STATE BAR of WISCONSIN®
YOUR PARTNER IN PRACTICE

June 1, 2001

State Senator Gary George
State Capitol
P.O. Box 7882
Madison, Wisconsin 53707

State Representative Steve Kestell
State Capitol
P.O. Box 8952
Madison, Wisconsin 53708

RE: Percentage Expressed Orders in Family Law.

Dear Senator George and Representative Kestell:

The State Bar's Family Law Section appreciates both of your efforts on percentage-expressed orders as the main authors of Senate Bill 106 and Assembly Bill 248. We especially appreciate your patience in waiting to move forward on these bills while we work with the Wisconsin Department of Workforce Development and the U.S. Department of Health and Human Services.

As you know, we worked with DWD to explore the possibility of a waiver from DHHS for percentage-expressed orders in Wisconsin. Although the waiver was not granted, the federal agency indicated that they have no problem allowing non-IV-D cases (cases that do not receive state or federal assistance) to use percentage-expressed orders.

Since receiving the news from DHHS, we have continued to work with DWD to find an approach that would allow for percentage-expressed orders in non-IV-D cases and to develop a procedure for annual review that would not be burdensome for the courts or the parties. We appreciate the Department's assistance in working with us on draft language that will meet those goals.

It is our hope that you will support the substitute language to:

> Allow parties to stipulate that they want to use percentage-expressed orders if theirs is not a IV-D case and neither have any other child support orders;
>
> Require the judge, at the time of the order, to set the time limits for exchanging financial information, determine the type of financial information exchanged and provide a form for the agreed upon annual adjustments.

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We would be happy to meet with you to discuss these alternatives and to work with you on the proposal.

Again, thank you for taking the lead on this important family law issue.

Sincerely,

Marjorie H. Schuett

Marjorie Schuett, Chair
Family Law Section Board
State Bar of Wisconsin

State of Wisconsin
Department of Workforce Development

OFFICE OF THE SECRETARY
FAX COVER SHEET

Date Sent: 4/23/01	**Number of Pages (including this cover):** 5
TO: Dan Rossmiller (Sen. Gary George)	**From:** Jennifer L. Noyes
Fax Number: 266-7381	**Fax Number:** 608/266-1784
Phone Number: 266-2500	**Phone Number:** 608/261-9458

Dan -

FYI. We can talk whenever you get a chance.

JN

If there were any problems with the transmission or not all pages were received, please contact the sender immediately

201 E. Washington Avenue, Room 400x, P.O. Box 7946, Madison, WI 53707-7946

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
Office of the Assistant Secretary, Suite 600
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

April 18, 2001

Ms. Jennifer Reinert
Secretary
Wisconsin Department of
Workforce Development
201 East Washington Avenue
P.O. Box 7946
Madison, Wisconsin 53707-7946

Dear Ms. Reinert:

Secretary Thompson has asked me to respond to your letter asking if there are options available that would permit Wisconsin to continue writing percentage-expressed child support orders without loss of federal incentive funding and risk of state plan disapproval or if the Department could waive requirements that would jeopardize that funding.

Unfortunately, it is only under very specific circumstances that the Department has the authority to grant waivers to the requirements of the Social Security Act. We cannot waive the requirements and grant your request as expressed in your letter. I am, however, hopeful that we can find a solution to this problem.

Nothing in Federal law or regulations prohibits the State from using State child support guidelines that establish support orders as a percentage of income. However, as you are aware, use of percentage-expressed orders impacts on the State IV-D program's ability to meet other explicit Federal distribution and enforcement requirements that the Secretary does not have authority to waive. In addition, States may receive incentives only if the Secretary can determine that the data used to calculate the incentive performance measures is complete and reliable. I do not believe that the State can meet these requirements unless support orders are expressed as a dollar amount.

Federal requirements are not an issue if a case with a percentage-expressed order never receives services under the IV-D programs. These orders can work well when payments are regular and there is no interruption in employment. However, once a case enters the State IV-D caseload, it must be enforced in accordance with all Federal requirements.

I am eager to work with you to help avoid the consequences of using percentage-expressed orders in cases receiving services from the IV-D program. Perhaps a State legislative change is possible that would provide for the percentage-expressed orders that traditionally have worked well in many Wisconsin cases and provide for sum-certain orders in those cases that need

enforcement under the State IV-D program. For example, could State law and child support guidelines require that any order established in a IV-D case must be established as a sum-certain, and that any percentage-expressed order in a case that enters the IV-D program must be converted to a sum-certain? As long as an obligor is current on support payments and his or her family does not need IV-D services, the order could be expressed as a percentage of income.

You, the State Bar Association, and many other interested people in Wisconsin, have demonstrated your commitment to resolving these issues, and my staff will continue to work with you to help to ensure that children receive the support they deserve. I have enclosed the Office of Child Support Enforcement Policy Staff analysis of the suggested legislative changes and mitigation plan included with your letter.

The Secretary and I share your concern that our children benefit from a flexible child support program that takes into consideration the fact that many obligors in the State depend on seasonal employment. The well-being of children is a primary concern of this Department and we thank you for your interest. If you have further questions or concerns, please do not hesitate to contact Gaile Maller in the Office of Child Support Enforcement at (202) 401-1822.

Sincerely,

Diann Dawson
Acting Principal Deputy Assistant Secretary
Administration for Children and Families

Enclosure

HHS Concerns raised by Wisconsin's Proposals for Legislative Change and Mitigation Plan to allow the State to continue to use percentage-expressed orders without Federal financial consequences.

Since the solution to this issue may not be a waiver of Federal requirements, we appreciate the State Bar's attempt to suggest possible legislative amendments to mitigate the problems created when these orders are enforced by the State IV-D program. The State Bar suggests a wide range of possible legislative changes that would limit the number of new percentage-expressed orders, ensure consistency (between percentage-based or sum-certain) within and across support orders, or prohibit, or allow modification of, a percentage-expressed order under certain circumstances concerning the obligor or passage of time. However, it will be difficult for the State IV-D program to meet explicit and multiple Federal requirements as long as the program must enforce percentage-expressed orders.

We recognize that in certain circumstances these types of orders may work well, for example, when payments are regular and there is no interruption in employment. However, these circumstances rarely occur in most cases served by the State IV-D program. We want to continue to work with the State to help them avoid the consequences of using these orders in cases receiving services from the IV-D program. While the legislative changes proposed by the State Bar may not solve the problem for the State IV-D program, perhaps a legislative change is possible that would meet the State Bar and State IV-D program needs. For example, could State law and child support guidelines require that any order established in a IV-D case must be established as a sum-certain, and that any percentage-expressed order in a case that enters the IV-D program must be converted to a sum-certain? As long as an obligor is current on support payments and his or her family does not need IV-D services, the order could be expressed as a percentage of income

The plan attached to Ms. Reinert's letter proposes steps the State would take to mitigate the consequences of the State IV-D program enforcing percentage-expressed orders, and therefore, not being able to accurately track arrearages or current support due, or report complete and reliable data on the Federal OCSE-157. We do not believe that these steps will bring the State into compliance with the requirements of sections 458A, 457, 454B(b)(4) and (c), and 454A(e)(4) of the Act. Rather than critical monthly reconciliation of amounts due under these orders, the State proposes an alternative sampling methodology to measure State performance. One key shortcoming with Wisconsin's suggested methodology is that the numbers derived from the percentage-expressed orders sample are by definition an estimate. When combined with the fixed order numbers reported on Lines 24 and 25, the results are still an estimate. However, the statute in section 458A of the Act requires, for purposes of the incentive requirements, that information on the total amounts of support collected and owed be reported for all cases. Section 458A authorizes estimates only for purposes of making incentive payments to States during the year, pending reconciliation at the end of the year. The data reported from all States are used in determining the amount of incentive payments due each State. Accordingly, to ensure accuracy, completeness, and fairness, the same reporting procedures need to be used for all States and estimates cannot be used. See also OCSE-AT-99-15, Q & A #1. Data must be reliable for all cases, not just a sample of cases in order for a State to earn incentive payments for current and arrearage support collections.

Additionally, the State admits that it will not reconcile all orders as required, but only those sampled. This confirms the fact that Wisconsin does not have the staffing resources to reconcile all orders even as infrequently as once each year. These orders, to meet distribution requirements in section 457 of the Act, need to be reconciled at least monthly to accurately post child support amounts due to the obligor's financial records and disburse payments to the appropriate person or entity within 2 business days as required by section 454B(c) of the Act. Timely reconciliation is also needed in order for the State to meet the requirement in section 454B(b)(4) of the Act that the State disbursement unit use automated procedures to enable it to furnish to any parent, upon request, timely information on the current status of support payments and the requirement in section 454A(e)(4) of the Act that the State case registry maintain a record of the amount of monthly support and other amounts (including arrearages, interest, late penalties, and fees) owed, the amount of such items that has been collected, and the distribution of such amounts. The State also does not address the issue of those cases that call for the payment of either a percentage of income or a specific dollar amount.

The plan addresses how the State will meet the complex distribution requirements in section 457 of the Act. The State will use gross income reported by employers to convert the obligation to a monthly amount and apply payments to current support first. However, this will not address the issue in any case in which there is percentage-expressed order and payments are not made through income withholding. Ultimately, the State must demonstrate that it meets the distribution requirements through running the distribution test deck as part of its Personal Responsibility and Work Opportunity Reconciliation Act systems certification review. The State IV-D automated system must be able to track amounts due, paid and unpaid, as well as apply collections to satisfy current and past-due support in a very explicit order set out in the Federal statute. This has proved difficult even for States using exclusively sum-certain orders.

Delinquency monitoring is particularly important because it triggers certain enforcement techniques, including Federal and State income tax refund offset, as well as other techniques that might include thresholds established under State or Federal law. Annual reconciliation or recognition that the amount paid has varied by 20 percent, as proposed by the State, may not be adequate to meet the requirements for use of these enforcement techniques. While the State is ultimately responsible for meeting Federal requirements, Federal staff has been working with the State for some time to resolve these issues. We will continue to provide any technical assistance possible to help the State to meet requirements and avoid the financial consequences in Federal statute of failing to do so. Unless these issues are addressed, the State could face a penalty beginning at 4 percent of IV-D funding and rising to 30 percent over time; loss of a portion of incentive funding ($6,000,000 in FY 1999), possible penalties of between 1 to 5 percent of TANF funding for incomplete or unreliable data, or possible loss of all Federal TANF and IV-D funding.

Senator Gary R. George
State of Wisconsin
Sixth Senate District

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Facsimile Cover Sheet

To: Drew Lawson, LFB

From: Office of State Senator Gary R. George

Recipient's Fax Number: 7-6873

Number of pages: 6, including cover sheet.

If you have difficulty receiving this fax transmission please call (608) 266-2500.

Child support changes opposed

Lawyers hope to keep percentage orders

By TOM KERTSCHER
of the Journal Sentinel staff

A state agency's plan to change the way child support is calculated for 66,000 Wisconsin families is running into opposition, even before legislation is drafted to make the change.

An organization that represents 1,400 family law attorneys and judges probably will lobby against the change, said Milwaukee lawyer Christopher Walther.

"This strikes us as another example of responsible citizens being penalized to make the jobs of bureaucrats more convenient," Walther said.

Walther is immediate past chair of the State Bar of Wisconsin's Family Law Section, which represents 1,400 lawyers, judges and commissioners who work in family courts around the state. The section's board is scheduled to vote on the issue Feb. 10 and likely will decide to fight the proposed change, he said.

In most of Wisconsin's child support cases — about 123,000 of them — one parent is ordered to pay the other a specified amount of money in support every month. But in the other 66,000 cases, one parent pays a percentage of income — an amount that can vary wildly each month.

Those "percentage-expressed" orders are allowed only in Wisconsin and are opposed by the U.S. Department of Health and Human Services, which funds the lion's share of child support enforcement programs around the country.

Federal officials say it is much harder to determine whether the proper amount of support is being paid in percentage cases, as compared with fixed-amount cases. They have told state officials that if Wisconsin does not eliminate percentage orders, it could be hit with millions of dollars of federal funding cuts and fines.

The state Department of Workforce Development, which oversees child support enforcement, is drafting legislation that would ban percentage orders and require the 66,000 cases that now use them to be converted to fixed-amount orders. The department says it hopes to convert all of the cases by the end of the year.

Law change would add costs

The change itself is likely to be controversial, but the Legislature also would need to find an estimated $1.7 million that is not in the current budget in order to convert the cases. If both parents in a given case agree to switch from percentage to fixed-amount orders, the matter can be handled without going to court. But officials expect that many, if not most, cases will have to be handled with at least one court hearing.

Walther said the state should keep percentage orders because they work well for families in which the paying parent's income fluctuates because of seasonal work, commission earnings or other factors. The amount of child support, at least theoretically, adjusts automatically with changes in the paying parent's income.

"In most of the 66,000 cases where (percentage orders) are used, they have worked very well for responsible parents in the state of Wisconsin who want to make sure that the right amount of child support is timely paid and received under circumstances where there are fluctuations in income," he said.

Walther said state officials should ask the federal government for a waiver, or make some other compromise, so that percentage orders can continue to be used without any financial penalty to the state.

Rachel Biittner, spokeswoman for the Department of Workforce Development, said officials want to eliminate percentage orders to help not bureaucrats but employers, who have "very many administrative difficulties" with them.

Under Wisconsin law, an employer withholds child support payments from one parent's paycheck and forwards them to the state, which then forwards them to the receiving parents. Changes in the paying parent's income make the withholding more difficult in percentage cases than in fixed-amount cases, Biittner said.

Also, she said, the state wants to follow the federal directive not only to preserve federal funding, but also to be able to collect more child support, Biittner said. When a paying parent with a fixed-amount order loses a job, unpaid child support accumulates, but it does not accumulate for parents with percentage orders, she said.

"The impetus behind this is to make the collection of child support more efficient and equitable," Biittner said.

John Hayes, director of the child support enforcement in Milwaukee County, which has 15,000 percentage orders, agreed that the orders work well in some cases. But since the government relies on employers to withhold the proper percentage of income from the paying parent's paycheck, there is no reliable way of determining whether the right amount of support is being paid, he said.

"People are getting shortchanged, no question about it," Hayes said of percentage cases. In many instances, the proper amount of support is not withheld, he said.

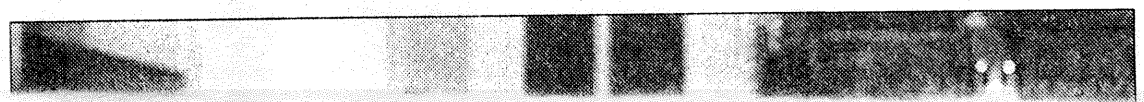
HHS pushed for new process

The U.S. Department of Health and Human Services has been pressuring Wisconsin for years to dump the percentage system because it makes it easier in federal audits to determine that the proper amount of child support is being collected if support is calculated in fixed-dollar amounts.

President-elect George W. Bush has said he will nominate Gov. Tommy G. Thompson as secretary of the U.S. Department of Health and Human Services. His spokesmen have said he won't comment on HHS policy matters until after being confirmed to his post by the U.S. Senate.

State gains reprieve

UNITY CELEBRATION



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TO: Senator Gary George

FROM: Bob Andersen

RE: **Revision of the Amendments I Proposed to SB 106, relating to Percentage Expressed Orders**

DATE: June 19, 2001

The amendments which I proposed to the Senate Judiciary and Consumer Affairs Committee in my memorandum, dated June 5, 2001, were discussed at a meeting held on June 18, 2001 by the ad hoc committee established by DWD to review child support laws. I attended the meeting of the DWD committee to advocate in favor of two of the three suggestions that I made in my memo to your committee. **(I have decided not to pursue the third amendment addressed in the earlier memo, relating to abating a child support order during the period that a payer is incarcerated or is hospitalized.)** The committee decided not to support the two amendments I suggested at this time, but deferred any further action until their next meeting scheduled for August 27,2001.

My concern is, as I testified before your committee, that the enactment of the repeal of percentage expressed orders will be very harmful to low income payers because courts and court commissioners will be even more inclined to automatically set support orders at 40 times the federal minimum wage for people who do not have jobs. While percentage expressed orders existed, courts and court commissioners could set percentages to be applied to the real income that comes from real jobs that payers have. Now, without the percentage expressed orders, judges and court commissioners will automatically set orders at fictional levels of 40 times the federal minimum wage, notwithstanding physical, mental, educational, or job market barriers that may prevent payers from actually obtaining those jobs. **The problem is that the payers are never able to comply with those child support orders and they go to jail.**

I am concerned that whatever amendments need to be made should be made at the time the authority for the percentage expressed orders expires, and not at some distant date when some other legislation may be approved. In view of this reality, I am afraid that it is too long to wait for the next meeting of this ad hoc committee.

The discussion that the ad hoc committee had on these proposals was very helpful and provided a basis for improving my proposals. I cannot say that the ad hoc committee will ever approve the

following revised proposals, but I can tell you what their concerns were and how the following revisions address those.

As a result, I would like to modify my proposals for amendment to SB 106 to include the following two amendments:

1. Provide in the statutes that the court may impute income by setting **"an amount determined by the court to represent the payer's *actual* ability to earn, based on the payer's education, training and work experience, and the availability of work in or near the payer's community."**

   [Note: the largest question raised by the ad hoc committee was whether this would really do anything to change current law, because judges or court commissioners could still look at this and set orders at 40 times the federal minimum wage. While this is true, it would at least be an explicit reference in the law to this as the standard to follow, instead of an explicit reference to imputing income at 40 times the federal minimum wage, which is given express authority by DWD 40.03 (3). Also, this includes the word "actual" in defining the ability to earn, which does not exist under the current administrative rule].

2. Provide that **"Any arrears in child support that is attributable to months during which the payer has an income that is below the federal poverty guidelines amount for a single person, as reported by the federal department of health and human services, shall not accrue to more than $500 in total, unless the payer had the actual ability to earn more than the federal poverty guidelines amount, based on the payer's education, training and work experience, and the availability of work in or near the payer's community."**

   [Note: The single largest objection made to the proposal was that a payer could have a limit placed on arrears, even though the payer had the ability to earn more, simply because the payer's income was below the federal poverty level. Members of the ad hoc committee suggested qualifying this so that it would not apply where the earning capacity of the individual was higher. Consequently, this proposed amendment has been revised to provide that the arrears attributable to months that a payer's income is below poverty will not be limited to $500 if the payer had the actual ability to earn more than the poverty level.]

Senator Gary R. George
State of Wisconsin
Sixth Senate District

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Facsimile Cover Sheet

Please deliver to the individual named below.

To:	Pam Kahler, Legislative Reference Bureau
Phone:	(608) 266-2682
Fax:	(608) 264-8522
From:	Dan Rossmiller, Chief of Staff
Number of pages:	3, including cover sheet
Message:	I know you must just be swamped. Is there a chance Sen. George could have the two changes proposed in the attached letter drafted in the form of a simple amendment to the substitute you drafted to SB 106 re: eliminating the use of percentage expressed child support orders? We are holding a committee exec. on Tuesday morning at 10:30 AM. Please let me know what can be done in light of all the budget requests you have. Also, please call me if you have any questions. (6-2500) Thank you so much.

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FROM: Bob Andersen

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Rossmiller, Dan

From: Markham, Kimberly
Sent: Wednesday, June 06, 2001 12:26 PM
To: Rossmiller, Dan
Cc: Chesnik, Constance; Noyes, Jennifer
Subject: SB106 substitute

Hi Dan -

Attached is the department's response to the suggested amendments to the SB106 sub that were brought up at yesterday's hearing. As we told you, we'd like to discuss these in person as well, as soon as possible, to keep the bill moving forward. Let me know if you have any time yet this week to meet. You can call either me (7-3200), Connie (7-7295) or Jennifer Noyes (1-9458) to schedule. I'll be out on Friday, but Connie and Jennifer could meet. Our main goal is to not "muddy the waters" and make the bill controversial to the point that it gets stalled in the legislature.

Also, to clarify the answer to one of Senator George's questions at the hearing yesterday:

There are currently over 84,000 peo's, of which about 18,000 are in non IV-D cases. Parties to an action in a non IV-D case with a peo will be able to retain their peo even if this legislation passes, unless they become a IV-D case. As for future peo's, the bill permits them under only very limited circumstances and neither the Department nor the Bar anticipates there will be many.

Thanks Dan!

Kim

peolawamendments.doc

Legal Action of Wisconsin proposed three amendments to SB 106 designed to address issues related to low income and incarcerated obligors. Our primary concern is that the position taken by LAW with respect to incarcerated obligors is likely to be controversial and could lead to a debate on the merits of their proposal, thereby delaying passage of SB 106. As an alternative, the Department will have LAW's proposals considered by the Child Support Guidelines Advisory Committee The issues raised by LAW are perfectly suited to the work of this committee and we can assure you they will be given a thorough review.

We do oppose the following language proposed by LAW in #2 on page 3 of their testimony:

"If the payer's subsequent income or earning capacity is sufficiently high in the opinion of the court, the reinstated child support order may be increased upon the payer's release to include an amount that would apply to the time during which the payer was incarcerated or hospitalized."

The proposed language directly violates the provision in federal law known as the "Bradley Amendment" which prohibits retroactive modification of child support orders. 42 USC 666(a)(9).

Mr. Raz also proposed three amendments to SB 106:

1. The first proposed amendment would require both parties to exchange financial information, as opposed to the language in SB 106 which requires only the payer to furnish financial information. That change has been made as a part of the substitute amendment.

2. The second proposed amendment would permit a change in the economic circumstances of either party to serve as a basis for a request for annual adjustment under s.767.33. The purpose of an annual adjustment is to keep the level of support consistent with the percentage of income standard. If the payer's income has not changed, there is no basis for an adjustment. A change in the payee's economic circumstances may serve as a basis for a modification of the support order under s,767.32, which is the procedure that should be used as it requires the party seeking a change to show that there has been a substantial change of circumstances and that the change justifies a change in the support amount.

3. The third proposed amendment would create a threshold change in income (10% was suggested) below which an adjustment under s.767.33 could not be sought. The purpose of the adjustment provisions is to see that the level of the support order remains consistent with the levels in the percentage of income standard. That purpose would not be accomplished if the orders could not be adjusted until there had been a 10% change. Additionally, the modification provisions under s.767.32 already provide that a 10% change in income is, by law, a substantial

change of circumstances for purposes of a modification of the order. Requiring a 10% change as a part of the adjustment provisions in 767.33 would render the annual adjustment provisions meaningless.

Finally, it was proposed that the bill be amended to provide that tax returns be returned to the parties following the completion of the annual adjustment and sealed in the court record. The Department would not oppose that amendment.

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January 11, 2001

Sen. Gary George
Wisconsin State Senate
P.O. Box 7882
Madison, WI 53707-7882

Re: Proposed Legislation on Child Support and Paternity Establishment, relating to Low Income People

Dear Sen. George:

I have been meeting with staff for the Center on Fathers, Families, and Public Policy (CFFPP), including the executive director, Jacquelyn Boggess, and with Allan Ferguson of the Urban League of Greater Madison. I have enclosed a copy of an article that appeared in the *Isthmus*, quoting Jacquelyn (at the end of the article) about the inequities of the new child support and paternity establishment laws. You can also find a list of very informative policy fax briefings on low income child support and related issues on their website, www.cffpp.org. Two of those policy fax briefings accompany this memo.

Allan arranged for us to meet with some low income African-American men, who were being held at the Dane County Huber Law Center, so that they could tell us about how many men like themselves are being held in jail for failing to pay for child support. The men told us that a great number of men were being held in jail for non payment of support and told us about how unjust and fool hardy the system is that confronts them and many others.

I have also heard from others, including Albert Holmes of New Concepts in Milwaukee, who attended a different meeting that I attended and who brought along a young man to tell about the injustice that was being done to him. I am sure that you are well aware, and have been for years, about what is happening in this system. The stories that I have heard are about men being placed in jail, where, of course, they could not maintain a job to pay the child support they owe; about men, who, because they were in jail, were unable to attend court hearings at which they were found in contempt and who ultimately spent even longer time in jail; about men, who like the young man that Holmes brought with him, were paying their support when they were picked up

on old warrants for non support and placed in jail and who lost their jobs, as a result; and, incredibly enough, about men whose child support orders did not *begin* until they were placed in jail on some other charge, because they were now no longer living with the mothers of their children.

Of course, much of this has to do with the new and mistaken philosophy associated with welfare reform, that the needs of needy mothers and children can largely be solved by stricter child support enforcement. It also has to do with the careless naivety on the part of policy makers about the realities that confront low income men, especially African Americans.

However, remarkably there have been some recent developments on the national level that indicate that policy makers are realizing the failure of these policies. Attached is a copy of a Policy Fax Briefing of CFFPP, indicating that the federal Office of Child Support Enforcement is backing off on some of their key policies affecting low income people, regarding (1) the imputation of income, (2) the accumulation of arrearages, and (3) the effect of incarceration, among other matters. This is largely due to a critical report that was recently issued by the federal Office of Inspector General (OIG), concerning the failure of policies directed at low income obligors.

I have already discussed the counterproductive effect of incarceration above. As for the imputation of income, I opposed the creation of legislation which originally allowed courts to automatically calculate income for people without any apparent income, by assuming incomes of 40 times the federal minimum wage. Unfortunately, the result of this law is, as I had feared, that judges take the easy route and simply automatically order obligors to pay 40 times the federal minimum wage, if the obligors do not have jobs. As a result, these obligors suffer from snowballing arrearages that they will never be able to pay off. They end up in jail.

Now, the federal Office of Child Support is telling states that they can reduce arrearages. They are also telling states that they should limit the imputation of income to cases where the noncustodial parent has apparent assets and/or the ability to pay, but is uncooperative. They are also telling states to review child support obligations where circumstances change significantly, particularly in cases of incarceration.

As a result, I would like to ask whether you would be interested in introducing legislation that would address these concerns in the following three ways. This could be legislation that would either be a part of other child support legislation you are contemplating, legislation that could be offered to amend what will be offered by the Department of Workforce Development (DWD) for the budget bill (which is expected to include at least a repeal of percentage orders that have received much publicity lately), or legislation that could be introduced as separate legislation.

The three recommendations that I have are as follows:

1. Repeal current law, relating to imputing income at 40 hours per week times the federal minimum wage. In its place allow the court to apply the percentage standard to "an amount determined by the court to represent the payer's ability to earn, based on the payer's education, training and work experience, and the availability of work in or near the payer's community, [redacted]

   The alternative language provides a much more accurate means of assessing a payer's earning ability, taking into account the payer's ability and the availability of jobs. [redacted] The current law allowing income to be imputed at 40 times the federal minimum wage serves only to provide an automatic and speedy basis for establishing a payer's earning ability, which may be either too high or too low in its assessment. Courts now often simply automatically enter these orders at 40 times the federal minimum wage, where someone does not have a job, because it is easy to do so. This happens in cases where the payer does not have the ability to make these earnings and it happens even though the payer's earning ability is actually much greater than 40 times the minimum federal wage. The result is that either payers or payees unjustly suffer. Current law is a contrivance of DWD. It is not required by federal law.

2. A new section in the statutes would be created as follows:

   > A child support order shall be suspended during the period that a payer is incarcerated in a jail or penal institution or during the time a payer is hospitalized. The child support order that has been so suspended shall be reinstated upon the release of the payer from the jail, penal institution, or hospital. If the payer's subsequent income or earning capacity is sufficiently high in the opinion of the court, the reinstated child support order may be increased upon the payer's release to include an amount that would apply to the time during which the payer was incarcerated or hospitalized.

   It makes no sense to have child support orders snowball during the time that the obligor is in jail or hospitalized. The result is only that the obligor will be reincarcerated after his release, because he cannot keep up with the order. This does not benefit the children, the father, or society's goals in making its residents (especially those with child support orders) productive members of society.

3. A new section in the statutes would be created as follows

> Any arrears in child support that is attributable to months during which the payer has an income that is below the federal poverty guidelines amount for a single person, as reported by the federal department of health and human services, shall not exceed $500 in total.

New York has this law. This would go a long way toward resolving the severe problems that exist under current law. It makes no sense to have a child support order snowballing on an obligor who has no means of paying it off. All that happens under current law is that the obligor will be incarcerated, where there is no chance remaining that child support will actually be paid. Once incarcerated, the obligor loses his job and the chances of his getting employment when he is released diminish.

No doubt there are other changes that should be made to the child support laws as they affect low income people. Chief among them is that something needs to be done about the conclusive establishment of paternity that is established by the signing of acknowledgments of paternity in hospitals. Unfortunately, federal law requires the state to have such a process (no doubt largely at the instigation of policy makers in Wisconsin). But there should be some change to the law that helps guarantee that people know what they are doing when they sign these acknowledgments. Otherwise, what happens now in a large number of cases (the policy briefings of CFFPP bear this out) is that the wrong man is determined to be the father, to the detriment of the mother, the father, and above all, the children.

If there is any further information you would like on these matters, please feel free to contact me.

Thank you for your consideration of these vitally important issues.

Sincerely,

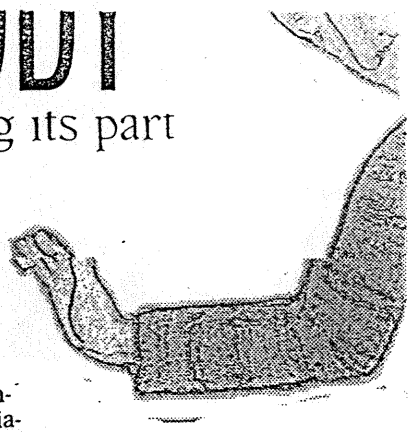
Bob Andersen

Robert J. Andersen
Staff Attorney

MAKE ROOM FOR DADDY

Call it Welfare Reform, Part 2: Wisconsin is doing its part to turn poor men into good providers — or else.

By JUDITH DAVIDOFF



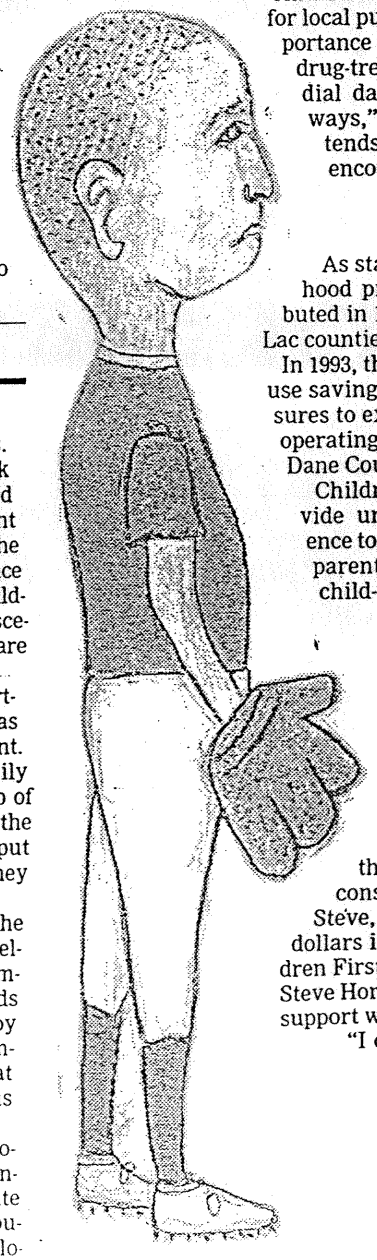
Scott Hendrickson, the father of an 11-year-old daughter, is back in jail and court ordered, once again, into Children First, Wisconsin's mandatory program for noncustodial parents who fall behind in child support.

"I really don't think the system is working," says Hendrickson, who this Thursday evening is out of jail to attend a parenting class at the Children First offices in Racine.

Hendrickson says he was current with his child support when he made $9.50 an hour as an industrial painter. But he hurt his arm, lost his job and fell behind in child-support payments. He interviewed at a bakery this morning and was offered a job. But, in a catch-22, he doesn't have the money he needs to win his release from jail.

"They want me to go to get a job so that I can pay my child support," says Hendrickson. "Now I got the job, but how am I going to get the $126 to get out of jail? It's frustrating. I'm trying to work with the program, but it seems I'm not getting nowhere."

Join the crowd. During the last several years, a slew of new government programs like Children First have come on the scene, aimed at turning poor dads into breadwinners. Call it Welfare Reform, Part Two. While moms were the targets of early welfare-reform efforts, noncustodial dads are now also being asked to pull themselves up by their bootstraps.



The Parental Responsibility and Work Reconciliation Act of 1996, which ended the entitlement to welfare, has brought new urgency to these efforts. Now, for the first time since the New Deal, families face time limits for receiving welfare. Child-support payments, in this unfolding scenario, become the substitute for a welfare check.

Fueling this new focus is the purported crisis of "fatherlessness," as well as the "responsible fatherhood" movement. These believers in fathers and family have moved fatherlessness to the top of the nation's agenda and helped grease the wheels for tough new measures to put poor fathers to work and make sure they pay child support.

The Department of Labor is in the process of distributing $3 billion in Welfare-to-Work grants to states and community-service providers. These funds are supposed to help hard-to-employ welfare recipients move into lasting employment; most states are devoting at least part of their grants to programs for noncustodial parents.

Of the $12.7 million in welfare-to-work grants received in 1998 by Wisconsin (matched with $6.35 million in state and local funds and in-kind contributions), almost $11 million is going to local providers that target noncustodial parents. Much of the remaining money is being used to help newly released prisoners, who have few skills and resources, find jobs.

In August, Gov. Tommy Thompson announced the Wisconsin Fatherhood Initiative with a press conference at the Milwaukee County Zoo. Said the guv, "We are here today to shine a spotlight on fathers—their importance in the lives of their children and what we as a community can do to encourage their greater involvement."

Thompson called on all state agencies to review their programs and policies to make them friendlier toward fathers, just as President Clinton did for federal agencies in 1995. He also promised a state fatherhood summit where practitioners, policy-makers and community leaders can "develop strategies on reducing fatherlessness." The summit will be held May 10 at the Chula Vista Resort in Wisconsin Dells.

And Thompson's just-released budget includes $150,000 for local public-awareness campaigns to highlight the importance of fatherhood, as well as $25,000 for faith-based drug-treatment and job-training services for noncustodial dads in Milwaukee. "As we have in so many ways," said the governor in August, "Wisconsin intends to lead the way in strengthening families by encouraging men to become good fathers."

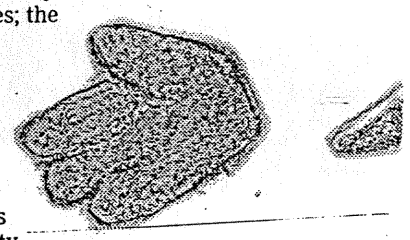
While mom were target of early welfare reform efforts, the focus is now on noncustodi fathers.

HOP ON POP

As states around the county scramble to put fatherhood programs in place, Children First—which debuted in 1990 as a pilot program in Racine and Fond du Lac counties—is being held up as a national model.

In 1993, the federal government allowed Wisconsin to use savings from other welfare-reform measures to expand the program. It is currently operating in 38 of the state's 72 counties; the Dane County program started in 1993.

Children First is supposed to provide unsubsidized work experience to unemployed noncustodial parents who fail to make their child-support payments. For men like Steve and Billy, who asked that their real names not be used, the Dane County program has provided a needed boost.



Steve lost a good job at Motorola in Illinois when he became disabled with back problems. He subsequently got a divorce and moved to Madison, where he continued to pay child support to his ex-wife directly—not through the formal system. That's a no-no in Wisconsin, which does not count such payments, so Steve, between jobs, found himself several thousand dollars in arrears. He credits the skills classes at Children First and the support he received from coordinator Steve Horne with helping him land a job doing computer support work.

"I came up with a résumé that got me a job," he says.

Billy, who estimates he's been thrown in the slammer six or seven times for being late in child support for his five children, is about $10,000 in arrears and says the only work he's ever known is playing football.

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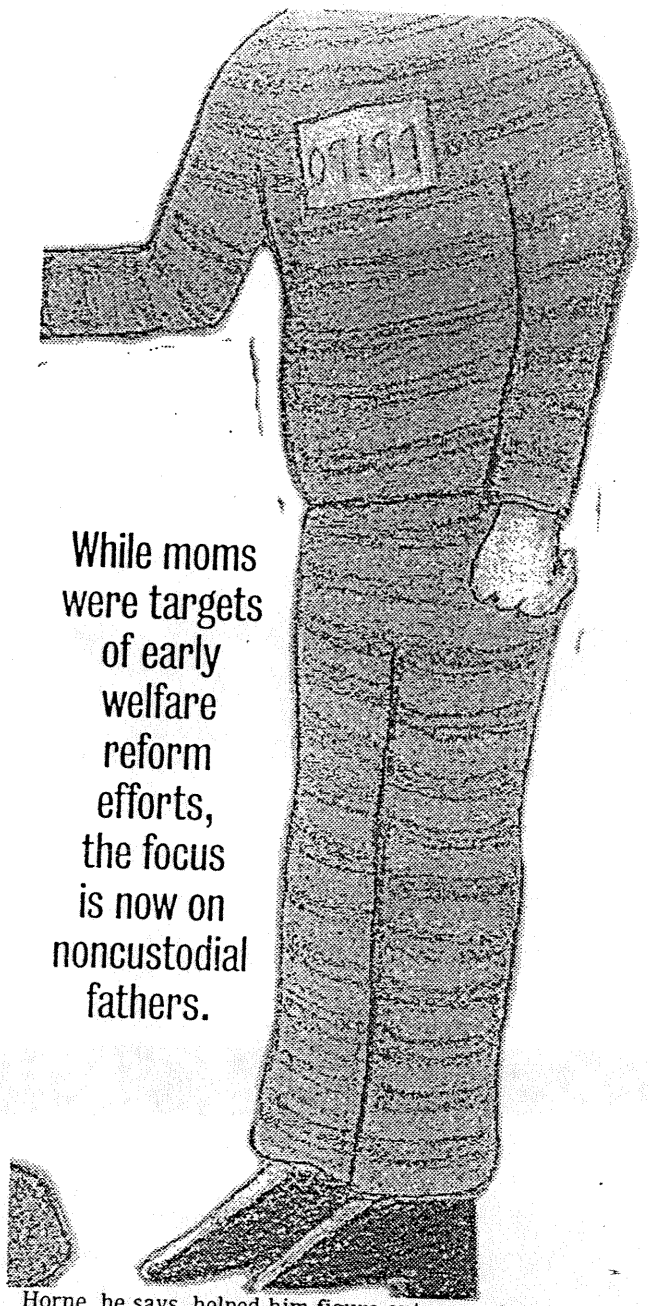


While moms were targets of early welfare reform efforts, the focus is now on noncustodial fathers.

Horne, he says, helped him figure out a way to continue playing professional indoor football and supplement his income with a second job to satisfy the folks at child support enforcement.

Yet the positive experience of these two men is not borne out by formal program evaluations. A final report on Children First, due in July 1998, was supposed to test whether the program helped participants land jobs and increase their child support payments. But as an official from the state Department of Workforce Development finally admitted in October, the evaluation is never going to see the light of day.

"The experimental evaluation structure didn't work out," says Jean Rogers, administrator of the state Division of Economic Support. The problem was that some members of the control group received services from the program provider: "We don't know how many, but we know there were enough to make the results unreliable."

Rogers cites a 1995 report she claims shows Children First raised the "income" of participants as well as their "amount of work." Actually, the evaluation shows that the program did not increase the wage rate of participants and that just

CONTINUED ON NEXT PAGE

Fathers

CONTINUED FROM PAGE 9

nder 7% of the men were actually placed in job—most received services like "assessment and orientation," and "job readiness nd motivation."

The results were similarly discouraging n September, when the Manpower Demonstration Research Corp. released its final report on the Parents' Fair Share Demonstration. This program, which started as a federal pilot in 1992 and now operates in seven ites around the country, was supposed to est "a new approach." In exchange for cooperating with the child-support system, fathers received such services as training and mployment support, peer support and parenting classes. The evaluation showed that hile child-support payments among participants went up slightly, there was no corresponding increase in fathers' employment and earnings.

So much for the goal of oving families from welfare self-sufficiency.

At Racine's Children First, tests caseworker Bobby ells, the vast majority of articipants get placed in mporary jobs. "They hold em for two to three weeks, eir self-esteem gets built p, and then all of a sudden ey get laid off," he says. here are only so many ows they can take until it as an effect on them."

Meanwhile, child-support bt continues to accrue—ith 18% interest—even for thers who are unemployed, sabled or incarcerated.

Jerry Hamilton, the executive director of Children Upont—the umbrella organition for Racine's Children rst program—says the ild-support system has hisrically failed to distinguish tween the deadbeat dad d the dead-broke dad.

"It is a myth that low-income fathers don't want to comply with ild support," says Hamilton. "Most of ese parents are very much involved in the es of their children, but once [government] starts to be involved, it strains the relationship."

MARRIED, WITH CHILDREN

arles Ballard, a pioneer of the responsible fatherhood movement, believes the key getting financial support from absent fathers is to curry their emotional ties to their ildren.

"You will get your child support," said llard at a fatherhood conference last ring sponsored by the state Department Workforce Development. "They'll do it luntarily because they love their kids."

Ballard is the founder of the Institute for Responsible Fatherhood and Family Revitalization, a program now operating in six U.S. cities, including Milwaukee. The institute landed a $4.5 million grant welfare-to-work grant even though its focus is not on employment. Instead, the programs are run by married couples who live in inner-city neighborhoods, find men to participate in their program, and nurture them down the road to married bliss.

Ballard's approach proved an attractive match for welfare-to-work dollars, since the goal of supporting marriage was written right into the preamble of the 1996 welfare bill: "Marriage is the foundation of a successful society."

Temporary Aid to Needy Families (TANF), the program that replaced Aid to Families with Dependent Children, also codified Congress' belief in the supremacy of traditional, nuclear families. Among the program's stated objectives: "End the dependence of needy parents on government benefits by promoting job preparation, work and marriage"; and, "Encourage the formation and maintenance of two-parent families."

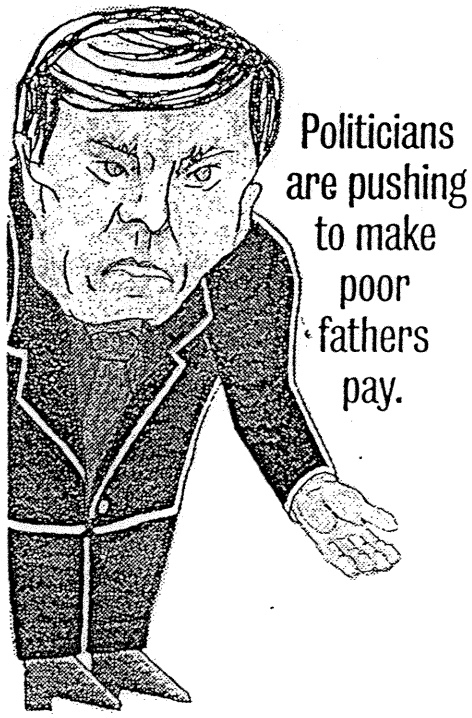
This exaltation of marriage derives from concern over the crisis of "fatherlessness." Everything from delinquency to substance abuse to early sexual activity is bandied about as the probable fate awaiting children who grow up in homes without fathers. (It was this issue that GOP presidential candidate Dan Quayle was presumably grasping at when he recently lamented, "One-third of the children today are born into homes without families.")

U.S. Rep. E. Clay Shaw Jr., the main sponsor of the 1996 welfare law, is now pushing the "Fathers Count Bill," which would put fatherhood programs that emphasize marriage first in line for $2 billion more in funding. Shaw is one of the speakers on tap for Thompson's Fatherhood Summit in May.

This idea for preferential treatment based on marital status was heartily endorsed in *Fathers, Marriage and Welfare Reform*, a report released in 1997 by Wade Horn and Andrew Bush. Horn is president of the National Fatherhood Initiative and a fellow of the Hudson Institute; Bush is director of Hudson's Welfare Policy Center. Hudson, a conservative think tank based in Indianapolis, became a national leader in welfare reform policy after helping write Wisconsin's W-2 program.

Bush and Horn call on states to seize the opportunities created by welfare reform. They recommend, for instance, that preferential treatment be given to married parents in the distribution of such benefits as Head Start and public housing. They also encourage states to include low-income men in their welfare-to-work programs to increase these men's "marriageability."

Horn's National Fatherhood Initiative, based in Maryland, is perhaps the most influential player in this new field of fatherhood. Created in 1994 to "counter the growing problem of fatherlessness by stimulating a broad-based social movement to restore responsible fatherhood as a national priority," it convened the first National Summit on Fatherhood and has partnered up with the nation's governors through the Governors' Task Force on Fatherhood Promotion. It is also active on



the federal level as an adviser to the bipartisan Congressional Task Force on Fatherhood Promotion, formed in 1997 to promote political leadership in combating "fatherlessness."

When Gov. Thompson announced his fatherhood initiative in August, Wade Horn was by his side. The NFI is also expected to open its first state chapter in Milwaukee this spring. Horn and Ballard are also on the board of Marriage Savers, a Maryland-based group pushing the adoption of municipal "community marriage covenants" designed to reduce the divorce rate. In January, Wisconsin Assembly Speaker Scott Jensen invited representatives of the group to address the state Assembly.

In pursuing its cause, the NFI relies heavily on the writings of David Blankenhorn, director of the Institute for American Values, and sociologist David Popenoe, the author of the much-quoted *Life Without Fathers: Compelling New Evidence That Fatherhood and Marriage Are Indispensable for the Good of Children and Society*.

Citing Sara McLanahan and Gary Sandefur, Popenoe contends that the "latest and most authoritative review of the research" shows that "the decline of fatherhood is a major force behind many of the most disturbing problems that plague American society," including crime and delinquency, teenage pregnancy, depression, and so on.

But Popenoe doesn't stop there. He also contends that dads bring to the family an "array of unique and irreplaceable qualities that women do not ordinarily bring." Fathers are protectors, he says, and the ones who engage in rough-and-tumble play; mothers are caretakers.

But is this truly what the "authoritative" research has to say?

Not exactly.

In *Growing Up with a Single Parent*, McLanahan's and Sandefur's 1994 book that capped 10 years of study on the topic, the authors agree that "children who grow up in a household with only one biological parent are worse off, on average, than children who grow up in a household with both of their biological parents."

But does that mean that single motherhood and father absence are "the root cause of child poverty, school failure, and juvenile delinquency?" ask the authors. "Our findings lead us to say no." They argue that low income "is the single most important factor in children's lower achievement in single-parent homes, accounting for about half of the disadvantage."

DOLLARS AND SENSE

While the effect of fathers' absence on children remains open to debate, there is no question that more children are growing up in single-parent families.

In the early 1950s, most children lived with both of their biological parents until they left the nest. Today, more than 50% of children will live apart from at least one parent, usually the father, before reaching adulthood.

In the mid-1970s, the federal government established the Office of Child Support Enforcement in response to an increase in divorce and out-of-wedlock births—and the resulting burden on public expenditures for welfare. Over the years, the feds and states have conceived stricter enforcement measures aimed at making nonresident dads provide more economic support for their children.

The 1996 welfare-overhaul bill also stepped up enforcement with such measures as expedited paternity establishment and new federal and state registries to track down delinquent dads. But it also made it less likely that families on assistance would see any of the money collected in their name.

Under Aid to Families with Dependent Children, families received $50 per month of child-support benefits paid on their behalf; the state kept the rest as payback for the families' welfare check. Now TANF has eliminated this "pass through" altogether.

Jacquelyn Bogess of the Center on Fathers, Families and Public Policy, based in Madison and Chicago, says this "makes no sense," especially given the rhetoric about strengthening families. "It's a built-in contradiction and a major disincentive to dads who want to give money directly to moms. Even if a guy has a great job—$300 a week—the mother will never see a penny of it. They will go underground. It's what any rational family would do."

Wisconsin, to its credit, received permission from the federal government to conduct an experiment in which all of the child support money collected on behalf of children on assistance is passed through to the family. The purpose of the demonstration project—which is being evaluated by the Madison-based Institute for Research on Poverty at a cost of $9 million over five years—is to see what effect this policy change will have on the collections, and actions, of noncustodial parents.

Even this attempt to tweak the system, however, has not done much to squeeze more money from poor fathers: Just 37% of eligible families received any child support during the first year of the study. "What's amazing is that the 37% seems so low, yet Wisconsin is one of the highest-collecting states in the nation," says Barbara Kipp, an analyst with the state Bureau of Child Support.

A General Accounting Office report released in August shows that child support is indeed a tenuous replacement for a welfare check, since child-support-enforcement programs have historically never been able to collect "on more than 13% of its AFDC child-support cases." And the report warns that even with new enforcement tools, "Many TANF families may not be able to count on child support as a steady source of income when their time-limited benefits expire."

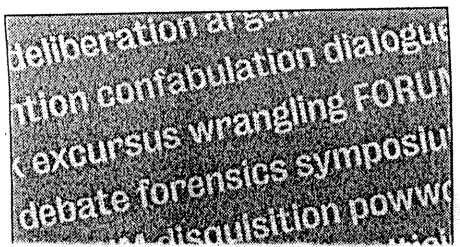
Bogess and others also fear that new attempts to streamline and coerce paternity establishment in the name of child support enforcement may produce more conflict for families already under tremendous emotional and financial stress. And they could put moms at risk of domestic violence by forcing contact where none should be.

"She's going to get him into this vicious cycle that could cause conflict," says Bogess, "but under TANF, if she doesn't cooperate, a minimum of 25% of her welfare check can be withheld."

Jerry Hamilton of Children Upfront says he's already "heard some horror stories from around the country" bearing out this fear. Accordingly, he urges caution in pushing marriage-focused programs: "We have to be concerned when they are encouraging, sometimes forcing, couples to be together in a marriage situation."

Bogess just wishes the feds and state would get out of the matchmaking business altogether.

"We can't decide whether or not a father is going to be an integral part of a family," she says. "Let them make that decision. Help families economically, but don't tell them how to live their lives." ■



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POLICY FAX BRIEFING

November 2000 • Vol. 2, No 9

Federal Office of Child Support Enforcement Clarifies Policies For Low-Income Parents

In response to a recent Office of Inspector General (OIG) report (see October 2000 Policy Fax Briefing) that identified several areas where low-income obligors face significant obstacles to paying child support, the Office of Child Support Enforcement (OCSE) has published the answer to a Policy Interpretation Question, *PIQ-00-03.* The document reiterates several options available to states to address some of the issues outlined in the OIG report. It could prove particularly valuable for those who advocate on behalf of low-income families, since it makes clear that many state policies and practices are not mandated or even encouraged by federal law. Among the key points:

- Acknowledging that child support arrearages owed to the state by low-income obligors are largely uncollectable, OCSE reiterates its earlier policy clarification to states that when child support has been permanently assigned to the state, the state may compromise (reduce) the arrearage. OCSE encourages states to consider this by describing several methods for doing so: 1) arrearages can be compromised in accordance with specific criteria such as participation in fatherhood or employment programs, and/or payment of current support. 2) amnesty programs that consider a portion of assigned past-due support satisfied for obligors who pay full current support on time over a certain period, or 3) enforcement can be postponed.
- States are encouraged to consider compromising state debt in cases where payment of current child support obligations is feasible, but the level of state debt is beyond the ability of the obligor to pay. State debt refers to an amount charged to noncustodial parents equal to the amount of welfare assistance provided to the family for the period when there was no support order in place, and to any other charges for state services.
- Citing OIG's findings that child support orders based on imputed minimum wage often go unpaid, OCSE suggests that states limit the imputation of income to cases in which the noncustodial parent has apparent assets and/or ability to pay, but is uncooperative.
- States are also encouraged to publicize to noncustodial parents the opportunity to request a review of a support obligation when circumstances change significantly, particularly in cases of incarceration, and are asked to respond appropriately to requests for child support modifications in order to ensure that the order is based on a current ability to pay.
- States may choose not to establish retroactive child support debt for low-income obligors in public assistance cases. The added debt discourages payment particularly since it is owed to the state.

The document is available on-line at www.acf.dhhs.gov/programs/cse/pol.

Paternity Establishment Report Released

The National Women's Law Center (NWLC) and the Center on Fathers, Families, and Public Policy (CFFPP) released a report this week from their collaborative initiative, *Reaching Common Ground.* The collaboration is an ongoing series of discussions funded by the Ford Foundation with the purpose of bringing together the potentially conflicting agendas of low-income fathers and mothers to find commonality on issues facing low-income families. The report, *Family Ties: Improving Paternity Establishment Practices and Procedures for Low-Income Mothers, Fathers and Children*, addresses issues specific to paternity establishment. The report makes the following conclusions:

- The Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA) increased federal pressure on states to establish paternity and collect child support. States have responded with an increasingly informal procedure to establish paternity. This more casual process may lead parents to overlook the serious implications of paternity establishment. Participants agreed that a process that does not ensure that paternity is established for the right father can be harmful to all family members, particularly since the collected child support is usually retained by the state.
- Under PRWORA, low-income women must assign rights to child support to the state as a condition of receiving welfare benefits. This assignment allows the state to collect and retain child support in order to repay the cost of providing public assistance to the family. The report recommends that, with the goal of maximizing the income of poor families, the state should rescind the required assignment of child support to the state for women on welfare. At the very least, states should pass through and disregard support collected to the mother instead of retaining it. Such a measure will ensure that child support is economically beneficial to children and give low-income fathers more incentive to cooperate with the formal child support system.
- To receive federal assistance, a woman on welfare must disclose the name of the father. Participants agreed that the decision to establish paternity and pursue support should be made by the family rather than the state. Forced paternity establishment often undermines informal arrangements of families in which the father is already offering economic and emotional support.
- Since the paternity establishment and child support process leads to forced legal contact between mother and father, in cases of domestic violence more women need access to the good cause exemption from child support cooperation requirements.
- Low-income mothers and fathers, and the social service staff who are working with them need to be educated on the full range of implications of paternity establishment, including custody and visitation rights and possible consequences on immigration status.
- For parents who choose to establish paternity, the procedure should be accessible and easy. The state should work to facilitate, rather than force paternity establishment.
- The paternity establishment procedure should be fair to both parents. Considering the significant implications that paternity establishment has for low-income men and their families, at a minimum the following should be ensured: a procedure for rescission of paternity that is as accessible and simplified as that of paternity establishment, more conservative default judgments that are reserved for the parent who is purposely avoiding the paternity establishment process, and free genetic testing for low-income fathers contesting paternity.

Future reports of the *Reaching Common Ground Initiative* will address the setting and modification of child support awards, child support enforcement, and custody and visitation for low-income families. The full report can be obtained on-line at www.cffpp.org, or from NWLC at www.nwlc.org.

Genetic Tests as Basis for Reversing Paternity and Stopping Child Support Are Addressed in Two States

A Circuit Court decision in Maryland and a new state law in Ohio that took effect October 27, 2000, (reported on as a bill in the May 2000 Policy Fax Briefing), both address the question of overturning paternity judgments when genetic tests provide evidence to disprove paternity. In Ohio, men whose genetic tests disprove their paternity now have legal grounds to contest a final paternity order. This would mean that the father would no longer be responsible for child support and could have any child support arrearages that accrued under a previous child support order for that child waived.

In Maryland, a Circuit Court filed a ruling in which the court held that anyone who has a paternity declaration entered against him, without blood and genetic testing, generally may initiate proceedings to modify or set aside the paternity and may request blood or genetic tests in order to confirm or deny paternity. The Court's holding does not necessarily apply to any child support already paid or the support arrears proven to be due at the time of the trial. The Court held that a consideration of the best interests of the child in ordering the requested testing, or in consideration of paternity, is inappropriate.

Currently, most states forbid challenges to paternity establishment after a specific period of time. The availability of DNA testing is likely to continue to push states to reconsider these statutes, but there are circumstances that present lawmakers with a difficult choice. For fathers who have raised children as their own, a disavowal of paternity would arguably not be in the best interest of the children, particularly if it were sought in order to avoid child support obligations.

New considerations of the right to modify or revoke orders established when genetic tests disprove paternity could have a significant impact on paternity cases associated with the welfare caseload. Welfare reform created a requirement that the custodial parent cooperate with the state to establish paternity, increasing the pressure to name a father for the applicant's children. Under PROWRA, states are required to establish paternity establishment procedures under which "a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger." There is some question whether the new Ohio law and the Maryland court holding counter this federal law. Several recent reports suggest that a high percentage of these paternities are established in error, with the putative father being subject to child support obligations that repay the state for the welfare received by the custodial parent.

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Urban Institute Reports on Status of Low-Income Fathers

The Urban Institute has issued a new report on nonresident fathers, *A Look at Poor Dads Who Don't Pay Support.* Using data from the National Survey of America's Families, authors Elaine Sorensen and Chava Zibman find that:

- An estimated 7.2 million men identify themselves as nonresident fathers. Of these, 2.6 million (36.1%) are low-income (income below the poverty level), with a limited ability to provide support to their children.
- Nearly all nonresident fathers who pay formal child support have incomes above the poverty level. Only 3% of nonresident fathers who are poor pay child support.
- *Approximately 25% of low-income fathers who do not pay child support are incarcerated.* Almost 40% of the fathers who do not pay child support and are not working are incarcerated.
- Low-income nonpaying fathers who worked in 1996 averaged just 29 full-time weeks of work in a year. *Average earned income for these working fathers was $5,750.*
- Among the barriers to employment encountered by low-income nonpaying fathers are:
  - *Education*: 42% did not graduate from high school or obtain a G.E.D.
  - *Employment History*: Almost one-third had not held a job in more than three years.
  - *Health:* 42% had at least one health-related barrier.
  - *Telephone Access:* 32% lived in a household that did not have a telephone.
- Only 16% of low-income nonpaying fathers receive food stamp benefits. Perhaps related to this low participation rate is the six-month time limit established in1996 on food stamp receipt for "able-bodied childless adults."
- Only 12% of these fathers had private health insurance.

The report, which contains similar data on custodial parents who do not receive child support, is available on the web at http://newfederalism.urban.org/html/whatnew.html.

Violence Against Women Act Passes Both Houses

The Violence Against Women Act (VAWA) Reauthorization bill (H.R. 1248) was passed with a vote of 95-0 on October 11, 2000. President Clinton is reportedly eager to sign the bill and thus immediately reauthorize funding for the services that expired under the original VAWA on.September 30, 2000. The recent legislation will allocate $3.3 billion in funds for five more years to cover battered women's shelters, a national domestic violence hotline, and training for police officers, prosecutors, and health professionals that were funded under VAWA in 1994. Improvements to the original landmark legislation include protection for battered immigrant women, attention to dating violence, and provision for transitional housing, supervised visitation centers and civil legal assistance and judicial education.

California Governor Vetoes Child Support Amnesty Program

California's proposed child support amnesty program (described in last month's Policy Fax Briefing) was vetoed by Democratic Governor Gray Davis on September 24, 2000, after passing in the California Senate and Assembly in August. In his veto message, the Governor expressed concern that the short-term costs of implementing the amnesty would not result in assured savings in terms of increased child support collections.

Accuracy of Paternity Acknowledgments Questioned

Milwaukee County Director of Child Support Enforcement John P. Hayes is quoted in a Milwaukee Journal Sentinel article as saying "Anyone who doesn't ask for a (paternity) test is a fool." Mr. Hayes stated that from his experience, such tests tend to clear about one in five men alleged to be fathers. The remarks come in a year (1999) in which the number of paternities established reached an all-time high of 1.5 million, and during a period in which procedures to voluntarily acknowledge paternity have been made simpler and faster. The Personal Responsibility and Work Opportunities Reconciliation Act (PROWRA) included a requirement that states establish paternity for 90% of the welfare recipient caseload, and later child support enforcement legislation emphasizes paternity establishment rates in awarding child support incentive funding to states. Both of these policies encourage states and localities to establish paternities at higher rates, and increase the risk that such paternities will be established in error.

New Findings on Poverty Released

The Commerce Department of the Census Bureau released a report on September 26, 2000 stating that the poverty rate in the US is the lowest in 20 years at 11.8% in 1999 and that the median household income of $40,000 was at a record high. There were discrepancies by race, however, with poverty levels of 23.6% for African Americans, 22.8% for Hispanics, and 7.7% for whites. The poverty rates for white and Hispanic families are at record lows while the rate has remained unchanged for African Americans. In response to the Census Bureau report, the Children's Defense Fund (CDF) states that while the number of poor children has decreased since 1998, 12.1 million still live in poverty. In addition, the profile of poor families is changing, as the percentage of poor children living in working families has increased in each of the last six years to 77% in 1999.

The Census Bureau report can be obtained on the web at www.census.gov. The Children's Defense Fund information is available at www.childrensdefense.org.

States Stand to Lose $1.9 Billion in Federal Funds for CHIP

Forty states face losing almost half of their federal allotment under the State Children's Health Insurance Program (CHIP). Considered to be the most significant expansion of subsidized health care coverage since the inception of Medicaid and Medicare in 1965, CHIP was created in 1997 to provide health insurance for children with family incomes too high to be eligible for Medicaid, but too low to afford private health insurance. States were given three years to spend fiscal year 1998's money, but forty states were unable to do so by the September 30, 2000 deadline. The New York Times has suggested the states' loss of funds are due to fewer eligible children in the current strong economy, states' inability to put up matching funds, complicated forms that discouraged eligible families from applying, and stringent federal guidelines that prevent eligibility for numbers of uninsured

children. However, a report issued by the Urban Institute in September 2000 states the following:

- The ten states that were able to spend their FY 1998 allotment in the three-year period already had a comparable state health program in place. It took the other states one or two years to develop the program and recruit eligible participants.
- The design of funding, with more federal money given in the start-up years and decreased funding in subsequent years, presented a challenge to states to spend their allotments during a period of program development. Funding drops off in future years, constituting a threat that states will actually run short on resources as their programs continue to grow.

The authors urge that the reallocation of unspent funds be responsive to states' changing spending patterns and needs as they develop their programs in the coming years.

Child Support Data Report Reveals Amount of Child Support Distributed to Welfare Families

The federal Office of Child Support Enforcement has issued its preliminary Fiscal Year 1999 data report, with financial and statistical information on the program. Notable in the report is OCSE's accounting for the distribution of collected child support: *of $1.5 billion in child support collected on behalf current TANF and Foster Care cases, $1.377 billion (91%) was retained by the state and federal government, and $112 million (8%) was distributed to families.* For each dollar of total child support enforcement administrative expenditures, less than one dollar of child support was collected on behalf of TANF and Foster Care families. The report, *Child Support Enforcement FY 1999 Preliminary Data Report*, is available on-line at www.acf.dhhs.gov/programs/cse.