

Private Attorney Access to Child Support Enforcement Tools in the Recommendations of the U.S. Commission on Interstate Child Support

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I. Introduction.

On August 4, 1992, the United States Commission on Interstate Child Support released its Report to Congress, thereby concluding nearly two and one-half years of in-depth and detailed study of the nation's child support enforcement system. The work of the Commission was unprecedented; the impact of its recommendations, momentous. By every measure, the Report of the Commission to Congress represented a defining event in the historical development of child support enforcement – and of family law – in this country. In providing the bases for the extensive and highly prescriptive child support enforcement provisions of the 1996 Welfare Reform Act – the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) – the Report's recommendations moved the role of the federal government in state domestic relations law far beyond the position established for it under the provisions of earlier congressional Acts, including the Child Support Amendments of 1984 and the Family Support Act of 1988.

Among the one hundred and twenty recommendations of the Commission, contained in its 446-page Report, was one that was endorsed by the House of Delegates of the American Bar Association in 1993 and that was included in several bills introduced by key members of Congress who sought the implementation of the Commission's master plan for reshaping the child support enforcement system. It was, however, a recommendation that for a number of reasons – not the least of which were political and ideological – never made its way into the 1996 welfare reform. That was "Recommendation No. 8(c)" which reads as follows:

Private attorneys and pro se obligees shall be given access to state locate resources, tax refund offsets (state and federal), and other public enforcement techniques through the [state Title IV-D] child support enforcement agency, with appropriate privacy safeguards for the information provided. The cost of such services must be disclosed to the custodial parent prior to the provision of any service.

This month we will explore the historical background of the Commission's recommendations and examine the particular importance of Recommendation No. 8(c) for child support enforcement in this country. We will also consider why this particular recommendation of the Commission was not enacted under PRWORA in 1996 or subsequent legislation and why it continues to have great significance for the future of child support enforcement in this country.

II. Legislative Events Leading to the Creation of the Interstate Commission.

On January 4, 1975, President Gerald Ford reluctantly signed into law the Social Services Amendments of 1974 (P.L. 93-647) which contained a new part D of title IV of the Social Security Act establishing a state-federal child support enforcement program – the “Title IV-D program”. Ford shared the concerns of many members of Congress that the new child support program would intrude too greatly into what was a traditional domain of the states – domestic relations. While some members of Congress had long sought – and, indeed, fought for – the establishment of such a child support program, the provisions creating it were enacted by the 93rd Congress only because they were put into legislation having strong bipartisan support for improvements to federally funded social services programs.

Within a few years the kinds of reservations President Ford and others had had in 1975 about the role of the federal government in matters of family law disappeared. The reason was that Congress had become increasingly concerned about the cost to the taxpayer of supporting on welfare the dependent children of “absent” parents who did not provide the child support they legally and morally owed. Many members of Congress wanted stronger laws, tougher penalties, and more aggressive enforcement actions by the states to deal with these “deadbeats.” But in addition to the rising federal expenditures on welfare, Congress was concerned about the economic injustice done families who did not receive the support due them. Child support – or the lack of it – affected many more children than just those in families having to rely on public assistance.

In 1984, after nearly two years of hearings by committees in both chambers and after some failed efforts, Congress passed landmark child support enforcement legislation – the Child Support Amendments of 1984. The new Act imposed a number of mandates on the states and refocused the efforts of the Title IV-D program to provide effective services to both public assistance families (who were required to cooperate with the program as a condition of eligibility for welfare benefits) and non-public assistance families (who could apply for services). What Congress learned in the succession of committee hearings was that there was a great disparity among the states in the quality of child support services provided by state IV-D programs and that, to some degree, this

unevenness resulted from the lack of uniform laws and procedures. But Congress also discovered that the federal Office of Child Support Enforcement (OCSE), in the Department of (now) Health and Human Services, was failing to provide effective leadership and technical assistance to the states. Moreover, the overall problems of a largely ineffectual child support enforcement system were worsened by a federal funding structure that provided no real financial incentives (or penalties) to the states to do a better job of serving families needing enforcement services.

The 1984 Act sought to rectify problems within the Title IV-D system and to strengthen child support enforcement among the states. In large measure it succeeded in its goals. Among the new state mandates were: mandatory wage withholding in Title IV-D cases and the initiation of wage withholding in all other new or modified support orders issued in a state upon one month's delinquency in support payments or at the request of the obligor; the imposition of liens against real and personal property of an obligor for past-due support; the interception of state income tax refunds for payment of past-due support; furnishing consumer credit reporting bureaus, upon request, with information about overdue support in IV-D cases; requiring bonds or other guarantees from obligors with a history of delinquency; allowing the establishment of paternity until the 18th birthday of a child; the inclusion of medical support in a child support order wherever health insurance was available to the non-custodial parent at reasonable cost; and requiring the use of quasi-judicial or administrative expedited processes for Title IV-D cases to meet prescribed time frames. Other provisions of the Act changed the system for payment of federal incentives to states for Title IV-D program performance in order to promote the delivery of services equally to public assistance and non-public assistance families. Moreover, the Act made enhanced federal matching funds available to states for the development of automated data retrieval and information systems in their Title IV-D programs to strengthen locate and enforcement efforts. Also, the use of the interception of federal income tax refunds was extended to non-public assistance cases, and states were required to develop guidelines to be used at the discretion of courts or administrative entities in setting child support obligations in both IV-D and non-IV-D cases. In addition, state IV-D programs were required to publicize the availability of their services and generally to be more accountable for their case processing through triennial audits conducted by OCSE.

The 1984 Act brought a number of changes not only to the Title IV-D program in particular, but to state domestic relations law in general. It also represented a significant change in the thinking of the Congress about the national child support enforcement program and the role of the federal government in overseeing and strengthening it. In place of the kind of timidity and uncertainty

in the Congress that heralded the establishment of the Title IV-D program in 1975, the 1984 Amendments exhibited a determination by Congress that parents assume responsibility for financial support of their children, instead of putting that responsibility on the backs of the taxpayers through public assistance programs. But members of Congress were, also, concerned about the high level of poverty among single-parent families, in large measure attributable to the failure of the absent parent to provide child support. They were, as well, troubled by what they perceived to be the inadequate performance of state programs in vigorously addressing the enforcement need of growing numbers of families included in the IV-D caseload. Therefore, in their judgment, it was imperative that the federal government itself assume a more aggressive and involved role in the national child support enforcement effort.

Of the various enforcement mechanisms mandated of states under the 1984 Act, wage withholding for child support was viewed as potentially having the greatest effect, and congressional expectations with respect to wage withholding were, indeed, very high. A 1986 report by the General Accounting Office, however, did not paint an encouraging picture of states' efforts to meet the 1984 wage withholding mandates. While most states agreed about the potential of wage withholding, only 40 percent of the states had enacted the statutes and procedures needed for implementing wage withholding in the manner prescribed by the Congress.

It became increasingly clear to Congress that the 1984 Amendments were no panacea for the intractable challenges inherent in child support enforcement. It also became increasingly clear to some key congressional leaders that attempts to restructure the welfare system — a matter of acute concern to Congress, as well as to the Reagan Administration — could produce no sound and lasting effects without, also, dealing with deficiencies in child support enforcement. In the Senate the chief proponent for coupling welfare reform with improvements in the child support enforcement program was Daniel Patrick Moynihan (D-NY). As chair of the Subcommittee on Social Security and Family Policy, Committee on Finance, Senator Moynihan was well positioned to lead the effort on both fronts. At the beginning of the 100th Congress in 1987, he held two days of hearings to explore ways to ensure that parents assumed primary responsibility for the financial support of their children, both through payment by non-custodial parents of ordered child support and through income-producing jobs (at least part-time) on the part of custodial parents able to work. For custodial parents unable to work, the government — in the Senator's scheme — would provide time-limited benefits. This basic scheme was to provide the structure for the next major piece of federal legislation affecting the national child support enforcement program — the Family Support Act of 1988 (FSA).

Although by 1987 states had had only limited – and very mixed – experience with both wage withholding and the use (albeit discretionary) of guidelines for setting support awards, witnesses at the Senator’s hearings repeatedly stressed the importance both of strengthening wage withholding and of ensuring that support awards were consistent, equitable, and, above all, sufficient to meet the needs of dependent children. A little over a year after the Senate hearings, the Subcommittee on Public Assistance and Unemployment Compensation of the House Committee on Ways and Means conducted its own inquiry into the compliance of states with the 1984 mandates and possible improvements to the child support enforcement program. Witnesses on this occasion affirmed the importance of wage withholding as an enforcement mechanism but pointed out that inadequate automated systems undercut the ability of states to use this, as well as other enforcement tools. Moreover, the great diversity of state laws and procedures made interstate enforcement a veritable nightmare; child support obligors could – and did – very easily escape their obligations simply by relocating from the state in which a support order had been rendered. This meant that a great number of the cases entrusted to the IV-D system for enforcement, as well as a great number of those pursued by private attorneys, were simply lost causes. Although over a quarter of a century earlier the National Conference of Commissioners on Uniform Laws had promulgated, and the American Bar Association had approved the use of the Uniform Reciprocal Enforcement of Support Act (URESA) for the interstate enforcement of child support, this was only a “model act.” States were not required to use its provisions, although, in time, forty-eight states did subscribe to it in one fashion or another.

Under URESA’s provisions, states could pursue either civil enforcement – by petition or by the registration of an existing order – or criminal extradition. Because of the diverse state adaptations of URESA, however – as well as its inherent limitations – URESA never became an especially effective instrument for pursuing interstate child support. Moreover, as Robert Arenstein of the ABA’s Family Section testified, URESA was outdated and many of its provisions, deficient. A new interstate Act was needed – one to which all states would subscribe and which they would follow uniformly. Furthermore, as the ABA had learned from its own efforts to assist states in implementing the 1984 requirements, Congress had to address the use by the states of both wage withholding and child support guidelines inasmuch as the 1984 federal requirements in both areas were not sufficient.

The hearings in both chambers led to the introduction of bills in the House and Senate during the 100th Congress to reform the welfare system and to strengthen child support enforcement. Two legislative proposals – one offered by Representative Harold Ford (D-TN) and the other by Senator Moynihan –

developed into the FSA which was signed into law by President Reagan on October 13, 1988. This Act incorporated child support enforcement provisions common to several bills pending in the 100th Congress. These included provisions for strengthened wage withholding by requiring states to institute immediate income withholding in IV-D cases where the support order is issued or modified on or after November 1, 1990, except where the tribunal finds good cause not to require immediate withholding and the parties reach a written agreement providing for an alternative arrangement for payment of ordered support. In other IV-D cases income withholding would commence automatically upon one month's delinquency in payment of support or earlier, without regard to a delinquency, the earliest of the date the obligor requests withholding, the date the obligee requests it (subject to approval by the state according to its own procedures and standards), or any earlier date the state may set. Moreover, states must have procedures for immediate income withholding in all child support orders initially issued on or after January 1, 1994, whether or not these orders were enforced by the IV-D program.

Paternity establishment was another area of critical concern addressed in the congressional hearings. Here the FSA required state IV-D programs to meet certain, specific performance measures, subject to federal penalties for failure to meet the standards. In addition, states were required to have statutorily prescribed procedures for having all parties in a contested paternity case to be genetically tested upon the request of one party. Moreover, states were "encouraged" to develop and use simple civil processes for the voluntary acknowledgment of paternity, as well as civil procedures for establishing paternity in contested cases. To promote more aggressive paternity establishment by state IV-D programs, the Act provided enhanced federal matching funds (at 90%) for the use of genetic testing in contested cases, although state programs were permitted to charge a requesting party in a non-public assistance case the full costs of genetic testing.

In another significant step toward achieving greater uniformity of state child support enforcement procedures, the FSA required states to develop and use mandatory guidelines for establishing child support award amounts. The use of the mandatory guidelines in a judicial or administrative proceeding presumptively established the correct amount of child support in a case, unless there was a written or specific finding on the record that the use of the guidelines in a particular case would be unjust or inappropriate. Related to the use of mandatory guidelines was the requirement the state IV-D agency periodically review support awards in its caseload to determine whether or not an adjustment (upward or downward) of the amount was required to comport with the state guidelines.

III. The Charge and Work of the Interstate Commission.

The complex problem of interstate child support enforcement raised in the congressional hearings of 1987 and 1988 commanded a prominent place in the Act. Section 126 of the FSA - following the Senate amendment to the Conference Report on the bill (H.R. 1720) – called for the establishment of a “Commission on Interstate Child Support” which would provide Congress with recommendations for “(A) improving the interstate establishment and enforcement of child support awards, and (B) revising the Uniform Reciprocal Enforcement of Support Act.” The fifteen members of the Commission were to be appointed “from among individuals knowledgeable in matters involving interstate child support,” with seven members chosen by the Secretary of Health and Human Services and four members by the leadership of the Senate and four by the leadership of the House.

According to provisions of the Act, the Commission members were to be appointed by July 1, 1989, and the Commission was to make its report, with recommendations, to Congress by “not later than May 1, 1991.” As it turned out, neither of these dates held. First, the selection of the membership took longer than had been anticipated, in part because of the need to find as broad a spectrum as possible of representation from the diverse participants in child support enforcement: state and federal legislators, jurists, attorneys, members of advocacy groups, and officials from federal and state government agencies. The result was that the Commission did not actually begin its work until mid-year in 1990. Once assembled, the members elected Margaret (“Meg”) Campbell Haynes, the director of the ABA’s Child Support Project, the chair of the Commission.

As for the due date of the Commission’s report, the tasks undertaken by the Commission required a greater amount of time than that envisioned by the drafters of the legislation for the simple reason that the Commission made a critical decision at the outset to do far more than just suggest improvements to interstate enforcement and URESA. As Ms. Haynes stated in her “Preface” to the Commission’s Report, the majority of the Commission’s members found that it was not possible to separate neatly interstate concerns from the “many laws, policies, and procedures that govern intrastate cases.” This meant scrutinizing the diversity of state laws and procedures affecting child support enforcement, as well as the mechanisms and resources available to state IV-D programs for locating absent parents, establishing paternity, and establishing and enforcing support obligations. This, in turn, required consideration of ways to integrate state and federal resources and to make the most effective use of those resources, as well as achieve greater uniformity of practices among the states. This expansive agenda necessitated – in addition to a “national leadership conference” mandated under the FSA – a number of public hearings and

informal meetings around the country and the drawing in of the expertise of specialists in various areas, such as medical support, military enforcement, privacy rights, jurisdiction and choice of law issues, service of process, criminal nonsupport, and automated data systems. Because of the delay in the beginning of Commission's work and the manner in which it undertook its charge, Congress had twice to enact amendments to the FSA to extend the life of the Commission and the date by which its report would be submitted.

As the Commission proceeded in its, now broadly defined, task, it generated various papers with findings and tentative recommendations affecting both intrastate and interstate enforcement. In doing so, it invited responses from the child support enforcement community, including national organizations of child support professionals and groups with particular interest or involvement in child support enforcement, such as the National Child Support Enforcement Association, the Children's Defense Fund, the American Public Welfare Association, the ABA, the National Governors's Association, the American Society of Payroll Management, and advocacy groups. The purpose of this extensive involvement of groups with an interest in child support enforcement was to ensure, to the extent possible, that the final recommendations of the Commission would reflect an effective consensus of the child support community and, accordingly, would ensure broadly based support for the implementation of the Commission's Report.

When the long-awaited Report was transmitted to Congress, it provided exactly what its title stated: "A Blueprint for Reform." Virtually no area of child support enforcement went unaddressed, although certain matters – in particular those of custody and visitation – were, upon the decision of the majority of the Commission's members, only tangentially considered, being viewed as engaging issues separate from child support enforcement itself. Also, the majority the Commission's members decided against recommending a change from the existing state-based system to a completely federalized system. As the chair of the Commission, Margaret Haynes, stated in summing up the nearly two and a half years of work:

As a group we have labored long to develop recommendations that are both practical and visionary. We have based our recommendations on a belief that with strong federal leadership, needed improvement to the interstate establishment and enforcement of support awards can, and should, be made in the context of state-based systems.

The key elements in the Commission's report related to vast improvements in locate resources, both state and federal; the expeditious use of income withholding across state lines; identical enactment by states of a new "Uniform

Interstate Family Support Act” (UIFSA), developed by NCCUSL to replace URESA; uniform state laws and procedures for voluntary acknowledgment of paternity, including uniform evidentiary rules for contested cases; universal access to healthcare insurance for children of separated parents; an increase in trained state program staff and resources to ensure that cases are processed in a timely and attentive manner; a review of funding for the Title IV-D program, including incentives to promote higher levels of program performance; and vigorous leadership at the federal level to provide states with a common focus and direction. These elements translated into dozens of specific recommendations, some requiring major changes in state and federal law, as well as significant financial impact at both the state and federal level.

Of particular concern to the Commission was the need for “universal, speedy data exchange for location and enforcement.” As the Report asserts:

States require access to a range of data that can help pinpoint the locations of non-custodial parents or their income and assets. Whether it is a non-IV-D case handled by a private attorney or a IV-D case processed by government workers, fast access to current information is essential.

To ensure speedy access to comprehensive information for locate and enforcement purposes, the Commission recommended that all states be required to have central registries of support orders, that there be a national computer network linking state information systems with an expanded Federal Parent Locator Service (FPLS), and that there be a system whereby every newly hired employee would report any child support obligation on the W-4 forms or, if no obligation were reported by the employee, the W-4 information could be transmitted over the proposed national network to see if any match is made between that information (e.g., the social security number of the employee) and a support order recorded in a state registry.

The recommendations of the Commission with respect to locate and case tracking envisioned, then, a system of interstate and intrastate and state-to-federal automated transmission of critical data concerning child support obligors – not just their physical whereabouts, but also their employment and other income sources and assets. The automated system envisioned by the Commission would incorporate a great variety and range of information sources, both federal and state, including, at the state level, some fifteen different data sources – such as records of state and local tax departments, motor vehicle departments, occupational and professional licensing agencies, bureaus of vital statistics, private credit reporting agencies, and records of publicly regulated utility and cable television companies. As the Commission observed: “An effective locate strategy rests on proactive monitoring and early intervention in

cases to determine address, employer, income and assets of the parent(s).” Delay in access to such critical information - particularly where new hire information can be matched with support orders in a case registry - only results in delayed, and potentially ineffectual, enforcement action. This kind of expedited and easily accessible information network would be an important corrective to the, then, current process of pursuing enforcement only after support arrearages had mounted and the obligor had “disappeared.”

In examining the inadequacies of the, then, existing system for locating parents subject to support orders and enforcing support obligations, the Commission became aware that any effort to revamp the system had to take into consideration that not all child support orders were being enforced by state Title IV-D programs and that any effective and comprehensive national child support enforcement effort would have to go beyond the IV-D realm. Accordingly, the Commission made the bold recommendation that:

Private attorneys and pro se obligees shall be given access to state locate resources, tax refund offsets (state and federal), and other public enforcement techniques through the [state IV-D] child support enforcement agency, with appropriate privacy safeguards for the information provided. The cost of such services must be disclosed to the custodial parent prior to the provision of any service.

It was apparent to the Commission that this sort of recommendation would require a change in the way the federal government and states approached the child support enforcement problem and the way the Title IV-D program operated -at least to the extent of acknowledging that the problem went well beyond the confines of the government child support enforcement program. It was clear, then, that, to address the magnitude and complexity of the problem, it was imperative that all locate and enforcement resources be made available to every participant in the enforcement effort, both public and private. While this perspective of the Commission introduced a new dimension to the mapping out of a “Blueprint for Reform” of the child support enforcement system, the Commission advanced its recommendation with utmost conviction. In a highly significant assertion, the Report to Congress lays out the thinking of the Commission in the following manner:

The Commission is convinced that the needs of children for economic support . . . are more than ample reason to provide access to all records that will assist child support officials, courts, and attorneys in doing the jobs required of them.

Given “the needs of children for economic support,” it was clearly inconceivable that anyone pursuing enforcement of a support obligation would be denied

information of any kind that would aid in that enforcement effort. Similarly, it made no sense that the use of all congressionally authorized enforcement remedies (“public enforcement techniques”) would be denied to attorneys with the same adverse effect too families that had to make do going without the child support they were owed and urgently needed. Although such enforcement resources needed to be available to those outside the Title IV-D program who were seeking to secure support for families, the availability and use of these resources had, as the Commission observed, to be through the state IV-D agency and subject to “appropriate privacy safeguards.”

The ABA’s House of Delegates agreed with the perspective of the Commission and its sense that “the needs of children for economic support” should be paramount – and directive – in reforming the child support enforcement system. In February 1993, in response to the Commission’s recommendation, the House of Delegates passed a resolution that read in pertinent part, as follows:

RESOLVED, That the American Bar Association endorses the recommendations of the U.S. Commission on Interstate Child Support to improve the interstate establishment and enforcement of child support orders.

BE IT FURTHER RESOLVED, That the American Bar Association:

(c) Urges Congress to pass legislation to give priority to the following recommendations of the Interstate Commission:

(9) Extend the availability of enforcement remedies currently available only to IV-D cases (handled by state and territory agencies) to cases brought by private attorneys on behalf of custodial parents and to pro se parties.

This resolution of the House of Delegates only underscored the Commission’s own sense of the urgency to attack the extensive and systemic problems of the national child support enforcement effort full-face and full-force. The Commission did not shy away from embracing the great range of issues within the scope of its work. It did not elect to recommend only piecemeal solutions, to apply only patches here and there to a program that needed not fixes, but a complete overhaul. It could clearly see – after extensive study of the problems and after considering the testimony of dozens of individuals and groups – that nothing less than a new and daring approach was needed. In spite of the improvements provided by Congress and the dedicated efforts of state IV-D agency staff over the years, the Commission had concluded that there were fundamental flaws and deficiencies in the system – and, thus, a need for “A Blueprint for Reform.”

IV. The Response of Congress to the Interstate Commission's Recommendations.

Even before the Commission had submitted its final Report in August, 1992, members of Congress who knew the Commission's work and the nature of its recommendations were eager to develop legislative proposal for implementing the "Blueprint." On October 1, 1992, two members of Congress who had served on the Commission – Representative Marge Roukema (R-NJ) and Senator Bill Bradley (D-NJ) – introduced comprehensive and identical legislation to implement the Commission's recommendations, H.R. 6091 and S. 3291. In his remarks on the Senate floor introducing the legislation, Senator Bradley – whose proposal it was to create an Interstate Commission under provisions of the FSA – spoke of the deficiencies of the existing system. "It is time," he said, "to revamp the way we collect interstate child support because the gaps in the system are a nightmare for everyone involved – the parents, the caseworkers, but above all, the children who are caught in the middle of this whole mess." He went on to observe that while improvements made to the child support enforcement system enacted by Congress in 1984 and 1988 had yielded positive results, "[y]et even with these improvements, no one would suggest that we have solved all the problems."

Even with all the work that has been done in child support over the last few years, the fact is that \$5 billion of owed child support remains unpaid by non-custodial parents and millions more is [sic] never owed because no child support order has been established. Despite some improvement, the system still fails to make collections in too many cases. Who pays for this tragedy? The American taxpayer and millions of children whose life-chances are severely restricted by the lack of money.

The bills filed by Senator Bradley and Congresswoman Roukema on October 1, 1992, contained provisions implementing all the major recommendations of the Interstate Commission - including the recommendation that private attorneys and pro se obligees have access to the information resources and enforcement tools available to the Title IV-D program. The pertinent section in each of the two bills reads as follows:

PRIVATE ATTORNEY ACCESS TO LOCATE AND ENFORCEMENT SERVICES.

Section 466(a) [of the Social Security Act], (42 U.S.C. 666(a)) . . . is amended by inserting after paragraph (12) the following new paragraph:

(13) Procedures under which private attorneys and pro se obligees are given access to information located in the State locate resources and through

enforcement techniques of the State [Title IV-D] child support enforcement agency, for the limited purpose of establishing, modifying, and enforcing child support, visitation, and parentage orders, provided that safeguards are in place to prevent release of information when it may jeopardize the safety of the children or either parent. Such procedures may provide for reasonable fees for such access.

In this one, brief amendment to the federal code, these two distinguished and highly regarded members of Congress were proposing, as the Commission strongly recommended, a nearly revolutionary change in the orientation of the child support enforcement program. Instead of being restricted to the government program — which, in spite of repeated efforts by Congress to improve its performance, was still not meeting the needs of America's families — the extensive information resources and enforcement mechanisms already in existence and being proposed by the legislation would be extended to members of the private bar engaged in child support enforcement. These visionary members of Congress could see that the salutary impact of the enactment of this proposal upon the, then, abysmal state of enforcement efforts would be enormous — all to the benefit of the millions of children who should, but did not, receive financial support from an absent parent.

No action was taken on either bill because the Second Session of the 102nd Congress was at its end. Therefore, both Senator Bradley and Congresswoman Roukema reintroduced their bills — with minor changes — in the First Session of the 103rd Congress, on April 1, 1993. This time both bills — H.R. 1600 and S. 689 — carried the names of an impressive list of co-sponsors, senior members of both parties. In impassioned speeches on the floor of the House and of the Senate, Congresswoman Roukema and Senator Bradley appealed to their respective colleagues to move quickly, to act boldly to implement the recommendations of the Commission. Both of these members of Congress could speak with authority about the problems and needs of the national child support enforcement effort inasmuch as both had been leaders in shaping earlier legislation enacted by Congress — in particular the Amendments of 1984 and the FSA. Their words, then, counted when it came to promoting the enactment of the Commission's recommendations. "If we are serious about improving the lives of families — of children," said the congresswoman, "we must act swiftly to ensure that all parents provide for their children." She continued:

Ideally, children should be supported emotionally and financially by two loving parents. Unfortunately, government cannot ensure that all children will receive the emotional support that they so desperately need from both parents. Government can, however — indeed government must — take action to ensure that parents live up to their moral and legal responsibility to provide financial

support for their children. I believe that this comprehensive interstate child support bill represents a significant step in that direction.

For his part, Senator Bradley painted a picture of the current child support enforcement system that, while accurate, was dismaying:

[I]magine a system where parents can escape the responsibility of support for their children by simply crossing State lines, where individuals can live lavish lifestyles while their children wallow in poverty, and where children can be born right onto the welfare rolls because their fathers do not acknowledge paternity. Imagine a system where computer systems are so outdated that they provide only minimal help in tracking down delinquent parents, and caseworkers are asked to handle, on average, 1,000 cases each. If you can imagine this system . . . you can begin to understand the confusing and socially damaging system of child support enforcement in this country.

Yet another congressional member of the Interstate Commission, Congresswoman Barbara Kennelly (D-CN), introduced a bill to implement the Commission's recommendations. H.R 1961 – which varied from the Bradley and Roukema bills with respect to certain jurisdictional issues – was introduced on May 3, 1993, and quickly drew dozens of co-sponsors from both parties. Kennelly's bill also contained a provision under which all congressionally authorized information resources and enforcement mechanisms would be available through state Title IV-D agencies to private attorneys.

A similar provision appeared in a measure introduced in the second session of the 103rd Congress. On October 5, 1994, Representative Robert Andrews (D-NJ) filed H.R. 5180 to implement the Interstate Commission's recommendations. In Representative Andrews's bill, however, the extension of Title IV-D information resources and enforcement mechanism was spelled out in somewhat more detail than in the other bills and with a greater imperative. In the language of the Andrews bill, as a state law requirement under Section 466(a) of the Social Security Act, a state would have to have "[p]rocedures under which private attorneys and pro se obligees must (in accordance with regulations prescribed by the Secretary in consultation with the Attorney General of the United States) be given access to State locate resources and . . . enforcement techniques of the State child support enforcement agency . . . in accordance with safeguards established by the Secretary in regulations . . ." States would be allowed to establish "reasonable fees" for access to information and enforcement remedies.

During the 103rd Congress there was growing momentum for the adoption of all of the Commission's recommendations. In general, the members of Congress recognized the importance of the Commission's work and the need to achieve

bipartisan support for implementing its proposals for reforming a system that simply was not working effectively in meeting the child support enforcement needs of millions of American families. While there were some areas of disagreement – in particular with respect to the testing of “child support assurance,” a surrogate form of welfare under which government guaranteed monthly child support amounts, whether or not collections actually were made – no dissent was voiced about the proposal that congressional authorized and taxpayer-fund enforcement resources, including access to essential information, be made available to the private bar for child support purposes. Child support enforcement reform, following the Commission’s “Blueprint,” appeared a certainty and probably would have been enacted by the 103rd Congress in the legislative form provided by Senator Bradley and Representative Roukema if welfare reform had not also become a priority.

V. Child Support Reform within Welfare Reform.

In 1992, a Democratic administration and many members of Congress from both parties especially the Republican controlled House of Representatives turned their attention to welfare reform. Bill Clinton had made welfare reform one of his rallying cries during the 1992 presidential election. His campaign The promise was “to end welfare as we know it,” and his Administration set about to do just that. While the new President also strongly support changes to the national child support enforcement program, he wanted those changes to Child support enforcement was be an important part of a larger plan that included major changes to the existing welfare system. Members of the Congress and the Accordingly the group created by the Administration to draft a reform of the welfare system viewed the child support enforcement program much in the same way as it had been regarded since the beginning of the program – as an adjunct to the welfare system. Moreover, as the political lines were drawn during the developing welfare reform debate, it became increasingly clear to welfare reform strategists in both parties that for any welfare reform package to enjoy sufficient bipartisan support to be enacted, it had to include child support as a key ingredient. This became even more apparent after the 1994 the congressional elections and the installation of a Republican dominated House. Any requirement that custodial parents move from welfare to work in order to support their families had to be accompanied by the requirement that non-custodial parents pay child support to supplement family income.

The Administration’s “Working Group on Welfare Reform, Family Support and Independence” brought together nearly three dozen representatives from the federal bureaucracy and the White House. Those from the Department of Health and Human Services and the White House were clearly committed to strong federal government control of the welfare system and to more federal mandates

for the Title IV-D program. Although they drew heavily upon the recommendations of the Interstate Commission, the inclusion of the private sector in the child support enforcement system was not within their vision of a reform of the system. Moreover, they turned for counsel to various beltway advocacy and interest groups who had already gone on record for a complete federalization of the system and who would hardly have supported any extension of government enforcement resources to the private bar. The result was that the final proposals of the Working Group with respect to child support enforcement omitted the Interstate Commission's recommendation that the child support effort be strengthened through the sharing by the government program of taxpayer-funded resources with members of the private bar.

While the Administration's welfare reform plan, as developed by the Working Group, finally gave way to the one developed by Republican staffers in the House of Representatives, the child support proposals shaped by the Working Group were largely incorporated without change into the ultimately successful Republican welfare reform measure. The expansive vision of the Interstate Commission was pared back in the apparent belief that with improved information resources and more enforcement remedies at its disposal, the government program alone could do the job of ensuring that all families needing enforcement services received those services equally well and that all child support due those families would be fully paid.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) left out any specific provision for the use of all information resources and enforcement tools by the private bar. It did, however, provide the government program with a range of vastly extended and enhanced mechanisms for child support enforcement. The extensive child support enforcement provisions of the Act included requirements for the establishment at the state level of a "State Case Registry" and a "New Hire Directory," with federal counterparts ("Federal Case Registry of Child Support Orders" and the "National Directory of New Hires") within an expanded Federal Parent Locator Service (FPLS). The case registries were to contain information on all child support orders being enforced by the IV-D program and all other orders established or modified in a state on or after October 1, 1998. The new hire directories were to contain information reported by all employers (including state and federal governments) on all newly hired or rehired employees, beginning October 1, 1997. Through data matches within the components of the FPLS (in particular the national case registry and new hire directory) parents subject to child support orders would be identified and reported (including locate information) to appropriate state IV-D agencies for the purpose of establishing and/or enforcing support obligations.

PRWORA also required states to operate a “State Disbursement Unit” for collecting and disbursing child support payments in all IV-D cases and in non-IV-D cases with support orders initially entered in a state on or after January 1, 1994, under which the non-custodial parent is subject to income withholding. In addition, each state IV-D agency had to enter into arrangements with all financial institutions in the state for quarterly data matches to identify and seize any assets of delinquent obligors in cases being enforced by the IV-D agency. Other provisions of the Act greatly expanded the state and federal data resources to which a state IV-D agency may have access for child support enforcement (including public and private records of various kinds) and bestowed upon the IV-D agency administrative authority to undertake a number of legal actions “without the necessity of obtaining an order from any other judicial or administrative tribunal.”

PRWORA not only enlarged the enforcement resources of the government program, it mandated numerous changes to state laws relating to paternity establishment, down to the last detail - including the denial of the availability of jury trial in a contested paternity action. It prescribed matters of notice and due process requirements in child support actions and required the use of new enforcement remedies, including the suspension, denial, or limitation of professional, drivers’ and recreational licenses and (in IV-D cases) passports for support delinquency. Social security numbers were to be provided on applications for every sort of license issued by a state, as well as in records for divorce decrees, support orders, paternity determinations or acknowledgments, and death certificates. Child support liens against the personal and real property of a delinquent child support obligor were to arise by operation of law and be enforceable across state lines, and standard forms promulgated by OCSE were to be used for interstate income withholding, liens, and administrative subpoenas.

Altogether, PRWORA represented a significant overhaul of the child support enforcement system, following most of the key recommendations of the Interstate Commission – most, but not all. Regrettably, there was no specific provision in the Act for the sharing by the government program of its extensive enforcement resources with members of the private bar so as to provide more effective services to a greater number of families needing the child support due them.

VI. Post-PRWORA Attempts to Implement the Commission’s Recommendation.

When Senator Bill Bradley introduced his first bill (October, 1992) to implement the recommendations of the U.S. Commission on Interstate Child Support, he referred in his floor remarks to a child support system in which “\$5 billion of

owed child support remains unpaid by non-custodial parents and millions more is never owed because no child support order has been established.” In fact, in FY 1993 (October 1, 1992 – September 30, 1993), the national child support enforcement program had failed to collect, not “\$5 billion of owed child support,” but a total of \$31 billion – including \$6.1 in current support and \$24.9 billion in past years support (arrearages). Moreover, in FY 1993, only 55.4 percent of the cases in the national Title IV-D caseload had orders established and collections were being made in a mere 18.2 percent of the caseload.

By FY 1998, with the new enforcement resources and remedies available to the program under PRWORA, the figures were only slightly improved. The percentage of cases with orders had risen by 3.6 points to 59 percent of the total caseload, while the percentage of paying cases (typically only partially paying) had gone up 4.9 points to 23 percent. But the amount of uncollected child support in the government program’s caseload – both current and past years support – had grown by 68 percent to a total of \$52.2 billion. At an annual collection rate of about 50 percent on current support amounts due and a mere 7 percent on past years support due, the total amount of obligated, but uncollected support in the national program was clearly snowballing – far outstripping the ability of the understaffed, underfunded state IV-D programs to collect. Moreover, the extensive automation requirements imposed by PRWORA were proving to be beyond the ability of most states to meet in a timely and productive manner, if at all.

The disturbingly slow rate of improvement in the productivity of the national program led Senator Kay Bailey Hutchison (R-TX) to introduce legislation in the 105th Congress to achieve in effect what the Interstate Commission had recommended in 1992. On July 31, 1998, Senator Hutchison introduced S. 2411 that provided for the access by private attorney and public non-IV-D child support enforcement agencies to essential locate information from state and federal sources and for the sharing of enforcement remedies restricted in use to the Title IV-D program. The use of these resources and remedies would be through the state IV-D agency, as the Commission had recommended, solely for child support enforcement purposes and state IV-D agencies would be allowed to charge a fee for services. Moreover, only private attorneys and public non-IV-D agencies which had registered with the Secretary of Health and Human Services would be allowed access to these mechanisms and information resources. Furthermore, significant penalties (including fines and sanctions upon private attorneys) would be imposed for any unauthorized use of information or enforcement tools.

Senator Hutchison filed new legislation in the 106th Congress. S. 1882, which she introduced on November 8, 1999, reflected a number of concerns expressed by

state Title IV-D administrators and special interest groups. It made the participation of state IV-D agencies in the project completely optional and added even more stringent safeguards for the protection of privacy rights and confidential information. In a similar manner, two bills introduced in the House by Congresswoman Nancy Johnson (R-CT) – chair of the House Ways and Means Subcommittee on Human Resources and congressional leader in child support enforcement – authorized the Secretary of Health and Human Services to work with state IV-D agencies in developing rules and procedures for expanding the use of IV-D information resources and enforcement remedies. Under H.R. 4469, introduced on May 16, 2000, state IV-D agencies were provided the option of entering into agreements with private and public non-IV-D child support entities enabling access to certain enforcement resources, subject to payment of fees for services and to very restrict controls on the use of these resources and the safeguarding of privacy rights and confidentiality of information. On June 15, 2000, Congresswoman Johnson introduced a modified version of her proposal in provisions of H.R. 4678 which authorized a limited number of pilot projects for testing the value of sharing IV-D resources with non-IV-D private and public entities. This proposal was amended, however, during committee markup, and the pilot projects were limited to just public non-IV-D entities.

Unfortunately, all of these legislative proposals met with opposition from both within and outside the Title IV-D community. Most of this opposition – when closely examined – revealed a lack of understanding of the intent and the fundamental features of the bills. For example, there was concern that state IV-D agencies would be saddled with yet more work, when they could not handle the demands of their current caseloads. There was also concern that there wouldn't be sufficient safeguards against unauthorized use of any information provided to participating private and public entities – even though the legislation provided amply for these safeguards at both the state and the federal level. Some of the opposition to the legislation, however, was simply ideological – that only the government program should provide child support enforcement services. The result was that a great deal of groundless fear was generated for the purpose of ensuring that the proposals would not move forward. One group, for example, asserted that “these bills would provide massive amounts of sensitive personal data and enforcement remedies . . . to private attorneys and private child support collection agencies with few safeguards for the data or penalties for unauthorized disclosure or misuse.” Yet another special interest organization within the beltway- one that has advocated the total federalization of the child support enforcement system – asserted that the proposals “would unlock the door on government databases, requiring disclosure of vast amounts of automated personal financial data to the private market, with no consent, no regulations, no practical controls or oversight, and no genuine accountability.”

Neither of these statements factually related to the provisions of the bills. Although the legislative proposals differed in their particulars, they all specified that access by private attorneys and non-IV-D government child support enforcement agencies would be limited and strictly controlled and subject to every conceivable safeguard for protection of confidential information, privacy rights, and due process. Moreover, private attorneys and other non-IV-D government agencies that provided enforcement services who would be authorized to use information or procedures made available by or through a state IV-D program would be subject to significant penalties for any willful misuse. The Secretary of the federal Department of Health and Human Services would be responsible for developing procedures and rules – in consultation and collaboration with representatives of state IV-D agencies – for providing access to, and controlled use by, only authorized private attorneys and non-IV-D enforcement providers – not to just anyone off the street or for purposes other than those authorized by the Secretary and agreed to by state IV-D agencies.

Apart from the safeguards built into the bills themselves, release of information authorized under the legislation was already subject to well articulated statutory provisions in the federal code with respect to the protection of confidentiality and privacy rights. Sections 453, 454(26), and 454A of the Social Security Act [42 U.S.C. 653,654(26) and 654A] contain detailed limitations and restrictions on the disclosure of personal information at both the federal and state levels. These sections of the Act specifically address the highly sensitive matter of disclosure of information where there has been known or suspected domestic violence and where release of locate or other identifying information might result in harm to either parent or to a child. Indeed, states are required to inform the Federal Parent Locator Service (FPLS) of any known or suspected domestic violence or other harmful behavior in any child support case.

Section 453(c) of the Act specifically provides the following controls with respect to release of information from any component of the FPLS to any “authorized person” – including the state Title IV-D agency itself:

(c)(2). No information shall be disclosed to any person if the State has notified the Secretary that the State has reasonable evidence of domestic violence or child abuse and the disclosure of such information could be harmful to the custodial parent or the child of such parent, provided that in response to a request from an authorized person (as defined in subsection (c) of this section and section 463(d)(2)), the Secretary shall advise the authorized person that the Secretary has been notified that there is reasonable evidence of domestic violence or child abuse and that information can only be disclosed to a court or an agent of a court pursuant to subparagraph (B); and information may be disclosed to a court or an

agent of a court described in subsection (c)(2) of this section or section 463(d)(2)(B), if- upon receipt of information from the Secretary, the court determines whether disclosure to any other person of that information could be harmful to the parent or the child; and if the court determines that disclosure of such information to any other person could be harmful, the court and its agents shall not make any such disclosure.

(3) Information received or transmitted pursuant to this section shall be subject to the safeguard provisions contained in section 454(26).

These provisions clearly require that even a state IV-D agency must petition a court for release of information in any case of known or suspected domestic violence and, then, that the court have a hearing and make a determination whether or not to release the information. Moreover, even when information is released to the state IV-D agency, it must be handled according to the requirements of section 454(26). Under this section the state IV-D agency must:

have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties, including-

(A) safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify, or enforce support, or to make or enforce a child custody determination;

(B) prohibitions against the release of information on the whereabouts of 1 party or the child to another party against whom a protective order with respect to the former party or the child has been entered;

(C) prohibitions against the release of information on the whereabouts of 1 party or the child to another person if the State has reason to believe that the release of the information may to that person [sic] result in physical or emotional harm to the party or the child;

(D) in cases in which the prohibitions under subparagraphs (B) and (C) apply, the requirement to notify the Secretary, for purposes of section 453(b)(2), that the State has reasonable evidence of domestic violence or child abuse against a party or the child and that the disclosure of such information could be harmful to the party or the child; and

(E) procedures providing that when the Secretary discloses information about a parent or child to a State court or an agent of a State court described in section 453(c)(2) or 463(d)(2)(B), and advises that court or agent that the Secretary has

been notified that there is reasonable evidence of domestic violence or child abuse pursuant to section 453(b)(2), the court shall determine whether disclosure to any other person of information received from the Secretary could be harmful to the parent or child and, if the court determines that disclosure to any other person could be harmful, the court and its agents shall not make any such disclosure

There simply is no way that a private attorney could even now – let alone under the Commission’s recommendation or the Hutchison and Johnson bills – obtain information where there has been any indication or suggestion of domestic violence. The assertions that, under the Johnson and Hutchison proposals, information would be released from federal and state sources “with few safeguards for the data or penalties for unauthorized disclosure or misuse” and that allowing private attorneys or non-IV-D enforcement entities access to critical information for child support enforcement purposes “would unlock the door on government databases, requiring disclosure of vast amounts of automated personal financial data to the private market, with no consent, no regulations, no practical controls or oversight, and no genuine accountability” are, sadly, expressions of groundless fear or, worse, ideological bias against the involvement of the private attorneys sector in child support enforcement efforts.

As for the concerns voiced by some that the Johnson and Hutchison legislative proposals would impose additional work burdens on state IV-D agencies or that state legislatures would have to change state laws or that there would be excessive expenditures of federal and state funds to provide for the extension of information and other enforcement resources beyond the Title IV-D program – none of these really hold up when examined in terms of the actual provisions of the bills. First of all, the bills filed in the 106th Congress gave state IV-D agencies the option of entering into agreements with private attorneys and public non-IV-D providers for controlled sharing of certain enforcement resources on a case-by-case basis. Moreover, the legislative proposals offered by Congresswoman Johnson authorized only a limited number of “demonstration projects” to test the value of greater collaboration of non-IV-D and IV-D agencies. State IV-D agencies that elected to participate in such projects would themselves be able to establish criteria for non-IV-D participants to meet. Only those non-IV-D providers that met the terms and conditions set by both the Secretary and the state IV-D agency would be considered for a demonstration project. Second, although there may have been some “start up” costs to establish procedures and avenues for the interaction of non-IV-D providers with the IV-D program, such costs would have been far outweighed by the benefits to families needing all the help they can get in their struggle to obtain the child support due them. Moreover, the active collaboration of private attorneys and public non-IV-D enforcement agencies with state IV-D programs could conceivably have resulted

in a lightening of the IV-D program's workload and related program expenditures.

Finally, some critics of the legislation opined that it is contrary to the "best interest of the child" for the custodial parent to pay a fee to a private attorney to collect unpaid child support, and, for that reason, state IV-D agencies should refuse to cooperate with private attorneys and other private providers of enforcement services in their efforts to secure unpaid child support for families. Indeed, following that notion, some state IV-D agencies have now promulgated policies that make it virtually impossible for custodial parents to engage the services of a private attorney while having a IV-D case open. But is it in the "best interest of the child" – or the custodial parent – to go without the support that is due? Is it inimical to the child's best interest for its custodial parent to make informed decisions about how to provide for the financial welfare of the family? Does the government always know what is "best" for a custodial parent to do - that, for example, it is "best" to go without child support that has remained uncollected for years by the government program? Should government be in the position of dictating to a custodial parent what the parent may or may not do to ensure that child support is finally collected?

It is puzzling that those who rightly are quick to oppose any restrictions on how a custodial parent uses child support payments are quick to deny the custodial parent's right to use child support payments for the purpose of recovering the child support in the first place, if the parent elects to use the services of a private attorney. If a custodial parent is the most competent party to decide how child support will be spent for all other purposes, then why would that same parent not be the most competent party to decide whether a particular source of enforcement services is worth the expenditure?

No reasonable person would expect a private attorney to be able to provide services without adequate compensation, any more than one would reasonably expect a government agency to be able to function without taxpayer support. No professional – at least not in our society – can provide services for free and still remain in business. Private attorneys are no exception. They have to cover the costs of the services they offer. Even state IV-D agencies, themselves, are increasingly charging fees for the services they provide in making support collections, and Congress has considered – and will certainly continue to consider – proposals requiring that, in non-public assistance cases, state IV-D agencies recover the costs of their services through fees. The budget filed in 2002 by President Bush as well as the administration's recent welfare reform reauthorization proposal urges that fees be paid by custodial parents from their support to mitigate the costs of the Title IV-D program. The current proposals

wisely limit the fee to be charged to only those parents who never received welfare benefits.

VII. The Continuing Significance of the Commission's Recommendation.

The failure of the drafters of PRWORA to include the Interstate Commission recommendation with respect to the expanded use of congressionally authorized enforcement resources does not diminish the importance of that recommendation — nor does the failure of Congress to enact the provisions of Senator Hutchison's and Congresswoman Johnson's bills. The disturbing fact is that, in spite of the additional resources provided it by PRWORA, the government child support enforcement program simply cannot meet the needs of all families needing child support services.

The most recent data (FY 2000) provided by the federal Office of Child Support Enforcement shows that the national Title IV-D program made collections in only 41.6 percent of the 17.4 million cases in its caseload. Moreover, 40 percent of the cases in the caseload do not even have support orders (a 1 percent improvement in two years), and of those with orders, just 67 percent have collections — typically only partial payment of the support obligation and not timely made. Translated into support dollars, in FY 2000, the national program collected a little over 17 percent of the \$107 billion in current and past years support owed in its cases. That means that in FY 2000, close to \$90 billion in obligated support went uncollected, up by about \$32 billion from FY 1998. Looked at in terms of the number of children in its caseload — some 19 million in FY2000 — many millions went without a penny of support in FY 2000.

This troubling situation is not likely to change, no matter how effectively the state IV-D agencies use the vast information and enforcement resources available to them. **The amounts of obligated, but uncollected support will continue to mount at a rate beyond the ability of the program ever to collect. Even though taxpayer expenditures in FY 2000 exceeded \$4.5 billion — up 12 percent from the prior year — there still isn't adequate funding for the program, and with state and federal governments now looking at budget deficits, instead of surpluses, there is no likelihood that funding of the magnitude needed for a more effective program will ever be provided.** But, even if deficits did not exist, it is doubtful that state and federal governments would double or triple or quadruple the funding for the program in order for it simply to remain ahead of the growing amount of obligated, but unpaid child support.

Looked at historically, while the performance of the government program has significantly improved over the past two and a half decades, it has had — as the research staff of the U.S. House Ways and Means Committee has observed

– **only modest impact on the national [child support enforcement] picture.** This “national picture” – as presented by data of the U.S. Census Bureau - is, indeed, a dismal one. In nearly a 20-year period, from 1978-1997, “only a slightly higher percentage of women [eligible for child support] were awarded child support (59.5 percent in 1997 versus 59.1 in 1978), a smaller percentage of women received full payment (22 percent in 1997 versus 24 percent in 1978).” Moreover, although support collections measured by dollar amounts have risen over the years in the IV-D program, this may be attributable to the IV-D program’s “recruiting more and more cases from the private [viz., non-welfare] sector, providing them with subsidized services . . . but not greatly improving overall collections [in the national arena]. Whatever the explanation, it seems that improved effectiveness of the IV-D program has not led to significant improvement of the Nation’s child support performance.”

According to the federal Office of Child Support Enforcement, in 1995, only about two-thirds of the child support eligible families in the nation were being served by the IV-D program. Although the program has more non-welfare families in its caseload today than it had in 1995, it is reasonable to estimate – on the basis of Census Bureau data – that well over five million non-welfare families in the nation are not included in the IV-D caseload. Various studies - including U.S. Census Bureau surveys – as well as media reports on child support enforcement, have suggested why non-IV-D custodial parents do not seek the services of the program. Computer system breakdowns, lost child support checks, delayed disbursement of support payments, failure to find non-custodial parents even when provided with locate information, inappropriate and ineffective enforcement actions – and millions of cases simply languishing in the IV-D system – are among the well-documented reasons. As one researcher – Dr. Janice Hassebrock Laakso – concluded from a 1999 study of the IV-D system: “From the experiences of the [custodial] mothers in this study, their skepticism and negativity towards the formal [IV-D] system are well justified. Throughout the interviews with mothers who have had contact with the child support system there is a clear pattern of inefficiency and ineffectiveness leading to frustration and despair.”

There is no question that the state IV-D agencies have dedicated staff – but there is also no question that they have far more cases than they can reasonably work. One can find significant data to support the proposition that the title IV-D program has made significant improvements that reflect very favorably on the managers and front line workers who have accomplished a great deal with limited funds. **While competent staff in the IV-D system may have performed admirably, the IV-D program is overrun with cases.** If the IV-D program were to take in the one-third of the child support eligible population it currently does not serve, one can only imagine that the effect on the whole

enterprise. would come to an absolute standstill. If the program cannot adequately serve the population it attempts to serve today, how could it possibly serve any more families any better?

Recognizing that members of the private bar are handicapped in their efforts to help families receive the child support they need — whether or not such families are included in the Title IV-D caseload — the ABA's Family Law Section proposed a resolution in 2000 urging Congress to enact legislation to provide that information, procedures, remedies and resources available to the government's program be made available, as well, to private attorneys engaged in child support enforcement. This proposed resolution, in effect, echoed the resolution actually adopted by the ABA's House of Delegates in February, 1993, endorsing the Interstate Commission's recommendation.

Various concerns about — as well as opposition to — the resolution were quickly voiced from both within and outside the Association, and action on it by the House of Delegates was deferred. Upon scrutiny it seems that most of the criticism of the resolution was directed, not at the access of private attorneys to child support enforcement tools and information, but at possible access to these resources by unregulated private child support enforcement agencies. The Family Law Section's resolution was clear, however, that it related only to state-licensed and profession-regulated private attorneys. Issues involving private child support enforcement agencies and other non-IV-D public enforcement agencies were never a part of this resolution.

Also, some of the criticism of the Family Law Section resolution appears to be based upon a presumption by critics that what was being recommended in the resolution was completely uncontrolled and unregulated access by any private attorney to every bit of government data existing in any government database. Of course, that was not intended and, indeed, if intended, would not have accorded with existing federal law. The critics did not want to acknowledge that access to information was only being sought by a licensed attorney who represented a client owed back child support and verified it. The Title IV-D agency would be required to check their databases and provide the attorney the needed information for that particular identifiable case.

Finally, much of the criticism of the Family Law Section's resolution from outside the Association seemed to reflect a ideological bias or notion that the government can do all that needs to be done in child support enforcement — that, indeed, there should be a government monopoly on these services to the point of outlawing private enforcement services and of preventing custodial parents from having a choice of enforcement providers. But those who hold this position can't provide an answer to the question that if government can do it all, why hasn't it

done it all? Why are there tens of billions of dollars in obligated, but uncollected child support every year and why are there millions of custodial mothers and their children who receive none of the support owed them?

The statistics demonstrate why it is unrealistic to suppose that the government program – no matter how improved its enforcement mechanisms may be as the result of congressional actions - will ever accomplish the Herculean task of collecting the constantly-mounting tens of billions of dollars in past-due child support owed by non-custodial parents represented in its caseload. But the fact is that the government program does not – and should not – have to do the job alone. This is where the extensive resources of the private bar have to be factored in as critical to the success of a national child support enforcement effort or, indeed, to any significant improvement in the current situation.

The involvement of the private bar in child support enforcement is, of course, nothing new. In fact, it antedates by a couple of centuries the existence of any government enforcement program in this country. The fundamental intent of the recommendation of the Interstate Commission and the corresponding provisions in the bills proposed over the years by Senators Bradley and Hutchison and Representatives Roukema, Kennelly, and Andrews was to enhance the national child support enforcement effort by: (1) promoting the collaboration of members of the private bar and state IV-D agencies; and (2) strengthening the ability of private attorneys to offer effective services to families needing enforcement assistance.

To the supporters of the Commission's recommendation and the ensuing legislative proposals over the years, it makes no sense to deny custodial parents the use of every available enforcement tool simply because they elect – at their own expense and not that of the taxpayer – to have their support obligations enforced by a private attorney. Nor, conversely, does it make sense to force custodial parents to use IV-D services – at cost to the taxpayer – in order to have access to enforcement resources authorized by Congress, particularly when the IV-D program nationally is unable to fully meet the current demand for its services. More than that, however, it is truly counterproductive to the national child support enforcement effort to deny private attorneys, representing clients in enforcing court-ordered child support obligations, access to critical information and the use of all available enforcement remedies.

To limit the use of such information and mechanisms to the IV-D program is simply to limit their ultimate value and effect in the fight against child support delinquency. What rational justification can be offered – given the magnitude of the national problem of nonsupport – to require custodial parents to line up for services from an already overworked and insufficiently funded government

program in order to have the benefit of all the enforcement resources authorized by their elected lawmakers? Or what rational justification can be offered for denying private attorneys access to information and procedures that could make their efforts at providing child support enforcement services – and securing support for families – more effective?

Demographic prognostications are for the child support-needy population to grow over the next few years. **A study by the federal Office of Child Support Enforcement has found that by 2009, the child support population will reach 72 million – including 17 million custodial parents, almost 3 million non-parent custodians, 22 million non-custodial parents, and over 30 million children eligible for child support (11 million more than in the population served by the Title IV-D program in FY 2000). How will we as a nation deal then with a problem that is already out of control? Will we still simply believe that somehow the government can do it all – or will we have developed before then rational plans for the greater and more effective use of child support enforcement resources?**

The fundamental issue before the child support community is to ensure that, by 2009, more families are receiving the full amounts of child support due them. Given the limited public resources available, we clearly need to find ways to use more effectively resources in the private sector. Strengthening the ability of private attorneys to collect support has the potential to increase significantly the financial support available for children. The choice given custodial parents ought not to be whether or not they have access to all congressionally authorized enforcement resources, but how they have access. This belief was at the heart of the visionary recommendation of the Interstate Commission in its “Blueprint” offered a decade ago. **Today we must strive to realized the Commission’s recommendation and achieve a new mode of partnership between the government child support enforcement program and members of the private bar – a collaboration that energizes all participants and that puts to the fullest and most effective use the resources we, as a nation, have in order to ensure that families receive the child support they are owed and urgently need.**