

POLICY BRIEFING

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Supreme Court Supports States' Right to Reimburse Foster Care Expenses from Child's Social Security Benefits

In February, the U.S. Supreme Court ruled that there is not legal or statutory restriction to the Washington state policy of taking

Social Security benefits from eligible children who are in foster care in order to repay the state for its associated costs. The state's practice applies to children who are in foster care and eligible for Social Security benefits, either because they are disabled and poor or because they are the surviving dependent of deceased or disabled parents. Under the practice, the state applies for the benefits on behalf of the child, names itself a representative payee and so receives the benefits and disburses them to reimburse itself for payments made to foster care providers. The ruling is *Washington State Department of Social and Health Services v. Guardianship Estate of Danny Keffeler*. In Washington State, more than 10% of the 10,578 foster children in the state's system receive such Social Security benefits, almost all of whom have the state as representative payee. According to the Seattle Post-Intelligencer, Washington collects about \$7 million per year this way, and all states use Social Security benefits in a similar fashion.

Attorneys for Mr. Keffeler argued that the practice conflicts with the best interests of children, and undermines the rights of foster care children by taking federally protected benefits that might be better used for other needs. But the Court disagreed, as did 39 states and several advocacy organizations that filed "friend of the court" briefs in support of the state. They argued that without the reimbursement, states would not have an incentive to pay for foster care services for all eligible children, and would assist in the application for Social Security benefits for fewer children. They also argued that if the children were to keep their benefits, they could exceed the \$2,000 cap on resources allowable to maintain eligibility for Social Security benefits.

Missouri Court Prohibits State from Establishing a Child Support Order For Former Custodial Parent

The Missouri Court of Appeals Western District decided against the State of Missouri in a February 11th opinion regarding the child support agency's jurisdiction to order child

support when a previous court order for support has been entered. The case involved a family in which the noncustodial father had been ordered to pay support upon the couple's divorce in 1986. In 2000, the son left his mother's home and moved in with his older sister. When the sister applied for and received temporary financial assistance on her brother's behalf, the state administratively ordered child support from the boy's mother, which would allow reimbursement for cash benefits provided to the sister's household. The Court's ruling prohibits such a practice, based on a state law that bars the establishment of an administrative child support order on behalf of any child for whom a prior order exists. The decision, *Garcia-Huerta v. Garcia and State of Missouri*, is expected to affect approximately 8,000 cases statewide.

Legal Services to the Poor Receive Boost From Supreme Court Decision, but Legal Representation Remains Insufficient

On March 26, the U. S. Supreme Court handed down a major legal decision in *Brown v. Legal Foundation of Washington*, 2003 WL 1523550

(U.S.). Affirming a decision of the Ninth Circuit, the Supreme Court held that the State of Washington did not effect a “taking without just compensation” in using interest on lawyers’ trust accounts (IOLTA) to pay for legal services to the needy. This practice is used in every state to raise money for legal services for the poor. The court’s 5-4 decision prevents the loss of approximately \$200 million per year in funds for legal representation for the indigent.

The decision will secure much needed funding for legal services, but the right to legal representation remains, in effect, denied to most poor defendants, according to the National Association of Criminal Defense Lawyers (NACDL) and the National Legal Aid and Defenders Association (NLADA). In a press release on the forty-year anniversary of the *Gideon v. Wainwright* Supreme Court ruling that guaranteed legal representation in a criminal trial to people who cannot afford an attorney, NACDL and NLADA point out that:

- A large number of people accused of a crime get no lawyer at all. The groups refer to this as the “dirty little secret of the criminal justice system.”
- Public defenders’ caseloads are often as much as 10 times the national standard of 150 per attorney per year. As a result, even the basic tasks involved in mounting a good defense are not completed. Defendants can wait for months before being assigned an attorney, and may not be given an opportunity to meet or speak with counsel until the day of a court appearance.
- Lack of adequate representation has been tolerated by courts that have held that lawyers who are asleep, drunk or under the influence of drugs are still meeting their responsibilities as counsel.
- State governments commonly spend three times as much on prosecution as on public defense, even though national standards call for a balance of resources between prosecution and defense.
- In California last year, just one county had more than 12,000 people plead guilty to misdemeanors without the assistance of counsel. In Wisconsin, more than 11,000 people go without legal representation each year because anyone with an annual income of more than \$3,000 is deemed able to afford a lawyer.

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Status of Poor Families Who Do Not Receive Cash Assistance Examined

For a recent report from the Urban Institute, *Families Coping without Earnings or Government Cash Assistance*,

researchers interviewed 275 extremely poor families, defined as those with income below 50% of the federal poverty level, who have no earned income yet do not receive government cash assistance. Among the report’s findings:

- Poor health was reported by 32% of respondents as the reason that they were not working. Twenty-four percent attributed their unemployment to the lack of available jobs, and 24% to an inability to find or afford child care, or to the desire to care for their own children at home.

- TANF program requirements and attitudes of caseworkers were cited by 40% of respondents as the reason for not participating in the program. Program hassles were the primary TANF program characteristic that kept them from participating. TANF generated more dissatisfaction than any other assistance program among respondents.
- Housing assistance was one of the most important sources of support for respondents. Food stamps and Medicaid were also important, but food stamps were difficult to secure and maintain for about half of the respondents.
- Distrust of the child support system kept many of the respondents from pursuing formal child support payments.

The report is available at <http://www.urbaninstitute.org/>.

CFPPP Publications on Domestic Violence and Medicaid Reimbursement Available

The Center on Fathers, Families and Public Policy has recently released a report on the challenges facing

fatherhood programs in regard to domestic violence, and an Amicus Brief that outlines the issues created by state policies that seek reimbursement of birth expenses.

Fatherhood Programs and Domestic Violence, is a report based on meetings that brought together fatherhood program practitioners and domestic violence advocates for a discussion of the issues, challenges and opportunities that present themselves when either group considers addressing domestic violence among low-income fathers and their families. Among the points made in the meetings:

- Domestic violence advocates are compelled to spend valuable resources substantiating the existence of high rates of domestic violence, because of common misperceptions that the incidence is much lower than is the case. This challenge, along with the efforts of some father's rights groups to undermine their efforts and concerns, forces a defensive posture on the part of both groups (domestic violence advocates and fatherhood practitioners) when approaching each other.
- Low-income minority communities experience a different legal system than do middle-class white communities. The historical association of domestic violence advocacy with the white middle-class constitutes another challenge in forming working relationships with fatherhood programs that more often represent poor minority clients.
- Fatherhood programs are in a unique position to address domestic violence with clients, since fathers have few other places where they can be treated in a supportive way. But programs that attempt to address this issue with clients need to be aware of the importance of ascertaining appropriate actions to take on behalf of a client.

Congress Should Preclude Child Support Agencies From Recovering Medicaid-Covered Prenatal Birth Expenses argues for a ban on the recovery of Medicaid costs associated with prenatal, birth and perinatal expenses. Such a ban was included in last year's Senate Finance Committee welfare reauthorization bill, and was a recommendation of the congressionally-mandated Medical Child Support Working Group in June 2000.

As of May 2001 38 states had statutes that allow for the reimbursement of birthing costs. The policy applies when a pregnant woman receives Medicaid assistance for the birth of

her child, and allows the child support agency to seek reimbursement of the birth costs from the father. The debt for the birth costs is added to his child support bill.

The Amicus Brief makes the following points in support of a federal ban on this reimbursement of birth costs:

- Recouping birth costs from noncustodial parents discourages low-income women from seeking prenatal care, since the debt owed to the state by the father will not benefit the family, but will drain what are often extremely limited funds from the money available to take care of the children.
- The average income of low-income noncustodial parents who work but do not pay child support is \$5,627 per year. Adding birth costs to the child support bill for these parents only serves as a deterrent to paying the obligation, since the debt quickly becomes insurmountable.
- Birth cost reimbursement policies serve as a deterrent to the voluntary establishment of paternity.

Both documents are available at our website, www.cffpp.org.

Noncustodial Parent of One Charged with 18 Counts of Nonpayment

The Eau Claire (Wisconsin) Leader-Telegram reports that a noncustodial father with child support arrearages exceeding \$25,000 is facing 18 counts for failing to pay child support, seventeen of which are felonies. The father has one child who was born in 1990 and failed to pay child support from January 1996 to August 1999, and from September 2000 through December 2002. If convicted on all counts, he could be sentenced to 34 years in prison.

Texas Experience with Bush Faith-Based Initiatives Precursor to National Trend

A report from the Texas Freedom Network describes the consequences of President Bush's faith-based initiatives on services to the poor in the state. Texas was subject to a strikingly similar and aggressive implementation of the Faith-Based Initiative which then-Governor Bush launched once welfare reform passed in 1996. As president, Bush has pursued the Texas model on a federal level, making the experience in Texas pertinent nationally. With both initiatives, Bush has sought to deregulate faith-based providers and increase funding available to them. The report points to several consequences of these actions in Texas:

- Faith-based deregulation was rapid and widespread, with organizations that had been cited as not complying with state health and safety regulations becoming representatives on a Bush-appointed task force that made recommendations regarding the implementation of the initiative. Teen Challenge, a religious chemical dependency program, had its director appointed to the task force in spite of having received an inspection that resulted in a 49-page list of instances of noncompliance with the state's health and safety codes the previous year.
- The legislature established an "Alternative Accreditation" program that allowed faith-based child-care centers and residential children's homes to attain exemption from state licensing by instead being monitored and "alternatively accredited" by a non-governmental entity, such as a group of pastors. The state

then approved only one entity for this purpose, the Texas Association of Christian Child-Care Agencies (TACCCA). TACCCA proceeded to:

- ❖ Accredited the Roloff Homes first, a faith-based home for troubled teens with a history of child abuse allegations, that had previously been barred by the U.S. Supreme Court from operating in Texas without a state license.
- ❖ Accredited eight agencies, three of which were run by pastors who served on the TACCCA board.
- ❖ Accredited facilities that had a rate of confirmed abuse and neglect that was 25 times that of state-licensed facilities.
- Alternative Accreditation sheltered faith-based organizations from state oversight but left the children in their care unprotected. In Spring 2001, the Texas legislature dismantled the program.
- Regulatory changes such as changes to contract and proposal language, establishment of faith-based liaisons, targeted outreach efforts and set-asides for faith-based providers resulted in preferential treatment of faith-based providers in government contracting opportunities.
- Nothing in the language of the initiative provides a safeguard to prevent faith-based programs from co-mingling taxpayer funds with church funds or from spending government funds on overtly religious activities.
- Clients are being court-ordered into unlicensed faith-based chemical dependency programs without being aware that the provider is not subject to state health and safety regulations.

The report, *The Texas Faith-Based Initiative at Five Years: Warning Signs as President Bush Expands Texas-Style Program to National Level*, is available from the Texas Freedom Network at www.tfn.org.

State Fact Sheets on Status of Children Available
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The Child Welfare League of America has fact sheets on the status of children available for every state. Each fact sheet contains information on a state's poverty rates including: child poverty; trends in receipt of government assistance, child care and health services; rates of adoption or reunification with birth families, and youth violence and arrest rates. The fact sheets are available at www.cwla.org/advocacy/statefactsheets.