



## Child Support Enforcement: State Legislation in Response to the 1996 Federal Welfare Reform Act

State Legislative Report

September 1998

Vol. 23, No. 17

By [Teresa Myers](#), Senior Policy Specialist

America's child support enforcement programs are undergoing sweeping changes. In recent years, state policymakers have adopted widespread reforms of child support enforcement. Nationwide, child support enforcement caseloads have grown as single parent families increase and as society emphasizes the responsibilities of noncustodial parents.

Assembling innovations from several states, Congress enacted in 1996 an overhaul of state child support enforcement programs as part of a larger welfare reform initiative. Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) not only expands existing requirements for state child support systems, but introduces substantial new mandates as well. The federal mandates aim to streamline child support collections, increase paternity establishments and child support orders, strengthen penalties for delinquent payments, and encourage payment of child support. Because child support is primarily a function of state family law, the federal law requires state legislatures to make numerous changes in state law as a condition of receiving financial support for their child support and welfare programs. Compliance with these mandates is linked to receipt of federal welfare funds; states that do not enact all the child support reforms faced a complete loss of federal Temporary Assistance to Needy Families (TANF) funds, a severe sanction and one that received the immediate attention of state legislatures. By August 1998, no state had been formally penalized by the U.S. Department of Health and Human Services for noncompliance with PRWORA.

In passing Title III of PRWORA, Congress was responding to what it viewed as a crisis in child welfare. The Census Bureau reports that today more than 15.4 million families are headed by a single parent, up from 6.8 million in 1970. Research shows that nearly one out of every four children now lives in a single-parent home and about half of all children are likely to spend some time in a single-parent home. Approximately 20 percent of America's children currently live in poverty, and the children of single-parent households are much more likely to be poor than are children raised in two-parent households. For these single-parent families, child support payments often constitute an essential portion of their income.

These demographic changes spawned burgeoning child support caseloads. According to the Federal Office of Child Support Enforcement (OCSE), between 1980 and 1992, the nationwide child support enforcement caseload grew 180 percent, from 5.4 million to 15.2 million cases. Not surprisingly, states have been struggling to enforce current orders, establish others, and help provide children of single-parent families with an adequate standard of living.

According to a 1994 study by the Urban Institute, 62 percent of all custodial mothers in the United States did not receive child support in 1989. The study also finds an enormous gap—billions of dollars—between what is currently being collected and what could possibly be collected under an ideal system. State data, as reported to OCSE, indicate that only 20 percent of all custodial parents served by the child support enforcement program in 1995 actually received support payments. Only one half of all custodial parents with a child support order in place received the full amount.

Even as collection rates improve, they are still not sufficient to meet the needs of families entitled to child support. A 1994 General Accounting Office report found that between 1980 and 1992, when child support enforcement caseloads grew 180 percent, overall dollar collections increased by more than 400 percent. Although the rate of collections rose another 50 percent between 1992 and 1996, millions of children entitled to child support from their noncustodial parents were receiving little or none of it. PRWORA and the resulting state enactments represent legislators' most comprehensive attempt to fix America's ailing child support program and propelled child support to a prominent place in public and legislative debate.

This *State Legislative Report* is based on results of a survey of state laws conducted by NCSL staff and contractors from December 1997 through

July 1998. State legislative and agency staff contributed to the survey research. Only Vermont declined to participate in the survey, and we acquired information for that state from other sources. Some of the federal mandates required legislative action to achieve compliance, while others could be legislated or adopted as administrative policy and included in state plans submitted to OCSE for review. Due to this inherent legislative/administrative option, this report recognizes and discusses state progress of both kinds. When PRWORA was enacted, some states already had similar, if not identical, provisions in place, but many states were facing a considerable overhaul of their child support programs. As a result, most of the legislation and policies discussed in this report were enacted or adopted in 1997 or 1998. For more detailed information on which states have enacted or adopted particular PRWORA provisions, visit NCSL's Child Support Project Website at <http://www.ncsl.org/programs/cyf/cs.htm>.

#### Expanded Agency Authority and Expedited Procedures

One of the primary goals of PRWORA is to centralize and streamline child support enforcement operations within states. Expanding and enhancing agency authority is seen as the first means to this end. Many child support enforcement procedures are administrative, as opposed to judicial, in nature and are uncontested by noncustodial obligors. Recognizing this, Congress sought to reduce current judicial involvement and create uniform state structures to improve interstate information requests and case exchanges.

#### Access to Information Sources

The federal requirements concerning state agency authority are divisible into three categories, with the largest being expanded agency authority to access information relevant to enforcement of child support orders. State agencies must have the authority under state law to issue administrative subpoenas for financial, employment and benefit information. Forty-eight states have enacted this provision. Sanctions for failure to comply with requests for information differ dramatically from state to state. Alaskan authorities will be collecting a \$10 fine for every failure to comply with an agency information request, Iowa sanctions are \$100 per violation, and Pennsylvania penalties are set at \$5,000 per violation. Colorado legislation prohibits imposing fines for noncompliance. New Hampshire requires information within 15 days of an agency request, and charges \$15 per day beyond that timeframe, while Florida allows a five-day response time and imposes a fine of up to \$500 plus attorneys' fees for noncompliance.

Federal law also requires that state agencies be able to access records of state and local governments, including: vital statistics and state and local tax and revenue records (enacted by 49 states); records concerning real and titled personal property (enacted by 49 states); records of occupational, professional and other corporate license and ownership information (enacted by 48 states); employment security records (enacted by 47 states); records of agencies administering public assistance programs (enacted by 46 states); and records of the corrections (enacted by 50 states) and motor vehicle (enacted by 48 states) departments. Agencies must also have access under state law to certain records held by private entities, including customer records of public utility and cable television companies (enacted by 50 states) and records of financial institution (enacted by 49 states). Several states, including Arkansas, Georgia, Idaho, and Maryland, enacted general language authorizing access to information as necessary to enforce child support orders. Mississippi legislation created a task force to assess the need for payment of a reasonable fee to compensate private entities for compliance with these provisions.

#### Expanded Administrative Authority

A second category of state agency authority is expanded administrative authority to take actions concerning child support enforcement previously limited to the judicial system. States must now have legislation authorizing agencies to order genetic tests for the purpose of establishing paternity (enacted by 46 states), order a change in the recipient of child support when an assignment exists (enacted by 42 states), order income withholding (enacted by 40 states), and increase monthly payments to secure overdue support (enacted by 39 states). A few states, like Maryland, permit the agency to request tests, but require a court order to compel parties to submit. Each state is also required to confer statewide jurisdiction upon any judicial or administrative tribunal with authority to hear child support and paternity cases. Thirty-six states enacted a statutory provision for such authority and another two states adopted administrative policies in this area. In 1997, California completely revamped its hearing structure, creating child support commissioners to hear cases and take the actions required in these provisions.

#### Seizure of Assets

A third category of state agency authority requirements is the authority of the child support enforcement agency to secure certain assets when an arrearage exists. Forty-two states enacted broad provisions permitting the agency to seize or secure assets to satisfy child support obligations. Other states adopted the specific provisions detailed in the federal legislation. Forty-four states incorporated provisions allowing for the interception or seizure of periodic or lump sum payments from a state or local agency, including unemployment compensation, worker's compensation, and other benefits, judgments, settlements and lotteries. Forty-five states incorporated the federal requirement that the agency be permitted to seize assets of delinquent obligors held by financial institutions, while 38 states also included the authority to seize public and private retirement funds. Finally, 46 states enacted the provision authorizing the agency to impose liens and force the sale of property when

necessary to satisfy child support arrearages. Some states specifically excluded certain items from the lien provision. For instance, the Louisiana child support agency may not place liens against motor vehicles.

PRWORA directs that all expedited procedures must be subject to due process safeguards, as appropriate. Forty-five states incorporated specific due process safeguards into their expanded authority legislation last year. To ensure that due process rights are adequately protected, states must direct parties to paternity and child support proceedings to file and maintain location and identification information with the agency. Such information is used to demonstrate sufficient effort to provide notice to parties of a pending action.

#### Paternity Establishment

Federal law also encourages the establishment of paternity. Although great strides had been made since the early 1990s, some of the best incentive programs and most effective procedures were not being used uniformly nationwide. Accordingly, Congress devoted a large portion of PRWORA to mandating and simplifying paternity establishment procedures. Changes in paternity establishment laws can be divided into four categories.

#### General Paternity Establishment Requirements

This first paternity category sets the general foundation requirements for state laws. In PRWORA, Congress reiterated an earlier federal mandate that states have procedures in place permitting the establishment of paternity of children from birth to at least age 18. Thirty-seven states incorporated this provision into their recent legislation, including states such as Alabama, Arkansas, Mississippi and Oklahoma, which permit establishment beyond the age of 18. Alaska relies on existing judicial interpretations of its law to permit establishment until age 18.

Federal law also requires that states ensure that the putative father is guaranteed a reasonable opportunity to initiate a paternity action. Many states did not have such a provision in place prior to PRWORA. Forty-one state legislatures enacted this provision and Arkansas adopted it administratively. More controversial was the requirement that parties to a paternity action not be entitled to a jury trial. In many states, this was a point of serious debate, but 34 states included it in their recent legislative packages and Delaware adopted it as a judicial rule. Connecticut retained a court trial, but without a jury, while the North Carolina legislature determined that a jury trial was a constitutional right and so retained that option. Montana was granted an exemption from this requirement on the basis that the state currently did not have a right to jury trials in paternity cases.

PRWORA requires that in order for a father's name to appear on the birth certificate, both parents have to sign a paternity acknowledgment or a judicial or administrative determination must be in place. Thirty-nine states incorporated similar requirements in their legislation and it is administrative policy in Kentucky. Forty-seven states enacted a required provision that the acknowledgment becomes a legal determination of paternity after 60 days, without an additional ratification process. And 44 enacted the corollary provision that only challenges based on fraud, duress or material mistake of fact be permitted after the 60-day period. Kentucky limited the challenges through administrative policy. The Arkansas legislature established a three-year period for altering or rescinding a paternity acknowledgment, and Minnesota's legislation includes a grace period of one year. Oklahoma chose not to limit the grounds for challenge during the 60-day period, so presumably a challenge may be based on any good cause. Alaska law requires that upon a showing of good cause, a court may not stay legal responsibilities during a challenge.

Some states adopted special rules regarding paternity acknowledgment by a minor. In Delaware, a minor's acknowledgment becomes final 60 days after he reaches age 18. Similarly, an acknowledgment in California becomes final 60 days after both parents reach age 18 or are emancipated. A paternity acknowledgment by a minor in Wyoming must be accompanied by his social security number and a signature of his legal guardian.

#### Simplifying the Paternity Acknowledgment Process

A second paternity category consists of provisions simplifying the paternity acknowledgment process and thereby encouraging more fathers to acknowledge paternity. These provisions were generally well-received in state legislatures. PRWORA requires states to have simple civil processes for voluntary paternity acknowledgment (enacted by 44 states), and that oral and written notice of the legal responsibilities and alternatives associated with paternity must be provided to the mother and putative father prior to signing the acknowledgment (enacted by 44 states, administratively adopted by one). Alabama requires that the affidavit of acknowledgement be notarized, and 1997 legislation in Connecticut specifically detailed the various notice provisions to be delivered prior to acknowledgment. Additionally, states must operate a hospital-based program, but also offer services at sites other than hospitals, including the agency responsible for maintaining birth records (enacted by 41 states, administratively adopted by two). Arkansas legislation is typical in providing financial incentives for entities conducting paternity acknowledgment programs.

#### Use of Genetic Tests

Federal requirements concerning the use of genetic tests in paternity establishment comprise a third category. State agencies must have the authority under state law to order genetic tests upon the request of any party to a paternity proceeding, if that request is accompanied by a sworn statement either alleging or denying paternity (enacted by 49 states). The state must also pay the costs of such tests, but can later recoup them from the father if paternity is established (enacted by 45 states). A few states, such as Alaska and Kansas, retained the requirement of a court order for genetic tests.

PRWORA requires that the genetic tests, if they meet a certain threshold of probability, be admissible in a paternity proceeding and constitute at least a rebuttable presumption of paternity (enacted by 47 states), and permits states to limit objections to their admissibility (enacted by 40 states, included as judicial rule by one state). Most states created a rebuttable presumption of paternity at 95 percent probability. In Maryland, genetic tests are admissible at 97.3 percent probability, and presumptive at 99 percent probability. In Alabama, objections to genetic test results will now have to be made in writing at least 15 days prior to the hearing, and in Connecticut those objections must be made no later than 20 days before the hearing.

#### Miscellaneous Paternity Requirements

A final paternity category contains several unrelated but important requirements. States are required to mandate, under state law, issuance of a temporary support order during an administrative or judicial paternity proceeding if clear and convincing evidence of paternity exists. Forty-four states incorporated similar requirements into statutory authority, and others, including California, converted it to a permissive authorization. Washington authorizes the issuance of a temporary order, but requires that it be stayed if the putative father contests. Georgia law directs that payments under a temporary support order be placed in an escrow account, with no distribution made until the court issues a final paternity determination. Conversely, Iowa explicitly forbids a refund of the money paid under a temporary support order if the putative father is later cleared of paternity.

Federal law also requires that states make certain medical and testing bills associated with pregnancy, childbirth or paternity admissible as evidence of costs borne by the mother or state (enacted by 47 states). Finally, states are required to grant full faith and credit to out-of-state paternity acknowledgments and determinations (enacted by 38 states).

#### License Restrictions for Noncompliance with Child Support

The threat of restriction or suspension of certain licenses is one of the most successful incentives for the payment of child support. With this in mind, Congress expanded upon existing state laws by requiring states to have laws to withhold, suspend or restrict the use of driver's, professional, occupational and recreational licenses of noncustodial parents who owe overdue support or fail to comply with subpoenas or warrants in paternity or child support proceedings. Although some of these mandates met with considerable resistance from interest groups and others, state legislatures responded overwhelmingly to these mandates. Fifty states enacted provisions relating to driver's licenses, 51 jurisdictions adopted provisions for professional and occupational licenses, and 49 states included types of recreational licenses in their legislation.

Before passage of the technical amendments in 1997, PRWORA addressed restrictions only on commercial driver's licenses, not personal driver's licenses. As a result, some states enacted the more limited version of this requirement, including Arkansas and Nebraska. Missouri legislation requires a court order before licenses may be suspended or restricted.

Legislation in many states specified what would trigger license restrictions. For example, Arizona requires an arrearage of at least two months. The licenses of Oklahoma obligors will be restricted after 90 days of overdue support accrues. Rhode Island set its trigger at \$500. Washington will restrict licenses when support is late by 180 days or more. Finally, Wyoming obligors must be behind by at least three times their current monthly support payment before licenses are restricted. Florida forbids any revocation if irreparable harm to the obligor would result and Nebraska law outlines a hierarchy for license suspensions, e.g. professional licenses must be suspended before driver's licenses. Montana's legislation directed that all administrative hearings regarding license restrictions be attempted first via teleconferencing before requiring personal appearance at the court or agency. This innovative approach attempts to achieve better service in a large state with a widely dispersed population.

#### Income Withholding

Income withholding is the single most effective collection tool in child support enforcement. States are expanding the breadth of their income withholding programs in response to the new federal requirements. Under existing federal law, states are required to enact procedures for income withholding based on an arrearage of one month or more in cases: 1) being serviced by the child support agency, or 2) based on orders issued or modified before Jan. 1, 1994, and subject to withholding if arrearages occur. Forty-six states have enacted this general withholding mandate.

Additional federal provisions outline the required procedures for state income withholding programs. Advance notice to the noncustodial parent is not required (enacted by 39 states, administratively adopted by one), but notice that withholding has commenced and information describing

procedures for challenge must be sent to the obligor (enacted by 45 states). It is unclear under current federal law whether states are permitted to provide advance notice to obligors. Eight states have enacted provisions permitting or requiring advance notice of income withholding. States' notice requirements vary. In Colorado, 10 days' advance notice to the noncustodial parent is required, and the employer must notify the parent when withholding commences. The District of Columbia, Hawaii and Louisiana also provide advance notice to obligors. In Georgia, the obligor's employer is required to notify him or her, but in Nebraska, the obligor is responsible for notifying his or her employer of the withholding obligation.

Employers must withhold income according to the withholding notice (enacted by 49 states), forward withheld income to the state disbursement unit within seven business days of payday (enacted by 46 states), and may not punish employees subject to withholding (enacted by 50 states). Many states enacted sanctions for employer retaliation or noncompliance. Connecticut will levy a \$1,000 fine against an employer who unlawfully discharges an employee subject to withholding. Kansas permits a civil penalty of not more than \$500 for retaliation and a judgment in favor of the support recipient for three times the amount of support owed for failure to comply. Illinois will be fining employers \$100 for each day that the withholding amount is not paid, and has created a presumption that the employer acted knowingly when there is more than one instance of failure to pay for a particular employee.

Employer processing fees for income withholding were also permitted by the federal legislation, and several states chose to include such provisions in their child support legislative packages. For example, Kansas and Louisiana permit employers to charge the obligor a \$5 per month fee for processing withholding orders. Finally, 47 states specifically granted employers limited immunity from liability for complying with any withholding order that appears legitimate on its face.

#### Matching Financial Records Data

To encourage states to discover funds intentionally hidden by noncustodial parents, Congress included a section in PRWORA mandating states to cross-check child support cases with financial institution records. "Financial institutions" includes not only banks and credit unions, but also benefit associations, insurance companies, safe deposit companies, money-market mutual funds or similar entities. These provisions found strong support at the state level and have been enacted by most state legislatures.

Federal law requires states to direct their child support agencies to enter into agreements for information matching with financial institutions in the state (enacted by 48 states). Forty-nine states enacted the requirement that state agencies must develop and operate an information matching system for quarterly matching of delinquent noncustodial parents with institutional accountholders. The agency is permitted to pay a reasonable fee to the institutions in 41 states. Some states limited the data matching requirements. In Colorado, data matching occurs only semi-annually rather than quarterly. Utah enacted a permissive authorization, and Rhode Island does not permit data matching until the arrearage reaches at least \$500.

Financial institutions are also required, in response to a notice of a lien or levy, to encumber or surrender the assets of a delinquent obligor (enacted by 47 states). Penalties for failure to comply were fairly uniform nationwide. For example, in Mississippi and Pennsylvania, institutions will be charged \$1,000, and in Hawaii, the penalty is the lesser of a \$1,000 fine or the amount of the obligor's account.

To encourage participation and shield cooperating entities, financial institutions are to receive limited immunity for compliance with an information request, a lien or levy, or any other good faith compliance effort (enacted by 48 states).

#### Simplified Review of Child Support Orders

PRWORA also focuses on streamlining the review and modification process for child support orders. At the request of any party, or the state agency if there is a child support assignment in place, the 1996 federal law requires review of child support cases managed by the state agencies at least once every three years. Thirty-four states incorporated this provision into their statutes and another six adopted it administratively. The corollary mandate that a showing of a change in circumstances be required for review outside the three-year cycle has been enacted in 36 states and administratively adopted in five more. States must base reviews on the best interest of the child, and may adjust the support order based on state guidelines for calculating the amount of child support collected (enacted by 33 states, administratively adopted by five), cost of living adjustments (enacted by eight states, administratively adopted by two), or automated methods (enacted by nine states, administratively adopted by two). The law also requires that notice of the entitlement to review be given to parents at least once every three years. Thirty-two states enacted this provision into law, another seven adopted it administratively, and Michigan received a federal exemption from this requirement.

Many states define the "substantial change in circumstances" necessary to warrant a review outside the usual three year cycle. In Arizona, the circumstance must be "substantial and continuing." Connecticut legislation creates a rebuttable presumption that any deviation of less than 15 percent from the guidelines is not substantial but any deviation of 15 percent or more is. "Substantial change in circumstances" in Iowa means a 50 percent or more change in the noncustodial parent's income, and the change must be due to financial circumstances that have existed for at

least three months and are expected to last at least another three. Finally, in Minnesota, a change in circumstances that results in at least a 20 percent or \$50 change in the monthly award is considered substantial.

#### New Hire Directories

Some parents attempting to avoid their child support obligations may conceal their employment or hide their location from authorities and the custodial parent completely. In the early 1990s, some states began using employment records to locate delinquent obligors. This practice evolved into the comprehensive new hire reporting program included in PRWORA. States are given the option of enacting these sections or adopting them administratively. Under the federal law, states are to require employers to report all new employees within 20 days of hire. Forty-five states included similar general mandates in their legislation and another two did so administratively. The law also requires states to establish new hire directories, instructing employers to make reports using W-4 forms (enacted by 40 states, administratively adopted by two) and requiring cross-checking with the state case registry (enacted by 29 states, administratively adopted by six). Privacy concerns led a few states, including Colorado and Kansas, to require that new hire information be purged from government records after two years.

The federal legislation also detailed permissible timeframes for operation of the new hire registry. The state agency must enter the employment information into the directory within five business days of receipt (enacted by 27 states, administratively adopted by six), forward information to the national directory of new hires within three business days of receipt (enacted by 33 states, administratively adopted by six), issue employer income withholding notices within two business days after entry of the new hire information into the directory (enacted by 20 states, administratively adopted by nine), and make quarterly wage reports to the national directory (enacted by 26 states, administratively adopted by nine). Some states further tightened the reporting timeframes. Alabama requires new hire reports within seven days of hiring, and includes recalls and rehires in the definition of new hires. Conversely, Indiana explicitly limited reporting to first time hires. Other states, such as Texas and Wisconsin, did not outline their new hire programs in legislation, but instead enacted general language that directs the agency to operate a directory in compliance with federal regulations.

Finally, states are permitted to assess certain fines for employer noncompliance. Thirty-four states elected to do so statutorily and another two states are levying such fines based on administrative authority. Many states enacted the penalties suggested in the federal legislation: \$25 for each failure to report, or \$500 if there is conspiracy between the employer and employee. Alabama capped the maximum fine at \$25, and Maryland will treat all offenses occurring in the same month as one offense, subject to a \$20 fine. Taking a stronger position, Hawaii dictated that intentional violations will be charged as petty misdemeanors. Illinois created a similar misdemeanor offense for conspiracy. A few states, such as Arizona, expressly forbade agencies from sanctioning employers for noncompliance. Georgia is issuing warnings for noncompliance, but did not include a sanction in their 1997 legislation.

#### Administrative Liens for Child Support Enforcement

The use of automatic liens, another PRWORA requirement, is an additional way to thwart the delinquent obligor attempting to claim financial hardship as a reason for not paying child support. Under state law, liens based on past-due child support obligations must arise administratively, and must attach to both real and personal property. Response to this requirement was notable: 46 states enacted similar provisions, and 47 enacted the corollary mandate that full faith and credit be applied to out-of-state liens, without judicial notice or hearing.

Many states identified the amount of arrearage that would give rise to a lien. In Connecticut, obligors must owe at least \$500 in overdue support, and notice is required before the lien may be attached. North Carolina set its triggering arrearage at three months or \$3,000, and South Carolina adopted \$1,000 as its trigger point. In Wyoming, delinquent noncustodial parents owing three times their monthly amount or more can expect a lien against their property. Iowa legislation created a statewide support lien index, and Pennsylvania legislation directs the agency to develop a system to create and attach these liens. Legislation in several states, including Colorado, Georgia, Hawaii, and Illinois, detailed the priority of these liens in relation to other liens against the same property.

#### Health Care Coverage in Child Support Orders

Concerns over the lack of adequate health care coverage for some of America's poorest children-many of whom are receiving or are owed child support-prompted Congress to include health care coverage requirements for child support orders. States are now required to mandate that all child support orders handled by the child support agency include a provision for health care coverage. Forty-four states responded by incorporating similar requirements in their legislation while New Jersey is exercising administrative authority. California's legislation authorizes, rather than directs, the agency to include this section in all orders, and Maine permits employers to deny enrollment under limited circumstances. An additional requirement directing that timely notice be given to new employers who must then enroll the child in the parent's health coverage was enacted by 39 states and administratively adopted by another two.

#### Collection of Social Security Numbers

One of the primary obstacles to effective child support enforcement has always been locating delinquent obligors. Often their whereabouts are unknown or they may be known by several names. By collecting social security numbers on official state documents, the state acquires a paper trail that enables the child support enforcement agency to locate the correct obligor and pursue delinquent child support accounts. Responding to federal requirements, 39 states enacted legislation to require social security numbers on applications for professional, occupational, driver's, marriage and recreational licenses. Another eight states enacted partial elements of this requirement. Forty-two states are collecting social security numbers in records for support orders, paternity establishments and divorce decrees, and four states are collecting numbers on some of these documents. Finally, laws in 39 states require social security numbers on death certificates, two other states have these requirements in administrative law, and Montana received a federal exemption for social security numbers on death certificates. Some states, such as Arizona, adopted provisions requiring social security numbers on birth certificates as well. Illinois legislation mandates collection of other identification numbers for citizens of foreign countries.

#### Confidentiality and Sharing of Child Support Records

Advocacy groups opposed to domestic violence raised serious concerns regarding the potential, unintended consequences of compiling so much information about custodial and noncustodial parents. They argued that victims of domestic violence would not pursue child support enforcement if doing so meant providing information that might be accessible to the abusive parent. Additionally, privacy advocates pushed for strict control over social security numbers, employment and financial information, and credit history. Acknowledging these concerns, Congress included several confidentiality provisions in PRWORA and its later technical amendments. These provisions do not require legislation and may be included instead in administrative regulations and policies.

PRWORA requires that states prohibit, in law or administrative policy, the unauthorized use or disclosure of information about paternity establishment or child support orders. States also are required to prohibit the release of information on the whereabouts of one party to another party if a protective order has been entered or if the release of the information may result in physical or emotional harm to the party. Forty states have enacted similar confidentiality provisions and another five incorporated them into administrative law. Several states, including Alaska, Arizona, Colorado and Delaware, enacted broad confidentiality provisions that seem to cover most or all information collected for child support enforcement purposes.

Section 353 of PRWORA mandates immunity for financial institutions that provide information in good faith to assist in child support enforcement efforts, and limits use of the information to establishing, modifying or enforcing a child support obligation. Forty-eight states enacted the immunity provision; 44 states included the use limitation section. States are required to grant civil servants immunity for all unlawful disclosures made in good faith, including those based on an erroneous interpretation of the law, and 37 states incorporated this protection into their laws. Twenty-one states enacted, and one state administratively adopted, the federal requirement that states provide a remedy for individuals harmed by unlawful disclosure that was negligent or knowing. Finally, 28 state legislatures authorized remedies for willful disclosure and disclosure based on gross negligence.

Congress also created privacy safeguards for new hire directory information. Thirty-six states enacted and three more administratively adopted the federal provision specifically protecting new hire information from use or disclosure for purposes other than those defined in statute.

#### State Disbursement Units and Case Registries

The federal initiative toward centralized support collection and disbursement and records maintenance is evidenced in the PRWORA requirements concerning the establishment of state disbursement units and case registries. As with the privacy sections above, these provisions are not legislative requirements, and may be implemented through regulation or policy. The disbursement unit is mandated to process child support collections on all child support agency cases, and all nonagency orders subject to income withholding issued or modified after Jan. 1, 1994. Twenty-nine states enacted this provision, and five others included it in their administrative policies. The federal legislation also outlines several timeframe requirements for disbursement of collected support and issuance of withholding notices. Twenty-one states addressed these requirements in law and another eight did so in administrative policy.

Given the freedom to either legislate or promulgate regulations, this area saw considerable variance from the federal language. At least three states, including North Carolina, Utah and Wyoming, simply enacted provisions requiring that a disbursement unit be established according to federal law. In Missouri and Nebraska, task forces will be created to determine the best policies for the unit. Louisiana's legislation permits the department to retain up to 1 percent of the total amount collected for administrative costs. Both Alabama and Montana mandated "prompt disbursement" in their legislation, rather than incorporating the federal timeframes.

Under Section 311 of PRWORA, states must establish a registry containing all state agency cases and new nonagency orders issued or modified after Oct. 1, 1998. Forty-one states statutorily authorized this requirement and another four states did so in administrative policy. Additional provisions dealt with the contents of the registry records and cross-checking those records with the federal case and order registry. Thirty-four

states adopted each of those additional provisions last year in either legislation or administrative policy. Virginia enacted general language directing that the registry be created and maintained in accordance with federal law, and Montana established an advisory board to oversee development of the registry in that state.

#### Conclusion

As states continue to respond to the 1996 federal legislation and examine their state child support programs, more reforms are sure to follow. Most likely these future reforms will build upon, rather than undo, the extensive work states have already completed in this area. Complex administrative questions still remain for many states, particularly concerning systems automation and the centralized collection and disbursement of child support payments. For state legislatures and agencies, the challenge of the 21st century will be to fully realize the potential of these newest reforms.

#### Resources

1. Bartfield, Judi, and Daniel Meyer. *Are There Really Deadbeat Dads? The Relationship Between Ability to Pay, Enforcement, and Compliance in Nonmarital Child Support Cases*, DP#994-93. Madison, Wis.: Institute for Research on Poverty, March 1993.
2. "The Basics of Child Support Enforcement." *Children Today* 24, no. 2: 6-8.
3. Bryson, Ken. *Household and Family Characteristics: March 1995*, U.S. Bureau of Census, Current Population Survey, as quoted in "Changing Family Composition," *Children Today*, 24, no. 2: 1.
4. Legler, Paul. "The Coming Revolution in Child Support Policy: Implications of the 1996 Welfare Act," *Family Law Quarterly*, 30, no. 3 (Fall 1996): 519-563.
5. Sorenson, Elaine. *Noncustodial Fathers: Can They Afford to Pay More Child Support?* Washington, D.C.: The Urban Institute, January 1994.
6. U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement. *20th Annual Report to Congress*, period ending Sept. 30, 1995, (Washington, D.C., 1997).
7. U.S. Department of Health and Human Services, Public Health Service, Health Resources and Services Administration, Maternal and Child Health Bureau. *Child Health USA '96 - '97*, HRSA-M-DSEA-97-48, September 1997.
8. U.S. General Accounting Office. *Child Support Assurance: Effect of Applying State Guidelines to Determine Fathers' Payments*, GAO/HRD-93-26. Washington, D.C., January 1993.
9. \_\_\_\_\_. *Child Support Enforcement: Families Could Benefit From Stronger Enforcement Program*, GAO/HEHS-95-24. Washington, D.C., December 1994.
10. Ventura, Stephanie. "Recent Trends and Variations in Nonmarital Childbearing," *Children Today* 24, no. 2: 12.

**This publication was made possible through a contract with the Office of Child Support Enforcement of the U.S. Department of Health and Human Services: Contract No. 105-97-8301. Any statements, opinions, findings or conclusions expressed herein do not necessarily reflect the views or policies of the Office of Child Support Enforcement or the U.S. Department of Health and Human Services.**

STATE LEGISLATIVE REPORT is published 12 to 18 times a year. It is distributed without charge to legislative leaders, council and research directors, legislative librarians, and selected groups for each issue. For further information on STATE LEGISLATIVE REPORT or to obtain copies, contact the NCSL Book Order Department in Denver at (303) 364-7700.

---

© 2008 National Conference of State Legislatures, All Rights Reserved

**Denver Office:** Tel: 303-364-7700 | Fax: 303-364-7800 | 7700 East First Place | Denver, CO 80230 | [Map](#)

**Washington Office:** Tel: 202-624-5400 | Fax: 202-737-1069 | 444 North Capitol Street, N.W., Suite 515 | Washington, D.C. 20001