

3-31-1992

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### Recommended Citation

Paula Roberts, *Child Support Enforcement For Low-Income Children: Part Of The Problem Or Part Of The Solution?*, 1 U.D.C. L. Rev. 143 (1992).

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# CHILD SUPPORT ENFORCEMENT FOR LOW-INCOME CHILDREN: PART OF THE PROBLEM OR PART OF THE SOLUTION?

Paula Roberts\*

## INTRODUCTION

Despite recent rhetoric to the contrary,<sup>1</sup> America's social welfare programs have significantly reduced economic suffering. In 1959, 22 percent of the American population was living in poverty; 30 years later, 13.5 percent was poor. The decline was partly the result of successful public benefits programs: the number of families able to obtain Aid to Families With Dependent Children (AFDC) increased; the AFDC-UP (Unemployed Parent) program, Medicaid, Medicare, Social Security Income (SSI), and the food stamp programs were enacted; Social Security was expanded to cover more workers and higher minimum benefits were established.

Another factor in reducing poverty was the availability of jobs. Indeed it is largely the loss of jobs and stagnation in wages that have caused the poverty rate to increase in the last two years.<sup>2</sup> Finally, as more women enter the labor force, two-parent families have two incomes. Two incomes, even from minimum wage jobs, raise families above the poverty level.<sup>3</sup>

One group of people, however, remains mired in seemingly intractable poverty. This is the group of female-headed families with children where the father is absent. This group has an astounding 32.2 percent rate of poverty.<sup>4</sup> This article will examine the reasons why it has been difficult to eradicate

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1. See e.g., C. MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY 1950-1980* (1984); HOUSE WEDNESDAY GROUP, *MOVING AHEAD: INITIATIVES FOR EXPANDING OPPORTUNITY IN AMERICA* (1991).

2. See, CENTER ON BUDGET AND POLICY PRIORITIES, *TWO MILLION MORE AMERICANS BECOME POOR AS RECESSION HITS AND WAGES AND INCOMES DECLINE* (Sept. 26, 1991).

3. In 1992, the poverty level for a family of four is \$13,950. A full-time year-round minimum wage worker could earn \$3,840 (52 weeks x 40 hours per week x \$4.25). With two such earners family income is \$17,680 or \$3,730 above poverty. For poverty line figures, see 57 Fed. Reg. 5456 (Feb. 14, 1992).

4. U.S. DEPT. OF COMMERCE, BUREAU OF THE CENSUS, *CHILD SUPPORT AND ALIMONY: 1989* (1991), Series P-60, No. 173 at 2. [hereinafter *CHILD SUPPORT*].

poverty in this group and will discuss the role child support enforcement can play in addressing the problem.

Before starting, however, it must be noted that the overall figures mask another reality. It is Black and Hispanic female-headed families whose poverty is most acute. For example, in 1989, white female-headed families had a poverty rate of 25.5 percent; similar Black families had a 47.4 percent poverty rate; such Hispanic families had a 48.2 percent poverty rate.<sup>5</sup> Clearly, the impoverishment of children in single-parent families is also a racial issue.

### I. OVERVIEW

There are three systems from which single mothers with children can potentially receive income: paid employment, child support, and public benefits. Individually, these systems do not offer much promise of solving the problem:

- In 1992, a mother with two children working full-time at the minimum wage (\$4.25 per hour) would have a gross income equal to 76 percent of the poverty line.<sup>6</sup> She would have to earn about \$5.50 per hour just to reach the poverty level. Yet, women continue to be clustered at the lower end of the wage scale and are the people most likely to hold minimum wage jobs.
- A recent Census Bureau study found that only 58 percent of women with children under 21 with an absent father, had been awarded child support or had an agreement to receive support. Thus, 42 percent had no support award. Even when an order was obtained, it was rarely fully enforced. In the same survey, the Census Bureau found that of those with support orders only 51 percent of the mothers received full payment; 22 percent received partial payment, and 25 percent received no payment. As a result, absent parents owed their children \$5.1 billion in uncollected, legally required support.<sup>7</sup>

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5. *Id.*

6. A full-time year around minimum wage worker earns \$8,840 (52 x 40 x \$4.25). The poverty level for a three-person household is \$11,570.

7. CHILD SUPPORT, *supra* note 4 at 1.

— No state—even when AFDC and Food Stamps are combined—pays public benefits sufficient to remove families from poverty. Indeed, in 1990, the median AFDC and food stamp benefit for a family of three was 72 percent of the poverty line.<sup>8</sup>

Obviously, efforts need to be made to improve each of these systems. An equally fruitful approach would be to improve the interrelationships among the programs, so that more than one source could be used.<sup>9</sup>

Since Congress raised the minimum wage in 1989,<sup>10</sup> it is not likely to do so again in the near future. Moreover, in 1988, despite evidence that it should do so, Congress failed to change the AFDC program to require a minimum national benefit.<sup>11</sup>

Yet, as detailed below, there has been longstanding interest in developing a child support system that adequately addresses the needs of single-parent families. One reason for focusing on child support, then, is that change is politically achievable.

## II. THE CURRENT CHILD SUPPORT SYSTEM

### A. Background

Congress enacted Title IV-D of the Social Security Act in 1974.<sup>12</sup> This federal law requires each state participating in the AFDC program to operate a child support enforcement program that can locate absent parents, establish paternity, obtain support orders, and ensure that those orders are actually enforced.<sup>13</sup>

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8. COMM. ON WAYS AND MEANS, OVERVIEW OF ENTITLEMENT PROGRAMS, WMCP 102-9, 102d Cong. 1st Sess. (1991) at 598. [hereinafter OVERVIEW].

9. For a detailed discussion of the value of combining public assistance and employment see R. SPALTER-ROTH, H. HARTMANN, L. ANDREWS & U. SUNKARA, COMBINING WORK AND WELFARE, AN ALTERNATIVE ANTI- POVERTY STRATEGY (1991) (available from the Institute for Women's Policy Research, 1400 20th Street, NW, Suite 104, Washington, DC 20036).

10. P.L. 101-157, 103 Stat. 938, 29 U.S.C. § 206.

11. P.L. 100-485, § 406, 102 Stat. 2343 (codified at 42 U.S.C. § 602 note (1991) (authorizes a study of implementation of a minimum national benefit, but this was as far as Congress was willing to go).

12. Pub. L. 93-647, 88 Stat. 2337 (codified at 42 U.S.C. § 651 *et seq.* (1988)).

13. 42 U.S.C. § 602(a)(27) (1988) and *id.* §§ 651 *et seq.*

AFDC families are eligible for services without filing an application or paying an application fee.<sup>14</sup> In return for IV-D services, AFDC recipients are required to assign their child support rights to the state and to cooperate in the state effort to establish paternity and obtain support.<sup>15</sup> Until 1984, all the money collected went to the government to reimburse them for what AFDC paid. Today, the first \$50 collected each month is given to the AFDC family.<sup>16</sup> The rest is used to reimburse the state and federal governments for that month's AFDC grant.<sup>17</sup>

The services of the state's IV-D agency are also available to non-AFDC families but they must apply and may be asked to pay an application fee as well as fees for specific services.<sup>18</sup> Non-AFDC IV-D clients are generally either poor women who are for some reason ineligible for public assistance or lower-income women who are unable to afford the cost of a private attorney. They are entitled to receive the entire amount of support collected on their behalf.<sup>19</sup>

The Office of Child Support Enforcement (OCSE), located in the Office of Family Assistance of the Department of Health and Human Services (HHS), is the federal agency responsible for issuing regulations, monitoring the states' IV-D programs and conducting audits.<sup>20</sup>

A number of problems arose in the early years of IV-D implementation. Essentially, the IV-D system represented a federalization of family law—an area traditionally reserved to the states. To avoid incursion into the states' province, OCSE proceeded gingerly, unwilling to promulgate regulations that set out specific or stringent state obligations. Lacking specific standards, OCSE was also unable to aggressively monitor state IV-D performance and penalize states operating inadequate systems.

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14. *Id.* at § 654(4). Families receiving Medicaid are also eligible for free services. *Id.* at 45 C.F.R. § 302.22, 56 *Fed. Reg.* 8003 (Feb. 26, 1991).

15. 42 U.S.C. § 602(a)(26) (1988). There is a limited exception for those with good cause for refusing to cooperate. *Id.* at § 602(a)(26)(B). For a critique of this mandatory approach see Harris, *Child Support for Welfare Families: Family Policy Trapped in its Own Rhetoric*, 16 N.Y.U. REV. OF LAW AND SOC. CHANGE 619 (1988).

16. 42 U.S.C. § 657(b)(1) (1991). The \$50 does not affect the family's AFDC eligibility or grant. *Id.* at § 602(a)(8)(A)(vi).

17. *Id.* at § 657(b)(2). If there is money left over, the rest goes either to the family for current support, *id.* § 657(b)(3) or to the state if arrears are owed to it, *id.* § 657(b)(4). If no arrears are owed to the state, the AFDC family gets the arrears, *id.*

18. *Id.* at § 654(6).

19. 45 C.F.R. § 302.51(a) (1990).

20. 42 U.S.C. § 652 (1988).

Additionally, states could see the advantage of collecting child support for AFDC recipients where most of the money goes to the state to reimburse for AFDC. No commensurate fiscal incentive existed for states to collect money owed to non-AFDC clients.

Fiscal concerns also made enforcement difficult. Some noncustodial parents make a career out of avoiding child support. Tracking them down and bringing them to court is expensive. Moreover, in AFDC cases, absent parents see their support payments primarily fall into state coffers to reimburse AFDC grants, rather than bringing any benefit to the children. As a result, noncustodial parents were often recalcitrant and their payments sporadic.<sup>21</sup>

### *B. The Child Support Enforcement Amendments of 1984*

In 1984, due to the efforts of organized groups of vocal non-AFDC recipients who needed child support services, Congress revisited the child support arena, enacting the Child Support Enforcement Amendments of 1984.<sup>22</sup>

The 1984 Amendments placed renewed emphasis on service to non-AFDC cases.<sup>23</sup> To increase the number of mothers who could obtain support awards, the Amendments also instructed states to abolish short paternity statutes of limitation and allow paternity claims to be brought at least until a child's eighteenth birthday.<sup>24</sup> To encourage AFDC families to actively pursue support, the law gave the family the right to the first \$50 collected each month.<sup>25</sup> To help increase the size of support awards, the Amendments required states to develop specific guidelines for establishing what the noncustodial parent should pay, though they were not statutorily obligated to use those guidelines.<sup>26</sup> Congress also mandated that states adopt a variety of new enforcement techniques including interception of tax refunds and wage withholding when a noncustodial parent fell into arrears on support payments.<sup>27</sup>

The 1984 revisions had a number of positive results. Awards went up as the result of child support guidelines. With wage withholding, the notion that there

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21. For a fuller discussion of these issues, see D. CHAMBERS, *MAKING FATHERS PAY: THE ENFORCEMENT OF CHILD SUPPORT* (1979).

22. Pub. L. 93-378, § 2, 98 Stat. 1305 (1988).

23. *Id.* at § 2, codified at 42 U.S.C. § 651 (1991).

24. P.L. 98-378, § 3(b), 98 Stat. 1306, amended and codified at 42 U.S.C. § 666(a)(5)(A)(i) (1988).

25. 42 U.S.C. §§ 602(a)(8)(A)(vi) and 657(b)(1) (1988).

26. P.L. 98-378, § 18(a), 98 Stat. 1321, amended and codified at 42 U.S.C. § 667 (1988).

27. P.L. 98-378, § 3(b), 98 Stat. 1306, codified at 42 U.S.C. § 666(a) (1988).

was no way to force an absent parent to pay support eroded. Even in cases where an absent parent was not wealthy, the \$50 that went to the family was an incentive to establish paternity and secure support as the payment was a step toward easing poverty for some families.<sup>28</sup> The 1984 Amendments also prodded some state legislatures to go beyond the federal requirements. Some enacted wage withholding statutes that required support be withheld from the noncustodial parent's wages from the day an award is made. (This is referred to as "immediate wage withholding").<sup>29</sup> In this way, a payment never falls into arrears. Some states streamlined paternity processes so they were less cumbersome.<sup>30</sup> Others adopted time standards for transmitting support awards and pass-through payments to custodial parents who could then see the benefit of support enforcement.<sup>31</sup>

Many states, however, still had ineffective enforcement systems and systemic problems with the distribution of support collections. Sometimes, noncustodial parents were not credited with payments made. Despite federal requirements to the contrary, support payments owed to the family were sometimes not paid promptly—or at all. When families left AFDC, support was not redirected in a timely fashion. When payment was forwarded, no explanation of the amount paid was offered, nor was an opportunity or method to challenge the amount of payment available.<sup>32</sup>

### C. *The Family Support Act of 1988*

Cognizant that the system was still not fulfilling its potential, in 1988, Congress enacted Title I of the Family Support Act (FSA).<sup>33</sup> The FSA mandates that states amend their family law to require that: 1) all parties to a contested paternity action submit to genetic testing;<sup>34</sup> 2) all parents furnish their Social Security numbers to the state's birth records agency as part of the

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28. In Fiscal Year 1989, AFDC families received \$269 million in pass-through payments up from \$94 million in 1985. U.S. DEPT. HEALTH AND OF HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, CHILD SUPPORT ENFORCEMENT, 14TH ANNUAL REPORT TO CONGRESS (1991) at 18.

29. See, e.g., TEX. CODE ANN. tit. 2 § 14.43 (1987); WISC. STAT § 767.265 (1987).

30. See, e.g., MASS. GEN. LAW, ch. 310, § 11(a) (1986).

31. See, e.g., W.VA. CODE 48A-2-12(a) (1986).

32. For a discussion of these issues and the legal challenges brought to address them, see M. MASON & P. ROBERTS, IMPROVING THE QUALITY OF STATE IV-D PROGRAMS THROUGH LITIGATION (1988) (available from the National Clearinghouse for Legal Services, 407 S. Dearborn Street, Chicago, IL 60605).

33. P. L. 100-485, tit 1, 102 Stat. 2343 codified at 42 U.S.C. §§ 651 *et seq.* (1988).

34. 42 U.S.C. § 666(a)(5)(B) (1991).

process for issuing a birth certificate;<sup>35</sup> 3) decisionmakers use the state's child support guidelines in establishing or modifying support awards unless to do so would be unjust or inappropriate;<sup>36</sup> 4) state child support guidelines be updated at least once every four years;<sup>37</sup> and 5) new child support orders provide for collection through immediate wage withholding unless both parents agree to an alternative arrangement or the court finds good cause for not ordering it.<sup>38</sup> These changes apply to all child support cases.

In addition, the FSA also has provisions that require states to make changes within their IV-D systems. (States, of course, are free to extend these to everyone.) They include: all existing orders must be amenable to review and adjustment under the guidelines at least once every three years,<sup>39</sup> and states must meet certain goals for paternity establishment.<sup>40</sup> Accordingly, states may simplify their paternity procedures in noncontested cases and/or decriminalize their contested case procedures.<sup>41</sup>

Moreover, state IV-D systems have to provide applications for service upon request, process cases according to specific time frames,<sup>42</sup> and give IV-D clients the support payments to which they are entitled (including the \$50 pass-through) shortly after it is received by the IV-D agency.<sup>43</sup>

Finally, the FSA has a few provisions that affect only AFDC cases. Of importance is that in 1993, states will be required to send AFDC families monthly notices of support collected on their behalf and an explanation of how the support was distributed.<sup>44</sup>

### III. RESULTS TO DATE

From 1974 to the present there has been steady improvement in the child support legal system. From a fragmented state law system has emerged a more uniform national system. Implementation of this legal framework, however, has

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35. *Id.* at § 405(c)(2)(C)(i)(ii).

36. *Id.* at § 667(b)(2).

37. *Id.* at § 667(a).

38. *Id.* at § 666(b)(3); P.L. 100-485, tit. 1, 102 Stat. 2343 codified at 42 U.S.C. §§ 101(b) and (d)(2).

39. 42 U.S.C. § 666(a)(10)(B) (1988).

40. *Id.* at § 652(g).

41. *Id.* at § 668.

42. *Id.* at §§ 452(h); 45 C.F.R. §§ 303.2, 303.3, 303.4, 303.5 and 303.6 (1990).

43. 42 U.S.C. § 652(i) (1988); 45 C.F.R. § 302.32(f) (1990).

44. P.L. 100-485, § 104, 102 Stat. 2348, to be codified at 42 U.S.C. § 654(5)(A) (1988).

not translated into improvements in the economic status of mother-only families that its proponents had hoped for.

Indeed, criticisms of the states' poor performance in making the laws work abound.<sup>45</sup> This is especially the case with enforcement when the parents live in different states (interstate cases).<sup>46</sup> Some critics estimate that if reasonable child support guidelines were in place and income withholding properly implemented, custodial mothers and their children would have a \$23 billion increase in their annual income.<sup>47</sup>

However, this significant transfer of money would not likely help the most vulnerable mothers. The fact is that the custodial mother most likely to have a child support order and be collecting what is owed is a nonpoor divorced, white, college-educated woman who has remarried.<sup>48</sup> The mother least likely to have such an order is a poor, never-married, Black high-school dropout.<sup>49</sup>

Here, however, some progress is being made. Recent census data indicate that among poor women, since 1978, the percentage with support orders has increased from 38 percent to 43 percent; and the number who collected money owed rose from 59 percent to 68 percent.<sup>50</sup> Indeed, between 1985 and 1989, the IV-D system increased the number of paternities established from 232,000 per year to 336,000 per year; increased the number of support obligations established from 669,000 to 936,000 per year; and total collections have gone from \$2.7 billion per year to \$5.3 billion per year.<sup>51</sup>

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45. See, e.g., SUBCOMM. ON HUMAN RESOURCES, COMM. ON WAYS AND MEANS, CHILD SUPPORT ENFORCEMENT REPORT CARD, WMCP 102-1, 102d Cong. 1st Sess. (1991); GOVERNMENT ACCOUNTING OFFICE, CHILD SUPPORT: NEED TO IMPROVE EFFORTS TO IDENTIFY FATHERS AND OBTAIN SUPPORT ORDERS, GAO-HRD-87-37 (1987).

46. GOVERNMENT ACCOUNTING OFFICE, INTERSTATE CHILD SUPPORT WAGE WITHHOLDING NOT FULFILLING EXPECTATIONS, GAO-HRD-92-65BR (1992).

47. Garfinkel & Oellerich, *Noncustodial Father's Ability to Pay Child Support*, 26 DEMOGRAPHY 219 (May 1989) [hereinafter Garfinkel & Oellerich].

48. CHILD SUPPORT, *supra* note 4, at p.5 Table C.

49. *Id.* See also MICHALOPOULAS & GARFINKEL, REDUCING THE WELFARE DEPENDENCE AND POVERTY OF SINGLE MOTHERS BY MEANS OF EARNINGS AND CHILD SUPPORT, IRP DISCUSSION PAPER 882-89 (1989).

50. CHILD SUPPORT, *supra* note 4, at 4, Table B.

51. U.S. DEPT. OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, OFFICE OF CHILD SUPPORT ENFORCEMENT, 14TH ANNUAL REPORT TO CONGRESS FOR THE PERIOD ENDING SEPTEMBER 30, 1989 at Tables 58, 60 and 3. (1991).

#### IV. WHERE DO WE GO FROM HERE?

There is now in place, a rudimentary system to help custodial parents establish paternity and obtain child support. Gradual improvement has occurred in the past decade and more improvement is likely in the 1990s. As a result, some mothers and children will escape poverty—especially if they can combine wages and child support.

This is particularly true for non-AFDC families. Recent data suggests that the noncustodial parent in such families can afford to pay significant amounts of support.<sup>52</sup> For example, one state study found that more than 70 percent of noncustodial parents had incomes over twice the poverty line.<sup>53</sup> Another study found that in the 21-29 age cohort, 59 percent of divorced or separated mothers were poor but only 12 percent of noncustodial, divorced or separated fathers were; 60 percent of never-married mothers were poor, but only 25 percent of never-married fathers fell into poverty.<sup>54</sup>

However, improvements in the child support system alone will not greatly help AFDC families. Evidence suggests that while AFDC noncustodial fathers could pay something, their ability is considerably less than that of the general population of noncustodial AFDC fathers.<sup>55</sup> This is particularly true of Black and Hispanic noncustodial parents.<sup>56</sup>

Some states, recognizing this, have tried new approaches to the problem. Some states allow AFDC custodial parents to keep child support in excess of

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52. See F. SONNENSTEIN & C. CALHOUN, *SURVEY OF ABSENT PARENTS: PILOT RESULTS* (1987). See also Garfinkel and Oellerich, *supra* note 47, at 224, where it is estimated that in 1983 dollars the mean income of noncustodial parents was over \$19,000 per year.

53. M. McDONALD, *ECONOMIC AND DEMOGRAPHIC CHARACTERISTICS OF CUSTODIAL AND ABSENT PARENTS IN WISCONSIN* INSTITUTE FOR RESEARCH ON POVERTY DISCUSSION PAPER 809-86 (1986).

54. Lerman, *Child Support Policies* in P. COTTINGHAM & D. ELLWOOD, *WELFARE POLICY FOR THE 1990s*, ch 8 at 224 (1989).

55. R. HASKINS, A. DOBELSTEIN, J. AKINS & J. SCHWARZ, *ESTIMATES OF NATIONAL CHILD SUPPORT COLLECTIONS POTENTIAL AND THE INCOME SECURITY OF FEMALE-HEADED FAMILIES* (1985). This study found that the absent fathers of AFDC children had income that was less than half the national average for men employed full-time. In a two-year period, over 50 percent were unemployed at least once, some for as many as 52 weeks; 14 percent were unemployed two or more times. Less than 30 percent had cash savings and, of those that did, the average amount was only \$400. Only 10 percent owned their homes; 50 percent owned a car. These fathers were already paying over 19 percent of their income in child support—more than twice the average (9 percent) paid by all absent fathers, with outstanding orders. See also F. SONNENSTEIN & C. CALHOUN, *supra* note 52.

56. GARFINKEL, MEYER & SANDEFUR, *THE EFFECTS OF ALTERNATIVE CHILD SUPPORT SYSTEM ON BLACKS, HISPANICS AND NON-HISPANIC WHITES* (INSTITUTE FOR RESEARCH ON POVERTY DISCUSSION PAPER 946-91, at 11 Table 1. (1991)

\$50 per month to supplement the AFDC grant.<sup>57</sup> Another state (New York) has obtained federal waivers to experiment with guaranteeing a minimal level of child support, which when combined with earnings, allows family income to equal or exceed the poverty line.<sup>58</sup>

#### A. *Child Support as a Supplement to AFDC*

Under federal law, each state must develop a standard of need for AFDC families.<sup>59</sup> This is the amount of money in which is necessary to live at a minimal level of decency in the state. Some states pay AFDC benefit, equal to their standard of need. Over half, however, pay AFDC grants that are less than this.<sup>60</sup> Thus, there is a "gap" between what the state says a family needs to survive and what the state pays the family.

Some states are authorized by federal law to "fill-the-gap" with child support.<sup>61</sup>

1. **States Currently Allowed to "Fill-the-Gap."** Before title IV-D was enacted, AFDC recipients who collected child support from a noncustodial parent simply kept the money. They then reported receipt of the money to the AFDC agency that counted the support payment as income. Most states subtracted the child support income dollar-for-dollar from the AFDC grant (i.e., \$75 in child support received meant \$75 less in AFDC).

Many states, however, did not make such a dollar-for-dollar reduction. These states were generally those in which there was a significant difference between the AFDC grant level and the standard of need. Some states allowed the family to keep all the support it received so long as total family income (e.g., the AFDC grant plus support) did not exceed the standard of need. Others allowed the family to keep some percentage of the support without reducing the grant.<sup>62</sup>

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57. This is allowable pursuant to 42 U.S.C. § 602(a)(28) (1992). *See* discussion, *infra*.

58. OMNIBUS BUDGET RECONCILIATION ACT OF 1987, P.L. 100-203, § 9122, 101 Stat 1330, 42 U.S.C. 602 § 9122 (1988). *See also* N.Y. SOC. SERVICES LAW § 111 (1987).<sup>1</sup>

59. 45 C.F.R. § 233.20(a) (1990).

60. *See*, OVERVIEW, *supra*, note 8, at 597-598.

61. 42 U.S.C. § 602(a)(28) (1992).

62. *See*, § 402(a)(28) of the Social Security Act, 51 *Fed. Reg.* 29223 (1986) (to be codified at 45 C.F.R. § 232.233).

In 1975, as part of the new IV-D program, AFDC custodians were required to assign their support rights to the state and let the state make the collection.<sup>63</sup> Thus, the money was not "income" to the recipient, and she did not have to report it. In many states, this change made no economic difference to the AFDC custodian. In the "fill-the-gap" states, however, the recipient faced a potential loss of income. To remedy this, just before the effective date of the IV-D law, Congress passed a law that allows any state which, in July of 1975, chose to use support payments to "fill-the-gap" to continue to do so, so long as it specified this choice in its state plan.<sup>64</sup>

According to HHS, as of July 1988, five states were taking advantage of the child support "fill-the-gap" provision. Georgia, Maine, and Tennessee allow support to completely fill the gap; South Carolina and Mississippi allow partial filling.<sup>65</sup> In those states, if more than \$50 per month in support is paid, AFDC families receive their basic grant, the \$50- pass-through, and a supplemental child support payment. Obviously, these families are considerably better off than families for whom no support is being paid.

There are 14 other states that could revert to being "fill-the-gap" states by virtue of their having had state plans in July 1975 which allowed AFDC recipients to retain a portion of their monthly child support payment without experiencing a dollar-for-dollar reduction in the AFDC payment. These states are: Alabama, Alaska, Arizona, Arkansas, Delaware, Florida, Indiana, Kentucky, Missouri, Nebraska, New Mexico, Virginia, Washington, and Wyoming.<sup>66</sup> It is also possible that the following jurisdictions qualify: District of Columbia, Guam, Hawaii, Kansas, Maryland, Montana, Oklahoma, Puerto Rico, and the Virgin Islands.<sup>67</sup>

Of course, these jurisdictions can use a "fill-the-gap" approach only if there is a gap to fill. In the years between 1975 and the present, some of these jurisdictions have changed their budgeting methods so that the payment standard and the standard of need are now the same. However, if they do revert to a system where there is a gap between the two, then they may adopt a "fill-the-gap" approach.<sup>68</sup>

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63. 42 U.S.C. § 602(a)(26) (1988).

64. *Id.* at § 602(a)(28).

65. See, Blong & Leyser, *An Explanation of Fill The Gap Budgeting as used in the AFDC Program*, 23 CLEARINGHOUSE REV. 153 (1989).

66. *Id.* at 156.

67. These are jurisdictions which were listed as eligible in an HHS promulgation of proposed rules to implement § 602(a)(28) appearing at 45 *Fed. Reg.* 8321 (Feb. 7, 1980).

68. For a description of the various methods states could use see 45 C.F.R. § 232.21 (1990).

Moreover, there is no logical reason to limit fill-the-gap budgeting to states based on their behavior in 1974. Much could be gained if Congress amended the law to allow any state that wished to do so to use this budgeting method.

**2. Child Support Enforcement and Insurance.** Almost every industrialized Western nation—except the United States—provides a package of cash and in-kind benefits to aid all families with children. A central component of most of these programs is a cash grant called the children's allowance. Despite the existence of these allowances, many countries found there was still significant children's poverty—particularly in single-parent families. To address this problem, a new system was needed. "Advance maintenance payment systems" were seen to be the answer.<sup>69</sup>

Under these systems, children with a noncustodial parent are entitled to a monthly support payment in addition to the children's allowance. If the noncustodial parent is unemployed, or cannot be found or identified, the state funds the support payment. Noncustodians who can be located and are employed are taxed a certain percentage of their income each month to fund the payment. If the noncustodial parent's income is too low to fully fund the payment, he or she pays part, and the state makes up the difference.

In other words, the state assumes primary responsibility for assuring a minimal level of decency to children with absent parents. It also assumes responsibility (through the tax system) for making sure noncustodial parents contribute to the support of their children when and if they are able to do so. Children whose noncustodial parent cannot be located or cannot contribute nonetheless receive a payment and are treated no differently than those with an available, solvent parent.<sup>70</sup>

The advance maintenance payment program has several advantages over the current American child support system. First, it greatly increases the chance that a noncustodial parent will pay. Second, it is a more universal system—providing help to families that receive social assistance and those who do not. Finally, it is simply more fair to children. They are not penalized if their noncustodial parent is unable or unwilling to contribute to their support.

It is not surprising, then, that there has been some movement in this direction in the United States in the past few years. The initial push has come

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69. KAMMERMAN & A. KAHN, *MOTHERS ALONE: STRATEGIES FOR A TIME OF CHANGE* ch 3 (1988). See also H. R. RODGERS, *POOR WOMEN, POOR FAMILIES* ch 5 (1986).

70. For a more detailed description, see KAMMERMAN & KAHN, *supra*.

from the academic community. The most extensive work has been spearheaded by Irwin Garfinkel and his colleagues at the Institute for Research on Poverty at the University of Wisconsin. They have proposed an American version of advance maintenance called a Child Support Assurance System (CSAS). CSAS has three basic components: (1) a standardized formula or guideline for establishing the support obligation of noncustodial parents; (2) automatic income withholding to collect child support awards; (3) an assured minimum benefit to each child with a support order with the state making up the difference (if any) between what the noncustodial parents pays under the guideline and the guaranteed minimum.<sup>71</sup>

Garfinkel and his colleagues designed their system to be tried in Wisconsin. Wisconsin, however, did not implement the system. Rather, New York took the idea and designed a pilot project to test an assured benefit for AFDC recipients who also work.<sup>72</sup> Early data from the project indicates it has been quite successful.<sup>73</sup>

In fact, the child support assurance idea is currently receiving national attention. Partly this is the result of the work of David Ellwood who has popularized the notion,<sup>74</sup> and rechristened it Child Support Enforcement and Insurance. The National Commission on Children endorsed Congressional authorization of pilot projects to test out the idea.<sup>75</sup> Also, Senator Christopher Dodd (D-CT) has introduced pilot project legislation.<sup>76</sup> Thus, it is possible that in the next two years, Congress will consider such a program and that, at the very least, states will be allowed to conduct demonstration projects. States should encourage Congressional interest in the Child Support Assurance legislation. Once such legislation is in place, interested states should participate in the pilot project.

71. I. GARFINKEL & M. MELLI, CHILD SUPPORT: WEAKNESSES OF THE OLD AND FEATURES OF A PROPOSED NEW SYSTEM, Vols. I, II, III (1982) INSTITUTE FOR RESEARCH ON POVERTY SPECIAL REPORT SERIES; A. NICHOLS-CASEBOLT, I. GARFINKEL & P. WONG, REFORMING WISCONSIN'S CHILD SUPPORT SYSTEM (1985) INSTITUTE FOR RESEARCH ON POVERTY (1985) DISCUSSION PAPER NO. 793-85; I. GARFINKEL, P. ROBINS & P. WONG, THE WISCONSIN CHILD SUPPORT ASSURANCE SYSTEM: ESTIMATED EFFECTS ON PARTICIPANTS INSTITUTE FOR RESEARCH ON POVERTY DISCUSSION PAPER NO. 833-87 (1987).

72. See *supra*, note 58.

73. See discussion in Roberts, *Child Support and Beyond: Mapping a Future for America's Low-Income Children*, 22 CLEARINGHOUSE REV. 583 (1988).

74. D. ELLWOOD, POOR SUPPORT ch. 5 (1988).

75. NATIONAL COMMISSION ON CHILDREN, BEYOND RHETORIC: A NEW AMERICAN AGENDA FOR CHILDREN AND FAMILIES, ch 5 at 81. (1991)

76. S. 1411, 1001st Cong., 1st Sess. § 202 (1991).

### CONCLUSION

Ultimately the American welfare system needs drastic revision—far beyond that contained in the Family Support Act of 1988. The child support provisions of the FSA do, however, offer an opportunity to move in a positive direction particularly if coupled with strategies to increase the amount of support collected that actually reaches low-income families. A narrow, but significant gain could be made if all states used fill-the-gap budgeting to allow AFDC families to keep more than \$50 in support collected each month. Even greater gains could be made by adopting the Child Support Enforcement and Insurance concept for all families. Current evidence suggests that this would be particularly helpful to Black and Hispanic children<sup>77</sup> who are currently the poorest of the poor.

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77. Garfinkel, Meyer, & Sandefeur, *supra* at note 56.