

**THE DIVISION OF CHILD SUPPORT ENFORCEMENT:
VIRGINIA'S RESPONSE TO FEDERAL CHILD SUPPORT REFORM**

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**INTRODUCTION: THE NEED FOR FEDERAL INTERVENTION
IN CHILD SUPPORT LAW**

One criticism of the United States' traditional societal treatment of children's issues is that it focuses upon specific perceived problems of individual groups of children, rather than a "comprehensive family social policy which truly promotes the well-being of all children or attempts to guarantee that all children receive consistent nurture and adequate financial support."¹ Through the last half of the twentieth century, issues of support and welfare for all children have grown significantly in importance.

As recognition of the need for child support grew, it did so exclusively at the state level, with the federal government adopting a policy of abstention from the entire realm of domestic relations. This precluded the federal court system from interfering with state courts' imposition of child support awards.²

Although federal courts had not historically played a part in developing the field of family law, Congress began legislating in order to remedy inadequacies in the states' systems of governing family relations.³ Escalating costs in the federal Aid to Families with Dependent Children (AFDC) program focused Congress' attention on child support

¹ Howe, *Who Speaketh for the Child?*, 23 N. ENG. L. REV. 421, 422 (1988).

² Note, *Bankruptcy: Including a Child Support Arrearage in a Chapter 13 Plan*, 43 WASH. & LEE L. REV. 477, 483 (1986) [hereinafter *Chapter 13 Plan*]. This abstention has constitutional foundations. Since the Tenth Amendment reserves for the states "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States," U.S. CONST. amend. X, and the powers to legislate in the areas of family and domestic matters are not specifically granted to Congress by Article 1, § 8 of the Constitution (enumerating Congress' powers), the jurisdiction to control domestic relations lies with the states. *Chapter 13 Plan, supra*, at 483 n.34.

³ Krause, *Reflections on Child Support*, 1983 U. ILL. L. REV. 99, 99 (1983) [hereinafter *Reflections*].

enforcement problems at the state level.⁴ By 1975, Congress had enacted laws which would effectively override state laws in the domestic relations field.⁵

The federal government entered the area of child support both because of recognition of the subject's importance,⁶ and because of the states' failure to provide for the needs of children.⁷ A major problem with the states' systems was the inadequacy of the support orders issued by the state courts.⁸ As a result, custodial parents, usually mothers of the children needing support, were faced with a grossly disproportionate share of child-raising expenses, creating a "feminization and cradlization of poverty."⁹

Another problem with the state courts' exclusive jurisdiction over child support matters was the inconsistency with which child support orders were determined. State statutes governing child support provided little guidance to judges determining levels of support that were fair to all concerned parties.¹⁰ The resulting support awards could

⁴ *Id.* The AFDC program is a federally-funded means of support for families with dependent children. *See infra* note 23 and accompanying text.

⁵ *Reflections, supra* note 3, at 99 (citing Pub. L. No. 93-647, 88 Stat. 2337 (codified at 42 U.S.C. §§ 651-60 (1976))). The laws of the United States are the "supreme Law of the Land," *see* U.S. CONST. art. VI, cl. 2, and a federal law preempts state law if the state law's effect is to interfere with Congress' purpose in legislating in a particular area. *Chapter 13 Plan, supra* note 2, at 483 n.34.

⁶ Historically, children are one of the groups with the most need for support, as well as the most deserving. Of those individuals living below standards of poverty, children are, clearly, the least responsible for their situation. Giampetro, *Mathematical Approaches to Calculating Child Support Payments: Stated Objectives, Practical Results, and Hidden Policies*, 20 FAM. L.Q. 373, 373 n.1 (1986).

⁷ *See Reflections, supra* note 3, at 99.

⁸ Woods, *Child Support: A National Disgrace*, 17 CLEARINGHOUSE REV. 538, 538 (Oct. 1983); Brackney, *Battling Inconsistency and Inadequacy: Child Support Guidelines in the States*, 11 HARV. WOMEN'S L.J. 197, 213 (1988).

⁹ Brackney, *supra* note 8, at 199.

¹⁰ Giampetro, *supra* note 6, at 377.

easily reflect judges' own policy preferences¹¹ more than the needs of the children involved and their parents' ability to provide for them. The inconsistency of this "case-by-case method" had the potential to contribute to the tensions and hostility already present in a divorce situation.¹² As a result, non-custodial parents, feeling that they had received unfair treatment by the court system, were less likely to comply with the order.¹³

Parental noncompliance was the third major difficulty with the state courts' child support systems.¹⁴ Census bureau reports from 1984 (when Congress increased the strength of states' powers to enforce child support)¹⁵ estimated the amount of overdue child support payments at forty billion dollars annually.¹⁶ In fact, almost a third of the ordered support was never received by the custodial parents.¹⁷ One commentator has suggested that the federal government's AFDC system was viewed as an alternative to parents providing support.¹⁸ The skyrocketing costs of this system, however, finally brought home to Congress the need for the government to take a more active role in the process of determining and enforcing non-custodial parents' duties to take financial responsibility for their children.¹⁹

¹¹ *Id.*

¹² Brackney, *supra* note 8, at 200.

¹³ *Id.*

¹⁴ Howe, *supra* note 1, at 423; Woods, *supra* note 8, at 538.

¹⁵ *See infra* notes 50 to 53 and accompanying text.

¹⁶ Note, *Constitutional Implications of the Child Support Enforcement Amendments of 1984*, 24 J. FAM. L. 301, 301 (1986) [hereinafter *Implications*] (citing *The Courier-Journal*, Sept. 15, 1984, at A16, col. 1).

¹⁷ Woods, *supra* note 8, at 538.

¹⁸ Krause, *Child Support Reassessed: Limits of Private Responsibility and the Public Interest*, 24 FAM. L.Q. 1, 4 (Spring 1990) [hereinafter *Private Responsibility*].

¹⁹ *Reflections*, *supra* note 3, at 99.

Another commentator has drawn an illustrative parallel between the need for governmental coordination of child support enforcement programs and the centralization of workers' compensation laws.²⁰ Before the current worker's compensation system, employees seeking recoupment for job-related injuries often faced obstacles similar to custodial parents seeking child support through the courts. Insufficient funds to hire legal assistance and prepare cases adequately, lengthy court delays restricting the availability of much-needed funds, and widely varying awards for similar cases were complaints common to both sets of plaintiffs. Also inherent to both situations were bogged-down court systems struggling to manage exploding caseloads.²¹ The solution for injured employees was a federal worker's compensation program. A similarly centralized federal program for child support would not only coordinate and establish state enforcement programs, but would also oversee their operation to ensure that the programs are implemented in accordance with the law.²²

FEDERAL LEGISLATIVE CHILD SUPPORT INITIATIVES

The Social Security Act of 1935

Federal statutory intervention in the child support area began as early as the Depression, though in a limited manner. The Social Security Act of 1935 included a section that established the provision of funds to impoverished mothers to help them care for their dependent children. This was the birth of AFDC.²³ The Act also required

²⁰ Henry & Swartz, *Expedited Processes For Child Support Enforcement*, 36 JUV. & FAM. CT. J. 77, 81 (Fall 1985).

²¹ *Id.*

²² Note, *Child Support Enforcement: Balancing Increased Federal Involvement with Procedural Due Process*, 19 SUFFOLK U.L. REV. 687, 688 (1985) [hereinafter *Increased Federal Involvement*].

²³ *Id.* at 691-92; Baker & Stuff, *The Costs and Benefits of Child Support Enforcement*, 18 PROSECUTOR, J. NAT'L DIST. ATT'YS A. 27, 27 (Winter 1984).

non-custodial parents to contribute child support payments on behalf of their children, but provided no effective means to enforce this obligation.²⁴

URESAs: Interstate Enforcement of Support Orders

In 1950, the National Conference of Commissioners on Uniform State Laws gave state courts more power to enforce support orders from other states through the approval of the Uniform Reciprocal Enforcement of Support Act (URESAs).²⁵ Every state has adopted a form of this model statute,²⁶ and most states have since adopted the Revised Uniform Reciprocal Enforcement of Support Act (RURESAs).²⁷ Under these laws, support enforcement begins with the custodial parent bringing a support enforcement action in state court.²⁸ The court where the action is brought (the "initiating state") directs the petition to the jurisdiction where it is believed that the non-custodial parent is located.²⁹ The court in this jurisdiction (the "responding state") attempts to enforce the order by obtaining jurisdiction over non-custodial parents and requiring them to remit their support obligations either to the responding court or to an appropriate state agency.³⁰ These funds are sent to the initiating court which distributes the money to the party that brought the action.³¹

²⁴ Baker & Stuff, *supra* note 23, at 27.

²⁵ *Increased Federal Involvement*, *supra* note 22, at 690.

²⁶ *Id.*

²⁷ Atkinson, *The Child's Need Versus the Parent's Ability to Pay*, 12 FAM. ADVOC. 26, 28 (Winter 1990).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

Though URESA removed the previous barrier to collecting court-ordered support from out-of-state non-custodial parents,³² the Act is criticized for the lengthy time periods required for enforcement by the two jurisdictions, the costs involved for the responding state, the low priority responding states give URESA cases, and the difficulty in locating non-custodial parents.³³

States' Enforcement Agencies

In 1967, Congress amended the Social Security Act, and, for the first time, mandated the development and implementation of state-run child support enforcement programs.³⁴ These amendments, however, did little to help custodial parents receive more of the support due them, because many states failed to comply with the revised law.³⁵ The federal government was required to provide only fifty percent of the administrative costs of enacting the states' programs, and it did nothing to enforce the state programs' implementation.³⁶

Title IV-D: Addressing a Growing Problem

By 1974, seventy-eight percent of the children eligible for AFDC funding, approximately 6,062,000 children, were so situated because of the absence of a parent.³⁷ Only about a fourth of these children were provided for by court-ordered or voluntary arrangements to provide child support.³⁸ Of this group, only about twenty-one percent

³² *Increased Federal Involvement*, *supra* note 22, at 689-91.

³³ *Id.* at 691.

³⁴ *Id.* at 692.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Baker & Stuff, *supra* note 23, at 27.

³⁸ *Id.*

actually received the full amount of the money owed them.³⁹ As a result of this growing need, Congress, in 1975, added Title IV-D to the Social Security Act to address child support issues.⁴⁰ The federal and state programs envisioned by the amendments were to provide four basic areas of service: locating absent parents responsible for providing child support, establishing paternity, establishing appropriate amounts of support, and enforcing support obligations.⁴¹ The Congressional intent in passing the amendments goes well beyond the objective of merely recouping disbursed AFDC funds from legally responsible parents:

The committee believes that all children have the right to receive support from their fathers. The committee bill is designed to help children attain this right, including the right to have their fathers identified so that support can be obtained. The immediate result will be a lower welfare cost to the taxpayer but, more importantly, as an effective support collection system is established fathers will be deterred from deserting their families to welfare and the children will be spared the effects of family break-up.⁴²

The government also demonstrated an intent to enforce the new amendment by providing guidelines that state programs must meet in order to qualify for federal reimbursement of seventy-five percent of the state's administrative costs.⁴³ Finally, the amendments created the federal Parent Locator Service, which provides state agencies with data from the Social Security Administration, Internal Revenue Service, and Department of Defense, which would otherwise be unavailable to the states' own locator services.⁴⁴ The federal Parent Locator Service was designed to complement and enhance

³⁹ *Id.*

⁴⁰ 42 U.S.C. §§ 651-62 (1988); *see Increased Federal Involvement, supra* note 22, at 692-93.

⁴¹ Haynes, *Legislative Update: More IV-D Follow-Up*, 10 FAM. ADVOC. 11, 11 (Spring 1988).

⁴² Hearings on Senate Bills 1842 and 2081 before the Senate Committee on Finance, 93rd Cong., 1st Sess. (1973), *cited in Baker & Stuff, supra* note 23, at 27.

⁴³ 42 U.S.C. § 652(a) (1988).

⁴⁴ *Id.*

the resources of each state's parent locator service,⁴⁵ and to fit in with the federal government's new role, under Title IV-D, as an overseer of the states' support enforcement programs.⁴⁶

IRS Cooperation in Enforcement

In 1981, Congress brought the Internal Revenue Service into child support enforcement by allowing overdue support payments to be collected through the interception of non-custodial parents' federal income tax refunds.⁴⁷ This streamlined the tax-intercept procedures previously provided for in the 1975 amendments.⁴⁸

The 1975 law instructed the IRS to provide "full collection" of delinquent debts.⁴⁹ Under the 1975 act, the IRS could garnish the wages of AFDC or non-AFDC delinquent parents, attach and sell their property, or intercept their federal tax refund and forward it to the state requesting collection of the support obligation.⁵⁰ In order to receive this service, the debt needed to be delinquent in the amount of at least \$750 and established by an administrative or court order.⁵¹ Further, the state child support enforcement agency had to describe to the IRS the "collection actions" it had taken,

⁴⁵ *Increased Federal Involvement*, *supra* note 22, at 693 n.29.

⁴⁶ *Id.* at 694.

⁴⁷ 42 U.S.C. § 644 (1988); *see Roberts, In the Frying Pan and In the Fire: AFDC Custodial Parents and the IV-D System*, 18 CLEARINGHOUSE REV. 1407, 1408 (Apr. 1985) [hereinafter *Custodial Parents*].

⁴⁸ *See Increased Federal Involvement*, *supra* note 22, at 697; Note, *In Support of Support: The Federal Tax Refund Offset Program*, 37 TAX LAW. 719, 723-24 (1984) [hereinafter *In Support*].

⁴⁹ *In Support*, *supra* note 48, at 723.

⁵⁰ *Id.*

⁵¹ *Id.*

why they were not effective, and why further state actions would not be successful in collecting the debt.⁵²

Under the 1981 Amendments, the Internal Revenue Service can become involved in the collection of AFDC arrearages of just \$150, if the debt is at least three months old, and if the state child support enforcement agency demonstrates to the Department of Health and Human Services that the state has taken reasonable measures to collect the overdue support.⁵³ The only collection method available under this "streamlined procedure" is to reduce the responsible parent's federal income tax refund by the amount of ordered support.⁵⁴

Expanding the System: The 1984 Child Support Enforcement Amendments

In 1984, Congress further amended the Social Security Act to enhance the states' powers to enforce child support obligations and to make the services of state support enforcement agencies available to all custodial parents, regardless of their eligibility for AFDC benefits.⁵⁵ A major effect of this set of amendments was its impact upon the substance of state laws; the 1984 amendments required that each state legislatively

⁵² *Id.* at 724 n.34.

⁵³ *Id.* at 724.

⁵⁴ *Id.*

⁵⁵ The 1974 amendments only provided these services to custodial parents who were AFDC recipients. *Implications, supra* note 16, at 302 n.10.

The major objectives of the 1984 amendments are: to encourage states to aggressively seek child support collection for children not receiving welfare benefits; to mandate nationwide enforcement techniques that have already been proven successful; to provide financial rewards to states that improve enforcement programs; to audit all state programs; and to strengthen interstate enforcement techniques.

Increased Federal Involvement, supra note 22, at 700.

provide for certain techniques of support collection.⁵⁶ Among these techniques are mandatory withholding of the income of the non-custodial parent, interception of federal and state income tax refunds, liens, bonds to guarantee support payments, a mandatory report of the non-custodial parent's support obligation sent to credit agencies, guidelines for child support awards, and expedited proceedings to handle child support cases.⁵⁷ The 1984 amendments clearly announce the intention of Congress to rule on the adequacy of state child support laws.⁵⁸

Still Stronger Enforcement Powers

In the 1988 Family Support Act,⁵⁹ Congress made the states' new child support enforcement powers still stronger by providing stricter wage withholding of child support payments, rebuttable support guidelines for ascertaining support obligations, review of child support orders at least every three years, and federal standards for establishing paternity.⁶⁰

The Current Federal IV-D System

With the successive changes in the welfare law (particularly with the 1984 Social Security Act amendments), applicants for AFDC programs must assign their rights to

⁵⁶ Dodson & Horowitz, *What to Do About the Growing Problem of Child Support*, 71 A.B.A. J. 133, 133 (Sept. 1985); *Private Responsibility*, *supra* note 18, at 8.

⁵⁷ *Private Responsibility*, *supra* note 18, at 8-9. Federal regulations define "expedited processes" as "any administrative or expedited judicial processes in which the presiding officer is not a judge of court, which increase the effectiveness of the establishment and enforcement process, and which meet specific processing time frames."; 45 C.F.R. § 303.101 (1990); Henry & Swartz, *supra* note 20, at 77.

⁵⁸ *Private Responsibility*, *supra* note 18, at 8.

⁵⁹ Pub. L. No. 100-485, 102 Stat. 2343 (1988).

⁶⁰ *Private Responsibility*, *supra* note 18, at 11; Roberts, *Tenth Annual Review of Poverty Law: Child Support Enforcement in 1989*, 23 CLEARINGHOUSE REV. 1101, 1104-05 (Jan. 1990) [hereinafter *Tenth Annual Review*].

receive child support to the IV-D agency and agree to cooperate with the agency in locating the non-custodial parents, establishing paternity and support orders against them, and enforcing the orders.⁶¹ Through the custodial parents' assignments, the state acquires a financial interest, equal to the total AFDC payments, against the responsible parents. The state is in a better position than custodial parents to recover these funds, as it has the resources of the federal government and the reciprocal cooperation of the other states behind it.⁶² Implementation of a program this wide-spread is inevitably difficult and has resulted in various criticisms,⁶³ but the federal government's attempt to unify and coordinate states' child support programs unquestionably provides a greater opportunity for fair resolutions of children's needs and parents' obligations.⁶⁴

THE DIVISION OF CHILD SUPPORT ENFORCEMENT: VIRGINIA'S IV-D PROGRAM

Virginia's response to the Congressional initiatives on child support enforcement was the creation of the Division of Child Support Enforcement (DCSE or Division), a subdivision of the Commonwealth's Department of Social Services.⁶⁵ The functions of

⁶¹ *Private Responsibility*, *supra* note 18, at 7.

⁶² *Id.* at 7-8.

⁶³ *Id.* at 12 (still "wide variations" in different states' collection performance and enforcement of child support laws); *Custodial Parents*, *supra* note 47, at 1410 (states benefitting from support collection causes indifference or hostility towards the IV-D agency); *Tenth Annual Review*, *supra* note 60, at 1109 (complaints about the timeliness and adequacy of service by the agency involved); *Implications*, *supra* note 16, at 304, 307 (constitutional concerns regarding wage withholding and the tax refund intercept program).

⁶⁴ Baker & Stuff, *supra* note 23, at 29 (the benefits of a child support enforcement program are not to be measured solely by the funds collected to reimburse state and federal AFDC disbursements; the "indirect cost evidence" achieved by keeping other custodial parents "off AFDC" must also be taken into account).

⁶⁵ Acts 1974, Session 1974, enacted April 5, 1974, amending Virginia Code to add Sections 63.1-249 through 63.1-290.

the Division are governed by Title 63, Chapters 13 and 14 of the Virginia Code.⁶⁶ DCSE operates through sixteen offices located throughout the Commonwealth, and is staffed with program support personnel and Support Enforcement Specialists.⁶⁷ Although the Policy Manual for the Division is careful to point out that DCSE staff may not take any attorney-like role in the agency's cases,⁶⁸ agency personnel perform many of the pre-trial tasks required in enforcement proceedings.⁶⁹ Legal counsel for the Division is provided by a Special Counsel in the Attorney General's office, specifically assigned to child support enforcement matters, or representation may be obtained through cooperative agreements with Commonwealth Attorneys, city or county attorneys, or members of the private bar.⁷⁰

The services available from the DCSE are those mandated by Title IV-D: (1) Locating responsible parents and putative fathers in order to establish their child support obligation; (2) establishing putative fathers' paternity; (3) establishing and modifying orders for child support payments; (4) administratively and judicially enforcing spousal support if such support is ordered as part of the child support order; and (5) collecting and disbursing child support payments.⁷¹ In addition, the Division provides information about its functions and parental rights and responsibilities through brochures available at its offices.

⁶⁶ VA. CODE ANN. §§ 63.1-249 to -274.9 (Supp. 1990).

⁶⁷ Commonwealth of Virginia, *Department of Social Services, Division of Child Support Enforcement Policy Manual*, ch. A, 1 (1990) [hereinafter *Policy Manual*]; Commonwealth of Virginia, *Department of Social Services, Pub. No. 032-01-935, Facts About Child Support Enforcement For Custodial Parents* [hereinafter *Support Enforcement Pamphlet*].

⁶⁸ *Policy Manual*, *supra* note 67, at ch. A, 1.

⁶⁹ *Id.* at 2.

⁷⁰ *Id.* at 3.

⁷¹ *Id.* at ch. C, 1.

The Parent Locator Service

The parent locator service offered by the Division is the State Parent Locator Service, which searches the Commonwealth for the absent parent, coordinates with other states' locator services to find responsible parents who have left Virginia, and uses the federal Parent Locator Service to search for responsible parents on a national level.⁷² On the federal level, new regulations that are applicable to the states and designed to improve the quality of parent locator services became effective October 1, 1990.⁷³

Establishing Paternity

The Division of Child Support Enforcement uses both administrative means and the court system to establish paternity. Administratively, in a situation where the putative father is willing to admit paternity of the child for whom support is sought, the Support Enforcement Specialist informs the putative father that he has been identified as the child's parent and asks him to verify the claim.⁷⁴ If the putative father does so, he is advised of his "rights and responsibilities regarding the issue of paternity."⁷⁵ The putative father then reads a Declaration of Paternity Form and signs, under oath, a Paternity Rights and Responsibilities Statement.⁷⁶ Both the custodial parent and the putative father sign the Declaration of Paternity form, and each receives a copy.⁷⁷ The

⁷² *Support Enforcement Pamphlet, supra* note 67.

⁷³ *Tenth Annual Review, supra* note 60, at 1104-05.

⁷⁴ *Policy Manual, supra* note 67, ch. D, 1 (1990). The DCSE Policy Manual uses the term "putative fater" to refer to the party whose paternity the Division is attempting to establish.

⁷⁵ *Id.* at 2.

⁷⁶ *Id.*

⁷⁷ *Id.*

Division files this document with the Juvenile and Domestic Relations District Court (J&DR Court), where the judge signs it as a court order.⁷⁸

If the putative father denies paternity but agrees to have the probability of his paternity tested, he is informed of his duties and privileges as a parent, and is asked to sign a form acknowledging these obligations.⁷⁹ In order to be voluntarily tested for paternity, the putative father must also sign the Voluntary Agreement for Genetic Blood Testing Form.⁸⁰ If the genetic test results in a finding of probability of ninety-eight percent or better that the putative father is the child's father, he is declared the legal father as of the date that the positive test results are received by the Division, and must pay DCSE for the expenses of all of the parties' blood tests (the mother's, the child's, and his own).⁸¹ The father receives a copy of the Paternity Certification Form, which is filed with the court and becomes a binding court order.⁸² If the genetic testing results show a probability of less than ninety-eight percent that the putative father is indeed the father, DCSE may pursue the paternity issue in court.⁸³ If the court excludes the possibility of the putative father's paternity, the Division pays the costs of the blood tests.⁸⁴

Finally, paternity may be established only through the J&DR Court system if the putative father does not voluntarily agree to genetic testing.⁸⁵ The child's mother completes a Mother's Affidavit of Paternity Form, and, in cases where public assistance

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 3.

⁸² *Id.* at 2-3.

⁸³ *Id.* at 3.

⁸⁴ *Id.*

⁸⁵ *Id.* at 3.

is not involved, fills out a Financial Statement.⁸⁶ If the mother is receiving Aid to Dependent Children (ADC) benefits,⁸⁷ she is presumed to have no income and does not complete a Financial Statement. Both documents are notarized.⁸⁸ The agency or the mother files a paternity petition with the J&DR court, which orders blood testing of all the parties.⁸⁹ The results of these tests are filed at DCSE.⁹⁰

Genetic testing is not the only form of evidence used in establishment of a paternal obligation. The court also considers whether the putative father and the mother were openly living together at the time that the child was probably conceived, the use of the putative father's name on the child's birth certificate, the child's use of the putative father's last name at any time since birth, and any government forms or statements signed by the putative father that declare or claim the child as his own.⁹¹

Federally, paternity testing is the area of domestic relations law that has changed the most significantly in the past decade, both because of a new, longer statute of limitations for paternity establishment⁹² and due to the technological development of more advanced means of testing for paternity.⁹³ New federal regulations demand that the state must attempt to establish paternity within ninety calendar days of locating a

⁸⁶ *Id.*

⁸⁷ Aid to Dependent Children is a public assistance grant paid by the Commonwealth to support dependent children. *See* VA. CODE ANN. § 63.1-87 (1987).

⁸⁸ *Policy Manual, supra* note 67, ch. D, 3 (1990).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ Commonwealth of Virginia, *Department of Social Services, Pub. No. 032-01-932/1, Facts About Establishing Paternity in Virginia* [hereinafter *Paternity Pamphlet*].

⁹² 42 U.S.C. § 666(a)(5)(A)(i) (1988).

⁹³ *Tenth Annual Review, supra* note 60, at 1102.

putative father.⁹⁴ A putative father's paternity must be established or excluded within one year of service of process or the child's becoming six month's old, whichever is later,⁹⁵ to judicially establish paternity.

Establishing the Support Obligation

The 1984 Child Support Enforcement amendments to the Social Security Act mandated that states formulate guidelines to determine appropriate child support awards.⁹⁶ Section 20-108.2 of the Virginia Code complies with the federal law.⁹⁷ In Virginia, the methods used to set the amount of child support obligation differ depending upon whether or not the custodial parent is a recipient of public assistance (PA).⁹⁸ In a "non-PA" case, where the custodial parent is not receiving public assistance, the Support Enforcement Specialist interviews both the custodial and non-custodial parents, requires each of them to complete Financial Statements, and instructs them to report any future changes in their financial situations.⁹⁹ Child support is established by taking into account each parent's income, monetary support paid to other children for whom the parent is responsible, and each parent's earning potential.¹⁰⁰ If the responsible parent does not appear at the interview in which the Support

⁹⁴ 45 C.F.R. § 303.5(a)(1) (1990).

⁹⁵ 45 C.F.R. § 303.5(a)(2) (1990).

⁹⁶ 42 U.S.C. § 667(a) (1988).

⁹⁷ VA. CODE ANN. § 20-108.2 (1990). In accordance with the 1988 Child Support Enforcement Amendments, Virginia's support figures are rebuttably presumed to be a proper level of support. *Id.*

⁹⁸ *Policy Manual*, *supra* note 67, ch. E, 1-11 (1990).

⁹⁹ *Id.* at ch. D, 3-4.

¹⁰⁰ VA. CODE ANN. §§ 20-107.1, -108.1, -108.2 (1990).

Enforcement Specialist gathers this information, the agency may establish a default judgment against him.¹⁰¹

If the custodial parent receives benefits from the ADC program, he or she is considered to have no income, and is neither interviewed nor required to fill out a financial statement.¹⁰² In any case involving a custodial parent receiving public assistance, it is likewise unnecessary to attempt to interview the non-custodial parent before establishing a default obligation.¹⁰³ The amount of the default debt is set at the level of ADC benefits paid to the custodial parent.¹⁰⁴

Once the appropriate level of support is determined, DCSE must establish the debt.¹⁰⁵ In a case where ADC payments have been paid to the custodial parent, the debt is established by sending an Administrative Support Order to the responsible parent, directing him to pay the stated amount.¹⁰⁶ The Administrative Support Order serves three purposes: it notifies the responsible parent that public assistance has been

¹⁰¹ *Policy Manual, supra* note 67, at ch. E, 5. *See infra* note 105 and accompanying text.

¹⁰² *Policy Manual, supra* note 67, at ch. E, 5.

¹⁰³ *Id.*

¹⁰⁴ *Id.* If a default obligation is established for a non-custodial parent in a non-PA case, the default obligation is set at the amount of ADC benefits that *would* be paid to the custodial parent, based upon the number of children supported and the area where the custodial parent and children reside. *Policy Manual, supra* note 67, ch. E, apps. B and C (1990).

¹⁰⁵ *Id.* at 5.

¹⁰⁶ *Id.* at ch. E, 13. An Administrative Support Order is defined by the Division of Child Support Enforcement Policy Manual as

a non-court ordered legally enforceable support obligation based on the income of the Responsible Parent and Custodial Parent as applied to the Support Scale, or a non-court ordered, legally enforceable obligation based on the amount of the public assistance grant paid or that could be paid for non-PA cases. The administrative order has the same force and effect as a court order.

Id. at Glossary of Terms, 2.

or is being provided to persons to whom the responsible parent owes a legal duty of support, and that a child support debt is accordingly owed to the Commonwealth; it informs a responsible parent that, although the custodial parent may not be a recipient of public assistance, he or she has requested that child support enforcement assist him/her in collection of child support; and, finally, it advises the responsible parent that an Immediate Withholding of Earnings is about to be implemented against him or her.¹⁰⁷

The Support Enforcement Specialist must schedule an appointment with the responsible parent within thirty days of service of the Administrative Support Order, to permit the responsible parent to provide financial information to the agency. From this information, the agency may set the parent's support obligation in accordance with his or her ability to pay.¹⁰⁸ If the responsible parent does not appear for this meeting, or fails to provide a financial statement, his or her obligation remains at the amount set forth on the Administrative Support Order.¹⁰⁹

To establish the debt in a non-PA case where the responsible parent has had a default obligation entered against him or her, the agency serves an Administrative Support Order with the default amount included in it.¹¹⁰ Once the ten-day period for appeal of the Administrative Support Order has passed, the agency files a non-support petition in the J&DR Court for enforcement.¹¹¹

Collecting the Debt

Child support in Virginia is paid in one of three ways. First, a court may order the non-custodial parent to pay support directly to the custodial parent; DCSE is not

¹⁰⁷ *Id.* at ch. E, 12-13.

¹⁰⁸ *Id.* at 7.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

involved.¹¹² Alternatively, if custodial parents do not receive public assistance, they may opt to receive their child support payments through DCSE.¹¹³ Custodial parents receiving public assistance are legally required to use the Division's services.¹¹⁴ In any case where the Division provides collection service, the custodial parent must first assign to DCSE any rights to receive funds from the responsible parent. Finally, if a non-custodial parent agrees to pay child support through voluntary assignment of his or her earnings, he or she signs an Assignment of Earnings form under oath, the form is sent to his or her employer, and the employer automatically forwards a portion of each of the responsible parent's paychecks to DCSE.¹¹⁵ These funds are credited against the non-custodial parent's support obligation.¹¹⁶ If the non-custodial parent refuses to voluntarily assign his or her wages to the agency, the Support Enforcement Specialist notifies the parents that, as soon as the obligation is legally established, an Immediate Withholding of Earnings Form will be issued to his or her employer.¹¹⁷ The Immediate Withholding of Earnings Form operates in the same manner as a voluntary assignment: it is served upon the responsible parent's employer, who forwards a percentage of the responsible parent's pay each pay period to the Division.¹¹⁸

¹¹² Harman, *A System Overload*, 39 VA. LAW. 12, 15 (Sept. 1990) (referring to "direct pay" as an alternative to DCSE involvement in the enforcement of child support payments).

¹¹³ VA. CODE ANN. §§ 63.1-250.2 (Supp. 1988); *Support Enforcement Pamphlet*, *supra* note 67.

¹¹⁴ *Support Enforcement Pamphlet*, *supra* note 67.

¹¹⁵ *Policy Manual*, *supra* note 67, ch. E, 10 (1990).

¹¹⁶ VA. CODE ANN. § 63.1-250.3(A) (Supp. 1990). The employer's duty to comply with the withholding of earnings is set forth at VA. CODE ANN. § 20-79.3 (1990).

¹¹⁷ VA. CODE ANN. §§ 63.1-250.3, -258.1 (Supp. 1990).

¹¹⁸ *Policy Manual*, *supra* note 67, at ch. E, 10.

Wage assignments may only be released by the Division of Child Support Enforcement. These assignments will only be discontinued upon satisfaction of the responsible parent's current obligation and all arrearages owing for past support, or upon replacement by a Mandatory Withholding of Earnings or an Immediate Withholding of Earnings.¹¹⁹

Enforcement

Enforcement of child support orders is the aspect of federally mandated state programs that has brought about the greatest degree of change in states' child support systems.¹²⁰ Pursuant to the Title IV-D, Virginia's Division of Child Support Enforcement employs a number of child support enforcement techniques, including immediate and mandatory withholding of earnings, liens and foreclosures, reports to credit agencies, orders to "withhold and deliver" assets of the obligor, unemployment compensation benefits, and state and federal tax refund interception programs.¹²¹

1. Immediate Withholding of Earnings.

Once a support debt is established, each Administrative Support Order issued after July 1, 1988 is required to contain an Immediate Withholding of Earnings.¹²² The administrative order is issued to the responsible parent's employer, directing its payroll department to deduct a specified amount from each of the responsible parent's

¹¹⁹ *Id.* See *infra* notes 122-30 and accompanying text.

¹²⁰ *Private Responsibility*, *supra* note 18, at 8.

¹²¹ See *Policy Manual*, *supra* note 67, ch. F, 1-48 (1990). While the following does not constitute an in-depth exploration of the various means available for the Commonwealth to enforce child support orders, it is intended to provide an overview of the more frequently-utilized methods.

¹²² VA. CODE ANN. § 63.1-250.3(A) (Supp. 1990).

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paychecks.¹²³ The responsible parent may appeal the Immediate Withholding of Earnings, but must limit any objections to the issue of whether he/she actually owes a support obligation or to the accuracy of the information appearing on the Administrative Support Order.¹²⁴ In the event of an appeal, the agency may not implement any wage withholding until the Hearings Officer hearing the appeal makes a determination as to the validity of the Administrative Support Order.¹²⁵

2. Mandatory Withholding Of Earnings.

A Mandatory Withholding of Earnings (MWE) operates in a similar manner to the Immediate Withholding of Earnings. The Immediate Withholding of Earnings, an administrative enforcement technique, however, may not be used unless the responsible parent works in Virginia, holds attachable assets in the Commonwealth, or is otherwise subjected to Virginia law.¹²⁶ The MWE, though also an administrative remedy, may be used for both in-state and out-of-state cases.¹²⁷ Like an Immediate Withholding of Earnings, the Mandatory Withholding of Earnings is served upon the responsible parent's employer, and the order takes precedence over any other state law claims upon the employee's income, except for prior wage reduction orders to pay child support.¹²⁸ A responsible parent's administrative appeal rights are, as with the Immediate Withholding of Earnings, limited in scope, and may address only a mistake of fact as to the identity of the responsible parent or error in the calculation of current child

¹²³ VA. CODE ANN. § 63.1-250.3(C), (D) (1990).

¹²⁴ *Policy Manual*, *supra* note 67, at ch. F, 2a.

¹²⁵ *Id.*

¹²⁶ *Id.* at 2b.

¹²⁷ *Id.*

¹²⁸ VA. CODE ANN. § 20-79.3(A)(7) (1990).

support or arrearages owed.¹²⁹ Unlike the Immediate Withholding of Earnings, the MWE remains in effect while the responsible parent's appeal is pending. If the responsible parent is found not to be liable for all or part of the support debt being withheld from his/her wages, the agency will return any money collected during the appeal process.¹³⁰

3. Liens and Orders to Withhold and Deliver.

For the Division to establish a lien against a responsible parent's real or personal property, that parent must either reside, be employed, or hold attachable property in the Commonwealth.¹³¹ If the parent is a federal employee, a lien may be established if the responsible parent either resides or works outside of Virginia.¹³² If the responsible parent is employed outside the Commonwealth by an employer who has a registered agent in Virginia, the responsible parent's income is subject to attachment.¹³³

Orders to Withhold and Deliver also operate to attach the responsible parent's property, but where a lien serves as an encumbrance of the responsible parent's real or personal property,¹³⁴ an Order to Withhold and Deliver is generally used to collect delinquent, not current support obligations, by collecting the responsible parent's financial holdings, such as stocks, bonds, bank accounts, and trust account income.¹³⁵ Orders to Withhold may be sent to all of the holders of the responsible parent's assets

¹²⁹ *Policy Manual*, *supra* note 67, at ch. F, 6a (1990).

¹³⁰ *Id.*

¹³¹ *Id.* at 9.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *See id.*

¹³⁵ *Id.* at 10.

until the amount of debt owed by the responsible parent is collected.¹³⁶ When the agency serves the holders of the responsible parent's assets with the order to withhold, it must similarly serve the responsible parent and afford him or her the right to an administrative appeal.¹³⁷ If the Division wins the appeal, it sends an Order to Deliver to the holders of the responsible parent's assets.¹³⁸

4. Tax refund collection.

Interception of responsible parents' state and federal tax refunds operates as a form of withholding of the refunds for the satisfaction of arrearage debts.¹³⁹ Before any funds may be collected in this manner, the Internal Revenue Service Enforcement provides the responsible parent with advance notice that the support obligation had been forwarded to the agency for collection, and informs the parent of his/her right to administrative review of this decision.¹⁴⁰ The responsible parent is entitled to not only the administrative review, but also an administrative appeal and judicial review of the certification of his debt for collection.¹⁴¹ The responsible parent's tax refund is returned to him/her if DCSE had mistakenly certified the arrearage debt to the IRS, the responsible parent has fully paid his or her debt, or the total amount collected from his state and federal tax refunds exceeds the amount certified for collection.¹⁴²

As a last resort, any IV-D agency may request, through the federal Office of Child Support Enforcement, full collection services by the Internal Revenue Service of

¹³⁶ *Id.*

¹³⁷ *Id.* at 10-11.

¹³⁸ *Id.* at 10.

¹³⁹ *Implications, supra* note 16, at 310.

¹⁴⁰ *Policy Manual, supra* note 67, ch. F, 22 (1990).

¹⁴¹ *Id.* at 23.

¹⁴² *Id.*

any delinquent support.¹⁴³ To qualify for this collection assistance, the agency must "have made reasonable efforts to collect child support without success,"¹⁴⁴ the obligation must be legally enforceable (either in the form of a court order or an Administrative Support Order), and the amount certified for collection must exceed \$750.¹⁴⁵

Interaction with the Division of Child Support Enforcement

One of the objectives of the Division of Child Support Enforcement is to "maximize the use of non-attorneys to the extent permitted by law"¹⁴⁶ in providing its services to citizens of the Commonwealth. However, there is still a need for attorney interaction with the Division. Responsible parents may be injured by the expedited procedures practiced by the Division, and their due process rights may be threatened by the child support enforcement's collections procedures.¹⁴⁷ IV-D agencies may harm the custodial parents they were designed to assist,¹⁴⁸ particularly in jurisdictions where, as in Virginia, the IV-D agency is still working to establish itself. Attorneys involved with the system in those jurisdictions can help the establishment process by increasing

¹⁴³ *Id.* at 26. For a discussion of the IRS "full collection services," *see supra* notes 49-52 and accompanying text.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 27.

¹⁴⁶ *Id.* at ch. A, 3.

¹⁴⁷ *See* Cipriani, *Child Support Enforcement Curriculum: Defenses*, 36 *Juv. & Fam. Ct. J.* 115 (Fall 1985) (defenses to child support orders and actions); Barber, *Update on Title IV-D*, 1 *AM. J. FAM. L.* 383, 389 (1987) (questionable constitutional validity of wage withholding regulations that do not provide opportunities for responsible parents to challenge "the jurisdictional validity of the underlying order").

¹⁴⁸ *See Harman, supra* note 112, at 12, 12-13 (despite "good intentions," Virginia's conversion from the court collection system to a IV-D system resulted in chaotic attempts to coordinate support funds for both AFDC and non-PA custodial parents).

their awareness of the agency's status and growth and advising clients of alternative means of support enforcement.¹⁴⁹

CONCLUSION

Despite some of the difficulties of implementing a comprehensive program to effectively collect and enforce child support without infringing upon the constitutional rights of the non-custodial parent, efforts to ensure such a system are essential for the nurturing and protection of America's children. A unified national child support enforcement program affords children in all of the states an opportunity for fair and consistent child support, helps keep custodial parents from finding it necessary to turn to public assistance for support, and establishes a proportionate share of child rearing responsibility upon each parent.

Virginia's Division of Child Support Enforcement reflects the Commonwealth's concern for and commitment to this unified national system. By consolidating child support issues into a single agency, the Commonwealth relieves Virginia's court system of many enforcement and paternity issues, and ensures that the children of Virginia are at least as well cared for as children throughout the United States.

¹⁴⁹ *Id.* at 15.