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Child Support: Changes Enacted or Proposed in the 103rd Congress

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CHILD SUPPORT: CHANGES ENACTED OR PROPOSED IN THE 103RD CONGRESS

SUMMARY

In FY1993, the Child Support Enforcement (CSE) program, which is estimated to handle only 50% of all child support cases, had a caseload of 17.1 million families but obtained collections for less than 20% of them. CSE collections totalled $8.9 billion, and collections not handled through the CSE agency were estimated at $4.1 billion. The Administration estimates that the maximum sum of child support payments that could be collected annually is $47 billion, if all children with an absent parent had a child support order of a specified size. However, it is estimated that two-thirds of children born outside marriage do **not** have legally identified fathers and, thus, cannot obtain child support. Moreover, the average size of child support orders falls below the Administration target. In 1993, Congress passed provisions (P.L. 103-66) designed to increase paternity establishment and improve the enforcement of medical support for children in the CSE program.

The Clinton Administration's 1994 welfare reform bill, H.R. 4605/S. 2224, included many proposals to strengthen the CSE program. President Clinton's proposal had three goals: establish paternity for out-of-wedlock births, ensure fair award levels, and collect awards that are owed. During the 103rd Congress, more than 40 child support bills were introduced, ranging in scope from comprehensive to narrow. Many of the bills proposed to: (1) establish an automated network to link all States to location and income information, (2) require new hires to report child support obligations on revised W-4 forms, (3) require States to establish a registry of child support orders, (4) provide Federal incentives and/or penalties to improve paternity establishments, (5) require States to implement new collection methods for self-employed or temporary workers, and (6) require States to revoke or deny licenses to debtor parents, attach lottery winnings and assets forfeited because of criminal conviction, and report child support delinquencies to credit bureaus. Several of the bills would have required more comprehensive reform of the CSE program: some would have made the Federal Government solely responsible for the collection and enforcement of support orders; others would have adopted the concept of child support assurance and enforcement to guarantee all children a minimum child support benefit.

During the last months of the 103rd Congress, many Members moved to separate CSE legislation from the welfare reform package and pass the child support provisions separately. H.R. 4570, a comprehensive child support bill introduced by Members of the Congressional Caucus for Women's Issues, was reported out of the House Post Office and Civil Service Committee, but it was not reported out of the other six committees to which it was referred. Two bills dealing with Federal personnel were introduced at the close of the session and passed the House, but not the Senate. H.R. 5140 would have strengthened enforcement procedures for child support owed by military personnel. H.R. 5179 would have strengthened mechanisms for ensuring that Federal workers meet their child support obligations. Four bills were enacted into law that contained child support provisions (see *Public Laws*). On Sept. 27, 1994, the House Republican Leadership released a "Contract with America," signed by all but 57 House Republicans, and committed to bring to the floor within the first 100 days of the 104th Congress the 10 draft bills that comprise the Contract. Two of the bills, the Personal Responsibility Act and the Family Reinforcement Act, contain child support provisions.

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BACKGROUND

Title IV-D of the Social Security Act was enacted in 1975 (P.L. 93-647) to establish a program of child support enforcement and paternity establishment. The program was enacted to (1) reduce public expenditures on Aid to Families with Dependent Children (AFDC) by obtaining child support for AFDC children from noncustodial parents and by obtaining child support for other families, who might otherwise have to resort to AFDC and (2) establish paternity for children born outside of marriage so that child support could be obtained for them.

Program Mechanics

The CSE program serves both AFDC and non-AFDC recipients. AFDC applicants and recipients are required to assign their child support rights to the State in order to receive AFDC. In addition, each applicant or recipient must cooperate with the State if necessary to establish paternity and secure child support. Parents receiving benefits from the programs of AFDC, Federal foster care, or Medicaid automatically receive CSE services free-of-charge. Other persons must apply for CSE services and are charged an application fee of up to $25. In addition, CSE agencies are allowed to recover the actual costs of their services to non-AFDC families from either the custodial parent or the noncustodial parent, once current support has been paid.

The services provided by the CSE agency are (1) parent location, (2) paternity establishment, (3) establishment of child support orders, (4) collection of child support (and in certain cases spousal support) payments, and (5) enforcement of medical support.

To establish and enforce a child support order, the CSE program must locate the noncustodial parent; if the CSE agency cannot locate the noncustodial parent with the information provided by the custodial parent, it must use State and Federal parent locator services. The State uses various information sources to locate parents, such as telephone directories, postal service records, motor vehicle registries, tax files, employment data, and criminal records. The Federal Parent Locator Service (FPLS) can access data from the Social Security Administration, the Internal Revenue Service (IRS), the Selective Service System, the Department of Defense, Department of Transportation (Coast Guard), the Veterans Administration, the National Personnel Records Center, and any other Federal agency. The FPLS also has access to State Employment Security Agency (SESA) wage and unemployment compensation data which contain noncustodial parent and employer addresses. According to the Office of

Child Support Enforcement (OCSE) in FY1992, over 75% of the four million cases submitted to the FPLS generated the address of the noncustodial parent or his or her employer. In FY1993, 4.5 million absent parents were located.

Legally identifying the father is a prerequisite for obtaining a child support order. If parents are married, the husband is presumed to be the father of children born during the marriage. If parents are not married and paternity is not established, children have no legal claim on their fathers' income. Paternity establishment can provide social, psychological, and emotional benefits and can make available the father's medical history, which in some cases may be needed to give a child proper care. P.L. 98-378, the Child Support Enforcement Amendments of 1984, required States to implement laws to permit paternity establishment until a child's 18th birthday. P.L. 100-485, the Family Support Act of 1988, required States to meet Federal requirements for the establishment of paternity. One of the ways States could meet the paternity establishment requirement was to establish paternity for at least 50% of the children in the CSE program. The 1988 law also required States to have all parties in a contested paternity case submit to a genetic test upon request. The Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66) required States to adopt laws and procedures to simplify the process of paternity establishment. P.L. 103-66 also increased the percentage of children for whom the State must establish paternity (e.g., from 50% to 75%). P.L. 103-66 also requires States to adopt procedures under which full faith and credit will be given to a determination of paternity made by any other State. In FY1993, paternity was established for 553,000 children receiving CSE services, 16% of the 3.5 million children requiring paternity determination.

Collection methods used by CSE agencies include income withholding, intercept of Federal and State income tax refunds, intercept of unemployment compensation, liens against property, security bonds, and reporting child support obligations to credit bureaus. In addition, all jurisdictions have civil or criminal contempt-of-court procedures and criminal nonsupport laws which many use as a last-resort enforcement tool. The most used collection technique has been income withholding (from the paycheck). In FY1993, $4.7 billion of the $8.9 billion collected by CSE agencies was through income withholding.

P.L. 98-378 required States to implement mandatory income withholding for cases enforced through the CSE agency whenever a child support arrearage was equal to the amount of child support payable for 1 month. P.L. 100-485 required States, beginning Nov. 1, 1990, to use mandatory income withholding in new or modified nondelinquent child support cases handled through the CSE program. Moreover, P.L. 100-485 required mandatory income withholding for all child support orders issued or modified after Jan. 1, 1994 (unless both parents agree in writing to another arrangement), regardless of whether they are processed through the CSE program.

The CSE agency also is required to petition for and pursue medical support, pursuant to P.L. 98-378. OCSE data indicate that in FY1992 only 55% of child support orders issued included provisions regarding health insurance coverage, and only 30% of the orders modified or enforced included such provisions.

Collections, Distribution, and Financing

The Administration estimates that the potential amount of child support obligations that could be collected yearly is $47 billion annually (if *every* custodial mother had a child support order(s), support payments averaged *$5,400* per year, and the *full amount were paid*). However, only $20 billion in child support obligations have actually been legally established, and in FY1993 only $13 billion was paid. Thus, the gap between estimated potential child support payments and actual payments was $34 billion annually. The Administration attributes this gap to the lack of a legally established support order, the low amount of existing awards, and the failure of States to collect child support in the majority of cases. In FY1993, the CSE program, which is estimated to handle only 50% of all child support cases, collected $8.9 billion. The remaining $4.1 billion reported as collected was handled by private attorneys or collection agencies, or through mutual agreements between custodial and noncustodial parents.

The latest Census data on child support (1989) indicate that 42% of the 10 million women with children under age 21 whose fathers lived apart from them *did not* have a child support order. The Census data also show that the average child support payment received in 1989 amounted to $2,995, roughly $250 per month.

The Federal Government reimburses each State 66% of the cost of administering its CSE program. It also refunds States 90% of the laboratory costs of establishing paternity, and through FY1995 90% of the costs of developing comprehensive statewide automated systems. In addition, the Federal Government pays States an incentive amount ranging from 6% to 10% of AFDC and non-AFDC collections to encourage States to operate effective programs.

Child support payments made on behalf of an AFDC child are supposed to be paid to the CSE agency rather than to the family. If the support collection is insufficient to disqualify the family from receiving AFDC, the family receives its full monthly AFDC benefit plus the first $50 of monthly child support payments made on the child's behalf. The remainder of that monthly child support payment is distributed to reimburse the State and Federal Governments in proportion to their assistance to the family (but out of the Federal share of reimbursements incentive payments are made to States). If the family's income, including child support, makes the family ineligible for AFDC, the family's AFDC benefits end, and future support payments are paid directly to the family.

For the first 14 years of its existence, the CSE program resulted in a surplus to the U.S. Treasury. Since 1989, the CSE program has increased the Federal deficit (primarily because a change in the formula for Federal incentive payments to States required higher payments). In FY1993, the Federal share of AFDC collections totalled $777 million, but the Federal share of CSE expenditures was $1.5 billion, resulting in a Federal deficit of $740 million. State CSE expenditures totalled $724 million, while the State share of AFDC collections (plus the incentive payments) totalled $1.2 billion,

Child Support Data--FY1993

Total CSE caseload--17.1 million; **AFDC** cases, 9.6 million; **non-AFDC** cases, 7.5 million
Total CSE collections--$8.9 billion; **AFDC** families, $2.4 billion; **non-AFDC**, $6.5 billion
- **Payments to AFDC families**, $365 million
- **Federal share of AFDC collections**, $777 million
- **State share of AFDC collections**, $847 million
- **Incentive payments to States**, $339 million

Total CSE expenditures--$2.2 billion
- **Federal share**, $1.5 billion
- **State share**, $724 million

Absent parents located--4,481,000
Paternities established--553,000
Support orders initiated--1,038,000
Collections made for 873,000 **AFDC** families; 1,954,000 **non-AFDC** families
Families ineligible for AFDC because of collections-- 242,000

resulting in a State surplus of $462 million. Thus, the program had a net public *cost* of $278 million (Federal deficit of $740 million minus State surplus of $462 million).[1]

ISSUES

Locate Networks

P.L. 100-485 requires that by Oct. 1, 1995, every State must have an approved statewide CSE automated tracking and monitoring system in effect. The Federal matching rate of 90% for developing CSE automated systems expires Sept. 30, 1995. According to the OCSE 17th annual report, as of early FY1993, 32 States were undertaking automated system-transfer efforts. Of those States, eight were completing systems programming, 16 were in the design stage, and eight were in the process of procuring the services of a transfer agent. The remaining 22 States were modifying their existing systems.

In its 1992 report to Congress, the Interstate Commission recommended several provisions to improve the CSE agency's ability to locate absent parents. They include (1) requiring States to establish a registry of child support orders that would include the relevant information for both CSE and non-CSE cases, (2) requiring new employees to

[1]The reader should note that the non-AFDC component of the CSE program provides no direct savings to the States or the Federal Government. Nevertheless, the non-AFDC component of the CSE program can achieve welfare cost avoidance in the following ways: by providing non-AFDC families with additional income sufficient to make them decide not to apply for public assistance (AFDC, food stamps, or Medicaid), even though they may be eligible; by making non-AFDC families ineligible for public assistance and by continuing to make these families ineligible by reason of income; and by reducing the benefit levels of families who do receive public assistance benefits.

provide information regarding child support obligations on a revised W-4 form, and (3) expanding the FPLS by linking it to State data bases and allowing both custodial and noncustodial parents to access the system for both child support and visitation enforcement.

There is disagreement about what can be accomplished through State comprehensive automated systems. Some argue that even if every State had a fully automated system by FY1996, which they regard as doubtful, the systems would not be designed to interlink. Thus, they regard a national computer network as not yet feasible. Others point out that OCSE has awarded a contract to International Business Machines (IBM) to establish a nationwide communications network that will link State CSE systems, referred to as CSENet (Child Support Enforcement Network). The network is supposed to serve as a conduit for the transmission of information among State automated CSE systems. Proponents of this network say that, although it is designed to work in conjunction with statewide automated CSE systems, it will benefit States with limited or no automation. In order for the State's system to be approved by the OCSE, it must interface with CSENet.

Paternity Establishment

In 1971, only 11.3% of all live births in the U.S. (3.6 million) were to *unmarried* women. By 1992, 30.1% of all live births (4.1 million) were to *unmarried* women. According to the OCSE, paternity is established in only one-third of these cases. In FY1992, 53% of AFDC children had parents who had never married. In FY1992, paternity was established for only 18% of the nearly 2.1 million AFDC children who entered the program without legally identified fathers. In 1992, 35% of the 15.4 million children born outside of marriage lived solely with their mothers.

As a result of the increase in the percentage of children born to parents who are not married, paternity establishment has become one of the more crucial elements of the CSE program. However, a major weakness of the CSE program is its poor performance in establishing paternity for children. In FY1992, the national average for paternity establishment for CSE cases was 48%, up from 45% in December 1988 and 43% in FY1991.[2] Although several States are having success in identifying fathers, many are not. In FY1992, the paternity percentage ranged from a high of 85% in West Virginia to a low of 3% in Oklahoma.

The law requires AFDC applicants and recipients to *cooperate* with the State to establish paternity. To satisfy the cooperation requirement, the 1994 Administration

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[2]States are required to meet Federal standards for the establishment of paternity. The standard relates to the percentage obtained by dividing the number of children in the State who are born outside of marriage, are receiving AFDC or CSE services, and for whom paternity has been established by the number of children who are born outside of marriage and are receiving AFDC or CSE services. To meet Federal requirements, this percentage in a State must (1) be at least 50%, (2) be at least equal to the average for all States, or (3) have increased by 3 percentage points from FY1988-1991 and by 3 percentage points each year thereafter.

bill (H.R. 4605, S. 2224) would have required mothers to furnish the name of the putative father (or fathers) and sufficient additional information to enable the CSE agency to verify paternity. The Administration's 1994 bill would have eliminated Federal matching funds for cases in which the custodial parent met the proposed cooperation requirements but for which the State failed to establish paternity within a specified 1-year time frame. House Republicans have proposed to condition AFDC receipt upon a *successful* paternity determination. The draft Personal Responsibility Act in the House Republican "Contract with America" would prohibit States, unless a State adopts an exemption from the law, from paying AFDC to the family of a child whose paternity was not established except in cases where the child was conceived as a result of rape or incest, or where the State determined that efforts to establish paternity would result in the physical danger of the relative applying for AFDC.

Congressional members of the Interstate Commission recommend increased efforts to educate mothers on the benefits to the child of having a legally identified father. Several bills in the last Congress would have required States to implement paternity outreach programs, promoting voluntary acknowledgement of paternity and providing information on the benefits and procedures for establishing paternity (H.R. 1600, H.R. 1961, H.R. 4605, H.R. 4767, S. 689, S. 2224).

There is a widespread view that identifying fathers does not receive sufficient emphasis and should be the number one priority of the CSE program. Many States are thought to give low priority to paternity cases, especially cases involving young unwed fathers, because collections may be lower and administrative costs higher than in other cases. Time spent on these cases could reduce a State's incentive payments, which are based upon collections. Some bills in the 103rd Congress proposed to extend the 90% Federal matching rate now allowed for laboratory costs to other costs related to paternity establishment (H.R. 1600, H.R. 1961, S. 689). H.R. 4605/S. 2224 would have provided performance-based incentives (i.e., higher Federal funding) for States that increased the number and percentage of paternities established.

Some dispute the potential gains from identifying fathers. They argue that many noncustodial fathers have very little income and are unable to make regular child support payments. In these cases, they say, the CSE program merely transfers income from poor fathers to poor children with the result that some fathers may become recipients of State general assistance programs and of the Federal Food Stamp program. Some alleged fathers maintain that much of their resistance to paternity establishment is due to uncertainty about whether they truly are the father of the child (an issue that could be settled by a genetic test) and fear of incarceration if paternity were established and they were unable to pay child support.

A controversial issue is whether alleged fathers receive due process during the simplified voluntary acknowledgement of paternity process. The issue of whether the alleged father has a constitutionally protected interest under the due process clause of the Fourteenth Amendment has been examined by several courts. The majority of courts have concluded that the only protectable interest involved in a paternity action is a property interest -- that if the alleged father is found to be the child's father, he most

likely will incur a monetary child support obligation. Therefore, before the child support obligation is imposed, the Constitution requires that the alleged father's property interest be afforded procedural due process of the law. With respect to action taken by administrative agencies, the Supreme Court has held that due process does not require a hearing at the initial stage, or at any particular point in the proceeding, so long as a hearing is held before the final order becomes effective (*Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)).

Many of the CSE bills in the 103rd Congress included provisions about paternity establishment. Several bills would have raised the paternity establishment requirement from 75% of children of unwed mothers who apply for AFDC or CSE, to 90% (H.R. 3500, S. 1795). The Administration's bill would have required States, as a condition of receipt of CSE funding, to calculate a paternity establishment percentage that included **all** out-of-wedlock births, regardless of whether the custodial parent applied for or received CSE services. Others would have revised the CSE financing to reward high performance in identifying fathers and/or penalize poor performance (H.R. 892, H.R. 4605, H.R. 4767, S. 2224). Some bills would have provided AFDC benefits only to families in which paternity was established for one or all eligible children (H.R. 3500).

Enforcement of Child Support Obligations

In FY1993, of the $8.9 billion collected by the CSE agencies on behalf of AFDC and non-AFDC families, 63% was collected through wage withholding or automatic offset machinery, as follows: income/wage withholding, 53%; Federal income tax offset program, 6%; unemployment compensation offset program, 3%; State income tax offset programs, 1%. The other 37% was collected by some other means. The other means category included payments sent directly to State CSE agencies, voluntary payments without an order, liens against real and personal property, and posting of bonds by noncustodial parents. According to OCSE data, in FY1992, State CSE agencies made collections in only 18.7% of the 15.2 million CSE cases. In other words, a collection was made on behalf of less than one in every five CSE cases. The percentage of child support collections obtained through income withholding may increase beginning in FY1994, since on Jan. 1, 1994 all new and modified child support orders became subject to automatic income withholding, as required by P.L. 100-485, regardless of whether the custodial parent receives CSE services.

In addition to the items discussed below, many of the child support bills introduced in the 103rd Congress included some of the following enforcement techniques: implement fraudulent transfer laws to deter noncustodial parents from hiding income and assets; establish a broader definition of income that would be subject to withholding for child support; attach winnings from lotteries, insurance settlements, judgments, and proceeds from property forfeited because of criminal conviction to satisfy child support arrearages; encourage CSE agencies to refer noncustodial parents who are unable to pay child support to programs or services that may help them obtain a job; and encourage States to use collection agencies for hard-to-collect cases.

Reporting Child Support Obligations on W-4 Forms

Federal regulations require employers to notify the State when a noncustodial parent with an income withholding order leaves his or her job, and to provide the name and address of the new employer, if known. This procedure is not very effective if the noncustodial parent changes jobs frequently, works intermittently, or works in seasonal or cyclical employment. One study has shown that because of job changes, the duration of an income withholding order is less than six months in 49% of CSE AFDC cases and in 28% of non-AFDC cases. As of July 1993, 13 States were requiring new employees to report child support obligations.[3]

The Commission on Interstate Child Support recommended that the W-4 form for reporting exemption claims for employees be modified to reflect whether new employees have a child support obligation, the terms of such obligation, and the existence of an income withholding order. The Commissioners maintain that requiring new employees to report child support obligations on a revised W-4 form would reduce from months to days the time it takes to locate noncustodial parents and that it also would provide employer information. The following bills would have mandated States to require that all new and/or existing employee fill out revised W-4 forms that ask information about child support obligations: H.R. 1600, H.R. 1961, H.R. 3500, H.R. 3892, H.R. 4051, H.R. 4126, H.R. 4414, H.R. 4473, H.R. 4570, H.R. 4605, H.R. 4767, S. 689, S. 1909, S. 1977, S. 2134, and S. 2224.

Credit Reporting

Pursuant to 1984 CSE legislation, providing child support debt information to credit reporting agencies bureaus (sometimes referred to as credit bureaus), has been included as another collection method. The primary purposes for reporting delinquent child support payers to credit reporting agencies are to (1) discourage noncustodial parents from not making their child support payments, (2) prevent the undeserved extension of credit, and (3) maintain the noncustodial parent's ability to pay his or her child obligation. Other benefits include access to address, employment, and asset information.

The Child Support Enforcement Amendments of 1984, P.L. 98-378, require that States establish procedures for reporting overdue child support obligations exceeding $1,000 to consumer reporting agencies, if such information is requested by the credit bureau. States have the option of using such procedures in cases where the noncustodial parent is less than $1,000 in arrears. The 1984 law requires States to provide the noncustodial parent an advance notice of its intent to release information regarding his child support arrearage and an opportunity for him to contest the accuracy of the information. The CSE agency may charge the credit bureau a fee for the information. Although some States and counties had agreements in place with credit bureaus to obtain information about the location of absent parents, the 1984

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[3]The 13 States were: Alaska, California, Georgia, Hawaii, Iowa, Massachusetts, Minnesota, Missouri, Oregon, Texas, Virginia, Washington, and West Virginia.

provision authorizes the routine transfer of information concerning overdue child support to credit bureaus on a much broader basis. The Ted Weiss Child Support Enforcement Act of 1992, P.L. 102-537, amends the Fair Credit Reporting Act to require consumer credit reporting agencies to include in any consumer report information on child support delinquencies provided by or verified by State or local CSE agencies, which antedates the report by 7 years.

The Social Security Act Amendments of 1994, P.L. 103-432 requires States to implement procedures for periodic reports to consumer reporting agencies of the names of debtor parents owing at least 2 months of overdue child support and the amount of child support overdue (this provision takes effect on Oct. 1, 1995).

License Forfeiture

Federal regulations do not require States to deny professional licenses to noncustodial parents with child support delinquencies. However, as of August 1994, 28 States were denying or revoking professional, business, or trade licenses of persons who have child support arrearages.[4] In those States, physicians, realtors, plumbers, hairdressers and others who depend on a license to earn their livelihood are required to be in "good standing" with respect to payment of their child support obligations. Proponents argue that a license is a privilege and not a right and that it is in the interest of the State that the license holder be law-abiding and that its judicial or administrative orders be honored. Opponents argue that it is counterproductive to take away a noncustodial parent's ability to earn a living (via the business license). They note that it is crucial that States have proper due process safeguards if license forfeiture provisions are adopted. The following bills of the 103rd Congress would have required States to deny (or revoke) professional and business licenses (and in some cases other licenses) to noncustodial parents with child support delinquencies: H.R. 915, H.R. 1600, H.R. 1961, H.R. 4570, H.R. 4605, H.R. 4767, H.R. 4897, S. 689, S. 1909, S. 1977, and S. 2224.

Visitation Rights

Visitation rights and child support have been treated historically as separate legal issues. Thus, nonpayment of support is not a valid defense to denial of visitation and visitation interference is not a valid defense to nonpayment of support. P.L. 102-521 establishes a Commission on Child and Family Welfare to study issues affecting the best interests of children, including visitation. The 1994 Clinton bill would have provided grants to States to promote continued access to and visitation by the noncustodial parent (e.g., counseling and education programs, and visitation enforcement, including monitoring, supervision, etc.).

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[4]The 28 States are: Arkansas, Arizona, California, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New York, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Vermont, West Virginia, and Wisconsin.

Discharges in Bankruptcy

Some noncustodial parents seek relief from their financial obligations in the U.S. Bankruptcy Courts. Although child support payments may not be discharged via a filing of bankruptcy (i.e., the debtor parent cannot escape his or her child support obligation by filing a bankruptcy petition), a bankruptcy filing may cause long delays in securing child support payments. Pursuant to P.L. 103-394, a filing of bankruptcy will not stay a paternity, child support, or alimony proceeding. In addition, child support and alimony payments will be priority claims and custodial parents will be able to appear in bankruptcy court to protect their interests without having to pay a fee or meeting any local rules for attorney appearances.

Small Business Loans

The 103rd Congress passed legislation, the Small Business Administration Reauthorization and Amendments Act of 1994 (P.L. 103-403), which includes a provision that requires recipients of financial assistance from the SBA, including direct loans and loan guarantees, to certify that the recipient is not more than 60 days delinquent in the payment of child support. The new law requires the Administration to promulgate, no later than 6 months after enactment, regulations to enforce compliance with the provision.

Other

The draft Family Reinforcement Act, part of the House Republican Contract with America, contains several child support provisions; namely, requiring that uniform terms and information be included in all child support orders, requiring work by some noncustodial parents with child support arrearages, and requiring that child support orders be given "full faith and credit" so that one State would be prohibited from modifying a child support order of another State.[5]

Interstate Enforcement

In 1992, the U.S. Commission on Interstate Child Support, established by P.L. 100-485, sent its 120 recommendations to Congress. It was the view of the majority of Commissioners that because many laws, policies and procedures that govern *intrastate* cases also significantly affect *interstate* cases, their recommendations should address all aspects of the CSE program. The Commission identified four areas in which it concluded that reform of the interstate child support system was critical: electronic communication among the States, uniformity of State laws and procedures, simplicity and ease of case processing, and sufficient resources to process interstate cases. Accordingly, the Commission offered recommendations concerning: the location of parents, assets, and support order information; a W-4 reporting mechanism for new

[5]As noted in this report, the 103rd Congress passed full faith and credit protections for child support orders (P.L. 103-383). The Republican-controlled House has promised to bring to the floor within the first 100 days of the 104th Congress all 10 draft bills that comprise the Contract.

hires to assist States in the location of parents; and the ability of courts to obtain jurisdiction over the case and the process used to establish an order; order enforcement through direct income withholding; paternity establishment; health care support, staffing and training; and funding of child support programs. Many of the CSE bills in the 103rd Congress reflected the Commission's recommendations (S. 689, H.R. 1600. H.R. 1961. H.R. 4570).

In 1990, the OCSE estimated that 30% of all CSE cases comprised a custodial parent and child who lived in a different State from the noncustodial parent. Recently, increased attention has focused on *interstate* CSE and on eliminating barriers to collection. Although States are required to cooperate in interstate cases, problems arise from the autonomy of State and local courts.

The Commission on Interstate Child Support debated whether any or all aspects of the CSE program should be federalized, but the majority of Commissioners were not convinced that federalization would improve the establishment and enforcement of child support orders. Some child advocacy groups believe that there should be a stronger Federal role in enforcement to avoid jurisdictional disputes and differing State laws. Proponents would require the IRS to enforce child support orders (H.R. 773, S. 967, S. 2009 in the 103rd Congress). Advantages to the federalization of enforcement include uniformity through use of one set of enforcement procedures, one central collection point, one enforcement agency, access to Federal databases, and ease of recovery of AFDC. Some disadvantages include differences among State courts that set and modify awards and the Federal enforcement agency, the cost of creating the Federal enforcement structure, a loss of State innovation, erosion of State control over family law issues, and an increased Federal court caseload.

Full Faith and Credit

One of the most significant barriers to improved interstate collections is that, because a child support order is not considered a final judgment, the full faith and credit clause of the U.S. Constitution does not preclude modification. Thus, the order is subject to modification upon a showing of changed circumstances by the issuing court or by another court with jurisdiction. Congress could prohibit inter- or intra-State modifications of child support orders. Arguments could be made that a complete ban on modifications would be unrealistic and unfair. A more likely approach would be one under which States were required to give full faith and credit to each other's child support orders under most circumstances.

The Omnibus Budget Reconciliation Act of 1986, P.L. 99-509, requires States to treat past due support obligations as final judgments that are entitled to full faith and credit in every State. Thus, a person who has a support order in one State does not have to obtain a second order in another State to obtain the money due should the debtor parent move from the issuing court's jurisdiction; the second State can modify it prospectively if it finds that circumstances exist to justify a change. The State may not, however, retroactively modify a child support order. Several CSE bills in the

103rd Congress would have granted full faith and credit status to child support orders (H.R. 454, H.R. 3892, H.R. 4188, H.R. 5001, S. 532, S. 922).

P.L. 103-383, the Full Faith and Credit for Child Support Orders Act (S. 922, signed into law Oct. 20, 1994), restricts a State court's ability to modify a child support order issued by another State unless the child and the custodial parent have moved to the State where the modification is sought or have agreed to the modification.

Uniform Reciprocal Enforcement of Support Act (URESA)

States have several options available for interstate CSE including: direct income withholding; interstate income withholding; long-arm statutes (which require the use of the court system in the State of the custodial parent); the Uniform Reciprocal Enforcement of Support Act (URESA); and the Revised Uniform Reciprocal Enforcement of Support Act (RURESA). In 1950, the National Conference of Commissioners on State Uniform Laws (NCCUSL) developed a model statute for enforcing interstate child support -- referred to as URESA. The model act was amended in 1952 and 1958. In 1968, the act was substantially revised and referred to as RURESA. All 50 States and jurisdictions have enacted either the URESA or the RURESA, but there are important differences in versions adopted by the various States.

If the noncustodial parent lives out of State, the primary tool for enforcement is URESA. URESA establishes a procedure for the registration and enforcement of a support order issued by a State other than the one in which enforcement is sought. A person who has a valid child support order in one State can seek to have that order directly recognized and enforced in another State, and does not need to seek an original order in the second State. The child support official or private attorney files a two-State petition with the CSE agency or a court in another State. Where the URESA provisions in the two States are compatible, the law can be used effectively. However, many of these laws are out of date and incompatible, which makes interstate enforcement relatively ineffective. Some commentators note that the use of URESA procedures often result in lower orders for both current support and arrearages. They also contend that few CSE agencies attempt to use URESA procedures.

Uniform Interstate Family Support Act (UIFSA)

Recently, the NCCUSL approved a new model State law for handling interstate child support enforcement cases. The new Uniform Interstate Family Support Act (UIFSA) is designed to deal with desertion and nonsupport by instituting uniform laws in all 50 States that limit control of a child support case to a *single* State.[6] This ensures that only one child support order from one court or CSE agency will be in effect at any given time. It also helps to eliminate jurisdictional disputes between States that are impediments to locating parents and enforcing child support orders across State lines. The NCCUSL is urging States to adopt UIFSA as a replacement for

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[6]9 Uniform Laws Annot. Pt. I, *Uniform Interstate Family Support Act* (Supp. 1994).

URESA. The UIFSA was endorsed by the U.S. Commission on Child Support. Bills in the 103rd Congress that would have required States to adopt UIFSA were H.R. 915, H.R. 1600, H.R. 4126, H.R. 4605, H.R. 4767, S. 689, S. 1977, and S. 2224.

As of July 21, 1994, 20 States had enacted the Uniform Interstate Family Support Act. Twelve States have implemented UIFSA (Arkansas, Texas, Montana, Nebraska, Wisconsin, Idaho, Oregon, South Dakota, Virginia, Washington, South Carolina, Oklahoma), and the rest (Illinois, Colorado, Minnesota, Arizona, Delaware, Kansas, Maine, New Mexico) will begin to do so in 1995. UIFSA legislation has been introduced in Alaska, California, Connecticut, District of Columbia, Hawaii, Kentucky, and Massachusetts.

Child Support Recovery Act of 1992

The Child Support Recovery Act of 1992, P.L. 102-521, imposes a Federal criminal penalty for the willful failure to pay a past due child (or spousal) support obligation, ordered by a court or an administrative entity, with respect to a child who resides in another State that has remained unpaid for longer than a year or is greater than $5,000. Under the new law, the Government must prove that the debtor voluntarily and intentionally failed to pay child support. For a first conviction, the penalty is a fine of $5,000 and/or imprisonment for not more than 6 months; for a second conviction, the penalty is a fine of $250,000 and/or imprisonment for up to 2 years.

P.L. 102-521 was rarely enforced by the Justice Department. In order to address shortcomings in the enforcement of the law, in July 1994, the Senate voted unanimously to adopt an amendment to the Justice Department's spending bill, directing the Attorney General to enforce the law. To that end, during December 1994, the Justice Department filed 28 suits against parents under the law. The Department of Health and Human Services referred 25 cases to Federal prosecutors recently, and more than 200 child support cases are reported to be under review.

While the threat of a Federal criminal penalty may help deter child support delinquency, some have suggested that the problem of interstate support enforcement might be more effectively addressed if there were (1) federally mandated State long-arm statutes that allow a State to obtain jurisdiction over a non-resident and (2) provision for the uniform, reciprocal recognition and enforcement among States of income withholding orders.

Child Support Assurance

The concept of Child Support Assurance (CSA) is designed to assure some support for every child with an absent parent. Both Wisconsin and New York have operated CSA demonstrations (authorized by P.L. 98-378 and P.L. 100-203, respectively). The philosophy underlying CSA is that parents are responsible for sharing income with their children, and that the government is responsible for assuring that children receive the support to which they are entitled. CSA consists of three components: (1) a formula to determine the amount of the child support order; (2) collection through income withholding; and (3) an assured minimum benefit. If the

noncustodial parent cannot pay the required amount, the government pays the difference between the amount paid by the noncustodial parent and the assured benefit. In the 103rd Congress H.R. 4051 and H.R. 4494 proposed to establish a national CSA program, with a minimum guarantee of $250 per month for 1 child or $300 per month for more than 1 child. Other bills would have authorized CSA demonstrations in several States (S. 663, S. 689, S. 1962, S. 2224, H.R. 1600, H.R. 1961, H.R. 4570, H.R. 4605, H.R. 4767).

Proponents of CSA claim that it would ease the task of moving people from welfare to work because single parents would be able to count on some child support income, if not from the noncustodial parent then from the Federal Government. Advocates say that the combination of child support income and recipients' own earnings (which would not reduce the assured benefit) would give them a better chance of becoming self-sufficient. Further, since CSA is not income-tested, it has no reporting requirements, no welfare offices, no benefit offsets, and no welfare stigma. Opponents of CSA view it as just another form of welfare and fear that if the Federal Government assures a minimum child support benefit, noncustodial parents would pay less (despite enforcement efforts), and that CSA could impose huge costs on the Federal Government and increase incentives to form single-parent families.

PUBLIC LAWS

P.L. 103-66, the Omnibus Budget Reconciliation Act of 1993 (H.R. 2264, signed into law Aug. 10, 1993), increases the percentage of children for whom the State must establish paternity and requires States to adopt laws requiring civil procedures to voluntarily acknowledge paternity (including hospital-based programs). It also requires States to adopt laws to ensure the compliance of health insurers and employers in carrying out court or administrative orders for medical child support and includes a provision that forbids health insurers to deny coverage to children who are not living with the covered individual or who were born outside of marriage.

P.L. 103-432, the Social Security Act Amendments of 1994 (H.R. 5252, signed into law Oct. 31, 1994), includes a provision that requires States to implement procedures that require the State to periodically report to consumer reporting agencies the name of debtor parents owing at least 2 months of overdue child support, and the amount of child support overdue.

P.L. 103-394, the Bankruptcy Reform Act of 1994 (H.R. 5116, signed into law Oct. 22, 1994), includes a provision that designates child support payments as priority debts when an individual files for bankruptcy.

P.L. 103-383, the Full Faith and Credit for Child Support Orders Act (S. 922, signed into law Oct. 20, 1994), restricts a State court's ability to modify a child support order issued by another State unless the child and the custodial parent have moved to the State where the modification is sought or have agreed to the modification.

P.L. 103-403, the Small Business Administration Amendments of 1994 (S. 2060, signed into law Oct. 22, 1994), makes parents who fail to pay child support ineligible for small business loans.

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