be viewed as fair to the states
- o Allowing states to use their own estimation techniques to refine the measure should not cause concern

Cons:

- o Technique allowing states to estimate the impact of events affecting the size of the pool of paternity eligibles may be overly generous to states
- o There is room for possible abuse by overestimation of the impact of these denominator-reducing events which would artificially inflate the paternity establishment measure

NOTE: An alternative option could remove from the pool of eligibles the children of unmarried mothers who refuse to establish paternity or cooperate with it.

The fifth question is how to handle in the measure women who refuse to cooperate with the establishment of paternity. Are non-cooperators to be removed from the state's pool of eligibles? If mothers are not obligated to cooperate with paternity establishment and will not, should the state be held responsible for establishment of those cases? Again, the state can reasonably argue that if services have been offered and the mothers refused outright the state should not continue to be held responsible and such cases should be removed from the pool of eligibles.

## Options:

1. Allow these cases to be removed from the pool of eligibles on the grounds that the state is unable to establish paternity for IV-D or non IV-D cases if the mother refuses to cooperate.

## Pros:

- o it will be difficult to apply any system of sanctions and awards in those cases for which the state cannot be held accountable

## Cons:

- o It would be easy to lump difficult cases under a category of "refuser" or "good cause" to make the paternity measurement look more favorable

2. Continue to hold states responsible for the establishment of paternity even if the mother refuses cooperation.

## Pros:

- o The measure that results will be a more accurate picture of the state of paternity establishment in a state including difficult cases and cases that, while now refused for services, might later come into the system

## Cons:

- o Will be perceived by states as a fairness issue - holding them responsible for cases they cannot expect to establish

## V. ALTERNATIVE MEASURES

There are other possible options that would also be compatible with universal paternity establishment.

## Option 2: USING A NATIONAL SURVEY TO MEASURE STATE PATERNITY PERFORMANCE

Questions could be added to some phase of the Current Population Survey, perhaps the wave in which state-specific unemployment statistics are collected. One question would ask respondents, male or female, whether they had ever had a child born out of wedlock, if so how old was the child, and if so, had paternity ever been established. The case would be thrown out of the count for all children born over eighteen years ago. These questions would set the denominator and the numerator of the paternity establishment fraction and standards could be set which would have to be met every year, on the basis of what the sample population told the enumerators.

## Pros:

- o Relatively simple concept, depends on obtaining answers to some questions on a survey once a year, and using data to figure simple percentage
- o Measure that is compatible with a number of different sanctioning or reward scenarios
- o Scheme is entirely divorced from child support or welfare reciprocity, rather asks questions tied specifically to paternity in a totally neutral and anonymous context
- o Census has increasing knowledge about how to ask questions concerning marital status and paternity

## Cons:

- o Subject matter very sensitive, Census has resisted asking these questions, on assumption that subject could refuse to cooperate further with the survey
- o Answers subject to lying
- o Some paternity issues are conceptually difficult for respondents to understand and answer even if willing to do so
- o Available indications are that such questions elicit a great deal of embarrassment and resistance
- o Could be viewed as overly intrusive government intervention in the private lives of people who are not asking for government services

Another sub-option is use of the Survey of Income and Program Participation (SIPP) which will be augmented in 1995 to 50,000 households every two years so that a state specific sample could be obtained for many states; provisions would have to be made for small states perhaps necessitating an augmentation far larger than is planned in order to cover all states. SIPP asks respondents to list all of the children in a household, one of whose parents is absent, and then it asks whether support payments were received for the youngest and oldest children in the household. One of the reasons for not receiving payments is "Paternity not established." If these questions were slightly reworded the paternity question could be asked of every child in the household.

## Pros:

- o Most of the same advantages as for the Current Population Survey
- o The survey could produce a wealth of information about the population producing out-of-wedlock children and the children themselves, information could be very helpful in shaping policy decisions about paternity

## Cons:

- o Survey would have to be substantially changed because it asks paternity only for oldest and youngest child
- o Census is resistant to asking sensitive questions about paternity
- o Validity of data would remain an issue for sanctioning decisions
- o Augmentation to cover representativeness of all states could be costly

In short, the survey route may be viable and as cost effective as any other form of measurement. Advice as to its legality as a sanctioning instrument, and estimates and feasibility for making one of the currently used surveys (the CPS child support and alimony supplement or the SIPP) a state specific instrument are needed. More negotiation and dialogue with Census is in order.

## Option 3: A NATIONAL SYSTEM BASED ON SOCIAL SECURITY NUMBERS

At birth each child could be assigned a social security number; this is almost a necessity now, because of the requirements of the Federal income tax system. Along with the recording of the Social Security number the child's birth status and State of birth go into its file. Whenever paternity is established by whatever means, or whenever a child dies or is adopted the event must become a part of the child's social security file along with the name of the state in which the event occurred. Social Security should be able to refine state universes by removing deaths and adoptions and keeping track of paternity establishments by state.

## Pros:

- o Relatively simple
- o Based on requirement already in force because of tax code

- o Should be fairly easy to arrive at a fairly accurate accounting of a State's caseload

Cons:

- o Would put huge additional burden on Social Security system
- o System would not be totally accurate in that it would not cover certain contingencies such as interstate movement of mother and child

Option 4: USING ONLY THE AUDIT PROCESS TO MEASURE PATERNITY PERFORMANCE

In a scenario where every unwed mother who wants paternity services will be offered them in the hospital and the IV-D agency will assume responsibility for the cases of these women to be treated like any other IV-D case, whether they are paternity only, or go on to need order establishment and enforcement functions, then the paternity establishment measurement process need not be a separate process from audit itself, which contains a standard for paternity establishment. Option 4 would simply build on the present system by adding in-hospital cases generated through the birth registration process and then measuring the extent to which these and all other paternity cases are worked through the audit. These cases are then subject to audit as are all cases, and states are held to the audit paternity standard. All other forms of measurement are dropped. Cases requiring only paternity would be dropped upon successful establishment. Mothers who refuse services can be counted for statistical purposes so that the state and federal governments can see what the extent of the paternity establishment problem is during any given year, but no action would be taken against a state involving the cases of mothers who refuse.

Pros:

- o System avoids enormous difficulties in setting up a separate paternity measurement system
- o Measurement system is based on a process that all of the states know and understand - the OCSE audit.

Cons:

- o Does not emphasize and underline the importance that Federal government wants to place on paternity, as a separate system does
- o Places burden on audit and would require additional resources

## VI. PROBLEMS WITH MEASUREMENT SYSTEMS IN GENERAL

There are legal questions involved in all systems of State performance measurement when sanctions are involved. The current law requires ACF to sanction states if they do not meet a certain paternity standard that includes a national average or 50 percent of their cases in need of establishment or some incremental increase each year. This performance standard is currently measured by states in two ways: a census of all cases, a point-in-time sample of their caseload. OCSE auditors have concluded that the data produced by the States is flawed. Furthermore the Office of the General Counsel says that the national average required by law is legally problematic in that it depends on accurate data from each of 54 jurisdictions or it can be challenged in court. The conclusion is that states can only be judged against their own performance, not that of other states, and the new legislation amends the old requirement along those lines.

Auditors have a history of sanctioning states on the basis of samples that are drawn by them with the aid of the state, but in every case of sanctioning there is a lengthy process during which the state challenges the audit findings on methodological bases. Audit has usually won these disputes, even though data cannot be demonstrated to be perfect. Data have to be defensible, though. The new legislation currently in Congress takes these principles into consideration, and any system proposed for measurement must also do so.

The data do not exist to be able to calculate one global universal paternity measurement based on the percentage of all out-of-wedlock births for which paternity has been established. Such a performance measurement can only start at some point in the future. Old data cannot be captured in this manner. When the new data begin to come in, at the end of the new system's first year, we will be able to tell how many children, born during that year, have had paternity established, been adopted, and died, and then relate these figures back to the number of out-of-wedlock births collected by Vital Statistics, or other means, for that year. This will give a relatively accurate paternity establishment rate for one-year-olds. The problems come into the system when looking backward. Certainly during the second year of the new measurement system, not only can the system capture the new rate for one year olds, but also the same accurate rate for children who are two years old, and so on as the measure is used from every year hence. Thus, the method would allow us, starting in a particular year, say 1994, to establish accurate rates for all age cohorts born that year and in the future.

## VII. DISCUSSION

The system described above assumes that paternity will remain a state function. It is based on relatively simple counts of paternities established and services offered to unwed mothers in hospitals and elsewhere. If a state establishes paternities within the IV-D system it will be favorably or unfavorably audited and sanctioned or not as required. If cases added under universal paternity do not become IV-D cases, then the new cases can be measured and perhaps an incentive payment given to states to work such cases. The magnitude and mix of sanctions and incentive payments would depend on the option chosen. There is also the possibility of paying incentives to mothers who give information leading to successful establishment. The whole issue of incentives in child support is being dealt with by other issue groups and is also a restructuring problem, and ultimately needs to be treated in the context of the whole child support program. The proposed measurement system should perhaps be demonstrated in several states before it is considered for general adoption.

JKManiha  
6/30/93



# ADMINISTRATIVE DETERMINATION OF PARENTAGE

## Executive Summary

This paper explores the possibilities for making the paternity establishment process an administrative one, rather than relying so heavily on the court system. Strategies which exist or could be developed to remove the disposition of a significant segment of paternity actions from the traditional court-based adjudicative approach are highlighted. A search to improve efficiency and cost effectiveness in operating a child support enforcement program has led a growing number of States to adopt administrative alternatives to enhance traditional judicial processes for the establishment of paternity. An administrative process offers a State child support agency an opportunity to streamline procedures, enhance quality control, consolidate and integrate management of the full-range of case-processing activities, and improve policy-making and decision-making in the agency. Moreover, a properly designed and operated administrative process can effectively ensure that constitutional due process guarantees are safeguarded.

Most administrative processes that encompass paternity establishment focus on purely uncontested cases in which the alleged father freely and voluntarily acknowledges parentage. As a result, the judicial system is freed to handle disputed actions. There is, however, an increasing recognition that use of highly probative genetic testing as a precursor to commencing formal adversarial proceedings can produce a significant number of acknowledgments among fathers unwilling to initially admit absent some independent objective "proof." At least three States--Ohio, Montana, and Iowa--have incorporated administrative mechanisms for directing the parties to submit to genetic testing. The features of these processes are described in this paper.

Use of expedited processes in handling paternity cases, now an option for States, would be required under the Administration's proposed legislation presently before Congress. Obviously, the Federal/State child support enforcement partnership faces a consequential juncture for revisiting the design of expedited processes. Undoubtedly, this will include serious consideration of administrative processes.

Redesigning a system steeped in judicial tradition can be a challenging, but not insurmountable, undertaking. Decisions will significantly impact--and will need to include involvement by-- all branches of State government, and the public. It will be important to clearly define the best way to structure and share responsibilities. The experiences of those States which have incorporated workable administrative processes into traditional court-based structures should be carefully considered. This paper includes descriptive illustrations of various administrative approaches being utilized among the States.

# ADMINISTRATIVE DETERMINATION OF PARENTAGE: DISENGAGING THE TRAPS OF TRADITION

## Introduction

This paper explores the possibilities for making the paternity establishment process an administrative one, rather than relying so heavily on the court system. It examines alternative approaches and methods for improving the resolution of paternity cases by reducing the need for judicial involvement.

Some of the processes currently available in various States that can serve as useful models for streamlined resolution of disputed paternity cases, including Ohio, Iowa, Montana, Maine, Colorado, and Oregon, are illustrated. Strategies which exist or could be developed to remove the disposition of a significant segment of paternity actions from the traditional court-based adjudicative approach are highlighted. Consideration is also given to how use of an administrative process and/or less adversarial strategies might strengthen and enhance present practices.

## Background

Concerns have been voiced that court-based, judicially-dependent mechanisms which have been relied upon to ascertain a child's parentage may hinder prompt resolution. Furthermore, such protracted processes may not be the optimum way of delivering justice in the majority of cases. Certainly where there is no real dispute about the ultimate issue, either because there is a willingness to acknowledge parentage at the outset, or where the results of genetic testing allay uncertainty, there is little benefit to congesting an already inundated docket with cases for which there exists no controversy--and for which delay is a disservice. Is there a less-complicated alternative that produces a just result while still guaranteeing that due process is afforded the participants?

It is well-established that State legislatures have the authority to set up an executive agency or board to resolve problems or claims between private parties.<sup>1</sup> State child support practitioners are becoming increasingly cognizant that cases processed through the judicial system often take inordinate amounts of time because the existing judicial procedures are rather ill-suited to establishing and continuing to enforce ongoing obligations, many of which span decades. In a world of burgeoning demands for services, resources to meet the need--particularly time--are precious commodities.

An administrative process is one way to relieve the courts of the overwhelming caseload by delegating it to a specialized agency in the executive branch. The administrative process offers many advantages in establishing and enforcing child support obligations. It permits child support obligations to be established more quickly due to fewer procedural roadblocks. By virtue of consolidation of functions (with the exception of appeals), an administrative process offers efficiency and eliminates splintering of responsibilities and competition for control among multiple entities.

An administrative process provides a State child support agency an opportunity to streamline procedures, enhance quality control, consolidate and integrate management of the full-range of case-processing activities, and improve policy-making and decision-making in the agency. Moreover, a properly designed and operated administrative process can effectively ensure that constitutional due process guarantees are safeguarded through proper notice, an opportunity for a fair and impartial hearing, and right to appeal the agency decision.

### Legislative History of Expedited Processes

Congressional acknowledgment of the need for efficiency and effectiveness in establishing and enforcing child support obligations is evident in the enactment of the Child Support Enforcement Amendments of 1984.<sup>3</sup> Among the comprehensive, sweeping mandates was the requirement that States have in effect and use expedited processes for obtaining and enforcing support orders, and at the option of the States, for establishing paternity.<sup>4</sup>

The legislative history suggests Congress' insistence that States make all reasonable efforts to expedite and otherwise improve the establishment of, compliance with, and enforcement of child support obligations. Citing problems resulting from the necessity of resolving disputes through courts, the House Ways and Means Committee observed that using the courts often exacerbates the adversarial nature of the proceeding with parents emerging as "victors" and "losers." The combination of long delays, poor case management and communication, and adversarial proceedings may create a climate which deters voluntary compliance with child support obligations. Administrative process is described as a statutory system granting authority to an executive agency to determine child support duties. . .wholly outside the court system. Procedures can be tailored to mesh with and complement existing legal and administrative arrangements within jurisdictions so inefficient systems can be bypassed or eliminated from the child support program.<sup>5</sup>

The Senate Finance Committee version specified that "States will be required to have in effect expedited processes within the State judicial system for establishing paternity and obtaining and enforcing child support orders." Expressly recognizing that a variety of procedures are used by different States, the Committee specified that the provision "does not mandate a particular procedure nor authorize the Federal agency to impose its views on the details of State court organization. What is required is that States adopt structures and procedures which will ensure that child support and paternity actions are processed in an expeditious manner."<sup>6</sup>

The Conference agreement on this provision "mandates that the States use expedited processes, but allows them to determine whether they are under the judicial system or administrative processes. States are permitted but not required to include paternity establishment in their expedited process. It is not intended that the Secretary be authorized to specify the particular administrative or judicial structures to be adopted by the States. Rather it is intended that the Secretary should measure a State's compliance with the provision primarily on the basis of the results it produces."<sup>7</sup>

In the preamble to final regulations issued to implement the Child Support Enforcement Amendments of 1984, OCSE responded to comments on the use of expedited processes for determining paternity and concerns expressed about the need for additional due process protections. It was recommended by a commenter that OCSE add additional requirements for determining paternity under an expedited process or limit paternity proceedings under expedited process to uncontested cases. OCSE explained that States that opt to include paternity establishment in their expedited process must provide whatever additional due process requirements are necessary for the protection of the parties involved in the proceedings. However, if a case involves non-support-related issues such as countersuits by the alleged father, the State may refer the case to its judicial system.<sup>8</sup>

According to official State IV-D plans submitted by the individual States, 20 States have indicated their election of the option to include paternity establishment in their expedited process (either quasi-judicial, administrative, or combination).<sup>9</sup>

### Changes On the Horizon

As drafted, the Administration's proposed budget reconciliation bill would eliminate the "at State option" language with respect to paternity establishment.<sup>10</sup> Thus, use of expedited processes in handling paternity cases would be required. Therefore, we can anticipate a fast-approaching critical juncture for revisiting the design of expedited processes and undoubtedly, consideration of administrative processes.

### Creating an Administrative Process

State legislatures must enact statutes expressly authorizing an administrative process. State constitutions prohibit agencies from simply assuming legislative or judicial authority without specific statutory delegations. A chief concern articulated about placement of traditional judicial functions in an executive branch agency is whether administrative determinations of child support obligations are constitutional. Essentially, may the legislature delegate this traditionally judicial area to the executive branch? May child support obligations be established and enforced by an executive agency without violating a responsible parent's right to due process of law?

When challenged, such delegations generally have been upheld as not a breach of State constitutional restrictions, as long as the delegating statute contains some standards to limit agency discretion. It is clear that an administrative agency may make factual determinations and even "adjudicate" rights of the parties without running afoul of the constitutional separation of powers. It is when an agency purports to enter enforceable judgments that courts draw the line of permissibility, since entry of enforceable judgments is the essence of judicial power.<sup>11</sup>

## State Laws Allowing Administrative Determination of Paternity

Establishing paternity is historically a legal activity firmly rooted in the judicial arena, dating back to the Elizabethan poor laws.<sup>12</sup> Because of the criminal underpinnings in these 16th century principles--non-marital intercourse being considered a "sin and a crime"-- a judicial, punitive process was required to establish proof beyond a reasonable doubt. Although it has evolved through advancements in technology and has remarkably changed as a result of social attitudes, the paternity establishment process remains primarily entrenched within, and reliant upon, the court sector in the vast majority of States. Yet, States are focusing increasingly more attention on various aspects that can be accomplished independently of the court, even if the court ultimately must "establish" the paternity as required by State law.<sup>13</sup>

One such endeavor is the use of administrative processes in lieu of adjudicative ones. Normally a formal hearing is necessary when the alleged father contests the issue. The agency may be empowered to establish paternity without holding a hearing, provided that notice is given to all parties, in uncontested cases. These situations would include, for instance, where the father has acknowledged paternity in writing or where the parties have married, but a formal finding or declaration is necessary under State law to make it legally binding or official.

The implementation of an administrative process can significantly alter each step in case-processing procedures. Incorporating paternity determinations within the functions may demand extensive additions to the text of an administrative process statute. For instance, the hearing officer needs authority to order the parties to submit to genetic testing and a method to handle refusals to comply. Many other issues attendant to a civil paternity statute such as admissibility of evidence, presumptions, and necessary parties, also need to be addressed.<sup>14</sup> Forms have to be designed to provide for formal acknowledgment of paternity, as well as other documents including notice, findings, and order.<sup>15</sup>

A search for greater efficiency and cost effectiveness in operating a child support enforcement program has led a growing number of States to adopt or explore administrative alternatives to traditional judicial processes. In addition to delegated authority to establish support obligations, an administrative agency may be granted the power to determine paternity. Oregon, Montana, Ohio, Colorado, Maine, and as a result of legislation enacted in May 1993, Iowa, are among the States in which such authority has, to varying degrees, been designated.<sup>16</sup> A narrative description of the process used in each of these States follows. Legislation has been considered in several other States, including Massachusetts.<sup>17</sup> Appendix A includes copies of the specific statutory language for Ohio, Oregon, Washington, Missouri, Iowa, Colorado, Maine, and Montana. Also incorporated is a diagram depicting the process set forth in the Ohio administrative paternity statute.

## Montana's Process

Montana enacted its administrative paternity process legislation in 1989, premised on a concern that typical processing was "extremely difficult and time-consuming for the child support enforcement program."<sup>18</sup> The major stumbling block imposed in contested cases by the judicial process was the requirement that absolute probable cause be established in the district court before a genetic testing order could be granted. With the extensive evidentiary requirements, the many delays available to an uncooperative alleged father, and the heavy backlogs in many Montana courts, most contested cases would wait more than a year for progress.

Under the 1989 revisions, codified at Montana Code Annotated §§40-5-231-40-5-237, personal jurisdiction is established in the Department of Revenue over any person who has had sexual intercourse in Montana that has resulted in the birth of a child who is the subject of a paternity proceeding. Personal jurisdiction may be acquired either by personal service or by service of notice by certified mail. If the child or either parent resides in Montana, any hearing may be held in the county where the child resides, either parent resides, or the department or any of its regional offices is located. The alleged father may be served an administrative notice of paternity determination based upon the sworn statement of the mother or evidence of a presumption under State law or any other reasonable cause to believe the alleged father is the child's natural father.

After service of the administrative notice, the alleged father has three alternatives: (1) respond and acknowledge paternity; (2) respond and deny paternity; or (3) ignore the service and make no response. If the alleged father fails to respond, such default is taken as an admission of paternity and an administrative order is rendered by the administrative hearing officer. The order takes effect within 10 days unless good cause for failure to appear is alleged. Upon timely request, and for good cause shown, a default judgment can be set aside. Default judgments are not taken in cases involving multiple alleged fathers, unless all other alleged fathers have been excluded by genetic blood testing.

Based on a written acknowledgment of paternity from an adult or minor alleged father, the administrative process enters an order establishing paternity. If the alleged father denies paternity in response to the notice, an administrative hearing is scheduled. During the hearing, which is usually conducted by telephone, the hearing officer determines if a reasonable probability exists that the alleged father had sexual intercourse with the mother during the probable period of conception or if any legal presumption of paternity exists under the circumstances of the particular case. If so, an administrative subpoena is issued ordering genetic testing. The Child Support Enforcement agency can apply to the district court, if necessary, to have its order enforced. If the alleged father fails to appear for the hearing or fails to appear for blood tests, the default is taken in the same fashion as if he had not made timely response to the initial service.

If the results of the genetic tests reflect a 95 percent or higher probability that the alleged father is the natural father of the child, a rebuttable presumption of paternity is created, and the hearing officer may enter an order establishing paternity. If the probability of paternity is less than 95 percent, but the alleged father is not excluded by the tests, the test results are weighed along with other evidence of paternity.

An administrative order of the department declaring the paternity of a child, docketed with the court, establishes the legal existence of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and obligations. Upon request of the mother or father of the child, the department must file a copy of its order with the department of health and environmental sciences, which must prepare a substitute certificate of birth, if necessary, consistent with the administrative order.

Except for an order based on a voluntary acknowledgment of paternity, the department may set aside an administrative order establishing the paternity of a child upon application of any affected party and upon a showing of any of the grounds and within the timeframes provided in Rule 60(b) of the Montana Rules of Civil Procedure. This rule specifies that the court may relieve a party or his legal representative from a final order, judgment, or proceeding based upon (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly-discovered evidence which by due diligence could not have been discovered in time to move for a new trial; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment have prospective application; or (6) any other reason justifying relief. The timeframe for the first three bases is 60 days from the entry of the judgment.

If an alleged father objects to the procedures for or the results of a paternity blood test, he must file a written objection with the court within 20 days after the service of the notice of the referral to the district court of the administrative determination. The court must order an additional blood test if a written objection is filed or at the request of the department. An additional test must be performed by the same or another expert who is qualified in paternity blood testing. Failure of the alleged father to make a timely challenge is considered a waiver of any defense to the test results or test procedures, including the chain of custody. In any hearing before the court or at trial, testimony relating to sexual intercourse of the mother with any person who has been excluded from consideration as a possible father of the child involved by the results of a paternity blood test is inadmissible in evidence. When a paternity blood test excludes an alleged father from possible paternity, the test must be conclusive evidence of nonpaternity of the alleged father for all purposes in district court.

Appeal of final administrative orders may be made on the father's initiative to the district court. However, if the results of genetic testing do not exclude the alleged father but he continues to deny paternity prior to the entry of an administrative order, he is served written notice and the case is referred by the child support agency to the district court.

The child support agency appears in the proceeding only with regard to the issue of paternity. No other issue--custody, visitation, or other--may be joined. Since Montana's law creates a rebuttable presumption that it is in the child's best interest to legally establish paternity, the court may not normally appoint a guardian ad litem. Furthermore, neither the mother nor the child are necessary parties to the action although they may testify as witnesses. Expert testimony on the genetic testing in the form of a certified report is admissible without further testimony, as is an affidavit documenting the chain of custody of the blood specimens. Genetic exclusion is considered conclusive evidence of non-paternity, and no evidence is admissible concerning sexual intercourse of the mother with any man already excluded by the genetic testing. The child support program is not liable for attorney fees, including those for indigent alleged fathers, or for the cost of a guardian ad litem unless frivolousness or bad faith is proven.

### Ohio's Approach

As a result of legislation enacted effective July 15, 1992, Ohio has statutory authority governing the administrative determination of paternity.<sup>19</sup> Particularly noteworthy is the fact that Ohio's child support enforcement program has historically been judicially-oriented, traditionally depending on the avenue of court proceedings to adjudicate actions. Administrative measures for accomplishing many functions were incorporated in Ohio's laws through passage of Senate Bill 10 in 1992.

With limited exceptions,<sup>20</sup> no person may bring court action to establish paternity before requesting an administrative determination of the existence or nonexistence of a parent and child relationship from the child support enforcement agency of the county in which the child or the guardian or legal custodian of the child resides. If more than one county agency receives a request, the agency receiving the request first must proceed with it. The request must contain all of the following information: the name, birthdate, and current address of the alleged father of the child; the name, social security number, and current address of the mother of the child; and the name and last known address of the alleged father of the child.

Upon receiving a request for a determination of the existence and nonexistence of a parent and child relationship, the agency schedules a hearing before an administrative officer to determine whether the natural mother and alleged natural father would voluntarily sign an acknowledgment of paternity or agree to be bound to the results of genetic testing. The hearing is to be held no later than sixty days after the date on which the request was received and no earlier than thirty days after the date the agency provides notice of the hearing to the mother and the alleged father.

## Notice Requirements

After scheduling the hearing, the agency must give a notice, in accordance with rules of civil procedure, to the mother and alleged father stating all of the following:

- that the agency has been requested to determine the existence of a parent and child relationship between a child and the alleged named father;
- the name and birthdate of the child of which the man is alleged to be the natural father;
- the name of the mother and the alleged natural father;
- the rights and responsibilities of a parent;
- that the person served with notice must appear at the administrative hearing at the date, time, and location set forth in the notice, that all interested persons will have the opportunity to produce evidence proving or disproving the allegation, and that the child, the mother, and the alleged father may be required to submit to genetic testing at the time of the hearing;
- that any person served with notice has the right to bring legal counsel to the administrative hearing.

### At the Hearing

If both the mother and the alleged father attend the scheduled hearing, the administrative officer explains the allegation, the administrative procedure for determining the existence of a parent and child relationship, and the rights and responsibilities of a parent to his child and explain that the mother and alleged father have a right not to dispute the allegation and sign an acknowledgment of paternity acknowledging that the child is the child of the alleged father and agree that the father will assume the parental duty of support.

### If Both Acknowledge

If both the mother and the alleged father sign an acknowledgment of paternity, the administrative officer must issue an administrative order that the alleged father is the father of the child. The order must include a statement that the mother and father may object to the determination by bringing an action in court within thirty days of the date the administrative officer issued the determination.

If an administrative officer issues an administrative order determining the existence of a parent and child relationship or if an acknowledgment of paternity is filed and one of the parents named on the acknowledgment requests an administrative order for support, the administrative officer must schedule a hearing no later than sixty days after the issuance of the order and no earlier than thirty days after the date the agency gives the notice of the administrative hearing to the mother and father.

#### **If Both Do Not Acknowledge**

If both the mother and the alleged father attend the administrative hearing but do not sign an acknowledgment of paternity, the administrative officer explains to the mother and the father that they have the right to agree to be bound by the results of genetic testing. If they agree to be bound by the testing and the results show a ninety-five percent or greater probability of paternity, the administrative officer issues an administrative order that the alleged father is the father of the child. If the results of the genetic testing show a less than ninety five percent probability that the alleged father is the father of the child but do not exclude him, the administrative officer issues an administrative order stating that it is inconclusive whether the alleged father is the natural father of the child. If the results show that the alleged father is excluded as the natural father of the child, the administrative officer issues an administrative order that the alleged father is not the father of the child.

If both the mother and the alleged father sign a voluntary agreement to genetic testing stating that they agree to be bound by the results of genetic testing performed by an examiner authorized by the department of human services and that they waive any right to a jury trial, the administrative officer sets a date and time for the mother, the child, and the alleged father to submit to genetic testing.

When an administrative officer issues an administrative order determining the existence or nonexistence of a parent and child relationship, he must include in the administrative order a notice that both the mother and the alleged father may object to the determination by bringing, within thirty days after the date the administrative officer issued the order, an action in the juvenile court of the county in which the alleged father, the mother, the child, or the guardian or custodian of the child resides and that if neither brings an action within that thirty-day period, the administrative order is final.

#### **Setting of Support Obligation**

If the administrative officer issues an administrative order determining the existence of a parent and child relationship, the administrative officer schedules an administrative hearing to determine the amount of child support any parent is to pay and the method of payment. This hearing must be held no later than sixty days after the date of issuance of the order and no earlier than thirty days after the administrative officer gives the mother and the father notice of the administrative hearing.

The mother or the father may object to the administrative order by bringing an action in juvenile court no later than thirty days after the date of issuance of the administrative order requiring the payment of child support. If neither parent timely objects by making such court filing, the administrative order is final.

If the alleged natural father or the natural mother willfully fails to submit to genetic testing, the agency enters an administrative order stating that it is inconclusive as to whether the alleged father is the natural father of the child and must provide notice to the parties that an action may be brought through the court to establish the parent/child relationship.

If the mother and the alleged father both do not sign an acknowledgment of paternity or an agreement to be bound by the results of the genetic testing or if the mother or the natural father do not appear at the administrative hearing and do not show good cause why he or she did not appear at the administrative hearing, the agency must deny and dismiss the request for an administrative determination of the existence or nonexistence of the parent and child relationship. The mother and the alleged father are informed that they may bring an action in court.

#### Colorado's Process

Colorado's administrative paternity establishment statute, effective August 1, 1992, provides that the child support enforcement unit may issue an order establishing paternity of, and financial responsibility for, a child in the course of a support proceeding. This process is available when both parents sign sworn statements that the paternity of the child for whom support is sought has not been legally established, that the parents are the natural parents of the child, and if neither parent is contesting the issue of paternity.

Service of process to establish paternity and financial responsibility may be made by certified mail or by any of the other method of service. Prior to issuing an order, the child support enforcement unit must advise both parents in writing of their legal rights concerning the determination of paternity. The statute also allows issuance of an order of default establishing paternity and financial responsibility.

A copy of the order establishing paternity and financial responsibility and the sworn statements of the parents and, in the case of a default order establishing paternity and financial responsibility, the obligee's verified affidavit regarding paternity and the blood test results, if any, must be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued. The order establishing paternity and financial responsibility must have all the force, effect, and remedies of an order of the district court. The order of financial responsibility shall have all the force, effect, and remedies of an order of the court, including, but not limited to, wage assignment or contempt of court. Execution may be issued on the order in the same manner and with the same effect as if it were an order of the court. If the order establishing paternity is at variance with the child's birth certificate, the child support unit shall order that a new birth certificate be issued.

## Expedited Administrative Process in Maine

In 1991, Maine enacted a statutory "Expedited Administrative Process for the Commencement of Paternity Actions." Under Maine's law, a person who engages in sexual intercourse with a resident of Maine in Maine submits to the jurisdiction of the department of human services for the purpose of commencing a paternity proceeding. To ensure maximum protection to citizens of Maine, the department shall assert jurisdiction over nonresident alleged fathers to the fullest extent permitted by the due process clause of the United States Constitution.

The department may commence a paternity proceeding by serving a notice on an alleged father. The department may not serve such a notice unless it has a sworn statement or affirmation under the penalty for unsworn falsification from the child's mother claiming that the alleged father engaged in sexual intercourse with her during a possible time of conception of the child or is a man who is presumed under State law to be the father. If the mother is a minor, the sworn statement or affirmation may be that of the guardian or next friend of the mother.

In addition, the notice must conform to the Maine Administrative Procedure Act and must include:

- a statement that service of the notice on the alleged father constitutes the commencement of a paternity proceeding for the determination of paternity and any related issues;
- a statement identifying any of the following as the reasons for filing the record of the proceeding in court:
  - the alleged father fails to deny paternity
  - the alleged father refuses to submit to blood or tissue typing tests
  - the alleged father fails to execute and deliver to the department an acknowledgment of paternity.
- a statement that, if the department files a record of the proceeding, the department may seek an order of support, reimbursement, and attorney fees and such other relief;
- the child's name and place and date of birth;
- the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

- the probable date on or period during which the child was conceived;
- an allegation that the alleged father engaged in sexual intercourse with the child's mother during a possible time of conception of the child or is a man who is presumed to be the child's father under State law, and that the alleged father is or may be the natural father of the child;
- if applicable, an allegation that the child may have been conceived as a result of sexual intercourse in the State and that the alleged father is subject to long-arm personal jurisdiction;
- a statement that the alleged father may deny the allegation of paternity by filing a written denial of paternity with the department within 20 days after service of the notice; that if the alleged father fails to file a written denial the proceeding will be filed in a court as a paternity proceeding; and that the question of paternity and any related issues may be resolved against him by the court;
- a statement that if the alleged father files a written denial of paternity; the department will provide an expert examiner of blood or tissue types to conduct blood or tissue typing tests on the mother, child, and alleged father and the tests will be conducted as follows:
  - the alleged father is required to submit to tests, which may include, but are not limited to, tests for red cell antigens, red cell isoenzymes, human leukocyte antigens and serum proteins;
  - the department will pay the initial cost of the tests;
  - an indigent alleged father is not liable for reimbursement of the cost of the tests;
  - if the alleged father refuses to submit to test, the proceeding will be filed in a court as a paternity proceeding;
  - if the alleged father is not excluded by the test results and he does not, within 15 days of the ordinary mailing to him of a report and copy of the blood typing results, execute and deliver to the department an acknowledgment of paternity of the child in accordance with the laws of the State in which the child was born, the proceeding will be filed in a court as a paternity proceeding; and
  - if the alleged father is excluded by the test results as the natural father of the child, the proceeding will be filed in a court as a paternity proceeding for disposition

- a statement that if, prior to the filing in a court, the alleged father executes and delivers to the department an acknowledgment of paternity, the proceeding must terminate and the department may proceed against him in court; and
- a statement that the alleged father may, within 25 days after notice has been mailed to him that the record has been filed in a court, assert any defense, in law or fact, if the record is filed because the alleged father:
  - refuses to submit to blood or tissue typing tests; or
  - fails to execute and deliver to the department an acknowledgment of paternity.

Service of a notice must be made by service in hand and may be made by an authorized representative of the commissioner or by a person authorized by the Maine Rules of Civil Procedure.

### Components of the Court Order

The department may request that the court:

- establish the alleged father as the natural father of the child; ■
- order the alleged father to pay such sums per week in child support as required under the child support guidelines;
- order the alleged father to make support payments directly to the department whenever the mother is receiving aid to families with dependent children from the department for the child or is a support enforcement client of the department and at all other times directly to the mother;
- order the alleged father to pay all reasonable medical, dental, hospital and optical expenses for the child, to provide medical and health insurance coverage for the child and to provide evidence of that coverage to the department. An alleged father's liability for past expenses incurred is limited to the six years preceding service of the notice.
- order the alleged father to pay reasonable attorney's fees and costs for prosecution of the action, including, but not limited to, prejudgment interest;
- order income withholding as available under or required by law; and

- grant such other relief as the court determines just and proper.

When it appears to the department that there may be more than one alleged father, the department may maintain proceedings against each alleged father, simultaneously or successively. Failure to serve a notice on an alleged father does not bar the department from maintaining a proceeding against any other alleged father.

If the alleged father fails to file a written denial of paternity with the department within 20 days after service of notice upon him, the department's attorney may file the record of the proceeding in a court as a paternity proceeding. The department must schedule blood or tissue typing tests for the mother, the child and the alleged father. The tests must be performed by an expert examiner in a laboratory that is accredited for parentage testing by the American Association of Blood Banks.

The department must notify the alleged father in writing by ordinary mail of the date, time and place of his blood or tissue typing tests. The tests must be conducted no earlier than 15 days following the mailing of the department's notice, except with the consent of the alleged father. The test must be conducted in an office of the department, when practicable. The department must take into account the alleged father's place of residence or employment in selecting the location of the test.

If the alleged father does not submit to the tests, the department must notify him in writing by ordinary mail that if he does not, within 15 days, request the department to reschedule the tests, his failure to appear constitutes a refusal to submit to the tests. If the alleged father timely requests rescheduling, the department must reschedule the tests. The rescheduled tests must be conducted no earlier than 15 days following the mailing of the notice of rescheduling. The notice must also advise the alleged father that, if he fails to submit to the rescheduled tests, the failure constitutes a refusal to submit to the tests.

If the alleged father refuses to submit to blood or tissue typing tests, the department may file the record of the proceeding in a court as a paternity proceeding. Upon receipt of the results of the tests, the department must send copies of the result by ordinary mail to the alleged father and to the child's mother or to the mother's guardian or next friend if the mother is a minor. If the alleged father is excluded by the test results as the natural father of child, the department may file the record of the proceeding in a court as a paternity proceeding.

If the alleged father is not excluded by the test results and he does not, within 15 days of the mailing to him of a copy of the blood or tissue typing results and report, execute and deliver to the department by ordinary mail an acknowledgment of paternity of the child in accordance with the laws of the state in which the child was born, the department may file the record of the proceeding, inclusive of the blood or tissue typing test results, in a court as a paternity proceeding. The alleged father's participation in the tests may not prejudice any

application by the alleged father for an order appointing an additional examiner of blood or tissue types.

If a record of the proceeding is filed in court, the alleged father is not required to file an additional denial of paternity. He may assert any defense, in law or fact. Any defense must be asserted within 25 days after the mailing by ordinary mail of a notice to the alleged father that the record has been filed in court. The alleged father must be given notice of these requirements.

If, prior to the filing in a court, the alleged father executes and delivers to the department an acknowledgment of paternity of the child in accordance with the laws of the State in which the child was born, the proceeding must be terminated and the department may proceed against the father for a support obligation.

### The Oregon Approach

Oregon has been operating for several years under a law which provides for an administrative system for paternity establishment. When both parents are present and agree to paternity, the steps are simple. Both can sign a joint Declaration of Paternity. The document is then filed with the Department of Vital Statistics and a modest fee is paid (either by the parents or the IV-D agency). Vital Statistics prepares the birth certificate. For situations that are not as straightforward as this, Oregon has a very effective paternity establishment program which has been carefully refined over the last several years so that it now is operated mostly by regular staff rather than attorneys. It has been effectively reduced to an organized set of very simple procedures, clearly outlined in flow charts and utilizing standard forms. According to the staff, the system operates efficiently and still provides multiple opportunities for consent.

The welfare department handles in-take. The caseworker gives the mother an affidavit of paternity to complete. When it is signed and sworn to, it is sent to the IV-D office. The child support office then issues a Notice of Financial Responsibility which is personally served. If the alleged father wishes to acknowledge paternity, he can simply return an acknowledgment of paternity form to the IV-D office. If the Notice is served and ignored, paternity is established by default. If the alleged father responds and denies, genetic tests (including DNA) follow. A recent law allows the establishment of paternity when genetic test results show a cumulative paternity index of 99 or greater. When this standard is met and the mother makes a statement of paternity, an order is issued, unless a party objects within 30 days. If an objection is raised, the case goes to court. This process appears to avoid contested court actions. Oregon reports that they are establishing approximately 440 paternities per month, of which only one is court-ordered.<sup>21</sup>

## Recent Iowa Enactment of Administrative Paternity Process

On May 4, 1993, Iowa's legislature enacted Senate Bill 350 adding new Section 252F to the Iowa Code to provide for administrative determination of paternity. The new law, effective July 1, 1993, governs cases in which paternity is at issue, meaning any of the following conditions: a child was not born or conceived within marriage; a child was born or conceived within marriage but a court has declared that the child is not the issue of the marriage; or paternity has been established by the filing of an affidavit of paternity and the father is contesting paternity within the statute of limitations period.

In any case in which the child support recovery (hereinafter referred to as CSRU) is at issue, proceedings may be initiated by the CSRU for the sole purpose of establishing paternity and any accrued or accruing child support or medical support obligations. Such proceedings are in addition to other means of establishing paternity or support. Issues in addition to establishment of paternity or support obligations shall not be addressed in such proceedings.

The CSRU may prepare a notice of alleged paternity and support debt to be served on the alleged father if the mother of the child provides a statement to the CSRU verifying that the alleged father is or may be the biological father of the child or children involved. The notice must be accompanied by a copy of the mother's statement and served on the alleged father. Service upon the mother shall not constitute valid service upon the alleged father.

The notice must include:

- The name of the recipient of services and the name and birth date of the child or children involved;
- A statement that the alleged father has been named as the biological father of the child or children named;
- A statement that the amount of the alleged father's monthly support obligation and the amount of the support debt accrued and accruing will be established in accordance with State guidelines;
- A statement that the alleged father has a duty to provide accrued and accruing medical support to the child or children;
- An explanation of the procedures for determining the child support obligation and a request for financial or income information as necessary for application of the child support guidelines;
- The right of the alleged father to request a conference with the

CSRU to discuss paternity establishment and the amount of support that the alleged father is required to pay, within ten days of the date of service or within ten days of the date of mailing of the paternity test results to the alleged father if the father denies paternity;

- A statement that if a conference is requested the alleged father shall have ten days from the date set for the conference or twenty days from the date of service of the original notice, or ten days from the date of the mailing of paternity test results to the alleged father if the alleged father no longer denies paternity, whichever is later, to send a written request for a hearing on the issue of support to the CSRU;
- A statement that after the conference is held, the administrator may issue a new notice and finding of financial responsibility for child support or medical support, or both, to be sent to the alleged father by regular mail addressed to the alleged father's last known address;
- A statement that if the administration issues a new notice and finding of financial responsibility for child support or medical support, or both, the alleged father has ten days from the date of issuance of the new notice or twenty days from the date of service of the original notice, or ten days from the date of the mailing of paternity test results to the alleged father if the alleged father no longer denies paternity, whichever is later, to send a written request for a hearing on the issue of support to the CSRU;
- A statement that if a conference is not requested, and the alleged father objects to the finding of financial responsibility or the amount of child support or medical support, or both, the alleged father must, within twenty days of the date of service or within ten days from the date of the mailing of paternity test results to the alleged father if the alleged father no longer denies paternity, whichever is later, to send a written request for a hearing on the issue of support to the CSRU.
- A statement that if a timely written request for a hearing on the issue of support is received by the CSRU, the alleged father has the right to a hearing to be held in district court and that if no timely written request is received and paternity is not denied, the administrator may enter an order in accordance with the

notice and finding of financial responsibility for child support or medical support, or both.

- A statement of the rights and responsibilities associated with the establishment of paternity;
- A statement of the alleged father's right to deny paternity, the procedures for denying paternity, and the consequences of the denial.

The time limitations established for the notice provisions are binding unless otherwise specified or waived by the alleged father. If notice is served on the alleged father, the CSRU shall file a true copy of the notice and the original return of service with the clerk of the district court in the county in which the child or children reside, or, if the action is the result of a request from a foreign jurisdiction of another state to establish paternity of a alleged father located in Iowa, in the county in which the alleged father resides. All subsequent documents filed or court hearings held related to the action shall be in the district court in the county in which the notice was filed. The clerk shall file and docket the action.

If the alleged father requests a hearing on the issue of support, and if a timely written response setting forth objections and requesting a hearing is received by the CSRU, a hearing shall be held in district court on the issue of support. If a timely written response and request for hearing is not received by the CSRU and the alleged father does not deny paternity, the administrator may enter an order on the issue of support.

If the alleged father denies paternity, the alleged father must submit, within twenty days of service of the notice under subsection 1, a written denial of paternity to the CSRU. Upon receipt of a written denial of paternity, the administrator must enter an ex parte administrative order requiring the mother, child or children, and the alleged father to submit to paternity testing. The order must be filed with the clerk of the district court in the county where the notice was filed.

If the alleged father has signed an affidavit of paternity within the three-year period prior to the receipt of notice, and he contests paternity, he must pay all costs of the paternity testing. If a paternity test is required, the administrator must direct that inherited characteristics, including but not limited to blood types, be analyzed and interpreted, and shall appoint an expert qualified as an examiner of genetic markers to analyze and interpret the results and report the results to the administrator.

The alleged father shall be provided one opportunity to reschedule the paternity testing appointment if the testing is rescheduled prior to the date of the originally scheduled appointment. An original copy of the test results must be sent to the clerk of the district court in the county where the notice was filed, and a copy sent to the administrator and to the alleged father.

Verified documentation of the chain of custody of the blood specimens is competent evidence to establish the chain of custody. If the expert concludes that the test results show that the alleged father is not excluded and that the probability of the alleged father's paternity is ninety-five percent or higher, there shall be a rebuttable presumption that the alleged father is the biological father, and the evidence shall be sufficient as a basis for administrative establishment of paternity. A verified expert's report on test results which indicate a statistical probability of paternity is sufficient authenticity of the expert's conclusion.

If the paternity test results indicate a probability of paternity of ninety-five percent or greater and the alleged father wishes to challenge the presumption of paternity, the alleged father must file a written notice of the challenge with the district court and an application for a hearing by the district court within twenty days of the filing of the expert's report with the clerk of the district court or within ten days after the scheduled date of the conference, whichever occurs later.

The party challenging the presumption of paternity has the burden of proving that the alleged father is not the father of the child. The presumption of paternity may be rebutted only by clear and convincing evidence. If the expert concludes that the test results indicate that the alleged father is not excluded and that the probability of the alleged father's paternity is less than ninety-five percent, test results must be weighed along with other evidence of paternity. To challenge the test results, a party must file a written notice of the challenge with the clerk of the district court within twenty days of the filing of the expert's report and must send a copy of the written notice to any other party. The administrator may then order a second test or certify the case to the district court for resolution.

If the paternity test results exclude the alleged father as a potential biological father of the child, and additional tests are not requested by either party, the CSRU must withdraw its action against the alleged father and must file a notice of the withdrawal with the clerk of the district court.

If the results of the test or the expert's analysis are disputed, the administrator, upon the request of a party or upon the CSRU's own initiative, must order that an additional test be performed by the same laboratory or an independent laboratory, at the expense of the party requesting additional testing.

### **Entry of Default Orders**

If the alleged father fails to respond to the initial notice within twenty days after the date of service of the notice, or fails to appear at the conference on the scheduled date of the conference, the administrator may enter an order against the alleged father, declaring the alleged father to be the biological father and assessing the support obligation and accrued and accruing child support pursuant to State guidelines and medical support against the father. If the alleged father fails to appear for a paternity test and fails to request a rescheduling or

fails to appear for both the initial and the rescheduled paternity tests, the administrator may enter an order against the alleged father declaring the alleged father to be the biological father of the child and assessing the support obligation and accrued and accruing child support pursuant to the guidelines and medical support against the father.

### Orders Upon Appearance at Conference

If the alleged father appears at a conference, the administrator may enter an order against the alleged father ten days after the second notice has been sent declaring the alleged father to be the biological father of the child and assessing the support obligation and accrued and accruing child support pursuant to the guidelines and medical support against the father.

If paternity testing was performed and the alleged father was not excluded, and the alleged father fails to timely challenge paternity testing, the administrator may enter an order against the alleged father declaring the alleged father to be the biological father of the child and assessing the support obligation and accrued and accruing child support pursuant to guidelines and medical support against the father.

The administrator must establish a support obligation based upon the best information available to the CSRU.

The order must contain all of the following provisions:

- A declaration of paternity;
- The amount of monthly support to be paid, with direction as to the manner of payment;
- The amount of accrued support;
- The name of the custodial parent or caretaker;
- The name and birth date of the child or children to whom the order applies;
- A statement that property of the alleged father is subject to income withholding, liens, garnishment, tax offset, and other collection actions.
- The medical support required.

If the alleged father does not deny paternity but does wish to challenge the issues of child or medical support, the administrator may enter an order establishing paternity and reserving the issues of child or medical support for determination by the district court.

### **Certification to District Court**

Actions initiated under the administrative paternity process are not subject to contested case proceedings or further review. An action may be certified to the district court if a party challenges the administrator's finding of paternity, or the amount of support, or both. Review by the district court must be an original hearing before the court.

In any action under the administrative process, the action shall not be certified to the district court in a contested paternity action unless all of the following have occurred:

- Paternity testing has been completed;
- The results of the paternity test have been sent to the alleged father;
- A written objection to the entry of an order has been received from the alleged father;

A matter shall be certified to the district court in the county in which the notice was filed. The court shall set the matter for hearing and notify the parties of the time of and place for hearing.

If the court determines that the alleged father is the biological father, the court shall establish the amount of the monthly support payment and the accrued and accruing child support pursuant to the guidelines and shall establish medical support. If a party fails to appear at the hearing, upon a showing that proper notice has been provided to the party, the court may find the party in default and enter an appropriate order.

### **Filing with the District Court**

Following issuance of an order by the administrator, the order must be presented to an appropriate district court judge for review and approval. Unless a defect appears on the face of the order, the district court shall approve the order. Upon approval by the district court judge, the order shall be filed in the district court in the county in which the notice was filed. Upon filing, the order has the same force and effect as a district court order.

### **Report to Vital Statistics**

Upon the filing of an order with the district court, the clerk of the district court shall report the information from the order to the bureau of vital statistics. Upon receipt of a signed statement from the alleged father waiving the time limitations, the administrator may enter an order establishing paternity and support and the court may approve the order, notwithstanding the expiration of the period of the time limitations.

An alleged father may waive the time limitations. If he does so and an order establishing paternity and support is entered, the signed statement of the alleged father waiving the time limitations shall be filed with the order for support.

### **Balancing Need for Finality Against Accuracy in Determination**

The objective of the paternity establishment process is not to obtain *any* father, but to find the biological father. This quest has to be balanced against presumptions that exist under the law--including the presumption of legitimacy and whether the best interests of a child are served by, or conversely, compromised by, rebuttal of that presumption. The wrong father may be more of a disservice to the child than no father at all. Should an acknowledged father be permitted to later challenge or renege on the admission and demand genetic testing? Within what timeframe and under what circumstances should reopening the paternity issue be allowed? Conditions and limitations for challenging a voluntary acknowledgment as well as notification to individuals who acknowledge regarding the consequences of their written admission would be a useful component of any paternity acknowledgment process. If an acknowledgment is allowed to be easily overturned, its value and efficacy is diminished. The need for finality and certainty is crucial in the lives of the parties, so to permit reopening except under a narrowly defined scope, could produce unnecessary tensions over the ultimate issue.

As suggested by David T. Ellwood and Paul K. Legler, there are two possible ways to treat voluntary acknowledgments which would balance these competing interests of finality and finding the right father.<sup>22</sup> One sensible compromise is to allow challenges requesting a genetic test to be subject to a one or two-year statute of limitations after signing an acknowledgment (with the provision that a request does not stay payment and that no support is reimbursable if the father is then excluded). Another possibility is to allow challenges only upon a court showing that it is in the best interest of the child considering such things as the length and nature of the father/child relationship and impact on the child.

Iowa Code §600B.41(7) provides a useful example. It specifies that the establishment of paternity by court order, including a court order based on an administrative establishment of paternity, or by affidavit may be overcome if all of the following conditions are met:

- Prior blood or genetic tests have not been performed to establish paternity of the child.
- The court finds that it is in the best interest of the child to overcome the establishment of paternity. In determining the best interest of the child, the court shall consider the possibility of establishing actual paternity of the child.

- The court finds that the conclusion of the expert as disclosed by the evidence based upon the blood or genetic tests demonstrates that the established father is not the biological father of the child.
- The action to overcome paternity is filed no later than three years after establishment of paternity.
- Notice of the action to overcome paternity is served on any parent of the child not initiating the action and any assignee of the support judgment.
- A guardian ad litem is appointed for the child.

### Anticipating Judicial Reaction

Redesigning a system so steeped in tradition can be a challenging, but not insurmountable, exercise. Legislative revision is certainly an intensive process and adapting to change is not instantaneous. However, engaging the players early--to explore and explain what is in it for them--is an essential element.

One aspect that cannot be ignored is the sacrosanct separation of powers doctrine. The perception of intrusion on turf and trampling on discretion is a genuine, and highly sensitive, issue for the judiciary. Rather than allocating blame for "failure" of the traditional routes, deliberations should focus on determining ways to perform the required functions more efficiently. Prudent management suggests adopting a positive framework for mutual decision-making: emphasizing the need for harmonious linkages, the sharing of duties, a division of labor.

Even if a need to tread slowly emerges, development of a dual system that combines the best features of the "full administrative approach" and a "total judicial function" may be an improvement over the current system. For example, there is tremendous potential in the legislation currently before the Congress to improve paternity establishment to alleviate the burden created under existent procedures under which every single paternity case has to be filed and processed through the court, regardless of more practical alternatives (e.g., recognition of an acknowledgment; use of stipulations and consent decrees).

Obviously the fully contested cases, where a trial by jury is demanded, must be reserved for judicial resolution. While the right to trial by jury is available in many States, the frequency with which these are demanded is generally low, and the actual occurrence even lower. A primarily administrative system must avail the parties an open avenue for challenge in the courts.

## A Reason to Reinvent the Paternity Establishment Environment

The proposition of going to court where a robed figure on an elevated bench with a gavel makes rulings about matters emanating from private, personal relationships can be intimidating. Even the most seasoned veteran of court proceedings can be overwhelmed by the prospect of a judge--and possibly a jury--deliberating the consequences of an intimate relationship. There is something inherently contradictory about having a "win/lose" environment for deciding an issue for which the intended outcome is extensive cooperation. Such adversarial processes may also generate resistance and create misunderstanding and confusion among the parties involved.

Why is an adversarial method used when a primary objective is encouraging a degree of "participative parenting," which, at a minimum, is an expectation of financial responsibility. There is an urgent need to formulate and test new approaches, to examine ways to remove the impediments that prevent or forestall achieving the ultimate result.

Is the current process so disconcerting that people avoid it? Alleged fathers dodging service of process or failing to appear for a blood draw as directed by the court are not uncommon problems with which child support practitioners contend. To what extent is nonparticipation driven by fear of the process itself?

It may be valuable to posit ways to engage the parties in case resolution without the necessity of a commencing a legal action. This, without question, creates an unproductive adversarial relationship. It positions the parties--many of whom may have had no previous contact with the judicial system--against each other on opposite sides of a contest.

### Considerations in Taking Another Look

Efforts to make the opportunity to acknowledge paternity more readily available, as well as access to objective, persuasive genetic information demands a different perspective on how paternity is legally determined. It may call for a break from routine practices. Like enforcement cases, paternity cases vary in complexity across a continuum. Often, the posture of a case shifts from contested to uncontested based upon receipt of highly inclusionary results of genetic testing. Within the context of delivering services, it is important to evaluate alternative ways of responding to divergent case characteristics and to the fact that resolution of a "contested case" can occur at points other than a full-blown trial.

For instance, in a paternity intake interview or questionnaire, the foremost "next question" after asking a mother who is the father of her child is whether the man named will voluntarily admit parentage. If her response is affirmative, methods for obtaining the acknowledgment should be utilized rather than launching a lawsuit. Similarly, if an alleged father expresses uncertainty and desires genetic testing for purposes of an independent

validation of the mother's claim, it should not necessitate filing a court case to arrange the testing. Because in many respects an administrative approach is better equipped to handle these aspects does not denigrate the court's importance.

Permitting the judicial system to devote ever-limited resources to just complex paternity cases, such as those involving multiple possible fathers, inconclusive genetic results, and jury trial demands, is deserving of study.

The organizational approach taken in recognition of the wide-ranging possible reactions that alleged fathers may have to a claim of paternity is an important element. The Urban Institute used information from a national survey of county child support agencies conducted in 1990 to describe how paternity establishment is organized and expedited.<sup>23</sup> The summary of their research also explores whether particular organizational approaches and practices are associated with higher rates of paternity establishment. The Urban Institute analysis suggests that counties with a "transfer approach" (cases with cooperative fathers handled by the human services agency and contested cases referred to the legal agency) and which permit multiple opportunities for the father to consent had the highest rate of program performance. The Urban Institute research hypothesized that these higher rates may be due to the ability to tailor the system response to the father's level of cooperation to take full advantage of the fact that there is a spectrum of possible response to the allegation. The researchers also posit their suspicion that systems with a transfer option may be more efficient in screening cases to identify the probable response of the alleged father. They suggest the need for further research to understand why this approach appears particularly effective.

As States contemplate changes to keep pace with program demands and expectations, they will either need to redefine how cases are handled in a dual agency/court effort or establish alternative administrative approaches to paternity establishment. In so doing, consideration is worth giving to the need to incorporate the following suggested refinements, wherever appropriate:

- Less offensive captioning ("In the Matter of the Paternity of Baby Doe" is more palatable than "Jane Doe -vs- Joe Doak").
- Methods of notifying the alleged father--regular mail rather than use of law enforcement process server.<sup>24</sup>
- Use of voluntary appearances in lieu of summons.
- Administrative subpoena power.
- Authority for administrative agency to compel genetic testing prior to filing any type of lawsuit or without need for a court to order such tests as a condition of their acceptability/admissibility.

in later proceedings, formal or informal.<sup>25</sup>

- More extensive routine use of stipulations and consent agreements--at any juncture in the process--which can be approved by the court, if necessary, without formal hearing.
- Use of voluntary waivers of rights after full disclosure of consequences.
- Use of summary judgments based on "no genuine issue of law and fact" when presumptive inclusionary results are achieved.
- Immediate establishment of temporary support orders following receipt of inclusionary testing results and prior to final determination.<sup>26</sup>
- Use of retroactive support demands to counter dilatory tactics by alleged fathers/defense counsel which prolong resolution.<sup>27</sup>

### Conclusion

A movement toward more extensive use of administrative processes for paternity establishment would be a change for most States accustomed to litigating paternity cases in court. Fervent advocates of traditional mechanisms will have to be convinced that a different strategy is better. The challenge will be to take an objective look at whether, and how, the desired outcome--maximizing the number of children for whom paternity is established--can be reached easier and faster, without sacrificing accuracy and due process rights. Further inquiry into the experiences--and benefits derived--in those States which have adopted innovative approaches to streamlining the paternity establishment process, such as those illustrated in this paper, would be a worthwhile undertaking.

## ENDNOTES

1. Cooper, D., Henry, M., and Schwartz, V., A Guide for Designing and Implementing an Administrative Process for Child Support Enforcement, (National Institute for Child Support Enforcement, July 22, 1985), p. 1.
2. Silvester, F. and Cooper, D., The Administrative Adjudication of Child Support Obligations, (National Institute for Child Support Enforcement, September 1991), p. 53.
3. P.L. 98-378
4. 42 U.S.C. §656(a)(2)
5. U.S. House of Representatives, Report 98-527 on H.R. 4325, Child Support Enforcement Amendments of 1983, 98th Cong. (November 10, 1983), pp. 35-36.
6. United States Senate, Report 98-387 (April 9, 1984), p. 29.
7. U.S. House of Representatives, Report 98-925, to accompany H.R. 4325, Child Support Enforcement Amendments of 1984 (August 1, 1984), p. 36.
8. 50 FR 19629 (May 9, 1985)
9. State IV-D Plan Preprint Page 2.12-2; States specifying optional inclusion of paternity establishment in expedited processes are Colorado, Delaware, District of Columbia, Guam, Massachusetts, Michigan, Mississippi, Montana, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Texas, Vermont, Virgin Islands, Virginia, West Virginia, and Wisconsin.
10. Draft Bill, Sec. 13261(b)(1)(A) [April 30, 1993]
11. State of Iowa ex rel. Keasling v. Keasling, 442 N.W.2d 118 (Iowa 1989) [statute authorizing child support agency to order wage attachment not invalid delegation of judicial function].
12. Melli, M., "A Brief History of the Legal Structure for Paternity Establishment in the United States" (paper presented at Paternity Establishment: A Public Policy Conference, Washington, D.C., February 1992).
13. "Paternity Establishment: State Innovations," METS Periodic Report No. 1, OCSE-IM-92-06 (November 1992); "Effective Paternity Establishment Practices: Technical Report," (Office of the Inspector General, January 1990); "Some Current Issues in Paternity Establishment" (OCSE Occasional Paper #1, B. Cleveland) (May 1992); "State Advancements in Paternity Establishment: Legislative, Gubernatorial, and Program Initiatives," OCSE-IM-92-

09 (December 1992).

14. Cooper, D., Henry, M., and Schwartz, V., A Guide for Designing and Implementing an Administrative Process for Child Support Enforcement, (National Institute for Child Support Enforcement, July 22, 1985), p. 49.

15. Cooper, D., Henry, M., and Schwartz, V., A Guide for Designing and Implementing an Administrative Process for Child Support Enforcement, (National Institute for Child Support Enforcement, July 22, 1985), p. 73. [Note: Chapter Four of this handbook includes an extensive discussion of the myriad of implementation considerations involved in adopting an administrative process].

16. Colo. R.S. §26-13.5-103; Maine 19 § 517; Missouri §454.485; Oregon §416.430; Washington §74.20A.056; Ohio §3111.22; Montana §40-5-231 et seq., Iowa § [Note: Oklahoma adopted an administrative paternity statute (10 Okla.Stat. §90.1-90.3) in 1987 which was repealed in 1991.]

17. "State Advancements in Paternity Establishment: Legislative, Gubernatorial, and Program Initiatives," OCSE-IM-92-09 (December 1992).

18. "Montana Passes Strong Paternity Legislation," Child Support Report, Vol. XI, No. 6, pg. 6 (Federal Office of Child Support Enforcement, June 1989).

19. Page's Ohio Revised Code Annotated §3111.22

20. Where the alleged father is deceased, where an action for divorce, dissolution of marriage, or legal separation is pending in a court of common pleas and a question of paternity arises, or where a juvenile court has entered a support order based upon an acknowledgment and a question regarding paternity arises [§3111.22(A)(2)]

21. "Paternity Establishment: State Innovations," METS Periodic Report No. 1, OCSE-IM-92-06 (November 1992), pp. 13-14.

22. Ellwood, David T. and Legler, Paul K., *Getting Serious About Paternity* (January 1993 Draft), p. 62.

23. Sonenstein, Freya L., Holcomb, Pamela A., and Seefeldt, Kristen S., *Promising Approaches to Improving Paternity Establishment Rates at the Local Level*, (Urban Institute, February 1993);

24. "State Advancements in Paternity Establishment: Legislative, Gubernatorial, and Program Initiatives," OCSE-IM-92-09 (December 1992), p. 73 (description of Missouri's use of special process servers).

25. Page's Ohio Revised Code Annotated §3111.22(C)(5) and (6);  
Montana §40-5-233; Iowa Code §252F.3

26. Minn. Stat. Ann. §257.62(5)(a) (West Supp. 1992)

27. Kathy L.B. v. Patrick J.B., 371 S.E.2d 583 (W.Va. 1988)

# OHIO

**§ 3111.22** Request for administrative determination prior to paternity action; hearing; paternity and support orders; objections.

(A)(1) Except as otherwise provided in division (A)(2) of this section, no person may bring an action under sections 3111.01 to 3111.19 of the Revised Code before requesting an administrative determination of the existence or nonexistence of a parent and child relationship from the child support enforcement agency of the county in which the child or the guardian or legal custodian of the child resides.

(2) If the alleged father of a child is deceased and proceedings for the probate of the estate of the alleged father have been or can be commenced, the court with jurisdiction over the probate proceedings shall retain jurisdiction to determine the existence or nonexistence of a parent and child relationship between the alleged father and any child without an administrative determination being requested from a child support enforcement agency. If an action for divorce, dissolution of marriage, or legal separation, or an action under section 2151.23 [2151.23.1] of the Revised Code requesting an order requiring the payment of child support, has been filed in a court of common pleas and a question as to the existence or nonexistence of a parent and child relationship arises, the court in which the original action was filed shall retain jurisdiction to determine the existence or nonexistence of the parent and child relationship without an administrative determination being requested from a child support enforcement agency. If a juvenile court issues a support order under section 2151.23 [2151.23.1] of the Revised Code relying on an acknowledgment of paternity entered upon its journal by the probate court pursuant to section 2105.18 of the Revised Code, the juvenile court that issued the support order shall retain jurisdiction if a question as to the existence of a parent and child relationship arises.

(B) Except as provided in division (A)(2) of this section, before a person brings an action pursuant to sections 3111.01 to 3111.19 of the Revised Code to determine the existence or nonexistence of a parent and child relationship, he shall request the child support enforcement agency of the county in which the child or the guardian or legal custodian of the child resides to determine the existence or nonexistence of a parent and child relationship between the alleged father and the child. If more than one agency receives a request pursuant to this section, the agency that receives the request first shall pur-

ceed with the request. The request shall contain all of the following information:

- (1) The name, birthdate, and current address of the alleged father of the child;
- (2) The name, social security number, and current address of the mother of the child;
- (3) The name and last known address of the alleged father of the child.

(C)(1) Upon receiving a request for a determination of the existence or nonexistence of a parent and child relationship in accordance with division (B) of this section, the agency shall schedule a hearing before an administrative officer to determine whether the natural mother and the alleged natural father would voluntarily sign an acknowledgment of paternity or agree to be bound to the results of genetic testing. The hearing shall be held no later than sixty days after the date on which the request was received and no earlier than thirty days after the date the agency provides notice of the hearing to the mother and the alleged father.

After scheduling the hearing, the agency shall give notice in accordance with the Rules of Civil Procedure to the mother and the alleged father stating all of the following:

- (a) That the agency has been requested to determine the existence of a parent and child relationship between a child and the alleged named father;
- (b) The name and birthdate of the child of which the man is alleged to be the natural father;
- (c) The name of the mother and the alleged natural father;
- (d) The rights and responsibilities of a parent;
- (e) That the person served with notice must appear at the administrative hearing at the date, time, and location set forth in the notice, that all interested persons will have the opportunity to produce evidence proving or disproving the allegation, and that the child, the mother, and the alleged father may be required to submit to genetic testing at the time of the hearing;
- (f) That any person served with notice has the right to bring legal counsel to the administrative hearing;
- (g) If both the mother and the alleged father attend the hearing scheduled under division (C)(1) of this section, the administrative officer shall do both of the following:
  - (a) Explain the allegation, the administrative procedure for determining the existence of a parent and child relationship, and the rights and responsibilities of a parent to his child;
  - (b) Explain that the mother and the alleged father have the right to not dispute the allegation and sign an acknowledgment of paternity acknowledging that the child is the child of the alleged father and agree that the father will assume the parental rights of support.
- (h) If both the mother and the alleged father sign an acknowledgment of paternity, the administrative

officer shall issue an administrative order that the alleged father is the father of the child who is the subject of the proceeding. The order shall include any information that the department requires pursuant to section 2301.35 of the Revised Code and shall include a statement that the mother and father may object to the determination by bringing an action under sections 3111.01 to 3111.19 of the Revised Code within thirty days after the date the administrative officer issued the administrative order determining the existence of a parent and child relationship between the alleged natural father and the child.

(4) If an administrative officer issues an administrative order determining the existence of a parent and child relationship pursuant to division (C)(3) of this section or if an acknowledgment of paternity is filed pursuant to section 2105.18 of the Revised Code and one of the parents named on the acknowledgment of paternity requests an administrative officer to issue an administrative order requiring the payment of child support, the administrative officer shall schedule an administrative hearing to determine, in accordance with sections 3111.21 to 3111.29 and 3113.215 [3113.21.5] of the Revised Code, the amount of child support any parent is required to pay and the method of payment of the child support. The hearing shall be held no later than sixty days after the date of the issuance of the order and no earlier than thirty days after the date the agency gives the mother and the father notice of the administrative hearing. When an administrative officer issues an administrative order for the payment of support, all of the following apply:

(a) An administrative order for the payment of support ordinarily shall be for periodic payments that may vary in amount. In the best interest of the child, the administrative officer may order a lump sum payment or the purchase of an annuity in lieu of periodic payments of support.

(b) The administrative order for the payment of support shall include a notice stating that the mother or the father may object to an administrative order by bringing an action for the payment of support under section 2151.23 [2151.23.1] of the Revised Code in the juvenile court of the county in which the child or the guardian or legal custodian of the child resides, that the action may be brought no later than thirty days after the date of the issuance of the administrative order requiring the payment of child support, and that, if neither the mother nor the father brings an action for the payment of support within that thirty-day period, the administrative order requiring the payment of support is final and may be modified only in accordance with sections 3113.21 to 3113.219 [3113.21.9] or section 3111.27 of the Revised Code.

(5)(a) If both the mother and the alleged father attend the administrative hearing scheduled under division (C)(1) of this section but do not sign an

acknowledgment of paternity, the administrative officer shall explain to the mother and the father that they have the right to agree to be bound by the results of genetic testing, that, if they agree to be bound by genetic testing and the results show a ninety-five per cent or greater probability that the alleged father is the natural father of the child, the administrative officer will issue an administrative order that the alleged father is the father of the child, that, if the results of the genetic testing show a less than ninety-five per cent probability that the alleged father is the natural father of the child but do not exclude the alleged father as the natural father of the child, the administrative officer will issue an administrative order stating that it is inconclusive whether the alleged father is the natural father of the child, and that if the results show that the alleged father is excluded as the natural father of the child, the administrative officer will issue an administrative order that the alleged father is not the father of the child.

(b) If both the mother and the alleged father sign a voluntary agreement to genetic testing stating that they agree to be bound by the results of genetic testing performed by an examiner authorized by the department of human services and that they waive any right to a jury trial, the administrative officer shall schedule a date and time for the mother, the child, and the alleged father to submit to genetic testing in accordance with the rules adopted by the department of human services pursuant to section 2301.35 of the Revised Code. If the natural mother and the alleged father both sign a voluntary agreement to genetic testing, all of the following apply:

(i) If the results of the genetic testing show a ninety-five per cent or greater probability that the alleged father is the natural father of the child, the administrative officer of the agency shall issue an administrative order that the alleged father is the father of the child who is the subject of the proceeding.

(ii) If the results of genetic testing show less than a ninety-five per cent probability that the alleged father is the natural father of the child but do not exclude the alleged father from being the natural father of the child, the administrative officer shall issue an administrative order stating that it is inconclusive whether the alleged father is the natural father of the child.

(iii) If the results of the genetic testing exclude the alleged father from being the natural father of the child, the administrative officer shall issue an administrative order that the alleged father is not the father of the child who is the subject of the proceeding.

(iv) When an administrative officer issues an administrative order determining the existence or non-existence of a parent and child relationship pursuant to this section, he shall include in the administrative order a notice that both the mother and the

alleged father may object to the determination by bringing, within thirty days after the date the administrative officer issued the order, an action under sections 3111.01 to 3111.19 of the Revised Code in the juvenile court in the county in which the alleged father, the mother, the child, or the guardian or custodian of the child resides and that if neither brings an action within that thirty-day period, the administrative order is final.

(c) If an administrative officer issues an administrative order determining the existence of a parent and child relationship between the alleged father and the child, the administrative officer shall schedule an administrative hearing to determine, in accordance with sections 3111.21 to 3111.29 and 3113.215 [3113.21.5] of the Revised Code, the amount of child support any parent is required to pay and the method of payment of child support. The hearing shall be held no later than sixty days after the date of the issuance of the order and no earlier than thirty days after the date the administrative officer gives the mother and the father notice of the administrative hearing.

(d) The mother or the father may object to the administrative order by bringing an action for the payment of support under section 2151.231 [2151.23.1] of the Revised Code in the juvenile court of the county in which the child or the guardian or legal custodian of the child resides. The action shall be brought no later than thirty days after the date of the issuance of the administrative order requiring the payment of child support. If neither the mother nor the father brings an action for the payment of support within that thirty-day period, the administrative order requiring the payment of support is final and may be modified only in accordance with sections 3113.21 to 3113.219 [3113.21.9] or section 3111.27 of the Revised Code.

(e) If the alleged natural father or the natural mother willfully fails to submit to genetic testing or if either parent or any other person who is the custodian of the child willfully fails to submit the child to genetic testing, the agency shall enter an administrative order stating that it is inconclusive as to whether the alleged natural father is the natural father of the child and shall provide notice to the parties that an action may be brought under sections 3111.01 to 3111.19 of the Revised Code to establish a parent and child relationship.

(6) If the mother and the alleged father both do not sign an acknowledgment of paternity or an agreement to be bound by the results of genetic testing or if either the mother or the natural father does not appear at the administrative hearing and does not show good cause why he or she did not appear at the administrative hearing, the agency shall deny and dismiss the request for an administrative determination of the existence or non-existence of a parent and child relationship and inform the mother and the alleged father that they may

bring an action under sections 3111.01 to 3111.19 of the Revised Code to determine the existence of a parent and child relationship.

(D)(1) The guardian or legal custodian of a child may object to an administrative officer's determination of the existence or non-existence of a parent and child relationship by bringing an action under sections 3111.01 to 3111.19 of the Revised Code in the juvenile court of the county in which the child, the mother, or the alleged father resides or is found to determine the existence or non-existence of a parent and child relationship. The action shall be brought no later than thirty days after the date of the issuance of the administrative order determining the existence or non-existence of a parent and child relationship. If neither the mother nor the alleged father files an action under sections 3111.01 to 3111.19 of the Revised Code in the juvenile court within the thirty-day period, the administrative order determining a parent and child relationship is final.

(2) The mother or the father of a child may object to an administrative officer's administrative order for the payment of support by bringing an action for the payment of support under section 2151.231 [2151.23.1] of the Revised Code in the juvenile court of the county in which the child or the guardian or legal custodian of the child resides. The action shall be brought no later than thirty days after the date the administrative officer issued the administrative order requiring the payment of child support. If neither the mother nor the alleged father files an action for the payment of support in the juvenile court within the thirty-day period, the administrative order requiring the payment of support is final and may be modified only in accordance with sections 3113.21 to 3113.219 [3113.21.9] or section 3111.27 of the Revised Code.

HISTORY: 144 v. 1 CO. EFF 7-13-82.

Not analogous to former RC § 3111.22 (RS § 5824; S & S 39; 78 v. 114, § 19; GC § 8006.22; 124 v. 178(201); Bureau of Code Revision, 10-1-83), repealed 139 v. 11 245, § 2, eff 6-28-82.

#### Cross-References to Related Sections

Administrative order for withholding child support from personal earnings, workers' compensation payments, public retirement system benefits or other sources of income of obligor; modification or termination, RC § 3111.23.

Definitions relating to child support, RC § 3111.20.

Presumptions as to natural father, RC § 3111.03.

Reports to director of human services of court-ordered support order or administrative support order, RC § 2301.35.1.

Separate order for health insurance coverage for children, RC § 3111.24.1.

Who may bring action to determine relationship of father and child, RC § 3111.04.

APPENDIX A

O R E G O N

**416.430 Establishing paternity of child; certification of paternity issue to circuit court.** (1) The administrator may establish paternity of a child in the course of a support proceeding under ORS 416.400 to 416.470 when both parents sign sworn statements that paternity has not been legally established and that the male parent is the father of the child. The administrator may enter an order which establishes paternity.

(2) If the parent fails to file a response denying paternity and requesting a hearing within the time period allowed in ORS 416.415 (2), then the administrator, without further notice to the parent, may enter an order, in accordance with ORS 416.415 (8), which declares and establishes the parent as the legal father of the child.

(3) Any order entered pursuant to subsection (1) or (2) of this section establishes legal paternity for all purposes. The Vital Statistics Unit of the Health Division of the Department of Human Resources shall prepare a new birth certificate in the new name, if any, of the child. The original birth certificate shall be sealed and filed and may be opened only upon order of a court of competent jurisdiction.

(4) If paternity is alleged under ORS 416.415 (3) and a written response denying paternity and requesting a hearing is received within the time period allowed in ORS 416.415 (2), or if the administrator determines that there is a valid issue with respect to paternity of the child, the administrator, subject to the provisions of subsections (5) and (6) of this section, shall certify the matter to the circuit court for a determination based upon the contents of the file and any evidence which may be produced at trial. The proceedings in court shall for all purposes be deemed suits in equity, but either party shall have the right to trial by jury on the issue of paternity. The provisions of ORS 109.145 to 109.230 apply to proceedings certified to court by the administrator pursuant to this section.

(5) An action to establish paternity initiated under ORS 416.400 to 416.470 shall not be certified to court for trial unless all of the following have occurred:

(a) Blood tests have been conducted;

(b) The results of the blood tests have been served upon the parties and notice has been given that an order establishing paternity will be entered unless a written objection is received within 30 days; and

(c) A written objection to the entry of an order has been timely received from a party.

(6) Notwithstanding the provisions of subsection (5) of this section, the matter shall be certified to court by the administrator:

(a) Within 30 days of receipt by the administrator of a timely written objection to the entry of an order by a party under paragraph (c) of subsection (5) of this section;

(b) At any time a party requests certification in writing provided, however, that 120 days have elapsed from receipt of a party's written denial of paternity; or

(c) Upon receipt of blood test results with a cumulative paternity index of less than 99.

(7) Notwithstanding ORS 109.258, if the blood tests conducted under ORS 109.250 to 109.262 result in a cumulative paternity index of 99 or greater, evidence of the tests, together with the testimony of the parent, shall be a sufficient basis upon which to establish paternity and the administrator may enter an order declaring the alleged father as the legal father of the child unless a party objects in writing to the entry of the order. The testimony of the parent may be presented by affidavit.

(8) Prior to certification to court, the administrator may attempt to resolve the issue of paternity by discovery conducted under the Oregon Rules of Civil Procedure. Unless otherwise specifically provided by statute, the proceedings shall be conducted under the Oregon Rules of Civil Procedure. (1979 c.431 §; 1983 c.709 §44; 1985 c.671 §38; 1989 c.566 §6; 1991 c.484 §9)

74.20A.056. Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting

(1) If an alleged father has signed an affidavit acknowledging paternity which has been filed with the state office of vital statistics, the office of support enforcement may serve a notice and finding of parental responsibility on him. Service of the notice shall be in the same manner as a summons in a civil action or by certified mail, return receipt requested. The notice shall have attached to it a copy of the affidavit and shall state that:

(a) The alleged father may file an application for an adjudicative proceeding at which he will be required to appear and show cause why the amount stated in the finding of financial responsibility as to support is incorrect and should not be ordered;

(b) An alleged father may request that a blood test be administered to determine whether such test would exclude him from being a natural parent and, if not excluded, may subsequently request that the office of support enforcement initiate an action in superior court to determine the existence of the parent-child relationship; and

(c) If the alleged father does not request that a blood test be administered or file an application for an adjudicative proceeding, the amount of support stated in the notice and finding of parental responsibility shall become final, subject only to a subsequent determination under RCW 26.26.060 that the parent-child relationship does not exist.

(2) An alleged father who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt, the amount of the current and future support obligation, and the reimbursement of the costs of blood tests if advanced by the department.

(3) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department. If no application is filed within twenty days:

(a) The amounts in the notice shall become final and the debt created therein shall be subject to collection action; and

(b) Any amounts so collected shall neither be refunded nor returned if the parent is later found not to be the father.

(4) An alleged father who denies being a responsible parent may request that a blood test be administered at any time. The request for testing shall be in writing and served on the office of support enforcement personally or by registered or certified mail. If a request for testing is made, the department shall arrange for the test and, pursuant to rules adopted by the department, may advance the cost of such testing. The department shall mail a copy of the test results by certified mail, return receipt requested, to the alleged father's last known address.

(5) If the test excludes the alleged father from being a natural parent, the office of support enforcement shall file a copy of the results with the state office of vital statistics and shall dismiss any pending administrative collection proceedings based upon the affidavit in issue. The state office of vital statistics shall remove the alleged father's name from the birth certificate.

(6) The alleged father may, within twenty days after the date of receipt of the test results, request the office of support enforcement to initiate an action under RCW 26.26.060 to determine the existence of the parent-child relationship. If the office of support enforcement initiates a superior court action at the request of the alleged father and the decision of the court is that the alleged father is a natural parent, the alleged father shall be liable for court costs incurred.

(7) If the alleged father does not request the office of support enforcement to initiate a superior court action, or if the alleged father fails to appear and cooperate with blood testing, the notice of parental responsibility shall become final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.060.

## DIVISION IV

## ADMINISTRATIVE ESTABLISHMENT OF PATERNITY

Sec. 14. NEW SECTION. 252F.1 DEFINITIONS.

As used in this chapter unless the context otherwise requires:

1. "Administrator" means the administrator of the child support recovery unit of the department of human services or the administrator's designee.
2. "Mother" means a mother of the child for whom paternity is being established.
3. "Paternity is at issue" means any of the following conditions:
  - a. A child was not born or conceived within marriage.
  - b. A child was born or conceived within marriage but a court has declared that the child is not the issue of the marriage.
  - c. Paternity has been established by the filing of an affidavit of paternity and the father is contesting paternity within the statute of limitations period pursuant to section 600B.41, subsection 7.
  4. "Paternity test" means and includes any form of blood, tissue, or genetic testing administered to determine the biological father of a child.
  5. "Putative father" means a person alleged to be the biological father of a child.
  6. "Unit" means the child support recovery unit created in section 252B.2.

Sec. 15. NEW SECTION. 252F.2 JURISDICTION.

In any case in which the unit is providing services pursuant to chapter 252B and paternity is at issue,

proceedings may be initiated by the unit pursuant to this chapter for the sole purpose of establishing paternity and any accrued or accruing child support or medical support obligations. Proceedings under this chapter are in addition to other means of establishing paternity or support. Issues in addition to establishment of paternity or support obligations shall not be addressed in proceedings initiated under this chapter.

An action to establish paternity and support under this chapter may be brought within the time limitations set forth in section 614.4.

Sec. 16. NEW SECTION. 252F.3 NOTICE OF ALLEGED PATERNITY AND SUPPORT DUTY -- CONFERENCE -- REQUEST FOR HEARINGS.

1. The unit may prepare a notice of alleged paternity and support debt to be served on the putative father if the mother of the child provides a statement to the unit verifying that the putative father is or may be the biological father of the child or children involved. The notice shall be accompanied by a copy of the statement and served on the putative father in accordance with rule of civil procedure 56.1. Service upon the mother shall not constitute valid service upon the putative father. The notice shall include all of the following:
  - a. The name of the recipient of services under chapter 252B and the name and birth date of the child or children involved.
  - b. A statement that the putative father has been named as the biological father of the child or children named.
  - c. A statement that the amount of the putative father's monthly support obligation and the amount of the support debt accrued and accruing will be established in accordance with the guidelines established in section 590.21, subsection 4, and the criteria established pursuant to section 252B.2A.
  - d. A statement that the putative father has a duty to provide accrued and accruing medical support to the child or children in accordance with chapter 252E.

8. An explanation of the procedures for determining the child support obligation and a request for financial or income information as necessary for application of the child support guidelines established pursuant to section 582B.21, subsection 4.

1. (1) The right of the putative father to request a conference with the unit to discuss paternity establishment and the amount of support that the putative father is required to pay, within ten days of the date of service or within ten days of the date of mailing of the paternity test results to the putative father if the father denies paternity.

(2) A statement that if a conference is requested, the putative father shall have ten days from the date set for the conference or twenty days from the date of service of the original notice, or ten days from the date of the mailing of paternity test results to the putative father if the putative father no longer denies paternity, whichever is later, to send a written request for a hearing on the issue of support to the unit.

(3) A statement that after the holding of the conference, the administrator may issue a new notice and finding of financial responsibility for child support or medical support, or both, to be sent to the putative father by regular mail addressed to the putative father's last known address.

(4) A statement that if the administrator issues a new notice and finding of financial responsibility for child support or medical support, or both, the putative father shall have ten days from the date of issuance of the new notice or twenty days from the date of service of the original notice, or ten days from the date of the mailing of paternity test results to the putative father if the putative father no longer denies paternity, whichever is later, to send a written request for a hearing on the issue of support to the unit.

9. A statement that if a conference is not requested, and the putative father objects to the finding of financial

responsibility or the amount of child support or medical support, or both, the putative father shall within twenty days of the date of service or within ten days from the date of the mailing of paternity test results to the putative father, if the putative father no longer denies paternity, whichever is later, to send a written request for a hearing on the issue of support to the unit.

h. A statement that if a timely written request for a hearing on the issue of support is received by the unit, the putative father shall have the right to a hearing to be held in district court and that if no timely written request is received and paternity is not denied, the administrator may enter an order in accordance with the notice and finding of financial responsibility for child support or medical support, or both.

i. A statement of the rights and responsibilities associated with the establishment of paternity.

j. A statement of the putative father's right to deny paternity, the procedures for denying paternity, and the consequences of the denial.

1A. The time limitations established for the notice provisions under subsection 1 are binding unless otherwise specified in this chapter or waived by the putative father pursuant to section 582F.8.

2. If notice is served on the putative father, the unit shall file a true copy of the notice and the original return of service with the clerk of the district court in the county in which the child or children reside, or, if the action is the result of a request from a foreign jurisdiction of another state to establish paternity of a putative father located in Iowa, in the county in which the putative father resides. All subsequent documents filed or court hearings held related to the action shall be in the district court in the county in which notice was filed pursuant to this subsection. The clerk shall file and docket the action.

3. If the putative father requests a hearing on the issue of support, and if a timely written response setting forth objections and requesting a hearing is received by the unit, a hearing shall be held in district court on the issue of support.

4. If a timely written response and request for hearing is not received by the unit and the putative father does not deny paternity, the administrator may enter an order in accordance with section 52F.4 on the issue of support.

5. a. If the putative father denies paternity, the putative father shall submit, within twenty days of service of the notice under subsection 1, a written denial of paternity to the unit. Upon receipt of a written denial of paternity, the administrator shall enter an ex parte administrative order requiring the mother, child or children, and the putative father to submit to paternity testing. The order shall be filed with the clerk of the district court in the county where the notice was filed.

b. If the putative father has signed an affidavit of paternity pursuant to section 52A.3A within the three-year period prior to the receipt of notice, and the putative father contests paternity, the putative father shall pay all costs of the paternity testing.

c. If a paternity test is required under this section, the administrator shall direct that inherited characteristics, including but not limited to blood type, be analyzed and interpreted, and shall appoint an expert qualified as an examiner of genetic markers to analyze and interpret the results and report the results to the administrator.

d. The putative father shall be provided one opportunity to reschedule the paternity testing appointment if the testing is rescheduled prior to the date of the originally scheduled appointment.

e. An original copy of the test results shall be sent to the clerk of the district court in the county where the notice

was filed, and a copy shall be sent to the administrator and to the putative father.

f. Verified documentation of the chain of custody of the blood specimens is competent evidence to establish the chain of custody.

9. If the expert concludes that the test results show that the putative father is not excluded and that the probability of the putative father's paternity is ninety-five percent or higher, there shall be a rebuttable presumption that the putative father is the biological father, and the evidence shall be sufficient as a basis for administrative establishment of paternity. A verified expert's report on test results which indicate a statistical probability of paternity is sufficient authenticity of the expert's conclusion.

h. If the paternity test results indicate a probability of paternity of ninety-five percent or greater and the putative father wishes to challenge the presumption of paternity, the putative father shall file a written notice of the challenge with the district court and an application for a hearing by the district court within twenty days of the filing of the expert's report with the clerk of the district court or within ten days after the scheduled date of the conference, whichever occurs later.

(1) The party challenging the presumption of paternity has the burden of proving that the putative father is not the father of the child.

(2) The presumption of paternity may be rebutted only by clear and convincing evidence.

i. If the expert concludes that the test results indicate that the putative father is not excluded and that the probability of the putative father's paternity is less than ninety-five percent, test results shall be weighed along with other evidence of paternity. To challenge the test results, a party shall file a written notice of the challenge with the

clerk of the district court within twenty days of the filing of the expert's report and shall send a copy of the written notice to any other party. The administrator may then order a second test or certify the case to the district court for resolution.

j. If the paternity test results exclude the putative father as a potential biological father of the child, and additional tests are not requested by either party, the unit shall withdraw its action against the putative father and shall file a notice of the withdrawal with the clerk of the district court.

k. If the results of the test or the expert's analysis are disputed, the administrator, upon the request of a party or upon the unit's own initiative, shall order that an additional test be performed by the same laboratory or an independent laboratory, at the expense of the party requesting additional testing.

#### SEC. 17. NEW SECTION. 252F.4 ENTRY OF ORDER.

1. If the putative father fails to respond to the initial notice within twenty days after the date of service of the notice or fails to appear at the conference pursuant to section 252F.3 on the scheduled date of the conference, the administrator may enter an order against the putative father, declaring the putative father to be the biological father and assessing the support obligation and accrued and accruing child support pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E against the father.

2. If the putative father fails to appear for a paternity test and fails to request a rescheduling pursuant to section 252F.3, or fails to appear for both the initial and the rescheduled paternity tests, the administrator may enter an order against the putative father, declaring the putative father to be the biological father of the child and assessing the support obligation and accrued and accruing child support

pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E against the father.

3. If the putative father appears at a conference, the administrator may enter an order against the putative father ten days after the second notice has been sent declaring the putative father to be the biological father of the child and assessing the support obligation and accrued and accruing child support pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E against the father.

3a. If paternity testing was performed and the putative father was not excluded, and the putative father fails to timely challenge paternity testing, the administrator may enter an order against the putative father declaring the putative father to be the biological father of the child and assessing the support obligation and accrued and accruing child support pursuant to the guidelines established under section 598.21, subsection 4, and medical support pursuant to chapter 252E against the father.

4. The administrator shall establish a support obligation under this section based upon the best information available to the unit and pursuant to section 252B.7B.

5. The order shall contain all of the following:

- a. A declaration of paternity.
- b. The amount of monthly support to be paid, with direction as to the manner of payment.
- c. The amount of accrued support.
- d. The name of the custodial parent or caretaker.
- e. The name and birth date of the child or children to whom the order applies.
- f. A statement that property of the putative father is subject to income withholding, liens, garnishment, tax offset, and other collection actions.

9. The medical support required pursuant to Chapter 598 and Chapter 252E.

6. If the putative father does not deny paternity but does wish to challenge the issues of child or medical support, the administrator may enter an order establishing paternity and reserving the issues of child or medical support for determination by the district court.

Sec. 18. NEW SECTION. 252F.5 CERTIFICATION TO DISTRICT COURT.

1. Actions initiated under this chapter are not subject to contested case proceedings or further review pursuant to Chapter 17A.

7. An action under this chapter may be certified to the district court if a party challenges the administrator's finding of paternity, or the amount of support, or both, review by the district court shall be an original hearing before the court.

3. In any action brought under this chapter, the action shall not be certified to the district court in a contested paternity action unless all of the following have occurred:

a. Paternity testing has been completed.

b. The results of the paternity test have been sent to the putative father.

c. A written objection to the entry of an order has been received from the putative father.

4. A matter shall be certified to the district court in the county in which the notice was filed pursuant to section 252F.3, subsection 2.

5. The court shall set the matter for hearing and notify the parties of the time of and place for hearing.

6. If the court determines that the putative father is the biological father, the court shall establish the amount of the monthly support payment and the accrued and accruing child support pursuant to the guidelines established under section 598.21, subsection 4, and shall establish medical support pursuant to Chapter 252E.

7. If a party fails to appeal at the hearing, upon a showing that proper notice has been provided to the party, the court may find the party in default and enter an appropriate order.

Sec. 19. NEW SECTION. 252F.6 FILING WITH THE DISTRICT COURT.

Following issuance of an order by the administrator, the order shall be presented to an appropriate district court judge for review and approval. Unless a defect appears on the face of the order, the district court shall approve the order. Upon approval by the district court judge, the order shall be filed in the district court in the county in which the notice was filed pursuant to section 252F.3, subsection 2. Upon filing, the order has the same force and effect as a district court order.

Sec. 20. NEW SECTION. 252F.7 REPORT TO VITAL STATISTICS.  
Upon the filing of an order with the district court pursuant to this chapter, the clerk of the district court shall report the information from the order to the bureau of vital statistics in the manner provided in section 600B.16.

Sec. 21. NEW SECTION. 252F.8 WAIVER OF TIME LIMITATIONS BY PUTATIVE FATHER.

1. A putative father may waive the time limitations established in this chapter.

2. Upon receipt of a signed statement from the putative father waiving the time limitations, the administrator may enter an order establishing paternity and support and the court may approve the order, notwithstanding the expiration of the period of the time limitations.

3. If a putative father waives the time limitations and an order establishing paternity and support is entered under this chapter, the signed statement of the putative father waiving the time limitations shall be filed with the order for support.

Sec. 22, Section 502.41, subsection 7, paragraph a, unnumbered paragraph 1, Code 1993, is amended to read as follows:

Notwithstanding section 502.31, subsection 3, paragraph "1", the establishment of paternity by court order, including a court order based on an administrative establishment of paternity, or by affidavit may be overcome if all of the following conditions are met:

Sec. 23, Section 502.41, subsection 7, paragraph a, subparagraph (4), Code 1993, is amended to read as follows:

(4) The action to overcome paternity is filed no later than three years after the entry of an order establishing paternity.

to pay a monthly support obligation, a child support debt, support of children in foster care, and any arrearages.

Source: (4) and (7) amended and (8.5) added, L. 90, p. 896, § 19, effective July 1; (5) amended, L. 91, p. 365, § 39, effective April 9; (9) amended, L. 91, p. 216, § 5, effective July 1.

## COLORADO

### ARTICLE 13.5

#### Administrative Procedure for Child Support Establishment and Enforcement

26-13.5-102.	Definitions.	26-13.5-106.	Default - issuance of order of default - filing of order with district court.
26-13.5-103.	Notice of financial responsibility issued - contents.	26-13.5-107.	Orders - duration - effect of court determinations.
26-13.5-104.	Service of notice of financial responsibility.	26-13.5-108.	Request for court hearing. (Repealed)
26-13.5-105.	Negotiation conference - issuance of order of financial responsibility - filing of order with district court.	26-13.5-110.	Paternity - establishment - filing of order with court.
		26-13.5-112.	Modification of an order.

26-13.5-102. Definitions. (4) "Costs of collection" means attorney fees, costs for administrative staff time, service of process fees, court costs, costs of blood tests, and costs for certified mail. Attorney fees and costs for administrative time shall only be collected in accordance with federal law and rules and regulations.

(5) "Court" or "judge" means any court or judge in this state having jurisdiction to determine the liability of persons for the support of another person. "Court" or "judge" includes a juvenile magistrate and a district court magistrate.

(7) "Delegate child support enforcement unit" means the unit of a county department of social services or its contractual agent which is responsible for carrying out the provisions of article 13 of this title.

(8.5) "District court" means any district court in this state and includes the juvenile court of the city and county of Denver and the juvenile division of the district court outside of the city and county of Denver.

(9) "Duty of support" means a duty of support imposed by law, by order, decree, or judgment of any court, or by administrative order, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise. "Duty of support" includes the duty

26-13.5-103. Notice of financial responsibility issued - contents. (1) The delegate child support enforcement unit shall issue a notice of financial responsibility to an obligor who owes a child support debt or who is responsible for the support of a child on whose behalf the custodian of that child is receiving support enforcement services from the delegate child support enforcement unit pursuant to article 13 of this title. The notice shall advise the obligor:

(b) That the delegate child support enforcement unit shall issue an order of default setting forth the amount of the obligor's duty of support, if the obligor:

(I) Fails to appear for the negotiation conference as scheduled in the notice; and

(II) Fails to reschedule a negotiation conference prior to the date and time stated in the notice; and

(b.5) That, if the notice is issued for the purpose of establishing the paternity of and financial responsibility for a child, the delegate child support enforcement unit shall issue an order of default establishing paternity and setting forth the amount of the obligor's duty of support, if:

(I) The obligor fails to take a blood test or fails to appear for an appointment to take a blood test without good cause; or

(II) The results of the blood test indicate a ninety-seven percent or greater probability that the alleged father is the father of the child, and the obligor fails to appear for the negotiation conference as scheduled in the notice and fails to reschedule a negotiation conference prior to the date and time stated in the notice;

(c) (Deleted by amendment, L. 92, p. 213, § 17, effective August 1, 1992.)

(e) That, a judgment may be entered on the order of financial responsibility issued pursuant to this article, and that if a judgment is not entered on the order of financial responsibility and needs to be enforced, the judgment creditor shall file with the court a verified entry of judgment specifying the period of time that the judgment covers and the total amount of the judgment for that period and that, notwithstanding the provisions of this paragraph (e), no court order for judgment nor verified entry of judgment shall be required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or state department of revenue for purposes of intercepting a federal or state tax refund;

(m) If applicable, that foster care maintenance may be collected against the obligor;

Source: IP(1), IP(1)(b), (1)(b)(I), (1)(b)(II), and (1)(m) amended, L. 90, p. 896, § 20, effective July 1; (1)(c) amended, L. 91, p. 257, § 22, effective July 1; (1)(b.5) added and (1)(c) and (1)(e) amended, L. 92, pp. 184, 213, § § 5, 17, effective August 1.

Editor's note: Section 10 of chapter 38, Session Laws of Colorado 1992, provides that the act enacting subsection (1)(b.5) is effective August 1, 1992, and applies to orders entered on or after said date.

**26-13.5-104. Service of notice of financial responsibility.** (1) The delegate child support enforcement unit shall serve a notice of financial responsibility on the obligor not less than ten days prior to the date stated in the notice for the negotiation conference:

- (a) In the manner prescribed for service of process in a civil action; or
- (b) By an employee appointed by the delegate child support enforcement unit to serve such process; or
- (c) By certified mail, return receipt requested, signed by the obligor only. The receipt shall be prima facie evidence of service.

(2) Service of process to establish paternity and financial responsibility may be made under this article by certified mail as specified in subsection (1) of this section or by any of the other methods of service specified in said subsection (1).

(3) If process has been served pursuant to this section, no additional service of process shall be necessary if the case is referred to court for further review.

Source: IP(1) amended, L. 90, p. 896, § 21, effective July 1; entire section amended, L. 92, p. 184, § 6, effective August 1.

Editor's note: Section 10 of chapter 38, Session Laws of Colorado 1992, provides that the act amending this section is effective August 1, 1992, and applies to orders entered on or after said date.

**26-13.5-105. Negotiation conference - issuance of order of financial responsibility - filing of order with district court.** (1) Every obligor who has been served with a notice of financial responsibility pursuant to section 26-13.5-104 shall appear at the time and location stated in the notice for a negotiation conference or shall reschedule a negotiation conference prior to the date and time stated in the notice. The negotiation conference shall be scheduled not more than thirty days after the date of the issuance of the notice of financial responsibility. A negotiation conference shall not be rescheduled more than once and shall not be rescheduled for a date more than ten days after the date and time stated in the notice without good cause as defined in rules and regulations promulgated pursuant to section 26-13.5-113. If a negotiation conference is continued, the obligor shall be notified of such continuance by first class mail. If a stipulation is agreed upon at the negotiation conference as to the obligor's duty of support, the delegate child support enforcement unit shall issue an administrative order of financial responsibility setting forth the following:

- (a) The amount of the monthly support obligation and instructions on the manner in which it shall be paid;
- (b) The amount of child support debt due and owing to the state department and instructions on the manner in which it shall be paid;
- (c) The amount of arrearages due and owing and instructions on the manner in which it shall be paid;

(d) The name of the custodian of the child and the name, birth date, and social security number of the child for whom support is being sought;

(e) The information required by section 14-14-107 (1) (b), C.R.S.;

(f) Such other information set forth in rules and regulations promulgated pursuant to section 26-13.5-113.

(2) A copy of the administrative order of financial responsibility issued pursuant to subsection (1) of this section, along with proof of service, shall be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued or in the district court where an action relating to support is pending or an order exists but is silent on the issue of child support. The clerk shall stamp the date of receipt of the copy of the order and shall assign the order a case number. The order of financial responsibility shall have all the force, effect, and remedies of an order of the court, including, but not limited to, wage assignment or contempt of court. Execution may be issued on the order in the same manner and with the same effect as if it were an order of the court. In order to enforce a judgment based on an order issued pursuant to this article, the judgment creditor shall file with the court a verified entry of judgment specifying the period of time that the judgment covers and the total amount of the judgment for that period. Notwithstanding the provisions of this subsection (2), no court order for judgment nor verified entry of judgment shall be required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or state department of revenue for purposes of intercepting a federal or state tax refund.

(3) If no stipulation is agreed upon at the negotiation conference because the obligor contests the issue of paternity, the delegate child support enforcement unit shall file the notice of financial responsibility and proof of service with the clerk of the district court in the county in which the notice of financial responsibility was issued or in the district court where an action relating to child support is pending or an order exists but is silent on the issue of child support, and shall request the court to set a hearing for the matter. If no stipulation is agreed upon at the negotiation conference and paternity is not an issue, the delegate child support enforcement unit shall issue temporary orders establishing child support and shall file the notice of financial responsibility and proof of service with the clerk of the district court in the county in which the notice of financial responsibility was issued and shall request the court to set a hearing for the matter. Notwithstanding any rules of the Colorado rules of civil procedure, a complaint is not required in order to initiate a court action pursuant to this subsection (3). The court shall inform the delegate child support enforcement unit of the date and location of the hearing and the court or the delegate child support enforcement unit shall send a notice to the obligor informing the obligor of the date and location of the hearing. In order to meet federal requirements of expedited process for child support enforcement, the court shall hold a hearing and decide only the issue of child support within ninety days after receipt of notice, as defined in section 26-13.5-102 (13), or within one year after receipt of notice, as defined in section 26-13.5-102 (13), if the obligor is contesting the issue of paternity. If the obligor raises issues relating to custody or visitation and the court has jurisdiction to hear such matters, the court shall set

a separate hearing for those issues after entry of the order of support. In any action, including an action for paternity, no additional service beyond that originally required pursuant to section 26-13.5-104 shall be required if no stipulation is reached at the negotiation conference and the court is requested to set a hearing in the matter.

(4) The determination of the monthly support obligation shall be based on the child support guidelines set forth in section 14-10-115, C.R.S. The delegate child support enforcement unit may issue an administrative subpoena requesting income information, including but not limited to wage statements, pay stubs, and tax records. In the absence of reliable information, which may include such information as wage statements or other wage information obtained from the department of labor and employment, tax records, and verified statements made by the obligee, the delegate child support enforcement unit shall set the amount included in the order of financial responsibility pursuant to section 14-10-115, C.R.S., based on the current minimum wage for a forty-hour workweek.

Source: IP(1), (2), and (3) amended, L. 90, p. 897, § 22, effective July 1; entire section amended, L. 92, p. 213, § 18, effective August 1.

**26-13.5-106. Default - issuance of order of default - filing of order with district court.** (1) (a) If an obligor fails to appear for a negotiation conference as scheduled in the notice of financial responsibility, and fails to reschedule a negotiation conference prior to the date and time stated in the notice of financial responsibility, the delegate child support enforcement unit shall issue an order of default in accordance with the notice of financial responsibility. If an obligor fails to appear for a rescheduled negotiation conference, the delegate child support enforcement unit shall issue an order of default in accordance with the notice of financial responsibility.

(b) In an action to establish paternity and financial responsibility, if an obligor fails to take a blood test or fails to appear for an appointment to take a blood test without good cause or if the results of the blood test indicate a ninety-seven percent or greater probability that the alleged father is the father of the child, and the obligor fails to appear for the negotiation conference as scheduled in the notice of financial responsibility and fails to reschedule a negotiation conference prior to the date and time stated in the notice of financial responsibility, the delegate child support enforcement unit shall issue an order of default establishing paternity and financial responsibility in accordance with the notice of financial responsibility. The state board shall promulgate rules defining what constitutes good cause for failure to appear at a negotiation conference.

(c) Such order of default shall be approved by the court and shall include the following:

(I) The amount of the monthly support obligation and instructions on the manner in which it shall be paid;

(II) The amount of child support debt due and owing to the state department and instructions on the manner in which it shall be paid;

(III) The amount of arrearages due and owing and instructions on the manner in which it shall be paid;

(IV) The name of the custodian of the child and the name, birth date, and social security number of the child for whom support is being sought;

(V) The information required by section 14-14-107 (1)(b), C.R.S.;

(VI) In a default order establishing paternity, a statement that the obligor has been determined to be the natural parent of the child;

(VII) Such other information set forth in rules and regulations promulgated pursuant to section 26-13.5-113.

(2) A copy of any order of default issued pursuant to subsection (1) of this section, along with proof of service, and in the case of a default order establishing paternity and financial responsibility under paragraph (b) of subsection (1) of this section, the obligee's verified affidavit regarding paternity and the blood test results, if any, shall be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued or in the district court where an action relating to child support is pending or an order exists but is silent on the issue of child support. The clerk shall stamp the date of receipt of the copy of the order of default and shall assign the order a case number. The order of default shall have all the force, effect, and remedies of an order of the court, including, but not limited to, wage assignment or contempt of court. Execution may be issued on the order in the same manner and with the same effect as if it were an order of the court. In order to enforce a judgment based on an order issued pursuant to this article, the judgment creditor shall file with the court a verified entry of judgment specifying the period of time that the judgment covers and the total amount of the judgment for that period. Notwithstanding the provisions of this subsection (2), no court order for judgment nor verified entry of judgment shall be required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or state department of revenue for purposes of intercepting a federal or state tax refund.

Source: IP(1) and (2) amended, L. 90, p. 898, § 23, effective July 1; (1) and (2) amended, L. 92, p. 185, § 7, effective August 1; entire section amended, L. 92, p. 215, § 19, effective August 1.

Editor's note: This section is amended by chapters 38 and 40, Session Laws of Colorado 1992, and section 10 of chapter 38 provides that the act set out in that chapter amending subsections (1) and (2) is effective August 1, 1992, and applies to orders entered on or after said date.

**26-13.5-107. Orders - duration - effect of court determinations.** (1) A copy of any order of financial responsibility or of any order of default or of any temporary order of financial responsibility issued by the delegate child support enforcement unit shall be sent by such unit by first-class mail to the obligor or his attorney of record and to the custodian of the child.

(2) Any order of financial responsibility, any order of default, and any temporary order of financial responsibility shall continue notwithstanding the fact that the child is no longer receiving benefits for aid to families with dependent children, unless the child is emancipated or is otherwise no longer entitled to support. Any order of financial responsibility, any order of default, and any temporary order of financial responsibility shall continue until modified by administrative order or court order or by emancipation of the child.

In the event that the order of financial responsibility, order of default, or temporary order of financial responsibility is entered in a case at a time when there is a court action on the same case, the court may credit a portion of a monthly amount paid under the administrative process order towards future payments due in the court case only if the order in the court case is established at a lower amount than the administrative process order and only to the extent of the difference between the amount of the court order and the amount of the administrative process order.

Source: (1) and (2) amended, L. 92, p. 217, § 20, effective August 1.

#### 26-13.5-108. Request for court hearing. (Repealed)

Repealed, effective August 1, 1992.

Source: (1) and (2) amended, L. 90, p. 898, § 24, effective July 1; (2) amended, L. 91, p. 258, § 23, effective July 1; entire section repealed, L. 92, p. 217, § 21, effective August 1.

**26-13.5-110. Paternity - establishment - filing of order with court.** (1) The delegate child support enforcement unit may issue an order establishing paternity of and financial responsibility for a child in the course of a support proceeding under this article when both parents sign sworn statements that the paternity of the child for whom support is sought has not been legally established and that the parents are the natural parents of the child and if neither parent is contesting the issue of paternity or may issue an order of default establishing paternity and financial responsibility in accordance with section 26-13.5-106. Prior to issuing an order under this section, the delegate child support enforcement unit shall advise both parents in writing as prescribed by rule and regulation promulgated pursuant to section 26-13.5-113 of their legal rights concerning the determination of paternity.

(2) A copy of the order establishing paternity and financial responsibility and the sworn statements of the parents and, in the case of a default order establishing paternity and financial responsibility, the obligee's verified affidavit regarding paternity and the blood test results, if any, shall be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued or as otherwise provided in accordance with the provisions of section 26-13.5-105 (2). The order establishing paternity and financial responsibility shall have all the force, effect, and remedies of an order of the district court, and the order may be executed upon and enforced in the same manner as set forth in section 26-13.5-105 (2).

(3) If the order establishing paternity is at variance with the child's birth certificate, the delegate child support enforcement unit shall order that a new birth certificate be issued under section 19-4-124, C.R.S.

(4) Service of process to establish paternity and financial responsibility may be made under this article by certified mail as specified in section 26-13.5-104 or by any of the other methods of service specified in said section.

Source: (2) amended, L. 90, p. 899, § 25, effective July 1; entire section amended, L. 92, p. 186, § 8, effective August 1.

Editor's note: Section 10 of chapter 38, Session Laws of Colorado 1992, provides that the act amending this section is effective August 1, 1992, and applies to orders entered on or after said date.

**26-13.5-112. Modification of an order.** (1) At any time after the entry of an order of financial responsibility or an order of default under this article, in order to add, alter, or delete any provisions to such an order, the delegate child support enforcement unit may issue a notice of financial responsibility to an obligor requesting the modification of an existing administrative order issued pursuant to this article. The delegate child support enforcement unit shall serve the obligor with a notice of financial responsibility by first class mail and shall proceed as set forth in this article. The obligor or the obligee may file a written request for modification of an administrative order issued under this article with the delegate child support enforcement unit by serving the delegate child support enforcement unit by certified mail. If such unit objects to the request for modification based upon the failure to demonstrate a showing of changed circumstances required pursuant to section 14-10-122, C.R.S., the delegate child support enforcement unit shall advise the requesting party of the party's right to request the court to set the matter for a court hearing. The court shall hold a hearing and decide only the issue of modification within ninety days of such request. If the delegate child support enforcement unit does not object to the obligor's or obligee's request for modification, the unit shall serve the obligor with a notice of financial responsibility by first class mail and shall proceed as set forth in this article. Within thirty days of receipt of the request for modification, the delegate child support enforcement unit shall either advise the requesting party of the party's right to request a court hearing or shall issue a notice of financial responsibility. If the child for whom the order applies is no longer in the custody of a person receiving public assistance or receiving support enforcement services from the delegate child support enforcement unit pursuant to article 13 of this title, the delegate child support enforcement unit shall certify the matter for hearing to the district court in which the order was filed.

Source: (1) amended, L. 90, p. 899, § 26, effective July 1; (1) amended, L. 91, p. 258, § 24, effective July 1.

# MAINE

## EXPEDITED PROCESS FOR THE COMMENCEMENT OF PATERNITY ACTIONS

Section	Section
517. Definitions.	524. Multiple alleged fathers.
518. Additional persons subject to jurisdiction.	525. Failure of alleged father to deny paternity.
519. Limitation on recovery from father.	526. Blood or tissue typing tests.
520. Service.	527. Refusal of alleged father to submit to blood or tissue tests.
521. Notice of proceeding to commence an action.	528. Procedures after blood tests.
522. Court orders; relief.	529. Applicability; Maine Rules of Civil Procedure, Rule 12(b).
523. Applicability; Maine Rules of Civil Procedure, Rule 5(b).	530. Acknowledgment of paternity.

### Historical and Statutory Notes

#### Codification

Laws 1991, c. 256, enacted Subchapter VI, Expedited Process for the Commencement of Paternity Actions.

#### § 517. Definitions

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings.

1. **Alleged father.** "Alleged father" means:

- A man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child; or
- A man who is presumed to be a child's father under the Maine Rules of Evidence, Rule 302.

2. **Blood or tissue typing tests.** "Blood or tissue typing tests" means tests that demonstrate through examination of genetic markers the paternity of a child.

3. **Commissioner.** "Commissioner" means the Commissioner of Human Services.

4. **Department.** "Department" means the Department of Human Services.

5. **Paternity proceeding.** "Paternity proceeding" means the administrative proceeding provided in this subchapter for the commencement of an action to establish paternity under chapter 5, subchapter III.<sup>1</sup>

1991, c. 256.

<sup>1</sup>Section 271 et seq. of this title.

#### Library References

#### Words and Phrases

Words and Phrases (Perm.Ed.)

#### § 518. Additional persons subject to jurisdiction

1. **Application.** To ensure maximum protection to citizens of this State, the department shall apply this section to assert jurisdiction over nonresident alleged fathers to the fullest extent permitted by the due process clause of the United States Constitution, Amendment XIV.

2. **Cause of action.** A person who engages in sexual intercourse with a resident of this State in this State submits to the jurisdiction of the department for the purpose of commencing a paternity proceeding.

1991, c. 256.

#### § 519. Limitation on recovery from father

An alleged father's liability for past expenses incurred is limited to the 6 years preceding service of the notice under section 521.  
1991, c. 256.

#### § 520. Service

Service of a notice under section 521 must be made by service in hand and may be made by an authorized representative of the commissioner or by a person authorized by the Maine Rules of Civil Procedure.  
1991, c. 256.

#### § 521. Notice of proceeding to commence an action

1. **Notice of proceeding.** The department may commence a paternity proceeding by serving a notice on an alleged father. The department may not serve such a notice unless it has a sworn statement or affirmation under the penalty for unsworn falsification from the child's mother claiming that the alleged father engaged in sexual intercourse with her during a possible time of conception of the child or is a man who is presumed under state law to be the child's father. If the mother is a minor, the sworn statement or affirmation may be that of the guardian or next friend of the mother.

2. **Contents of notice.** In addition to conforming with the requirements of the Maine Administrative Procedure Act, Title 5, section 9052, subsection 4, the notice must include:

A. A statement that service of the notice on the alleged father constitutes the commencement of a paternity proceeding for the determination of paternity and any related issues under this subchapter;

B. A statement identifying any of the following as the reason for filing the record of the proceeding in court.

- The alleged father fails to deny paternity.
- The alleged father refuses to submit to blood or tissue typing tests.
- The alleged father fails to execute and deliver to the department an acknowledgment of paternity;

C. A statement that, if the department files a record of the proceeding, the department may seek relief under section 522;

D. The child's name and place and date of birth;

E. The name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

F. The probable date on or period during which the child was conceived;

G. An allegation that the alleged father engaged in sexual intercourse with the child's mother during a possible time of conception of the child or is a man who is presumed to be the child's father under state law, and that the alleged father is or may be the natural father of the child;

H. If applicable, an allegation that the child may have been conceived as a result of sexual intercourse in this State and that the alleged father is subject to personal jurisdiction under section 518;

I. A statement that the alleged father may deny the allegation of paternity by filing a written denial of paternity with the department within 20 days after service of the notice; that if the alleged father fails to file a written denial the proceeding will be filed in a court as a paternity proceeding; and that the question of paternity and any related issues under this subchapter may be resolved against him by the court;

J. A statement that if the alleged father files a written denial of paternity:  
(1) The department will provide an expert examiner of blood or tissue types to conduct blood or tissue typing tests on the mother, child and alleged father and the tests will be conducted as follows:

- (a) The alleged father is required to submit to tests, which may include, but are not limited to, tests of red cell antigens, red cell isoenzymes, human leukocyte antigens and serum proteins;
- (b) The department will pay the initial cost of the tests; and
- (c) An indigent alleged father is not liable for reimbursement of the cost of the tests;

(2) If the alleged father refuses to submit to tests under subparagraph (1), the proceeding will be filed in a court as a paternity proceeding;

(3) If the alleged father is not excluded by the test results and he does not, within 15 days of the ordinary mailing to him of a report and copy of the blood or tissue typing results, execute and deliver to the department an acknowledgment of paternity of the child in accordance with the laws of the state in which the child was born, the proceeding will be filed in a court as a paternity proceeding; and

(4) If the alleged father is excluded by the test results as the natural father of the child, the proceeding will be filed in a court as a paternity proceeding for disposition under section 280, subsection 1, paragraph A;

K. A statement that if, prior to the filing in a court, the alleged father executes and delivers to the department an acknowledgment of paternity, the proceeding must terminate and the department may proceed against him under subchapter V;<sup>1</sup> and

L. A statement that the alleged father may, within 25 days after notice has been mailed to him that the record has been filed in a court, assert any defense, in law or fact, if the record is filed because the alleged father:

- (1) Refuses to submit to blood or tissue typing tests; or
- (2) Fails to execute and deliver to the department an acknowledgment of paternity.

1991, c. 256.

<sup>1</sup>Section 491 et seq. of this title.

#### § 522. Court orders; relief

The department may request that the court:

1. **Establish as natural father.** Establish the alleged father as the natural father of the child;
2. **Weekly support.** Order the alleged father to pay such sums per week in child support as required under the child support guidelines;
3. **To whom payments made.** Order the alleged father to make support payments directly to the department whenever the mother is receiving aid to families with dependent children from the department for the child or is a support enforcement client of the department and at all other times directly to the mother;
4. **Reimbursement.** Order the alleged father to reimburse the mother or the department or other payor of public assistance, as applicable, for the past support, birth expenses and medical expenses incurred on behalf of the child to the time of trial and grant judgment to the mother or the department or other payor of public assistance, as applicable, in the amount of those expenses, with execution to issue immediately;
5. **Medical expenses.** Order the alleged father to pay all reasonable medical, dental, hospital and optical expenses for the child, to provide medical and health insurance coverage for the child and to provide evidence of that coverage to the department under section 776;
6. **Attorney's fees.** Order the alleged father to pay reasonable attorney's fees under section 271 and costs for prosecution of the action, including, but not limited to, prejudgment interest;
7. **Income withholding period.** Order income withholding as available under or required by law; and

8. **Other relief.** Grant such other relief as the court determines just and proper.  
1991, c. 256.

#### § 523. Applicability; Maine Rules of Civil Procedure, Rule 5(b)

The Maine Rules of Civil Procedure, Rule 5(b), applies to a proceeding under this subchapter.

1991, c. 256.

#### § 524. Multiple alleged fathers

When it appears to the department that there may be more than one alleged father, the department may maintain proceedings against each alleged father, simultaneously or successively. Failure to serve a notice on an alleged father does not bar the department from maintaining a proceeding under this subchapter against any other alleged father.

1991, c. 256.

#### § 525. Failure of alleged father to deny paternity

If the alleged father fails to file a written denial of paternity with the department within 20 days after service of notice upon him, the department's attorney may file the record of the proceeding in a court as a paternity proceeding. This filing constitutes a filing under the Maine Rules of Civil Procedure, Rule 3.

1991, c. 256.

#### § 526. Blood or tissue typing tests

1. **Requirement of tests.** If the alleged father files a written denial of paternity with the department within 20 days after service of the notice upon him, the department shall schedule blood or tissue typing tests for the mother, the child and the alleged father, which may include, but not be limited to, tests of red cell antigens, red cell isoenzymes, human leukocyte antigens and serum proteins. The tests must be performed by an expert examiner in a laboratory that is accredited for parentage testing by the American Association of Blood Banks.

2. **Scheduling of tests.** The department shall notify the alleged father in writing by ordinary mail of the date, time and place of his blood or tissue typing tests. The tests must be conducted no earlier than 15 days following the mailing of the department's notice, except with the consent of the alleged father. The test must be conducted in an office of the department, when practicable. The department shall take into account the alleged father's place of residence or employment in selecting the location of the test.

3. **Rescheduling of tests.** If the alleged father does not submit to the tests, the department shall notify him in writing by ordinary mail that if he does not, within 15 days, request the department to reschedule the tests, his failure to appear constitutes a refusal to submit to the tests. If the alleged father timely requests rescheduling, the department shall reschedule the tests. The rescheduled tests must be conducted no earlier than 15 days following the mailing of the notice of rescheduling. The notice must also advise the alleged father that, if he fails to submit to the rescheduled tests, the failure constitutes a refusal to submit to the tests.

1991, c. 256.

#### § 527. Refusal of alleged father to submit to blood or tissue tests

If an alleged father refuses to submit to blood or tissue typing tests, the department may file the record of the proceeding in a court as a paternity proceeding. The alleged father's refusal to submit to a test constitutes a refusal to submit under section 277.

1991, c. 256.

### § 528. Procedures after blood tests

1. **Transmittal of test results.** Upon receipt of the results of the tests, the department shall send copies of the results by ordinary mail to the alleged father and to the child's mother or to the mother's guardian or next friend if the mother is a minor.

2. **Exclusion of alleged father.** If the alleged father is excluded by the test results as the natural father of the child, the department may file the record of the proceeding in a court as a paternity proceeding for disposition under section 290, subsection 1, paragraph A.

3. **Nonexclusion of alleged father.** If the alleged father is not excluded by the test results and he does not, within 15 days of the mailing to him of a copy of the blood or tissue typing results and report, execute and deliver to the department by ordinary mail an acknowledgment of paternity of the child in accordance with the laws of the state in which the child was born, the department may file the record of the proceeding, inclusive of the blood or tissue typing test results, in a court as a paternity proceeding. Section 280 applies to the action even though the tests were performed and the results prepared as part of an administrative proceeding. The alleged father's participation in the tests may not prejudice any application by the alleged father under section 278 for an order appointing an additional examiner of blood or tissue types.

1991, c. 256.

### § 529. Applicability; Maine Rules of Civil Procedure, Rule 12(b)

If a record of the proceeding is filed under section 527 or section 528, subsection 3, the alleged father is not required to file an additional denial of paternity. He may assert any defense, in law or fact. Any defense must be asserted within 25 days after the mailing by ordinary mail of a notice to the alleged father that the record has been filed in court. The notice must contain the substance of this section.

1991, c. 256.

### § 530. Acknowledgment of paternity

If, prior to the filing in a court, the alleged father executes and delivers to the department an acknowledgment of paternity of the child in accordance with the laws of the state in which the child was born, the proceeding must be terminated and the department may proceed against the father under subchapter V<sup>1</sup> with respect to any remedy provided under that subchapter.

1991, c. 256; R.R. 1991, c. 2, § 52.

<sup>1</sup> Section 491 ~~of~~ of this title.

#### Historical and Statutory Notes

##### Codification

Revisor's Report 1991, c. 2, § 52, corrected punctuation and reference to subchapter V.

## APPENDIX A

# M I S S O U R I

### 454.485. Paternity order, establishing—entered when—docketing of order, result—copies to be sent to bureau of vital records of department of health—defense of nonpaternity—decision, how rendered

1. The director may enter an order establishing paternity of a child in the course of a support proceeding under sections 454.460 to 454.510 when both parents sign sworn statements that the paternity of the dependent child for whom support is sought has not been legally established and that the male parent is the father of the child.

2. The docketing, pursuant to section 454.490, of an order establishing paternity under this section shall establish legal paternity for all purposes. The division shall provide an additional copy of each administrative order to be docketed and the circuit clerk shall, upon docketing, forward such copy to the bureau of vital records of the department of health. The bureau of vital records shall enter the name of the father on the birth records pursuant to sections 193.085 and 193.215, RSMo, and shall record the social security account numbers of both parents, pursuant to section 193.075, RSMo.

3. In no event shall a hearing official conducting a hearing under sections 454.460 to 454.510 be authorized to enter a finding of nonpaternity in the case of a man presumed to be the natural father of any child of legitimate birth under Missouri law, or of the father of any child born out of wedlock who has acknowledged paternity in writing under oath or has acknowledged that he is responsible for the support, maintenance, and education of such child, unless such presumption has been overruled, or such acknowledgment has been ruled void, by a court of competent jurisdiction.

(Amended by L. 1986, H.B. No. 1479, § 1; L.1990, S.B. No. 834, § A.)

#### Historical and Statutory Notes

1986 Amendment. In subsec. 2, substituted "Missouri department of health shall enter the name of the father on the birth records pursuant to sections 193.085 and 193.215, RSMo Supp. 1984" for "division of health of the state department of social services shall prepare a new birth certificate in the new name, if any, of the child, and shall list the male parent as the child's father on such certificate" in the second sentence; and in subsec. 3, substituted "enter a

finding" for "render a decision as to the validity of the defense".

#### 1990 Legislation

The 1990 amendment, in subsec. 2, inserted the second sentence, concerning the furnishing, docketing and forwarding of an additional copy of each administrative order, and at the end of the third sentence provided for a recording of the social security account numbers of both parents pursuant to § 193.075.

## MONTANA

### 40-5-231. Establishment of paternity — jurisdiction and venue.

(1) For purposes of an administrative action brought under 40-5-231 through 40-5-237, personal jurisdiction is established in the department over any person who has had sexual intercourse in this state that has resulted in the

birth of a child who is the subject of such proceedings and over any person subject to the provisions of Rule 4B of the Montana Rules of Civil Procedure, including but not limited to the child, the child's parents, any person having custody of the child, and any alleged father.

(2) Personal jurisdiction over the persons described in subsection (1) may be acquired by personal service or by service of notice by certified mail.

(3) If the child or either parent resides in this state, a hearing under 40-5-231 through 40-5-237 may be held in the county where:

- (a) the child resides;
- (b) either parent resides; or
- (c) the department or any of its regional offices is located.

History: En. Sec. 2, Ch. 119, L. 1989.

40-5-232. Establishment of paternity — notice of paternity determination — contents. (1) When the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

(2) It is presumed to be in the best interest of a child to legally determine and establish his paternity. A presumption under this subsection may be rebutted by a preponderance of the evidence.

(3) In any proceeding under 40-5-231 through 40-5-237, if a man acknowledges his paternity of a child in writing and such acknowledgment is filed with the department, the department may enter an order establishing legal paternity. An acknowledgment is binding on a parent who executes it, whether or not he is a minor.

(4) The department shall commence proceedings to establish paternity by serving on an alleged father a notice of paternity determination. The department may not serve such notice unless it has:

- (a) a sworn statement from the child's mother claiming that the alleged father is the child's natural father;
- (b) evidence of the existence of a presumption of paternity under 40-6-105; or
- (c) any other reasonable cause to believe that the alleged father is the child's natural father.

(5) Service on the alleged father of the notice of paternity determination shall be made as provided in 40-5-231(2). The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth;

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

(d) the probable time or period of time during which conception took place;

(e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against him without further notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) he is subject to compulsory blood testing;

(ii) a blood test may result in a presumption of paternity; and

(iii) he may request a trial in district court to determine paternity before the final administrative decision is made.

(6) The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of paternity determination.

(7) When there is more than one alleged father of a child, the department may serve a notice of paternity determination on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child.

History: En. Sec. 3, Ch. 119, L. 1989.

40-5-233. Establishment of paternity — administrative hearing — subpoena — compulsory blood testing. (1) When the department receives a timely written denial of paternity, it may order the alleged father to appear for an administrative hearing. The hearing may be conducted by teleconferencing methods. If the testimony and other supplementary evidence demonstrate a reasonable probability that the alleged father had sexual intercourse with the child's mother during the probable time of the child's conception or if the evidence shows a probable existence of a presumption under 40-6-105, the department may issue a subpoena ordering the alleged father to submit to paternity blood testing. A reasonable probability of sexual intercourse during the possible time of conception may be established by affidavit of the child's mother.

(2) If the department does not receive a timely written denial of paternity or if an alleged father fails to appear at a scheduled hearing or for a scheduled paternity blood test, the department may enter an order declaring the alleged father the legal father of the child. The order will take effect within 10 days after entry of the default unless the alleged father before the 10th day presents good cause for failure to make a timely denial or for failure to appear at the hearing or to undergo paternity blood testing. The department may not enter an order under this section if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of paternity blood testing. An order issued under the provisions of this section may be set aside as provided in 40-5-235(3).

(3) If the rights of others and the interests of justice so require, the department may apply to any district court under the provisions of 2-4-104 for an order compelling an alleged father to submit to paternity blood testing. The court shall hear the matter as expeditiously as possible. If the court finds reasonable cause to believe that the alleged father is the natural or presumed father of the child, the court shall enter an order compelling the alleged father to submit to a paternity blood test. As provided in subsection (1), reasonable cause may be established by affidavit of the child's mother.

History: En. Sec. 4, Ch. 119, L. 1989.

**40-5-234. Paternity blood tests — use of expert's affidavit — effect of test results.** (1) The department shall appoint an expert who is qualified in examining genetic markers to conduct any paternity blood test required by 40-5-233. If the issue of paternity is referred to the district court under 40-5-236, the expert's completed and certified report of the results and conclusions of a paternity blood test is admissible as evidence without additional testimony by the expert if the laboratory in which the expert performed the test is accredited for parentage testing by the American association of blood banks. Accreditation may be established by verified statement or reference to published sources.

(2) An affidavit documenting the chain of custody of any blood specimen is admissible to establish such chain of custody.

(3) If the scientific evidence resulting from a blood test:

(a) conclusively shows that the alleged father could not have been the natural father, the question of paternity shall be resolved accordingly. A finding under this subsection is sufficient to overcome a presumption created by 40-6-105.

(b) shows a 95% or higher statistical probability of paternity, the alleged father is presumed to be the natural father of the child. This presumption may be rebutted in an appropriate action in district court by a preponderance of the evidence.

(c) does not exclude the alleged father and shows less than a 95% statistical probability of paternity, the test results may be weighed in conjunction with other evidence to establish paternity.

History: En. Sec. 5, Ch. 119, L. 1989.

**40-5-235. Effect of order establishing paternity — birth records — relief from order.** (1) An administrative order of the department declaring the paternity of a child, docketed as provided in 40-5-227, establishes the legal existence of the parent and child relationship for all purposes and confers or imposes all parental rights, privileges, duties, and obligations.

(2) Upon the request of the mother or father of the child, the department shall file a copy of its order with the department of health and environmental sciences, which shall prepare a substitute certificate of birth, if necessary, consistent with the administrative order. The substitute certificate of birth is subject to the provisions of 40-6-123, with references to "court" taken to mean "department".

(3) Except for an order based on a voluntary acknowledgment of paternity, the department may set aside an administrative order establishing the paternity of a child upon the application of any affected party and upon a showing of any of the grounds and within the time frames provided in Rule 60(b) of the Montana Rules of Civil Procedure.

(4) An order of the department under 40-5-232 through 40-5-235 may be reviewed under the provisions of Title 2, chapter 4, part 7.

History: En. Sec. 6, Ch. 119, L. 1989.

**40-5-236. Referral of paternity issue to district court — record — parties — exclusion of other matters — fees.** (1) If the scientific evidence resulting from a blood test does not exclude the alleged father and he continues to deny paternity, the department shall refer the matter to the district court for a determination based on the contents of the administrative hearing record and any further evidence that may be produced at trial. Except as otherwise provided in 40-5-231 through 40-5-237, proceedings in the district court shall be conducted pursuant to Title 40, chapter 6, part 1.

(2) The administrative record must include:

(a) a copy of the notice of paternity determination and the return of service thereof;

(b) the alleged father's written denial of paternity, if any;

(c) the transcript of the administrative hearing;

(d) the paternity blood test results and any report of an expert based on the results; and

(e) any other relevant information.

(3) Upon filing of the record with the district court, the court acquires jurisdiction over the parties as if they had been served with a summons and complaint. The department shall serve written notice upon the alleged father as provided in 40-5-231(2) that the issue of paternity has been referred to the district court for determination.

(4) In a proceeding in the district court, the department shall appear on the issue of paternity only. The court may not appoint a guardian ad litem for the child unless the court in its discretion determines that such an appointment is necessary and in the best interest of the child. Neither the mother nor the child is a necessary party, but either may testify as a witness.

(5) No other matter may be joined with an action to determine the existence or nonexistence of the parent and child relationship under this section. The parties shall institute an independent action to address other issues, including visitation and custody.

(6) Except as provided in 25-10-711, the department is not liable for attorney fees, including fees for attorneys appointed under 40-6-119, or fees of a guardian ad litem appointed under 40-6-110.

History: En. Sec. 7, Ch. 119, L. 1989.

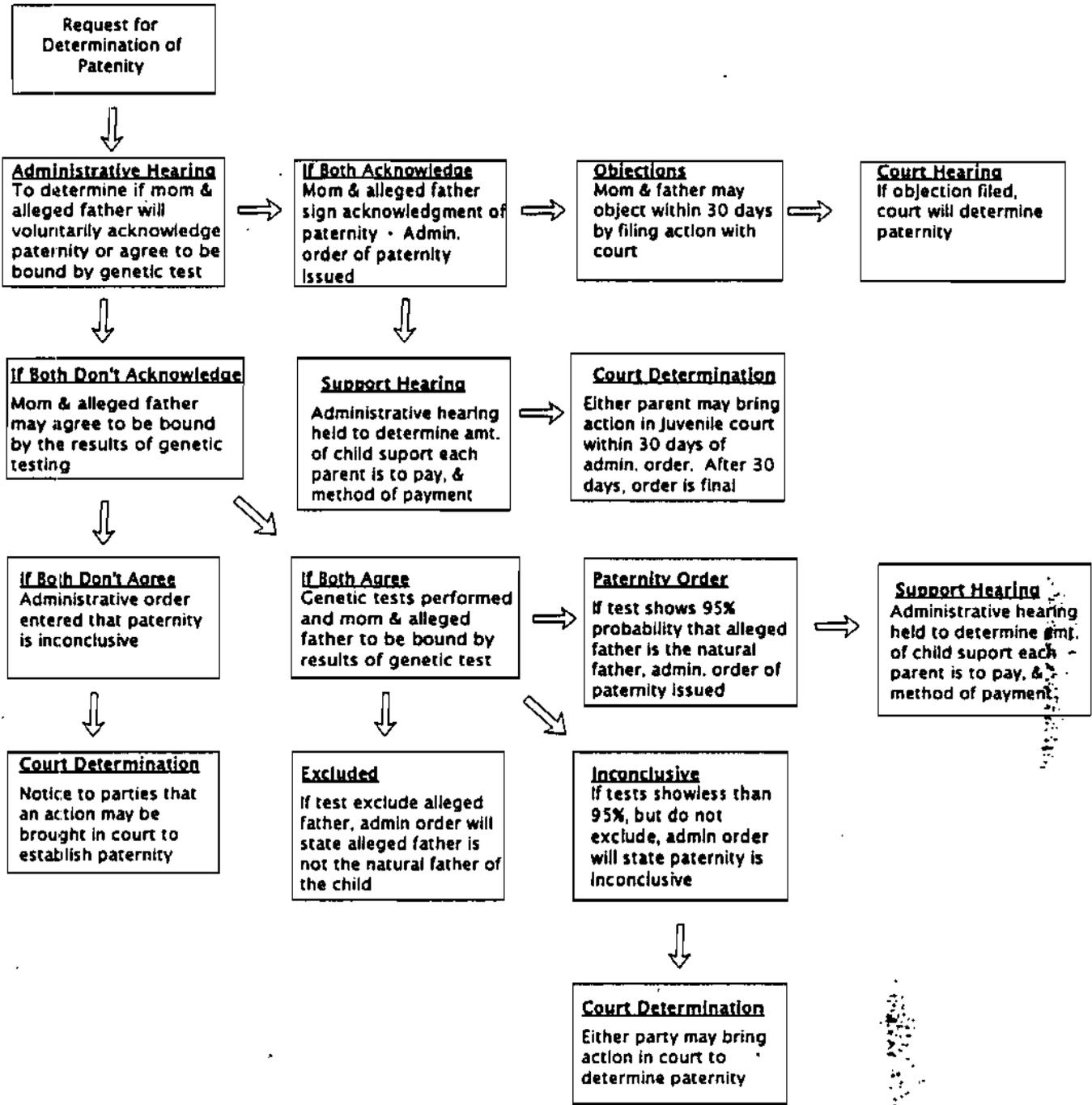
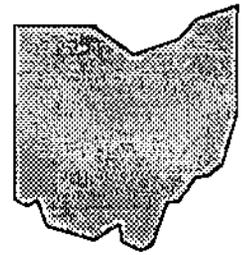
**40-5-237. District court paternity proceedings — objection to tests — additional tests.** (1) If an alleged father objects to the procedures for or the results of a paternity blood test, he shall file a written objection with the court within 20 days after service of the notice required by 40-5-236(3). The court shall order an additional paternity blood test if a written objection is filed or at the request of the department. An additional test must be performed by the same or another expert who is qualified in paternity blood testing. Failure of the alleged father to make a timely challenge is considered a waiver of any defense to the test results or test procedures, including the chain of custody.

(2) In any hearing before the court or at trial, testimony relating to sexual intercourse of the mother with any person who has been excluded from consideration as a possible father of the child involved by the results of a paternity blood test is inadmissible in evidence.

(3) When a paternity blood test excludes an alleged father from possible paternity, the test shall be conclusive evidence of nonpaternity of the alleged father for all purposes in the district court.

History: En. Sec. 8, Ch. 119, L. 1989.

# Administrative Paternity Establishment Under Ohio Statute, Effective July 15, 1992





# IMPROVING PATERNITY ESTABLISHMENT IN CONTESTED CASES WITHIN THE JUDICIAL SYSTEM

## EXECUTIVE SUMMARY

Recent efforts to reform paternity establishment procedures have focused on obtaining voluntary acknowledgments. However, in some cases, the man will not voluntarily acknowledge paternity. Since genetic tests are now routinely used in contested cases and the results they provide are almost conclusive, there is usually sufficient evidence to establish paternity if the man is actually the father, even if he is unwilling to voluntarily acknowledge. However, the process for establishing paternity in contested cases is often protracted, particularly in localities which use the courts. This paper examines ways to improve contested paternity establishment in a judicial system.

### **Expedited Process**

Many States that use courts for establishing paternity have already implemented practices to expedite the process, including the use of hearing officers, efficient case scheduling, and pretrial conferences. Legislation proposed by the Administration will, if enacted, require expedited paternity establishment processes for contested IV-D cases, thereby providing an impetus for the widespread adoption of efficient court management practices.

### **Additional Reforms to Expedite Contested Cases**

Civil Proceeding. The vast majority of States have civil procedures for paternity establishment. However, some States still have quasi-criminal rules and procedures. Federal legislation could require States to develop completely civil procedures, using a "preponderance of the evidence" standard, for contested cases. Civil procedures would likely expedite the process and create less conflict.

Service of Process. The inability to serve process is a major reason for failed paternity establishment. To address this problem, at least one jurisdiction has hired its own sheriffs that work exclusively on paternity and child support matters. Some States authorize first-class or certified mail service, limiting the need for personal process servers.

Temporary Support Orders and Retroactive Child Support. If the alleged father is obligated to pay support under a temporary order or if he knows that he may be ordered to pay retroactive child support, he will not have an incentive to prolong the paternity process by raising objections or other hurdles.

### **Other Contested Case Reforms**

Other reforms, in addition to those which expedite the process, may improve the adjudication of contested cases.

Admissibility of Taped Admissions. Federal legislation could require States to provide that written, videotaped, or audiotaped evidence of the defendant admitting paternity be admissible as evidence.

Preventing Fathers from Relitigating Paternity Determinations. A Federal statute requiring States to provide that a father whose paternity has been previously established may not plead non-paternity as a defense to a support action will prevent paternity determinations from being needlessly reopened.

Nonjoinder of Child. A Federal statute providing that States may bring a paternity action without joinder of the child as a party to the action may ensure that the child can relitigate paternity if a case was incorrectly dismissed due to a technicality.

Standing to Bring a Paternity Action. For reasons of equity, the Federal government may want to require States to allow a father, who wants contact and a relationship with his child, to initiate paternity establishment proceedings.

### **Interstate Paternity Establishment**

Contested cases can be particularly difficult to work when the parties live in different States. Increased use of long-arm jurisdiction, improving interstate locate methods, service of process reform, and liberalizing rules of evidence would improve processing in such cases.

## INTRODUCTION

Recent efforts to reform paternity establishment procedures have focused on obtaining voluntary acknowledgments. However, in some cases, the man may be unwilling to voluntarily acknowledge paternity. He may not believe or may be unsure that he is the father. The parents may not get along with each other. The father may not want to pay child support or have a relationship with his child. In such contested cases, paternity must be established by means other than a voluntary acknowledgment.

In recent years, scientific advancements in genetic testing have revolutionized the paternity determination process in contested cases. Genetic tests can usually either exclude a man from consideration or establish the probability that he is the father at 99 percent or higher, leaving little doubt as to whether an alleged father is actually the genetic father. Since genetic tests are now routinely used in contested cases and the results they provide are almost conclusive, there is usually sufficient evidence to establish paternity if the man is actually the father, even if he is unwilling to voluntarily acknowledge.

However, even with genetic testing, the process for establishing paternity in contested cases can still be protracted, particularly in localities which use the courts. One study of three localities found that paternity establishment, on average in both contested and uncontested cases, took 5 to 10 months after a case was opened, depending on the locality.<sup>1</sup> In certain localities, some contested cases have lasted 2 to 4 years. The longer it takes to establish paternity, the longer the children will have to wait for support.

Paternity establishment within the court system is often problematic, particularly in contested cases, for several reasons. First, fathers are able to use dilatory tactics, such as requesting continuances or jury trials (jury trials may lead to docket delays of over a year), in order to delay the proceedings. Second, some court procedures are burdensome and create delays. For example, some courts require the testimony of every person in the chain-of-custody of a blood sample before genetic test results can be admitted as evidence. There are often delays

between each step in the process as pleadings are filed, motions are made, and depositions are taken. Third, some courts may give low priority to paternity cases. Furthermore, some courts, particularly in urban areas with large caseloads, are overburdened and may simply lack the staff and capacity to handle so many cases. This leads to scheduling and long waits to get on the court's docket. If the paternity caseload were to increase further as a result of a universal paternity establishment initiative, some courts may be even further overwhelmed.

This last problem, an overburdened court system, may largely be a result of the other problems--dilatory tactics, cumbersome procedures, and a lack of effort. The courts may be able to handle the caseload if they developed efficient procedures and focused on paternity establishment. Furthermore, although judicial processing of paternity cases is problematic in some jurisdictions, there is little information available regarding how widespread these problems are. Some courts, such as the paternity court in Prince George's County, Maryland, have focused on paternity cases and adopted procedures that enable the judicial system to efficiently handle a large volume of cases.

This paper will examine reforms that can be implemented within a judicial system.<sup>3</sup> (Administrative process and genetic testing reforms are examined in separate papers and are not dealt with here). The paper will look at ways to expedite contested cases, other contested case reforms, and options for improving interstate contested cases. There are three reasons for examining ways to expedite a judicial process. First, the courts handle paternity establishment cases in most States. Second, unless administrative process is federally-mandated, some jurisdictions, with strong court systems, are likely to continue to process most paternity cases judicially. Finally, even if administrative processes for paternity establishment are mandated or widely adopted, some complex contested cases may still need to be adjudicated in the courts. Most States that currently use an administrative process for establishing paternity still use courts as a last resort in some cases.

## EXPEDITED PROCESS

Many States that use judicial systems for establishing paternity have already implemented reforms designed to expedite the process. For example, some jurisdictions use:

Court Hearing Officers. Some courts, including courts in parts of Delaware and Pennsylvania, allow court officials, other than judges, to make decisions in paternity cases. These officials, often called hearing officers or masters, may be able to order genetic tests or ratify voluntary acknowledgments. This expedites the process by allowing officials other than judges to make decisions and take action.

Efficient Case Scheduling. Courts expedite the process through innovative scheduling practices. Some courts schedule days for dealing solely with paternity, allowing the cases to be processed more quickly. Prince George's County, Maryland, for example, convenes paternity court once every other week, and processes at least 150 cases each day it is in session. Some courts also schedule a trial date at the time of the blood draw, allowing just enough time to get the test results prior to the trial.

Pretrial Conferences. Courts in Philadelphia, Pennsylvania schedule pretrial conferences between court personnel and the parties in contested cases. The conferences occur both prior to genetic testing and after receiving genetic test results and are designed to encourage voluntary acknowledgments so that the case will not have to go to trial.

Coordination between Courts and IV-D. Many courts have found that close coordination with the IV-D agency, on issues such as scheduling court hearings and trials, is essential to expediting the process. A number of States, including Colorado and Kansas, have established a child support judicial coordinator to serve as a liaison to foster open lines of communication and improved working relationships between the child support agency and the judiciary.

Such court management practices have been successful in expediting paternity establishment in many courts, but there are still many jurisdictions where the process remains lengthy. While the Federal government may want to encourage efficient court management practices, it would be difficult to federally-mandate each specific one. Practices that work in one court may not work in another due to local circumstances and procedures.

Instead of attempting to federally-mandate specific court management practices, the Administration has adopted an alternative approach that gives States more flexibility. A legislative proposal in the President's FY1994 budget, will, if enacted, require expedited paternity establishment processes for contested IV-D cases. Under the Administration's proposal, States would likely have flexibility to design their own expedited processes, but would have to meet case processing timeframes established in regulation. In order to meet these timeframes, States and courts would have to implement efficient court management practices (including, as discussed above, court hearing officers, efficient case scheduling, and pretrial conferences).<sup>3</sup>

#### ADDITIONAL REFORMS TO EXPEDITE CONTESTED CASES

In addition to the expedited process requirement in the proposed legislation, there are other reforms which would speed up the process. These reforms are more universally applicable than the specific court management practices discussed above and therefore could be federally-mandated by legislation.

Civil Proceeding. Historically, in most States, the paternity establishment process was initiated as a criminal proceeding. Criminal proceedings may have inhibited the paternity establishment process in several ways:

- The father may have been less willing to voluntarily acknowledge paternity if he was admitting to a criminal offense.
- The mother may have been reluctant to subject the father to a criminal conviction.
- Criminal proceedings required a higher standard of proof than civil proceedings.

The Family Support Act of 1988 encouraged States to adopt civil, rather than criminal, procedures for establishing paternity in contested cases.<sup>4</sup> The vast majority, if not all, States now have civil procedures for paternity establishment. However, some States still have quasi-criminal rules and procedures regarding paternity establishment (e.g., criminal warrants for abandonment, arrest). Federal legislation could require States to develop completely civil procedures for contested cases. Civil procedures would likely expedite the process and create less conflict.

A related issue is the evidence standard used in a civil process. Some States use a "clear and convincing evidence" standard<sup>5</sup>, which is a harder standard to meet than a "preponderance of the evidence".<sup>6</sup> The harder standard makes it more difficult to prove paternity. To address this problem, the Interstate Commission<sup>7</sup> recommended a Federal statute requiring States to use a "preponderance of the evidence" standard as part of a civil process for determining paternity.

The Interstate Commission also recommended a Federal statute preventing States from having laws making it a crime to father a child out-of-wedlock.<sup>8</sup> Several States currently have such criminal laws, which may hamper civil procedures for establishing paternity. Alleged fathers are more likely to cooperate in contested cases, and perhaps even voluntarily acknowledge, if State laws do not make their paternity a crime.

Service of Process. Service of process, under which notice is delivered to the obligor, is a necessary part of obtaining jurisdiction over an obligor in a paternity proceeding. However, the inability to serve process, e.g., because the obligor is purposely evasive or is frequently not home, is a major reason for failed paternity establishment. Many States require hand-delivered personal service, by a sheriff or private process server for example, for the initial contact in a proceeding. (Subsequent notification, after the initial contact, is less difficult since first class mail can be used in most States). Some process servers, such as sheriffs, may give priority to serving notice in criminal matters or other civil cases, rather than paternity cases.

To address these problems, the IV-D agency in Prince George's County, Maryland has hired its own sheriffs that work exclusively on paternity and child support matters. In addition, some States authorize first-class or certified mail service even for the initial service of process, limiting the need for personal process servers. However, there are drawbacks for using mail or similar techniques for initial service. These methods provide little or no proof that the obligor actually received service. Such proof is important in order to protect the rights of the obligor. In addition, lack of proof may impede progress in a case. For example, the judge may be reluctant or unable to enter a default order if there is not sufficient proof of initial service. In addition, if the obligor is not served, he may challenge and overturn the order. Therefore, techniques such as first-class mail may be more appropriate for subsequent service rather than initial service.<sup>9</sup>

Temporary Support Orders. The Interstate Commission recommended a Federal statute requiring States to have laws providing for the use of temporary support orders. Temporary orders require the man to pay child support prior to the final adjudication of paternity if genetic test results reach a certain threshold. Minnesota law allows the establishment of a temporary support order if genetic test results indicate a probability of paternity of 92 percent or greater. Once the alleged father is obligated to pay support under the temporary order, he no longer has an incentive to delay the paternity process by raising objections or other legal hurdles; therefore, resolution of the paternity issue should be expedited. In addition, the child will start receiving support payments sooner. However, temporary support orders may be unnecessary if a rebuttable presumption has been created by genetic test results, since paternity resolution should already be expedited. They may also create confusion and additional paperwork if the support amount is changed when the final support order is established, or if paternity is never established.

Retroactive Child Support. Another reform designed to expedite the process would be to require States have laws for awarding retroactive child support. In some States, courts have the authority to order retroactive support. In Minnesota, for example, courts can award retroactive child support for the two-year-period prior to the initiation of the paternity action.

In other States, retroactive child support can be awarded from the time of birth or the time of filing for paternity or support. If the man knows he may be ordered to pay retroactive child support, he will have less of an incentive to prolong paternity and support order establishment through dilatory tactics.

Jury Trials. Some courts still use jury trials to establish paternity in some cases. Limiting the use of jury trials would expedite the process. This issue is discussed in another paper.

### OTHER CONTESTED CASE REFORMS

In addition to reforms designed to expedite the process, other reforms for contested cases within the judicial system are needed. These reforms, discussed below, would increase the availability of evidence, prevent the father from relitigating cases where paternity has been established, allow children the opportunity to relitigate cases where paternity was not established, and allow men claiming to be fathers to initiate paternity actions. While these reforms can be implemented within a judicial system, they could also be used within administrative processes.

Admissibility of Taped Admissions. The Interstate Commission recommended a Federal statute requiring States to provide that written, videotaped, or audiotaped evidence of the defendant admitting paternity be admissible as evidence in a contested case. A witness would have to testify, in person or by affidavit, that the person admitting paternity was the defendant. This provision would allow additional evidence that could help prove paternity.

Res Judicata Effect of Paternity Determination. The principle of res judicata, which is designed to bring an end to litigation in a case, prevents relitigation of a claim or issue after a final determination by a court. Generally, divorce decrees that recognize paternity or other final paternity determinations are governed by res judicata; therefore, the obligor cannot raise non-paternity as a defense in a subsequent child support establishment or enforcement proceeding. However, some courts have allowed paternity cases to be reopened after a final

determination. To address this issue, the Interstate Commission recommended enactment of a Federal statute requiring States to have and use laws providing that a father whose paternity has been previously established, perhaps during a divorce proceeding, may not plead non-paternity as a defense to a support action.<sup>10</sup>

Nonjoinder of Child. While it is generally desirable to prevent fathers from relitigating paternity determinations once paternity has been established, it may be appropriate to allow children to relitigate in cases where paternity should have been established but was not. In some States, a parentage action cannot be brought without joinder of the child as a party.<sup>11</sup> Joinder is a legal principle that allows, or sometimes requires, persons involved in a lawsuit to be joined as plaintiffs to litigate the matter together. The problem with this practice is that if the child is joined as a party to the action, res judicata may prevent the matter from being relitigated, even if a technicality or error prevented paternity from being established. On the other hand, if the child is not joined as a party, the child may have standing to relitigate paternity at a later point.

Therefore, the Interstate Commission recommended enactment of a Federal statute providing that States may bring a paternity action without joinder of the named child. However, the Commission also recommended that State law would govern the res judicata effect of nonjoinder. Therefore, under the Interstate Commission's recommendation, State law could still prohibit relitigation, even if the child was not joined as a party in the original action. Alternatively, a Federal statute could require that if a child is not named as a party in the original action, the child has the right to relitigate paternity at a later point.

Standing to Bring a Paternity Action. In a few States, a person claiming to be the father of the child does not have standing to initiate a paternity action. The Interstate Commission encouraged States to give such standing to a person claiming to be the father. For reasons of equity, it is important to allow a father, who wants contact and a relationship with his child, to initiate paternity establishment proceedings. However, if the child's mother is married or involved with another man who acts as a father to the child, allowing the man claiming to be

the biological father to initiate paternity proceedings could disrupt the family and potentially harm the child in some cases.

## INTERSTATE PATERNITY ESTABLISHMENT

Contested cases can be particularly difficult to work when the parties live in different States. If the alleged father lives out-of-State, a court must either obtain long-arm jurisdiction over the man<sup>12</sup> or refer the case to another State for paternity establishment. If an interstate referral is made, the responding State's motivation for working another State's case may be low. IV-D agencies and parents complain that interstate paternity actions take too long, involve burdensome paperwork requirements, and are characterized by a lack of communication and cooperation between States. Below is a brief overview of some reforms which might improve the interstate establishment of paternity. (See the issue paper on interstate enforcement for a more detailed discussion of the interstate issue).

Use of Long-Arm. Use of long-arm would avoid interstate action by allowing one State to maintain control and work a case. Most States have long-arm authority in paternity cases; however a few do not. A Federal mandate requiring States to adopt the Uniform Interstate Family Support Act (UIFSA), a recently-drafted model State statute governing interstate processing, would ensure that every State had long-arm authority. UIFSA includes a broad long-arm provision that can be used to establish paternity.

Federal regulations require States to use their long-arm statutes, if they have a statute, where appropriate to establish paternity. However, since the State determines which cases are appropriate, long-arm jurisdiction is not widely used by most States. In order to increase the use of long-arm, the Federal government might: (1) establish financial incentives, or (2) require States to attempt long-arm jurisdiction before referring a case to another State, with only limited and specified exceptions.

Improving Interstate Locate. One of the primary barriers to working an interstate paternity case is locating the alleged father in another State. A national interstate network, the Child Support Enforcement System (CSENet) is currently being implemented. This network will allow locate inquiries and other information to be transmitted electronically between States, thereby expediting access to locate data. Complete implementation, and possible future expansion of CSENet's functions should help improve interstate locate.

Improving Service of Process. As discussed earlier in this paper, service of process can be an impediment to successful paternity adjudication. The problem is particularly difficult in interstate cases where it is necessary to serve an out-of-State individual. Innovative service-of-process techniques, such as certified mail, can help a court to serve process directly on a non-resident, without relying on an out-of-state process server. In addition, if each State recognized and accepted other States' proof and methods of service, States would be able to more easily use other States' service in long-arm cases.

Liberalizing rules of evidence. Evidence is essential to proving paternity in contested cases. However, obtaining, transmitting, and admitting evidence in interstate paternity cases can be difficult. To address this problem, UIFSA authorizes use of innovative techniques for transmission of evidence between States (e.g., via telephone), communication between States to obtain information, and assistance with discovery requests of another State. However, UIFSA only authorizes some of these actions and does not require them. To go a step further, Federal legislation could require States to: act on discovery orders issued by other States; use procedures that allow out-of-State witnesses to testify by telephone; and relax conditions for admitting out-of-State documents.

**APPENDIX: OVERVIEW OF PATERNITY PROPOSALS IN  
INTERSTATE COMMISSION REPORT AND ADMINISTRATION'S LEGISLATION**

Proposal	Interstate Commission Recommendation	Administration's Legislative Proposal
Time limit for objections to genetic test results; otherwise results admissible without foundation	X	X
Presumption of paternity based on genetic test results	X	X
Use of default orders	X	X
Expedited processes for paternity establishment		X
Immunity from prosecution in connection with an acknowledgment of paternity; decriminalization of nonmarital parentage	X	
Civil proceeding; preponderance of the evidence	X	
Putative father given standing to bring action	X	
Joinder of child not necessary; privity law governs res judicata effect	X	
Use of temporary support orders	X	
Admissibility of taped admissions and birth- related bills	X	
Party with paternity previously determined cannot plead non-paternity in support action	X	
Revised paternity performance standard		X
Simple civil process for voluntarily acknowledging paternity	X	X
Hospital-based acknowledgment programs	X	X
Voluntary acknowledgment creates presumption of paternity and is admissible as evidence		X
Acknowledgment basis for seeking support		X
Hearing to ratify acknowledgment unnecessary	X	
Paternity determinations made by another State entitled to full faith and credit		X
Paternity outreach programs with 90% FFP	X	

## APPENDIX: VOLUNTARY ACKNOWLEDGMENTS

The best way to expedite contested cases is to avoid them. Even if formal proceedings against an alleged father have already begun in a contested case, the matter may still be resolved by a voluntary acknowledgment. Although an alleged father may be initially unwilling to acknowledge paternity, perhaps because he is uncertain whether he is actually the biological father, he may be willing to voluntarily acknowledge after seeing genetic test results which show a high probability of paternity.

The Administration's proposed paternity legislation would require States to enact simple procedures for the voluntary acknowledgment of paternity. By requiring voluntary acknowledgment procedures as part of hospital-based and birth registration programs, the proposal particularly emphasizes early paternity establishment.

However, the Administration could take additional steps, most of which would require new Federal statutes, to increase the number of paternities established by voluntary acknowledgment and to expedite the process:

Require States to develop procedures for giving alleged fathers multiple opportunities to voluntarily acknowledge. State's voluntary acknowledgment procedures should be widely available (i.e., not simply limited to hospitals). Furthermore, once formal adjudication begins in a contested case, the alleged father should be given an opportunity to voluntarily acknowledge at every stage in the process.

Require States to develop outreach programs. Both the Interstate Commission and the Bradley/Roukema bill would require States to develop outreach programs for encouraging voluntary acknowledgments. The programs would include the distribution of written materials at schools, hospitals, and other agencies, and would receive 90 percent Federal Financial Participation (FFP).

Require staff training programs. A report by the Department of Health and Human Services Office of Inspector General found that interview training for caseworkers was effective in increasing the number of voluntary acknowledgments. (Department of Health and Human Services Office of Inspector General, "Effective Paternity Establishment Practices: Technical Report", January 1990, p. 15). Similarly, training of hospital and vital records staff is essential to the success of hospital-based voluntary acknowledgment programs.

If, under State procedures, a voluntary acknowledgment must be ratified by a tribunal, require that ratification be expedited. Many States require that a voluntary acknowledgment be entered or ratified by a tribunal. In order to ensure that this process does not delay a finding of paternity, agencies that obtain voluntary acknowledgments could be required to forward them to the appropriate tribunal within a specified timeperiod after receiving the acknowledgment. The Bradley/Roukema bill would establish a 10 day timeframe. Also, the tribunal could be required to ratify the acknowledgment without the necessity of a hearing.

Require collection of information necessary for support determination be done concurrently with the paternity acknowledgment process. This will not increase the number of voluntary acknowledgments, but will ensure, in cases where an acknowledgment is obtained, that support order establishment can be done concurrently or as soon as possible after paternity establishment.

Establish conditions and limits for challenging a voluntary acknowledgment. This will ensure that a voluntary acknowledgment cannot easily be overturned. One possibility would be to specify time limits within which challenges must occur, such as 1 or 2 years after the acknowledgment. Another option would be to only allow challenges upon a showing that it is in the best interest of the child. (David T. Ellwood and Paul K. Legler, "Getting Serious about Paternity", January 1993, DRAFT). The Bradley/Roukema bill contains a provision that would require States to adopt procedures "under which an individual who voluntarily acknowledges paternity may request genetic tests within 1 year of such acknowledgment". However, the bill does not specify whether the test results could be used to reverse the voluntary acknowledgment.

Many of these reforms are discussed in greater detail in the paper on universal paternity establishment.

## ENDNOTES

1. "Costs and Benefits of Paternity Establishment" was an OCSE-funded study conducted by the Center for Health and Social Services Research and Maximus, Inc. and published in 1985. Data was collected in 1979 through 1981, so the results are somewhat dated. The study examined paternity establishment in Eugene, Oregon; Dane County, Wisconsin; and Essex County, New Jersey. These localities were chosen for their above average performance and are not necessarily representative of localities nationwide. The localities all established paternity using judicial or quasijudicial procedures. The figures regarding average time necessary to establish paternity include both uncontested and contested cases; therefore, the time for contested cases was probably considerably longer. In addition to the relatively lengthy time required for paternity establishment, there were a large number of cases where paternity was not established.

2. While all of the options discussed in this paper can be implemented within a judicial system for establishing paternity, many can also be implemented within an administrative system.

3. Expedited processes for support order establishment and enforcement were mandated by Federal legislation in 1984. The experience of implementing these requirements indicates that expedited timeframes are an effective means of encouraging State innovation that effectively speeds up the process.

4. The Administration's proposed paternity legislation would require States to adopt civil procedures for the voluntary acknowledgment of paternity, but would not require civil procedures for contested cases.

5. States which use a "clear and convincing evidence" standard generally only use it in certain circumstances, such as posthumous proceedings.

6. In 1987, the U.S. Supreme Court, in Rivera v. Minnich, held that it is constitutional to determine paternity using a "preponderance of the evidence" standard.

7. Congress, as part of the Family Support Act of 1988, created the U.S. Commission on Interstate Child Support, charging it to submit a report containing recommendations for improving the interstate establishment and enforcement of support awards. In 1992, the Commission issued its comprehensive final report which contained numerous recommendations.

8. The Interstate Commission's recommendation did not apply to statutory rape laws.

9. If an obligor has already received initial service, he is aware of the proceedings, and he may inform the tribunal of

address changes if he moves so that the tribunal will be able to deliver subsequent service.

10. The Uniform Interstate Family Support Act (UIFSA), a recently-drafted model State statute governing interstate processing, would implement this recommendation in interstate cases. Section 315 of UIFSA states, "A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonpaternity as a defense to a proceeding under this Act". See the issue paper on interstate enforcement for a more detailed discussion of UIFSA.

11. For example, California (if the child is 12 years or older), Colorado, North Dakota, New Mexico, Ohio (unless good cause is shown for not doing so), Washington, and Wyoming require the child to be made a party to a paternity action.

12. In order for a State to use long-arm in a case, the alleged father must have had "contact" with the State, as specified by State law. For example, many States' laws allow the use of long-arm in a paternity case if the non-resident obligor engaged in sexual intercourse, which may have resulted in the child's conception, in the State.

## ENDNOTES

1. Annotation, "Paternity Proceedings: Right to Jury Trial," 51 ALR4th 565
2. For example, see Mississippi §93-9-15 and Oklahoma 10 § 76
3. Arizona, California, Delaware, District of Columbia, Hawaii, Idaho, Kansas, New Mexico, New York, North Carolina, South Carolina, Tennessee, Utah, Washington
4. For example, Illinois §40-2513(b) states that "any party who desires a trial by jury on the issue of parentage must file a demand therefore pursuant to and within the time limits set forth in the "Code of Civil Procedure"; Ohio §3111.12(D) specifies that "any party to an action brought pursuant to sections 3111.01 to 3111.19 of the Revised Code may demand a jury trial by filing the demand within three days after the action is set for trial. If a jury demand is not filed within the three-day period, the trial shall be by the court"; Rhode Island §15-8-8.1 declares that "trial shall be by the court unless trial by jury is claimed by either party within 10 days after the filing of an answer in which event the trial shall be by jury."
5. Colorado Revised Statute §19-4-128
6. County of El Dorado v. Schneider, 237 Cal.Rptr. 51 (Cal.Ct.App. 1987); Hyatt v. Hill, 714 P.2d 299 (Utah 1986)
7. Hoyle v. Superior Court of Arizona, County of Maricopa, 778 P.2d 259 (Ariz.App. 1989)
8. Kentucky, Maine, Mississippi, and Rhode Island added the jury trial right to their provisions; New Hampshire and Utah did not.
9. States that have adopted the Uniform Parentage Act (UPA) are Alabama, California, Colorado, Delaware, Hawaii, Illinois, Kansas, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Rhode Island, Washington, and Wyoming. Montana omits subsection 14(d). North Dakota and Wyoming add the phrase "unless either party demands trial by jury" after the phrase "without a jury" to their versions of the UPA. Missouri §210.839(4) declares that "any party shall have a right to trial by jury. A request shall be made within ninety days of the first responsive pleading. If a trial by jury is granted, such trial shall take place within 270 days of the order granting the request for a trial by jury. Where there is a trial by jury, the jury shall only make factual determinations on the issue of parentage."

authorized two justices of the peace, "upon examination of the cause and circumstance" of parentage to order the parent or putative parent of an illegitimate child whose support was likely to become a parish expense to "make payment of money weekly or other sustenance for the relief of the child." The version of these laws in effect in 1776 (6 George 2, chapter 31) authorized the parish officials who implemented the Poor Laws to apply one or more justices for the type of support order the law had created. These applications were administrative in nature. Like other proceedings conducted "out of Sessions" they took place without a jury. Disgruntled defendants could appeal a resulting order to the Quarter or General Sessions of the Peace, but "out of Sessions" appeals were decided by the session Justices alone.

Of the six States that have adopted the Uniform Act on Paternity which does not provide for a trial by jury, four States added language allowing for the right.<sup>8</sup> The Uniform Parentage Act provides affirmatively in §14(d) that trial shall not be by jury. In the explanatory comments, the National Conference of Commissioners on Uniform State Laws explained that "(t)he use of a jury is not desirable in the emotional atmosphere of cases of this nature. The clause eliminating the jury is bracketed only because in some States, constitutions may prevent elimination of a jury trial in this context." Eighteen States have adopted this Act, some with, some without §14(d).<sup>9</sup>

### Observations

In designing program revisions to expedite the process for resolving disputed paternity cases [as contemplated by the Administration's proposed changes to 42 USC §666(a)(2)], the delay inherent in jury cases cannot be overlooked. Burgeoning dockets in courts can result in scheduling of trials many months in the future. Lengthy proceedings involving filing and arguing pre-trial motions, crafting jury instructions, and mustering expert testimony to explain complex scientific evidence can complicate the resolution and precipitate frustration. That a possibility for a jury trial exists under statutes in a significant number of States should be a consideration in contemplating administrative mechanisms for resolving paternity cases. It will also be a factor in imposing case processing timeframes. Methods for limiting the availability of jury trials (e.g., by mandating an explicit timeframe for election or by linking to genetic testing) should be carefully explored.

Approximately thirty States have statutes which permit the parties to request trial by jury. Of these, a few limit the right to demand a jury to alleged fathers only.<sup>2</sup> In only fourteen States is there clearly no State constitutional or statutory right to trial by jury in a paternity action.<sup>3</sup>

### Discussion

The historical nature of paternity proceedings as quasi-criminal coupled with the fact that the State, with all its resources and expertise, is maintaining the action, can persuade a judge to react favorably to an alleged father's jury trial demand. It is crucial to deflect this initial reaction, and devise a method for ensuring that, to the greatest extent possible, contested paternity cases are tried to the bench. Jury trials are not appropriate for paternity cases for several reasons, including docket delays of over a year. Lengthy trials use up valuable court and attorney time, whereas a bench trial normally can be completed in half a day. Evidence is of a highly personal nature and, as is the case with other family law litigation, should not be affected by the chilling effect of public disclosure. The delay factor acts in the favor of the alleged father by allowing him additional freedom from his support obligation, which has the further effect of providing a disincentive to prompt case resolution.

In States where a statutory right to a jury trial in a paternity case exists, the person requesting a jury trial must generally request it in a timely manner according to State statute or procedure or it is deemed waived.<sup>4</sup> For example, Missouri Revised Statutes §210.839(4) specifies that a request for a trial by jury must be made within ninety days of the first responsive pleading. In its 1993 legislative session, Missouri amended the timeframe within which a jury trial must take place after an order granting a request for trial by jury from 90 days to 270 days, and also specifying that failure to have a trial within such time period shall not result in a dismissal of the action.

Although in most instances the jury trial never materializes, the mere demand invoked early on by an alleged father to preserve the right can be unsettling to the mother and demand considerable preparatory work for the State bringing the action. Because of the prospect of having to convince twelve laypersons of the reliability of scientific proof and meet challenges to the mother's veracity, preparation for a jury trial can be intensive.



# THE AVAILABILITY OF TRIAL BY JURY IN CONTESTED PATERNITY CASES

## Executive Summary

This paper examines issues concerning the availability of trial by jury in an action to establish paternity. It specifies that approximately two-thirds of the States allow one or both parties to a contested paternity case to demand a trial by jury. With the possible exception of Wisconsin, State statutes rather than the State constitution is the foundation for such right.

While the frequency of actual jury trials occurring may be low as compared to case resolution methods involving stipulations, consent decrees, or bench hearings, the mere request can trigger considerable preparatory work on the part of the parties and their counsel. Several States' approaches to placing restrictions on circumstances under which a party may exercise the right to demand a trial by jury are featured, as well as a brief discussion of the historical underpinnings of paternity cases as quasi-criminal proceedings.

Some possible ideas for legislative change at the Federal and/or State level in this regard are set forth for consideration.

# THE AVAILABILITY OF TRIAL BY JURY IN CONTESTED PATERNITY CASES

## Introduction

This paper will examine issues concerning the availability of trial by jury in an action to establish paternity and possible ideas for circumscribing the situations in which a party may demand this method of case resolution.

## Background

State law generally governs whether a judge or jury will try a paternity case. Since the Seventh Amendment of the United States Constitution does not apply to State courts, any right to trial by jury in a paternity case must be based on State constitutional, statutory, or case law.<sup>1</sup> Only three States [New Jersey, Wisconsin, and Ohio] have case law that recognized the existence of a State constitutional right to trial by jury in a paternity case. However, all three States have enacted subsequent statutory provisions clarifying the extent of the right and under what circumstances it may be exercised.

Ohio Revised Code §3111.12(D), effective July 15, 1992, provides that "any party to an action to establish paternity may demand a jury trial by filing the demand within three days after the action is set for trial. If a jury demand is not filed within the three-day period, the trial shall be by the court." The New Jersey Parentage Act, adopted May 21, 1983, specifies that the "trial shall be by the court without a jury, unless a party to the action files with the court a written request for a trial by jury within 10 days after service of the complaint. The complaint shall contain a notice to all parties that they may request a jury trial within 10 days of the service of the complaint. Wisconsin's statute is different in that it calls for an affirmative waiver. Wisconsin §767.50 provides that the trial shall be by jury, unless the defendant waives the right to trial by jury in writing or by statement in open court, on the record, with the approval of the court and the complainant.

Approximately thirty States have statutes which permit the parties to request trial by jury. Of these, a few limit the right to demand a jury to alleged fathers only.<sup>2</sup> In only fourteen States is there clearly no State constitutional or statutory right to trial by jury in a paternity action.<sup>3</sup>

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The historical nature of paternity proceedings as quasi-criminal coupled with the fact that the State, with all its resources and expertise, is maintaining the action, can persuade a judge to react favorably to an alleged father's jury trial demand. It is crucial to deflect this initial reaction, and devise a method for ensuring that, to the greatest extent possible, contested paternity cases are tried to the bench. Jury trials are not appropriate for paternity cases for several reasons, including docket delays of over a year. Lengthy trials use up valuable court and attorney time, whereas a bench trial normally can be completed in half a day. Evidence is of a highly personal nature and, as is the case with other family law litigation, should not be affected by the chilling effect of public disclosure. The delay factor acts in the favor of the alleged father by allowing him additional freedom from his support obligation, which has the further effect of providing a disincentive to prompt case resolution.

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Although in most instances the jury trial never materializes, the mere demand invoked early on by an alleged father to preserve the right can be unsettling to the mother and demand considerable preparatory work for the State bringing the action. Because of the prospect of having to convince twelve laypersons of the reliability of scientific proof and meet challenges to the mother's veracity, preparation for a jury trial can be intensive.

Many paternity cases can be resolved without the necessity of a full adversary bench or jury trial. Frequently, even those cases in which the alleged father initially denies the allegations become uncontested at a later stage, particularly upon receipt of genetic testing results which indicate non-exclusion and a high likelihood of paternity. With the advent of genetic testing, paternity actions have become less of a credibility contest between disputing parties and more of an objective search for biological truth. Other than waiver by failure to make a timely demand, to what extent can the exercise of the right to demand a jury be limited? Of particular note is a Colorado statute which links the right to trial by jury in paternity cases to genetic testing results.<sup>3</sup> It specifies that the petitioner or respondent may demand a trial by jury of six persons to determine the existence or nonexistence of the parent and child relationship. However, if genetic tests or other tests of inherited characteristics have been administered as provided in section 13-25-126, C.R.S., and the results show that the probability of the alleged father's paternity is ninety-nine percent or higher, the alleged father may not demand a trial by jury.

State constitutions generally contain a clause which specifies that "the right of trial by jury shall remain inviolate." This type of clause generally is construed to mean that any right to jury trial that existed at common law, on either the date the constitution was adopted or the date the constitution specifies as being applicable, cannot be abridged by legislative enactment. Several courts that have addressed the issue of an alleged father's constitutional right to trial by jury in a paternity case have found such right to be non-existent.<sup>6</sup> The courts which have found no constitutional right to a jury trial generally aver that there was no such thing as a common law action for declaration of paternity and support, illegitimate children being without a common law right to support from their fathers. That being the case, no right to jury trial existed and the legislature is free to grant or revoke the statutory right at any time.

For example, the Arizona Supreme Court upheld the constitutionality of Arizona's paternity statute which requires trial to the court and precludes the right to trial by jury.<sup>7</sup> In its opinion, the court traced the roots of Arizona common law. It noted particularly that paternity actions did not exist under England's non-statutory common law because the common law did not impose a duty of support upon the father of an illegitimate child. It explained that 18 Elizabeth, chapter 3, as amended, which created paternity actions in England, did not create a right to a jury trial in paternity actions. Instead, this law

authorized two justices of the peace, "upon examination of the cause and circumstance" of parentage to order the parent or putative parent of an illegitimate child whose support was likely to become a parish expense to "make payment of money weekly or other sustenance for the relief of the child." The version of these laws in effect in 1776 (6 George 2, chapter 31) authorized the parish officials who implemented the Poor Laws to apply one or more justices for the type of support order the law had created. These applications were administrative in nature. Like other proceedings conducted "out of Sessions" they took place without a jury. Disgruntled defendants could appeal a resulting order to the Quarter or General Sessions of the Peace, but "out of Sessions" appeals were decided by the session Justices alone.

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In designing program revisions to expedite the process for resolving disputed paternity cases [as contemplated by the Administration's proposed changes to 42 USC §666(a)(2)], the delay inherent in jury cases cannot be overlooked. Burgeoning dockets in courts can result in scheduling of trials many months in the future. Lengthy proceedings involving filing and arguing pre-trial motions, crafting jury instructions, and mustering expert testimony to explain complex scientific evidence can complicate the resolution and precipitate frustration. That a possibility for a jury trial exists under statutes in a significant number of States should be a consideration in contemplating administrative mechanisms for resolving paternity cases. It will also be a factor in imposing case processing timeframes. Methods for limiting the availability of jury trials (e.g., by mandating an explicit timeframe for election or by linking to genetic testing) should be carefully explored.

### Federal Legislative Possibilities

Since paternity establishment is a matter of State law, a Federal law which would wholly and unconditionally preclude States from allowing a party to a contested civil action from requesting a trial by jury may be subject to challenge as Federal intrusiveness and contrary to the Tenth Amendment. On the other hand, requiring States, as a condition of Federal financial participation in their child support program, to enact laws which restrict the availability of a jury trial to limited circumstances in which the demand is timely made, the results of genetic testing reflect an inclusionary percentage probability of paternity lower than the State's rebuttable presumption threshold, and the alleged father agrees to pay all costs and witness fees, as well as support retroactive to the date of the filing of the action or the child's birth may be worth exploring. Alternatively, the matter of the right to a jury trial in a paternity case could remain a State determination on a case-by-case basis, with States given the flexibility to repeal or place restrictions in the provisions of their jury trial statutes, such as the changes made by Colorado, for instance.

## ENDNOTES

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2. For example, see Mississippi §93-9-15 and Oklahoma 10 § 76
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# Issues Surrounding Noncooperation and Paternity Establishment

## Executive Summary

Child Support agencies have been struggling to improve paternity establishment performance in the face of rapid expansion in the numbers and rates of out-of-wedlock births. While there has been much discussion of this problem among teenagers, there has been little study of this phenomenon in the 25-44 age group which has experienced the most increase.

There are a number of incentives for cooperation in paternity establishment. Paternity establishment is the first step toward a child support award which can provide some stable support for the child. In addition, there are non-pecuniary incentives. Knowledge of family medical history is important. The emotional and psychological benefits of a child knowing who his father is are important. As a matter of fact, a higher value is placed on these intangible benefits than on financial ones.

Cooperation and its corollary, noncooperation, has a fairly standard definition: appearance for appointments, appearance for judicial or administrative proceedings, provision of complete and accurate information. While there are good cause provisions for noncooperation, their use is so limited that they do not appear to be an option. Beyond this we have little information on noncooperation. This probably reflects the subjective nature of the determination. Further, the paternity establishment process by its personal nature presents even more problems.

There are also disincentives for paternity establishment. The presence of informal support is an important factor. Child support agency attitudes can be negative. The Federal incentive system works counter to rewarding paternity establishment efforts.

The literature provides a wide variety of findings and recommendations with regard to paternity establishment and noncooperation. Those studies which address agency performance show that poorly performing agencies often use noncooperation as a scapegoat. On the other hand, agencies which are better performers tend to dismiss noncooperation by mothers as a nonproblem, or if a problem, one that can be easily solved by a good educational program. The truth probably lies somewhere in between. Clearly aggressive

management, highly motivated staff and strong administrative procedures can have an impact.

But, cooperation is a voluntary action. We know little about the decision processes involved. In addition, there is little information about the older group of mothers where the increase in out-of-wedlock births has been so great. Finally, while we know some of the incentives and disincentives to establish paternity, there has been little examination of the role of fear of violence. Much has been said, but little written, on this factor. All of this presents us with a number of issues especially as we move to expand paternity establishment through stronger efforts and through expansion of the universe.

## Issues Surrounding Noncooperation and Paternity Establishment

### Who Needs to Cooperate in Paternity Establishment?

According to the Census Bureau Survey on Child Support and Alimony: 1989, as of Spring of 1990, approximately 10.0 million mothers age 15 and over were living with their own children who were under 21 years old and whose fathers were not living in the households. The poverty rate for all women with children from absent fathers was 32% in 1989, thus 3.2 million mothers had incomes below the poverty level. The poverty rate for never-married mothers was 53.9% compared to a rate of 23.1% for ever-married mothers. The poverty status of mothers with less than a high school education was 59.1%. The poverty rate for mothers under 30 was 49.2%.

Almost 56% of women of all income levels receiving Aid to Families With Dependent Children (AFDC) have never been married. Over one-half of the AFDC budget goes to families where the mother was a teenager when her first child was born. Both of these statistics point out the importance of establishing paternity. The identification of the father and his potential to contribute to the care and financial support of his progeny could mean a step in the direction of self-sufficiency for the family as well as savings for the States and the Federal Government.

Data from the National Center for Health Statistics indicate that 28% of total births were out-of-wedlock in 1990. This means that approximately one out of every four children in our society is born out of wedlock. Figures from the late 80's show that the out-of-wedlock birth phenomenon has become ingrained; there is an increase in both actual numbers and in the percentage of growth rate.

More specifically, the total number of births to unmarried mothers in 1990 totaled 1,168,384, a 6% increase over 1989. This is a 76% increase over the 665,700 out-of-wedlock births at the beginning of the decade in 1980. The 1980 figure represented, in turn, a 67% increase over the 398,700 out-of-wedlock births reported at beginning of the previous decade.

The increases in the birth rates were substantial for unmarried mothers in all age groups. Birth rates were highest for unmarried mothers aged 18 to 24, with 57-62 per 1000. Because the

number of teenage women declined during the 1980's, the number of births to this age group was not as high as might have been expected.

However, the number of women aged 20 and older increased, particularly the 25 to 44 year olds. Increasingly this group is unmarried. This situation combined with the rising rate of non-marital childbearing caused sharp increases in the number of out-of-wedlock births to this group: between 1980 and 1989, the number of births rose from 393,946 to 746,289, an 89% increase. Because these women are older, it is possible that child support may be imposed and collected with more success with this group than with the teenaged one, assuming that paternity can be established. (METS, 1992)

Research has shown that welfare presents an intergenerational problem, with young mothers who are the daughters of welfare mothers giving birth to additional children, who if they are women may continue to depend on the AFDC system for the periodic support of themselves and their children. This group of women, although not the men who have fathered their children, has been the subject of research for some time. Unfortunately, there is very little literature available which studies the older group of women who are responsible for the sharpest increase in unwed births, much less on the men who father these children.

#### What Benefits Derive from this Cooperation?

But, what are the incentives to cooperate with the various entities which can provide help in establishing paternity? Establishing paternity is the first step toward a child support award and child support payments, in turn, can be a step toward family self-sufficiency. Immediate wage withholding can provide a consistent source of income for the child and mother and medical insurance can be an important part of the support package. Survivor's benefits through Social Security can be another source of income.

There are also non-pecuniary benefits which derive from paternity establishment. Knowledge of family medical history can be important. There are also emotional and psychological benefits. Knowing one's father, or just knowing who he is, can be important to a child's development. Studies have shown that bonding occurs within the first year of birth.

Interestingly, the literature indicates that mothers tend to place the strongest emphasis on the value of the non-financial benefits of paternity establishment (Wattenburg, 1991; Ellwood and Legler, 1993) and men do value their children. (Furstenberg, 1992)

For public assistance recipients, cooperation in location and paternity establishment is a requirement for the receipt of AFDC and Medicaid benefits with certain good cause exceptions. Welfare recipients also receive a \$50 monthly passthrough when the absent parents pays child support. There has been movement in other Federal areas and in the States to tie cooperation in paternity establishment efforts to the receipt of other Federal and State social benefits as a means of limiting expenditures.

#### How Is Cooperation Defined at the Federal and State Levels?

But how is cooperation and, by extension, noncooperation defined? The requirements for the level of cooperation for various benefits are defined with varying degrees of precision in Federal and State regulations. Most of these regulations also include provision for good cause exceptions. The requests for and granting of good cause exceptions represent such a minuscule portion of the AFDC and IV-D caseload that elaboration is not necessary. Let it suffice to list the good cause exceptions which apply to AFDC, Child Support and Medicaid: anticipated physical harm; anticipated emotional harm; incest or rape; pending adoption; and, preadoption service.

Cooperation, and its corollary non-cooperation, cannot be so clearly determined. The Federal AFDC regulations define cooperation as:

- (1) Appearing at an office of the State or local agency or the child support agency as necessary to provide verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the applicant or recipient;
- (2) Appearing as a witness at judicial or other hearings or proceedings;
- (3) Providing information, or attesting to the lack of information, under penalty of perjury; and,

(4) Paying to the child support agency any support payments received from the absent parent after an assignment...has been made.

The Food Stamps regulations are more detailed. They provide for good cause exceptions as they relate to specific provisions of the regulations, such as failure to appear for an interview, failure to provide a social security number, or failure to fulfill work requirements. The regulations provide numerous examples of what constitutes refusal to cooperate.

At the State level, studies in California and Maryland include three of the four aspects of the Federal definition of cooperation/noncooperation; i.e., failure to appear for appointments, failure to appear for court proceedings, and failure to provide complete and/or accurate information. Michigan regulations include the same types of failure to cooperate; and, in addition, they stress the subjective nature of any determination of noncooperation and include factors to be taken into consideration before a finding of noncooperation.

While there is some literature on noncooperation with AFDC and Food Stamps, there is little information available on noncooperation in paternity establishment specifically. An Office of Inspector General report (January, 1990) based on visits to 13 sites which were considered "effective" in paternity establishment provided the following general use definition of noncooperation for paternity establishment:

"...refusal to keep appointments for intake interviews, legal hearings and blood tests, and refusal to divulge information about the putative father."

An area which is not addressed in the OIG report is the fact that the paternity establishment process can be formal and legalistic and the interview process invasive. (Wattenburg, 1991) In this sensitive area, the definition of noncooperation becomes problematic.

Local practices can also be influenced by attitudes, caseloads and even pay scales for workers. Positive attitudes and reasonable caseloads can go a long way toward improving worker performance. Good pay scales and incentives have also been effective in generating an increase in the numbers of paternities established. (METS, 1992)

## What are the Disincentives to Cooperate in the Establishment of Paternity?

What is the situation at the time of birth? Wattenburg, among others, found that with adolescent mothers the father was present at the time of the birth 60% of the time.(Wattenburg, 1991) Further, she and others have concluded that the father is often around for some time after the birth and often provides informal support. (Wattenburg, 1991; Radosh, 1990; Gabbard and Wolff, 1977; Bernstein, 1982; Price and Williams, 1990). This would appear to present a positive situation in which the issue of cooperation, or noncooperation, might not appear. Yet among the disincentives of establishing paternity after the birth is the presence of this informal support. The mother may not want to jeopardize her relationship with the father and the support he provides by involving him with the formal paternity establishment and child support system. (Wattenburg, 1991; Ellwood and Legler, 1993) Thus, she may provide incomplete or inaccurate information.

This leads to a second disincentive for the mother to cooperate in paternity establishment: child support agency attitudes. Often the nature of the paternity establishment process generates a negative response.(Wattenburg, 1991) In addition, the incentive payment system for child support agencies works against paternity establishment and could easily be influencing staff in this direction as well.

Under the current formula for incentive payments, States are discouraged from pursuing paternity work because payments are based on a ratio of collections to administrative costs. Paternity work, especially in the short term, generates administrative costs but does not tend to generate large collections. This is even more the case with nonAFDC cases where incentive payments are capped. Given this environment, supervisors and staff must incline toward working big payoff cases, not paternities.

Finally, there is an additional disincentive to establish paternity: fear of violence. It may be that the mother has ended her relationship and has no desire to see the father again. This sentiment may or may not involve actual previous experience with abuse or threats of violence. The tiny percentage of cases which fall into the good cause arena would indicate that this is not an avenue which is often - or easily - pursued.

It has been noted that in these difficult situations, the child support agency may not only not help the mother but also may not protect her. (Ellwood and Legler, 1993) In relation to this issue, it should be noted that paternity establishment has important visitation and custody implications whether the couple is married or not and which deserve serious consideration. Unfortunately, there is little literature available on the often unstated fears of these mothers for themselves and their children.

What Does the Literature Tell Us about Child Support Agency  
Performance in Determining and Overcoming Noncooperation in Paternity Establishment?

The stories of poor performance by child support agencies in paternity establishment are well-documented and often cite "noncooperation" as a barrier to successful paternity establishment efforts. The OIG report (1990) found that the two most important reported barriers to paternity establishment were the parents and the adjudication process. The report cites numerous suggestions by the agencies involved for improving case processing and management, including better interviewing, streamlining of adjudication, additional staff and staff specialization and better interface between IV-A and IV-D and IV-D agencies and the courts. Improvements in these areas often appear in descriptions of best practices by IV-D agencies.

The report viewed parental noncooperation as an education issue to be addressed by informational programs on the benefits of paternity establishment. It noted "mothers provide incomplete or no information about the putative father due to a lack of understanding of the benefits of paternity establishment and other factors." This statement is matched by "fathers do not want to accept parental responsibility." Without dealing with the gender implications of these statements, the report continued to state that child support workers viewed favorably the use of financial penalties as incentives for cooperation.

McLanahan, Monson and Brown examined superior paternity establishment performance in three counties in Wisconsin. (McLanahan, Monson and Brown, 1992) They concluded that good administrative practices are more important than cooperation by the mother in successful effort to establish paternity. Among the administrative practices they found to be important were recordkeeping that made records complete and available, a timely and pertinent intake interview

using child support enforcement staff, and a reasonable caseload ratio. This latter turned out to be 300-400 cases per staff person in Dane and Racine Counties. A higher ratio of 700 per staff person in Milwaukee resulted in lesser performance. A recent GAO study indicated that nationwide the average caseload per staff member was 1,000.

A recent Measuring Excellence Through Statistics (METS) report provided an overview of paternity establishment practices at the State level in 1992. The review included a sampling of effective programming related to hospital-based paternity establishment, simple and efficient procedures after the hospital, use of genetic test results, outreach and education, incentive program and interrelationships with other programs. The main conclusion was that the provision of multiple opportunities for consent, timely intervention and case processing and strong management were major factors in the development of a successful paternity establishment effort. The paper noted the importance of innovative outreach and education and interface with other concerned agencies all along the continuum of paternity establishment.

A study of the Ohio demonstration project, Parents for Ohio's Children, showed that a series of complex interactions among various agencies and apparent noncooperation by mothers to be major factors in poor agency paternity establishment performance. (Adams, Landsbergen and Hecht, 1990). They concluded that administrative reforms would not be adequate to improve paternity establishment performance as required by the Family Support Act amendments of 1988 and that "interventions directed at client attitudes might be required".

A Maryland demonstration on custodial parent cooperation seemed to show that parental cooperation was improved by efforts to improve interface between AFDC and Child Support offices. However, it was not clear that the improved paternity performance was not the result of increased focus provided by the demonstration. (Pacific Consulting Group, 1989).

Price and Williams reviewed a demonstration paternity project in Nebraska which attempted to implement many of the educational recommendations contained in the studies listed above. (Price and Williams, 1990). As part of the project, educational seminars were offered to mothers needing paternity established. The major purpose of the seminars was to inform the mothers of (1) the purpose of paternity establishment, (2) benefits of it to mother and child, (3) the legal process for paternity establishment including the mothers rights and responsibilities, (4) the use of genetic testing and test results, (5) what cooperation is required of the mother, (6) how to

complete the paternity questionnaire. The issue to be addressed was whether this educational effort would improve cooperation with the Specialized Paternity Unit (also part of the demonstration).

The findings of the project have been cited elsewhere as indicators of poor agency performance in the face of information provided by the mothers. First, the statistics: 94% of the AFDC mothers knew the father's name, 49% knew his address, 29% knew the telephone number, 28% knew the social security number and 28% knew the employer's name. However, the results were that the paternity establishment rate was the same for those who attended the seminars and those who did not. Clearly poor agency performance and weak project administration were factors in the handling of this information. While AFDC paternity establishment rates did measurably improve, overall performance was still poor.

Ellwood cites the information provided as "considerable knowledge" of the alleged father. (Ellwood and Legler, 1993) However, the project report indicates that "these proportions seem higher than what is typically believed about this group of mothers" in terms of information provided. However, it is possible that the results of subsequent locate work had impacted the data in the files. It is later stated that the "data do not reveal that the educational seminars improved AFDC recipient cooperation of the IV-D agency."

The very low paternity establishment rate in the project could well reflect the quality of the information provided; a sort of noncooperating cooperation. In addition, the report noted that the average time for paternity establishment for AFDC mothers was seventeen and one-half months while that for non-AFDC mothers was ten months. The report posits that the difference in information provided could be a factor in the time differential, with non-AFDC mothers more motivated to provide accurate, useful information.

Ann Nichols-Casebolt found poor agency performance in Arizona (Nichols-Casebolt, 1992) derived from poor interface between IV-A and IV-D and between IV-D and the courts. In addition, she found that specialization of tasks can be a barrier to paternity establishment if they are not well-coordinated, that community doubt about child support agency effectiveness can affect willingness to cooperate, that the time lag in establishing paternity affects both cooperation and efficacy of paternity establishment efforts. Finally, she noted that the Arizona definition of noncooperation included the standard failure to appear for interviews, etc. and/or not providing

complete or accurate information. She concluded that lack of cooperation was a function of lack of knowledge of the benefits of paternity establishment.

However, she also connected performance in Arizona with the Nebraska Paternity Establishment Project where she concluded that the educational program had little impact on paternities established. Additional conclusions drawn from the Arizona study were that caseworkers believe that the provision of informal support by the father mitigates child support agency efforts to pursue paternity establishment and that poor agency performance means that the mother gets few benefits from the program anyway. This latter point and the absence of resources to address weaknesses would seem to create a self-fulfilling prophecy where neither side expects much from the other and thus nothing is achieved. It has been posited that this same set of attitudes may govern police response to domestic violence calls; an idea which could explain some of the lack of data. (Notar to Cleveland interview, 1993)

In Poor Support, David Ellwood cites an unpublished study by Paul Jargowsky which addresses the noncooperation issue. The study notes that "In very unusual cases, the mother may cooperate fully yet not know the identity of the father...In our sample of 52 cases from upstate New York counties, only one case in fifty-two did not have the name of the father listed." Ellwood continues to emphasize the importance of also obtaining the social security number and to discuss the government's emphasis on pursuing paternity establishment as a source of welfare savings while the welfare system offers few incentives for the mother to cooperate. Further, while the assumption that the government has just not been doing a good job on paternity establishment is probably a fair one, there tends to be a glossing over of the problem of women who provide inaccurate information or of performance in the face of rapidly increasing rates of out-of-wedlock births.

Finally, a number of focus groups were conducted in connection with the establishment of the Parents Fair Share Project (Furstenberg, 1992). Interviewers found a great deal of gender mistrust among the participants. Further, they found hostility toward the IV-D agencies. The mothers faulted poor performance and the fathers faulted failure to recognize the unevenness of the lives they lead. The interviewers also noted a great deal of misinformation by both parties. This combined with the hostility resulted in noncooperation with the IV-D agency. Esther Wattenburg found similar misinformation and lack of knowledge of the welfare system in a study in Minnesota.

Focus groups from the Teen Parent Demonstration Project in Illinois and New Jersey found that in addition to money and involvement with the child problems, teen mothers listed disputes involving jealousy, physical abuse, drugs and alcohol and attempted kidnapping. Interviews also revealed that a number of these women believed that if the father was already providing informal support and was emotionally involved with the child, that he would continue to provide what he could as a result of his emotional bond. This attitude could help explain what some have seen as a short-sighted view of the parental support situation.

Here too interviewers found hostility to the IV-D system, including the view that its goal is to punish the father; fear of jeopardizing the relationship and support by dealing with the agency; and, the perception of hostility on the part of workers at the IV-D agency. This latter perception was felt by both men and women.

### Where Does This Leave Us?

The literature provides a wide variety of findings and recommendations with regard to paternity establishment and noncooperation. Those studies which address agency performance show that poorly performing agencies often use noncooperation as a scapegoat, blaming their clients rather than their own weaknesses for failure to establish paternities. On the other hand, agencies which are better performers tend to dismiss noncooperation by mothers as a nonproblem, or if a problem, one that can be easily solved by a good educational program. The truth probably lies somewhere in between. Clearly, aggressive management, highly motivated staff and strong administrative procedures can have a large impact.

However, cooperation is a voluntary action. It can be influenced by threat of sanctions and other potential punishments but it still remains the mother's decision. Unfortunately, we know little about the decision processes involved in noncooperation. Most of the literature deals with teenage mothers and the fathers of their children. It discusses how teen mothers and fathers often feel that it is important to sign the birth certificate but that marriage is not always regarded as a good solution by the parents and social workers involved.

Studies have not addressed the older group of mothers where the rate of increase in out-of-wedlock births has been so great. We know little about this latter group and their decision-making. We do know that with the younger group there is a deep-seated gender mistrust and a mistrust of the welfare system and other public agencies, including child support. It would not be surprising to see some of this reflected in the older group as well. This older group probably has more experience in using or manipulating the system.

Federal and State definitions of cooperation, by necessity, have to allow for a great deal of subjective judgment. This combined with a welfare population that has some sophistication in dealing with the system has resulted perhaps in something which we can call noncooperating cooperation. The welfare recipient provides enough information to satisfy the caseworker that she is cooperating but not enough to lead to a successful paternity establishment. Services are provided without the necessity of jeopardizing the relationship with the male or more importantly without being forced to confront him.

This is a fuzzy area. There is lots of suspicion that fear of violence plays a role in the decision to cooperate in paternity establishment; yet, there is little documentation. The percentage of good cause exceptions is so small that one tends to dismiss it. If child support assurance and universal paternity establishment are to be implemented, this issue and others need to be examined.

### Major Issues Which Merit Examination

#### I. Research

- A. If the incentives to establish paternity for AFDC and financially independent women are primarily non-financial, how does a larger welfare passthrough or the promise of a child support assurance payment, overcome noncooperation in paternity establishment?
- B. How are decisions to cooperate or not cooperate in establishing paternity made?
  - Women's groups and line workers could be surveyed

- Interviewing concerning this issue will be a part of Year Three activities undertaken by the staff of the Program Improvement Grant in Denver Colorado

C. What do we know about coercion, abuse and violence as factors in the determination to cooperate in paternity establishment?

- Women's groups and line workers could be surveyed
- The Violence Against Women Act has been re-introduced, we could attempt to require that a study be conducted on non-cooperation in paternity establishment as part of this legislation. Any study should be limited to the paternity establishment process because this process is much more personal and potentially dangerous than the application for welfare benefits. (See below)
- Links could be established between OCSE and the OCS Family Violence Program. Joint research might be a possibility.
- At a minimum, programs throughout the Department of Health and Human Services could be surveyed for their connection to this issue and possible unintended negative impact.

## II. Regulations and Initiatives

A. How do we capitalize on the presence of the father at birth and in early infancy to establish paternity and involve him in the life of the child even if the adult relationship is terminating?

- Regulations could be issued in this area based on the experiences of the Program Improvement Grants in New York City and Denver requiring the use of trained personnel to work with both parents during both the pre and post natal period in the hospital and at related facilities.
- An initiative could be launched to encourage work with local Bureaus of Vital Statistics to improve information gathering for paternity establishment including

the use of additional supplementary community sensitive staff at the hospital and allowing for information regarding paternity establishment to be provided within a reasonable time period after the birth, rather than just in the hospital at time of birth. OCSE has already initiated contacts in this area at the national level.

- B. If paternity establishment is to become mandatory under a child support assurance system, should good cause be redefined?

### III. Legislation

- A. The Violence Against Women Act currently under consideration could be amended to include a study of the role of abuse and threats of violence against women by their partners, whether the putative father or not, in the paternity establishment process.
- B. Are the custody issues that derive from paternity establishment a factor in the determination to cooperate in paternity establishment? Will they become more of an issue with universal paternity establishment efforts?
  - Consideration could be given to legislation that would require that paternity establishment be decoupled from other legal steps. Custody rights could rest with the mother unless specific legal action is taken to redefine them.

BCCleveland

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# GENETIC TESTING

Final Draft  
June 28, 1993

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## GENETIC TESTING: EXECUTIVE SUMMARY

As a result of Federal requirements and advancements in genetic testing technology, genetic testing is now routinely used. However, States conduct testing and use test results in different ways, some of which may create lack of uniformity in interpreting test results, and some of which create unnecessary delays in establishing paternity. This paper examines ways to streamline the paternity establishment process through genetic testing reforms.

### INCREASING STANDARDIZATION IN GENETIC TESTING

Accreditation of Paternity Testing Laboratories. The Federal Government may want to require that IV-D agencies use test results obtained from a laboratory accredited to perform such tests. While the American Association of Blood Bank (AABB) is the organization that presently provides accreditation, additional research would need to be conducted prior to recommending the AABB as the organization to provide accreditation, if such accreditation were federally-mandated.

Use of DNA Tests. Another issue to be considered when examining standardization of genetic testing for parentage is which methodology -- DNA or the traditional sequential testing -- should be the methodology of choice. The traditional sequential testing is well-established and slightly cheaper. The DNA testing has advantages as well: it is viewed as state-of-the-art, is not dependent on scarce reagents, and can be used in cases where the man is deceased.

### INCREASING AND EXPEDITING THE USE OF GENETIC TESTING

Ensuring the expeditious use of genetic testing is essential since most men will voluntarily acknowledge after receiving test results that show a high probability of paternity. Some options include:

- Use of default orders, with due process safeguards, when the man refuses to cooperate with genetic testing.
- Offering the parties the opportunity to voluntarily submit to genetic testing before such tests are ordered.
- Offering free or subsidized genetic tests.
- If tests are not free, collecting appropriate fees or reimbursement only after testing is completed.
- In cases where it is necessary to order testing, require that tests be compelled based on the petition alone, without the need for additional testimony or evidence.

- Provide blood drawings at a court or agency office while the parents are present for hearings or other appointments.

## **INCREASING THE VALUE OF TEST RESULTS**

In some States, admitting genetic testing evidence can be cumbersome and the test results may be given little weight. To address these problems, the Administration has proposed legislation which would require States to adopt procedures:

- which provide that any objection to genetic test 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 without further foundation.
- that create a rebuttable, or at the option of the State, conclusive presumption of paternity if test results indicate a threshold probability of the alleged father being the father of the child.

There are also additional reforms that would improve the value of genetic test results. Possible options include:

- Use of retesting or additional tests if objections are raised to test results, rather than automatically proceeding to a trial or hearing.
- Encouraging the parties to sign agreements, as part of the adjudication of the paternity, that increase the value of test results (e.g., the parties agree to abide by the results).

## **GENETIC TESTING**

In recent years, scientific advancements in genetic testing have revolutionized the paternity determination process. Genetic tests can usually either exclude a man from consideration or establish the probability that he is the father at 99 percent or higher, leaving little doubt as to whether an alleged father is actually the biological father. Genetic test results provide powerful evidence and may, if they show a high probability of paternity, encourage fathers to voluntarily acknowledge paternity.

Federal law requires States to have procedures for compelling all parties in a contested IV-D case to submit to genetic testing upon the request of any party.<sup>1</sup> Federal financial participation (FFP) is available at the 90 percent rate to cover genetic testing laboratory costs. As a result of Federal requirements and advancements in genetic testing technology, genetic testing is now routinely used. However, States conduct testing and use test results in different ways, some of which may create lack of uniformity in interpreting test results, and some of which create unnecessary delays in establishing paternity. For example, some States do not take swift action against an alleged father who refuses to cooperate with tests, do not administer tests in an efficient manner, and do not give test results adequate weight in the paternity determination process.

In order to streamline the paternity establishment process, issues in three areas need to be examined: (1) increasing standardization in genetic testing, (2) increasing and expediting the use of genetic testing, and (3) increasing the value of test results.

### **INCREASING STANDARDIZATION IN GENETIC TESTING**

To assist in ensuring that laboratories performed both legally and medically acceptable genetic tests, in 1976 a joint committee of the American Bar Association (ABA) and the American Medical Association (AMA) established guidelines that recommended sequential testing (1) Red Cell Antigen, (2) White Cell Antigen (HLA), and (3) the Enzyme and Proteins. Using the sequential testing method, laboratories are able to exclude at least 90 percent, but preferably 95 to 99 percent, of all falsely accused men. Another advantage of this guideline is the ability to sometimes exclude a falsely accused alleged father during the first or second tier of testing, thus reducing testing costs.

As more laboratories became involved in paternity testing, concern grew that the ABA/AMA guidelines were not enough. That is, there should be standards that require competent staff and a properly designed set of laboratory procedures to ensure the accuracy of test results.

To augment the ABA/AMA guidelines the American Association of Blood Banks (AABB) started on-site laboratory accreditation in 1985. Under a grant from the Federal Office of Child Support Enforcement the AABB developed the Standards for Parentage Testing Laboratories which were published in 1990. In developing the standards, the AABB received assistance from the American Bar Association, the American Medical Association, the American Society for Histocompatibility and Immunogenetics, and the College of American Pathologists. These standards form the basis for the Parentage Testing Accreditation Program of the AABB and are subject to future revision as the state-of-the-art and experience dictate. For example, the AABB established standards for DNA testing in 1992, a technique in experimental stages at the time the original standards were formulated.

It should be pointed out that the AABB reviews laboratories based on the laboratories' ability to exclude falsely accused men rather than on inclusionary evidence, i.e., that is genetic tests that provide inclusionary evidence by showing the likelihood that an alleged father is the natural father.

Should the Federal Government mandate accreditation of laboratories? Thirty-six of the fifty-four (67 percent) Child Support Enforcement IV-D agencies use solely AABB accredited laboratories for paternity testing. While five States use the Deoxyribonucleic Acid (DNA) test exclusively, the majority of States who use AABB accredited laboratories have contracts that require for a battery of tests to be performed sequentially and only as necessary to exclude parentage or reach a specific inclusion rate. (States with statutory requirements of rebuttable presumption vary from a requirement of 95 percent to 99 percent inclusion rate.)

If the Federal Government were to authorize an organization to provide accreditation, which should it be? It is apparent that the AABB has had a major role in the standardization of genetic testing and has been successful partially because of its sensitivity in involving other organizations (as listed above) in the development of standards. While the other organizations have not been contacted to determine their interest in acquiring a leadership in accreditation, the AABB is recognized by many in the CSE community as the organization

responsible for accreditation of parentage testing laboratories. No other accreditation system seems to exist in the parentage testing arena. Whether the AABB would support their accreditation program being a mandatory one rather than the voluntary service that it is now, however, remains in question and would need to be explored further.

One might ask why mandate some form of accreditation, when 36 State CSE programs already exclusively use accredited laboratories on a voluntary basis? Several States have reported some difficulties in usage of nonaccredited laboratories that do not have contracts with the CSE agency. For example, in one State, even though there is a statewide contract with an AABB accredited laboratory which is used exclusively by the CSE agencies, judges have discretion in which labs are used once the case is litigated. Specifically, a local lab vendor that is not AABB accredited is sometimes used. This local lab charges \$138.00 per person while the lab contracted by the State charges \$130.00 per person. (Whether the actual accuracy of the testing suffers is unknown.) In another example, while the State CSE agency uses its two AABB accredited contractual labs exclusively, there are instances where once a case is litigated a judge will order the testing to be done by another laboratory that is not accredited and does not have a contract with the State. This can increase genetic testing prices for State CSE agencies.

Laboratories that are not presently accredited may resist a mandatory accreditation program. The AABB charges a fee of \$1,800 for accreditation. One representative of the Human Identification Trade Association (HITA)<sup>2</sup> maintains, however, that it is not the cost of the accreditation that serves as a resistance. Rather, nonaccredited laboratories do not have to follow the AABB standards which enables them to take shortcuts, thereby diminishing quality control. Moreover, because shortcuts in laboratory procedures may be taken, nonaccredited laboratories may bid lower prices. If a State agency's Request for Proposal (RFP) for genetic testing does not require AABB accreditation and puts a lot of weight on a bid with the lowest cost, the State may be tempted to sacrifice test accuracy for the lowest bid.

There appears to be no data that are statistically sound that can prove that quality control is inferior in laboratories that are not AABB accredited. Because of human involvement, even AABB accredited laboratories make mistakes. A possible solution to make certain that genetic testing is accurate is to pass a Federal statute that requires retesting upon the request of either party -- the mother or alleged father. The implementation of such a statute could

potentially have a high price tag. Consequentially, certain prerequisites such as evidence that the laboratory may have made a mistake or corroborating evidence of the defendant's paternity would need to be built in. *In re Paternity of Bratcher*, 551 N.E.2d 1160 (1990) is an example of an appellate case where the first round of testing excluded the alleged father. The retesting provided inclusionary results.

A final issue that needs to be examined in the accreditation area is whether States should have one statewide contract or permit contract staff who do IV-D work (such as county attorneys) to seek their own contracts. In some States where this is permitted there is a wide range of prices even though various contracts are with the same genetic testing firm.

DNA or the traditional battery of tests? Another issue to be considered when examining standardization of genetic testing for parentage is which methodology -- DNA or the traditional sequential testing -- should be the methodology of choice.

The traditional sequential testing has several advantages. First, because it has been around much longer than DNA it has a legal tradition. Second, it is a good methodology and is capable of reaching a 99 inclusion rate as can the DNA test. Third, unlike DNA, data from previous testing can be used if additional testing is necessary. Fourth, the testing is slightly cheaper. The two laboratories that do the most business as CSE agency contracts charge an average of \$85 per person for the sequential testing and \$100 per person for the DNA testing.<sup>3</sup>

The DNA testing has advantages as well. First, both the popular press and staff in criminal law practice view the DNA test as a state-of-the-art test which in turn is changing public perception of DNA in a positive fashion. Second, it is not dependent on good reagents. The scarcity of reagents (used in HLA testing) is growing as a result of their increased use in other medical fields. Third, its ability to be used in cases where the man is deceased has caused that type of testing to increase. Paternity can be established after the father is dead.

The State of New York appears to be the only State that prohibits the use of DNA results in court. (It is interesting to note, however, that the New York CSE program's contracted genetic testing laboratories use DNA if necessary.) Five CSE agencies use DNA as the test of choice, while the other States use DNA if necessary. Lack of statutes and case law could

potentially cause problems in the admissibility of DNA testing in a court room setting. Perhaps State CSE programs using DNA without supporting case law highlights that few paternity cases are appealed. Finally, it should be noted that some adverse case law against DNA exists. For example, the *Commonwealth of Massachusetts vs. Lanigan*, 596 N.E.2d 311 (1992) establishes that DNA findings as a stand-alone test are not permitted. It does permit use of DNA findings in conjunction with HLA. The States of California, Minnesota, and the territory of Guam also have case law that could pose problems for DNA admission.

Perhaps testing trends need to be observed longer before a decision is made as to whether the Federal Government should have a role in recommending which methodology is used and if so, which one.

### **INCREASING AND EXPEDITING THE USE OF GENETIC TESTING**

Ensuring the expeditious use of genetic testing is essential since most men will voluntarily acknowledge after receiving test results that show a high probability of paternity. Some options, which could either be mandated or encouraged by the Federal Government, are listed below.

Use Default Orders When Man Refuses to Cooperate with Testing. Default orders, which allow paternity to be established based on a refusal to submit to genetic testing, provide an incentive for men to cooperate with testing. While most States have general default order provisions as part of their civil procedures, the circumstances under which a default order can be issued, and the extent to which such orders are actually used varies. Not all States have specific provisions which provide for default orders based on the man's refusal to cooperate with genetic testing.

Legislation proposed by the Administration as part of the President's Fiscal Year 1994 budget would require States to use default orders to establish paternity when the alleged father refuses to cooperate in contested cases. This provision does not specifically mention, but may encompass, cases where a party refuses to comply with an order for genetic testing. Both the Interstate Commission<sup>4</sup> and Bradley/Roukema<sup>5</sup>, however, recommend default order provisions that specifically apply to cases where the man refuses genetic testing. Judges or hearing officers may be more likely to use a default order for failure to cooperate with

genetic testing if State law allows default orders specifically for that purpose. The drawback of default orders is that they may be perceived as too severe, although State law should provide for due process safeguards such as adequate notice.

Offer Genetic Testing Before it is Ordered. Prior to ordering genetic tests in a case, States could offer the tests to see if the parties will submit voluntarily. Genetic tests could be integrated as part of voluntary acknowledgment programs. If a father is unwilling or reluctant to acknowledge, the IV-D agency could offer genetic tests. If one of the parties does not submit to tests voluntarily, testing can then be ordered.

Offering and encouraging genetic testing as part of voluntary acknowledgment programs should increase the number of fathers who acknowledge since most fathers will voluntarily acknowledge after receiving test results that show a high probability of paternity. Offering, instead of automatically ordering, tests creates less conflict and may allow the paternity issue to be resolved based on the cooperation of both parents. This reduced conflict may improve relations between the parties and benefit the child. The tests would also resolve any doubts the father may have about paternity, thereby possibly strengthening the father-child relationship. In addition, delays, hearings, and paperwork needed to order testing can be avoided. On the other hand, if testing is encouraged and widely available, the number of fathers who voluntarily acknowledge prior to testing may decline. Increased testing will lead to increased laboratory costs, 90 percent of which is currently paid by the Federal Government. Many genetic testing laboratories are already operating at capacity and may have trouble, at least initially, handling an increased volume of tests. It appears that when laboratories (the large ones) experience slippage in turnaround time, however, it is remedied by expanding operations or adding shifts.

Genetic testing could be integrated as part of hospital-based voluntary acknowledgment programs. However, arranging genetic tests in a hospital could be difficult since a mother's stay in the hospital after birth is typically short. The cost for blood drawing in a hospital would likely be expensive, considering the high cost of other hospital services. In addition, the methods for genetic testing of newborns is limited. Most genetic tests are typically not used before a baby's sixth month since it is difficult to draw blood from an infant. Technology is available for drawing blood from the umbilical cord, but it is not widely used. Idaho, which recently conducted a pilot project on umbilical cord testing, suspended the

project after discovering that such tests were difficult to arrange and were often not completed since medical staff in the delivery room were often distracted by more pressing matters. An alternative, which is easier to implement, is to obtain a DNA sample, using a swab, from the baby's mouth.

Because of these difficulties, no State has integrated genetic testing into its hospital-based program. Integrating genetic testing into voluntary acknowledgment programs administered by IV-D agencies outside of the hospital may be more feasible.

Offer Free or Subsidized Genetic Tests. If genetic testing is routinely offered to alleged fathers, the question arises: who will pay for the tests? Under current Federal policy, a IV-D agency may charge any individual, except for Aid to Families with Dependent Children (AFDC) or Medicaid recipients, a reasonable fee for performing genetic tests. If paternity is established and genetic tests were performed, the IV-D agency must attempt to obtain a judgment for the costs of the genetic tests from the party who denied paternity or, at State option, from each party. Therefore, in many cases, a father whose paternity was established after genetic testing will be required to pay for the tests.

Offering free or subsidized tests in all cases may encourage fathers to voluntarily cooperate with testing, without the need for an order and its attendant delays. The main drawback to this approach is its cost. It may also encourage the "overuse" of testing in cases where the father would otherwise be willing to voluntarily acknowledge paternity without testing, if free or subsidized tests were not available.

An alternative to free or subsidized testing in all cases would be to only charge the man for the tests in cases where paternity is established.<sup>6</sup> This approach discourages overtesting and controls the government's costs, but only charges the man if he is actually the father of the child.

Have State Finance Testing Up-Front. If tests are not free, the State can still finance testing up-front and collect fees or reimbursement later.<sup>7</sup> This approach decreases delays and reluctance to take the tests due to the cost. Currently, a party may be ordered to pay costs prior to testing, and some tribunals may delay testing to give the man time to save money to

pay for the tests. A recent Health and Human Services Office of Inspector General report found that up-front State financing of tests was an effective technique for expediting the paternity establishment process.<sup>8</sup>

Compel Testing Based on Petition Alone. In cases where it is necessary to order genetic testing, some States will not order tests simply on the basis of a petition or the mother's signed statement alleging the man's paternity. These States require additional evidence or testimony, often in the form of a hearing, which can slow down the process. To address this problem, Federal law might be revised to require that test be ordered based on a petition alone, without the need for additional testimony or evidence.

Provide On-Site Blood Drawing. Many IV-D agencies, including agencies in Maryland and Tennessee, provide on-site blood drawings at a court or agency office while the parents are present for hearings or other appointments. On-site drawing expedites the process by preventing: scheduling delays, missed appointments, and the need to relocate alleged fathers who "disappear" after an initial hearing.

On-site blood drawing also has other advantages. First, procedures may be adopted that strengthen the chain of custody in that a local official (e.g., officer of the court, sheriff, etc.) becomes part of the chain of custody process. Second, logistical problems may be diminished. Especially in rural States, each county seems to have its own courthouse. On-site blood drawing at a county courthouse in a rural area where neither a blood center, hospital, or CSE agency exists, can eliminate the necessity of the parties to travel long distances.

## **INCREASING THE VALUE OF TEST RESULTS**

While reforms are needed to ensure that testing is conducted quickly in all appropriate cases, reforms are also needed to increase the value given to test results. Some men will still not voluntarily acknowledge after receiving test results that show a high probability of paternity. In such cases, test results need to be used and given adequate weight in the paternity adjudication process. Statute or case law in nearly every State provide that genetic test results that exclude a man as a possible father or establish a probability of paternity are admissible as evidence. However, in some States, the process for admitting such evidence

can be cumbersome and the test results may be given little weight. The Administration's proposed paternity legislation, mentioned earlier, addresses these problems in the following provisions:

Admissibility of Genetic Test Results. States would be required to adopt procedures which provide that any objection to genetic test 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 without further foundation. This provision would prevent delays resulting from last-minute challenges, and would limit time-consuming foundation requirements in cases where no objections are raised. Adoption of such procedures might be more palatable if States were required to use laboratories that used certain testing standards as required and monitored by a laboratory accreditation program.

Presumption of Paternity Based on Genetic Test Results. States would be required to adopt procedures that create a rebuttable, or at the option of the State, conclusive presumption of paternity if test results indicate a threshold probability of the alleged father being the father of the child. A rebuttable presumption is likely to expedite paternity resolution by shifting the burden to the presumed father to disprove paternity. A conclusive presumption, would conclusively resolve the matter by establishing paternity. At least 26 States currently have rebuttable or conclusive presumptions based on genetic test results. While Texas uses an exclusion rate, the remaining States use an inclusion rate ranging from 95 - 99.8 percent. It also should be pointed out that some States require a higher inclusion rate in their genetic testing contracts than their inclusion rate for rebuttable presumption, thus placing stringent demands on laboratories for accurate tests.

While the proposed legislation provides a starting point, there are still additional reforms that would improve the value of genetic test results. Possible options include:

Retesting or Additional Tests. If a man is still unwilling to voluntarily acknowledge paternity after genetic testing, the case usually goes to a hearing or trial. In such cases, there may be scheduling delays and the adjudication itself may be lengthy and expensive. The man, if he believes the test results are inaccurate, will likely object to the results, creating the need for additional testimony and proof that will likely further delay resolution.

However, the use of retesting or additional tests may help to avoid hearings or trials. Some men may be willing to voluntarily acknowledge paternity, without a hearing or trial, if retesting or additional tests confirm the results of the initial test. Furthermore, since testing mistakes may be made in some cases, this allows such errors to be discovered without the need of going through a trial or hearing.

Some State statutes, including Nebraska's, specify that "if the result of genetic testing ... is disputed, the court, upon reasonable request of a party, shall order that additional testing be done by the same laboratory or an independent laboratory at the expense of the party requesting additional testing."<sup>9</sup> The Uniform Parentage Act, which has been adopted by 17 States, provides that "the court, upon reasonable request by a party, shall order that independent tests be performed by other experts...."<sup>10</sup> Despite such statutes, it is not clear that States use additional testing on a regular basis.

A drawback of retesting is that the alleged father may use it simply as a dilatory tactic. However, in most cases, additional testing should be completed fairly quickly, so the delay should be limited. Another concern is that, if the State pays for additional testing, all alleged fathers may request retesting at significant public expense. On the other hand, if the alleged father must pay for the tests, as under the Nebraska statute, he may be unwilling, and retesting will rarely if ever be used. Charging the alleged father only if paternity is subsequently established may prevent frivolous requests for retesting while not discouraging legitimate ones.

Stipulations or Agreements. Some States encourage the parties to sign an agreement, prior to testing. There are several possible types of agreements:

- Some jurisdictions encourage the parties to stipulate the admissibility of the test results.
- Some States encourage the alleged father to sign an agreement, stating that he will voluntarily acknowledge paternity if the test results show a probability of paternity above a certain threshold.

- Some jurisdictions encourage the parties to sign a statement agreeing to abide by the test results. Under Washington, DC law if the parties sign such an agreement and the test results show at least a 99 percent probability of paternity, paternity is automatically established without the need for further proceedings.

The first type of agreement is useful if test results must be used as evidence in a contested case. It avoids the need to meet burdensome evidentiary requirements and prevents a party from objecting to the test results unless a significant error in the testing is found. The other two types of agreements make it less likely that a contested hearing or trial will be necessary.

### **LEGISLATIVE INITIATIVES**

Many of the reforms discussed in this paper, if they are to be implemented, will require Federal legislation. The Administration may want to consider legislation that would:

- Require IV-D agencies to use only genetic test results obtained from a laboratory accredited to perform the testing technique that was used. [This option needs further research for two reasons: (1) an accreditation requirement may discourage or prohibit States from using new, state-of-the-art techniques which might not yet be accredited, and (2) the American Association of Blood Banks, the organization that presently provides accreditation may not support a federally-mandated accreditation program.]
- Encourage or require the use of a particular testing technique as the test of choice. (Further research is need to compare DNA testing versus traditional sequential testing to determine if one is clearly preferable or cost-effective).
- Require States to have and use laws providing for default orders when the man refuses to cooperate with genetic testing.
- Require States to use procedures that would give parties the opportunity to voluntarily submit to genetic testing before tests are ordered.

- Provide free or subsidized genetic testing. (Further research on the cost implications and State versus Federal financing is needed).
- Require States to pay up-front for genetic tests, and only allow fees or reimbursement to be collected after testing.
- Require States to have and use laws providing that, in cases where it is necessary to order testing, tests be compelled based on the petition alone, without the need for additional testimony or evidence.
- Require States to have procedures for on-site blood drawings at court or agency offices.
- Require States to have and use laws providing for retesting or additional tests. (Research is needed regarding whether retesting should be used on a routine basis or only when requested by a party, and who should pay for retesting).
- Require States to have and use laws regarding agreements or stipulations between parties that would increase the value of test results, and to have procedures for encouraging parties to enter such agreements.

To avoid the risk of overwhelming States, the Administration may want to prioritize and limit the number of Federal mandates it attempts to impose, particularly since States are still struggling to implement Family Support Act requirements.

## ENDNOTES

1. The only exceptions to this requirement are cases where (1) an AFDC recipient has established good cause for refusing to cooperate, or (2) the IV-D agency has determined that paternity establishment would not be in the best interest of the child in a case involving incest, forcible rape, or pending legal proceedings for adoption.

2. The Human Identification Trade Association is a national non-profit association of 35 private DNA testing laboratories and commercial manufacturers whose members process over 90 percent of the DNA tests in the United States to establish human identity, including forensic and paternity DNA tests.

3. The \$85 per person may be a little overstated. According to two sources, approximately 30 percent of genetic testing completed under IV-D agency contracts results in excluding the alleged father. In a hypothetical situation where 100 alleged fathers are being tested, 30 of them would be excluded. Of those 30, 3 of them would be excluded at the first tier of testing (RCA), hence not requiring the HLA test. Using average figures, an additional saving of \$630 per 100 cases may be realized. (Some contracts charge \$15 per person for the RCA test and do not charge additional costs if the alleged father is excluded at the first tier of testing.

4. Congress, as part of the Family Support Act of 1988, created the U.S. Commission on Interstate Child Support, charging it to submit a report containing recommendations for improving the interstate establishment and enforcement of support awards. In 1992, the Commission issued its comprehensive final report which contained numerous recommendations.

5. In both the last and current sessions of Congress, Senator Bill Bradley and Representative Marge Roukema introduced legislation that, if enacted, would implement many of the Interstate Commission's recommendations.

6. Current Federal policy allows States to charge men a fee for genetic testing even if paternity is not established. States can also charge mothers a fee. It is unclear how many States levy such charges. Many do not charge falsely accused men.

7. It is unclear if some States actually charge fees for testing prior to conducting the tests, but States are allowed to do so under current Federal policy.

8. Department of Health and Human Services Office of Inspector General, "Effective Paternity Establishment Practices: Technical Report", January 1990, p. 16.

9. Neb.Rev.Stat. §43-1417.

10. Uniform Parentage Act, Section 11(b).



REVIEW AND ADJUSTMENT OF CHILD  
SUPPORT AWARDS IN A CHANGING CHILD SUPPORT SYSTEM

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## EXECUTIVE SUMMARY

It is vital that child support awards are updated regularly to provide for the child's needs and the parents' financial circumstances. In the past, States required a "change of circumstances" before their courts or administrative bodies would adjust a child support award amount. Because the updating of amounts was optional, many orders were never reviewed and adjusted. With the passage of the Family Support Act however, the Federal government for the first time mandated that States regularly review and adjust IV-D cases in which an assignment of support rights has been made to the State, with several exceptions.

The Family Support Act mandated demonstration projects to test and evaluate model procedures for reviewing and adjusting child support award amounts. Four States, Colorado, Delaware, Illinois, and Florida conducted such projects. They illustrate both the importance of automation to an efficient review and adjustment process, and examples of reasons why parties may not wish to have their cases reviewed. The limitations of the demonstration projects, and the Oregon updating project should be kept in mind however, because their results were undoubtedly affected by the fact that none of the States tested the 1993 review and adjustment requirements, and two States, Florida and Illinois, did not process cases in which a review indicated that a downward adjustment was warranted.

Several proposals to alter the review and adjustment process include: 1) the Downey/Hyde proposal; 2) the United States Interstate Commission recommendations

to Congress; and 3) the Bradley/Roukema companion pieces of legislation. While these suggestions differ in substance, they reveal an acknowledgment of the importance of the review and adjustment of child support awards regardless of the form of the future child support system.

States are developing creative innovations in their endeavor to implement the review and adjustment requirements. For example, at least 13 States are developing pro se practices to make the process more comprehensible for those pursuing review and adjustment actions on their own.

Australia has tackled the regular updating of child support awards differently than the United States, adjusting orders once a year based on prior year's tax information. We might wish to study its system in depth both to learn from its mistakes, and benefit from its experience.

The review and adjustment system of the future does not necessarily have to resemble the present one. There are variations such a system could take, among which are a mandatory system, one with limited "opt-outs", or one similar to that of the existing one, where non-AFDC parties may in effect "opt-in" to procure a review and adjustment.

## BACKGROUND

The importance of child support orders which accurately reflect the economic circumstances of the parents while still adequately providing for the needs of the children cannot be overestimated. Historically, State laws governing updating of child support orders have required that the party seeking a change in the award amount must prove that a material change in circumstances has occurred since entry of the order. Several States require that the change in circumstances be substantial and continuing. Still others impose a condition that the change be one that could not have been contemplated at the time the order was initially established. Meeting this burden of proof has often made obtaining a change in the amount of child support a difficult undertaking for many parties, and one which often required a lengthy adversarial proceeding to resolve.

Child support orders established prior to the adoption of State guidelines may be grossly inadequate. Even the use of guidelines in establishing the initial award amount does not ensure that orders continue to meet the support standards set by the guidelines. To address these problems, Congress passed the Family Support Act (FSA) of 1988 (P.L. 100-485) which amended § 466 the Social Security Act (the Act), (42 U.S.C. 666), to require States effective October 13, 1990, to develop procedures for review and adjustment of orders consistent with a State plan indicating how and when child support orders are to be reviewed and adjusted.<sup>1</sup>

The Federal Office of Child Support Enforcement (OCSE), has defined "review" to mean "an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine the appropriate support award amount, and the need to provide for the child's health care needs in the order through insurance or other means."<sup>2</sup> It has defined "adjustment" to mean "an upward or downward change in the amount of child support based upon an application of State guidelines for setting and adjusting child support awards; and/or, the provision for the child's health care needs, through insurance coverage or other means."<sup>3</sup>

Either parent or the IV-D agency may request a review, and any adjustment to the order must be made in accordance with the State's child support guidelines. The requirements for the review and adjustment process are important because they constitute the first Federal requirements to modify child support orders under their IV-D programs. In the past, while States were required to establish and enforce orders, modification services were optional.<sup>4</sup>

As of October 13, 1993, States must have implemented a process whereby orders being enforced in the title IV-D system will be reviewed no later than 36 months after establishment of the order or the most recent review of the order and adjusted in accordance with the State's guidelines for support award amounts. States must conduct reviews in IV-D cases in which support obligees have assigned their rights to support to the State, unless the State determines that it would not be in the child's best interests, and neither parent has requested a review. This includes cases in which benefits under

the AFDC, title IV-E foster care, or Medicaid programs are currently being provided. It does not encompass orders in former AFDC, title IV-E foster care, or Medicaid cases even if the State retains an assignment of support rights to the extent of any unpaid support that accrued under the assignment which remains due to the State after assistance terminates.

In IV-D cases in which there is no current assignment of support rights to the State, including former recipients of AFDC, title IV-E foster care, or Medicaid benefits receiving continued IV-D services, review is required at least once every 36 months only if a parent requests it. The State must also notify each parent whose case the IV-D agency is working, of the right to request a review, provide a 30-day notice to both parents that a review will be conducted, and a notice of proposed adjustment that allows the parents 30 days to challenge the review findings. In all IV-D cases, if such a review indicates that adjustment of the support amount is appropriate, the State must proceed to adjust the award accordingly.

#### **The Oregon Updating Project**

Before Congress enacted the FSA, Oregon initiated a project in October, 1988, to develop and test a strategy for periodic review and adjustment of child support orders with the aid of a grant from the Federal Office of Child Support Enforcement.(OCSE) About a year later, after the passage of the FSA, OCSE funded four demonstration projects to test review and adjustment. Those projects will be discussed below.

The Oregon project lasted nineteen months (March, 1989 to September, 1990). The Child Support Updating Unit (CSSU) handled reviews of 5,001 IV-D cases. After eliminating inappropriate cases, the agency reviewed 4,054 cases, and obtained adjusted orders in 693, or 17% of those cases appropriate for review. It should be noted however, that in 355 cases the agency began a review which it had not finished by the end of the project period.<sup>5</sup>

The study limited the sample to IV-D cases, and chose an approximately equal number of existing support orders established by administrative and judicial processes selected for review each month. The study selected only those orders which were 2.5 years or older, over which the support enforcement division had jurisdiction. This excluded most non-AFDC IV-D cases that were not former AFDC cases, (over which the district attorneys have authority).<sup>6</sup>

Cases which the CSSU deemed inappropriate for review included: 1) cases in which the youngest child would be emancipated within three months of case selection, 2) cases in which the parent was not the caretaker, 3) cases with incarcerated obligors, 4) cases with AFDC "good cause" determinations, 5) cases in which modifications were already pending. Oregon excluded almost one-fifth of cases from the review process.

### **Findings in Oregon**

The CSSU adjusted 81% of the orders upward, while it reduced only 19% of the cases. The average child support order increased from \$133 to \$212 per month, a net increase of \$79 per month (59%). One noteworthy finding of the project was that

adjustment increased the number of orders with medical support awards, so that medical support orders were incorporated into almost all modified orders. For 63% of AFDC cases with adjusted orders and 73% of non-AFDC cases with adjusted orders, this was the first time medical support had been included in the order. The project also discovered both that adjustment was more likely to occur in AFDC cases than non-AFDC cases (20% of eligible AFDC cases were adjusted compared to 7% in non-AFDC cases), and that it was less expensive to modify orders for AFDC cases than non-AFDC cases (\$560 for AFDC cases versus \$1,010 per non-AFDC case).

The project report suggests that both of these results may have occurred because in AFDC cases, unlike non-AFDC cases, CSSU workers did not have to request one of the parents to authorize a review of the existing support order. Therefore, a higher proportion of AFDC cases selected were adjusted. The agency already possessed all the financial information concerning the AFDC obligee, which reduced both the case processing time and the number of procedural steps that were required to be made.<sup>7</sup>

The study also discovered that it was less expensive to adjust orders through an administrative process (\$496 per case), than by judicial process (\$770 per case).<sup>8</sup> This is not surprising however, if we consider that administrative procedures tend to be more simple and expeditious. The Oregon project reported an overall decrease in compliance rates (from 70% to 64%) in the 12 months following adjustment, although only the decrease in compliance among AFDC cases (70% to 63%) was statistically significant.

## The importance of automation

The report also emphasized the importance of an automated system for the review and adjustment process. It states:

[t]he importance of automated support in the Oregon project cannot be overestimated. Case selection was entirely automated by the mainframe, that system provided case information, including information about obligor and obligee earnings through an interface with Employment Wage Commission files. Case tracking was also automated through the microcomputer Data Retrieval System.

Automation is likely to play a key role in the future of child support and particularly in the review and adjustment process, where automation could potentially allow automatic scheduling of review and adjustment cases upon either request or when such review came "due", and ease calculation of adjusted child support orders.

### Demonstration Projects

In addition to its other mandates, the Family Support Act (§103(e)), also required the Secretary of the Department of Health and Human Services to enter into an agreement with four States to conduct demonstration projects to test and evaluate model procedures for reviewing child support award amounts. States competed for demonstration project grants, which OCSE awarded to Colorado, Delaware, Florida and Illinois. Delaware acted as the lead State for the evaluation effort, and it awarded a contract for the evaluation.<sup>9</sup>

## Project limitations

While these demonstrations provide examples of different review and adjustment processes, and may enlighten us generally with their results, we should keep in mind one of their primary limitations: they did not apply the implementing regulations of the FSA. Because OCSE had not yet issued the final implementing regulations covering the 1990 and 1993 FSA review and adjustment requirements during the demonstration project period, the demonstration States applied their interpretations of the FSA review and adjustment requirements. The States operated independently and in fact often had inconsistent policies on review and adjustment. This fact is important because the regulations are likely to effect future outcomes of State review and adjustment processes.

A second important limitation of the project is that only Delaware (the smallest State, with three counties, and a population approximately that of the District of Columbia) conducted it on a Statewide basis. Colorado and Florida initiated it in six counties and four counties; while Illinois launched it in two judicial districts, Cook County and 6th Judicial Circuit.

A third limitation of the project was that two of the four demonstration States, Illinois and Florida, did not process any cases in which the review indicated a downward adjustment was warranted. Both States reasoned that: (1) processing of downward modifications was against the best interests of children; and (2) there may

be a conflict of interest for IV-D attorneys, who are often perceived as representing applicants or recipients of services, not the State.

OCSE has recently addressed the latter issue in a forthcoming information memorandum (or IM). Our research has found that at least 26 States and one territory have legislated that neither the custodial parent nor the non-custodial parent is the "client" of the IV-D agency, or the attorneys who work for the IV-D program.<sup>10</sup> The State Supreme Court of Oklahoma has recently held that no attorney-client relationship was formed between the district attorney and the State Department of Human Services when the district attorney attempted to collect child support from the noncustodial parent. (See Haney v. Oklahoma, 850 P.2d 1087 (Okla. 1993)). In addition, the American Association of Public Welfare Attorneys has also issued a policy memorandum which takes the position that the IV-D attorney represents only the IV-D agency, and that no attorney-client relationship exists between the IV-D agency and the recipient of IV-D services.<sup>11</sup>

This stance is advantageous in that it may reduce the possibility of conflicting interest when those of the parent and those of the State differ. Such conflicts may arise for example, when a IV-D attorney learns that a parent has received public assistance at the same time that he or she received support directly from another parent, and therefore, the interests of the State (possible prosecution for welfare fraud), conflict with those of the parent (defense).

It should be noted that there is still debate on this issue. In her recent article, Marilyn Ray Smith of the Department of Revenue, Child Support Enforcement Division,

in Cambridge, Massachusetts, indicates that in her opinion, there is a conflict of interest for a IV-D agency or attorney to initiate proceedings "on behalf of" noncustodial parents seeking downward modifications.<sup>12</sup>

A fourth limitation of the demonstrations was that not all of the States processed interstate cases. While Delaware and Colorado (for Colorado the exception was the existence of a URESA order in another State) reviewed interstate cases, both Florida and Illinois did not. Because interstate cases represent one of the most difficult types of child support cases to work, future review and adjustment results in "real" case scenarios will differ.

#### State Demonstration Project Processes

All four states conducted the review of child support orders by obtaining current financial information from the parents or independent data sources and applying the State's child support guidelines to determine whether any adjustment in the order was warranted. The specific procedures used to conduct the review, the sources of information used, and the process used to modify the order differed among the four projects.

Colorado conducted the reviews using financial information on both parents obtained from financial affidavits submitted by the parties or from independent data sources, such as the Colorado Department of Labor and Employment database. If the review indicated an adjustment was appropriate, project staff attempted to obtain a

stipulation to the modified order from the parents; if this failed, they referred the case for court adjudication.

Delaware integrated the review and adjustment process through the Family Court. Parents were required to bring financial information to a Family Court mediation session, where mediators conducted reviews in concert with IV-D workers who provided documentation available from independent sources. If the review indicated that an adjustment was warranted, the mediator attempted to negotiate an agreement to the modified amount. If mediation failed, project staff referred the case to a Master's hearing. (Masters are analogous to judges in Delaware).

Florida strove to conduct the reviews using information on both parents obtained mainly from the obligee or independent sources. If a review indicated that an adjustment was warranted, staff endeavored to obtain one through both parties' consent. If the consent process failed, staff referred cases for a hearing.

Based upon information available from State labor and revenue departments' databases to identify cases likely to require adjustment, Illinois simulated a guidelines calculation. It conducted manual reviews using primarily employer income information. Staff referred all cases warranting an adjustment to court, where IV-D attorneys sought to obtain pre-trial agreements between the parties.

### **Project Findings**

During the term of the two-year project States adjusted 3,023 orders. This number represents an average of 10 percent of the 30,968 cases selected and 47

percent of the 6,408 cases with reviews conducted. This left 5,371 cases pending at its conclusion (e.g., not worked). Of the adjustments obtained, 92 percent resulted in increased orders, 5 percent resulted in decreased orders, and in the remaining 3 percent of cases no changes were made in the order amount but new medical support and/or immediate income withholding provisions were added. Of the AFDC cases, 13,035 cases were selected of which, 8,709 (67%) were terminated, and 1,947 (15%) were modified, and 2,379 (18%) were pending. Of the non-AFDC cases, 17,907 cases were selected, of which 13,839 (77%) were terminated, 1,076 (6%) of the cases were adjusted, and 2,992 (17%) of the cases were pending.

In both the AFDC and non-AFDC cases, the average pre-modification monthly order was \$127, the average post-modification order amount was \$245, an increase of \$118 per case per month. This represents an average percentage increase of 101%.<sup>13</sup>

Project findings included that many child support orders are inadequate, outdated, and unreflective of parental ability to pay. The majority (87%) were upward adjustments in the child support award. The average percentage increase in the monthly support obligation ranged from 47% in Delaware to 135 % in Illinois. Across the four projects, the average percentage increase was 92%.<sup>14</sup>

The States terminated 22,574 cases before review (73%). Interestingly, the average percentage of cases terminated in the four State demonstration projects (73%) was similar to that in the earlier Oregon project (79%).

A second major factor in case terminations was the lack of authorization or request for a review in non-AFDC cases. Contrary to expectations, the majority of non-

AFDC obligees (71 percent) and non-AFDC obligors (85 percent) either did not respond or declined a request for authorization for a review of the order which resulted in the termination of these cases.

### **Medical Support Orders**

The demonstration project findings indicate that review and adjustment will have important ramifications for the provision of medical support to children. While decisionmakers made adjustments to relatively few orders for medical support purposes only, they ordered it in a large number of cases in conjunction with changes in the order amount. The States obtained new medical support orders in 1,372 cases in Colorado, Delaware and Illinois, representing 53 percent of the cases which did not have a medical support order prior to the modification. Data on medical support orders obtained were not available for Florida, although Florida's policy was to pursue medical support on all orders. While decisionmakers in Colorado could order medical support regardless of whether insurance was available to the obligor, in Delaware and Illinois, they ordered it only if medical insurance was actually available to the obligor at the time of the review and adjustment.

#### **Why did participants refuse to have their orders reviewed?**

The most frequently cited reason for not authorizing a review was that the obligee did not want to go court. Obligees were concerned both about being able to

take time off from work to attend hearings, and the potential stress of an adversarial court proceeding.

Other reasons obligees cited for not wishing a review of their case include: 1) if the obligor was not currently paying or had not been located, the review was considered a waste of time; 2) concern that a review might result in a reduction of the order amount; 3) if the obligor was currently paying, a fear of jeopardizing current payments, or affecting the relationship with the obligor; and, 4) problems understanding the review process.

A higher percentage of non-AFDC cases (77%) were terminated than AFDC cases (67%), principally because of the lack of authorization or cooperation from the parents for the review. A higher percentage of interstate cases (77%) were terminated than in-state cases (72%), principally because of the difficulty in obtaining information and authorization for the review from interstate cases.

In general, a much higher percentage of AFDC cases (15%) were adjusted than non-AFDC cases (6%). The disparity between AFDC and non-AFDC cases was found in every state except Florida, where the percentages were almost equal. Proportionately fewer non-AFDC cases were modified than AFDC cases because non-AFDC cases were terminated at a higher rate due to a lack of authorization for the review or interest in pursuing a review and possible modification. For example, the response rates for authorizing a review of the order follow: for non-AFDC cases, 29 percent of obligees and 15 percent of obligors authorized a review of the order.

## Time Required for Review and Adjustment

The average length of time from case selection to adjustment ranged from 157 days in Florida to 252 days in Colorado, which calculates into an overall average of 196 days (or 6.4 months) for the four demonstration States. These differences are based on variations in the amount of time devoted to case location and case "clean-up" activities (i.e., age of order, determination whether child had reached age of majority, obligor deceased or incarcerated), the extent to which case backlogs developed, and the relative efficiencies of the different review and modification processes used. Both Colorado and Delaware devoted a considerable amount of time to case location and case clean-up activities, and both States developed backlogs which contributed to lengthy case processing delays. Colorado and Florida used an out-of-court stipulation process, the average time required to obtain a stipulation (216 days in Colorado and 141 days in Florida) was considerably shorter than the time required for adjustment by court hearing (307 days in Colorado and 256 days in Florida). The expedited court-based processes that Delaware and Illinois employed, required 170 to 176 days on average to obtain modifications.

In general, non-AFDC cases demanded more time for review (15 days more on average) and adjustment (39 days more on average) than AFDC cases. This may be explained by the additional time required in non-AFDC cases to obtain authorization for the review, which was unnecessary in AFDC cases. Further, in several States, a higher

percentage of non-AFDC cases were modified through court hearings than in AFDC cases; and these generally necessitate more time than consent-oriented processes.

Project staff found interstate cases more time-consuming than intrastate cases, 30 to 40 days longer on average. The interstate cases which did get reviewed and adjusted were generally the less difficult interstate cases in the sample for which authorization and/or information could be obtained in a relatively short time period.

### Proposals for Change

#### The Downey/Hyde Proposal

In their child support enforcement and assurance proposal, (the "Downey-Hyde" proposal), Representative Henry Hyde (R. Ill.), and former Representative Tom Downey (D. N.Y.), suggested another type of review and adjustment process in the context of a substantially different child support structure. The Federal government would conduct reviews every two to three years, determining actual income based upon Federal tax returns. It would take into consideration the actual income of both parents in the base year and the income growth of both parents in the previous one-two year period. Either parent could appeal the adjusted order through a Federal administrative process. The State or either parent could contest changes made at the Federal level as a result of the Federal review. In addition, either parent could request an adjustment with a Federal administrative law judge, within the two to three-year period. Adjustments would be made only in response to changes in income or circumstances which resulted

in significant (not-defined) changes in the support order amount. Temporary changes could result in the order being modified to a lesser amount for three months. The support would revert to the original amount if further evidence was not supplied. Permanent changes, such as to the custody arrangement, would be reason to reestablish the support amount.

### The U.S. Interstate Commission Report

In its recent report to Congress, the United States Commission on Interstate Child Support, recommended several changes to the review and adjustment of child support awards.<sup>15</sup> First, it advised States to have and use laws providing that the non-AFDC custodial parent must agree to the review and adjustment of a child support order in IV-D cases. It advised IV-D agencies to notify custodial parents of the time of the review, and of the rights to "opt out" of the review process. Custodial parents who wish to pursue adjustment would be advised of a recalculated support amount and given an opportunity to "opt out" for any reason if they did not want to pursue the modification.<sup>16</sup> The stated purpose of this recommendation was to ensure effective use of IV-D agency's resources, and to protect parents' rights. It contradicts the premise of the review and adjustment process however, which is to adjust the child support award to reflect the parties' financial circumstances and the child's needs. Perhaps a more limited right to opt out could be implemented and made available to both parents in

specific instances, or, we may decide not to follow this particular recommendation at all.

Second, the Commission recommended that States implement laws which require that a change in the support order amount, determined through application of the guidelines since the entry of the last order, is sufficient reason for adjustment of a child support obligation without the necessity of showing any other change in circumstances. This differs from some current State practices, which require a given percentage difference between the previous and the new order before an adjustment action is allowed to be brought. (See for example, Rohrback v. Rohrback, 531 N.E.2d 773 (Ohio App. 1988), in which the court explained that a party moving for an adjustment in Ohio must demonstrate a variance in excess of 10% between the State guideline formula and the prior judgment.)

Further, it advised States to establish a minimum timeframe between reviews, to prohibit reviews before a certain period of time elapses, absent other changes in circumstances.<sup>17</sup> In its explanation for this recommendation the Commission reasoned that it is designed to save IV-D agencies' resources by reducing the number and frequency of reviews.<sup>18</sup> It may be advantageous, for example, to require a minimum percentage change in the original order amount before it may be reviewed. This may prevent decisionmakers from being overwhelmed by parents rushing back to have their child support orders reviewed.

To reduce the possibility that conflicting child support orders may be entered in several States, the Commission urged the use of continuing, exclusive jurisdiction,

which would allow a State that has properly asserted jurisdiction to retain continuing, exclusive jurisdiction over the parties as long as the child or either party reside in that State. A State would lose its continuing, exclusive jurisdiction to modify its order regarding child support if all the parties no longer reside in that state or if all the parties consent to another state asserting jurisdiction.<sup>19</sup> (This provision mirrors the Uniform Interstate Family Support Act, or UIFSA, which is discussed in depth in the welfare reform workgroup paper on interstate child support cases).

An additional recommendation, the use of administrative subpoena power to secure documents or appear at court, might expedite the review and adjustment process, by allowing information on the financial circumstances of the parties, for example, to be made readily available.

#### **The Bradley/Roukema bills**

Senator Bill Bradley (D. N.J.), and Representative Marge Roukema (R. N.J.), have recently introduced companion legislation (S.689), (H.R.773), designed to "improve the interstate enforcement of child support and parentage court orders, and for other purposes".<sup>20</sup> In addition to recommendations on jurisdictional issues, these bills establish practical procedures to be followed to ensure that proper notification requirements are met. At the time a support order is issued, both parents must register their locations, and provide updates as changes occur. Subsequent mailings to the locations provided by the parents would be considered sufficient notification. The legislation establishes a national subpoena duces tecum (allowing nationwide reach for

a subpoena for documents) providing penalties for failure to appear or provide information. As in the Interstate Commission report, any difference between the existing support amount and the amount determined under State guidelines is sufficient for an adjustment, and the non-AFDC IV-D custodial parent must agree to the adjustment amount.

### **States' Implementation of Review and Adjustment**

To learn how States are implementing the review and adjustment requirements, OCSE conducted an informal, anecdotal survey of about half the States, and reviewed State plans for 1990 from which to cull pertinent data. The survey consisted of the following questions: 1) is your State implementing review and adjustment? 2) have you found any procedures that are helpful? 3) have you found any procedures that are not helpful? 4) has your State developed any innovations or are you in the process of developing such innovations?

### **Which States are Implementing Review and Adjustment?**

OCSE has received State plans from 27 of the 54 States and territories. This indicates the States have an approved plan according to the October 13, 1990 review and adjustment requirement. With the exception of two States, all of the States surveyed stated that they are implementing review and adjustment, even those without an approved State plan. This implementation is being carried out in various ways.<sup>21</sup>

This indicates that they have an approved plan according to the October 13, 1990 Federal requirements.

Of the States which responded to the survey, twenty-five<sup>22</sup> indicated that they are implementing review and adjustment. Nine (Connecticut, District of Columbia, Michigan, Minnesota, New Jersey, Pennsylvania, Rhode Island, South Carolina, Wisconsin) do not yet have an approved State plan. Two States, (Maine, Puerto Rico) reported they are not implementing review and adjustment. States are implementing the review and adjustment criteria in various ways:

- Florida, Indiana, Minnesota, New York, Ohio, South Carolina, and Tennessee are still implementing the 1990 requirements;
- Connecticut, Georgia, and Kentucky are implementing some of the 1993 requirements;
- Massachusetts, and New Jersey are reviewing only AFDC cases;
- The District of Columbia, Idaho, Rhode Island, Virgin Islands, and Wisconsin, are sending out right to review notices;
- Massachusetts and Wisconsin are testing the review and adjustment requirements in pilot projects in three and nine counties respectively;
- New Hampshire is implementing the requirements solely by pro se processes;
- Alabama, Illinois, Mississippi, and Vermont have a systematic process to complete reviewing of AFDC cases by October 13, 1993;
- Pennsylvania leaves procedures up to each county court as it has not written Statewide operating procedures.

### Procedures involving notices

Our informal survey also indicated that States are devising new procedures to notify obligors/obligees of review and adjustment proceedings. Alabama generates its notices automatically, and upon receipt of a request for review, it notes the case number and court number on the request for review form. Connecticut has incorporated the right to review notice at various times during the establishment/enforcement process, and notifies the noncustodial parent on all forms that a legal action may be pursued. North Carolina has chosen to take the time and money saving tactic of assimilating three notices into one form with check-off boxes, so that it is easy to use.

### Obstacles to Implementation

States which have started implementing the review and adjustment process in our survey indicated a variety of difficulties that they are having with the review and adjustment procedure. Both Georgia and South Carolina find the process too time-consuming particularly since they have an insufficient number of staff. New Jersey opined that the notice to the AFDC custodial parent was confusing and might result in additional telephone calls to the IV-D office. Georgia and Mississippi indicated that the 30 days requirement after sending out pre- and post-review notices was too lengthy. Alabama finds the issue of legal representation in requests for downward modification

problematic, but, as stated supra OCSE has recently addressed this issue in an information memorandum which will be sent to all of the States. Minnesota endeavored to pass legislation to clarify the IV-D agency's relationship with the parties in IV-D cases, but it did not pass. Tennessee has experienced difficulty developing policy for review and adjustment in interstate cases.

#### **Innovative Procedures**

Although about half of the States responding to the survey indicated it was too early for innovative procedures, a number of them provided examples of efforts to streamline an otherwise potentially cumbersome process. OCSE culled these examples from their responses, the literature, and the State review and adjustment plans. About half of the responding States are developing procedures to help them carry out the review and adjustment requirements.

- Illinois employs its Bureau of Employment Security to centrally match the amount of the order and the absent parent's earnings and then compute the child support amount based on State guidelines;
- New York has enacted legislation enabling it to obtain tax return information from its Department of Taxation;
- Connecticut accesses the State Labor Department to obtain information and forwards cases where the absent parent is unknown to the FPLS. This information on employment and addresses is used for placement of new income withholding orders, liens or other enforcement tools.

## Pro Se Practices

At least 13 States (Alabama, Arizona, Colorado, District of Columbia, Kentucky, Massachusetts, Michigan, Minnesota, New Jersey, New Hampshire, Pennsylvania, Washington, and Wisconsin) are developing pro se procedures which attempt to make the review and adjustment process more comprehensible and simpler for those pursuing such actions on their own. This could in turn expedite the process, and save States' resources. For example, Massachusetts uses pro se only for obligors' requests for downward modifications. Arizona employs it in a limited manner in some of its counties. Both Arizona and Colorado are taking advantage of technological advances by using an interactive, computer driven video screen with pro se parties. In addition, Colorado makes information available in both Spanish and English. California and Iowa are developing pro se handbooks and instructions for local offices, and Massachusetts and Wisconsin are conducting pilot tests in several of their counties in each State. (Three counties and nine counties respectively). Michigan, Pennsylvania, and Wisconsin offer free assistance on pro se cases through volunteers, self-help groups, or the Legal Aid Society. If States do allow volunteers to provide information on pro se processes, it might be advisable for States to give them some sort of training to ensure that volunteers offer accurate information.

## Imputation of Income

It may be difficult for States to review and adjust child support awards if they do not have adequate information about the obligor parent's earnings and income or in situations where the obligor is voluntarily underemployed or unemployed.<sup>23</sup> At least ten States in our informal survey (California, Colorado, Kansas, Maine, Michigan, Montana, Nebraska, North Dakota, Texas and Vermont) impute income in certain circumstances. This might occur for example, when no obligor income information is available.

Connecticut establishes a diary on the automated system at the time of the initial support order and at the time of review to track cases due for review. It then notifies IV-D workers that a review should be conducted. Vermont's guideline "Reference Sheet" includes the most up-to-date amount representing one hundred and fifty percent of the annual covered wage for all employment as calculated by the Department of Employment and Training. This amount may be used as the presumptive value of a parent's annual gross income when that parent fails to provide income information.<sup>24</sup>

## The Australian Example

Faced with similar problems concerning child support orders becoming outdated over time through inflation or changes in circumstances, Australia enacted the Child

Support (Assessment) Act in October, 1989. The Act provided for the regular "assessment" or review and adjustment, of child support orders under "Scheme 2". Scheme 2 orders are those in which children were born on or after October 1, 1989, or whose parents separated on or after that date.<sup>25</sup> In cases that meet this criteria, "stage 2" liability is registered at the child support agency. In March to April of each year, the agency updates its income information on both the obligor and obligee to determine the next year's child support liability. Non-custodial parents may attempt to reduce the amount they pay if there has been at least a 15% drop in income actually experienced.

The process sounds relatively simple compared to ours, but a number of problems have arisen. Because the agency uses tax returns from the previous year to calculate support for the following year, there is in effect a two-year time lag in which the amount of income the obligor earns could increase or decrease. Further, this calculation is being done every year for all child support awards meeting stage 2 criteria. Depending on the number of cases, this process could be extraordinarily burdensome.

If the custodial parent becomes aware that the noncustodial parent's income has increased 15% or more, she may apply for a variation in the assessment. Some in Australia however, believe that this appeal process is an inadequate remedy.<sup>26</sup>

When either parent, or both parents fail(s) to file a tax return for the relevant tax year, the agency may enter a default assessment, which has been described as "in most cases, an unrealistic figure which is unlikely ever to be paid."<sup>27</sup>

The "Child Support Advisory Group", which is studying the Australian system, has recommended that "assessments" include all children, not simply those who fall within the scope of the 1989 Child Support Assessment Act.<sup>28</sup> Otherwise, children whose orders do not fall within the 1989 act are in effect being penalized, by their orders not being updated.

### Future Options for Review and Adjustment

There are many forms that a review and adjustment system within the context of a child support structure of the future could take. This paper will address three: 1) all mandatory (phased-in); 2) limited opt-out; 3) existing (or non-AFDC opt-in).

### Mandatory

In a mandatory review and adjustment system, every child support order would be subject to a review and adjustment at regular intervals and no one would be able to opt out. Such a system would have the benefits of uniformity in the sense that AFDC and non-AFDC recipients of child support would be subject to the same strictures regarding review and adjustment. It would benefit children by ensuring that child support awards are updated, and their parents, by ensuring that orders are adjusted either upwards or down depending on their financial circumstances. One issue that would have to be addressed however, is whether such a mandatory system would apply to non-IV-D cases as well as IV-D cases? If it applied to all cases, States are likely to

need additional monetary and staffing resources.<sup>29</sup> We should also keep in mind the reasons parties gave in the demonstration projects for not wanting to have their orders reviewed, because such sentiments will probably influence the success of a mandatory system.

If the child support program is Federalized, it may make sense to also have a mandatory, universal system of review and adjustment of child support awards. It is possible to envision a system in which child support collections are made at the Federal level, and while States conduct reviews and adjustments of child support orders.

Another area of concern is the extent to which a mandatory system would conflict with notions of individual liberties and privacy.<sup>30</sup> There may be individuals who are able to support their children, and therefore are not receiving public assistance, who would like as little governmental intrusion in their lives as possible.

#### Limited Opt-Out

A second possible construct a child support review and adjustment structure could take, is for there to be limited criteria for "opting out" of the process. These could be made available to either one parent or both parents. It may be preferable for such opt-out criteria to be available to both parents to reduce the likelihood of equal

protection lawsuits being brought to protest a system allowing custodial parents, but not noncustodial parents, from opting out of a review, and or adjustment.

The opt out criteria could follow those currently used for the "good cause" exception where the IV-D agency need not establish paternity (i.e., in any case involving incest or forcible rape, or in any case in which legal proceedings for adoption are pending).<sup>31</sup> It should be noted that this type of opt-out has the capacity to take a somewhat different form than the current system, which in effect requires that, even if a case meets the "good cause" requirement, it still must be reviewed upon parental request.<sup>32</sup> The opt-out criteria could certainly take other forms, which may be necessitated by an altered child support enforcement structure.

#### **"Opt-In" or Existing Structure**

A third possibility is an "opt-in" system, which would essentially mirror the current review and adjustment structure. Under the present organization, while the IV-D agency must conduct reviews and adjustments in IV-D AFDC cases, in IV-D non-AFDC cases, it must conduct reviews only upon the request of either parent.<sup>33</sup>

#### **Conclusion**

While mandating that States regularly review and adjust child support awards in which assignment rights have been assigned to the State is a step toward ensuring that child support awards meet children's needs and accurately reflect parent's financial

circumstances, there is more that could be done to achieve this goal. We may want to mandate that all child support awards be updated regularly, and commit the resources so that this occurs. It may be desirable to examine the reasons parties specified in the demonstration projects in Illinois, Colorado, Delaware, and Florida, to try to remove the obstacles that are preventing parties from wanting to have their orders reviewed, and possibly adjusted. We may want to establish certain specified opt-out criteria that are available to one or both parties. We hope that further examination of the review and adjustment process in the context of the child support structure resulting from welfare reform, will lead to improvements in meeting children's needs.

**APPENDIX**

## SUMMARY CONCLUSIONS OF DEMONSTRATION PROJECTS

Based on the two-year demonstration effort, the principal conclusions follow:

- o The percentage of cases adjusted was remarkably similar in three of the four demonstration projects, despite the different approaches taken; approximately 10 to 11 percent of the cases randomly selected were adjusted in Colorado, Delaware, and Illinois, while Florida adjusted only 4 percent of the cases selected.
- o The majority (73% overall) of the IV-D demonstration project cases selected were terminated for review and adjustment. This was because the cases were not appropriate or suitable for review, or due to a lack of authorization for a review in non-AFDC cases.
- o The review and adjustment process is a lengthy one (over six months to process a case from selection to modification). This was primarily because of factors other than the Family Support Act notice requirements such as case backlogs, the time required for manual case screening, case location and case clean-up activities, and the level of difficulty in obtaining information needed to conduct the review.
- o The majority of the 3,023 adjustments obtained (92%) were for increased orders, with an overall average of 101 percent increase in the order amounts from \$122 to \$245. Two of the four demonstration States, however, did not process downward adjustments.
- o Obligees whose orders were adjusted were generally satisfied with the review process and outcomes, while obligors were generally unsatisfied.
- o Resource requirements for IV-D staff, attorneys and the courts can be expected to vary in accordance with the process used for review and adjustment as well as other operational factors. Overall resource requirements and associated costs may be less than anticipated, however, because fewer cases may be suitable for review and adjustment than originally anticipated.

## Suggestions to Improve the Process

Based upon the experiences of the four state demonstration projects, the following approaches be helpful to States in the development and implementation of an effective review and adjustment process:

- o Assess State civil procedure rules which may effect review and adjustment to ensure the most advantageous environment for IV-D cases;
- o Create a steering committee comprised of representatives from the IV-D agency, the IV-D attorneys, and the courts to oversee the development and implementation of the review and modification process and to establish close working relationships, at both the state and local levels, to ensure successful implementation of the process;
- o Employ automated screening criteria to identify cases appropriate for a review of the order, rather than having to conduct a manual screening on each case;
- o Recognize case clean-up activities as a time-consuming but essential element of the review and adjustment process and assign priority to this workload. Approximately 20 percent of project cases were inappropriate for review (i.e., criteria for review and adjustment not met) due to inaccurate or incomplete case data which existed in both the States' automated systems and in its casefiles. The result was that project staff devoted considerable effort to conducting manual case reviews to obtain correct information. The Family Support Act of 1988 requires States to implement an automatic tracking and monitoring system by October 1995, which should facilitate this process;
- o Develop initial notice letters and forms for obligees and obligors which are clear and understandable; limit the initial collection of financial information only to that which is needed for the application of the guidelines;
- o Maximize use of administrative discovery powers, particularly administrative subpoenas for obligor employers, to collect financial information needed for the review; and
- o Maximize utilization of automated systems for document generation, guidelines calculations, and case tracking functions.

## ENDNOTES

1. I use the term "review and adjustment" in lieu of "review and modification" as the former is the statutory language.
2. See the implementing regulation on review and adjustment at 45 CFR 303.8(a)(3).
3. 45 CFR 303.8(a)(1). It should be emphasized that the term "adjustment" is used instead of "modification" because that is the term that the statute applies.
4. Oregon Child Support Updating Project, Final Report, Policy Studies, Inc. (April, 1991).
5. Oregon Child Support Updating Project, Final Report, Policy Studies Inc., (April, 1991).
6. Id.
7. Id.
8. Id.
9. The source for the following discussion is "Evaluation of Child Support Review and Modification Demonstration Projects in Four States: Cross-Site Final Report", Caliber Associates, Sharon Bishop, Project Director (May 15, 1992).
10. The following State's statutes have language which either specifically mentions that the agency or State attorneys represent the State, or that no attorney/client relationship is formed when the State conducts IV-D services: Arizona, California, Colorado, Connecticut, Florida, Georgia, Iowa, Louisiana, Maine, Mississippi, Nevada, New York, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, Wisconsin, and the Virgin Islands.
11. Memorandum, re: Who Does the IV-D Attorney Represent?, American Association of Public Welfare Attorneys, January, 31, 1991.
12. Smith, Marilyn Ray, Implementing the Periodic Modification Provisions of the Family Support Act, (1993).
13. OCSE Information Memorandum, Review and Adjustment of Child Support Orders, (OCSE-IM-93-01).

14. See the preamble to the Final Rule on Review and Adjustment Requirements for Child Support Orders Effective October 13, 1993 (57 FR 61559, 61561, December 28, 1992).

15. See generally, Supporting our Children: A Blueprint for Reform, (1992).

16. Id. at 113.

17. Id. at 106.

18. Id. at 105.

19. Id. at 89.

20. See the prefatory comments to S.689 (1993).

21. These are: Alabama, Alaska, Arizona, Colorado, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Texas, Vermont, and the Virgin Islands. It should be noted that because OCSE is constantly receiving updated State plans, this information is accurate as of June 30, 1993.

22. These are: Alabama, Connecticut, the District of Columbia, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Massachusetts, Michigan, Minnesota, Mississippi, North Carolina, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, the Virgin Islands, and Wisconsin).

23. Upton, Marianne, Imputing Income in Establishing and Adjusting Child Support Award Amounts, unpublished memorandum (1993).

24. Id.

25. For this discussion on Australia's counterpart to the review and adjustment system, see Child Support in Australia, Final Report of the Evaluation of the Child Support Scheme (199).

26. Id. at 244.

27. Id. at 248.

28. Id. at 6.

29. In this paper I will not attempt to discuss whether a child support system of the future will use courts, or whether it will become more or entirely administratively processed, because that is in the domain of the child support restructuring workgroup.

30. Individualism and privacy are two basic tenets of the American Philosophy. While the "right to privacy" has admittedly ambiguous roots, being found in the "penumbra" of the XIVth amendment, it nevertheless is inextricably linked to most Americans' notion of home and domestic life. While there are, of course, many exceptions to this right when the health or safety of children or other family members is endangered, when children are being cared for by able parents, an argument for governmental intrusion is more difficult to support.

31. See 45 CFR 303.5(b).

32. See the preamble to the Final Rule for review and adjustment of child support orders, 57 FR 61559, 61563 (December 28, 1992).

33. Id. at 61562.



## INCOME WITHHOLDING

### Executive Summary

Income withholding accounts for half of the total IV-D collections in the country. Its share of collections has increased steadily over the past several years. Since income withholding is a relatively effective and economical method to collect support, its continued expansion is desired.

### Withholding's Potential

Withholding's potential percentage of total collections may be significantly higher than its current percentage. Its upper limit reflects the labor market realities of unemployment, self-employment, short-duration employment, cash-paying employment, unreported employment, institutionalization, and incarceration, as well as the withholding-exempt status of Supplemental Security Income.

Streamlining the income withholding process should boost withholding collections somewhat, but more importantly, should free caseworkers to concentrate on cases for which withholding does not work. Automation, new-hire reporting, uniformity of laws, procedures and forms, simplification, direct withholding across state borders, improved training and accelerated universality will significantly improve withholding as a percentage of collections, and increase overall collections.

All states are required to have an automated IV-D system by 1995 that will, among other things, conduct routine obligor and employer locate matches with existing data bases, generate letters and notices, and monitor noncompliance. Automation, coupled with a new-hire reporting system that allows for rapid implementation of withholding once an obligor begins a new job, should lead to a significant increase in withholding collections.

States have variations of the same laws, procedures and forms; those differences are enough to bog down the interstate withholding system. Even within states, forms and procedures may vary, resulting in slow or inaccurate case-processing. Uniform

laws and procedures remove the expense and time uncertainty adds. Simplification of laws and procedures also streamlines the process. Combining uniform, simplified laws and procedures with "direct" withholding should increase the interstate collection rate dramatically.

Appropriate, regularly-provided training has a great effect on withholding success. Caseworker turnover is fairly high, and training dollars historically have been inadequate to ensure that workers are able to master their jobs. Additionally, the proper marketing of withholding to employers is important, as they are the linchpin of the withholding system.

Universal withholding, which will be implemented a generation from now under current law (except for cases in which the parties opt out or the decisionmaker finds cause not to implement withholding), could be speeded up. More cases in withholding status will result in more withholding collections and should result in more overall collections.

#### Federalization

Federalization of the withholding function would be beneficial to employers, but would offer few tangible benefits to the custodial parent, the state owed AFDC reimbursement, or the obligor, if one assumes that the quality of the federal collection system is similar to that of the state-based collection system.

While the system for collecting and distributing withholdings would be arguably the easiest of all the child support functions to federalize, the more functions that are federalized, the harder it would be to operate the federal portion from a central point. If one adds collecting payments made outside of the withholding process, monitoring compliance, sending notices, adjudicating disputes, reconciling accounting discrepancies, pursuing other enforcement techniques, and adjusting award levels to the federal system, myriad problems would arise unique to a federalized system.

## INCOME WITHHOLDING

### I. BACKGROUND

Income withholding has long been touted as the most-effective child support enforcement tool. It is. Starting with the Child Support Enforcement Amendments of 1984 (CSEA), Congress has required states to make income withholding available under certain circumstances for both its state-agency handled cases (IV-D) cases and private (nonIV-D) cases. (See the detailed analysis of the income withholding requirements in Appendix I.) The Family Support Act of 1988 (FSA) tightened the requirements so that more cases with orders were automatically subject to income withholding. Since income withholding is the-centerpiece of enforcement, it is important to ensure that it be done as efficiently and comprehensively as possible. This paper examines various options.

### II. ISSUES

#### a. Why is the Percentage of Total Collections from Income Withholding Not Higher?

Based on state reports, one half of the almost \$8 billion in distributed IV-D collections in FY 1992 was collected through income withholding. Among the states, the range of collections obtained from withholding was extremely wide, from 4.5% for Puerto Rico to 69% for Wisconsin during FY 1992. (See Table I.) Definitive reasons for the wide range are unavailable at this time. Extensive contact with state officials may help resolve this mystery; however, the disparity should caution us that the numbers reported may not be completely accurate indicators of payment methods. Also, withholding success may indicate less success at collecting through other means if one judges a state just by its percentage of total collections from withholding.)

While states report collections from withholding and other payment methods made through the IV-D system, states do not report the number of cases in withholding status, so comparing case status percentages (cases with orders and cases in

withholding status) with collection percentages may skew the numbers.

Determining the potential percentage of all child support cases with orders for which withholding can be implemented is difficult. Since we do not have demographic information specific to child support obligors, we base the following projections on U.S. Department of Labor numbers and other published statistics. By doing so, we do not assert that the obligor labor force demographics are exactly the same as the general labor force demographics. Starting with the universe of obligors with orders, one must subtract a few percentages for obligors who do not seek work, who are incarcerated, institutionalized, homeless, or receive non-reachable Supplemental Security Income (SSI).

The percentage of obligors who seek work or who are working is then reduced by factoring out persons with income that is not consistently available for withholding. The labor force includes approximately 126 million Americans, 8 million of whom are unemployed. Of the 118 million employed workers, 10 million are self-employed, and 6 million have jobs but are currently not receiving pay (vacation, unpaid family leave, seasonal work, sickness, etc.), leaving 102 million Americans who currently receive salaries or wages, or 81% of Americans age 16 and over who seek work or who are working.<sup>1</sup>

Additionally, by factoring out persons who are paid in cash or change jobs extremely rapidly (day laborers, e.g.), the percentage of the Americans against whom income withholding could be implemented drops by several percentages.<sup>2</sup> So even if withholding were implemented in all cases where withholding was possible, it would only be implemented in from three-fifths to three-fourths of the cases with orders.

Obviously, agency efficiency and accuracy and employer compliance will not reach 100% of the potential cases under the best circumstances. A realistic estimate of the percentage of cases with orders for which withholding can be implemented should reflect a further reduction of a few percentage points.

**b. 1. How Can Income Withholding Be Expanded and Improved?**

Income withholding can be expanded most rapidly by implementing four initiatives: automation; improved location efforts including new-hire reporting; a speedier timetable for universal withholding; and improved staff/management training.

Income withholding can be improved through: uniform laws, procedures and forms; direct withholding across state lines; increased staff training that focuses on properly implementing withholding; and an emphasis on producing a "user-friendly" environment for employers.

**III. RESPONSES TO THE TWO ISSUES**

**a. Why is the Percentage of Total Collections from Income Withholding Not Higher?**

**1. Self-employed, unemployed, moonlighters, teenagers, cash payees, SSI recipients, incarcerated, institutionalized and homeless persons**

Income withholding, particularly immediate income withholding, has been found to be an effective remedy for collection of child support (see Garfinkel and Klawitter, The Effect of Routine Income Withholding of Child Support Collections). However, it doesn't work against every obligor. In a national evaluation of income withholding conducted by OCSE, Feasibility of Mandatory Immediate Income Withholding for All Child Support Orders (hereinafter national evaluation), the biggest withholding stumbling block was lack of information on obligors' employers or employment status. Income withholding is typically hard to obtain or not practical in situations where obligors are: self-employed; unemployed; teenagers; persons who work for cash or barter; or individuals who are incarcerated, homeless, institutionalized, or receiving Supplemental Security Income (SSI) payments.<sup>3</sup>

As a general rule, young unwed fathers are not required to interrupt or terminate their secondary education in order to secure a full-time job to meet child support payments. They may, instead, be ordered by the court to pay a token amount, e.g., \$5 or \$10 a month, while they are in school (an amount, of course, that should increase upon their graduation.) Implementing income withholding while the obligor is in school paying token amounts from odd jobs such as lawn-mowing is infeasible.

Obligors who make up a certain percentage of the 8 million unemployed are not exempt from paying child support. In fact, interception of unemployment compensation amounted to more than \$143 million in FY 1991. The Bureau of Labor Statistics (BLS) of the U.S. Department of Labor has unofficially estimated that one-third to one-half of unemployed persons receive unemployment compensation sometime during their unemployment spell. Those who receive unemployment compensation may be added to the potential withholding population, even if in some states it is technically not considered withholding.

The 10 million self-employed persons are difficult to withhold against because their income is both easy to hide and hard to track. They are being asked, in effect, to withhold against themselves. There are many ways to disguise the amount of income taken from their own company. Still, they are the best candidates in this category to produce a substantial increase of collections through withholding.

Many obligors informally work for cash, receiving payments off the books. Income withholding will not be successful against under-the-table payments. As with workers who receive cash payments, persons who barter sometimes do so to avoid reporting their full income to the Internal Revenue Service. Even if income is reported by barterers, withholding is unavailable since the barterers receive in-kind payments for their work, such as sides of beef or television sets.

Supplemental Security Income (SSI) is not subject to withholding, pursuant to regulations promulgated by the Office of Personnel Management. Veteran's disability payments are also not

garnishable unless they are taken in lieu of some (but not all) of the veteran's retirement pay.

Incarcerated, institutionalized or homeless obligors also limit withholding's reach.

## 2. Short-duration Employment

Maintaining current employer information on some obligors is difficult because job turnover and termination rates tend to be high. These obligors include those who work out of union halls, and itinerants, such as farm laborers and odd-job workers, many of whom work for a month or two and then move on to another employer or locality. Even when the employer is located, high rates of job turnover and termination lead to shorter periods of withholding.

The AFL/CIO has some 14 million members in the U.S., 2-3 million of whom work out of hiring halls at short-duration jobs with different employers, rotating from job site to job site, without knowing much in advance where they will work next. The union acts as an agent, setting up the work for the member. In these cases, by the time an income withholding order is served on the employer, the worker is often at his or her next assignment.

Many obligors are day laborers, who look for odd-job work or who specialize in a skill that is used for a few hours by a businessperson or homeowner, such as housepainting or gardening.

The Labor Department says there are more than 7 million moonlighters or "multiples" who hold second jobs. Those second jobs may be shielded from withholding. For example, a "moonlighter" may work full time at one job (from which income may be withheld for child support payments) and hold another, part-time job for which earnings are "masked" through cash payments. He or she may also be "self-employed" in the second job and, again, receive only cash for services. Maine estimated that 40-50% of its obligated caseload are self-employed or moonlighting and, having joined the underground economy, are not fully reporting income.

### 3. Automation implementation

Currently, there is a wide degree of variance among states in their level of automation. They vary from manual systems in some counties to sophisticated, automated statewide systems which are close to meeting the Family Support Act of 1988's (FSA's) requirements.

Among the keys to operating a successful income withholding program are: the location of noncustodial parents/obligors and their employers; generation of appropriate notices and letters; accounting for collections received from employers; and notifying caseworkers of needed actions. States are required to interface with state and national data bases to locate noncustodial parents/obligors and their employers. Once these matches are made, the data must be processed to follow-up on any "hits." Once a hit is verified, appropriate letters/notices must be sent to establish the income withholding. Incoming payments must be accounted for and monitored. When not received, contact must be made with the employer to determine the reason for noncompliance. In the absence of a comprehensive automated system, these activities are extremely labor intensive, competing for scarce program resources.

As more States conform to the FSA's system requirements, income withholding will be more efficiently implemented. By decreasing the burden of performing routine activities, particularly in those cases where income withholding is not being implemented for lack of fulfilling the process requirements, caseworkers will be in a better position to take action on problematic cases.

### 4. Slow Locate

Locating the obligor, and then the obligor's employer, has historically taken a long time in cases without hard leads. When an obligor relocates and fails to notify the agency, court or obligee of his/her new address, local enforcement usually stops. In some cases the obligee more actively pursues the location of the obligor than does the IV-D agency. Once the obligor is located, the income and assets of the obligor must be located.

OCSE auditors state that while in general withholding proceeds smoothly if the employer's address is known, many offices do not even attempt to locate employers when withholding is triggered. When the employer's address is not known, some offices move the case into the locate function where it may sit for months.

Offices are not routinely checking local, state and federal resources. Some states apparently rely on the annual federal tax refund offset submission process as their only locate tool for these cases. - In some offices, location workers are often not trained on what location information is available from state sources and the Federal Parent Locator Service (FPLS), and are often not trained in skiptracing techniques to find absent parents who work for employers who do not report to the state employment security agencies (SESAs). (Obligors working for employers who do not have to report to SESA will not be identified in the monthly SESA crossmatches.)

New regulations require at least quarterly attempts to locate employers, but agencies should attempt location of the employer immediately upon withholding being triggered. Automation and new-hire reporting should make employer locate easier, faster and more successful.

#### **5. Management, Resources, Training and Case-processing Deficiencies**

Child support offices are understaffed. In comparison with the caseload per caseworker in the AFDC program, the average caseload for child support workers in most states is several times as large. The U.S. General Accounting Office reported that the median caseload per worker based on agency self-reporting is about 1000 cases.

Additionally, training of management, caseworkers, attorneys and decisionmakers is inadequate, and in some states, almost nonexistent beyond on-the-job training. Respondents to a GAO survey listed training as one of the top five ways to improve income withholding.<sup>4</sup>

Many states have repeatedly analyzed and improved their case-processing methods; however, some local offices have not intently reviewed the way they process their cases in many years. Changes in emphasis, laws, and regulations, and the impact of automation may have made old case-processing methods obsolete or fairly inefficient.

#### 6. Multiple Orders for the Same Parties

Many orders duplicate other orders for the same parties because they are established either in different states under URESA's de novo principles or in different counties where case transfer is not the rule. Additionally, some jurisdictions have historically had one case for welfare recoupment and another for nonAFDC IV-D collections for the same party. Some states may allow a nonIV-D case to remain unconsolidated with a IV-D case that covers the same parties. The impact of duplicate cases on the reporting of dollars collected through withholding compared to dollars collected through other methods is unknown.

#### 7. Reporting data deficiencies

When one observes the large variations from state to state in the percentages of total collections coming from income withholding (Table 1 and Fig. 1), it appears that some states may be underreporting income withholding collections. Since withholding collection percentages are based on self-reporting by states, there may be several state-specific reasons for the disparity. Underreporting may also occur in states that are close to the national mean in percentage of total collections through withholding.

Washington state analyzed its "other" collection method category (i.e., collections that are not made by means of income withholding, tax intercept, or unemployment intercept) for FY. 1993, first quarter. They found that about one-quarter of the other category included payments through clerks of court, which may be made either by withholding or complying payment. Also, intercepts from labor and industries benefits, like vacation pay, were included in the "other" category, even though for many

states those would be considered income withholding cases. By extrapolating from the collections reported in the "other" category those that may be collected through withholding, we can add about \$20 million to the annual withholding collection number for Washington state.

In FY 1992, Washington state reported collecting \$115 million through withholding, 43% of their total collections. Using first quarter FY 1993 "other category" information extrapolated to \$20 million, an additional 7% of FY 1992 collections probably could have been categorized as withholding collections (not including unemployment intercept).

While extrapolating Washington's data to the nation is hazardous because of the different collection systems used in each state, it seems fair to say that actual national percentage of total collections made through income withholding may be several percentage points higher than the 50% of total collections reported for FY 1992.

#### 8. Gradually phased-in immediate income withholding.

The CSEA mandated that States provide for income withholding in all IV-D cases if the amount past-due was equal or greater than one month's worth of child support. The FSA required that, as of November 1, 1990, all new and adjusted IV-D orders have provisions for immediate income withholding, unless the parties agree otherwise or a court or agency decision-maker finds good cause for not withholding. The same provision is effective for all new nonIV-D orders after January 1, 1994. With these requirements, all orders, with the opt-out exceptions mentioned above, should contain provisions for immediate income-withholding by 2012 (or 2015 in states where the age of majority for child support purposes is 21).

Why will it take so long? Under the FSA, nonAFDC IV-D cases could remain unmodified during the life of the order if neither parent requests a review. In four demonstration projects addressing review and adjustment procedures, only about 15% of AFDC cases and 6% of the nonAFDC IV-D cases were adjusted. The

FSA requires states to review and adjust, if needed, AFDC cases every three years. NonAFDC IV-D case adjustment is dependent on the request of one of the parents.

Consequently, some current IV-D cases with orders may never be in withholding status if: 1) the original order did not include an immediate income withholding provision; 2) neither parent requests implementation of immediate income withholding; 3) the order is not adjusted (which requires withholding implementation if not yet in place and the parties do not opt out); and 4) the obligor does not trigger initiated withholding by failing to timely pay support. The number of these cases will diminish over time: the last few cases will be phased out around 2008 when the support duty ends for an obligor under an order issued prior to the effective date of the immediate income withholding mandate.

There is no federal review and adjustment requirement for nonIV-D cases. Since little is known about the non-IV-D caseload, the expectation is that all non-opt-out, post-1993 nonIV-D support orders would be in immediate income withholding status and many if not most pre-1994 nonIV-D orders would not be in withholding status. Given that the age of majority is generally 18, 2012 represents the latest time for child support orders issued before January 1, 1994 to expire. It is not until then that all pre-1994 cases would be phased out.

Under the FSA's withholding provisions and a projection of their effect, a large majority of non-opt-out IV-D cases with orders should be in withholding status in the next few years. By 2008, the only non-opt-out cases where withholding will not be required will be pre-1990 orders with practically perfect pay histories, no adjustments, and no requests for withholding. A higher percentage of nonIV-D orders may remain withholding-free during the next 18 years because: there is no federal mandate to do review and adjustment in nonIV-D cases; there is no requirement that adjusted non-IV-D cases be placed in withholding status; and withholding implementation may require an affirmative step by the custodial parent once it is triggered.

## 9. Good Cause and Party Opt-out

Withholding collections could increase by eliminating the exceptions to immediate income withholding. The amount of increased collections is unknown; however, anecdotal statements by state child support workers suggest that opt-outs based on parties' agreements or decisionmakers' findings of good cause increase the higher the income of the obligor.<sup>5</sup>

Will limiting opt-out cases increase overall collections? Opt-out cases still face withholding initiation when one month's amount of support is past-due (or a lesser amount based on state law). In initiated cases where the obligor's employer can be immediately served with a withholding notice, few dollars will be lost. If the obligor or employer is hard to locate or no bond or escrow was posted, the dollar loss will be more significant. If the case is a direct pay case, then implementing either immediate or initiated withholding paid through a public payee will result in additional collections, only because the direct payments were not previously counted. Eliminating opt-outs will increase withholding collections, but will not increase overall collections as much.

The benefits to mandatory income withholding in all cases include destigmatization, increased withholding collections, reliance on a neutral employer to withhold instead of the obligor to pay, and accurate public accounting and monitoring. These benefits must be weighed against the actual cost of administering additional withholdings, the relatively slight effect on total collections, and the animosity of many people who are happy to remain outside the governmental system of withholding. Opt-out advocates mention the retention of privacy, the freedom to monitor one's domestic affairs, encouragement of voluntary compliance, avoidance of a presumption of noncompliance, and speedier payments receipt as reasons for continuing the opt-out option.

## 10. Employer noncompliance

While relatively few of the nation's six million employers fail to comply with withholding orders or notices, even a small

percentage can translate into thousands of noncomplying businesses and millions of dollars in uncollected child support.

Employers' lack of cooperation accounted for 8% of nonAFDC IV-D cases where withholding was attempted but was unsuccessful, according to OCSE's 1991 national evaluation. (Since withholding is usually successful once the employer is located, this percentage is reduced significantly if one looks at total withholding attempts. Employer noncooperation was the second-leading reason for unsuccessful attempted withholding, after obligor job-changing (factoring out pending withholding cases).)

Of 42 states and territories responding to a 1989 survey conducted by the American Bar Association, all except one state, Alaska, reported satisfactory or good levels of employer compliance with income withholding requirements.

Respondents to the ABA survey indicated that small, privately-owned or family-owned businesses are those most likely not to comply with income withholding requests, particularly those small businesses that are not automated or operate on a cash basis. This finding was corroborated by the OCSE national evaluation.

Additional profile characteristics of the noncomplying employer mentioned in the ABA survey were: businesses owned by employers who are personal friends or relatives of the employee obligors; rural businesses; union locals; trucking firms; temporary employment agencies; and employers of transient workers. One state cast non-complying employers as either "marginal employers with cash flow problems, or interstate employers." New Jersey named the casino industry.

OCSE's national evaluation states that "although employer cooperation with income withholding has been very good so far, small employers frequently have difficulty understanding requirements and implementing the withholding," contending that employer education and simplification of procedures are key to employer cooperation. In the ABA survey, a respondent recommended having the state agency work through an employers' association to ensure that employers comply with withholding.

## 11. Business structure

Income withholding should not be stymied because of the legal organization of the business where the obligor works. Closely-held corporations (corporations owned by a small group of people or by one person) may be served as the employer of the obligor if he or she draws a salary. If the corporation pays dividends instead of a large salary to the obligor, those dividends can be withheld under most states' definitions of income.

Partnerships can be served with charging orders. Every partner must be served. The charging order usually reaches only the distributable income of the partnership and not income that is used to pay expenses. It also reaches only the draw-down share of the partner who is the obligor. Depending on state law, partnership income may be accessible through income withholding instead of through the charging order.

## 12. Complying payments

"Complying payments," which is defined here as payments made by the obligor under an order to pay but not under a legal process to compel pay, such as a withholding order, is considered to be a significant portion of payments, although the exact amount is unknown. "Voluntary payments" are defined by OCSE as collections from obligors who are not subject to orders. Voluntary payments accounted for only \$107,000 of the reported \$8 billion in collections in 1992.

Washington state's statistics for FY 1993, first quarter, show that about 2 of 3 dollars collected in its "other" category were noted as complying payments, with an additional unknown number of complying payments made through clerks of court (which accounts for most of the remaining one-third of the "other" category).

In IV-D cases, complying payments occur when: 1) withholding has not been triggered and the order is not bound by an immediate withholding requirement; 2) the obligor's employer or other income source has not been located and served by the IV-D agency; or 3) the obligor is self-employed.

In nonIV-D cases, complying payments are much more common, because: 1) many obligors make direct payments to the custodial parent; 2) a voluntary deduction from wages is sent by the employer to the custodial parent; 3) a financial institution directly transfers the payment from the obligor's account to the custodial parent's account; 4) the obligor pays on a regular basis; 5) or the custodial parent is unwilling or unable to or unsure about taking the necessary action to implement withholding.

### 13. Interstate

One out of ten child support dollars collected through IV-D agencies involves an interstate case, although interstate cases make up an estimated 30% of all child support cases, according to the U.S. Commission on Interstate Child Support and GAO. Clearly, the system breaks down when two states become involved in enforcement. Interstate income withholding is used in only 15% of the interstate cases, while the slower URESA petitions are filed in a majority of the cases. Time lags in interstate cases may be fatal to securing a withholding order because of job-turnover and obsolete locate information. Also, it is a truism in child support that despite regulations to the contrary there is a tendency in many offices to favor instate cases over out-of-state cases. (See the paper on interstate issues for more details.)

#### b. What can be done to improve and expand income withholding?

##### 1. New-hire reporting and other locate improvements

Once income withholding is triggered, the next step is to locate the obligor's employer. While many obligors (and obligees) provide this information at the time that the order is issued, many do not, making the agency search among existing data sources, including state employment security agency (SESA) data. Because SESAs have relatively recent data, the match with SESAs (both within one's own State and with other States) is a favored locate tool. However, because data need only be reported to SESA

on a quarterly basis, these data bases contain information that is between four to six months old.

Other limitations include the fact that not all employers are required to report (exceptions vary from State-to-State, but often include government employees and farm workers). A confounding variable is the fact that the job-turnover rate for many obligors (particularly those with irregular payment histories) is extremely high.

To improve on the IV-D agency's ability to locate an obligor as soon as he or she secures employment, several States have adopted a new-hire reporting system. Several groups have proposed a similar federal new-hire scheme. (See the new-hire reporting paper.)

Under new-hire reporting, the employer would be required to report the new hire to a centralized state (or national) location soon after hiring. That information would be matched against cases with existing orders and cases in locate status. When a match was made, the information would be reported back to the appropriate IV-D agency. Based on the case's status, i.e., locate or enforcement, the IV-D agency would be responsible for contacting either the obligor or the employer. Through the use of automation, withholding could be implemented a few days after hire, perhaps by the time that the obligor's first paycheck was cut.

Washington State initiated "The Employer Reporting Program" in July 1990. Employers in five standard industrial classifications (building construction, other construction, manufacturing of transportation equipment, business services, and health services) were required to report new hires to the Office of Support Enforcement within 35 days of hire. (The employers covered by the project represented 11% of the total employers required to report to Washington's SESA.)<sup>6</sup>

Washington reports that it received collections from 43% of obligors who paid nothing from wages the year the program began.

The program has been particularly effective in reaching cyclical and seasonal workers.

The concept of self-disclosure in combination with new-hire reporting has been considered. Under self-disclosure, obligors report to their employers the amount of their obligation and to whom it is payable. Minnesota already has self-disclosure in place. The accuracy of self-disclosure and the rate of truthful admission of a support duty have been questioned.

Unlike self-disclosure, a new hire reporting system is able to provide the employer sufficient information on the existing order and procedures for submitting payments to ensure that they are in the proper amount, directed to the proper location and properly identified. Self-disclosure, on the other hand, ensures withholding begins with the first paycheck.

The addition of non-IV-D cases to a new-hire reporting system would have no impact on employers from the standpoint of initial reporting. The registry of existing orders would have to be expanded to accommodate non-IV-D cases, and new communication links would have to be established if administration is by other than the IV-D agency. An additional benefit to new hire reporting coupled with a central registry is the ability of the system to quickly locate, and where appropriate, expurgate, redundant cases covering the same debts for the same parties.

## 2. Self-employed withholding/reporting

According to BLS, there are approximately 10 million self-employed Americans. Regardless of employment, an obligor must pay according to a support order's terms.

There are two withholding-like approaches that may have an impact on self-employed obligor's compliance rates. One is to serve an income withholding order/notice on the self-employed person. A withholding notice may serve to remind the obligor of the obligation, focus the obligor on payment procedures and cycle, and provide a contact person for remittance. Coupling the withholding with a electronic funds transfer from the obligor's

bank account, produces a system for the regular payment of support by the self-employed that mirrors the current withholding system. Inherent problems with noncompliance are not resolved by this method, but withholding procedures may result in a slight increase in regular payments, similar to that experienced by businesses, such as mortgage holders, that provide the debtor with return envelopes and coupon books, or the option of paying by automatic withdrawals from bank accounts.

The second method is to have the self-employed obligor tie support to his or her monthly or quarterly tax filing. (Some states require monthly reporting, while the IRS requires self-employed workers to estimate their annual tax liability quarterly and remit accordingly.) If one had to reconcile child support liability in a similar manner at the same time, this would better ensure compliance with the underlying order, particularly if the IRS is made directly responsible for monitoring child support or forwarding noncompliance information to the appropriate state.

### 3. Income Withholding against Nonwage Income Sources

Income is derived from sources other than employers paying wages. These sources include tenants paying rent, contractors paying consideration, trustees and financial institutions distributing interest, corporations issuing dividends, and partnerships distributing draw downs.

If all states expanded their definition of income for income withholding purposes to include lump-sum payments and nonwage recurring payments, there would be more income available for withholding. Just as tax offset has shown to be an effective enforcement tool, withholding or offsetting other payments may help in cases with chronic underpayment. Most states have a broad definition of income that includes recurring payments, but only about half the states include some lump sum payments in their definition. While all assets can be reached through other techniques, income withholding is as simple or simpler than any of the other more traditional techniques such as seizure and sale, levy, and distraint. A state may set up thresholds for lump sum payments so that the distributor of the payment must

confirm that the distributee does not owe child support before the money is distributed. If child support is owed, the distributable amount is frozen pending receipt by the distributor of a withholding notice sent by the agency.

#### 4. Uniform Laws and Procedures

##### Universal Ordered Withholding

One major reform that would undoubtedly increase the number of cases in withholding status would be to make withholding universal in all IV-D and nonIV-D cases sooner than under current law and without exception. Since beginning in 1994 only new nonIV-D orders have to include an immediate withholding provision (unless good cause is found or the parties agree to an alternative arrangement), it is possible that immediate income withholding won't be universal until 2012 (in some states where the age of majority for child support purposes is 21, the year will be 2015).<sup>7</sup>

In IV-D cases, the year of universality is 2008 (2011 in some states). However, most IV-D cases should be in withholding status within the next few years because: 1) either parent can now ask for withholding and have it implemented; 2) few cases will not have a triggered delinquency of one month's worth of support sometime during their lifetimes; and 3) if a IV-D case is adjusted, withholding will be implemented (unless opted out) if has not already been implemented.

If all nonIV-D cases, regardless of the date the order was issued, were made subject to immediate income withholding by a certain date or phase-in period (1997 or 1998, for instance), nonIV-D cases with orders in withholding status would increase at a much faster rate, adding hundreds of thousands of cases with orders to the list of cases in withholding status. Also, by eliminating opt outs, a significant portion of the nonIV-D caseload would be added to those in immediate income withholding status.

Regarding IV-D cases, income withholding could be implemented whenever a case with rights assigned to the state comes up for its triennial review and adjustment and the case is not in withholding status. This is similar to the health insurance provision in OCSE's review and adjustment regulations. 45 CFR 303.8. The required implementation may be expanded to cover nonAFDC IV-D cases as well. With the elimination of opt outs, there could be ordered withholding in all cases with awards within three years of the effective date of the legislation.

#### Uniform Allocation in Multiple Obligee Cases

A quandary exists when an employer must withhold income for an obligor who owes support to more than one family, and there is not enough disposable income available to satisfy every order. Current regulations state that current support must be satisfied before any order's arrearage claim. If there is not enough income to satisfy the aggregate claim for current support, states must determine how to allocate the income, as long as every order receives some income. (See 45 CFR 303.100(a)(5)).

This requirement has resulted in a lack of uniformity among states. Some alternatives are to prorate based on: 1) the number of children covered by each order; 2) the percentage of the aggregate current amount due for each order; and 3) the number of orders for current support. Direct withholding in interstate cases would present an even larger problem in multiple obligee cases where inconsistent allocation formulas may result. A standardized allocation formula could be included on the withholding notice, to be applied in every multiple-order case.

While the U.S. Commission recommended a per capita allocation based on the number of children under each order, many argue that it is fairer to allocate based on the ratio of current support ordered. This reflects an allocation based on guideline-established award levels, which invariably decrease the increment of added support for each additional child. In other words, since guidelines do not produce a doubling of the amount owed for having two children instead of one child under the order, distribution rules shouldn't either. It is our opinion that

allocation theory in multiple order cases should be tied to guideline theory of relative costs instead of a per capita principle.

Under the law governing garnishment of federal pay and benefits, allocation is based on "first-in-time, first-in-right," which is the traditional garnishment approach. These garnishments should also follow the allocation scheme developed for nonfederal garnishment.

#### Uniform Policy Regarding Health Insurance Premium Deductions

Which is more important, child support or health insurance? The answer is personal to the family receiving both. A family may have pressing medical needs and continuity in health insurance coverage may be more important. A family may have alternative coverage, and may place more importance on the child support. There is no national policy on priority of health insurance premiums and child support when both are withheld from paychecks. The federal government has an interest in offsetting Medicaid expenditures and may wish to encourage higher medical support priority; however, it also has an interest in AFDC recoupment and welfare avoidance.

A default priority scheme could be set up that allows the custodial parent the opportunity to request a change in priority. This is important when the Consumer Credit Protection Act limits are met and the amount to distribute to the custodial parent (and perhaps to a third-party insurance carrier) does not meet both ordered amounts. Health insurance premiums are not deductible from gross pay when determining disposable income for CCPA purposes and must therefore compete with child support for the disposable income.

Another option is to allow health insurance premiums to be deducted from gross pay. This option gives health insurance a priority over all other nonmandatory (other-than-tax) deductions or garnishments.

### Standardized Language in Initial Order Providing Notice to Satisfy Due Process

With the advent of immediate withholding, there is no need for an additional pre-withholding notice to be sent to the obligor. However, in initiated withholding, there is a requirement that notice be sent to the obligor prior to requesting that the employer begin withholding. The advance notice in triggered withholding cases is required in every state except those few that did not require advance notice prior to the date of passage of the CSEA in 1984. If the order establishing the award does not result in immediate withholding, it still could include "boilerplate" language regarding initiated withholding, which is triggered in all cases, even opt-out cases, if one-month's worth of support is past due. This language may satisfy due process so that withholding may be implemented immediately upon the threshold arrearage being met.<sup>8</sup>

### Standardized Withholding Form

The standardization of the withholding order/notice to employers should save employers significant resources currently expended on deciphering and calculating.

OCSE, in conjunction with federal, state and local officials, and employer groups, is currently drafting a standardized income withholding order/notice to be used by IV-D agencies in all income withholding cases. This form should result in a uniform approach to withholding done in an employer-friendly manner.

An important feature of the proposed standardized form is the name and phone number of a contact person. Every state or locality would be required to designate someone who can answer general income withholding questions and case-specific questions.

### Uniform Federal Garnishment Statute

Combining the various statutes that govern garnishment of federal pay and benefits should lead to streamlined, standardized and more efficient withholding. Federal garnishment covers civilian

and military employees of the federal government, and recipients of most federal benefits, including Social Security retirement and disability. (but not SSI, black lung and most veteran's benefits). The goal is to make federal garnishment as simple as, if not simpler than, private withholding.

#### Amendments to IV-D and NonIV-D Withholding Statute

As stated above, the statute that governs withholding could be simplified to remove opt outs and require immediate withholding in all cases within a few years. A policy regarding federal reimbursement to implement universal withholding, particularly in nonIV-D cases, could be delineated.

Advance notice to the obligor in initiated withholding cases could be eliminated, and direct withholding across state lines could be added. Also a uniform state definition of income for withholding purposes could be added.

#### Consumer Credit Protection Act Amendments

The CCPA could be amended to prohibit state ceilings below the CCPA ceiling for child support and alimony. Child support's priority among competing garnishments, including federal tax levies, could be stated.

Anti-discrimination language could be strengthened by removing the "more than one garnishment" exception to the protection against disciplinary action or firing. A private right of action to enforce the anti-discrimination section could be added, allowing the aggrieved worker the right to sue to regain his or her job and pay instead of relying on the Department of Labor to bring the suit.

#### Centralized Collections

Centralized collections will greatly ease the burden of employers who in many states must forward withholdings to each county collection entity within the state. Because of automation and electronic funds transfer, payments at the state level can be

immediately routed to the local office for distribution if the state does not distribute from the state central collection point. (See paper on centralized collection and distribution.)

#### 5. Direct Withholding

Under UIFSA, and the U.S. Commission on Interstate Child Support's recommendations, the currently unauthorized practice of states directly sending withholding orders to employers in other states would be legitimized. Current OCSE regulations require IV-D interstate income withholding requests to go to the central registry of the state where the income is derived.

GAO found when polling local offices that it took them an average of seven weeks to respond to interstate withholding requests once received by their central registry, and an additional six weeks on average to serve the employer. This does not include the period of time the case is in the initiating state once it is discovered that withholding needs to be implemented. Instate cases took an average of four weeks from initiating withholding activity to serving the employer. One sees why GAO found that three of four offices use the one-state, direct withholding procedure even if not permitted under the regulations.

Additionally, GAO found that "pure" interstate withholding-only requests occur in only 15% of the cases. Most offices couple it with other enforcement requests, which often means filing a URESA petition to establish a new order in another state -- even if there is a perfectly valid order in the initiating state. Using URESA petitioning increases the mean interstate processing time an additional 3 to 10 weeks.

By going through a central registry and coupling withholding with other enforcement requests at this point, it takes an average of four to five months to serve a withholding order in a second state. Mathematica Policy Research found the average withholding spell to be 6 months or less in 40% of the AFDC cases, and in 28% of the nonAFDC IV-D cases. It seems fair to conclude that "indirect" withholding contributes to many missed withholding

opportunities, especially when coupled with other enforcement requests.

Without uniformity in forms, orders, laws, procedures, timeframes and interpretations, an employer may receive dissimilar withholding instructions from various states (or even counties with a state). Uniformity seems to be a prerequisite to a smooth direct-withholding process.

Also, there may be a jurisdictional issue that remains unresolved without Congress' stamp of approval on direct withholding. Even if two states agree that an employer in the second state may be directed to follow the first state's order, there must be a way to bind the employer.

Procedural problems also arise in direct withholding. One issue is where the hearing should be held if the employee contests withholding. (It should be noted that contests are the exception instead of the rule, since an obligor may only claim mistakes of fact such as incorrectly calculated arrearages.) Under UIFSA, the hearing is heard in the employer's state. If so, how does the employer's state agency adequately prepare to represent the withholding state's interests and still meet the 45-day timeframe under current law for resolving withholding disputes? Second, UIFSA contemplates that the employer serves the employee with the withholding notice. What complications arise as a result of this procedure where the employer fails to timely inform the employee of the withholding?

Also, the current funding system allows incentives to be paid to both states in a two-state-agency interstate case. Direct income withholding is normally a one-state-agency interstate case, with payments going to the state that issued the withholding order, generally unbeknownst to the state in which the employer is located. This will reduce the employer's state agency's incentive to cooperate if a withholding contest arises and the employer's state agency receives no incentive for its work.

As reported by GAO, pure interstate withholding is not currently popular for several reasons, one of which is that other

enforcement techniques are not available. This concern is not addressed by direct withholding. If the obligor changes jobs quickly or makes significant amounts of money through other methods, income withholding may prove inadequate, and secondary requests for enforcement will result in the two-state time delay. Medical support compliance, at a minimum, should be able to piggy-back on the withholding order/notice.

#### 6. Multistate employer procedures

A few large businesses employ many people in several states. According to the IRS, 56,000 businesses employ over 55 million workers. These businesses typically receive withholding orders from several states, which include dissimilar and conflicting withholding instructions.

To alleviate some of the confusion, employers would benefit if the withholding order always provided employers with the name of a contact person and a toll-free number.

Also, an employer that does business in several states but has a centralized payroll may want to designate that office for receiving withholding orders. A list of employers who voluntarily provide the address of the office where they prefer the order be sent could be made available to all IV-D agencies, updated regularly. Under direct withholding, child support agencies could send their orders directly to the address listed.

#### 7. State automation

The FSA mandates that all states have comprehensive, automated, statewide systems in place no later than September 30, 1995. Automation will free up caseworkers to pursue those activities requiring interpersonal skills. If a new-hire reporting system is integrated into the automated network, automation should solve or diminish many of the employer locate and withholding problems that currently impede withholding success.

The automation criteria for state systems require that automated interfaces be established with State and National data bases to

locate noncustodial parents and their employers. Once these matches are done, the system must process the data, following-up on any "hits." Once a hit is confirmed, appropriate letters or notices must be sent to establish the income withholding. Incoming payments must be monitored and accounted for and, when not received, contact must be made with the employer to determine the reason for non-compliance.

One of the keys to improved collections is the location of non-custodial parents and employers. By increasing the number of automated matches, the number of successful locates should be increased. Once a noncustodial parent is located and/or his place of employment ascertained, the automated system will automatically generate any needed notices and letters, thus removing the need for human intervention. The more people located, the more income withholdings implemented, the greater the collections.

As the automated system ages, caseworkers will become more comfortable with its capabilities. Experience with automated matches will lead the State to determine the most reliable sources of information.

#### 8. EFT/EDI

Electronic Funds Transfer/Electronic Data Interchange (EFT/EDI) technology is a process which will streamline the movement of income withholdings from the employer to the child support receipting agency. Using a procedure similar to those used for the direct deposit of wages, employers will send income withholdings, accompanied by identifying information (EDI), electronically through the Automated Clearing House (ACH) network. The money will be received by the IV-D agency's bank, and the identifying information forwarded to the IV-D agency for accounting, distribution, and disbursement to the custodial parent. Implementation of EFT/EDI will save employers the cost of processing and handling checks, and will save the IV-D agency data entry and check handling costs.

While all States are required to have automated systems which can accommodate the receipt of EFT payments, the regulations do not mandate that all employers use EFT/EDI to remit withheld income. OCSE believes that employers are in a unique position to determine whether or not EFT/EDI technology or the remittance procedures which they are currently using is best suited to their business needs. Many employers are anxious to use EFT/EDI, since it more closely fits with other electronic payments used for taxes, wages, etc. Many payroll processing companies will be offering a child support component, and many payroll software companies will be modifying their product.

Will EFT/EDI increase collection? Probably not. Yet, its efficiency should free workers for other tasks.

#### 9. Management/Resources/Case-processing

Many states could increase the number of their withholding cases by identifying systemic and organizational delays and inefficient processes.

The location function, in less automated offices, can be collocated with the enforcement function, or made part of a team approach. Child support offices could experiment with having the wage withholding issued from the location unit. States could conduct automated matches with major employers.

While not solely affecting the income withholding process, expansion of the federal incentive by removal of the nonAFDC cap would provide strong inducement to the states to use cost-effective child support enforcement methods, such as income withholding, especially in nonAFDC cases. Of course removal of the incentive cap without other changes means the federal government pays more incentive dollars overall to the states.

The caseload for child support workers in most states is much too high and overwhelms the worker. With a reasonable caseload, child support staff would have time to (among other tasks): 1) respond to employer inquiries in a timely manner; 2) work with

noncomplying employers; and 3) process cases that don't hit using either new-hire reporting or a SESA crossmatch.

Federally-mandated minimum staffing levels is a possibility. Perhaps the best way to encourage states to increase staff is to change the Federal law to require that all or a part of the financial incentives be reinvested in the program. While reinvestment appears to be the rule and not the exception, it should be required. Additionally, states should delegate authority to the local child support director to spend the funds where necessary, including for staff. In Philadelphia, for example, the incentive funds are reinvested in the Philadelphia CSE program, but the local office does not have the authority to hire additional staff with that money.

Emphasis on an efficient income-withholding process could reap benefits in several ways. First, the withholding process is continuous, requiring the least long-term attention in cases of stable employment. Other enforcement techniques usually require repeated efforts and are a one-time solution. Income withholding against a steady worker's paycheck is arguably the least labor-intensive long-term enforcement technique. Second, insisting that states adopt administrative procedures that require no judicial involvement such as reviewing and signing withholding orders should facilitate income withholding.

#### 10. Training

Over the past decade, OCSE has provided a variety of management and technical assistance to states through training and technology transfer, including intensive management analysis and program analysis services, on-site courses, lectures, and participation in conferences. This assistance has been almost totally curtailed in the past two years, but training continues to be a major need at the State and local levels. There are some 40,000 child support enforcement workers nationwide, with an annual turnover rate estimated at 20 percent. In addition, the complex legal and technical nature of a continuously evolving program keeps training needs in the forefront. Legislative

changes such as the CSEA and the FSA also contribute to the demand for regular training of staff.

Yet, according to the U.S. Commission on Interstate Child Support's Report to Congress, only one-third of the States have dedicated trainers within their child support organization to train on program-specific issues. The Commission recommended that: 1) federal law be changed to recognize the importance of training to the effective, efficient operation of the Child Support Enforcement Program; 2) Congress should appropriate adequate funding for the training function, comparable at least to the level of resources provided during the mid-1980s; 3) State plans should provide for annual training, at least, to all personnel furnishing services under the plan; 4) OCSE should provide a Federally funded core curriculum to all States to be used in the development of State-specific training guides; and 5) OCSE's annual report to Congress should include a description of training efforts and their results. Implementation of these recommendations would provide OCSE with a solid resource base on which to build an effective training structure.

Training specific to income withholding should target employers (especially the smaller ones) on new-hire reporting, CCPA and multiple order issues. State location staff should be trained on what location information is available from state and federal sources and skiptracing to find noncustodial parents.

Also, educating employers and simplifying withholding procedures are the keys to employer cooperation, according to OCSE's national evaluation of income withholding.

#### 11. Federal government as a model employer

OCSE is currently working with the Department of the Treasury and other federal agencies to develop plans to ensure that the federal government is a model employer when it comes to income withholding for child support purposes. Uniformity, administrative efficiency, and full implementation of EFT/EDI are the goals. An Executive Order would ensure that agencies coordinate their streamlining efforts and emphasize the

importance of a federal employee's duty to comply with orders for child support.

II. c. State-based recommendations

1. Legislative changes

- A. Require states or the federal government to implement a new-hire reporting system.
- B. Require states to pass UIFSA in substantially similar form as the official version, including the direct income withholding provision.
- C. Pass a plenary statute allowing employers to be served directly with a withholding order by a child support agency (the one-state counterpart to UIFSA).
- D. Amend Section 666 and other appropriate sections of Title IV-D to require states to use a standardized:
  - i. definition of income for income withholding purposes that includes all periodic and lump-sum income;
  - ii. method of allocating multiple order withholdings, based on order proration;
  - iii. withholding ceiling the same as the CCPA ceiling;
  - iv. procedure to withhold that does not require advance notice in initiated cases;
  - v. approach to health insurance premium withholding;
  - vi. set of criteria for opting out of immediate income withholding limiting the circumstances that support the granting of opt-outs.
  - vii. date of universal IV-D and nonIV-D withholding (in non-opt-out cases), preferably within 3 years of passage.

- viii. penalty against obligors who do not report their employer's name and address upon entry of a support order;
- ix. withholding order/notice against a self-employed obligor.

E. Combine Sections 659, 661 and 665 of Title 42 of the United States Code to streamline federal garnishment.

F. Require self-employed obligors to report their quarterly child support obligation and payment history to IRS, and to pay any delinquency either to the IRS with the estimated income taxes or directly to the state child support agency. This report would be available to OCSE through FPLS.

G. Amend federal law to give child support withholding a priority over all federal debts, including delinquent federal taxes.

2. Nonlegislative changes

A. Dramatically increase worker training.

B. Increase effective outreach to employers.

C. Provide an automated list of where multistate employers would prefer to be served with a withholding order to all support offices.

D. Ensure the federal government acts as a model employer.

E. Encourage use of EFT/EDI.

F. Provide employers with a state agency contact person, named on every standardized withholding order, who may be reached daily during business hours.

### III.

### FEDERALIZATION

Several advocates of effective child support enforcement have embraced federalization of the income withholding function as a way to improve the system and increase collections. Last year, Congressmen Tom Downey and Henry Hyde introduced legislation calling for the federalization of withholding, to be conducted by the IRS. This paper examines federalization of income withholding, addressing three issues:

- 1) Would the withholding process work more efficiently if federalized?
- 2) What other parts of the enforcement function should be federalized if remittance is federalized?
- 3) Would the number of cases in withholding status rise because of federalization?

Federalization of withholding has several appealing elements, including single-point remittance, greater uniformity, removal of interstate (and intercounty) barriers, nonredundant use of resources, and economies of scale. There is no question that larger employers would prefer to send one paper or electronic remittance to one point, instead of hundreds of remittances to hundreds of collection points. This will save employers money. The American Society of Payroll Management has estimated the cost of cutting each withholding check at \$10, and reports that few businesses charge the employee a fee to cover the expense.

Uniformity will also help employers who must respond to various state laws and procedures (see uniformity section above), a very labor-intensive and time-consuming activity.

Federalization of withholding would dissolve the real and imagined barriers that exist in the processing of interstate cases. Perceived problems concerning priority given to instate cases over out-of-state cases in certain offices would be eliminated.

Having one large withholding system eliminates redundant tasks performed in the 54 IV-D jurisdictions and the hundreds of counties in which payments are made, particularly in the area of management. Economies of scale alone should produce a more efficient collection rate per worker as well.

On the downside, federalization of withholding further fractures a system that appears to weaken when more than one agency performs child support functions at the state and local level. Information transfer between states and the federal government will undoubtedly be an added cost, even under the best automated system. Miscommunication and lack of complete information is inevitable when dealing with millions of cases that are constantly being opened or closed, changed from welfare to nonwelfare status and back, and where the orders are regularly increased or decreased. These problems could be amplified in cases where withholding is attempted and proves unsuccessful. Should the federal, state or local government pursue compliance issues, or other enforcement techniques?

Federalization of other enforcement techniques may prove problematic, because so many of them are dependent on intimate knowledge of the obligor's assets and lifestyle, a decidedly local-based inquiry. These techniques include liens, seizure and sale, and contempt. Some techniques like IRS full collection and credit bureau reporting could be done at the national level.

What about remittances that are hard to identify? Massachusetts has reported that this is a big problem, especially in interstate cases, because the case number or custodial parent identification is not clear from the check's face. It is expensive to reconcile. The more removed one is from local collection, the more likely it is that reconciliation is necessary and the less likely it is that reconciliation can be done quickly.

Also, can the federal government distribute collections efficiently? Since it has been reported by the American Payroll Association that a plurality of employees are paid weekly, hundreds of thousands of remittances for millions of obligors will be weekly funneled through one agency. How fast can the

government distribute those moneys, especially when state and local governments may have a claim to some of the withheld support for AFDC and foster care recoupment, and employer remittance may not universally be through EFT/EDI?

An additional factor to consider is that if withholding is not federalized for nonIV-D cases, then a parallel state or local collection and distribution system must remain in place.

If the federal government also monitors cases for delinquency, sends out notices to employers and obligors, documents payment histories, and adjudicates contests, there are added costs.

Certainly federalizing withholding would entail start-up costs. Once in place, however, one could foresee that a state-of-the-art automated collection system with properly managed and trained staff could be more cost-effective than today's multi-jurisdictional collection system. In FY 1991, states reported that distribution costs them \$345 million, and enforcement in general \$626 million. Added together, states report that over half of the \$1.8 billion spent on the program were spent on these functions. The cost of just the withholding portions of the enforcement and collection functions is unknown.

Federalization of other enforcement techniques may prove problematic, because so many of them are dependent on intimate knowledge of the obligor's assets and lifestyle, a decidedly local-based inquiry. These include liens, seizure and sale, and contempt. Some enforcement techniques like IRS full collection and credit bureau reporting could be done at the national level.

Would the number of withholdings rise as a result of federalization of the income withholding function? While purely speculative, it seems that federalization would have minor impact on the number of cases in withholding status, everything else being similar. If federalization means greater success at locating employers for withholding purposes than what states currently are able to do (or will be able to do once completely automated), there may be a rise in the number (although state-based new-hire reporting may be as successful).

Federalized collection is more employer-friendly and arguably more operationally-cost-effective than the current system, but federalization by itself may not result in a significant increase in the number of cases in withholding status.

## ENDNOTES

1. U.S. Department of Labor, Bureau of Labor Statistics. Persons who have jobs but who currently are not working comprise a shifting group, depending on the date of the snapshot of the workforce. Regarding income withholding, this group represents persons for whom withholding is not producing payments during that spell of leave without pay; the group should be subject to withholding upon return to pay status.

2. About 4.8 million Americans received SSI in 1990; 1.1 million Americans were in jail or prison in 1990, according to the U.S. Bureau of Justice Statistics; and, depending on whose estimates are used, several hundred thousand Americans are homeless at any one time.

3. These groups combine readily into two categories: the first includes those persons who work for barter or cash, and those who are incarcerated, institutionalized for mental or emotional problems, homeless, or receiving SSI. Not counting those who work for barter or cash (there are no reliable estimates of their numbers), there are an estimated 7.5 - 8 million Americans in this category. Income withholding, obviously, is not feasible against persons who live and work on the street or are in institutions. SSI is protected against withholding. For those who work only for cash payment (or barter), the amount and source of income is difficult to trace. Of course, for any individual in this category, withholding may become an option at some future time, since there is movement in and out of these groups.

The second category, more promising than the first but still difficult to collect from, includes the self-employed (an estimated 10 million), the unemployed (currently about 8 million), and working teens (5.4 million).

4. The same survey showed that 27% of the offices surveyed rated caseworker's familiarity with interstate income withholding as fair or poor; 31% and 59% of the offices reported equally dismal reviews for attorneys and judges, respectively.

5. Higher income obligors can more readily provide a bond or escrow money equivalent to several months' worth of support to guarantee payment. Also, generally attorneys are more likely to be involved in the higher-income cases, and attorneys may be more inclined to promote opting out to a client than if the client were representing himself or herself. States with a history of direct pay, such as California and Texas, may have a higher rate of opting out than a state such as Wisconsin, where a study found between 3 and 7% of the cases were direct pay cases (money flowed from the employer or obligor directly to the custodial parent instead of through the clerk of court).

6. An employer survey found that 93% said that reporting costs were either "none" or "minor." From the same survey, 26.5% strongly favored continuation, 46.1% favored continuation, 15.5% opposed continuation, and 11.8% strongly opposed continuation. When they were questioned on reducing the reporting time from 35 to 7 days, 46% responded that reducing the reporting time would increase their costs.

7. The percentage of cases with orders where the obligor has withholdable income that become withholding cases is speculative. Another unknown factor is the percentage of increased collections because of withholding implementation in these cases (as opposed to simply a shift in collection method without a net gain in payment).

Prof. Philip Robins predicted, based on an analysis of Wisconsin's experience with immediate income withholding, that one-fifth of nonIV-D cases not in withholding status would be in withholding status after the first year and one-third after two years. In comparison, Minnesota showed a 14% increase in the first year of nonIV-D cases in withholding status in pilot counties compared to control counties without immediate income withholding\*for nonIV-D cases.

8. The U.S. Supreme Court, in its only case on postjudgment, pre-garnishment notice, said that prior notice was not constitutionally required. Endicott Johnson Corp. v. Encyclopedia Press, Inc., 266 U.S. 285 (1924). Under modern precepts, notice contemporaneous with withholding and an expedient opportunity to contest a mistake in fact (i.e., not owing the triggering amount of arrearage or mistaken identity) may suffice in postjudgment garnishment cases, when balancing the competing public and private interests in child support withholding cases. See Mathews v. Eldridge, 424 U.S. 319 (1976) (balance of interest standard).

## APPENDIX 1

### DETAILED BACKGROUND

#### Title IV-D of the Social Security Act and the Social Services Amendments of 1974

With the enactment of Title IV-D in 1975, a Federal/State partnership was established for child support enforcement. As a condition for receiving Federal matching payments, States were required to establish child support enforcement programs which would use existing State laws and procedures to establish paternity and to establish and enforce support obligations on behalf of minor children. States were free to use existing enforcement techniques, which in many states included garnishment actions to collect child support. Garnishment was a discretionary remedy, and used only to collect arrears. A few States, such as Texas, did not allow garnishment for any type of collection, including child support.

However, Congress made clear through the Social Services Amendments of 1974 that in cases where the federal government owed money to obligors who owed child support or alimony (i.e., obligors who are Federal civilian employees, members of the armed services and recipients of Social Security retirement and disability payments), that garnishment would be allowed as if the United States were a private employer.

#### The Child Support Enforcement Amendments of 1984

While the establishment of the Title IV-D program led to significant improvements in child support collections, U.S. Census Bureau surveys continued to report that many families entitled to support orders did not have them, and that overall noncompliance with support orders continued at epidemic proportions despite the best efforts of Federal, State and local governments. In 1974, only ten States had statutory versions of child support garnishment.

When Congress determined that the child support system had to be bolstered, it looked to states for the most effective practices. Income withholding was the lead solution. In 1984, 26 States had systematic withholding of income from an obligor's paycheck based on a court order after finding of a delinquency. As a result of these efforts, the Child Support Enforcement Amendments of 1984 (CSEA) required all States to implement certain procedures. The cornerstone of the CSEA is the provision for mandatory wage withholding, requiring that States have two distinct procedures for carrying out such withholding.

The first pertained only to cases being enforced through the IV-D agency. Under this provision, States were required to implement

a system under which wages of a noncustodial parent were subject to withholding in IV-D cases on the date the noncustodial parent failed to make payments in an amount equal to one-month's support obligation. States were also required to implement the withholding at any earlier date that was in accordance with State law or that the absent parent may request. Withholding was to begin without amendment to the order or further action by the court, and include amounts to satisfy both current support and an amount to be applied toward liquidation of arrearages. The CSEA also specified other elements of the withholding system for IV-D cases such as requirements for prior notice to the noncustodial parent, basis for appeal, restrictions on the maximum amounts to be withheld, notice to the employer, and interstate withholding.

The second procedure provided that all new or modified orders issued in the State include a provision for wage withholding when an arrearage occurs, in order to ensure that withholding is available without having to apply for IV-D services.

By 1988, wage withholding became a universally-available remedy, accounting for 37% of all IV-D collections. Congress, while noting that wage withholding was effective, found that a delinquency based system of withholding was cumbersome to administer, and not as efficient as originally hoped. It was noted that 12 States in 1988 had already moved from a delinquency-based system to an immediate system, where wage withholding was established at the time the underlying support order was entered.

#### The Family Support Act of 1988

The Family Support Act of 1988 (FSA) required that States establish a system for immediate income withholding without regard to whether there are arrearages. Immediate withholding is required, effective November 1, 1990, for all IV-D cases with new or modified orders on the effective date of the order, unless the court or administrative authority finds good cause not to require the withholding, or a written agreement is reached between the parties which provides for an alternative arrangement.

For cases being enforced by the IV-D agency which are not subject to immediate withholding, the absent parent's wages are subject to withholding on the earliest of: the date on which arrearages occur which are at least equal to the support payable for one month; the date on which the obligor requests that withholding begin; the date on which the custodial parent requests that withholding begin; or an earlier date the State may select.

The FSA also requires that all nonIV-D orders contain immediate wage withholding provisions, effective January 1, 1994.

There are several advantages to immediate withholding. Its implementation prevents arrears from accruing, so long as the obligor is working or has other attachable income. It reduces administrative costs inherent in monitoring payment timeliness and implementing initiated withholding. Furthermore, a system of immediate withholding, without regard to any arrearage, removes the stigma of an arrearage-based system, since everyone subject to a support order will have withholding, not just delinquent obligors.

Yet, almost all child support practitioners agree that the number of withholdings is still too small. After allowing for collections made by States using Federal and State tax refund offsets, and the interception of unemployment benefits, a full 39% of State collections is listed under the category of "other."

## APPENDIX 2

### Charts

Chart 1. National Total Number of Cases with Established Orders, FY 1991 and FY 1992; National Total Number of Cases, FY 1988-1992 (Average Annual Caseload).

Chart 2. National Total Distributed Collections, FY 1988-1992; National Total Income Withholding Collections, FY 1988-1992.

Chart 3. 1988-1992 Percent Change: National Total Distributed Collections; National Total Income Withholding Collections; and National Total Child Support Enforcement Caseload.

### Tables

Table 1. Income Withholding Collections as a Percentage of Total Distributed Collections, by State, FY 1988-1992 (Showing Year of Automated Systems Certification).

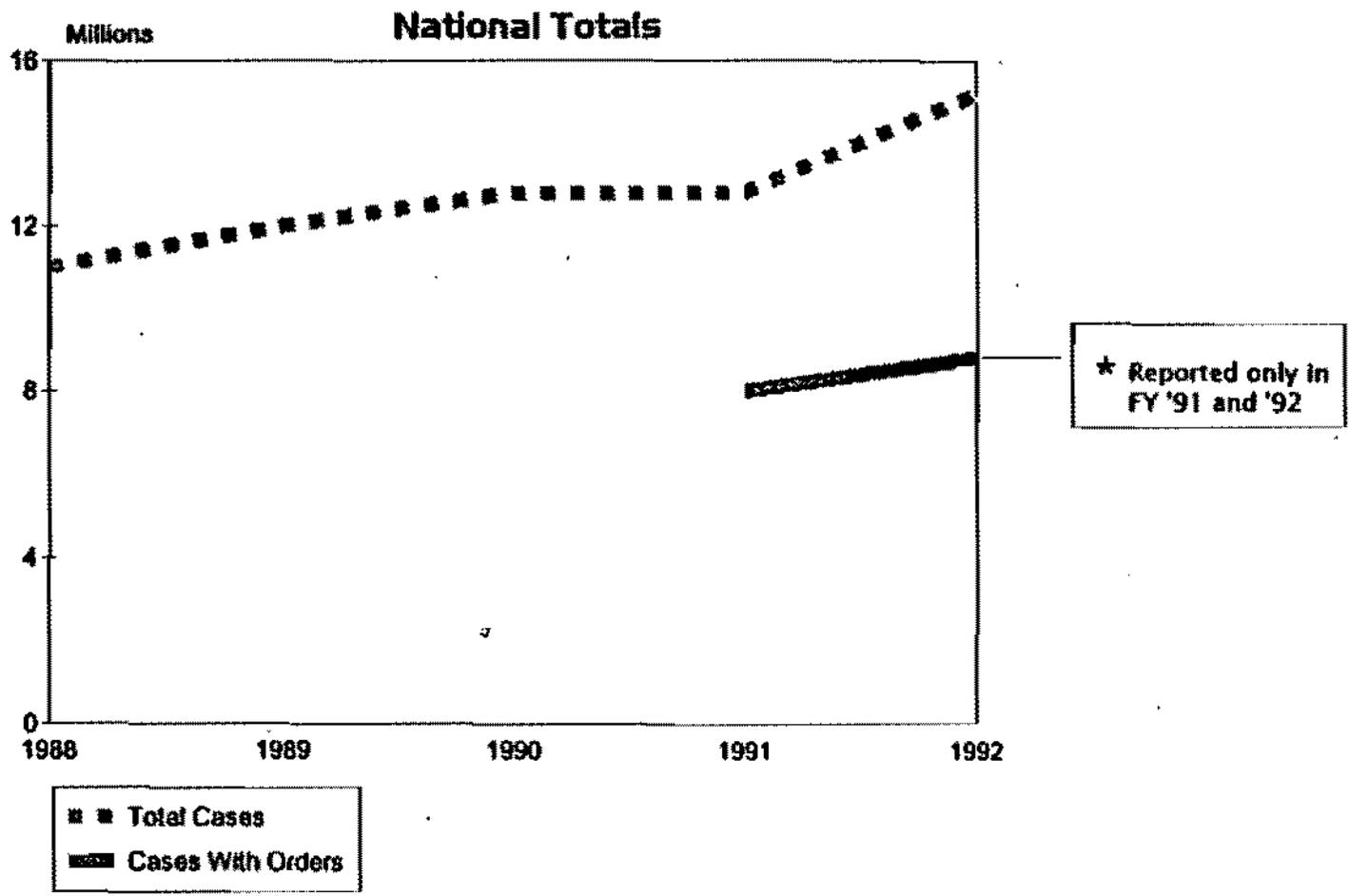
Table 2. Income Withholding Collections by State, FY 1988-1992.

### Figures

Figure 1. Most and Least Improved States in Income Withholding as a Percentage of Total Distributed Collections, FY 1988-1992 (Percentage Point Change).

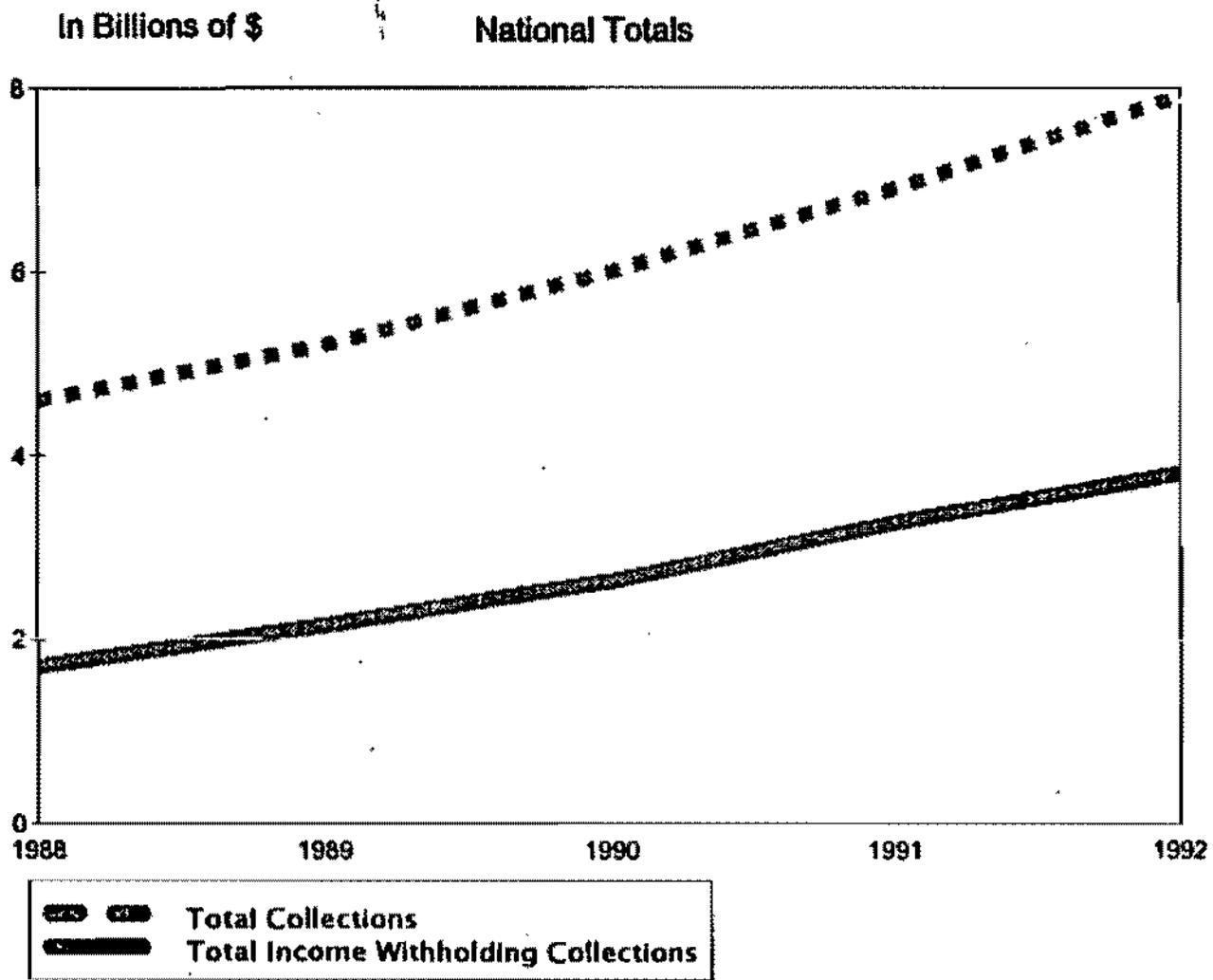
Figure 2. States with Most and Least Increased Child Support Enforcement Caseloads, FY 1988-1992.

# CASES 1988 - 1992 (Average Annual Caseload); CASES WITH ESTABLISHED ORDERS - 1991 & 1992 \*



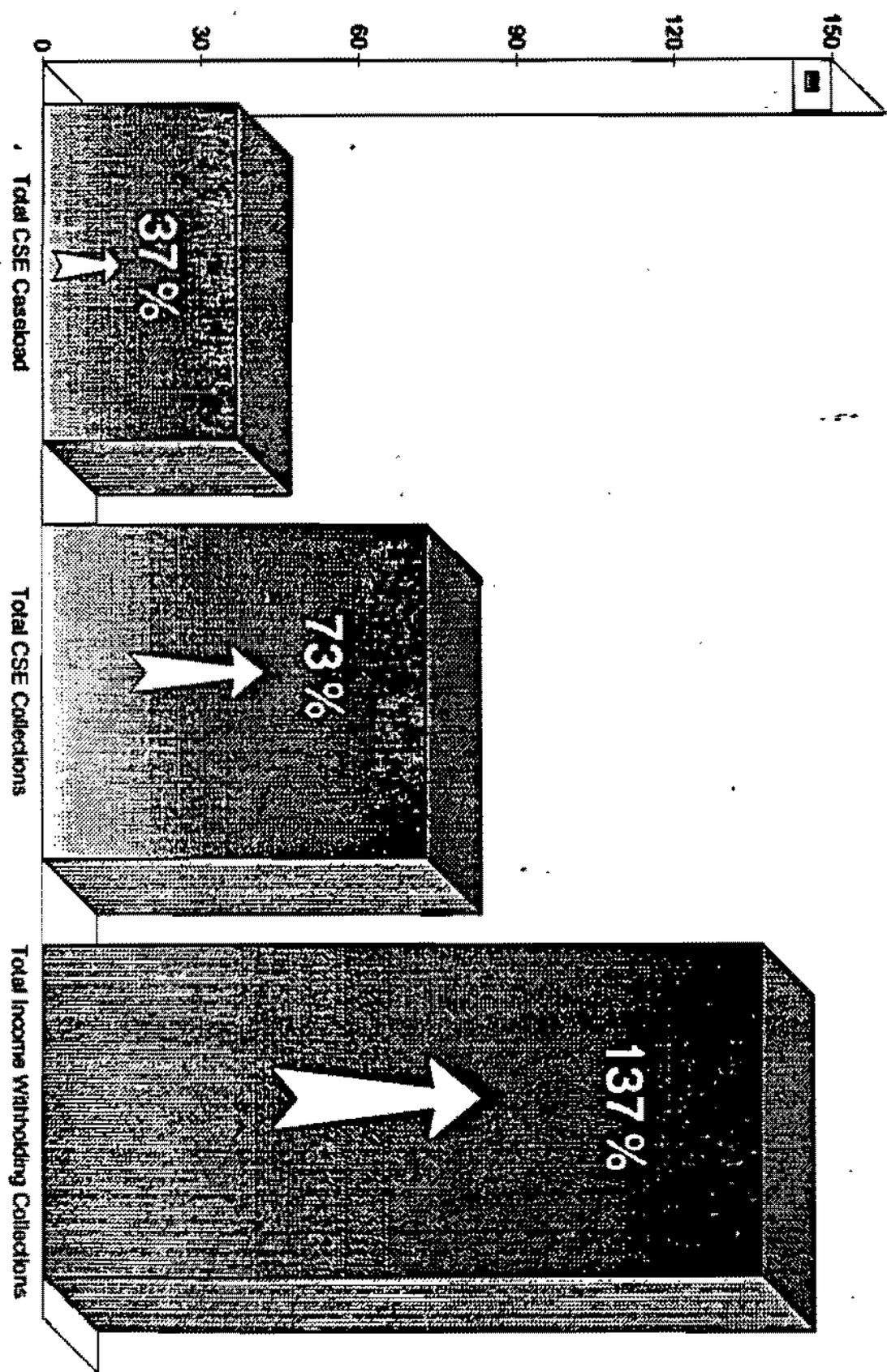
# DISTRIBUTED COLLECTIONS & INCOME WITHHOLDING COLLECTIONS 1988 - 1992

Chart 2



# PERCENT INCREASE - NATIONALLY 1988 - 1992

Chart 3



STATE	1988	1989	1990	1991	1992
ALABAMA	38.7	44.8	48.8	48.1	49.8
ALASKA	43.5	45.5	45.6	48.2	50.3
ARIZONA	16.8	17.5	18.3	21.5	21.5
ARKANSAS	44.3	41.3	36.8	36.6	38.6
CALIFORNIA	38.8	40.8	42.2	43.5	45.8
COLORADO	14.1	18.3	18.0	20.1	20.9
CONNECTICUT	31.9	35.2	42.7	48.1	48.8
DELAWARE	1/3/	31.4	31.4	35.7	31.8
DISTRICT OF COLUMBIA	32.1	32.6	35.6	41.4	41.7
FLORIDA	19.8	18.2	18.2	17.4	17.7
GEORGIA	11.0	10.8	10.5	11.4	11.7
HAWAII	2/	20.9	21.2	22.7	23.1
IDAHO	2/	24.0	24.2	25.7	26.8
ILLINOIS	21.1	22.7	23.7	24.4	25.8
INDIANA	18.4	18.7	18.7	19.2	19.8
IOWA	5/	29.3	25.4	25.7	24.8
KANSAS	2/	29.0	12.4	15.2	15.7
KENTUCKY	22.5	20.3	16.5	19.2	19.8
LOUISIANA	20.3	20.7	21.2	15.8	15.8
MAINE	42.8	43.5	40.2	39.7	41.8
MARYLAND	34.8	38.7	40.2	39.7	42.6
MASSACHUSETTS	23.4	21.6	21.8	21.3	21.3
MICHIGAN	4/	41.6	41.6	41.3	44.2
MINNESOTA	5/	35.1	42.5	47.8	46.2
MISSISSIPPI	40.9	42.8	41.4	30.8	34.8
MISSOURI	49.3	50.8	51.4	54.7	56.7
MONTANA	34.2	40.1	41.5	38.2	38.3
NEBRASKA	22.2	24.1	20.7	18.6	18.6
NEVADA	20.1	21.1	24.0	20.8	25.6
NEW HAMPSHIRE	41.8	48.5	45.1	56.3	58.4
NEW JERSEY	24.5	28.7	31.8	32.3	32.4
NEW MEXICO	28.7	27.7	27.8	28.6	27.7
NEW YORK	3/	25.5	27.7	27.8	28.6
NORTH CAROLINA	46.9	48.2	50.3	50.3	47.6
NORTH DAKOTA	22.2	25.3	25.3	28.2	28.2
OHIO	10.3	16.9	16.9	16.6	16.6
OKLAHOMA	48.8	51.5	54.5	61.6	62.8
OREGON	24.3	21.8	23.2	28.6	26.8
PENNSYLVANIA	36.6	31.8	28.3	28.6	26.8
Puerto Rico	37.3	38.4	40.2	44.6	47.2
RHODE ISLAND	24.1	25.7	1.2	1.7	4.5
SOUTH CAROLINA	24.0	29.3	26.8	27.7	32.6
SOUTH DAKOTA	27.6	26.7	21.5	16.9	16.6
TEXAS	13.7	18.2	27.2	31.1	36.6
UTAH	13.7	18.2	22.7	20.2	20.2
VERMONT	42.9	42.4	39.1	37.1	38.1
VIRGINIA	42.4	45.6	41.4	44.4	44.4
WASHINGTON ISLANDS	27.8	30.5	31.8	31.7	31.7
WASHINGTON	3/	16.5	17.1	17.7	17.7
WEST VIRGINIA	23.8	30.3	34.9	34.4	34.7
WISCONSIN	34.5	35.6	37.0	42.4	43.8
WYOMING	29.8	30.8	31.1	32.4	32.4
NATIONWIDE TOTALS	36.4	40.9	41.8	47.4	49.8

Year Automated Systems Certified:  
 1/ 1988: 2/ 1989: 3/ 1990: 4/ 1991: 5/ 1992

STATE	1988	1989	1990	1991	1992
ALABAMA	627,225,966	625,483,943	631,767,648	618,940,772	448,124,911
ALASKA	9,835,950	10,832,565	12,220,081	14,030,634	17,907,638
ARIZONA	3,397,878	4,394,808	5,387,703	10,470,810	23,007,979
ARKANSAS	8,952,518	9,372,488	10,793,764	10,496,713	24,551,443
CALIFORNIA	167,376,242	190,826,035	228,802,354	257,139,078	299,485,988
COLORADO	3,907,256	10,155,676	15,594,037	23,535,955	29,546,285
CONNECTICUT	23,854,339	23,881,894	26,479,945	34,861,950	38,561,344
DELAWARE	7,960,128	9,202,007	10,766,472	12,643,376	13,955,657
DISTRICT OF COLUMBIA	3,423,450	5,060,666	7,539,036	10,669,176	13,283,333
FLORIDA	28,087,089	30,740,868	30,298,156	101,459,750	105,230,428
GEORGIA	28,199,226	34,474,643	40,174,941	90,588,037	113,594,438
HAWAII	228,247	339,368	458,169	1,358,047	2,629,695
IDAHO	3,468,445	9,810,402	15,040,826	17,910,894	19,287,745
ILLINOIS	33,335,493	4,496,052	5,422,251	6,219,947	7,488,976
INDIANA	21,128,807	48,281,505	72,070,930	84,156,419	106,412,539
IOWA	11,678,696	27,499,488	36,909,593	39,326,593	44,415,277
KANSAS	6,246,729	9,284,638	11,691,615	15,498,412	22,141,521
KENTUCKY	7,037,482	7,655,722	4,117,073	7,592,746	12,542,996
LOUISIANA	21,400,069	15,377,439	22,326,670	30,296,173	37,072,441
MAINE	10,428,127	20,321,590	28,055,135	26,977,720	35,145,165
MASSACHUSETTS	30,090,368	14,253,572	17,229,894	15,867,298	17,377,581
MICHIGAN	64,221,648	102,332,284	112,442,358	47,627,291	85,728,980
MINNESOTA	289,495,042	259,498,356	289,922,786	349,109,246	413,612,308
MISSISSIPPI	48,423,014	57,978,390	71,554,122	87,420,902	106,430,694
MISSOURI	9,399,811	12,130,829	16,639,477	23,422,636	28,422,168
MONTANA	31,788,958	48,281,212	64,227,237	61,688,563	76,427,023
NEBRASKA	1,232,043	1,739,422	2,786,987	5,026,956	7,370,805
NEVADA	0,632,482	10,288,556	12,370,522	14,688,437	16,735,538
NEW HAMPSHIRE	4,418,942	6,374,354	9,294,864	13,148,731	17,770,269
NEW JERSEY	6,505,952	7,980,181	9,283,863	11,389,289	14,418,150
NEW MEXICO	27,355,734	96,066,943	108,953,821	130,167,032	178,475,488
NEW YORK	2,513,544	3,306,189	4,009,671	4,975,647	5,764,342
NORTH CAROLINA	233,585,793	186,989,835	191,715,186	240,241,299	281,539,815
NORTH DAKOTA	29,128,189	23,921,238	36,488,282	54,678,433	79,989,038
OHIO	738,027	1,419,496	2,461,274	4,498,338	6,456,355
OKLAHOMA	152,377,856	209,231,020	276,304,528	340,592,422	417,988,786
OREGON	5,212,117	6,359,119	8,130,001	11,353,091	12,463,164
PENNSYLVANIA	21,818,798	23,465,344	22,214,903	24,278,705	32,040,584
PUERTO RICO	190,684,188	214,529,543	247,199,520	318,437,442	348,948,468
RHODE ISLAND	3,544,174	585,975	939,951	1,313,252	1,803,110
SOUTH CAROLINA	9,728,227	9,141,835	5,349,051	8,242,966	10,484,383
SOUTH DAKOTA	2,277,459	13,549,571	16,459,134	28,518,352	25,170,896
TENNESSEE	6,931,708	2,757,689	2,998,245	4,804,158	5,817,942
TEXAS	48,938,553	18,783,184	16,241,362	21,717,808	31,781,444
UTAH	12,725,681	37,535,377	78,104,618	110,096,366	145,959,113
VERMONT	1,848,868	14,484,572	14,513,199	19,303,256	23,484,554
VIRGIN ISLANDS	1,848,868	2,557,247	3,164,173	4,480,161	4,746,729
VIRGINIA	1,251,745	1,189,188	1,460,131	1,724,469	2,069,023
WASHINGTON	17,992,545	29,516,285	40,825,977	45,695,073	51,965,452
WEST VIRGINIA	30,682,953	45,319,945	65,944,921	86,288,013	115,047,824
WISCONSIN	4,351,043	5,626,737	7,812,400	11,897,766	18,422,081
WYOMING	105,945,098	137,339,785	141,225,272	165,848,897	203,947,813
WYOMING	213,021	646,468	1,065,858	1,428,434	1,488,534
NATIONWIDE TOTAL	61,679,288,971	62,144,396,485	62,635,887,618	63,266,043,822	63,944,738,327

Date: 2/23/93

Figure 1. 1988-1992  
 Percentage Point Difference  
 in Income Withholding  
 Collections as a Percent  
 of Total Collections.

Most Improved States	Point Difference
VIRGINIA	41
COLORADO	37
ARIZONA	35
GEORGIA	34
NORTH DAKOTA	33
HAWAII	32
NORTH CAROLINA	26
GUAM	26
VERMONT	23
TENNESSEE	23
WEST VIRGINIA	22
FLORIDA	22
ILLINOIS	22
<u>Least, or Unimproved, States</u>	
LOUISIANA	-6
KANSAS	-4
OREGON	-4
MASSACHUSETTS	-3
UTAH	+2
IOWA	+2
DELAWARE	+3
OKLAHOMA	+3
NEW MEXICO	+4
DIST. OF COLUMBIA	+5
<u>NATIONAL CHANGE</u>	<u>+14</u>

1992 Income Withholding  
 Collections As a  
 Percentage of Total  
 Collections  
 (To Nearest Whole Percent).

Leading States	Percent
WISCONSIN	70
DIST. OF COLUMBIA	67
VIRGINIA	65
GEORGIA	65
OHIO	63
MISSISSIPPI	59
ARKANSAS	58
NEW YORK	58
MINNESOTA	56
HAWAII	56
GUAM	56
<u>Trailing States</u>	
PUERTO RICO	4
WYOMING	13
KANSAS	19
IOWA	23
NEBRASKA	26
OKLAHOMA	27
IDAHO	28
NEW MEXICO	30
PENNSYLVANIA	31
INDIANA	36
<u>NATIONAL PERCENT</u>	<u>50</u>

Figure 1 Worksheet. Income Withholding Collections  
as a Percent of Total Distributed Collections  
(Percent Rounded to Nearest Whole Number).

	1988	1992	POINT DIFFERENCE
NATIONAL:	38	50	14
STATE:			
ALABAMA	39	49	10
ALASKA	48	51	5
ARIZONA	18	51	35
ARKANSAS	44	58	14
CALIFORNIA	38	46	8
COLORADO	14	51	37
CONNECTICUT	35	46	11
DELAWARE	51	54	3
DIST. OF COLUMBIA	52	67	15
FLORIDA	20	42	22
GEORGIA	31	65	34
GUAM	30	56	26
HAWAII	24	56	32
IDAHO	21	28	7
ILLINOIS	33	55	22
INDIANA	29	36	7
IOWA	21	23	2
KANSAS	23	14	-9
KENTUCKY	21	40	19
LOUISIANA	48	42	-6
MAINE	42	48	6
MARYLAND	35	44	9
MASSACHUSETTS	56	53	-3
MICHIGAN	35	54	19
MINNESOTA	41	56	15
MISSISSIPPI	49	59	10
MISSOURI	36	46	10
MONTANA	22	42	20
NEBRASKA	20	26	6
NEVADA	41	55	14
NEW HAMPSHIRE	35	53	18
NEW JERSEY	29	47	18
NEW MEXICO	26	30	4
NEW YORK	45	58	13
NORTH CAROLINA	22	48	26
NORTH DAKOTA	10	43	33
OHIO	49	63	14
OKLAHOMA	24	27	3
OREGON	37	31	-6
PENNSYLVANIA	37	48	11
PUERTO RICO	1	5	4
RHODE ISLAND	24	43	19
SOUTH CAROLINA	24	37	13
SOUTH DAKOTA	28	37	9
TENNESSEE	14	37	23
TEXAS	48	58	10
UTAH	43	45	2
VERMONT	27	50	23
VIRGIN ISLANDS	37	51	14
VIRGINIA	24	65	41
WASHINGTON	35	43	8
WEST VIRGINIA	30	52	22
WISCONSIN	55	70	15
WYOMING	5	13	8

**Figure 2. Percent Change  
in Total CSE Caseload,  
FY 1988-1992**

**States with Most  
Increased Caseloads %Change**

TEXAS	102
NEBRASKA	100
RHODE ISLAND	92
NEVADA	91
NEW HAMPSHIRE	90
DELAWARE	87
INDIANA	85
ARKANSAS	69
CALIFORNIA	63
NEW JERSEY	62
NORTH CAROLINA	61
NORTH DAKOTA	60

**States with Decreased  
CSE CASELOADS %Change**

OKLAHOMA	-47
COLORADO	-21
WEST VIRGINIA	-20
NEW MEXICO	-16
MASSACHUSETTS	-3
VIRGIN ISLANDS	-2

Figure 2 Worksheet. Percent Change In Total  
CSE Caseload, FY 1988-1992  
(Unrounded Data In Thousands).

STATE:	1988	1992	DIFFERENCE	PERCENT CHANGE
ALABAMA	228	247	19	8%
ALASKA	28	41	13	48%
ARIZONA	134	195	61	46%
ARKANSAS	65	110	45	69%
CALIFORNIA	930	1,513	583	63%
COLORADO	196	155	(41)	-21%
CONNECTICUT	100	148	48	48%
DELAWARE	23	43	20	87%
DIST. OF COLUMBI	63	74	11	17%
FLORIDA	513	705	192	37%
GEORGIA	330	423	93	28%
GUAM	4	5	1	25%
HAWAII	51	61	10	20%
IDAHO	36	47	11	31%
ILLINOIS	505	661	156	31%
INDIANA	301	557	256	85%
IOWA	90	126	36	40%
KANSAS	92	113	21	23%
KENTUCKY	192	242	50	26%
LOUISIAN	182	236	54	30%
MAINE	51	59	8	16%
MARYLAND	195	296	100	51%
MASSACHUSETTS	215	210	(6)	-3%
MICHIGAN	891	1,163	272	31%
MINNESOTA	142	181	39	27%
MISSISSIPPI	193	260	67	35%
MISSOURI	179	301	122	68%
MONTANA	21	21	0	0%
NEBRASKA	57	114	57	100%
NEVADA	33	63	30	91%
NEW HAMPSHIRE	20	38	18	90%
NEW JERSEY	351	568	217	62%
NEW MEXICO	68	57	(11)	-16%
NEW YORK	722	1,007	285	39%
NORTH CAROLINA	229	369	140	61%
NORTH DAKOTA	20	32	12	60%
OHIO	558	906	248	38%
OKLAHOMA	172	92	(80)	-47%
OREGON	180	195	15	8%
PENNSYLVANIA	783	828	45	6%
PUERTO RICO	148	169	21	14%
RHODE ISLAND	39	75	36	92%
SOUTH CAROLINA	135	178	43	32%
SOUTH DAKOTA	18	22	4	22%
TENNESSEE	291	429	138	47%
TEXAS	345	696	351	102%
UTAH	51	72	21	41%
VERMONT	15	17	2	13%
VIRGIN ISLANDS	9	9	0	0%
VIRGINIA	198	280	82	41%
WASHINGTON	217	270	53	24%
WEST VIRGINIA	87	70	(17)	-20%
WISCONSIN	255	381	126	49%
WYOMING	17	25	8	47%
NATIONAL	11,077	15,160	4,083	37%