What If All the Money Came Home?

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What If All the Money Came Home? [1]

When the child support program was first established 25 years ago, its main purpose was cost recovery for state welfare programs. When families go on welfare, they turn over their rights to child support to the state. Consequently, child support rules often result in government, not families, keeping child support paid by the fathers of children receiving assistance.[2] Yet these rules are unfair to families, costly for state child support programs, and inconsistent with the welfare reform message of family self-sufficiency.

It is time to take welfare cost recovery out of the child support system, and to put the money where it belongs: in the hands of families. Time limits and work requirements are transforming the traditional welfare program into a short-term cash benefit program intended to lead to work. To support the goals of welfare reform, child support should be paid to families, even while they are receiving welfare.

Child Support Distribution Rules Emphasize Welfare Cost Recovery.

Title IV-D of the Social Security Act created a joint federal-state program to establish and enforce the obligation of noncustodial parents to financially support their children. Nearly two-thirds of all child support cases in the country are processed through the public child support (IV-D) program. Almost five times larger today than when the program started, the child support program is one of the largest human services programs, reaching low-income mothers, fathers, and children.

The child support program originally was set up to reimburse federal and state welfare costs under the old Aid to Families with Dependent Children (AFDC) program. As a condition of receiving assistance, welfare families must assign (sign over) their rights to child support and to cooperate with the child support program in establishing paternity and obtaining support.[3] Assigned child support collections are not paid to the families, but instead are kept by states as partial reimbursement for welfare benefits. The welfare collections are shared with the federal government, and treated as government revenues. The child support program also serves families who are not receiving welfare benefits, but who have requested child support services. These families do not assign their support rights to the state, and receive all of the support collected on their behalf.

Although states may spend their share of welfare collections without restriction, most states choose to allocate these revenues to the human services budget. Now that AFDC has been replaced by the Temporary Assistance to Needy Families (TANF) program, most states spend their state share of welfare collections to meet their state Maintenance of Effort (MOE) obligation required to draw down federal TANF funds. About one-third of the states use some or all of their welfare collections to help pay for the state share of matching funds for the child support program.[4]

At its inception, the child support program almost exclusively served families receiving welfare benefits. However, the dramatic decline in TANF caseloads, combined with long-term trends, have substantially reduced the proportion of welfare cases in the child support caseload. Today, less than a quarter of child support cases represent families receiving TANF. Most families in the program are former welfare and non-welfare low-income working families. Over three-fourths have incomes below 250 percent of poverty. About half of the non-welfare families receive other forms of public assistance, such as Medicaid or Food Stamps.[5]

Under welfare reform, the child support distribution rules (which determine whether the state or the family keeps collected support) were amended to allow former TANF families to keep more of the child support owed before the family went on TANF. This changed the old AFDC requirement that families relinquish all rights to support that accrued before and during a family's assistance period. Under the new rules, the basic approach is that support accruing before and after the family receives TANF belongs to the family, while support accruing while the family is on welfare belongs to the state. This approach is commonly called the "on-off" rule.[6]

However, there are several statutory exceptions to the basic "on-off" approach. The main exception is that support recouped from federal tax refunds are kept by the state. Support collected through the tax offset process totals more than half of the welfare arrears collected by the state. In addition, the state keeps arrears that accrued before the family went on assistance if they are collected after the family begins receiving assistance. This means that families who tried to hold out the longest before going on welfare can lose all the support owed to them if collected after they go on welfare. Finally, there are various phase-in exceptions for families on welfare before 2000.

Although the new rules are intended to get more money in the hands of families who have left welfare, they are the uneasy result of legislative compromise between contradictory program goals of helping families become self-sufficient and recovering welfare costs. The rules are extremely complicated and costly to administer, requiring states to track several different payment types, depending upon status, time period, and collection method--"assigned" current support; "never assigned" current support; "permanently assigned" arrears; "temporarily assigned" arrears; "conditionally assigned" arrears; "unassigned pre-assistance" arrears; "unassigned during-assistance" arrears; "never-assigned" arrears.

The welfare reform law also eliminated the federal requirement that the state pay the first $50 of collected child support to welfare families. Known as the "$50 pass-through," the child support income was "disregarded," or not counted, in calculating the amount of welfare benefits paid to the family. This meant that families received their full welfare check along with the first $50 of child support. The $50 pass-through requirement combined two distinct policies. The first was a distribution policy: should the state or the family get the money? The second was a disregard policy: should the income be counted or disregarded in determining welfare eligibility and benefit levels?

While the welfare reform law gave states the option to distribute and/or disregard their own state share of welfare collections to the family, they must still repay the federal share. In other words, the state, and not the federal government, bears the entire cost of any support passed through to families. Less than half of states have chosen to continue or increase the pass-through on those terms.[7]

Three states currently operate demonstration projects under federal waivers to distribute all current support to families on TANF. However, their disregard policies vary. Wisconsin distributes and disregards all current support, while Connecticut distributes all support and disregards $100, and Vermont distributes all support and disregards $50. Evaluation efforts are underway, and while it is too early to assess the impact of these policies, there is early evidence in Wisconsin that families receiving the full pass-through and disregard tend to leave welfare sooner. In Vermont, early results suggest that the state's distribution policy increased the average child support payment and the proportion of families receiving child support.

Child Support Makes a Difference to Low-Income Families.

Under welfare reform, mothers are expected to work and use their earnings to support their children. Under welfare reform, fathers also are expected to work and contribute to their children's support. By strengthening child support, policy makers recognized that poor and low-income children are going to need the support of both parents. To the extent that fathers have the ability to pay, strengthened child support policies under welfare reform will mean that more low-income families will be able to leave welfare and sustain low-wage employment. Next to earnings, child support is the second largest income source for poor single female-headed families receiving child support.[8] For poor families who get child support, the child support amounts to 26 percent of the family's budget, or $2000 per year. When families headed by single mothers get at least some child support during the year, their poverty rate drops significantly, from 33 to 22 percent.[9] Child support is complementary to work in that it helps increase single mothers' labor force participation, stabilizes and supplements low-wage earnings, and does not decline when the mother's earnings increase. If low-income single mothers receive child support, they often can forego a second or third part-time job. In addition, the child support system can be an important source of private and public health care coverage for children who would otherwise be uninsured.

However, child support is often overlooked as an important income supplement because less than a third of eligible families receive it. This is largely because half of poor custodial mothers lack a support order, the legal prerequisite to collecting support. The mothers who are the least likely to have support orders (and the fathers least able to pay support) are never-married, black, less educated, and very poor. Nonetheless, never-married mothers have seen dramatic gains, experiencing a four-fold increase in their child support receipt rate since the program started.[10] In addition, there is evidence that new tools such as employer data matching are disproportionately benefiting low-income families. Although child support is not likely to significantly increase the income of families in deep poverty, it is well targeted to poor and near-poor families where both parents are able to participate in the low-wage work force.

Child support has a dual quality, important not only as cash income, but as a way to encourage paternal involvement. Just as a job is about more than a paycheck, child support is about more than money. A father's good faith effort to pay child support carries with it symbolic meaning about his capacity to care for and take care of his children. The stakes are high for all members of the family. For fathers, it represents his basic commitment to his children. For mothers, it is evidence that the father will back her up. For children, it means that their father has put them first.

Establishing regular payment of child support appears to increase the fathers' involvement in their children's upbringing and improve child outcomes. It may also increase the availability of paternal relatives as a back-up system for child care and family emergencies, an important resource for single mothers working nontraditional hours and relying on multiple care givers. While domestic violence is a problem for some mothers, many mothers report that they encourage their children's emotional relationship with their father and his family, and try to keep the father involved in the children's lives when feasible.

Distribution Policies Work Against Poor Fathers and Mothers.

Current child support distribution rules make no sense to many poor mothers and fathers. In numerous studies, poor mothers and fathers of children receiving welfare identify the assignment requirement as a fundamental contradiction in the child support system that undermines their ability to work together to support their children. Parents want to be able to use their own money to support their children. Yet poor mothers and fathers both know that unless the father can pay enough to keep their children off of TANF, his support payments will be kept by the state as recovered welfare costs, and will not directly benefit the children.

Poor fathers and mothers who want to improve their children's lives, but can not fully support their children without some public help often find themselves in an untenable situation. The research indicates that poor mothers and fathers sometimes agree to informal contributions that by-pass the formal child support system. Many mothers and fathers are aware of each other's economic circumstances, and repeatedly re-negotiate their financial arrangements. Sometimes she holds back on formal enforcement. Sometimes, he pays informal financial support for the children. Sometimes, he does not pay regular support, but makes irregular in-kind contributions, such as diapers, school clothes, and Christmas gifts. Sometimes, he pays out of both pockets -- he pays off the state a little and he pays her a little. Sometimes she settles for non-financial support. Sometimes, they fight about the money. Sometimes, he walks away.

Yet no one is well served when parents agree to under-the-table payments and avoid the formal child support system. If a TANF mother accepts informal support from the father, she is vulnerable to a welfare fraud prosecution. In addition, informal payments are made at the discretion of the father. Informal payments are likely to be smaller and less regular, and there may be more disputes about the amounts paid. Payments are likely to decrease as the child gets older and the parents' relationship deteriorates. If a TANF father pays the mother informal support, his payment will not be credited through the formal system, and he will be liable for a growing arrearage balance. And, fundamentally, if the child support rules work against mothers and fathers, the child support system will lack integrity.

In addition, the child support program's welfare cost recovery focus can create unmanageable debt for low-income fathers. All states are required to set orders under child support guidelines based on the noncustodial parent's ability to pay. However, if a poor father's children are on welfare, his support order often can become unrelated to his ability to pay. Although federal policy is clear that support orders must be based on the state guidelines, some states add extra costs to the monthly support amount determined under the guidelines.[11] For example, Medicaid childbirth costs may be added to the order. Or the cost of welfare cash benefits paid to the family before the order was established may be added. These welfare cost recovery efforts can add thousands of dollars to the monthly order, interfere with a low-income father's ability to make regular payments, and sometimes drive him underground.

Helping Families Make the Transition Off of TANF.

Most poor children are no longer in the welfare system. Fewer families are applying for welfare benefits, and most of the families that have left welfare are now employed. However, much of that employment involves jobs that pay wages below the poverty line. When families do enter the welfare system, they often combine welfare and work, and leave welfare within a few months. When families receive regular child support, they are more likely to make it in the job market and less likely to return to welfare.

However, the distribution rules work against families who are leaving welfare. Families are supposed to start getting current support as soon as their TANF benefits end. Yet, the sheer complexity of the distribution rules aggravate a problem that has existed in some states for many years: the failure to account for and redirect child support payments to former TANF families in an accurate and timely manner. The child support agency sometimes retains the support improperly for months after welfare exits, because of administrative delays in identifying and changing the family's TANF case status. Instead of stabilizing the family's child support income before the family leaves TANF, child support is interrupted right at the point of exit and for some months thereafter.

The complexity of the distribution rules is also costly for the states and federal government. Problems with automating complicated distribution rules have been cited by many federal and state administrators as a contributing cause of computer systems delays and costs. The new rules require disproportionate training and staff time devoted to administering the rules, correcting errors, and explaining hard-to-understand decisions to parents. The new rules also heighten the vulnerability of states to audit problems. Because the new rules are so difficult to explain and administer, they erode confidence in the program's fairness and accuracy.

Simplicity, not complexity, must be the basic principle behind distribution rules. The simplest distribution rule is to treat all child support as support for children and income to the family. Researchers studying the Wisconsin demonstration to pass through all current support to families receiving W-2 assistance are finding important administrative advantages to a very simple distribution system. By having child support in place and budgeted for at the time of TANF exit, the child support system would help families transition off of welfare.

Sometimes, policy makers and advocates argue in favor of assignment rules because they believe a welfare check is more predictable income for the family. They also argue that assigning child support is easier administratively for the welfare agency because the welfare grant does not have to be adjusted when child support is collected. However, TANF families increasingly work part-time. In this new environment, welfare agencies have to put mechanisms in place to deal with month-to-month fluctuations in family income. In addition, the data suggest that there may be fewer month-to-month fluctuations in child support income than has been previously believed. Rather, child support appears to be similar to part-time earnings, with fluctuations occurring over the course of several months.

Some policy makers may also be reluctant to move to a full family distribution system because of concern about retaining families on TANF for longer periods if they receive child support income. However, when child support is paid to the family while receiving TANF, the family may be able to leave welfare sooner because the family will have a more accurate sense of the amount and regularity of child support payments available to combine with earnings. Preliminary results from the Wisconsin demonstration include findings that families move off of TANF faster when they receive child support, that fathers pay more support, and that administrative costs under the waiver are not increased. Preliminary findings in the Vermont demonstration also include increased child support payments by fathers.

The Cost Recovery Role of the Child Support Program is Obsolete.

The mission, caseload mix, and revenue-producing capability of the child support program are all changing dramatically. The child support program is not the revenue producer that it used to be. As TANF caseloads have plummeted, welfare collections also have fallen. Program funding has been destabilized in those states that use welfare collections to pay for child support program costs. Funding instability raises concern because of the established link between child support program resources and performance levels.[12] At the same time, overall program expenditures have steadily increased, as the program serves an increasing number of former and non-welfare families that do not produce direct revenues for the state.

While cost recovery seemed like a good deal to states in the beginning, there is increasing evidence that it has actually weakened the child support program's long-term ability to attract adequate resources to the program. From the start, the program was sold to state legislatures as a money maker. In some states, the political imperative to produce a state "profit" has overwhelmed service delivery needs, and forced child support agencies to make do with a budget and staff too meager to provide adequate services. The data suggests that child support programs that receive most of their state funding from welfare collections tend to fare worse that states that are funded through legislative appropriations. In addition, welfare collections are declining, further squeezing the budgets of programs that depend on welfare collections.

The cost-recovery role of the child support program has also undercut its visibility and status within the human services community. Even though it now serves several times as many families as the TANF program, closely fits the goals of welfare reform, and is a key income support program for low-income working families, the child support program has had trouble getting a seat at the welfare reform table. The program is often seen only as a limited reimbursement program--a program to make money from, not a program to help families. When the program can not show performance results, it has trouble attracting a constituency that will champion its concerns.

In order to attract new resources and to fully realize its potential, the message and funding base of the child support program have to change. Performance may deteriorate in some states unless state legislatures replace declining program revenues with new appropriations. For this to happen, state legislators have to make sense of the program, and the current distribution rules make this hard to do. Simplifying distribution will help increase the political standing of the child support program. By simplifying the program's message, state legislators can begin to see the program as a key program to advance welfare reform goals and to start to make program funding decisions on the same basis as other human services programs.

In the long run, eliminating the program's reliance on declining welfare collections and moving the program to a state appropriations basis will help stabilize and may even increase the program's resources. However, the concerns of child support administrators who rely on welfare collections to fund their programs are well-placed. In moving to full distribution, we can not pull the fiscal rug out from under these programs. A transition that includes state financing options and a phased-in implementation time frame would help states divest their welfare collections and place their child support programs on a sounder fiscal footing.

Treating Child Support as Support for Children.

There is growing support within the child support community for distribution reform. While there are a number of approaches to addressing distribution, there is widespread agreement that reform is needed. A number of recent legislative proposals in Congress would amend the the current distribution rules and increase the amount of support paid to families. These proposals represent important steps toward a full distribution policy. President Clinton recently announced a 2001 budget proposal to simplify post-TANF distribution rules and allow states to pass through more support to TANF families. In the Congress, legislation has been introduced by Sen. Kohl (S.1036) and Rep. Cardin (H.R. 3824), to allow states to distribute all support to TANF and former TANF families. In addition, legislation has been introduced by Rep. Johnson (H.R. 4469) to simplify the current on-off distribution rule.

By distributing all support to families, regardless of the family's TANF status, the child support program would come into better alignment with TANF goals:

- Child support would become part of a self-sufficiency strategy to help families leave TANF and maintain employment. Distributing child support to families while they are receiving TANF increases the likelihood that child support payments will be in place and will continue uninterrupted when a family leaves TANF.

- Noncustodial fathers would be able to contribute to their children's well-being. Distributing all support to families removes the disincentive to cooperate with collection efforts and removes a roadblock to linking the child support program to "responsible fatherhood" and other employment and training programs.

- By eliminating pressures to recover welfare costs, support orders would be based more consistently and fairly on the father's ability to pay. If welfare cost recovery was not part of the child support program's mission, the poorest fathers would not be burdened with demands to repay welfare costs that they can not afford.

- Full distribution of support would increase political support for the child support program by sending a consistent message about the program's goal to improve the well-being of children. Such a policy would be simple to administer and make sense to parents, child support workers, and legislators.

- Converting to a full distribution system would present a fiscal challenge, particularly in those states that depend upon welfare collections to fund their child support program. Ultimately, however, shifting the program to an appropriations basis would help stabilize the program's funding base.

While policy makers are increasingly receptive to the idea of distributing more of the money to families, including TANF families, this does not necessarily mean that they agree that all of the support should be disregarded when calculating welfare benefits. Some argue that unless the child support is disregarded, families will not be better off. Others argue that a disregard will retain families on welfare longer and create inequities among TANF families.

Certainly, the incentives for mothers and fathers to participate in the formal child support system are strongest when some or all support is disregarded when issuing TANF benefits. Most state TANF programs have adopted "make work pay" policies that disregard some of the mother's earned income to encourage and support her work effort. A similar rationale justifies disregarding some of the father's earned income contributed to the family as child support. A new study of the Minnesota Family Investment Program showed that increasing the earned income disregard had positive long-term impacts on employment and earnings, reduced poverty, and improved child wellbeing, and stabilized families.[13]

While a full or partial disregard would greatly help TANF families, full distribution--with or without a disregard--is the more critical reform for families and the child support program. More families will be affected and more money is at stake for families. The fact is that most poor families are no longer in the welfare system or will not remain long. The child support policy should be full-family distribution -- the state collects the money and gives it to the family. The TANF policy on how to treat the child support income should recognize that under the TANF block grant, states are given the responsibility for setting income and asset policies.

The reason for shifting to a full distribution policy is very basic: to treat all of the child support as family income and not as recovered welfare costs. To move to a full distribution system, both federal and state shares of retained collections should go to families, even if a state does not adopt a full disregard policy. Neither the states nor the federal government should use the child support system to recover welfare costs.

Conclusion.

The child support program, like other human services programs, must be brought into realignment with TANF goals and the realities of time-limited welfare. The goals of welfare reform--to promote work and to encourage the formation and maintenance of two-parent families--are best complemented by a child support strategy that respects child support as the family's own money and as the father's financial contribution to his children. A full distribution policy would reinforce parental responsibility and respect child support as a father's financial contribution to his children. It would help remove the disincentive for parents to pay support through the formal system. It would greatly simplify and rationalize program administration, and prevent delays at the point of TANF exits. It would help reorient the culture of the child support program by reducing its emphasis on welfare cost recovery, and increasing its focus on supporting work and families. And, in the long run, it would help increase political support for the child support program.

[1] A version of this paper was published in 5 Pub. Int. L. Rep. 13, Loyola University School of Law (Spring 2000).

[2] Since most custodial parents are mothers and most noncustodial parents are fathers, this discussion uses the term mother interchangeably with custodial parent and father to refer to a noncustodial parent. The situation can be, and

sometimes is, reversed. About 15 percent of custodial parents are fathers.

[3] 42 U.S.C. §608(a)(3)(1999).

[4] Michael Fishman, Kristin Dybdal, and John Tapogna, *State Financing of Child Support Enforcement Programs,* Final Report to HHS/ASPE, Contract No. 100-96-0011 (1999).

[5] U.S. Department of Health and Human Services, *Characteristics of Families Using IV-D Services in 1995* (May 1999) (Matthew Lyon), available at www.acf.dhhs.gov/programs/cse.

[6] 42 U.S.C. §657(1999).

[7] For a list of state pass-through policies, *see* Paula Roberts, *State Policy re Pass-through and Disregard of Current Month's Child Support Collected for Families Receiving TANF-Funded Cash Assistance* (Washington, DC: CLASP, 1999), posted at www.clasp.org.

[8] Earnings are 38%, cash assistance is 20%, and other income is 16% of the budgets of poor families receiving child support. See Elaine Sorenson and Chava Zibman, *To What Extent Do Children Benefit from Child Support?* (Washington, DC: Urban Institute, Jan. 2000).

[9] U.S. Bureau of the Census, *Child Support for Custodial Mothers and Fathers: 1995*, P. 60-196 (April 1999).

[10] Elaine Sorenson and Ariel Halpern, *Child Support Enforcement Is Working Better than We Think*, New Federalism Issues and Options for States, Series A, No. A-31 Washington, DC: Urban Institute, March 1999).

[11] OCSE Action Transmittals 99-10 (Sept. 15, 1999) and 93-04 (March 22, 1993). For a discussion of issues relating to welfare arrearage policies, see Vicki Turetsky, *Realistic Child Support Policies for Low Income Fathers* (Washington, DC: CLASP, March 2000), posted at www.clasp.org.

[12] For two recent studies examining the effect of child support expenditures on performance, *see* R. Freeman and J. Waldfogel, "Dunning Delinquent Dads: Child Support Enforcement Policy and Never-Married Women," *Focus,* vol. 21 (Spring 2000) (University of Wisconsin-Madison, Institute for Research on Poverty); Vicki Turetsky, *You Get What You Pay For: How Federal and State Investment Decisions Affect Child Support Performance* (Washington, DC: CLASP, 1998).

[13] Virginia Knox, Cynthia Miller, and Lisa A. Gennetain, *Reforming Welfare and Rewarding Work: A Summary of the Final Report on the Minnesota Family Investment Program* (New York: MDRC: 2000), posted at www.mdrc.org (initial MFIP pilot tested).