

## **CHILD SUPPORT ENFORCEMENT IN THE UNITED STATES AND THE ROLE OF THE PRIVATE BAR**

**by Laura Morgan**

### **I. THE CREATION OF THE GOVERNMENT CHILD SUPPORT ENFORCEMENT PROGRAM**

On January 4, 1975, President Gerald Ford signed into law the Social Security Amendments of 1974, which, among its other provisions, created a state-federal child support enforcement program under a new part D of title IV of the Social Security Act. This is now generally referred to as the "IV-D program." The purpose of this new partnership between the states and the federal government was directly tied to the existing federal program of cash assistance, or "welfare," under the Title IV-A, "Assistance to Families with Dependent Children" (AFDC). Specifically, the new IV-D program was designed to accomplish two welfare system-related goals through the enforcement of child support: (1) recover for state and federal governments the costs of public assistance paid out to families ("cost recovery"); and (2) help families on welfare leave the public assistance rolls and help families not yet on welfare avoid having to turn to public assistance ("cost avoidance").

The 1974 Act stated the mission of the IV-D program as:

- enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available . . . to all children (whether or not eligible for aid under [the AFDC program], for whom such assistance is requested.

Because the intent of Congress was that the IV-D program reduce expenditures for public assistance, all applicants for, and recipients of, AFDC had to accept IV-D services and cooperate with the state IV-D agency absent a finding of "good cause" for non-cooperation as a condition of initial and continuing eligibility for public assistance. In order to limit the growth of the public assistance rolls, Congress made IV-D services available to families not on AFDC. These non-public assistance families could voluntarily apply for IV-D services; they could, also, close their IV-D cases at any time.

The founding legislation assigned specific roles to the state and federal governments in the operation of the new program. In order to receive federal AFDC funding, each state was to designate an agency to administer the IV-D child support enforcement in the state. It could be an entirely new agency or an existing agency (e.g., the state human services agency), but the state's IV-D agency had to be "a single and separate organizational unit," wherever located. Moreover, the state IV-D program had to be statewide, although it could be administered on the county level. While the primary task of the states was to

administer the child support enforcement program, the primary role of the federal government, through a federal Office of Child Support Enforcement (OCSE) in the, now, Department of Health and Human Services, was: to share the costs of the state's administrative expenditures for the program; to award states with incentive payments for program performance; to provide technical assistance; and to exercise regulatory oversight. This regulatory oversight included making recommendations to Congress for legislative changes to strengthen the IV-D program and auditing state program performance on a triennial basis

Although establishing a new kind of state-federal partnership in child support enforcement, the IV-D program was not without its antecedents. Nearly a quarter of a century earlier, Congress had enacted the Social Security Act Amendments of 1950 which added § 402(a)(11) to the Act, 42 U.S.C. § 602(a)(11), requiring state AFDC agencies to notify appropriate law enforcement officials when a child received AFDC because of abandonment or desertion by a parent. The intent was that these parents be held responsible for the support of their minor children, not thrusting that cost upon the government and, ultimately, the taxpayer. In acknowledging the provenance and jurisdiction of the states in family law matters, the House Committee on Ways and Means, reporting on the legislation, noted that "the legal responsibility of a parent for the support of his minor children is, of course, clearly established in the laws of every State." In time, particularly from 1984 onward, this congressional acknowledgment of the historic primacy of states in family law matters was eroded by a succession of federal Acts mandating changes to state laws relating to the parent-child relationship, culminating in the 1996 welfare reform Act (discussed below) which instituted far-reaching changes.

Also in 1950, the National Conference of Commissioners on Uniform Laws and the American Bar Association approved the Uniform Reciprocal Enforcement of Support Act (URESA) for the interstate enforcement of child support. A model act, URESA was, in time, adopted by 48 states, with 2 other states, Iowa and New York, adopting the Uniform Support of Dependents Law, considered sufficiently similar to URESA to allow for reciprocity among the states in interstate enforcement. Under the Act'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. Under provisions of the 1996 welfare reform Act, Congress mandated that all states adopt verbatim the Uniform Interstate Family Support Act (UIFSA), a replacement for URESA providing greatly improved interstate procedures, in the form approved by the National Conference of Commissioners on Uniform Laws and the American Bar Association.

In spite of the notification process required under the 1950 amendments to the Social Security Act, there was a steady growth in the number of families turning to AFDC, due, in large part, to the desertion of children by their parents, combined with an increase in out-of-wedlock births. The growth of the welfare rolls led Congress to enact further legislation designed to make parents responsible for the support of their dependent

children. The Social Security Amendments of 1965 allowed state and local welfare agencies to obtain the home and/or employment address of an absent parent from the files of the Department of Health, Education, and Welfare (HEW, now the Department of Health and Human Services) under certain conditions (e.g., if the address could not be obtained from other sources and the child was an AFDC applicant or recipient).

Further amendments to the Act in 1967 required the Secretary of HEW to provide a court having jurisdiction with the home and/or employment address of an absent parent for the purpose of issuing a child support order. These amendments also required the establishment in a state or local welfare agency of a single organizational unit responsible for the establishing paternity and collecting support from absent parents for children receiving AFDC. Moreover, to facilitate this child support effort, states were required to enter into cooperative agreements with court and law enforcement officials, including financial arrangements. Finally, the 1967 amendments authorized the Internal Revenue Service (IRS), under statutory procedures, to yield information from its files for the purpose of locating an absent parent subject to a child support order or named in a petition for support.

None of these legislative efforts produced the results sought by Congress, as a 1972 report of the General Accounting Office (GAO) showed. According to this report, states had failed to implement successfully the requirements of the 1967 amendments, but this failure was largely the result of bureaucratic ineptitude on the part of HEW. The GAO found that HEW was approving state AFDC plans without carefully scrutinizing state mechanisms for enforcing child support in AFDC cases or monitoring results. Moreover, HEW was providing no guidance to states in pursuing ways to strengthen their child support activities to yield greater results.

The response of Congress to the GAO report was to develop a national program with significant federal oversight and direction designed to reduce dependence upon the government welfare program whose caseload, by 1971, had grown to 10 million, double what it was in 1967. For a period of nearly two years, various members of Congress worked on, and offered legislative proposals for such a program. A leader in the effort to construct an effective national program was Senator Russell Long, the chair of the Senate Finance Committee. In 1971, Long offered S. 3019, proposed as a reform of the AFDC system by shifting responsibility for the support of minor children from the taxpayer to the parents whom, in floor remarks on his legislation, Long characterized as "deadbeats." Under the Long proposal, the U.S. Attorney General, not HEW, would be responsible for the national child support enforcement program, and AFDC families would have to assign their child support rights to the federal government and cooperate in the establishment of paternity as a condition of eligibility for receiving AFDC. States with effective enforcement programs would receive both federal cost-sharing of administrative expenditures at the rate of 75% and federal incentive payments. The federal government would assume responsibility for providing information on "absent" parents from the IRS, Social Security Administration, and other federal agencies. Finally, to help non-AFDC families avoid having to turn to AFDC, government enforcement services would be made available to them on a fee-for-services basis.

Although the primary elements of Long's proposal were incorporated by the Senate into a House bill (H.R. 1) to amend the Social Security Act, they were removed by the conference committee. Long's efforts, and those of like-minded members of Congress, such as Senators Sam Nunn and Walter Mondale, did not end. After a great deal of deliberation as to the organizational structure and funding of a national program, including the extent to which it should be federalized or be a state-federal partnership and the degree to which the federal government should assume funding responsibility for the program, and repeated failures to get comprehensive child support enforcement bills adopted by both chambers of Congress, child support provisions were finally incorporated into H.R. 17045, a bill redesigning federally funded social services. If it were not for the fact that there was strong support for the other provisions of the Social Services Amendments of 1974, the provisions creating a national child support enforcement program under part D of title IV of the Social Security Act might not have been enacted, at least, not when they were. Very reluctantly, and expressing the concerns of many both inside and outside Congress about "injecting the Federal government into domestic relations [law]," President Gerald Ford signed H.R. 17045 into law on January 4, 1975, and the Title IV-D program was born.

## **II. THE HISTORICAL DEVELOPMENT OF THE NATIONAL CHILD SUPPORT ENFORCEMENT PROGRAM**

The enactment of Title IV-D represented a bold step of Congress into the arena of state family, an area that could be constitutionally supported only on the basis of the "nexus" between such a legislative act and the enumerated powers of Congress, under article 1, section 8, of the U.S. Constitution and other categories of congressional authority under the Tenth Amendment. See Laura W. Morgan, *A Shift in the Ruling Paradigm: Child Support as Outside the Contours of "Family Law,"* 12 *Divorce Litigation* 77 (May 2000). That "nexus" with respect to the establishment of the Title IV-D program lay in the spending powers of Congress in funding the AFDC cash assistance program under Title IV-A. Although traditionally the domain of the states, and beyond the reach of the federal government, child support became a concern of Congress to the extent that the location of absent parents, the establishment of paternity, and the establishment and enforcement of child support obligations had an impact upon the federal purse through the financial assistance paid families under the Title IV-A entitlement program. While participation in the AFDC program was voluntary on the part of the states, their participation in it, and the receipt of federal funds through it, was conditioned upon their meeting various federal requirements, including establishing child support enforcement programs under Title IV-D.

Senator Long and other members of Congress who shared his views saw the creation of the national child support enforcement program as being of fundamental importance to the stability of the American family by forcing errant parents to accept fully their responsibility for the support of their minor children. As he said on the floor of the Senate in 1972, in urging his colleagues to move forward with child support legislation:

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 desertions.

While Long and his partisans in the child support enforcement cause eventually prevailed, reservations about the new program lingered among members of Congress and led to various proposals, including some offered by the President, for amending Title IV-D. One such proposal, supported by the President, was to repeal provisions establishing a Federal Parent Locator Service that would draw upon various data resources of the federal government to locate "absent" parents for the purpose of establishing paternity and/or establishing and enforcing a child support obligation. The President had stated that "the establishment of a Parent Locator Service in the Department of Health, Education, and Welfare with access to all Federal records raises serious privacy and administrative issues." Sharing that concern, the House of Representatives passed a bill (H.R. 8598) on July 21, 1975, repealing statutory authorization for the Federal Parent Locator Service (FPLS), as well as other Title IV-D provisions. The Senate Finance Committee, however, rejected the bill, and it died. Twenty-one years later, in the Welfare Reform Act of 1996, Congress did not shy away for vastly expanding the data resources of the FPLS, including employer-reported information on every newly hired or rehired worker in the country.

The 1975 Act laid the foundation for a program that, within a few years, grew in complexity, both with respect to its regulatory mechanisms and the statutory mandates it imposed upon the states, changing the character of family law in most matters affecting the parent-child relationship. As noted above, as a condition of receiving federal AFDC funds, states had to establish a child support enforcement program meeting federal requirements under Title IV-D of the Social Security Act. This meant operating the state program according to a "State plan" approved by the Secretary of, now, the federal Department of Health and Human Services, through the Office of Child Support Enforcement (OCSE). All 54 states and territories have such an approved State plan.

Under the 1975 Act, the Secretary, that is OCSE, was responsible for establishing and operating the FPLS drawing upon information available from federal agencies, while state IV-D agencies had responsibility for maintaining a State Parent Locator Service (SPLS) drawing upon various state sources (e.g., drivers' licensing bureaus). Other duties of the Secretary included establishing standards for the operation of state IV-D programs, conducting audits of state program performance, providing states with various kinds of technical assistance, and certifying cases to the IRS for services to collect support delinquencies where the collection efforts of the state IV-D agency failed.

For their part, state IV-D agencies had to provide enforcement services to all AFDC applicants and recipients, who, in turn, had to accept these services unless there was a finding of "good cause" for not doing so, e.g., potential harm to the custodial parent and/or child, and to all other families upon voluntary application. The enforcement services provided by the state agency included locating the absent (non-custodial) parent, using the resources of the FPLS and SPLS, and, as needed, establishing paternity and establishing and enforcing a support obligation. In providing these services, state IV-D agencies were to enter into cooperative agreements with appropriate courts and law enforcement officials and to cooperate with the IV-D agency of any other state in locating absent parents, establishing paternity, and securing support.

Also included in the 1975 Act, besides program funding mechanisms, were provisions under which wages of federal employees (including members of the military) could be garnished for child and spousal support and under which the federal courts were provided with jurisdiction to hear and determine any civil action in any interstate child support cases certified by the Secretary. Moreover, procedures were prescribed for the distribution of support collections in both AFDC and non-AFDC cases.

The following year Congress enacted the Unemployment Compensation Amendments of 1976 requiring state employment security agencies to provide state AFDC and IV-D agencies, upon request, with information concerning the address of any non-custodial parent, as well as concerning such a parent's receipt of, or application for, unemployment insurance benefits and response to offers of employment.

In 1977, Congress made several amendments to Title IV-D. Under the Tax Reduction and Simplification Act of 1976 the conditions and procedures for garnishing the wages of federal employees were clarified and extended to include employees of the District of Columbia. Also, state plan provisions, 42 U.S.C. § 654, were amended to require IV-D agencies to provide bonding for employees receiving, handling, and disbursing cash and to separate accounting and collection functions within the state IV-D agency. Changes were made to federal incentive payment provisions in this Act, as well.

Under the 1977 Medicare-Medicaid Anti-Fraud and Abuse Amendments provided for a medical support enforcement program enabling states to require Medicaid recipients to assign their rights to medical support to a state as a condition for receipt of benefits. Moreover, a state's Medicaid agency was authorized to enter into cooperative agreements with other appropriate agencies of the state, including the IV-D agency, to help enforce assignments and collect medical support amounts. This set the stage for the later (1987) requirement that state IV-D agencies provide enforcement services to Medicaid families with an absent parent, regardless of whether or not they also received AFDC (so-called "Medicaid-only" cases).

In 1978, Congress enacted two pieces of legislation with bearing on the operation of the child support enforcement program. Under An Act To Establish a Uniform Law on the Subject of Bankruptcies the provision under the Social Security Act, 42 U.S.C. § 656(h), barring the discharge in bankruptcy of assigned child support rights was repealed and

placed instead in the provisions of the new Act. In addition, specific exceptions to discharge in bankruptcy were identified, including maintenance or support due a spouse, former spouse, or a child of the debtor under a separation agreement, divorce decree, or property settlement. Under the Financial Institutions Regulatory and Interest Rate Control Act of 1978 financial institutions were authorized to disclose account information to a governmental authority where there was a possible violation of any statute or regulation, thus enabling OCSE to gain further locate information on delinquent obligors.

The year 1980 saw two Acts with a direct impact on the child support enforcement program. The Social Security Disability Amendments of 1980 extended the use of "full collection" services of the IRS to non-AFDC cases enforced by the state IV-D agency. It also made federal matching funds at the rate of 90 percent available for the enhancement of automated systems used by state IV-D programs, subject to an approved "advance planning document." Most importantly, it authorized access by state IV-D agencies to wage information held by state employment security agencies and the Social Security Administration to assist in establishing and enforcing child support obligations. Under provisions of the Adoption Assistance and Child Welfare Act of 1980 federal matching funds for the administrative expenditures of state IV-D agencies in providing services to non-AFDC families were made permanent. Up to this point, such funding had been tentative, being periodically renewed, because of the belief that, in time, services to non-public assistance families could be entirely funded out of fees for services. By 1980, it had become apparent that without guaranteed, continuing federal sharing of the costs of providing enforcement services to non-AFDC families, state IV-D agencies would be less than fully committed to providing those services. Under the Act, federal cost-sharing of administrative expenditures for non-AFDC cases was made retroactive to October 1, 1978.

In 1981, Congress provided the IV-D program with an enforcement tool that has proved to be one of the most effective means of collecting past-due child support the program has ever had. Under the Omnibus Budget Reconciliation Act of 1981 the Secretary of the Treasury was required to withhold from refunds of annual personal income taxes any amounts certified by the Secretary of Health and Human Services owed as past-due child support. (The "IRS intercept" procedure has enabled state IV-D agencies to collect effectively on support delinquencies in both public assistance and non-public assistance cases.) Another important enforcement mechanism provided under this Act was withholding for child support from unemployment insurance benefits, either through an agreement between the IV-D agency and the support obligor or by legal processes. In addition, the Act required state IV-D agencies to collect spousal support for AFDC families and re-instituted under the Social Security Act the non-dischargeability in bankruptcy proceedings of any child support amount assigned to the state (which provision had been repealed in 1978). Three years later, under the Bankruptcy Amendments and Federal Judgeship Act of 1984 any debt for court-ordered child support was made non-dischargeable, whether or not the debtor parent had ever been married to the child's other parent.

The 1981 Act also instituted a service fee in non-AFDC cases equal to 10 percent of the amount of any past-due support owed to be collected from the support obligor. This was once more an effort by Congress to help make non-AFDC services self-supporting to the extent possible and to reserve "free" services for public assistance cases, in keeping with the original welfare orientation of the program. States, however, found the administration of the fee burdensome. So, the following year Congress removed the requirement under provisions of the Tax Equity and Fiscal Responsibility Act of 1982 and in its place provided state IV-D agencies with the option of recovering administrative costs in non-AFDC cases, either deducted directly from collections or charged against the non-custodial parent. That arrangement, also, proved to be unattractive to state IV-D agencies, and only a handful ever pursued this "cost recovery" option.

The Child Support Enforcement Amendments of 1984 dramatically increased federal oversight and control of the child support enforcement program and brought some major changes to both the IV-D program and to state domestic relations law - propelling the process of "federalization." A major concern of Congress in drafting the 1984 Amendments was that there was no uniformity of practice among state IV-D programs; the procedures to be used by state IV-D programs had never been specified. Moreover, some state practices were simply ineffective, while others known to be effective (e.g., income withholding) were not universally used. Furthermore, although services were available to non-AFDC families, some states were not providing services to these families as fully and as effectively as they were to AFDC families. So, the thrust of the amendments was to achieve some degree of uniformity among the states in the enforcement of child support, to see that "best practices" were used by all states, and to ensure that state IV-D programs served public assistance and non-public assistance families equally well.

Among the provisions of the 1984 Act were specific requirements for state law, not just state IV-D procedures. States were required to have "statutorily prescribed procedures" under which all new or modified child support orders issued in a state on or after October 1, 1985, included a provision for income withholding when an arrearage occurs. Moreover, "income," with respect to this requirement, could include other forms of periodic income besides wages. In IV-D cases, state law had to allow the interception of state income tax for the enforcement of child support obligations. Furthermore, state law had to provide for the imposition of liens against real and personal property and of security or bonds to ensure compliance with support obligations. State law must allow for the bringing of a paternity action until a child's 18th birthday, and states had to establish administrative or judicial expedited processes for establishing and enforcing child support orders, and, at the option of the state, establishing paternity. Title IV-D agencies were required to report to consumer credit bureaus the names of the delinquent obligors and the amounts of past-due support.

In addition to the state law requirements, the 1984 Amendments made a number of changes to IV-D procedures and funding mechanisms to improve the delivery of services to non-AFDC families. Both AFDC and non-AFDC cases were made subject to the same mandatory practices and case processing standards. The interception of federal income

tax refunds for past-due support was extended to non-AFDC cases, federal incentive payments were authorized for collections in non-AFDC cases (although limited under a "cost-effectiveness" ratio of collections to administrative expenditures), and IV-D agencies were required to continue services to families who left welfare without the requirement of an application for services or payment of an application fee and to publicize the availability of support enforcement services for non-AFDC families. Interstate enforcement of child support was strengthened through new enforcement procedures, federal incentives, and federal audits. The further development of automated data systems by IV-D agencies was encouraged through 90 percent federal match rate for the acquisition of computer hardware. Finally, parent locator services were strengthened by allowing state IV-D agencies to access the FPLS directly, without first having to exhaust state locator resources, and the social security numbers of absent parents were made available to state IV-D agencies either through the FPLS or the IRS.

Another important provision of the 1984 Act affecting both IV-D and non-IV-D cases was the requirement that states formulate discretionary guidelines for the setting of child support obligations by courts and other tribunals authorized to issue support orders. Despite a 1975 federal requirement, 45 C.F.R. 302.53, that states establish a formula for determining support amount where no court order exists, as of August, 1983, some 29 states had not, in fact, developed any kind of statutory statement or other rule with respect to the factors to be weighed by a court in ordering current support. Absent such instruction, courts followed their own subjective evaluation in setting support amounts, with the result that support awards were inconsistent and, often, insufficient to meet the needs of the minor child. To increase the use as well as the credibility of objective criteria for the setting of support amounts, the Act required each state, by October 1, 1987, to establish "by law or by judicial or administrative action" guidelines for determining support award amounts within the state. By federal rule, the guidelines were to "be based on specific descriptive and numeric criteria and result in a computation of the support obligation." While such guidelines could not ensure that custodial parents eligible for child support were actually awarded support, their use might ensure that equitable amounts of support were awarded when an order was entered.

States and their IV-D agencies had scarcely begun to deal with the many requirements under the 1984 Amendments, before Congress enacted the next major piece of legislation affecting child support enforcement: the Family Support Act of 1988 (FSA). While most of the child support enforcement provisions directly related to the operations of the state IV-D program, some had an impact on all child support cases, both IV-D and non-IV-D. One of these was the requirement that the hitherto discretionary guidelines for setting current support amounts be made mandatory and that such guidelines be reviewed by the state at least once every four years. The application of the guidelines to a case created the rebuttable presumption that the amount of support awarded through their application was just and appropriate in the case. State IV-D agencies were required to review every 36 months each support order in their non-AFDC caseload and, if necessary, adjust the support amount in accordance with the state guidelines. They were also required to "review and modify" in non-AFDC cases at the request of either parent.

The FSA made significant changes to state income withholding procedures. In cases being enforced by the state IV-D agency, orders issued or modified on or after the 25th month following enactment of the FSA (November 1, 1990) had to provide for immediate income withholding unless (1) one of the parties demonstrates, and the court finds, that there is good cause not to require such withholding or (2) there is a written agreement between the parties with respect to an alternative arrangement. Furthermore, under state law all child support orders initially issued in a state on or after January 1, 1994, had to provide for immediate income withholding, whether or not the order was enforced by the IV-D agency.

While the FSA "encouraged" states to adopt simple civil processes for the establishment of paternity, it set new performance standards for establishing paternity in cases being enforced under Title IV-D. To help states meet these standards, Congress authorized federal matching funds at a 90 percent rate for the costs of laboratory tests associated with establishment, although states were permitted to charge non-AFDC individuals for such costs. Congress also provided 90 percent matching funds for states to develop automated child support enforcement systems meeting the requirements of the Act, as prescribed in regulations promulgated by OCSE and in accordance with advance planning documents submitted by the state and approved by OCSE. With respect to locating parents in a child support action, state law dealing with the issuance of a birth certificate had to require each parent to furnish a social security number, unless the state found good cause in a particular case for not doing so. Although not appearing on the birth certificate, the social security number(s) had to be made available for child support enforcement purposes.

The next major, federal child support legislation came with the 1996 Welfare Reform Act: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which ended the cash public assistance entitlement and transformed AFDC into TANF: "Temporary Assistance for Needy Families." In every year intervening between the enactment of FSA and PRWORA, except for 1991, Congress passed child support enforcement legislation. Among the Congressional Acts over this period was the Child Support Recovery Act of 1992 which imposes a federal penalty for the willful failure to pay a past-due child support obligation with respect to a child residing in another state, where the obligation has remained unpaid for longer than one year or is greater than \$5,000. For a first conviction, the penalty is a fine of up to \$5,000, imprisonment for not more than 6 years, or both. A second conviction carries a penalty of a fine up to \$250,000, imprisonment for up to 2 years, or both.

The Ted Weiss Child Support Enforcement Act of 1992 amended the Fair Credit Reporting Act to require consumer credit reporting bureaus to include in any consumer credit report information on child support delinquencies that is provided by IV-D agencies and that antedates the report by seven years. Among other child support enforcement provisions of the Omnibus Budget Reconciliation Act of 1993, the federal "encouragement" in the FSA with respect to states' developing simple civil procedures for paternity establishment became a federal mandate by way of requiring states to adopt laws under which paternity may be voluntarily acknowledged (including through

hospital-based programs). This Act also mandated state laws (1) ensuring compliance by health insurers and employers in carrying out court or administrative orders for medical child support and (2) prohibiting health insurers from denying coverage to children who are not living with the covered individual or who were born outside marriage.

In 1994, the Full Faith and Credit for Child Support Orders Act required each state to enforce, according to its terms, a child support order issued by a court or other tribunal of a sister state and laid out conditions and specifications for resolving issues of jurisdiction. The Bankruptcy Reform Act of 1994 provided that the filing of a bankruptcy does not stay a paternity, child support, or alimony proceeding and, further, that child and spousal support payments are priority claims and that custodial parents may appear in bankruptcy court to protect their interests, without the requirement of paying a fee or meeting any local rules for attorney appearances.

With the enactment of PRWORA, the "federalization" of state domestic relations law moved to a point that the legislative founders of the IV-D program could not possibly have imagined. Title III of the voluminous 1996 Act contains literally dozens of new federal mandates, most of them affecting the procedures and operations of the IV-D program, but many of them transforming state child support enforcement mechanisms in general.

Several of the key elements in the child support enforcement provisions of PRWORA were derived from recommendations of the U.S. Commission on Interstate Child Support in its 1992 report to Congress. In its membership, the Commission, established under provisions of the FSA, represented the private bar, the judiciary, the IV-D community, state human services agencies, advocacy groups, the federal bureaucracy, and Congress. Its primary task as laid out in the FSA was to recommend to Congress ways to improve interstate child support, including changes to URESA. Its recommendations, however, extended to almost every aspect of child support enforcement, both inter- and intrastate, and expressed the judgment of the Commission that there was an imperative need for greater uniformity of laws and procedures among the states in the enforcement of child support.

The Commission's recommendations were taken up by a "Working Group" created by the Clinton Administration to develop a new welfare system. Although the legislative plan of the Working Group with respect to welfare reform itself was superseded by the plan of the Republican leadership in the 104th Congress, the grand design for an overhaul of the nation's child support enforcement system proposed by the Working Group was incorporated into Title III of the legislation. The belief shared by the President, Congress, public policy groups, and special interest organizations was that there could be no real reform of the welfare system without an overhaul of the child support enforcement system. The 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 extensive PRWORA child support enforcement provisions include 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 FPLS. The case registries 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 contain information reported by all employers (including state and federal governments) on all newly hired or rehired employees, beginning October 1, 1997. Information comparisons are conducted within the FPLS between the national case registry and new hire directory for the purpose of identifying parents who are subject to child support orders and reporting pertinent data (including locate information) to appropriate state IV-D agencies for the purpose of establishing and/or enforcing support obligations.

States must also 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 must 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.

PRWORA mandates 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 prescribes matters of notice and due process requirements in child support actions and requires the use of new enforcement remedies, including the suspension, denial, or limitation of professional, driver's, and recreational licenses and (in IV-D cases) passports for support delinquency. Social security numbers are required 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 are to arise by operation of law and be enforceable across state lines, and standard forms promulgated by OCSE are to be used for interstate income withholding, liens, and administrative subpoenas.

Other provisions of the Act greatly expand 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 bestow 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."

As extensive as the child support enforcement provisions of PRWORA are, it remains to be seen whether or not they represent the last movement of federal law in the direction of federalization of state family law. The Administration's "Working Group" had designed its legislative specifications to require that all child support orders be subject to IV-D enforcement services, absent an affirmative act by the custodial parent to refuse these services. Clearly, today's Congress no longer has any of the qualms about the intrusion of

the federal government into domestic laws which the Congress of twenty-five years ago had.

### **III. THE ROLE OF THE PRIVATE BAR IN CHILD SUPPORT ENFORCEMENT**

**Before the Title IV-D program came into existence, virtually all of child support enforcement was accomplished through the efforts of members of the private bar.** A few jurisdictions had some capacity for public enforcement (of which the State of Michigan represented one of the earliest and most extensive examples). Otherwise a custodial parent seeking redress had to employ the services of a private attorney to pursue limited, time-consuming, costly, and relatively complex procedures for establishing paternity and/or establishing and enforcing a support obligation. The creation of the Title IV-D program did not, of course, impair the right of a custodial parent to obtain enforcement action through the services of a private attorney or a public, non-IV-D agency. It offered alternative or, with respect to legal representation by a private attorney, supplemental relief to a custodial parent not receiving public assistance.

As the IV-D child support enforcement program evolved, it became increasingly clear to federal law makers that the same problems that plagued private attorneys and litigants in their attempts to establish and enforce child support obligations were also impeding the IV-D program's ability to enforce child support obligations. Thus, as shown above, over the years Congress acted repeatedly to strengthen the child support enforcement program by adding mechanisms facilitating the location of non-custodial parents, establishment of paternity, and the establishment and enforcement of support obligations. Some of these enforcement "tools", e.g., income withholding, except for the garnishment of unemployment insurance benefits, were extended beyond the non-IV-D program. The motivation for doing so was probably as much due to the realization that a non-IV-D case was likely to become a IV-D case if the non-support parent could not be located or no support order existed or the obligated parent became delinquent in making support payments as it was to the disposition of Congress to achieve uniformity and standardization of enforcement procedures among the states.

**Although the Title IV-D program has become the prevailing alternative in child support enforcement, it has not supplanted the role of the private bar in child support enforcement. In 1995, according to OCSE estimates, the IV-D program served a little over 63 percent of the 13,739,431 child support eligible families in the country. In 1995, roughly 52 percent of the IV-D caseload was made up of welfare cases. By FY 1998, that percentage had dropped to roughly 33 percent because of the declines in the welfare rolls resulting from the time limitations and other restrictions on the receipt of public assistance. A good amount of the increase in the non-public assistance component of the IV-D caseload, then, has really resulted, not from new applicants for services from the non-IV-D population, but from a continuation of services to former welfare cases. In other words, there is a sizeable population of child support eligible families in the country still not receiving Title IV-D services.**

Moreover, as OCSE data show, the IV-D program simply does not have the resources to provide effective services for the families already in its caseload, let alone those outside the caseload. In 1994, the national IV-D program had made collections (often just partial amounts of the support due) in 18.3 percent of its cases; by 1998, that rate of collection had risen to only 23 percent. With respect to the IV-D cases with orders, collections were made in 32.6 percent of those cases in 1995 and only 38.7 percent of those cases four years later. It is understandable why the IV-D program faces an up-hill road in making modest incremental improvements in its overall performance. Besides having to deal on a daily basis with the minutia of federal regulations, state IV-D agencies struggle with monumental demands in the establishment of complex (and often ill-designed and failing) automated systems and great numbers of hard-to-serve cases, particularly in the public assistance component of its caseload (in FY 1998, numbering some 19.4 million cases in total).

It is clear that, with respect to the nation's child support enforcement needs, the Title IV-D program cannot do it all. It is also clear that these needs are urgent. According to the most recent Census Bureau data (as of spring 1996), 42 percent of the 13.7 million child support eligible custodial parents (11.6 million mothers and 2.1 million fathers) had no support order. Of the approximately 7 million of the 8 million custodial parents with support orders and due support payments by spring 1996, only 60 percent received a portion of the amount owed. About \$28.3 billion of support was owed under child support orders in 1995, but only \$17.8 billion — or 63 percent of the total — was actually paid.

**There is more than enough work for the private bar in the area of child support enforcement. The Title IV-D does not have a monopoly with respect to the child support work load, but it has nearly a monopoly on the enforcement resources and remedies authorized by Congress in that many of the enforcement mechanisms provided by federal statute are currently restricted in use to state IV-D agencies. To the extent these enforcement resources and remedies are not available to the private bar - and to other providers of non-IV-D child support enforcement services (e.g., local government and private child support enforcement agencies), they are being underutilized.** Moreover, because the use of these enforcement "tools" is restricted to IV-D program, in order to have the benefit of them, custodial parents are forced to apply for IV-D services when IV-D agencies are already overwhelmed by their caseloads and severely limited in their ability to deliver effective services because of case backlogs and inadequate human and financial resources.

**Congress is beginning to understand that the IV-D program does not, and should not, constitute the only child support enforcement enterprise in the country. There is a great wealth of enforcement resources outside the IV-D program in the form of public, locally funded enforcement agencies, private enforcement entities, and private attorneys.** Two bills introduced in the current 106th Congress, S. 1882 by Senators Hutchison (R-TX) and Stevens (R-AK), and H.R. 4678 (as originally filed) by Representative Johnson (R-CT), would, in one or another manner, authorize the use of all enforcement resources and procedures provided under federal law. These bills, in effect,

acknowledge that non-IV-D enforcement resources have not yet been fully brought into the national child support enforcement effort and that, by making all congressionally authorized enforcement mechanisms available to them, non-IV-D public and private child support enforcement agencies and private attorneys could significantly augment the IV-D child support enforcement program, without added federal and state IV-D program costs. The intent of these bills is not to supplant the IV-D program — or even to change its scope or responsibilities in any way, but to provide custodial parents with effective child support enforcement options beyond the IV-D program.

**Given the size of their caseloads and the automated processes they must use, state IV-D agencies are unable to offer personalized attention. One of the great frustrations of parents whose cases are being enforced by the IV-D program is that they cannot reach "a real person" when they call their IV-D agencies for information on the status of their cases (e.g., to learn what actions have or may be taken by an agency), if, indeed, their telephone calls are answered at all. But custodial parents feel compelled to use IV-D services because the IV-D agency currently provides the only avenue to use of the full compendium of enforcement mechanisms and information resources. These parents should have a choice of child support enforcement services outside the IV-D program. A family needing support services should not be forced to turn to the already overburdened IV-D program simply because the program has the use of enforcement tools not available elsewhere. To provide families with a true choice of enforcement services, resources and procedures now limited to use in the IV-D program need to be extended to other public enforcement agencies and to members of the private bar. The IV-D program, public non-IV-D enforcement agencies, and the private attorneys enforcing support are, after all, committed to a common purpose and goal: getting support to the families owed and urgently needing that support. Everything should be done to facilitate the implementation of that purpose and the attainment of that goal.**

Congress has already started down the road to the sharing of enforcement mechanisms by the IV-D program and non-IV-D providers of enforcement services through the various changes in state domestic relations laws it has mandated over the years. "Universal" income withholding in the collection of child support and paternity establishment requirements and procedures provide examples of this. Unfortunately, however, not all child support enforcement remedies authorized by Congress are available beyond the IV-D program, resulting in custodial parents' having to wait month after month, sometimes year after year, to receive support collections which they might more expeditiously have received through the services of non-IV-D enforcement entities, if those entities also had use of all the tools Congress has authorized.

The character and pace of child support enforcement in this country would be dramatically changed if private attorneys and non-IV-D public and private child support enforcement agencies had access to the following procedures and resources:

\* Income withholding for Unemployment Insurance Benefits (UIB). Current law [42 U.S.C. § 503(e)] permits the withholding of child support from UIB only in cases enforced by the state's Title IV-D agency. This significantly restricts the enforcement of support in any case being handled by a local government agency or by a private attorney and requires the custodial parent to use the Title IV-D agency's services at federal expense. Federal law needs to be amended to permit state employment security agencies to honor an income withholding order sent by any entity — not just the IV-D agency — enforcing the collection on behalf of the custodial parent in the same manner that currently all employers (including federal agencies) and other payors of income honor such an order, whether IV-D or non-IV-D.

\* Federal and state tax refund intercepts for collection of child support. Current law [42 U.S.C. §§ 664; 666(a)(3)] requires the interception of a state or federal income tax refund of a person owing child support. The use of this enforcement remedy, however, is restricted to cases being enforced by the state Title IV-D agency. Federal law needs to be amended to provide procedures under which a non-Title IV-D public agency or a private attorney may collect past-due support from a state or federal income tax refund, without the requirement that such a case become a IV-D case.

\* The use of passport sanctions in cases of child support payment delinquency. In the 1996 Welfare Reform Act, Congress required state Title IV-D agencies to implement procedures for reporting to the Secretary of Health and Human Services the names of non-custodial parents who owe past-due support exceeding \$5,000 for the purpose of denying issuance of a passport or revoking or otherwise limiting the use of a passport already issued. As written, however, the law [42 U.S.C. §§ 652(k); 654(31)] appears to restrict access to this highly valuable tool to the state Title IV-D agency alone, with no opportunity for its use in a non-Title IV-D case. Federal law should be amended so that, with appropriate due process and other safeguards, a private attorney or local government enforcement agency may be able to certify to the Secretary that a non-custodial parent in a non-Title IV-D case owes past-due support in excess of \$5,000.

\* Data matches with financial institutions to identify and seize the assets of delinquent obligors. Under the 1996 Act [42 U.S.C. § 666(17)], each state Title IV-D agency must conduct quarterly data matches with all financial institutions (not just banks) in the state in order to identify assets of non-custodial parents delinquent in payment of ordered child support. In turn, financial institutions are required to encumber or surrender funds upon receiving notice of lien or levy from the state agency where a match occurs between the names and social security numbers of delinquent obligors and account holders. (On the interstate level this process of data matching with interstate financial institutions is conducted by the FPLS, to which state IV-D agencies send the names and social security numbers of non-custodial parents owing past-due child support). While a potentially valuable enforcement tool, such an exchange of data between the state Title IV-D agency and financial institutions is currently limited to cases being enforced by the state agency. Federal law should be amended: (1) to enable a private attorney or local government enforcement agency, upon payment of a suitable fee for the service, to request the state Title IV-D agency to include a non-Title IV-D case in the matches; and (2) to require financial institutions to provide information and to respond to notice of lien or levy in a non-Title IV-D case in the same manner and with the same exemptions from liability as in a Title IV-D case.

\* Reporting child support delinquencies to consumer credit reporting bureaus. In the 1996 Welfare Reform Act, states are required [42 U.S.C. § 666(7)] to have procedures for periodically reporting, subject to certain due process safeguards, the name of any non-custodial parent owing past-due support and the amount of the delinquency. Unfortunately, the federal Fair Credit Reporting Act currently restricts such reporting to state or local enforcement agencies or to amounts verified by any local, state, or federal government agency. This effectively denies a private attorney direct use of this valuable enforcement tool. Federal law should be amended to allow a private attorney, on behalf of a custodial parent, to report to credit bureaus the name of a non-custodial parent owing past-due support and the amount of past-due support, with prior notice to the non-custodial parent and the opportunity by that parent to challenge the amount of arrearages to be reported.

\* Co-operation of public agencies in payment processing. The availability of child support enforcement services by entities outside the Title IV-D program both saves the taxpayer on the federal costs of funding the Title IV-D program and provides custodial parents with a choice of alternatives for recovering the child support owed them. Just as state Title IV-D agencies may charge fees-for-services as a way to help finance their operations, so non-IV-D public enforcement agencies and private enforcers rely on fees to sustain their services. In a few states and in some jurisdictions within states the public entity (such as the State Disbursement Unit) responsible for receiving and disbursing support payments has refused to direct payments to a private attorney or private collection agency providing enforcement services to a custodial parent, even though the parent has properly designated an entity or person as the place for transmittal of support payments and has delegated a power of attorney for that purpose. Federal law should ensure the expeditious processing of support collections by requiring that support payments be transmitted to the address, and in care of a person or entity, designated by a custodial parent

\* Access to information for locating absent parents who owe child support. Under the 1996 Welfare Reform Act, Congress greatly expanded the Federal Parent Locator Service (FPLS) to include a national registry of child support orders and a national directory of new hires and to provide for important data matches for child support enforcement purposes to be made among the components of the expanded FPLS. Federal law [42 U.S.C. § 653(c)] already identifies the custodial parent or private attorney or other agent of a child as among the "authorized persons" allowed to request locate information concerning a non-custodial parent from the FPLS, including the parent's social security number(s), the addresses of the parent and the parent's current employer, income and employment benefits (e.g., health care coverage), and nature and location of the parent's assets and debts. The law should be amended to ensure that non-IV-D public enforcement agencies and private enforcers share top priority with state IV-D agencies in gaining access to this. In addition to currently authorized FPLS information, non-IV-D public enforcement agencies and private attorneys should have access to information on a child support case resulting from data matches within the components of the FPLS (the Federal Case Registry and the National Directory of New Hires).

Providing private attorneys and non-IV-D child support enforcement agencies with access to these enforcement resources and procedures would enormously strengthen child support enforcement in this country and the millions of families currently receiving the child support they are due would be the beneficiaries. Unfortunately, there is opposition from some state IV-D officials and from certain special interest groups who have asserted that non-IV-D public enforcement agencies and private attorneys cannot be trusted to use these enforcement tools responsibly, that somehow procedures would be inappropriately used and that confidential protections, privacy rights, and due process procedures would be jeopardized. Some of this opposition issues from genuine, but ill-founded concerns; some of it, however, expresses a kind of territoriality, a protection of IV-D program prerogatives and privileges.

If the child support enforcement in this country is to move boldly forward into the 21st century, everyone committed to the purpose of child support enforcement will need to work together to ensure that families timely and fully receive the support they are owed and urgently need. There is a need for expansive thinking and action to change the appalling national child support enforcement statistics, the millions of families un-served and under-served by the national child support enforcement program, the billions of uncollected and, hence, undistributed child support payments, mounting year after year.

Some opine that once state IV-D programs get their automated systems fully operational (a doubtful prospect in light of the past decade of troubled and failed efforts) and once all the enforcement mechanisms authorized by Congress for the IV-D program are fully employed, then the child support enforcement program will be able to satisfy the needs of all families equally well. The flaw in this perspective is that to make the IV-D program the success it aspires to be would require a commitment of state and federal resources of an unprecedented magnitude, dwarfing the current level of expenditures. In other words, there is no assurance, indeed, very little, if any, likelihood, that the IV-D program will ever have the resources to achieve full compliance with all the mandates currently before it and all the ones that will come its way and the history of the program clearly indicates that it will always be subject to legislated changes. More important, however, is the recognition that child support enforcement, no matter how sophisticated the tools, is always a human enterprise when it comes to the use of those tools. The heart of enforcement remains the work of child support personnel who deal with custodial and non-custodial parents, negotiate settlements, and perform legal work for court or administrative hearings. It is here where there is the greatest possibility of inadequate resources to meet the large and increasing caseloads of the program.

#### **IV. CONCLUSION**

Civil remedies of civil wrongs have always depended principally upon initial action being instituted by private parties acting through private attorneys. The involvement of government in actions to redress wrongs has been to assure impartiality and outcomes consistent with public policy and has been exercised by way of the judicial or administrative processes through which private actions are reviewed and resolved. Child support enforcement depends primarily on civil, rather than criminal, processes and,

before the creation of the Title IV-D program in the mid-1970s, was performed principally by private attorneys acting for private clients to protect their private interests.

The time has come to facilitate greater civil enforcement of child support through private attorneys by enhancing enforcement measures available to attorneys. Most state IV-D programs have been, and continue to be, struggling in their efforts to provide services to a phenomenal number of child support cases. Nor is the situation likely to improve. The result is that state IV-D agencies are under attack by advocacy groups, by the news media, by legislators and other elected officials at the national and state levels, and by the public at large. Moreover, state and federal resources available for the IV-D effort, already inadequate, are in jeopardy because of changes in rules affecting the assignment of support rights (so that state agencies can no longer fully reimburse themselves from support collections for public assistance amounts paid families), newly imposed limitations on federal incentive payments to state IV-D programs, costly new federal mandates, and the specter of a cut in the rate of federal cost-sharing for administrative expenditures. In this context, it does not make sense to continue denying private attorneys and other non-IV-D enforcement providers access to all the tools authorized by Congress.

**Finally, the extension to private attorneys and non-IV-D public and private entities of the enforcement mechanisms currently restricted in use to the Title IV-D program would provide custodial parents with viable child support enforcement options. If the premise is accepted that private attorneys and non-IV-D public and private agencies should be permitted to continue providing enforcement services, then it reasonably follows that those providers should have access to the same remedies and other enforcement mechanisms that are available to the IV-D program. It makes no sense to withhold use of enforcement tools from parents solely because it was their preference to have their child support obligations enforced through other than IV-D means, and at their own expense, in the case of choosing private attorneys.** There is no public policy served by creating an incentive for custodial parents to obtain IV-D enforcement services at taxpayer expense by denying those parents use of enforcement tools where they choose another enforcement alternative at their own expense. The further point here, however, is that the custodial parent who chooses to have a private attorney provide enforcement services is also a citizen who, through tax dollars, is already paying for the enforcement resources and remedies to which she/he is denied access because of her/his enforcement preference. By no measure is this an equitable situation.