Introduction to Special Issue on Child Support Enforcement

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Introduction

Traditionally the functioning American family has been a self-contained and self-supporting unit. In the last two decades, however, the number of such families has declined sharply. The tremendous increase in divorce and the large number of unmarried mothers have made such inroads in self-sufficiency that there are now hundreds of thousands of families, largely headed by single women, which are not being supported by the fathers of their children and are unable to support themselves. This situation in American society, reaching crisis proportions, has placed a huge burden on government.

In spite of laws requiring child support from the non-custodial parent after divorce, and from unwed fathers whose paternity has been established, compliance with court orders for support has been disappointingly low. Even where the support has been provided according to order, in many cases the support peters out and vanishes in from three to five years. The drain on government funds has made taxpayers increasingly resentful and rebellious. The parents who have ignored responsibility have in effect been subsidized. The truth is that on all levels—public welfare departments, court personnel and individual custodians of the children involved—there has been laxity in enforcing mandated laws.

Bold action was obviously necessary, and it was taken. In August 1984 the U.S. Congress passed the Child Support Enforcement Amendments. The legislation’s key provisions supply critical improvement to state and local programs in four major areas:

Child support enforcement services must be available equally to welfare and non-welfare families;

State child support enforcement programs must use proven enforcement techniques;

Federal financing of state program operations and the focus of federal auditing are tied more closely to program effectiveness and efficiency; and

There is a strengthened and focused effort to improve enforcement where the custodial parent and child live in one state, and the parent obligated for support lives in another.

In the first article of this issue Robert Horowitz discusses these Amendments (CSEA) of 1984. He reports child support obligors were defaulting on their obligations at the rate of $4 billion annually, and half of the custodial parents were without even a support order. CSEA’s all-out attack on this scandalous situation mandates that states must have the enforcement procedures embodied in the Amendments in place by Oct. 1, 1985. The remedies incorporated in CSEA must be available to IV-D agencies both for AFDC recipients and for non-AFDC applicants to the agency, in contrast to the original acts which favored AFDC collection, and the federal funding formula has been adjusted to improve interstate enforcement.

Carol Bruch and Norma Wikler, in the next article, discuss the many and often horrendous inequalities in judicial decisions on spousal support, with the bases used for determining the amount (such as length of marriage, husband’s income, wife’s work experience) and the actual amounts awarded as well as the duration of spousal support. The authors follow this with a detailed study of child support, contrasting the almost ludicrous discrepancies between award levels and the actual costs of rearing children, discuss the changes brought about by the emancipation of the children and compare the wealth of custodial and non-custodial households.

Judge Douglas writes on the factors used in determining the amount of child support awarded by the judge. While courts have not been uniform in basing awards on the needs of the child and the circumstances of the parent(s) who must pay, the new Amendments should go far in equalizing decisions, particularly since the Amendments must be incorporated into the laws of all the states. The author discusses the earning ability of the
parents, the ability to earn more and their other income, but emphasizes that the wants of the child must take precedence over previous lifestyles of the obligor.

The formulas and guidelines necessary for equitable decisions on child support are described by Judge Thompson and Susan Paiken. The ever-increasing volume of cases and the resulting delays in scheduling have brought about an insistent demand for an alternative mechanism to the use of limited judicial resources, and the authors of this article write about the formulas and methodologies of several states, particularly Oregon, Washington, Wisconsin, Delaware and Texas. Although the article shows a preference for the Delaware Child Support Formula, it suggests that all proposed guidelines be tested on a wide variety of factual situations to ensure that the results are consistent with a state’s statutory requirements.

Robert Williams discusses formulas for adequate awards and sets out evidence, in agreement with Carol Bruch’s article, that current levels greatly undervalue the true costs of rearing children. He reviews the economic data on the necessary expenditures and the levels of child support orders that would be derived under five support formulas, and lists the factors to be evaluated in the legal and policy context of each state. He believes the judiciary in each state, because of long experience, is particularly suited to develop the necessary formulas to ensure adequate recognition to the many variations that will arise in their application, to allow for equitable results in anomalous cases, and to use its educated discretion in modifying rulings for situations not contemplated in the original design.

In the next article Jessica Pearson and Nancy Thoennes study the relationships between child custody, support arrangements and payment patterns. They find the relationship between the divorced father and his children may affect the pattern of support payments—that fathers strongly bonded to their children before divorce may be anxious to maintain emotional and financial ties after divorce, whereas those not so firmly committed before, or who feel the custody arrangements set by the court are unfair, may view the divorce as the end of all their responsibilities. Basing their conclusions on two longitudinal studies carried out over a period of several years, the authors compare the child support experiences of mothers (in a few cases fathers) who have sole custody, and those where the custody is joint, and conclude economic and relationship factors may be even more important than joint custody in predicting payment patterns. Joint residential custody, meanwhile, is a relatively rare arrangement, and while evidence indicates parents who choose it are usually content with their decision, there is insufficient research to make predictions about couples ordered to accept joint custody over the opposition of one party.

Linda Elrod has prepared a detailed outline on how to use the Uniform Reciprocal Enforcement of Support Act (URESA) or the Revised Uniform Reciprocal Enforcement of Support Act (RURES A) which before the 1984 Amendments provided the most effective means to collect child support obligations across state lines. Her article includes suggestions for obtaining a civil judgment (initiating the proceeding, the duties of the initiating and responding courts, and the effect of collateral pending proceedings). She describes the hearing, the possible defenses by the obligor, the order itself, arrearage problems, the enforcement of the court order, the registration procedure of an existing support order and the pitfalls in attempting to modify a registered order. She believes that the 1984 Amendments will help remedy some of the problems that still arise, and that URESA, RURES A and the new Amendments combined will enable more obligees to receive the support owed to them.

The next article, by Diane Dodson, deals with a particular element of the Child Support Enforcement Amendments of 1984: the mandate that each state establish a new remedy of income withholding, under requirements in the Act, to enforce support obligations. While income withholding is far from a new concept or method, the Amendment puts sharp teeth into its enforcement, so that all support orders, whether as first issued or later modified, must include a conditional order or provision for withholding so that it will be
available either immediately or in case of arrearage. The provision is applicable not only to orders for support, but to actions for divorce, separation, separate maintenance, paternity, civil protections, guardianship or foster care; defenses are basically limited only to "mistakes of fact." "Runaway pappies" now should have no more open roads.

Michael Henry and Victoria Schwartz write about the expedited processes for child support enforcement embodied in the Amendments of 1984, which require each state to enact and implement such processes for establishing and enforcing child support obligations and also, at the state's option, for establishing paternity. The new regulations include in their definition of expedited processes any administrative or judicial proceeding in which the presiding officer is not a judge of the court and which both increases the effectiveness of the establishment and enforcement process and meets specific time frames. This article describes in detail the Pennsylvania and Missouri expedited judicial and administrative processes as they were implemented in those states before the passage of the 1984 Amendments, and makes an interesting comparison between the history of child support laws and that of workmen's compensation.

Judge Turner deals with the current situation in the courts when obligors are decreed in contempt. For such a ruling the court must find that the payor, although he had the earning capacity or other sources of income, willfully refused to comply with the court order. If the obligor was honestly unable to comply he cannot be found in contempt. Among the punishments for contempt discussed in the article are: confinement (with possible work release), which in and of itself does not lead to an efficient collection, although where the payor is simply evading his obligation it may spur him to comply; notification to consumer credit agencies, which does seem to be more effective; and liens on real and personal property. One unusual and sometimes effective technique for dealing with the hardcore unemployed is compelling him to attend a course on how to get a job, with instructions and practice in how to apply, what to say, how to dress; the defaulting payor who refuses to attend the course or afterward look for work is in willful contempt and the only alternative may have to be confinement.

In discussing private agreements about support and visitation to children of divorced parents, Judge Lindsay Arthur emphasizes that, though most child custody and support disputes are worked out between the parents, the court has the ultimate power to approve or disapprove such private agreements. Parents cannot, for instance, by agreement cancel the rights of their children to financial support or to the company, guidance and visitation of both parents. It is the exclusive right of the courts to determine the amount of support, and any agreement between parents as to amount has no binding effect on the court, although it will be considered along with other evidence. However, form of payment, division of the amount between the parents, even modification of agreements may be contracted between the parents so long as the amount of support which the court has determined is not reduced. Because it serves protectively in loco parentis, the court has powers which supersede even those of the actual parents.

Henry Foster and Doris Jonas Freed present a somewhat unusual facet of child support—the surrogate parent obligation. They find the origins of governmental interest in child support far back in Tudor England where local parishes assumed financial liability for the poor, including children, and had the legal right to recoup their costs for children from a husband, father if known, or other relatives. Today it is not only divorced biological fathers (or more rarely, mothers) who are legally bound to provide support for their offspring, but divorced stepparents who had adopted the children from a previous marriage. Without such legal adoption children's legal right to support can be very uncertain, although in some cases, where it can be proved that the husband has acted in loco parentis, equitable estoppel has been used to prevent the husband or surrogate parent from denying support liability. The authors make a distinction between state and federal domestic relations laws on the support of children: whereas the state intrudes into family autonomy at least theoretically in the best interests
of the child, the federal laws, such as URESA, RURESA and the new Amendments, are motivated overtly by the economic goal of plugging the drain on public funds.

Judge Leonard Hornstein finds the judicial role supreme in child support cases, although he points out that in some jurisdictions fact-finding and support orders are made by persons other than judges. Such persons may be called master, referee, hearing officer, commissioner or magistrate, and while their roles resemble that of the judge, they may or may not have authority to determine issues of custody and visitation. Nevertheless, the author believes that the final decisions on determining responsibility in divorce cases for the child’s overall financial and psychological needs remain with the judge. It is an open question now whether the new Amendments, which curtail judicial options by mandating child support requirements, will affect this heretofore overriding power.

In the final article of this issue Judge Nicholas Cipriani broadens the Dodson discussion on defense against specific court orders for child support. Such defenses, set up to justify non-compliance with an existing order, may be used not only against the initial complaint for support but against claims for increases or changes. They are based on a wide spectrum of arguments: claims that alternative payments, such as health insurance or payments in kind, fulfill the requirements; that the orders were defective; that the obligor, through bankruptcy, debts or obligations to a later family, is unable to pay; that the obligor has not been permitted court-ordered visitation; or that the child has adequate funds or is emancipated. The chances for success through such defenses, except possibly when there are genuine procedural errors, appear to be slight. Legally parents are strictly bound to support their children at least to majority or emancipation, regardless of geographic or emotional separation.

This volume has been published to clarify the state-of-the-art condition of child support in this country. Court orders for support have been ignored or evaded for too long; families have lived in dire poverty; government has been unconscionably burdened because obligors have failed to fulfill their legal obligations; and courts have been clogged and overwhelmed by the piling up of cases involving the support of children who are waiting in a limbo of near or total poverty. The Amendments to URESA and RURESA should herald a new day for taxpayers and children of divorce.

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