

NOTES

CHILD SUPPORT AND WELFARE REFORM: THE CHILD SUPPORT ENFORCEMENT PROVISIONS OF THE FAMILY SUPPORT ACT OF 1988

INTRODUCTION

While bitter ideological rivalries over the course of welfare reform almost doomed passage of the Family Support Act of 1988,¹ a broad and bipartisan consensus formed around the Act's child support enforcement provisions.² Members of Congress clashed over such controversial issues as "workfare", but few in Congress doubted the benefits of beefing up child support laws: tougher enforcement would ensure that support money reached deserving children and at the same time have the important fiscal effect of reducing welfare rolls.³

Advocates of improved child support laws came to Congress armed with startling statistics. Although some eight million families have so-called "absent fathers" and are probably entitled to child support, only sixty percent of them, by agreement or court award, receive child support.⁴ Of all the child support orders that are issued, about one-fourth are never paid; another one-fourth are only partially paid.⁵ This unpaid child support totalled three billion dollars in 1983.⁶ Furthermore, support awards are often dangerously inadequate, and their adjudication is rife with delays and procedural complications.⁷

Dependent children suffer most because of poor child support enforcement. But the resulting costs of poor enforcement are largely borne by the state welfare systems.⁸ Tougher enforcement procedures promise to reduce these costs because

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1. Pub. L. No. 100-485, 102 Stat. 2347 (codified as amended in scattered sections of 42 U.S.C.).
 2. Rovner, *Congress Clears Overhaul of Welfare System*, Vol. 46-40 CONG. Q. WEEKLY REP. 2699 (1988).
 3. Rovner, *Deep Schisms Still Imperil Welfare Overhaul*, Vol. 46-25 CONG. Q. WEEKLY REP. 1647-50 (1988).
 4. *Id.*
 5. Rovner, *Child Support Provisions Are the "Engine" . . . Pulling Controversial Welfare Reform Bill*, Vol. 46-25 CONG. Q. WEEKLY REP. 1648 (1988), citing statistics of the United States Bureau of the Census. These statistics include only the approximately 4.3 million families legally entitled, by agreement or court award, to child support payments. An additional three-and-a-half million women caring for children whose father is absent have no support awards or agreement at all. *Id.* It should be pointed out, however, that of the latter group, forty-two percent do not desire child support awards. Lerman, *Child-Support Policies*, in WELFARE POLICY FOR THE 1990s 232-33 (Cottingham and Ellwood eds. 1989).
 6. Williams, *Guidelines for Setting Levels of Child Support*, 21 FAM. L. Q. 281, 283 (Fall 1987) (citing United States Bureau of the Census, *Child Support and Alimony: 1983*, CURRENT POPULATION REPORTS, Series P-23, No. 141 (1985)).
 7. *Id.*
 8. This is true because Aid To Families with Dependent Children (AFDC) applicants are required to assign their child support rights to the state to qualify for AFDC benefits. 42 U.S.C. § 602(a)(26)(A), § 656 (1982). The obligated parent must then pay the support to the state. See *infra* notes 35-39 and accompanying text.

the additional money collected will at least partly reimburse the states for the millions they pay out in AFDC benefits.⁹ The Congressional Budget Office estimates that the enforcement provisions of the Family Support Act will save the welfare system over one billion dollars in the first five years after enactment.¹⁰

Enforcement provisions constitute the first title of the seven-title Family Support Act.¹¹ This prominent placement suggests a growing concern in Congress for child welfare, but also indicates the confidence of the Act's sponsors¹² that child support enforcement has sufficient fiscal appeal to carry along more controversial measures of the Act, such as "workfare".¹³

The highlights of the enforcement provisions include requirements that states establish procedures for immediate wage withholding from obligor parents,¹⁴ promulgate support award guidelines as rebuttable presumptions,¹⁵ establish procedures for reviewing and updating awards,¹⁶ and meet new federal requirements for establishing paternity.¹⁷ This Note examines these provisions, describes their departure from prior law and speculates on their probable impact and success. Finally, the Note discusses an alternative proposal for improving public assistance to single-parent families. The Note begins with a brief history of child support legislation in the United States.

I. THE HISTORY OF CHILD SUPPORT ENFORCEMENT

The federal government first became involved in child support in 1935 with the passage of Title IV of the Social Security Act.¹⁸ Although Title IV was named Aid to Families with Dependent Children (AFDC), today's conception of a dependent child is dramatically different from that of 1935. Initially, the typical AFDC recipient was the West Virginia coal miner's widow and her children.¹⁹ Today, only about 3.5% of those receiving AFDC have a deceased father: divorce accounts for 68% of single-parent families; illegitimacy another 20%; and ex-

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9. In 1986, AFDC paid \$15.8 billion in direct benefits to recipients; the total cost of the program for the same year was \$17.7 million. Cottingham, *Introduction*, in *WELFARE POLICY FOR THE 1990s*, *supra* note 5, at 2.
 10. Rovner, *Deep Schisms*, *supra* note 3, at 1649.
 11. The remaining titles of the Act are devoted to, respectively, job search and skills training, "workfare" or AFDC-UP, child care for parents participating in education and training, demonstration projects, miscellaneous provisions and funding provisions.
 12. Senator Daniel P. Moynihan (D-NY) sponsored the bill in the Senate, along with Senator Lloyd Bentsen (D-TX). Representative Thomas J. Downey (D-NY) sponsored the bill in the House. Rovner, *Deep Schisms*, *supra* note 3, at 1648-49.
 13. "Workfare" is embodied in the AFDC-UP (unemployed parents) provision of the Act. 42 U.S.C. § 607(b) (Supp. 1989). "Workfare" requires that one parent in two-parent households receiving welfare must work at least sixteen hours a week without pay before receiving benefits. *Id.* Its inclusion was a necessary compromise without which many conservative Republicans and the Reagan Administration would not have supported the Act. Rovner, *Congress Clears Overhaul*, *supra* note 2.
 14. See *infra* notes 51-61 and accompanying text.
 15. See *infra* notes 62-70 and accompanying text.
 16. See *infra* notes 71-75 and accompanying text.
 17. See *infra* notes 76-79 and accompanying text.
 18. Act of August 14, 1935, ch. 531, Title IV, § 401, 49 Stat. 627 (codified as amended in scattered sections of 42 U.S.C.).
 19. *Welfare: Reform or Replacement?: Hearing on H.R. 1720 Before Subcommittee of Social Security and Family Policy of the Senate Committee of Finance*, 102d Cong., 2d Sess. 7 (1987) (statement of Sen. Daniel P. Moynihan, D-NY, Chairman).

tended separation 8%.²⁰ Furthermore, while AFDC was originally conceived of as relief for a comparatively small number of children, today it has grown to serve over seven million children.²¹

Through the 1940s, as AFDC increasingly assisted children whose parents had deserted them, the need for mechanisms of child support enforcement became apparent.²² Congress responded in 1950 by amending the Social Security Act to require state welfare agencies to notify law enforcement officials when AFDC was being furnished to children who had been deserted by a parent.²³

Simultaneously, among the states, the National Conference of Commissioners on Uniform State Laws approved the Uniform Reciprocal Enforcement of Support Act (URESA).²⁴ URESA and later the Revised Uniform Reciprocal Enforcement of Support Act (RURESAs)²⁵ were designed to allow a custodial parent in one state to establish and enforce a support order when the obligor parent had fled to another state.²⁶ The hope was that between the 1950 amendments to the Social Security Act and URESA, the financial burden would be lifted from AFDC and placed where it belonged: on the obligated or deserting parent.

Despite these efforts, fathers continued to desert their children in record numbers, and AFDC dependency grew accordingly. The 1967 amendments to Title IV (requiring that states develop enforcement programs and adopt reciprocal child support procedures in state courts)²⁷ failed because of insufficient federal funding and supervision but also because of the continuing belief among legislators and special interest groups that the state rather than the deserting parent should be responsible for deserted children.²⁸

The failure of the 1967 amendments inspired Congress in 1974 to again amend the Social Security Act by adding a subtitle exclusively devoted to child support.²⁹ This amendment, Title IV-D, essentially established the federal government as overseer, standard-bearer and benefactor of child support enforcement.³⁰ The amendment, however, left primary enforcement and administrative

20. *Id.*

21. *Id.*

22. However, even through the 1970s many states did not recognize the right of illegitimate children to claim support from their fathers. Early efforts to place financial responsibility on absent parents were widely rejected by welfare advocates as both unfair to the poor and inefficient because of high administrative costs. Lerman, *supra* note 5, at 221.

23. Social Security Amendments of 1950, ch. 809, § 321(a)(10), 64 Stat. 549 (1950) (codified at 42 U.S.C. § 602 (a)(11) (1982)). The NOLEO (Notice to Law Enforcement Officials) amendments were designed to bring desertion cases to the attention of local prosecutors. The NOLEO provision was superseded by the 1975 amendments to the Social Security Act that created state child support agencies. *See infra* note 29 and accompanying text.

24. H. KRAUSE, CHILD SUPPORT IN AMERICA, THE LEGAL PERSPECTIVE, 97 (1982). First approved in 1950, URESA made support obligations binding in other states. The initiating state sends a court-appointed petition to the state where the obligor resides. The court of the latter state obtains jurisdiction over the obligor and conducts a hearing. If support is collected it is sent to the initiating court, which then disburses payment to the obligee. *Id.*

25. All fifty states have adopted either URESA or RURESAs. H. KRAUSE, *id.* at 96 n. 157.

26. *Id.*

27. Social Security Act Amendment of 1967, Pub. L. No. 90-248, 81 Stat. 896 (codified at 42 U.S.C. § 602(a)(17) (1982)).

28. H. KRAUSE, *supra* note 24, at 281-82. The view that deserted children are the state's responsibility alone, even among liberal scholars, has fallen out of favor. Lerman, *supra* note 5, at 219-20.

29. The Child Support Enforcement Act, Pub. L. No. 93-647, 88 Stat. 2337 (1974) (codified as amended in scattered sections of 42 U.S.C. 651-669 (1982 and Supp. 1989)).

30. *Id.*

responsibility to the states.³¹ Title IV-D required states to establish within their welfare agencies departments devoted solely to child support enforcement.³² The federal government reimbursed states for seventy-five percent of the cost of administering this program. Compliance was assured by periodic audits performed by the Secretary of Health and Human Services (HHS), who was given the authority to withhold five percent of federal AFDC funding from noncomplying states.³³ Additionally, Title IV-D created the Federal Parent Locator Service (FPLS) and provided the FPLS with access to federal information and agencies, including the Internal Revenue Service and the Social Security Administration, for use in tracking down parents owing overdue child support.³⁴

Perhaps the most significant innovation of Title IV-D was its requirement that custodial parents, in order to qualify for AFDC benefits, must first assign their support rights to the state.³⁵ Under this provision, the custodial parent on AFDC received assistance from the state only; the absent parent paid his or her financial obligation directly to the state.³⁶ Thus, Title IV-D assured the state that it would be reimbursed for its AFDC outlays to the extent it collected from the obligated parent.³⁷ In addition to assigning their child support rights to the state, to receive AFDC benefits custodial parents were also required (1) to provide the Social Security numbers of themselves and their dependents,³⁸ and (2) to cooperate with the state in naming, locating and establishing the paternity of the absent parent.³⁹

Title IV-D also made its child support enforcement program available to custodial parents not eligible for AFDC.⁴⁰ This program works the same as for AFDC applicants but with the important exception that, since no public assistance payments are to be reimbursed, there is no assigning of support rights to the state.⁴¹ This far-sighted provision recognized that many children not presently on AFDC would some day find themselves there (at the expense of taxpayers) if their support awards were not enforced.⁴²

Title IV-D improved the collection of child support dramatically.⁴³ Yet even its successes could not keep pace with the disintegrating American family. With divorce and illegitimate childbirths leaving three million children in need of new

31. 42 U.S.C. § 652(a) (1988).

32. *Id.*

33. *Id.*

34. *Id.*

35. 42 U.S.C. § 602(a)(26)(A) & § 656 (1982).

36. *Id.*

37. The steps the state is legally entitled to take to collect from a non-supporting parent include garnishing wages, attaching property and initiating contempt proceedings. *Id.*

38. 42 U.S.C. § 602(a)(25) (1982).

39. 42 U.S.C. § 602(a)(26)(B) (1982).

40. 42 U.S.C. § 652(b), (c)(3) (1982).

41. Typically, a small fee is assessed from support payments collected for the non-AFDC child. 45 C.F.R. § 302.33(c)(i) (revised as of Oct. 1, 1988).

42. LIEBERMAN, *CHILD SUPPORT IN AMERICA* 7 (1986).

43. Between the federal government and the states, the program collected \$603 million in 1976, \$818 million in 1977 and over \$1 billion in 1978. IV-D programs located almost 500,000 absent fathers in 1978 and established paternity in over 100,000 cases. For the year 1986, IV-D programs located over one million absent parents and established paternity in 250,000 cases. *Id.* at 8.

support orders every year,⁴⁴ existing law was still inadequate. As a result, Congress in 1981 provided for federal tax refund intercepts when an obligor parent became delinquent in paying child support.⁴⁵

In 1984, Congress again amended Title IV-D to accelerate state compliance with the federal initiative.⁴⁶ Essentially, the 1984 amendments improved child support enforcement by requiring the states to incorporate specific collection procedures into the state programs.⁴⁷ Wage withholding, income tax offsets, liens against property, security and bonding procedures all were made required weapons of the state's arsenal against unpaid child support.⁴⁸ The 1984 law also expanded the tax intercept program to non-AFDC families⁴⁹ and required the states to develop guidelines for determining support orders.⁵⁰

II. THE FAMILY SUPPORT ACT OF 1988

A. Immediate Wage Withholding

Of the many enforcement-related provisions of the Family Support Act, immediate wage withholding will have the most direct and decisive impact.⁵¹ The 1984 amendments made wage withholding mandatory only when arrears equalled or exceeded one month's support.⁵² This procedure, while an improvement over earlier law, was still complicated: typically, the custodial parent would have to demonstrate that one month's arrears had in fact accrued; the obligor parent had to be given the opportunity to respond in court; and, if necessary, a judge would have to render a decision. The 1988 amendments circumvent this process by ordering wage withholding immediately, at the time the support order is first awarded.

Specifically, the new law requires that for families on welfare, beginning November 1, 1990, the states must establish procedures so that court-ordered child support payments are immediately withheld from the wages of the absent parent.⁵³ Starting January 1, 1994 these procedures must be in place for *all* child support orders regardless of whether or not the family receives AFDC assistance.⁵⁴ Under the new law, the only exceptions to immediate withholding arise when the

44. *Id.*

45. Act of August 13, 1981, Pub. L. No. 97-35, 95 Stat. 860 (codified at 42 U.S.C. § 664 (1982)). After the Department of Health and Human Services certified that an obligor parent owed back support, the statute entitled the Internal Revenue Service to intercept and offset overdue support against that parent's tax refund. *Id.*

46. Child Support Amendment of 1984, Pub. L. No. 98-378, 98 Stat. 1306, (current version codified in scattered sections of 42 U.S.C.(Supp. IV 1986 and Supp.1989)).

47. *See generally*, Note, *Child Support Enforcement: Balancing Increased Federal Involvement with Procedural Due Process*, 19 SUFFOLK U.L. REV. 687, 699-701 (1985).

48. 42 U.S.C. § 666 (Supp. 1989).

49. *Id.* The 1984 law also established the \$50 disregard, 42 U.S.C. § 602(a) (Supp. 1989), through which the first \$50 of child support collected did not offset the custodial parent's AFDC benefits. The disregard was said to have little effect on reducing welfare rolls. Lerman, *supra* note 5, at 229.

50. 42 U.S.C. § 667 (Supp.1989). These guidelines, however, were not binding, a shortcoming corrected by the Family Support Act. *See supra* note 63 and accompanying text.

51. 42 U.S.C. § 666(b)(3) (Supp. 1989).

52. 42 U.S.C. § 666(b)(3)(A) (Supp. 1989).

53. *Id.*

54. 42 U.S.C. § 666(a)(8)(B) (Supp. 1989).

court finds good cause or both parents, in writing, agree to an alternative arrangement.⁵⁵

Immediate wage withholding guarantees that, as long as the absent parent is working, the family will receive child support. By collecting the money at the start—before nonpayment is a problem—rather than later, when trouble begins, the provision will eliminate the delay and waste of legal resources endemic to the former system. The additional requirement that both AFDC and non-AFDC orders are subject to immediate withholding is intended to diminish whatever social stigma attaches to the procedure.⁵⁶

Eleven states have already implemented immediate wage withholding.⁵⁷ These states have reduced administrative costs, increased collection, and eliminated the lengthy period families must wait for unpaid support obligations to be judicially enforced.⁵⁸ In other jurisdictions, support orders have been effectively enforced through court supervision, contempt citations, and ultimately incarceration.⁵⁹ Nevertheless, immediate wage withholding promises to be doubly efficient because it achieves the same result without resorting to such costly judicial intervention.

Immediate wage withholding had few detractors in Congress or elsewhere when it was proposed.⁶⁰ Members of Congress appreciated its efficiency and the money it would save state welfare agencies.⁶¹ Despite the inconvenience and potential embarrassment that wage withholding may cause the obligor parent, such drawbacks seem tolerable when weighed against the many benefits of ensuring the swift and complete payment of child support.

B. Support Award Guidelines

Like immediate wage withholding, the new requirements for support award guidelines⁶² promise to bring greater efficiency and certainty to the law of child

55. 42 U.S.C. § 666(b)(3)(A) (Supp. 1989).

56. Previously, it was argued that obligor parents were humiliated when wages were withheld. Since withholding formerly took place only when arrearages accrued, the obligor's employer inevitably knew about the nonpayment. Rovner, *Deep Schisms*, *supra* note 3, at 1649. Under the new system, this problem is eliminated because the wages of *all* obligor parents are withheld.

57. A.B.A. National Legal Resource Center for Child Advocacy and Protection, Dec. 27, 1988, at 7. These states are California, Wisconsin, Illinois, Massachusetts, Florida, Ohio, Texas, Arizona, Minnesota, Kentucky, and Hawaii.

58. *Id.*

59. Note, *Earned Income Credits are Protected From the Tax Refund Interception Method of Child Support Collection*, 51 Bklyn. L. Rev. 1169, 1204 n. 174 (1985).

60. One exception was advocates of father's groups. They contended—persuasively—that much child support legislation perpetuates the societal perception that absent fathers are unreliable and will not meet support obligations without state supervision. The Act addressed this criticism, to some extent, by reversing laws that prevented fathers from initiating paternity suits, and by naming the obligor parent (though it is almost always the father) as a unisex class. 42 U.S.C. § 666(a)(5)(B) (Supp. 1989). Father's groups specifically oppose immediate wage withholding because it is said to (1) endanger the father's job or work status, (2) take away his leverage for visitation, and, (3) since more child support will arrive from state agencies under the new law, give the child the impression that the state and not the absent father is its supporter. In response to these criticisms, defenders of immediate withholding point out that (1) it violates federal law and the law of most states to fire someone simply because they are subject to wage withholding and (2) child support as leverage for visitation is almost universally despised because it puts the parent's interests above the child's. Rovner, *Deep Schisms*, *supra* note 3, at 1649.

61. Rovner, *Congress Clears Overhaul*, *supra* note 2.

62. 42 U.S.C. § 667(b)(2) (Supp. 1989).

support. Prior law required states to promulgate guidelines for support awards, but these standards were not binding on state decision-makers.⁶³ The Family Support Act requires that by October, 1989, states establish support guidelines as a rebuttable presumption which can only be overcome by the decision-maker's written findings or oral findings made on the record.⁶⁴ Thus, while limiting the courts' discretion, the new law permits courts the flexibility to tailor awards to individual circumstances.

Although Congress requires the guidelines to be mandatory, the states themselves must formulate these guidelines.⁶⁵ The often complex criteria by which the states have figured support awards are beyond the scope of this Note; however, both the criteria used and the resulting awards vary widely between states.⁶⁶ In this respect, despite federal guidelines, states retain a great deal of discretion in managing child support awards.

Mandatory guidelines as a rebuttable presumption assure consistent treatment of similarly situated parties within an individual state. They also eliminate the inefficient and inequitable adjudication that prevails in the absence of uniform standards.⁶⁷ It is less clear whether mandatory guidelines will increase the dollar amount of support awards which, according to one study, presently provide support (on the average) at only eighty percent of the poverty level.⁶⁸

To some extent, if a state favors low support awards, the new law cannot compel the state to change.⁶⁹ However, mandatory guidelines may tend to increase support amounts, since some state agencies may be disinclined to promulgate standards far below the poverty level.⁷⁰

C. Updating Support Guidelines

The Family Support Act also promises to improve the methods by which child support orders are updated. By October 1, 1990, the states must establish procedures whereby the state or either parent can initiate review of a child support order.⁷¹ By October 1, 1993 the states must implement a process for the periodic review of child support orders.⁷² This review is required to take place within

63. 42 U.S.C. § 667(b) (Supp. 1989).

64. 42 U.S.C. § 667(b)(2) (Supp. 1989). To depart from the guidelines, the judge's finding must explain why application of the guidelines would be unfair or inappropriate. The Act additionally requires that every four years the states must review their mandatory guidelines to ensure that they yield appropriate awards. *Id.*

65. *Id.*

66. Williams, *supra* note 6, at 290-304.

67. Lerman, *supra* note 5, at 236.

68. Williams, *supra* note 6, at 321.

69. One study concluded that since most support orders are below the levels of AFDC benefits, even full payment of such orders would leave most mothers on welfare. Lerman, *supra* note 5, at 231.

70. Indiana, for instance, adopted an Income Shares support order system based on a model used in Delaware. 542 N.E.2d LX-XCIV (No.2)(1989). The early indications are that since the new guidelines have gone into effect in October, 1989, award amounts have risen. Whether higher orders result in higher collections remains to be seen. *Id.*

71. 42 U.S.C. § 666(a)(10)(B) (Supp. 1989).

72. Exceptions to this rule are 1) when, consistent with federal regulations, the state determines that review would not be in the best interests of the child and 2) when the case is non-AFDC and neither parent requests a review. 42 U.S.C.A. § 666(a)(10)(B)(i-ii) (Supp. 1989).

three years after the order is established, and if necessary the order must be adjusted according to the state's guidelines.⁷³

The updating procedure provision of the new law effectively addresses the "shortfall" of support awards which arises when factors such as inflation, higher costs of caring for older children, and changing incomes of parents make the original award insufficient. Yet if updating is to become the regular procedure envisioned by the Act, great expenditures will be necessary, both in expanding personnel within state agencies and in creating or improving the computerization of child support records.⁷⁴ In most cases, state agencies are barely able to keep up with cases as they arise; lacking the manpower and money to regularly review old awards, the initiating of updating has typically been left to the parties concerned.⁷⁵

Despite the wisdom of requiring that orders be updated, states will not be able to afford these innovations without federal help. The Act does not make explicit how states will meet the costs of these requirements. Possibly, the substantial savings from immediate wage withholding will provide additional funds. Without such funding, at any rate, the federal requirements will be very difficult to implement.

D. Paternity Establishment

The Act improves paternity establishment by increasing federal funding and raising minimum standards of state compliance. In general, the Act requires states to establish paternity in a specified percentage of its welfare cases or risk losing certain federal assistance.⁷⁶ The law also increases federal matching funds for genetic testing of paternity from sixty-seven percent to ninety percent⁷⁷ and allows for genetic testing to be initiated by either parent.⁷⁸ Finally, the new law encourages states to adopt simple civil procedures for acknowledging paternity.⁷⁹

Despite the obvious benefits of these amendments, high costs to states with low prospects for financial returns limit their impact. Since the absent parent in a paternity action is often poor and unable to provide any support to dependent children, the necessary lab testing and adjudication to prove paternity may, in some cases, cost more than these procedures are worth.

E. Additional Provisions

The Family Support Act also makes more federal information available to state parent locator services. In particular, the Act makes available Department of Labor information, including wage and unemployment records.⁸⁰ The Act

73. 42 U.S.C. § 666(a)(10)(B) (Supp. 1989).

74. Parnas and Cermak, *Rethinking Child Support*, 22 U.C. DAVIS L. REV. 759, 764-766 (1989).

75. *Id.*

76. 42 U.S.C. § 652(g)(1) (Supp. 1989). The percentage must be either (1) 50% of all pertinent state enforced cases, (2) equal to or exceeding the average for all states, or 3) increase by 3% between 1988 and 1991. *Id.*

77. 42 U.S.C. § 655(a)(1)(C) (Supp. 1989).

78. 42 U.S.C. § 666(a)(5)(B) (Supp. 1989). This unisex provision undermines the alleged discrimination against the father who sought to establish his paternity against the mother's wishes. *Id.*

79. 42 U.S.C. § 668(a)(2) (Supp. 1989).

80. 42 U.S.C. § 653(c)(3). Presently, FPLS accesses records of the Social Security Administration, the Veteran's Administration, the Internal Revenue Service, the Selective Service and other federal entities.

further requires states in issuing birth certificates to obtain each parent's Social Security number.⁸¹ Additionally, the Act establishes a Commission on Interstate Child Support, which by 1991 must report to Congress its recommendations for improving interstate child support and for revising URESA.⁸² Finally, the Act commissions a demonstration project to examine ways of improving parental visitation.⁸³

III. THE ASSURED BENEFITS SYSTEM: A RECOMMENDATION

The child support provisions of the Family Support Act may only modestly reduce welfare rolls. Since support awards are regularly far below the poverty level, even their total enforcement will not move those presently on welfare to self-sufficiency.⁸⁴ However, higher support awards accompanying improved enforcement will achieve more substantial results.⁸⁵

Unfortunately, the Act does not promise to significantly increase child support awards.⁸⁶ Although the Act wisely requires the states to promulgate support guidelines, it leaves the states free to set guidelines at sub-poverty levels.⁸⁷ If the new law fails to produce increases in support order amounts in the states, Congress' next step should be to establish minimum support levels. Where applicable, this minimum level should be based on a flat percentage of the father's income.⁸⁸

A leading alternative to AFDC is the Child Support Assurance System (CSAS).⁸⁹ This assured benefit approach would set a minimal support level⁹⁰ and pay the mother the difference between that level and the father's support payments.⁹¹ Thus, if the minimum level is set at \$2000 a year for the first child and only \$1000 is collected from the absent father, the assured benefit would be \$1000 for that year.

CSAS is not means-tested. Thus, assured benefits would be guaranteed to *all* custodial parents regardless of income. It also does not decrease benefits if the custodial parent becomes a wage-earner.⁹² The system is based not on a

81. 42 U.S.C. § 405(c)(2) (Supp. 1989).

82. 42 U.S.C. § 666 (Supp. 1989).

83. 42 U.S.C. § 1315 (Supp. 1989).

84. Lerman, *supra* note 5, at 245-46.

85. *Id.*

86. *See supra* note 69-70 and accompanying text.

87. *Id.*

88. *See generally*, Williams, *supra* note 6

89. Lerman, *supra* note 5, 235-246. *See also* Garfinkle and Uhr, *A New Approach to Child Support*, 75 PUBLIC INTEREST 111-22 (Spring 1984); Lerman, *Separating Income Support from Income Supplementation*, 17 J. INST. SOCIOECON. STUD. 101-25 (Autumn 1985).

90. Scholars differ as to what this minimum should be. The Wisconsin demonstration project of CSAS, which was developed by Irving Garfinkle, puts yearly benefits at over \$3,000 a year for the first child. Lerman, however, argues for far more modest benefits of approximately \$1,100 a year for the first child. Lerman contends that high benefits cost states too much in initial outlays, that the temptation for fraud through parental collusion is too great, and that the incentive to work is diminished because it is almost as profitable not to work and merely collect benefits. Furthermore, Lerman's more austere version of assured benefits is of far greater political appeal. Lerman, *supra* note 5, at 238-39.

91. *Id.* at 237.

92. *Id.* Lerman advocates a wage subsidy of approximately one dollar an hour, which would further increase the incentive of poor mothers to enter the labor force. *Id.*

mother's inability to support her children (as in AFDC), but instead on the shortfall of either the existing support award or the father's nonpayment of that award.

As a general rule, assured benefits would most improve the circumstances of middle-class custodial mothers. These mothers would be guaranteed a minimal level of support even when the absent father fails to pay. Superficially, poor mothers appear no better off under an assured benefits system, since AFDC benefits already reliably arrive every month under existing law. The key advantage of assured benefits, however, is that everyone (and not just the poor) receives them when child support collection falls below the assured benefit minimum.⁹³ Thus, like Social Security, assured benefits would be "a middle-class program with a redistributive element and no stigma attached."⁹⁴ Another advantage of CSAS is that it provides incentives for custodial mothers (rich or poor) to work because under CSAS there is no AFDC-style loss of benefits with increased income.

The assured benefits system can be distinguished from entitlement programs because its benefits are only activated when collection or enforcement fail.⁹⁵ Thus, no one is entitled to or guaranteed any benefits unless the collection mechanism breaks down. Furthermore, since CSAS requires neither income nor asset tests and is not targeted at a particular income group, its recipients experience none of the stigmatization that attaches to AFDC recipients.⁹⁶ Finally, the elimination of asset tests reduces administrative costs.

Under a CSAS system, some government money will flow to nonpoor families. Yet if the assured benefit minimum is kept comparatively low, outlays will not substantially increase and the long-term reduction of dependency will ultimately reduce costs.⁹⁷

The more difficult problem with CSAS is how to handle custodial mothers who neither have nor want support awards. Costs, of course, are kept low by excluding these mothers from CSAS. But such a policy would leave many families without public assistance or, if AFDC is retained for these families (as would be likely), such a policy would do little to reduce welfare rolls.⁹⁸ The best policy would be to make CSAS universally available but with improved incentives for custodial mothers to seek support awards.⁹⁹

93. *Id.*

94. Ellwood, *Conclusion*, in *WELFARE POLICY FOR THE 1990s*, *supra* note 5, at 284.

95. Lerman, *supra* note 5, at 237. The primary criticism of assured benefits systems is that they are different breeds of the same AFDC-entitlement animal. This is true to the extent CSAS recipients will be mostly poor. But the important selling point of CSAS—both for politicians and the public—is that benefits are only paid when no collection is made. With this emphasis on collection should come heightened awareness of the importance of enforcement in reducing welfare dependency. *Id.*

96. W.J. WILSON, *THE TRULY DISADVANTAGED* 152 (1987).

97. *Id.* at 152-53.

98. Lerman, *supra* note 5, at 239.

99. One such incentive under the AFDC system is its disregard of the first fifty dollars collected from the absent father; thus, when full support is collected by the state, the custodial mother receives the full AFDC monthly benefit *and* fifty dollars. 42 U.S.C. § 602(a) (Supp. 1989). Another is the good faith requirement that the mother help locate the absent father. Lerman, *supra* note 5, at 239. States might also consider slightly decreasing benefits for mothers who do not attempt to obtain awards.

Assured benefit systems have succeeded in many European countries and Israel.¹⁰⁰ Wisconsin has implemented a child support demonstration project which includes an assured benefit program. This program is expected to reduce AFDC rolls by fifteen percent while slightly reducing administrative and outlay costs.¹⁰¹

CSAS has the important practical advantage of encouraging welfare mothers to work without diminishing their benefits, and the important psychological advantage of destigmatizing assistance to needy families. Furthermore, since effective CSAS depends on strict enforcement, any assured benefit system also signals absent fathers that they are responsible for supporting their children.

CONCLUSION

The Family Support Act and earlier legislation toughening child support enforcement demonstrate a growing awareness in Congress that cracking down on deserting parents saves states money and creates a better life for dependent children. Tough enforcement may even keep families together, since fathers may be less inclined to leave if they know their obligations will follow them across town, even across country. Improved enforcement may benefit dependent children *not* on AFDC most: now their support checks are guaranteed to arrive so long as the obligor parent is working. (Welfare children do not experience this uncertainty because their support arrives, reliably, from the state.)

As an early chapter in welfare reform, the Family Support Act is a welcome improvement. Yet it must be recognized as a beginning; advocates of more drastic reforms should not deem the Act a failure if it does not reduce welfare dependency. Programs requiring paternity establishment and updating of support awards are important but must provide for sufficient federal funding. Immediate wage withholding is an effective tool of enforcement, but will be most effective if accompanied by higher support awards.

The next chapter in welfare reform should be the enactment of an assured benefit system to replace AFDC. Unlike present public assistance, CSAS has no built-in work disincentive and does not stigmatize its recipients. Despite initial cost increases, CSAS will effectively reduce long-term welfare costs. Finally, CSAS promises to do what AFDC has failed to do: return its recipients to self-sufficiency. To the extent that the Family Support Act lays a foundation for future reforms such as CSAS, its passage may be the beginning of the end of welfare dependency.

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100. Lerman, *supra* note 5, at 235.

101. *Id.*

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