Interstate Child Support Enforcement System: Juggernaut of Bureaucracy

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I. INTRODUCTION

This Comment examines the crisis of child support in America. Throughout, statistics and facts are provided to demonstrate the gravity of the problem, the ensuing drain on national resources, and why corrective steps must be taken. First, the Comment explains the causes and scope of the problem, focusing on the crux of the dilemma: single mothers with inadequate incomes raising children while receiving no support from absent fathers. Next, it explores the history of the child support obligation, tracing legislative attempts to coerce payment. The Comment then explains the currently available remedies, how they are applied, and why they are inadequate. The Comment analyzes studies done by public and private groups and the resulting recommendations for reform of the system, closing with a look at proposed legislation currently before Congress.

A. The Scope of the Child Support Problem

With the national divorce rate skyrocketing and unwed motherhood common, more and more children are growing up in single parent households. By 1989, studies show that 42% of white babies born in America will live with a single parent by the time they reach eight years old and experience a major spell of poverty within that time. "Eighty-six percent of black babies born in America will live with a single parent before they reach eight years old . . . [and] will live in poverty most of that time."1

Most often, it is the mother who retains custody of the children while the father sets up a separate residence.2 Although the mother frequently remains in the marital dwelling, she also single-handedly assumes its

accompanying expenses. Typically, the father makes more money than
the mother and was the breadwinner for the family during the mar-
riage.3

After the family breakup, the mother's financial responsibilities
increase while her salary remains inadequate. Yet, the father's financial
responsibilities decrease as he continues to receive his regular salary.
In a majority of divorces, custodial mothers face a serious financial crisis
while the noncustodial father's lifestyle improves markedly.4 A 1982
study found that in families with annual predivorce incomes of $40,000
or more, the divorced custodial mother and children must live at 48% of
their previous income level while the noncustodial father has 200% of his
former financial capacity.5

As a result, the poverty rate for single-parent families headed by the
mother is nearly 50%.6 The majority of single mothers work full-time,
earn no more than $18,000 a year, and receive little or no child
support.7 Child support delinquency is one of the most important
reasons why poverty in America has become "feminized."8 By 1981,
women headed almost 50% of all the poor families in America.9

The government has attempted to deal with the problem by requiring
the noncustodial father to pay the custodial mother a specified sum to
contribute to the support of the couple's children. The theory underlying
the child support order is that the noncustodial parent does not divorce
the children and must continue to provide for their needs until they
reach majority or become self supporting.10

Unfortunately, many noncustodial fathers fail to make their child
support payments. Currently, the default rate is nearly 50% (compared
to a default rate of only 3% for car loans).11 When the father fails to

3. Id. at 20-21.
4. Sally F. Goldfarb, What Every Lawyer Should Know About Child Support
   Divorce Revolution: The Unexpected Social and Economic Consequences for
   Women and Children in America 323 (1985)).
5. Lenore J. Weitzman, The Economic Consequences of Divorce: An Empirical Study
7. Weitzman, supra note 5, at 4050-53.
9. Id. at 11.
10. See Judith Cassetty, The Parental Child Support Obligation 71 (D.C. Heath
    & Co. 1988); see also Mark A. Simpkins, What Every Woman Should Know About
pay, the mother often turns to the welfare system and becomes a burden on taxpayers. Only 10% of all custodial parents receiving welfare also receive financial support from the noncustodial parent.

B. The Fiscal Crisis

The scope of the problem has caused a fiscal crisis within the states and attracted national concern as the Clinton Administration grapples with burgeoning welfare budgets carved from an already overextended national economy. Recent studies show that more than one-fifth of America's children live in poverty, and for the last five years, welfare in the form of Aid to Families With Dependent Children (“AFDC”) has increased dramatically.

In 1975, approximately 8 million children received public assistance. Twenty years later, the number has jumped to nearly 10 million. In 1975, the federal government spent about $5 billion and the states spent about $4 billion to support these children. The figures have now risen to $12.7 billion in federal expenditures and $10.5 billion spent by the states. Yet the increasing cost of administering the programs has caused the average monthly payment to welfare families to drop from $600 in 1975 to $375 in 1994.

The federal government estimates that 27 billion dollars in child support went uncollected in 1992. According to the U.S. Department of Health and Human Services, a substantial increase in child support collections could reduce AFDC payments by 25%.

14. AFDC is a federal-state cooperative program intended to ensure that needy families with children deprived of parental support due to death, disability, or desertion receive welfare benefits. 42 U.S.C. §§ 601-617 (1988).
C. The Interstate Dilemma

The most difficult aspect of child support enforcement occurs when the custodial parent and the noncustodial parent live in different states. Statistics from the General Accounting Office ("GAO") demonstrate that children whose parents do not live in the same state receive significantly less support.\(^9\) Although three out of every ten child support cases are interstate, only $1 of every $10 collected nationwide comes from interstate cases.\(^2\)

Kris Elwood, president of the coordinating council for the Association for Children for Enforcement of Support ("ACES") says, "Interstate cases are nightmares. Often times the paperwork is not filled out correctly and it has to be sent back three or four times. While all this paperwork is going on, the child isn't receiving any support."\(^{21}\)

Child support enforcement, which has traditionally been a state matter, has become national in scope because of the increasing mobility of American citizens. Many noncustodial parents move and change jobs frequently. Among cases handled by government enforcement agencies, the average length of employment for noncustodial parents is three months.\(^{22}\)

Interstate enforcement efforts are further frustrated by conflicting state regulations, confusing federal requirements, and overwhelming caseloads. The federal government has attempted to coordinate and assist the states in collecting delinquent child support payments but no effective system has been implemented to date.

II. History of Child Support Legislation & Enforcement

A. The Basis of the Parental Support Obligation

The responsibility of both parents to support their offspring must be one of the first principles of natural law in any ordered society.\(^{23}\) In 1899, Sir William Blackstone commented on the parental support duty:

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The duty of the parents to provide for the maintenance of their children, is a principle of natural law... laid on them not only by nature herself but by their own proper act, in bringing them into the world; for they would be in the highest manner injurious to their issue, if they only gave their children life that they might afterwards see them perish.24

The legal obligation to support minor children evolved in the United States from concepts of agency and necessaries doctrine.25 Child support legislation and enforcement was originally a matter controlled entirely by the states. This resulted in a total of fifty four different systems (including states, territories, and the District of Columbia).26

B. The Federal Government Gets Involved

1. Aid for Families with Dependent Children. The federal government got marginally involved in 1935 when it created AFDC as part of Title IV-A of the Social Security Act.27 The original AFDC program (commonly known as “welfare”) sent federal money to the states to support children whose fathers had died or become disabled. The funds were also used to support children whose fathers had deserted the family.28

The program’s language establishes that these funds are “for the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each state to furnish financial assistance and rehabilitation... to needy dependent children...” 29 By the mid-1980’s, almost 90% of children receiving AFDC benefits had a living parent who was absent from the home.30

2. Federal Courts Modify Interstate Enforcement Procedures. Prior to 1950, procedural burdens to enforcement of a child support order pertaining to a noncustodial parent in another state often

24. WILLIAM BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND IN FOUR BOOKS 441 (Callaghan & Co. 1899).
28. Lieberman, supra note 2, at 5.
made it economically unfeasible for a custodial parent to pursue. In addition, a state court's difficulty in obtaining personal jurisdiction over the absent parent made enforcement of a support order almost impossible.

After World War II, the federal courts began to recognize the increasing mobility of the population. This led to a relaxation of constitutional barriers to a state court's jurisdiction over a non-resident. The landmark case of *International Shoe Co. v. State of Washington* allowed a state to exercise personal jurisdiction over a non-resident if there was sufficient contact between the state and the non-resident, if the non-resident received adequate notice of the proceeding, and if traditional notions of justice and fair play were not offended.

Every state now has some form of "long arm statute" designed to reach out and exercise jurisdiction over an absent noncustodial parent who fails to make court ordered child support payments. Although the long arm statutes differ from state to state, there are three basic types:

1. Statutes which list factors which will subject a person to personal jurisdiction of its courts, such as:
   a. transacting of business in state
   b. contracting to supply goods/services in the state
   c. committing tort in the state
   d. having interest in real property in the state
   e. engaging in sexual intercourse which may result in conception of child in state;

2. Statutes which exercise personal jurisdiction to the full extent permitted by the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;

3. Statutes which combine aspects of both types.

Unfortunately, many long arm statutes are flawed by ambiguous sentence structure and vague wording which may cause them to reach

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32. *Id.*
33. 326 U.S. 310 (1945).
34. *Id.* at 316.
35. MARGARET CAMPBELL HAYNES, INTERSTATE CHILD SUPPORT REMEDIES 45 (1989).
36. See, e.g., Larsen v. Scholl, 296 N.W.2d 785 (Iowa 1980).
37. CAL. CIV. PRO. § 410.10. The California Long Arm Statute states simply that: "A court of this state may exercise jurisdiction on any basis not inconsistent with the constitution of this state or of the United States."
too far in some cases and not far enough in others. This problem allows numerous challenges on constitutional grounds.\footnote{See, e.g., Georgia Dep't of Human Resoources v. Estes, 208 Ga. App. 872, 432 S.E.2d 613 (1993) (court of appeals reversed trial court's denial of DHR's motion to serve out-of-state Defendant with action seeking recovery of child support, and upheld constitutionality of Georgia's long arm statute).}

C. The Initial Federal Attempt to Coordinate Interstate Support

1. Uniform Reciprocal Enforcement of Support Act. In 1947, the National Conference of Commissioners on Uniform State Laws studied the problem of enforcing support orders against a non-resident. The Commissioners then drafted the Uniform Reciprocal Enforcement of Support Act ("URESA"), promulgated in 1950.\footnote{9B U.L.A. (1950); UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT, approved by the National Conference of Commissioners on Uniform State Laws and the ABA in 1950, was intended to offer civil remedies not available under the 1910 Uniform Desertion and Nonsupport Act (which was directed to criminal sanctions).} Popularly known as "The Runaway Pappy Act," URESA was designed to allow a custodial mother to enforce a child support order across state lines.\footnote{WILLIAM J. BROCKELBANK, INTERSTATE ENFORCEMENT OF FAMILY SUPPORT (THE RUNAWAY PAPPY ACT) 4-5 (Bobbs-Merrill Co., Inc. 1960).} Within seven years, some version of URESA was adopted by all states.\footnote{CASSETT, supra note 10, at 18.}

URESA theoretically made a support order entered in one state easily enforceable in any other state. In a URESA proceeding, the "initiating jurisdiction" would notify the "responding jurisdiction" to enforce the order. The responding jurisdiction would then proceed against the absent parent using its own law to avoid conflict of law problems.\footnote{MARGARET CAMPBELL HAYNES, AN OVERVIEW OF URESA, IMPROVING CHILD SUPPORT PRACTICE II-52 (1986) (referring to URESA § 7).} In practice, however, difficulty arises from variances in state laws which can cause the responding state's order not to be entitled to full faith and credit in the courts of the initiating jurisdiction.\footnote{See, e.g., Poirrier v. Jones, 781 P.2d 531 (Wyo. 1989).} Problems can also arise when responding jurisdictions require the support order to be registered in accordance with the responding state's laws before its courts will consider the order.\footnote{See, e.g., Commonwealth of Ky. ex rel. Ball v. Musiak, 775 S.W.2d 524 (Ky. Ct. App. 1989).}

Despite corrective amendments in 1958 and 1968, use of URESA was plagued by bureaucratic inefficiency and confusion.\footnote{Harry B. O'Donnell, IV, Title I of the Family Support Act of 1988—The Quest for Effective National Child Support Enforcement Continues, 29 J. FAM. L. 149, 150-51 (1990).} Because the
enforcement system was judicially based, it was inaccessible to a
custodial parent who could not afford to hire a lawyer and pay the initial
fee and costs.\textsuperscript{47} Even when a lawyer was retained and an action filed,
enforcement was erratic. State courts did not place a high priority on
URESA cases and many cases filed with the assistance of local district
attorneys were simply never pursued.\textsuperscript{48}

D. The Federal Government Takes a More Active Role

As the divorce rate climbed, so did the number of custodial mothers
who became impoverished. In 1971 the Rand Corporation released a
study entitled "NonSupport of Legitimate Children by Affluent Fathers
as a Cause of Poverty and Welfare Dependence."\textsuperscript{49} The report focused
attention on the inadequacy of the system and motivated Congress to
take action\textsuperscript{50} by resolving "to improve collection of child support and
thereby reduce the federal costs of the AFDC program."\textsuperscript{51}

By 1975 it was clear that the mere enactment of URESA was not
efficient. The AFDC program was costing the public $7.6 billion per
year.\textsuperscript{52} It was also clear that the federal government was going to have
to take a more active role in solving the problem. Previous federal efforts
had simply assisted the child support enforcement of the individual
states. Senator Long, in addressing Congress, expressed the rising
sentiment:

Should our welfare system be made to support the children whose
father cavalierly abandons them or chooses not to marry the mother in
the first place? Is it fair to ask the American taxpayer who works hard
to support his own family and to carry his own burden to carry the
burden of the deserting father as well? Perhaps we cannot stop the
father from abandoning his children, but we can certainly improve the
system by obtaining child support from him and thereby place the
burden of caring for his children on his own shoulders where it belongs.
We can, and we must, take the financial reward out of desertion.\textsuperscript{53}

Congress decided that the role of the federal government in child
support collection must be expanded. Because the states had failed to

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\textsuperscript{47} Roberts, supra note 26, at 8.
\textsuperscript{48} CASSETTY, supra note 10, at 18.
\textsuperscript{49} M. WINSTON & T. FORSHER, NONSUPPORT OF LEGITIMATE CHILDREN BY
\textsuperscript{50} Id.
\textsuperscript{51} Id.
\textsuperscript{52} O'Donnell, supra note 46, at 152.
\textsuperscript{53} Lieberman, supra note 2, at 6.
\end{flushleft}
effectively utilize URESA, Congress determined that the federal
government must dictate a system to be utilized by the states. By
linking the system to federal assistance for state AFDC programs, the
federal government justified paying 75% of the operating costs. The
states were coerced into compliance by the threat of AFDC funding
loss.  

1. Title IV-D. In 1975, Congress added Title IV-D to the Social
Security Act. The new law required every state to provide child
support enforcement services to recipients of AFDC at no charge. In
addition, the law required the states to assist non-welfare families in
child support collections for only a nominal fee. The federal government
committed resources to pay the bulk of the estimated cost of running the
programs.  

AFDC is a federal-state cooperative program which provides welfare
benefits to needy families with children. The program requires that
"the State [have] in effect a plan approved under [Title IV-D] and
operate [ ] a child support program in substantial compliance with such
plan." If a state fails to provide the specific child support enforcement
services mandated by the statute, it risks losing federal funding.

Title IV-D was enacted to reimburse taxpayers for funds already
expended on AFDC and to reduce the present and future welfare burden.
"[T]he goal of Title IV-D was to immediately lower the cost to the
taxpayer as well as to lessen the number of families enrolling in welfare
in the future—benefits to society as a whole rather than specific
individuals." The legislative history of the statute specifically states:

The problem of welfare in the United States is, to a considerable
extent, a problem of the non-support of children by their absent
parents. Of the 11 million recipients who are now receiving [AFDC
funds], 4 out of every 5 are on the rolls because they have been
deprived of the support of a parent who has absented himself from the
home . . . .

512 (1990) (Boren Amendment imposes binding obligations on states because federal
funding is expressly conditioned on compliance with the Amendment).
56. Id. See LIEBERMAN, supra note 2, at 7.
58. Id. § 602(a)(27).
59. Wohunt v. Ledbetter, 875 F.2d 1558, 1565 (11th Cir. 1989) (quoting legislative
history of Title IV-D).
The Committee believes that all children have the right to receive support from their fathers. The immediate result of Title IV will be a lower welfare cost to the taxpayer but, more importantly, as an effective support collection system is established fathers will be deterred from deserting their families to welfare and children will be spared the effects of family breakup.

The legislature provided measures designed to recoup AFDC expenditures by requiring AFDC recipients to assign their right to collect support from the noncustodial parent over to the state. The state is then authorized to collect child support payments from the noncustodial parent as long as the custodial parent receives AFDC.

The state agency turns over the first $50 it collects to the custodial parent, then distributes any additional collections according to the following scheme:

1. State and federal government are reimbursed for their portions of AFDC paid that month.
2. If any sum remains, the custodial parent receives the excess up to the amount of the court ordered monthly support obligation.
3. If any sum remains, the state is reimbursed for any arrearage owed to it for prior AFDC payments, and
4. If any sum remains, the custodial parent is entitled to it for application to support arrearage.

With the enactment of Title IV-D, the federal government became actively involved in child support enforcement. However, the federal role focused exclusively on overseeing the implementation of a mandated state enforcement system. Under Title IV-D, the federal government created the Office of Child Support Enforcement (“OCSE”) to administer the program. The OCSE became a part of the Department of Health, Education, and Welfare and was charged with establishment of a broad body of administrative regulations governing the state plans. The state programs are administered by individual Child Support Recovery Units (“CSRU’s”).

60. Id. (quoting Social Services Amendments of 1974, S. Rep. No. 93-1356, 93d Cong. 2d Sess. 42 (1974)).
63. Id. § 302.51(b)(2).
64. Id. § 302.51(b)(3).
65. Id. § 302.51(b)(4).
66. Id. § 302.51(b)(5).
67. OCSE was established on June 10, 1975. 40 Fed. Reg. 27,156 (1975).
Again, it worked on paper, but failed in practice. State CSRU's couldn't coordinate with one another any better than the state judicial systems had under URESA. The system was thwarted by even more bureaucracy, thick practice manuals, a case overload growing at an alarming rate, and technicalities. The state child support agencies were underfunded and understaffed to handle the rapidly increasing volume of cases. Despite legislative modifications made in 1977, 1980, 1981, and 1982, no significant improvements were made in the system. Except for an innovative federal tax refund intercept program for overdue support added in 1981, most changes were technical or focused mainly on program funding.

2. Modification and Evolution of the System. In 1982, the OCSE funded a study of the interstate child support collection process. The collected data indicated that existing regulations concerning interstate child support enforcement lacked necessary direction and control mechanisms. Specifically, the report found that state agencies were assigning interstate cases a low priority because of the burdensome requirements and ineffective procedures.

In 1984, 1986, and 1988, Congress worked to streamline the cumbersome system and to effect nationwide uniformity. Major changes required states to have laws providing income assignments, income tax refund withholding, imposition of liens to enforce child support obligations, simplified paternity procedures, a ban on retroactive modification of child support arrearage, and child support guidelines.

The area of interstate child support enforcement was left without significant improvement. The 1984 amendments still lacked comprehensive direction for interstate enforcement and did nothing to address the poor handling of interstate cases by state IV-D agencies. The interstate enforcement system was still flawed by inadequate remedies and lack of uniformity in state laws, policies, and procedures.

69. See generally Testimony of Delfico, supra note 15.
70. Roberts, supra note 26, at 8.
71. HENRY & SCHWARTZ, supra note 25, at 224-27.
72. OCSE NATIONAL REFERENCE CENTER, CHILD SUPPORT ENFORCEMENT PROGRAMS; PROVISION OF SERVICES IN INTERSTATE IV-D CASES (1985).
73. Id. at 72-73.
74. Roberts, supra note 26, at 8.
76. O'Donnell, supra note 46, at 153.
3. The U.S. Commission on Interstate Child Support. In 1988, Congress enacted the Family Support Act. Key provisions of the Act required states to enact laws to implement wage withholding, to enact child support guidelines imposing a "rebuttable presumption" as to amount of the obligation, and to improve procedures for establishment of paternity. The Act also attempted to improve interstate enforcement of child support obligations.

In the statute, Congress created the U.S. Commission on Interstate Child Support ("the Commission") to study the problem and make recommendations for reform. Congress charged the Commission to recommend ways of "(A) improving the interstate establishment and enforcement of child support awards, and (B) revising the URESA." Simultaneously, the National Council on Uniform State Laws, which drafted URESA, set about writing a comprehensive replacement.

The fifteen-member Commission studied the situation for four years, holding public hearings and making in-depth examinations of independent studies, before reporting to Congress in 1992. In its report, the Commission recommended 120 changes to current state law and practice to be accomplished by mandates from the federal government.

III. THE CURRENT STATE OF THE SYSTEM

Although the history of child support enforcement shows a growing legislative concern, the frequent attempts at corrective modification have been largely unsuccessful. The main reason the current system is inadequate is that nonsupport has become a national problem but is administered on a state-to-state basis. Because the parents often live in different states, the enforcement problem has expanded to a nationwide scope. Despite numerous attempts by the federal government to foster cooperation between states, the states themselves have been unable to coordinate enforcement procedures. Although the federal government has taken an increasingly active role in overseeing interstate enforce-
ment, resistance to federalization of the system has caused administration to remain in the hands of state governments.

A. Currently Available Remedies

1. Income Withholding. Interstate income withholding was created by federal statute.\(^{88}\) It operates as a type of continuing garnishment triggered by the existence of a support obligation. In cases handled by state IV-D agencies, withholding is mandatory.\(^{89}\) In cases handled by private attorneys, withholding may be initiated through courts or by administrative action, depending on the law in the individual state.\(^{90}\)

Withholding can only work if the obligor is employed and the obligor's location is known. If the obligor's employer is a national company which does business in the state of the custodial parent, the withholding order can simply be served on the company's agent for service of process in the home state. If, however, the employer is not a national company, the custodial parent will have to request the assistance of the state child support agency in the state where the obligor is working.\(^{91}\)

If an obligor is self-employed, an independent contractor, or changes jobs frequently, income withholding is not an effective remedy. Since many noncustodial parents who are willfully eluding child support obligations purposefully change employers and hide income to avoid collection, withholding is frequently defeated.\(^{92}\)

2. Garnishment. Garnishment is a one time collection and is useful when an obligor is about to receive a lump sum payment. To be effectively used, it is essential to know the location of the obligor as well as the location of the asset to be garnished and the time the asset will be distributed. Because the garnishment must be filed in time to intercept the distribution, timing is crucial.\(^{93}\)

3. Civil Contempt of Court. Civil contempt is useful in collecting arrearage. To initiate a civil contempt action, a document must be filed showing that the child support order is not being followed. The court will then issue an order directing the obligor to appear and show cause why

\(^{90}\) Belay, supra note 12, at 19.
\(^{91}\) Id.
\(^{92}\) Id. at 20.
\(^{93}\) Id.
punishment should not be imposed. Of course, it is necessary for the obligor to be located and served personally. This can be a real drawback to the use of contempt as a remedy.

At the show cause hearing, the obligor must be given the opportunity to purge before any punishment can be imposed. If the obligor purges the contempt by clearing up the arrearage, no punishment can be imposed. The purpose of a contempt action is remedial, not punitive, so the judge will simply attempt to correct the problem, not punish the offender.

More often, if the arrearage is large, the judge will order the obligor to pay only part of it and to increase the monthly support payments by a specified amount. The problem with civil contempt is that there is no deterrence for the obligor who either can pay the arrearage or who is simply ordered to pay a higher monthly sum. The worst that can happen to the nonsupporting obligor is that he will be ordered to pay the entire arrearage plus interest on the back due sum and possibly the court costs.

Judges have been reluctant to use their contempt powers to jail men in support cases. Judges view contempt as a “drastic penalty—perhaps too drastic—for failure to pay child support.” Even if the judge does jail the obligor for failure to pay, contempt cannot guarantee future payments.

4. Criminal Contempt of Court. Although criminal contempt is a somewhat more complicated procedure than civil contempt, it can be a more effective remedy. The defendant in a criminal contempt action, however, cannot be presumed to be able to pay because this has been held to violate due process considerations.

In civil contempt actions, the sanction imposed by the court must be purgeable through compliance because the sanction is remedial in nature. In criminal contempt, however, the sanctions are punitive in

94. Id.
95. Id.
96. Sharon A. Drew, Remedies For Nonpayment, 16 Fam. Advoc. 36, 36-7 (Fall 1993).
98. LIEBERMAN, supra note 2, at 81.
99. Id. at 84.
100. Id.
nature and usually consist of a determinate jail sentence or fine with no purge.\textsuperscript{102}

Criminal contempt is viewed by the court system as more drastic than civil contempt and is considered "[more] appropriate in extreme circumstances in which the obligor has repeatedly violated court orders."\textsuperscript{103}

5. Tax Refund Interception. The federal and state income tax refunds of nonsupporting parents can be intercepted through the state IV-D agency. Federal law requires every state to have legislation authorizing income tax refund intercept programs to collect arrearage in IV-D cases.\textsuperscript{104} If the nonsupporting parent files a tax return, and a refund is due, the agency intercepts the refund and, after opportunity for review, applies the sum intercepted to delinquent child support.\textsuperscript{105}

The success of this program is graphically illustrated by the figures. In the first seven years the tax intercept program was used, over 3.5 million tax refunds were intercepted, resulting in over $1.8 billion in support collected.\textsuperscript{106}

As with other remedies, successful interception of income tax refunds depends on the action of state IV-D agency employees. Because the typical agency is so overburdened, many times the request for tax interception takes years to get results or is never filed.\textsuperscript{107}

6. Lien. A lien is a means of encumbering real or personal property. Although the lien does not produce instant results, once it attaches to the obligor’s property, that property cannot be freely transferred without the child support arrearage being cleared. Some states allow “foreclosure of the lien” and forced sale. Some states, however, allow the debtor time to redeem foreclosed or levied property and provide exemptions for some types of property. Also, some states prohibit the sale of property at a forced public sale for “substantially below fair market value price.”\textsuperscript{108}

\textsuperscript{102} Drew, \textit{supra} note 96, at 36-37.
\textsuperscript{103} \textit{Id.} at 37.
\textsuperscript{105} Belay, \textit{supra} note 12, at 20.
\textsuperscript{106} HAYNES, \textit{supra} note 35, at 151.
\textsuperscript{108} Connor, \textit{supra} note 1, at 94.
Since federal law does not dictate lien procedures, states differ substantially in requirements for perfecting a lien.\(^{109}\) The best solution after a lien is filed may be to negotiate with the noncustodial parent for payment of the accrued arrears in exchange for a release on the lien.\(^{110}\)

7. **Security Bonds.** Although an obligor can be required to post a security bond to guarantee payment of child support, this technique is not often used. If the obligor has the means to post a bond, judges prefer to utilize the funds to pay off delinquent support.\(^{111}\)

This rationale is not always logical. It can be extremely beneficial to require that a habitually delinquent obligor, who has the means to pay, post a security bond as a guarantee of payment of future support. If the obligor then fails to make a future payment, the custodial parent may be paid out of the security bond while enforcement procedures are brought to bear on the obligor.

8. **Uniform Enforcement of Foreign Judgments Act.** The Uniform Enforcement of Foreign Judgments Act ("UEFJA")\(^{112}\) may be used in collecting child support across state lines. The principal drawback to its use is that it has not been adopted in all states. UEFJA was revised in 1964, but was only adopted by 32 states. It allows conversion of the judgment of a foreign or sister state into a domestic judgment.\(^{113}\)

Another drawback to the use of UEFJA is that, like URESA, registration of an order in a second state may give jurisdiction to that second state to entertain modification proceedings.\(^{114}\)

9. **IRS Full Collection.** Although the IRS has been used to intercept income tax refunds to non-supporting absent parents, it is rarely used to collect routine child support payments even though such a system is already in place. The reason the system is so rarely used is because it is "cumbersome and prohibitively expensive from the states' perspective."\(^{115}\) Further, "bureaucratic hurdles and complicated

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109. *Id.*
110. *Id.* at 96.
112. 9A U.L.A. 287.
114. *Id.*
115. 140 CONG. REC. S7269, S7356.
paperwork requirements” discourage state use of the IRS to collect child support.\textsuperscript{116}

In 1993 the IRS and HHS undertook a study in which 700 cases from twelve states were certified to IRS for collection for the month of September. The data gathered from this study is being carefully analyzed so that the problem areas in the IRS collection system can be identified and corrected.\textsuperscript{117} Once the study is completed, the committee will make proposals that the Secretary of the Treasury will use to simplify and streamline an automated collection process for child support debts.\textsuperscript{118}

A bill sponsored by Representative Henry Hyde of Illinois, would make the IRS the primary collector of delinquent support.\textsuperscript{119} According to Representative Robert Matsui, “the IRS can play an important role in this process, and the administration is working very hard to come up with a good plan.”\textsuperscript{120}

10. Execution. An execution is a written command issued by a court to a sheriff or other officer which directs the officer to execute a court’s judgment. A judgment for child support arrearage may be enforced by an execution against the obligor’s property or his person. The writ of execution may also compel delivery of the property or allow the officer to seize the property and sell it at public auction. The ensuing proceeds are then applied to satisfy the judgment.\textsuperscript{121}

11. Credit Bureau Reporting. The Child Support Enforcement Amendments of 1984 required states “to honor credit bureau requests for information on noncustodial parents who are at least $1,000 in arrears in child support payments.”\textsuperscript{122} Although no significant results have been identified as a result of the program, the General Accounting Office believes that the real impact of credit-bureau reporting will show up over time as the delinquent parents are denied credit. Theoretically, denial of credit will “make these parents realize the extent to which they have deprived their own children of money for life’s essentials.”\textsuperscript{123}

\begin{thebibliography}{122}
\bibitem{116} IRS Playing Bigger Role in Child Support Collections, \textit{St. Louis Post Dispatch}, Dec 29, 1993, at 4A.
\bibitem{117} 140 Cong. Rec., supra note 115.
\bibitem{118} Id.
\bibitem{120} Id.
\bibitem{121} Drew, supra note 96, at 57.
\bibitem{122} Parents Who Don’t Pay, \textit{St. Louis Post Dispatch}, July 23, 1994, at 14B.
\bibitem{123} Id.
\end{thebibliography}
12. Criminal Prosecution under State Statutes. Most states have statutes in place which permit criminal prosecution of non-supporting parents.124 As in any criminal prosecution, the defendant enjoys full constitutional protections and all elements of the crime must be proven beyond a reasonable doubt.125

Criminal charges may be brought more quickly than local support agencies can process a civil case but successful initiation of a criminal case rests with the local prosecutor.126 Criminal non-support or abandonment is usually classified as a misdemeanor, but the charge can be raised to a felony under certain circumstances. Factors to be considered include: "whether a court order of support exists; the length of time support went unpaid; the dollar amount of unpaid support; the number of violations the defendant previously had; and whether the defendant has left the state."127

Criminal non-support, has many advantages over civil actions, including:

- Defendant does not have to be given the opportunity to purge and self-employed, under-employed, and unemployed obligors can still be punished for past violations despite lack of discoverable income or assets.
- Enforcement is much speedier than civil contempt actions instituted by child support agencies.
- Criminal enforcement tools can provide deterrence to reduce recidivism for the individual defendant and general deterrence to the population.
- Law enforcement officials tend to view criminal matters more seriously than civil matters and may enforce more aggressively.


Extradition is available for defendants who leave the state (as opposed to civil cases in which the arrest warrants are not enforceable across state lines).

National Crime Information Center ("NCIC") lists only individuals charged with criminal offenses.\textsuperscript{128}

13. \textbf{Federal Prosecution (for crossing state line to avoid paying child support).} Although crossing state lines to avoid paying child support was made a federal crime in 1992,\textsuperscript{129} in the past two years federal prosecutors have tracked down only five of the millions of parents guilty of the offense.\textsuperscript{130} Senator Richard C. Shelby said the Justice Department had done little to track down parents who have attempted to elude child support obligations by moving to other states. Shelby told reporters at a news conference, "It's a shame. It's shabby work by the Justice Department, and it's unacceptable."\textsuperscript{131}

In 1994, however, the Senate got Attorney General Janet Reno's attention by voting unanimously to adopt an amendment to the Justice Department's spending bill, telling Reno to "immediately address shortcomings in enforcement of the law."\textsuperscript{132} The Justice Department countered with a statement that, although it takes the child support mandate seriously, "without accompanying resources, United States attorneys must focus on the most egregious cases . . ."\textsuperscript{133}

Senator Herb Kohl, commented:

Two years ago, we worked together to pass a law that sent a stern message to deadbeat parents: Pay up or go to jail. Sadly, that message has not been delivered. Deadbeat parents continue to evade their responsibilities and our kids do not get the resources they need to live and grow.\textsuperscript{134}

Instead of prosecuting, the Justice Department is turning away legitimate cases or referring them back to state child support agencies.\textsuperscript{135}

\begin{footnotesize}
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\item \textsuperscript{128} Landstreet, supra note 126, at 16.
\item \textsuperscript{129} 18 U.S.C. § 228(a) (Supp. 1993).
\item \textsuperscript{130} Senator Urges Crackdown on Child Support, ST. LOUIS POST DISPATCH, July 22, 1994, at 5A.
\item \textsuperscript{131} Id.
\item \textsuperscript{132} Senate Tells Reno: Get Deadbeat Parents, PHOENIX GAZETTE, Jan. 12, 1994, at A20.
\item \textsuperscript{133} See ST. LOUIS POST DISPATCH, supra note 130.
\item \textsuperscript{134} Id.
\item \textsuperscript{135} Id.
\end{itemize}
\end{footnotesize}
B. The Failure of the Current System: Fatal Flaws

The current system for collection of delinquent child support has failed dismally. Despite federal expenditures of $1.5 billion in subsidies to state IV-D programs between 1980 and 1987, there is no perceptible difference in the percentage of collections successfully pursued.\(^{136}\) In one examination of interstate enforcement procedures, the author summed up the problem:

As every chain is only as strong as its weakest link, effective enforcement of child support orders depends on three things: a competent and thorough preparation of documents in the initiating state, a diligent and motivated (and not overburdened) prosecutor in the responding state, and a cooperative relationship between the two states involved . . . . Any weak link in this chain results in a lot of wasted time and little return for those involved.\(^{137}\)

Unfortunately, as the system is constructed now, every link in the chain fails. The states have failed to carry out the mandate to locate absent fathers and collect child support.\(^{138}\) A spokesperson for the U.S. Department of Health & Human Services called the system a “national failure” and testified to Congress, “We recognize that the current system fails millions of custodial parents and children across America . . . . [I]neffective enforcement allows many noncustodial parents—especially in interstate cases—to avoid payment.”\(^{139}\)

1. Overburdened and Underfunded. State agencies charged with administration of the child support enforcement program are overwhelmed with the increasing volume of cases. Funding has not kept pace with the increasing role of child support enforcement agencies. In some instances, caseworkers do not even have the budget to place long distance phone calls.\(^{140}\)

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137. Belay, supra note 12, at 18 (citing MARIANNE TAKAS, CHILD SUPPORT: A COMPLETE UP-TO-DATE AUTHORITATIVE GUIDE TO COLLECTING CHILD SUPPORT 16-19 (1986)).
140. O'Donnell, supra note 46, at 165 (citing Summary of Problems in Using Child Support Systems Expressed by Callers to Parent's Without Partners' Hotline, IMPROVING
A "mounting backlog of cases, and the ever increasing number of new cases, overwhelm the best efforts of all state child support enforcement agencies" to effect collection of child support obligations.\textsuperscript{141} "Soaring caseloads, coupled with limited human and financial resources and a lopsided federal funding scheme," contribute to the ineffectiveness of the current system.\textsuperscript{142}

The government caseload grew from seven million cases in 1983 to 15.2 million cases in 1992.\textsuperscript{143} In many states, the average caseload per worker exceeds one thousand cases. At this volume, if a caseworker attempted to actively pursue each case, the total available time would be a mere eight minutes a month per case.\textsuperscript{144} Since active pursuit of every case is impossible, caseworkers become "customer driven," deciding which cases to work by responding to requests by custodial and noncustodial parents as well as other states and agencies.\textsuperscript{145}

The net effect is that cumulative amounts of uncollected past-due support added to each current year's uncollected support will "outstrip the ability of the program to collect child support . . . ."\textsuperscript{146} At the current rate of progress in collections, it will take "over 180 years before each child served by a state child support agency can be guaranteed even a partial support collection."\textsuperscript{147}

Between 1983 and 1992, "[funding for] child support enforcement per case stagnated, while the caseload per worker worsened."\textsuperscript{148} Yet, despite significant budget deficits, Congress repeatedly attempts to solve the problem by mandating more requirements for state child support enforcement programs. As a result, state programs already overwhelmed by the volume of cases find themselves "burdened by more and more federal regulations, and strapped by inadequate financial resources to meet either client needs or federal requirements."\textsuperscript{149} The state IV-D agencies have been given more work and inadequate funding. The program "has changed from one designed to assist families and reduce
the cost of public assistance programs to one focused on passing audits and avoiding federal penalties."

2. Creation of Multiple Modifications & Conflicting Orders. Because the current URESA system relies on reciprocity, a child support order can be modified in more than one state. The effect of each modification is to create an order enforceable in any other state. This often results in competing awards when more than one state exercises modification jurisdiction.

When URESA is used, several child support orders may be created in different states (or even counties within the same state). Each order may be for a different amount, yet all the orders are valid and enforceable.

3. Lack of Standardization. Current regulations require the initiating state to provide sufficient information to the responding state to enable it to either act on the case or provide absent parent location services. The system is stymied, however, because the regulations do not specify what information must be included. Because various states require different information before they will proceed with collection, lack of standardization has crippled the system.

Additionally, electronic linkup of state agencies has been thwarted by noncompatible equipment. Many of the state computer programs are “seriously flawed” and may not be capable of being utilized on-line with the fifty-three other independently-developed systems. One state agency spokesperson identified the problem as “dealing with a 20th century problem with 19th century technology.”

Even though OCSE stated that “[e]ffective automation of the CSE program is essential to effective program operations and administra-


152. 140 CONG. REC. S7269 (1994).

153. 45 C.F.R. § 303.7(b) & (c).


156. Statement of Addison, supra note 107.
the final rules enacted to “implement section 123 of the Family Support Act of 1988” allowed numerous provisions for “waiver of Federal requirements related to an automated system” as late as 1992. To obtain a waiver from the statutory mandate, a state must merely “demonstrate that it has an alternative approach to APD requirements or an alternative system configuration,” or, failing that, “provide written assurances that steps will be taken to otherwise improve the State’s Child Support Enforcement program.”

4. Lack of Motivation of Responding State. Because the responding state is not expending AFDC funds on the custodial parent, interstate cases are not as zealously pursued as intrastate cases. The 1985 Interstate Child Support Collections Study found that “the responding state bears most of the expense incurred in interstate enforcement while the initiating state enjoys most of the benefits.”

Lack of motivation in the responding state may also result from case “ownership” conflicts. Responding states may fail to work interstate cases because they wait to be “told what actions to take by the initiating state.” Although responding states are required to provide services in interstate IV-D cases, the regulations “do not contain detail or specificity concerning necessary actions” and state IV-D administrators “generally believe they do not have sufficient authority to supervise and administer an efficient interstate case processing system.”

5. Failure to Locate the Noncustodial Parent. A major cause of failure to collect child support is inability to locate the noncustodial parent. Before any enforcement techniques can be employed to extract child support from a delinquent obligor, that obligor must be located.

The problem stems from lack of a national clearinghouse for support orders which links state agencies, federal locate sources, and new hire data. Congress is attempting to deal with the situation by considering UIFSA, which requires the creation of such a clearinghouse.
6. Potential Ethical Conflict for IV-D Attorneys. Confusion and disagreement about the nature of the relationship between the AFDC recipient and the Title IV-D attorney in child support collections could lead to an ethical conflict. Several factors may ultimately determine whether an attorney-client relationship exists between an assignor-AFDC recipient and an assignee-state IV-D agency attorney. The finding of an attorney-client relationship is prerequisite to attorney-client privilege, and can become a source of ethical conflict when an AFDC recipient discloses confidential information against the recipient's interests.

Most custodial parents utilizing the services of a IV-D agency to collect support believe themselves to be the client of the IV-D attorney. Likewise, noncustodial parents who seek downward modification through a IV-D agency believe themselves to be a client of the IV-D attorney. This perception is furthered by judicial reference to IV-D program participants in court as “clients.” The problem is even more confusing in non-AFDC cases in which the state has no apparent interest. In such cases, it seems obvious that the IV-D attorney is involved in the process as an advocate of some party's interest, but it is not obvious to whom the IV-D attorney owes client loyalty.

7. No Comprehensive Strategic Plan. The current program was established over twenty years ago without fundamental mechanisms to deal with the diversity of state-based child support enforcement laws and procedures. Originally created as an adjunct to AFDC, “the child support enforcement system developed haphazardly, by accretion rather than by design.” Rather than redesigning the system, Congress has tacked piece after piece of federal legislation onto the original statutes. Far from strengthening the structure, the effect is to hopelessly impair the operation of the entire system. In the words of one critic:

166. Alabama, Florida, North Dakota, and Ohio recognize the custodial parent as the client only in non-AFDC cases; West Virginia and Louisiana recognize the child as the client and regard the custodial parent as the guardian ad litem, Sablan, Legal Ethics: Attorney-Client Dilemma Within the Child Support Program, 8 JUV. & CHILD WELFARE L. REP. 94 (1990).
168. Id. at 161-63.
169. Connor, supra note 1, at 74 n.47.
170. Testimony of Hoffman, supra note 17.
171. Id.
It is as if you started with a Volkswagen and then over the years added layer after layer of heavy metal body parts from Cadillacs. You would still have a Volkswagen engine, but it would hardly be able to move the massive body built upon it. With no increase in horsepower, the slow-moving, hard-to-steer vehicle that is the government child support enforcement system has failed 80 percent of the families requesting assistance.  

8. AFDC Recipients Have No Alternative When System Fails. Title IV-D does not provide the means of private judicial redress necessary to constitute a comprehensive remedial scheme. Although the states have clearly failed to carry out the Title IV-D requirements, the statute lacks any procedure by which AFDC recipients can effectively complain or force compliance. Neither does the statute provide private judicial remedies such as citizens’ suits or judicial review of administrative procedures. Yet, by requiring AFDC mothers to sign away to the state their right to enforce the child support order, the system denies these women any opportunity of successfully collecting child support and getting off welfare. Since AFDC mothers have no choice but to turn the matter over to the state, when the system doesn’t work they cannot take their business elsewhere.

Some plaintiffs have successfully brought class actions against states and the Department of Health and Human Services for “improper behavior in implementing the federal laws.” The Supreme Court, however, has limited this type of class action by applying the rule set out in Cort v. Ash. In Cort the Supreme Court set out four key questions to determine whether a plaintiff has standing to sue to enforce a federal statute:

1. Is the plaintiff “one of the class for whose especial benefit the statute was enacted . . .?”
2. Is there any indication of legislative intent to create or deny a remedy to the plaintiff?
3. Is implication of a remedy for the plaintiff consistent with the underlying purposes of the legislative scheme?

172. Id.
174. Id. at 220.
177. 422 U.S. 66 (1975).
4. Is the cause of action traditionally one which basically concerns the states and is generally relegated to state law so that it would be inappropriate to infer a cause of action based solely on federal law?\textsuperscript{178}

IV. PROPOSALS FOR REFORM

The problem of welfare dependence and non-payment of child support has increasingly come to the attention of the public as the statistics rise to alarming proportions. By 1990, national attention was focused on the link between fathers who fail to pay child support and mothers who end up on welfare.

President Clinton, in his acceptance speech at the Democratic National Convention, targeted the problem:

I do want to say something to the fathers in this country who have chosen to abandon their children by neglecting their child support. Take responsibility for your children, or we will force you to do so, because governments don't raise children; parents do, and you should.\textsuperscript{179}

Bruce Reed, a senior domestic policy adviser to President Clinton, stated that child support enforcement is "an important part of breaking the cycle of poverty, and it will be an important part of Clinton's domestic program."\textsuperscript{180} Reed went on to say that the program would aim to "change the message that government social programs send to society. Clinton believes that people who can work should work and that people who have children should take responsibility for them."\textsuperscript{181}

A. Studies of the Problem

As a result of President Clinton's vow to improve child support enforcement, several intensive studies of the child support problem have recently been undertaken. While most are in agreement as to the identification of the problems, proposed solutions differ dramatically.

1. American Bar Association Study. In 1992, ABA President J. Michael McWilliams appointed an ABA Working Group on the Unmet

\begin{footnotesize}
\begin{enumerate}
\item[178.] Id. at 78.
\item[180.] Id.
\item[181.] Id.
\end{enumerate}
\end{footnotesize}
Legal Needs of Children and Families ("the Group").\footnote{182} McWilliams charged the Group with the task of recommending legal reforms that would improve the lives of children, "that were consistent with existing ABA policy, and that the ABA could present to the Clinton Administration and other public officials."\footnote{183}

The Group studied children's rights as "a matter of racial and economic justice," and made a report in 1993.\footnote{184} The report, entitled America's Children at Risk: A National Agenda for Legal Action,\footnote{185} "urges lawyers to pursue not only litigation, but also legislative and administrative advocacy and other 'preventive' work to help children.\footnote{186} Members of the Group then met with Hillary Rodham Clinton, Attorney General Janet Reno, and other officials, all of whom expressed support for the effort.\footnote{187}

The report stressed several themes:

- Children are at risk in the United States because of the deteriorating economic condition of their families.
- To a great extent, promoting children's rights is an economic issue requiring legal reforms to ameliorate poverty.
- Since children of color suffer disproportionately from poverty, advocacy to improve children's lives is a matter of racial justice.
- Legal reforms to help children must necessarily help, strengthen, and involve their families.
- Many laws already exist to assist children and their families, but they are not enforced.
- In assisting children, lawyers must use techniques and strategies similar to those they use in handling other cases, including preventive approaches that attempt to resolve problems before they lead to judicial proceedings. Where appropriate, lawyers should seek changes in the law that will benefit their clients.\footnote{188}

The emerging themes led to twenty broad recommendations which include numerous specific suggestions for policy changes and reallocation.

\footnote{183. Id.}
\footnote{184. Id. at 14-15.}
\footnote{185. ABA Report: America's Children at Risk: A National Agenda for Legal Action (July 1993).}
\footnote{186. Morales, supra note 182, at 14.}
\footnote{187. Id.}
\footnote{188. Id. at 15 (from inset by Mary Ann Herlihy & Susan F. Paikin).}
of resources. The ABA has now formed a steering committee to assist in implementation of the report's recommendations, which include:

- Every state should create a unified Family Court system using a jurisdictional model such as that of Delaware, which has jurisdiction "over all cases involving children and relating to family life."\textsuperscript{189}
- Every state should adopt a uniform child support guideline modeled after the "Melson Formula."\textsuperscript{190}
- National and local organizations should be formed to increase the availability of legal representation for children.\textsuperscript{191}

The ABA, based on the report of the Group, opposes federalization of the child support system. Marshall J. Wolf, chair of the ABA Family Law Section, in addressing a House of Representatives subcommittee, stated that federalization "would result in tremendous added costs, decreased accessibility to child support services offices, and the loss of innovation at the state level."\textsuperscript{192} Instead, Wolf recommended that Congress mandate greater uniformity of state laws and practices.\textsuperscript{193}

2. The U.S. Commission on Interstate Child Support. The congressionally appointed U.S. Commission on Interstate Child Support studied the operation of the child support system for four years. The Commission then issued a compelling report which focused on two aspects of concern. First, the report recommended "sweeping reforms of state systems to insure the establishment and collection of child support."\textsuperscript{194} Second, the report emphasizes the problem of enforcement of child support orders in interstate cases. In this area, the Commission proposes "major reforms in the interstate establishment and enforcement of support orders."\textsuperscript{195}

The Commission ultimately decided to continue to allow the system to be operated by the states, but the system itself will be controlled at the

\textsuperscript{189} Id.
\textsuperscript{190} Id. The Melson Formula was created by Family Court Judge Elwood F. Melson, Jr., and was adopted by the Family Court Judiciary in 1978. The formula uses a four-step process which incorporates critical factors designed to evoke adequate support for children and equity for the parties. \textit{Id.; see also} Conner, \textit{supra} note 1, at 77-78.
\textsuperscript{191} Morales, \textit{supra} note 182, at 15.
\textsuperscript{192} McMillion, \textit{supra} note 77, at 107.
\textsuperscript{193} Id.
\textsuperscript{194} Spector, \textit{supra} note 85, at 3.
\textsuperscript{195} Id.
federal level to ensure uniformity and reciprocity. The Commission’s report explained its rationale:

... the majority of Commission members was not convinced that the federal government could do a better job than states in establishing and enforcing support. Commission members were concerned about: (1) the loss of creativity at the state and local level, (2) the federalization of one aspect of family law that often arises in the context of other family issues, (3) the existing backlog in federal courts, (4) the lack of an effective federal administrative model, (5) improper identification and distribution of payments, (6) the cost of creating a system that already exists at the state level, and (7) the taking of such a major step prior to evaluating the effects of state automated systems on states’ abilities to effectively process cases.

The Commission went on to recommend over one hundred changes to current state procedure to be accomplished by federal mandate. The major thrust of the Commission’s interstate reform recommendations was concentrated on the establishment of a single support order enforceable in all states. The Commission’s recommendations have been incorporated into bills currently before Congress. These bills are discussed below in some detail.

3. The Commission on Child and Family Welfare. In 1992, Congress moved to address the issues of child custody and visitation as related to child support. Although separate issues legally, the issues are related and have mutual effects. In the Child Support Recovery Act of 1992, Congress created the Commission on Child and Family Welfare made up of officials from the Justice Department, the Department of Health and Human Services, and the Internal Revenue Service. The goal of this group is to propose welfare and child support reforms to be incorporated into a reform bill for Congress. The commission is charged with the following duties:

- compile information and data on the issues that affect the best interests of children, including domestic issues such as abuse, family

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196. Id.
197. Roberts, supra note 26, at 9 (quoting U.S. COMMISSION ON INTERSTATE CHILD SUPPORT, SUPPORTING OUR CHILDREN: A BLUEPRINT FOR REFORM (1992)).
198. Id.
relations, services and agencies for children and families, family courts, and juvenile courts;

  o compile a report that lists the strengths and weaknesses of the child welfare system as it relates to placement (including child custody and visitation), summarizes state laws and regulations relating to visitation, and makes recommendations for changing the system or developing a federal role in strengthening the system;

  o study the strengths and weaknesses of the juvenile and family courts as they relate to visitation, custody, and child support enforcement and suggest any recommendations for changing these systems; and

  o study domestic issues that relate to the treatment and placement of children (such as child and spousal abuse) and suggest recommendations for any needed changes, including models for mediation and other programs.202

After completion of these studies, the Commission will issue a report to Congress and make recommendations. The findings of this Commission will then be compared to those of the Interstate Commission on Child Support.203

B. Recommendations For Improvement Of The System

1. Target Societal Attitude. Because half of all marriages end in divorce204 leaving a quarter of the nation's children with "little or no contact with their dads," Richard Loev of Parents' Magazine says that fatherhood classes and stricter child support laws are needed.205 Charles Augustus Ballard, head of a group that works with teenage fathers says, "They just don't think like fathers. They don't connect pregnancy with marriage or husbanding or fatherhood."206

There is a growing trend toward recognition that the traditional role of the father is changing. Historically, the father was the breadwinner and the mother stayed home with the children. In today's economy, however, both parents frequently work to support the family. With the

203. Id. at 5.
206. Id.
mother assuming responsibility for part of the family's earnings, the father's role must also change to accommodate more active parenting.

Yet men in general are subjected to "cultural resistance," to the changing role of fathers.207 James Levine, director of a research and consulting group on fatherhood, observes that "unless the institutions that have a direct impact on families' lives—businesses, hospitals, churches, synagogues, social-service agencies, and schools—are transformed, neither personal change nor national legislation will accomplish much."208 Loev says, "The truth, however politically untidy, is that men will not move back into the family until our culture reconnects masculinity and fatherhood, until men come to see fathering—not just paternity—as the fullest expression of manhood."

Bonnie Campbell, Democratic Attorney General of Iowa, used a $50,000 appropriation from the state legislature to mount a "wanted" poster campaign against deadbeat dads. She plastered 10,000 posters statewide showing the names and pictures of ten men who were among the most delinquent in paying child support.210 "They're not always poor," said Campbell, "That's a common myth. They certainly could make it a priority. They will say, 'I couldn't because I had to make my motorcycle payment.' That's the attitude we are trying to change. It's the first bill you pay because it's probably the only bill that is court-ordered."211

According to Marilyn Ray Smith, chief legal counsel of Child Support Enforcement in Massachusetts, the ultimate goal "really is to make it no longer acceptable not to support your children, so that the guys at the bar no longer have respect for the guy down at the end of the bar who doesn't pay his support."212 OCSE has worked "to elevate the issues of child support and parental responsibility in the public eye so that non-support of children will be deemed a serious offense—as well as a burden on taxpayers."213

The OCSE, to further its goal of changing public attitude, has conferred with the Mothers Against Drunk Driving ("MADD") organization. MADD has been instrumental in changing societal attitudes about drunk driving by focusing national attention on the problem. OCSE is

207. Id. (quoting James Levine, Director of the Families and Work Institute's Fatherhood Project).
208. Id.
209. Id.
211. Id.
212. Id.
considering strategies used by MADD in making drinking and driving socially unacceptable.\textsuperscript{214}

2. Teleconferencing of Child Support Hearings. Two states, Delaware and Colorado, have experimented with telephone-conferenced court hearings in interstate child support cases.\textsuperscript{215} Teleconferencing has already been tested in civil and criminal cases with encouraging results.\textsuperscript{216} In child support cases, evidence from the two experiments indicated difficulties in four areas: "(1) equipment and facilities; (2) scheduling hearings; (3) notifying the petitioner; and (4) planning and coordinating the telephone conference."\textsuperscript{217}

When telephone-conferenced hearings were used, petitioners and initiating states recognized three major advantages over the former system: (1) petitioners were allowed to give their side of the story; (2) petitioners were able to respond to respondent's testimony; and (3) petitioners were able to learn the outcome of the hearing immediately.\textsuperscript{218}

The telephone-conferenced hearings also provided two major benefits to the court: the court was able to utilize the most current information about the case (as opposed to typical URESA hearings in which the information is at least six months old), and the court was able to hear the petitioner's side of the story.\textsuperscript{219}

The combined data from the two projects suggest the following merits and limitations of telephone-conferenced hearings in interstate child support cases litigated under URESA:

- Telephone-conferenced court hearings are feasible in interstate cases [but] may not be practical in all cases.
- Judges and IV-D attorneys liked telephone-conferenced hearings because they provided more timely and more accurate information to the court in deciding the case.

\textsuperscript{214} Id. at 58-59.
\textsuperscript{216} Id. (citing J. Corsi et al., \textit{The Use of Telephone Conferencing in Administrative Fair Hearings: Major Findings of the New Mexico Experiment with Welfare Appeals}, Report to the National Service Foundation (May 1981), and R. Hanson, et al., \textit{Evaluation of Telephone Conferencing in Civil and Criminal Court Cases}, Report to the National Institute of Justice (1983)).
\textsuperscript{217} Id. at 26.
\textsuperscript{218} Id. at 27.
\textsuperscript{219} Id. at 28.
Petitioners (and participants representing initiating state child support agencies) liked telephone-conferenced hearings because they gave petitioners the opportunity to tell their side of the story and to rebut testimony presented by the respondent.

Telephone-conferenced hearings appeared to reduce overall case-processing time even though they increased the amount of court time required for the hearing. This latter outcome results directly from the increased number of participants in the hearing.

Telephone-conferenced hearings require considerable coordination if they are to be conducted successfully.²²⁰

The coordinators of the two projects suggested several changes to improve the utility of telephone-conferenced hearings. Overall, the experiments were called “a promising approach” to resolving the interstate child support enforcement problem.²²¹

3. Privatization of Enforcement. Because of the lack of success in governmental attempts to collect child support, there is a growing movement toward privatization of child support collection services.²²² One report called privatization a trend “clearly on the forefront of emerging enforcement techniques.”²²³ Not only are individuals seeking private agencies for child support enforcement, but state agencies are also investigating the use of private contractors. At recent child support conferences, programs concerning privatization were filled to capacity.²²⁴

Private agencies have entered the market, usually as an offshoot of a collection agency. One such agency, Child Support Services, conducted market research and began operating in Virginia as a division of Credit Services in 1991.²²⁵ The state agency for child support collections has given “guarded approval” to the venture. Ron Harris, district manager of the government’s Child Support Enforcement Office in Virginia Beach, Virginia observed that there is “certainly enough business here for all of us.”²²⁶ The market certainly exists for such private enterprise. After just one TV commercial on five Virginia stations, Child Support Services received nearly 9,000 telephone calls wanting information.²²⁷

²²⁰. Id. at 29-30.
²²¹. Id. at 31.
²²². Barnhart, supra note 213, at 59-60.
²²³. Id. at 60.
²²⁴. Id.
²²⁶. Id.
²²⁷. Id.
One drawback is that private businesses cannot handle welfare cases, because federal mandate requires the state to manage those cases in order to reimburse AFDC payments.\textsuperscript{228} Ironically, these cases may well be the ones most critically in need of private services.

Child Support Services claims to locate about 85% of its targets, using the "classic techniques of the bill-collection trade."\textsuperscript{229} Entrepreneur James Jones, founder of Child Support Services says, "My people are trained to skip-trace, to search to locate someone. They don't have to leave their chairs. They're calling neighbors, credit references, past employers."\textsuperscript{230} Although the state can look into some databases not available to the private sector, such as IRS and SSA, many other tools are available. These include on-line credit reports, department of motor vehicles reports, magazine-subscription updates, post-office changes of address, "list enhancement" services from major credit-card companies—and direct contact with the target's creditors.\textsuperscript{231}

Child Support Services charges a $35 fee for the service plus 25% of whatever is collected, "until the arrearage is paid off or the yearly contract terminates."\textsuperscript{232} To accomplish the mission, the business uses a $175,000 network of IBM and Digital computers.\textsuperscript{233} Private agencies pursue cases more zealously than state agencies because they are operated by the profit motive and get paid proportionate to successful collection.

4. Federalization of Enforcement. Although the state-based approach is consistent with past methods of reform and generates less political controversy among powerful interests, a movement exists to federalize child support law. Advocates of federalization believe that it will be difficult to rebuild the flawed automation system already in place in the states and that enactment of UIFSA will not radically improve interstate cooperation.\textsuperscript{234} Geraldine Jensen, the only member of the U.S. Commission on Interstate Child Support to dissent from its report, stated her case for more "radical, fundamental restructuring:"

\ldots America's child support enforcement system fails in almost every possible way to serve the children. The message delivered at every public hearing the Commission held was the same: the system needs

\textsuperscript{228} Id. \textit{See supra} note 61.
\textsuperscript{229} Greco, \textit{supra} note 225.
\textsuperscript{230} Id.
\textsuperscript{231} Id.
\textsuperscript{232} Id.
\textsuperscript{233} Id.
\textsuperscript{234} Roberts, \textit{supra} note 26, at 10.
radical, fundamental restructuring. It needs to put children first! Regrettably, the Commission's recommendations fall far short of the fundamental restructuring that is needed. The recommendations are based on the premise that with a few more laws, better worker training, and more funding, the present judicially-based, lawyer-dominated, state-run system can be sufficiently improved to do the job.235

In May, 1992, Representative Tom Downey and Representative Henry Hyde drafted a proposal for radical reform which would move the establishment of paternity, the modification of support orders, and the support enforcement function from the states to the federal government. The proposal included a provision for a national child support registry to be located in the IRS or SSA which would take on "enforcement and modification responsibilities in a universal system."236

The Downey/Hyde proposal also included a national child support assurance system in which the federal government not only takes on total responsibility to collect child support but also guarantees a child support payment to every custodial parent.237 The proposal won overwhelming approval from custodial parents and child support advocates but drew outrage from noncustodial parents, lawyers, and state and local officials.238 Representative Downey, however, was defeated in his bid for re-election and the bill was never brought to a vote. Representative Hyde is now focusing on the bill's provisions for federalization of child support collections only.239

Arguments exist against attempting to address the child support problem with federal law. One concern is that federal legislation to be administered by state courts without the participation of the states in the drafting process often results in unworkable legislation.240 Also, there is concern that federal legislative process delays corrections if a federal law proves to be ineffective or unworkable. Opponents of federalization point to the Federal Internal Revenue Code as an "example of poor federal statutory draftsmanship."241

5. Partial Federalization of Enforcement. Another movement exists to partially federalize child support enforcement. A coalition of custodial and noncustodial parent groups, child support advocates, some

235. Id. (quoting Geraldine Jensen).
236. Id.
237. Id.
238. Id. at 11.
239. Id.
240. Hartnett, supra note 19, at 52.
241. Id.
This Committee favors partial federalization of the child support collection system and adoption of guaranteed child support payments by the government. Under the partially federalized system, paternity, as well as establishment and modification of child support awards would remain at the state level. States would be subject to a mandatory uniform national child support guideline. The Committee also endorses a national child support registry to be administered through the IRS, which would enforce the orders primarily through income withholding and then disburse the payments.

6. Guaranteed Support Assurance Programs. Government guaranteed support assurance programs would guarantee minimum child support payments for all single parents. The government would pay the difference between any amounts collected from the noncustodial parent and the minimum assured benefit.

Opponents of guaranteed support argue that it would “simply add another expensive entitlement to the $24.7 billion basic welfare program and swell the ranks of the 4.9 million families receiving public assistance.” Representative Rick Santorum called the proposal “a new entitlement that pays people for not being responsible. Dad fails to pay, so we pay for him. Why don’t we just track him down and make him pay? All this does is let the deadbeat dads off the hook and continues this system of dependency.”

7. Innovations at the State Level. In September of 1993, the state of South Dakota sent 10,600 letters to non-supporting parents, saying they would lose their driver’s licenses if they didn’t pay their delinquent child support. As a result, sixty people paid the entire amount owed and 150 entered agreements to pay off their debts.
Texas has dramatically improved its collection rates by recognizing child support collection as a law enforcement problem instead of merely a "welfare problem." 249

Arizona, ranked worst in the country in child support collections in 1991, has implemented several innovations which have dramatically boosted the success rate of its program. The state first set up a "total-quality-management program" which included hiring two private collection firms. 250 In addition, Arizona has established an interstate nationwide computer link-up system and a telephone number backed by forty-five "customer service" representatives that will allow resolution of many current problems "with the punch of a few buttons." 251 The state is also working on a massive computer system, called ATLAS, which will store the equivalent of twenty million typewritten pages and manage a program that will determine the most effective action for individual cases. 252 The program is backed up with tough enforcement methods which include credit reporting and a police "dragnet" which continuously sweeps over the state to arrest those in contempt of child support orders. 253

Wisconsin has implemented a program which requires non-supporting parents to perform up to thirty-two hours per week for sixteen weeks doing community service maintenance work. 254 The "get-tough" experiment is known as Children First, and has been effective in nearly four out of five cases. Jean Rogers, administrator of the program, said, "Non-custodial parents need to pay, they need to pay more, and they need to pay more frequently." 255

In Virginia, the state has gained "crucial leverage against thousands of recalcitrant parents, mostly fathers, who owe their children millions of dollars but have been able to evade normal enforcement techniques because they are self-employed, work for cash or have hidden assets from authorities." 256 The state can now suspend professional licenses for such occupations as architects, cosmetologists, auctioneers, harbor pilots,

249. Walsh, supra note 179, at A3.
252. Id.
253. Id.
255. Id.
geologists, funeral directors, embalmers, bar owners, polygraph examiners, lawyers, doctors, and real estate agents. Virginia is also considering a program which suspends driver's licenses.\textsuperscript{257}

In the District of Columbia, the government increased child support collections by 23\% by "searching public records, checking employer payrolls and sending police officers to find parents behind in their payments."\textsuperscript{258} The District's Office of Paternity and Child Support Enforcement is using a special police unit and plans to install a computer system to search motor vehicle records.\textsuperscript{259} Social Services Commissioner Clarice D. Walker said, "We are moving aggressively to improve paternity establishment and child support collections, and it is paying off."\textsuperscript{260}

Maine has begun to enforce a new law revoking the professional and driving licenses of "deadbeat parents." The law was first used in June of 1994 against nine men who "ignored warnings to pay child support." Enacted last year, the law is credited with increasing collections by $11.5 million.\textsuperscript{261}

C. Proposed Legislation

1. Uniform Interstate Family Support Act. In August of 1992, the National Conference of Commissioners on Uniform State laws promulgated the Uniform Interstate Family Support Act ("UIFSA").\textsuperscript{262} UIFSA is intended to replace the Uniform Reciprocal Enforcement of Support Act ("URES A") drafted by the Uniform Law Commissioners in 1950.\textsuperscript{263}

The most significant aspect of UIFSA is the requirement that the state that first imposes a support order retain jurisdiction over the matter until the support obligation terminates unless certain conditions are satisfied. Known as the "one-order-one-time" rule, it is designed to eliminate the difficult legal problem that currently arises when more than one order for support for the same child is entered by courts in different states, thus resulting in inconsistent orders.\textsuperscript{264}

\textsuperscript{257} Id.
\textsuperscript{259} Id.
\textsuperscript{260} Id.
\textsuperscript{262} Hartnett, supra note 19, at 52.
\textsuperscript{263} Id.
\textsuperscript{264} Id. at 53.
To ensure that only one state controls the terms of an order at any one time, UIFSA, unlike URESA, contains a comprehensive long-arm jurisdiction section. Congress will be asked to:

express its sense that it is constitutional to use “child-state” jurisdiction, which if upheld by the Supreme Court, will allow agencies to bring the child support case where the child resides instead of where the noncustodial parent lives if he or she has no ties to the child’s state. This extends long arm jurisdiction’s reach to all cases instead of just some cases. It would also eliminate arguments and court proceedings regarding jurisdiction.

The “major conceptual differences” between URESA and UIFSA are:

- UIFSA provides a clearer separation between civil and criminal proceedings.
- UIFSA introduces a “one-order-at-a-time” concept and addresses the logistical problems of application.
- UIFSA limits modification actions on a restricted idea of continuing jurisdiction.
- UIFSA creates a separate interstate parentage act.
- UIFSA addresses conflict of law issues.

The desired net effect of UIFSA is to “eradicate any barriers that exist to case processing simply because the parents do not reside in the same state.” The Federal Commission on Interstate Child Support has recommended that Congress require the verbatim adoption of UIFSA by each state as a prerequisite to receipt of AFDC funding. The ABA has also recommended “prompt enactment” of UIFSA by all states.

2. The Interstate Child Support Enforcement Act of 1993. Senator Bill Bradley and Representative Marge Roukema, who both served on the Interstate Child Support Commission, incorporated the Commission’s recommendations into a bill introduced to the Senate and the House. The Interstate Child Support Enforcement Act of 1993 is designed to attack the problems of “lack of uniformity in state laws,
policies and procedures; inadequate enforcement remedies; insufficient resources; and multiple, often conflicting, support orders.\textsuperscript{273} Roukema, in introducing the bill to the House of Representatives, said, "I believe that we must act expeditiously to streamline the child support process, eliminate contradictions in state laws, give our courts and law enforcement agencies the tools that they need, and get tough with states that fail to do their jobs."\textsuperscript{274}

The main purpose of the proposed bill is to require that the state in which the child resides have jurisdiction in support enforcement cases and that its "legal and binding" court orders be honored by all other states.\textsuperscript{275} The state that entered the original child support order would retain exclusive jurisdiction to modify the order unless all contestants (including the IV-D agency, if AFDC payments are pending) are now located in other states.\textsuperscript{276} Other provisions of the measure will:

- require the states to implement hospital-based paternity establishment procedures;
- change the income tax withholding form W-4 so that new employees will be required to indicate any existing support obligation;
- mandate verbatim acceptance of the Uniform Interstate Family Support Act ("UIFSA") by all states;
- expand use of the Federal Parent Locator System and the databases accessed by the Parent Locator System;
- improve training and staffing conditions for state child support collection employees;
- elevate the OCSE to be headed by an assistant secretary of Health and Human Services;
- establish a National Child Support Guideline Commission to standardize child support awards;
- provide a host of enforcement mechanisms to include automatic withholding of support amounts from paychecks and benefits, procedures to suspend or revoke occupational licenses for failure to pay child support, and procedures to subject tort recoveries, lottery winnings, and insurance payouts to child support collection laws.\textsuperscript{277}

\textsuperscript{273} McMillion, \textit{supra} note 82, at 107.
\textsuperscript{274} Id. (quoting Rep. Marge Roukema).
\textsuperscript{275} Id.
\textsuperscript{276} Robert A. Spector, \textit{A Look at the National Act}, 16 \textit{FAM. ADVOC.} 20, 20 (Fall 1993).
3. The President's Work and Responsibility Act of 1994. Acting upon his campaign promise "to end welfare as we know it and replace it with a system that is based on work and responsibility," President Clinton introduced his innovative welfare reform bill on June 21, 1994. The President's Work and Responsibility Act of 1994 purports to replace welfare with work and to promote parental responsibility.

In a Presidential Message to Congress, Clinton stated that his program "signals that people should not have children until they are ready to support them, and that parents—both parents—who bring children into the work must take responsibility for supporting them." To underscore this goal, the bill "establishes the toughest child support enforcement program ever." Clinton went on to tie child support issues to employment by saying, "We owe every child in America the chance to watch their parents assume the responsibility and dignity of a real job. This bill is designed to make that possible."

In presenting the bill to Congress, co-sponsor Representative Ford said that the bill "follows the basic values of the American people—able-bodied parents ought to work to support their families, and parents ought to be responsible for their children." Co-sponsor Senator Moynihan, stated that the bill is intended "to enforce the responsibility of both parents from the moment the child is born."

Speaking on behalf of the bill, Senator Mitchell said that it will require welfare parents to develop an employability plan and will require anyone offered a job to take it. Mitchell went on to say that the bill would target "deadbeat parents . . . [who] have walked away from their financial responsibility."

Health and Human Services Secretary Donna Shalala said the plan's three main goals are:

1. Moving welfare parents off public support by putting them to work in the private sector;
2. Curing the social epidemic of teen-age pregnancies; and
3. Getting parents to take responsibility for their children.\textsuperscript{287}

Among other provisions of the plan are:

- A two-year time limit on cash benefits for single parents eighteen and older. Welfare recipients who are single women born after 1971 are targeted for job training and placement, plus child care to help them join the work force.
- Work in government-subsidized jobs for those who remain unemployed after their benefits expire in two years. These people could keep their taxpayer-funded jobs as long as they could demonstrate they were genuinely seeking employment in the private sector.
- A program to get fathers to support their illegitimate children, including an effort to determine paternity of children before they leave the hospital.
- A requirement that, to qualify for welfare, unwed mothers under the age of 18 live at home or with a responsible adult.
- An education campaign against teen-age pregnancy.\textsuperscript{288}

The bill has come under much fire from many factions. Republicans, most of whom have rejected the proposal outright, specifically spurn the $9.3 billion price tag, creation of another public-sector work program, and failure to adequately address teen pregnancy.\textsuperscript{289} Because some of the proposed funding is slated to come from cutting benefits to legal aliens, there has also been resistance from minority groups. Representative Nydia Valazquez, chairman of the Congressional Hispanic Caucus' subcommittee on welfare, says "I cannot support a plan that is financed on the backs of immigrants."\textsuperscript{290}

Additionally, critics of the Clinton plan condemn it as a "sham reform that preserves the system while pretending to change it."\textsuperscript{291} Robert Rector of the Heritage Foundation stated that if Clinton "really wanted to do something about welfare, he would have taken an entirely different tack—such as automatically cutting benefits after six months but allowing recipients to keep more of what they earn."\textsuperscript{292} Rector also

\textsuperscript{287} Clinton to Detail Welfare Plan, "I'D Be Very Surprised if They Can Seriously Move It," Gingrich Says, St. Louis Post Dispatch, June 14, 1994, at A5.
\textsuperscript{288} Id.
\textsuperscript{290} Id.
\textsuperscript{291} Debra J. Saunders, Growing Welfare As We Know It, San Francisco Chronicle, June 15, 1994, at A21.
\textsuperscript{292} Id.
claims that the bill does not really establish time limits but merely places "a few beneficiaries in make-work jobs," requires only 7% of welfare recipients to even enroll in work programs, and requires those enrolled to work only fifteen hours a week.\textsuperscript{293}

Originally envisioned to pass in 1994 in tandem with health care reform to revise the Medicaid system, the bill has now been put on the back-burner. After seven hearings on the bill, it was never brought for a vote before the November elections. Its fate remains uncertain.\textsuperscript{294}

4. The Child Support Responsibility Act of 1994. Disheartened by the stall of welfare reform, the Congressional Caucus for Women's Issues has begun a push to pass new child support measures independent of the welfare package.\textsuperscript{295} Proposed by Representatives Patricia Schroeder and Olympia Snowe, the Child Support Responsibility Act would "streamline the process for establishing paternity, improve collections, and track noncustodial parents across state lines."\textsuperscript{296} Among other things, the Act would require:

- creation of a commission to develop national child support guidelines
- changing W-4 forms to reflect child support obligations
- employers to withhold and send child support from wages
- state agencies to improve review of child support cases and move awards up or down as warranted
- listing both parties' Social Security numbers on marriage licenses, divorce decrees, children's birth certificates, and child support orders
- a limited number of child-support assurance demonstrations
- revocations of professional, occupational and driver's licenses of non-supporting parents
- an increase or elimination on the statute of limitation on child support debts
- reporting of delinquent payments to credit bureaus
- state agencies to place liens on motor vehicles
- interest and late fees to be imposed on arrearage
- seizure of lottery winnings and lump-sum settlements to satisfy child support debts

\textsuperscript{293} Id.
\textsuperscript{294} Wetzstein, supra note 289, at A4.
\textsuperscript{295} Cheryl Wetzstein, Backing Grows for Child Support Action; As Welfare Reform Package Stalls, Calls Mount to Go After Deadbeats, WASH. TIMES, Aug. 21, 1994, at A4.
\textsuperscript{296} Id.
attachment of public and private retirement funds
- easing of bankruptcy-related obstacles to obtaining child support
- denial of visas and passports to those with sizeable arrears.297

D. The Congressional Hearings

In July 1994, both houses of Congress invited testimony concerning the issues of child support enforcement and welfare reform. The purpose of the hearings was to gather input about the problems and to receive suggestions for corrective measures. In the Senate, the Committee on Governmental Affairs received testimony on July 20, 1994.298 In the House of Representatives, the Ways and Means Subcommittee heard testimony on July 28, 1994.299

1. Testimony Before the Senate. Senator Pryor took the floor of the Senate and stated the purpose of the hearing: to examine and highlight child support enforcement.300 After calling the current trend toward default "an outrage," Senator Pryor questioned the role of the federal government in child support collections.301

According to Senator Pryor, "the key issue is how well the present system can respond to the many new ideas contained in the Administration's welfare reform proposal."302 Although he recognized the need for legislative changes, Senator Pryor mentioned the concern expressed by the GAO about whether the present system can implement the new requirements.303

The bottom line is that "none of us is satisfied with the status quo."304 Although the Clinton Administration has made many innovative proposals to increase the amount of money collected, Senator Pryor expressed a belief that in order to effect real change, "we need a fundamental change in the public attitude towards this issue."305

297. Id.
301. Id.
302. Id.
304. Id.
305. Id.
a. Children's Defense Fund. Nancy Ebb, Senior Staff Attorney, presented the findings of the Children's Defense Fund ("CDF") study on state-based child support enforcement.\(^{306}\) The CDF found a need for broad-based reform of the entire system and emphasized that every state had failed to provide adequate child support enforcement services, mainly because of staggering caseloads. Ms. Ebb testified that at the current rate:

it will take over 180 years before each child served by a state child support agency can be guaranteed even a partial support collection. Ten generations of children will be born, reach the age of majority, and pass out of the child support system without our being able to guarantee each child that any child support was obtained in his behalf in a year.\(^{307}\)

Based on its findings, the CDF recommended federalizing the collection of child support but leaving paternity establishment and initial award of support at the state level. The CDF also urged Congress to adopt child support assurance which would guarantee a "minimum assured benefit" to the custodial parent.\(^{308}\)

b. Virginia Division of Child Support Enforcement. Pat Addison, Program Specialist for the Virginia Division of Child Support Enforcement, testified pertaining to her findings in nine years of work in child support programs.\(^{309}\) Addison described the overwhelming caseloads of child support workers and graphically narrated a typical scenario:

[The] current caseload assignment per worker is 1,000 cases and growing all the time. With this large number of cases and the available workhours in a year, if a worker was actually able to look at each case and devote time to it the total available time would only be 98 minutes a year which works out to 8 minutes a month per case. Eight minutes is easily taken up by one phone call, one document, sometimes even just getting your hands on a case file. It is difficult to keep a commitment you make to a customer even to return a phone call, when you are faced with a large number of tasks, constant phone inquiries, mountains of correspondence, and almost everything is a priority because it involves someone's money and children. Customers are also waiting in the lobby. Workers are rarely able to predict how the day will go or accomplish what they planned to do, no matter how good

\(^{306}\) Testimony of Ebb, supra note 143.
\(^{307}\) Id.
\(^{308}\) Id.
\(^{309}\) Statement of Addison, supra note 107.
their intentions are. So how do caseworkers decide which case to work at any given time? Usually they are customer driven... 310

Addison recommended that the federal government mandate a ratio of cases per worker or offer incentives for states to maintain a more manageable ratio. She endorsed the federal tax offset program (in which the income tax returns of non-supporting parents are retained for child support), but asked that it be extended to cover child support arrearage owed beyond the child's majority. 311

In addition, Addison advised Congress to expedite procedures, allow more frequent certification of existing support orders, and implement employer reporting of all new hires. Ms. Addison approved UIFSA, but criticized piecemeal state adoption, holding up the failure of URESA as an example of the effects of states picking and choosing provisions. She pointed out that such piecemeal adoption undermined the purpose of a uniform statute, saying, “it's uniform except in this state you do it one way and in that state you do it another way... [T]rying to keep up with 50 variations is almost impossible.” 312 To correct this, Addison urged Congress to mandate that every state adopt UIFSA verbatim. 313

Among other things, Addison spoke out on behalf of on-line access to a federal data base designed to locate absent parents and funding for public awareness and education programs. She denounced limitations on types of income which can be attached and court system backlogs. 314

c. Arkansas Office of Child Support Enforcement. Judy Jones, Administrator of the Arkansas OCSE, submitted written testimony which focused on strengthening the structure of the child support enforcement system. 315 Jones stated that increasing federal regulation has only hampered operations at the state level. She charged that oppressive regulation has changed the program “from one designed to assist families and reduce the cost of public assistance programs to one focused on passing audits and avoiding federal penalties.” 316

Jones went on to say that “meaningful change will not occur without redefining the goals of the program and restructuring the federal framework to provide leadership and to prevent micromanagement

310. Id.
311. Id.
312. Id.
313. Id.
314. Id.
315. Letter by Jordan, supra note 150.
316. Id.
through federal regulation and oversight." State innovation suited to each state's unique socioeconomic situations and flexibility are stifled by "time consuming and cumbersome" federal requirements, according to Jones. She also decried inconsistent statements of federal policy disseminated from region to region. To cure these problems, Jones recommended organizational changes which would elevate the Deputy Director of OCSE to have direct authority over all child support program staff.318

Jones further condemned bureaucratic barriers to efficient enforcement, specifically federal auditing procedures. The current audit system utilizes over 130 "process oriented criteria" rather than focusing on whether child support was actually collected.319 The auditing system takes up approximately 50% of OCSE central staff resources and actually prevents child support services.320

To correct auditing procedures, Ms. Jones suggested an audit program which would initially measure performance outcomes in six areas: paternity establishment, order establishment, collections of current support, collections of arrears, establishment of health insurance for children, and distribution of collected child support. After an initial audit, a state would only be required to submit to "outcome audits" unless it fails; then additional "process audits" could be implemented to diagnose the problem.321

Jones also argued for increased funding, mandatory state adoption of UIFSA, and a program to recover state Medicaid costs from non-supporting parents. She endorsed enforcement techniques such as new hire reporting, revocation of professional and commercial licenses, and a central registry of child support orders.322

d. U.S. Department of Health and Human Services. Mary Jo Bane, Assistant Secretary of the OCSE, testified concerning the Administration's future plans for the child support enforcement program.323 Bane characterized the child support program as a "Federal/state partnership with the mission of promoting self-sufficiency by securing regular and timely child support payment."324

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317. Id.
318. Id.
319. Letter by Jordan, supra note 150.
320. Id.
321. Id.
322. Id.
323. Testimony of Bane, supra note 139.
324. Id.
While noting that the statistics demonstrate progress has been made by the system, Bane admitted that the current system has failed. However, she outlined a multifaceted remedial approach through legislative reforms. To this end, Bane stated that the Federal government is “committed to shifting the Federal focus in child support from process to results,” and changing the federal role from that of a “reactive overseer to a proactive partner.”

Bane endorsed the President’s Work and Responsibility Act of 1994, which she called “the most powerful child support system ever to make sure parents pay their support.” According to Bane, the Act will reduce litigation, automate enforcement, and create a proactive system through three key initiatives: establishment of paternity, fair award levels, and universal payment enforcement. Further, the Act will replace fragmented child support structures with centralized state registries and clearinghouses as well as streamline Federal auditing procedures. Unfortunately, Bane did not divulge many details of how the Act would accomplish these goals.

e. U.S. General Accounting Office. Joseph Delfico, Director for Income Security Issues, addressed the Senate to discuss the record of the federal office responsible for overseeing state child support programs. Delfico candidly acknowledged that the OCSE “has had difficulty meeting its responsibilities.” The problems, according to Delfico, stemmed from reorganization, budget cuts, lack of a strategic vision, inadequate communications between regional offices and states, and flawed program data. In addition, Delfico charges that amendments to the original program have caused the OCSE’s mission to become less clear while the caseload has grown in both volume and complexity.

Reorganization in 1991 combined several agencies and caused states to have to deal with a minimum of five organizational units, adding layers of bureaucracy which impede communication between states, regions, and OCSE. This, Delfico claimed, has caused regional staff to misconstrue information and to communicate inaccurate messages to state offices.
Delfico also elaborated on ways the OCSE’s planning, goal setting, and performance measurement methods fall short of expectations, including the revelation that OCSE does not even have a plan for its own day to day operations. He then targeted cumbersome and futile federal auditing procedures which frequently result in reports issued a full two years after the audit is conducted.332

States, according to Delfico, want more technical and training assistance from OCSE and HHS as well as more input into regulations development. Delfico stated that the GAO’s study indicated that although current welfare reform proposals were needed, the OCSE would find it difficult to provide the leadership needed to implement them due to the demands of existing requirements.333

Ultimately, Delfico urged alteration of the current organizational structure of the system after determination of the role of regional HHS personnel, how regional resources should be spent, and where federal resources should be devoted to foster state goal achievement. He then cited the GAO’s pending report which he said would “discuss these and other issues in more detail.”334

2. Testimony Before the House of Representatives.

a. Child Support Enforcement (Private Corporation). Richard Hoffman, President of Child Support Enforcement (“CSE”), addressed the House of Representatives regarding the advisability of utilizing the resources of the private sector to collect child support obligations.335

After giving his credentials, which include eighteen years of family law practice as well as six years as Assistant Attorney General directing the Texas child support enforcement program, Mr. Hoffman discussed the Administration’s sweeping proposals to revamp the system.336

Mr. Hoffman commended the Administration’s plan, calling it “well thought out,” but said the proposals were so thorough that the taxpayers could not afford them.337 Hoffman then examined the current system, explaining why it is unworkable.338

The main problem, according to Hoffman, is that the current program lacks coherence and is outmoded. After discussing the dismal history of

332. Testimony of Delfico, supra note 15.
333. Id.
334. Id.
335. Testimony of Hoffman, supra note 17.
336. Id.
337. Id.
338. Id.
the program, Hoffman scrutinized the Administration's plans to implement additional federal mandates in view of demographic evidence. Citing statistics, Hoffman asserted that although the new requirements would improve effectiveness and productivity of the government's program, they would be unable to "make a dent in the backlog."\textsuperscript{339} Hoffman described the existing system as "overworked and overextended" and charged that even with the proposed reforms, there were just too many cases for the government to handle effectively.\textsuperscript{340}

Hoffman went on to propose that Congress "reinvent" the child support system utilizing a "two tiered case management system."\textsuperscript{341} Tier One of Hoffman's system would focus on families receiving welfare assistance as well as those struggling to stay off welfare. Hoffman justifies inclusion of the second category as "cost avoidance."\textsuperscript{342} Hoffman would, however, prioritize Tier One cases to work welfare recipient families first.\textsuperscript{343}

Tier Two would consist of cases that do not meet eligibility requirements for the first tier and would only be worked by states which had effectively already worked the cases in Tier One. Tier Two cases could then be charged fees based on a sliding scale or be turned over to the private sector.\textsuperscript{344}

Hoffman's message to Congress was essentially that Tier Two cases can be managed more efficiently and effectively by the private sector by introducing "an urgently needed additional workforce."\textsuperscript{345} Additionally, Hoffman advocated increased participation by the private sector in the areas of paternity establishment and monitoring of delinquency. Hoffman envisioned the private sector's role being expanded to assist government agencies in collections. He justifies governmental use of private companies by suggesting a contingency fee arrangement in which the government does not pay unless a collection is made. In this way, says Hoffman, the government "could retain and enlist the services of the private sector on an as-needed basis and be guaranteed a return on the case, since payment would be issued only upon achievement of a successful result."\textsuperscript{346}

\textsuperscript{339} Testimony of Hoffman, \textit{supra} note 17.
\textsuperscript{340} \textit{Id.}
\textsuperscript{341} \textit{Id.}
\textsuperscript{342} \textit{Id.}
\textsuperscript{343} Testimony of Hoffman, \textit{supra} note 17.
\textsuperscript{344} \textit{Id.}
\textsuperscript{345} \textit{Id.}
\textsuperscript{346} \textit{Id.}
Hoffman believes that child support enforcement would become more productive if public and private agencies cooperate in locating the absent parent and collecting the money. He points to the example of credit bureaus to demonstrate the advisability of such an information sharing arrangement.347

Finally, Hoffman encouraged Congress to take affirmative steps to change societal attitudes about child support in much the same way Mothers Against Drunk Driving ("MADD") has worked to change attitudes about responsible drinking. Hoffman also urged Congress to ensure that "at every possible turn" the cost of enforcement be placed on the parents who caused the problem by failing to pay support instead of on the taxpayer.348

b. American Academy of Matrimonial Lawyers. The American Academy of Matrimonial Lawyers presented a position paper on Federal Child Support Issues to the House.349 The paper stated the Academy's belief that "the federal government has a legitimate interest in ensuring basic legal rights for parents and children, including the right to be supported and the right to parent your children."350 The paper went on to state, however, that "whenever possible, the states should be allowed to refine the law to meet their own state's needs."351

The Academy advocated expanded use of a federal locator system, to include information for purposes of enforcing visitation as well as support, increasing access to armed forces personnel, and allowing access by private attorneys and pro se litigants. In addition, the Academy urged expansion and uniformity of the child support order registry. The registry would include registration of all parties using a uniform abstract of judgment and report findings of income whenever support is established or modified. It would also increase the use of direct wage withholding and eliminate the need for "change in circumstances" when guideline application results in a material change in the support order. The registry would also provide for notification of changes of address of either party, but prohibit release of information where abuse or safety is at issue.352

347. Testimony of Hoffman, supra note 17.
348. Id.
350. Id.
351. Id.
352. Id.
The Academy also suggested establishment of a quantifiable maximum turnaround time for furnishing information and responding to requests as well as an expanded database for warrant and public record information. Expansion and improvement of current processes could be achieved by requiring adoption of UIFSA without material change and requiring states to serve out-of-state process with the same priority and guidelines used for in-state.\textsuperscript{353}

Among other changes proposed by the Academy were: extension of child support for high school students until age twenty; changing the statute of limitations on arrearage to the attainment of age twenty-one or ten years from the due date, whichever occurs later; expanded enforcement procedures; and liberalization of procedures for protecting child support arrearage from bankruptcy protections.\textsuperscript{354}

c. Women's Legal Defense Fund. Judith Lichtman, President of the Women's Legal Defense Fund ("WLDF"), testified before the House concerning the failure of the state-based child support enforcement system.\textsuperscript{355} The brunt of the statement reflected that state-based systems were not working, that the system should be federalized, and that a national program of child support assurance is needed.\textsuperscript{356}

In support of federalization, Lichtman stressed the need for a single agency approach. Citing the record of state-based programs, she contended that the Administration's proposals were doomed to failure. Although Lichtman concedes that if the Administration's proposals were fully implemented, they could significantly improve the state-based system, she finds full implementation unlikely.\textsuperscript{357}

WLDF endorses the establishment of a national system of child support assurance as a reliable supplement to the wages of a custodial parent. Under its proposed system, when a noncustodial parent fails to make support payments, the government would step in and make a guaranteed minimum child support payment. The government would then recoup its payment from the defaulting parent.\textsuperscript{358}

WLDF, however, decried the test support assurance programs proposed by the Administration which would reduce AFDC benefits...
dollar for dollar for the assured benefit. This, according to Lichtman, would result in no economic gain to the AFDC family and would not encourage the custodial parent to seek to combine child support and work in order to get off the welfare rolls.\textsuperscript{359}

Among other concerns, WLDF urged Congress to implement legislation to help families to obtain support awards, to decrease caseloads of child support workers, and to establish a national child support guideline. WLDF also recommends that the existing system be restructured to improve modification of awards.\textsuperscript{360}

Overall, however, WLDF commends the Administration “for recognizing that comprehensive reform of this country’s child support system is required.”\textsuperscript{361} WLDF stresses that time is of the essence and asks that Congress implement a workable system quickly, “not five years from now.”\textsuperscript{362}

\textit{d. Project for the Improvement of Child Support Litigation Technology.} Roger Gay spoke out in protest against child support guidelines and child support awards generally.\textsuperscript{363} Gay charged that parental responsibility does not mean that parents should be punished if they are unable to provide. He rejected the idea that child support should be subject to “government control and manipulation of parental resources.”\textsuperscript{364} Instead, Gay feels that parents should “make their own decisions and act upon them.”\textsuperscript{365}

Gay denounced current support guidelines as “formulae that anyone could develop” and made vague accusations that the guidelines are “applied without comprehension . . . in favor of the goal of increasing the amount of child support awarded.”\textsuperscript{366} Further, Gay insists that each state needs to provide a legal definition of child support to enable noncustodial parents to challenge child support calculations.\textsuperscript{367}

Gay explained that child support should be subject to “natural limits” which he described in relation to the standard of living of the custodial

\textsuperscript{359.} Testimony of Lichtman, \textit{supra} note 355.
\textsuperscript{360.} \textit{Id.}
\textsuperscript{361.} \textit{Id.}
\textsuperscript{362.} \textit{Id.}
\textsuperscript{364.} \textit{Id.}
\textsuperscript{365.} \textit{Id.}
\textsuperscript{366.} \textit{Id.}
\textsuperscript{367.} Testimony of Gay, \textit{supra} note 363.
parent. In Gay's view, when the limit is reached, "there is a sudden, sharp decline in the percentage of any additional money transferred to the custodial parent that would actually be spent on children." Any amount of child support given to a custodial parent beyond this natural limit actually becomes spousal maintenance.

Further, Gay charged that the current child support guidelines include a hidden margin of spousal maintenance of approximately fifty percent. This, says Gay, is illegal. To cure this, Gay espouses the use of "new equations" which "are designed to adapt to variations in circumstances by use of a small number of mathematical techniques" which can distinguish between spousal maintenance and child support.

Gay then compared the United States system to the Swedish Model and stated that "estimates of child support compliance in the United States, without our new expensive collection system, were between 70-90 percent." Gay praised the Swedish model and asserted that since joint custody is automatic when couples separate, the government is not allowed to become involved in the details of family management, such as child support awards and enforcement.

Gay went on to commend the Swedish system's reliance on personal responsibility, saying that such a sense of personal responsibility is lacking in the United States merely because it is not respected (presumably by the government). Gay declared that "we can't expect pride in the idea of being personally responsible to survive when it is bent to mean capitulation to government control over one's personal life."

Gay then attacked the Administration's proposals for welfare reform. He reported that the public "has been badly misinformed" about the proposals and that "[i]t's just a pork barrel." Gay explained that "people who have spent a lifetime building a business or profession will fall on bad times and get behind in their child support payments." The result of proposed sanctions which include revocation of professional licenses is that these people will lose their means of support and be forced into "low wage government labor." Gay asked, "How many

368. Id.
369. Id.
370. Id.
372. Id.
373. Id.
374. Id.
375. Testimony of Gay, supra note 363.
376. Id.
377. Id.
suicides does it take to satisfy the average politician’s desire for a sound bite?”

The remainder of Gay’s testimony went on in this same vein. He accused every major news outlet of inundating the public with “anti-father propaganda” which creates and maintains the “false impressions that allow the corruption of our system to flourish.” Gay called proponents of welfare reform “snake oil salesmen” and condemned the commission on child support guidelines.

In conclusion, Gay stated that being able to support a family financially is “not in any sense equal to parenting.” He maintained that United States fathers “have been unsurpassed in their generosity of time and financial resources when it comes to their children.” In response to governmental interference, Gay said that “[c]itizen armies have formed in an attempt to protect the family against a government intent on destroying it.”

V. CONCLUSION

Despite countless attempts to correct the system, the nation’s child support enforcement system does not work. The failure of noncustodial parents (usually fathers) to pay child support is the reason an overwhelming amount of custodial parents (usually mothers) are forced into government welfare programs. Because the welfare system has become such a drain on the national economy, the child support enforcement system has become an area of national concern. The current administration has promised to reform the welfare system and has focused its resources on reform in the area of child support collections.

Although every study made has found the current system inadequate, proposals for correction vary greatly and disagree in fundamental particulars. The toughest decision will be whether to try to reform the state-based model or to create a completely federalized system.

Although Congress has received several proposed bills containing schemes for child support reform and has heard extensive testimony concerning the problem, it declined to vote on any legislation in its last session. Instead, Congress elected to study the problem more extensively and deferred making any decision.

378. Id.
379. Testimony of Gay, supra note 363.
380. Id.
381. Id.
382. Id.
383. Id.
Despite broad consensus on the identification of the problem, no such agreement exists on the solution. Although some proposed innovations have met with broad acceptance, such issues as funding and administration have deadlocked any decision-making.

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