

# Child Support

## BACKGROUND

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Child-support issues have become increasingly important in recent years, driven by dramatic changes in American family life, particularly with regard to children who are born out wedlock or whose parents divorce.

### GLOSSARY

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#### **Custodial parent**

*The parent awarded physical custody of a minor child and therefore responsible for day-to-day decisions affecting the child.*

#### **Child Support Enforcement System (CSES)**

*The computerized case-management system required of each state by the federal Family Support Act of 1988 to streamline the administration of state child-support programs.*

#### **Fragile family**

*Unmarried parents raising a child together; called "family" because children are being raised jointly and "fragile" because of the high risk of poverty and instability.*

#### **Imputed income**

*The amount a person is able to earn, even if s/he currently is not earning at that level.*

#### **Noncustodial parent**

*The parent who does not have custody of the child and is not responsible for day-to-day decisions affecting the child's well-being. A noncustodial parent may have rights to visit the child or have the child with him/her for periods of time ("visitation" rights and "parenting time") as well as a legal obligation to pay child support.*

#### **Shared economic responsibility (SER)**

*The circumstance in which a noncustodial parent has a child with him/her frequently enough (at least 128 overnights annually) to be considered directly contributing to the child's care.*

- In 1960 about 4 percent of all U.S. children were born out of wedlock; the figure is closer to 33 percent today.
- In Michigan the annual number of divorces has more than doubled since 1960; in 2000 the parents of approximately 37,000 Michigan children under age 18 were divorced.

Children born out of wedlock or whose parents divorce can face numerous economic and psychological hardships. Those who live only with their father are three times more likely to live in poverty than are children living with two parents; those living only with their mother are seven times more likely. Because children living in single-parent households frequently receive public assistance, policymakers have become increasingly concerned about the link between welfare and child-support enforcement.

A court determines whether custody of children of a divorce is granted to the mother, father, both (joint custody), or a third party. Granting sole custody to the mother is by far the most common arrangement. Michigan Department of Community Health statistics show that of nearly 19,900 court cases in which custody was awarded in 2000, mothers became the sole custodial parent in about 13,000 cases (almost 66 percent). Joint custody was awarded in about 22 percent of cases, and the father received sole custody in 11 percent. In a few instances, custody was awarded to a third party. The noncustodial parent typically incurs a legal obligation to help support the child(ren) financially.

In 1986, to increase uniformity and predictability of child support statewide, Michigan adopted a formula identifying the factors to be considered in setting awards: the child's needs, both parents' resources, and child-care and health-care costs. The state formula permits use of "imputed" income to set the support level—that is, the court may find that the noncustodial parent has the ability to earn a certain amount, even if s/he currently is not earning at that level. The formula also recognizes cases of "shared economic responsibility" (SER)—that is, the noncustodial parent has custody of a child for 128 or more overnight visits annually—and allows support payments to be reduced because the noncustodial parent is directly contributing to care.

Efforts to force noncustodial parents to pay their child support have become much more aggressive and successful in recent years. Nevertheless, the total arrearage in Michigan—the amount owed but not paid—exceeds \$7 billion.

### **Michigan's Child-Support System**

Michigan, like other states, has two child-support enforcement systems—one private and one public. The private system most often is used by parents who are financially stable and prefer to manage child support without government involvement. The public system, the subject of this piece, involves a partnership between the judicial and the executive branches of government that acts on behalf of the child.

## CHILD SUPPORT

The foundation for the public system was laid in 1917 with the establishment of Friend of the Court (FOC) offices within the circuit courts of all 83 counties. Currently, the FOCs have a number of responsibilities, but two predominate: (1) They collect individual child-support payments (that is, payments made directly by the parent as opposed to payments withheld from wages) and distribute court-ordered child-support payments, and (2) they enforce court-ordered custody, parenting time, and financial support. By 2003 the payments will be collected and distributed by the Michigan State Disbursement Unit (MiSDU), as discussed below.

In the early 1970s, Congress recognized that the child-support system across the country was failing many low-income parents and added Title IV-D to the Social Security Act. At that point, child support became a federal as well as a state responsibility. Title IV-D required every state to establish a child-support agency that provides services to low-income families as well as others for a very small or no fee. Michigan's designated Title IV-D agency is the Office of Child Support (OCS), in the Michigan Family Independence Agency. The OCS retains fiscal and policy control of the Michigan child-support system and its field staff provides intake and case preparation in 128 offices statewide. The FOCs and local prosecutors perform legal and enforcement work under contract to the OCS.

### Federal and State Reforms

In the 30 years since Title IV-D was created, the federal government steadily has increased its role in child-support enforcement, and many of Michigan's recent reforms respond to federal changes. Two federal laws, the Family Support Act of 1988 and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, are particularly significant.

The Family Support Act required each state to establish a computerized case-management system—the Child Support Enforcement System (CSES)—by 1997. Only 17 states met the original deadline, and Michigan was not among them. As of the end of FY 1999–2000, Michigan was among only three states that still did not have a federally certified CSES, and the accrued penalties—in the form of escalating reductions in federal grants to the state child-support program—were mounting: The Michigan Senate Fiscal Agency (SFA) calculates that Michigan originally incurred nearly \$69 million in penalties. The OCS notes that \$35 million was recaptured as the state moved toward compliance.

The state offset the federal penalties with supplemental appropriations and General Fund transfers to child-support programming, thus, at first, child-support program-

ming was not greatly affected. But the SFA believes a failure in FY 2000–01 to complete CSES implementation would have led to an additional \$50 million in penalties and severe program impacts. As of the end of FY 2000–01, Michigan does have a version of the CSES operational and ready for federal inspection. While state officials expect certification to be forthcoming, it is not certain, and the child-support budget will be precarious as long as additional penalties are possible.

PRWORA is the main vehicle of national welfare reform. While public attention focused mainly on its welfare-to-work requirements, most of the language in the new law deals with child-support enforcement. The legislation reflects the belief that children are less likely to need welfare when their parents meet legal obligations to support them. Under PRWORA, welfare recipients must turn over their child-support payments to the state and cooperate with efforts to establish a child's paternity. The law also created new child-support enforcement tools, including a (1) national "new hire" reporting system that makes it easier to locate absent parents and enforce support orders and (2) license-revocation capability that allows states to revoke professional, driver, and recreation (e.g., hunting and fishing) licenses when support is not paid.

A number of Michigan's recent policy initiatives anticipate or respond to PRWORA mandates and include the following:

- An in-hospital paternity program that establishes responsibility for child support and gives the child inheritance rights, access to the father's medical history and insurance (if he has it), and other benefits
- The "Fatherhood Initiative," begun in partnership with the Detroit Lions to encourage men to take a more active role in their children's lives
- The Uniform Interstate Family Support Act, which simplifies managing interstate child-support cases

PRWORA also mandated major changes in the way states collect money. Under its provisions, states are allowed to establish Financial Institutions Data Match programs that provide access to bank and other financial data for the purpose of locating parents and enforcing child-support orders. The act also required creation of a centralized collections unit—in Michigan, the Michigan State Disbursement Unit.

### Collection and Disbursement

The FOCs still are the enforcement agency of record and, therefore, the legal collector of support. Their role is greatly changed, however, by creation of MiSDU, which, by 2003,

will collect and disburse all payments. Currently, individual payments—that is, those made by unemployed or self-employed parents—still are collected by the FOCs. But child-support payments withheld from employee wages (more than 70 percent of the total collected) now go directly from employers to the MiSDU. The MiSDU eventually will disburse as well as collect payments, but for now it sends payment authorization to the local FOC offices, which print and mail checks to the recipients.

In FY 2000–01 the state system collected \$1.5 billion in child support, approximately 4 percent more than in the prior year and roughly 52 percent more than in FY 1994–95 (see the exhibit).

Much of the increase is in response to the more aggressive collection mandates required by PRWORA—especially through the Financial Institutions Data Match program. Two additional facts about state child-support collections are important because of their public policy implications:

- There often is a large gap between the amount in child-support payments that the state takes in during any given time period and the amount it pays out. At the conclusion of the 4th quarter of FY 2001, the state had on hand approximately \$44 million more than it had paid out.
- The current arrearage—the amount owed by parents but not collected—is enormous: according to OCS

officials, more than \$7 billion when the accumulating 8 percent interest is included.

### Current Michigan Initiatives

At this writing, the Michigan House of Representatives is considering legislation that would greatly affect state child-support policy. The proposed bills would

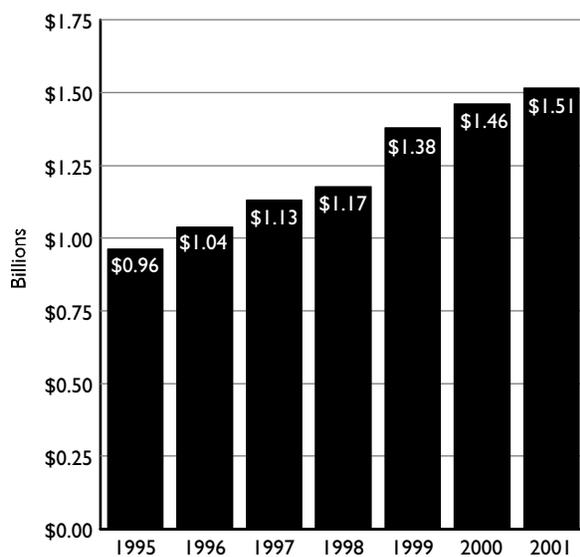
- commit the state to a more aggressive effort to locate children and families for whom support payments have been made but not distributed (HB 4918);
- amend the Child Custody Act to create a presumption—rebuttable only by clear and convincing evidence that one parent is unfit—that a child's best interest is served by joint custody arrangements (HB 4664); and
- establish a broadly empowered Marriage and Fatherhood Commission in the state Legislative Council (HB 5545).

### DISCUSSION

Many observers are dismayed at the loss of millions in federal dollars due to problems with the Child Support Enforcement System. Although money from other sources prevented wholesale erosion of child-support programs, the funds had to come from other programs. State officials contend that Michigan's decentralized system was largely to blame: local counties were able, in effect, to veto the establishment of the CSES system statewide. Critics, however, believe state officials bear responsibility too and claim that it cost far more money to implement the CSES in Michigan than in any other state (the latter is vigorously disputed by the OCS).

Debate on HB 4918, which would affect how the state uses the child-support money it collects but does not distribute, promises to be contentious. State officials argue that although technically accurate, it is misleading to claim that the gap between collected and distributed funds runs to tens of millions of dollars. The key distinction, they say, is between *undistributed* and *undistributable* funds. Money may not be distributed immediately for a variety of technical and legal reasons, but they argue that only about \$700,000 actually is undistributable (because the custodial parent, to whom the money is to be directed, cannot be found). Supporters of the bill are skeptical of this claim and insist that the state must do a better job of finding custodial parents. At the very least, they say, undistributable funds should be returned to the noncustodial parents who paid them—not kept by the state.

### Michigan Child-Support Collections, FYs 1995–2001 (\$ billions)



SOURCE: Michigan Family Independence Agency, Office of Child Support.

## CHILD SUPPORT

House Bill 4664, to make joint custody the “default” arrangement, also is controversial. Organizations such as Dads of Michigan, which is dedicated to rectifying what it perceives as a systemic bias against fathers in divorce and child-support cases, support the bill. The organization argues that children are better off in joint-custody situations and also that the law would make the shared economic responsibility formula available to many more parents than use it now. The Association for Children for Enforcement of Support (ACES) takes a different view. While it generally supports joint custody, ACES opposes the presumption of joint custody unless one parent is demonstrated to be unfit. In its view, custody hearings ought to hinge on what is best for children, not on parental fitness or unfitness. Although the State Bar of Michigan has not commented directly on this legislation, members of its Family Law Section are sufficiently concerned about inequities in the use of the SER formula to appoint an *ad hoc* subcommittee to study the issue.

As so often has been the case, federal developments may affect state policy. Key federal welfare statutes are up for reauthorization in 2002, and lawmakers on both sides of the aisle express concern for the so-called fragile families—that is, arrangements in which children’s unmarried natural parents, very often poor, are working together to raise them. Studies suggest that current welfare policy may create economic incentives for such couples to remain unmarried. The *New York Times* reports emerging bipartisan agreement that more should be done to create economic incentives that encourage marriage whenever possible or, at a minimum, the active involvement of both natural parents in childrearing.

The problem of the accumulating arrearage—in Michigan and elsewhere—is immense and apparently without solution for the moment. Simply “forgiving” delinquent payers would send the wrong message to parents who have conscientiously met their child-support obligations all along, but the fact is that the debt burden for some parents is now so high that they literally can never repay.

See also Welfare Reform: TANF Reauthorization; Youth at Risk.

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## FOR ADDITIONAL INFORMATION

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