



National Center for Youth Law

## RECOMMENDATIONS ON CHILD SUPPORT

### California Working Families Policy Summit January 18, 2007

#### Introduction

The Child Support Program was originally designed by Congress in 1975 as a cost-recovery program to reimburse state and federal governments for public assistance paid to children. However, since the implementation of welfare reform in 1996, which included time limits and work requirements, there has been a dramatic change in the population served by the Child Support Program.

In 1997, sixty-one percent of the California families that received child support services were current welfare cases. By 2005, that number dropped to twenty-five percent. Likewise, in 1997 forty-six percent of collections in California were retained by the State as reimbursement for current assistance families. In 2005, only thirteen percent of the California collections were retained by the State for current assistance families.<sup>i</sup>

Federal policy from The Office of Child Support Enforcement establishes that: “Child support is no longer primarily a welfare reimbursement, revenue-producing device for the Federal and State governments; it is a *family-first program*, intended to ensure families’ self-sufficiency by making child support a more reliable source of income.”<sup>ii</sup>

In 2005, the Child Support Program served 1.8 million California families with 1.9 million children. In that same year, \$2.2 billion was collected from absent parents. Most of the collections now go directly to families who are not receiving assistance. It is estimated that in Fiscal Year 2006-07 California will distribute \$1.77 billion to families directly, or seventy-five percent of the total collections of \$2.36 billion, while retaining only \$587 million as reimbursement for welfare costs.<sup>iii</sup>

Clearly, the Child Support Program is now an integral financial component of the support system for children of low-wage working custodial parents.

In addition to helping families avoid welfare, the receipt of child support has also generated revenue for the State. In Fiscal Year 2006-07, the State is projected to spend \$290 million from the General Fund (not including federal automation penalties) for the administration of the program. In the same period, it is expected to recover \$297 million for the State General Fund. With the federal matching rate for program administration, there is a net benefit to the State General Fund of \$7 million.<sup>iv</sup> The State can, therefore, transfer \$1.8 billion from absent parents directly to children of those parents at a small profit.

In 2007, federal support for the Child Support Program will decrease due to changes in federal law last year. At the same time, other federal law changes offer states new options to increase the amount of child support paid to families who receive assistance and those who formerly received assistance. In the upcoming year, the Legislature will face important decisions about maintaining the funding for the Child Support Program – and ensuring this essential support for nearly 2 million California families.

### **Policy Objective #1**

**Restore the \$90 million that was cut from the federal contribution to Child Support Program administration in the Deficit Reduction Act by investing \$30 million in state funds to secure \$60 million in matching federal funds.**

### ***Background***

On February 8, 2006, the President signed The Deficit Reduction Act of 2005 (DRA).<sup>v</sup> The DRA, among other things, now prohibits States from receiving federal matching payments for the administration of the child support program on the federal incentive payments that States earn based on their child support program performance.<sup>vi</sup> This change, effective October 1, 2007, will reduce the federal government's current 66% sharing ratio to zero, resulting in a nearly one-half billion dollar loss of federal funds to the State over five years. Additionally, this reduction could result in over \$800 million in lost collections over 5 years that go to both the State as welfare recovery (\$146 million) and directly to families (\$681 million), as well as a \$240 million reduction in other State program cost avoidance. Over five years, the total lost collections and cost avoidance will result in over a \$1.5 billion loss to California.<sup>vii</sup>

### ***Recommended Actions***

**A.** The State Fiscal Year 2007-08 Budget should backfill the lost federal match on the child support incentive payments. Although the impact of the DRA on California from the direct loss of federal funds is approximately \$90 million, the State can restore that \$90 million by appropriating \$30 million for the backfill. The \$30 million is eligible for the 66 percent federal match and, therefore, with the match, the current child support funding would remain constant and the California General Fund and families would not suffer nearly \$1 billion in lost collections over 5 years.<sup>viii</sup>

**B.** A State Fiscal Year 2007-08 backfill of lost federal incentive match should be tied to, and contingent upon, improved program performance. The original intent of the federal incentive funds and their 66 percent match is to encourage improved child support collections. The federal incentives have been worth nearly \$150 million annually in California and have served to provide an incentive for improved State and county performance. The federal reduction of the incentive funds in the DRA eliminates most of the performance incentives that previously existed before the reduction. Thus, any State backfill funds should be based on performance improvement to ensure a continued commitment to improved child support collections and program performance.

## **Policy Objective #2**

**The Legislature should take advantage of new state flexibility in the DRA to increase the amount of child support paid to both families who receive assistance and those who formerly received assistance.**

### ***Background***

Although the DRA made a significant cut in the federal incentive match to the states, it also included several options and new flexibility for States to pass through more child support to families that receive and formerly received assistance.<sup>ix</sup> These options, if implemented, can significantly assist families who receive CalWORKs benefits and those who are transitioning to employment. Most importantly, these options recognize that under the new vision of the child support program, children – not the government – should receive the child support paid by their parents.

Federal law establishes a complex scheme for distributing child support it collects on behalf of families. The rules for distributing child support are based on whether the family on whose behalf the support is paid is receiving assistance, formerly received assistance, or never received assistance.

Before a family may receive CalWORKs benefits, any rights to child support owed to children in the family must be assigned to the State for both the period the family receives assistance and for child support which accrued before the family received assistance.<sup>x</sup> For the period that the family receives assistance, the State may retain any current support payment and any pre-assistance arrearages that it collects that do not exceed the amount of the total of assistance paid. In California, a CalWORKs family that receives a current child support payment is entitled to have the first \$50 of the payment “passed through” to the family and “disregarded” as income and resources for CalWORKs eligibility.

The distribution rules for families that leave assistance, known as “former assistance,” are far more complicated. When a family leaves CalWORKs, the State must keep track of six categories of child support arrearages that are determined by the families assistance status when the arrearage accrued, the amount of the non-reimbursed public assistance balance, the date of the assignment of support rights as well as the date the CalWORKs case closed, and whether the family received assistance before or after October 1, 1997.

In former assistance cases, if a collection is from an IRS tax refund intercept, it will be paid to the State rather than the family, up to the cumulative amount of the assistance not reimbursed. Any other support payment is first distributed to the family and any balance is allocated to any arrearages and distributed depending on the category of the arrearage.

A family that has never received assistance can still receive child support services from the State. The distribution rules for these families are much simpler: the State must distribute all collections, current and arrearages, to the family.

The DRA provides a number of options to the State, with varying effective dates, that will increase the amount of child support that can go directly to families. We recommend a focus on five of those options.<sup>xi</sup>

### ***Recommended Actions***

A. For families currently in CalWORKs:

The Legislature should implement the option to “pass through” and “disregard” child support received on behalf of CalWORKs families to the maximum amount the federal government shares the cost. Fifty percent of any child support collected on behalf of a CalWORKs family must be shared with the federal government. Effective October 1, 2008, the federal government will waive its 50 percent share of collections if the State “passes through” and “disregards” the collection for CalWORKs eligibility up to \$100 for one child and \$200 for two or more children. California currently “passes through” and “disregards” \$50 of current support to CalWORKS families and pays the federal share. Thus, implementing the \$100 federal amount would result in no new state costs and the increase to \$200 would result in minor costs.

B. For families applying to CalWORKs:

The Legislature should implement the option in 2008 to eliminate the State’s claim to child support arrearages for families that apply for CalWORKs benefits. This provision is mandatory as of October 1, 2009, but the State may elect to implement one year early. All CalWORKS applicants must assign to the State their right to child support which has accrued and is unpaid before the date of their application. This will allow a CalWORKs family to keep more child support collected on their behalf one year earlier than required by federal law.

C. For families applying to, currently in, or have left CalWORKs:

The Legislature should implement the option to discontinue the assignment of pre-assistance arrears that accrued on or before September 30, 1997. Currently any assignment of child support that existed in the former Aid to Families with Dependent Children (AFDC) program must remain in effect. The State can give up its claim to this child support and, if collected, it would go directly to the family. This option is effective October 1, 2009. Electing this option significantly simplifies the child support system.

D. For families that have left CalWORKs:

The Legislature should implement the option to give families who have left CalWORKs more of the child support collected on their behalf. Currently, whenever child support is collected on behalf of a former CalWORKs recipient through a federal income tax offset, the State retains the collection. Pursuant to a DRA option the State may distribute the child support arrearages to the former CalWORKs recipient when it is collected through an IRS tax intercept. This option is effective October 1, 2008 and, if elected by the State, the federal government will waive its 50 percent share of the collection if the payment goes to the family. This means more child support for families that have transitioned off of CalWORKs.

E. For non-welfare families:

The Legislature should pay the \$25 annual fee for families who have never received CalWORKs benefits and receive a child support collection that exceeds \$500. The DRA requires that States charge a \$25 annual fee to families who have never received assistance, effective January 1, 2008. The State may collect the fee from the custodial parent, the noncustodial parent or pay the fee itself.<sup>xiii</sup>

## Endnotes

<sup>i</sup> Source: Office of Child Support Enforcement, *Annual Reports*, available at: <http://www.acf.dhhs.gov/programs/cse/pubs/index.html#annual>.

<sup>ii</sup> Office of Child Support Enforcement, U.S. Department of Health and Human Services, *National Child Support Enforcement Strategic Plan FY 2005-2009*, p. 1.

<sup>iii</sup> Source: Department of Child Support Services, *Local Assistance and Administrative Costs and Collections Estimates*, January 10, 2006, available at: <http://www.childsup.cahwnet.gov/pub/budget/2007/2007-01budget.pdf>.

<sup>iv</sup> *Id.*

<sup>v</sup> Pub. L. 109-171, 120 Stat. 4 (2006).

<sup>vi</sup> The Child Support Program is financed through three major revenue streams: 1) Federal government reimbursements provide states with 66 percent of all State administrative costs; 2) Child support collections assigned by families that receive TANF and foster care benefits; and, 3) Federal incentive payments designed to encourage States to collect child support for both assistance and nonassistance families. Under the federal incentive payment scheme Congress has appropriated a national incentive pool of funds (\$471 million in 2007) to be divided between the states based on their child support program performance in five specified performance areas. States are required to use their incentive payments in the Child Support Program. Once those incentive payments are spent in the program, they are also eligible for the 66 percent federal match for any additional state funds spent. California's share of the federal incentives for Fiscal Year 2005-06 is \$47 million. Along with the 66 percent federal match, the federal incentives are worth over \$138 million to California.

<sup>vii</sup> National Center for Youth Law, *California Families and General Fund Combined Will Lose Over \$1.5 Billion Over 5 Years if Federal Matching Funds for Child Support Incentive Payments are Eliminated*, (February, 2006).

<sup>viii</sup> The Governor's 2007-08 Proposed Budget provides a backfill of \$23 million State General Fund for a total replacement of \$67.6 million with the federal matching funds.

<sup>ix</sup> See, Center for Law and Social Policy and Policy Studies, Inc., *More Child Support Dollars to Kids: Using New State Flexibility in Child Support Pass-Through and Distribution Rules to Benefit Government and Families*, (July, 2006).

<sup>x</sup> An "assignment" conveys to the State the legal right to receive child support ordered by a court from the person on whose behalf the support is owed and paid.

<sup>xi</sup> The DRA contains several other provisions to improve the collection of child and medical support. We emphasize these five as important priorities.

<sup>xii</sup> The Governor's 2007-08 Proposed Budget provides \$1.8 million from the State General Fund to pay the federal share of the mandatory fees required by the DRA.

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