

## ***Reforming California's Child Support System: A Consensus for Action***

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### **Introduction**

*"California has one of the worst [child support enforcement] systems in the country. The system is so localized . . . so-county based . . . [which] accounts for the relatively dismal performance." – Professor Irwin Garfinkel, Columbia University*

*"The State holds a powerful tool for ensuring that district attorneys aggressively enforce child support: It controls the flow of federal money to the counties. But the State fails to use that tool, or any other tool, to effectively supervise county performance." -- Little Hoover Commission*

By almost any measure, California's child support enforcement program is failing our children. More than three million children rely on the child support enforcement program to get them the support necessary to meet their basic needs – food, shelter, clothing, and medical attention. And while the state has substantially improved the monetary level of court-ordered child support, five out of six of those children are not receiving any support at all.<sup>1</sup>

The failures of California's child support enforcement program are rendered even more dramatic because we are living in an era of time-limited welfare. With the recent implementation of welfare reform, child support payments are often the only real "safety

net" children can expect. And virtually all the experts agree that California's safety net has a big hole in it.

It is hardly atypical for a child in California's child support enforcement system today to be no closer to securing an order for child support than he or she was two, three, or even five years earlier. While experts agree about the severity of this problem, they also agree there is no simple fix. Problems abound in nearly every aspect of California's child support enforcement program, from the opening of a case, to the gathering of necessary information to proceed, to the establishment of paternity and support orders, to the use of the many enforcement mechanisms already provided by the Legislature.

After several years of beefing up enforcement mechanisms and making other important improvements to California's existing child support enforcement program, the Legislature is now prepared to examine proposals to substantially restructure California's child support program to create a much more effective and "user-friendly" child support delivery system in order to better ensure collection of the greatest possible amount of support for children.

Section 1 of this paper will examine the ways in which California's child support enforcement program came into being and has evolved – providing a brief overview of the federal and state laws that created the child support enforcement program. Section 2 will examine the current state of California's child support enforcement program – the things that work and the things that don't. Section 3 will examine various proposals that might improve California's child support delivery system, and maximize the support that California gets to our children.

## **I. An Overview of Federal and State Child Support Enforcement Program Requirements**

### *A. Title IV-D and the Designation of DSS As Our Child Support Overseer*

In 1975, Congress enacted Title IV-D of the Social Security Act, creating a federal-state program for the establishment and enforcement of child support obligations.<sup>2</sup> Title IV-D required every state to create or designate a single and separate organizational unit responsible for the state's child support enforcement program (referred to as "the IV-D agency"). In California, the Department of Social Services (DSS) is the designated single state agency responsible for the administration of the state's child support enforcement program ("the IV-D program"). However, DSS contracts the day-to-day operations of California's IV-D program to the 58 county district attorneys' offices. DSS also has cooperative agreements with the Attorney General's Office (AG), the Employment Development Department (EDD), the Franchise Tax Board (FTB), and others to assist in the administration of the state's IV-D program.

Title IV-D provided that, as a condition of eligibility for receiving Aid to Families with Dependent Children ("AFDC," now Temporary Assistance to Needy Families, "TANF"), an applicant must assign his or her right to receive child support to the state. By the same token, every state was required to adopt a state plan providing that the state will establish paternity if necessary, and will secure an order for child support for all children receiving AFDC, or for any other children upon application of the parent or guardian. To ensure uniformity of procedure, and to assist states in their collection efforts, the federal government was given authority to oversee implementation of each state's plan and to "provide technical assistance to the states to help them establish effective systems for collecting child support and establishing paternity."<sup>3</sup>

### *B. Federal Child Support Enforcement Laws Since 1984*

In 1984, 1988, and 1996, the federal government made substantial refinements to the operation of state IV-D programs. The Child Support Enforcement Amendments of 1984<sup>4</sup> amend Title IV-D "to assure . . . that all children in the United States who are in need of assistance in securing financial support from their parents will receive such assistance regardless of their circumstance." This legislation sought to improve the effectiveness of state IV-D programs by requiring states to enact legislation strengthening their enforcement laws. Specifically, states were required to enact laws addressing the withholding of income for past-due support; state tax refund intercepts; liens on real and personal property; and reporting of overdue support to credit reporting agencies. States were additionally required to include medical support orders, requiring the obligated parent to provide health care coverage for the child, as one part of orders for child support secured by the state.

The Family Support Act of 1988<sup>5</sup> further strengthened state efforts to establish and enforce child support. This act required all states to implement, as of October 1, 1995, a statewide automated computer system for handling the state's IV-D program.<sup>6</sup> The act also beefed up the income withholding provisions, requiring income withholding orders for current as well as past-due support for all child support orders secured by the IV-D program.

Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA," more commonly known as the federal welfare reform legislation)<sup>7</sup> also made significant changes to the child support enforcement program enacted by Title IV-D of the Social Security Act. The substantial revision of public assistance programs enacted by PRWORA essentially made child support the only remaining safety net for children and families living at or near the poverty level. As a result, the PRWORA amendments to the IV-D program were intended to increase the amount of support going to families and improve the effectiveness of state IV-D programs.

Among other amendments to Title IV-D, PRWORA: 1) altered the scheme for distribution of support payments made to families receiving or formerly receiving public assistance; 2) required every state to implement and maintain a "case registry", containing records of

every case within the state's IV-D program as well as all private cases in which a support order was established or modified after October 1, 1998<sup>8</sup>; 3) required all states to operate a "State Directory of New Hires," to which all employers are required, as of October 1, 1997, to submit certain data regarding all newly hired employees<sup>9</sup>; 4) involved financial institutions in the child support enforcement process by requiring the development of a data match system where the financial institution reports to the state IV-D program whether delinquent support obligors maintain any accounts with the institution<sup>10</sup>; and 5) required various program components to be performed administratively, without the need for a court order (e.g., orders for genetic testing, subpoenas of financial information; orders for income withholding; the imposition of liens and seizure of assets, monetary judgments, and lottery winnings).

### *C. California's New Child Support Commissioner System*

Responding to additional concerns raised within California that our courts were backlogged and slow in processing IV-D cases, the California Legislature, pursuant to AB 1058 (Speier), enacted further reforms to the child support enforcement program, creating a new child support commissioner system.<sup>11</sup> According to this legislation, the commissioner system was created because: "(1) Child and spousal support are serious legal obligations. (2) The current system for obtaining, modifying, and enforcing child and spousal support orders is inadequate to meet the future needs of California's children due to burgeoning caseloads within district attorneys' offices and the growing number of parents who are representing themselves in family law actions. (3) The success of California's child support enforcement program depends upon its ability to establish and enforce child support orders quickly and efficiently. (4) There is a compelling state interest in creating an expedited process in the courts that is cost-effective and accessible to families, for establishing and enforcing child support orders in cases being enforced by the district attorney. (5) There is a compelling state interest in having a simple, speedy, conflict-reducing system, that is both cost-effective and accessible to families, for resolving all issues concerning children, including support, health insurance, custody, and visitation in family law cases that do not involve enforcement by the district attorney."<sup>12</sup> Pursuant to AB 2498 (Runner) enacted in the 1998 Legislative Session, the Judicial Council is required to report to the Legislature by February 1, 2000 the extent to which the commissioner system has achieved these goals.<sup>13</sup>

## **II. California's IV-D Program Today**

### *A. Tough Enforcement Tools Available*

California has some of the toughest child support enforcement tools in the nation. In fact, some of California's child support enforcement laws have been viewed as models of innovation and have become part of the federal requirements for adoption by all state IV-D programs. For example, the requirement that courts issue an income withholding order with

all child support orders, regardless of whether the obligor is delinquent, was not mandated by the federal government until January 1, 1994. In California, that requirement became law in 1989.

California was also one of the early states to permit the withholding or suspension of business, professional, and driver's licenses for people who are delinquent on child support obligations.<sup>14</sup> And California also spearheaded the New Employee Registry, requiring that employers report specified information to EDD for child support collection and enforcement purposes, enacting this requirement in 1992. In 1996, PRWORA required all states to implement such a registry in all employment sectors.<sup>15</sup>

In addition, recent legislation (authored by Assemblymembers Kuehl and Escutia and Senator Lockyer) requires all county IV-D programs to forward cases to the State Franchise Tax Board for collection if the case is more than 90 days delinquent.<sup>16</sup> Counties have the option of forwarding current support orders to FTB for collection as well,<sup>17</sup> but according to the FTB no county has exercised that option.

### *B. Performance Remains Dismal*

Despite all of these powerful enforcement mechanisms provided by lawmakers, California's child support enforcement program is consistently reported to be one of the poorest child support efforts in the United States, failing to provide critical financial support to too many of the millions of children who have relied on it.

The ultimate blame for failure to pay child support must, of course, be placed on parents who shirk their financial responsibilities to their children. But in the same way police officers and courts exist to enforce criminal laws, the child support enforcement program exists to enforce payment of child support when moral and legal responsibility fails. California has continually fallen down on the job, consistently performing below the national average in most measurements of successful child support enforcement programs. "Obtaining a child support order is the first critical step to collecting support. Without a support order, no child support accrues for children. Today, over half the families in California's child support program . . . lack support orders."<sup>18</sup> Nationally, roughly 61 percent of cases in the IV-D program have support orders, and while such a figure is still unacceptable, it is substantially higher than California's average.<sup>19</sup>

And the problems do not cease once a support order is secured. The most recent available data show that while more than three (3) million children rely on the state to obtain child support, California collects support for just 17% of them.<sup>20</sup> "While no state does a great job of collecting support,<sup>21</sup> nine states, including Massachusetts, Minnesota, Pennsylvania and Washington, collect support for more than 30% of their families."<sup>22</sup>

Minnesota, which is repeatedly held up as one of the most effective child support enforcement programs in the nation, has support orders in place for over 77 percent of the families in its caseload, and collects some support in more than 41 percent of its cases.<sup>23</sup> The average collection per case in Minnesota, \$1,331 per year, is more than twice the national average (\$652) and more than three times California's average (\$419). Even if this calculation were restricted to cases in which an order for support has already been secured, California's average collections per case still fall below the national average and substantially trail Minnesota.<sup>24</sup>

The importance of regular receipt of child support cannot be overstated. Nationally, "nearly one out of every four children now lives in a single-parent home and about half of all children are likely to spend some time in a single-parent home" by the time they are 18. Roughly 20 percent of America's children currently live in poverty, and the children of single-parent households are much more likely to be poor than are children raised in two-parent households. In fact, nearly 60 percent of all poor children live in single-parent households, and almost one in two children living with their mothers in single-parent households live in poverty. For these single-parent families, child support payments often constitute an essential portion of their income. It has been estimated that single-parent families who receive all of the child support due to them have substantially higher incomes (with a mean annual income of \$19,217) than single-parent families without support orders (having a mean annual income of \$13,283).<sup>25</sup>

### *C. Welfare Reforms Make Bold Action Critical*

In this era of time-limited welfare, the need for an effective child support delivery system becomes even more critical than these statistics demonstrate. With the loss of public assistance, more and more families will be forced to depend on the regular receipt of child support payments to meet their children's basic needs. In a recent study that looked at the first three states to enforce welfare benefit time limits – Connecticut, Florida, and Virginia – the likelihood of being able to count on such payments came into question. "In the first three states to enforce time limits, most families who reached their . . . time limits did not have any child support collected for them during the 12 months before their welfare termination. Moreover, in about one-half to two-thirds of these families' child support cases, child support was not due at termination because a support obligation had not yet been established."<sup>26</sup> The study further found that initial critical steps for getting support to children – "locating" the absent parent and establishing paternity – had not been accomplished by the time welfare benefits were terminated. The states failed to locate the absent parent in 56 to 81 percent of the cases needing location services at the start of the time limit. And "[f]rom 71 percent to 79 percent of the child support cases that needed to have paternity established did not have paternity established by the time welfare benefits ended."<sup>27</sup> The study concluded that "[if ] states expect to obtain child support for families before their time-limited welfare benefits expire, the states will need to improve their

performance and ensure that they effectively implement the new tools provided by the Congress."<sup>28</sup>

#### *D. The Little Hoover Commission Report*

Unfortunately, a recent examination of California's IV-D program by the Little Hoover Commission found California's child support enforcement program to be woefully inadequate, concluding, in short, that "the program is falling far short of its traditional expectations [and that] the program is ill-prepared to take on a larger role in helping single-parent families meet basic human needs" which is necessitated by welfare reform.<sup>29</sup>

More specifically, the Little Hoover Commission found that:<sup>30</sup>

- 1) "The management of [the] state Office of Child Support has not defined a vision, provided the leadership or developed the public and private partnerships necessary for the enforcement program to reach its potential."
- 2) "The State does not hold county child support programs accountable for meeting minimum performance standards and depends on unreliable data to reward counties for undocumented successes."
- 3) "In dividing child support enforcement duties between the counties and the State, the opportunity is being missed to develop efficient and flexible solutions that encourage ongoing innovations that will maximize collections."
- 4) "The existing child support program is not adequate for providing all of the financial help that children will need when welfare benefits expire."<sup>31</sup>

These findings, summarized as lack of accountability, leadership, and effective oversight, mirror those commonly articulated by child support advocates throughout the state. Advocates note that "California's core problems lie with the fundamental structure of its child support program. . . . When it comes to managing and overseeing the program, state bureaucrats are no match for local district attorneys, so instead of one program in 58 locations, we have 58 separate programs with 58 completely different ways of doing business. . . . This has led to a complex, bureaucratic-heavy program that functions well in some counties, but poorly in most, without any clear leadership or true accountability."<sup>32</sup>

The Little Hoover Commission noted that "enforcing child support requires the cooperation of hundreds of public and private entities. Pulling these efforts together demands extraordinary leadership – to align agencies with diverse missions and to achieve broad public accord in collecting support for children. The Department of Social Services has not supplied the vision needed to meet this challenge."<sup>33</sup> The Commission further commented that "California must clarify the roles of the key agencies involved and employ the leadership needed to show public agencies and the public that child support enforcement is critical to the State's long-term economic and social success."<sup>34</sup>

"The Child Support Enforcement Program – under the right circumstances – has tremendous potential to help children and to reduce the expenditure of public money." But the state does not appear to exercise the leadership which is necessary to turn the program around. For example, the state permits counties to report performance data which is 'glaringly defective'. "Without better data – without a process for translating case numbers into families and children, and without knowing what needs are not being met and why – managers will not be able to improve child support enforcement programs." Other glaring problems identified by the Little Hoover Commission include the fact that "the State does not hold counties to minimum standards or sanction those that perform poorly [and] . . . the Department of Social Services has not used its resources effectively to help counties improve programs, nor has it held county child support programs up to the light of public scrutiny."<sup>35</sup>

#### *E. Additional Concerns of Child Support Advocates*

As briefly set forth above, advocates also point to the lack of standardization between counties as one cause of substantial problems with California's child support enforcement program. From county to county, there are slight to significant differences in operational and organizational procedures. The complete failure of the California's statewide automated child support system ("SACSS")<sup>36</sup> has, in part, been attributed to this difference in county operating procedures. The State Auditor, in reviewing the causes for the failure of SACSS, noted that "automation of California's child support enforcement program is more of a political problem than a technical problem." The Auditor further noted that "California faces significant organizational and political barriers that it must overcome before it can successfully automate the child support enforcement system. . . . For example, the State and the counties have different needs and priorities. Unlike most other states, California's 58 counties work somewhat autonomously to perform child support enforcement activities. Operations are not centralized nor directly controlled by the State, and governance rests in the hands of elected county officials."<sup>37</sup>

Counties have also been criticized for failing to be at all consistent in the way data is reported; with regard to the frequency of using various enforcement techniques; case closure procedures; and the manner in which adequate information is garnered from custodial parents to establish and enforce orders for child support.

Another concern sometimes voiced is that California's use of judicial, rather than administrative, processes for the establishment and enforcement of child support is both more complicated and more time consuming. In an administrative process, IV-D support cases generally would be resolved by an administrative law judge rather than the court. Under most administrative process models, uncontested paternity cases and support cases are referred to an administrative law judge. The role of the court system is limited to contested paternity cases, imposition of certain enforcement mechanisms (e.g. criminal prosecution and contempt), and hearing appeals from administrative orders. An administrative process,



it is argued, is more expeditious, guarantees greater likelihood that the decisionmaker will follow rules, procedures, and guidelines, is cheaper to operate, and is more accessible to unrepresented parents.

#### *F. Responses from the "Front Line"*

California's state and county IV-D offices contest many of the assertions contained in this Section relating to program performance and the ability of the program to maximize efforts to collect support. They argue that statistics show substantial improvements in the operation of the child support program and increased ability to get support to the families that rely on it to meet their basic needs. And California's collections *have* generally improved. And the percentage of support orders and paternities established *have* generally increased. Nevertheless, it remains true that: 1) California's child support program under performs the national average in many performance categories; 2) California's children are owed more than \$8 billion in unpaid child support<sup>38</sup>; and 3) with welfare time-limits upon us, California needs to ensure that we have an effective child support delivery system that gets support to families and children.

### **III. Current Proposals for Improvement**

The need for substantial improvement in California's child support enforcement program is clear. California's ability to collect support has constantly lagged behind other states and has consistently failed far too many of the children who rely on it. The Legislature has been instituting critical improvements in recent years, including mandating referral of delinquent cases to the FTB for collection and instituting the New Employee Registry, and these *have* led to more support going to children. But with all these tools, California is still failing to get support to large numbers of families.

The reason for this continuing failure to fix California's child support program by this piecemeal approach may be tied to the structure of the program, itself. A recent survey, conducted by the Washington, DC based Center for Law and Social Policy, found that IV-D directors in states with county-run programs report numerous problems with the fundamental structure of such a system. "Several states reported that their decentralized structure hampered performance, decreased program accountability, made it harder to maintain reliable data, or made it more difficult to secure resources. . . . States with county-run programs identified other weaknesses, including inefficiency, inconsistent administration, lack of standardized practice, uneven resource allocation affecting customer service, and problems with control, cooperation, communication and training."<sup>39</sup>

With these problems in mind, various proposals have been advanced to improve California's ability to get support to the children who rely on it. Below is a brief explanation of some of these proposals.

**1) Demand Accountability of All Key Players and Impose Strict Oversight and Management Requirements.** California's child support enforcement program is often criticized as completely lacking accountability, as well as failing to exercise any meaningful oversight and management of the statewide program. It often seems that every agency involved in the child support system places the blame for program failures on every other agency. The state IV-D agency must be held accountable for the successes and failures of the IV-D program, and the state IV-D agency must, in turn, hold the counties accountable for their performance. While "the bucks" go uncollected for children and families, the buck has stopped nowhere in this state program.

Seemingly all experts and advocates agree that, at a minimum, real teeth must be put into the oversight and management exercised by DSS, the state IV-D agency. DSS has been repeatedly criticized for its failure to exercise its administrative responsibilities as the agency designated by the state of California to administer the child support enforcement program. Critics allege that California's program is not run by DSS, but by the 58 individual district attorneys with whom DSS has contracted.

One example demonstrating this perception that the counties, rather than the state, effectively control the operation of California's child support program is the complete and total failure of SACSS, the statewide automated child support system which has already cost the state more than \$100 million, and will continue to cost us in penalties and uncollected child support in the future. As noted in Section 2, above, many insist that in large part the failure of SACSS is attributable to the desire of each of the 57 participating counties to customize SACSS to accommodate their own desired way of doing business, rather than changing their way of doing business to conform with SACSS, and perhaps most of all to the failure of the state to prohibit such destructive practices.

Strong oversight and management of county-run child support programs could include the adoption of standardized practices, setting priorities for the use of specific enforcement mechanisms,<sup>40</sup> establishing standard caseworker to case staffing ratios as well as appropriate attorney to caseworker ratios, instituting a consistent state policy on the appropriateness of closing cases, and implementing standard complaint resolution procedures at the local level. The exercise of strong oversight and management could also include mandating county compliance with DSS determined "best practices" (see below); requiring all county programs to meet minimum performance levels; requiring county acceptance of technical assistance from the state or other counties if such levels are not reached; and putting consistently poor performing counties and counties that repeatedly refuse to implement state mandates into receivership or otherwise removing the program from that county agency.

**2) Allow the Possibility That County Agencies Other Than, Or In Addition To, the District Attorney Can Operate the Child Support Program at the Local Level.** Current statutory law provides for the operation of the IV-D program at the local level

solely by district attorneys' offices. Advocates often contend that district attorneys' primary mission is criminal prosecution, not securing child support. As a result, advocates contend, district attorneys are not necessarily in the best position to implement effective non-prosecutorial strategies to maximize collection of child support. In fact, in personal interviews with the Little Hoover Commission, a number of family support directors in county district attorneys' offices conceded this, noting that "they were unsympathetic with the Department of Social Services' institutional approach to helping the needy and are more aligned with the prosecutorial approach to enforcing child support."<sup>41</sup> A recent audit of the Texas child support program, which is located in Texas' Office of the Attorney General, also expressed concerns with attorney management of child support programs, noting that "[m]ost attorneys are trained to analyze and resolve legal issues, not manage service operations like a child support program."<sup>42</sup>

In some counties, other local agencies (such as the local welfare agency), may be better suited than the district attorney to operate the IV-D program. One reform option, therefore, would eliminate the statutory mandate that the district attorney run the program at the local level, and permit the state to decide on a county-by-county basis the agency best suited to handle the demands of the IV-D program and most effectively deliver on the goal of getting child support to families.

3) **Institute "Best Practices"**. DSS should study the "best practices" of other state child support programs, as well as innovative practices of individual California counties which appear to be particularly effective, and determine how to implement these practices in California to maximize collection of support for children and families. County compliance with best practices could then be required. A county refusing to implement these practices would risk losing oversight of the IV-D program to another county agency or the state.

4) **Vest Authority and Responsibility for the Child Support Program in a High Level Official Within the Administration**. Various departments and agencies within California's executive branch are assigned tasks to assist in the collection of child support. For example, as mentioned earlier in this paper, the Franchise Tax Board collects support on delinquent cases, the Employment Development Department operates the New Employee Registry, and the Health and Welfare Data Center is involved with the automation of California's child support enforcement program. The Department of Social Services does not have any direct line authority over these agencies or over the practices and procedures they implement. In order to create a "well-oiled" child support enforcement program, all agencies with responsibility for individual aspects of the program should be responsible to the IV-D agency and responsible for maintaining the goals and vision of the program. One way to accomplish this might be to designate an individual in the administration with the responsibility to ultimately oversee and manage the IV-D program, including the authority to oversee aspects of the program being operated by state agencies other than DSS.

**5) Create an Advisory Commission, Comprised of Key Players in the Child Support Process, to Improve Coordination Between Agencies and to Improve Child Support Collection.** As indicated in number 4, above, coordination between key players in the child support program is essential to the creation of an effective child support delivery system. Recognizing that the state and county agencies involved in the program, as well as court personnel and child support advocates, all have valuable information to contribute, some have suggested the creation of an advisory commission to review practices and procedures, address issues regarding coordination between different agencies, and to encourage the free flow of information to determine how to maximize collection for children and families. Massachusetts, often reputed to be one of the best child support programs in the nation, has, by statute, established such a child support enforcement commission. The commission is charged with the duty to "monitor the child support enforcement system of the commonwealth and . . . from time to time, advise the IV-D agency and other agencies of the commonwealth . . . in matters for the improvement of the child support enforcement system."<sup>43</sup>

A recent audit of the Texas child support enforcement program also noted the importance of cooperation and coordination between various agencies involved in the IV-D program, recommending that the IV-D director establish an executive work group, consisting of agency heads of the departments and agencies with which it interacts.<sup>44</sup>

**6) Remove DSS as the State IV-D Agency.** The question ultimately comes down to whether a newly invigorated DSS, with new leadership at management levels, will be capable of breaking the long-established pattern of relinquishing a substantial amount of control to the district attorneys who run the local IV-D programs. In the past, DSS "has put its desire to build a partnership with county district attorneys ahead of its obligation to hold counties responsible for collecting support."<sup>45</sup> It has been argued that in order to effectuate a true change in the relationship between the county IV-D programs and the state, a new state agency, whose sole mission is administering the child support enforcement program, should be created. The creation of an agency solely dedicated to oversight of the child support enforcement program might also demonstrate the state's commitment to ensuring that more children receive the child support to which they are entitled.

**7) Centralize California's Child Support Program in a Single State Agency.** Many of California's child support advocates insist that the basic structure of California's county-based child support enforcement program is fatally flawed, and increased oversight and management simply will not solve the problems. These advocates believe that the program must be operated by a single, statewide child support agency, without delegating the operation of the program to the counties. However, because of the importance of being accessible and accountable to families involved in the program, this approach might require that the state agency in charge of the IV-D program operate local offices for ease of access for California families.

8) **Administrative Process.** As discussed in Section 2, above, another approach to reform would be to create an administrative process to hear child support matters, removing at least certain aspects of the child support enforcement program from the courts. Federal law currently requires that certain functions be performed administratively, without the need for court intervention. These functions include: securing orders for genetic testing in contested paternity cases; issuing subpoenas for financial information; and ordering that support be paid through income withholding orders. California has implemented all of the administrative requirements mandated by federal law, but has gone no further. The director of Minnesota's successful IV-D program has noted that "an administrative approach that is able to simplify the process of setting, modifying, and enforcing child support orders is an essential element for effective reform of the current welfare system."<sup>46</sup>

## **CONCLUSION**

California lawmakers have demonstrated bi-partisan support for improving the amount of support children should receive, and for strengthening the enforcement tools available to actually get that support to the children who need it. Yet, in spite of all the enforcement tools adopted, California's child support enforcement program has remained mired in failure. Though experts and advocates will determine the reforms that will turn this sad history around, all agree the time for bold state action is now.

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## ENDNOTES

<sup>1</sup> This figure, based on the most recent available data, is derived from the U.S. Department of Health and Human Services report, Child Support Enforcement: Twenty-First Annual Report to Congress (1998). This report details data from federal fiscal year 1996 as reported by state child support enforcement programs. The Department has preliminary data for the 1997 federal fiscal year, suggesting slight improvement in California's performance, but final numbers are not yet available.

<sup>2</sup> Public Law 93-647 (HR 17045), effective July 1, 1975.

<sup>3</sup> Social Security Act, Title IV-D, Section 452 (a)(4) .

<sup>4</sup> Public Law 98-378 (HR 4325).

<sup>5</sup> Public Law 100-485 (HR 1720).

<sup>6</sup> In 1995, the October 1, 1995 deadline was extended to October 1, 1997 pursuant to Public Law 104-35. Only 17 states received full or conditional certification by the October 1, 1997 deadline. As of November 1998, California became one of only 12 jurisdictions to not have received certification or be awaiting review by the federal government for certification. It is estimated that it will take several more years for California to achieve compliance with this requirement.

<sup>7</sup> Public Law 104-193 (HR 3734).

<sup>8</sup> California law already required the creation of a child support case registry for all California child support orders. (Welfare and Institutions Code section 16576). The required date for completion of the child support case registry was a moving target, from 1993 to 1996, and finally to October 1, 1998. Implementation of the child support registry has been hampered, however, by the failure of the state to develop its statewide automated child support system, discussed in more detail below.

<sup>9</sup> California's directory of new hires, the New Employee Registry (NER) is operated by the Employment Development Department. A fuller discussion of California's NER is contained in section II of this paper.

<sup>10</sup> California complied with this requirement, creating a financial institution data match system in 1997 pursuant to 1997 Stats. ch. 697 (AB 702, Villaraigosa).

<sup>11</sup> 1996 Stats. ch. 957. This legislation was the result of a two-year governor's taskforce studying needed improvements in the court process to create a more efficient, cost-effective method of handling IV-D child support cases in California.

<sup>12</sup> Family Code section 4250.

<sup>13</sup> 1998 Stats. ch. 249.

<sup>14</sup> California's license revocation and suspension program, known as SLMS (State License Match System) was first enacted in 1992 pursuant to AB 1394 (Speier), 1992 Stats. ch. 50. This version applied to business, professional and occupational licenses. The law was subsequently amended to apply to: commercial driver's licenses, 1994 Stats. ch. 906 (AB 923, Speier); non-commercial driver's licenses, 1995 Stats. ch. 481 (AB 257, Speier); and commercial fishing licenses 1996 Stats. ch. 756 (SB 1442, Marks). The federal mandate that states enact such license suspension and revocation regulations only came into place in 1996 pursuant to PRWORA, Public Law 104-193.

<sup>15</sup> California's NER was initially limited to only 17 industries. The industries required to report were: automotive dealers and gasoline service stations; automotive repairs, services, and garages; building construction; business services; construction special trade contractors, eating and drinking places; engineering, accounting, research, management, and related services; health services; heavy construction; holding and other investment offices; hotels and other lodging places; landscape and horticultural services; motion pictures; motor freight transportation and warehousing; water transportation; and wholesale trade in durable and non-durable goods. Pursuant to the requirements of PRWORA, California expanded the NER to employers in all industries. 1997 Stats. ch. 606 (AB 67, Escutia).

<sup>16</sup> 1997 Stats. ch. 614 (AB 1395, Escutia).

<sup>17</sup> 1997 Stats. ch. 599 (AB 573, Kuehl).

<sup>18</sup> NATIONAL CENTER FOR YOUTH LAW ET AL, CALIFORNIA'S CHILD SUPPORT PROGRAM: THE COST OF FAILURE (1998) at 7.

<sup>19</sup> U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, CHILD SUPPORT ENFORCEMENT: TWENTY-FIRST ANNUAL REPORT TO CONGRESS (1998).

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The support order percentage represents the average of all states, excluding California. Because California's caseload represents approximately 13 percent of the national caseload, California's low performance in any category necessarily influences the national average. Exclusion of California from the national average allows a fair comparison with the average performance of the remainder of the states.

More recent data regarding California's child support enforcement program is available through the state's Child Support Management Information System Annual Report, covering state fiscal year 1996/97. This data unfortunately does not consistently include information from the 23 counties that had transitioned to SACSS, the erstwhile statewide automated child support system, and therefore may not accurately reflect California's overall performance. This paper will therefore use the nationally reported data from the Department of Health and Human Services annual report.

<sup>20</sup> This figure represents the percentage of total caseload in which one or more payments of support are received in the fiscal year. Because such a large percentage of cases do not have the necessary precursor for collection (i.e. a support order) that percentage is necessarily low. California collects some support for 37 percent of the cases in which there is a support order in place.

<sup>21</sup> The national average, excluding California, is roughly 20.9 percent. TWENTY-FIRST ANNUAL REPORT, *supra* note 19, Table 34.

<sup>22</sup> NATIONAL CENTER FOR YOUTH LAW et al, *supra* note 18, at page 7. These percentages are based on the Department of Health and Human Services' Twenty-First Annual Report to Congress, *supra*, note 19. The other five states which collect support for more than 30 percent of the families in the IV-D program are: Kansas, Maine, New Hampshire, South Dakota and Vermont. Of the states with a caseload of one million or more (California, Florida, Michigan and New York) however, California's 17 percent collection rate is the highest.

<sup>23</sup> TWENTY-FIRST ANNUAL REPORT TO CONGRESS, *supra* note 19, Tables 32, 33, and 34. For those 77 percent of cases with a support order, the rate of collection is 53 percent.

<sup>24</sup> TWENTY-FIRST ANNUAL REPORT TO CONGRESS, *supra* note 19, Tables 4, 32, and 33. The average collection for those cases with orders in Minnesota's IV-D program is \$1717. The national average, excluding California, is \$1069, and California's average trails behind at \$906 per year.

<sup>25</sup> National Conference of State Legislatures, *Child Support Enforcement: State Legislation in Response to the 1996 Federal Welfare Reform Act*, STATE LEGISLATIVE REPORT, Vol. 23, No. 17 (September 1998); Bureau of the Census, Current Population Reports, Series P60-201, *Poverty in the United States: 1997* (1998); Testimony of Leora Gershenzon, National Center for Youth Law, before the Commission on the Status of Women, May 4, 1998.

<sup>26</sup> U.S. GENERAL ACCOUNTING OFFICE, WELFARE REFORM: CHILD SUPPORT AN UNCERTAIN INCOME SUPPLEMENT FOR FAMILIES LEAVING WELFARE, GAO/HEHS-98-168 (August 1998) at 6.

<sup>27</sup> *Id.* at page 8, 10. "Location" is a term of art, referring often to a computer match identifying the physical whereabouts of the absent parent or identifying information on income and assets of that parent.

<sup>28</sup> *Id.* at 15.

<sup>29</sup> Letter to Governor Wilson and the Legislature from the Little Hoover Commission, May 13, 1997 in LITTLE HOOVER COMMISSION, ENFORCING CHILD SUPPORT: PARENTAL DUTY, PUBLIC PRIORITY (May, 1997). In conducting its study of the state child support enforcement program, the Commission created an advisory committee to help in the identification of problems and to discuss potential reforms. The Commission also held two public hearings on the issue, conducted an extensive literature review, and visited seven county family support offices to develop its comprehensive understanding of California's child support enforcement system.

<sup>30</sup> One of the findings dealt with California's troubled statewide automated child support system. The statewide automated system is beyond the scope of this paper, and therefore this finding is not addressed.

<sup>31</sup> LITTLE HOOVER COMMISSION, ENFORCING CHILD SUPPORT: PARENTAL DUTY, PUBLIC PRIORITY (May 1997) at 29, 43, 63 and 95.

<sup>32</sup> Testimony of Leora Gershenzon, National Center for Youth Law, before the Commission on the Status of Women, May 4, 1998.

<sup>33</sup> LITTLE HOOVER COMMISSION, *supra* note 31, at 27.

<sup>34</sup> *Id.* at 38.

<sup>35</sup> *Id.* at 38, 41.

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<sup>36</sup> Pursuant to the Family Support Act of 1988, Public Law 100-485, every state was required to develop a single statewide computer system to automate and systematize child support processes. The final deadline for completion of the statewide automated system was October 1, 1997.

In 1992, California entered into a contract with Lockheed Martin to design this computer system for 57 of California's 58 counties. Los Angeles County, by federal mandate, established a separate system which was required to be able to interface with the statewide system when it becomes operational. SACSS was replete with problems. A 1995 report identified over 1400 problems with the computer system. In November 1997, after five years and more than \$100 million, California terminated its contract with Lockheed Martin and scrapped SACSS.

<sup>37</sup> BUREAU OF STATE AUDITS, HEALTH AND WELFARE AGENCY: LOCKHEED MARTIN INFORMATION MANAGEMENT SYSTEMS FAILED TO DELIVER AND THE STATE POORLY MANAGED THE STATEWIDE AUTOMATED CHILD SUPPORT SYSTEM (March 1998) at 56.

<sup>38</sup> TWENTY-FIRST ANNUAL REPORT TO CONGRESS, *supra* note 19, Tables 68-71.

<sup>39</sup> CENTER FOR LAW AND SOCIAL POLICY, PRELIMINARY SURVEY RESULTS, DRAFT (1998).

<sup>40</sup> For example, some counties routinely use criminal prosecution as a method of enforcing a support order and may not rely as heavily on license suspension and revocation or tax intercepts. Other counties may do the exact opposite.

<sup>41</sup> LITTLE HOOVER COMMISSION, *supra* note 31, at page 32.

<sup>42</sup> DAVID M. GRIFFITH & ASSOCIATES, REPORT TO THE SUNSET ADVISORY COMMISSION: REVIEW OF TEXAS OFFICE OF THE ATTORNEY GENERAL CHILD SUPPORT DIVISION, (October 1998) at 3-15.

<sup>43</sup> General Laws of Massachusetts, Chapter 119A.

<sup>44</sup> REVIEW OF TEXAS OFFICE OF THE ATTORNEY GENERAL CHILD SUPPORT DIVISION, *supra* note 42, at 5-6.

<sup>45</sup> LITTLE HOOVER COMMISSION, *supra* note 31, at vi.

<sup>46</sup> LAURA KADWELL, THE ADMINISTRATIVE PROCESS IN MINNESOTA: A COOPERATIVE APPROACH TO ADJUDICATING CHILD SUPPORT (September 1998) at 1.