

Child Support in America

By Michael McCormick, ACFC Exec. Dir

This Section provides an overview of the child support system as it operates today in the United States. The influence of the nation's child support bureaucracy on family law cannot be underestimated. It is important that fathers understand how the agency impacts their lives.

A Brief History of the Modern Child Support Era

The foundations for the modern era of child support were laid in 1975 with legislation signed by President Gerald Ford, himself the child of a 1930's divorce. President Ford noted that while agreeing with the legislation's intent, he also had reservations stating;

“... the establishment of a parent locator service in the Department of Health, Education, and Welfare with access to all Federal records raises serious privacy and administrative issues.”ⁱ

From its humble beginnings as a program designed to recover money expended by the government from absent parents whose children received welfare benefits, child support enforcement has grown into a monstrous state and federal collaboration employing over 56,700 people at a taxpayer cost in excess of \$5.77 billion per year.ⁱⁱ

An exhaustive look at the legislative history of child support is beyond the scope of this work. For those wanting a summary of the evolution of child support from a legislative perspective the federal Administration for Children and Families (ACF), an agency within the Department of Health and Human Services (HHS) provides a synopsis of the significant acts which define the present day child support program.ⁱⁱⁱ Our look will take the form of a narrative review.

Ford's signing in 1975 ushered in an era of continuing change within the child support agency. Until the mid 1980's child support primarily focused its attention on recovery of money from the absent parent in welfare cases. One outcome of the 1960's 'liberation' era was a significant increase in the number of out-of-wedlock births. From the 1960's into today our nation has seen a heretofore unprecedented number of children being born to

unwed mothers. One of the greatest indicators for poverty and welfare dependency is a child born to a single mother headed household.

President Johnson's 1960's Great Society plan was government's approach to eradicating poverty in the United States. Government began offering significant services to single mothers and began promulgating qualification rules for individuals applying for services. In the 1970's one rule that developed was the 'man out of the house rule.' As a condition for receiving welfare benefits there could be no adult male (father) living in the household with the children.

This rule obviously had a detrimental impact on keeping fathers present in the home with his children. It set in motion a system where a poor mother had to choose between forming a relationship and building a family with a poor father or taking the economic benefits being offered to her to help their children. Such a Hobson's choice^{iv} had devastating consequences on poor families, particularly poor black families. In the 1960's over 82.7% of poor inner-city African-American children were being raised by both biological parents in an intact home. Today, that number is less than 18%. This one 'rule,' effectively removing dad from the home, set in motion the demise of the poor family and virtually assured an endless cycle of childbearing without family formation.

Against the backdrop of growing single mother parenting child support agencies began carrying out their purpose of going after absent Fathers in an attempt to collect money from him to 'reimburse' the state and federal government for the cost of the welfare benefits extended on behalf of the children. The money collected from poor fathers was kept by the government. This was the original purpose of the child support system and until well into the 1980's the formal child support bureaucracy confined its activities to this purpose. Back then, in non-welfare cases when the judge ordered that child support be paid, it was paid by one parent, typically the father, writing a check and handing it to the other parent. Child support enforcement was also largely a states affair with the programs being operated locally under state government supervision.

One event took place during this period which significantly impacted our current child support systems. In 1985 Lenore Weitzman released a book called: 'The Divorce

Revolution: Economic Impacts on Women and Children. This book expounded on an earlier Weitzman research project that demonstrated women suffered a 73% decline in their standard of living after divorce while men experienced a 42% increase. That's an astounding differential.

It's common practice in the social sciences community for researchers to release their data sets along with the results of their studies. This is useful for other researchers so they can evaluate information in light of their own work and also confirm or extract additional insights based on the data sets. In this case, researcher Weitzman refused to release her data for over 12 years. Other researcher's began expressing doubts about the validity of the conclusions of her results as they were unable to replicate the results. When Weitzman's data was ultimately released it turns out she had miscalculated the data and her conclusions were staggeringly wrong.

Just how wrong were her conclusions? According to researchers and authors Dr. Sanford Braver and Diane O'Connell, in their book: *'Divorced Dads: Shattering the Myths'* once tax and other benefits are factored into the equation there is virtually no difference in the actual standards of living for mothers and fathers after divorce. Neither mothers nor fathers see post divorce improvements in their standards of living.

It's one thing to issue research that has no impact outside of the community of researchers, but such was not the case with Weitzman's work. Its influence on policy development around child support was monumental. According to Richard Peterson, a sociologist who finally acquired and reran her data, a 1996 Nexis database search showed the results had been referenced in 175 newspaper articles, 348 social science journal articles, 250 law review articles and 24 appellate and Supreme Court decisions.^v It's one thing to be wrong, it's quite another to be wrong and have your results be a primary driver for a massive government social program.

By the late 1980's the federal government began taking a much more active role in child support. It hired a consultant, who today runs one of the largest private collection agencies in the nation, to work on developing the child support guidelines that have become the hallmark of the present child support system. Estimates indicate these

guidelines resulted in child support awards that were 2 – 4 times higher than previous awards. What we were seeing was the development of a solution searching for a problem.

The fundamental economic premise driving development of these new guidelines, which were to be applied at all income levels, was “children of divorce should not have a standard of living that is less than the one they would have enjoyed had their parents remained married.” While the sentiment might be nice, the reality for all but the wealthiest is that it is not feasible to support two households on the same income that formerly supported one. Yet over twenty years after the development of these guidelines, as unsound as it is, that premise remains the pole star for child support guidelines and regulations.

The federal government began offering extensive subsidies and reimbursement to the states to ‘encourage’ them to accept the new program mandates. The mother of all massive changes to the modern child support system occurred in 1996 with the PRWORA (welfare reform) act signed by President Clinton. This act expanded the child support program to a level previously unknown in the history of the nation. The argument went something like this: If we are going to limit the duration of time mothers receive welfare we are going to have to increase child support enforcement efforts to make up for the lost benefits as mothers leave the welfare rolls.

Over the next several years new collection enforcement techniques were implemented which included punitive measures like incarceration for non-payment, drivers and professional license suspension, asset seizures and wage withholding orders so support would be taken directly from an obligors paycheck. Toward the end of the decade laws were promulgated at the federal level which required the implementation of massive computer tracking systems, centralized payment and dispersal systems, a new hires registry to track all new employees and unprecedented interagency and private business reporting on the financial affairs of all American citizens ordered to pay support.

Tremendous debates took place in Congress over the necessity and legality of requiring states to implement what are essentially citizen tracking and monitoring systems. All of this was done under the threat of withholding federal dollars to the state if the states failed to comply. A number of child support enforcement leaders complained Congress was

essentially creating a system that would draw the middle class into it in ways which had never been intended. State child support directors testified the way to game the system and generate the greatest financial windfalls for the state was to focus on generating middle class child support orders with less attention on the lower income cases for which the system was originally designed.^{vi} President Gerald Ford's concerns for citizen privacy expressed in the 1970's were being realized in the 1990's. And the system continues its expansion.

During this time period part of the incentive formula paid to states was a percentage 'bonus' on each dollar of support collected. The bonus ranged from 6% to 10% of each dollar collected depending on the characterization of the dollar. It doesn't take long, or require a rocket science degree, to understand that if you bring more middle class payers into the system, your state picks up more money from the feds. It also doesn't take much to see that the higher the child support award, the greater the amount of money that passes through the system leading to the greater incentive payment to the state. The incentive system to the states changed about a decade ago with the passage of the Child Support Performance Incentive Act. This is the foundation on which the current child support system is built.

How does or doesn't the present system promote best outcomes for children?

What do you think about how the government uses these systems to regulate and assure compliance with its child support orders? Is this a proper function of government?

Can you think of other instances where erroneous studies, reports and books like Lenore Weitzman's have had such an impact on society and government programs?

How the Child Support System Impacts Child Custody

There are a couple of other points you should be aware of when it comes to the child support system. While you are required to pay support there is no corresponding requirement that the support money be spent on your children. Also, at this point child support is more accurately called lifestyle support given that the guidelines are based on the parent(s) income, not on the actual basic costs associated with raising a child.

Further, one of the unstated reasons fathers get so little time with their children is that increasing their time may result in a lowered support obligation which would mean less money to mom. States receive fewer incentive and reimbursement dollars as fewer dollars flow through the system. It is outrageous that our nation's children are being denied relationships with their fathers' in order to assure the most money possible passes through the system. At this point I'm sure you're beginning to see how the system is completely stacked against a non-custodial/non-primary residential parent having a full and equal relationship with the children.

What incentive would the state have in assuring kids a full relationship with both parents if the state is going to realize less money for doing so?

You might be asking how the state could be so callous and put its revenue considerations above all else. After all, the standard to be applied when determining custody is supposed to be the best interest of the child. How would the state make its money if it gave similarly situated parents equal time and there were fewer child support awards? So what happens?

Special interest groups protect the family court by perpetuating the myth that the only reason a father would want to be with his kids is to pay less child support. That's about as

offensive as saying mothers only want custody of the children to get a check. Neither is true, then again family law is not generally about the truth, or about the best interest of the children, but about perpetuating the business of family law.

The child support agencies themselves generate a tremendous amount of one-sided information through their own press operations. We've all seen the deadbeat dad roundups. They make great TV, but the reality is they accomplish very little. Why should the public waste limited resources chasing poor people when its sheriff and police departments ought to be addressing real criminal activity? Roundups are simply a demonstration of the unbridled power of the state over the most intimate details of citizens' lives. As Terrebonne, Louisiana District Attorney Joe Waitz Jr. says the arrests are part of a last-ditch effort to get delinquent parents to do their duty.

***"We have tried, but there is no money anyway,"** Waitz said. "We want to give them a taste of jail. It sends a strong message. Maybe not to (those arrested), but to those who are on the fence about paying."*^{vii}

The child support industry is responsible for the return of debtor's prisons to America. The practice of incarcerating people who have no ability to pay money was outlawed in the United States in the 1830's. However with the enactment of United States Code Section 42 USC 666 the practice of incarceration for non-payment of support was reintroduced. On any given day in the United States it is estimated several tens of thousands of individuals are sitting in jails and prisons because they are simply too poor to pay child support. So outrageous and widespread has this practice become that the United States Supreme Court heard the case of Turner v. Price rendering a decision in June of 2011 that once again reaffirmed the ban on incarcerating people too poor to pay support. Despite this, the practice of jailing indigents continues.

John's story illustrates all too often what happens in this system. John first reached out in 2008. His email said: "I'd like you to use my case as an example of how broken the system is in...We have presented evidence to DCSE (child support), but they choose to ignore it. I have terminal cancer and am missing possibly my last visitation with my son due to these proceedings. How does jailing me seem justified?" John was jailed. Here is the even

crazier part of his case. He and his ex-wife reached agreement on how much he would pay her. She didn't want any more money from him. John was a big fellow who trained horses. When he appeared before the judge he didn't look like a man who was dying. Even though John and his ex had settled their child support issues the court refused to honor their agreement and jailed John anyway. Why? Because the state makes money whether John is paying support or sitting in jail. The state was unwilling to let go of a man until they squeezed a few more dollars from his dying hands.^{viii} In June of 2009 another email arrived. John had lost his battle with cancer while the courts kept a death grip on him until the very end. John's case demonstrates what can happen on the individual level. It would be easy to dismiss John's case as an aberration. With over 25,000 people in jail it's hard to write off John's case as a 'one off' situation.

How do the child support and child custody systems work together to prevent children from having a full relationship with both parents? Here's another example, in 2006 a young man named Mitchell Sanderson spearheaded an initiative to put shared parenting on the ballot in North Dakota. Mitch and his fellow citizens from the North Dakota Shared Parenting Initiative gathered over 12,000 signatures and the measure made it to the ballot.

Alarmed at the initiative's strong public support, North Dakota's Health and Human Services agency (the agency that collects child support in ND), along with the bar association and the domestic violence coalitions went on the attack. The child support agency argued that enacting shared parenting would jeopardize federal funds to the state. In a nutshell the state argued that giving children a full relationship with both parents would put North Dakota's child support program out of compliance with federal regulations and cause the state to immediately forfeit several tens of millions of dollars in federal funds over a two year period.

The state found a federal regional program director willing to write a letter supporting that position. A subsequent letter from the acting Deputy Secretary in Washington, DC clarifying the issue indicated the state position and regional director's claims regarding immediate loss of funding were inaccurate. However the damage to what was the most widely discussed and debated measure on the 2006 North Dakota ballot had been done.

Measure 3 was defeated at the polls by less than six percentage points. It is not an exaggeration to say that a measure benefitting the children and parents of North Dakota was derailed by the bureaucrats who expand their departments and assure their pensions at the expense of the well being of our children and families.

H.L. Mencken, a well known early 20th century journalist with the Baltimore Sun said: “The whole aim of practical politics is to keep the populace alarmed (and hence clamorous to be led to safety) by menacing it with an endless series of hobgoblins all of them imaginary.” The child support enforcement bureaucracy was expanded to protect citizens from a supposed army of fathers who were willingly abandoning their families to the government dole. However the evidence indicates government policies were creating the very problems being blamed on fathers by removing him from family life. There was no mass of evidence indicating middle class Americans were avoiding the payment of support that would justify creation of such an intrusive system.

The child support enforcement bureaucracy continually lobbies for more money and tools, at taxpayer expense, through its professional trade associations. Two out of every three dollars a state spends on its child support system comes from the federal government. Additionally the federal government reimburses states 90% of the costs of implementing its computer systems. The federal government provides another \$500 million+ annually to the states in the form of an incentive pool. If positive change is to come to this overblown bureaucratic nightmare it will have to begin with a realignment of the reimbursement and incentive programs in a way that rewards states for maximizing the time children spend with both their parents. Were incentives paid along these lines we would see an overnight shift in child custody awards as states sought to maximize their share of federal funds.

In an incredibly callous move states are now penalizing parents fortunate enough to have shared parenting by applying a ‘multiplier’ to the base child support amount when children spend closer to equal time with both parents. This essentially assures that all but the wealthiest of support paying parents will not have sufficient funds remaining to spend on their children when the children are with them. A new model for child support is being pitched around the nation. It is called COBS, which stands for child outcome based support.

This system results in even greater transfer payments from one parent to the other. Our federal child support laws actually discourage shared parenting by statutorily requiring one parent be designated as the non-custodial parent.^{ix}

As you have seen child support agencies are leading the way in the erosion of individual liberties. The motive is to take your money, with little thought to your relationship with your child. The Congressional Green Book, a publication of the United States government that summarizes the legislative history of government programs, made these observations about the child support program.

Although currently there is only modest evidence that would allow an estimate of the cost avoidance effect (Wheaton & Sorensen, 1998; see also: Barnow, Dall, Nowak, Dannhausen, 2000), there is nonetheless good reason to believe that at least some noncustodial parents make child support payments in part because they fear detection and prosecution. Even more to the point, a strong child support program may change the way society thinks about child support.

As in the cases of civil rights and smoking, a persistent effort over a period of years may convince millions of Americans, both those who owe child support and those concerned with the condition of single-parent families, that making payments is a moral and civic duty. **Those who avoid it would then be subject to something even more potent than legal prosecution--social ostracism.**^x

Equally discouraging, while a slightly higher percentage of women were awarded child support (63.0 percent in 2001 versus 59.1 percent in 1978), the percentage of women who received full payment remained virtually unchanged (25 percent in 2001 versus 24 percent in 1978).^{xi}

In summary, it appears that the performance of the Nation's child support system is modest and that only a few performance measures have improved over two decades.^{xii}

By government's own admission the agency has done little to increase its rate of collections, so why is it allowed to continue at a cost of over \$5.77 billion per year? As citizens and fathers to our children we should be concerned when government admits to engaging in social engineering programs, particularly when those programs guarantee children will spend a significant amount of time without one of their parents. Fathers are being conditioned to accept that they should not expect to play a lifelong role in their

children's lives and further that a father's primary benefit to his child lies in his wallet. Over the last fifty years this type of institutionalized thinking has taken an unsustainable toll on our families and our relationship with our children.

The Federal Office of Child Support Enforcement is gearing up for the next phase of its mission creep. The agency is under budgetary pressure and is seeking to expand services in the areas of 'access and visitation.' Make no mistake, the agencies first priority is and will remain extracting funds. It views maintaining fathers' relationships with their children as simply a means to achieve greater compliance with support orders.

Fathers, and those who love them, are right to be outraged that children are being denied a full relationship with their dads because of systems that generate revenue for the states by the very act of separating his children from him. That's real child abuse.

It's time for men to exercise their considerable political power and put an end to the practice of picking dads' pocket while separating him from his children, under the pretext that doing so is in the best interest of his child.

How do you think the child support system could be improved?

What's been the impact of the child support system on your life? The lives of other men you know?

Some Tips if You Are Dealing With Child Support Issues

- 1) If you are contacted by a child support agency respond to their inquiry, don't ignore it. If you do not respond the agency can seek an order against you anyway.

- 2) If you are not married to the mother or there is any question about your being the father, demand a DNA test.

- 3) If you are not married to the mother and think you might have a child with a women register with the putative father registry in your state so your child can not be adopted away from you without your consent. If an adoption occurs, registering will allow you to contest an adoption later. If you are registered you must be notified before an adoption occurs.

- 4) If you lose your job or your income drops significantly contact your child support office and apply for a downward modification immediately. If you wait, you lose. Child support agencies are prohibited by law from granting modifications to a date earlier than you submit the request for modification.

- 5) If the state is seeking to incarcerate you for non-payment of support they are not allowed to do so if you demonstrate you have no ability to pay the obligation. Make sure you can demonstrate your indigence to stay out of jail.

For more information and additional resources on these and other family law related issues visit www.acfc.org

Copyright © 2012 Michael McCormick

ⁱ The American Presidency Project <http://www.presidency.ucsb.edu/ws/index.php?pid=4783#axzz1jxE745c3>

ⁱⁱ Administration of Children and Families, Office of Child Support Enforcement 2010 Preliminary Data Reports http://www.acf.hhs.gov/programs/cse/pubs/2011/reports/preliminary_report_fy2010/OCSE

ⁱⁱⁱ Administration of Children and Families, Legislative History Summary http://www.acf.hhs.gov/programs/cse/pubs/2002/reports/essentials/appendix_a.html

^{iv} No real choice at all - the only options being to either accept or refuse the offer that is given to you. Thomas Hobson (1545–1631) ran a thriving carrier and horse rental business in Cambridge, England, around the turn of the 17th century. Hobson rented out horses, mainly to Cambridge University students, but refused to hire them out other than in the order he chose. The choice his customers were given was 'this or none'; quite literally, Hobson's choice.

^v The Seattle Times 19 May 1996, A3

^{vi} Leslie Frye 1997 Testimony to House Ways and Means Committee

<http://waysandmeans.house.gov/legacy/humres/105cong/3-20-97/3-20frye.htm>

^{vii} The Daily Comet - <http://www.dailycomet.com/article/20111214/ARTICLES/111219800?p=1&tc=pg>

^{viii} ACFC National Press Club Conference August 16, 2007 <http://www.youtube.com/watch?v=w1ftmBBgudE>

^{ix} 42 USC §666

^x 2004 Congressional Green book at pg. 8-68

^{xi} id at pg. 8-73

^{xii} id at pg. 8-73