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PERSPECTIVE ON THE CHILD SUPPORT PROVISIONS (SERVICES)
OF THE WELFARE REFORM ACT OF 1971, A

STATE SOCIAL WELFARE BOARD NOVEMBER, 1971

SIGNED OUT TO:

DATE:

PERSPECTIVE ON THE CHILD SUPPORT PROVISIONS OF THE
WELFARE REFORM ACT OF 1971, A

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STATE SOCIAL WELFARE BOARD

A Perspective on the Child Support Provisions of the

WELFARE REFORM ACT OF 1971



STATE OF CALIFORNIA
HUMAN RELATIONS AGENCY
DEPARTMENT OF SOCIAL WELFARE

NOVEMBER 1971

STATE SOCIAL WELFARE BOARD

**A Perspective on the Child Support Provisions of the
WELFARE REFORM ACT OF 1971**

November 1971

FOREWORD

The purpose of this report is to bring to the attention of the people of the State of California the child support enforcement provisions of the Welfare Reform Act of 1971 recently enacted by the Legislature and signed into law by the Governor on August 13, 1971.

At the request of the State Director of Social Welfare, the Board has accepted responsibility for bringing to the attention of various segments of the public the new tools available to assist in upgrading child support enforcement programs. The Board has also taken direct steps, in addition to compiling this report, in fulfilling this charge as outlined elsewhere in this document.

Members of the State Social Welfare Board have had a direct and personal experience with the people served by California's welfare programs; with persons at various levels of government who administer the programs; and, with the complicated federal and state laws and regulations and county procedures under which these controversial programs function. The magnitude of the problems encountered in the welfare system are difficult to comprehend and views held by many are so polarized that significant change in the system is difficult to achieve.

Because of the Board's firsthand exposure to the problems of the people and the system, it is especially gratified at the conciliatory actions of the Executive and Legislative branches of California state government which, after spirited negotiations, resulted in passage of the Welfare Reform Act of 1971. The Board's views are expressed in a resolution which is a part of this report.

It is the view of the State Social Welfare Board that this important legislation should not go unnoticed by the people of the State of California. Although this report covers only those elements related to the subject of absent parent child support, an understanding of the rationale and the practical effect of the key provisions of this act will make for greater public awareness and to this end, this report is respectfully dedicated.

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Executive Secretary

Mr. Jack W. Thompson
744 P Street
Sacramento, California 95814
916/445-8934

SOCIAL WELFARE BOARD
State of California

RESOLUTION OF COMMENDATION

WHEREAS, the California State Legislature recently enacted and the Governor signed into law the Welfare Reform Act of 1971; and,

WHEREAS, the provisions of the Welfare Reform Act of 1971 emphasizes a concern, in the form of benefits and programs, for those persons truly in need thereof, family responsibility, and provides for more businesslike methods and management controls over the state's vast public assistance programs; and,

WHEREAS, the new statute represents a most significant step by state government in balancing the realistic needs of people against available fiscal resources; and,

WHEREAS, the passage of the new law resulted from a demonstrated conciliatory approach by the Executive and Legislative branches of California state government; now, therefore,

BE IT RESOLVED, by unanimous vote of those members present, the Social Welfare Board of the State of California does hereby commend the Governor of the State of California, members of the California State Legislature and the respective staff members of both branches for their dedicated efforts and distinguished service in negotiating a balanced approach to welfare reform in the interest of the truly needy and the people of the State of California, generally.

October 31, 1971
Date

Robert E. Mitchell
Robert E. Mitchell, Chairman
State Social Welfare Board

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I. INTRODUCTION

The significance of the child support enforcement provisions of the Welfare Reform Act of 1971 will be better understood with some background information on the problem of absent parent child support and the actions which led to the original legislative proposals. These proposals were introduced in the Senate in omnibus bills containing a number of other important welfare-related legislative proposals sponsored by the state administration. Subsequently, they were amended into Senate Bill 796 which, after amendments and negotiations between the Executive and Legislative branches of state government, was enacted and signed into law as the Welfare Reform Act of 1971.

A. Responsibility for Child Support Enforcement Programs

Primary responsibility for enforcing the child support obligation rests with county government agencies including the judiciary. The degree of interagency cooperation and coordination required in an effective child support enforcement program can be illustrated by the number of local agencies involved and the differences in their basic orientation. Members of County Boards of Supervisors have responsibility for determining policies and establishing priorities; county administrative officers have budgeting responsibilities; county welfare departments assist in the identification of welfare nonsupport cases and act as a referral agency to the district attorney's office for court action which then involves the sheriff's deputies or marshal in serving necessary legal papers. If the nonsupport case reaches a court hearing, the judge becomes the central

figure in the entire effort. An informed and aware judiciary can play a key role in upgrading enforcement activities. Conversely, the judge has the potential of negating even the most highly coordinated activities of the aforementioned county agencies. County probation departments have an important and continuing part to play in the enforcement program.

Although not having direct operational responsibilities, two agencies of state government are also involved in child support activities. The State Department of Social Welfare has supervisory responsibilities over county welfare departments and, in this context, must establish regulatory guidelines which enhance the cooperative relationships between county welfare departments and other local agencies. A unit of the State Department of Justice provides a service for local government in locating absent nonsupporting parents utilizing a number of record sources.

It is clear, therefore, that the effectiveness and uniformity with which child support statutes are enforced in California depend largely on the administration in the state's fifty-eight counties and the several agencies in each county which have program responsibilities.

B. State Social Welfare Board Study

In carrying out its statutory responsibilities, as provided in Section 10700, California Welfare and Institutions Code, the State Social Welfare Board conducts studies in broad areas related to poverty, deprivation and neglect. In addition to its regular public business meetings and other activities, the Board periodically schedules large-scale community meetings in various

parts of the state. In planning the community meetings, a deliberate attempt is made to encourage a large and representative attendance by members of the local community. In this manner, the Board members are able to keep abreast of trends and concerns on a wide variety of issues as expressed by individuals and groups across the state.

It was through the community meeting process that the Board was alerted to problems in the enforcement of the child support obligation in both welfare and nonwelfare families. Similar concerns were expressed in other meetings as the Board moved about the state. In response to this information, the Board developed some basic statistical information and sought the expert assistance of key deputy district attorneys who are active in the support enforcement field, as well as from groups of mothers organized for the purpose of stimulating a higher level of enforcement activity. It became clear that the problem was statewide in scope and had significant social and fiscal ramifications. The Board launched a major study, with the assistance of a Task Force on Absent Parent Child Support, the results of which were published in January 1971.

The State Social Welfare Board's Final Report of the Task Force on Absent Parent Child Support did, in fact, show a lack of uniformity in the enforcement of the child support obligation across the state. It pointed out that in June 1970, only 14.7% of the estranged fathers of California's welfare children were paying anything for their support. The remaining 85% had thrust their moral and legal obligation on to the state's tax supported programs. While the percentage of contributing absent fathers

had reached an eight-year low, the actual number of absent fathers had increased during the same period from 52,000 to 230,000. During the year ending June 30, 1970, over \$36,500,000 was collected from less than 15% of the absent fathers. Aside from offsetting welfare costs and providing necessities for the youngsters, the receipt of child support payments on a regular basis often enables a family to maintain its financial independence without having to resort to welfare.

The Board's task force report lists forty recommendations for stimulating a higher level of enforcement activity in such areas as interagency cooperation; prevention and incentives; and, enforcement activities. Many of these recommendations have been adopted by administrative action and some are still under study. Several require action by federal authorities and the remainder require action by the Legislature of the State of California. It was this latter group, along with proposals from a number of other sources, that became part of the Governor's welfare reform program.

The Board recognized that even with statutory authority and adequate enforcement tools, the degree to which California's child support enforcement programs were upgraded depended not only on local agency cooperation and coordination, but on the motivation and awareness of local officials and the general public as well. With this in mind, the State Director of Social Welfare requested that the Board take responsibility for acquainting the public with the child support enforcement related provisions of the new law.

Two actions have been taken by the Board to inform and motivate various groups. First, the Board, with the help of a subcommittee of the task force, has published a supplementary report entitled, Guide for Administration and Conduct of a Coordinated Child Support Program by California Counties, September 1971. This guide contains valuable information on organization and administration, funding resources and training needs, as well as three model operational plans. Second, the Board has held two major Seminars on Absent Parent Child Support for over 300 representatives of county government including members of boards of supervisors, county administrative officers, members of the judiciary, district attorneys, county welfare directors and probation officers. A transcript of this seminar will soon be published and will provide many interesting insights to child support issues and related problems.

It is the intention of the Board to continue its interest and effort to effect dramatic upgrading of child support enforcement programs. The Board encourages public interest in this subject and will be pleased to supply copies of the aforementioned reports on request. Official interest and public support are necessary requisites to any major improvement in protecting the undisputed right of children to support from their parents and the right of the people of this state to insist that this obligation be clearly recognized and vigorously enforced.

II. CHILD SUPPORT PROVISIONS OF THE WELFARE REFORM ACT OF 1971

As mentioned earlier, several of the recommendations contained in the Final Report of the Task Force on Absent Parent Child Support, along with other proposals in the Governor's welfare reform program, were introduced in the Senate and amended into Senate Bill 796. Although in some instances slightly modified from the original proposals, following is a discussion of the child support provisions which survived the negotiations and became a part of the Welfare Reform Act of 1971.

A. Grand Jury Review of Support Activities

The Board and the task force were concerned that there was no agency with overall responsibility for monitoring local child support enforcement activities. These kinds of enforcement programs are viewed as law enforcement-oriented and on this basis, there was some discussion about the possibility of the Attorney General assuming this function. The Attorney General is the chief law enforcement officer in the state with responsibility for moving into local jurisdictions when county law enforcement agencies do not or cannot function effectively.

Since primary responsibility for child support enforcement activities rests with local administrations and county agencies, the Board and task force believed that monitoring this activity should also be a local responsibility. The grand jury, which already has certain functions mandated by statute, seemed to be a unit of local government capable of performing this function effectively especially in view of the fact that so many county agencies are involved.

A provision of the Welfare Reform Act of 1971 adds Section 10602.5 to the Welfare and Institutions Code requiring that an auditor appointed by the grand jury conduct an annual review of that county's child support collection program and comment in writing upon the performance of the duties involved therein by any county agency concerned and file a copy of the report with the Board of Supervisors and the State Department of Social Welfare.

It is expected that a careful annual audit conducted by local officials will insure a high level of enforcement activity in each county for the purpose of insuring that children receive the support to which they are entitled; that tax-supported programs are not unnecessarily overburdened and that local government receives all of the reimbursements to which it is entitled by virtue of its child support enforcement activities.

B. Social Security Numbers

Assumptions based on statistical data published by the State Department of Social Welfare, as well as research conducted by the task force tended to indicate that about 75% of the welfare absent fathers and 85% of the non-welfare absent fathers could be located within the State of California, if not within the county in which the family resides. As our society becomes more complex, there is an increasing amount of record data which is a valuable resource in locating an absent nonsupporting parent. However, the same complexities which account for the increase in this information presents problems in terms of retrieval.

Increased emphasis is being placed on social security numbers for the purpose of file identification and as a key to data retrieval in some of the more sophisticated information systems. At present, social security numbers are not universally available in welfare records. The task force made several recommendations in its report concerning the streamlining of techniques designed to locate the absent nonsupporting parent. The Board believes that the uniform availability of social security numbers will enhance this activity and assist in curtailing the fraudulent receipt of welfare benefits.

In an effort to achieve the increased effectiveness outlined above, certain provisions of the Welfare Reform Act require the listing of the social security numbers of both parents on birth certificates; the entry of social security numbers on certificates of eligibility and redeterminations of eligibility for public assistance, as well as on certain financial statements required of the absent parent when an application for public assistance is filed for his child. It is believed that through this means, in a relatively short period of time, the availability of these keys to data retrieval will result in more timely locating of nonsupporting parents.

C. Referral of Welfare Nonsupport Cases to the District Attorney

It is the view of the Board and the task force that enforcing the child support obligation is a law enforcement function. In this context, the Board's report recommended immediate referral of welfare nonsupport cases to the district attorney on the basis that prompt and effective action by that agency was a requisite to establishing a good payment habit on the

part of the nonsupporting parent. In addition, it was the Board's recommendation that responsibility for determining the financial ability of the absent parent and negotiating voluntary agreements to pay should be vested in law enforcement oriented staff, rather than social work oriented staff as specified in the then applicable statute which further provided that referral to the district attorney, under certain circumstances, could be delayed up to 45 days. The Board also made recommendations concerning the use of liens as a means of securing child support arrearages.

Provisions of the Welfare Reform Act of 1971 do make certain changes in the former statutes although not to the extent proposed by the Board. The time limit for referral of cases to the district attorney has been shortened to 30 days. Also included in the amendments to Section 11476 of the Welfare and Institutions Code is a provision for the use of liens against real and personal property where appropriate. The new act does, however, provide the district attorney with an option to request prompt referral. Section 11476.7 requires the county welfare department to immediately refer cases to the district attorney in situations in which the district attorney has requested that all cases involving parents absent from the home be referred to him immediately upon receipt of the application for assistance.

Experience will show that prompt and vigorous collection techniques utilized by appropriate enforcement staff will yield good results. It is hoped that district attorneys will exercise the option provided in the new law. This action does not preclude social work oriented staff from working with the parents toward reconciliation.

D. Attachment of Earnings

The Board made several recommendations for technical changes in the law designed to improve the ability of the district attorney and other appropriate law enforcement staff to enforce the child support obligation. One such provision which survived the negotiations makes certain amendments in Section 690.6 of the Code of Civil Procedure and adds Section 11489 to the Welfare and Institutions Code. Generally, these technical changes provide for more effective use of the attachment procedure against earnings; a reduction in the amount of a debtor's earnings which are exempt from attachment; and, a status for judgments resulting from actions brought under Section 11350 which is substantially equal to a judgment obtained on the basis of a court's support order.

In connection with the legal tools, techniques and remedies available to enforcement agencies, there are a number of improvements in existing procedures which can be achieved by local administrative action and not requiring a legislative enactment or a change in state regulations. An example is the increased effectiveness of a letter citation over first attempts at personal service of child support warrants. A test in one county has shown that of those individuals who actually received the letter citation by first class mail, 95% made a personal appearance in the support enforcement unit in answer to the outstanding warrant. Local enforcement units are urged to seek out and take administrative action to implement such innovations as an important means of upgrading their activities.

E. Awarding of Attorney Fees

In a number of instances, the task force report addressed itself to the matter of costs incurred by the county in enforcing the child support obligation. Generally, the expenses incurred in the prosecution of these actions for court costs and the costs of legal services provided by the district attorney are borne by the county. The Board recommended that the courts should have the discretionary power to award such fees and costs to the county in those cases in which the financial ability of the nonsupporting parent indicated that this action was appropriate.

The Welfare Reform Act provides for the amending of Section 248 of the Civil Code to include language permitting the court to order the obligor to pay the county reasonable attorney fees and court costs in any proceeding brought by the county pursuant to this section.

In the study conducted by the task force, some informal research was conducted with respect to welfare and nonwelfare nonsupport cases through the cooperation of family support units in five California counties. One of the results of this research indicated that a substantial number of nonsupporting parents not only had the financial ability to pay their child support obligation but, further, had sufficient earnings to justify the imposition of court costs and attorney's fees incurred by the county attendant to the enforcement of that obligation. Local officials and members of the judiciary should be alert to this potential revenue resource.

F. Fiscal Incentives and Recovery of Costs

As noted in the Board's report, an effective child support enforcement program is expensive. An ineffective program is even more expensive and represents a luxury that the taxpaying public can ill afford. At the policy level of county government, priorities must be established which are reflected in the adequate staffing of enforcement units with highly qualified staff and necessary supportive services. Counties have long argued that they were required to meet all of the enforcement costs, but that child support recoveries, as an offset against the welfare grant, had to be distributed along the lines of traditional funding relationships which left the county with only about 16% of the monies recovered in child support from the absent parent of a welfare family.

There are little used provisions of the 1967 Amendments to the Federal Social Security Act which provide for the availability of federal funds for child support activities. These provisions were highlighted in the Board's recent Seminars on Absent Parent Child Support. This funding source is of considerable interest to county government and requires action on their part to file the necessary documents with the U. S. Department of Health, Education, and Welfare.

There are two additional revenue resources contained in the Welfare Reform Act of 1971. One of these, an amendment to Section 11487 of the Welfare and Institutions Code, becomes operative if and when amendments to federal statutes or rules and regulations of the U. S. Department of Health, Education, and Welfare permit. Generally, this section was amended to

provide that counties may deduct from repayments of aid offset by child support collections to both state and federal governments, the costs reasonably and necessarily incurred by the district attorney's office in locating absent parents and recovering child support.

Of greatest significance to county government is the provision of the Welfare Reform Act which establishes the Support Enforcement Incentive Fund. This provision adds Section 15200.1 to the Welfare and Institutions Code and appropriates state funds for the purpose of offsetting county welfare costs to the extent of 21.25% of the amounts received or collected from absent welfare parents. Since the cost of collection represents only 10% of the support payments, this fund will provide an important incentive to county government to upgrade its child support enforcement program.

G. Support by Remarried Mothers

The obligation for support of the children is shared by the father and mother. One of the inequities in the welfare program has been those cases in which the children qualify for a welfare grant in spite of the fact that the mother has remarried and the children's stepfather has substantial income. The Welfare Reform Act of 1971 adds Section 5127.5 to the Civil Code which provides that the mother is entitled to the management and control of her share of the community property and earnings. Her share is determined after allowing certain deductions from her husband's gross monthly earnings. The amount of the mother's share is liable for the support of the children by her former marriage. The natural father is not

relieved of any legal obligation to support his children and his contributions shall reduce the liability to which the interest of the wife in the community property is subject.

H. Obligation of the Absent Parent

The Welfare Reform Act repeals Section 11350, Welfare and Institutions Code and substitutes a new section on relatives' responsibility with strengthened language. Generally, the new statutes establish a debt in the amount of the aid paid to be charged against a parent or parents whose separation or desertion results in their children qualifying for public assistance. The law limits this obligation to the amount of support specified in any court order, less the amount actually paid by the parent and by the parent's ability to pay. It further provides that the district attorney shall bring suit for enforcement of support pursuant to this section.

The new Section 11350 represents a positive emphasis on the obligation of parents to support their children and provides a useful tool in dealing with parents who are under court order to support, as well as the substantial number of cases in which the natural parents either were not married or the marriage was not formally terminated through a dissolution proceeding with a resulting order for support.

III. SUMMARY

Having devoted a considerable amount of study and research, the Board is sensitive to enforcement needs throughout the state and the benefits that can be derived from effective programs. Although this report relates primarily to welfare nonsupport matters, the Board is aware that similar problems exist in nonwelfare cases as well. A concerted and vigorous approach to enforcement involves very significant social and fiscal benefits to county government. Collections and the percentage of parents contributing to the support of their children do not appear to have any direct correlation to fluctuations in the economy or unemployment conditions. It should also be noted that cost/effectiveness can be measured. In the course of the study, it was determined that in some of the more effective county enforcement units, costs were running as low as 10% of collections. Perhaps even more important is the fact that an effective enforcement program can have a significant preventive effect in connection with welfare. There are a substantial number of single-parent families who are maintaining their financial independence on the mother's part or full-time earnings, plus child support from the father. Unless the services of the county's enforcement unit is available in these low-income cases, even a temporary halt in child support will have the effect of forcing many of these families on welfare rolls.

The Board believes that the child support provisions of the Welfare Reform Act of 1971 represent an important step in placing priority emphasis on the subject and providing some useful tools to those in the field. The Board is gratified to have played a part in bringing this matter to the attention of the

administration and the Legislature and pledges its continued interest and support of actions designed to ameliorate the vast problems that exist.