

**1999 HOUSE HUMAN SERVICES**

**HB 1407**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1407

House Human Services Committee

Conference Committee

Hearing Date February 1, 1999

| Tape Number   | Side A | Side B | Meter #    |
|---|--------|--------|------------|
| 1   | X      |        | 0.0 - 10.5 |
| 1   |        | X      | 47.1 - End |
| Committee Clerk Signature <i>Susann Lindsteigen</i> |        |        |            |

Minutes:

Chairman Rep. CLARA SUE PRICE called the committee to order at 10:00 AM.

Present were Reps. Clara Sue Price, Robin Weisz, William Devlin, Pat Galvin, Dale Henegar, Roxanne Jensen, Amy Kliniske, Chet Pollert, Todd Porter, Blair Thoreson, Bruce Eckre, Ralph Metcalf, Carol Niemeier, Wanda Rose, and Sally Sandvig.

Rep. JOHN MAHONEY, District 33, introduced the bill and testified that child support payments are determined according to a chart. When an individual pays spousal support and child support, the child support payments are periodically adjusted without consideration of spousal support payments. This bill asks for consideration of spousal support payments before raising child support payments.

Rep. ROBIN WEISZ asked when periodic child support adjustments are made, is there a problem when spousal support is not considered? Rep. JOHN MAHONEY said child support periodic adjustments do not include consideration of paid spousal support.

SUSAN BEEHLER, Mandan, (Written testimony attached).

OPPOSITION

DAN BERTSCH, Assistant States Attorney, SE Regional Child Support Enforcement Unit, testified (Testimony attached).

Rep. AMY KLINISKE asked if obligee pays taxes on child support? DAN BERTSCH said no, obligor pays.

Rep. ROBIN WEISZ asked for explanation on "equal footing" DAN BERTSCH explained the deviation is approximately 100%, i.e., \$500 - child's needs, \$1000 - mother's needs, the spousal support is at 100% which may lead to no support for the child.

Hearing Closed at 10:15 AM.

Committee Discussion.

Rep. CHET POLLERT moved DO NOT PASS.

Rep. RALPH METCALF second the motion.

Further Committee Discussion.

ROLL CALL VOTE #7: 9 yeas, 5 nays, 1 absent

CARRIER: Rep. SALLY SANDVIG

# FISCAL NOTE

(Return original and 14 copies)

Bill / Resolution No.: HB 1407

Amendment to: \_\_\_\_\_

Requested by Legislative Council

Date of Request: 01/20/99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

This bill would require spousal support paid by an obligor to an obligee to be included in the child support guidelines established by the department to assist courts in determining the amount a parent is expected to contribute toward child support. These changes to the guidelines are duties that would be assumed by current staff and therefore, there would be no fiscal impact.

2. State fiscal effect in dollar amounts:

|               | 1997-1999       |                | 1999-2001       |                | 2001-2003       |                |
|---------------|-----------------|----------------|-----------------|----------------|-----------------|----------------|
|               | <u>Biennium</u> |                | <u>Biennium</u> |                | <u>Biennium</u> |                |
|               | <u>General</u>  | <u>Special</u> | <u>General</u>  | <u>Special</u> | <u>General</u>  | <u>Special</u> |
|               | <u>Fund</u>     | <u>Funds</u>   | <u>Fund</u>     | <u>Funds</u>   | <u>Fund</u>     | <u>Funds</u>   |
| Revenues:     |                 |                |                 |                |                 |                |
| Expenditures: | -0-             |                | -0-             |                | -0-             |                |

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: \_\_\_\_\_ -0-
- b. For the 1999-01 biennium: \_\_\_\_\_ -0-
- c. For the 2001-03 biennium: \_\_\_\_\_ -0-

4. County, City, and School District fiscal effect in dollar amounts:

|  | 1997-1999       |               |                         | 1999-2001       |               |                         | 2001-2003       |               |                         |
|--|-----------------|---------------|-------------------------|-----------------|---------------|-------------------------|-----------------|---------------|-------------------------|
|  | <u>Biennium</u> |               |                         | <u>Biennium</u> |               |                         | <u>Biennium</u> |               |                         |
|  | <u>Counties</u> | <u>Cities</u> | <u>School Districts</u> | <u>Counties</u> | <u>Cities</u> | <u>School Districts</u> | <u>Counties</u> | <u>Cities</u> | <u>School Districts</u> |
|  |                 |               |                         |                 |               |                         |                 |               |                         |
|  | -0-             |               |                         |                 |               |                         |                 |               |                         |

If additional space is needed, attach a supplemental sheet.

Signed

Brenda M. Weisz

Typed Name

Brenda M. Weisz

Date Prepared: January 22, 1999

Department

Human Services

Phone No.

328-2397

Date: 2-1-99  
Roll Call Vote #: 7

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1407

House Human Services Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Chet Pollert Seconded By Ralph Metcalf

| Representatives              | Yes | No | Representatives   | Yes | No |
|------------------------------|-----|----|-------------------|-----|----|
| Clara Sue Price - Chairwoman | X   |    | Bruce A. Eckre    |     | X  |
| Robin Weisz - Vice Chairman  |     | X  | Ralph Metcalf     |     | X  |
| William R. Devlin            | X   |    | Carol A. Niemeier |     |    |
| Pat Galvin                   |     | X  | Wanda Rose        | X   |    |
| Dale L. Henegar              | X   |    | Sally M. Sandvig  | X   |    |
| Roxanne Jensen               | X   |    |                   |     |    |
| Amy N. Kliniske              | X   |    |                   |     |    |
| Chet Pollert                 | X   |    |                   |     |    |
| Todd Porter                  |     | X  |                   |     |    |
| Blair Thoreson               | X   |    |                   |     |    |
|                              |     |    |                   |     |    |
|                              |     |    |                   |     |    |
|                              |     |    |                   |     |    |
|                              |     |    |                   |     |    |

Total Yes 9 No 5  
Absent \_\_\_\_\_

Floor Assignment Sandvig

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
February 1, 1999 3:04 p.m.

Module No: HR-20-1616  
Carrier: Sandvig  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1407: Human Services Committee (Rep. Price, Chairman) recommends DO NOT PASS (9 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1407 was placed on the Eleventh order on the calendar.**

**1999 TESTIMONY**

**HB 1407**

# Fact Sheet: Child Support Enforcement Division

**What is it?** Child Support Enforcement is a joint state, county, and federal partnership to collect child support to ensure that children have the financial support of both their parents, to foster responsible behavior toward children, and to reduce welfare costs.

**Who does the division serve?** Our primary customers are the children for whom we collect funds for their support and medical care. We also serve custodial and non-custodial parents.

**What services are provided?** Working with the Regional Child Support Enforcement Units, we locate non-custodial parents, establish paternities, establish court ordered child support and medical support, and periodically review and adjust support obligations.

**Who can apply for services?** Either parent can apply for services. Applicants for TANF, Medi-caid, or Foster Care are referred to us for service.

**Are there fees?** We do not charge a fee for services.

**How is the division funded?** The federal government provides 66% of our budget; the state is responsible for the rest. The Regional Child Support Enforcement Units are responsible for their costs, generally relying on local property taxes.

**How much is collected?** Through the combined efforts of the regional units, the state office, and the federal government, our collections continue to increase at double digit rates each year. In calendar year 1998, we collected \$40.8 million, an 11.65% increase over 1997. In contrast, we collected \$12.1 million in 1990.

**Where does the money go?** Most of the amounts collected are sent to the families. A portion is retained to repay the federal, state, and county governments for TANF, Foster Care, and Medicaid payments made on behalf of families.

**What about the penalty?** The division is currently under federal penalty because we did not get FACSES, our Fully Automated Child Support Enforcement System, sufficiently developed to meet federal certification standards. The penalty, a percentage of the federal administrative funds available to us, was \$125,000 for 1998 and \$250,000 for 1999. We expect to become certified during 1999 and recover 90% of the penalty for the year, resulting in a total net penalty of \$150,000.

**What does it cost to operate the Child Support Enforcement program statewide?** The regional offices and state office spent a combined \$7.6 million in federal fiscal year 1998. Our appropriation request for the state office in the upcoming biennium, as approved in the Governor's budget, is \$6.3 million of which \$106,981 would be general funds.

**How many cases are handled?** We have about 35,000 cases, each of which involves at least three people — a child, the mother, and the father. These are primarily in-state cases, but by working with other states and other countries, we also serve people across the United States and internationally.

**What does the future hold?** We expect change in the future. With the continued emphasis at the federal and state level for people to be more self-sufficient, and the TANF imposed 60-month time limit, all levels of government and society will need to collect the amounts due for the support of children. The change in the immediate future involves bringing all case information into FACSES so that it can be certified. The guidelines, which are in the process of amendment, need to be finalized once the Legislature completes its work. The enforcement tool chest will also be revisited to ensure we are using all the appropriate tools to collect what is due. We will continue to work with our customers to ensure that we are providing prompt, courteous and accurate services.

Prepared January 1999 for the North Dakota Department of Human Services. For information call (701) 328-3582.



2/1/99

GOOD MORNING CHAIRMAN REPRESENTATIVE PRICE AND MEMBERS OF THE HOUSE  
HUMAN SERVICE COMMITTEE:

MY NAME IS SUSAN BEEHLER A UNPAID LOBBYIST FOR R-KIDS, MOTHER OF FIVE  
CHILDREN, A CUSTODIAL PARENT AND A SMALL BUSINESS OWNER.

WE ARE IN FAVOR OF HB 1407. IN LOOKING AT WHAT OTHER STATES ARE DOING  
IN REGARDS TO SPOUSAL SUPPORT, 35 STATES SPECIFICALLY ADDRESS HOW TO  
USE SPOUSAL SUPPORT WHEN FIGURING CHILD SUPPORT. THE STATES ARE ALABAMA  
ARIZONA , COLORADO,CONNECTICUT, DELAWARE, FLORIDA, DISTRICT OF COLUMBIA,  
HAWAII, IDAHO,KANSAS, KENTUCKY, LOUISIANA, MARYLAND, MASSACHUSETTS,  
MICHIGAN, MINNESOTA,MISSISSIPPI, MISSOURI, MONTANA, NEW HAMPSHIRE,  
NEW JERSEY, NEW MEXICO,NEW YORK, OHIO, OKLAHOMA, OREGON, PENNSYLVANNIA  
SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH VERMONT, VIRGINIA,  
WASHINGTON, WYOMING.

BECAUSE A MAJORITY OF STATES ARE INCOME SHARES MODEL STATES, ALIMONY  
IS TREATED AS INCOME TO THE OBLIGEE WHEN DETERMING SUPPORT,  
SOME SPECIFICALLY SAY IT IS DEDUCTED FROM OBLIGOR'S INCOME AND ADDED  
TO OBLIGEE INCOME OTHERS HAVE RULES REGARDING PREEXISTING ORDERS, AND  
DEVIATION FACTORS TO ADDRESS THE FAIRNESS ISSUE OF WHETHER OR NOT IT  
SHOULD BE CONSIDERED. OUR STATE HAS IGNORED ADDRESS THIS ISSUE UNTIL NOW.

WE URGE YOU TO PASS HB1407.

SUSAN BEEHLER  
702 14TH ST NW  
MANDAN ND 58554  
663-4728



A ARGUMENT I HAVE HEARD IS THAT THE CHILD SUPPORT SHOULD BE GIVEN PRIORITY  
SO BY SUBTRACTING THE SPOUSAL SUPPORT LIVES LESS FOR THE CHILD. THAT

**TESTIMONY BEFORE THE  
HOUSE HUMAN SERVICES COMMITTEE  
REGARDING HB 1407  
February 1, 1999**

Chairman Price and members of the House Human Services Committee, my name is Dan Bertsch. I am an Assistant State's Attorney with the Southeast Regional Child Support Enforcement Unit. I oppose HB 1407.

Pursuant to §75-02-04.1-09(2)(j), the child support guidelines, courts already have discretion to reduce an obligor's child support obligation because of spousal support paid by the obligor and if the court is convinced a reduction is justified. This legislation is unnecessary, and it is inappropriate.

Spousal support is interrelated with property division and based on a number of factors that are not even appropriately considered in establishing child support. Whether or not spousal support is awarded is based on a number of criteria, including the obligee's needs and the ability of the obligor to pay. Child support received by an obligee the obligor is a resource of the obligee that a court may consider in determining whether the obligee spousal support should be paid.

However, child support is intended to provide support for the child, and is, and should be, given greater consideration than spousal support. Spousal support is a consideration secondary to child support and is determined after child support is established, based on the circumstances at a particular point in time.

If the IV-D agency seeks an amendment of an obligor's child support obligation, there is no deduction for spousal support specified in the North Dakota Child Support Guidelines, but the court can take into account the spousal support the obligor is currently paying and make a deviation from the child support guidelines

upon a proper request for a deviation by the obligor. However, a more likely and appropriate scenario would be that the obligor would simultaneously seek to reduce the spousal support in light of his reduced ability to pay due to the increased child support obligation. The same would be true if we were attempting to establish a child support obligation for a child from another relationship. In the latter case the obligor should seek a reduction in a pre-existing spousal support obligation rather than penalizing the child in need of a parent's support.

In HB 1407 I see an opportunity to manipulate the terms of a divorce decree to circumvent all the safeguards that have been put in place to assure that child support is paid to the child. I see HB 1407 as an endorsement for, or at least an opportunity for obligors' attorneys to argue, the proposition that child support can be given a back seat to spousal support in formulating a divorce settlement or judgment, contrary to the current situation.

I can envision cases where an obligor will attempt to persuade the obligee or the court to award substantial spousal support, and no child support, in order to avoid a child support obligation, and thus avoid the "system" completely. This may be acceptable and workable for both parties in some situations but, if the parties' relationship breaks down the obligee would have several disadvantages until she can get back to court to establish an appropriate child support obligation.

Spousal support does not have to be paid through the Clerk of Court nor the SDU if it is not owed in conjunction with a child support obligation. The Clerk of Court does not enforce a spousal support obligation through contempt proceedings, unless it is in conjunction with a child support obligation. Income withholding orders cannot be issued for spousal support alone. The States Attorneys have no obligation to assist in the collection of spousal support unless combined with a child support obligation. The IV-D offices have no authority to collect a spousal

support obligation alone, and other IV-D services would also be available, such as a review of the obligation or interstate enforcement. The burden of enforcing a spousal support obligation is completely the obligee's. And the obligee also pays all the taxes on the spousal support award.

I believe HB 1407 is not only unnecessary, but may lead to instances of abuse that would not be possible if there is no statute which puts spousal support on equal footing with child support. I urge that HB 1407 not pass.

OFFICE OF CHILD SUPPORT ENFORCEMENT

U.S. Department of Health and Human Services  
Aerospace Building  
370 L'Enfant Promenade, SW  
Washington, D.C. 20447

*Giving Hope and Support to  
America's Children*

# Handbook on Child Support Enforcement



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Administration for Children and Families  
Office of Child Support Enforcement

## I. INTRODUCTION

Are you a parent--divorced, separated or never married--with children to support?

Do you need help to get a child support order?

Do you need help to collect child support payments from the parent who has an order to pay?

States must use proven enforcement tools on behalf of families who apply for child support enforcement services. The Child Support Enforcement (CSE) Program is run by State Human Services Departments, Attorney General's Offices, or Departments of Revenue. To learn more about the program or to apply for child support services, call your local CSE office. Check the county listings in your telephone book to get the telephone number, or call or write the State CSE Agency listed at the back of this Handbook. (CSE Agency toll-free numbers, when available, are listed too.)

For the most part, child support enforcement problems are handled according to State and local laws and practices. States often can use *administrative procedures*\* or other legal processes for establishing and enforcing support orders more quickly than is usually possible with court proceedings.

In this Handbook, you will find the basic steps to follow to establish paternity and obtain a support order, and to collect the support due, whether you are working with your State or local CSE Program or your own attorney. The Handbook is organized so that you can refer directly to the sections you need.

Your State's Child Support Enforcement Program is available to help you:

- . Find the noncustodial parent: **Location**
- . Establish legal fatherhood for children: **Paternity**
- . Establish the legal support order: **Obligation**
- . Collect child support payments: **Enforcement**

\* Words in italics are defined in the Glossary beginning on page 39.

Problems such as property settlement, *visitation* and *custody* are not, by themselves, child support enforcement issues and the CSE Program generally cannot enforce court orders relating to them. Parents must deal with these issues through the courts or other systems set up by the State.

Today, about 85 percent of *custodial parents* are women and 15 percent of custodial parents are men. As you go through this Handbook, remember that either parent may have been awarded primary custody by the court.

**REMEMBER:** The more you know about child support enforcement, the more you take an active role in getting information to your caseworker and asking questions about your case, the more success you will have in obtaining regular and full child support payments for your children.

The person you will be working with at your enforcement office may be called a caseworker, investigator, enforcement worker, collection specialist, or child support worker. The term "caseworker" will be used in this Handbook. Also, the words "court" or "judge" mean the official agency having the authority in your State to make legally binding decisions.

### Who can get help?

Any parent or person with custody of a child who needs help to establish a child support or medical support order or to collect support payments can apply for child support enforcement services. People who have received assistance under cash assistance programs - *Aid to Families with Dependent Children (AFDC)*, or the new *Temporary Assistance for Needy Families (TANF)* (we will refer to these as "cash assistance" in this Handbook), or *Medicaid* or *Federally-assisted Foster Care* programs are automatically referred for child support enforcement services.

An unmarried father can apply for services to establish paternity--a legal relationship with his child.

A *noncustodial parent* whose case is not in the CSE Program can request services to make payments through the Program. Doing so can ensure that there is a record of payments made.

### Where do I apply for help in obtaining child support?

Through your local child support enforcement (CSE) office. The number can be found in your telephone directory usually under the State/County social services agency.

### Is there an application fee?

People receiving assistance under Medicaid, Foster Care, or cash assistance programs do not have to pay for CSE services. For all others, a fee of up to \$25 is charged, although some States absorb all or part of the fee or collect payment from the noncustodial parent.

### Are there any other costs?

Because child support agencies may recover all or part of the actual costs of their services from customers who are not in a public assistance program, there may be other costs to parents. These can include the cost of legal work done by agency attorneys and costs for locating a noncustodial parent. Such costs may be deducted from the child support before it is sent to you or may be collected from the noncustodial parent. Not all States recover the costs of their services. Your local CSE office can tell you about the practices in your State.

### My State recovers costs from the custodial parent. How will I know how much will be deducted from my support checks?

Your caseworker should be able to estimate the costs involved in your case, and give you an idea of how much they will deduct from each check before sending it to you.

### Will I receive the entire amount of support paid?

If you have not received cash assistance, you will receive the total child support payment (less any fees the State may collect). If you are receiving cash assistance, check with your State CSE Agency. Some States will give you the entire child support payment and reduce your assistance payment, others will keep the entire amount and not reduce the assistance payment. If you are not receiving cash assistance now but did in the past, if amounts are still owed to the State, any support collected beyond the amount ordered for current support may be used to reduce the arrearages owed.

**Will there be an extra cost if the enforcement agency is dealing with the enforcement agency in another State?**

There may be extra costs if more than one State is handling your case. Ask your caseworker to estimate these costs, if any.

**Will the enforcement agency keep track of my child support payments to make sure they keep coming? I am not in a cash assistance program.**

CSE offices are required to monitor payments to make sure they are made regularly and fully. But you should inform the agency if payments are late or in the wrong amount, or if you receive payments directly. When you monitor your case, you can keep the CSE office informed so that it can act quickly if needed.

**I'm getting a divorce and my spouse wants me to pay child support directly to her. Can I insist on paying through the CSE office?**

You should send your payment to whomever is specified in the child support order. Since January, 1994, support orders must include a provision for *wage withholding* unless both parents and the courts agree on another payment method. If your order does not call for wage withholding, you can request this service. If you do, you will have a record that you have made payments as required. If you are self-employed, you may be able to arrange for an automatic transfer of funds to the child support agency through *electronic funds transfer*. Either parent can apply for CSE services, which include receiving and distributing payments.

**The noncustodial parent lives across the State. I cannot afford to take the time off from work or travel there for a child support hearing. How can I get enforcement of my child support?**

Most local CSE offices handle enforcement in different *jurisdictions* in the same State without your having to travel outside your own jurisdiction. Ask your local CSE office for details about how enforcement would work in your case.

**I am applying for cash assistance. Do I have to provide information about the father?**

To be eligible for assistance, you must provide information to help to identify the father and collect child support from him. Any child support

collected will be used to help support your children--going either directly to you or to repay the State for your assistance grant. Your State CSE Agency will explain how the child support will be used.

**I am applying for cash assistance, but I am afraid that the father may hurt me or the children if I tell a caseworker who he is. What should I do?**

Under some conditions, the CSE office may agree that there is "good cause" for not trying to collect support from the father. You can explain the situation to your caseworker and provide supporting information.

**My children and I need money now. The noncustodial parent left us 10 years ago. Can the CSE office still take my case?**

If you apply for services, the CSE office will try to find the noncustodial parent to establish or enforce a child support obligation. Be sure to give your caseworker all the information you have that might help find the parent.

**If the CSE office can't find the noncustodial parent, does that mean I can't get cash assistance?**

No. You can get cash assistance if you are trying to help find the noncustodial parent. Your State or local CSE Agency will tell you what information they will need you to provide in order to get assistance.

**What does the child support enforcement agency need to know?**

No matter where you start--establishing paternity, finding a noncustodial parent, establishing or enforcing a support order--the CSE office must have enough information to pursue your case. All information you provide will be treated in confidence. The more details you provide, the easier it will be to process your case and to collect child support payments for your children.

**What documents do I need to bring to the enforcement agency?**

The following information and documents will help the CSE office to locate the parent, establish paternity, and establish and/or enforce your child support order:



- Information about the noncustodial parent
  - name, address and social security number
  - name and address of current or recent employer
  - names of friends and relatives, names of organizations to which he or she might belong
  - information about his or her income and assets - payslips, tax returns, bank accounts, investments or property holdings
  - physical description
- children's birth certificates
- if paternity is an issue, written statements (letters or notes) in which the alleged father has said or implied that the child is his
- your child support order
- your divorce decree or separation agreement
- records of any child support received in the past
- information about your income and assets

You play a big role in getting the child support your children deserve.

**I'm the noncustodial parent. I love my kids. I pay my child support. About half the time when I go to pick them up for my weekend, my ex-wife has made other plans for them. It's not fair that the State will enforce my child support obligation but not do anything about my rights.**

Although the CSE Program lacks authority to enforce visitation, many State or local governments have developed procedures for enforcing visitation orders. Also, a provision of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) makes funding available to States for developing model programs to ensure that children will be able to have the continuing care and emotional support of both parents. Check with your CSE office to see what resources are available to you and to find out about laws which address custody and visitation.

## II. FINDING THE NONCUSTODIAL PARENT: LOCATION

To establish the paternity of a child, to obtain an order for support, and in most cases, to enforce that order, the CSE agency must know where the other parent lives or works. When a legal claim is made by one person against another, the *defendant* must be given notice of the legal action taken and the steps necessary to protect his or her rights. To notify the noncustodial parent in advance--either by certified mail or in person--child support enforcement officials need a correct address. If you do not have the address, the CSE office can try to find it. The most important information that you can provide to the child support office is the noncustodial parent's social security number (SSN).

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) has given us an important new tool for locating parents who owe child support. It requires State and National Directories of newly hired employees. Employers will be required to report their employees within 20 days of their hiring to a State Directory of New Hires. The State Directory will report the information to a National Directory of New Hires provided by the Federal Office of Child Support Enforcement.

State CSE Agencies, with due process and security safeguards, have access to information from the following:

- State and local government:
  - vital statistics
  - state tax files
  - real and titled personal property records
  - occupational and professional licenses and business information
  - employment security agency
  - public assistance agency
  - motor vehicle department
  - law enforcement departments
- Records of private entities like public utilities and cable television companies (such as names and addresses of individuals and their employers as they appear in customer records)
- Information held by financial institutions, including asset and liability data.

I think the noncustodial parent is still in the area. What information will the enforcement office need to find him?

Most important is the SSN and an employer's name and address; also helpful are the names, addresses and phone numbers of relatives, friends, or former employers who might know where he/she works or lives. Unions and local organizations, including professional organizations, might also have information.

**What if I don't have the SSN?**

Social security numbers are now required on applications for professional licenses, commercial driver's licenses and marriage licenses, on divorce records, support orders, paternity determinations or acknowledgements, and death records.

If none of these is available, or the SSN was not yet required when the document was issued, the CSE office can subpoena information about bank accounts, insurance policies, credit cards, paystips, or income tax returns. If you and the other parent filed a joint Federal income tax return in the last three years, the CSE office can get the social security number from the IRS. Your caseworker may be able to get the SSN with at least three of the following pieces of information: the parent's name, place of birth, date of birth, his/her father's name, and his/her mother's maiden name.

**What if the noncustodial parent cannot be found locally?**

Your CSE office will ask the *State Parent Locator Service (SPLS)* to search. Using the social security number, the SPLS will check the records of State agencies such as motor vehicle registration, unemployment insurance, income tax, and correctional facilities. If the SPLS finds that the parent has moved to another State, it can ask the other State to search, or send a request to the *Federal Parent Locator Service (FPLS)*.

**What resources does the FPLS have?**

The FPLS can search for addresses in the records of the Internal Revenue Service, the Department of Defense, the National Personnel Records Center, the Social Security Administration, the Department of Veterans Affairs, and State Employment Security Agencies. States will be reporting newly hired employees to a National Directory of New Hires, which, as of October 1, 1997, will be a part of the FPLS.

**Can my lawyer or I ask the FPLS to find an address for the other parent?**

Not directly. However, you or your attorney can submit a request to use the FPLS through the local or State CSE Agency.

**Can State and Federal location efforts be made at the same time?**

Yes. For instance, a search can be initiated by the State to another State and to the FPLS at the same time.

**Can enforcement agencies use the Federal income tax return to find out where the noncustodial parent lives and what he or she earns?**

Yes. Under certain conditions, the IRS, working through the State and Federal Child Support Enforcement Agencies, may disclose to the child support office information that income providers submit on IRS Form 1099. This information is a valuable tool to help find a noncustodial parent and determine his or her financial assets. The information may only be used for the purpose of enforcing child support payments.

Information available through Form 1099 includes both earned and unearned income, including wages, earnings on stocks and bonds, interest from bank accounts, unemployment compensation, capital gains, royalties and prizes, and employer and financial institution addresses. A number of very small businesses submit 1099 asset information to the IRS, so this can be a good source of information. Any information obtained from the IRS must be verified through a second source, such as an employer or bank, before the CSE agency can use it.

**What will happen when the caseworker has the current address of the noncustodial parent?**

The worker will verify the home and work addresses, then ask the noncustodial parent to come to the CSE office for an interview, or notify him/her that legal action may be taken.

**The father of my child is in the military, but I don't know where he is stationed. Can the enforcement agency find him?**

Yes. The FPLS can provide the current duty station of a parent who is in any of the uniformed services.

### III. ESTABLISHING FATHERHOOD: PATERNITY

A father can acknowledge paternity by signing a written admission or *voluntary acknowledgement* of paternity. All States have programs under which birthing hospitals give unmarried parents of a newborn the opportunity to acknowledge the father's paternity of the child. States must also help parents acknowledge paternity up until the child's eighteenth birthday through vital records offices or other entities designated by the State. Parents are not required to apply for child support enforcement services when acknowledging paternity.

Under the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA) an acknowledgment of paternity becomes a *finding* of paternity unless the man who signed the acknowledgment denies that he is the father within 60 days. If it becomes necessary to seek child support, a finding of paternity creates the basis for a child support order. A support order against the father cannot be established for a child who is born to unmarried parents until paternity has been established.

It is important to establish paternity as early as possible. While CSE offices must try to establish paternity for any child up to the child's 18th birthday, it is best to do it as soon after the child's birth as possible. If the man will not acknowledge that he is the father, the CSE agency can order *genetic testing*. These tests are simple to take and highly accurate.

#### **What are the benefits of establishing paternity?**

Paternity establishment can provide basic emotional, social, and economic ties between a father and his child.

Once paternity is established legally, a child gains legal rights and privileges. Among these may be rights to inheritance, rights to the father's medical and life insurance benefits, and to social security and possibly veterans' benefits. The child also has a chance to develop a relationship with the father, and to develop a sense of identity and connection to the "other half" of his or her family. It may be important for the health of the child for doctors to have knowledge of the father's medical history.

#### **What will the enforcement caseworker need to know to try to establish paternity?**

The caseworker needs as much information as you can give about the alleged father and the facts about your relationship with him, your

pregnancy, and the birth of your child. Some of these questions may be personal. States must keep the information that you give confidential.

The caseworker will also want to know whether he ever provided any financial support, or in any other way acknowledged--through letters or gifts--that the child was his. A picture of the alleged father with the child is helpful, as well as any information from others who could confirm your relationship with him.

**What if he denies he is the father, or says he's not sure?**

Paternity can be determined by administrative procedures which take into account highly accurate tests conducted on blood or tissue samples of the man, mother and child. Genetic test results indicate a *probability of paternity* and can establish a legal *presumption of paternity*. These tests have an accuracy range of between 90 and 99 percent. They can exclude a man who is not the biological father and can also show the likelihood of paternity if he is not excluded. Each party in a contested paternity case must submit to genetic tests at the request of either party or the CSE agency.

**If genetic tests are necessary, who pays for them?**

If the State orders the tests, the State must pay the cost of the testing. If the father is identified by the tests, some States will charge him for their costs.

If a party disputes the original test result, he or she can pay for a second genetic test and the State must then obtain additional testing.

**What happens if I am not sure who the father is?**

If the father could be one of several men, each may be required to take a genetic test. These tests are very accurate, and it is almost always possible to determine who fathered a baby and to rule out any one who did not.

**My boyfriend is on a military base abroad and I am about to have his baby. How can I establish paternity and get an order for support?**

You can apply for child support enforcement services at your local CSE office. If he is willing to sign documents to acknowledge paternity and agree to support, then enforcement can proceed by a wage withholding

order. If the man is on a naval ship or lives on a military base abroad, he will not acknowledge paternity, it may be necessary to wait until he returns to the United States for blood work to be done.

**The father of my child said I would never get a paternity judgment on him because he'd just leave the State. What happens in this case?**

If the accused father fails to respond to a formal *complaint* properly served upon him, a *default judgment* can be entered in court. The default judgment establishes paternity. At the same time, a court order for support may be issued. If the parent has disappeared, State and Federal Parent Locator Services can be called on to help find him. States must give full faith and credit to paternity determinations made by other states in accordance with their laws and regulations.

**My boyfriend and I are still in high school, and our baby is 6 months old. Why should legal paternity be established if the father has no money to support the child?**

When the father gets older and starts working, he will be able to support the child. Having paternity established legally, even if the order for support is delayed, means collecting child support will be easier later.

**My baby's father lives out of State. Can I still have paternity established?**

Yes, you can. If the baby was conceived in your State, or the father used to live there, your State can claim "long arm" jurisdiction over him, and require that he appear for paternity establishment. If your State cannot claim jurisdiction, the CSE Agency can petition the State where he lives to establish paternity. Your caseworker will be able to tell you what needs to be done in your case.

**What happens after paternity is established?**

If it becomes necessary to establish a child support order, a CSE caseworker may discuss the child's needs with the father and what he is required to pay for child support according to the State guidelines. The court may also include at this time the exact terms of custody, visitation, and other parental rights.

**I don't want my daughter's father in our lives. I'd rather work two jobs and support my child myself than have him establish paternity. As long as I don't receive public assistance, why does establishing paternity matter?**

There are few situations when it is not in children's best interest to have paternity established. Knowing their father and having his emotional and financial support is very important to children. Also, remember, the child's father has the right to request genetic testing to prove that he is the father and he can then establish the legal right to a relationship with his child.

**I don't have any way to support my baby without help, but my baby's father is dangerous. I'm afraid to tell the caseworker who he is.**

If you are worried about your or the baby's safety if you try to establish paternity, if you need to be in a cash assistance program, you may talk with your caseworker about showing "good cause" for not naming the father.

**My child's father wants to declare paternity. Is there an easy way for him to do this?**

All States offer parents the opportunity to voluntarily acknowledge a child's paternity until the age of 18. Forms are available at the hospital or from the State vital records agency. More information is available from the CSE agency.

If child support enforcement becomes an issue, it is necessary to have a legal order for child support spelling out the amount of the *obligation* and how it is to be paid. Data from the United States Census Bureau show that, of the over 11 million families with a parent living elsewhere, only 56 percent have legally binding support orders.

Establishing a support order depends on how much success you and your caseworker or lawyer have in several critical areas, such as locating the noncustodial parent if necessary, identifying what he or she can pay, and determining the financial needs of the child.

States are required to have child support *guidelines* available to all people who set child support amounts. Most State guidelines consider the needs of the child, other dependents, and the ability of the parents to pay. States must use the guidelines unless they can be shown to be inappropriate in a particular case.

States today have arrangements for establishing the support order by an *administrative procedure* or other expedited legal procedure. The hearing may be conducted by a master or a referee of the court, or by an administrative hearings officer. An agreement made between the parents, based on the appropriate child support guidelines, and approved by this kind of agency generally has the same effect as one established in court. It is legally binding on the parties concerned.

The agreement that the parents make should provide for the child's present and future well-being. It may be useful to discuss these issues together if you can, or with a mediator or family counselor. You may call your Child Support Enforcement (CSE) office to find out about your State's guidelines.

**How does the caseworker find out about the other parent's income or assets? I don't know much that will help.**

The caseworker will make every possible effort to identify the parent's employment, property owned, and any other sources of income or assets. This information must be verified before the support order is final. Under certain situations, the IRS may provide financial information about the parent's earned and unearned income such as interest payments and unemployment compensation. The State CSE agency now has access to financial institution data, such as bank accounts, and credit bureau data, which may provide information about employers and/or assets.

**I'm sure the other parent is willing to pay support. Can we make an agreement between ourselves and present it to the court?**

If parents can cooperate and agree, all the better. You can get help from a lawyer, mediator or family counselor. The court's sole interest in your agreement is to see that it is fair to all parties, that the welfare of the children is protected, and that the agreement conforms with the guidelines.

**Are the earnings of both parents considered in setting support awards?**

In some State guidelines, both parents' earnings are considered in setting the amount of the support order. Check with your CSE office. Laws vary from State to State, but parents who can work out a fair support agreement between themselves will have a better chance of having their wishes recognized in court.

**My wife and I are working out a joint custody agreement. How would the court decide the amount of child support for each of us?**

That depends a lot on the terms of your custody agreement and on your State guidelines: some States have guideline formulas that take joint custody into account. The same factors would apply: State guidelines, each parent's ability to pay, and the needs of the child.

**My husband's income is enough to support the children and me without a drop in our standard of living after the divorce. Do the courts consider this?**

These decisions, again, are based on the State's guidelines. Of course, parents can try to have the amount of support changed if their financial situations change.

**I just heard that my son's mother has had three promotions in the last four years but the child support is still like it was six years ago. Is there some way to find out when she has a raise?**

CSE offices will review child support orders every three years if either parent requests such a review. Ask your caseworker for information about reviewing and, if appropriate, modifying your child support order. States can adjust child support orders according to child support guidelines, a cost of living adjustment, or automated methods determined by the State.

**What can I do to get my support increased if it is too low?**

If you go to your CSE office for a modification of your order, the income and assets of the *noncustodial parent*, in many States your financial situation, and any special needs of the child will need to be determined. If appropriate, the agency can then seek a legal modification.

**Is there a limit to the amount of money that can be taken from my paycheck for child support?**

The amount that can be withheld from an employee's disposable wages is limited by the Federal Consumer Credit Protection Act (FCCPA) to 50 percent of disposable earnings if an obligated parent has a second family and 60 percent if there is no second family. These limits are each increased by 5 percent (to 55% and 65%) if payments are in arrears for a period equal to 12 weeks or more. State law may further limit the amount that can be taken from a wage earner's paycheck.

**My ex-husband has remarried and has another family to support. How will this affect the support that my children are due?**

Even though the noncustodial parent has a second family, this does not eliminate responsibility to the first family. In some States, the judge may grant the noncustodial parent a decrease in the obligation based on guidelines for child support. You should be notified beforehand and given an opportunity to contest the proposed change. Other factors which could lower the support order include steady employment of the child or poor health or decreased earning ability of the noncustodial parent.

**My children's father is divorcing again and will have another child support order. We live in another State and I'm afraid that this second order will be enforced before mine.**

State guidelines may indicate how child support is to be shared when there is more than one support order. If his income will not provide for both orders, the amount of support for your children may be reduced, but you will receive a share of the support collected. For orders enforced by wage withholding, States must have a formula for sharing the available income among the support orders. Ask your caseworker for more information.

**I can't get health insurance with my job but my ex-wife gets good benefits where she works. Can she be required to put the children on her insurance?**

Yes. The CSE agency must petition the court to include *medical support* in any order for child support when employment related or other group health insurance is available to the noncustodial parent at a reasonable cost. Court orders can also be modified to include health care coverage.

If you are not receiving cash assistance or Medicaid, the CSE agency will help you enforce a medical support order if you want it to. If you do not want its help, you may decline it. For people on cash assistance, or Medicaid, the CSE agency must order the noncustodial parent to provide health insurance, if it is available.

Federal law requires States to have laws which should make medical support enforcement easier. For example, insurers can no longer refuse to enroll a child in a health care plan because the parents were not married or because the child does not live in the same household as the enrolled parent. The law also created a tool that child support agencies will be able to use to establish and enforce medical support when the noncustodial parent participates in a group health plan but does not enroll the child.

This law provides that custodial parents can obtain information about coverage directly from an insurer, submit claims directly to the insurer, and be reimbursed directly by an insurer. For specific information about these laws in your State, contact the CSE office.

**The father of my child is in jail. Can I get support?**

Past-due support may accumulate while the father is in jail. But unless he has other assets, such as property or any income such as wages from a work-release program, it is unlikely that support can be collected while he is in jail. Depending on State law, your support order may be modified so that payment is deferred until he is released and working.

**After I pay my child support, I don't even have enough money for decent food. When my child support order was set I was making about \$300 a month more than I am now. Can I get the order changed?**

Either parent can request a review, and adjustment, if appropriate, of a child support obligation every 36 months, or sooner if there has been a

substantial change in circumstances such as reduced income of the obligated parent. Check with your CSE office to see if your child support obligation is in line with State guidelines and ask how to request a review.

If your case does not meet the State's standards for review, either because the order has been reviewed within three years or the change in income is smaller than would merit an adjustment under State standards, you may still be able to petition the courts for a hearing. In this case, it may be helpful to have the services of an attorney. Your local legal aid society may be able to provide low-cost counsel to parents who cannot afford a private attorney. Also a number of States have information about how to handle your case pro se (a legal term for representing yourself) to have the courts determine if your support obligation should be changed. Contact your local CSE office or the court.

## V. ENFORCING THE SUPPORT ORDER: ENFORCEMENT

A main objective of the Child Support Enforcement Program is to make sure that child support payments are made regularly and in the correct amount. While many *noncustodial parents* are involved in their children's lives and are willing to pay child support, lapses of payment do occur. When they do, a family's budget can be quickly and seriously threatened, and the anxiety the *custodial parent* feels can easily disrupt the family's life.

For this reason, Congress decided that *immediate wage withholding* should be included in all child support orders. (States must also apply withholding to sources of income other than wages.) For child support orders issued or modified through State CSE Programs, immediate wage withholding began November 1, 1990. Immediate wage withholding began January 1, 1994 for all initial orders which are not established through the CSE Program. The law allows for an exception to immediate wage withholding if the court (or administrative process) finds good cause, or if both parents agree to an alternative arrangement. In these cases, an arrearage equal to one month's payment will trigger withholding.

If the noncustodial parent has a regular job, wage withholding for child support can be treated like other forms of payroll deduction--income tax, social security, union dues, or any other required payment.

If payments are skipped or stop entirely, especially if the noncustodial parent is self-employed, works for cash or commissions, changes employment, or moves frequently, the CSE office will try to enforce the support order through other means.

Subject to due process safeguards, States have laws which allow them to use enforcement techniques such as State and Federal income tax offset, *liens* on real or personal property owned by the debtor, orders to withhold and deliver property that may satisfy the debt, or a seizure and sale of property with the proceeds from the sale applied to the support debt. These methods can be used by the CSE office without directly involving the courts.

**The noncustodial parent refuses to pay child support, but owns a good deal of property in the county. Can a lien be issued on the property?**

Yes. But you must remember a lien on property does not by itself result in the immediate collection of any money. It only prevents the owner from selling, transferring, or borrowing against the property until the child



support debt is paid. However, the presence of a property lien may encourage the noncustodial parent to pay the past-due child support in order to retain clear title to the property. States are now required to give full faith and credit to liens issued by another State.

**Is it possible to collect the support payments from personal property?**

Under some State laws, the enforcement official can issue an order to withhold and deliver. The order is sent to the person, company, or institution that is holding property belonging to the debtor, such as a bank account, investments, or personal property. The holder of the property must deliver it either to the enforcement agency or court that issued the support order. Some States permit the property to be attached or seized and sold to pay the debt. Some States require noncustodial parents with a poor payment history to pledge property as a guarantee of payment. Non-payment results in forfeiture of the property.

**I am working with a private attorney. Can she request wage withholding for my child support payments?**

Yes. You can collect support through wage withholding if you use a private attorney rather than the CSE office. States must also apply withholding to other kinds of income in addition to wages, such as bonuses, commissions, retirement, rental or interest income.

**Can I have the wage withholding applied to my existing child support order?**

Yes, you can apply for the wage withholding through your local CSE office or your attorney. Though there are limits on how much of a person's check can be withheld, wage withholding can be used for both ongoing support and arrearages. Ask the CSE agency how this can be done.

**Why can't my attorney work on my child support problem while I am receiving services from the child support program?**

Your attorney can work with the child support program. For best results, they should coordinate their efforts to prevent duplication of services and conflicting enforcement decisions.

**My child's mother works for a big company and has moved several times in her job. Can wage withholding work in this case?**

Yes. States must recognize the wage withholding orders from other States, and continue the wage withholding as ordered, without regard to where the noncustodial parent or the custodial parent and children live.

**My ex-husband has a good job and is willing to have the payments deducted from his paycheck, but his employer won't do it. What can I do?**

Under Federal law, an employer **must** withhold the support if ordered to, or if the noncustodial parent requests it. If you run into problems with an employer, seek the assistance of your CSE office.

**The children's father works irregularly and is paid in cash. Wage withholding won't work for me. What will?**

Automatic billing, telephone reminders, and delinquency notices from your CSE office might convince him to make regular payments. Other techniques, such as property attachment, credit bureau reporting, tax refund offset, and liens might work for the arrearages. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) requires States to enact legislation to allow suspending or revoking drivers, professional, occupational and recreational licenses if an arrearage develops. If none of these is successful, your enforcement office can take the case to court for stronger enforcement methods.

**My ex-wife has her own computer programming service. How can the CSE office find out how much she earns, and how can they collect the money?**

The CSE office has access to information from the Internal Revenue Service to determine her income and assets. This information will help to set the support order amount.

Cases involving self-employed noncustodial parents can be the most challenging to work, and often take more time and effort. If it is not possible to arrange for an allotment or withholding, it may be possible to secure liens on her payments from regular clients or to garnish her bank account. If her business depends on having a license, she may make arrangements to pay rather than risk losing her license. Knowing that arrears will be reported to a credit bureau may give her a strong incentive to comply with the order. Provide your caseworker with as much information as you can about the business and her clients.

**My children's father owns a cross-country moving van and a nice home. Why won't the child support office put a lien on either one?**

Most States will not put a lien on a primary residence or attach property which a person needs to make a living. Talk to your caseworker about what kinds of property are available for liens and attachment in your State.

**My ex-spouse is in the Army. How do I go about having child support payments deducted from a paycheck? And can I get medical coverage for my child?**

Members of the military are subject to the same wage withholding requirements as other public or private employees. Federal garnishment procedures should be used in most instances, although use of military involuntary allotments is sometimes more appropriate. If a service member is not meeting a support obligation, a wage withholding order can be sent to the Defense Finance and Accounting Service (DFAS) Center in Cleveland, Ohio. Ask your CSE office for information on how to start this action.

To get medical coverage for a child of a military member, the child must be enrolled in the Defense Enrollment Eligibility Reporting System (DEERS). Contact the following DEERS Office for the nearest DEERS enrollment site:

800-334-4162 (California only)  
800-527-5602 (Alaska and Hawaii only)  
800-538-9552 (all other States)

**My children's father retired from the Navy when he was only 40, just before our divorce. Can his military retirement check be garnished for back child support?**

Yes, it is possible to garnish the income of retired members of the military. With the assistance of your caseworker or lawyer, you can get a garnishment order from the court and send it with a certified copy of your child support order to DFAS (as above). Your local enforcement office can tell you the exact procedures and follow through on your behalf.

**The children's mother works for the Federal government. She was recently transferred and stopped making payments. What do I have to do to get them started again?**

All Federal employees are subject to wage withholding, and there is a central payment office for each Department, so moves within the Department should not affect a wage withholding order. If you do not have a formal support order, ask a child support office or an attorney about establishing one. If you have a child support order, your CSE office or attorney can help you to secure payments by wage withholding. If she has moved to a different Department, the Federal Parent Locator Service (FPLS) can provide her new location.

**Can past-due child support be taken from the State income tax refund?**

Under Federal law, all States with State income tax must *offset* State income tax refunds for past-due support owed to families, and to States for cash assistance they have provided.

**How does the non-paying parent find out that his or her State tax refund will be taken?**

The State must notify the noncustodial parent in advance of taking the action. The notice specifies the amount owed in arrears and the amount to be offset. It also tells whom to contact if the person wants to contest the offset.

**Can Federal income tax refunds be offset the same way?**

Yes, States can request an offset of Federal income tax refunds for past-due support of over \$500 owed on behalf of minor children not receiving cash assistance as well as over \$150 owed to States that have provided assistance.

**Doesn't the Internal Revenue Service have another method it can use to help us get the support owed?**

Yes, your caseworker may be able to make a request for use of the IRS "full collection" technique. Under certain conditions, the Internal Revenue Service can attach a parent's income and other assets for child support payments. The CSE agency can submit the request when the amount owed is over \$750 and there is good evidence that the obligated parent has assets that can be tapped for collection. Contact your caseworker for more information.

The children's father lost his job and is collecting unemployment compensation. Can child support payments be deducted and sent to me?

Yes. Unemployment compensation, and other State and Federal benefits can be tapped for child support. Ask your caseworker about the procedures, and make sure you tell your caseworker immediately if you learn about changes in the father's employment situation.

By my own calculation, my ex owes me \$3,475 in past due child support. Can the enforcement agency try to collect it for me?

If this support was owed before the CSE office became involved in your case, the CSE office will have to verify the amount owed, and may have to present the documentation to a court before it can start collection procedures. While it is doing this, the agency can try to collect support payments for current months.

I heard that my children's father is buying a very expensive car. He owes over \$5,000 in back support. Can the credit agency be told this?

Yes. By Federal law, the CSE office must periodically report the amount of past-due child support to credit reporting agencies. Consult your caseworker for more information.

The other parent does not work regularly and keeps falling behind in child support payments. Is there any way the court can establish regular payment?

As mentioned before, property liens and attachments might work. In certain cases Federal law also authorizes that the parent be required to post security, bond, or other guarantee to cover support obligations. These may be in the form of money or property. Ask your enforcement caseworker if these might be applied to your case.

My ex-wife has declared bankruptcy and says she doesn't have to pay child support. Is that true?

Child support payments generally cannot be discharged in bankruptcy. This means that the parent who owed child support cannot escape this duty by filing for bankruptcy. As of October 1994, bankruptcies do not act as a *stay*, or hold, on actions to establish paternity or to establish or modify child support obligations. The relationship between child support and

bankruptcy is complex, and you may need the help of someone familiar with bankruptcy law. Ask your caseworker how the CSE office can help.

My daughter's father says that since he gives her gifts and money he does not have to pay child support.

Courts generally will not allow gifts to a child to take the place of child support, and require that child support payments are carried out as ordered by the child support agreement. In some cases, if the voluntary payment is larger than a normal gift would be, a court may decide to credit the payment as a child support payment.

Will the Federal Government step in to enforce a difficult child support case?

No. State and local offices are responsible for establishing paternity and establishing and enforcing child support orders. The Federal Government tries to make sure that States use appropriate enforcement techniques. It pays much of the cost of the program, issues policies, offers technical assistance, and reviews State programs for compliance with Federal requirements. (However, see page 31, under Interstate Enforcement.)

The child support office is not enforcing my case. Can I take it to a Federal Court?

If your caseworker and State CSE office have had no response to their requests for enforcement in another *jurisdiction*, it is possible for the case to be heard by a Federal court. This is not done often, and the decision to use a Federal court will be made by the Federal Regional Office of Child Support Enforcement at the request of your caseworker and the State enforcement office. If you are not satisfied with the services you are receiving in your local CSE office, you may ask your State CSE Agency for help. State Agency addresses are listed at the end of the Handbook.

My children are over 18 and don't get child support any more, but there is still a \$10,000 arrearage owed to me for support that was never paid. Will the CSE office collect that money for me?

State *statutes of limitations* determine how long the CSE Office can try to collect on a child support debt. Within this period, the CSE office is required by Federal law to collect verified back support. Ask your CSE office for more information.

Can my children be provided for if my ex-husband dies?

A well written child support order should provide for continued support if the noncustodial parent should die. The child support payments should be defined as a claim against his estate. The children can also be named as beneficiaries in your ex-husband's life insurance policy or will.

The children's mother lives in another State and we don't know when she is buying something. Every time the kids come home from there they talk about her new car or stove or something, but she still won't pay her child support. Why can she get credit if the courts know she owes her kids so much?

CSE offices must report child support arrearages to credit bureaus. The State notifies the noncustodial parent if the debt will be reported to the credit reporting network. That sometimes is enough to encourage payment of the overdue support.

My ex-husband inherited a house and a sizeable amount of money from his parents. He already had some income property. Now he doesn't have to work, and he put everything into his brother's name and got his child support reduced to the State minimum.

Under the Personal Responsibility and Work Opportunity Reconciliation Act, States must have, or develop, laws and procedures for voiding transfers of income or property that were made to avoid payment of child support. Your CSE Office will have current information about how your State is handling these fraudulent transfers.

## VI. WORKING WITH OTHER STATES AND COUNTRIES INTERSTATE AND INTERNATIONAL COOPERATION

The most difficult child support cases to pursue are those in which the parent obligated to pay child support lives in one State and the child and custodial parent live in another. However, all States are required to pursue child support enforcement, including location, paternity establishment, and establishment of support obligations, as vigorously for children who live outside their borders as for those under their own *jurisdiction*.

State enforcement agencies must cooperate with each other in handling requests for assistance, however, it has not been a simple matter for one State to automatically enforce the court orders of another State. Until recently, States used all or parts of a law called the *Uniform Reciprocal Enforcement of Support Act (URESA)*.

With the enactment of the Full Faith and Credit For Child Support Orders Act and the Federal mandate that all States enact the *Uniform Interstate Family Support Act (UIFSA)* by January 1, 1998, interstate enforcement of child support obligations should improve. UIFSA includes a provision designed to ensure that, when more than one State is involved, there is only one valid child support order which can be enforced for current support, and a provision which allows a State to work a case against an out-of-State obligor directly if certain conditions are met.

Both URESA and UIFSA have procedures under which an enforcement official (or private attorney) can refer a case for action in another State. The laws can be used to establish paternity and to establish, modify, or enforce a support order. A URESA State is able to refer a case to a UIFSA State, and vice versa.

Interstate *wage withholding* can be used to enforce a support order in another State if the *noncustodial parent's* employer is known. With interstate wage withholding, the Child Support Enforcement (CSE) office in the State where the noncustodial parent lives will make sure that a wage withholding order from another State contains all the information required by their State laws and will forward it to the noncustodial parent's employer. The order does not have to go through the courts as it would with an interstate child support enforcement petition. State laws vary and you will need to ask your caseworker whether this option is available in your case.

State CSE Agencies all have an office called the Central Registry to receive incoming interstate child support cases, make sure that the information given is complete, send them to the right local office and respond to inquiries from out of State CSE offices. Standard forms make it easier for caseworkers to find the information they need to enforce a case, and to be sure they are supplying enough information for another State to enforce their case.

**I know the address of my children's father in another State, and my caseworker sent a petition to establish my support order there. That was three months ago, and still no support payments. What's wrong?**

It may be any number of things: enforcement officials may not be able to serve notice on the noncustodial parent due to inadequate address information; if a hearing is necessary, it may take a while to get a court date. Continue to keep in touch with your caseworker to resolve any delay or to provide any new information you may have.

**I need to establish paternity for my child, and the father lives in another part of the country. How does this work?**

The fact that you and the alleged father live in different States will not keep you from pursuing a paternity establishment action. Your State may be able to claim jurisdiction and establish paternity if the alleged father had lived there or the child was conceived in your State. Otherwise your State can petition the other State to establish paternity under their laws. Often, genetic tests will be ordered to help prove paternity. Ask your caseworker for specific information about the laws in your State and the State where the other parent lives.

**My caseworker filed a URESA petition for paternity. The father denied it, and the other court just dismissed the case. What went wrong?**

A responding State's CSE office should not dismiss a case without asking for the information it needs. The initiating State is required to provide that information in 30 days. Either party in a contested paternity action can request blood or genetic testing. Ask your caseworker to reopen the case. You have the right to establish paternity until your child's 18th birthday.

**If paternity is established in another state, will the support order also be entered in that State?**

Yes. Ask your caseworker how this is done.

**I have had to wait several months for my enforcement agency to get a reply to its request for location assistance in another State. Why does it take so long to get an answer?**

Even though they try to be responsive, enforcement agencies have a very high demand for their services. A State's ability to act rapidly depends on the characteristics of the case, the quality of information received, and the amount of staff and other resources they have to devote to it. Be sure to follow up regularly with your caseworker to make sure that each State is actively working your case.

**As soon as the children's father is notified about enforcement, he moves. How will I ever be able to collect my support?**

Many custodial parents are angry when, after the noncustodial parent is finally located and served notice of the enforcement action, he or she moves on. It is difficult to enforce child support payments when the noncustodial parent intentionally moves to avoid paying. Try to be an active participant in your own case. Whenever you learn that the noncustodial parent has moved or has a new job, you should tell your caseworker as soon as possible. Starting October 1997, all States are required to have a State Directory of New Hires, and employers will be required to report hiring new employees within 20 days. The information will, in turn, be sent to a National Directory of New Hires. This will help in locating the noncustodial parent if he/she moves on to a new job.

**Isn't there a law now that makes it a Federal crime to not pay child support if the child lives in another State?**

The Child Support Recovery Act of 1992 makes it a Federal crime to willfully fail to pay support for a child living in another State.

Briefly, in order to prosecute under this Act, the United States Attorney's Office must prove that the noncustodial parent was financially able to meet his/her obligation at the time the payment was due. If support arrearages are more than \$5,000 or are unpaid for longer than one year, the noncustodial parent is subject to punishment. A major consideration in screening a case for Federal prosecution is whether all reasonably available civil and State criminal remedies have been pursued first. Next, priority is given to cases: (1) where there is a pattern of moving from State to State

to avoid payment; (2) where there is a pattern of deception (e.g., use of false name or social security number); (3) where there is failure to make support payments after being held in contempt of court; and (4) where failure to make support payments is connected to some other Federal offense such as bankruptcy fraud.

**My former wife lives in another State. She owns an expensive car, jewelry, and several pieces of property. Would the CSE Program be able to attach this property for child support?**

An interstate CSE action may be filed on your behalf to enforce your child support order. Before requesting the other State to attach this property, your enforcement worker or lawyer should see if a "withhold and deliver" or "attachment" of the property could be successfully carried out from your State.

**Will location and enforcement services cost more if my agency is dealing with another State? I am not receiving cash assistance.**

Possibly. It depends on what the CSE office has to do to find the noncustodial parent and to establish regular payment. The more solid information and leads you provide, the more efficiently your case can be conducted. For non-assistance cases, States vary in the fees they charge for services. Your caseworker should be able to tell you more about these costs in your particular case. (See discussion in **Introduction**.)

**I don't have a support order. Can I have one established by petitioning the court where my ex-husband lives?**

Yes. This can also be done by your CSE office. Depending on the facts, it could be handled in your State or referred to another State under URESA or UIFSA. An affidavit of the facts, including the name and address of the responsible parent, details of your financial circumstances, and the needs of the child will be included. The petition will be mailed to the enforcement agency, the court, or the interstate official where the father lives. The responding State will review this information together with information about the father's ability to pay, and set the amount to be paid.

**The father of my child has left the United States. How can I get my court order for child support enforced?**

We suggest you check with your local CSE office and State CSE agency (at the address listed in the back of this **Handbook**). Many State CSE agencies have agreements with foreign countries to recognize child support judgments made in other countries, or to help establish orders when there is none. The U.S. Government is in the process of negotiating federal-level reciprocity declarations with other countries on behalf of all U.S. jurisdictions. These international child support agreements specify procedures for establishing and enforcing child support orders across borders. While requirements for getting enforcement action may vary depending on the other nation involved, a parent will be asked to provide the same information as in a domestic case, including as much specific information, such as address and employer of the noncustodial parent, as is possible.

If the noncustodial parent works for an American company, or for a foreign company with offices in the United States, wage withholding might work even if the country he lives in does not have any agreement to enforce an American State's order. Even in cases where the noncustodial parent is living and working in a country that has no reciprocity agreement, approaching the foreign employer directly for help might prove successful.

**I checked with the CSE office, but my daughter's father lives in a country that has no agreement with any State to enforce child support obligations. Is there anything else to try?**

The Office of Citizens Consular Services may be able to give you information about how to have the support order enforced in that country and how to obtain a list of attorneys there. That address is: Department of State, Office of Citizens Consular Services, Washington, D.C. 20520.

**She is still in this country, but I understand that my children's mother is planning to live abroad with her new husband. She owes me \$14,000 in child support. Is there anything the CSE Office can do?**

Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) legislation, State CSE Agencies can certify child support arrearages of more than \$5000 to the Secretary of Health and Human Services, who, in turn, will transmit the certification to the Secretary of State for denial, revocation or limitation of passports. This becomes effective October 1, 1997.

## VII. CHILD SUPPORT ENFORCEMENT FOR NATIVE AMERICAN CHILDREN

The Native American Child Support Program in the Federal Office of Child Support Enforcement has been consulting with the Tribes and Native American organizations to ensure that Native American children receive the child support to which they are entitled. New provisions in the Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA) provide more options to achieve this goal.

American Indian Tribes or Tribal organizations will be eligible to apply for grants to operate full or partial child support enforcement programs. The projects must meet child support enforcement criteria that will be issued through regulations in mid-1998. Formal consultation is planned for the proposed rules.

Native American reservations are governed by Tribal laws which may differ from those of the States, just as laws differ from State to State. The differences, and the various types of State and Tribal court systems, sometimes make it difficult to enforce child support orders or to locate absent parents on reservations.

However, some States and Tribes have entered into Cooperative Agreements to facilitate obtaining child support for Native American children. If Tribes do not operate child support enforcement programs, it is expected that more Tribes and States will enter into Cooperative Agreements to work together to carry out their child support responsibilities.

In the interim, Tribal and State child support staffs will continue to pursue all available means to assist Native American children to receive support. What works best, and barriers encountered, will be shared. This will assist Tribes to decide how best to meet child support enforcement requirements, through Tribal programs or Cooperative Agreements with States.

**My ex-husband is a Native American who lives and works on an Indian Reservation. Can the CSE Program help get child support for my children?**

It may be difficult to establish or enforce a child support order when the non-custodial parent lives and works on an Indian Reservation if the Tribe does not have an agreement with a State to establish or enforce each other's child support orders. When a Tribe has an agreement with a State CSE Agency to establish paternity, locate absent parents, or enforce or

modify support orders, State and local CSE staff and the Tribal courts work together to obtain the child support for Native American children.

State CSE Agencies and OCSE are currently working with a number of Tribes to develop cooperative agreements to solve the complex problems of obtaining child support. Talk with your State or local CSE office about the specific situation and how it can help. Be sure to provide any information about any assets off the Reservation that your ex-husband may have.

**My ex-husband is a Native American living on a Reservation. My caseworker hasn't been able to get any child support for my children. What can I do?**

Check with the Tribal leaders to see if there are any provisions established by the Tribe for supporting Tribal children. Your children may be eligible to receive special services (health, education, general assistance payments, etc.), or some other kind of specialized assistance.

**I am a Native American mother of a three-year-old and I live on a reservation. His father is not Native American, does not live on the Reservation, and does not fall under the jurisdiction of the Tribal Court. How can I get him to help support his son?**

Seek assistance for your child through the Tribe if you live on the Reservation. If the Tribe does not have an agreement with the State, also work directly with the IV-D office in the State, or local, OCSE office to locate the father and establish a child support order.

## VIII. CONCLUSION

The success you have in obtaining regular, adequate, and full child support payments depends to a great extent on how well you can make the child support enforcement system work for you. At the same time it is important to remember that not all the solutions to your child support problems are within your control. The legal rights and welfare of all parties must be carefully guarded, and sometimes laws that protect the rights of one parent seem unfair to the other.

Knowledge is power. The more you know about child support enforcement procedures where you and the noncustodial parent live, the better you will be able to exercise your rights and responsibilities under the law, and the more successful you will be in obtaining the support that rightfully belongs to your children. As you proceed with your enforcement case, it is a good idea to keep a written account of the actions taken and the outcomes of those actions. Do not hesitate to ask questions and make suggestions to your enforcement caseworker. If you are not satisfied with the actions taken on your behalf, you have recourse to the head of the local CSE office as well as to the director of the State Child Support Enforcement agency. Keep in mind that it is always best to communicate the problem in writing.

An informed parent can make the child support enforcement system work. This, together with improvements that State enforcement programs, legislatures, and the courts are making, can benefit millions of parents and their children.



## GLOSSARY OF CHILD SUPPORT ENFORCEMENT TERMS

|  |   |
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| administrative procedure                       | method by which support orders are made and enforced by an executive agency rather than by courts and judges  |
| Aid to Families with Dependent Children (AFDC) | assistance payments made on behalf of children who don't have the financial support of one of their parents by reason of death, disability, or continued absence from the home; known in many States as ADC (Aid to Dependent Children) |
| arrearages                                     | unpaid child support for past periods owed by a parent who is obligated to pay  |
| assignment of support rights                   | a person receiving public assistance agrees to turn over to the State any right to child support, including arrearages, paid by the obligated parent in exchange for receipt of a cash assistance grant and other benefits              |
| complaint                                      | written document filed in court in which the person initiating the action names the persons, allegations, and relief sought   |
| consent agreement                              | voluntary written admission of paternity or responsibility for support  |
| custodial parent                               | person with legal custody and with whom the child lives; may be parent, other relative, or someone else   |
| custody order                                  | legal determination which establishes with whom a child shall live  |
| default  | failure of a defendant to appear, or file an answer or response in a civil case, after having been served with a summons and complaint  |

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| default judgment                      | decision made by the court when the defendant fails to respond   |
| defendant                             | person against whom a civil or criminal proceeding is begun  |
| electronic funds transfer             | transfer of money from one bank account to another or to a CSE Agency  |
| enforcement                           | obtaining payment of a child support or medical support obligation   |
| Federal Income Tax Offset Program     | a program under the Federal Office of Child Support Enforcement which makes available to State CSE Agencies a route for securing the tax refund of parents who have been certified as owing substantial amounts of child support.  |
| Federal Parent Locator Service (FPLS) | a service operated by the Federal Office of Child Support Enforcement to help the States locate parents in order to obtain child support payments; also used in cases of parental kidnapping related to custody and visitation determinations; FPLS obtains address and employer information from Federal agencies |
| Federally-assisted Foster Care        | a program, funded in part by the Federal government, under which a child is raised in a household by someone other than his or her own parent  |
| finding                               | a formal determination by a court, or administrative process that has legal standing   |
| Full Faith and Credit                 | doctrine under which a State must honor an order or judgement entered in another State   |
| garnishment                           | a legal proceeding under which part of a person's wages and/or assets is withheld for payment of a debt  |
| genetic testing                       | analysis of inherited factors (usually by blood or tissue test) of mother, child, and alleged father which can help to prove or disprove that  |

|                            |   |
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| guidelines                 | a standard method for setting child support obligations based on the income of the parent(s) and other factors as determined by State law |
| immediate wage withholding | automatic deductions from income which start as soon as the agreement for support is established (see wage withholding)                   |
| jurisdiction               | legal authority which a court has over particular persons, certain types of cases, and in a defined geographical area                     |
| legal father               | a man who is recognized by law as the male parent   |
| lien                       | a claim upon property to prevent sale or transfer until a debt is satisfied   |
| long arm statute           | a law which permits one State to claim personal jurisdiction over someone who lives in another State                                      |
| Medicaid program           | federally funded medical support for low income families  |
| medical support            | legal provision for payment of medical and dental bills   |
| noncustodial parent        | parent who does not have primary custody of a child   |
| obligation                 | amount of money to be paid as support by the responsible parent and the manner by which it is to be paid                                  |
| offset                     | amount of money taken from a parent's State or Federal income tax refund to satisfy a child support debt                                  |

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| order                               | direction of a magistrate, judge or properly empowered administrative officer  |
| paternity judgement                 | legal determination of fatherhood  |
| plaintiff                           | person who brings an action, complains or sues in a civil case   |
| presumption of paternity            | a rule of law under which evidence of a man's paternity (e.g. voluntary acknowledgment, genetic test results) creates a presumption that the man is the father of a child. A rebuttable presumption can be overcome by evidence that the man is not the father, but it shifts the burden of proof to the father to disprove paternity. |
| probability of paternity            | the probability that the alleged father is the biological father of the child as indicated by genetic test results.  |
| public assistance                   | money granted from the State/ Federal Aid to Families with Dependent Children program to a person or family for living expenses; eligibility based on need   |
| State Parent Locator Service (SPLS) | a service operated by the State Child Support Enforcement Agencies to locate noncustodial parents to establish paternity, and establish and enforce child support obligations  |
| statute of limitations              | the period during which someone can be held liable for an action or a debt--statutes of limitations for collecting child support vary from State to State  |
| stay                                | an order by a court which suspends all or some of the proceedings in a case  |
| TANF                                | Temporary Assistance to Needy Families; time-limited assistance payments to poor families. The program provides parents with job preparation, work and support services to help them become self-sufficient.   |

Uniform Interstate Family Support Act (UIFSA), and Uniform Reciprocal Enforcement of Support Act (URES A)

visitation

voluntary acknowledgement of paternity

wage withholding

laws enacted at the State level which provide mechanisms for establishing and enforcing support obligations when the noncustodial parent lives in one state and the custodial parent and children live in another

the right of a non-custodial parent to visit or spend time with his or her children

an acknowledgement by a man, or both parents, that the man is the father of a child, usually provided in writing on an affidavit or form

procedure by which automatic deductions are made from wage or income to pay some debt such as child support; may be voluntary or involuntary