

CHAPTER ONE CHILD SUPPORT IN THE UNITED STATES

THE CHILD SUPPORT ENFORCEMENT PROGRAM TODAY¹

American children today live with the legacy of numerous social changes that took place during the second half of the 20th century. Divorce rates rose. Births to unmarried women rose. Family structure became much more fluid. The mission of attorneys and other professionals working in child support enforcement is to ensure that, despite these changes, today's children retain a degree of security, financial and otherwise, to see them through their youth.

Established under Title IV-D of the Social Security Act², the Child Support Enforcement (CSE) program is charged with locating noncustodial parents, establishing paternity, and obtaining and enforcing orders for support owed by noncustodial parents to their children. This Federal legislation places responsibility for the program at both the Federal and State levels, giving the Federal Office of Child Support Enforcement (OCSE)³ primary administrative, regulatory, and technical assistance responsibilities and delegating to State IV-D agencies the daily operational aspects of the program.

Program Benefits

For the child. Although its primary role is financial, the CSE program also offers significant social, economic, and medical benefits to children. It helps foster in families a sense of parental responsibility, heritage, and self-esteem. Establishing paternity for a child born out of wedlock and having a parent contribute financial assistance for a child's upbringing (that might otherwise come from public funds) benefit the child and society. In addition to providing an alternative source of income for the family, a noncustodial parent could provide a child with access to such "social entitlements" as Social Security benefits, pension benefits, veterans' benefits, and other rights of inheritance.

Children gain social and psychological advantages from having legally identified parents who are involved in their lives. As well as providing a sense of family heritage, this can be a first step in creating a psychological and social bond between an estranged father and his child. Further, it may be in the child's best interest to maintain contact with his or her parents for medical reasons. Diseases, illnesses, birth defects, and other abnormalities might be passed to children by their parents. Knowledge of both parents' medical histories can help predict susceptibility to certain medical disorders and aid in diagnosis of illness.

¹ For a legislative history of the Child Support Enforcement program, please refer to Appendix A.

² 42 U.S.C. §§ 651 - 669 (1994, Supp. IV 1998, & Supp. V 1999).

³ OCSE is part of the Administration for Children and Families, Department of Health and Human Services.

For the taxpayer. The millions of dollars that the CSE program collects each year represent a direct benefit to State and local taxpayers. Collections made on behalf of families receiving public assistance are used to reimburse assistance paid to these families, as well as to help these families become self-sufficient.

In addition to its direct revenue-generating aspects, the CSE program produces indirect taxpayer benefits by providing services to families not receiving public assistance who, without income from child support, might turn to public assistance. Similarly, through program efforts, sufficient support is collected on behalf of some families receiving public assistance to eliminate their dependence on welfare and related assistance programs. This has become increasingly important since passage in 1996 of the Personal Responsibility and Work Opportunity Reconciliation Act⁴ (PRWORA), commonly known as "welfare reform," which imposes time limits on public assistance benefits a family can receive.

Program Achievements

Clearly the best measure of the nationwide effectiveness of the Child Support Enforcement program is the growth in support collections. In Fiscal Year (FY) 2000, a record \$ 17.9 billion was collected on behalf of children, an increase of 12 percent over FY1999 collections. The total IV-D caseload in FY2000 was 17.4 million. Collections were made in 7.2 million cases. The total number of cases with collections increased by 83 percent from FY 1996 to FY 2000.⁵

In FY2000, the CSE program collected \$2.6 billion in cases for which the Government was currently paying assistance under Title IV-A (welfare benefits) or Title IV-E (foster care). This represents an increase of 4.5 percent from the previous year.⁶

In addition, 1,555,581 paternities were established in FY2000. Gains also were made in establishing support orders and in locating noncustodial parents who were not paying child support. Almost 1.2 million orders were established.⁷

⁴ P.L. No. 104-193 (1996).

⁵ Office of Child Support Enforcement, *Preliminary FY 2000 Data Report*.

⁶ Office of Child Support Enforcement, *Preliminary FY 2000 Data Report*.

⁷ Office of Child Support Enforcement, *Preliminary FY 2000 Data Report*.

CHANGING FAMILY AND SOCIAL STRUCTURE

The Child Support Enforcement program in the United States has grown in response to the needs of children living without both legal parents. In the 25 years since inception of the IV-D program, the demographics of American society have changed and the numbers of children affected by changing family structure have grown significantly. In 1998, approximately 26 percent of children under age 21 living in families had a parent living elsewhere. These approximately 23 million children were in the custody of approximately 14 million custodial parents.⁸

Divorce

Divorce rates increased dramatically between 1965 and 1974, when the annual number of divorces nationwide more than doubled to 977,000. By 1981, the annual number of divorces climbed to a record 1.21 million. In 1998, 1.14 million divorces were granted.⁹

Out-of-Wedlock Births

The number of births to unmarried women has been increasing for the past 60 years, although the rate of increase slowed during the 1990's. In 1940, there were 89,500 out-of-wedlock births. In 1990, there were 1.17 million. This represents an average increase of 5 percent per year. Between 1990 and 1999, the number rose to 1.30 million, an increase of just slightly over 1 percent per year.¹⁰ Since 1994, the percent of all births to unmarried women has been approximately 33 percent.¹¹ In 1998, four out of ten women giving birth to their first child were not married and almost two-thirds of women under age 25 giving birth for the first time were not married.¹²

Child Poverty

The overall child poverty rate in 1999 was 16.9 percent, the lowest since 1979.¹³ However, children living in households with one parent were much more likely to live below the poverty level than those living with two parents.¹⁴ Unfortunately, between 1980 and 1999, single parent households increased from 23 percent to 32 percent.¹⁵

⁸ U.S. Census Bureau, *Child Support for Custodial Mothers and Fathers: 1997* (Oct. 2000).

⁹ Nat'l Center for Health Statistics, 47 Monthly Vital Statistics Rep. No. 21 (provisional 1998 data).

¹⁰ Nat'l Center for Health Statistics, 48 Monthly Vital Statistics Rep. No. 16, *Nonmarital Childbearing in the United States, 1940-1999* (Oct. 2000) [hereinafter *Nonmarital Childbearing*].

¹¹ *Nonmarital Childbearing*, supra note 10.

¹² *Nonmarital Childbearing*, supra note 10.

¹³ U.S. Census Bureau, *Poverty in the United States: 1999* (Sept. 2000) [hereinafter *Poverty in the United States: 1999*].

¹⁴ U.S. Census Bureau, *Poverty in the United States: 2000* (Sept. 2001).

¹⁵ *Id.*

In 1999, the poverty rate for households headed by single women was 27.8 percent.¹⁶ Although this represents a decrease over past years, it is still almost three times the rate for families, which was 9.3 percent. Among the youngest children, the differences are even more pronounced. Children under age six living in families headed by a single woman experienced a poverty rate of 50.3 percent, more than five times the rate for children under six in married-couple families (9.0 percent).

PROGRAM CHANGES

The structure of American society and families underwent many transformations during the second half of the 20th century. As discussed earlier, the CSE program began in 1975 in response to growing needs resulting from these changes. The shifts within society and families have continued, necessitating adaptation in the CSE and related programs.

Welfare Reform

Title IV-A of the Social Security Act established the Aid to Families with Dependent Children (AFDC) program in 1935. This program allowed each State to set a monthly grant rate for families with dependent children, who were without the care of one or both parents due to death or a prolonged absence from the home. The Federal government reimbursed States for a portion of the AFDC program costs. In exchange for benefits, an AFDC recipient had to assign his or her support rights to the State.¹⁷ Further, the AFDC recipient was required to cooperate with State efforts to identify the absent parent(s) and obtain support for the child. The cooperation requirement could be excused if the State found that the recipient had good cause not to cooperate.¹⁸

AFDC was replaced by Temporary Assistance for Needy Families (TANF) under PRWORA, which places a limit on the maximum lifetime benefit that can be received, and imposes new work requirements for recipients of assistance. In addition, it places greater emphasis on paternity establishment and child support enforcement. To achieve these ends, PRWORA created new tools for the State and Federal governments to use in identifying parents and requiring them to support their children. As discussed earlier, the years since the passage of PRWORA have shown great increases in the amount of child support collected and the number of paternities established. As States move beyond the initial phases of implementation of the new PRWORA provisions, the effectiveness of the CSE program is likely to increase even more.

¹⁶ *Poverty in the United States: 1999*, *supra* note 13.

¹⁷ 42 U.S.C. § 608(a)(3) (Supp. IV 1998 & Supp. V 1999).

¹⁸ 42 U.S.C. § 654(29) (Supp. IV 1998 & Supp. V 1999).

Changing Legal Role

Shortly after Congress created the Child Support Enforcement program in 1975, State legislatures implemented the program by authorizing creation of new agencies at the State or local level to locate noncustodial parents and prepare cases for stipulation or litigation. Existing court procedures and resources were assumed to be sufficient to handle the volume of cases to be processed. Lack of court time due to civil and criminal dockets proved problematic. Remedies were inadequate to enforce compliance with existing support orders or too cumbersome to allow for expeditious and efficient case processing.

To deal with these difficulties, States began devising alternate systems to resolve child support cases. Many States began experimenting with administrative processes, seeking to avoid the delays inherent in the court-based systems. Paternity establishment was accomplished through affidavits; child support awards were set by administrative agencies, based on guidelines; and enforcement was increased by using income withholding for all cases. States using these methods found that they were, in many cases, quite successful. Based on the success of these State experiments, Congress included, in the Child Support Enforcement Amendments of 1984 and PRWORA, requirements that certain types of functions be accomplished through administrative, or otherwise expedited, processes.

Collaboration With Other Programs and Resources

As originally conceived in 1975, the CSE program continues to be a vehicle to recoup the money spent by the State and Federal governments for public assistance. However, the duties of the State and Federal programs have expanded greatly. The program now serves many individuals who have never received any type of public assistance. The services it provides range from full-scale establishment and enforcement to simple funds disbursement. In addition, there has been a call to expand the role of the CSE program in strengthening families beyond a financial role. Thus, CSE programs at both the State and Federal levels have begun to collaborate more closely with other programs and resources to better serve families' varying needs.

Government agencies. IV-D agencies have found new allies recently in other government programs. Recognizing that in many instances the populations served overlap, other agencies serving children and families have begun working with IV-D agencies toward common goals. Many childcare and Head Start programs use their referral services to provide information on paternity establishment and support enforcement, and many provide training to their own workers in these topics, as well. Some jurisdictions require that those receiving childcare services cooperate in paternity establishment and child support enforcement. In addition, CSE agencies have undertaken new initiatives with law enforcement agencies to assist in collecting child support, and apprehending and

prosecuting those guilty of criminal nonsupport. Some jurisdictions have formed task forces to enhance the ability of the IV-D agencies and law enforcement to work together.

Private entities. CSE agencies also gather information from many agencies and private organizations that were never previously involved in child support enforcement. Employers assist through income withholding. Financial institutions assist through the reporting and seizure of assets. The effort to collect the support owed to America's children now cuts across many aspects of daily life and all income levels.

Private organizations with similar goals and service populations have also begun to work more closely with CSE agencies in recent years. A new recognition of the importance of fathers in the lives of their children has brought many fatherhood programs into collaborative initiatives with child support enforcement. There are programs that help unemployed noncustodial fathers obtain training or employment, assist in exercise of visitation privileges, and offer parenting classes. Cooperation with organizations that address domestic violence has also resulted in collaborative efforts to assist victims with paternity establishment and support enforcement, protect victims from contact with their abusers during visitation or court proceedings, and help victims achieve self-sufficiency.

The Ongoing Need

Although the Child Support Enforcement program has met with increased success in recent years, it needs to continue to build upon this success. The number of children in need of the services provided by the CSE program is increasing. The total amount of current support due for FY1999 was \$21 billion. Without continued and more effective operation of the CSE program at the Federal, State, and local levels, many children will not enjoy the benefits of being supported by both parents.

In passing PRWORA, legislators sought to strengthen families and make them more self-sufficient. They provided additional tools for enforcement of child support obligations. They recognized the importance of fathers in the lives of children, and provided funds for programs to attempt to increase father involvement. They opened avenues for CSE cooperation with other government agencies and private programs with similar missions and goals. All of this is targeted toward strengthening the social fabric of America. Child Support Enforcement attorneys, and other CSE professionals, have important roles to play in this endeavor.

CHAPTER ONE

TABLE OF STATUTES AND AUTHORITIES

<u>Statutes and Regulations</u>	<u>Page</u>
42 U.S.C. § 608(a)(3) (Supp. IV 1998 & Supp. V 1999)	4
42 U.S.C. § 654(29) (Supp. IV 1998 & Supp. V 1999)	4
42 U.S.C. §§ 651 - 669 (1994, Supp. IV 1998, & Supp. V 1999)	1
P.L. No. 104-193 (1996)	2

[page left intentionally blank]