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### **Bridging the Justice Gap in Family Law: Repurposing Federal IV-D Funding to Expand Community-Based Legal and Social Services for Parents**

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# Bridging the Justice Gap in Family Law: Repurposing Federal IV-D Funding to Expand Community-Based Legal and Social Services for Parents

STACY BRUSTIN\* AND LISA MARTIN\*\*

*Parents in family court overwhelmingly proceed pro se; however, in child support courtrooms, government attorneys representing the state child support agency frequently play a pivotal role. These attorneys represent the state's ostensible interests in ensuring that children are financially supported and in preventing welfare dependence; they do not represent individual parents. The outcomes of child support proceedings have profound, long-term constitutional and financial implications for parents, yet litigants rarely understand their rights or the role of the government.*

*Originally, the goal of state child support enforcement efforts was to recapture the costs of welfare expenditures. In 1990, two-thirds of cases involved families receiving public assistance. However, this number has declined dramatically and public assistance cases constitute only fourteen percent of the states' caseloads. Recognizing that cost recapture is no longer a sustainable mission, the federal program administering the funding of state support agencies has attempted to rebrand the mission to one promoting shared parenting. Although well-intentioned, this shift in mission has led to proposals that would further increase government involvement in private family law matters and threaten due process for parents determining whether and how to share parenting responsibilities.*

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*Rather than enlarging the government child support apparatus, it is time to reevaluate the role of the state and devise new mechanisms for ensuring effective family dispute resolution. This Article proposes that state child support agencies focus on areas in which the government has a clear state interest and specialized capability, for example, identification of income and assets; collection and distribution of child support payments; and administrative enforcement. Rather than continuing to fund state cadres of child support enforcement attorneys and expand their involvement in private family law disputes, the Article suggests that Congress and state legislatures redirect funding to community-based legal and social services organizations that can provide expertise, neutrality, and a range of assistance in custody, parental access, and child support matters involving low-income families.*

#### TABLE OF CONTENTS

INTRODUCTION.....	1266
I. THE IV-D SYSTEM.....	1272
A. THE FRAMEWORK—A FEDERALIZED SYSTEM.....	1272
B. EXPANDING AND REBRANDING THE IV-D MISSION.....	1275
C. THE IMPACT OF STATE IV-D AGENCY INVOLVEMENT ON THE JUDICIAL ADJUDICATORY PROCESS.....	1278
II. A NEW MODEL—DECREASING GOVERNMENT INVOLVEMENT IN FAMILY LAW COURTS, STREAMLINING IV-D FUNCTIONS, AND INCREASING ACCESS TO COMMUNITY-BASED LEGAL AND SOCIAL SERVICES.....	1284
A. HALTING MANDATORY ASSIGNMENT .....	1284
B. RECALIBRATING THE ROLE OF THE STATE .....	1286
C. CREATING NEW FEDERAL AND STATE INITIATIVES THAT DIRECT FUNDING TO COMMUNITY-BASED LEGAL, SOCIAL, AND EMPLOYMENT SERVICES FOR PARENTS.....	1289
III. RISKS OF PROPOSALS TO REDESIGN THE IV-D SYSTEM AND FAVOR PRIVATE DISPUTE RESOLUTION MODEL .....	1294
CONCLUSION .....	1296

#### INTRODUCTION

The lack of legal representation in family courts has reached a crisis point. “[F]ar from being exceptional, *pro se* litigants are now the norm in family courts across the country.”<sup>1</sup> Family law representation consistently is one of the most highly demanded services that civil legal aid

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1. JANE C. MURPHY & JANA B. SINGER, *DIVORCED FROM REALITY: RETHINKING FAMILY DISPUTE RESOLUTION* 69 (2015).

organizations provide.<sup>2</sup> Demand is so high that family matters constitute both the largest share of case dockets and the largest share of unmet requests for representation for many legal services organizations.<sup>3</sup>

The rise in unrepresented parties impacts the functioning of family courts.<sup>4</sup> The lack of lawyers strains court resources and creates delays in court dockets that prolong family disputes.<sup>5</sup> Although family courts are taking steps to better accommodate unrepresented individuals,<sup>6</sup> the persistent dearth of available legal representation creates significant challenges for parents navigating family disputes in adjudicated proceedings and court-based mediation programs.<sup>7</sup> Parents are more likely to succeed in securing the outcomes they desire in family court cases when represented or at least advised by counsel.<sup>8</sup> Without legal counsel, parents may not understand important issues such as the scope of their legal rights and responsibilities, the pros and cons of formalizing versus privately ordering their parenting affairs, the legal presumptions and factors that govern how courts allocate parenting rights and responsibilities, and how financial and caretaking responsibilities interrelate. In such circumstances, parents might reach agreements contrary to their interests or litigate claims that have little chance of succeeding.<sup>9</sup>

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2. D.C. ACCESS TO JUSTICE COMM'N, JUSTICE FOR ALL? AN EXAMINATION OF THE CIVIL LEGAL NEEDS OF THE DISTRICT OF COLUMBIA'S LOW-INCOME COMMUNITY 7-9 (2008); LEGAL SERVS. CORP., BY THE NUMBERS: THE DATA UNDERLYING LEGAL AID PROGRAMS 14, 17 (2014).

3. LEGAL SERVS. CORP., *supra* note 2, at 17; LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS II (2009) [hereinafter LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP].

4. JOY MOSES, CTR. FOR AM. PROGRESS, GROUNDS FOR OBJECTION: CAUSES AND CONSEQUENCES OF AMERICA'S PRO SE CRISIS AND HOW TO SOLVE THE PROBLEM OF UNREPRESENTED LITIGANTS 8 (2011).

5. *Id.*; see JONA GOLDSCHMIDT ET AL., AM. JUDICATURE SOC'Y & STATE JUSTICE INST., MEETING THE CHALLENGES OF PRO SE LITIGATION: A REPORT AND GUIDEBOOK FOR JUDGES AND COURT MANAGERS 49-53 (1998). *But see* JOHN M. GREACEN, CTR. FOR FAMILIES, CHILDREN & THE COURTS, SELF REPRESENTED LITIGANTS AND COURT AND LEGAL SERVICES RESPONSES TO THEIR NEEDS: WHAT WE KNOW 9-10 (2003). This report suggests that case-processing times in family courts might be faster where parties proceed as pro se. This may be, as one commentator suggests, because pro se litigants have simpler cases or because lawyers employ time delay tactics or overly complicate matters. *See* MOSES, *supra* note 4, at 8. Or it may be because pro se litigants are unaware of or fail to bring witnesses or other sources of evidence to support their claims, or lack knowledge of legal arguments to raise or procedural tactics to employ to best present their cases.

6. *See Pro Se Resources by State*, A.B.A., [http://www.americanbar.org/groups/delivery\\_legal\\_services/resources/pro\\_se\\_unbundling\\_resource\\_center/pro\\_se\\_resources\\_by\\_state.html](http://www.americanbar.org/groups/delivery_legal_services/resources/pro_se_unbundling_resource_center/pro_se_resources_by_state.html) (last visited May 29, 2016); AM. BAR ASS'N, THE SELF-HELP CENTER CENSUS: A NATIONAL SURVEY (2014).

7. MURPHY & SINGER, *supra* note 1, at 68-67. We recognize that nonparent caregivers might be parties in family law proceedings. However, this Article focuses on those visitation or parenting, paternity, and child support cases involving litigants who are the biological or adoptive parents of the children at issue.

8. Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 *FORDHAM URB. L.J.* 51-56 (2010) (reviewing studies on family court outcomes for represented and unrepresented parties).

9. MURPHY & SINGER, *supra* note 1, at 71.

Litigants in family law matters generally enter the court through one of two gateways: the domestic relations portal or the paternity/child support portal.<sup>10</sup> Which gateway litigants use often depends upon whether the individuals are married, have conflicts over parenting, seek financial support, or receive public assistance.<sup>11</sup> Those seeking divorces as well as those who are unmarried and seeking adjudication of caretaking and child access<sup>12</sup> typically file and litigate these claims in domestic relations courts.<sup>13</sup> Individuals (more often unmarried) seeking financial support for children, or those who assign their right to collect child support to the state as a condition of receiving public assistance, often have their cases adjudicated in paternity and child support courts.<sup>14</sup>

Parents in both court settings overwhelmingly proceed pro se; however, in child support courtrooms, government attorneys and paralegals acting on behalf of the state often play a pivotal role in the proceedings.<sup>15</sup> All fifty states and the District of Columbia have child support enforcement agencies which operate under the funding control of the federal Office of Child Support Enforcement (“OCSE”).<sup>16</sup> Often known as IV-D agencies—named after the title of the Social Security Act that governs them<sup>17</sup>—state child support enforcement agencies are comprised of caseworkers, investigators, and lawyers, who collectively work to determine paternity, establish child support, and enforce support orders against noncustodial parents.<sup>18</sup> IV-D agencies are authorized to

10. See Stacy Brustin & Lisa Vollendorf Martin, *Paved with Good Intentions: Unintended Consequences of Federal Proposals to Integrate Child Support and Parenting Time*, 48 IND. L. REV. 803, 813–15 (2015); see also Clare Huntington, *Postmarital Family Law: A Legal Structure for Nonmarital Families*, 67 STAN. L. REV. 167, 183 (2015). A third gateway, not addressed in this Article, is the domestic violence portal. Domestic violence protection order cases can result in orders of temporary custody, visitation, and child support. AM. BAR ASS’N COMM’N ON DOMESTIC VIOLENCE, DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS (CPOs) BY STATE (2008); see also Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801 (1993).

11. See Brustin & Martin, *supra* note 10, at 811–15.

12. Some state statutes use the terms custody (physical and legal) and visitation to describe these parental rights and responsibilities whereas other states use the terms parenting orders or parental access orders. LINDA D. ELROD, CHILD CUSTODY PRACTICE AND PROCEDURE § 4.1, Westlaw (database updated June 2015).

13. Brustin & Martin, *supra* note 10, at 812–15.

14. *Id.*

15. *Id.* at 817, 836–37; see Stacy L. Brustin, *Making Turner a Reality—Improving Access to Justice Through Court-Annexed Resource Centers and Same Day Representation*, 20 TEX. J. ON C.L. & C.R. 17, 18–20 (2015); Barbara Glesner Fines, *From Representing “Clients” to Serving “Recipients”*: *Transforming the Role of the IV-D Child Support Enforcement Attorney*, 67 FORDHAM L. REV. 2155 (1999). See generally U.S. DEP’T OF HEALTH & HUMAN SERVS., OFFICE OF CHILD SUPPORT ENF’T, ESSENTIALS FOR ATTORNEYS IN CHILD ENFORCEMENT 34 (2002) (reviewing novel issues complicating representation in child support enforcement).

16. U.S. DEP’T OF HEALTH & HUMAN SERVS., CHILD SUPPORT HANDBOOK 2 (2013).

17. Social Security Act, 42 U.S.C. § 654 (2014) (Title IV-D).

18. U.S. DEP’T OF HEALTH & HUMAN SERVS., *supra* note 16, at 2.

initiate paternity and child support actions,<sup>19</sup> and they do so on a broad scale. Today, IV-D agencies are playing a role in fifty to sixty percent of all child support matters in the United States.<sup>20</sup>

The frequent participation of state IV-D attorneys in child support courtrooms is striking not only because of the persistent dearth of attorneys representing the parents' interests (government attorneys represent the state, not individual parents), but also because the state lacks a cognizable interest in the vast majority of the child support proceedings in which state attorneys play a role. States automatically pursue child support when a parent receives Temporary Assistance for Needy Families ("TANF")<sup>21</sup> benefits in an attempt to recoup the cost of this public assistance expenditure.<sup>22</sup> States also pursue child support at the request of parents not receiving TANF in exchange for a nominal fee.<sup>23</sup> As many as ninety percent of IV-D cases involve low-income families who are not presently receiving TANF benefits.<sup>24</sup> Child support claims in these cases do not implicate the state's interest in recouping welfare costs unless arrears remain outstanding from when a family was receiving TANF benefits.<sup>25</sup> Rather, these cases involve private disputes between parents about how to financially support their children.

The outcomes of child support proceedings have profound, long-term constitutional and financial implications for parents, yet litigants rarely understand the procedural and substantive rights that they could invoke to assert their interests. When IV-D matters reach the court, the state agency is represented by attorneys directly employed by the state or contracted to represent the agency.<sup>26</sup> These attorneys do not represent

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19. 42 U.S.C. § 654.

20. CARMEN SOLOMON-FEARS, CONG. RESEARCH SERV., CHILD SUPPORT ENFORCEMENT: PROGRAM BASICS I (2014).

21. The Temporary Assistance to Needy Families program replaced the former Aid for Dependent Children program in 1996 as the source of federal cash welfare benefits to needy families. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

22. 42 U.S.C. § 608(a)(3) (2016); 45 C.F.R. §§ 302.32, 302.50 (2016); *see also* U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 15, at 2-3.

23. Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 (1984); *see* Vicki Turetsky, *What If All the Money Came Home? Welfare Cost Recovery in the Child Support Program*, 43 FAM. CT. REV. 402, 403 (2005).

24. KYE LIPPOLD & ELAINE SORENSEN, URBAN INST., CHARACTERISTICS OF FAMILIES SERVED BY THE CHILD SUPPORT (IV-D) PROGRAM: 2010 CENSUS SURVEY RESULTS 7 (2013) (estimating that ninety percent of families served by IV-D agencies in 2009 were not receiving TANF); *Child Support Enforcement Introduction and Overview*, GREEN BOOK (Aug. 9, 2012), <http://greenbook.waysandmeans.house.gov/2012-green-book/child-support-enforcement-cover-page/introduction-and-overview> (estimating that eighty-six percent of families served by IV-D agencies are not currently receiving TANF).

25. Arrears accrued during the time period when a custodial parent receives TANF continue to be assigned to the state after the parent stops receiving TANF benefits. 42 U.S.C. §§ 608(a)(7)(F), 657(b)(1)(B) (2016).

26. Glesner Fines, *supra* note 15, at 2159; *see also* U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 15, at 38. Some states have recruited volunteer attorneys to assist the state in enforcing child

either parent but, instead, represent the state's interest in securing support for children and preventing welfare dependence.<sup>27</sup> In many states, the parent who is owed child support is not considered a party to the case.<sup>28</sup> Instead, such parents are treated as witnesses, and they must formally intervene as a party to the case in order to assert their rights.<sup>29</sup> State attorneys determine the strategies to pursue in the case and may or may not consult with the parent owed support regarding possible settlement of the child support matter.<sup>30</sup> There is no attorney-client privilege between state attorneys and parents who are owed support. As a result, any information relayed by a parent to a state attorney in settlement discussions or in preparation for hearings is not confidential and may be disclosed without the parent's consent.<sup>31</sup> If parents who receive TANF do not appear at child support hearings, state attorneys proceed in their absence.<sup>32</sup> Parents who affirmatively seek assistance from state child support agencies are frequently confused about the role of state attorneys and mistakenly assume that the attorneys represent their interests.<sup>33</sup>

States often bring these paternity and support actions against parents with limited financial means who cannot afford representation.<sup>34</sup> These individuals typically proceed pro se, and frequently understand neither their rights nor the child support adjudication process.<sup>35</sup> Defendants in child support cases are shepherded through state-facilitated negotiation processes in which government attorneys or paralegals meet with them, request documentation of income, use these documents to calculate an amount of support to be paid under the child support guideline, urge the defendants to enter into consent child support agreements, draft the

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support orders on a pro bono basis. See also Anita Davis, *TYLA and AG's Office Launch Child Support Enforcement Project*, 63 TEX. B.J. 978, 978-79 (2000).

27. Glesner Fines, *supra* note 15, at 2163-64; U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 15, at 34.

28. Stacy Brustin, *More than a Witness: The Role of Custodial Parents in the IV-D Child Support Process*, 26 CHILD. LEGAL RTS. J. 37, 43-44 (2006).

29. *Id.* at 44.

30. *Id.* at 45-46.

31. U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 15, at 49; Brustin & Martin, *supra* note 10, at 817; Glesner Fines, *supra* note 15, at 2181-82; Paula Roberts, *Attorney-Client Relationship and the IV-D System: Protection Against Inadvertent Disclosure of Damaging Information*, 19 CLEARINGHOUSE REV. 158, 158-59 (1985).

32. Brustin, *supra* note 28, at 44, 73.

33. *Id.* at 46; Roberts, *supra* note 31, at 158.

34. See Solangel Maldonado, *Deadbeat or Deadbroke: Redefining Child Support for Poor Fathers*, 39 U.C. DAVIS L. REV. 991, 1002-03 (2006) and sources cited therein.

35. Daniel L. Hatcher & Hannah Lieberman, *Breaking the Cycle of Defeat for "Deadbroke" Noncustodial Parents Through Advocacy on Child Support Issues*, 37 CLEARINGHOUSE REV. 5, 8-9 (2003); Jane C. Murphy, *Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children*, 81 NOTRE DAME L. REV. 325, 358 (2005).

agreements, and present them to the judge.<sup>36</sup> Defendants are often uninformed about available defenses to child support claims and potential credits or deductions that might reduce the amount they are required to pay.<sup>37</sup> If a defendant does not consent to a negotiated agreement, he must defend himself<sup>38</sup> in evidentiary hearings against experienced government attorneys.<sup>39</sup>

Because state agencies provide a widely accessible, low-cost mechanism for securing and enforcing child support, many legal services providers have prioritized other critical legal needs and decline to represent parents in paternity and support matters.<sup>40</sup> Yet, the IV-D system has proven to be insufficient in serving the legal needs of pro se parents seeking support and often is heavy handed or coercive in its dealings with pro se parties from whom the government seeks to collect child support.<sup>41</sup>

The work of IV-D agencies is expanding the reach of government in the lives of low-income families.<sup>42</sup> Recognizing that cost recapture is no longer a sustainable purpose for the IV-D bureaucracy, OCSE has been working to reorient the IV-D mission to more holistically address the needs of low-income families by, for example, offering assistance with job training and the establishment of shared parenting arrangements.<sup>43</sup> Although well intentioned, this shift in the IV-D mission has led to proposals that would further increase government involvement in low-income families and decrease access to justice for parents, for example, by mandating that all child support orders sought by IV-D programs also include awards of custody and visitation, regardless of whether the parents want this relief.<sup>44</sup>

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36. See Daniel L. Hatcher, *Forgotten Fathers*, 93 B.U. L. REV. 897, 910–11 (2013); Lisa Kelly, *If Anybody Asks You Who I Am: An Outsider's Story of the Duty to Establish Paternity*, 6 YALE J.L. & FEMINISM 297, 299–305 (1994).

37. Hatcher & Lieberman, *supra* note 35, at 9.

38. This Article departs from this *Journal's* standard use of feminine pronouns to reflect the reality that most defendants in child support cases are fathers. Lippold & Sorenson, *supra* note 24, at 7 (noting that eighty-two percent of custodial parents (the petitioners in child support cases) served by IV-D agencies in 2009 were mothers).

39. *Id.* at 13.

40. Paula Roberts, *Child Support—An Important but Often Overlooked Issue for Low-Income Clients*, in POVERTY LAW MANUAL FOR THE NEW LAWYER 196 (2002).

41. See generally Daniel L. Hatcher, *Child Support Harming Children: Subordinating the Best Interests of Children to the Fiscal Interests of the State*, 42 WAKE FOREST L. REV. 1029, 1029 (2007) (“examin[ing] the government policy of seeking reimbursement of welfare costs through child support enforcement”).

42. See Brustin & Martin, *supra* note 10, at 806–07; Tonya L. Brito, *The Welfarization of Family Law*, 48 U. KAN. L. REV. 229, 256–68 (2000).

43. U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 16, at 5–7.

44. Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 303, 128 Stat. 1919, 1946 (2014); Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs, 79 Fed. Reg. 68,548, 68,580 (proposed Nov. 17, 2014) (to be codified at 45 C.F.R. pt. 302); *Child Support and Fatherhood Initiative in the Administration's FY2014 Budget*, OFF. CHILD SUPPORT ENFORCEMENT (Apr.



This moment of potential expansion provides an opportunity to reflect on IV-D functions given the dramatic changes in the agency's mission and caseload since the federal program's inception. That is, now that the state has a cost recapture interest in only fourteen percent of child support cases,<sup>45</sup> should federal and state governments continue to support widespread IV-D involvement in what otherwise would be private family law litigation or consider something new? This Article suggests that rather than further enlarging the functions of the government child support apparatus, it is time to pause, reevaluate the appropriate role of IV-D agencies, and devise new mechanisms for ensuring greater due process and more effective dispute resolution for parents who are determining how to share responsibilities for raising and supporting their children.

The Article proceeds in three parts. Part I explores the current state of the IV-D system. Part II suggests that it is time to streamline the IV-D program to reduce the agency's involvement in individual paternity and child support establishment cases. The Article proposes that state agencies focus on activities in which the government has a direct interest and specialized capability, primarily in the location of assets, distribution of child support payments, and administrative enforcement. Part II then suggests that rather than continuing to institutionalize state cadres of child support enforcement attorneys, federal and state governments should redirect this funding to legal and social services organizations. Those organizations can then provide expertise, neutrality, and a panoply of limited assistance, mediation, and representation options in custody, visitation, and child support matters involving low-income parents. Part III highlights some of the risks that the proposal to restructure the current IV-D model entail.

## I. THE IV-D SYSTEM

### A. THE FRAMEWORK—A FEDERALIZED SYSTEM

Family law is traditionally considered the province of the state.<sup>46</sup> The reality is more complex. Throughout the late twentieth and early twenty-first centuries Congress has used its spending power to advance federal policy objectives regarding families in areas including paternity

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15, 2013). <http://www.acf.hhs.gov/programs/css/resource/child-support-and-fatherhood-initiative-in-the-administrations-fy-2016>; see also Brustin & Martin, *supra* note 10.

45. See *Child Support Enforcement Introduction and Overview*, *supra* note 24.

46. *United States v. Windsor*, 133 S. Ct. 2675, 2691 (2013) (“[R]egulation of domestic relations’ is ‘an area that has long been regarded as a virtually exclusive province of the States.’” (citation omitted)).

and child support, child abuse and neglect, healthy marriages, and engaged fatherhood.<sup>47</sup>

In the child support context, Congress has federalized the legal and procedural framework of paternity establishment and child support enforcement through the power of the purse. State child support programs are financed by five funding streams: (1) state appropriations; (2) federal reimbursement of two-thirds of state expenditures; (3) child support payments assigned to states; (4) federal incentive payments conditioned on state programs meeting certain standards; and (5) application fees and costs assessed to non-welfare families.<sup>48</sup> Federal legislation requires states to establish and maintain federally approved child support enforcement programs in order to be eligible for funding for the TANF<sup>49</sup> cash welfare benefits program.<sup>50</sup> To ensure effective oversight and implementation, Congress established the federal OCSE within the Department of Health and Human Services (“HHS”) and dedicated funding to support state child support enforcement programs that meet federal standards.<sup>51</sup>

Federal oversight of state child support programming is robust. States must establish IV-D agencies. These agencies must provide seven primary services, and in doing so, must comply with detailed regulations governing each function.<sup>52</sup> IV-D programs must assist with “(1) parent

47. See generally Ann Laquer Estin, *Sharing Governance: Family Law in Congress and the States*, 18 CORNELL J.L. & PUB. POL’Y 267 (2009) (evaluating three varieties of federalism present in family law); see also Libby S. Adler, *Federalism and Family*, 8 COLUM. J. GENDER & L. 197, 211–22 (1999); Jill Elaine Hasday, *Federalism and the Family Reconstructed*, 45 UCLA L. REV. 1297, 1373–86 (1998).

48. SOLOMON-FEARS, *supra* note 20; see MICHAEL E. FISHMAN, ET AL., U.S. DEPT. OF HEALTH & HUMAN SERVS., STATE FINANCING OF CHILD SUPPORT ENFORCEMENT PROGRAMS 1–2 (1999).

49. The TANF program replaced the former Aid for Dependent Children program in 1996. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

50. 42 U.S.C. § 602(a)(2) (2016); CARMEN SOLOMON-FEARS, CONG. RESEARCH SERV., CHILD SUPPORT ENFORCEMENT PROGRAM INCENTIVE PAYMENTS: BACKGROUND AND POLICY ISSUES 25 (2013) (“Since the enactment of the CSE program in 1975, there has always been a provision in federal law that linked poor performance (and penalties) or noncompliance in the CSE program with a reduction in Title IV-A funding.”). State eligibility for full TANF funding is also conditioned on state operation of foster care and adoption assistance programs. 42 U.S.C. § 602(a)(3) (2016). A report by the Congressional Research Service explains:

States are responsible for administering the [Child Support Enforcement] program, but the federal government plays a major role in dictating the major design features of state programs, funding state and local programs, monitoring and evaluating state programs, providing technical assistance, and giving direct assistance to states in locating absent parents and obtaining child support payments.

CARMEN SOLOMON-FEARS, CONG. RESEARCH SERV., ANALYSIS OF FEDERAL-STATE FINANCING OF THE CHILD SUPPORT ENFORCEMENT PROGRAM I (2012).

51. Social Services Amendments of 1974, Pub. L. No. 93-647, 88 Stat. 2337 (1974) (codified as amended at 42 U.S.C. §§ 651–669b (2016)); see SOLOMON-FEARS, *supra* note 20, at 7–8.

52. 42 U.S.C. §§ 654, 655, 658 (2016); 45 C.F.R. §§ 301–310 (2016). See generally Naomi R. Cahn & Jane C. Murphy, *Collecting Child Support: A History of Federal and State Initiatives*, 34 CLEARINGHOUSE REV. 165, 167 (2000) (reviewing federal involvement in the child support arena).

location, (2) paternity establishment, (3) establishment of child support orders, (4) review and modification of child support orders, (5) collection of child support payments, (6) distribution of child support payments, and (7) establishment and enforcement of medical support.”<sup>53</sup> To qualify for federal incentive payments, IV-D agencies must meet performance goals for establishing paternity and child support orders, collecting current child support and arrearages, and maintaining the cost-effectiveness of the IV-D program.<sup>54</sup> States that fail to achieve targeted performance levels and those that fail to comply with program requirements may be subject to financial penalties that reduce the state’s TANF block grant award<sup>55</sup> or disqualify the state from federal incentive payments.<sup>56</sup>

IV-D agencies perform these functions on behalf of three different constituencies: current TANF recipients, individuals who formerly received TANF, and parents or caretakers who have never received TANF.<sup>57</sup> Today, among some types of families, IV-D agency involvement is ubiquitous. IV-D agencies are estimated to provide services to more than sixty percent of all nonmarital families in the United States,<sup>58</sup> and nearly eighty percent of nonmarital families whose incomes fall below the federal poverty threshold.<sup>59</sup> Parents receiving services from IV-D agencies are predominately of low to moderate income and have lower levels of education than parents living apart from one another who do not receive IV-D services.<sup>60</sup> IV-D agencies have much less interaction with parents who have higher incomes and levels of education.<sup>61</sup> Such parents are more likely to marry<sup>62</sup> and resolve issues relating to child support through divorce proceedings or opt out of litigation altogether in favor of alternative forms of dispute resolution.<sup>63</sup> Because these parents are better able to afford private counsel, they need not rely on the state to navigate child support claims. The tendency of income levels and marital status to vary along racial lines means that parents interacting

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53. SOLOMON-FEARS, *supra* note 20, at 2; *see* Cahn & Murphy, *supra* note 52, at 167.

54. SOLOMON-FEARS, *supra* note 50, at 4–5.

55. *Id.* at 9.

56. *Id.*; *see* 42 U.S.C. § 658a(a)–(b) (2016).

57. Brustin & Martin, *supra* note 10, at 816.

58. LIPPOLD & SORENSEN, *supra* note 24; SOLOMON-FEARS, *supra* note 20, at 1.

59. LIPPOLD & SORENSEN, *supra* note 24, at 14.

60. *Id.* (“Custodial families most likely to receive [state child support] services are poor, never-married, younger, and less educated.”); *see* U.S. DEP’T OF HEALTH & HUMAN SERVS., JUSTIFICATION OF ESTIMATES FOR APPROPRIATIONS COMMITTEES: FISCAL YEAR 2016, at 289 (2015) (“Approximately half of families in the [IV-D child support] program are below 150 percent of the poverty level, while 90 percent are below 400 percent of poverty.”).

61. LIPPOLD & SORENSEN, *supra* note 24, at 4, 11–12.

62. Richard Fry, *New Census Data Show More Americans Are Tying the Knot, but Mostly It’s the College-Educated*, PEW RES. CTR. (Feb. 6, 2014), <http://www.pewresearch.org/fact-tank/2014/02/06/new-census-data-show-more-americans-are-tying-the-knot-but-mostly-its-the-college-educated/>.

63. LIPPOLD & SORENSEN, *supra* note 24, at 24 tbl.2.

with IV-D agencies are also disproportionately members of minority groups.<sup>64</sup>

#### B. EXPANDING AND REBRANDING THE IV-D MISSION

Congress initially established the federal child support enforcement program to recapture the cost of welfare expenditures, reduce future welfare costs, and enable custodial parents to collect child support.<sup>65</sup> Over time, Congress's mission expanded to include serving the additional needs of families involved with child support programs.<sup>66</sup> For example, since 1984, Congress has permitted states to pass-through a portion of the child support amounts collected in TANF cases to the family, without impacting the family's eligibility to receive TANF benefits.<sup>67</sup> Congress has also funded programs within child support agencies to facilitate noncustodial parents' employment and access to their children.<sup>68</sup>

This shift in the program's mission follows the dramatic shift in child support agency caseloads since the enactment of Title IV-D, as welfare reforms have steadily reduced the number of families receiving welfare benefits.<sup>69</sup> In 1990, two-thirds of IV-D cases to collect child support were brought on behalf of parents receiving welfare benefits.<sup>70</sup> Today, as few as ten percent of families receiving IV-D services currently receive TANF benefits—as many as ninety percent of such families do not.<sup>71</sup> As a result, child support agencies today are primarily engaged in resolving civil family law disputes between private parties.

The federal OCSE has embraced Congress's expanded mission for child support programs. According to OCSE, the primary goals of the current IV-D system include decreasing child poverty, encouraging co-parenting, encouraging shared financial support of children, strengthening parenting skills, encouraging economic self-sufficiency,

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64. *Id.* at 9, 44 tbls.12–14; PEW RESEARCH CTR., *THE DECLINE OF MARRIAGE AND RISE OF NEW FAMILIES 9–11* (2010); Diana B. Elliot et al., *Historical Marriage Trends from 1890–2010: A Focus on Race Differences* (SESHD, Working Paper No. 2012-12).

65. SOLOMON-FEARS, *supra* note 50, at 1.

66. U.S. DEP'T OF HEALTH & HUMAN SERVS., *NATIONAL CHILD SUPPORT STRATEGIC PLAN: FY 2010–2014*, at 5–6 (2013).

67. Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 2640(c), 98 Stat. 494, 1145 (1984); 42 U.S.C. §§ 644, 657 (2009). *See, e.g.*, MICHELLE VINSON & VICKI TURETSKY, CTR. FOR LAW & SOC. POLICY, *STATE CHILD SUPPORT PASS-THROUGH POLICIES* (2009); *Child Support Pass-Through and Disregard Policies for Public Assistance Recipients*, NAT'L CONF. ST. LEGISLATURES (Oct. 6, 2015), <http://www.ncsl.org/research/human-services/state-policy-pass-through-disregard-child-support.aspx>.

68. 42 U.S.C. § 603(a)(2)(C) (2016); Jessica Pearson et al., *A New Look at an Old Issue: An Evaluation of the State Access and Visitation Grant Program*, 43 FAM. CT. REV. 372, 372 (2005).

69. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified in scattered sections of 42 U.S.C.); Brustin & Martin, *supra* note 10, at 818.

70. Glesner Fines, *supra* note 15, at 2165.

71. *See* LIPPOLD & SORENSEN, *supra* note 24, at 7.

and decreasing welfare dependence.<sup>72</sup> To carry out these broader family relationship-based goals, OCSE has attempted to rebrand the IV-D program as a family-friendly initiative designed to help low-income mothers and fathers share in the financial support of their children.<sup>73</sup> Recent policy proposals by Congress and the OCSE signal a growing interest in expanding IV-D services to address child custody and visitation within child support orders established by state agencies.<sup>74</sup> IV-D agencies in some states already perform this function under state laws.<sup>75</sup> This expansion would essentially make IV-D agencies the primary arbiters of both child support *and* child custody disputes among low to moderate-income families.<sup>76</sup>

Although many of these goals are worthy, the rebranding effort conflicts with IV-D agencies' continued prosecutorial role. To facilitate collection and enforcement, IV-D agencies utilize a wide array of tools including garnishment of wages, imputation of income, tax intercepts, revocation of licenses, and even incarceration following court findings of civil or criminal contempt.<sup>77</sup> The use of these tools cause parents, particularly low-income fathers, to view IV-D agencies as prosecutorial entities whose sole interest is taking their money or locking them up for failing to pay support.<sup>78</sup>

Expanding the program's scope also could further compromise IV-D agencies' ability to effectively carry out existing functions. Many IV-D

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72. U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 66, at 5–6.

73. *Id.*

74. See sources cited *supra* note 44.

75. See, e.g., TEX. FAM. CODE ANN. § 153.007 (West 2016); see also DEP'T OF HEALTH & HUMAN SERVS., CHILD SUPPORT AND PARENTING TIME: IMPROVING COORDINATION TO BENEFIT CHILDREN 2–3 (2013).

76. See *supra* Part I.A.

77. See U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 16, at 23–25. Although some agencies have attempted to reduce the punitive nature of enforcement efforts by pursuing imputation and contempt less frequently, these tools remain available to the programs. *Id.* at 23–24. Other IV-D programs have not embraced the shift toward a kinder, gentler approach. Hatcher, *supra* note 41, 1048–51.

78. MAUREEN WALLER & ROBERT PLOTNICK, PUB. POLICY INST. OF CAL., CHILD SUPPORT AND LOW-INCOME FAMILIES: PERCEPTIONS, PRACTICES, AND POLICY, at viii–ix (1999). This study found that many custodial parents receiving TANF are opposed to assigning their rights to child support. *Id.* at vii. They view the system as ineffective and unresponsive. *Id.* Waller and Plotnick note that fathers reported two primary concerns with IV-D enforcement:

[t]he first is the system's inability to recognize or respond to their unstable economic circumstances. . . . The second major problem cited by fathers is the practice of treating them as criminals when they fail to make payments. Fathers often believe that heightened enforcement practices ignore or even impede their efforts to support or be involved with their children. Others maintain that the system penalizes fathers indiscriminately. Moreover, they believe that the system is more likely to pursue fathers working in the regular economy than those who turn to the underground economy.

*Id.* at viii–ix; see Ann Cammett, *Deadbeats, Deadbrokes, and Prisoners*, 18 GEO. J. ON POVERTY L. & POL'Y 127, 133 (2011); Jane C. Murphy, *Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children*, 81 NOTRE DAME L. REV. 325, 373–74 (2005).

agencies currently lack sufficient resources to locate assets, conduct surveillance, and gather evidence to prove that a noncustodial parent who is not earning a steady garnishable wage has the ability to pay support.<sup>79</sup> Insufficient staffing at many agencies causes backlogs, delays case processing, and hinders effective customer service.<sup>80</sup> Without significant increases in funding, increasing IV-D programs' scope will only exacerbate existing challenges.

Most important, the expansion of the IV-D mission has further compromised parental autonomy.<sup>81</sup> Parents who receive TANF benefits must assign their rights to pursue child support to the state and cooperate with state efforts to collect child support payments, regardless of whether the parent desires that relief.<sup>82</sup> Parents who would like legal assistance pursuing child support claims have few alternatives to IV-D agency support.<sup>83</sup> Working with IV-D agencies means that parents give up their ability to control the means and objectives of the representation as well as the privileges and ethical protections attendant to legal counsel.<sup>84</sup> Structuring IV-D assistance to advance the state's interests leaves low-income custodial and noncustodial parents without an advocate for their own interests in child support proceedings. Recent policy proposals potentially would require all child support orders sought by IV-D agencies—in TANF and non-TANF cases—to include provisions addressing custody and visitation of the children at issue, regardless of whether either parent wants the court to define these rights and

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79. See, e.g., Nat'l Child Support Enf't Assoc., Comments on Notice of Proposed Rulemaking 6 (Jan. 14, 2015) ("While extensive discovery such as investigators, depositions, interrogatories, and subpoenas duces tecum might lead to admissible evidence related to unreported income and lifestyle, IV-D agencies simply do not have the resources necessary to conduct such discovery. Absent this, the practical ability to establish a support obligation through lifestyle evidence is minimal."); see also MICH. SUPREME COURT, UNDERGROUND ECONOMY 22 (2010) (recognizing the limited resources available to child support agencies and the IRS to investigate those evading payment of child support and urging collaboration among multiple government agencies and private financial institutions).

80. See, e.g., Davis, *supra* note 26, at 980 (noting that in 2000, Texas had more than one million open IV-D child support cases, an average of 6300 cases for each of the 175 assistant attorneys general in the Texas child support system). See generally OFFICE OF CHILD SUPPORT ENF'T, PRELIMINARY REPORT FY 2014 (2014) (including data on the total number of open child support cases and the total number of full-time equivalent staff in the child support programs of each state from 2010 to 2014). The District of Columbia, for example, had 51,222 open cases and 239 FTE staff members in 2014, for an average of 214 cases per staff member. *Id.*

81. See Daniel L. Hatcher, *Don't Forget Dad: Addressing Women's Poverty by Rethinking Forced and Outdated Child Support Policies*, 20 AM. U. J. GENDER, SOC. POL'Y & L. 775, 781–82 (2012).

82. 42 U.S.C. § 608(a)(3) (2016); Hatcher, *supra* note 41, at 1045, 1069 (describing why custodial parents might not choose to cooperate with child support collection efforts if given the choice and noting that formal enforcement of child support may result in the cessation of in-kind support); Maldonado, *supra* note 34, at 1005–10 (describing the types of in-kind child support contributions noncustodial parents often make and the reasons why custodial parents may not choose to pursue child support).

83. Roberts, *supra* note 40, at 196.

84. See sources cited *supra* note 15.

responsibilities.<sup>85</sup> In all of these ways, IV-D policies have eroded the ability of low-income parents to choose for themselves whether and how to resolve issues regarding financial and caretaking responsibilities for children.<sup>86</sup>

### C. THE IMPACT OF STATE IV-D AGENCY INVOLVEMENT ON THE JUDICIAL ADJUDICATORY PROCESS

Most states establish child support orders through judicial processes. Some use a judicial process, whereas others use a mix of judicial and administrative adjudication.<sup>87</sup> Approximately twenty-eight states and the District of Columbia determine paternity and establish support orders exclusively through judicial processes.<sup>88</sup> In these “judicial” jurisdictions, attorneys directly employed or contracted by the IV-D agency typically represent the state. Along with paralegals and other IV-D administrative staff, IV-D attorneys work to establish paternity, child support, and medical support orders, as well as modify and enforce existing support orders.<sup>89</sup>

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85. See sources cited *supra* note 44. Such requirements already exist under state law in Texas. See sources cited *supra* note 75.

86. See generally JANE C. MURPHY & JANE B. SINGER, *DIVORCED FROM REALITY: RETHINKING FAMILY DISPUTE RESOLUTION* (2015) (examining the effectiveness of family dispute resolution in the context of modern day family compositions and structures).

87. *Child Support Process: Administrative v. Judicial*, NAT'L CONF. OF ST. LEGISLATURES, <http://www.ncsl.org/research/human-services/child-support-process-administrative-vs-judicial.aspx> (last visited May 29, 2016). Some states, however, give administrative courts or agencies exclusive or concurrent jurisdiction to establish and modify support orders. *Id.*; see also Huntington, *supra* note 10, at 183 n.71 (citing FLA. STAT. § 409.2563(2)(a) (2014); GA. CODE ANN. § 19-6-26(a)(1) (West 2014); HAW. REV. STAT. § 576E-2 (West 2014); 305 ILL. COMP. STAT. 5/10-11 (2014); IOWA CODE § 252C.2(3) (2014); KY. REV. STAT. ANN. § 205.712(2) (2014); MO. REV. STAT. § 454.470(1) (2014); OR. REV. STAT. § 416.419(2) (2014); S.C. CODE ANN. § 63-17-710 (2013); S.D. CODIFIED LAWS § 25-7A-56.3 (2014); TEX. FAM. CODE ANN. § 233.001(a) (West 2013); VA. CODE ANN. § 63.2-1903(A) (West 2014)).

88. Including Alabama, Arizona, Arkansas, California, Delaware, District of Columbia, Idaho, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, West Virginia, Wisconsin, and Wyoming.

89. See, e.g., *Applying for Child Support Services*, ALA. DEP'T HUM. RESOURCES [http://dhr.alabama.gov/services/child\\_support\\_services/Apply\\_Child\\_Support\\_Svcs.aspx](http://dhr.alabama.gov/services/child_support_services/Apply_Child_Support_Svcs.aspx) (last visited May 29, 2016) (“The Alabama Department of Human Resources has agreements with child support attorneys around the state to provide legal representation. It is the attorney’s duty to pursue the legal steps necessary to enforce or establish child support obligations from non-custodial parents. The attorney represents the State of Alabama only. Regardless of whether you receive TANF or not, no attorney-client relationship will exist between you and the child support attorney. The child support attorney can address matters of child support only. If an action is filed relating to custody, visitation or any matter other than support, it will be necessary for you to seek private counsel to represent your interests in these issues.”); *Child Support*, ARIZ. ATT’Y GEN. OFF., <https://www.azag.gov/child-and-family/child-support> (last visited May 29, 2016) (“The Attorney General works with the Arizona Department of Economic Security (DES), the various counties and the courts to establish and enforce support obligations. The attorneys and legal staff of the Child Support Service Section (CSSS) provide legal advice and representation to the Division of Child Support Services (DCSS) within DES. DCSS is responsible for the statewide operation of the child support program. CSSS represents the program

in paternity, support order establishment, modification, and enforcement matters in both local and interstate cases. The CSSS does not represent private individuals. There are eleven CSSS locations, handling cases in thirteen different counties[] throughout the State of Arizona. In the other counties, the County Attorney provides child support services.”); *Collections and Child Support*, ST. CONN., <http://www.ct.gov/ag/cwp/browse.asp?a=2095&bc=0&c=19179> (last visited May 29, 2016) (“In furtherance of its child support activities, the Department also provides legal services to the Department of Social Services Bureau of Child Support Enforcement and to the Support Enforcement Services division of the Judicial Branch pursuant to a cooperative agreement designed to satisfy the requirements of the federal Social Security Act and related state law.”); *Child Support*, ST. DEL., <http://attorneygeneral.delaware.gov/family/childsupport.shtml> (last visited May 29, 2016) (“DOJ attorneys represent the State, through the Division of Child Support Enforcement, in establishing, modifying, and enforcing child support orders. In addition, it handles prosecutions of criminal non-support cases.”); *Child Support Enforcement Bureau*, FLA. OFF. ATT’Y GEN., <http://myfloridalegal.com/pages.nsf/Main/F33243FEC3E04A6E85256CCB006D06B7> (last visited May 29, 2016) (“The Child Support Enforcement Bureau, General Civil Litigation Division, of the Office of the Attorney General, represents the Department of Revenue in 12 of Florida’s 67 counties in cases establishing and enforcing child support orders.”); *Idaho: Changing a Child Support Order in Your State*, ADMIN. FOR CHILD. & FAMS., (Oct. 2013), [https://www.acf.hhs.gov/sites/default/files/programs/css/id\\_cs\\_order.pdf](https://www.acf.hhs.gov/sites/default/files/programs/css/id_cs_order.pdf) (“If the review indicates the child support order should change, and the parties are agreeable, a stipulation is completed by CSS, with the assistance of a Deputy Attorney General. The stipulation, along with an order, is presented to the court for a judge’s signature. If the review indicates the child support order should change, and both parties are not agreeable, the case is referred to a Deputy Attorney General. The attorney will take the legal actions necessary to change the court order, including preparing the legal documents, filing them with the court, and having both parties served. When both parties are served, they have the option to stipulate or request a hearing. If the non-requesting party does not respond, a modified order will be entered by default.”); PUB. AID BUREAU, OFFICE OF THE ILL. ATT’Y GEN., CHILD SUPPORT IN ILLINOIS: INFORMATION FOR CUSTODIAL AND NON-CUSTODIAL PARENTS I (2009) (“The Attorney General’s Office has the primary responsibility for representing HFS/DCSE. However, HFS/DCSE has the authority to contract with other entities for child support services. HFS/DCSE contracts with the State’s Attorney’s Office in 13 counties throughout the state, while the Attorney General’s Office handles child support enforcement in 89 counties through its Public Aid Bureau. . . . The Attorney General’s Office is responsible for establishing paternity as well as establishing, enforcing, and modifying both child support and medical orders.”); *General Information*, IND. DEP’T CHILD SERVS., <http://www.in.gov/dcs/2934.htm> (last visited May 29, 2016) (“The Child Support Bureau has entered into cooperative agreements with county prosecutors in every Indiana county to provide child support enforcement services.”); *Child Support Enforcement Services Provided*, STATE LA. DEP’T CHILD. & FAM. SERVS., <http://www.dss.state.la.us/index.cfm?md=pagebuilder&tmp=home&pid=142> (last visited May 29, 2016) (“If an alleged father refuses to sign an acknowledgment of paternity, Child Support Enforcement attorneys or contract District Attorneys may file a paternity suit asking the court to determine paternity.”); *About Child Support*, MO. DEP’T SOC. SERVS., <https://dss.mo.gov/child-support/about-child-support.htm> (last visited May 29, 2016) (“The Child Support program consists of a Central Office located in Jefferson City, two regional offices, and field offices across the state. The field offices are comprised of supervisory, investigative and support staff. In addition, local prosecuting attorneys and circuit court clerks assist with Child Support responsibilities. The majority of prosecutors in Missouri provide legal support (e.g., the filing of paternity actions, criminal nonsupport and enforcement actions) for cases Child Support staff refer to them. Circuit court clerks support Child Support staff by filing legal documents and providing copies of documents already on file.”).

In some states child support services (including legal services) are administered through local county prosecutor’s offices. *See, e.g., Child Support Division*, FAYETTE COUNTY ATT’Y’S OFF., [http://www.fayettedcountyattorney.com/child\\_support.asp](http://www.fayettedcountyattorney.com/child_support.asp) (last visited May 29, 2016) (employing forty-eight employees including eight attorneys); *Child Support Division*, LANCASTER NEB. COUNTY ATT’Y’S OFF., <http://lancaster.ne.gov/attorney/childsupport.htm> (last visited May 29, 2016); *Child Support Enforcement*, LORAIN COUNTY JOB & FAM. SERVS., <http://www.lcdjfs.com/child-support/enforcement> (last visited May 29, 2016) (“The CSEA staff also initiates judicial enforcement actions through the



In judicial child support jurisdictions, IV-D agency involvement has changed the dynamic of paternity and child support courtrooms relative to other family court dockets. Whereas the majority of cases on domestic relations calendars now proceed without the involvement of attorneys on one or both sides,<sup>90</sup> at least one attorney participates in the majority of cases on child support calendars—the attorney from the IV-D agency.<sup>91</sup> Although they are not neutral parties in the matter, IV-D attorneys often serve as negotiators in child support proceedings, encouraging resolution through settlement agreements.<sup>92</sup> To do so, IV-D attorneys or paralegals review financial information available through automated systems or brought by the parents; initiate DNA testing where paternity has not been established; apply child support guideline calculators to derive a support amount; draft proposed orders; and present settlement terms on the record.<sup>93</sup> In short, state attorneys, paralegals, and caseworkers assume a quasi-adjudicator role through widespread negotiation of consent agreements.

Where the parties do not reach settlement, IV-D attorneys conduct contested evidentiary hearings before the court on behalf of the “state.”<sup>94</sup> The respondents in such proceedings (the parents who owe support) are

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Lorain County Prosecutor’s Office, whose attorneys review cases for litigation, recommend appropriate legal proceedings, conduct pre-trial negotiation and collection activities, and finalize proceedings and appropriate court orders. The attorneys represent the state of Ohio. Judicial enforcement tools include: contempt of a court or administrative order; felony non-support; liens; attachments; and executions.”). *But see* JUDICIAL COUNSEL OF CAL., FACT SHEET: CHILD SUPPORT COMMISSIONER AND FAMILY LAW FACILITATOR PROGRAM (2015), (describing the process used in California involving Family Law Facilitators in every court who are attorneys that do not work for the child support agency and assist parents in filling out forms, running guideline calculations, answering questions, and in some cases mediating cases); *see also* *Obtaining Information on Your Client’s Case*, MASS. DEP’T REVENUE, <http://www.mass.gov/dor/child-support/iv-d-agencies-and-attorneys/attorneys/> (last visited May 29, 2016) (explaining that in Massachusetts state agency attorneys are not assigned to every child support case; the Massachusetts Department of Revenue clarifies that “DOR attorneys represent the Child Support Enforcement Division pursuing the Commonwealth’s interest in ensuring that children are supported by their parents. We must allocate litigation resources in a balanced and efficient manner, so as to benefit the greatest number of children in need of services. DOR’s strength is in its access to information from employers, banks and other government agencies, allowing us to generate high volume collections at low cost. DOR is not able to devote the resources and individual attention to a case that private counsel may provide, not just for child support, but also for other issues important to the family, such as parenting time, alimony and distribution of assets. We look forward to working with members of the private bar to maximize our mutual strengths in ensuring that the child support enforcement system serves the needs of the children and families of the Commonwealth.”).

90. LEGAL SERVS. CORP., DOCUMENTING THE JUSTICE GAP, *supra* note 3, at 25–26 (collecting statistics from multiple states finding that a significant majority of litigants in family law and domestic violence cases are unrepresented); OFFICE OF THE DEPUTY CHIEF ADMIN. JUDGE FOR JUSTICE INITIATIVES, SELF-REPRESENTED LITIGANTS: CHARACTERISTICS, NEEDS, SERVICES I (2005) (finding that approximately seventy-five percent of litigants in family court cases represent themselves).

91. SOLOMON-FEARS, *supra* note 20, at 1 (“The CSE program is estimated to handle 50%–60% of all child support cases.”).

92. *See* sources cited *supra* note 36.

93. *Id.*

94. *Id.*

typically unrepresented.<sup>95</sup> The parents who are seeking support may not be considered parties to the action and also typically proceed without their own counsel to represent their individual interests.<sup>96</sup>

The participation of IV-D attorneys alters the dynamic of child support hearings in several ways. First, IV-D attorneys inject the state's interest into the proceedings. IV-D attorneys do not represent the interests of the parents nor the child in the case; IV-D attorneys represent only the interests of the state in promoting the financial support of children and recouping or preventing welfare expenditures.<sup>97</sup> The participation of IV-D attorneys in child support proceedings thereby injects a third interest to be balanced alongside those of the individual

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95. Hatcher & Lieberman, *supra* note 35, at 8–9; Murphy, *supra* note 35, at 358; *see also* Brustin, *supra* note 15, at 19–20.

96. *See* Hatcher & Lieberman, *supra* note 35, at 8–9.

97. *See, e.g.*, ALA. CODE § 38-10-7.1 (2016) (“Any district attorney or attorney approved or appointed by the Attorney General initiating legal proceedings at the request of the Department of Human Resources to establish or enforce child support, . . . pursuant to the provisions of Title IV-D of the Social Security Act and the laws of this state shall represent the State of Alabama, Department of Human Resources, exclusively in said proceedings. No attorney-client relationship shall exist between the IV-D attorney and any applicant or recipient of the agency’s support enforcement services, without regard to the style of the case in which legal proceedings are initiated.”); ARK. OFFICE OF CHILD SUPPORT ENF’T, REQUEST FOR CHILD SUPPORT SERVICES 2 (2010) (“OCSE attorneys do not represent either party, but rather the state’s interest in seeing that the children receive the support to which they are entitled.”); *Child Support Services Program*, ILL. CHILD SUPPORT SERVS., <http://www.childsupportillinois.com/general/hfs1759.html> (last visited May 29, 2016) (“When the judicial process is used, the Department is represented by the county State’s Attorney’s Office or the Illinois Attorney General’s Office. These legal representatives will handle the DCSS cases in circuit court as the attorneys for the Department and do not legally represent CPs, in court or out of court, as clients. As a result, there are no attorney-client relationships and any discussions between custodial parents and the Department’s attorneys are not considered confidential or privileged under Illinois law.”); MD. DEP’T OF HUMAN RES., CHILD SUPPORT ENFORCEMENT ADMINISTRATION APPLICATION FOR SUPPORT ENFORCEMENT SERVICES (“An attorney working in the child support enforcement program represents the Child Support Enforcement Administration of the State of Maryland. The attorney [does not] represent you or your personal interest and there is no attorney-client relationship between you and the attorney, between you and the child support office, or any employees thereof. Any information you provide may not be treated as confidential, except as provided by law. You may be required to appear as a witness in court. Your failure to appear for court pursuant to an order or subpoena could result in your arrest.”); TENN. DEP’T OF HUMAN SERVS., TENNESSEE CHILD SUPPORT HANDBOOK (2013) (“Attorneys handling child support cases through the child support program represent the State of Tennessee and not you as an individual. The attorney’s role is to establish paternity and set, enforce and modify support according to the law.”); TEX. FAM. CODE ANN. § 231.109(d) (1995) (“An attorney employed to provide Title IV-D services represents the interests of the state and not the interest of any other party.”); WIS. DEP’T OF CHILDREN & FAMILIES, YOUR GUIDE TO CHILD SUPPORT SERVICES 4 (Aug. 2015) (“The child support attorney will handle legal issues connected with obtaining and enforcing a child support order. However, their services do not include giving parents legal advice. A child support attorney who appears at your court hearing is there to represent the interests of the state. The attorney does not represent either parent. There is no attorney-client relationship between parents and child support attorneys.”); *see also* U.S. DEP’T OF HEALTH & HUMAN SERVS., *supra* note 15, at 34; Glesner Fines, *supra* note 15, at 2155–56.

litigants.<sup>98</sup> As the state's is typically the only interest in child support proceedings that is represented by counsel, it may be disproportionately benefitted, especially where IV-D attorneys appear frequently before the same judges.<sup>99</sup>

Second, IV-D attorney participation changes the flow and dynamic of the courtroom. IV-D attorneys become fixtures in child support courtrooms and may work in partnership with the judge, courtroom clerks, and state paralegals to expeditiously progress through overcrowded dockets.<sup>100</sup> Hearings involving an attorney for the state can shift from what otherwise would be a dialogue between the parents and the judge to a dialogue primarily between the judge and the state's attorney, with parents called upon as needed.<sup>101</sup> IV-D attorneys and the state thereby take on a central role in child support courtrooms, and the individual circumstances and interests of parent parties can be sidelined.<sup>102</sup>

Third, the presence of IV-D attorneys at the petitioner's table alongside parents seeking child support creates a power imbalance, projecting an image to the court of the power of the state supporting one parent's cause.<sup>103</sup> Furthermore, because the state's interest more often aligns with that of the parent seeking support, pro se respondent parents are left to square off against knowledgeable, experienced government lawyers. This puts respondent parents at a disadvantage, as they frequently lack an understanding of their rights and the child support adjudication process.<sup>104</sup>

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98. Paula Roberts, *Expedited Processes and Child Support Enforcement: A Delicate Balance Part I*, 19 CLEARINGHOUSE REV. 483, 483 (1985) ("Devising an equitable support enforcement system frequently involves a delicate balance between the rights of custodial and noncustodial parents. . . . A proper balance, which is difficult to achieve when only private parties are involved, is even more difficult to achieve when the state becomes the real party in interest. . . . In these cases, recouping benefits paid and/or preventing the need for public assistance becomes a factor in the process of enforcing the support obligation. Indeed, protecting the public fisc becomes the state's major goal.").

99. See Rebecca L. Sandefur, *Elements of Professional Expertise: Understanding Relational and Substantive Expertise Through Lawyers' Impact*, 80 AM. SOC. REV. 909, 924-25 (2015). Sandefur notes that "[l]awyer representation may act as an endorsement of lower-status parties that affects how judges and other court staff treat them and evaluate their claims, perhaps because court staff believe represented cases are more meritorious," and that "[l]awyers who appear repeatedly before the same court come to be seen as reliable, knowledgeable, and trustworthy by judges, who then give their arguments more credence than those proffered by unknown attorneys." *Id.*

100. See Kelly, *supra* note 36, at 302 (recounting in a fictional narrative based on the author's experience the state's attorney calling roll and engaging in settlement negotiations with each of the respondents at the request of the judge). See e.g., 26TH JUDICIAL DIST., FAMILY COURT DIV., LOCAL RULES OF DOMESTIC COURT r. 9 (2015) ("9.1 IV-D Child Support Cases are primarily heard in Courtroom 8110. Periodically, court sessions may also be scheduled in Courtroom 8130. . . . IV-D Attorneys and Agents shall be in court no later than 7:30 a.m. and remain until all cases are resolved.").

101. Authors' observations, D.C. Superior Court (Sept. 2015-Mar. 2016).

102. Hatcher, *supra* note 41, at 1078; Hatcher & Lieberman, *supra* note 35, at 7-8.

103. See *supra* note 98.

104. Hatcher & Lieberman, *supra* note 35, at 8-9.

Although petitioning parents can be somewhat advantaged by having the state's support in the courtroom, they often feel disempowered or excluded by the process.<sup>105</sup> Petitioning parents must cooperate with IV-D attorneys to advance their claims, but the absence of an attorney-client relationship strips petitioning parents of the authority to control the objectives of the litigation. They also do not benefit from the duties of competence, confidentiality, and loyalty required of lawyers who represent individual clients.<sup>106</sup> The high volume of cases IV-D attorneys must manage can inhibit IV-D attorneys from having contact with petitioning parents outside of the courtroom, establishing rapport, or

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105. Hatcher, *supra* note 41, at 1066. *See generally* Kelly, *supra* note 36 (recounting the experiences of a representative custodial parent in a fictional narrative based on the true experiences of the author in child support courtrooms). This story resonates with the authors' own experiences in child support courtrooms and stories told to the authors by their clients.

106. *See, e.g.*, WASHINGTON, D.C. OFFICE OF THE ATT'Y GEN., BASIC SERVICES PACKAGE (2012), [http://cssd.dc.gov/sites/default/files/dc/sites/cssd/page\\_content/attachments/CSSD%20BSP%20Aug%202012%20B%20Saveable.pdf](http://cssd.dc.gov/sites/default/files/dc/sites/cssd/page_content/attachments/CSSD%20BSP%20Aug%202012%20B%20Saveable.pdf) ("CSSD attorneys will take the legal steps necessary to establish parentage and establish, modify (including downward modifications if the mandatory three-year review and adjustment indicates a lower child support amount is warranted) and enforce support obligations. CSSD attorneys represent the District of Columbia ONLY. There is no attorney-client relationship between you and the child support attorney or between you and CSSD or its staff. CSSD attorneys DO NOT represent you, and information you provide to these attorneys is NOT protected by the attorney-client privilege. CSSD attorneys represent the District in making sure that children are supported and in collecting overdue support. You may be required to appear as a witness or take other action in connection with the case."); STATE OF GA. DEP'T OF HUMAN SERVS., APPLICATION FOR SERVICES (2016), [http://dcss.dhs.georgia.gov/sites/dcss.dhs.georgia.gov/files/DCSSEnglish\\_Packet\\_I\\_o.pdf](http://dcss.dhs.georgia.gov/sites/dcss.dhs.georgia.gov/files/DCSSEnglish_Packet_I_o.pdf) ("DCSS may use an attorney to establish, enforce and/or modify my child support order. There is no attorney-client relationship between me and the attorney, as the attorney represents the State. I understand that the attorney does not handle legal issues such as legitimation, custody or visitation; therefore, I must seek my own private attorney regarding these issues."); STATE OF HAW. DEP'T OF THE ATT'Y GEN., CHILD SUPPORT ENF'T AGENCY, APPLICATION FOR SERVICES (2008), [http://ag.hawaii.gov/csea/files/2013/07/app\\_for\\_serv.pdf](http://ag.hawaii.gov/csea/files/2013/07/app_for_serv.pdf) ("I acknowledge that the Agency's attorneys are not my private attorneys. They represent the interests of the State of Hawaii, and there is no creation of an attorney-client relationship between the Agency's attorneys and me. I understand that the Agency is authorized to undertake whatever action is necessary to locate the parent(s), establish paternity, establish and/or enforce child support obligations, review and adjust support orders, and to execute in my name any pleadings relative to legal action pursuant to Title IV-D of the Social Security Act. I also agree that the decision of how to proceed in my case is the Agency's, and not mine."); IOWA DEP'T OF HUMAN SERVS., APPLICATION FOR NONASSISTANCE SUPPORT SERVICES (2016), <https://secureapp.dhs.state.ia.us/CustomerWeb/Resources/GeneralInfo/470-0188.pdf> ("I understand that when the Unit accepts this application for services, one of the people with whom I may discuss my case is an attorney who is an employee of the Unit or the Attorney General's office. None of the services provided to me establish an attorney-client relationship with either the Unit or the attorney. The attorney works for the state of Iowa and represents only the state. By turning in this application, I admit that I understand and accept this condition."); KAN. DEP'T OF CHILDREN & FAMILY SERVS., CHILD SUPPORT SERVICES HANDBOOK 7 (2015) ("No Attorney-Client Relationship: The attorneys who work for the CSS program work only for the Secretary of DCF. Even if you benefit from their work, they do not represent you. They cannot give you legal advice. They cannot do any legal work on your case that goes beyond CSS services. The role of the CSS attorney in the child support case is to act in the public interest to make sure parents support their children. If the other parent raises issues that are beyond CSS services, [such as parenting time or custody,] you will need to talk with a lawyer of your own to protect your rights or for personal legal advice."); Glesner Fines, *supra* note 15.

developing a thorough understanding of parents' circumstances and the facts of their cases.<sup>107</sup>

Fourth, the investment of IV-D resources into child support cases has led some civil legal services organizations to reduce their representation of parents in paternity and child support matters. Lacking sufficient funding to meet more than a fraction of the need for legal assistance, legal services organizations across the United States have been forced to triage.<sup>108</sup> With IV-D programs providing at least some attorney involvement in child support cases, albeit to support the interest of the state rather than either parent, many legal services organizations have concentrated their family law resources in domestic relations courtrooms and civil protection order courtrooms where no legal assistance is readily available.<sup>109</sup> In this way, the widespread involvement of IV-D agencies in child support courtrooms has indirectly reduced the availability of legal assistance for parents in these proceedings.

## II. A NEW MODEL—DECREASING GOVERNMENT INVOLVEMENT IN FAMILY LAW COURTS, STREAMLINING IV-D FUNCTIONS, AND INCREASING ACCESS TO COMMUNITY-BASED LEGAL AND SOCIAL SERVICES

The IV-D system is ripe for fundamental change. Rather than further enlarging the scope of the IV-D program and continuing its involvement in private family law matters, it is time for states and the federal government to reconfigure the IV-D program. This redesigned system should reduce the government's role in court proceedings, streamline IV-D functions, and expand legal, social, and employment services for families seeking to develop workable parenting and child support arrangements.

### A. HALTING MANDATORY ASSIGNMENT

As a critical first step, states, with the support of Congress and HHS, should stop requiring parents to assign their rights to collect child support to the state as a condition of receiving TANF benefits.<sup>110</sup> Policy analysts and academics have long argued that passing through all assigned funds would encourage non-custodial parents to comply with support orders.<sup>111</sup> A growing number of experts have now gone further and argue that the assignment requirement is a policy that is no longer

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107. This observation is based, in part, in the authors' experiences representing clients in child support courtrooms. See Davis, *supra* note 26, at 980; Hatcher, *supra* note 36, at 910–11; Kelly, *supra* note 36.

108. See LEGAL SERVS. CORP., *supra* note 2, at 1–2.

109. See Brustin, *supra* note 28, at 45–46.

110. 42 U.S.C. § 608(a)(3) (2016) (“No assistance for families not assigning certain support rights to the State.”).

111. WALLER & PLOTNICK, *supra* note 78, at 52–53; see Turetsky, *supra* note 23.

effective or economically justified.<sup>112</sup> As little as fourteen percent of the IV-D caseload consists of TANF cases, and in many of these cases the obligor is of low income or unemployed.<sup>113</sup> As a result, states are expending significant effort to recover welfare reimbursement from individuals who have little or no income to collect. It is questionable whether state collections in TANF cases actually recoup the cost of pursuing them.<sup>114</sup>

Mandatory assignment policies also interfere with the ability of parents to determine whether and how to share their responsibilities to financially support their children, thereby compromising parental autonomy.<sup>115</sup> As one example, parents who prefer to provide in-kind support—such as goods or services instead of money<sup>116</sup>—to their children may not be able to afford to do so once a formal child support order is entered.<sup>117</sup> Moreover, parents who receive TANF benefits risk committing welfare fraud if they continue to accept in-kind support or direct child support payments from co-parents after assignment is established.<sup>118</sup> By restricting parents' ability to work out financial support issues themselves, mandatory assignment policies can increase tension and

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112. Hatcher & Lieberman, *supra* note 35, at 9; Murphy, *supra* note 35, at 344–64; see Brustin & Martin, *supra* note 10, at 811–13.

113. See *supra* note 24.

114. Some states have already shifted to a system in which all or most of the support collected through mandatory assignment is passed through to the resident parent and children. In addition, federal law has encouraged states, through partial federal reimbursement, to pass-through significant amounts of support collected through mandatory assignment and disregard the funds when calculating TANF payments. See, e.g., 2015 *Child Support and Family Law Legislative Enactments by Topic*, NAT'L CONF. ST. LEGISLATURES (Jan. 26, 2016), <http://www.ncsl.org/research/human-services/2015-child-support-and-family-law-legislative-enactments-by-topic.aspx#ChildSupportPrevention> (discussing Colorado SB 12, which requires the state department of human services to pass-through or distribute all funds collected via mandatory assignment to the recipient of cash assistance, and Minnesota SB 1458, which authorizes an income disregard of up to \$100 for a TANF recipient with one child and up to \$200 for a TANF recipient with two children). However, approximately half of all states retain all assigned monies collected. See, e.g., N.M. STAT. ANN. § 27-2B-7 (West 2004); N.Y. Soc. Serv. Law § 111-c(d) (McKinney 2012); 23 PA. CONS. STAT. ANN. § 4374(c) (West 2008). See generally *Child Support Pass-Through and Disregard Policies for Public Assistance Recipients*, NAT'L CONF. ST. LEGISLATURES (Oct. 6, 2015), <http://www.ncsl.org/research/human-services/state-policy-pass-through-disregard-child-support.aspx>. When noncustodial parents make late, lump sum payments or have resources forcibly seized through means such as tax intercept programs, the entirety of the balance owed may go directly to the government, even if the funds that would have passed through to the child were the amounts owed paid voluntarily and on time.

115. See Hatcher, *supra* note 81, at 781–82; Laurie S. Kohn, *Engaging Men as Fathers: The Courts, the Law, and Father-Absence in Low-Income Families*, 35 CARDOZO L. REV. 511, 535 (2013).

116. Lenna Nepomnyaschy & Irwin Garfinkel, *Child Support Enforcement and Fathers' Contributions to Their Nonmarital Children*, 84 SOC. SERV. REV. 341, 342 (2010).

117. Hatcher, *supra* note 77, at 1045, 1069; Maldonado, *supra* note 34, at 1005–09.

118. See Kohn, *supra* note 115, at 539–44.

acrimony between parents, which can undermine their ability to effectively co-parent their child.<sup>119</sup>

Researchers and policy analysts further posit that mandatory assignment policies disincentivize the payment of support and negatively impact the relationship between parents obligated to pay support and their children.<sup>120</sup> Such parents might perceive that child support payments assigned to the state do not benefit their children. This perception might encourage parents to pursue employment in the underground economy where the state cannot garnish wages.<sup>121</sup>

Mandatory assignment diverts limited funds from the families who most need them to a government bureaucracy whose services the families may neither need nor desire. To conserve IV-D resources and better address those cases in which parents want state assistance in collecting or enforcing child support, states should no longer compel parents receiving public benefits to assign their rights to child support.

#### B. RECALIBRATING THE ROLE OF THE STATE

It is time to recalibrate the role and scope of the IV-D program. The IV-D program should adopt a transparent and pragmatic focus on administrative assessment, collection, and distribution of child support payments. This streamlined approach would leave disputes that implicate fundamental parental rights concerning paternity, support, custody, and visitation to independent legal service providers, neutral mediators, and impartial judges.

If federal law no longer required the assignment of support to the state in TANF cases, then the state would have no direct pecuniary interest to justify involvement in private child support cases.<sup>122</sup> Congress and OCSE have suggested that the IV-D program furthers the state's interests in ensuring that children are financially supported as well as in preventing future welfare dependence.<sup>123</sup> However, in private family law

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119. *Id.* Studies show that one of the most significant factors contributing to father absence is conflict with the mother. *Id.* at 521; *see also* Hatcher, *supra* note 81, at 781–84; WALLER & PLOTNICK, *supra* note 78, at 30–31.

120. *See, e.g.*, Kohn, *supra* note 115, at 534–35; Turetsky, *supra* note 23, at 404.

121. PETER EDELMAN ET AL., RECONNECTING DISADVANTAGED YOUNG MEN 130 (2006); CARMEN SOLOMON-FEARS, CONG. RESEARCH SERV., FATHERHOOD INITIATIVES: CONNECTING FATHERS TO THEIR CHILDREN 13 (2012) (discussing the perception among nonresident fathers that money assigned benefits the government rather than their children).

122. States may retain a pecuniary interest in cases in which children have been removed from their parents and placed in the custody of the state through child abuse and neglect proceedings. 42 U.S.C. § 671(a)(17) (2016). *See generally* Daniel L. Hatcher, *Collateral Children: Consequence and Illegality at the Intersection of Foster Care and Child Support*, 74 BROOK. L. REV. 1333, 1334 (2009) (suggesting reforms to address the policy concerns and illegal practices involving foster care and child support).

123. SOLOMON-FEARS, *supra* note 50, at 10–11; U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 66, at 1–2.

proceedings, outside of the abuse and neglect context, the involvement of government attorneys representing the separate interest of the state is inappropriate and unnecessary.<sup>124</sup> The state's generalized interest in supporting children and avoiding welfare dependence does not justify state intervention in private civil disputes simply because they relate to an attenuated family policy goal.

Removing the state from child support adjudications would create a more level playing field for parents and would conserve court resources to address those disputes in which one or both parents actually desire court intervention. Courts would no longer need to consider the asserted interest of the state in these proceedings, but could concentrate on the interests of the parties and the child—those who must actually live with the judgment. Halting state participation in child support proceedings would also better allow for the integrated resolution of custody and child support issues without state interference.<sup>125</sup>

A primarily administrative IV-D system designed to assess, collect, distribute, and enforce support would suffice to serve the state's generalized interest in ensuring support of children and avoiding welfare dependence. IV-D state agencies could concentrate their efforts and resources on locating income and assets, calculating child support obligations, protecting the privacy of identity-related information, managing the collection and distribution of support, and using administrative remedies to enforce child support agreements or court orders. All of these tasks are central to the program's ultimate goal of directing financial support to children whose parents are not voluntarily providing such support.<sup>126</sup>

Under a more streamlined model, IV-D agencies would limit their role in child support matters to calculating and providing a child support assessment at the request of a parent or the court. Agencies would use tax, employment, social security disability benefits, unemployment insurance benefits, and other income or asset-related records in government databases to generate the assessment. Parents, mediators,

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<sup>124</sup> Brustin & Martin, *supra* note 10, at 844.

<sup>125</sup> *Id.* at 812–13. *But see* Elizabeth L. MacDowell, *Reimagining Access to Justice in the Poor People's Courts*, 22 GEO. J. ON POVERTY L. & POL'Y 473, 480 (2015) (“[T]he proactive and interventionist role of the court in family cases suggests that the concept of ‘private party cases’ as distinct from those initiated by the state is misleading. Family courts have abandoned the latent role associated with civil courts to take a more active role in case management and fact-finding, with continued detrimental results.”).

<sup>126</sup> To facilitate this change, the federal Office of Child Support Enforcement should develop new performance measures for state IV-D programs that value using resources to locate and uncover assets in cases in which individuals are believed to be understating or hiding income or assets. Congress has established five measures by which to measure annual state IV-D performance including: paternity establishment, establishment of support orders, current payment levels, arranged payment levels, and program cost-effectiveness. 42 U.S.C. § 658a(b)(4) (2016).



and courts could then use these support assessments to come to voluntary support agreements or as evidence in adjudications.<sup>127</sup>

IV-D agencies would focus more attention on operating the state centralized child support collection and distribution units, which administer wage garnishments, maintain payment history records, and ensure that support is distributed to the correct parties.<sup>128</sup> These functions require the manpower, technical capacity, and oversight that government agencies are uniquely suited to provide. Finally, IV-D agencies would continue to engage in administrative enforcement of unpaid support orders through bank seizures, tax intercepts, license revocations, and suspension of passports.<sup>129</sup> The state has the capacity to manage the volume of data and to employ the labor required to undertake these enforcement efforts as well as a strong interest in and obligation to protect the identity-related information uncovered through these efforts.<sup>130</sup>

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127. In carrying out this function, the government would have to balance the need to provide an accurate assessment with the duty to protect the privacy of identity-related information. The IV-D agencies have access to wage information and new hires databases. They interface with other government tax, employment, and public benefits agencies to identify obligor assets such as income tax refunds, unemployment compensation, and lottery winnings. They also interface with private entities such as banks and other financial institutions to identify assets. See U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 16, at 23–24. The ability to shield information is particularly critical in situations involving domestic violence or child abuse.

128. *Id.* at 31.

129. *Id.* at 23–24. The IV-D agency is the executive agency most likely to have access to the databases and interagency networks to accomplish such administrative enforcement. Parents should be afforded due process protections including the right to object to such seizures and have their objection heard by a neutral fact finder in a civil or administrative court prior to the government taking such actions. These investigatory and enforcement tools are especially critical when a noncustodial parent lives outside of the child's state of residence or outside of the United States. In such circumstances, laws empowering IV-D agencies to share information with one another and with related international agencies can overcome geographical, jurisdictional, and privacy barriers that can stymie custodial parents' efforts to establish and enforce child support orders. As IV-D agencies are in the best position to coordinate efforts and share confidential information with other government agencies, interstate and international child support establishment and enforcement should be a central function of IV-D programs. See, e.g., Letter from Vicki Turetsky, Comm'r Office of Child Support Enf't, to State IV-D Directors (Nov. 5, 2015) (on file with authors) (directing state agencies to provide information regarding state support procedures which OCSE will use to prepare reports needed in preparation for U.S. ratification of the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance).

130. In terms of civil contempt, states should alter their involvement in civil contempt proceedings in one of two ways. One alternative is for the IV-D agency to refrain from participating in civil contempt litigation altogether and leave it to private parties to pursue or defend these actions pro se or represented by counsel. The Supreme Court decision in *Turner v. Rogers* makes it clear that while appointment of counsel in civil contempt cases is not constitutionally required, at least where both the petitioner and respondent are proceeding pro se, courts must implement adequate procedural safeguards to protect the due process rights of defendants. *Turner v. Rogers*, 131 S. Ct. 2518, 2520 (2011); see Brustin, *supra* note 15. Therefore, courts would need to ensure that defendants are aware of the standards of proof and have a meaningful opportunity to be heard. A second option could be for the state to elect to initiate select civil contempt cases at the behest of the parent owed support. The *Turner* Court specifically notes that the question of whether counsel is required for defendants in

States might consider referring cases in which the only issue to be adjudicated is the accuracy of IV-D child support assessments to administrative tribunals.<sup>131</sup> Administrative courts review executive agency determinations, and these tribunals offer parties the opportunity to be heard by a neutral fact finder. They typically operate under expedited, informal procedures and relaxed rules of evidence, making them accessible to pro se parties.<sup>132</sup> Given the private nature of the dispute between the parties, there would be no need for IV-D lawyers or personnel to represent the state in these proceedings.<sup>133</sup>

### C. CREATING NEW FEDERAL AND STATE INITIATIVES THAT DIRECT FUNDING TO COMMUNITY-BASED LEGAL, SOCIAL, AND EMPLOYMENT SERVICES FOR PARENTS

Both the efforts to rebrand the OCSE mission and to incorporate parenting time determinations into child support cases represent attempts to strengthen the financial and social well being of low-income families. The focus on the underlying needs of these families is laudable,

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civil contempt actions might be answered affirmatively when it is the state initiating the claim and government lawyers are litigating against a pro se defendant. *Turner*, 131 S. Ct. at 2520. Therefore, in light of *Turner*, in those cases it would be prudent for the court to appoint an attorney for the parent against whom the action is filed if that parent cannot afford one.

131. This administrative review of an executive agency decision concerning a dispute between two private entities is akin to unemployment insurance benefits determinations. Claims examiners at state departments of employment make an initial determination as to whether benefits should be granted. The employee or employer has a right to an administrative appeal of the decision. *See, e.g., Filing a Claim*, STATE CAL. EMP. DEV. DEP'T, [http://www.edd.ca.gov/unemployment/Filing\\_a\\_Claim.htm](http://www.edd.ca.gov/unemployment/Filing_a_Claim.htm) (last visited May 29, 2016); *Appeals Information for Claimants and Employers*, S.C. DEP'T EMP. & WORKFORCE, <http://dew.sc.gov/appeals.asp> (last visited May 29, 2016); *Start Your Unemployment Compensation Process*, DC.GOV: DEP'T EMP. SERVS., <http://docs.dc.gov/service/start-your-unemployment-compensation-process> (last visited May 29, 2016). In Washington, D.C., for example, employees or employers appealing decisions may have a representative or lawyer representing them. There are non-profit programs as well as private sector companies or firms available to provide legal representation. *See* D.C. DEP'T OF EMP'T SERVS., DISTRICT OF COLUMBIA UNEMPLOYMENT INSURANCE: CLAIMANT'S RIGHTS AND RESPONSIBILITIES 9–10, 12 (2015). Representatives or attorneys for the D.C. government are only involved in proceedings in which there is a dispute about the Department of Employment Service's eligibility or benefit calculations or when the government is the employer. Generally, these appeals are treated as disputes between two private parties. *See, e.g., You May Be Able to Get Free Legal Help for this Case*, DC.GOV, [http://oah.dc.gov/sites/default/files/dc/sites/oah/publication/attachments/CAP\\_EAP\\_Flyer.pdf](http://oah.dc.gov/sites/default/files/dc/sites/oah/publication/attachments/CAP_EAP_Flyer.pdf) (last visited May 29, 2016); *The Hearing Process: Frequently Asked Questions*, N.Y. DEP'T OF LABOR, <https://www.labor.ny.gov/ui/claimantinfo/hearingprocess.shtm#hp17> (last visited May 29, 2016).

132. Jane C. Murphy, *Access to Legal Remedies: The Crisis in Family Law*, 8 BYU J. PUB. L. 123, 134–38 (1993) (positing that full hearings do not benefit pro se litigants and advocating to eliminate hearings on matters lacking meaningful factual disputes).

133. Instead of the IV-D agency initiating child support cases as a party to the case, individuals could file directly with the courts (particularly if there are issues of paternity, custody and/or visitation to address) or file for an administrative assessment. If agreed to by the parties, an administrative assessment could become an enforceable child support order. If not agreed to by both parties, then the person requesting support could seek review and adjudication in a family court or administrative tribunal.

however, federal and state child support programs are ill-suited for accomplishing these goals. IV-D agencies operate under funding and performance standards designed to achieve specific collection and enforcement goals. These agencies have developed the expertise needed to advance these performance goals,<sup>134</sup> however, IV-D agencies are neither well equipped nor well positioned to advance the broader family goals policymakers have in mind.

Low-income families frequently have significant government involvement in their private lives, including regular interactions with law enforcement officials, public benefits case workers, and child protection services officials.<sup>135</sup> In many cases, parents perceive these interactions as invasive and persecutory, and these encounters result in punitive actions that likely would not occur absent the high level of government scrutiny these families experience.<sup>136</sup> Low-income families often do not trust that the involvement of government-affiliated workers in their lives will help them. Instead they seek services from community organizations that help families address their needs on their own terms.<sup>137</sup>

Rather than funding cadres of IV-D lawyers and paralegals to negotiate and litigate paternity, support, and parenting matters, state legislatures and Congress should redirect this funding to existing<sup>138</sup> or

134. See Child Support Performance and Incentive Act of 1998, Pub. L. No. 105-200, 112 Stat. 645 (1998); see also U.S. DEP'T OF HEALTH & HUMAN SERVS., *supra* note 60, at 286-87.

135. Wendy A. Bach, *The Hyperregulatory State: Women, Race, Poverty, and Support*, 25 YALE J. L. & FEMINISM 317, 331-38 (2013).

136. See, e.g., Joan M. Shaughnessy, *Essay on Poverty and Child Neglect: New Interventions*, 21 WASH. & LEE J. C.R. & SOC. JUST. 5, 12-14 (2014).

137. See, e.g., Jonathan Blazer & Brett Murphy, *Addressing the Needs of Immigrants and Limited English Communities in Disaster Planning and Relief: Lessons for Government, Disaster Relief Agencies, and Community-Based Organizations*, 22 IMMIGRANTS' RTS. UPDATE 8, 2-3 (2008); see also ALANA LANDEY & ALEXANDER COCCIA, U.S. DEP'T OF HEALTH & HUMAN SERVS., COMMUNITY ACTION AGENCY ACTIVITIES IN AFFORDABLE CARE ACT OUTREACH AND ENROLLMENT: INSIGHTS FROM CASE STUDIES (2015).

138. See SOLOMON-FEARS, *supra* note 121, at 1-3, 5-6 (discussing direct federal funding for responsible fatherhood programs including HHS Office of Family Assistance awards of \$55 million in competitive responsible fatherhood grants issued in October 2015 as well as indirect government and private funding for fatherhood initiatives through the TANF program, state Maintenance of Effort [MOE] expenditures, and social services block grants.) The White House Office of Faith-based and Neighborhood Partnerships coordinates Centers for Faith-based and Neighborhood Partnerships in several federal agencies including the Department of Labor, Department of Homeland Security, and Departments of Agriculture, Commerce, Education, Health and Human Services, Housing and Urban Development, Justice, and Veterans Affairs as well the Small Business Administration, Corporation for National and Community Service, US. Agency for International Development and the Environmental Protection Agency. Each Center partners with faith-based and neighborhood organizations to advance certain policy goals including responsible fathering and full employment. For example, the Department of Labor ("DOL") Center works with community groups to strengthen job training and workforce development programs. See *About the Office of Faith-Based and Neighborhood Partnerships*, WHITE HOUSE, <http://www.whitehouse.gov/administration/eop/ofbnp/about> (last visited May 29, 2016). The federal Office of Child Support Enforcement awards \$10 million in grants to states and territories through the Access and Visitation ("AV") Program. This, however, is a relatively small

new community-based initiatives focused on strengthening parenting and support of children. Congress could redirect the IV-D funding to develop a new program under the auspices of HHS, or as a joint program among HHS, the Department of Labor, and the Department of Justice. Whatever the form, the program would need to fund community-based organizations as well as problem solving and community courts that address the multiple intersecting legal, social, and employment needs of low-income parents struggling to support their children and endeavoring to establish meaningful, realistic parenting arrangements.<sup>139</sup>

Several reasons support confining the government's role to facilitating the frontline efforts of community-based organizations and courts, rather than providing such services directly. First, an extensive network of legal and social services organizations exists to provide assistance to parents and children around the country.<sup>140</sup> These organizations have substantive expertise in the applicable legal and regulatory regimes and an understanding of the complexity and variation of family configurations characteristic of the communities they serve.<sup>141</sup> The government need not recreate this infrastructure, particularly when existing community-based organizations desperately need financial and technical support to serve those seeking assistance.

Second, community-based organizations represent the interests of the individuals and families they serve, rather than the policy objectives of the state. This clarity of mission and allegiance places these organizations in a strong position to earn the trust of community members who might otherwise distrust police and government agencies.

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amount of money given the broad scope of activities that the grant program funds and the geographic area it covers. States and territories can use these grants to fund services. *Access and Visitation*, OFF. CHILD SUPPORT ENFORCEMENT, <http://www.acf.hhs.gov/programs/css/grants/access-visitation> (last visited May 29, 2016). The most frequently provided service funded through the AV program is parent education (41%) followed by mediation services (24%), development of parenting plans (18%), visitation enforcement (12%), and counseling services (5%). OFFICE OF CHILD SUPPORT ENF'T, ACCESS AND VISITATION GRANT PROGRAM FY 2013 UPDATE (NOV. 2014).

139. See SOLOMON-FEARS, *supra* note 121, at 6 ("To help fathers and mothers meet their parental responsibilities, many policy analysts and observers support broad-based collaborative strategies that go beyond welfare and child support agencies and include schools, work programs, prison systems, churches, community organizations, and the health care system.").

140. The Legal Services Corporation, for example, provides funding to 134 independent, non-profit legal services agencies around the United States and in U.S. territories as well as the District of Columbia. For a listing of agencies receiving funding, see *Find Legal Aid*, LEGAL SERVS. CORP., <http://www.lsc.gov/what-legal-aid/find-legal-aid> (last visited May 29, 2016).

141. See, e.g., *Civil Legal Aid 101*, U.S. DEP'T JUST., <https://www.justice.gov/atj/civil-legal-aid-101> (last visited May 29, 2016) ("LSC-funded organizations comprise about 25% of the total number of civil legal aid providers nationally. There are hundreds of independently-run nonprofit civil legal aid programs that don't get LSC funds and that may focus on particular populations or issues (e.g., children, homeless, people with disabilities, veterans, etc.), provide more generalized services including legal aid, coordinate pro bono programs, or specialize in self-help services including legal aid, coordinate pro bono programs, or specialize in self-help assistance.").

Third, community-based organizations and community courts are positioned to tailor their services and approaches to the neighborhoods and populations they serve, and better able to innovate and implement comprehensive approaches to complex challenges than government bureaucracies.<sup>142</sup> For example, problem-solving<sup>143</sup> and community courts<sup>144</sup> address the needs and disputes of litigants in a holistic way.<sup>145</sup> Such courts aim to remedy underlying structural barriers that prevent parents from complying with court orders in order to more adequately and permanently resolve disputes.

It is difficult to ascertain the total amount of state and federal funding expended on attorneys and other court-related staff hired to mediating, negotiating, and litigating IV-D paternity and child support matters in trial or administrative courts because most state budgets do not provide detailed salary information. A few figures offer limited insight into this question. In Maryland, for example, approximately \$3,000,000 was appropriated in the 2015 state budget to fund IV-D attorneys.<sup>146</sup> In Florida, under a fiscal year 2015 contract with the State of Florida Office of the Attorney General (“OAG”), the Florida Department of Revenue agreed to pay OAG up to \$6,841,910 for legal services performed on behalf of Florida’s IV-D child support enforcement program.<sup>147</sup> The federal OCSE and independent researchers (using Freedom of Information Act requests) would need to undertake more

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142. Community-based organizations also provide or refer clients to obtain employment training, GED training, and access to public benefits. Some of these organizations are already forming alliances and partnerships with courts to offer low-income litigants information, referrals and representation in paternity, support, and other family related disputes. Non-profit agencies can also develop court-annexed resource centers in which attorneys on site can offer advice, limited representation, or full representation. *See e.g., Special Projects*, LEGAL AID Soc’y D.C., <http://www.legalaiddc.org/special-projects> (last visited May 29, 2016). The District of Columbia’s Child Support Community Legal Services Project, a court annexed legal resource center located at the Superior Court provides one example. The project is administered by two community-based organizations, the D.C. Legal Aid Society and Bread for the City, and offers general legal advice concerning litigation of paternity and child support cases, as well as limited and full representation.

143. Kohn, *supra* note 115, at 553–54.

144. *See Community Court: Overview*, CT. FOR CT. INNOVATION, <http://www.courtinnovation.org/topic/community-court> (last visited May 29, 2016).

145. *Id.*; *see* CYNTHIA G. LEE ET AL., NAT’L CTR. FOR STATE COURTS, A COMMUNITY COURT GROWS IN BROOKLYN: A COMPREHENSIVE EVALUATION OF THE RED HOOK COMMUNITY JUSTICE CENTER 1–3 (2013).

146. *See* MD. DEP’T OF BUDGET & MGMT., FY 2017 PROPOSED OPERATING BUDGET PERSONNEL DETAIL vol. II, at 14–16 (2015). Paralegals were not separately identified so the funding allocated to paralegals could not be calculated.

147. *See* Agreement Between the State of Fla. Off. of Att’y Gen. and Fla. Dep’t of Revenue Child Support Enf’t Program, July 1, 2009 through June 30, 2014, at 1–6, 11, [http://www.myfloridalegal.com/CTRSweb.nsf/0/85257C8C006B03C385257CA600443B02/\\$file/CL9AG.pdf](http://www.myfloridalegal.com/CTRSweb.nsf/0/85257C8C006B03C385257CA600443B02/$file/CL9AG.pdf). Attached to the contract is FY 2009–2010 estimates of costs for Offices of the Attorney General in three counties. The estimated salary and benefits costs for attorneys, paralegals, clerks and assistants are: \$584,401 in Leon County; \$1,305,736 in Broward County; and \$2,815,773 in St. Petersburg. Including all operating, litigation, and administrative costs, the estimated contract totals are: \$796,881 for Leon county; \$1,813,359 for Broward county; and \$4,003,305 for St. Petersburg county.

extensive research to determine the amount of funding expended with any accuracy.

The Health Resources and Services Administration (“HRSA”)<sup>148</sup> offers a model for promoting public policy goals designed to support low-income and vulnerable families through funding of community-based initiatives. HRSA “is the primary Federal agency for improving health and achieving health equity through access to quality services, a skilled health workforce and innovative programs.”<sup>149</sup> HRSA issues more than 10,000 grants and supplements to 3000 partners to provide leadership training, technical assistance, and funding to community-based health care providers, schools, and local health systems in states and municipalities throughout the United States.<sup>150</sup> HRSA’s Health Center Program alone provides grant funding to approximately 1300 programs providing primary health care at more than 9200 clinics serving approximately twenty-two million patients, many of whom are low income and struggling to subsist.<sup>151</sup>

HRSA’s programs, such as those funded under the auspices of the Maternal and Child Health Bureau, are implemented by doctors, nurses, caseworkers, and social workers who are integrated in their communities and are knowledgeable about the needs of their patients.<sup>152</sup> Although federally funded, these health care professionals are not agents of the state, but rather, are independent community partners providing critical services to those in need. HRSA-funded centers address the needs of their patients holistically, not only providing health care, but also services addressing other social determinants of health such as substandard housing conditions, substance abuse, and family violence.<sup>153</sup>

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148. HRSA is an agency of the U.S. Department of Health and Human Services. *About HRSA*, HEALTH RESOURCES & SERVS. ADMIN., <http://www.hrsa.gov/about/index.html> (last visited May 29, 2016).

149. *Id.* (“HRSA’s programs provide health care to people who are geographically isolated, economically or medically vulnerable.”).

150. *See Strategic Plan FY 2016–2018*, HEALTH RESOURCES & SERVS. ADMIN., <http://www.hrsa.gov/about/strategicplan.html> (last visited May 29, 2016).

151. *Id.* HRSA operates five additional programs including: the Ryan White HIV/AIDS Program which funds 900 organizations that provide health care services to individuals living with HIV; the National Health Service Corps which provides funding (including loan repayment) to encourage health care professionals to provide services in underserved communities; Health Workforce Training Programs which fund training and education of technically skilled and culturally competent health care professionals who are equipped to work in settings offering multidisciplinary team-based care; the Maternal and Child Health Block Grant Program which issues grants to fifty-nine states and U.S. territories to support quality health care for women, infants, and children, including children with special health care needs; and the Rural Health Policy Program geared toward developing effective policy and capacity building for underserved rural communities. *Id.* at 2–3.

152. *See Maternal and Child Health Bureau*, HEALTH RESOURCES & SERVS. ADMIN., <http://www.hrsa.gov/about/organization/bureaus/mchb/index.html> (last visited May 29, 2016).

153. INST. FOR ALT. FUTURES, COMMUNITY HEALTH CENTERS LEVERAGING THE SOCIAL DETERMINANTS OF HEALTH 4–5 (2012).

The implementation of a dramatically different approach to achieving parenting, employment, and child support policy goals is possible and has the potential to increase access to justice. In contrast to the government-centric approach taken in the IV-D child support enforcement context to date, federal efforts to strengthen financial support and encourage shared parenting should pursue an approach more akin to HRSA and redirect funding to increase the availability of social, employment, and legal services to low-income families.<sup>154</sup>

Grant programs under the auspices of HHS, the Department of Labor, and/or the Department of Justice could prioritize legal services agencies offering a menu of services including limited advice and assistance (court-annexed and independent), mediation services,<sup>155</sup> agreement drafting and review, limited appearances, and full representation.<sup>156</sup> Funding could also be targeted to community-based social services and employment organizations providing parenting education, counseling, and mediation, as well as skills education, job training, and meaningful assistance securing employment.<sup>157</sup> In this way, funding would promote innovation and interdisciplinary collaboration as a means to strengthen parenting and expand parents' capacity to financially support children.

### III. RISKS OF PROPOSALS TO REDESIGN THE IV-D SYSTEM AND FAVOR PRIVATE DISPUTE RESOLUTION MODEL

Streamlining the IV-D system and redirecting resources to community-based legal and social services would pose a number of risks that cannot be ignored. Perhaps the biggest potential risk of implementing the proposals outlined in Part II is that lawmakers could divert funds from IV-D agency litigation budgets and syphon them off for other purposes rather than appropriate funds to community-based

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154. Congress has sought to promote healthy marriage and engaged fatherhood through grants to government agencies, non-profits, and faith-based as well as community-based organizations. See SOLOMON-FEARS, *supra* note 121, at 6 (citing U.S. DEP'T OF HEALTH & HUMAN SERVS., IMPLEMENTING HEALTHY MARRIAGE AND RESPONSIBLE FATHERHOOD PROGRAMS WITHIN DIFFERENT ORGANIZATIONAL STRUCTURES I (2012)).

155. See Kohn, *supra* note 115, at 551–52 (noting that studies have found that mediation reduces conflict between parents and enhances their abilities to communicate with one another. This finding, Kohn points out, applies to unmarried and married parents). Caution is warranted when incorporating mediation services, to ensure that mediation is appropriately viewed as a means to conflict resolution rather than an end in itself, and that mediators are adequately versed in the cultural and social context of the community and trained to recognize and appropriately screen or manage cases involving a history of domestic violence. See Brustin & Martin, *supra* note 10, at 839, 845–46.

156. Brustin, *supra* note 15, at 33–43 (highlighting the District of Columbia's Child Support Community Legal Services Project).

157. See, e.g., Lydia DePillis, *So, You Have a Minimum-Wage Job. Now What?*, WASH. POST (Dec. 30, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/12/30/so-you-have-a-minimum-wage-job-now-what/> (discussing Jubilee Jobs, Move Up Program, a support and resource project tailored for individuals in the Washington, D.C. job market trying to move from entry-level, minimum-wage jobs to higher paying, secure employment).

initiatives. The absence of funding allocated to support the recent federal parenting time initiatives suggests that Congress lacks the will to provide the resources needed to address parenting issues.<sup>158</sup> Further, a strategy to fund more lawyers, even if those lawyers are serving poor families, is unlikely to garner much popular support.<sup>159</sup> Thus, diminishing the legal advocacy capacity of the IV-D program could eliminate the one existing source of legal assistance available to parents of low and moderate income seeking to establish parentage and to collect, modify, or enforce support. Without an alternative option, parents in need of support could find themselves in a worse position than they are in today.

Second, without more serious efforts to address wage stagnation, unemployment, and underemployment, low-income parents will continue to struggle to support their children.<sup>160</sup> Reforms such as bolstering the minimum wage; expanding earned income tax credits; making Medicaid more accessible; increasing expenditures for adult education, substance abuse treatment, and mental health services; expanding child care subsidies; and loosening restrictions on expungement of criminal records would bolster the financial position and social and emotional well-being of low-income parents. Without meaningful progress on these issues, low-income parents will continue to struggle to support their children regardless of which government agency or program oversees child support and parenting initiatives.

Third, shifting child support calculation and collection to largely administrative processes might lead to an increase in unfair or inaccurate determinations unless Congress and states implement effective accountability mechanisms and meaningful remedies to redress errors. Many states have created independent administrative tribunals to review state agency determinations on substantive and procedural grounds.<sup>161</sup> The District of Columbia, for example, has established the Office of Administrative Hearings (“OAH”) to review agency determinations.

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158. The Congressional resolution enacted in 2014 merely urges IV-D to include parenting time in child support orders but provides no additional funding for such initiatives. Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 303(b)(2), 128 Stat. 1919, 1946 (2014) (“States should use existing funding sources to support the establishment of parenting time arrangements, including child support incentives, Access and Visitation Grants, and Healthy Marriage Promotion and Responsible Fatherhood Grants.”).

159. See generally ALAN HOUSEMAN, CTR. FOR LAW & SOC. POLICY, CIVIL LEGAL AID IN THE UNITED STATES: AN UPDATE FOR 2013, at 1, 9 (2013) (anticipating that LSC appropriation would diminish even more in 2014).

160. See Stacy Brustin, *Child Support: Shifting the Financial Burden in Low-Income Families*, 20 GEO. J. ON POVERTY L. & POL’Y 1, 32–52 (2012).

161. See, e.g., *Office of Administrative Hearings*, OAH.DC.GOV (last visited May 29, 2016); *Office of Administrative Hearings*, OREGON.GOV, <http://www.oregon.gov/oah/pages/index.aspx> (last visited May 29, 2016); *Office of Administrative Hearings*, MARYLAND.GOV, <http://www.oah.state.md.us/> (last visited May 29, 2016); *The Mission of the Office of Administrative Hearings*, CA.GOV, <http://www.dgs.ca.gov/oah/Home.aspx> (last visited May 29, 2016); see also James F. Flanagan, *An Update on Developments in Central Panels and ALJ Final Order Authority*, 38 IND. L. REV. 401 (2005).



OAH is an independent tribunal that is staffed by neutral adjudicators, governed by comprehensive rules of procedure, and subject to appeals of its decisions to the D.C. Court of Appeals.<sup>162</sup> The neutrality of the tribunal, the procedural protections governing its proceedings, and the availability of appellate court review of its decisions make the OAH an effective arbiter of procedural and substantive challenges to agency determinations. This type of independent review is not available in all states, so instead agencies use an internal administrative review process.<sup>163</sup> Without effective independent review, shifting child support calculations and collections to administrative processes might grant agencies unbridled authority without the transparency and recourse that court adjudication provides.<sup>164</sup>

Fourth, it is unclear whether there exists an adequate network of community-based organizations throughout the country to meet the demand for assistance with child support disputes that IV-D agencies currently address. In rural areas in particular, the paucity of available providers of legal services could create conflicts of interest preventing agencies from representing a particular parent and ultimately preventing that parent from obtaining assistance.<sup>165</sup>

Finally, it is possible that streamlining the scope of IV-D services will do little to change—and may exacerbate—the dual track system of adjudication existing in family courts throughout the country.<sup>166</sup> Although government attorneys would no longer be involved in mediating and litigating parentage and child support claims in the name of a nebulous state interest, low-income litigants seeking child support might end up cabined off into administrative processes—away from courts entirely—while more affluent litigants continue to have the opportunity to more easily resolve all issues in one proceeding in domestic relations courts.<sup>167</sup>

#### CONCLUSION

The size and ubiquity of the federal and state child support bureaucracy make its current role and functions seem inevitable. The IV-D program has made many important contributions, collecting significant

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162. D.C. OAH is accessible by public transportation and consists of numerous private hearing rooms as well as a staffed resources center to assist pro se claimants.

163. See A. Michael Nolan, *State Agency-Based v. Central Panel Jurisdiction: Is There a Deference?*, 29 J. NAT'L ASS'N ADMIN. L. JUDICIARY 1, 37–40 (2009).

164. Further, IV-D agencies are often unwilling to share with parents information gleaned from interstate databases or other sources and therefore parents would not have the information necessary to contest agency decisions or pursue other remedies in court or administrative tribunals.

165. See *Rural Pro Bono Project*, A.B.A., [http://www.americanbar.org/groups/probono\\_public\\_service/projects\\_awards/rural\\_pro\\_bono\\_project.html](http://www.americanbar.org/groups/probono_public_service/projects_awards/rural_pro_bono_project.html) (last visited May 29, 2016).

166. Brustin & Martin, *supra* note 10, at 805–06, 812–15.

167. *Id.*

amounts of child support on behalf of low-income families and enabling advances in the aggregation of data to facilitate child support enforcement. At the same time, the insertion of IV-D personnel into parentage and child support cases has materially impacted the balance and focus of private family law proceedings in ways detrimental to low-income parents, and the level of intervention is poised to expand. Rather than enlarging the scope and reach of IV-D child support programs, they should be streamlined to focus on their strengths. Congress and states should then redirect funding to community-based organizations and courts that provide legal, employment, and social services aimed at facilitating engaged parenting and strengthening financial support of children.

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