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Notes

MAINTAINING WELFARE FAMILIES' INCOME IN KENTUCKY: A STUDY OF THE RELATIONSHIP BETWEEN AFDC GRANTS AND SUPPORT PAYMENTS FROM ABSENT PARENTS*

I. INTRODUCTION

There is no finer investment for any community than putting milk into babies.¹

Winston Churchill

This statement has universal acceptance. One who disagrees would quickly be likened to a repossessor of crutches and wheelchairs. Honorable men may and often do disagree, however, on the method of putting the milk into the baby as well as the quantity required to fill the baby's stomach. The virtues of breast feeding are contrasted to the wholesomeness of the formula method, and the variation in size among babies' stomachs makes the volume required to fill an "average baby" a very uncertain amount. Disagreement has led to debate, and debate has led to federal and state legislative programs designed to put wholesome milk into babies.² Although the results have been beneficial, inadequacies still exist.³

* This article represents research conducted during the summer of 1968, by the author while he was on an internship assignment with the Southern Regional Education Board supported by the Office of Economic Opportunity.

¹ Radio Broadcast (A Four Year's Plan), March 21, 1943.

² The Social Security Act of 1935 established public assistance programs designed to help needy people. The categorical assistance programs were Title I, Old Age Assistance (OAA); Title IV, Aid to Families with Dependent Children (AFDC); Title X, Aid to the Blind (AB); and, Title XIV, Aid to the Permanently and Totally Disabled (APTD or AD) (This program was not originated until 1950). Under these public assistance titles of the Act, the federal government provides financial support for state welfare programs designed to aid people in these categories of need. States, in order to receive federal funds for their welfare programs, must have plans which comply with standards established by the federal government. These federal standards, established by statutes and regulations, are controlling over state programs to the extent that state public assistance plans "must conform with several requirements of the Social Security Act and with rules and regulations promulgated by HEW." *King v. Smith*, 36 U.S.L.W. 4703, 4705 (1968).

As noted above, AFDC is a categorical public assistance program. It is designed with

[t]he purpose of encouraging the care of dependent children in their own home or in the homes of relatives (through) . . . financial assistance . . . to needy dependent children and the parents or relatives with whom

(Continued on next page)

In Kentucky, one such inadequacy exists where families receive support payments from an absent parent and grants from the Commonwealth under the public assistance program, Aid to Families with Dependent Children [hereinafter referred to as AFDC]. The Kentucky Public Assistance Division, of the Department of Economic Security encourages the payment of money or the rendering of services to AFDC families from legally responsible absent parents in compliance with a support order. Often, however, families scheduled to receive support payments along with AFDC grants are penalized when the support payments are not made. The penalty occurs because, unless the Public Assistance employee who computes the AFDC recipient's grant is furnished with information to the contrary, the AFDC grant is initially calculated on the theory that the support payment from the absent parent will equal the amount specified by the support order. But, when the absent parent does not comply with the support order, and he usually does not,⁴ there is no immediate method by which the welfare family can recover this loss, *i.e.*, the amount the AFDC grant is reduced in anticipation of a support payment.

Some jurisdictions have recognized this problem and have attempted to solve it. Others, including Kentucky, either have not recognized it, or after recognition have been apathetic toward the plight of the people being penalized by the AFDC assumption. Having recognized the problem in Kentucky, the state now may choose the direction in which it desires to move—in the direction of inaction, apathy and the maintenance of the status quo, or toward alleviation of the problem. This study seeks to indicate the direction which should be taken. The basic question to be considered in determining this direction is: "Should the state pay the AFDC family the amount of its determined need and then have the authority and responsibility of collecting the support payment from the legally liable absent parent?"

(Footnote continued from preceding page)

they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection.

42 U.S.C. § 601 (1968). Kentucky had adopted the AFDC program and has met the federal standards required of a state plan. Much discretion remains, however, with the state in the administration of this public assistance program. Each state has the authority to make its own definition of minimum need and to pay only a percentage of that need. Therefore, a state may participate in the Social Security Act's AFDC program, receive federal financial support for the program, yet still determine the amount and under what circumstances assistance is to be paid recipients within its borders.

For a comprehensive coverage of welfare law see Wedemyer & Moore, *The American Welfare System*, 54 CALIF. L. REV. 326 (1966).

³ See notes 60 and 67 *infra*, and accompanying text.

⁴ See note 62 *infra*, and accompanying text.

II. AFDC AND SUPPORT PAYMENTS IN KENTUCKY

A. AFDC Grants

Prior to 1943, Kentucky families with needy children had to rely upon friends, charities, fraternal orders, or private legislative grants⁵ for assistance in supporting their children.⁶ The state used all available land for legislative grants, and the friends, charities, and fraternal orders became unable to meet effectively the needs of an ever increasing group of impoverished citizens. In January, 1943, Kentucky inaugurated the Aid for Dependent Children program to "provide financial assistance to needy children under 18 who have been deprived of a parent because of death, absence, or incapacity."⁷ This state assistance to needy children was established under the 1935 Social Security Act.⁸ The Kentucky program was declared constitutional in 1942⁹ and became operative in 1943.¹⁰

In December, 1951, 21,245 families consisting of 19,801 adults and 55,295 children were on the Kentucky AFDC rolls.¹¹ The program for that year was administered on a budget of \$10,460,000. The average monthly grant was \$41.86 per family and \$16.08 per child,¹² representing a 44 percent increase during the previous nine years. However, the grant still met only 54 percent of the estimated needs of the recipients,¹³ and the amount of the payments placed Kentucky forty-third among the forty-eight states.¹⁴

The figures for 1951 may be compared with those for April, 1968, and fiscal year 1966-67. In April, 1968, 27,432 families, comprised of 29,535 adults and 78,179 children, were receiving AFDC money payments from the Kentucky Public Assistance Program.¹⁵ The payments

⁵ For an example of a private grant see Ch. 47, [1824] Ky. Acts 39. Two hundred acres of vacant unappropriated land in Madison County were given to a widow because it was "represented to the General Assembly of the Commonwealth of Kentucky, that Celia Maxwell, with four children, was left destitute of the means of support, and entirely dependent upon her friends." To remedy this and "to relieve her infants from their distressed situation," the 200 acres was given to the family.

⁶ See E. SUNLEY, *THE KENTUCKY POOR LAW 1792 - 1936* (1942).

⁷ KENTUCKY LEGISLATIVE RESEARCH COMMISSION, *WELFARE PUBLIC ASSISTANCE 15* (Res. Rep. No. 21, 1952).

⁸ For the text of the original Social Security Act, see 49 Stat. 620 (1935).

⁹ *Meredith v. Ray*, 292 Ky. 326, 166 S.W.2d 437 (1942).

¹⁰ By the end of 1938, all but eight states had established an ADC program. Kentucky was one of the eight. Others included Connecticut, Illinois, Iowa, Mississippi, Nevada, South Dakota, and Texas. W. BELL, *AID TO DEPENDENT CHILDREN* 23 (1965).

¹¹ KENTUCKY LEGISLATIVE RESEARCH COMMISSION, *WELFARE PUBLIC ASSISTANCE 16* (Res. Rep. No. 21, 1952).

¹² *Id.* at 8.

¹³ *Id.*

¹⁴ *Id.* at 9.

¹⁵ DIVISION OF PUBLIC ASSISTANCE, *KENTUCKY DEP'T OF ECONOMIC SECURITY (PA-264 Rep. Ser., April, 1968)*.

for April totaled \$3,055,455; the average monthly grant was \$111.38 per family and \$28.37 per recipient.¹⁶ Grant payments in fiscal year 1966-67 amounted to \$29,295,068 for 22,348 families comprised of 24,049 adults and 63,568 children.¹⁷ The average AFDC monthly payment for fiscal year 1966-67 was \$27.87 per recipient.¹⁸

Although these figures are impressive and the money being given to the recipients is helpful, one must remember that not all families with needy children receive AFDC payments. In Kentucky, the largest group of needy children who do not receive AFDC grants are those who are needy because a parent is unemployed. The federal government has provided a program for these needy children,¹⁹ but Kentucky has not implemented it.²⁰ Other eligible families not on the AFDC rolls may not know of the program, may not have been given adequate information upon application, or may have dropped out of the process after having applied.

Those presently on the AFDC rolls had to be "processed" in their local public assistance offices. Such "processing" typically includes the following steps: (1) A person believing himself or his family to be in need of financial or social services assistance will go to a local Public Assistance office;²¹ (2) He will be met by a receptionist and assigned to a social case worker;²² (3) An application will be taken, immediate problems will be discussed and necessary temporary action will be taken to relieve immediate anxiety;²³ (4) Other potential problem areas which may necessitate welfare grants or social services will also be discussed and the applicant will be informed of his rights and responsibilities concerning public assistance grants;²⁴ (5) Plans

¹⁶ *Id.*

¹⁷ DIVISION OF PUBLIC ASSISTANCE, KENTUCKY DEP'T OF ECONOMIC SECURITY (PA-264 Rep. Ser., Fiscal Year, Table VI, 1966-67).

¹⁸ *Id.*

¹⁹ 42 U.S.C.A. § 607 (1968).

²⁰ To date, twenty-two states have elected to participate in the AFDC-UP program. Kentucky is not one of the twenty-two. The National Advisory Commission on Civil Disorders strongly urges implementation of the AFDC-UP program in each state. NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS, REP. 255 (1968).

²¹ For a description of the application process from the state's point of view, see DIVISION OF PUBLIC ASSISTANCE, KENTUCKY DEP'T OF ECONOMIC SECURITY, MANUAL OF OPERATION §§ 1000-1319 (1967) [hereinafter cited as KY. MANUAL].

²² A declaration form, rather than a personal interview, may be used to determine the applicant's eligibility. If the declaration form is used it must meet criteria established by the federal government. See HEW, HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION pt. IV, § 2300(e)(6) 1968 [hereinafter cited as FEDERAL HANDBOOK].

²³ Temporary action taken to relieve immediate anxiety would include, e.g., the obtaining of surplus commodities for a hungry family or the securing of health service for the applicant or his family.

²⁴ Other potential service areas could include procurement of eyeglasses from a local community club, referral of the applicant to a more appropriate form of welfare, or the provision of services to the applicant or his family.

will be made with the client for home visitation so that other problem areas may be diagnosed; and (6) If necessary, the applicant will be referred to a service agency.

It is important to note that every citizen has the *right to apply* for public assistance.²⁵ Not all applicants are *eligible*,²⁶ of course, and in cases of denial, reduction, or discontinuance of payments six months must pass before the application can be filed again.²⁷ It is possible, however, to reapply immediately when the conditions supporting the previous rejection have changed.²⁸ The law further provides that if any applicant or recipient is dissatisfied with the decision or delay in action on his application for public assistance or the amount granted to him, he may appeal to a referee.²⁹ A claimant can appeal from the referee to the Appeal Board³⁰ and from the Appeal Board to the circuit courts.³¹ Those applicants who are found eligible for public assistance can expect a money grant from the state within thirty days.³² This is the target date for initial payments to eligible applicants, but the time lag has been as long as ten months when medical examinations and other substantiating documents are required.

B. Legal Obligation to Support

The moral and legal duty of parents to support their children is strong.³³ Kentucky Revised Statutes [hereinafter referred to as KRS]

²⁵ KY. MANUAL § 1009 (1967).

²⁶ In determining continuing eligibility for public assistance, a "pre-hearing" has been established. The "pre-hearing" provides for "advance notice of questions it [the agency] has about an individual's eligibility so that a recipient has an opportunity to discuss his situation before receiving formal written notice of reduction in payment or termination of assistance." FEDERAL HANDBOOK pt. IV, § 2300(d)(5) (1968). See also FEDERAL HANDBOOK pt. IV, §§ 5514(2)(c), 6400(a) (1968).

²⁷ 1 KY. ADMIN. REG. PA-71(2) (1962); KY. MANUAL § 1012 (1967).

²⁸ 1 KY. ADMIN. REG. PA-71 (1962); KY. MANUAL § 1012 (1967).

²⁹ 42 U.S.C.A. § 602(a)(4) (1968). See also KY. REV. STAT. [hereinafter cited as KRS] § 205.231(2) (1964); 1 KY. ADMIN. REG. PA-50 (1958).

³⁰ KRS § 205.231(4) (1964). The Appeal Board is appointed by the Commissioner of Economic Security and is composed of the Commissioner and two other members. The Commissioner is chairman and he and one other member constitute a quorum. KRS § 205.231(3) (1964).

³¹ KRS § 205.234 (1964).

³² Effective July 1, 1968, it is a requirement of a state plan that action on an application must not exceed 30 days. FEDERAL HANDBOOK § 2200(b)(3) (1968).

³³ Cf. KRS § 405.020(1) (1968); *Sowders v. Sowders*, 286 Ky. 269, 150 S.W.2d 903 (1941).

In certain instances the child is also responsible for the support of his parents. KRS § 405.080 (1968) provides:

Any person who is eighteen years of age or over, residing in this state and having in this state a parent who is destitute of means of subsistence and unable because of old age, infirmity or illness to support himself or herself, shall, after reasonable notice, provide that parent with neces-

(Continued on next page)

section 205.010(6), defines a parent for public assistance purposes as, "Parent, in addition to natural or adoptive parent, shall include step-parents and persons unrelated by marriage, but maintaining an established family relationship."³⁴ Kentucky statutory and case law recognizes this parental duty and places the primary duty of supporting the children of a marriage on the father.³⁵ If the father is unable to support the children of the marriage, the duty of support is then placed on the mother.³⁶

The belief that it is the parents' duty to support their children has been expanded from the natural parents to other individuals occupying a parental role.³⁷ Kentucky statutory law makes the step-parent of any child who is an applicant for or recipient of public assistance legally responsible for the support of such child in the same manner

(Footnote continued from preceding page)

sary shelter, food, care and clothing, if he has, or is able to earn, sufficient means to do so.

A Kentucky statute identical to that quoted above, with the exception that the previous statute provided "Any adult person residing . . .", was held constitutional in *Wood v. Wheat*, 226 Ky. 762, 11 S.W.2d 916 (1928). Recently, however, the constitutionality of these "family responsibility" laws has been questioned. See Rosenbaum, *Are Family Responsibility Laws Constitutional?*, FAMILY L.Q., December, 1967, at 55. The case of *Department of Mental Hygiene v. Kirchner*, 43 Cal. Rptr. 329, 400 P.2d 321 (1965), held that it was a violation of the equal protection clause of the California Constitution to compel a deceased's estate to pay for maintenance of the deceased's mother after commitment to a state institution. *Kirchner*, however, has not been followed and has been narrowly construed. See, e.g., *County of Alameda v. Espinoza*, 243 Cal. App.2d 534, 52 Cal. Rptr. 480 (Dist. Ct. App. 1966); *In re Dudley*, 239 Cal. App. 2d 401, 48 Cal. Rptr. 790 (Dist. Ct. App. 1966).

³⁴ Prior to September 3, 1968, this definition of parent was also used in the Kentucky Public Assistance Manual of Operation. See KY. MANUAL § 2214(G) (1967). After *King v. Smith*, 36 U.S.L.W. 4703 (1968), however, the definition of parent in the Kentucky Public Assistance Manual of Operation is, "Parent means either father or mother, natural, adoptive or step-parent." KY. MANUAL § 2205(B) (1968).

For a discussion of the way "substitute father" clauses were used to deny recipients AFDC, see W. BELL, *AID TO DEPENDENT CHILDREN* 76-92 (1965).

³⁵ KRS § 405.020(1) (1968); *Sowders v. Sowders*, 286 Ky. 269, 150 S.W.2d 903 (1941). Other manifestations of statutory intent for the enforcement of the parent's duty to support his children are KRS § 381.180(6) (1966), "Although a trust is a spendthrift trust, the interest of the beneficiary shall be subject to the satisfaction of an enforceable claim against the beneficiary: (a) by the wife or child of the beneficiary for support, or by the wife for alimony: . . ." and KRS § 427.045 (1966), "The exemptions provided in KRS 425.210, 427.010 to 427.040 shall not apply for executions, attachments, or garnishments, issued for the collection of maintenance of minor children."

³⁶ KRS §§ 405.020(1)-(2) (1968); see also KY. MANUAL § 2285 (1967).

³⁷ In a recent case for criminal nonsupport, a California court held a man to be a "lawful father" and guilty of the crime of nonsupport of a child conceived through heterologous artificial insemination of his wife with his consent. *People v. Sorensen*, 66 Cal. Repr. 7, 437 P.2d 495 (1968). A West German court recently placed the obligation of contributing one half of a child's support until age 18 on a pharmacist who negligently dispensed a digestive aid rather than the prescribed birth control pill to the child's mother. An appeal of the case is planned. *TIME*, Dec. 13, 1968 at 62.

as a natural parent.³⁸ These duties of support imposed by statutes, judicial interpretations, administrative regulations, and manual guidelines are not apparent in the normal conjugal relationships, because supporting the children is just "the thing to do." When something happens to the marriage, or when there is no marriage, the duty of supporting the children and the amount needed to accomplish this, are hotly contested issues.

For families receiving AFDC, the question of parental support payments arises in three circumstances: (1) where there has been a divorce, separation, or annulment; (2) where there has been a desertion; and (3) where there are illegitimate children.

Where divorce, separation, or annulment are concerned, the support order for children placed in need because of the divorce of their parents is usually rendered at the time the divorce is granted in the court. If no support order is issued then, or if it is inadequate to support the children, the case may be reopened later only by the attorneys involved in the original proceedings. The court will review the adequacy or necessity of the support order and will make any necessary alterations.³⁹ Separation and annulment agreements are often handled in a similar manner.

"The term desertion refers to the action of the parent or parents who fail to perform the duties owed to the child and leave the home in which the child lives."⁴⁰ The deserting parent carries with him the duty to support his children. His children are technically eligible for AFDC benefit, however, only if they have been deserted for thirty days or more.⁴¹ If desertion does in fact occur, the remaining parent or other specified relative⁴² may request the county court to issue a warrant against the absent parent.⁴³ If the deserted child does apply for AFDC, it is the duty of the public assistance office to assist the applicant child in obtaining support from his parents,⁴⁴ and to notify the appropriate law enforcement officials that a child has been deserted.⁴⁵ It is important to note that the bringing of a support action by an applicant is not an eligibility requirement for receiving AFDC. However, if, and only if, such an action is deemed advisable by the social

³⁸ KRS § 205.310 (1962).

³⁹ KRS § 403.070 (1962).

⁴⁰ KY. MANUAL § 2281 (1967).

⁴¹ *Id.* at § 2281(A).

⁴² 1 KY. ADMIN. REG. PA-42-1 (1964); KY. MANUAL § 2810(B) (1967).

⁴³ KRS § 435.240 (1962).

⁴⁴ 42 U.S.C.A. § 602(a)(17) (1968). *See also* 1 KY. ADMIN. REG. PA-61-2(2) (1967).

⁴⁵ KRS § 205.200(6) (1962). Under 42 U.S.C.A. § 602(a)(18) (1968), provision is made for a cooperative financial arrangement among courts, law enforcement officials, and the state agency administering the plan.

case worker, it may be grounds on which to deny assistance. In such an instance, the applicant's refusal to assist in bringing the support action may result in the denial or termination of an AFDC grant for "lack of cooperation."⁴⁶ If the support action is pursued, the public assistance grant is not dependent upon the termination or results of that proceeding. Instead, the eligibility requirement is met when the action requested by the case worker is taken by the applicant.⁴⁷

Where illegitimate children are involved, KRS 406.011 states that "The father of a child which is or may be born out of wedlock is liable [for the child's support] to the same extent as the father of a child born in wedlock" In cases of children born out of wedlock, paternity actions are urged by the Public Assistance Department as a means of obtaining parental support. The support action for paternity cases differs from that for desertion cases in that such action is an eligibility requirement.⁴⁸ That is, no child born out of wedlock will be eligible for public assistance as a needy child until after a paternity proceeding involving the child has been initiated or waived by the Commissioner of Economic Security or his duly authorized representative.⁴⁹ It is similar to the desertion action, however, because eligibility is determined at the time the action is filed and does not depend on the outcome of the action. Under present legislation, the paternity action is a civil proceeding under the jurisdiction of the county court. It must be brought before the child reaches four years of age.⁵⁰

Closely related to the support action concepts for divorce or annulment, desertion, and children born out of wedlock, is the Uniform Support of Dependents Act,⁵¹ as codified in Chapter 407 of KRS. The Act is designed to "extend by reciprocal legislation the enforcement of duties of support. . . ."⁵² One provision of the Act which is very important to this study is KRS 407.160. This provision gives a state or political subdivision that furnishes support to a person the same right as the needy person to seek reimbursement for expenditures made and

⁴⁶ See 1 KY. ADMIN. REG. PA-54 (1961); KY. MANUAL § 2285(c) (1967).

⁴⁷ But see FEDERAL HANDBOOK pt. IV, § 3422.5(2) (1946).

⁴⁸ See KRS § 205.200(4) (1966).

⁴⁹ See KRS § 205.200(4) (1966); 1 KY. ADMIN. REG. PA-33 (1952); KY. MANUAL § 2265 (1967). In the end analysis, it is not necessary to distinguish between the necessity of bringing a support action or a paternity action as an eligibility requirement for receiving AFDC. In both cases, if the social worker determines that an action should be brought and the applicant refuses to cooperate, no benefits will be given the applicant.

⁵⁰ KRS § 406.031 (1964).

⁵¹ The act was declared constitutional in *Duncan v. Smith*, 262 S.W.2d 373 (Ky. 1953). See generally Annot., 42 A.L.R.2d 768 (1955). For an exhaustive discussion of the act see Murphy, *Uniform Support Legislation*, 43 Ky. L.J. 98 (1954).

⁵² KRS § 407.010(2) (1962).

to secure continuing support from the person normally obligated to support the needy person. Thus the state may bring an action in its own behalf, in interstate cases at least. To this date, however, the Economic Security Department has declined to exercise this power and has insisted that the applicant remain the petitioner in the support proceeding:

One who desires a support order must be "processed" in a manner similar to that used for issuing AFDC grants. The procedure varies in each of Kentucky's 120 counties. The procedure used in Fayette County is an example: (1) The mother goes to the Domestic Relations Division of the County Court; (2) She describes her situation and gives necessary background information to a representative of the Domestic Relations Division; (3) Housing and necessary support for the children are also discussed; (4) A complaint is taken; (5) If the address of the father is known, a letter is sent informing him that a complaint has been filed against him and that he is to contact the Domestic Relations office within one week; (6) The mother is informed to check with the Domestic Relations Office within one week; (7) If the father responds to the request, an appointment is set up for the mother and father with a Domestic Relations representative present. At this meeting the representative attempts by negotiation to obtain from the father an official out-of-court agreement to support the woman and children; (8) If the father does not answer the letter, the mother is asked to sign a warrant for the arrest of the father on grounds of "neglect of minor children." The warrant is sent to the police to be served. If the warrant is successfully served, the father is arrested and charged. Usually his personal bond is recognized in order to allow him to return to work, and he is informed of the date on which he is to appear in the Adult Division of Juvenile Court; (9) The county judge sets the amount of the support payment and usually suspends the sentence so that the father can return to work and pay the amount set in the order; (10) If the address of the father is unknown, an attempt is made to locate him. The mother cooperates in this activity. If the father is out of the state, the mother is sent to the county attorney and the Uniform Support of Dependents Act is utilized. In out-of-state cases a warrant is also left with the local police so that it may be served if the father returns to the state; (11) A *capias* is issued for "failure to obey a court order" if the support payments, within one year, do not comply with the court order. Usually, however, this is issued only in cases of repeated violations.⁵³

⁵³ Interview with Barbara Weiss, Fayette County Director of Health and Welfare, in Lexington, Kentucky, July 16, 1968.

Fayette County provides that all support payments be paid to the Domestic Relations Collection Department.⁵⁴ An additional 2 percent is added to the support order and is paid by the father in order to finance the collection process. The burden to report missed or insufficient payments remains, however, on the mother.

Although similar procedures for obtaining support orders are utilized in other counties, the method of payment varies widely. Jefferson County has a data processing system designed to record payments made under a support order. The equipment prints a weekly roll, automatically redockets cases, and prints a statement for the account when two consecutive payments are missed. Many counties, of course, have the support payments made directly to the families and it is the families' responsibility to report missed or insufficient payments.

C. Relationship of AFDC Grants and Support Payments

The complex theories and realities of AFDC and support payments sometime become applicable simultaneously to one family. In April, 1968, 4,172 Kentucky families received both AFDC grants from the Commonwealth and support payments from absent parents.⁵⁵ This number represents 15.2 percent of all AFDC families. In April, 1968, the total AFDC grant to these families totaled \$449,158.⁵⁶ The average grant per family was \$107.66.⁵⁷ For the same month, support payments from absent parents to these families totaled \$200,365, representing an average payment per family of \$48.00.⁵⁸

An example will best explain the relationship of AFDC grants and support payments within one family. It will be assumed that the hypothetical family used for discussion, meets all of the eligibility requirements for AFDC and that the mother, with four children in her custody, has a support order against, and is receiving from, her divorced husband a total of \$50 per month. If the mother's local public assistance office determines her family's need to be \$250 per month, the \$50 will be subtracted from the estimated need and an AFDC grant of \$173 from the Commonwealth will be paid. The amount is \$173 rather than \$200 because AFDC grants do not presently meet 100 percent of need.⁵⁹ Instead the grant reflects 86.5 percent of the deficit, rounded to the nearest dollar.⁶⁰

⁵⁴ *Id.*

⁵⁵ Interview with Roy Butler, Kentucky Department of Economic Security Statistical Supervisor, in Frankfort, Kentucky, June 13, 1968.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ The extent of the practice under which states pay only a percentage of a

(Continued on next page)

An inadequacy of the present program may now be examined. If, in this hypothetical case, the mother does receive the full support payment from the absent parent, the total amount of money coming into the home would be \$223 per month (\$173 AFDC grant plus \$50 support payment). On the other hand, if the family needs must be met entirely from AFDC assistance, the grant would be \$216 per month (86.5 percent of \$250).⁶¹ Therefore, if support payments are in fact paid, the family would receive an additional \$7 per month. Using

(Footnote continued from preceding page)

recipient's determined need was revealed in hearings before the Committee on Ways and Means concerning the President's proposals for revision in the Social Security System.

More than 3 million children in families dependent on public assistance live below the poverty level. In figuring public assistance payments, each of the 50 States makes its own definition of minimum need. Although a few States define need at or above the poverty level, no State pays as much as that amount.

Moreover, 33 States provide less support for needy children than the standards the States themselves have set as necessary to meet basic human needs. The record for these 33 States is shown in the table below, which shows actual support for needy children as a percentage of the State's own minimum standard:

STATES	PERCENT
Oregon, California, New Mexico, Idaho	90-99
Colorado, South Dakota, West Virginia, Ohio, Wyoming, Washington	80-89
Kentucky, Michigan, Iowa, Utah	70-79
Georgia, Tennessee, Texas, Vermont, Louisiana, Delaware	60-69
Maine, Arkansas, Arizona, Missouri	50-59
Nevada, South Carolina, Indiana, Nebraska	40-49
Alaska, Alabama, Florida	30-39
Mississippi	20-29
* * * *	

Low levels of aid tend to keep families and children dependent.

Hearings on H.R. 5710 Before the Committee on Ways and Means, 90th Cong., 1st Sess., pt. 1, at 118 (1967).

Kentucky now meets 86.5 percent of its determined need. KY. MANUAL § 2910 (Grant Table) (1967).

⁶⁰ KY. MANUAL § 2910(c) (1967). There has been much recent dissatisfaction with maximum grant provisions in state welfare programs. The constitutionality of such provisions is under attack. One state has held that maximum grant clauses are unconstitutional under the equal protection clause of its state constitution. *Collins v. State Bd. of Social Welfare*, 249 Ia. 369, 81 N.W.2d 4 (1957). Washington's maximum grant provisions were held to be "fundamentally wrong" as a basis for determining assistance. *Straub v. Department of Public Welfare*, 31 Wash. 2d 707, 198 P.2d 817 (1948).

New attacks are being made on these provisions in Arizona, Florida, Maine, Texas, Washington and Maryland. See WEL. L. BULL., June, 1968, at 13, col. 4. The maximum grant provisions are being challenged in these states as violating the equal protection clause of the federal Constitution and the state and federal statutes authorizing AFDC. WEL. L. BULL., April, 1968, at 4, col. 2.

⁶¹ This is true if the family lived in the industrial counties of Boyd, Campbell, Christian, Daviess, Fayette, Franklin, Henderson, Jefferson, Kenton, McCracken, or Warren. Otherwise, the family would have received the maximum AFDC grant of \$180.00 per month for a family consisting of from one to six persons. See KY. MANUAL § 2910(G) (1968).

the hypothetical family again, if none of the \$50 is paid, the family receives \$173 as compared to the \$216 that could have been received if a support order and payments had never been established. In reality, this is betting, if indeed the recipients were allowed to bet, \$43 (the difference of \$216 and \$173) on the chance of gaining an additional \$7 (the difference in \$223 and \$216).

Over a long period of time, the odds for this bet are even worse. Individuals closely associated with welfare recipients and support payments are of the opinion that at some time support payments from the absent parent either will not be paid at all, or will be paid in an amount less than that required by the support order.⁶² An AFDC recipient replied:

My support payments are seldom received in an amount equal to the support agreement. Only a couple of times has the payment been more than the agreement. If a support payment is missed, you are just out of luck for that one. When you report it to the court, they just say, "give him time to pay it."⁶³

A former state service worker has said:

Ninety-nine percent of the time the support payments are not paid regularly, and if paid at all, they are usually less than the amount set in the order. This happens if the payments are made to the wife or to the circuit court, and the payors are never sent to jail.⁶⁴

A Kentucky public assistance area administrator has observed:

After the support order has been entered the husband usually begins to pay, but after a few months the payments almost invariably become sporadic.⁶⁵

The supervisor of a child support department has concluded:

Sooner or later nearly all will either not pay at all or will not pay the full amount. A person who complies fully would not be in this department in the first place.⁶⁶

These statements indicate that support payments to AFDC families

⁶² A recent study in an Indiana county revealed that there were arrearages or no collections in 89 percent of the cases and that in 47 percent no support or alimony payments were made even though the court order directed payment to the clerk of the court. Foster & Freed, *Unequal Protection: Poverty and Family Law*, 42 IND. L.J. 192, 206 (1967).

⁶³ Quotations used in this study, unless otherwise cited, are attributed to the respondent's title only. The confidentiality of the welfare program necessitates this practice. 42 U.S.C.A. § 1306 (1968); KRS § 205.175 (1962); 1 KY. ADMIN. REC. PA-22 (1950); FEDERAL HANDBOOK pt. IV, § 7430 (1968); KY. MANUAL § 1021(A)(3) (1967). Copies of interviews and records used are on file with the KENTUCKY LAW JOURNAL, Lexington, Kentucky.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

are not made on a regular basis. This result is not surprising, because if the father were in a secure economic position, his family would not likely be on welfare. The missed support payment results in its greatest harm when it is for children who are needy enough to qualify for AFDC grants. The harm is even greater in the present Kentucky system because there is no way the AFDC family can achieve immediate financial assistance to make up for the missed payment. Thus, a missed payment or payments places a greater burden on an already strained family purse.⁶⁷

Another method by which the relationship of AFDC and support payments may be shown is to examine the status of fathers of AFDC children. Table No. 1 shows the status of fathers of AFDC children from 1950 to 1968 and reveals changes in fatherhood status throughout those years. In 1950, children whose fathers were dead or incapacitated comprised 63.8 percent⁶⁸ of the recipients, while for the same year the children of absent fathers made up 34.4 percent of the recipients.⁶⁹ Figures for 1968 reveal that for the same categories the percentages were 39.5 and 56.7 respectively.

The greatest increase in the components of the 56.7 percent figure for absent fathers occurred in two classes: (1) deserting fathers; and (2) fathers not married to the mother of the dependent children. Although these are two of the most socially unacceptable reasons for receiving welfare, these groups have shown a steady increase over the past eighteen years, from 20.1 percent (1950) to 22.1 percent (1958) to 25.8 percent (1961) to 41.8 percent (1968).

Table No. 2 reveals that among 27,774 Kentucky AFDC families in 1968, the fathers in 16,150, or 58.2 percent of them were absent because of divorce, separation, desertion, or failure to marry the mother. The figure for 1968 when compared to the 53.1 percent in 1961 shows a seven year increase of 5.1 percent.

One facet of the relationship between AFDC and support payments can be seen from these two tables. The absent fathers portrayed numerically in these tables, just as other fathers, owe their children and families a moral and legal duty of support. However, this support

⁶⁷ The Louisville Welfare Rights Organization charges that the amount reflected in the state budget is not sufficient and despite rising costs, has not been changed in at least seven years. Congress, in the 1967 amendments to the Social Security Act, provided that by July 1, 1969, the amounts used by the state to determine the needs of individuals shall have been adjusted to reflect fully the changes in living costs since such amounts were established. Congress also provided that any maximums that the state imposed on the amount of aid paid to families must be proportionately adjusted. 42 U.S.C.A. § 602(23) (1968).

⁶⁸ See Table No. 1, May, 1968.

⁶⁹ See Table No. 1, May, 1968. This figure includes fathers who had either divorced, separated, deserted, or not married the mother of children receiving AFDC.

TABLE NO. 1
CHANGES SINCE NOVEMBER 1950 IN STATUS OF FATHER OF AFDC CHILDREN

STATUS OF FATHER	May 1968 ^a		November 1961		December 1958		November 1950	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Total Children	78,991	100.1	59,376	100.0	56,787	100.0	60,964	100.0
Dead	8,996	11.4	6,919	11.7	9,267	16.3	12,002	19.7
Incapacitated	22,134	28.0	20,211	34.0	22,261	39.1	23,890	44.1
Absent:								
Divorced	10,654	13.5	11,301	19.0	7,557	13.3	5,231	8.6
Separated	1,105	1.4	1,509	2.5	1,813	3.2	1,557 ^b	2.6
Deserting	12,153	15.4	5,891	9.9	4,242	7.5	4,000 ^b	6.5
Not married to mother	20,796	26.4	9,414	15.9	8,299	14.6	8,270	13.6
Imprisoned	2,446	3.1	3,774	6.4	2,492	4.4	1,900 ^b	3.1
Other Absence	473	0.6	84	0.1	453	0.8	454 ^b	0.7
In Home	158	0.2	273	0.5	453	0.8	660	1.1

^a) May, 1968, figures are based on a 10 percent sample study made in December, 1967.

^b) Estimated from November, 1953 survey.

is not readily available, if available at all, for 56.7 percent⁷⁰ of the children and 58.2 percent⁷¹ of the families receiving AFDC. Of the 16,150 families with absent fathers, 4,172 actually received a payment.⁷² It is not known why only a small amount of the potential parental support is actually collected. The figures do show, however, that an area exists for the securing of child support orders and payments to AFDC families.

TABLE NO. 2
NUMBER OF AFDC FAMILIES IN NOVEMBER 1961 AND MAY 1968,
BY STATUS OF FATHER

STATUS OF FATHER	May, 1968 ^a Families		November, 1961 Families	
	Number	Percent	Number	Percent
Total	27,774	100.0	21,826	100.0
Dead	3,258	11.7	2,872	13.2
Incapacitated	7,289	26.2	5,871	26.9
Absent:				
Divorced	3,671	13.2	3,900	17.9
Separated	276	1.0	524	2.4
Deserting	4,280	15.4	2,138	9.8
Not Married to Mother	7,923	28.6	5,032	23.0
Imprisoned	911	3.3	1,384	6.3
Other Absence	111	0.4	42	0.2
Other Status	55	0.2	63	0.3

^a) May, 1968, figures are based on a 10 percent sample study made in December, 1967.

III. PROBLEMS WITH THE EXISTING PROCEDURE

Many problems now exist for a family whose livelihood consists of support payments from an absent parent and an AFDC grant from the Commonwealth. The following problems are representative and not exhaustive.

(1) *There is a lack of cooperation between officials administering public assistance and those enforcing support orders.* A story circulates through the offices of public assistance employees and

⁷⁰ This does not include fathers absent because of imprisonment or other absences.

⁷¹ See Table No. 2, May, 1968, for families whose fathers had either divorced, separated, deserted, or not married the mother of children receiving AFDC.

⁷² The 16,150 is a May, 1968, figure and the 4,172 is an April, 1968, figure.

county officials about a father who has not complied with a support order against him and cannot be found. Finally the mother of his child sees the father standing on a corner near the county courthouse. She immediately goes inside and tells a law enforcement official that the father of her child is outside and that he should be arrested, under a complaint previously filed, for non-support. It is said that the official's response is to send a deputy to tell the man to leave so the officials will not have to be bothered with him.

Although the story is probably false, the fact that it is circulated indicates that a problem exists. Exactly where to place fault for the lack of cooperation between public assistance employees and officials enforcing support orders depends on the critic's position. A former state service worker has stated:

County officials are reluctant to serve "failure to support warrants" and are inclined to "shift the buck." The county officials tend to take advantage of the low-income people and are reluctant to assist them. However, public assistance furthers this situation by sending the applicants alone to deal with the county officials.⁷³

A county attorney observed:

The law enforcement officials in this county are very cooperative. The local officials are, however, operating under a heavy work load. At the county level, too, you must remember, local politics is involved.⁷⁴

The separate existence of, and lack of cooperation among the agencies assisting a family receiving support payments and AFDC grants often imposes an additional hardship on the people they serve. A public assistance area administrator succinctly stated the problem and its results:

We tell them [the applicants] if they have any problems or reports to make to just call or come by to see us. However, many of these people neither have a phone nor an extra 10¢ to use a pay phone. The same is true with transportation, they either do not have an automobile or can not afford a 60¢ taxi fare.⁷⁵

(2) *There is no effective uniform way for enforcement officials to know if support payments are made in accordance with the support order or agreement.* In the less populous counties of Kentucky it is the duty of the AFDC mother to report deficient support payments whether the payment is made through the court or directly to the family. Even in Fayette County, where all support payments are handled by a county collection department, it remains the duty of the

⁷³ See note 63 *supra*.

⁷⁴ *Id.*

⁷⁵ *Id.*

obligee to report missed or noncomplying payments in order to seek redress. Jefferson County is the only county surveyed that has provisions for action by enforcement officials without notice from the obligee. By means of an elaborate data processing system, a support case is automatically redocketed if two consecutive support payments are missed. Even under this system, however, half of the payments may be missed without any action, if the father merely makes every other payment. In this case it remains the obligee's duty to complain of missed payments.

(3) *If a support payment is made in an amount less than required by the support order, or not paid at all, the family must suffer this loss until an adjustment in the AFDC grant can be made.* Formerly, state public assistance guidelines permitted calculation of the AFDC grant to include in the family budget the amount of the support order whether it was actually received or not. Pursuant to federal guidelines, this method of figuring the budget of Kentucky AFDC recipients was changed in April, 1967. Administrative regulation PA-61-2(3) of the Department of Economic Security, Public Assistance Division, provides, "Only that amount of support actually available to meet the needs of the child shall be considered in computing the budgeted needs of such child." In order to achieve this objective, Kentucky public assistance personnel use the average support payments for a three month period immediately prior to the application or recalculation of the AFDC grant.⁷⁶ Under this method of calculation, the average amount actually received for the prior three months is used in the budget, regardless of whether it represents more or less than the amount of the support order. For example, assume a family has a \$100 per month support order against the absent parent and that the absent parent pays this amount for January, but misses the February and March payments. When the AFDC recipient notifies the public assistance office of the resulting budget deficit, the average amount received for the three months (\$100 divided by three equals \$33.33 per month) will be the amount included in the family budget. Of course, if in the rare case, more is paid by the absent parent than directed in the support order, that average is also included in the family budget.

This method seems relatively easy to use, but there has been some misunderstanding over the term "three months." Can the family budget be refigured only every three months, or may it be recalculated every month in order to reflect changes in income? The question is important because if the budget may only be figured every three months, a prolonged hardship will result when, immediately after a budget including

⁷⁶ See KY. MANUAL §§ 2296, 2703 (1967).

support payments is figured, the support payments are not made. A public assistance area administrator replied to the above question, "Our office will refigure the budget every month if necessary. You must remember though that it is the recipient's responsibility to report any difference in income."⁷⁷ By contrast, an AFDC recipient in the same administrator's area replied, "The budget can be refigured every three months."⁷⁸ This is a prime example of providing a method by which relief may be granted, but allowing the person it is designed to help (the potential beneficiary) to remain ignorant of its existence. A public assistance social service supervisor in another area answered the question regarding the time factor in refiguring the budget by saying, "The recalculation of budgets on a monthly basis is just about an impossibility because of deadlines to be met and the worker's case loads."⁷⁹ The clear inference in this answer was that her office calculated a recipient's budget no more often than every three months.⁸⁰

⁷⁷ See note 63 *supra*. See also KY. MANUAL § 2296 (1967).

⁷⁸ See note 63 *supra*.

⁷⁹ *Id.*

⁸⁰ State AFDC grants and support payments to families will seldom, if ever, reflect the families' standard of need as determined by the public assistance case worker. The seriousness of this problem can best be shown by use of a chart. For this chart, it will be assumed that: (1) The amount of determined family need is \$169; (2) The amount of the support order is \$100; (3) The beginning deficit is \$69; and, (4) The beginning AFDC grant is 86.5 percent of \$69 or \$60. It will be further assumed, perhaps optimistically so, that adjustments for the budget are made and reported by the 10th of each month (the adjustment and reporting must be completed by the 10th in order to be reflected in the next month's AFDC grant) and that the AFDC recipients budget will be refigured every month on the basis of support payments actually received during the preceding three months.

Month	A Support Actually Paid (Assured)	B 3 Month Support Average (Computed)	C AFDC Grant (Computed)	D Income Family Scheduled to Receive (B-C)	E Income Actually Received (A+C)
January	100		60		
February	0	100/2 = 50	60		
March	50	150/3 = 50	103	153	153
April	0	50/3 = 17	103	153	103
May	100	150/3 = 50	131	148	231
June	100	200/3 = 67	103	153	203
July	25	225/3 = 75	88	155	113
August	0	125/3 = 42	81	156	81
September	0	25/3 = 8	110	152	110
October	75	75/3 = 25	139	147	214
November	100	175/3 = 59	125	150	225
December	100	275/3 = 92	95	154	195

This representation is the optimum at which the present system can operate. Even if the budget is refigured every month, if there is diligent calculating and reporting of budgets, and if the support payments are paid or not paid in time for this to be achieved, there is still a great fluctuation in the monthly amount actually received by the family. The chart shows a fluctuation of only \$9 in the amount the

(Continued on next page)

Administrative deadlines also add delay to the time required for a decrease in support to be reflected by an increase in the AFDC grant. For example, to have a change in the AFDC grant in April the information must be received in the state public assistance office by the tenth day of March. This adds more time to the delay. An actual case can best illustrate the time involved. An AFDC recipient had her budget refigured the second week of April and received a letter on May 15, 1968, which stated that her check would be increased on July 1, 1968. Using the prior three months for the income used in the recalculation of the budget means that it took *six months* for a *deficiency* in support payments to be *reflected* by an *increase* in the AFDC grant.

(4) *Present AFDC guidelines and requirements make it the "stepchild" of public assistance programs.*⁸¹ AFDC's stepchild position

(Footnote continued from preceding page)

family is scheduled to receive. In reality, the fluctuation is \$150. There is even a \$128 difference in the months of April and May.

This type of result may place the Kentucky state plan in jeopardy of being not in compliance with federal standards. It may not be in compliance because it fails to meet the current need of the recipients. In *Ferguson v. Noe*, 364 S.W.2d 650 (Ky. 1963) (a case involving the retroactive payment of public assistance) counsel for the Kentucky Department of Economic Security argued:

[P]ublic assistance is based on *current* needs for subsistence of a "needy child" and the computation of amounts payable is controlled by standards adopted by the Department for determining present and future requirements of the recipient. . . . [T]here is nothing in the public assistance law, regulations or policies which requires or authorizes subsidizing *past* economic difficulties. *Id.* at 651.

Whether the Kentucky method of handling AFDC grants to families which also receive support payments meets federal standards has been questioned. *See* legal memorandum from Robert M. Viles to Messrs. Caumissar, Nickell and Short of Northeast Legal Services Program, Dec. 9, 1968, on file with Robert M. Viles, University of Kentucky College of Law, Lexington, Kentucky.

⁸¹ Historically the AFDC program has always been the stepchild of public assistance programs. Edwin E. Witte, Executive Director of the Committee on Economic Security, 1934-35, was largely responsible for supervision of the drafting of the Economic Security Bill which later became the Social Security Act of 1935. Mr. Witte recorded his impression of the relationship in initial treatment of the many public assistance programs:

There was little interest in Congress in the aid to dependent children.

It is my belief that nothing would have been done on this subject if it had not been included in the report of the Committee on Economic Security. That the grants to states for this purpose are limited to one-third of their expenditures, while the grants for old age assistance and blind pensions are for one-half of the expenditures, reflects this complete lack of interest in the aid for dependent children. E. WITTE, *THE DEVELOPMENT OF THE SOCIAL SECURITY ACT 164* (1963).

The stepchild treatment of AFDC by the federal government has continued to date. Today's concern is over the growing number of children who are needy because of a parent's absence. In Kentucky, for example, the percent of children receiving AFDC who are in need because of an absent parent has increased from 34.4 percent in 1950 to 56.7 percent in 1968. *See* Table No. 1. Congressional reaction to this and similar increases was the enactment of 42 U.S.C.A. § 603(d) (1968). It provides:

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in the welfare family is important because the factors which make missed support payments to an AFDC family seem oppressive are multiplied when the inadequacies of the AFDC program are also included.

The most evident restrictions of the Kentucky AFDC program are the provisions which place a ceiling on meeting budgeted need and the failure to pay 100 percent of the need for any AFDC grant.⁸² The AFDC program has a monthly maximum grant of \$180 (\$220 in industrial counties) for a family of 1 to 6 and a maximum of \$220 (\$260) for a family of 7 or more. Moreover, the state meets only 86.5 percent of determined need in the form of an AFDC grant. When contrasted to the public assistance programs for the aged, blind, and disabled, these AFDC limitations appear even more discriminatory. In programs for the aged, blind, and disabled, there are no maximum grants for recipients outside of "licensed homes"⁸³ and their grants reflect 100 percent of need. Further investigation reveals that the aged or disabled recipient is allowed to disregard \$7.50 of any income⁸⁴ plus \$20 and one-half of the remainder of the first \$80 per month of earned income;⁸⁵ the blind recipient is allowed to disregard \$7.50 of any income⁸⁶ plus \$85 per month of earned income and one-half of earned income in excess of \$85 per month;⁸⁷ on the other hand, AFDC recipients may disregard only \$5 of any income⁸⁸ plus the first \$30 earned income and one-third of the remaining earned income per

(Footnote continued from preceding page)

Notwithstanding any other provision of this chapter, the average monthly number of dependent children under the age of 18 who have been deprived of parental support or care by reason of the *continued absence* from the home of a parent with respect to whom payments under this section may be made to a State for any calendar quarter after June 30, 1968, shall not exceed the number which bears the same ratio to the total population of such State under the age of 18 with respect to whom payments under this section were made to such State for the calendar quarter beginning January 1, 1968, bore to the total population of such State under the age of 18 on that date. (Emphasis added.)

⁸² For a discussion of current litigation on these areas see note 60 *supra*.

⁸³ See KRS §§ 216.610-700 (1962) for the licensing requirements and procedures. See also KY. MANUAL §§ 2818, 2910(G)(2) (1968).

⁸⁴ 42 U.S.C.A. § 302(a)(10)(A)(i) (1968); 42 U.S.C.A. § 1402(a)(8)(A) (1968). See also 1 KY. ADMIN. REG. PA-66.5(1) (1968); KY. MANUAL § 2671 (1968).

⁸⁵ 42 U.S.C.A. § 302(a)(10)(A)(ii) (1968); 42 U.S.C.A. § 1352(a)(8)(B) (1968). See also KY. MANUAL § 2673(B) (1968).

⁸⁶ 42 U.S.C.A. § 1202(a)(8)(C) (1968). See also KY. MANUAL § 2671 (1968).

⁸⁷ 42 U.S.C.A. § 1202(a)(8)(A) (1968). See also KY. MANUAL §§ 2673(A)(1)-(3) (1968).

⁸⁸ 42 U.S.C.A. § 602(a)(8)(B)(ii) (1968). See also KY. MANUAL § 2671 (1968).

month.⁸⁹ Disregarding the income for AFDC cases did not become effective until July 1, 1968. The fact that AFDC recipients continue to be placed on the bottom rung of the public assistance ladder was evidenced by the 1968 Kentucky House Resolution which became law without the Governor's signature. It resolved, "[T]hat the Department of Economic Security is hereby requested not to reduce the amount of payments to the needy aged due to an increase in the amount of Social Security payments."⁹⁰ No such concern for AFDC recipients was exhibited by the Legislature.

The "stepchild" treatment of AFDC as a public assistance program can be attributed to the makeup of its recipients and the political questions involved. Early AFDC programs assisted children who were needy primarily because of the death of their fathers. Today, however, the program primarily assists children who are needy because their father has deserted them or has never married the child's mother. To most citizens, neither of these acts is socially acceptable, and a program which in any way contributes to these conditions is even more socially unacceptable. Consequently, it is difficult for a legislator to advocate an enlarged AFDC program without incurring the wrath of a large segment of the electorate. Therefore, AFDC continues to be a "stepchild" of the public assistance program and little action has been taken to improve it.

IV. WHAT CAN BE DONE?

The Kentucky Department of Economic Security has recognized the problems experienced by families when they receive AFDC grants and support payments. To date, however, a workable solution to the problems has not been implemented. One of the latest proposals was a bill for the amendment of KRS ch. 407, the Uniform Support of Dependents Act.⁹¹ The bill would allow the state to pay an absent parent's AFDC family the amount of its determined need, and to assume the authority and responsibility for collecting the support payment from the absent parent.⁹² Explanation accompanying the proposed bill described it as designed to:

- (1) provide for enforcement of the duty to support against a father

⁸⁹ 42 U.S.C.A. § 602(a)(8)(A)(ii) (1968). See generally KY. MANUAL §§ 2671, 2673, 2676, and 2910 (Grant Tables); KY. MANUAL § 2681 (1968).

⁹⁰ Ch. 227, [1968] KY. ACTS 843. This resolution was passed by the Kentucky Legislature because, historically, every increase in Social Security payments paid to the needy aged would result in a decrease of the amount paid to this group by the state. This happened because the state grant was determined by need and the increased Social Security payment reduced this need.

⁹¹ KRS ch. 407 (1962).

⁹² For the full text of the proposed bill see the Appendix.

located within the state in the same manner as if he were in another state;

- (2) permit any state agency supplying support and maintenance for needy children to initiate support action against an absent parent; and,
- (3) permit such state agency to receive support payment as reimbursement for assistance furnished to such needy children. Such provisions could assure continuing assistance for needy children in an amount consistent with the needs of the children with the support collected treated as a refund of assistance granted.⁹³

The bill, drawn by the Kentucky Economic Security Department, for submission to the 1968 Kentucky General Assembly, was never introduced in the Senate or House of Representatives. The question now becomes: "Should such a proposal be made at the next session of the Kentucky Legislature?" Relevant social and economic factors must be considered before answering this question.

V. PERTINENT FACTORS FOR CONSIDERATION OF CHANGE

A. *Public Policy*

Responses to the question of whether the state should become involved in the collection of support payments for AFDC recipients in order to make the AFDC grant reflect the families' determined needs, have ranged from "I am for it wholeheartedly" to "I am unalterably opposed to such a method." Like the universal support for putting milk into babies, all agree that such a state payment and collection program would be beneficial to the AFDC families involved. Like all other important social and legal questions, however, this question has spokesmen both pro and con as well as those in the great middle of the road. There is considerable disagreement on who should administer the proposed program, how it should be handled, and to what extent it should change existing enforcement procedures. Public assistance employees say that law enforcement officials should be responsible for administering it, the county enforcement officials feel that public assistance agencies should do most of the work in enforcing the support orders, and recipients do not seem to care who is in charge so long as they get their money.

The mention of a welfare mother on AFDC brings an immediate cry from the general public: "Why don't you do something about these mothers having more children just to get bigger welfare checks?"⁹⁴

⁹³ *Id.*

⁹⁴ Similar questions were posed to this writer when the topic of this study was discussed with people not associated with the Kentucky or federal assistance programs. Repeated incidents of this nature occurred during preparation of this study.

Based on the fact that in May, 1968, the fathers of 41.8 percent of the children receiving AFDC in Kentucky had either deserted the child or had not been married to its mother, the attitude behind this question has some validity. There is much of this public dissatisfaction with Kentucky's present AFDC system.⁹⁵

Tennessee has adopted a statute similar to the one drafted by the Kentucky Economic Security Department for the 1968 Kentucky Legislature.⁹⁶ Under this statute, the Tennessee Public Assistance Agency may bring suit against parents who are not supporting their children. A team from the Kentucky Department of Economic Security, after visiting Tennessee to study its program, concluded that it makes the public more aware of the state's efforts to collect child payments from legally responsible parties. This tends to foster an improved image of the welfare programs. This, in theory at least, should lead to enactment and better administration of welfare programs.

Social workers working with AFDC families have definite opinions concerning the involvement of such a cold creature as the state in the intimate family setting. One opinion opposes state collection of support payments because the state is impersonal both to the mother and children receiving the AFDC grant and to the father required to make his support payment to a bureaucratic agency rather than directly to his family. This opinion stresses maintenance of the family and believes that as long as there is contact between the father and mother, even if it is limited to payment of support money, there is a chance of reuniting the family. When the state agency is interjected into this relationship, this opportunity is lost.

The opposing opinion of social workers holds that it is too late to save the family after the father has abandoned (or never joined) it. The steady income provided by the proposed program would do more good than futile attempts at reuniting the family. Although both arguments are valid, the second is more realistic. It recognizes the hard problems faced by AFDC families while not forgetting that through proper social work, the family can still be reunited.⁹⁷

⁹⁵ See, e.g., The Courier-Journal, June 13, 1968, § B, at I, col. 1. There is also dissatisfaction with AFDC programs in other states. See W. BELL, AID TO DEPENDENT CHILDREN 60-75 (1965); TIME, Dec. 13, 1968, at 25.

⁹⁶ TENN. CODE ANN. §§ 36-1006 (Supp. 1968). In addition, Tennessee has statutory authority for bringing a civil action to recover money paid to a wife or needy child by the welfare department. *Id.* at §§ 14-323.

⁹⁷ Often the attempt to keep the family together results in even greater family and state welfare hardships. One AFDC recipient stated that six months after she and her four children separated from their father, she had to return to him because she could not meet financial obligations. The reunification of the marriage produced two more children. The mother and her six children now receive AFDC, and the father is in prison.

The National Welfare Rights Organization⁹⁸ and its local chapters endorse state collection of support payments.⁹⁹ The attitude of the Louisville chapter's president is vehement toward fathers who do not support their children: "If you have to make a man pay for taking care of his family, his citizenship papers should be taken away."¹⁰⁰

Employees of the Kentucky Public Assistance Division who were interviewed endorsed the proposed program and they emphasized that it would guarantee the total amount of income the family would receive and allow for better household budgeting. This would reduce pressures on the family, and relax the burden on public assistance employees in meeting administrative deadlines.

County officials who were interviewed agreed that support payment to and collection by the state would be good for the AFDC families involved. They expressed reservations, however, about their ability to enforce support orders in such a program, indicating that they are overworked now and that such a program would have to be administered by another state agency. The supervisor of the Jefferson County Child Support Department stated that if state collection of support payments were implemented, his department should be closed down because it could not function:

The mother and children could not care less if the father paid the state. . . . There would be a breakdown all along the line. The families would not be particularly interested if the state got money, now they do care about the children getting their money. What motive would the mother have to tell where her husband could be found? Through the wife is the only way to find them now because the wife has the right channels. Everyone is looking out for themselves and if she has nothing to gain, she won't comply.¹⁰¹

⁹⁸ The National Welfare Rights Organization is an organization of welfare recipients and other poor people. It consists of 100 affiliated local groups in 26 states and 100 other local groups in formative stages. It also claims over 5,000 dues paying members (families) which represent over 20,000 welfare recipients. NATIONAL WEL. LEADERS NEWSLETTER, April 15, 1968, at 24. The largest Kentucky chapter is in Louisville. It has 200 members on its roll, but only 60 are active members.

⁹⁹ Interview with Mrs. Selma Burch, President of Louisville Welfare Rights Organization, in Louisville, Kentucky, July 1, 1968.

Other goals of the Louisville chapter are: (1) Have the AFDC budget reflect 100 percent of need; (2) Establish a program of annual guaranteed income; (3) Create a realistic job training program; (4) Educate welfare recipients about available programs and the "hearing procedure;" (5) Have social workers inform recipients in advance of visits to their home; (6) Pay at least \$1.60 per hour for jobs the trainees are offered after completion of their training program; and, (7) Have a reappraisal of the schedule on which AFDC grants are made because the basic figure has not changed in eight years. Interview with Mrs. Roxana Jackson, Treasurer of Louisville Welfare Rights Organization, in Louisville, Kentucky, July 1, 1968.

¹⁰⁰ Interview with Mrs. Selma Burch, President of Louisville Welfare Rights Organization, in Louisville, Kentucky, July 1, 1968.

¹⁰¹ See note 63 *supra*.

California has provided, through legislation, for the consequences envisioned by the Louisville supervisor. A statute¹⁰² provides for discontinuation of an AFDC grant if the recipient family refuses law enforcement officers reasonable assistance in the enforcement of support obligations. Acts deemed to be a refusal to offer reasonable assistance are: (1) A refusal to be interviewed by the district attorney; (2) A refusal to sign a complaint against the absent parent; (3) A request to dismiss the complaint; and, (4) The concealment of the identity or whereabouts of the absent parent.¹⁰³ Such a legislative enactment or administrative implementation may be necessary for Kentucky, if the acceptance of the proposed new program is deemed advisable.¹⁰⁴

Numerous other questions arose during the investigation of this problem. Representative questions are: (1) Does the mother use the courts and the support order proceeding to harass the absent parent? (2) Should the mother be excluded from being an active participant in the court proceedings which are necessary to obtain a support order against an absent parent?¹⁰⁵ (3) Would the amount of the original support order be higher or lower if a state representative, rather than the mother, appeared before the judge who determines the amount of the support order? (4) Would the obligor be as likely to miss a support payment to the state as to the mother? and, (5) How many fathers not presently complying with support orders have new families to support?

In considering the first two questions, it seems that mothers do not object to being involved in a support action against the father. But, it further seems that judicial action is used only as a means of obtaining money for the children and not to harass the father. An AFDC mother stated, "I had no objection to taking out the warrant for my husband because I was more interested in the welfare of my children than in the welfare of my husband, especially when he refused to support the children."¹⁰⁶ Therefore, preliminary investigation reveals that mothers

¹⁰² CAL. WEL. & INST. CODE ANN. § 11477 (West 1965).

¹⁰³ *Id.*

¹⁰⁴ There is presently much disagreement over the question of whether mothers, in order to be eligible for AFDC, should be required to file a nonsupport complaint against a deserting or abandoning father. Compare TENNESSEE WELFARE HANDBOOK Vol. II, 350 (1961), which provides, "It shall be explained to the applicant-relative (grantee-relative) that legal action is required but she (he) has the right of choice, however, if she (he) does not wish to take such action or consent to the Department's taking available legal action assistance will be denied" with FEDERAL HANDBOOK pt. IV, § 3422.5(2) (1946); G. STEINER, SOCIAL INSECURITY: THE POLITICS OF WELFARE 117 (1966); O'Neil, *Unconstitutional Conditions: Welfare Benefits with Strings Attached*, 54 CALIF. L. REV. 443, 451 (1966); WEL. L. BULL., June 1968, at 14, col. 1.

¹⁰⁵ FEDERAL HANDBOOK pt. IV, § 3422.5(2) (1946).

¹⁰⁶ See note 63 *supra*.

do not use the court order proceeding against the absent parent as a harassing device. Instead, it is used by the mother as a means of obtaining financial assistance for herself and her children. The mother in this proceeding has taken action to provide for her family and should, in absence of special reasons determined by her social caseworker, remain an active participant in the court proceeding. If, however, the mother refuses to participate in the proceedings, the needy children should not be stricken from the AFDC rolls.

No conclusions could be drawn for answers to question three. It is not this writing's purpose to measure judicial sympathy or the judiciary's understanding of family economics. Predictions may be based, however, on two theories: (1) A widow and her children standing before the court will create judicial sympathy which will be reflected in the setting of a higher support order; or (2) A representative of the state will be qualified to present a case based on family need as well as the absent parent's ability to pay. This will make the recipient better represented and will result in a more equitable support order. Ideally, neither theory should affect the judge's support order. The order should reflect a proper balance between the absent parent's ability to pay and the family's need.

Question four's probable answer is that the obligor would not be as likely to miss a support payment to the state as to the mother. Presently, support orders are not effectively enforced and the obligor does not fear the consequences of a missed support payment. Ideally, these payments should be made for the good of the family, but if the payment follows a court action for support, there seems to be little basis on which to hope for voluntary compliance with the order. Effective enforcement of the support orders should decrease the frequency of missed support payments.

The answer to question five was not revealed during investigation for this study. Undoubtedly some of the absent fathers of AFDC recipients have acquired new families. Compelling the father in these circumstances to support his previous family would result in his placing his present family in need.

No doubt, other factual questions are equally important. These have been chosen, however, to represent areas which may be troublesome for any welfare program dealing with AFDC recipients who also receive child support payments from absent parents. These questions need further investigation. However, definitive answers are not mandatory before a recommendation can be made. Possible answers have, like the questions, also arisen from this investigation.

B. Cost of Proposed Program

The expense involved in implementing an AFDC payment and collection program such as that proposed for Kentucky essentially involves the additional amount expended in AFDC grants and the administrative costs of establishing and operating the program. Although it may be contended that cost should not be a determining factor in deciding whether to adopt the program, the practical and political problems of raising public welfare appropriations require consideration of the financial implications.

In an earlier section of this study, it was stated that absent fathers paid \$200,365 in support payments to AFDC families in April, 1968.¹⁰⁷ This figure projected to a twelve month total means that the new program would result in at least a \$2,404,380¹⁰⁸ increase in AFDC grants from the state if support payments are paid by the state at 100 percent of need.¹⁰⁹ Ideally, the additional money spent by the state would be collected in the form of support payments from the absent fathers. Of course, the risk of non-collection is always present, but the possibility of securing and collecting more support payments from legally liable parents, through the vigorous use of paternity actions and the active enforcement of support orders, is also present. Such a program would reduce the amount of state and federal funds required to administer the AFDC program. This could be accomplished by putting more money into the AFDC family and thereby reducing the amount of AFDC funds required to maintain the family at a state determined standard of need.

The effect of the proposed program on administrative costs also deserves attention. A Kentucky public assistance area administrator indicated that the new program would require more workers on the local level. This would result in an increase in personnel on the state level. Additional employees would also be needed in the counties or at the state level to collect the support payments and to keep records of the accounts. Greater numbers of paternity and support cases would also result in greater court costs. More numerous cases means more orders to enforce and a rise in enforcement costs may also be ex-

¹⁰⁷ See note 55 *supra*. and accompanying text.

¹⁰⁸ There are many unpaid support orders not reflected in this amount. Neither the amount of unpaid orders nor the extent to which those orders had already resulted in an adjustment of the AFDC grant could be determined.

¹⁰⁹ In handling this process, an important administrative decision would have to be made. That is, will the state pay 100 percent of the support payments collected from the father in the AFDC grant or will it continue to pay the 86.5 percent of determined need? If the state collected the \$200,365 in support payments paid in April, 1968, and continued to pay 86.5 percent of need, a monthly difference of \$27,049 and a yearly difference of \$324,588 would result. See FEDERAL HANDBOOK pt. IV, § 3124 (1966).

pected. Although a determination of the program's total administrative costs is beyond the scope and resources of this study, it can safely be predicted that the increase would be substantial.

This consideration casts substantial doubt on the possibility of implementing the proposed program in Kentucky. There is, however, a federal program available to the states under which they may follow and receive reimbursement for a set ratio of administrative costs. That program is the Notification of Law Enforcement Officials (hereinafter referred to as NOLEO) as codified in the 1967 amendments to the AFDC title of the Social Security Act.¹¹⁰

In December, 1965, the states were urged to review the method by which their court-ordered support payments were collected. At that time the federal government recommended:

The most economical method of handling court-ordered support payments from the standpoint of the family and the Welfare Department is usually to have the payments made to the Welfare agency, either directly by the absent parent or by the court. It is desirable that this method of payment be adopted State-wide so far as it meets approval of the courts. Where this method is used and need is met according to the agency's standard the agency must make regular payments to the family in an amount that is not reduced by the amount due or received from the parent. The support payments from the absent parent will be treated as a refund of assistance paid.¹¹¹

Review by the state was to be completed by July 1, 1967.

Taking earlier recommendations a step further, Congress has attempted to establish a nationwide procedure for locating and prosecuting parents who desert or abandon dependent children. The expanded NOLEO provisions of 1967 Social Security Amendments, effective January 1, 1969, provide that the state shall report at least quarterly to the Secretary of Health, Education, and Welfare¹¹² the name and social security account number of any parent of a dependent child who is not meeting a support order, against whom a petition for such order has been filed, or whom it has been unable to locate.¹¹³ Also to be included in the report is the last known address of the parent and such other information as the Secretary may specify.¹¹⁴ The Law further provides for cooperation between states¹¹⁵ and for assistance by the Internal Revenue Service in locating the parent.¹¹⁶ The information gathered by the federal government is to be sent back

¹¹⁰ 42 U.S.C.A. §§ 602(a)(18)-(19) (1968).

¹¹¹ FEDERAL HANDBOOK pt. IV, § 3124 (1966).

¹¹² 42 U.S.C.A. § 602(a)(21) (1968).

¹¹³ 42 U.S.C.A. §§ 602(a)(21)(A)(i)-(ii) (1968).

¹¹⁴ 42 U.S.C.A. §§ 602(a)(21)(B)-(C) (1968).

¹¹⁵ 42 U.S.C.A. §§ 602(a)(22)(A)-(B) (1968).

¹¹⁶ 42 U.S.C.A. § 610(a) (1968).

to the state agencies for use in apprehension of the parent and for enforcement of the support order.

The U.S. Department of Health, Education and Welfare on July 10, 1968, released a "Policy Statement" on the 1967 Amendments to the Social Security Act.¹¹⁷ This issuance establishes broad guidelines for the states to follow. Of particular importance to this study is the section which provides:

A program must be instituted for establishing paternity for children born out of wedlock and for securing financial support for them and for all other children receiving AFDC who have been deserted by their parents or other legally liable persons. There must be a single staff unit in the State agency and in large local agencies to administer the program. There must be a plan for cooperation with courts and law enforcement officials and the agency must provide information aimed at locating putative fathers, establishing paternity and other matters of common concern. . . . Financial arrangement must be made for reimbursement to courts and law enforcement officials found necessary for them to undertake services beyond those usually provided in such cases.¹¹⁸

Although NOLEO may be regarded by some as a necessary or unnecessary evil, to the state of Kentucky it could be a saving ray of sunlight. It could provide the state public assistance program with federal financial participation to the extent of 50 percent of "[t]he costs of State or local agencies for agency activities related to the collection of support and accounting for such funds on eligibility or assistance payments"¹¹⁹ NOLEO, therefore, provides a way by which the state's administrative costs in establishing and operating the proposed AFDC grant and support payment collection system can be cut in half.

Under the existing system, it is extremely doubtful that a meaningful report on the class of people described in the NOLEO provisions could be compiled. The information required for the new NOLEO reports is basically the same as is necessary under the proposed program for state collection of support payments to AFDC recipients. Therefore, it is far from a pipe dream to think that both programs could be implemented simultaneously with federal financial participation in 50 percent of the program's collecting and reporting costs.¹²⁰

¹¹⁷ Interim HEW Policy Statement No. 8, 33 Fed. Reg. 10234 (1968).

¹¹⁸ HEW Policy Statement § III(D), *Id.* at 10238.

¹¹⁹ HEW Policy Statement § V(A)(7)(b), *Id.* at 10239. "Federal financial participation at the 50 percent rate is [also] available in the costs of reimbursing courts and law enforcement officials for their increased effort or additional staff time in assisting the State or local agency in respect to its program to secure support and establish paternity." HEW Policy Statement § V(A)(7)(a), *Id.* at 10239.

¹²⁰ 1968 U.S. CODE CONG. & AD. NEWS 2861, 2862.

C. Statutory Authority

Presently the Kentucky Department of Economic Security is not explicitly authorized by statute to bring an action to recover the amount of a public assistance grant, or part of it, from the one legally liable to support the recipient. KRS 208.280 permits the juvenile division of a county court to order the parent or his estate to pay a reasonable sum from time to time for the support, maintenance or education of a child. Although this provision appears to be generally applicable for enforcing support, it requires that, "The [support] order shall direct that the money be paid to the county clerk to be disbursed as ordered by the court or be paid to the person, institution, agency or department to which the child was committed or probated."¹²¹ Thus, this section could allow support payments to be made to a welfare agency pursuant to an order by a juvenile court judge. It does not, however, give the state or any state agency authority to bring the action. Such authority to bring an action exists in Kentucky in two specific instances:¹²² (1) Under the Uniform Support of Dependents Act,¹²³ and (2) Recovery for agency assistance to a child through a paternity action.¹²⁴

The Uniform Support of Dependents Act contains the following sections:

KRS 407.120—Duties of support arising under the law of this state, when applicable under KRS 407.150, bind the obligor, present in this state, regardless of the presence or residence of the obligee.

* * * *

KRS 407.160—Whenever the state or political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of receiving reimbursement of expenditures so made and of obtaining continuing support.

* * * *

KRS 407.190—The county attorney, upon the request of the court or an appropriate welfare official or state agency, shall represent the plaintiff in any proceeding under this chapter.

The argument made from these sections is that if the obligor is present within Kentucky, the obligee's presence is of no concern under KRS 407.120. Therefore an action may be brought by the state under KRS 407.160 with the county attorney representing the state agency as

¹²¹ KRS § 208.280 (1962).

¹²² Although the state has legislative authority to bring this action, it has never been used. The state presently requires that the mother remain the petitioner in the action.

¹²³ KRS § 407.160 (1962).

¹²⁴ KRS § 406.021 (1964).

provided in KRS 407.190.¹²⁵ This would result in intrastate application of the Act although it is normally applied in interstate transactions.

Even if the above argument is correct, it remains an uncertain foundation on which to build a state-wide system. The fact that the Kentucky Department of Economic Security has not favored this argument on the intrastate application of the Uniform Support of Dependents Act is evidenced by the Department's drafting of a bill for the 1968 Kentucky Legislature.¹²⁶ The prepared bill was designed primarily to "permit any state agency supplying support and maintenance for needy children to initiate support action against an absent parent";¹²⁷ and to "permit such state agency to receive support payments as reimbursement for assistance furnished to such needy children."¹²⁸ Similar results would be attained under the argument for an intrastate application of the Uniform Support of Dependents Act.

The other instance when the state can bring a support action is when a bastardy proceeding is involved. KRS 406.021 provides:

Paternity may be determined upon the complaint of the mother, child, person or agency substantially contributing to the support of the child. . . . The liabilities of the father may be enforced in the same or other proceedings by the mother, child, person or agency substantially contributing to the cost of pregnancy, confinement, education, necessary support or funeral expenses.

Therefore, this statute authorizes the state to initiate a paternity action and collect payments from the responsible parent for the support of the child.

These two statutory provisions involve the state in intimate family relationships.¹²⁹ They also allow the state to bring action to recover expenditures made and to obtain continuing support. By enacting these two statutes, Kentucky has authorized the initiation of support actions and the collection of support payments by the state or one of its political subdivisions. Implementation of the proposal, with which this study is concerned, would be only an additional step of this practice.

Other states have had welfare problems similar to the one here discussed. Many have taken the additional step of granting the state legislative authority to initiate support actions and collect support

¹²⁵ A principal attorney in the Kentucky Department of Public Assistance advanced this argument. He recommended, however, an opinion of the Attorney General be obtained to clarify the point.

¹²⁶ This is the same act as discussed on page 248 and reproduced in full in the Appendix.

¹²⁷ See Appendix [introductory material § (2)].

¹²⁸ *Id.* at § (3).

¹²⁹ See note 97 *supra*, and accompanying text.

payments.¹³⁰ This was done so that the AFDC recipient could receive the full amount of determined need without worry of a missed support payment.

¹³⁰ Many other states have adopted solutions similar to the one studied in this note. *E.g.*,

CALIFORNIA—If at any time during the continuance of aid under this chapter, the county, upon investigation, determines that the parent of a recipient has been gainfully employed or has had sufficient assets to enable him to reasonably assist the recipient during the period in which the child was receiving aid, it may, after notifying the parent of the amount of assistance granted, bring suit against the parent to recover the amount of assistance paid under the provisions of this chapter, including any assistance paid after commencement of the suit and before rendition of the judgment. CAL. WEL. & INST. CODE ANN. § 11350 (West 1965).

ILLINOIS—Where applicable, the determination and [support] notice may include a demand for reimbursement for emergency aid granted an applicant or recipient during the period between the application and determination of the relative's obligation for support and for aid granted during any subsequent period the responsible relative was financially able to provide support but failed or refused to do so. ILL. REV. STAT. ch. 23, § 10-7 (1967).

The notice to responsible relatives shall direct payment (a) to the Illinois Department in cases of applicants for or recipients of aid under Articles III (Aged), IV (AFDC), and V (Medical), and (b) to the local government unit is the care of applicants for or recipients of aid under Articles VI (General), and VII (Medically indigent). *Id.* at § 10-8.

If a responsible relative fails or refuses to furnish support, or contributes less than the amount indicated by the determination, the administrative enforcement unit shall take action to enforce support in accordance with Section 10-10 (Court Enforcement) or Section 10-11 (Administrative Orders). *Id.* at § 10-9.

INDIANA—Where any person or persons, by the terms of any court order or decree, in order to pay support money to or for the dependent wife, husband, father, mother, child or children of such person or persons, and such dependents are being supported in whole or in part by public funds, the court shall order that the payment of such support money be made to the clerk of the circuit court of the county wherein such decree or order is entered. IND. ANN. STAT. § 3-3201 (Burn's repl. 1965).

Upon the receipt of the notification (of delinquent payments for one month) from the clerk, the court on its own motion, may order into court the person charged with making such support payments, or notify the attorneys of record, if any, or the prosecuting attorney, advising them of the delinquent payments, and shall make such provisions for enforcing the decree or order as such court, in its discretion, may deem necessary. *Id.* at § 3-3204.

OHIO—In cases against an adult under sections 2151.01 to 2151.54, inclusive, of the Revised Code, any person may file an affidavit with the clerk of the juvenile court setting forth briefly, in plain and ordinary language, the charges against the accused who shall be tried thereon. When the child is a recipient of aid pursuant to Chapter 5107 or 5113 of the Revised Code, the county welfare department shall file charges against any person who fails to provide support as provided in section 2151.42 of the Revised Code, unless charges are filed under section

(Continued on next page)

VI. RECOMMENDATIONS

The decision to be made concerning Kentucky's AFDC and support payment problem may be resolved in either of two ways. One would be to continue to follow the existing practices and to maintain the existing system. An alternative is to enact legislative and administrative procedures designed to improve existing welfare programs. Such could be effected through enactment of a statute similar to that proposed to the 1968 Kentucky General Assembly. This legislative enactment, to be effective, would have to be followed by implementation of administrative policies designed to implement the purposes of the act.

The adoption of the first alternative will result in a continuation of the existing policy toward families that receive both AFDC payments from the state and support payments from absent parents. Problems with the existing procedure have been indicated in this study. A maintenance of the status quo can only create more problems. If the present procedure is continued, AFDC families that also receive support payments will do without some of the money the Kentucky public assistance department has determined the family needs in order to subsist. A continuation of the present method of payment and collection of support payments from absent parents to AFDC families will also mean that a program which meets the new NOLEO provisions must still be formulated.

(Footnote continued from preceding page)

311.306 of the Revised Code. OHIO REV. CODE ANN. § 2151.43 (Page 1967).

* * * *

In the case of convictions for non-support of a child who is receiving aid under Chapter 5107 or 5113 of the Revised Code, if the juvenile judge suspends sentence on condition that the person make payments for support, the payment shall be made to the county welfare department rather than to the child or custodian of the child. *Id.* at § 2151.49.

TENNESSEE—All payments made by the welfare department to such wife or dependent child shall be recoverable against the husband or parent by the state, and such recovered payments shall be deposited by the state treasury to the credit of the aid and services to needy families with children fund. TENN. CODE ANN. § 14-323 (1963).

* * * *

(Inter-county Enforcement of Support) Whenever the department of public welfare, state of Tennessee, furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continued support. *Id.* at § 36-1006.

VIRGINIA—The local board may proceed in the manner provided by law against any person who is legally liable for the support of any child to require such person to support such child. VA. CODE ANN. § 63-151 (1948).

Adoption of the second alternative will result in an improvement in the living conditions for over 4,100 Kentucky families receiving state AFDC grants and support payments from absent parents. Under proper legislative authority and administrative implementation, it could also result in a reduction of expenditures for state and federal AFDC programs. A better public image of welfare administration would be a needed incidental result.

Legislation authorizing a state agency to initiate a paternity or support action must, however, be viewed in relation to other considerations. In deciding whether to prosecute the responsible parent, two factors, other than social factors, appear most prominent; money and the constitutionality of the action. If the responsible parent is successfully prosecuted, more support orders could be set. Ideally, this would result in a reduction of state and federal funds required to operate the Kentucky AFDC program. This type of prosecution will be aided by the NOLEO provisions of the Social Security Act in cooperation with the Internal Revenue Service. Prosecution of the responsible parent, however, raises constitutional problems. If the welfare grant is based on the condition that a support action be brought, this may be unconstitutional in that it bases welfare on something other than need. These same results may be reached, however, if the social caseworker instills in the recipient the will to cooperate with the agency and enforcement officials.

Of the alternatives available, the soundest course is the implementation of the proposed program. It is a proper balance of rights and responsibilities for both the state and the recipients. The program would give a steady amount of income to financially impoverished families with needy children, provide a method of keeping better records for families receiving AFDC and support payments, and satisfy the state's program under the federal government's NOLEO requirements. The results of these features would be to greatly enhance a welfare family's chances of getting off of welfare by not placing them in a financial crisis every time a support payment is not paid. It would also provide the state with a program under which maximum effort could be made in the enforcement of a parent's legal duty to support his children.

The proposed program should be implemented. The state should pay the AFDC family the amount of its determined need and then have the authority and responsibility for collecting the support payment from the absent parent.

Woodford L. Gardner, Jr.

APPENDIX

AN ACT TO AMEND KRS CHAPTER 407 THE UNIFORM SUPPORT OF
DEPENDENTS ACT

AN ACT relating to the support of dependent children; providing both an interstate and intrastate remedy for securing support and authorizing any state agency supplying support and maintenance to initiate actions for support to secure reimbursement for monies expended.

The Department of Economic Security recommends revisions to Chapter 406 pertaining to Uniform Support of Dependents to: (1) provide for enforcement of the duty to support against a father located within the state in the same manner as if he were in another state; (2) permit any state agency supplying support and maintenance for needy children to initiate support action against an absent parent; (3) permit such state agency to receive support payments as reimbursement for assistance furnished to such needy children.

The sections of this act providing intrastate action would permit a parent or agency to commence support action in the county in which the needy child(ren) lives with the action conducted and order of support entered in the county in which the absent parent resides. It is believed that this provision would result in more positive action in that it would prevent disruption of employment and the costs involved in returning the parent to the initiating county.

Amendments to the Act further permit any agency, including but not limited to the Department of Economic Security, to initiate support action against an absent parent and to receive support payments directly from such parents or the court collecting such payments. Such provision could assure continuing assistance for needy children in an amount consistent with the needs of the children with the support collected treated as a refund of assistance granted.

Be it enacted by the General Assembly of the
Commonwealth of Kentucky

Section 1: Section 407.010 of the Kentucky Revised Statutes is revised to read as follows:

(1) This chapter may be cited and referred to as the "Uniform Support of Dependents Act."

(2) The purposes of the chapter are to improve and extend by reciprocal legislation the enforcement of duties of support; (and) to make uniform the laws with respect thereto; and to provide both an interstate and intrastate remedy for support.

Section 2: Section 407.100 of the Kentucky Revised Statutes is revised to read as follows:

As used in this chapter unless the context requires otherwise:

(1) "State" includes any state, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted;

(2) "Initiating state" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced;

(3) "Responding state" means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced;

(4) "Initiating county" means any county in this state in which a proceeding pursuant to this reciprocal law is commenced;

(5) "Responding County" means any county in this state in which any proceeding pursuant to the proceeding in the initiating county is commenced;

(6) "Court" means the circuit or county court of this state and when the context requires, means the court of any other state as defined in a substantially similar reciprocal law;

(7) "Law" includes both common and statute law;

(8) "Duty of support" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise;

(9) "Obligor" means any person owing a duty of support;

(10) "Obligee" means any person to whom a duty of support is owed.

Section 3: Section 407.240 of the Kentucky Revised Statutes is amended to read as follows:

(1) Any state agency supplying support or maintenance to a child or children may initiate actions for support and receive support payments for monies expended;

(2) The Department of Economic Security is hereby designated as the State Information Agency under this chapter, and it shall be its duty:

(a) To compile a list of the courts and their addresses in this state having jurisdiction under this chapter and transmit the same to the state information agency of every other state which has adopted this or a substantially similar law;

(b) To maintain a register of such lists received from other states and to transmit copies thereof as soon as possible after receipt

to every court in this state having jurisdiction under this chapter.

Section 4: Section 407.310 of the Kentucky Revised Statutes is amended to read as follows:

The court of this state when acting as a responding state shall have the following duties which may be carried out through the clerk of the court or official designated by the court:

(1) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state; and

(2) Upon request to furnish to the court of the initiating state a certified statement of all payments made by the defendant.

(3) When applicable, to transmit payments to any agency of this state supplying support and maintenance to the child (or children); and to supply the said agency a certified statement of all payments made by the defendant.

Section 5: Section _____, a new section of the Kentucky Revised Statutes is created to read:

When the obligee and the obligor both reside in this state in the same counties or in different counties, an action for support may be commenced and the same remedies obtained under the provisions of this chapter in the same manner as if it were an interstate action; and the duties of the Court's and petitioner's representatives are the same as in an interstate action.

Section 6: Sections 407.130 and 407.140 of the Kentucky Revised Statutes are repealed.