

COLLOQUIUM SERIES
1998-1999

Negotiating the Child Support System

RECOMMENDATIONS

from a Discussion
of Policy and Practice

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A NOTE TO THE READER

THE colloquia in this series were held with the purpose of understanding individuals' experiences and concerns as they negotiate the child support system in different regions of the United States. The meetings were 5 to 6 hours long, and the format was one of open-ended discussions led by a facilitator. There was no effort to try to explore each situation in detail or to develop a complete picture of each incident described by participants. Instead, the purpose was to develop an understanding of the perceptions of people as they recalled their experiences. The reports and recommendations were written with this objective in mind and are not intended to give complete renditions of incidents or provide legal information that may be pertinent to specific situations. We take this opportunity to thank Robin Whyte for proofreading this report.

The Center would like to thank The Ford Foundation, The Charles Stewart Mott Foundation, The William and Flora Hewlett Foundation, and The Public Welfare Foundation, whose support made these colloquia possible. We would also like to thank the Public Policy Institute of California for providing space for the San Francisco colloquium and the Urban Institute for providing space for the Washington colloquium. In addition, we would like to thank Margaret Stapleton of the National Center on Poverty Law, Maureen Waller of the Public Policy Institute of California, and Elaine Sorensen of the Urban Institute for sharing their professional expertise with us at each of the colloquia. Several other policy analysts, researchers, and legal advocates attended the colloquia, and we thank them for their participation and insights.

Most importantly, however, we would like to thank the fathers and case managers who generously shared their experiences with us. We hope that this publication will be helpful in making their voices heard. Fathers and case managers from the following organizations participated in the colloquia: Goodwill Industries Children UpFront Program (Racine, WI), Paternal Involvement Project (Chicago), Nehemiah Community Development Corporation (Madison, WI), Parents Fair Share (Los Angeles County), Bienvenidos Children's Center, Inc. (Los Angeles), Men's Mobile Health Unit (Oakland, CA), Center for Fathers, Families, and Workforce Development (Baltimore), Boston Healthy Start Initiative Men's Program (Boston), East District Families First (Richmond, VA), Urban League of Greater Madison, Inc. (Madison, WI).

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Introduction

BETWEEN July 1998 and October 1999, the Center on Fathers, Families, and Public Policy (CFFPP) held a series of colloquia that focused on the experiences of low-income fathers as they negotiate the systems of paternity establishment and child support enforcement. The meetings were attended by low-income, mostly never-married noncustodial fathers, caseworkers from community-based organizations who work with low-income, never-married noncustodial fathers, researchers, policy analysts, and poverty lawyers whose work has centered on low-income noncustodial fathers and their families. The purpose of these meetings was to gain a sense of how low-income noncustodial fathers and those working with them experience the system of child support enforcement and how they manage their relationships with their families as they negotiate this and other government agencies and programs (e.g., TANF, housing, food stamps, etc.). The reports of the first three of the meetings are incorporated in a publication entitled *Negotiating the Child Support System: Report from a Discussion of Policy and Practice*.

In addition to those meetings, CFFPP held a final colloquium that included several of the participants of the earlier meetings. This final meeting was directed at determining the issues that generated most concern over the course of the colloquia and developing some means of addressing them. The current publication pulls together some of the suggestions made at the meetings and, where appropriate, includes specific recommendations for addressing particular issues. The concerns and recommendations listed are not necessarily presented in the same form as at the meetings, but rather represent CFFPP's understanding of the primary issues and concerns that were raised throughout the colloquium series.

Overall, these issues can be grouped within the following categories: specific policy concerns, difficulties deriving from systemic contradictions, a need for education related to child support, a need for legal education and support for parents, and issues related to the provision of services.

I. POLICY CONCERNS

OVER the past years, legislation and policies to enforce the payment of child support have become increasingly stringent and standardized. Guidelines are used to calculate the amount of support owed by noncustodial parents, child support orders can be set by default if the noncustodial parent does not appear in court, orders can be based on imputed rather than actual income, unpaid child support debt accrues interest at a rate determined by state law, courts can no longer retroactively reduce accumulated arrears (since enactment of the Bradley Amendment in 1986), and a child support debt above a certain amount can lead to a felony conviction in some states. The objective of these policies and laws are multiple: they are intended to standard-

ize child support enforcement on a national level, making it less likely for orders to be set unevenly; they make it difficult for noncustodial parents to avoid their support obligations or have those obligations retroactively modified in court; and they make the legal repercussions of nonpayment more severe.

However, while these policies may be useful in preventing financially stable noncustodial parents from avoiding their child support obligations, they can have devastating consequences for low-income noncustodial parents who do not have a stable and dependable source of income. The combination of policies that allow orders to be set without the noncustodial parent's presence, that allow orders to be based on imputed income (e.g., that from a full-time minimum wage job) rather than actual income (which may be sporadic), and that lead to a rapid accumulation of debt that cannot be modified even as other policies effectively criminalize the accumulation of this debt, creates financial obstacles and situations that become insurmountable for many low-income noncustodial parents. Over the course of the colloquia it became apparent that these issues need to be addressed specifically in regard to how they affect low-income parents.

CFFPP considers the following recommendations useful to consider when addressing some of these issues.

Default Orders

PARTICIPANTS repeatedly pointed out that, for various reasons (e.g., unstable housing, misunderstanding, etc.), many low-income noncustodial parents do not receive notification of the need to appear in court regarding paternity establishment or child support. Consequently many of these parents receive child support orders by default, and the default orders often do not reflect their income. In addition to having inappropriate orders, they often continue to be unaware of the order and begin to accumulate arrears. CFFPP recommends the following:

- All efforts should be made to ensure that both parents receive proper notification and service of any summons in a paternity or child support case. The most appropriate form of service in these contexts is personal service.
- No paternity should be determined by default in the absence of a genetic test.
- Child support orders should be set by default only if there is reasonable evidence of the noncustodial parent's current income and assets. Recent enforcement measures such as the New Hire Registry make such information more readily available than it has been in the past.

Imputed Income

MANY low-income noncustodial parents have sporadic and part-time employment and thus an uneven income. As participants indicated, often these parents' child support orders are based on an imputed income that reflects their presumed earning capacity (calculated on the basis of numerous criteria, but often at the very least amounting to the income from a full-time, minimum-wage job). Since these parents do not actually earn this income, they quickly accumulate arrears on their orders. CFFPP recommends the following:

- Child support orders should be based only on reasonable evidence of noncustodial parents' current income and assets.

Retroactive Support/State Debt

PARTICIPANTS pointed out that noncustodial parents who are unaware of the birth of their child might, upon establishing paternity or some time thereafter, receive child support orders that include payment obligations that date back to the birth of their child. The amount of money owed may be for retroactive support or may result from state debt that was incurred on behalf of the child (e.g., for public assistance, medical support, etc.). Depending upon the age of the child and the services a child and/or a child's custodial parent have received, this can lead noncustodial parents to face a large debt from the moment they establish paternity. CFFPP recommends the following:

- If paternity is established some time after a child is born, the child support order should be calculated from the time paternity is established rather than the time of the child's birth.
- State debt should not be included in child support orders.
- Noncustodial parents should not be required to reimburse the state or federal government for welfare assistance provided to their children or their children's custodial parents (e.g., AFDC, TANF, food stamps, Medicaid, etc.).

Arrears

PARTICIPANTS indicated that one of the biggest concerns for low-income noncustodial parents is the large arrears many of them face. These arrears can become obstacles in their efforts to achieve financial stability and meet their current child support obligations. For many they become significant emotional as well as financial barriers. CFFPP recommends the following:

- There should be some process by which arrears can be reduced in accordance with payment of current support. States should prospectively suspend a child support payment in specific situations, such as incarceration or seasonal employment.
- Interest on arrears owed to the government should be eliminated.

Modification

VIRTUALLY all of the noncustodial fathers who participated at the colloquium noted that it is often very difficult and time-consuming for noncustodial parents to have their child support orders modified downward if the current order exceeds their ability to pay. Colloquium participants said that they were often not informed of the possibility of getting a downward modification, that the process once initiated generally took many months, and that they often did not ultimately receive the modification, or, if they did, that it might not go back to the date requested but only to the date of the hearing or decision. CFFPP recommends the following:

- Noncustodial and custodial parents should be informed of the possibility of seeking a modification and of the process entailed in doing so (e.g., requesting a review or modification from the child support office vs. petitioning the court).
- Modification requests should be handled expediently.
- A modification should revert back to the time of the request rather than to the date of the court hearing.

Pass-Through

COLLOQUIUM participants noted that in most states, when a child receives public assistance, most of the child support from a noncustodial parent does not go to the child but is used to reimburse the state for the public assistance provided. While under AFDC \$50 used to be passed through to custodial families, under the PRWORA of 1996 no federal TANF funds may be used to provide a pass-through. States have the option of using state funds to provide a pass-through. More than half of the states do not provide a pass-through, a number of states pass through \$50, Nevada passes through \$75, Connecticut passes through \$100, and only Wisconsin currently passes through the full amount of child support paid and disregards it when calculating the custodial family's eligibility for, and level of, public assistance. Colloquium participants routinely discussed the frustrations for poor noncustodial parents in knowing that the child support payments they make do not go directly to their child but are used to reimburse the govern-

ment. CFFPP recommends the following:

- Particularly in the context of time-limited public assistance, child support paid by noncustodial parents should be passed through to custodial families in full. Moreover, states should disregard the child support when calculating a custodial family's eligibility for, or level of, public assistance.

License Suspension and Revocation

MANY participants discussed the fact that some enforcement techniques, while serving the purpose of getting noncustodial parents to pay child support, can have unintended consequences for these parents. Among the more frequently raised issues was the suspension of licenses. While on the one hand participants felt that it has the effect of forcing unwilling noncustodial parents to pay their child support orders, it has also had the effect of forcing people out of their jobs (e.g., because their professional license is suspended and cannot be reinstated), limiting employment opportunities (e.g., because a driver's license has been suspended), and increasing expenses over the long term (e.g., for auto insurance, because the cause for a license suspension remains unspecified). CFFPP recommends the following:

- If licenses are suspended because of nonpayment of child support, all public records should indicate the reason for the suspension, so individuals do not appear to have lost their license due to professional misconduct.
- States should recognize that driver's license suspensions could result in the loss of employment and/or the inability to secure employment. Exceptions should be made to the suspension that permit driving under certain circumstances (e.g., to and from work, at work, to and from child care, etc.).

Access and Visitation

MANY participants expressed frustration with the fact that, while child support is pursued by the state, there is no coherent effort to address the issue of visitation and access. Although it was not necessarily desired that the office of child support enforcement handle this issue, participants did indicate that they feel it should be addressed. CFFPP recommends the following:

- Custodial and noncustodial parents should be given adequate information about how to address access and visitation issues at the time of paternity establishment or the setting of a child support order, or any time thereafter when it is requested.

- Local family courts should establish a procedure through which they can facilitate never-married parents' need to address access and visitation through the court system, most importantly when they lack legal representation.

II. SYSTEMIC CONTRADICTIONS

OVER the course of the colloquia it became clear that participants had concerns that derive not only from individual policy issues, but from a sense of the system of child support enforcement overall. These more general concerns can be expressed in terms of a number of contradictions that appear to permeate the system.

Administrative versus Judicial System

ONE of the primary concerns of participants was the overwhelming confusion and misinformation about the system and how it works. Participants consistently said that they were unsure or confused about what was expected of them and about what they could expect of the system. A primary reason for this confusion is not merely the complexity of the system, but the calculated mixture of judicial and administrative processes within the system, particularly as it affects very poor, insecurely employed parents without legal representation. The processes—whether judicial or administrative—are directed toward the benefit of the system, putting the child support system in the optimum position to collect money to reimburse the state for public assistance that has been provided to custodial families. For example, administrative processes that are most beneficial to the system and most likely to result in the highest possible child support order and the highest possible income withholding, are overwhelmingly preferred (e.g., voluntary paternity acknowledgment) or, in some cases, mandated (e.g., automatic withholding, and expedited procedures for administrative actions by states). By contrast, administrative processes that might have the opposite effect (e.g., downward modifications based on valid changes in circumstances, administrative appeals) are rarely, if ever, considered. Similarly, judicial processes are employed and encouraged selectively. Thus, child support offices facilitate the use of such judicial mechanisms as default judgments for paternity and child support, civil contempt of court (and consequently, in some states and counties, incarceration), pre-trial conferences, and stipulated agreements. On the other hand, judicial processes designed to ensure due process for noncustodial parents are minimized. For example, the right to, and the process of, rescission of voluntary paternity acknowledgment, and the judicial modification of child support orders are rights and processes that are not fully explained or duly highlighted by the child support system and are not generally known or understood by parents. If the goal of the child support system is

to accurately determine the father of a child and to facilitate establishment of a child support order based squarely on his actual ability to pay, CFFPP recommends the following:

- Child support policy and, if necessary, state and federal statutes should be changed to ensure that the processes entailed in the establishment of paternity and the enforcement of child support are fair, consistent, and cognizant of the due process rights of individuals.

Office of Child Support Enforcement as Collection Agency vs. Social Service Agency

MANY participants found it difficult to reconcile the apparently contradictory roles of the office of child support enforcement. On the one hand, it serves as a collection agency with wide-ranging powers that can have serious consequences for individuals, including the loss of employment, incarceration, inability to secure future employment (e.g., because of a felony record for nonpayment of child support), and overwhelming debt (e.g., from interest). On the other hand, there has been an increasing trend in recent years to funnel social services for non-custodial parents (such as parenting programs, AODA programs, employment programs, etc.) through child support enforcement agencies (e.g., through collaborations between local community-based organizations and offices of child support enforcement, through state- or county-funded employment programs coordinated with the office of child support enforcement, etc.). The linking of desperately needed services with harsh enforcement methods creates an atmosphere of distrust and fear that has led many participants to question the sincerity of the service provision. CFFPP recommends the following:

- The Office of Child Support Enforcement should continue its primary function of collecting child support. Noncustodial parents should be provided with services through agencies other than the Office of Child Support Enforcement.

Government Reimbursement vs. Support of Children

PARTICIPANTS also routinely questioned the sincerity of the message that child support collected on behalf of poor children is important to their well-being, since little of the child support collected is actually passed through to the children if they have received public assistance. Custodial parents, if they receive government assistance, must assign their rights to child sup-

port to the state. In doing so, the custodial parent loses the ability to decide when, whether, and in what form to collect support from the noncustodial parent. Moreover, in such cases the support collected is used to reimburse the state rather than directly support the child. Participants felt that the use of child support (often from noncustodial parents who are themselves very poor and in need of services) to reimburse the state for what is understood to be financial support with no expectation of repayment (i.e., public assistance) is inappropriate. They also felt that it is inappropriate for the state to make important decisions on behalf of individuals and families that are more appropriately made by those individuals and families. CFFPP recommends the following:

- Custodial parents seeking welfare services should not be required to assign their right to collect child support to the state.

III. EDUCATION

PARTICIPANTS consistently discussed the need for greater education around the issues of paternity establishment, child support enforcement, and the social support services that are needed by, and available to, low-income individuals and families. Not only did participants comment that low-income, never-married noncustodial and custodial parents are in need of more information and education about these issues, they also pointed out that the general public, policymakers, legislators, and service providers need to be better informed about the myriad issues faced by low-income custodial and noncustodial parents and their children. CFFPP recommends that public education campaigns be undertaken on two levels.

- For noncustodial and custodial parents, to provide them with information about the child support system and its intersection with other agencies they may deal with (e.g., TANF, food stamps, etc.), and to provide them with information about services of which they may avail themselves.
- For the general public and legislators/policymakers, to provide them with information about the system of child support enforcement and its effects on low-income families.

IV. LEGAL SERVICES

IN addition to general information and education, participants also consistently raised the concern that low-income noncustodial (as well as custodial) parents do not have the legal information they require in order to negotiate the child support system and do not have adequate access to legal

services. The child support system is highly complex and is increasingly designed to operate with minimal court involvement (e.g., creating administrative processes, allowing for determinations by default, etc.). As discussed above, many low-income custodial and noncustodial parents remain unaware of the meaning and importance of some of the processes, of their rights and options as they negotiate them, of the possibility of altering some actions after they have been undertaken, or of the roles of individuals they come across in undertaking any of them. This lack of information can leave them unaware of such issues as their options regarding cooperation requirements, the implications of making informal child support arrangements, or the impact and durability of a voluntary declaration of paternity. CFFPP recommends the following:

- Advocates and program staff who serve low-income custodial and noncustodial parents should become knowledgeable about legal and administrative documents and procedures related to the system of child support enforcement and should educate parents about these procedures and about how they can best negotiate the system.
- Legal professionals should be encouraged to provide legal services and information to low-income custodial and noncustodial parents about child support issues and their implications.

V. SOCIAL SERVICES

OVERALL, participants agreed that there is a dearth of services available to low-income noncustodial parents. In addition to failing to meet the basic needs of a segment of the population, this lack of services can in addition become a source of conflict between parents as their experiences differ markedly in terms of the services they might receive and the obligations and constraints that might be placed on them. Participants supported not only an increase in services for low-income noncustodial parents, but also an increase in services directed at both custodial and noncustodial parents. Such services might alleviate conflict between parents as well as between their advocates, who currently must at times compete for services for their clients. At the same time that participants supported the provision of collaborative or joint services for custodial and noncustodial parents, they also emphasized that such services should only be considered if serious attention is devoted to the issue of domestic violence and efforts are made to ensure that such services do not create or increase the potential for harm for any family members.



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