

Written Statement of
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Alliance for Non-Custodial Parents' Rights
for the
Hearing on Fatherhood

April 27, 1999

THE COMMITTEE ON WAYS AND MEANS

Subcommittee on Human Resources

Congresswoman Nancy L. Johnson, Chair

- Committee on
Ways and Means
- U.S. House of
Representatives
- 1102 Longworth
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- Washington, D.C.
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FOCUS OF THE HEARING

This committee's stated focus is on 1) low-income fathers who have children outside of marriage and 2) helping low-income fathers improve economically and promote marriage.

This hearing on fatherhood reveals a major misunderstanding: it assumes fathers are the source of these problems. They are not. Child support policy, along with changing social mores, is the problem. Nothing can be done in the short-term to change societal norms, but child support policy can be fixed immediately.

Improving job prospects for low-income people - whether mothers or fathers, parents or non-parents - is a good idea. But with our current no-fault divorce laws and lucrative economic incentives encouraging divorce, a problem emerges: as low-income families become middle-class, they can expect to be divorced by women, not men. Women initiate divorce at a rate 3 times that of men. The more financially independent the women are - either from their own earnings or from child and/or spousal support - the greater the chance of divorce. During economic boom times, divorce increases. During recessions, it decreases.

But what is the real goal for getting fathers employed - is it to better their life or is it to generate an income stream that the government will tap into to collect child support? If it is the latter, it will fail miserably. It is not uncommon to see wage garnishments of 50% of the noncustodial parents' gross wages. At these staggering levels, why work? He won't be bettering himself - he will be working more, incurring more expenses, paying more taxes, experiencing more aches and pains and having less free time - all for the benefit of someone that doesn't like him enough to live with or vice versa. But if the reason is to support his children, this too is a fallacy, as child support won't help his children (see "Myth: Child Support Lifts Children out of Poverty" below). He is expected to take responsibility repaying a loan that he had no say in getting (see "Welfare: Grant or Loan?" below). Rarely do people pay something for nothing.

Obviously, women should not (and cannot) be held back from their ambitions. Everyone needs to be rewarded for taking individual responsibility. The work ethic needs to be restored. Our laws discourage responsible behavior (see "Perverse Incentives of Child Support" below). Divorce is the only contract in America that rewards that person breaking it. Child support is tax-free income with no accountability as to how it's spent. Visitation violations and false abuse allegations are not prosecuted.

Another problem is that being a full-time mother is not valued and respected in today's society. The feeling is that women should be establishing careers while leaving the raising of their children up to "professionals." Then we are shocked to learn that these professionals - whether it's a poor inner-city babysitter or a Louise Woodward-type nanny - are slapping, hitting and/or ignoring the very children they were hired to raise. The message society and the media gives is "you can have it all." This is the ultimate quantity over quality argument. It's greed. The reality is you cannot have it all, all at once, all the time. The media is the biggest culprit in this arena, not only perpetuating the myth that you can have it all, but leading us to believe that "everyone else is doing it, so why can't you?"

It is important to recognize two distinct groups affected by child support collections: welfare and non-welfare. Sanford Braver points out in his book *"Divorced Dads: Shattering the Myths,"* that a big difference exists between divorced fathers and never-married fathers. Government policy is clearly delineated along the lines of welfare recipients (a.k.a. Title IV-D) and non-welfare recipients. This probably correlates well with Dr. Braver's married/never-married division. So if new government programs are lucky enough to "work," child support problems will shift from the welfare group to the

non-welfare group. They will not be eliminated. The remainder of this paper will examine family issues that apply to all socioeconomic groups.

Child support hurts children.

How could this be? After all, kids need to be clothed, housed and fed and that takes money. And child support collects this money for kids - at least in theory. Child support, with its excessive awards and draconian punishments, only serves to force noncustodial parents into exile, irreparably harming the children. Child support allows single-parent households to flourish.

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Child support awards are excessive Compare the average child support award against other government measures such as welfare, foster care, social security and the poverty level.

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| Average Child Support Award | \$733/mo | noncustodial parent's portion only |
| Foster Care | \$358/mo | |
| Welfare (Michigan) | \$87.80/mo* | \$439/mo for a mother + 2 kids |
| Welfare (San Diego) | \$128.57/mo* | \$900/mo - mother + 4 kids (includes food stamps) |
| Average welfare benefit per recipient | 131.90/mo | Feb 1997 TANF |
| 1997 HHS Adult Poverty Guidelines | \$657.50/mo | \$8,163 (1 Adult under 65) |
| 1997 HHS Child Poverty Guidelines | \$221/mo | \$10,815 (1 Adult under 65 with 1 child under 18) |
| Social Security Adult Disability Income | \$470/mo | |

*-converted into "child equivalents" based on adult to child poverty ratio of 3:1

Even radical feminist and author Karen Winner confirms that child support is excessive when she writes, "There is accumulating evidence that men are challenging their wives for custody of the children precisely because it is cheaper to keep them than to pay child support." Custodial parents often complain about how low support orders are, but when suggested that they give up custody and *they* pay child support, the screams are deafening. If support orders were equitable, this wouldn't happen.

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Child support punishments are draconian Congress has passed tougher and tougher legislation since child support's (Federal) inception in 1975 - always hoping "this time it will work." It never has and it never will. The Constitution along with individual rights, have taken a beating in the process. Today, child support is the only debt that one can be jailed for (debtor's prison), you can lose your driver's license (or any license) even though your "crime" had nothing to do with a car, invasion of privacy is rampant through government sponsored databases such as the Federal Parent Locator System (FPLS) and the National Directory of New Hires (NDNH). HHS' FPLS tracks noncustodial parents' whereabouts and gives this information to custodial parents. However, if the custodial parent moves away with the children against court orders, such as Geraldine Jensen, founder of ACES did, 1) they are not prosecuted for kidnapping (or violating a court order) and 2) HHS will not give the noncustodial parents information on their children's whereabouts. In other words, the FPLS is a one-way street. Administrative accountability is non-existent. Bureaucrats are free to ruin your life (e.g. false paternity assignments and incorrect reporting to credit bureaus), and they are legally absolved of any liability. It's open season on noncustodial parents.

The current session of Congress has more "get tough" legislation introduced by Henry Hyde and Lynn Woolsey in addition to Christopher Cox, less than a year after President Clinton signed The Deadbeat Parents Punishment Act of 1998 into law. Child support and penalties accrue during unemployment and incarceration (even if you are a POW). The state of Georgia is considering "work camps" for noncustodial parents. Slavery is making a comeback.

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Myth: Child Support Helps Children Aside from the fact that parents are forced into exile by our child support laws, no study has ever shown child support to help children. And how could it, since no accountability is required of custodial parents. Custodial parents can spend this tax-free gift on anything they want: booze, drugs, new clothes, a new car, vacations - maybe even on the children. Nobody knows how much of the money ever reaches the child. UCLA Professor William S. Comanor estimates that only \$1 in \$5 of child support actually is spent on the child. Why not adopt the same documentation rules for custodial parents that the IRS requires for tax deductions? Ditto for penalties and fines.

Studies do show that states highest in child support and welfare payments rank lowest in child well-being (in fact, this information was presented to this very same committee in 1995). Why? Money is a destabilizer or put differently, a single-parent household enabler. What was responsible for increasing child well-being? The intact family, something not terribly popular with society's "me, me, me" attitude. Divorces increase during economic boom times and decrease during tough times. Child support, like welfare, creates an individual economic boom (without requiring work, no less).

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Perverse Incentives of Child Support Child support not only encourages irresponsible behavior, but demands it. Consider the case of the responsible noncustodial parent who works a second job to make up for the severe economic loss child support payments have created. He's doing what we would consider to be the responsible thing to do: improving himself, supporting his current family. The work ethic. He will have higher expenses, pay more taxes and have less time for himself and his family. But when the custodial parent hears of his second job, she files a petition for upward modification of child support based on his new increased income. The judge will grant this increase, as it is law. Net effect: the more responsible you are, the more child support punishes you. Why not cut back on your hours; even work less than full time? Enjoy yourself. Plus, you could use this as a form of revenge. The custodial parent has had all of her expenses paid for by the taxpayer (prosecution, attorneys, court fees, admin services). The noncustodial parent is forced to hire an attorney, file court papers and miss work - all direct expenses that he must pay. If he fails to do this, he will lose on default judgment.

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Welfare: Grant or Loan?

Welfare is treated as a grant. The mother applies for welfare and gets it. The father has no say in the matter. If it were a loan, there would be principal, interest, late payment penalties and a length of the loan. For the mother, it is a grant - there is no intention of it ever being repaid, *by her*. But for the father, welfare that the mother applied for and received - often without his knowledge or consent - has now become a loan, complete with interest, penalties, even jail. For low-income fathers, it may be a moot point, as many do not earn enough to repay it.

For non-welfare fathers, why would anyone repay a loan that they had no say in obtaining? Granting welfare to one party and asking a non-participating party to repay this is the ultimate in irresponsibility. If a mother must go on welfare, the father should be offered custody of the children. If he assumes custody, then the mother would work (consistent with welfare to work policy) and pay the father child support.

Remember, collecting child support in welfare cases produces no benefit to the mother or children. All money goes back to the government. Please do not use the excuse that child support will lift children out of poverty.

An underlying problem with child support is that awards 1) do not reflect the dynamic nature of the economy and 2) are not necessarily based on earnings. Child support is based on a percentage of income, but not a dynamic or current percentage. If the child support order is calculated during a high earning period (overtime or commissions), then the noncustodial parent is stuck with a high order. Likewise, if the parent becomes

disabled or get laid off, child support ignores these facts. Why not make the percentage a true percentage? If your support order is 20% and you get laid off, 20% of \$0 = \$0.

Secondly, child support orders are often based on imputed wages - what the judge *thinks* you could or should be earning. Why not simply use reality? Disallow imputed earnings and base support on actual earnings. Imputed earnings, taken to extremes, becomes legalized indentured servitude - slavery. Another assault on the Constitution. The California Supreme Court has already greased the slipperiest of all the slippery slopes with its 1998 Moss decision.

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No-fault Divorce As Children's Rights Council attorney Ron Henry says, marriage is the fastest and surest way out of poverty. Conversely, divorce (or splitting up if not married) is the fastest and surest way into poverty. On average, over 3,000 divorces occur each and every day. No-fault divorce must be eliminated. No-fault divorce may be the crown jewel of the "me, me, me" generation. Once you have a child, "me, me, me" should become "us, us, us" (referring to the family).

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Problem: Women Initiate Divorce 3 Times that of Men Perhaps this subcommittee needs to open a new hearing on motherhood and divorce. Most Americans believe the out-dated myth that a man dumps his poor wife for some hot, young babe. That's Hollywood. Reality is shockingly different: women overwhelmingly dump men. Women breaking up families - not a politically popular notion, but a reality. And what punishment awaits those who break this (marriage) contract? Lucrative spousal and child support awards.

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Who Needs Marriage? Talk about equality; marriage is on par with being single. By making marriage equal to non-marriage, there are no benefits to getting married - so why do it? We've made marriage unnecessary. Unmarried couples can live together, open joint bank accounts, buy cars, even get spousal benefits assigned by their employer. What if you couldn't receive child support unless you were first married (and no-fault divorced was eliminated)?

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Myth: Child Support Lifts Children out of Poverty Children in poverty are on (or eligible for) welfare. All child support collected in welfare cases goes back to the government, not to the family. If welfare hasn't lifted these children out of poverty, it is impossible for child support to do so. Furthermore, child support advocates conveniently ignore the fact that many families of noncustodial parents are driven into poverty by child

support orders. If all the unemployed, single custodial mothers worked minimum wage jobs, an additional \$70B in household income would be available to children.

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Fundamental Problem 1: The Greed Factor

Child support encourages greed. It boils down to the premise that 1) poverty is the cause of poor child well-being and 2) money solves this problem. Money has never solved any social problem. LBJ's war on poverty is a perfect example. After spending trillions of dollars, poverty is alive and well. Studies have also shown that children raised below the poverty level academically outperformed children living above the poverty level - the reason: they were living in an intact family. As mentioned above, money is a single-parent household enabler, a destabilizer.

Current laws encourage custodial parents to get as much money as possible from the noncustodial parent. The Bureau of Family Support Operations in Los Angeles runs a public access TV program that urges custodial parents to ask for increases "because things change." Nationally recognized child support advocate Leora Gershenson of The National Center for Youth Law, commenting on the large increase in establishing paternity orders said, "Besides receiving child support, the children will benefit from access to the father's medical history, rights of inheritance and eligibility for the father's health insurance." The ACLU states, "...it is essential to consider ways to obtain an award that is higher than the basic amount dictated by the guidelines."

Greed is also encouraged within child support enforcement administration, as their funding is based on child support collected (or amount to be collected). If the goal is to increase child well-being, why not base performance incentives of these organizations on child well-being instead of money collected? The fact that child support collections has become a big business is another clue to its greediness. Lockheed-Martin, the world's largest defense contractor, states that child support collections is "the company's fastest-growing line of business." In today's one-sided atmosphere of "anything goes," private collection companies have no qualms boasting about how they intrude on noncustodial parents' rights and why these parents shouldn't have any rights.

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Fundamental Problem 2: The Revenge Factor

The concept of custody (or primary caretaker) is the perfect vehicle for revenge and is used everyday for just that. Why do we treat children like property? "She got the house, the car and the kids." We've all heard it. When children are treated like property (cold and callously), they act cold and callously and we get situations like Littleton, CO. We are reaping what we've sown. Our children are not suffering from too much parental involvement, they are suffering from a lack of it, as is all of society. When our children are not raised properly, everyone pays the price. Time is needed to instill values in

children. When sole custody is awarded (sometimes under the name of joint custody), not only does the child lose contact with that parent, but the custodial parent is apt to suffer from what Dr. Richard Warshak calls "overload" - trying to be a full-time parent while holding down a full-time job. Depression, anger and hopelessness result.

While billions of dollars are spent annually to enforce child support, nothing is spent on enforcing visitation. Visitation violations are as common as clouds in the sky, yet they are not prosecuted. People like ACES' founder Geraldine Jensen know they can break the law with no repercussions. HHS proudly announced that they have made \$10M in grants available to study access (visitation). How does this \$10M nation-wide figure compare to support enforcement? Los Angeles County alone spends \$120M each year (and now wants to raise this 6 fold to \$720M). Adding insult to injury, a Children's Rights Council member in Toledo notes that many of these grants are going to battered women's shelters and other distinctly anti-male, anti-father and anti-family groups. Actions speak louder than words.

False allegations of abuse (spousal and/or child sexual) represent the largest social problem facing our nation. False abuse claims are frequently used during custody hearings. Because no trial is given and no evidence required, false abuse is the perfect vehicle to gain instant custody of your child. By the time your trial comes around, no judge will remove a child from the parent who issued the TRO (temporary restraining order). The party that lies, wins. What is needed is a strict physical evidence standard in all abuse cases. Period. Vigorous prosecution of people making false claims should follow. False abuse allegations should carry stiffer penalties than the abuse penalty itself, as the person is knowingly defrauding an innocent person.

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The solution:

Having a Child is an 18-year Unbreakable Commitment

When a couple has a child, they have made an 18-year commitment - regardless of their marital status. Children have the *right* to be raised by both biological parents and the parents have a *responsibility* to raise their children. As a society, we need to demand accountability for their actions. If you don't think you can stay with your partner for 18 years, you have no business having a child. "Move-aways" would be strictly prohibited unless otherwise agreed to in a written shared parenting plan.

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Child Support as a Last Resort

Make shared parenting a rebuttable presumption in all divorce and child support cases, when parents cannot reach a voluntary agreement. Shared parenting is based on a written plan (unlike joint custody) and requires both parents to spend equal time (unless

otherwise agreed to) raising their children. Shared parenting focuses on physical time spent with children and most closely emulates the child's environment prior to divorce. Since each parent is spending equal time and resources raising their children, the need for child support collections evaporates. Child support would only be collected in cases where one parent refuses to either 1) spend half their time raising their children or 2) follow and agreed upon parenting plan.

With child support eliminated, the greed factor is eliminated. Parents know they cannot continually go back to court and ask for more money (plus, free resources would not be available to them). With the concept of custody dissolved, the revenge factor disappears - there is nothing to fight over. If false allegations of abuse (that cannot be backed up with physical evidence) are made, watch out - you're headed for jail. If you move away with your kids (of course, they are not *your* kids), you will be prosecuted for kidnapping, unless agreed to in your parenting plan.

With the greed and revenge factors eliminated, parents can now concentrate on what they should have been doing all along: getting on with their life.

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Possible Objections

The most likely argument against this is that restricting "move-aways" violates a person's freedom of movement. Once a couple has children, their freedoms temporarily are overridden by the child's need to have both parents and the parent's responsibilities. If a parent wants to wander, then don't have kids. It's time to enforce responsible behavior and hold people accountable for their actions.

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Conclusions:

Continuous introduction of child support legislation and increasingly draconian punishments reflect the frustration of 24 years worth of failed policy. With each new failure, the same "get tough" mantra is repeated instead of looking for new, fair and permanent solutions. Personal responsibility is defined as zipping off a check once a month and only applies to noncustodial parents.

Thinking that low-income fathers can be "fixed" has two major flaws. First, if the low-income group becomes middle-income, then child support problems will simply shift into this category and not be solved. Secondly, if low-income fathers are put to work simply so the government can take the money they earned and pay it to the mother - why work?

In many cases, child support is 50% of a person's gross pay. This explains why many quit after their employer informs them of a wage garnishment. Getting a new minimum wage job becomes an instant doubling of their pay.

While societal change is an unclear and long process, our laws can, and must, be changed now - switching their sole focus from money to increasing parental involvement. This means maximizing the involvement of both parents. Shared parenting is the mechanism to do this. The greed and revenge factors would be eliminated from family law. A strong message of the work ethic, personal responsibility and accountability is what these new laws must promote and reinforce. Kids need parents, not money.

Child Support: Myths & Realities

- **Myth: Money (i.e. child support) solves problems (of kids being raised in poverty, poor child academics, behavior problem, child well-being, etc.)**
- Reality #1: Since no accountability exists to ensure that child support is actually spent on the child, this claim cannot be substantiated. UCLA Prof. William S. Comanor has research showing that only 20% of child support is spent on children.
- Reality #2: Child support acts as a single-parent (read: broken home) enabler. Child support, like welfare, enables one parent to take the kids and move away from the other parent. This causes irreparable harm to children.
- Reality #3: Poverty is not the cause of poor child well-being, in fact, studies show just the opposite. An intact family was the key determinant for child well-being. States with the highest welfare and child support payments ranked lowest in child well-being. Why? That money was a single-parent household enabler, children were raised in non-intact homes. During economic booms, divorce increases; during tight times, divorces decreases.
- Reality #4: Trying to solve poverty by throwing money at it won't work. We know that thanks to LBJ's War on Poverty programs. Money has never solved a social problem.
- Reality #5: Parental (that's both parents) involvement is what kids need. Matthew Eappen had two well-educated, prosperous parents - but lacked parental involvement, preferring to hire nanny Louise Woodward (a teenager no less) to raise their child.
- **Myth: If all uncollected child support was paid, it would save the taxpayers a bundle.**

- Reality #1: A figure of \$34B - \$41B is commonly referred to as uncollected child support. The government and other sources indicate it is in the \$5B range. And how would they know it's \$41B? No central repository of support orders exists that is accurate. It is a well-known fact that many duplicate support orders exist (which should never happen) and that erroneous bills are routinely sent out. Los Angeles County is a prime example of this.
- Reality #2: The medical, behavioral and academic problems created by children raised in single-parent households dwarfs the cost of welfare. These costs include not only police, jails, hospitals and courts, but the psychological costs of citizens living in fear.
- Reality #3: Child support orders are excessive by any measure. The average support order exceeds that of welfare, foster care, social security disability - you name it. As pointed out in a 1992 GAO study and later confirmed by ASU researcher Sanford Braver, most parents who don't pay child support cannot afford to pay it.
- Reality #4: Mothers are free to get welfare. Until this program is changed to disallow this practice, the taxpayers will be funding single-parent households, which is the genesis of these problems.

Child Support: Myths & Realities

- **Myth: Child support will lift children out of poverty**
- Reality #1: All child support collected in welfare cases goes to the government, not children. If welfare hasn't "lifted kids out of poverty," then child support surely can't.
- Reality #2: Poverty is not the problem; Money is not the solution (see first myth above).

- **Myth: Child support orders are fair**
- Reality #1: Many custodial parents complain that child support is too low. However, when asked to reverse the support order (i.e. give up custody and pay the exact same amount of child support to the other parent), the scream bloody murder.
- Reality #2: While over \$5B is spent annually on child support collections, nothing is spent on visitation enforcement. HHS boasts they have allocated \$10M in grants to study visitation and access - that amounts to less than 0.2% of the budget.

- Reality #3: The government gives custodial parents information on the whereabouts of noncustodial parents through the Federal Parent Locator System (FPLS). But when custodial parents kidnap or move the children, HHS will not give noncustodial parents information on where the children are living.
 - Reality #4: Welfare: grant or loan? The mother initiates this process, receives all the benefits and is not expected to repay the government one cent. The father, on the other hand, usually doesn't know the mother has applied for welfare, has no say so in the matter and is expected to repay welfare plus penalties and interest!
 - Reality #5: Making false allegations of abuse is a well-known and well-practiced tactic in family law. False allegations are not prosecuted, physical evidence is not required (hearsay will do) and no trial is given. In short, you're guilty until proven innocent and you are denied your due process of law.
 - Reality #6: Even radical feminist Karen Winner states in her book, *Divorced From Justice*, that child support is excessive - clearly exceeding the amount necessary to raise a child. (p. 52).
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- **Myth: Paying child support shows responsibility**
 - Reality #1: Raising a child takes a lot more work than simply zipping off a check once a month. To equate writing a check with raising a child is ludicrous.

Reality #2: Most people would not consider an able-bodied person who parks in handicapped spots a responsible person as long as he paid the fine. Why do we think this way when it comes to child support?