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### Helping Families Help Themselves: Using Child Support Enforcement to Reform Our Welfare System

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## COMMENT

### HELPING FAMILIES HELP THEMSELVES: USING CHILD SUPPORT ENFORCEMENT TO REFORM OUR WELFARE SYSTEM

*The audience grows silent as a modestly dressed woman takes her place behind the podium. Looking around the room she begins, "I would not need to come before you today as a recipient of public assistance if someone, somewhere would assist me in getting the \$341 a month in child support that rightfully belongs to my two children. Because I receive nothing from the father of the children I care for by myself, I have become dependent on AFDC, MediCal and more—because, simply stated, he refuses to do his "job" in supporting his children.<sup>1</sup>*

#### INTRODUCTION

The critical link between welfare rolls and delinquent child support payments has largely been neglected by legislatures and commentators. Its effect on women is especially significant, given the fact that 89% of the families on welfare are headed by single women.<sup>2</sup> In 1994, only 12.5% of welfare households headed by single parents received child support from their children's non-custodial parents.<sup>3</sup> Were it not for the efforts of the federally funded Child Support Enforcement Program, which uses sanctions to force fathers<sup>4</sup> to pay child support orders, even fewer welfare families would

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1. This quote is paraphrased from a welfare mother's statement at a public forum on welfare reform, held before the County of San Diego Board of Supervisors on December 10, 1996. Interview with Carol Drummond, Communications Coordinator, San Diego Dept. of Social Services (January 24, 1997).

2. The Personal Responsibility and Work Opportunity Reconciliation Act, § 101, Pub. L. No. 104-193, 110 Stat. 2105, 2110 (1996) (codified as amended at 42 U.S.C. sec. 601 note (1997)).

3. OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEPT. OF HEALTH AND HUMAN SERV., NINETEENTH ANNUAL REPORT TO CONG. (1995) at 39 [hereinafter NINETEENTH ANNUAL REPORT]. For the ease of discussion, this paper mentions welfare families receiving child support. In actuality, the payments made to families on welfare are actually paid to the state for the period that the family is on welfare, in order to reimburse the state for the welfare payments it makes to that family. Personal Responsibility Act, § 302(a), 110 Stat. at 2200 (codified as amended at 42 U.S.C. sec. 657, § 457(a)(1) (1997)).

4. Fathers form the majority of non-custodial parents who are delinquent in paying child support, therefore, it understates the problem to discuss "parents," where the real problem is fathers. One study revealed that fathers are more likely to pay their car loans regularly than child support owed to mothers. In 1990, car loan delinquency was less than 3%, while 49% of child support payments owed to mothers went unpaid. Paula Monopli, "Deadbeat Dads": *Should Support and Inheritance Be Linked?*, 49 U. MIAMI L. REV. 257, 258 (1994); (See William Safire, *What Fathers Want*, NY TIMES, June 16, 1994, at A27.) Therefore, this Comment, in general, refers to custodial parents as "mothers" and non-custodial parents who are obligated to pay child support as "fathers." Although not all families on welfare are women with children, nationally 89% are. Personal Responsibility Act, § 101, 110 Stat. at 2110 (codified as amended at 42 U.S.C. sec. 601 note (1997)).

receive their rightful payments.<sup>5</sup> Recent reforms in both the child support enforcement program and the welfare system as a whole address the special link between welfare rolls and delinquent child support payments. These reforms should drastically increase the number of welfare families receiving child support, and as a result decrease the welfare caseload.<sup>6</sup>

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996<sup>7</sup> (Personal Responsibility Act) was enacted to reform the currently inefficient and costly national welfare system<sup>8</sup> by encouraging parents to take financial responsibility for their families.<sup>9</sup> It also grants greater autonomy and flexibility to all states in distributing welfare.<sup>10</sup> In addition to these benefits, however, there are problems. The Personal Responsibility Act reduces overall federal funding for state welfare programs,<sup>11</sup> and consequently, states are forced to spend more of their own money on programs no longer covered by federal funding.<sup>12</sup> The Personal Responsibility Act also tightens welfare eligibility requirements.<sup>13</sup> Therefore, it will propel many currently eligible families off the welfare rolls with no other source of

5. NINETEENTH ANNUAL REPORT, *supra* note 3.

6. The addition of child support payments to a working single mother's small salary can lead to a family's independence from government support. For example, if a mother of two children works full time at \$5.15 an hour and receives \$240 a month for each of her children from their father, she will receive \$1,304 a month. In San Diego, Aid to Families with Dependent Children [hereinafter AFDC] would pay that family only \$594 a month. See Sabrena Marshall, *AFDC, GAIN and Child Support: Working Together to Promote Self-Sufficiency*, PARTNERS FOR SUCCESS (1996). A further advantage child support has over welfare is that increased income, based on the receipt of child support payments, generally does not cause the loss of MediCal or food stamp benefits. Interview with Sabrena Marshall, GAIN social worker, San Diego (March 18, 1997). The average child support order for a welfare family is \$240 per child per month. CALIFORNIA DEPARTMENT OF SOCIAL SERVICES 1994 ANNUAL REPORT, *Fact Sheet* [hereinafter *Fact Sheet*]. The amount per child, however, decreases based on the number of children in the family that the father supports. See Cal. Family Code § 4055 (West 1994).

7. Personal Responsibility Act, 110 Stat. at 2105.

8. Personal Responsibility Act, § 101, 110 Stat. at 2110-12 (codified as amended at 42 U.S.C. sec. 601 note (1997)).

9. The federal government dedicated nearly one quarter of the Personal Responsibility Act (62 pages of the 250 page act) to reforming the Child Support Enforcement Program. Personal Responsibility Act, § 300-95, 110 Stat. at 2198-260.

10. Personal Responsibility Act, § 103, 110 Stat. at 2113 (codified as amended at 42 U.S.C. sec. 601, § 401(a) (1997)).

11. *Federal Welfare Reform (H.R. 3734): Fiscal Effect on California*, Legislative Analyst's Office (Aug. 20, 1996) <[http://www.lao.ca.gov/fed\\_welfare\\_reform\\_pb082096.html](http://www.lao.ca.gov/fed_welfare_reform_pb082096.html)> [hereinafter LAO Report].

12. *Id.*

13. The Personal Responsibility Act includes a mandatory work requirement for all participants after two years of receiving benefits, as well as a five year lifetime benefit limit. These provisions eliminate all financial assistance to ineligible families, unless child support payments are enforced. One commentator fears that this bill, with all its benefits, may "make hundreds of thousands of children poorer." 142 CONG. REC. E1570-01 (Sept. 11, 1996) (Remarks by Hon. Lee Hamilton) available in 1996 WL 514072 [hereinafter Hamilton remarks].

income.<sup>14</sup> The federal legislature recognized this deficiency, however, and included provisions aimed at increasing collection rates in the state's Child Support Enforcement Divisions (CSEDs).<sup>15</sup> The legislature reasoned that the increased collections of child support payments should generate revenue to offset additional state welfare costs and help families avoid welfare by becoming financially stable.<sup>16</sup>

Arguably, the enforcement of child support payments has always been the best method to supplement state welfare costs.<sup>17</sup> However, burdensome and time-consuming federal procedural requirements formerly limited each CSED caseworker's potential for productivity.<sup>18</sup> Conservative national statistics estimate that one-half to three-quarters of all potential child support payments went uncollected under a former "auditing" system which reviewed trivial procedures, such as when and how to mail letters, rather than the amount of child support being collected.<sup>19</sup> Under the Personal Responsibility Act, this

14. There are many more, equally problematic areas of the Personal Responsibility Act, but federal funding and eligibility limitations are the two main problem areas upon which this article focuses.

15. CSEDs are agencies, funded by both the state and federal governments, which work cooperatively with social services to determine child paternity, obtain court orders for child support, and enforce child support payments. The agencies serve both welfare and non-welfare families. NINETEENTH ANNUAL REPORT, *supra* note 3, at 1.

16. The 1994 census reported that there has been a 319% increase in female-headed single parent households since 1960. U.S. Bureau of the Census, *Marital Status and Living Arrangements*, CURRENT POP. REPORT, Series P20-484 (March 1994 and earlier reports). While 50% of female-headed, single parent families received child support orders, as of 1992, 33% of the \$17.7 billion due in child support payments went unpaid. Further, child support payments, on average, account for 17% of a female-headed, single parent family's income. *Who Receives Child Support?*, U.S. Bureau of the Census (May 1995) <<http://www.census.gov/pub/socdemo/www/chldsupp.html>>. One criticism of this reasoning is that financial stability is based on the assumption that child support payments would arrive on time and in full every month, without fail. However, the legislature's reasoning does not fail completely because there would still be a significant improvement over the meager 12.5% of welfare families that currently receive payments if only half of the families with non-indigent fathers made regular payments. Studies show that at least 60% of the fathers of welfare families are employed at wages above the poverty level and could afford to pay all or part of their child support order regularly. See *infra* note 146.

17. H.R. Report No. 771, 102d Cong., 2d Sess. 5 (1992). This is not to say that child support enforcement is the only manner by which to supplement state welfare costs. Commentators have also advocated a similar system which aids needy families using tax dollars, instead of enforcing child support, in order to save the costs of finding delinquent paying fathers. Harry D. Krause, *Child Support Reassessed in DIVORCE REFORM AT THE CROSSROADS*, 166, (1990) (Stephen D. Sugarman & Herma Hill Kay, eds.); Stephen D. Sugarman, *Financial Support of Children and the End to Welfare as We Know It*, 81 VA. L. REV. 2523 (1995).

18. One state agency study revealed that each CSED caseworker managed approximately one thousand child support enforcement cases. This leaves eight minutes per case, per month for that caseworker to spend on each. One commentator has noted that this is "barely enough time to find and open a file." *Remarks Before the Subcomm. on Human Resources of the House Comm. on Ways and Means*, 104th Cong., 1st Sess. (Feb. 2, 1995) (statement of Roberta Spalter-Roth, Director of Research Institute for Women's Policy Research) available in WL 6621234 [hereinafter Spalter-Roth statement].

19. Nationally, \$8.9 billion in child support is collected, but conservative estimates claim \$20-40 billion goes uncollected. *Child Support Enforcement: Hearings Before the Subcommittee on Federal Services of the Governmental Affairs Committee*, 103d Cong., 2d Sess. (July 20, 1994) (testimony of Judy Jones Jordan) available in WL 14190261 [hereinafter Jones Jordan

strict procedural scrutiny has been eliminated and replaced with a system monitoring child support collection results. Less procedural scrutiny should reduce time spent pacifying federal spending guidelines and provide CSEDs with more time to spend enforcing child support orders.

California, the largest welfare state,<sup>20</sup> has the largest child support enforcement caseload.<sup>21</sup> For California, the Personal Responsibility Act couples new state autonomy with the loss of nearly \$6.8 billion in federal welfare funding over the next six years.<sup>22</sup> This is extremely problematic for California; given the fact that the Federal Office of Child Support Enforcement gave California's child support enforcement program an overall grade of "D" in a 1991 report.<sup>23</sup> Although California has produced the most significant overall increase in productivity in the last five years than any other state with similar demographics,<sup>24</sup> California's child support collection rate for welfare mothers was still 3.5 % below the national average in 1994.<sup>25</sup> However, if the Personal Responsibility Act succeeds in making the CSED more efficient, states, such as California, might be able to increase their child support collections, decrease their welfare costs, and help welfare families become independent, all at the same time.<sup>26</sup>

The Personal Responsibility Act contains the most radical reforms in the nation's welfare history, but the precise ramifications of these changes remain

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testimony].

20. California's welfare caseload totaled 2.6 million recipients as of November 1996. Robert Pear, *Welfare Changes Minor Under U.S. Rule*, THE PLAIN DEALER, Nov. 6, 1996, at 18A.

21. In 1994, California's child support caseload was at 2.1 million. CAL. DISTRICT ATTORNEYS & CAL. FAMILY SUPPORT COUNCIL, THE FUTURE OF CHILD SUPPORT ENFORCEMENT IN CALIFORNIA (1995) at iii [hereinafter FUTURE OF CHILD SUPPORT ENFORCEMENT]. As of November 1996, \$3.5 billion was owed in unpaid child support in California. Nancy Weaver Teichert, *Kids Often Cut on Jagged Edges as Marriages Break Apart*, THE SACRAMENTO BEE, Nov. 18, 1996, at A1.

22. LAO Report, *supra* note 11.

23. California has worked to "debunk the myth" that California's child support enforcement program is not productive by demonstrating that the report was defective because it assessed productivity using unreliable points of comparison between states. FUTURE OF CHILD SUPPORT ENFORCEMENT, *supra* note 21, at 10. For example, commentators argue that the report should have compared how costs and results related instead of comparing trivial procedural compliance as it did. *Id.* at 11.

24. *Id.* at 11.

25. As mentioned, 12.5% of child support payments were collected for welfare families nationally in 1994. NINETEENTH ANNUAL REPORT, *supra* note 3, at 39. In 1994, California generated support for only 9% of its welfare families. The 9% figure is derived from the following information: In California, 1,449,243 AFDC families were owed child support, the average child support monthly payment was \$240 in 1994, *Fact Sheet*, *supra* note 6, and the total support payments collected for the AFDC families was \$373,001,980 in 1994, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, 1995 ANNUAL REPORT ON CHILD SUPPORT ENFORCEMENT (1995) at 14 [hereinafter 1995 ANNUAL REPORT].

26. These projections for California are dependent on a number of factors, such as whether California decides to make up for the lost federal funds and whether California declines to aid all those made ineligible under the Personal Responsibility Act. There are also unknown costs for the Personal Responsibility Act's reform implementation. LAO Report, *supra* note 11.

unknown.<sup>27</sup> This Comment focuses on the changes the enforcement of child support and how these changes should help to offset new state welfare costs.<sup>28</sup>

Section I of this Comment explores the Personal Responsibility Act's welfare reforms which terminate support for many needy families. Some of the more damaging provisions of the act include new eligibility limitations, block grants,<sup>29</sup> and the conditioning of federal funding on state productivity. Section II discusses the history of child support enforcement and the revolutionary changes made by the Personal Responsibility Act. This section demonstrates how the Personal Responsibility Act's child support enforcement provisions should help to offset the costs and solve the dilemmas the recent welfare reforms create. Section III illustrates some criticisms of the Personal Responsibility Act's reforms and proposes some possible solutions. Section IV lays out suggestions for constructing child support assurance legislation. Such legislation could prove critical to the financial independence and stability of many welfare families headed by single women. In conclusion, the Personal Responsibility Act may be the "end to welfare as we know it," but it is a viable reform mainly because the Personal Responsibility Act grants CSEDs the means to force fathers to pay child support and help many welfare families move beyond the need for welfare altogether.

#### I. THE PERSONAL RESPONSIBILITY ACT'S WELFARE REFORMS

The Personal Responsibility Act implements many revolutionary, yet controversial, new reforms which have made our old welfare system obsolete. The Personal Responsibility Act eliminates Aid to Families with Dependent Children<sup>30</sup> (AFDC) and replaces<sup>31</sup> it with Temporary Assistance to Needy

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27. Hamilton remarks, *supra* note 13.

28. For every \$1 invested in child support enforcement programs, \$4 is collected. NINETEENTH ANNUAL REPORT, *supra* note 3, at 45. Therefore, when CSEDs collect payments for welfare families, this reduces families welfare needs and overall state costs. Spalter-Roth statement, *supra* note 18.

29. A block grant consists of one large sum of money for the state to distribute. Interview with Carol Drummond, Communications Coordinator, San Diego Dept. of Social Services (October 8, 1996) [hereinafter Drummond interview].

30. The federal welfare system (which later developed into AFDC) began in 1911 as a state-level pension designed to help the poor children of women without husbands, generally widows. It allowed them the opportunity to raise their children at home, in the hope that mothers would stimulate a universal cultural family ideal and ensure the "assimilation of proper family values" in children. Gwendolyn Mink, *Welfare Reform in Historical Perspective*, 26 CONN. L. REV. 879 (1994) (as developed in GWENDOLYN MINK, *THE WAGES OF MOTHERHOOD: WOMEN'S INEQUALITY IN THE WELFARE STATE* (1995)).

31. Under the Personal Responsibility Act, AFDC entitlement ended on Oct. 1, 1996. LAO Report, *supra* note 11.

Families<sup>32</sup> (TANF). TANF increases state autonomy by letting states determine fund distribution and family eligibility standards.<sup>33</sup> However, TANF eligibility limitations, block grants and the conditioning of federal funding on productivity all necessitate a new way to generate state revenue to help families in need.<sup>34</sup>

Eligibility limitations under the Personal Responsibility Act pose serious financial problems to families on welfare. Under the Personal Responsibility Act, there is a two-year mandatory work requirement, and a five year lifetime benefit limit.<sup>35</sup> Once families exceed their eligibility limits, the state can offer them no further government assistance.<sup>36</sup> The first requirement mandates that all welfare recipients obtain employment after two years of benefits.<sup>37</sup> The second requirement is stricter and terminates all welfare benefits to recipients after five years, regardless of financial need.<sup>38</sup> However, there are exceptions. If a recipient was under 18, or not recognized as the head of the household for a time while collecting TANF, the Personal Responsibility Act does not include these months in the five year limit.<sup>39</sup> Further, each state may allow 20% of recipients to extend their benefits for

32. TANF is a program which provides needy families with temporary benefits while promoting work and personal responsibility. Personal Responsibility Act, § 103(a), 110 Stat. at 2113 (codified as amended 42 U.S.C. sec. 601, § 401(a) (1997)). This is much different than the former AFDC program because benefits are no longer viewed as an entitlement. Personal Responsibility Act, § 103(a), 110 Stat. at 2113 (codified as amended 42 U.S.C. sec. 601, § 401(b) (1997)).

33. Personal Responsibility Act, § 103, 110 Stat. at 2113 (codified as amended at 42 U.S.C. sec. 601, § 401(a-b) (1997)).

34. The states are now responsible for generating any extra money they need if the federal funding is insufficient. Hamilton remarks, *supra* note 13.

35. Benefit limitations are on the family use of federal block grant funds. LAO Report, *supra* note 11. The propriety of benefit limitations is in debate because of differing statistics for different groups of welfare recipients. Some group differences include age and race. For example, some studies have found that older women have a greater probability of leaving the welfare rolls than younger women. These studies disagree, however, as to their reasoning. VICKY N. ALBERT, WELFARE DEPENDENCE AND WELFARE POLICY (1988), at 109 (citing R. Plotnick, *Turnover in the AFDC Population: An Event History Analysis*, 18 J. HUM. RESOURCES 65-81 (1983), and R.M. Hutchins, *Entry and Exit Transitions in Government Transfer Programs: The Case of Aid to Families with Dependent Children*, 16 J. HUM. RESOURCES 217-37 (1981)). With regard to race, studies have produced contradictory results as to when welfare dependence ends. One study found that non-White families tend to stay on welfare longer than White families. For high school graduates, under the age of 30, non-White families stay approximately 6.2 years, while White families stay 4.3 years. This study also suggested that marriage did not aid in non-White families' welfare closure as much as job earnings. *Id.* at 109, (citing M.J. Bane & D.T. Ellwood, *The Dynamics of Dependence: The Routes to Self-Sufficiency*, Contract No HHS-100-82-0038 (Washington DC: U.S. Health and Human Services Department, 1983)).

36. Personal Responsibility Act, § 103, 110 Stat. at 2137 (codified as amended at 42 U.S.C. sec. 608, § 408(a)(7)(A) (1997)).

37. Sherril Paul, Assistant Deputy Director, Program and Policy Development Division, Country of San Diego Department of Social Services, *Remarks at South Bay Human Services Fall Forum* (Oct. 25, 1996) [hereinafter Paul remarks].

38. Personal Responsibility Act, § 103, 110 Stat. at 2137 (codified as amended at 42 U.S.C. sec. 608, § 408(a)(7)(A) (1997)).

39. Personal Responsibility Act, § 103, 110 Stat. at 2137 (codified as amended at 42 U.S.C. sec. 608, § 408 (a)(7)(B) (1997)).

reasons of hardship, such as physical abuse.<sup>40</sup> While time limits are meant to encourage work and independence from welfare rolls, some families will not become independent before their welfare eligibility expires.<sup>41</sup> After leaving welfare roles, many families will require another source of financial assistance. Child support payments by the delinquent father could fill that need.<sup>42</sup>

A financially problematic provision of the Personal Responsibility Act is the federal government's use of annual block grants<sup>43</sup> under the Personal Responsibility Act.<sup>44</sup> With block grants, proper distribution and longevity of funds are a major concern among states.<sup>45</sup> The advantage of block grants is that the states will have greater flexibility in operating their welfare programs and more opportunity to innovate on a state level.<sup>46</sup> The disadvantage of this system, however, is that state financing will inevitably increase due to the decrease in federal support.<sup>47</sup> This potential for increased costs could encourage states to "cut corners" in distributing welfare in order to manage the limited funds available.<sup>48</sup> Because these limited federal funds cannot cover the cost of all currently available programs' costs, states will have to finance any programs they do not down-size to meet available funding.<sup>49</sup> In California alone, overall federal welfare funding is estimated to drop nearly \$6.8 billion over the next six years.<sup>50</sup> One critic of block grants notes that distribution of these limited funds may become problematic over the course of each year. The state's federal block grant may

40. Personal Responsibility Act, § 103, 110 Stat. at 2137 (codified as amended at 42 U.S.C. sec. 608, § 408 (a)(7)(C) (1997)).

41. While work requirements for welfare recipients is something most people support, this will still be a problematic area for many families. In states where the unemployment rate is 10% or greater, welfare recipients are 7% less likely to work, in contrast to recipients who live in states with an unemployment rate of 3.5% or less. Spalter-Roth statement, *supra* note 18. This will make the two year work requirement more problematic in states where there is high unemployment.

42. This is the very premise upon which the Personal Responsibility Act was formulated – the promotion of parents taking personal responsibility for their children. Personal Responsibility Act, § 101(a)(1), 110 Stat. at 2110-12.

43. *See supra* note 29.

44. Personal Responsibility Act, § 103, 110 Stat. at 2112-24.

45. Under the former system, the federal government paid 50% of all administrative and benefit costs for each state's welfare caseload, rather than block grants. Drummond interview, *supra* note 29.

46. Personal Responsibility Act, § 103(a)(1), 110 Stat. at 2113 (codified as amended at 42 U.S.C. sec. 601, § 401(a) (1997)).

47. Dion Nissenbaum, *Welfare Cut Result Hazy, Wilson Says*, THE PRESS-ENTERPRISE, Aug. 14, 1996, at A07.

48. As one editorial commented, the new block grants given to the states will be unworkable because they will create a state to state "race to the bottom," as states race to cut welfare benefits faster than their neighboring states in order to save state funds. Paul Peterson, *State Response to Welfare Reform: A Race to the Bottom?*, Welfare Reform: An Analysis of the Issues (visited Sept. 26, 1996) <<http://www.apwa.org/statenew/CA.htm>>.

49. *Id.*

50. LAO Report, *supra* note 11.



diminish towards the end of the year, so many families who become eligible at that point may be denied assistance.<sup>51</sup>

In addition to creating block grants, the Personal Responsibility Act, conditions a state's receipt of federal funds on state productivity. The federal government now requires that each state have 25% of the heads of TANF households employed by 1997, and 50% by 2002.<sup>52</sup> Further, while TANF annual payments under the grants are larger than the former payments under AFDC, other welfare programs, such as the food stamp program, were significantly cut.<sup>53</sup> Therefore, based on the possibility of further sanctions and an overall decrease in federal funding, states need to find additional methods to financially support their programs. Sanction opponents argue that the Personal Responsibility Act's financial impact on states will be even more severe given the new system of penalties. The federal government will sanction poorer states which are unable to meet participant work requirements.<sup>54</sup> Opponents argue that the poorer states will face an even harder battle the next year as they attempt to improve their program with less funding.<sup>55</sup> Therefore, federal sanctions may actually assure repeated violations and continued decreases in funding for poorer states because of the continued series of funding cuts.<sup>56</sup>

While the Personal Responsibility Act's provisions may be damaging to many needy families, its purpose is to encourage states to help move families beyond the need for welfare, toward work, and eventually toward decreasing future welfare rolls.<sup>57</sup> The goal is to decrease overall welfare costs through the promotion of personal responsibility.<sup>58</sup> There are even financial incentives for states that actually meet these goals.<sup>59</sup> The provisions in the Personal Responsibility Act for reforming child support enforcement should aid both state and family burdens. The Personal Responsibility Act's

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51. Rebecca Blumenstein, et al., *Welfare: Q&A. Sidebars*, available in 1995 WL 5102609.

52. Personal Responsibility Act, § 103(a)(1), 110 Stat. at 2129 (codified as amended at 42 U.S.C. sec. 607, § 407(a) (1997)). In San Diego county, 27% of welfare participants are employed. Nada Grigsby, Program Manager, S. Bay Employment Services, County of San Diego Department of Social Services, Remarks at the *South Bay Human Services Fall Forum* (Oct. 25, 1996). In determining funding sanctions, however, California will be judged according to the state's total percentage of working participants—not county by county. States could lose up to 5% of their block grant if they do not meet these work requirements. This penalty increases 2% each year, up to 21%, if non-compliance continues. LAO Report, *supra* note 11.

53. LAO Report, *supra* note 11.

54. 142 CONG. REC. S8929, S8930 (July 25, 1996) (statement of Sen. Bingaman) [hereinafter Bingaman statement].

55. *Id.*

56. *Id.*

57. Personal Responsibility Act, § 103, 110 Stat. at 2113 (codified as amended in 42 U.S.C. 601 (1997)).

58. Personal Responsibility Act, § 101(a)(1), 110 Stat. at 2110-12.

59. For example, states demonstrating a significant decrease in out-of-wedlock births could gain a bonus of up to \$25 million. Personal Responsibility Act, § 103(a)(1), 110 Stat. at 2118 (codified as amended at 42 U.S.C. sec. 603, § 403(a)(2)(B)(ii) (1997)).

emphasis on child support enforcement demonstrates the federal government's reliance on child support collections in supplementing state costs under the Personal Responsibility Act's reforms.<sup>60</sup> This reliance should serve as "our best opportunity to change the culture of welfare and . . . to provide in every way possible a hand up . . . not a handout."<sup>61</sup>

## II. CHILD SUPPORT ENFORCEMENT

Child support enforcement is the mechanism that makes the Personal Responsibility Act's welfare reforms a viable means to revolutionize welfare distribution.<sup>62</sup> Before discussing the history of child support enforcement or the Personal Responsibility Act's reforms, it is important to describe briefly how CSEDs help to offset welfare costs.

Each county runs a CSED which collects monthly child support payments from fathers and establishes paternity in order to generate support obligations for both welfare and non-welfare families. Once a family enrolls in the welfare program, Social Services automatically enrolls them in the child support enforcement program regardless of whether they have a child support order or payments that are delinquent.<sup>63</sup> While the family is on welfare, the father pays all child support payments directly to the state and the state uses the funds to offset the costs of welfare payments to the family.<sup>64</sup> Formerly, the state gave the first \$50 of collected child support, termed the "disregard," to the family in addition to their monthly welfare check.<sup>65</sup> The state retained the balance as reimbursement for previously-paid state welfare benefits, but not for collection costs.<sup>66</sup> The Personal Responsibility Act has eliminated this \$50 disregard,<sup>67</sup> thus creating another means to generate state revenue.

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60. See *supra* note 9.

61. 142 CONG. REC. S9322-02 (daily ed. Aug. 1, 1996) (statement of Sen. Domenici).

62. One supporter referred to the Personal Responsibility Act's child support enforcement reforms as "the silver lining" of the welfare reform bill. 142 CONG. REC. S9322-02 (daily ed. Aug. 1, 1996) (statement of Sen. Bradley).

63. Personal Responsibility Act, § 301(a), 110 Stat. at 2199 (codified as amended at 42 U.S.C. sec. 654, § 454(4)(A) (1997)).

64. Personal Responsibility Act, § 302(a), 110 Stat. at 2200 (codified as amended at 42 U.S.C. sec. 657, § 457(a)(1) (1997)).

65. 42 U.S.C. sec. 657(b) (1996).

66. Personal Responsibility Act, § 301, 110 Stat. at 2201 (codified as amended at 42 U.S.C. sec. 654, § 457(a)(1) (1997)). CSEDs continue to collect delinquent child support payments after a family leaves welfare. Delinquent child support payments, which should have been made to the family while the family was on welfare, are paid to the state to reimburse it for welfare payments paid to that family during that period. Personal Responsibility Act, § 301, 110 Stat. at 2202 (codified as amended at 42 U.S.C. sec. 654, § 457(a)(1)(B)(ii)(bb) (1997)).

67. LAO Report, *supra* note 11. For example, an AFDC family, which had its child support payments enforced by a CSED, would receive their monthly benefits, plus an extra \$50 from the support payments. Under the current system, if a family is receiving TANF and a CSED enforces its child support order, the entire payment is paid to the state and the family continues to receive only TANF benefits.

While many families have benefited from CSEDs' services by receiving child support payments from fathers who formerly refused to pay, the fact remains that under the old collection system, twice as many families did not.<sup>68</sup> In analyzing CSEDs' past inefficiencies, the primary deficiencies were procedural barriers and the limited means available for CSEDs to sanction non-paying fathers. The Personal Responsibility Act cures both these deficiencies, thereby increasing the potential for CSEDs to be more productive.

### A. *The History of Child Support Enforcement*

Child support enforcement has been an available method to offset welfare costs since welfare first began in 1911.<sup>69</sup> Before 1971, the welfare department dealt with child support enforcement issues on its own.<sup>70</sup> Since 1971, however, CSEDs<sup>71</sup> have handled child support enforcement and Social Services has automatically referred all households headed by a single parent to them for paternity establishment and child support enforcement.<sup>72</sup>

Before 1975, state law governed all child support enforcement programs.<sup>73</sup> As a result, there was no uniformity in distribution, eligibility requirements, or the setting of support awards.<sup>74</sup> The state run programs were not very efficient or productive, and enforcing awards in a different state was virtually impossible.<sup>75</sup> To remedy some of these program deficiencies, the Child Support Enforcement Act of 1974 created the first federally mandated, state-run, child support enforcement program.<sup>76</sup> Its goals were to: (1) reduce welfare costs, (2) increase parent contribution, and (3) secure independence for welfare families by using child support enforcement programs to get them off the welfare rolls.<sup>77</sup>

Congress has attempted to reform the welfare and child support enforcement system for the last twenty years. The provisions of the 1974 Act were

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68. Nationally, \$8.9 billion in child support is collected annually and the conservative estimates speculate that \$20-40 billion goes uncollected. Jones Jordon testimony, *supra* note 19.

69. FUTURE OF CHILD SUPPORT ENFORCEMENT, *supra* note 21, at 1.

70. *Id.*

71. In California, all CSEDs are separate divisions within the 58 state district attorney's offices. CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, CHILD SUPPORT ENFORCEMENT PROGRAM: VISION FOR EXCELLENCE, at 1 (June 1992).

72. FUTURE OF CHILD SUPPORT ENFORCEMENT, *supra* note 21, at 1.

73. Paula Roberts, *Child Support Enforcement and Assurance: One Part of an Anti-Poverty Strategy for Women*, 21 SOC. JUST. 76, 77 (1994).

74. *Id.*

75. *Id.*

76. The Child Support Enforcement Act of 1974 is located in Title IV, Part D of the Social Security Act. 46 ADMIN. L. REV. 523, 525 (citing 42 U.S.C.A. sec. 651-69 (West 1985 & Supp. 1992)).

77. H.R. Report No. 771, 102nd Cong., 2d Sess. 5 (1992).

amended in 1984 and 1988,<sup>78</sup> along with minor reform legislation passed in 1992 and 1993.<sup>79</sup> Most reforms were attempts to increase enforcement uniformity and standardize administrative collection procedures.<sup>80</sup> Past federal reforms have conditioned benefit eligibility on a mother's cooperation in paternity establishment,<sup>81</sup> and permitted reviews and modifications of past child support orders.<sup>82</sup> They have also improved delinquent child support collection methods by garnishing wages,<sup>83</sup> tracking down fathers using employment information,<sup>84</sup> and enacting laws which make willful failure to pay child support a felony.<sup>85</sup>

While many reforms have changed federally funded child support enforcement in the years since 1975, the most radical changes in child support enforcement and welfare as a whole occurred with the passage of the Personal Responsibility Act.<sup>86</sup> The current dilemma facing the CSEDs is interpreting and integrating all the new changes into their programs.<sup>87</sup> Once states implement the Personal Responsibility Act's provisions, however, the reforms should offset welfare rolls significantly, encourage more work participation, and provide the long-awaited "end to welfare as we know it."<sup>88</sup> The Personal Responsibility Act focuses on the benefits of increased child

78. David L. Chambers, *Fathers, The Welfare System, and the Virtues and Perils of Child Support Enforcement*, 81 VA. L. REV. 2575, 2584 (1995) (citing Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 1984 U.S.C.C.A.N. (98 Stat.) 1305; Family Support Act of 1988, Pub. L. No. 100-485, 1988 U.S.C.C.A.N. (102 Stat.) 2343).

79. *Id.* (citing Child Support Recovery Act of 1992, Pub. L. No. 102-521, 1992 U.S.C.C.A.N. (106 Stat.) 3403; Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 1993 U.S.C.C.A.N. (107 Stat.) 213).

80. Roberts, *supra* note 73, at 77. Prior to creating administrative processes and child support award guidelines, judges had a lot of discretion as to how much to award. *Id.*

81. Chambers, *supra* note 78, at 2584 (citing 42 U.S.C. sec. 602(a)(26)(B)(1988)).

82. *Id.* (citing 42 U.S.C. sec. 667(a); sec. 667(b)(2); sec. 666(a)(10) (1988)). These modifications are based on increases in child care costs and changes in the non-custodial parent's income.

83. *Id.* (citing 42 U.S.C. sec. 666(a)(8) (1988 & Supp. V 1994)).

84. *Id.* (citing 42 U.S.C. sec. 653 (1988) ("Parent Locator Services")).

85. *Id.* at 2584 (citing 18 U.S.C. sec. 228 (1994)).

86. While the Personal Responsibility Act is the most radical welfare reform to date, prior to its passage, the most significant welfare reform act was the Family Support Act of 1988 [hereinafter FSA]. Like the Personal Responsibility Act, the FSA also encouraged self-sufficiency. One billion dollars was appropriated under this act to re-train, educate, and assist with child care costs. Mink, *Welfare Reform*, *supra* note 30, at 892. Two major problems with the FSA program were that child care provisions did not work properly and the women were trained for low-wage, unstable jobs which provided little financial help or job security. *Id.* (citing Julie Johnson, *Child Care Lack Dims Welfare Programs Future*, NY TIMES, Dec. 12, 1989, at A20). The FSA encouraged women to work, but did not consider the fact that the work available to these women was the reason these women remained poor. The minimum sufficiency wage as of 1991 was \$6.67 per hour. Almost one half of the women under this act earned less than this minimum standard. *Id.* (citing HEIDI HARTMAN & ROBERTA SPALTER-ROTH, INSTITUTE FOR WOMEN'S POLICY RESEARCH, THE LABOR MARKET, THE WORKING POOR, AND THE WELFARE REFORM: POLICY SUGGESTIONS FOR THE CLINTON ADMINISTRATION (1992)).

87. Drummond interview, *supra* note 29.

88. Hamilton remarks, *supra* note 13.

support enforcement collections, thus making a great deal of this success possible.

### *B. The Personal Responsibility Act's Child Support Enforcement Reforms*

The Personal Responsibility Act cuts welfare eligibility and federal funding to save costs. These cuts could push many families off the welfare rolls with no source of income.<sup>89</sup> Therefore, child support enforcement becomes critical because it can supply financial independence to families ineligible for welfare.<sup>90</sup> Nationally, 87.5%<sup>91</sup> of welfare families headed by single parents do not receive child support, so logically many of these families should be able to leave the welfare rolls and live independently if they receive monthly child support payments.<sup>92</sup> Further, under the Personal Responsibility Act, not only is child support enforcement encouraged but it is mandatory for any state that wants federal funding for its welfare programs.<sup>93</sup> The Personal Responsibility Act's welfare reforms and child support enforcement are more efficient and successful because of nationwide innovations and changes in computerization, sanctions for delinquent fathers, paternity establishment regulations, and the federal auditing procedures. One commentator has noted that under the Personal Responsibility Act, CSEDs finally have "real teeth" with which to extract payment or enact penalties on fathers who do not pay.<sup>94</sup>

#### *1. Computerization*

The reforms of the Personal Responsibility Act focus a great deal of attention on computerizing CSED offices statewide and nationwide.<sup>95</sup> The

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89. The impact of ineligibility is mainly a concern because of the new five year lifetime benefit limit. For California, the benefit timer may have begun to tick as early as Oct. 1, 1996, when AFDC benefits ended, but the California Social Services Department is not yet certain what the day will be. Paul remarks, *supra* note 37. When these families are ineligible after their five years has expired, they will need other sources of income, such as child support, to live independently.

90. Chambers, *supra* note 78, at 2585.

91. See *supra* note 3.

92. NINETEENTH ANNUAL REPORT, *supra* note 3, at 2.

93. Federal certification is required to prove state's use of a child support enforcement program. Personal Responsibility Act, § 103(a)(1), 110 Stat. at 2114 (codified as amended at 42 U.S.C. sec. 602, § 402(a)(2) (1997)).

94. 142 CONG. REC. E1453-02, E1453 (July 31, 1996) (Speech by Hon. Constance A. Morella).

95. Even prior to the Personal Responsibility Act, computerization has advanced child support enforcement techniques and efficiency. For example, once a CSED discovers where a father who owes child support is employed, the CSED then notifies the employer to garnish the employees wages. Computerization allows the San Diego CSED to notify employers automatically by computer, without staff assistance. Jeff Weeland, Deputy District Attorney, Chief of Legal Division, Bureau of Child Support Enforcement, Dept. of the District Attorney, Remarks at the *South Bay Human Services Fall Forum* (Oct. 25, 1996) [hereinafter Weeland remarks].

computerization provisions are initially a costly endeavor, the goal behind these provisions is to increase efficiency.<sup>96</sup> Computerization will greatly assist in locating out-of-state fathers. As of 1995, 30% of child support enforcement cases involved fathers who lived out of state, yet CSEDs nationally collected only 7% of these payments due.<sup>97</sup> In the past, it has been difficult to keep track of fathers because many move to other states to avoid complying with child support orders.<sup>98</sup> In response to this problem, the Personal Responsibility Act mandates the expansion of the "Parent Locator Service," which is a nation-wide computer network that aids in tracking fathers as they move from state to state.<sup>99</sup> Similarly, locating fathers with delinquent support within states will also be easier after computerization because the Personal Responsibility Act also implements a "State Case Registry" to network all CSEDs' computers.<sup>100</sup>

In addition to "parent locators," the Personal Responsibility Act also includes a "State Directory of New Hires."<sup>101</sup> Under the Personal Responsibility Act, employers must report all new hires to state child support enforcement agencies within twenty days of hire, so money can be withheld from an employee's paycheck if the employee is delinquent in making his child support payments.<sup>102</sup> Non-compliant employers will face penalties.<sup>103</sup>

## 2. Sanctions

In addition to computerized access to information, the Personal Responsibility Act also provides CSEDs with strong tools with which to collect support payments. Methods of enforcement now include uniform interstate

96. The procedural regulations which proved time-consuming to monitor on paper, have created even more hardships in their implementation into a computerized system. Before the Personal Responsibility Act, nearly \$2 billion had already been spent on a national system of computers by 1994, and much of the money was spent to appease procedural regulations rather than increase child support enforcement efficiency. *Implementing Welfare Revision, Hearings Before the Subcommittee on Human Resources of the House of Representatives Committee on Ways and Means*, 104th Cong., 2d Sess. (Sept. 19, 1996) (testimony by Robert M. Melia), available in 1996 WL 10831249 [hereinafter Melia testimony].

97. Spalter-Roth statement, *supra* note 18. While computerization is an important improvement, there are still personal jurisdiction problems that the CSEDs face when attempting to enforce child support payments from fathers who have moved out of state.

98. Spalter-Roth statement, *supra* note 18.

99. Personal Responsibility Act, § 316, 110 Stat. at 2214.

100. Personal Responsibility Act, § 311, 110 Stat. at 2205-06.

101. Personal Responsibility Act, § 313, 110 Stat. at 2209-12.

102. Personal Responsibility Act, § 313(b), 110 Stat. at 2210 (codified as amended at 42 U.S.C. sec. 653a, § 453(A)(b)(2)(A) (1997)).

103. The penalty against the employer is set by the state. The penalty must be less than \$25, unless the state implements a law making failure to comply a conspiracy between employer and employee. In the latter situation, the penalty must be less than \$500. Personal Responsibility Act, § 313(b), 110 Stat. at 2211 (codified as amended at 42 U.S.C. sec. 653a, § 453(A)(d) (1997)).

child support laws,<sup>104</sup> the garnishment of wages,<sup>105</sup> the seizure of assets,<sup>106</sup> and the revocation of driver's, professional, and occupational licenses.<sup>107</sup> Although all these methods are not new to child support enforcement, the Personal Responsibility Act's inventory of strict methods should provide an effective arsenal for CSEDs. In addition, some of the newer reforms should be successful based on their prior successes in state test programs. California, for example, enacted legislation which permitted license revocation in 1992. Since then, the state has revoked more than 27,000 state-issued business and professional licenses.<sup>108</sup> Limits on license renewals or initial applications have proven to be a powerful tool in inspiring compliance with child support orders. California has generated over \$14 million through this procedure alone.<sup>109</sup>

### 3. Paternity

One of the more controversial new provisions of the Personal Responsibility Act conditions welfare eligibility on the mother's cooperation in determining a child's paternity.<sup>110</sup> If the mother is unsure of her child's paternity, she must cooperate in good faith with the CSED and provide all necessary information to aid in establishing paternity.<sup>111</sup> Part of the

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104. Personal Responsibility Act, § 321, 110 Stat. at 2221 (codified as amended at 42 U.S.C. sec. 666, § 466(f) (1997)).

105. Personal Responsibility Act, § 314, 110 Stat. at 2213 (codified as amended at 42 U.S.C. sec. 666(a)(1), § 466(a)(1) (1997)).

106. Personal Responsibility Act, § 325(c)(1)(G), 110 Stat. at 2225 (codified as amended at 42 U.S.C. sec. 666, § 466 (1997), as amended by § 314 of this act).

107. Personal Responsibility Act, § 369, 110 Stat. at 2251 (codified as amended at 42 U.S.C. sec. 666(a), § 466(a)(16) (1997)).

108. 1995 ANNUAL REPORT, *supra* note 25, at 4.

109. *Id.*

110. Personal Responsibility Act, § 333, 110 Stat. at 2230-31 (codified as amended at 42 U.S.C. sec. 654, § 454(3) (1997), as amended by § 301(b), § 303(a), and § 313(a) of this act).

111. Personal Responsibility Act, § 333, 110 Stat. at 2230-31 (codified as amended at 42 U.S.C. sec. 654, § 454(3) (1997), as amended by § 301(b), § 303(a), and § 313(a) of this act). One of the largest criticisms of this reform is that there is no codified exception for women who have suffered from domestic abuse. The Personal Responsibility Act states:

[T]he State agency responsible for administering the State plan- (A) shall make the determination (and redetermination at appropriate intervals) as to whether an individual who has applied for or is receiving assistance under the State program . . . is cooperating in good faith with the State in establishing the paternity of, or in establishing, modifying, or enforcing a support order for, any child of the individual by providing the State agency with the name of, and such other information as the State agency may require with respect to, the noncustodial parent of the child, subject to good cause and other exceptions which- (i) shall be defined, taking into account the best interests of the child, and (ii) shall be applied in each case, by, at the *option* of the State, the State agency administering the State program.

Personal Responsibility Act, § 333, 110 Stat. at 2230-31 (codified as amended at 42 U.S.C. sec. 654, § 454(29)(A) (1997), as amended by § 301(b), § 303(a), and § 313(a) of this act) (emphasis added). Under this reform, the state has the discretion to force abused women to

mandatory cooperation requirement can require the mother to appear at interviews, hearings, and legal proceedings, as well as submit herself and her child to genetic tests, pursuant to an administrative or judicial order.<sup>112</sup> Mothers who fail to cooperate with paternity establishment face a minimum 25% reduction in their monthly assistance payments.<sup>113</sup> The state welfare system could deny assistance to an otherwise eligible family altogether if the mother does not provide the requisite information.<sup>114</sup> The purpose behind these provisions is to encourage more welfare mothers to voluntarily offer paternity, thus making delinquent child support payments that much easier to enforce.<sup>115</sup>

#### 4. Federal Audits

In addition to adding new sanctions for non-paying fathers, the Personal Responsibility Act also de-emphasizes the procedural audit, which is an ineffective and time-consuming process.<sup>116</sup> Every three years,<sup>117</sup> the General Accounting Office (GAO) audits agency procedures by reviewing the "adequacy of financial management of the State [child support enforcement] program."<sup>118</sup> Procedural audits assess whether child support collections are properly distributed,<sup>119</sup> and whether state funds are "appropriately expended, and . . . properly and fully accounted for."<sup>120</sup> While the Personal Responsi-

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comply with paternity establishment and face the possibility of future abuse in order to continue to receive their welfare benefits.

112. Personal Responsibility Act, § 333, 110 Stat. at 2231 (codified as amended at 42 U.S.C. sec. 654, § 454(29)(B-C) (1997), as amended by § 301(b), § 303(a), and § 313(a) of this act).

113. Personal Responsibility Act, § 103, 110 Stat. at 2135 (codified as amended at 42 U.S.C. sec. 608, § 408(a)(2)(A) (1997)).

114. Chambers, *supra* note 78, at 2586.

115. Personal Responsibility Act, § 331(a), 110 Stat. at 2227 (codified as amended at 42 U.S.C. sec. 666(a)(5), § 466(a)(5) (1997)).

116. Many commentators directly involved in the audit process have advocated de-emphasizing the procedural audit because it does not increase productivity. *Statement Before the Senate Comm. on Finance, 104th Congress, 1st Sess., (March 28, 1995)* (prepared statement of Margaret Campbell Haynes, Former Chair, US Commission on Interstate Child Support American Bar Association Center on Children and the Law) 1995 WL 10887406; Jones Jordan testimony, *supra* note 19.

117. Personal Responsibility Act, § 342, 110 Stat. at 2234 (codified as amended at 42 U.S.C. sec. 652(a)(4), § 452(a)(4)(C)(i) (1997)). More frequent audits are done when a CSED fails to meet procedural standards. *Id.*

118. Personal Responsibility Act, § 342, 110 Stat. at 2234 (codified as amended at 42 U.S.C. sec. 652(a)(4), § 452(a)(4)(C)(ii) (1997)).

119. Personal Responsibility Act, § 342, 110 Stat. at 2234 (codified as amended at 42 U.S.C. sec. 652(a)(4), § 452(a)(4)(C)(ii)(II) (1997)).

120. Personal Responsibility Act, § 342, 110 Stat. at 2234 (codified as amended at 42 U.S.C. sec. 652(a)(4), § 452(a)(4)(C)(ii)(I) (1997)).



bility Act has not eliminated procedural audits entirely,<sup>121</sup> it has shifted the emphasis away from procedure and focused primarily on productivity.<sup>122</sup>

Prior to the Personal Responsibility Act's passage, triennial audits reviewed federally mandated procedures only.<sup>123</sup> The audits were so technically burdensome that 70% of the states failed at least one of the reviewed categories the first time.<sup>124</sup> The time-consuming guidelines forced CSEDs to lose a great deal of productivity potential,<sup>125</sup> because the audits forced states to comply with trivial procedures in order to keep federal funding rather than work to increase child support collection rates.<sup>126</sup> The procedural auditing process was also burdensome for the Federal Office of Child Support Enforcement,<sup>127</sup> (Federal OCSE) which was forced to dedicate 50% of its staff resources to conducting state CSED procedural audits.<sup>128</sup> The largest complaint regarding the time-consuming procedural audit was the fact that it did not improve the overall productivity of child support enforcement.<sup>129</sup> States which learned how to pass the audits spent too much valuable time preparing for the audit, rather than working to increase collections.<sup>130</sup> Since the passage of the Personal Responsibility Act, staff members can spend more time establishing child paternity and collecting delinquent child support payments.

The only purpose of the procedural audit was to verify that federal money was spent according to guidelines.<sup>131</sup> In effect, the audit traced all the money the CSEDs spent to legitimate purposes, regardless of any derived successes. The former, inefficient program also determined incentive payments solely on procedural compliance rather than performance, thereby rewarding inefficient programs.<sup>132</sup> For example, Indiana, which earned the

121. Procedural compliance is still audited every three years. Personal Responsibility Act, § 342, 110 Stat. at 2233-34 (codified as amended at 42 U.S.C. sec. 654, § 454 (1997)).

122. Personal Responsibility Act, § 341, 110 Stat. at 2231-33 (codified as amended at 42 U.S.C. sec. 658, § 458 (1997)).

123. Jones Jordon testimony, *supra* note 19.

124. *Id.*

125. The regulations reviewed by the audit include trivial tasks such as: when to open and close cases, how many letters and notices to send by mail, what their content must be, how to mail them, and when to mail them. Melia testimony, *supra* note 96.

126. Non-compliance with federal procedural regulations is penalized with reduced federal funding. The first year a state is non-compliant, the penalty is 1%. For California, a 1% penalty is approximately \$40 million. FUTURE OF CHILD SUPPORT ENFORCEMENT, *supra* note 21, at 4.

127. The Office of Child Support Enforcement is the federal agency which oversees the state CSEDs and sets national standards. NINETEENTH ANNUAL REPORT, *supra* note 3, at 1.

128. Jones Jordon testimony, *supra* note 19.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Implementing Welfare Revision: Testimony Before the Subcomm. on Human Resources Comm. on Ways and Means of the House Comm. on Child Support Provisions of P.L. 104-193: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, 104th Cong., 1st Sess. (Sept. 19, 1996) (testimony of Elisabeth Hirschhorn Donahue) available in 1996 WL

highest rating for effective use of federal funds in 1994, had the second lowest child support collection rate in the nation.<sup>133</sup>

The federal government still needs to monitor spending through procedural audits because it continues to reimburse states for 66% of their collection costs.<sup>134</sup> However, while triennial procedural audits are necessary, the Personal Responsibility Act does not make procedure the sole focus of the review.<sup>135</sup> Therefore, the Personal Responsibility Act follows commentator advice by simplifying procedural audits<sup>136</sup> and changing welfare distribution policy goals.<sup>137</sup> Instead of unlimited lifetime support, the Personal Responsibility Act's goals are to wean families off TANF and promote TANF avoidance entirely.<sup>138</sup> While past procedural audits worked as a system of state cost-reimbursement, the Personal Responsibility Act properly turns the focus to productivity and results.<sup>139</sup>

Since the Personal Responsibility Act is relatively new, the Federal OCSE has not yet determined to what extent the new audits will concentrate on substance over procedure.<sup>140</sup> Advocates of audits which measure results argue that reviews should measure CSEDs' successes in: (1) paternity establishment, (2) child support order establishment, (3) collections of current support, (4) collections of overdue support payments, (5) enrollment of children in parent's health insurance, and (6) distribution of collections.<sup>141</sup> Other advocates argue that it should only measure the percentage of paternities established and the amount of child support collected.<sup>142</sup> Reviewing productivity is intended to provide a stimulus for innovation on a state level since funds are dependent on results and procedure, rather than careful procedural spending alone.<sup>143</sup>

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13104266 [hereinafter Donahue testimony].

133. *Id.*

134. Melia testimony, *supra* note 96. Unlike TANF, there are no limited block grants for child support enforcement, so the flexible nature of funding requires that the federal government monitor state spending.

135. Personal Responsibility Act, § 341, 110 Stat. at 2231-33 (codified as amended at 42 U.S.C. sec. 658, § 458 (1997)).

136. Jones Jordon testimony, *supra* note 19.

137. Hamilton remarks, *supra* note 13.

138. The main goal of the Personal Responsibility Act is to promote family self-sufficiency. Personal Responsibility Act, § 101(10), 110 Stat. at 2112.

139. Melia testimony, *supra* note 96.

140. Telephone Interview with Keith Bassett, Director, OCSE's Audit Division (Nov. 1, 1996).

141. Jones Jordon testimony, *supra* note 19.

142. Melia testimony, *supra* note 96.

143. One procedural audit opponent argues that procedural audits should be eliminated entirely and all funds should be dependent on results in order to stimulate innovation. *Id.*

The productivity review process eventually should be the most efficient and liberating new reform of the Personal Responsibility Act.<sup>144</sup> To further aid productivity, the Personal Responsibility Act's mandatory national and state-wide computer networks will simplify and standardize procedural and productivity calculations in each locality.<sup>145</sup> Therefore, not only will overall CSED productivity increase because of readily accessible information, but more time can be spent innovating and securing orders because staff can focus on results.

The Personal Responsibility Act grants the CSEDs new tools with which to collect delinquent child support payments more efficiently.<sup>146</sup> Some of these reforms include national computerization, tougher sanctions, stringent paternity establishment measures, and the de-emphasis of procedural audits. These changes should make the CSEDs more productive and provide a means for the Personal Responsibility Act's reforms to benefit both welfare families and the states.

### III. CRITICISMS OF THE PERSONAL RESPONSIBILITY ACT

There is a great deal of national support for the new reforms under the Personal Responsibility Act.<sup>147</sup> As with any new system, however, there are problems. Because of the Personal Responsibility Act's recent passage, provisions in the Personal Responsibility Act have yet to be fully implemented. While the productivity of the CSEDs should increase once the Personal Responsibility Act reforms are in full effect, assuredly even more criticisms will arise.

One criticism of the Personal Responsibility Act stems from the fact that many families not receiving child support have poor fathers.<sup>148</sup> Although some poor fathers are currently able to pay only a portion of their child support orders, critics argue that all support may be cut off when enforcement tactics pressure fathers to make full payments.<sup>149</sup> Some fathers may enter

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144. Before the Personal Responsibility Act's reforms, state CSEDs focused on passing federal audits and avoiding sanctions, rather than innovating methods of collecting child support. Jones Jordon testimony, *supra* note 19.

145. Personal Responsibility Act, § 344, 110 Stat. at 2234-36 (codified as amended at 42 U.S.C. sec. 654(16), § 454(16) (1997)).

146. Donahue testimony, *supra* note 132.

147. While little is known about the actual effect of the Personal Responsibility Act on welfare and child support enforcement, Federal OCSE Deputy Director David Gray Ross has said he is "[looking] forward to [the OCSE's] new responsibilities and [believes] that the next several years will be an exciting and productive time for [the OCSE] and for the nation's child support enforcement program." OCSC Newsletter (October, 1996) <<http://www.acf.dhhs.gov/ACFPrograms/CSE/new/csr/9610.htm1>>.

148. A 1995 survey revealed that 23.4% of parents not paying child support are unemployed and 14.4% are employed in low-paying jobs. *Survey by Maximus for the State of Minnesota* (1995).

149. Chambers, *supra* note 78, at 2596.

the underground work force to avoid paying support altogether.<sup>150</sup> Moreover, the Personal Responsibility Act's strict requirements for paternity establishment and employment tracking may actually encourage underground jobs<sup>151</sup> or the use of false social security numbers.<sup>152</sup> These strict requirements, such as new hire registration for employers, will not be effective if fathers opt out of the legitimate workforce.<sup>153</sup> The most serious threat posed by the CSED's reforms is for TANF-families, because poor children generally have poor fathers.<sup>154</sup>

A further criticism surrounds the concern that states might go too far to enforce child support payments. Advocates of increasing government involvement suggest the federal government should create job programs for the fathers who cannot afford to pay.<sup>155</sup> Such job programs would elicit money from fathers who are otherwise working in the underground work force.<sup>156</sup> One critic fears that the recent reforms are so focused on enforcing child support that the application of these reforms could ultimately expand into creating penal work camps for fathers who are delinquent in support payments.<sup>157</sup>

To handle these concerns, advocates of government action support a federally financed child support assurance program. Child support assurance is a program which would guarantee child support payments to families involved in the federally funded child support enforcement program, regardless of whether the father actually makes his payments.<sup>158</sup> While critics of child support assurance argue that the program would be too costly for the federal government, advocates reason that the Personal Responsibility Act's reforms will lessen the government's financial welfare burdens and make a child support assurance plan fiscally viable.<sup>159</sup>

150. However, a recent study found no correlation between child support enforcement and legitimate employment. *Id.* at 2596-97.

151. *Id.* at 2597.

152. Weeland remarks, *supra* note 95.

153. Under the Personal Responsibility Act, employers are to report their new hires' social security numbers to new hire databases. Personal Responsibility Act, § 313, 110 Stat. at 2210 (codified as amended at 42 U.S.C. sec. 653(a), § 453(A)(b)(1)(B) (1997)). If fathers work underground, however, no social security number is necessary, so there is no way to track the fathers or the compliance of the employers.

154. Chambers, *supra* note 78, at 2594 (citing DONALD HERNANDEZ, AMERICA'S CHILDREN: RESOURCES FROM FAMILY, GOVERNMENT, AND THE ECONOMY 310-11 (1993)); GWENDOLYN MINK, THE WAGES OF MOTHERHOOD: WOMEN'S INEQUALITY IN THE WELFARE STATE (1995) at 187.

155. Sugarman, *supra* note 17, at 2571.

156. Spalter-Roth statement, *supra* note 18.

157. Chambers, *supra* note 78, at 2598. In Massachusetts, one father who refused to pay his increasing child support payments was offered jail or participation in the Fair Share Program. He chose the program. *Id.* (citing Andrea K. Walker, *Welfare Plans Take Fathers into Account: Pilot Programs Help Men Work, Learn, Support Their Children*, BOSTON GLOBE, June 18, 1995, at 6).

158. Melia testimony, *supra* note 96.

159. *Id.*

Some critics of both child support assurance and enforcement programs argue that neither should be used to reform welfare. According to these critics, even with child support assurance or enforcement, needy families will still need additional government assistance because poor families generally have poor fathers.<sup>160</sup> Child support enforcement cannot be a successful welfare reform because the fathers have nothing to give.<sup>161</sup> Further, child support assurance or enforcement could foster unwanted contact between fathers and families.<sup>162</sup>

In contrast, advocates focus on the efficiency of both child support enforcement and assurance systems. Under a child support assurance system, efficiency in child support collection would rapidly increase because "the government bears the cost" when payments are not collected.<sup>163</sup> Currently, if the CSED cannot collect payment for the family or the father is too poor to pay, the family suffers.<sup>164</sup> Putting the burden on the government, rather than the family, should motivate the government to increase its collection rate.<sup>165</sup> In addition, advocates reason that child support assurance is a beneficial reform because it would help to decrease the welfare rolls. Under the Personal Responsibility Act, child paternity should be established early so the CSEDs can collect child support awards sooner. An efficient CSED could help families avoid the need to enter the TANF rolls.<sup>166</sup> Further, the child support assurance program would not deny payments to working mothers, so it promotes the Personal Responsibility Act's personal responsibility work incentives.<sup>167</sup>

Another overall criticism of the Personal Responsibility Act is that, while beneficial in many ways, it does not go far enough to motivate state efficiency. One proposal is to eliminate procedural audits altogether and offer federal funds only to states which meet certain levels of productivity.<sup>168</sup> Under this proposed system, federal funds would be completely dependent on

160. *See supra* note 154.

161. Mink, *supra* note 154, at 187.

162. *Id.* One critic comments, "To create a direct relationship between a father's wages and the children's economic security would suggest an exchange relationship in which a mother's right to raise her children independently is traded for the father's access to those children." *Id.* at 188.

163. Roberts, *supra* note 73, at 79.

164. *Id.*

165. *Id.*

166. In the past, many AFDC mothers did not assist CSEDs in establishing their child's paternity because they were satisfied with AFDC benefits. Weeland remarks, *supra* note 95. While the Personal Responsibility Act forces mothers to comply with paternity establishment, child support assurance could be an even bigger incentive because families could be guaranteed child support benefits for life, rather than the five year limit under the Personal Responsibility Act. Melia testimony, *supra* note 96.

167. Melia testimony, *supra* note 96; *see supra* note 37.

168. On a national level, the cost for such a program has been equated with the former procedural auditing process, yet with a greater benefit being derived from expended funds. *Id.* Under the Personal Responsibility Act, audits primarily focus on results; however, procedural audits have not entirely been eliminated.

results; therefore, the most productive states would benefit with increased funding.<sup>169</sup> This procedure, however, may not increase innovation and could result in less overall effectiveness for poorer states with low productivity who cannot compete with more productive states.<sup>170</sup> In response, proponents argue that less productivity in a state or locality would hurt it financially, yet force it to innovate to increase productivity with lesser funds.<sup>171</sup> The new productivity-based audit process will help all states and localities to be more efficient from the start because time and energy can be focused on obtaining results instead of following trivial procedural guidelines.<sup>172</sup>

While there are many critics of the Personal Responsibility Act, there are many advocates of reforming welfare through child support enforcement.<sup>173</sup> Problems with the Personal Responsibility Act do exist; however, it is still the most positive change in welfare the country has ever seen.

#### IV. CREATING A CHILD SUPPORT ASSURANCE PROGRAM

Many of the criticisms of the Personal Responsibility Act could be alleviated by the implementation of a child support assurance program. While numerous concerns must be addressed in implementing such a large program, a properly constructed program could be quite successful in lowering the welfare rolls and enforcing child support payments.

A child support assurance system is a radical concept, yet one that could greatly benefit our nation, as well as many families in need. As explained above, under a child support assurance program, the eligible family receives monthly child support payments from the government regardless of whether the father actually pays his support obligation on time and in full each month.<sup>174</sup> There are many opponents to such a program, but the following suggestions acknowledge the fact that criticisms exist and pose solutions to some of the more pressing concerns.

Due to the significant costs involved in assuring child support payments, the initial program size should be limited when first constructing a child support assurance program. Legislation should require that all families enrolling in the assurance program be eligible for welfare. This requirement will limit the number of families that the program must aid, while helping the

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169. *Id.*

170. Reasoning taken from critics' reaction against the Personal Responsibility Act's already implemented sanctions. See Bingaman statement, *supra* note 54.

171. Melia testimony, *supra* note 96. An example of an inexpensive innovation to increase productivity is the establishment of paternity in the hospital as opposed to expensive court proceedings which cost over \$500. *Id.*

172. *Id.*

173. Supporters' statements include: Hamilton remarks, *supra* note 13; Melia testimony, *supra* note 96; Spalter-Roth statement, *supra* note 18; and Jones Jordon testimony, *supra* note 19.

174. Melia testimony, *supra* note 96.

families that are in the most dire need of child support.<sup>175</sup>

Further, legislation should mandate that a valid child support order must be established before a family can be eligible for child support assurance. This limitation will also restrict the number of families that can initially enroll in the program. As of 1994, only 39.5% of welfare families had child support orders which were not being complied with,<sup>176</sup> so the initial financial burden on the child support assurance program would not be unduly burdensome. Additionally, by making child support orders a prerequisite to enrolling in the assurance program, the government is guaranteed information as to the paternity of the child in question, therefore, collection of delinquent payments would be made significantly easier. This should also increase the number of paternities established by CSEDs because it encourages welfare mothers who want to receive assured child support and leave the welfare roles to cooperate and seek child support orders.

In constructing child support assurance legislation, one of the most important concerns for legislators should be to protect the program from abuse. The potential for abuse is that the program could give many families the incentive to collect child support from the assurance program without concern for the fact that their child support orders are not being paid by the fathers who owe them.<sup>177</sup> Legislators should try to curtail program abuse by requiring all families in the assurance program to assist with CSED efforts by continually providing all necessary information to collect payment from the delinquent fathers. This requirement is similar to the Personal Responsibility Act's paternity establishment provision which conditions welfare eligibility on a mother's active assistance in identifying and locating the father of her child.<sup>178</sup> With active assistance as a requirement for child support assurance, families are not permitted to rely on child support assurance without bearing in mind it is the father who is obligated to pay monthly support.

In addition to protecting the government from program abuse, it is important to protect the families from potential physical abuse. Many

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175. Other child support assurance advocates have argued that offering this program to welfare families is problematic because welfare benefits decrease based on increases in family income. IRWIN GARFINKEL, ASSURING CHILD SUPPORT: AN EXTENSION OF SOCIAL SECURITY 142-43 (1992). However, properly constructed legislation would not remove all public assistance from needy families simply because they are enrolled in the child support assurance program. Further, as will be discussed, narrowly defined exceptions in child support assurance legislation could help those families who could be financially burdened by a decrease in welfare benefits.

176. The 39.5% figure is derived from the following information: Twelve and one half percent of all welfare families nationally have their child support orders enforced, NINETEENTH ANNUAL REPORT, *supra* note 3, and 52% of AFDC recipients had child support orders in 1994, *Id.* at 33. Therefore, 39.5% of welfare families are left eligible for and in need of child support assurance.

177. See GARFINKEL, *supra* note 175, at 143-44.

178. See Personal Responsibility Act, § 333, 110 Stat. at 2230-31 (codified as amended at 42 U.S.C. sec. 654, § 454(3) (1997), as amended by § 301(b), § 303(a), and § 313(a) of this act).

families on welfare are survivors of domestic abuse.<sup>179</sup> Therefore, any method of child support enforcement could produce contact between the father and the family, and consequently, renewed opportunities for abuse. Legislators should take this concern into account and provide an exception which allows these families to collect TANF and decline to participate in the child support assurance program.<sup>180</sup> In this way, families can avoid abusive fathers without losing their welfare assistance.

Additionally, undue financial hardship could also pose a problem for the few families which have child support orders smaller than TANF monthly assistance would provide. An exception similar to the one exempting participation by physically abused families would solve this dilemma by assuring that poorer families are not penalized by mandatory participation in the child support assurance program.<sup>181</sup> While on TANF, a family's child support could still be enforced through the CSEDs' methods. However, in the meantime, the family is not forced to live on less income than welfare would grant.

A child support assurance program would initially be costly to implement since few support checks would be received from the fathers of program participants to repay program expenditures, and the average monthly payments can be significantly higher than average welfare benefits.<sup>182</sup> However, child support assurance could be financially viable because the legislative suggestions described above limit eligibility and remain focused on enforcing child support obligations from the father. The system is assured a process of slow implementation because the program only assures child support payments for the initially few welfare families with valid support orders.

The intent of a child support assurance program is not to replace the welfare system but to decrease welfare roles and increase CSED efficiency. As the Personal Responsibility Act reforms allow for the establishment of more paternities and child support orders, the child support assurance rolls will inevitably increase. However, the welfare and child support enforcement systems will be much more efficient under the Personal Responsibility Act, so the net cost to the state should still be less than current welfare expenditures. Under a child support assurance system, once a father is forced to pay

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179. One study revealed that 60% of AFDC recipients have been victims of domestic abuse. Lynn Smith, *90's Family: What Happens to Battered Women When the Safety Net Is Cut?*, L.A. TIMES, Dec. 8, 1996, at E2.

180. Under the Personal Responsibility Act, there is no codified exception from their obligation to help establish a child's paternity for families which could face physical abuse if paternity is established or a court order is enforced. *See supra* note 111.

181. Given the fact that welfare eligibility is a prerequisite to enrolling in the child support assurance program, legislation should include a provision allowing for automatic enrollment in the child support assurance program once welfare benefits are terminated. Otherwise, once a family exceeds their five year lifetime limit on welfare, they lose all support, including child support assurance program eligibility. *See* Personal Responsibility Act, § 103, 110 Stat. at 2137 (codified as amended at 42 U.S.C. sec. 608, § 408(a)(7)(A) (1997)).

182. *See supra* note 6.



child support payments regularly, he should also be liable for all overdue payments that the state has previously paid to the family, including interest and costs.<sup>183</sup> Therefore, while this system might be costly to implement at first, it will eventually pay for itself with an ever increasing number of fathers being forced to make back payments.<sup>184</sup>

The Personal Responsibility Act's welfare reforms would be complemented by a child support assurance program because they both pursue the same goals of encouraging personal responsibility and increasing the efficiency of the child support enforcement program. Child support assurance will lower the welfare rolls by protecting family income through the assurance of regularly paid, court ordered child support payments. While it may be argued that child support assurance simply allows welfare families to collect state funds from a new program with a different name, child support assurance does more than welfare because it encourages CSEDs to be more efficient in collecting child support.<sup>185</sup> It also gives families a higher degree of financial security because of the significant difference in monthly income between welfare benefits and child support payments.<sup>186</sup>

The long term effects of a child support assurance program are the most compelling reasons to implement such a program. First, families who formerly received late, partial, or no payments from delinquent fathers are guaranteed monthly payments on time and in full each month. Second, the child support assurance program encourages mothers to establish paternity in order to get an assured and enforceable child support order.<sup>187</sup> Third, the state will become even more driven to establish child support orders and collect payments because the state is financially responsible when it fails to do so.<sup>188</sup> Fourth, the welfare rolls will significantly decline as more and more families acquire child support orders.<sup>189</sup> Finally, the five year limit on welfare will not be as devastating for families who are not financially independent by the time they become ineligible for welfare. Child support assurance may be costly to implement at first, but when one considers the long term effects, child support assurance becomes a desirable alternative to the welfare rolls.

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183. See Roberts, *supra* note 73, at 79.

184. Ideally, once a child support assurance program benefiting welfare families became financially stable, it could be expanded to assure child support payments for all families with valid support orders, regardless of their financial income. For a proposal for nationalized child support assurance regardless of financial need, see GARFINKEL, *supra* note 175, at 42-61.

185. See GARFINKEL, *supra* note 175, at 49.

186. See *supra* note 6.

187. See GARFINKEL, *supra* note 175, at 49.

188. Roberts, *supra* note 73, at 79.

189. See GARFINKEL, *supra* note 175, at 48.

## CONCLUSION

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 contains the most radical welfare reforms in the history of welfare and child support enforcement. One commentator noted, while there are many flaws in the Personal Responsibility Act, "the bill probably represents our best hope for figuring out how to solve the problems of the poor and underclass."<sup>190</sup> One of the Personal Responsibility Act's greatest benefits is the current focus on increasing child support enforcement to offset welfare costs through parent contribution. Additionally, it will help to secure independence for welfare families by using enforcement programs to reduce the need for welfare entirely.<sup>191</sup> The new focus on Child Support Enforcement Divisions' productivity should increase state CSED innovation and efficiency because local divisions can spend more time establishing paternities and collecting support instead of spending time conforming to time-consuming federal procedural guidelines. While some may argue that child support enforcement is futile as a means of lowering welfare rolls because nearly 40% of welfare families have fathers who will never be able to pay, there are still over 60% of welfare families who could benefit.<sup>192</sup> If even half of those families were to receive child support, it would still be a significant improvement considering only 12.5% of all welfare families received any support as of 1994.<sup>193</sup>

The majority of the Personal Responsibility Act's reforms will be a welcome change to our welfare and child support enforcement systems. However, even with the Personal Responsibility Act's radical welfare changes, room still exists for continued reform. One solution is to initiate a child support assurance program which could help fill the needs of many families who would be financially independent if their monthly child support orders were paid on time and in full. Such an assurance program could be costly to implement at first, but the long term effects should make it worthwhile.

The Personal Responsibility Act forces all the states to seek new ways to manage rising welfare costs because block grants result in limited funds. An efficient child support enforcement system will aid in reimbursing state welfare costs directly through support checks owed to families benefiting from the program. With new and efficient child support enforcement methods, states can afford to help more eligible families in need. Ideally,

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190. Hamilton remarks, *supra* note 13.

191. 142 CONG. REC. S9322-02 (daily ed. Aug. 1, 1996) (statement of Sen. Roth).

192. *See supra* note 148.

193. *See supra* note 3.

under the Personal Responsibility Act, many families will soon be able to survive financially without government assistance.

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