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## Child Support Enforcement and Establishment of Paternity as Tools of Welfare Reform—Social Services Amendments of 1974, pt. B, 42 U.S.C. §§ 651-60 (Supp. V, 1975)

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CHILD SUPPORT ENFORCEMENT AND ESTABLISHMENT OF PATERNITY AS  
TOOLS OF WELFARE REFORM—SOCIAL SERVICES AMENDMENTS OF  
1974, pt. B, 42 U.S.C. §§ 651–60 (Supp. V, 1975).

Among the Social Services Amendments of 1974<sup>1</sup> is a new part D, the Child Support and Establishment of Paternity provisions,<sup>2</sup> of title IV of the Social Security Act.<sup>3</sup> Part D of title IV (IV–D) requires states to establish or designate an agency to obtain and enforce orders for support of children for whom application for Aid to Families with Dependent Children (AFDC)<sup>4</sup> has been made<sup>5</sup> and, where necessary, to establish paternity.<sup>6</sup> Additional provisions provide for Department of Health, Education, and Welfare (HEW) monitoring of state programs<sup>7</sup> and assistance in finding absent parents through a Parent Locator Service (PLS);<sup>8</sup> an exception to the immunity of federal employees' wages from garnishment for child support obligations;<sup>9</sup> an increase in federal matching funds for costs of enforcement<sup>10</sup> and penalty provisions for noncompliance,<sup>11</sup> which serve as the inducement for states to implement child support enforcement programs; and services necessary to the establishment of paternity and enforcement of support orders,<sup>12</sup> which are also available to nonrecipients<sup>13</sup> to prevent them from becoming welfare applicants.<sup>14</sup>

This note will discuss the purposes of the amendments, describe how the provisions are intended to work, and indicate what is required by HEW and the state welfare agencies for compliance. Constitutional and administrative problems that can be anticipated as the provisions are implemented will also be explored. Finally, the existing

1. Act of Jan. 4, 1975, Pub. L. No. 93–647, 88 Stat. 2337 (codified in scattered sections of 42 U.S.C.).

2. 42 U.S.C. §§ 651–60 (Supp. V, 1975). The Child Support and Establishment of Paternity provisions were part of a package of amendments enacted by both houses of Congress on December 20, 1974, and signed by President Ford on January 4, 1975.

3. *Id.* §§ 601–60, amending 42 U.S.C. §§ 601–44 (1970).

4. *Id.* §§ 601–09 (1970), as amended, (Supp. V, 1975).

5. *Id.* § 654 (Supp. V, 1975).

6. *Id.* § 654(4)(A).

7. *Id.* § 652.

8. *Id.* § 653.

9. *Id.* § 659.

10. S. REP. NO. 93–1356, 93d Cong., 2d Sess. 2 (1974).

11. 42 U.S.C. §§ 603(h), 652(a)(4) (Supp. V, 1975).

12. *Id.* § 654.

13. *Id.* § 654(6).

14. S. REP. NO. 93–1356, 93d Cong., 2d Sess. 55 (1974).

Washington State system of child support enforcement will be explained and offered as an example of a successful approach to this difficult problem.

## I. BACKGROUND

The Child Support and Establishment of Paternity sections of the Social Services Amendments of 1974 are Congress' reaction to the high incidence of children with nonsupporting absent parents within the AFDC caseload.<sup>15</sup> The AFDC program is intended to supply aid to children who are dependent because they "[have] been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent . . . ."<sup>16</sup> Prior to the 1974 amendments the proportion of children on the welfare rolls because of parents' "continued absence" had been increasing rapidly,<sup>17</sup> while the proportion dependent because of death or disability of parents had decreased.<sup>18</sup> An increase in the number of children whose parents had never been married added to the "continued absence" category.<sup>19</sup> Congress was impatient with the increase in illegitimacy, abandonments, and desertions.<sup>20</sup>

15. *Id.* at 42.

16. 42 U.S.C. § 606(a)(1) (1970).

17. In 1961, 66.7% of the families who received AFDC assistance did so because the father was absent from the home. In 1967, 74.2% of the AFDC caseload fell within that category. By 1973, it reached 80.2%. In June 1974, 8.7 million mothers and children were receiving AFDC because of the father's absence from the home. S. REP. NO. 93-1356, 93d Cong., 2d Sess. 42 (1974).

18. In 1940 the recipient's father's death was a ground for eligibility in 42% of the cases. Due to enactment of survivor benefits under the social security program, death of the father accounted for 7.7% in 1961 and 4% in 1973. In 1961, 18.1% of recipient children were eligible for AFDC because their fathers were disabled; in 1973 disability accounted for only 10.2%. *Id.*

19. There was an increase of 21.7% in the category of illegitimate child recipients from 1971 to 1973. *Id.* at 43. In 1961, the mother and father were not married in 21.3% of the AFDC families. The percentage of such families increased to 34.7% in 1973. The 645,000 illegitimate children in the nation's AFDC caseload in 1961 had grown to 2,529,846 in 1973. STAFF OF SENATE COMM. ON FINANCE, 94TH CONG., 1ST SESS., WAGE GARNISHMENT, ATTACHMENT AND ASSIGNMENT, AND ESTABLISHMENT OF PATERNITY 215-16 (Comm. Print 1975). These statistics caused the Senate Finance Committee staff to conclude that "the largest single factor accounting for the increase in the AFDC rolls is illegitimacy." *Id.* at 215.

20. *E.g.*, Senator Russell B. Long, chairman of the Senate Committee on Finance, termed failure to support children a form of welfare cheating, cheating by desertion:

Should our welfare system be made to support the children whose father cavalierly abandons them—or chooses not to marry the mother in the first place? Is it fair to ask the American taxpayer—who works hard to support his own family and to carry his own burden—to carry the burden of the deserting father as well?

## Child Support Enforcement

Both federal<sup>21</sup> and state<sup>22</sup> legislatures have long recognized the need to enforce child support obligations and have enacted statutes to meet this need. But despite this legislation, neither individuals nor local and state governments have enforced child support obligations to a satisfactory extent.<sup>23</sup> Among the reasons given have been the cost and complexity of litigation,<sup>24</sup> the difficulty of proving the amount of

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Perhaps we cannot stop the father from abandoning his children, but we can certainly improve the system by obtaining child support from him and thereby place the burden of caring for his children on his own shoulders where it belongs. We can—and we must—take the financial reward out of desertions.

118 CONG. REC. 8291 (1972).

21. In the 1940's, Congress considered making avoidance of family support a federal crime. See *Hearing on S. 1842 and S. 2081 Before the Senate Comm. on Finance*, 93d Cong., 1st Sess. 59 (1973). A 1950 enactment required that states provide prompt notice to law enforcement officials in cases where AFDC was being furnished to children who had been deserted or abandoned by a parent. Social Security Act Amendments of 1950, ch. 809, § 321(a)(10), 64 Stat. 549 (1950). This so-called NOLEO (Notice to Law Enforcement Officials) provision was an effort to assist enforcement by bringing cases of abandonment to the attention of prosecutors. The NOLEO provision has been superseded by an amendment providing for prompt notice to the state child support collection agency established under IV-D rather than notice to law enforcement officials. 42 U.S.C. § 602(a)(11) (Supp. V, 1975).

The Social Security Amendments of 1967 also reflected the purpose of enforcing parental financial responsibilities by requiring that states establish programs (1) to determine paternity and secure support for deserted or abandoned children, utilizing reciprocal arrangements adopted with other states, and (2) to secure the cooperation of courts and enforcement officials. Social Security Act Amendments of 1967, Pub. L. No. 90-248, §§ 201(a)(17), (18), 81 Stat. 878 (repealed 1975).

22. The Uniform Reciprocal Enforcement of Support Act (URESA) is an effort to increase cooperation among states in enforcing child support orders and judgments. URESA was approved by the National Conference of Commissioners on Uniform State Laws in 1950, amended in 1952 and 1958, and significantly revised in 1968. A version of URESA is currently in force in each of the 50 states. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT, Commissioners' Prefatory Note (1968 version). See generally UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT (1968 version); *id.* (1950 version, amended 1952, 1958). URESA provides that support duties bind an obligor regardless of the place of residence of the obligee and sets up a two-state proceeding. The initiating state sends a judge-approved petition to the responding state, where a court obtains jurisdiction over the obligor or the obligor's property. The court in the responding state conducts a hearing, and if it finds that a duty of support exists, it orders the furnishing of support. Amounts collected are sent to the initiating court for disbursement to the obligee. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT, Commissioners' Prefatory Note (1950) (1950 version, amended 1952, 1958). See generally W. BROCKELBANK, INTERSTATE ENFORCEMENT OF FAMILY SUPPORT (1960).

23. S. REP. NO. 93-1356, 93d Cong., 2d Sess. 43 (1974). See Note, 48 CORNELL L.Q. 541, 542-46 (1963).

24. The Senate Committee on Finance considered a Rand report that attached blame to the workings of the enforcement system. This report indicated that (1) costs of legal process prohibited actions by any but the rich and welfare recipients; (2) judges and lawyers found support cases boring and, in some instances, were hostile to the idea that fathers are responsible for their children; and (3) in California, where the study was conducted, even the state welfare agencies seemed uninterested in enforcing child support obligations. M. Winston & T. Forsher, *Summary to Nonsupport of Legitimate Children by Affluent Fathers as a Cause of Poverty and Welfare Dependence at v, vii*, Dec. 1971.

income of self-employed parents,<sup>25</sup> the legal barriers to collecting judgments against salaries of federal employees,<sup>26</sup> and the low priority placed on child support cases by public prosecutors.<sup>27</sup>

The committee considering the child support legislation was persuaded that more effective enforcement was an attainable goal. Among the persuasive factors was a Rand Corporation report showing that some commonly held beliefs about deserting fathers and abandoned mothers were unfounded.<sup>28</sup> First, many deserting fathers who contributed nothing to their children's support were not poor<sup>29</sup> but had incomes of \$25,000 or \$30,000 per year.<sup>30</sup> This indicates that money could be collected if adequate efforts were made. Secondly, child support payments due from divorced fathers were not unreasonably large—\$50 a month was typical.<sup>31</sup> Thirdly, a surprisingly large number of "middle-class" women were caught in the welfare trap when their marriages broke up and support payments were not made.<sup>32</sup> Finally, contrary to the belief that many nonsupporting fathers are hiding, the report showed that most were still in the same state and usually in the same county as their children.<sup>33</sup> Thus, the report implies that collections should be possible for a large number of cases.

Little empirical data exist about compliance with child support orders. One study presented to the Senate Committee on Finance indi-

25. M. Winston & T. Forsher, *Nonsupport of Legitimate Children by Affluent Fathers as a Cause of Poverty and Welfare Dependence* 4, Dec. 1971 [hereinafter cited as *Winston & Forsher*]. One study found that self-employed men falsified their incomes in order to gain lower child support determinations. See *Hearing on S. 1842 and S. 2081 Before the Senate Comm. on Finance, 93d Cong., 1st Sess.* 204 (1973).

26. Case examples include a federal employee and a retired Air Force major who were thousands of dollars behind in child support payments while their children were receiving welfare. Their federal paychecks were not subject to garnishment because of federal regulations. *Hearing on S. 1842 and S. 2081 Before the Senate Comm. on Finance, 93d Cong., 1st Sess.* 153-54 (1973).

27. Winston & Forsher, *supra* note 25, at 4. "Thousands of unserved child support warrants pile up in many jurisdictions and often traffic cases have a higher priority." S. REP. NO. 93-1356, 93d Cong., 2d Sess. 43 (1974).

28. Winston & Forsher, *supra* note 25, at 16, *quoted in* S. REP. NO. 93-1356, 93d Cong., 2d Sess. 43-44 (1974).

29. *Summary to Winston & Forsher, supra* note 25, at v, *quoted in* S. REP. NO. 93-1356, 93d Cong., 2d Sess. 44 (1974).

30. Winston & Forsher, *supra* note 25, at 3, 15; *Summary to id.*, at v.

31. Winston & Forsher, *supra* note 25, at 16, *quoted in* S. REP. NO. 93-1356, 93d Cong., 2d Sess. 44 (1974).

32. *Summary to Winston & Forsher, supra* note 25, at v, *cited in* S. REP. NO. 93-1356, 93d Cong., 2d Sess. 44 (1974); see Winston & Forsher, *supra* note 25, at 6-7.

33. Winston & Forsher, *supra* note 25, at 16, *quoted in* S. REP. NO. 93-1356, 93d Cong., 2d Sess. 43 (1974); see Winston & Forsher, *supra* note 25, at 3.

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cated that only 38 percent of fathers were in compliance with support orders one year after the divorce decree; 42 percent made no payment at all.<sup>34</sup> By the tenth year after divorce, 79 percent of the fathers in the group studied were in total noncompliance.<sup>35</sup> This kind of data, the input from the Rand report, and the fact of success in a handful of states<sup>36</sup> encouraged Congress that child support enforcement was both necessary and realistically possible.

## II. STATUTORY SCHEME

### A. Program Implementation

Title IV, part D, of the Social Security Act allocates duties between the Department of Health, Education, and Welfare and designated state agencies. The states are the primary enforcers of state obligations, but HEW monitors their programs and provides support services.<sup>37</sup> Initially HEW has had responsibility for establishing organization plans, staffing requirements, and performance standards for state IV-D plans.<sup>38</sup> Henceforth HEW must review and approve

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34. Composite of Citizens Advisory Council on the Status of Women, Memo on ERA and Alimony and Child Support Laws, Jan. 1972, in *Hearing on S. 1842 and S. 2081 Before the Senate Comm. on Finance*, 93d Cong., 1st Sess. 193, Table VII (1973).

35. *Id.*

36. *E.g.*, representatives of the Michigan social services department described that state's cooperative reimbursement program, which had saved \$3.30 in public assistance costs for every \$1 invested in collection. *Hearing on S. 1842 and S. 2081 Before the Senate Comm. on Finance*, 93d Cong., 1st Sess. 170-76 (1973). A witness from Sacramento County, California, reported costs of 17 cents for each \$1 collected. *Id.* at 143. The support enforcement section of the Washington State Department of Social and Health Services reported recovery of 8.2% of AFDC grant expenditures with collection costs of 17.75%. *Id.* at 253, App. B. *See also* S. REP. No. 93-1356, 93d Cong., 2d Sess. 45-46 (1974).

37. Title IV of the Social Security Act is the statutory scheme under which HEW promulgates rules and regulations applicable to the states whose social services agencies administer AFDC. The federal government matches state funding for approved programs. *See, e.g.*, 42 U.S.C. § 603(a)(3) (Supp. V, 1975), amending 42 U.S.C. § 603 (1970); *id.* § 655 (Supp. V, 1975).

38. *Id.* §§ 652(a)(1)-(2).

The organizational and functional statement of the Office of Child Support Enforcement created within HEW was published on June 10, 1975. Social & Rehabilitation Serv., U.S. Dep't of Health, Education, & Welfare, Statement of Organization, Functions, and Delegations of Authority, in 40 Fed. Reg. 24764 (1975). The office is divided into the Parent Locator Service Division, Administrative Division, and Policy and Planning Division.

Rules and regulations for the Child Support Enforcement Program were published on June 26, 1975. 40 Fed. Reg. 27154 (1975). The rules and regulations amend 45 C.F.R. pts. 205, 232-35 (1974), *see id.* (1975); and create a new chapter III, divided into four parts: *id.* pt. 301 (state plan approval and grant procedures); *id.* pt. 302

state IV-D plans as submitted.<sup>39</sup>

As an inducement to efficient program administration, Congress has designed a scheme of financial incentives into the statutory provisions. First, the state will be reimbursed for 75 percent of its administrative costs<sup>40</sup> rather than the prior 50 percent.<sup>41</sup> Secondly, under the assignment provisions a state may recover past AFDC payments made to the family out of amounts collected from the absent parent that exceed the current court-ordered obligation.<sup>42</sup> Thirdly, when a political subdivision of a state, *e.g.*, a county, collects a support obligation on behalf of a requesting state, that subdivision will be paid a bonus by the requesting state.<sup>43</sup> Although these inducements encourage child support collection, a sanction also is provided to assure that states do not fail to set up complying IV-D agencies. After December 31, 1976, any state found by the Secretary of HEW not to have an effective program will be penalized by five percent of the amount oth-

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(state plan requirements); *id.* pt. 303 (standards for an effective program); *id.* pt. 304 (federal financial participation).

39. 42 U.S.C. § 652(a)(3) (Supp. V, 1975). *Id.* § 654 requires each state to prepare a plan in compliance with the statute and HEW regulations. This plan is to be a comprehensive statement describing the state's program and detailing its conformity with each of the HEW regulations. 45 C.F.R. § 301.10 (1975). The requirements for a state plan are set out in *id.* pt. 302.

40. 42 U.S.C. § 655(a)(1) (Supp. V, 1975).

41. S. REP. No. 93-1356, 93d Cong., 2d Sess. 2 (1974).

42. 42 U.S.C. § 657(b)(3) (Supp. V, 1975).

The plan for allocating the child support moneys collected under the assignment provision is rather complex. There was a provision that Congress hoped would encourage reluctant mothers to make the assignments as the IV-D program was first implemented. It applied only to the 15-month period following July 1, 1975. Until the provision expired, families were immediately paid 40% of the first \$50 the state collected from the absent parent. This \$20 bonus to the family was disregarded in calculation of the family's assistance amount. *Id.* § 657(a)(1).

The additional allocation provisions are not limited in duration. First, the state and federal governments get reimbursement for the funds they are contributing to the family in the form of welfare payments. This amount is the remainder of the sum that represents the monthly support payment collected from the absent parent. The state must distribute the federal government's portion according to the matching fund formula in effect in that state. *Id.* § 657(1). Secondly, any amounts collected for the period under court order that exceed the amount the family receives in assistance are distributed to the family. *Id.* § 657(2). Finally, any other excess amounts, apparently amounts beyond current obligations that the absent parent contributes or may be paying to make up arrearages are to go to the state and federal governments. These funds are once again divided according to the matching fund ratio and represent recoupment for prior assistance payments. If there have been no prior unrecouped welfare payments, the family will receive the excess. *Id.* § 657(3).

43. *Id.* § 658(a). The bonus is an amount equal to 25% of a current support obligation actually collected for the first 12 months. For ongoing collections after the first 12 months, the political subdivision will get 10% a month.

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erwise payable from federal funds for operating its AFDC program.<sup>44</sup>

### B. Specific IV-D Functions

#### 1. Location of absent parents

HEW must establish and conduct a Parent Locator Service.<sup>45</sup> Information from HEW files, including all Social Security Administration data, must be made available for this purpose.<sup>46</sup> If necessary and disclosable information is not there, other departments, agencies, or instrumentalities of the United States must make it available.<sup>47</sup> The statute authorizes divulgence of an absent parent's most recent address and place of employment to an "authorized person."<sup>48</sup> This person may be an enforcement agent of a state with an approved support enforcement plan in effect, an agent of a court with authority to issue a support order, or an agent of a child who is not receiving AFDC and is owed a duty of support.<sup>49</sup> No information will be released, however,

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44. *Id.* § 603(h). This determination by the Secretary will be based on the annual HEW audit of state AFDC programs. *Id.*

45. *Id.* § 653. The PLS will operate largely as a computerized function under regulations and systems that HEW imposes. See Social & Rehabilitation Serv., U.S. Dep't of Health, Education, & Welfare, Statement of Organization, Functions, and Delegations of Authority, Parent Locator Service Division, in 40 Fed. Reg. 24764 (1975).

46. 42 U.S.C. § 653(b)(1) (Supp. V, 1975). Each state IV-D agency is required to establish its own parent locator service. 45 C.F.R. § 302.35(a) (1975). The state PLS must use diligent and reasonable efforts to exhaust all appropriate state and local resources before resorting to the federal PLS. *Id.* § 302.35(c).

47. 42 U.S.C. § 653(b)(2) (Supp. V, 1975). Federal locator information was available to states before enactment of IV-D. Under the Social Security Amendments of 1967, Pub. L. No. 90-248, § 211(b), 81 Stat. 897 (repealed 1975), addresses from Internal Revenue Service files were furnished to state agencies that requested that information in order to locate parents.

48. 42 U.S.C. § 653(b) (Supp. V, 1975). All requests for information must come through state IV-D units, including those requests from the representatives of children not receiving or applying for AFDC. *Id.* § 653(f).

49. *Id.* § 653(c). For example, a mother applying for AFDC might indicate that her husband has left the state and is not making support payments, and that she does not know where he has gone. The father's social security number (SSN) would be crucial as a location tool. HEW regulations promulgated under *id.* § 602(a)(26)(B)(ii) and *id.* § 1302 (1970) provide that the mother must give whatever information she possesses, presumably including the father's SSN, as a condition of her eligibility. 45 C.F.R. §§ 232.12(a)(1), (b)(3) (1975). The value of the SSN is that Social Security files could indicate whether the missing parent is employed, where, and by whom, and this information would then be divulged to the state IV-D collection unit. The federal PLS would resort to other federal agencies for information if the Social Security data were not sufficient. If this example had involved a mother who was not a welfare applicant, the process would be the same, but the mother would be charged a fee to cover costs of obtaining the information. See *id.* §§ 302.35, .70. See also Social & Rehabilitation Serv., U.S. Dep't of Health, Education, & Welfare, Statement of Organization,



if disclosure would be contrary to "the national policy or security interests of the United States or the confidentiality of census data."<sup>50</sup>

## 2. *Determination of paternity*

One duty of each state IV-D unit is to establish paternity in AFDC cases involving children born out of wedlock.<sup>51</sup> The 1974 amendments assist the state by requiring that the mother-applicant cooperate in establishing paternity.<sup>52</sup> This means she has to name the father if she knows his identity, assist in locating him, and participate as the local law requires to establish his legal obligation.<sup>53</sup> The portion of AFDC payments ordinarily provided for the caretaker parent will be denied if she does not cooperate.<sup>54</sup> The child, however, may not be deprived of aid because of the mother's failure to cooperate.<sup>55</sup>

HEW is instructed to render "technical assistance" for establishing paternity,<sup>56</sup> although what this means is not clear from either the statute or the regulations.<sup>57</sup> Beyond this, states must rely on their own

Functions, and Delegations of Authority, Parent Locator Service Division, in 40 Fed. Reg. 24764 (1975).

50. 42 U.S.C. § 653(b) (Supp. V, 1975). Nevertheless, the legislative history of IV-D does not reflect a concern for preserving confidentiality of personal information supplied to state agencies by applicants and recipients of aid. Rather, the concern seemed to be with granting too much protection to assistance records. Chairman Long of the Senate Committee on Finance described an incident where a state prosecutor investigating a welfare fraud case was denied requested information because of an HEW regulation, as "an utterly ridiculous use of confidentiality." *Hearings on H.R. 1 Before the Senate Comm. on Finance*, 92d Cong., 1st & 2d Sess., pt. 4, at 2171 (1972). Concern was expressed to the committee that using confidentiality to frustrate attempts to crack down on cheating would undermine public confidence in welfare administration. *Id.* at 2171-72.

51. 42 U.S.C. § 654(4)(A) (Supp. V, 1975).

52. *Id.* § 606(f). See also *id.* § 602(a)(26)(B)(i). Until IV-D was enacted, cooperation could not be required as a condition of eligibility for AFDC payments. See notes 82-85 and accompanying text *infra*.

53. 45 C.F.R. § 232.12 (1975).

54. 42 U.S.C. § 602(a)(26)(B)(ii) (Supp. V, 1975).

55. *Id.* § 606(f). In addition, *id.* § 602(a)(26)(B)(ii) provides that in case of the caretaker's noncompliance the child's benefits be paid in the form of protective payments. Such payments can be made to a neighbor or a local welfare office employee not affiliated with the case who purchases necessities for the child. See *id.* § 606(b)(2) (1970). They also can be made in the form of vendor payments directly to landlords, grocers, utilities, etc. *Id.* The protective payments system is difficult and costly to administer.

The congressional intent in these provisions evidently is to deny assistance to the mother but not hurt the child. The efficacy of the system is questionable, as it is apparent that a reduction in the family's total AFDC payment by elimination of the caretaker portion would in reality reduce resources available to the child.

56. *Id.* § 652(a)(7) (Supp. V, 1975).

57. The legislative history reveals one form of technical assistance that might have

paternity laws and procedures. The statute also requires that the paternity determination services established by the state be made available "to any individual not otherwise eligible," *i.e.*, to nonwelfare applicants, upon application and, at the state's option, payment of a reasonable application fee.<sup>58</sup>

The number of paternity cases is large, as more than 45 percent of all AFDC families have at least one illegitimate child.<sup>59</sup> State filiation statutes generally require the bringing of actions within two to six years of the child's birth.<sup>60</sup> Thus, where the support obligation can be established only by first determining paternity, the father's liability cannot be imposed in cases where the limitation period has already run.<sup>61</sup>

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been anticipated. The Senate had approved provisions for establishment of regional blood grouping laboratories that would perform blood-typing work as an aid to establishing paternity. These were deleted by House and Senate conferees in arriving at their compromise position before final passage of the Social Services Amendments of 1974. H.R. REP. NO. 93-1643, 93d Cong., 2d Sess. 30 (1974).

58. 42 U.S.C. § 654(6) (Supp. V, 1975). This section further provides that any costs in excess of the fee so imposed may be deducted from the amount of recovery. *Id.* § 654(6)(C).

59. According to a 1973 AFDC survey of 2,989,891 families, 45.6% of all AFDC families had one or more illegitimate children; 25.3% had one illegitimate child; 10.8% had two illegitimate children; 1.2% had six or more illegitimate children; and 832 families had ten or more illegitimate children. Of all the children in the AFDC survey, 32.7% were illegitimate, an increase of 292% in the illegitimate children receiving AFDC in just 12 years. STAFF OF SENATE COMM. ON FINANCE, 94TH CONG., 1ST SESS., WAGE GARNISHMENT, ATTACHMENT AND ASSIGNMENT, AND ESTABLISHMENT OF PATERNITY 215-16 (Comm. Print 1975).

60. *See, e.g.*, ILL. ANN. STAT. ch. 106½, § 54 (Smith-Hurd Supp. 1976) (two years from birth of child, most recent acknowledgment, or from last support contribution subsequent to such acknowledgment); MICH. STAT. ANN. § 25.494(b) (1974) (six years from birth or from last support contribution within that time; absent paternal acknowledgment or absence from state); OKLA. STAT. ANN. tit. 10, § 83 (1966) (three years from birth or last contribution to support); UTAH CODE ANN. § 77-60-15 (1953) (four years unless alleged father was absent from the state during that period).

Washington has enacted its own codification of the Uniform Parentage Act, which imposes no statute of limitations where parentage is presumed but limits actions by the Washington State Department of Social and Health Services to five years after the child's birth or after the alleged parent ceases providing support, exclusive of periods of that parent's absence from the state, in cases where parentage is not presumed. Ch. 42, §§ 7(1), (2), (7), [1975-76] Wash. Laws 2d Ex. Sess. 171.

61. The recently drafted Uniform Parentage Act statute of limitations section reads in pertinent part as follows:

An action to determine the existence of the father and child relationship as to a child who has no presumed father . . . may not be brought later than [three] years after the birth of the child, or later than [three] years after the effective date of this Act, whichever is later. However, an action brought by or on behalf of a child whose paternity has not been determined is not barred until [three] years after the child reaches the age of majority.

UNIFORM PARENTAGE ACT § 7 (bracketed material in original). The apparent inconsistency between the first and second sentences has been explained as follows:

The three year provision stated in the first sentence . . . will serve as an admo-

### 3. Enforcement of support obligations

Another duty imposed upon states by IV-D is locating parents who owe financial support.<sup>62</sup> As a condition for eligibility, an applicant for aid is required to cooperate in obtaining support payments.<sup>63</sup> Regulations of HEW interpret the cooperation requirement to include giving information for locating the parent from whom support is due.<sup>64</sup> The state must use "all sources" of information and all available records, including the HEW PLS.<sup>65</sup>

Once a parent is located, enforcement of support obligations becomes a major legal function to be carried on by the state IV-D agency.<sup>66</sup> An applicant's eligibility for aid is condi-

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tion that paternity actions should be brought promptly. In effect, however, [§7] provides for a twenty-one-year statute of limitations . . . . [I]t is fully understood that such an extended statute of limitations will cause problems of proof in many cases. In part for that reason and also to provide every infant with the means to exercise his rights, rather than leave his fortunes to the whim of his mother or the views of the social worker, an earlier draft of the Act contained a provision . . . which read as follows:

"If a child has no presumed father . . . and the action to determine the existence of the father and child relationship has not been brought and proceedings to adopt the child have not been instituted within [1] year after the child's birth, an action to determine the existence of the relationship shall be brought promptly on behalf of the child by the [appropriate state agency]."

While this provision was stricken from the final draft, state legislators may wish to consider such a procedure, especially if S.2081, 93d Cong., 1st Sess., or a similar bill should be enacted.

*Id.*, Commissioners' Comment (bracketed material in original). Provisions relating to establishment of paternity and collection of child support contained in S. 2081 to which the commissioners referred were ultimately enacted in IV-D. Thus, the commissioners' statements are applicable to the new law. The drafters were very much aware of the relationship between the Uniform Parentage Act and public efforts to enforce child support obligations. They said: "[I]t is expected that this Act will fulfill an important social need in terms of improving the states' systems of support enforcement." UNIFORM PARENTAGE ACT, Commissioners' Prefatory Note. For the Uniform Parentage Act to have the effect the commissioners intended, the deleted paragraph quoted above should be included by states adopting it.

62. 42 U.S.C. §§ 654(8), (9) (Supp. V, 1975).

63. *Id.* § 602(a)(26)(B).

64. 45 C.F.R. §§ 232.12(a)(1), (b)(3) (1975).

65. 42 U.S.C. § 654(8) (Supp. V, 1975). See note 46 *supra*. Locating persons is more an art developed by experienced investigators than a mechanical function. Besides personal inquiries, however, various records are available such as those kept by banks, clubs, schools, police, or creditors. Other state agencies also have information that can aid in location. In Washington, for example, information can be obtained from the Washington State Department of Motor Vehicles, which has registration information for all automobiles, and from the Washington State Department of Revenue, which has registration information for self-employed individuals. Interview with Robert E. Querry, Chief of Office of Support Enforcement, Washington State Department of Social and Health Services, in Olympia, Washington, Dec. 5, 1975. Employment information from the Social Security Administration is available through the federal PLS. 42 U.S.C. § 653(b)(1) (Supp. V, 1975).

66. 42 U.S.C. § 654(4)(B) (Supp. V, 1975).

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tioned upon his assigning to the state any rights to support that are owed a member of the family.<sup>67</sup> These rights become an obligation to the state and can be collected through all state and local processes.<sup>68</sup>

Where support orders already exist, the IV-D agency's duty is to enforce those orders.<sup>69</sup> If there is no court order, the IV-D agency is to determine the amount of the obligation.<sup>70</sup> The agency must also enforce orders under reciprocal arrangements adopted with other states.<sup>71</sup> The statute further requires that the child support collection services be made available to persons other than AFDC applicants subject to the same application and fee arrangement established for paternity determination assistance.<sup>72</sup>

As another aid to enforcement of support obligations, IV-D grants jurisdiction to federal district courts for enforcement of child support judgments.<sup>73</sup> The Secretary of HEW must certify applications by states to use the federal courts and is to do so only "upon a finding that (A) another State has not undertaken to enforce the court order of the originating State against the absent parent within a reasonable time,

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67. *Id.* § 602(a)(26)(A). The statute also provides that rights assigned to the state are not dischargeable in bankruptcy. *Id.* § 656(b). See notes 78-81 and accompanying text *infra*.

68. 42 U.S.C. § 656(a) (Supp. V, 1975). The provision does not indicate what happens to the assignment once the family no longer receives welfare. Under a subrogation theory the state could collect only amounts actually paid out in benefits. But subrogation language is not used in IV-D, and the requirement that applicants and recipients assign accrued rights indicates that something different from subrogation was intended. *Id.* §§ 657(b), (c) add to the puzzle of what happens to the assignment after the family leaves the welfare rolls. Provision is made for reimbursement to the state for welfare amounts previously paid the family from excess collections over amounts currently due the family.

69. *Id.* § 654(9)(C).

70. *Id.* § 656(a)(1)(B). State agencies must use schedules or formulae approved by HEW. *Id.* See, e.g., WASH. AD. CODE § 388-11-190 (Supp. 15, 1975).

71. 42 U.S.C. § 654(4)(B) (Supp. V, 1975). This provision requires IV-D agencies to insist upon use of the Uniform Reciprocal Enforcement of Support Act (URESA) as it has been adopted in the respective states, but it opens the federal courts for enforcement of support orders if URESA is not effective. Specifically, federal courts are available where responding states delay more than 60 days in taking action on behalf of the requesting state. 45 C.F.R. § 302.72 (1975).

72. 42 U.S.C. § 654(6) (Supp. V, 1975). See note 58 and accompanying text *supra*. Where support payments are a principal source of income to a family, inability to collect the obligation can force the family to seek public assistance. It was anticipated that by providing enforcement help for custodial parents who are not yet on welfare, resort to welfare would be made unnecessary. S. REP. NO. 93-1356, 93d Cong., 2d Sess. 55 (1974).

73. 42 U.S.C. § 660 (Supp. V, 1975) confers jurisdiction on federal district courts "without regard to any amount in controversy," and the action may be brought "in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides." *But see* text accompanying notes 74 & 110 *infra*.

and (B) that utilization of the Federal courts is the only reasonable method of enforcing such order . . . ."<sup>74</sup>

States with an approved IV-D plan in effect may also request HEW to certify support obligations for collection by the Internal Revenue Service (IRS).<sup>75</sup> HEW may certify the amount of the delinquency of a court-ordered support obligation that has been assigned to the state, provided that the state has made "diligent and reasonable efforts" at collection.<sup>76</sup> The IRS is authorized to collect the delinquency as if it were a tax debt, and certain property exempt from levy for tax obligations does not qualify for exemption where the obligation is for child support.<sup>77</sup>

### III. SOLVED AND UNSOLVED PROBLEMS OF IV-D

#### A. *Problems Avoided by Drafting*

Some potential problems under IV-D were clearly anticipated and avoided by careful drafting. The IV-D bankruptcy section is one such problem-preventing provision.<sup>78</sup> Debts for alimony, maintenance, or support are not dischargeable in bankruptcy,<sup>79</sup> yet debts due states do not constitute such a statutory exception.<sup>80</sup> After child support obligations are assigned to the state, bankruptcy of the debtor parent would arguably discharge the debt. The drafters of IV-D simply included a provision that "[a] debt which is a child support obligation assigned to a State . . . is not released by a discharge in bankruptcy under the Bankruptcy Act."<sup>81</sup>

The 1974 amendments also have removed a statutory obstacle to improved child support enforcement. Prior to the enactment of IV-D, several states had attempted to deny aid to any cus-

74. 42 U.S.C. § 652(a)(8) (Supp. V, 1975).

75. *Id.* § 652(b).

76. *Id.* Section 652(b) further requires that the requesting state agree to reimburse the federal government for the costs of collection.

77. 26 *id.* § 6305(a). Property exempt from levy for tax obligations under *id.* §§ 6334(a)(4), (6) (1970) and *id.* § 6334(a)(3) (Supp. V, 1975) is not exempt where collection is for child support. *Id.* § 6305(a)(2).

78. 42 *id.* § 656(b).

79. 11 *id.* § 35(a)(7) (1970).

80. *Id.* § 35(a)(7). The Court of Appeals for the Ninth Circuit, however, has held that under Washington's subrogation of support obligation provisions, WASH. REV. CODE ch. 74.20A (1974), a recoupment debt is a debt for maintenance or support and is thus exempt from discharge in bankruptcy under 11 U.S.C. § 35(a)(7) (1970). *Williams v. Department of Soc'l & Health Servs.*, 529 F.2d 1264 (9th Cir. 1976).

81. 42 U.S.C. § 656(b) (Supp. V, 1975).

total parent who refused to assist in securing support for deserted or abandoned children. The lower federal courts uniformly held, however, that withholding AFDC benefits on this basis was inconsistent with the federal act.<sup>82</sup> Although the cooperation requirements were challenged as violative of several constitutional provisions,<sup>83</sup> the federal courts chose to base their decisions on statutory grounds. Noting that the Social Security Act imposed only two eligibility requirements (that the child be needy and dependent), the courts reasoned that requiring cooperation effectively imposed a third requirement.<sup>84</sup> The courts further reasoned that Congress did not intend an additional requirement, because it could have made such an intention express.<sup>85</sup>

The new amendments have overcome this statutory argument by expressly stating that an applicant or recipient must cooperate as a condition of eligibility.<sup>86</sup> The statute also overcomes the sensitive issue of denying benefits to a child because of his parent's noncooperation by providing that the child will still receive aid in the form of protective payments.<sup>87</sup>

82. State provisions that denied, terminated, or reduced aid for children or non-cooperating parents were invalidated in several cases. See, e.g., *Taylor v. Martin*, 330 F. Supp. 85 (N.D. Cal.), *aff'd sub nom. Carleson v. Taylor*, 404 U.S. 980 (1971) (aid may not be denied for refusal of mother to sign criminal nonsupport complaint against absent father); *Meyers v. Juras*, 327 F. Supp. 759 (D. Ore.), *aff'd*, 404 U.S. 803 (1971) (aid may not be denied for refusal of mother to sign complaint against nonsupporting father); *Woods v. Miller*, 318 F. Supp. 510 (W.D. Pa. 1970) (aid may not be denied for refusal to sue adult daughter for support); *Doe v. Harder*, 310 F. Supp. 302 (D. Conn.), *appeal dismissed*, 399 U.S. 902 (1970) (mother may not be denied aid for refusal to name father of illegitimate child); *Doe v. Shapiro*, 302 F. Supp. 761 (D. Conn. 1969), *appeal dismissed*, 396 U.S. 488 (1970) (illegitimate child may not be denied aid for mother's refusal to reveal name of father).

83. See notes 88-93 and accompanying text *infra*.

84. The argument made in the cases cited in note 82 *supra* was that if a family or family member could not get aid without cooperating as to paternity or enforcement of a duty of support, such cooperation became a condition of eligibility no matter how stated. The additional eligibility requirement was not expressed in the Social Security Act, although need and dependence were. See also *King v. Smith*, 392 U.S. 309 (1968). In *King* a state regulation denying AFDC where a "substitute father" cohabited with the mother was held invalid. The Court found the state's attempt to impose moral sanctions inconsistent with the federal law and policy reflected in the Social Security Act. A mother's "good" behavior had in effect become an AFDC eligibility requirement. The Court pointed out that the federal government may impose conditions on its money allotments to states and that state laws or regulations inconsistent with the federal grant are invalid. *Id.* at 333 n.34.

85. See *Doe v. Shapiro*, 302 F. Supp. 761 (D. Conn. 1969), *appeal dismissed*, 396 U.S. 488 (1970). *Doe v. Shapiro* was the first case testing a state cooperation requirement. The court decided the statutory question against the state and thus did not reach the constitutional questions. The courts in the cases listed in note 82 *supra* reached the same decision on the same ground.

86. 42 U.S.C. § 602(a)(26)(B) (Supp. V, 1975).

87. *Id.* § 606(f). It was felt to be unfair to deprive the innocent child of aid be-

## B. Constitutional Obstacles

The constitutional issues raised in the pre-IV-D challenges to cooperation requirements could not be resolved by Congress. These arguments were based on three constitutional provisions. The first was the fifth amendment protection against self-incrimination. Mothers objected that revealing names of putative fathers to welfare authorities made that information available for use as evidence against them in criminal actions for fornication, lascivious carriage, adultery, or other sex offenses.<sup>88</sup> The second ground for attacking cooperation requirements was that they invidiously discriminated against illegitimate children, thus denying them equal protection under the fourteenth amendment.<sup>89</sup> The third ground for attack was that in requiring

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cause of his custodian's actions. Protective payments are made to a third person who is concerned with the child's welfare or vouchers are made payable directly to parties supplying necessities to the child. *Id.* § 602(a)(26)(B); *id.* § 606(b)(2) (1970).

The new amendments make it clear that it is the child's interests, not the mother's, that are paramount in considerations of paternity and enforcement. *Id.* §§ 602(a)(26)-(B), 654(4) (Supp. V, 1975). The option is left open not to establish paternity in those cases where it would be against the child's best interests. *Id.* § 602(a)(26)(B). An example of a case where a child's interests would require not touching the issue of paternity is where his or her parentage is incestuous or his or her conception resulted from rape. It is for the state agency to determine, in accordance with standards prescribed by HEW, whether there is good cause for excusing the mother's refusal to cooperate. *Id.*

88. In *Doe v. Shapiro*, 302 F. Supp. 761 (D. Conn. 1969), *appeal dismissed*, 396 U.S. 488 (1970), the fifth amendment problem was discussed in some detail, although it was not the decisive issue in the case. The court saw the self-incrimination problem as potentially realistic, citing an earlier case where welfare information had been used in an action for lascivious carriage. *Id.* at 763, *citing* *State v. Plummer*, 5 Conn. Cir. 35, 241 A.2d 198 (1967). When *Doe v. Norton*, 365 F. Supp. 65 (D. Conn. 1973), *vacated sub nom. Roe v. Norton*, 422 U.S. 391 (1975), was decided by the district court, self-incrimination was no longer deemed a problem, as the challenged Connecticut statute then contained a "transactional" and "use" immunity provision preventing criminal prosecution for the matters about which testimony would be taken in the paternity action.

The dissenting judge in *Doe v. Swank*, 332 F. Supp. 61, 64 (N.D. Ill.), *aff'd sub nom. Weaver v. Doe*, 404 U.S. 987 (1971), felt the self-incrimination problem was the most serious issue raised, but pointed out that information given as a condition to obtain relief would have been coerced, and thus could not be used in subsequent criminal proceedings.

89. Some of the cases in which an equal protection argument was made include the following: *Doe v. Norton*, 365 F. Supp. 65 (D. Conn. 1973) (incarceration for civil contempt may be used against unwed mothers receiving AFDC who refuse to cooperate in obtaining support from the fathers), *vacated sub nom. Roe v. Norton*, 422 U.S. 391 (1975) (remanded for consideration in light of enactment of IV-D); *Taylor v. Martin*, 330 F. Supp. 85 (N.D. Cal.), *aff'd sub nom. Carleson v. Taylor*, 404 U.S. 980 (1971); *Doe v. Shapiro*, 302 F. Supp. 761 (D. Conn. 1969), *appeal dismissed*, 396 U.S. 488 (1970).

In *Grow v. Smith*, 511 F.2d 1146 (9th Cir. 1975), Judge Wright dismissed the contention that an invidious discrimination was made between legitimate and illegitimate children in cases where eligibility was denied because of mothers' unwillingness

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mothers to name and prosecute fathers, the penumbral right of privacy was violated.<sup>90</sup>

These arguments could still be raised in a case where a mother challenges the denial of caretaker benefits because of her failure to cooperate with welfare officials. Finding a genuine self-incrimination, equal protection, or right of privacy question could lead to partial invalidation of the statute despite clear legislative intent that a non-cooperating mother not receive assistance.<sup>91</sup> However, the courts that have struck down state cooperation requirements reasoned that the threats to constitutional rights were too slight for such a determination,<sup>92</sup> especially when balanced against the state interest promoted by the child support and establishment of paternity provisions then in effect.<sup>93</sup> Therefore, a successful challenge to the cooperation requirement on constitutional grounds appears unlikely.<sup>94</sup>

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to cooperate in paternity actions, by pointing out that the classes created were (1) children whose absent parents were legally obligated to support them and (2) children whose absent fathers had no legal support obligation. *Id.* at 1149.

90. See, e.g., *Doe v. Schmidt*, 330 F. Supp. 159 (E.D. Wis. 1971); *Taylor v. Martin*, 330 F. Supp. 85 (N.D. Cal.), *aff'd sub nom. Carleson v. Taylor*, 404 U.S. 980 (1971); *Saiz v. Goodwin*, 325 F. Supp. 23 (D.N.M.), (action to enjoin enforcement of requirement to name father dismissed), *vacated and remanded*, 450 F.2d 788 (10th Cir. 1971); *Woods v. Miller*, 318 F. Supp. 510 (W.D. Pa. 1970).

Although the privacy issue was not decisive in any of the cases, one opinion discussing the issue is *Doe v. Norton*, 365 F. Supp. 65 (D. Conn. 1973), *vacated sub nom. Roe v. Norton*, 422 U.S. 391 (1975). In that case the district court acknowledged recent Supreme Court emphasis on marital privacy and reviewed the arguments that paternity actions disrupt harmony within the home and often force permanent severance of the relationship with the father. It examined the scope of the government's power to compel testimony, finding its only constitutional limit to be the privilege against self-incrimination. See note 82 *supra*. There was said to be no privilege between paramours similar to that between husbands and wives that would excuse testimony. Moreover, all that was required was the name of the father so that a support obligation could be imposed. Thus, the court concluded, the Connecticut cooperation statute did not "impinge on any 'fundamental' rights of the plaintiffs related to privacy." 365 F. Supp. at 78.

91. 42 U.S.C. § 606(f) (Supp. V, 1975).

92. See cases cited in note 82 *supra*. None of the courts that decided against state cooperation requirements dealt in detail with the constitutional issues. In upholding the Connecticut statutory requirement, the district court in *Doe v. Norton*, 365 F. Supp. 65 (D. Conn. 1973), *vacated sub nom. Roe v. Norton*, 422 U.S. 391 (1975), did not base its decision on constitutional issues. Examining the constitutional arguments, however, the court saw no fifth amendment problem because of immunities bestowed by the challenged statute; no invasion of privacy, because the question was simply one of a monetary debt; and no discrimination, because the state aided illegitimate as well as legitimate children. The means employed were deemed rationally related to the purposes of the statute.

93. The state's interests are well stated in Appellant's Petition for Rehearing, *Juras v. Meyers*, 404 U.S. 961 (1971), in *Hearings on H.R. 1 Before the Senate Comm. on Finance*, 92d Cong., 1st & 2d Sess., pt. 6, at 3201 (1972).

94. But see Note, *Civil Liberties Versus Governmental Interest: A Constitutional Context for the Impact of Title IV-D of the Social Security Act on Ohio Families in*



An additional concern raised by the 1974 amendments is the threat to privacy created by the Parent Locator Service. Because Congress assumed that a parent had no right simply to disappear in order to avoid an obligation to support his children,<sup>95</sup> it created a responsibility on the part of state IV-D agencies to locate deserting parents.<sup>96</sup> Location requires access to information, and although the PLS serves as a tool to share the essential information, it also presents a potential for misuse. There has been a general uneasiness about possible abuse of data banks<sup>97</sup> and a particular fear of extensive government data banks.<sup>98</sup> Due to the sensitive information required by social service programs, there has been special concern about abusive use of HEW data.<sup>99</sup> Since its 1939 amendments the Social Security Act has required that state plans for AFDC provide safeguards restricting the use and disclosure of information concerning applicants and recipients to purposes directly connected with the program's administration.<sup>100</sup> The new IV-D provisions reflect an even greater concern for security of information. Only persons with a duty to obtain child support payments have access to the PLS.<sup>101</sup> The amendments also have expanded the safeguards by stating more fully when access to

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*the Aid to Families with Dependent Children Program*, 5 CAPITAL U.L. REV. 245 (1976).

95. See note 20 *supra*.

96. 42 U.S.C. § 654(8) (Supp. V, 1975).

97. See, e.g., 1 A. Harrison, *The Problem of Privacy in the Computer Age: An Annotated Bibliography*, Dec. 1967 (memorandum prepared for the United States Air Force Project Rand and the Rand Corp.); 2 A. Harrison, *The Problem of Privacy in the Computer Age: An Annotated Bibliography*, Dec. 1969 (memorandum prepared for the United States Air Force Project Rand). See also M. Hunt & R. Turn, *Privacy and Security in Databank Systems: An Annotated Bibliography, 1970-73*, March 1974 (prepared for the National Science Foundation).

98. A good documentation of the concerns is included in the legislative history accompanying the Privacy Act of 1974, 5 U.S.C. § 552a (Supp. V, 1975). See S. REP. NO. 93-1183, 93d Cong., 2d Sess. (1974); H.R. REP. NO. 93-1416, 93d Cong., 2d Sess. (1974). For a comprehensive, multivolume study see STAFF OF THE SUBCOMM. ON CONSTITUTIONAL RIGHTS, SENATE COMM. ON THE JUDICIARY, 93D CONG., 2D SESS., *FEDERAL DATA BANKS AND CONSTITUTIONAL RIGHTS* (Comm. Print 1974).

99. Examples of problems and litigation that arise with social service data when it is computerized and made readily available are discussed in a case history on New York's computerization program. Wilson, *Computerization of Welfare Recipients: Implications for the Individual and the Right to Privacy*, 4 RUTG. J. COMPUTERS & L. 163 (1974).

100. Social Security Act Amendments of 1939, ch. 666, § 401(b), 53 Stat. 1379, *as amended*, 42 U.S.C. § 602(a)(9) (Supp. V, 1975).

101. 42 U.S.C. § 653(c) (Supp. V, 1975). Information that would contravene national policy, security interests, or confidentiality of census data may not be disclosed even to persons otherwise authorized under IV-D. *Id.* § 653(b). See note 50 and accompanying text *supra*.

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information concerning applicants or recipients of aid is available.<sup>102</sup> More importantly, outside the Social Security structure, extensive safeguard procedures now apply to all federal agencies under the Privacy Act of 1974.<sup>103</sup>

### C. *Problems with Access to Federal Courts*

Another aspect of the 1974 amendments may raise a new constitutional question. It is the conferral of federal district court jurisdiction without regard to the amount in controversy to hear and determine child support cases certified by the Secretary of HEW.<sup>104</sup> Although federal court access was meant to facilitate interstate enforcement where diversity of citizenship exists, it is possible to have a case in which there is no diversity, even though there is no indication that Congress intended to create jurisdiction in such instance. For example, if mother (*M*) and father (*F*) are both domiciliaries of state *A*, but *F* is employed in state *B* while residing there temporarily, the federal court jurisdiction (assuming certification by the Secretary) could arguably be invoked under the statute to enforce a support order against *F*. It would seem, however, that Congress has no power to grant such jurisdiction under article III.<sup>105</sup>

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102. 42 U.S.C. § 602(a)(9) (Supp. V, 1975). Further reference to the use of information by public officials is found in the new regulations at 45 C.F.R. § 205.50 (1975). Outside the Social Security structure, extensive safeguard procedures now apply to all federal agencies under the Privacy Act of 1974, 5 U.S.C. § 552a (Supp. V, 1975), which was signed just four days before the Social Services Amendments of 1974.

103. The Privacy Act of 1974, 5 U.S.C. § 552a (Supp. V, 1975), is a result of concern for the fundamental right of privacy of individuals in the face of federal agencies' collection, maintenance, use, and dissemination of voluminous personal information, particularly in computer banks. See Privacy Act of 1974, Pub. L. No. 93-579, §§ 2(a), (b), 88 Stat. 1896.

The purpose of the Act is to safeguard information held by federal agencies by requiring them (1) to permit individuals to determine what records pertaining to them are collected or used by such agencies, (2) to permit individuals to prevent their records held for one purpose from being used for another purpose without their consent, (3) to permit individuals to correct or amend records about them, (4) to obtain and keep information in such a manner that it will be used only for necessary and lawful purposes and that will prevent its misuse, (5) to permit exemptions only where there is a public policy need as determined by specific law, and (6) to subject federal agencies to civil suit for damages for wilful or intentional acts violative of individuals' rights. *Id.* § 2(b).

104. 42 U.S.C. § 660 (Supp. V, 1975). Congress intended to create an alternative to reliance on URESA for interstate enforcement because experience had shown that not all prosecutors receiving URESA requests were acting on them. See S. REP. NO. 93-1356, 93d Cong., 2d Sess. 43, 45 (1974).

105. U.S. CONST. art. III, § 2, states:

Absent diversity, the only ground upon which jurisdiction could be constitutionally based is the concept of "arising under" the Constitution or laws of the United States. The child support orders the federal courts are now authorized to enforce do not arise under federal law but rather are based entirely on state law. The doctrine of protective jurisdiction<sup>106</sup> could be invoked to justify this use of federal courts, but it is an ill-defined concept that has not been fully developed by the courts.<sup>107</sup> The rationale that constitutional questions or federal statutory questions are very likely to be raised does not apply in cases involving enforcement of state child support orders. Thus, the elusive limits of "arising under" could be reached where there is little likelihood of a constitutional or federal issue in the case.<sup>108</sup> Congress by amendment of the jurisdiction provision, HEW by regulations, or the courts in a proper case could determine that Congress did not intend to waive the diversity requirement in granting access to federal courts, thus avoiding the necessity of reaching the constitutionality of the jurisdictional grant.

In practice, the federal jurisdiction question may never arise. Access to the federal courts is conditioned upon certification by the Sec-

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The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; . . . — to Controversies between two or more States; —between a State and Citizens of another State;—between Citizens of different States . . . .

106. See HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 866-70 (2d ed. P. Bator, D. Shapiro, P. Mishkin & H. Wechsler 1973).

107. See *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 460 (1957) (Frankfurter, J., dissenting). Congress has long bestowed federal court jurisdiction where questions consisting entirely of state law might theoretically be raised. See *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738 (1824). These jurisdictional grants have been upheld by the courts.

See *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448 (1957) (despite lack of diversity and amount in controversy requisites, suit could be maintained in federal court to enforce collective bargaining agreement under Taft-Hartley Act, as Act so provided and jurisdiction was necessary for effective enforcement); *Williams v. Austrian*, 331 U.S. 642 (1947) (although diversity or other usual ground for federal jurisdiction was lacking, broad language of the jurisdictional grant in the Bankruptcy Act supports federal court jurisdiction to hear plenary suit brought by reorganization trustee). See also *Lathrop v. Drake*, 91 U.S. 516 (1875).

108. Another congressional enactment that invites an "arising under" challenge is § 4(a) of the Clean Air Amendments of 1970, 42 U.S.C. § 1857c-8(b) (Supp. V, 1975), which gives access to federal district courts for enforcement of regulations that under the Act are to be promulgated by the states. As in the child support enactment, there is a federal policy being advanced and access to federal courts may make enforcement easier, but the cases raised will involve state law. The issue is whether such a tenuous federal interest satisfies the constitutional "arising under" requirement. See HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 870 (2d ed. P. Bator, D. Shapiro, P. Mishkin & H. Wechsler 1973).

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retary of HEW,<sup>109</sup> and regulations already promulgated by HEW indicate that certification will not be easily obtainable.<sup>110</sup> The stringency of these requirements assures that access to federal courts will seldom be granted.

### D. *Lack of Enforcement Tools*

Although the above problems could be troublesome, the states, rather than the courts, hold the key to success of IV-D. It is the states which are asked to follow through with the creation of the IV-D agencies and accomplish the goal Congress has set. Their task is tremendous, and they may be expected to bring pressure on Congress to lower the standards for compliance. This approach, however, would reduce the potential of IV-D for enforcing familial obligations and saving welfare dollars. The major difficulty for the states is that they are left largely to traditional remedies for creating and enforcing obligations.<sup>111</sup> The 1967 amendments to the Social Security Act set essentially the same goals that IV-D has reemphasized.<sup>112</sup> IV-D was necessary because the 1967 amendments did not succeed in prodding the states to solve the child support problem.<sup>113</sup> But while this statute has given the states significant new burdens, it has given few new substantive tools.<sup>114</sup> The new

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109. 42 U.S.C. § 660 (Supp. V, 1975).

110. 45 C.F.R. § 302.72 (1975). To receive certification a state must show that a request for cooperation has been made to another state, that the latter has not acted within 60 days of receipt of the request, and that use of the federal district court is the only "reasonable" means of enforcing the order. *Id.* §§ 302.72(a)(1), (2). Another delay of at least 30 days is built in for the requesting state to notify the IV-D agency of the responding state that it will request the Secretary to certify use of the federal court if there is no response. *Id.* § 302.72(b)(3).

111. No new law regulating the establishment of paternity is included in IV-D. State agencies must rely on existing statutes and common law. No new tool is provided for obtaining a judgment or child support order out of a nonadjudicated obligation. Regular court processes must be used unless and until administrative procedures for setting enforceable obligations are developed. Most significantly, except for the newly created power to garnish wages of federal employees, no new tools for collection have been created, and states are left to their own statutory remedies. Proposals to impose criminal sanction appeared in H.R. 1, 92d Cong., 2d Sess. (1972), and in S. 2081, 43d Cong., 1st Sess. (1973), but were not included in the Social Services Amendments of 1974.

112. Social Security Amendments of 1967, Pub. L. No. 90-248, § 201(a)-(1)(C), 81 Stat. 878 (codified at 42 U.S.C. § 602(a)(17) (1970), repealed 1975).

113. See note 17 *supra*.

114. The federal PLS is really not a significant new tool, as states with child support collection programs in operation prior to the enactment of IV-D could already get certain Social Security and Internal Revenue Service information. Furthermore,

scheme relies merely on its system of financial incentives as a spur to making state action more aggressive.

#### IV. THE WASHINGTON CHILD SUPPORT ENFORCEMENT SYSTEM: A MODEL FOR OTHER STATES

The experiences of a few states show that significant success in child support enforcement is possible.<sup>115</sup> Washington has been noted as a state with a program that works.<sup>116</sup> It has been cited by HEW as an example for states desiring models to consider in development of their own plans.<sup>117</sup>

Washington's active enforcement of support orders began in 1959 with the enactment of chapter 74.20 of the Washington Revised Code, providing for support of dependent children.<sup>118</sup> A duty is placed on the Washington State Department of Social and Health Services (DSHS) to take appropriate action against parents neglecting their responsibilities to children for whom applications for public assistance are being made.<sup>119</sup> From the outset cooperation has been required by persons having custody of the child.<sup>120</sup> Subsequently other tools have been added to make chapter 74.20 more workable.<sup>121</sup>

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the HEW duty to give the states technical assistance is not at all well defined. 42 U.S.C. § 652(a)(7) (Supp. V, 1975).

The blood grouping laboratories proposed in earlier versions of the IV-D legislation. *see note 57 supra*, would have made available the kind of highly accurate determinations of probable fatherhood that are used in some European countries. *See Krause, The Uniform Parentage Act*, in STAFF OF THE SENATE COMM. ON FINANCE, 94TH CONG., 1ST SESS., WAGE GARNISHMENT, ATTACHMENT AND ASSIGNMENT, AND ESTABLISHMENT OF PATERNITY 245 (Comm. Print 1975).

115. S. REP. NO. 93-1356, 93d Cong., 2d Sess. 45-46 (1974).

116. *Hearing on S. 1842 and S. 2081 Before the Senate Comm. on Finance*, 93d Cong., 1st Sess. 62 (1973).

117. STAFF OF SENATE COMM. ON FINANCE, 94TH CONG., 1ST SESS., WAGE GARNISHMENT, ATTACHMENT AND ASSIGNMENT, AND ESTABLISHMENT OF PATERNITY 265-79, App. A. (Comm. Print 1975); Assistance Payments Administration, Social and Rehabilitation Serv., U.S. Dep't of Health, Education, & Welfare, *How They Do It*, July 1974.

118. WASH. REV. CODE ch. 74.20 (1974). The express concern of that enactment is stated as follows:

[T]o conserve the expenditure of public assistance funds, whenever possible, in order that such funds shall not be expended if there are private funds available or which can be made available by judicial process or otherwise to partially or completely meet the financial needs of the children of this state. The failure of parents to provide adequate financial support and care for their children is a major cause of financial dependency and a contributing cause of social delinquency.

*Id.* § 74.20.010.

119. *Id.* § 74.20.040.

120. *Id.* § 74.20.060 (originally enacted as ch. 322, § 7, [1959] Wash. Laws 1563). Refusal to cooperate is a misdemeanor. *Id.*

121. *See, e.g., id.* § 74.20.210 (originally enacted as ch. 206, § 6, [1963] Wash.

## Child Support Enforcement

In particular, legislation developed by the Office of Support Enforcement (OSE) and passed by the Washington legislature in 1971<sup>122</sup> has changed Washington's enforcement system from the typical floundering program found in most states to one that can be used as a model for others. The problem, in the drafters' view, was the reliance on the criminal process when pursuing a recalcitrant parent for court-ordered support. OSE felt that most cases do not belong in the criminal process at the stage when initial collection efforts are made. The objective sought is not punishment of the person, but access to his financial resources. Thus, the new statute emphasizes collection.

This new chapter, chapter 74.20A, gives DSHS the best collection mechanisms possible, emulating those of the IRS. The key feature is that obligations may be both established and enforced entirely by administrative processes, with access to the courts and traditional remedies as an alternative.<sup>123</sup> DSHS, acting through its Secretary, is the agent of the state for collecting child support debts owed the state.<sup>124</sup> The Washington law, unlike the new IV-D provi-

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Laws 1031) (attorney general may use URESA where petitioner is public assistance applicant); *id.* §§ 74.20.220(1), (2) (originally enacted as ch. 206, § 7, [1963] Wash. Laws 1031) (department of public assistance may represent dependent child in obtaining or enforcing support order, may appear in divorce or separate maintenance actions to advise court of state's financial interest); *id.* 74.20.220(3) (amended in ch. 154, § 112, [1973] Wash. Laws 1st Ex. Sess. 1190) (department of public assistance may represent custodial parent in securing modification of divorce or separate maintenance decree in order to obtain child support); *id.* § 74.20.230 (amended in ch. 154, § 113, [1973] Wash. Laws 1st Ex. Sess. 1191) (DSHS may bring actions for support on behalf of parent receiving assistance who has no funds for litigation).

Appropriate powers have been granted the courts to facilitate this participation by DSHS. *See, e.g., id.* § 74.20.250 (originally enacted as ch. 206, § 10, [1963] Wash. Laws 1033) (fee waiver).

122. *Id.* ch. 74.20A.

123. The effectiveness of Washington's administrative enforcement provisions was challenged by the United States Department of Defense (DOD) when it was asked to garnish the wages of a civilian Air Force employee. The employee was behind in support payments and the family was receiving AFDC. The State of Washington requested that the Air Force withhold from the employee's wages under 42 U.S.C. § 659 (Supp. V, 1975). DOD refused on the ground that § 659 uses the phrase "legal process," which it contended should be interpreted to mean proceedings by courts of competent jurisdiction only, not administrative orders. The Comptroller General disagreed and authorized DOD to comply with the garnishment request. *In re State of Washington*, File No. B-183433 (U.S. Comptroller Gen., Nov. 28, 1975). The decision was based on the apparent congressional approval of procedures similar to Washington's. The Senate committee responsible for IV-D had praised Washington's collection program and had "consciously adapted portions of it" when drafting its own law. *Id.* at 5.

124. Throughout WASH. REV. CODE ch. 74.20A (1974) are references to the powers of the Secretary in the determinations of liabilities and collection of them. *See, e.g., id.* § 74.20A.060 (Secretary may assert lien upon debtor's property); *id.* § 74.20A.160 (Secretary may set debt payment schedule).

sion,<sup>125</sup> does not require that child support rights be assigned to the state as a condition of eligibility for aid; rather, payments of public assistance automatically create a debt owing to DSHS.<sup>126</sup> In addition, DSHS is subrogated to the right of the child or person with custody of the child and can "prosecute or maintain any support action or execute any administrative remedy . . . to obtain reimbursement of moneys thus expended."<sup>127</sup>

Where court orders for support already exist, the DSHS Secretary may simply serve notice by certified mail on the obligor parent, stating the debt accrued and accruing and demanding payment within 20 days.<sup>128</sup> The notice advises the parent that his property is subject to collection action and that within 20 days of the parent's refusal to pay the Secretary is authorized to collect by lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver.<sup>129</sup> If no court order exists, the Secretary may begin collection procedures for an obligation based on the amount of assistance the family is receiving; but if the parent answers by raising defenses, he has a right to a hearing at which DSHS will determine his liability.<sup>130</sup> After the hearing, if payments are not forthcoming, the Secretary is authorized to use the special collection procedures.<sup>131</sup> An alternative procedure permits the Secretary to serve a notice and finding of financial responsibility,<sup>132</sup> which sets forth the amount the responsible parent owes based on a

125. See notes 67-68 and accompanying text *supra*.

126. WASH. REV. CODE § 74.20A.030 (1974).

127. *Id.*

128. *Id.* § 74.20A.040.

129. *Id.* See note 131 *infra*.

130. WASH. REV. CODE § 74.20A.050 (1974).

131. *Id.* §§ 74.20A.050-.260.

The collection procedures that further facilitate DSHS actions include the right to assert liens on all real and personal property of the debtor by filing notice with the county auditor. *Id.* § 74.20A.060. Liens may be served upon parties holding earnings or deposits due, owing, or belonging to the debtor. *Id.* § 74.20A.070. After notice of such lien, the Secretary can issue an order for the holder of the debtor's property to withhold that property and deliver it on demand to DSHS. *Id.* § 74.20A.080. Should the employer or holder of the debtor's property refuse to withhold and deliver to DSHS, that party is then liable for the debt. *Id.* § 74.20A.100. To protect the debtor, there is a provision that his employer may not discharge him because of a withhold order. *Id.* § 74.20A.230.

Another collection method provided by Washington's statute is distraint, seizure and sale subject to liens asserted by the Secretary. *Id.* § 74.20A.130. After due notice that certain of the debtor's property is to be sold, the Secretary may sell it at public auction, the proceeds to cover DSHS expenses and the debtor's obligation. Any balance will be returned to the debtor. *Id.* Alternatively, access to the courts is provided for statutory foreclosure of the child support lien. *Id.* § 74.20A.140.

132. *Id.* § 74.20A.055.

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formula adopted by DSHS.<sup>133</sup> The parent is given 20 days to request a hearing and show cause why responsibility should not be imposed or why the amount of the ordered obligation should be modified.<sup>134</sup>

The Washington State Department of Social and Health Services has had increasing success in collections, for it has been able to collect child support through administrative procedures.<sup>135</sup> Approximately \$100 has been collected for each \$22 in expenses.<sup>136</sup> A promising feature of Washington's program, which has also been incorporated into IV-D,<sup>137</sup> is enforcement services for nonrecipients of AFDC.<sup>138</sup> OSE places emphasis on nonrecipient cases because of the belief that enforcement while the family can still manage financially will prevent resort to welfare.<sup>139</sup>

## V. CONCLUSION

Congress has enacted the Child Support and Establishment of Paternity provisions of the Social Security Act to reduce AFDC dependency and limit increasing welfare costs. States are presented with a difficult task, as no new methods of obtaining enforceable child support orders or significant new mechanisms for collections have been provided by IV-D.<sup>140</sup> Promises of advantages of federal court access and IRS collection mechanisms are reduced in potential by the stringency of HEW regulations for using them. Furthermore, the IV-D emphasis is on programs, not on results.<sup>141</sup> Only if the in-

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133. See WASH. AD. CODE § 388-11-190 (Supp. 15, 1975).

134. WASH. REV. CODE § 74.20A.055 (1974).

135. For the specific procedures which DSHS must follow see WASH. AD. CODE ch. 388-11 (Supp. 15, 1975).

136. Assistance Payments Administration, Social & Rehabilitation Serv., U.S. Dep't of Health, Education, & Welfare, How They Do It 52, 70, Exhibit 2, July 1974.

137. See notes 58 & 72 and accompanying text *supra*.

138. WASH. REV. CODE § 74.20.040 (1974). The authority to aid nonrecipients was created by amendment to *id.* ch. 213, § 1, [1971] Wash. Laws 1st Ex. Sess. 982. Later, remedies of WASH. REV. CODE ch. 74.20A were also made available to DSHS for non-recipient collections. *Id.* 74.20.040 (1974) (amended in ch. 183, § 1, [1973] Wash. Laws 1st Ex. Sess. 1344).

139. Assistance Payments Administration, Social & Rehabilitation Serv., U.S. Dep't of Health, Education, & Welfare, How They Do It 62-63, July 1974.

140. Although IV-D does provide access to federal courts, 42 U.S.C. § 660 (Supp. V, 1975), and authorizes collection by the Secretary of the Treasury, who may use the powers available for tax collections, *id.* § 652(b), there are significant impediments to use of those procedures imposed by the HEW regulations accompanying IV-D, 45 C.F.R. §§ 302.71, .72 (1975). See text accompanying notes 73-76 *supra*.

141. The requirements for state IV-D agencies that HEW will evaluate in its annual audits emphasize agency organization and staffing, recordkeeping, use of procedures



dividual states upon which the primary responsibility has been placed develop aggressive IV-D agencies, and the various state legislatures create efficient procedures and remedies for child support cases, will Congress' goal be accomplished.

States can, within the scope of the federal law, enact legislation that will greatly simplify the task of the state collection units. The new Uniform Parentage Act and some form of administrative procedure like the one used in Washington State for streamlining the ascertainment and collection of support obligations are examples of some needed enactments. Consent by the United States to garnishment of moneys due child support or alimony obligors is a valuable and much needed change in the law.

Requiring cooperation of applicants and recipients in locating absent parents, establishing paternity, and enforcing obligations should aid in support enforcement. Assignment of support rights to the state is an important improvement, as the states may now bring collection actions on their own behalf. Finally, one of the most significant provisions of IV-D is making location and collection services available to persons who are not, and hope not to become, dependent on welfare. Too many children have too long been deprived of financial support because custodial parents have had no assistance in enforcing financial obligations owed by absent parents.

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available under state law, and cooperation with other states. No mention is made of dollar targets or ratios of expenses to collections. 45 C.F.R. pt. 303 (1975).