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Congress Demands Stricter Child-Support Enforcement: Florida Requires Major Reforms to Comply

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Maureen Gallen

Abstract

Millions of American children live in poverty.¹ Many of these children live in single-parent families and receive little or no support from their absent parent.'

KEYWORDS: reforms, stricter, child-support

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I. Introduction

Millions of American children live in poverty.¹ Many of these children live in single-parent families and receive little or no support from their absent parent.² The number of families headed by a single-parent, usually the mother,³ is steadily increasing due to the rising number of divorces, desertions and out-of-wedlock births.⁴ Lack of support from the absent parent is often the cause of the children's poverty.⁵ Surprisingly, only a little more than half of the single mothers with minor children have support orders from a court,⁶ and of the women who have court awards for support, fewer than half receive full payment.⁷ Even more shocking is that nearly one third of the fathers under court order

1. NATIONAL CHILD SUPPORT ENFORCEMENT CENTER, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *Nonsupport and Poverty are Topics at Charleston*, CHILD SUPPORT REP., Dec. 1985, at 4 [hereinafter cited as *Nonsupport and Poverty*]. "Children . . . constitute 40 percent of all poor people . . ." *Id.* See OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, 9TH ANNUAL REPORT TO CONGRESS 5 (1984) [hereinafter cited as 9TH ANNUAL REPORT]. See also Letter from William J. Page to Governor Robert Graham (September 30, 1985) (submitting FLORIDA GOVERNOR'S COMM'N ON CHILD SUPPORT, FINAL REPORT (1985)), stating: "[M]ore than one in five (22.5 percent) of children in 1983 were living in poverty"

2. *Nonsupport and Poverty*, *supra* note 1, at 4. "In fact, 55 percent of all children in single-parent households live in poverty." *Id.*

3. Hunter, *Child Support Law & Policy: The Systematic Imposition of Costs on Women*, 6 HARV. WOMEN'S L.J. 1, 2 (1983). Ninety percent of single-parent families are headed by females. *Id.*

4. "From 1970 to 1981, the number of divorces in the United States more than doubled, and the number of children living with one parent increased by fifty-four percent, to a total of 12.6 million children, or one child in five." *Id.* at 1. It is estimated that half the children born today will live at some point in their life in a single-parent family headed by a female. Chambers, *Child Support in the Twenty-First Century*, in THE PARENTAL CHILD SUPPORT OBLIGATION 284 (J. Cassetty ed. 1983) (citing Moy-nihan, *Children and Welfare Reports*, 6 J. INST. SOCIOECON. STUD. 1 (Spring 1981)).

5. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF CHILD SUPPORT ENFORCEMENT, CHILD SUPPORT: AN ANNOTATED LEGAL BIBLIOGRAPHY 1 (1984).

6. NATIONAL CHILD SUPPORT ENFORCEMENT CENTER, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *Secretary Heckler Announces Child Support Initiative*, CHILD SUPPORT REP., (special ed.) Aug. 1984 at 2 [hereinafter cited as *Heckler Announces Initiative*].

7. *Id.*

to pay child support fail to make a single payment.⁸

Parental failure to support children forces many single-parent families onto the welfare rolls. Congress, concerned with the growing welfare budget, has attempted to shift the burden of support back to where it belongs — on the parents. The various provisions of the Child Support Enforcement Amendments of 1984⁹ are Congress' latest attempts to force the states to adopt effective legislation designed to remedy this serious, nation-wide child-support enforcement problem. A state's failure to comply with the child-support enforcement sections of the Social Security Act¹⁰ could result in a reduction of federal welfare funds.¹¹

After a brief description of the history of the child-support enforcement laws, this note focuses on the legislative efforts to alleviate the enforcement problem. The major concentration of this note is a presentation and analysis of Congress' 1984 Amendments to the child-support enforcement section of the Social Security Act. Finally, this note discusses what Florida must do to comply with Congress' mandate.

II. History of Child-Support Responsibility

A. *The Duty to Support*

Many of the current child-support enforcement problems are deeply rooted in the common law. Historically, the common-law duty to support children rested primarily on the father.¹² The father owed this duty not only to the child, but to the state,¹³ to prevent the child from becoming a public burden.¹⁴ Some courts held that the duty to support children is both a legal and a moral duty¹⁵ while other courts

8. *Id.*

9. Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 (to be codified in various sections of 42 U.S.C.). See *infra* note 70 for detailed list of enacted and amended sections.

10. See 42 U.S.C.A. §§ 651-667 (West 1983 & Supp. 1985).

11. 42 U.S.C.A. § 603(h) (West Supp. 1985).

12. *Dunbar v. Dunbar*, 190 U.S. 340, 351 (1903); *State v. Langford*, 90 Or. 251, 176 P. 197 (1918); *Walborsky v. Walborsky*, 197 So. 2d 853, 854 (Fla. 1st Dist. Ct. App. 1967).

13. *Strecker v. Wilkinson*, 220 Kan. 292, 298, 552 P.2d 979, 984 (1976).

14. *Coler v. Corn Exch. Bank*, 250 N.Y. 136, 140, 164 N.E. 882, 884 (1928).

15. *In re Mogus*, 73 F. Supp. 150, 152 (W.D. Pa. 1947); *Osborn v. Weatherford*, 27 Ala. App. 258, 259, 170 So. 95, 96 (1936).

held it is merely a moral duty.¹⁶ The moral duty to care for children too young to care for themselves was often based on the reciprocal right of a parent to receive the services and earnings of his children.¹⁷ Some early court decisions extended to the mother the duty to support if the father failed to fulfill it;¹⁸ however, other decisions held that since a father's duty to support his children rested on his reciprocal right to receive the value of their services and the mother did not have that right, the mother was not obligated to provide child support.¹⁹ Recent court decisions, on the other hand, have shown a trend toward holding both parents responsible for the support of their children.²⁰ Many states have enacted statutes which equalize the obligation.²¹

Generally, the parental support obligation continues until the children attain the age of legal majority.²² Divorce does not terminate the obligation.²³ It can extend beyond the age of majority if the parent so agrees in a separation agreement²⁴ or if the child is physically or mentally impaired and therefore incapable of self-support.²⁵

Another support problem concerns the duty to support illegitimate children. At English common law, an illegitimate child was called *nulius filius*, son of no one.²⁶ The court imposed no obligation on either parent to support the child.²⁷ A later English statute imposed on the mother the duty to support the illegitimate child.²⁸ In the United States some jurisdictions required the mother to support her illegitimate child,

16. *Dunlap v. Dunlap*, 84 N.H. 352, 369, 150 A. 905, 914 (1930); *Ramsey v. Ramsey*, 121 Ind. 215, 217, 23 N.E. 69, 70 (1889).

17. *Hollingsworth v. Swedenborg*, 49 Ind. 378, 381 (1875).

18. *Hunter v. State*, 100 Okla. Crim. 119, 134 P. 1134 (Okla. Crim. App. 1913); *Bullard v. Bullard*, 195 So. 2d 876, 879 (Fla. 2d Dist. Ct. App. 1967).

19. *Gilley v. Gilley*, 79 Me. 292, 296, 9 A. 623, 624 (1887).

20. *Rand v. Rand*, 280 Md. 508, 374 A.2d 900 (1977); *Birge v. Simpson*, 280 So. 2d 482, 483 (Fla. 1st Dist. Ct. App. 1973); *Kern v. Kern*, 360 So. 2d 482, 484 (Fla. 4th Dist. Ct. App. 1978); *Variety Children's Hosp., Inc. v. Vigliotti*, 385 So. 2d 1052, 1053 (Fla. 3rd Dist. Ct. App. 1980).

21. FLA. STAT. § 61.13(1)(a) (Supp. 1984); N.J. STAT. § 44:1-143 (West Supp. 1985).

22. *Dunbar*, 190 U.S. at 351.

23. *Elble v. Elble*, 100 Ill. App. 2d 221, 241 N.E.2d 328 (Ill. App. Ct. 1968).

24. *Venuti v. Venuti*, 185 Conn. 156, 160 n.3, 440 A.2d 878, 881 n.3 (1981).

25. *Sudduth v. Scott*, 394 So. 2d 536 (Fla. 4th Dist. Ct. App. 1981).

26. *Hehr's Adm'n v. Hehr*, 288 Ky. 580, 585, 157 S.W.2d 111, 114 (1941); *State v. Tieman*, 32 Wash. 294, 298, 73 P. 375, 376 (1903).

27. *Tieman*, 32 Wash. at 299, 73 P. at 376.

28. *Id.*

but other jurisdictions did not.²⁹ Absent a statute, the father had no duty to support his illegitimate children.³⁰ However, in 1973 the United States Supreme Court held that a child cannot be denied support from the father "simply because its natural father has not married its mother."³¹

B. *Reasons for the Failure to Meet Support Obligations: Correcting a Myth*

Statistics show that the popular belief that fathers fail to pay their support obligations because they cannot afford to pay is a myth. If that belief were true, men with lower incomes, arguably, would have higher failure rates.³² However, a Los Angeles study found little relationship between income and noncompliance with court-ordered support payments.³³ Other researchers found that men who failed to pay any child support had incomes higher than men who had fair or poor records of payment.³⁴ Furthermore, the amount of the award is often low and sometimes inadequate to cover the costs of raising a child.³⁵ For example, a study revealed that in Denver, Colorado, two-thirds of the fathers ordered to pay child support had monthly support orders which amounted to less than their monthly car payments.³⁶ Ironically, the ac-

29. *Id.*

30. *Myers v. Harrington*, 70 Cal. App. 680, 683, 234 P. 412, 413 (Cal. Dist. Ct. App. 1925).

31. *Gomez v. Perez*, 409 U.S. 535, 538 (1973).

32. Weitzman, *The Economics of Divorce: Social and Economic Consequences of Property, Alimony and Child Support Awards*, 28 U.C.L.A. L. Rev. 1181, 1256 (1981).

33. *Id.* A 1978 study in Los Angeles County found that of fathers making \$20,000 or less per year, twenty-seven percent made either irregular or no child-support payments at all; of fathers making between \$20,000 and \$30,000, twenty-two percent made irregular or no child-support payments; of fathers making between \$30,000 and \$50,000 per year, twenty-nine percent made irregular or no payments. *Id.*

34. *Id.* That same study showed that eighty percent of fathers had the ability to pay. *Id.* at 1239 n.205.

35. In 1983 the U.S. Census Bureau reported that of 8.4 million female-headed families, 5.5 million received no support from the absent parent, 1.9 million received an average of \$100 per month and only 1 million received up to \$200 per month for child support. W. DIXON, *THE CHILD SUPPORT ENFORCEMENT PROGRAM: UNEQUAL PROTECTION UNDER THE LAW* v (J. Duggan ed. 1985) (available through the National Forum Foundation). Court awards for support cover less than fifty percent of the cost of raising a child. Hunter, *supra* note 3, at 1.

36. Yee, *What Really Happens in Child Support Cases: An Empirical Study of*

tual standard of living for men actually rises after a divorce.³⁷ Therefore, the inability to fulfill support obligations does not appear to be the major reason fathers fail to meet their support obligations. "A better explanation for the lack of compliance lies in the absence of . . . effective enforcement procedures."³⁸

C. States' Attempts to Alleviate the Child-Support Enforcement Problem

Only in the last twenty years has the federal government provided assistance to children left destitute by their parents' deaths or desertions. Prior to that, states shouldered the entire responsibility of providing support for these destitute children.³⁹ Traditional state remedies include criminal nonsupport statutes penalizing the parents' willful failure to provide support and the use of civil contempt to enforce child-support orders.⁴⁰ Judges, however, have been reluctant to jail absent parents for willful noncompliance.⁴¹ Although incarceration for contempt or neglect is sometimes an effective means of enforcement, that subject is beyond the scope of this note.

One of the problems inherent in state regulation of child support is that the lack of uniformity among state laws results in unequal protection for children. States' responses to the problem of nonsupport vary widely. Some states have enacted strong legislation and have invested substantial sums to enforce child support while other states have ineffective enforcement laws and have made little financial commitment.⁴² Studies show that states which have enabling legislation and make adequate financial commitments to enforce the support legislation collect more money from absent parents than do states without similar legisla-

Establishment and Enforcement of Child Support Orders in the Denver District Courts, 57 DEN. L.J. 21, 36 (1979), noted in Hunter, *supra* note 3, at 7.

37. Weitzman, *supra* note 32, at 1250. A California study revealed that divorced men showed a forty-two percent improvement in their standard of living while their ex-family's standard dropped a dramatic seventy-three percent. *Id.*

38. *Id.* at 1257.

39. R. HOROWITZ & H. DAVIDSON, LEGAL RIGHTS OF CHILDREN 28 (1984).

40. H. KRAUSE, CHILD SUPPORT IN AMERICA: THE LEGAL PERSPECTIVE 51 (1981).

41. FLORIDA GOVERNOR'S COMM'N ON CHILD SUPPORT, FINAL REPORT app. C. 3 (1985) [hereinafter cited as FLORIDA REPORT].

42. See OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES 9TH ANNUAL REPORT TO CONGRESS 33-34 (1984).

tion and commitments.⁴³

In many states a factor contributing to the support problem is the apathy among those charged with enforcing support laws. For example, judges and legislators have often been reluctant to become involved in what they consider a family dispute.⁴⁴ A report to the Senate showed that "judges and lawyers found support cases boring and in some instances were hostile to the idea that fathers are responsible for their children"⁴⁵ Furthermore, even "state welfare agencies seem uninterested in enforcing child-support obligations."⁴⁶ Arguably, a significant number of fathers simply fail to pay support because they know they can do it with impunity.⁴⁷ Recognizing this as the real reason for noncompliance with support orders, Congress enacted legislation designed to force states to enact their own laws to ensure compliance with child-support orders. Sections III and IV of this note discuss Congress' legislation and the recent amendments.

43. See, e.g., W. DIXON, *supra* note 35 at 65-77.

"Probably the most interesting contrast in the Nation is between two nearby midwestern States: Michigan and Illinois. Michigan invested \$123.67 per female-headed household in 1984, compared to \$42.29 for Illinois, a factor of nearly 3 to 1. Michigan's results were that the average weekly collection per female-headed household was \$17.74, compared to Illinois's \$1.87, a factor of more than 9 to 1. Michigan collected \$7.46 for every dollar in administrative costs, while Illinois spent a dollar to collect only \$2.30 in child support." *Id.* at 66-67.

44. See H. KRAUSE, *supra* note 40, at 51.

Thousands of unserved child support warrants pile up in many jurisdictions and often traffic cases have a higher priority. The blame for this situation is shared by judges, prosecutors and welfare officials alike, and is reinforced by certain myths which have grown up about deserting fathers.

The Committee on Finance in 1974 as cited in S. REP. NO. 387, 98th Cong., 2d Sess. 1-50, *reprinted* in 1984 U.S. CODE CONG. & AD. NEWS 2401 [hereinafter cited as S. REP. NO. 387].

45. Katz, *A Historical Perspective on Child Support Laws in the United States*, in *THE PARENTAL CHILD-SUPPORT OBLIGATION* 19-20 (J. Cassetty ed. 1983).

46. *Id.* at 20.

47. See D. CHAMBERS, *MAKING FATHERS PAY 100* (1979). Chambers compares the support payments made in Genessee County, Michigan to those made in Wastanaw County, Wisconsin. In Genessee County, which had a rigorous support enforcement system, men made payments at high levels. In Washtenaw, which had a passive support system, low levels of payment were made and "many who paid erratically apparently found that their haphazard payments were ignored or followed by hollow threats or that, even if they were arrested, they were released and then forgotten." *Id.* at 100.

III. Early Amendments to the Social Security Act: (Titles IV-A and IV-D)

The federal government first became involved in the support of needy children when it passed an amendment to the Social Security Act. Title IV-A, Aid to Dependent Children, now called Aid to Families with Dependent Children (AFDC).⁴⁸ Simply stated, an AFDC family is one which receives welfare funds under Title IV-A. The Social Security Act encouraged state participation in the AFDC program by reimbursing state funds used in support of needy families with a parent absent from the home. Over the years, the reason for requesting this aid has changed dramatically. Congress originally designed AFDC to assist the widows and children of deceased or disabled men. However, AFDC now provides aid primarily to low-income families where there is a living father who is voluntarily absent from the home.⁴⁹

In 1974, Congress, motivated by a skyrocketing AFDC budget,⁵⁰ attempted to jolt the states out of their apathetic attitude towards child-support enforcement. Senator Long, the chairman of the Senate Finance Committee, expressing congressional dissatisfaction with widespread noncompliance, stated: "Is it fair to ask the American taxpayer — who works hard to support his own family and to carry his own burden — to carry the burden of the deserting father as well? . . . We can — and we must — take the financial reward out of desertions."⁵¹

In an attempt to alleviate the burden on the American taxpayer, Congress passed a comprehensive law dealing with child support: Title IV-D of the Social Security Act.⁵² Title IV-D created a federal and

48. 42 U.S.C. §§ 601-615 (1982) (The title of IV-A was enacted in Act of Jan. 2, 1968, 81 Stat. 911).

49. C. ADAMS & D. COOPER, A GUIDE FOR JUDGES IN CHILD SUPPORT ENFORCEMENT 5 (A. Kaye ed. 1982) (Available through Child Support Enforcement, U.S. Department of Health and Human Services). In eighty-seven percent of the AFDC cases, the reason for receiving aid is the father's absence from the house. *Id.* "The portion of the caseload eligible because of father's death was 42% in 1940, 7.7% in 1961 and 4% in 1973." Note, *Enforcement of Child Support Obligations of Absent Parents — Social Service Amendments of 1974*, 30 Sw. L.J. 625, 632 (1976).

50. AFDC costs were \$7.6 billion in 1973. KRAUSE, *supra* note 40, at 307; Dodson & Horowitz, *Child Support Enforcement Amendments of 1984: New Tools for Enforcement* 10 FAM. L. REP. (BNA) 3051 (1984).

51. Katz, *supra* note 45, at 19, *citing* the 118 CONG. REC. 8291 (1972).

52. 42 U.S.C.A. §§ 651-667 (West 1983 & Supp. 1985) (enacted by Act of Jan. 4, 1975, Pub. L. No. 93-647, 88 Stat. 2351 (1976)).

state partnership to establish and enforce awards for child support.⁵³ Under Title IV-D, states retained primary responsibility for the collection of child support, while the Department of Health, Education and Welfare, now called the Department of Health and Human Services (HHS), imposed standards and made regulations through the newly created Office of Child Support Enforcement (OCSE).⁵⁴ The OCSE is responsible for national administration of the child-support enforcement program, which required each state to establish its own IV-D agency.⁵⁵ The state IV-D agencies are responsible for making regulations for locating absent parents, establishing paternity and support obligations, and for enforcing child-support orders.⁵⁶ Title IV-D also established the Federal Parent Locator Service⁵⁷ and mandated each state to establish a parent locator service.⁵⁸ States in compliance with OCSE standards received federal incentive payments of seventy-five percent of their costs.⁵⁹

The 1974 Title IV-D legislation provides services to all families, including those not receiving AFDC assistance.⁶⁰ The procedures AFDC families must follow are different from other families. To be eligible for child-support services, AFDC recipients must cooperate

53. See W. DIXON, *supra* note 35, at 7, which states:

How States are forced to comply with federal requirements for child support enforcement is a brief, but interesting story. Title IV-A (AFDC) reimburses the States for at least half the cost of AFDC through a contract between the federal government and each State, called the "State Plan for AFDC". One provision of this State Plan permits Congress to modify it (by legislation) without the State's being able to reject the changes.

To implement Title 4D, Congress modified Title IV-A by requiring States to accept the new Title 4D, OR ELSE! The "or else", of course, was risking the loss of millions of dollars of federal money for AFDC. All States accepted Title 4D.

Title 4D, on the other hand, established the need for a "State Plan for Child Support". You guessed right. States must accept new 4D amendments by Congress in order to be in compliance with Title 4D to be in compliance with Title IV-A.

54. 42 U.S.C. § 652(a) (1982).

55. *Id.* § 652(a)(1).

56. *Id.*

57. *Id.* § 653.

58. *Id.* § 654(8).

59. 42 U.S.C. § 655(a)(1) (1979) (amended by Act of Sept. 3, 1982, Pub. L. No. 97-248, 96 Stat. 401 substituting "70 percent" for "75 percent").

60. 42 U.S.C. § 654(6)(A) (1982).

with the state. As a condition for AFDC eligibility, a mother must provide information to help the state locate the absent father, or in cases where it is first necessary to establish paternity, the mother must identify the father.⁶¹ Furthermore, the custodial parent must assign to the state her rights to child support owed by the absent parent.⁶² The money collected by the state from the absent parent is used to offset AFDC payments made to the family.⁶³ Families not receiving AFDC assistance may apply to the state IV-D agency for child-support services.⁶⁴ A fee for child-support services may be charged to families not receiving AFDC.⁶⁵

IV. Child Support Enforcement Amendments of 1984

Although the 1974 social security amendments helped establish and enforce child-support orders,⁶⁶ ten years later the nation-wide support problem remained.⁶⁷ Parents under court orders for support continued to avoid making payments, and states did not have effective enforcement procedures or laws. Congress, concerned about the social and economic effects of nonsupport, began a bi-partisan effort to force states to collect support payments more aggressively and efficiently. This effort resulted in the unanimous passage of the Child Support Enforcement Amendments of 1984.⁶⁸ President Reagan signed the bill into law commenting that “[i]t’s an unfortunate fact of our times that one in four American children live in single-parent homes and millions of these children endure needless deprivation and hardship due to the lack of support by their absent parent”⁶⁹ Through the 1984 Amend-

61. *Id.* § 602(a)(26)(B).

62. *Id.* § 602(a)(26)(A).

63. *Id.* § 658(a).

64. *Id.* § 654(6)(A).

65. *Id.* § 654(6)(B).

66. S. REP. NO. 387, *supra*, note 44, at 2,407.

67. The census bureau reports that only \$6.1 billion was collected out of \$9.9 billion owed in child-support payments in 1981. *Heckler Announces Initiative*, *supra* note 6, at 2. In 1984, state agencies opened up over two and a half million new cases to establish and collect support which resulted in less than 100,000 successful collection cases. DIXON, *supra*, note 35 at 2.

68. Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 (to be codified in various sections of 42 U.S.C.). See *infra* note 70 for detailed list of enacted and amended sections.

69. R. Reagan, Remarks of the President at signing ceremony at Child Support Conference in Washington, D.C. (Aug. 16, 1984) reprinted in NATIONAL CHILD SUP-

ments, Congress almost completely overhauled Title IV-D of the Social Security Act.⁷⁰ Title IV-D deals with federal grants given to states to aid needy families with children in their area of child support and establishment of paternity.⁷¹

The 1984 Amendments have four primary objectives: 1) to require all states to use specific child-support enforcement procedures, which have proven successful in the states which have employed them; 2) to provide equal availability of enforcement services for non-welfare, as well as welfare, families; 3) to improve interstate support services; and 4) to force states to improve child-support enforcement performances through periodic auditing and a reduction of federal financial assistance to states.⁷² This section will discuss and analyze these objectives seriatim.

A. *Utilization of Specific Enforcement Procedures*

The 1984 Amendments require states to enact specific legislation and implement procedures to improve their child-support services as a condition to continued receipt of federal AFDC funds.⁷³ The deadline for compliance for most provisions was October 1, 1985.⁷⁴ However, if a state proved to the Secretary of Health and Human Services that legislation was needed to bring the state plan into compliance with federal requirements, the state was given until four months after the end of the state's first legislative session held after October 1, 1985 to pass whatever legislation was necessary to comply with the 1984 Amend-

PORT ENFORCEMENT CENTER, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES CHILD SUPPORT REP., special ed. Aug. 1984 at 3.

70. Title IV of the Social Security Act is subtitled, Grants to States For Aid and Services to Needy Families with Children and for Welfare Services. 42 U.S.C. §§ 601-731 (1982). Part D under Title IV is called Child Support and Establishment of Paternity. 42 U.S.C.A. §§ 651-667 (West 1983 & Supp. 1985). The Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305, enacted 42 U.S.C. sections 666 and 667, amended sections 602, 603, 606, 651, 652, 653, 654, 655, 656, 658, 664, 671, 1315, and 1396(a), and 26 U.S.C. 6103, 6402 and 7213, and enacted notes under 42 U.S.C. §§ 602, 606, 652, 654, 657, 658, and 667, as well as notes under 26 U.S.C. § 6103. 42 U.S.C.A. § 1305 (West Supp. 1985).

71. 42 U.S.C.A. §§ 651-667 (West 1983 & Supp. 1985).

72. OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, 9TH ANNUAL REPORT TO CONGRESS (1984) [hereinafter cited as 9TH ANNUAL REPORT].

73. 42 U.S.C.A. § 666(a) (West Supp. 1985).

74. *Id.*

ments' requirements.⁷⁵

Although the 1974 Title IV-D legislation permitted the states to use existing state laws, the 1984 Amendments to Title IV-D require states to enact specific legislation designed to strengthen child-support enforcement. The specific enforcement procedures mandated by the 1984 Amendments are those procedures successfully used by states with high collection rates. This section reviews the major enforcement requirements.

1. *Mandatory Wage Withholding*

The most important new tool for enforcement is the mandatory wage withholding provision. The court orders for child support or modifications must automatically include a conditional provision for wage withholding to collect delinquent support obligations.⁷⁶ This requirement enables all support recipients, including those represented by private counsel, to have some method of initiating wage withholding in the event of a support delinquency. Although all families qualify for wage withholding, the procedures for obtaining wage withholding differ, depending on whether the family is on AFDC or registered with the local IV-D agency. Non-AFDC recipients must register with the state IV-D agency when the support order is entered to initiate automatic wage withholding.⁷⁷ Once a family has registered for IV-D services withhold-

75. 50 Fed. Reg. 19,608.

76. 42 U.S.C.A. § 666(a)(8) (West Supp. 1985).

77. *Id.* § 666(b)(1)(2). These subsections provide:

(1) In the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent's wages (as defined by the State for purposes of this section) must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 1673(b) of Title 15. If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 1673(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for aid under part A) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance

ing triggers automatically, requiring no further court action,⁷⁸ when the support becomes overdue in an amount equal to one month's payment.⁷⁹ Automatic withholding can trigger earlier at the state's option or at the option of the absent parent.⁸⁰ Families not already registered with the IV-D agency may apply for services to trigger automatic withholding after an arrearage occurs, and the agency will initiate the withholding at that time.⁸¹

The amount withheld must equal the amount of support due⁸² and at the state's option may include a fee to cover the employer's costs of withholding.⁸³ Additionally, the amount must be within the limits set by section 303(b) of the Consumer Credit Protection Act.⁸⁴ Withholding must comply with state procedural due process requirements.⁸⁵ The

with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part) by the court or other entity which issued such order.

Although the language of this section does not distinguish between IV-D and non-IV-D families, the legislative history clearly does.

Withholding must occur without amendment of the order or further action by the court. The Committee believes that this requirement is particularly crucial to the effectiveness of any income withholding provision, because it means that the custodial parent will not have to experience the costs and delays involved in returning to court to get a garnishment decree or a new support order. Under the Committee provision, the required withholding procedures must be provided without the need for any application therefor on behalf of all IV-D (both AFDC and non-AFDC) families. Families who are not receiving IV-D services may file an application for such services to trigger the initiation of withholding by the agency on their behalf.

S. REP. NO. 387, *supra*, note 44, at 2,423.

78. *Id.* § 666(b)(2).

79. *Id.* § 666(b)(3)(A).

80. *Id.* § 666(b)(3)(B),(C).

81. *Id.* § 666(b)(2).

82. *Id.* § 666(b)(1).

83. *Id.* § 666(b)(6)(A)(1).

84. *Id.* § 666(b)(1). The Consumer Credit Protection Act section 5.303(b) states that fifty percent of the disposable income for an obligor with a second family may be garnished and sixty percent for an obligor without a second family. The percentages increased by five percent if the arrearage accrues at a certain time in the pay period. 15 U.S.C. § 1673(b)(1982).

85. 42 U.S.C.A. § 666(b)(4)(A) (West Supp. 1985). Once the state law grants

obligor must be given advance notice of the withholding and an opportunity to contest it.⁸⁶ Moreover, the obligor's only grounds for contesting the withholding is that there is a mistake of fact.⁸⁷ If the withholding is contested, the state must notify the obligor of the results of its decision within forty-five days of the advance notice.⁸⁸

If the obligor does not contest the withholding, a notice, containing only enough information to enable compliance, is sent to the employer.⁸⁹ An employer who fails to withhold wages after proper notification is liable for the amount which should have been withheld.⁹⁰ An employer must withhold wages for child support before complying with any other obligation because withholding for child support⁹¹ "must have priority over any other legal process under state law against the same wages . . ."⁹² An employer may aggregate all support monies he is obligated to disburse for all employees into one check.⁹³ If an obligor terminates his employment, the employer must notify the state and forward his last known address and the address of the new employer if known.⁹⁴ Additionally, to prevent retaliation by the employer, any employer who fires or disciplines an employee as a result of a withholding order is subject to a fine.⁹⁵

A state is free to extend its withholding provision to other sources of income.⁹⁶ Therefore, commissions, bonuses, retirement benefits, pen-

individuals an entitlement, that interest cannot be taken away arbitrarily. The adequacy of process due these individuals is determined by weighing the interest of the individual in having the additional safeguard and the risk of error in the current procedure along with the value of having an additional procedure against the interest of the state government in not providing the procedure. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

86. 42 U.S.C.A. § 666 (b)(4)(B) (West Supp. 1985). The notice must inform the obligor of the amount owed and the amount to be withheld. *Id.*

87. *Id.* § 666 (b)(4)(A). Mistake of fact is limited to a mistake in the amount of support owed or mistaken identity of the obligor. Dodson & Horowitz, *Child Support Enforcement Amendments of 1984: New Tools for Enforcement*, 10 FAM. L. REP. 3,051, 3,053 (1984).

88. 42 U.S.C.A. § 666 (b)(4)(A) (West Supp. 1985).

89. *Id.* § 666 (b)(6)(A)(ii).

90. *Id.* § 666 (b)(4)(C).

91. *Id.* § 666 (b)(7).

92. 50 Fed. Reg. 19,611 (1985). Implementation of Child Support Enforcement Amendments of 1984, 50 Fed. Reg. 19,611 (1985).

93. 42 U.S.C.A. § 666(b)(6)(B) (West Supp. 1985).

94. 45 C.F.R. § 303.100(d)(x) (1985).

95. 42 U.S.C.A. § 666(b)(6)(D) (West Supp. 1985).

96. *Id.* § 666 (b)(8).

sions, unemployment benefits, worker's compensation, dividends, royalties, and trust accounts may be considered income by the states and subject to wage withholding.⁹⁷ This provision is particularly important in cases where the obligor does not receive a regular salary or is self-employed. Each state must designate a public agency to receive, record and forward payments.⁹⁸ There must be a provision in the state laws for the termination of withholding under certain conditions.⁹⁹

2. *Liens, Bonds, Security, and Guarantees*

Other procedures mandated by the 1984 Amendments, which are useful tools against obligors who are not salaried employees, are the procedures for the imposition of liens and the posting of security bonds or guarantees. As previously stated, high-income, self-employed absent parents obligated to pay child support have as poor a record of nonpayment as any other class, perhaps even the worst.¹⁰⁰ Because these individuals are not salaried employees, the wage withholding provision of the 1984 Amendments will not enforce their payments. Aware of this fact, Congress included in the 1984 Amendments the requirement that states must have and use "[p]rocedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State."¹⁰¹ Under these procedures, the liens, which may attach prior to a default or arrearage, provide not only a means of enforcing support obligations, but also may deter the absent parent from defaulting.

The problem, however, is that neither the 1984 Amendments nor the federal regulation implementing the requirement for lien procedures provides any guidance for uniformity among the states.¹⁰² States are apparently free to use either existing lien laws and procedures or implement new ones. Neither the statute nor the rule mandates a specific method for perfecting these liens, and neither requires that child-support liens acquire a higher priority against the property than other

97. See FLA. STAT. § 61.1301 (1985).

98. 42 U.S.C.A. § 666(b)(5) (West Supp. 1985).

99. *Id.* § 666 (b)(10). These conditions are limited to such circumstances as "the disappearance of the custodial parent and child for an extended period so that it becomes impossible to forward payments, the child reaching the age specified, or the child being legally adopted by someone else." *Dodson, supra* note 87, at 3,053.

100. See *supra* text accompanying notes 32-38.

101. 42 U.S.C.A. § 666(a)(4) (West Supp. 1985).

102. See *id.*; 45 C.F.R. § 303.103 (1985).

liens. Just as current lien laws vary from state to state, the child-support lien procedures will also vary greatly. Nonetheless, the child-support lien requirement may greatly improve the effectiveness of child-support enforcement throughout the country.

Another requirement of the 1984 Amendments which targets, but is not limited to, the higher income, self-employed child-support obligor, is the posting of bonds, security or some type of guarantee. States must use "[p]rocedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of overdue support"¹⁰³ The Office of Child Support Enforcement recognized a difficulty with the bonding procedure¹⁰⁴ when implementing regulations for this requirement. "The majority [of] commenters expressed concern that no bonding company will risk underwriting child-support payments because of the long-term commitment of the support obligation and the high rate of noncompliance with these obligations."¹⁰⁵ Clearly, this reality represents a major drawback to an otherwise tremendously useful enforcement device. Nonetheless, the OCSE "urge[s] States and local IV-D agencies to educate local bonding companies of the efficacy of underwriting child-support obligations in cases where the absent parent has been a minimal credit risk in other credit ventures."¹⁰⁶ Because these minimal-credit-risk absent parents are as delinquent as any other class when it comes to making their support payments, the bonding procedure could be a valuable enforcement tool if utilized effectively.¹⁰⁷

In addition to the bonding procedure, the procedures for providing security or a guarantee may be equally effective for improving child-support enforcement. The OCSE recognized that the state IV-D agency could hold in escrow various assets of the obligor parent, i.e. stocks, bonds and other negotiable instruments.¹⁰⁸ As it did with the

103. 42 U.S.C.A. § 666(a)(6) (West Supp. 1985).

104. See 50 Fed. Reg. 19,631 (1985).

105. *Id.*

106. *Id.*

107 These parents can get bonded because of their good credit ratings. The bonding companies should realize that the reason these parents are as delinquent as any other group in child support payments is that they have traditionally been able to be delinquent with impunity. Bonding companies should further recognize that if these parents are bonded, a motivation exists to keep payments current. These parents may gain satisfaction from tormenting their ex-spouses with delinquent payments, but they will not risk their credit rating or the wrath of the bonding companies for that pleasure.

108. *Id.*

requirement of imposing liens, however, the OCSE fell short of enacting specific regulations for states to follow, opting instead “[t]o provide States with flexibility in this area”¹⁰⁹ Although there is something to be said in favor of permitting states the flexibility to develop their own procedures, by doing so the OCSE has fallen short of its obligation to ensure improvement of child-support enforcement. By permitting state legislators to compromise these procedures, the OCSE missed the opportunity to require states to adopt specific, efficient procedures to ensure enforcement of child-support obligations and, in turn, save the taxpayer money. On the other hand, the 1984 Amendments’ requirements of procedures for imposing liens, posting bonds, and giving security or other guarantees have the potential to greatly reduce the nation-wide support enforcement problem. Of course, states are required to ensure other requirements of due process before using these procedures.¹¹⁰

Still another enforcement tool which the 1984 Amendments require states to use is a state income tax refund offset.¹¹¹ Anyone who has registered with the IV-D agency in a state that has state income taxes qualifies for the state income tax refund offset program.¹¹² The state tax program permits states to intercept state tax refunds owed to parents who are in arrears with child support and use the refund to offset the overdue support payment.¹¹³ Advance notice and an opportunity to contest the offset must be provided to the obligor.¹¹⁴

3. *Reporting to Consumer Credit Agencies*

An additional feature of the 1984 Amendments requires states to report support arrearages to consumer credit reporting agencies when the agency requests the information and when the amount of overdue support is more than \$1,000.¹¹⁵ States may, however, report arrearages of less than \$1,000.¹¹⁶ States may also charge the credit reporting agency a fee for providing the information.¹¹⁷ States must provide the

109. *Id.*

110. 42 U.S.C.A. § 666(b) (West Supp. 1985).

111. *Id.* § 666 (a)(3); 45 C.F.R. § 303.102 (1985).

112. 42 U.S.C.A. § 666(a)(3)(A) (West Supp. 1985).

113. *Id.*

114. *Id.*

115. *Id.* § 666 (a)(7).

116. *Id.* § 666 (a)(7)(A).

117. *Id.* § 666 (a)(7)(C).

obligor advance notice and an opportunity to contest.¹¹⁸ The potential problem with this tool is that states are required to report arrearages only when the agencies request the information. There is fear that the agencies will have no interest in requesting the information, particularly when they are required to pay a fee.¹¹⁹ Although states apparently may provide the information voluntarily,¹²⁰ the OCSE stopped short of requiring states to report support payment arrearages to the credit agencies.¹²¹

4. Expedited Procedures

Another extremely valuable, yet somewhat complicated, enforcement technique which the 1984 Amendments require is the use of expedited procedures for the establishment and enforcement of support orders.¹²² By requiring states to use expedited legal procedures to obtain and enforce orders for child support, Congress has attempted to remedy another problem often encountered by custodial parents. In jurisdictions with crowded court dockets, parents often experience long delays in obtaining support orders.¹²³ Not only does judicial delay cause financial hardship on custodial parents and their children, but delay also exacerbates the support enforcement problem.¹²⁴ Delays can cause the custodial parent to lose contact with the absent parent, thereby jeopardizing the establishment of the support order.¹²⁵ Further-

118. *Id.* § 666 (a)(7)(B).

119. 50 Fed. Reg. 19,631-32 (1985). On the other hand, consumer credit reporting agencies should be interested in this information because under the 1984 Amendments, wage withholding for child support has priority over any other legal process against those same wages, therefore arrearages in child support payments will affect the obligor's ability to satisfy other debts. *Id.*

120. *Id.* at 19,632.

121. *Id.* at 16,931.

122. 42 U.S.C.A. § 666 (a)(2) (West Supp. 1985); 45 C.F.R. § 303.101 (1985). States may use expedited procedures to establish paternity. U.S.C.A. § 666(a)(2)(B).

123. FLORIDA GOVERNOR'S COMM'N ON CHILD SUPPORT, FINAL REPORT app. C.3 (1985) [hereinafter cited as FLORIDA REPORT]. In Florida "6.2 weeks was estimated as the average time it took to arrange for a court hearing in child-support enforcement matters." Office of the Auditor General, State of Florida, Performance Audit of the Child Support Enforcement Program Administered by the Department of Health and Rehabilitative Services in Conjunction with Various Other State and Local Agencies 18 (Dec. 18, 1985) [hereinafter referred to as PERFORMANCE AUDIT].

124. PERFORMANCE AUDIT, *supra* note 123, at 17.

125. *Id.*

more, court delay can result in such substantial arrearages that the absent parent is unable to pay the past-due amounts.¹²⁶ Under the rules adopted pursuant to the 1984 Amendments, states must use either expedited administrative or expedited quasi-judicial procedures in lieu of standard full judicial procedures in all IV-D cases.¹²⁷ However, political subdivisions which can prove they already have effective and timely court systems may apply for an exemption from expedited procedures.¹²⁸ Decisions resulting from expedited procedures have the same force and effect as full judicial decisions.¹²⁹ Of course, the expedited procedure must provide due process to all parties involved.¹³⁰ Decisions reached under expedited procedures may be ratified by a judge and are then subject to appellate review.¹³¹ If a case is inappropriate for expedited procedures, perhaps because it deals with complex issues, it may be decided pursuant to traditional judicial proceedings.¹³² However, a state must first use expedited procedures to establish temporary support orders in complex cases.¹³³ Congress provides financial incentives for cases heard under expedited procedures. Federal funds are available to pay a portion of the salaries of administrative or quasi-judicial officials such as special masters or family court commissioners, but not for the salaries of judges in child-support matters.¹³⁴

Expedited procedures are an important tool for states to improve support enforcement because custodial parents will begin receiving payments after dissolution or separation much sooner than in the past. Arguably, however, the expedited procedures have an inherent drawback. The proper, equitable amount of a support order is often one of the most contested issues of a dissolution proceeding and the discovery of assets, the valuation of assets, the determination of the paying parent's ability to pay and the custodial parent's needs are understandably time-consuming.¹³⁵ The OCSE regulations may be too ambitious by requiring completion of ninety percent of the IV-D cases in three months,¹³⁶

126. *Id.*

127. 45 C.F.R. § 303.101 (1985).

128. 42 U.S.C.A. § 666(a)(2)(B) (West Supp. 1985).

129. 45 C.F.R. § 303.101(c)(1) (1985).

130. *Id.* § 303.101(c)(2).

131. 45 C.F.R. § 303.101(c)(5),(6) (1985).

132. *Id.* § 303.101(b)(4).

133. *Id.*

134. 45 C.F.R. §§ 304.21(a), (b)(2) (1985).

135. *See* Horowitz, *Congress Gets Tough*, 8 FAM. ADVOC. 3, 6 (1985).

136. 45 C.F.R. § 303.101(b)(2)(i) (1985).

ninety-eight percent within six months,¹³⁷ and one hundred percent within twelve months.¹³⁸ Although AFDC cases may not require the depth of discovery or time that other cases may require, states that use expedited procedures for all child-support orders are equitable determinations which require careful analysis. By reducing these determinations to formulas in expedited hearings, states run the risk of sacrificing true equity for speed and convenience.

On the other hand, the expedited procedure has the potential to be a more effective and more equitable means of making support determinations than the current system if certain standards are met. For example, the quasi-judicial officials must be well-qualified and develop expertise in the area of child support. That many circuit court trial judges do not relish presiding over domestic relation contests is no secret. A circuit court judge's distaste for support proceedings may actually reduce his determinations to formulas lacking careful analysis. An expert quasi-judicial official whose sole responsibility is to preside over child-support cases may well be the best person to make equitable determinations.¹³⁹

B. *Equalization of Enforcement Services for Welfare and Non-Welfare Families*

While the 1974 IV-D¹⁴⁰ legislation provided for services to non-welfare families¹⁴¹ as a preventive welfare measure, the federal fiscal

137. *Id.* § 303.101(b)(2)(ii).

138. *Id.* § 303.101(b)(2)(iii).

139. In New York, hearing examiners have been assigned to hear IV-D support cases.

Hearing examiners do not hear matters relating to custody or visitation, contested paternity, requests for orders of protection or for exclusive possession of the marital home. These must be heard exclusively by judges. Hearing examiners not only make orders of support, they can order an *undertaking* to assure payments are made, *commit* the respondent to jail upon confirmation by a judge, and *order* any relief a judge can to enforce the order. If the respondent defaults in appearing and it can be proven he was personally served with process, there are no second chances, no second requests: An order of support *must* be entered.

NATIONAL CHILD SUPPORT ENFORCEMENT CENTER, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *New Law Expedites Enforcement in New York*, CHILD SUPPORT REP. Dec. 1985 at 2 (original emphasis).

140. 42 U.S.C.A. § 666 (a)(5) (West Supp. 1985).

141. 42 U.S.C. § 654 (6)(A) (1982).

incentive to the states was for services provided to AFDC families.¹⁴² In practice, therefore, non-AFDC families often found it difficult, if not impossible, to get child-support assistance.¹⁴³ *Carter v. Morrow*¹⁴⁴ illustrates that in 1983 non-welfare families in North Carolina were refused child-support services which were readily available to welfare families.¹⁴⁵ North Carolina had been providing in-court legal representation to AFDC families, but not to non-recipients of AFDC.¹⁴⁶ The United States District Court for the Western District of North Carolina held that Congress' clear intent was that welfare and non-welfare families are to receive the same IV-D services.¹⁴⁷ The *Morrow* court enjoined the North Carolina Department of Human Services from continued discrimination against persons on the basis of their welfare status.¹⁴⁸ Congress intended the 1984 Amendments to resolve any lingering doubts regarding who is eligible to receive services under the IV-D program. The purpose of the 1984 Amendments is to assure "that the assistance in obtaining support will be available . . . to all children . . . for whom such assistance is requested."¹⁴⁹ Clearly, Congress intended to make child-support services available equally to AFDC and non-AFDC families.¹⁵⁰ Families not on welfare may now be more aware of child-support services because states must publicize the availability of enforcement services through public service announcements made on a frequent basis.¹⁵¹

1. *Incentive Programs*

Under the IV-D program prior to the 1984 Amendments, the federal government, in order to stimulate collections, provided a fixed incentive which allowed the states and political subdivisions to retain twelve percent of all support monies collected for AFDC families.¹⁵²

142. *Id.* § 658(a)(amended 1984).

143. See FLORIDA REPORT, *supra* note 123 at 23.

144. *Carter v. Morrow*, 562 F. Supp. 311 (W.D.N.C. 1983).

145. *Id.* at 314.

146. *Id.*

147. *Id.* at 315.

148. *Id.* at 318.

149. 42 U.S.C.A. § 651 (West Supp. 1985).

150. S. REP. NO. 387, 98TH CONG., 2d Sess. 1-50, *reprinted in* 1984 U.S. CODE CONG. & AD. NEWS 2,419. [hereinafter cited as S. REP. NO. 387].

151. 42 U.S.C.A. § 654(23) (West Supp. 1985).

152. 42 U.S.C. § 658 (1982)(amended 1984).

The states, however, received no incentive for monies collected on behalf of non-AFDC families. Furthermore, AFDC collections are used to reimburse the state and federal government for their pro rata share of public assistance payments.¹⁵³ As a result, many states and political subdivisions focused on the financial reward provided for AFDC collections and neglected their services to non-AFDC families.¹⁵⁴ Additionally, the fixed incentive under the prior law provided little impetus for states to improve the efficiency and effectiveness of their child-support programs.

In order to encourage the states to equalize their provision of services to all families and to increase the efficiency and effectiveness of their programs, the 1984 Amendments provide a new incentive system¹⁵⁵ for both AFDC and non-AFDC collections.¹⁵⁶ A sliding scale has replaced the fixed percentage in computing the incentive to be paid each state.¹⁵⁷ The federal government pays the states a minimum incentive of six percent for all collections; however, if a state's performance meets federal criteria for efficiency and effectiveness, the incentive payment to that state could reach as high as ten percent.¹⁵⁸ The new incentives program is a great improvement over the old program. The new incentives encourage the states to make their child-support services more effective and efficient and to make them available to all families. Furthermore, the new incentives provide a great opportunity for states to increase their percentage of federal financial assistance because federal incentives for non-AFDC collections should be even higher than for AFDC collections because non-AFDC fathers have a greater ability to pay than welfare fathers.¹⁵⁹

2. Federal Income Tax Refund Program

The 1984 Amendments permit non-welfare and foster-care cases to utilize the federal income tax refund program previously limited to AFDC clients.¹⁶⁰ Non-AFDC clients may collect past-due child-support that exceeds five hundred dollars from the federal income tax re-

153. 42 U.S.C.A. § 603 (West Supp. 1985).

154. FLORIDA REPORT, *supra* note 123, at 13.

155. 42 U.S.C.A. § 658 (West Supp. 1985).

156. *Id.* § 658(b)(2).

157. *Id.*

158. *Id.* § 658(b)(2), (c)(2).

159. FLORIDA REPORT, *supra* note 123, at 24.

160. 42 U.S.C.A., § 664 (West Supp. 1985).

fund due to the absent parent.¹⁶¹ Notice must be sent to the absent parent, and he must have an opportunity to contest the order.¹⁶² If the absent parent has remarried and has filed a joint return with his new spouse, the procedure protects the share of the refund due to the new spouse.¹⁶³

3. *Imposition of Fees*

Although states must now provide child-support services equally to non-welfare and welfare families, one area of minor inequality remains. Congress amended 42 U.S.C. § 654(6)(8) to require states to charge "an application fee for furnishing . . . services"¹⁶⁴ Under the prior provision, a fee was not mandatory.¹⁶⁵ The fee cannot exceed twenty-five dollars unless the Secretary of Health and Human Services determines that administrative costs require a higher fee.¹⁶⁶ Furthermore, although the upper limit must be uniform nationwide,¹⁶⁷ each state may vary the amount an individual must pay based on that individual's ability to pay.¹⁶⁸ Under the OCSE rules, states may either charge a flat fee or establish a schedule, but the schedule must be tied to the applicant's ability to pay.¹⁶⁹ AFDC families, on the other hand, are not charged a fee for any services. Arguably, this inequality is *de minimus* because the fee charged to IV-D families is low and unlikely to discourage them from applying for services.

The 1984 Amendments permit states to charge an additional twenty-five dollar fee to non-AFDC clients who request the federal income tax refund offset program.¹⁷⁰ States may impose still another twenty-five dollar fee for payments made through the Child Support Clearinghouse.¹⁷¹ States may continue to charge for the actual costs of the collection services¹⁷² and impose charges against either the custo-

161. *Id.* § 664(b)(2)(A).

162. *Id.* § 664(a)(2)(A), (3)(A).

163. *Id.* § 664(a)(3)(A).

164. *Id.* § 654(6)(B).

165. 42 U.S.C. § 654(6)(B) (1982)(amended 1984).

166. 42 U.S.C.A. § 654 (6)(B)(i) (West Supp. 1985).

167. *Id.*

168. *Id.* § 654(6)(B)(ii).

169. 45 C.F.R. § 302.33(c)(2)(iv)(A), (B) (1985).

170. 42 U.S.C.A. § 664 (A)(2)(B) (West Supp. 1985).

171. *Id.* § 666(c).

172. *Id.* § 654(6)(B),(C).

dial or absent parent.¹⁷³

C. *Improved Enforcement of Interstate Collections*

Another problem area encountered by many parents is the enforcement of child-support awards across state lines.¹⁷⁴ Under the 1984 Amendments, states must use their wage withholding systems to enforce out-of-state support orders.¹⁷⁵ There is new incentive for states to cooperate because the 1984 Amendments provide that both the state where the custodial parent resides and the state where the absent parent works will receive federal incentive payments.¹⁷⁶ Expedited legal procedures also apply to interstate cases.¹⁷⁷ States must cooperate with each other to obtain and enforce orders for child support.¹⁷⁸ Therefore, mandatory state procedures, such as the imposition of liens and the posting of bonds, apply to interstate cases.¹⁷⁹ Additionally, the 1984 Amendments set aside grants of money to encourage states to use new or innovative methods to improve interstate collection.¹⁸⁰

Congress has mandated a nationwide uniform child-support enforcement act. Not only has Congress required each state to meet certain standards in order to receive federal funds, but Congress has also established enforcement standards which will receive full faith and credit among the sister states. Because many absent parents live in different states than custodial parents, the cooperation requirement of the 1984 Amendments may be one of the most valuable child-support enforcement provisions.

D. *Federal Financial Participation and Penalties*

1. *Reduction of Federal Share of Costs*

Another method of congressional pressure on each state to increase the effectiveness of its program is the reduction of the federal share of administrative costs of the state enforcement program. Currently the

173. *Id.* § 654(6)(C)(i), (ii).

174. *See* FLORIDA REPORT, *supra* note 123, at app. C.4.

175. 42 U.S.C.A. § 666 (b)(9) (West Supp. 1985).

176. 50 Fed. Reg. 19,626 (1985).

177. 42 U.S.C.A. § 666 (a)(2) (West Supp. 1985).

178. *Id.* § 654(9).

179. *Id.*

180. *Id.* § 655(e).

federal government pays seventy percent of each state's administrative costs for providing child-support services to both welfare and non-welfare families.¹⁸¹ However, in 1988 and 1989 the federal rate will drop to sixty-eight percent, and in 1990 it will drop again and remain thereafter at sixty-five percent.¹⁸² The legislative history states that "[b]y increasing the state matching share, the Committee expects that State responsibility for and interest in the effectiveness of child support enforcement and paternity establishment services will also be increased."¹⁸³ In other words, Congress believes that by gradually increasing the percentage of costs payable by the states, the states will have greater incentive to make their child-support programs more cost efficient.

While decreasing the amount of federal financial participation in many areas, the 1984 Amendments increased federal funding for computerized enforcement systems in order to encourage states to develop more efficient child-support services. Federal matching funds of up to ninety percent are available for the "planning, design, development, installation or enhancement of an automatic data-processing and information system."¹⁸⁴ These automated systems will record child-support payments made and report any delinquencies.¹⁸⁵

2. *Audits and Penalties*

Auditing is another procedure included in the 1984 Amendments designed to make state programs more effective. One of the duties of the OCSE is to audit state child-support programs at least once every three years.¹⁸⁶ The auditor must make a report to the Secretary of Health and Human Services, who determines if the state child-support enforcement programs conforms to the requirements of the IV-D statute.¹⁸⁷ Two types of sanctions exist for noncompliance. The first sanction is a reduction in federal AFDC benefits to any state not in substantial compliance with Title IV-D.¹⁸⁸ The second type of sanction

181. *Id.* § 655(a)(2).

182. *Id.*

183. S. REP. NO. 387, *supra* note 150, at 2,419.

184. 42 U.S.C.A. § 655 (a)(1)(B) (West Supp. 1985).

185. 50 Fed. Reg. 19,640 (1985).

186. 42 U.S.C.A. § 652 (a)(4) (West Supp. 1985).

187. *Id.*

188. *Id.* § 603(h)(2).

The 1984 amendments require that OCSE conduct audits of State enforce-

occurs when the Secretary of Health and Human Services refuses to approve a state plan. The secretary will disapprove any state plan that the audit shows does not comply with IV-D requirements.¹⁸⁹ The secretary's refusal to approve a state plan results in termination of all federal financial participation in that state's child-support program.¹⁹⁰ If, for example, a state refuses to cooperate with another state, or fails to conform to any other requirement of Title IV-D, that state loses its seventy percent federal matching funds and incentives for its child-support program. Therefore, as a result of an audit, any state found not in substantial compliance with Title IV-D will incur two penalties: reduction of state AFDC funds and termination of federal financial participation in the state's child-support program.

E. *Other Miscellaneous Provisions of the 1984 Amendments*

The Secretary of Health and Human Services may exempt a state from a particular requirement if that state can demonstrate that the required procedures would not increase the effectiveness and efficiency of that state's current program.¹⁹¹ In other words, the burden is on the state to prove that an existing procedure is so effective that the state child-support program would not be improved by implementing the new procedure mandated by the 1984 Amendments.¹⁹² This is a refreshing approach by Congress since legislators, in an attempt to improve an

ment programs at least once every 3 years, or annually if a State has been found not to be in "substantial compliance" with Federal requirements. Before any penalties are imposed, however, a State is allowed a maximum of one year to implement a corrective action plan. Following this, if the State is still out of substantial compliance, a penalty of 1-2 percent of its Federal AFDC funds will be imposed on a quarterly basis. The penalty will increase 2-3 percent for the second consecutive instance of noncompliance with the same audit criteria and to 3-5 percent for all subsequent failures. If another area is found out of compliance, another separate notice is issued, and another corrective action period is started.

NATIONAL CHILD SUPPORT ENFORCEMENT CENTER, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, *Child Support Enforcement Audit Rules Issued*, CHILD SUPPORT REP. Feb. 1986 at 1.

189. 42 U.S.C.A. § 652(3) (West Supp. 1985).

190. *Id.* § 655(a)(1)(A); Under 42 U.S.C.A. § 655(a)(1)(A), only states with approved plans under 42 U.S.C.A. § 654 (West 1983 & Supp. 1985) will receive appropriated sums.

191. 42 U.S.C.A. § 666(d) (West Supp. 1985).

192. 50 Fed. Reg. 19,633 (1985).

area of law, often enact legislation which actually retards the progress already made in some jurisdictions. The exemption enables states that are one or more steps ahead of the 1984 Amendments to continue progress as usual.¹⁹³

Custodial parents who are IV-D clients and have spousal support orders as well as orders for child support and who live in the same household as the child may have their spousal support order enforced along with the order for child support.¹⁹⁴ In addition, the state IV-D agency may petition the court to include medical support in a child-support order if health insurance is available to the absent parent at a reasonable cost.¹⁹⁵

V. Florida's Compliance with Congress' Mandate: Major Problems & Recommendations

Florida must resolve serious deficiencies before it will receive the Secretary's approval of its state plan. Unless the Florida legislature enacts new laws in the 1986 legislative session, Florida will lose all federal financial participation in the state child-support program and will incur a reduction in federal AFDC funds. Areas requiring legislation include provisions for expedited procedures, establishment of guidelines for child support, liens on personal property, and wage withholding. Of course, in addition to enacting necessary legislation, Florida must improve its operations for the delivery of child-support services by expanding service to non-AFDC families. Florida must also expand its child-support program to provide services to a greater number of families because federal criteria require that seventy-five percent of the cases must be served at any given time.¹⁹⁶

The 1984 Amendments require the governor of each state to appoint a commission to study the child-support program in that state¹⁹⁷ and make a report on its findings and recommendations.¹⁹⁸ Governor Graham appointed a state commission composed of attorneys, judges, public officials, divorced parents and various experts in the field of child

193. For example, Congress included a waiver procedure for Wisconsin's pilot enforcement program. Child Support Enforcement Amendments of 1984, Pub.L. No. 98-378, § 22, 98 Stat. 1,326.

194. 42 U.S.C.A. § 654 (4)(B) (West Supp. 1985).

195. *Id.* § 652(f).

196. 45 C.F.R. § 305.20 (1985).

197. 42 U.S.C.A. § 654 note(a) (West Supp. 1985).

198. *Id.* § 654 note(d).

support.¹⁹⁹ On October 1, 1985 the Florida Governor's Commission on Child Support presented its report²⁰⁰ to Governor Graham. In addition to the report of the state commission, the Florida Office of the Auditor General conducted a performance audit of the state child-support enforcement program and issued its recommendations in a report dated December 18, 1985.²⁰¹ This section of the note discusses the major areas of current Florida noncompliance.²⁰²

A. *The Need for Enactment of Specific Legislation*

The 1984 Amendments require states to use expedited procedures in all IV-D cases.²⁰³ Under the OCSE rules Florida must use administrative or quasi-judicial proceedings to establish and enforce child-support orders if the custodial parent has applied to the state IV-D agency or is on AFDC.²⁰⁴ Justice Boyd of the Florida Supreme Court believes there are better ways to speed up the judicial process than the use of administrative or quasi-judicial officials. Justice Boyd has already taken steps to make child-support determinations more timely. He recommended to the Florida Legislature the addition of twelve circuit court judges in fiscal year 1985-1986.²⁰⁵ He also issued an administrative order on April 12, 1985 that requires judges to hear child-support cases within fifteen days of a request and to make determinations within ten days.²⁰⁶ Expressing his views on quasi-judicial officials he writes:

The Court has some concern about requiring the use of masters. Masters are limited in their authority to making recommendations which must be reviewed by a judge. Experience has shown that the use of masters adds on another layer of bureaucracy contributing to delay. I strongly believe that with adequate prepara-

199. FLORIDA REPORT, *supra* note 123, at iv-vi.

200. FLORIDA GOVERNOR'S COMM'N ON CHILD SUPPORT, FINAL REPORT (1985).

201. PERFORMANCE AUDIT, *supra* note 123.

202. A complete list of specific legislation which must be enacted by Florida in order to comply with the 1984 amendments can be found in OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, STATE CHILD SUPPORT LEGISLATION AND THE 1984 FEDERAL AMENDMENTS: A 54 JURISDICTIONAL ANALYSIS 21 (December 1985).

203. 42 U.S.C.A. § 666 (a)(2) (West Supp. 1985).

204. 45 C.F.R. § 303.101 (1985).

205. PERFORMANCE AUDIT, *supra* note 123, at 18.

206. Letter from Chief Justice Boyd to Auditor General Ernest Ellison, *found in* PERFORMANCE AUDIT, *supra* note 123, at 51-52.

tory services and a few additional judges, Florida can alleviate any delay now existing in hearing child support cases and prevent the necessity of creating another tier to the court system.²⁰⁷

Other alternatives have been suggested by the state commission. They recommend the establishment of a family court division in the Office of the Courts Administrator.²⁰⁸ Under the current system child-support cases must compete with criminal and other civil cases for limited judicial time. Unfortunately, in jurisdictions with crowded court dockets, judges are forced to hear child-support motions on their morning motion calendars in order to comply with the administrative order requiring speedy support determinations. Frequently this means that each attorney is allowed only five minutes to present his case. While these hearings may technically comply with Justice Boyd's administrative order, five minutes is often not a sufficient amount of time to permit the judge to make an informed and equitable decision. The growing number of divorce cases and the distaste that some judges have for domestic issues makes the establishment of a family court division a good alternative to the present system.

The state commission also recommends Florida adopt new rules of civil procedure similar to the Florida Rules of Summary Procedure to expedite the judicial process.²⁰⁹ The Florida Rules of Summary Procedure shorten the time limit for service of pleadings and discovery, thus allowing cases to be disposed of in a more timely manner.²¹⁰

Florida should request exemptions as provided for in the 1984 Amendments for political subdivisions already handling cases in a timely manner.²¹¹ However, the subdivisions must prove to the Secretary of Health and Human Services that their present handling of cases qualifies as timely.²¹² Unfortunately, many subdivisions which are presently operating child-support programs in a timely manner may not be able to prove this to the secretary because these subdivisions may not have the necessary statistics available.

Another problem frustrating many parents is the lack of consistency in the amount of support awarded.²¹³ Even in the same judicial

207. *Id.* at 52.

208. FLORIDA REPORT, *supra* note 123, at 42.

209. FLORIDA REPORT, *supra* note 123, at 32.

210. *Id.*

211. 42 U.S.C.A. § 666 (a)(2)(B) (West Supp. 1985).

212. *Id.* § 666(d).

213. FLORIDA REPORT, *supra* note 123, at app. C.2.

circuit, children under similar circumstances are awarded widely disparate amounts for child support.²¹⁴ Custodial parents often compare the amount of their support orders to the amounts awarded to custodial parents in similar circumstances and conclude the amount of their support order is inadequate, while non-custodial parents compare amount of support awards and conclude the amount of their order is excessive.²¹⁵ "Such inequity is bound to lead to disrespect for the legal judicial system at best and, at worst, non-compliance with support orders by those who feel they were the victims of an unfair and arbitrary process."²¹⁶ To remedy this problem the 1984 Amendments require states to establish support guidelines by October 1, 1987.²¹⁷ Florida must develop guidelines which can be either aspirational or mandatory to be used by judges to establish the amount of the award for child support.²¹⁸ The guidelines must include specific numerical criteria to be used in computing the amount of the support order.²¹⁹

The provision requiring these support guidelines is one of the most controversial provisions of the 1984 Amendments.²²⁰ The chairman of the Family Law section of the American Bar Association warns that "support guidelines may create more problems than they solve."²²¹ On the other hand, the state commission considers the guidelines "necessary to achieve equity and adequacy in child support awards."²²² One drawback to guidelines is that they offer a mechanical approach to setting amounts for support, generally based on the basic needs of the child and the parent's ability to pay.²²³ Guidelines may fail to consider special needs of a child. A case-by-case approach, on the other hand, would be less likely to overlook those needs. Justice Boyd expressed his reservations about support guidelines by citing *Rook v. Rook*,²²⁴ "in

214. *Id.* at 31-32.

215. Cassetty, *Emerging Issues in Child-Support Policy and Practice*, in *THE PARENTAL CHILD-SUPPORT OBLIGATION* 3, 5 (J. Cassetty ed. 1983).

216. *Id.* at 5-6.

217. 42 U.S.C.A. § 667 (West Supp. 1985).

218. *Id.* § 667(b).

219. *Id.* § 667.

220. 45 C.F.R. § 302.56(c) (1985).

221. Albano & Dennis, *Child Support Guidelines: A Necessary Evil?*, 8 *FAM. ADVOC.* 4 (1985).

222. *FLORIDA REPORT*, *supra* note 123, at 32.

223. Bruch, *Developing Normative Standards for Child-Support Payments: A Critique of Current Practice*, in *THE PARENTAL CHILD-SUPPORT OBLIGATION* 119 (J. Cassetty ed. 1983).

224. *Rook v. Rook*, 469 So. 2d 172 (Fla. 5th Dist. Ct. App. 1985).

which the Fifth District Court of Appeal stated that a mechanized approach to establishing child support would contravene the Court's decision in *Canakaris v. Canakaris*.²²⁵ The *Canakaris* decision gives judges wide discretion in domestic matters, including child support.²²⁶ Another disadvantage to guidelines is that they are often based on minimum levels of support established for poor families.²²⁷ The use of such guidelines is inappropriate for families with middle level or high incomes. The state commission recognizes these problems and therefore recommends that Florida adopt guidelines which include considerations for children with special needs, parents with very low incomes or "other extraordinary circumstances."²²⁸ The state commission further urges that the low level of support provided in the AFDC program not be used in calculating a child's basic needs²²⁹ and it recommends that Florida adopt the Melson Formula,²³⁰ an approach that incorporates both cost and income sharing concepts.

Wage withholding is another controversial subject. Although Flor-

225. Letter from Chief Justice Boyd to Auditor General Ernest Ellison, *supra* note 206, at 52 (referring to *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980)).

226. *Canakaris v. Canakaris*, 382 So. 2d 1197, 1204 (Fla. 1980).

227. *See* Cassetty, *supra* note 215, at 6.

228. FLORIDA REPORT, *supra* note 123, at 33.

229. *Id.* at 33-34.

230. Judge Melson developed the Delaware child-support formula in I.B. v. R.W.W.B., No. A-3000 (Del. Fam. Ct. 1977); *see also* *Emsley v. Emsley*, 467 A.2d 700, 702 (Del. Fam. Ct. 1983). The Melson Formula is based on three principles:

[1] Parents are entitled to keep sufficient income to meet their most basic needs in order to encourage continued employment.

[2] Until the basic needs of children are met, parents should not be permitted to retain any more income than that required to provide the bare necessities for their own self-support.

[3] Where income is sufficient to cover the basic needs of the parents and all dependents, children are entitled to share in any additional income so that they can benefit from the absent parent's higher standard of living.

These principles were formulated into a guideline that serves as the method under which the Court presumes that a fair and equitable amount of child support will be derived. This presumption is *rebuttable* in that it will be applied unless and until a parent presents facts that persuade the Court that an application of the formula would be inequitable to either the absent parent, the custodial parent, or the child.

CHIEF JUDGE R.D. THOMPSON, DEL. FAM. CT., THE DELAWARE CHILD SUPPORT FORMULA — STUDY AND EVALUATION: REPORT TO THE 132ND GENERAL ASSEMBLY 2 (April 15, 1984) (available from The Family Court of the State of Delaware, 900 King St., Wilmington, Delaware) (emphasis in original).

ida has had statutory provisions for wage withholding in effect since 1982,²³¹ much disagreement exists over the procedures that should be used to initiate the withholding. Under current law, wages will be withheld in IV-D cases if the support is overdue by thirty days.²³² Arguably, a shorter triggering period is required to provide adequate security to the child. The state commission recommends that all child-support orders have provisions for *immediate* wage withholding without waiting for a delinquency to occur.²³³ One advantage to the immediate withholding is that no stigma would accompany wage deductions since all parents, not just delinquent payers, would have support payments automatically deducted from their wages.

To comply with the 1984 Amendments, Florida must enact legislation to provide for the imposition of liens against real and personal property to insure child-support payments. Under the bill²³⁴ proposed by the Florida Senate, when an obligor's support payment becomes overdue, the obligee or his agent may record a claim of lien in the amount of the overdue payment.²³⁵ "The lien shall attach to all non-exempt real and personal property currently owned or subsequently acquired by the obligor."²³⁶ Notice must be sent to the obligor whose grounds for contesting the lien is limited solely to a mistake of fact.²³⁷

B. *The Need to Improve Delivery of Child-Support Services*

Florida has a poor record for providing child-support services. It currently ranks last among the states in providing child-support services to families headed by women.²³⁸ In 1984 only twenty-four percent of Florida's families headed by women were receiving child-support services.²³⁹ In fact Florida's performance appears to have been getting worse in recent years. In 1984, there were not only fewer cases in

231. FLORIDA REPORT, *supra* note 123, at 72.

232. FLA. STAT. 61.181(3) (1985).

233. FLORIDA REPORT, *supra* note 123, at 73-74.

234. Fla. S. 224, 9th Leg., 2d Leg. Sess. (1986).

235. *Id.* at 28.

236. *Id.*

237. *Id.*

238. W. DIXON, THE CHILD SUPPORT ENFORCEMENT PROGRAM: UNEQUAL PROTECTION UNDER THE LAW 10 (J. Duggan ed. 1985)(available through the National Forum Foundation).

239. *Id.*

which payments were collected from absent fathers²⁴⁰ but fewer absent fathers were located than in 1983.²⁴¹

These statistics are particularly distressing because the demand for child-support services is very high in Florida.²⁴² This high demand for services is due in part to Florida's high out-of-wedlock birth rate.²⁴³ Children born out-of-wedlock are likely to require state assistance in establishing paternity and enforcing support orders.²⁴⁴ Florida's divorce rate for families with children, the eighth highest in the nation,²⁴⁵ is also a factor contributing to the high demand for child-support services.

According to the state commission there are two principal reasons for Florida's poor record.²⁴⁶ First, Florida has concentrated on providing child-support services almost exclusively to AFDC families.²⁴⁷ Because most families are not on AFDC²⁴⁸ they have been unable to receive support services. Only seven percent of non-AFDC families receive child-support services.²⁴⁹ The 1984 Amendments have eliminated a major reason for this disparity — the old incentives program which encouraged the unequal treatment of welfare and non-welfare families. Furthermore, Florida Statutes section 409.24 requires that child-support services be provided equally to all families.²⁵⁰

According to the state commission the second reason Florida is ranked last in the nation in providing child-support services to families headed by women is that Florida has not maintained an adequate staff of child-support workers.²⁵¹ Staff workers in Florida have caseloads more than twice as heavy as the national average.²⁵² Only three states

240. *Id.* at 48.

241. *Id.* at 52.

242. FLORIDA REPORT, *supra* note 123, at 6. There is an estimated backlog of 250,000 cases of Florida families needing, but not receiving, child-support services. *Id.*

243. *Id.* at 7. Twenty-five percent of children born in Florida are born out-of-wedlock; however, the national average is less than twenty percent born out-of-wedlock. *Id.*

244. *Id.*

245. *Id.* at app. A-2.

246. *Id.* at 7.

247. *Id.* at x. Thirty-eight percent of Florida AFDC families receive child-support services. *Id.*

248. W. DIXON, *supra* note 238, at 10. For example, there are 370,000 families headed by women in Florida, and only 78,000 of those are on AFDC. *Id.* at 10.

249. FLORIDA REPORT, *supra* note 123, at x.

250. FLA. STAT. § 409.2567 (1985).

251. FLORIDA REPORT, *supra* note 123, at 7.

252. *Id.* at 8.

assign their support workers more cases than Florida assigns its workers.²⁵³ Florida stands to lose federal funding because of its poor service delivery system if Florida fails to meet the OCSE requirements²⁵⁴ which provide that "75 percent of cases must be currently served at any given time."²⁵⁵ The Florida legislature should allocate more money to the child-support enforcement program to hire, train and better compensate staff workers. Furthermore, Florida should improve the current automated child-support information systems to increase staff efficiency.²⁵⁶ Expanded federal funding²⁵⁷ for automated systems makes the acquisition and improvement of computer systems a particularly wise investment.

C. *The Need to Allocate More Revenue to the Florida Child-Support Program*

The child-support program is cost beneficial to Florida. Although Florida spent over four million dollars providing child-support services, it recouped nearly four times that amount from support payments recovered from absent parents, fees paid by non-AFDC families and federal incentive payments.²⁵⁸ If the legislature allocates more money to the child-support program, the program will recover more money from absent parents. As a result, federal incentive payments will increase and produce an even greater net gain for the state.²⁵⁹ The state commission calls the child-support program "a highly productive financial arrangement for the government and the citizens of Florida. It is most unusual for state government to provide a social service and, at the same time, earn or recover 377 percent of the state's program costs."²⁶⁰

VI. Conclusion

The increasing number of divorces, desertions and out-of-wedlock

253. *Id.* at app. A-5.

254. 45 C.F.R. § 305.20 (1985).

255. Letter from William J. Page to Governor Robert Graham (September 30, 1985) (submitting FLORIDA GOVERNOR'S COMM'N ON CHILD SUPPORT, FINAL REPORT 2 (1985)).

256. *See* FLORIDA REPORT, *supra* note 123, at 45.

257. 42 U.S.C.A. § 655(a)(1)(B) (West Supp. 1985).

258. FLORIDA REPORT, *supra* note 123, at x.

259. *Id.* at 2.

260. *Id.* at 15.

births results in the increasing number of single-parent families. It is estimated that half the children born in the United States today will live in a single-parent family at some point in their lives.²⁶¹ These children run a high risk of living lives of poverty because they often receive little or no support from their absent parent. Taxpayers have been forced to assume the responsibility of providing support for these children through the AFDC program. In order to reduce the taxpayers' burden and to force absent parents to assume their parental duty to support their children, the federal government invaded a traditional state domain — child-support enforcement. The most recent federal action, the Child Support Amendments of 1984, revised various provisions of Title IV-D of the Social Security Act and provides new federal incentives and penalties to force the states to use specific child-support enforcement procedures which other states have successfully utilized. Wage withholding is perhaps the most important new procedure for support enforcement. Other new provisions include the requirements for the imposition of liens and the posting of bonds to secure support payments, mandatory tax refund offset programs, and the use of expedited procedures to accelerate the establishment and enforcement of child-support orders. The 1984 Amendments clearly require that states provide child-support services equally to AFDC and non-AFDC families.

In order to continue receiving federal funds for the state child-support program and to avoid a reduction in federal AFDC funds, Florida must pass the required legislation and make significant improvements in its system for the delivery of child-support services. Since the child-support program is cost-beneficial, the Florida legislature has no excuse not to allocate more money to the child-support program. The Florida Governor's Commission on Child Support declared "[i]t is clear . . . that [the] establishment and enforcement of child support obligations is the most significant and useful public policy instrument for reducing poverty among children in the United States."²⁶²

Maureen Gallen

261. Chambers, *Child Support in the Twenty-first Century*, in *THE PARENTAL CHILD-SUPPORT OBLIGATION* 283, 284 (J. Cassetty ed. 1983).

262. FLORIDA REPORT, *supra* note 123, at 11.