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## The Complicated Game of Child Support in Illinois: Does Anyone Really Win?

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# THE COMPLICATED GAME OF CHILD SUPPORT IN ILLINOIS: DOES ANYONE REALLY WIN?

By Kristina E. Smith

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Imagine playing a card game where the rules are so complicated that each player only knows a portion of them. This game uses at least five decks, all in different sizes, shapes, and colors. The players all speak different languages and many times do not get along. Are you having fun yet? Now imagine that after playing the game for several hours you suddenly realize that the cards you need to win are missing from the deck. Do you give up? Not surprisingly, most people would.

Luckily, there is no such game because no one would ever want to play it. However, this is how Cook County, Illinois runs a program designed to establish, collect, and enforce child support payments for children who do not live with both of their parents.

## *I. Introduction to Child Support Programs*

In the past, legislators were only concerned with child support insofar as it could be used to keep poor single mothers off of welfare. To meet this objective, in the 1970s the federal government designed state-operated programs (called "IV-D" programs after its location in Title IV-D of the Social Security Act) that would force these mothers to help track down non-resident fathers and make them support their children.<sup>1</sup> As time wore on, legislators began to realize that the need for child support services went beyond welfare mothers and was trickling into a greater spectrum of socioeconomic levels.<sup>2</sup> Consequently, they expanded the scope of IV-D programs to include any custodial parent willing to pay a small fee for the agency to locate alleged fathers, establish paternity, and secure, enforce, and modify child support orders.<sup>3</sup> With the number of children being born to never-married mothers ever increasing and now at 33%,<sup>4</sup> and the divorce rate at over 50% of the marriage rate,<sup>5</sup> the amount of custodial parents seeking to establish

and enforce child support orders is swelling to drastic proportions. Under-funded and under-staffed IV-D child support agencies simply cannot handle the workload.

Children are the ones who are suffering when the IV-D agency fails and they are not supported by both of their parents. In 2000, there were 17 million open IV-D cases in the United States, representing 19 million children.<sup>6</sup> Of these only 42% received *any* child support from the non-resident parent during that year.<sup>7</sup> For custodial parents frustrated with the IV-D program, their only other options are to hire a private attorney or to take matters into their own hands. Unfortunately, most single parents cannot afford to hire private attorneys to obtain and enforce child support

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orders. They may have already exhausted their resources on an attorney to handle their divorce, or on attorneys' fees to secure the child support order. These parents cannot afford to keep retaining an attorney to go back to court for enforcement when the ex-spouse stops paying. Furthermore, the rules are far too complex for even the most diligent parent trying to go it alone. With the deck stacked against her,<sup>8</sup> a single parent will many times simply give up.

For those low- and middle-income parents who are determined to pursue support for their children, they will be forced to enter into the endless bureaucracy of the IV-D program in their state. Once they enter the system, they will be faced with unending delays, mix-ups, computer glitches, missing checks, rude caseworkers, unsympathetic judges, and hundreds of unanswered questions. They will be pitted against the non-resident parent and even the most amiable relationships will be shattered.

## II. Focus on Illinois

When considering IV-D programs across the country, Illinois' program is the worst of the worst. Housed in the Illinois Department of Public Aid (IDPA), Illinois' IV-D program has one of the lowest rates of collections,<sup>9</sup> cases with child support orders,<sup>10</sup> paternity establishment,<sup>11</sup> and cost-effectiveness.<sup>12</sup> This adds up to a state with 1.1 million open child support cases, where only 16% of these cases have any child support collections.<sup>13</sup>

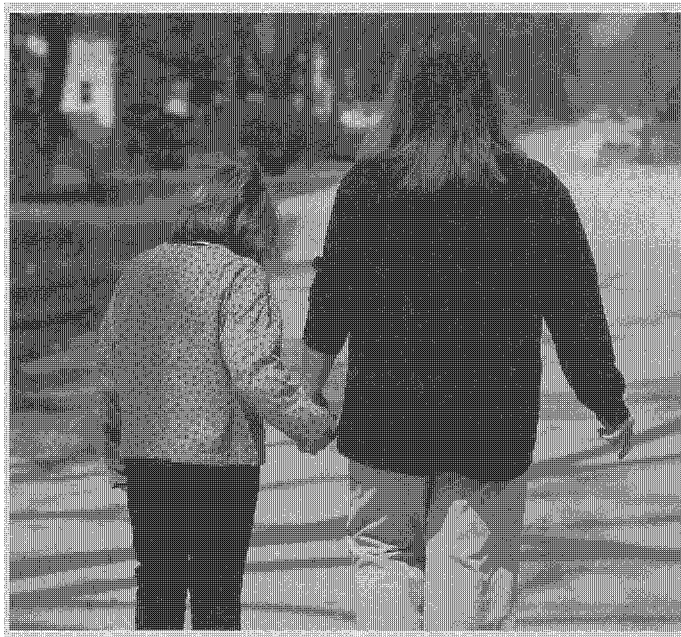
Realizing that the child support system was failing Illinois, the Chicago Appleseed Fund for Justice<sup>14</sup> conducted a non-scientific study involving review of available literature, legal representation, court-watching, and interviewing of non-custodial and custodial parents, clerks of the circuit court, state's attorneys, and others involved in Cook County's child support program. Through this research, Chicago Appleseed was able to pinpoint some key areas where the program falls apart.

### A. Structure of the IV-D Agency

Like many states' child support programs, Illinois' IV-D program is housed in a social services agency. Unlike most other states, however, the administrators of Illinois' IV-D program contract with a myriad of other agencies to carry out the services it is legislated to perform.

In Cook County alone, IDPA contracts with over six different organizations. In a typical case, the Illinois Department of Human Services or IDPA handles case intake; the Cook County State's Attorney's Office takes the case to court; the Cook County Clerk of the Circuit Court keeps court and payment records; the Sheriff handles service of process; Maximus, Inc. (a private company) handles modifications and monitors Income Withholding Orders; and the State Disbursement Unit (now operated by IDPA, but soon to be operated by a private vendor) receives and distributes child support payments. There are also other agencies involved in child support such as the Department of Employment Security, which collects names of newly hired employees and shares them with IDPA to help it track child support obligors, and the Illinois State Comptroller that intercepts state tax refunds, unemployment and workers' compensation checks, lot-

tery winnings, and other state payments to collect unpaid child support. Additionally, the IRS, Department of Insurance and Professional Regulation, Illinois Department of Public Health, Illinois Department of Revenue, Secretary of State, U.S. Department of State, and U.S. Department of Treasury are all involved in child support.



All of these agencies must be able to give and receive accurate information and must communicate effectively for the IV-D program to function well. Unfortunately, in Cook County, accurate information and effective communication are severely lacking. The county has been plagued with computer problems stemming from the introduction of its federally-mandated statewide computer system, called the Key Information Delivery System (KIDS). Users of KIDS complain that it is difficult, it crashes frequently, and its records are inaccurate. Without having accurate and available data, Cook County cannot hope to keep up with even the easiest child support cases. A computer system with accurate case information, such as the non-custodial parent's address or employer information, is vital to getting child support from the non-custodial to the custodial parent.

Lack of communication is a problem that stems, in part, from the fact that there are so many agencies involved in child support. Each agency has different rules and procedures, different funding sources, and different standards for quality. Employees from one agency do not have accountability to another. For example, if an IDPA child support worker does a poor

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**Feature: Child Support**


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job conducting intake so that the assistant state's attorney who takes the matter to court finds it unusable, the assistant state's attorney has no authority to reprimand the IDPA worker or to demand higher quality work in the future. The assistant state's attorney can merely send the file back to IDPA and wait for it to be corrected. By not having direct and frequent communication or accountability with each other, the various agencies involved in child support have a difficult time performing even the most basic tasks.

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Another problem with the fragmented structure of the Cook County agency is that no one organization takes responsibility for a given problem. This can wreak havoc in the lives of parents who attempt to obtain, enforce, or modify a child support order. A mother who tries to have her child support order modified may go to the IDPA office, wait for over an hour to see a caseworker, and then be told that IDPA does not handle modifications. She will be directed to call Maximus, Inc. instead even though it was IDPA and the State's Attorney's Office that initially helped her to obtain the order. As a result of the disjointed structure of Cook County's child support system, parents have no idea who to contact when problems or questions arise in their child support cases.

### ***B. Caseload***

**A** study by the Lewin Group found that the more child support enforcement staff employed by a state's IV-D program, the higher the percent of IV-D cases with paternity established and with support orders in place.<sup>15</sup> Another study was conducted in Virginia and similarly found that increasing the number of employees improves office performance locating non-resident parents, paternity establishment, dollars collected, cost-effectiveness, and employee and customer satisfaction.<sup>16</sup> Illinois' caseload is one of the highest in the country with 1,665 IDPA employees handling over 1 million child support cases.<sup>17</sup> Of these

employees, not all of them even handle child support cases directly. This number represents all employees working in IDPA's Division of Child Support Enforcement, including management, support staff, and computer programmers. Imagine being a child support worker responsible for over 600 cases and you can begin to understand why Illinois lags behind other states in performance of its child support program.

Employees feel overwhelmed by the caseload. They complain that when a new program designed to improve services to parents is introduced, employees must be taken from other already understaffed departments to staff the new program. Despite increasing demands from the federal government to implement new programs, Illinois has not increased its staffing level in four years.<sup>18</sup>

### ***C. Administrative vs. Judicial Process***

**U**nlike some other states, Cook County uses administrative and judicial methods for the exact same child support matters.<sup>19</sup> This has created a confusing mess. The administrative system and judicial system are operated by two separate organizations, with different employees, different organizational procedures, and different computer systems. Because of these organizational differences, the tribunals are not able to effectively communicate with each other. One consequence of the lack of communication is that non-custodial parents can find themselves having double the amount of child support garnished from their paychecks because there may be both an administrative order and a judicial order for the same child support case. To make matters worse, Cook County does not keep administrative and judicial

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records in the same place. Parents and even attorneys are confused about where to get copies of an order for a particular case or where to get payment records.

Not only is it problematic that more than one tribunal exists to handle the same child support matters, but there are serious concerns about whether the administrative procedure used in Illinois' IV-D program affords litigants due process of law. Non-custodial parents who are forced to defend themselves in an administrative proceeding before this agency are often not allowed to cross-examine witnesses or to confront the custodial parent. The lack of procedural protections and the differences between the judicial and administrative proceedings have raised serious due process concerns with lawyers who handle child support matters in Cook County.

#### ***D. Non-Custodial Parents***

##### ***1. The Problem with Pro Se***

In Cook County, custodial parents who are part of Illinois' IV-D program will be assisted by an attorney working for the Cook County State's Attorney's Office.<sup>20</sup> With very few exceptions, non-custodial parents who cannot afford to hire an attorney have to go it alone. As a result, many Cook County courtrooms are overrun with litigants attempting to represent themselves in child support matters. This has become a problem for the few private attorneys that enter the courtrooms, who complain that pro se litigants create huge case backlogs and delays because they are uninformed and unprepared. State's attorneys complain that judges go out of their way to help self-represented parents in child support matters.



Some state's attorneys even feel that these judges are so helpful that they are inappropriately acting as defense attorneys for non-custodial parents. Judges and hearing officers disagree, and argue that due to the rules of professional ethics they actually can offer very little information to these parents and no legal advice whatsoever - much less than what many pro se liti-

gants need to adequately protect their rights.

No matter how much attorneys and judges may complain about the problem with pro se litigants, few solutions are being offered to make things better. Pro se litigants cause bottlenecks in child support courtrooms for the obvious reason that they are laypersons being held to the same standards as attorneys. In Cook County, no one will take responsibility for assisting these parents. Due to budgetary constraints, the few legal services agencies that provide help with child support matters limit their services to custodial or formerly married parents. Many times a pro se litigant who takes the initiative to bring a matter to court on his own will be told by the judge or hearing officer to "get an attorney and come back." This is interpreted as a denial of justice to the parents who cannot afford an attorney.

##### ***2. Policies Affecting Poor Fathers***

No matter how much we try to crack down and punish non-custodial parents who fail to pay child support, some of them will never be able to pay substantial amounts of money. Certain non-resident fathers and mothers are simply unable to

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earn enough money to pay child support. Reasons for this may be drug abuse, incarceration, poor education, or a slumping job market. For these parents, efforts to enforce child support orders that they cannot hope to satisfy only serve to drive them away from their children.

A study conducted by the Department of Health and Human Services (DHHS) found that the enforcement policies in use by states are not likely to produce more child support payments from poor non-custodial parents.<sup>21</sup> One of these policies is the addition of retroactive support to initial child support orders. At the discretion of the judge, Cook County courts may require non-custodial parents to pay retroactive sup-

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port for the time period before a child support order is entered. The court may even order a non-custodial parent brought to court many years after the child is born to pay for the costs of the birth of his child and for all years subsequent to the birth. The DHHS study found that the longer the period of retroactivity, the less likely it was that the parent will pay any support.<sup>22</sup> Retroactive support burdens a father with a large amount of debt at the beginning of his legal support obligation. Especially in cases of low-income fathers, this debt may be so overwhelming that payment seems futile and so fathers may choose to avoid payment altogether.

Poor non-custodial parents also have a hard time paying when they do not see their money as benefiting their children. In Illinois, when a custodial parent receives cash welfare benefits, most of the child support collected on her behalf goes to reimburse the state and federal governments for the money it gave her. For parents who do not understand this rule, it can lead to disappointment, frustration, and anger toward

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the other parent. Mothers may not realize that the father is paying support because they do not actually see a check coming from him. As a result, they may unfairly label him as a deadbeat. Fathers, on the other hand, would rather give the money directly to their children so that they can see it make a difference, rather than sending it to the state. This policy serves to tear poor families apart.

Low-income non-custodial parents are also particularly burdened by child support “arrears,” a term used to designate past due child support. Many times arrears accumulate when a non-custodial parent loses or changes jobs. Non-custodial parents faced with insurmountable arrears often view the child support system as unreasonable and adversarial.<sup>23</sup> These par-

ents are likely to pay nothing at all rather than putting money toward a debt they cannot hope to pay off.<sup>24</sup>

### 3. *Voluntary Agreements*

**R**esearch has shown that non-custodial parents who have a child support order established by voluntary agreement involving a process of bargaining and mutual agreement, rather than litigation and court mandate, maintain more contact with their children, are more likely to pay support, comply more fully with child support orders, and pay greater amounts of child support.<sup>25</sup> Contact of non-custodial parents with their children has a positive association with both payment of support and compliance with child support orders.<sup>26</sup>

In most continental European countries, voluntary agreements, ratified by courts or administrative agencies, are encouraged. These countries have found that arrangements worked out through negotiating and cooperation produce more realistic results that parents are more likely to honor and reduce administrative expenses.<sup>27</sup>

Cook County does nothing to encourage voluntary agreements. Non-custodial parents look upon the child support system as biased against them. They feel that it does not offer them a chance to do the right thing on their own, but supports whatever the custodial parent wants.

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### III. Recommendations

Cook County's child support system should be restructured to streamline operations, improve customer relations, and assure data accuracy. Some suggestions of how Cook County can do this are to:

- Eliminate many of the contracting agencies and move toward an under-one-roof structure where as much work as possible is handled by one agency.
- Reduce the caseload per child support worker to reflect the national average.
- Hold child support workers accountable for individual cases so parents only need to contact one person who is familiar with their case and can handle their issues.
- Form client service teams that handle cases using a triage method that sends cases to different units depending on what services are needed.
- Establish an automated customer service phone system that can give parents accurate and up-to-date case information 24 hours a day.
- Provide local child support services to parents at convenient times including weekend and evening hours.
- Begin each case with an emphasis on reaching a voluntary agreement between the parents. Use more adversarial methods only when cooperation is unsuccessful.
- Provide and fund services to non-custodial parents, including a pro se desk that will provide help with drafting and interpreting court

documents, and referrals to legal services and other agencies that can assist non-custodial parents in court.

- Eliminate duplicate tribunals and clearly define proceedings handled by the Domestic Relations Division and the administrative process. Assure that due process is provided in all proceedings.
- Improve the child support computer system, KIDS, so that it contains accurate data, is user-friendly, and does not break down.
- Establish arrears forgiveness programs that will provide consistently paying non-custodial parents with some relief from their child support debt, especially where that debt is owed to the state.

Cook County's child support system is not serving families. It has become so complex and so fragmented that parents are unable to navigate it successfully. If the system is not reformed, the real losers will continue to be the children who go without support from both of their parents.

<sup>1</sup> In 1974, Congress enacted Title IV-D of the Social Security Act which established the Office of Child Support Enforcement, the Federal Parent Locator Service (FPLS), and required every state to have an agency to assist custodial parents in obtaining support.

<sup>2</sup> See Lisa Dukelow, *Child Support in North Carolina: What is the State of the Law and How Did We Get Here?*, 22 N.C. Cent. L.J. 14 (1996).

<sup>3</sup> See Harry D. Krause, *Child Support Reassessed: Limits of Private Responsibility and the Public Interest*, 1989 U. Ill. L. Rev. 367 (1989).

<sup>4</sup> The percent of births to unmarried women in the United States in 1998 was 32.8 (National Vital Statistics Report, Vol. 48, No. 3, March 28, 2000).

<sup>5</sup> The marriage rate per 1000 population was 7.4 (National Vital Statistics Report, Vol. 47, No. 21, July 6, 1999).

<sup>6</sup> U.S. Department of Health & Human Services, Administration for Children & Families, Office of Child

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Support Enforcement, FY 2000 Preliminary Data Preview.

<sup>7</sup> *Id.*

<sup>8</sup> Ninety percent of custodial parents are women. (U.S. Census Bureau, Current Population Survey, April 1998.)

<sup>9</sup> Illinois collected child support in 16.37% of its IV-D cases in fiscal year 2000; of all reporting states and territories, Illinois ranks 51 out of 53 for IV-D cases with child support collections (U.S. Department of Health & Human Services, Administration for Children & Families, Office of Child Support Enforcement, FY 2000 Preliminary Data Preview).

<sup>10</sup> Illinois has child support orders established in 30% of its IV-D cases; of all reporting states and territories, Illinois ranks 50 out of 53 for IV-D cases with child support orders established (U.S. Department of Health & Human Services, Administration for Children & Families, Office of Child Support Enforcement, FY 2000 Preliminary Data Preview).

<sup>11</sup> Illinois established paternity in 2.48% of its IV-D cases in fiscal year 2000; of all reporting states and territories, Illinois ranks 39 out of 53 for paternity establishment (U.S. Department of Health & Human Services, Administration for Children & Families, Office of Child Support Enforcement, FY 2000 Preliminary Data Preview).

<sup>12</sup> Cost-effectiveness is the amount of child support collected per dollar of total administrative expenditures. Illinois' cost-effectiveness ratio for fiscal year 2000 was \$2.42. Illinois ranks 52 out of 54 reporting states and territories in terms of cost-effectiveness (U.S. Department of Health & Human Services, Administration for Children & Families, Office of Child Support Enforcement, FY 2000 Preliminary Data Preview).

<sup>13</sup> U.S. Department of Health & Human Services, Administration for Children & Families, Office of Child Support Enforcement, FY 2000 Preliminary Data Preview.

<sup>14</sup> The Chicago Appleseed Fund for Justice (hereinafter referred to as "Chicago Appleseed") is a reform-minded public interest and advocacy organization affiliated with the Appleseed Foundation.

<sup>15</sup> Michael Fishman, et. al., *Preliminary Assessment of the Associations between State Child Support Enforcement Performance and Financing Structure*, The Lewin Group, Inc. (2000): 21.

<sup>16</sup> Donald W. Meyers, et. al, *Virginia Staffing Demonstration: Executive Summary*, Division of Child Support Enforcement, Virginia Department of Social Ser-

vices (September 2000): 6.

<sup>17</sup> However, as noted above, IDPA does contract with several other agencies to handle the functions of its IV-D agency. The 1,665 IDPA employees assigned to its child support division do not include these contracting employees.

<sup>18</sup> According to the U.S. Department of Health and Human Services, Office of Child Support Enforcement Annual Report to Congress for fiscal years 2000, 1999, 1998, 1997, and 1996, Illinois staffing level has remained at 1,665 since fiscal year 1997 when it increased its staffing from 1,608 full time equivalent employees to 1,665.

<sup>19</sup> In Cook County, child support cases can be heard in several forums. IDPA has an administrative process that can establish paternity, and establish, enforce, and modify child support obligations. These same matters can also be heard in the Domestic Relations Division of the Cook County Circuit Court. A case in the Domestic Relations Division will typically be sent to its Expedited Division if the parents were never married. The Expedited Division utilizes both judges and hearing officers. If the parents are or were married, the case will typically not be sent to the Expedited Division and will be heard by a judge.

<sup>20</sup> Under Illinois law, assistant states attorneys do not represent the custodial parent, but represent IDPA; however, in most cases the custodial parent's interests are the same as that of IDPA.

<sup>21</sup> U.S. Department of Health and Human Services, Office of Inspector General. *The Establishment of Child Support Orders for Low Income Non-Custodial Parents*. July 2000.

<sup>22</sup> *Id.* at 12.

<sup>23</sup> *Id.* at 23.

<sup>24</sup> *Id.*

<sup>25</sup> Christine Winquist Nord and Nicholas Zill, *Non-Custodial Parents Participation in their Children's Lives: Evidence from the Survey of Income and Program Participation*, prepared for the Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. August 1996.

<sup>26</sup> *Id.*

<sup>27</sup> Anne Corden and Daniel R. Meyer, *Child Support Policy Regimes in the United States, United Kingdom, and Other Countries: Similar Issues, Different Approaches*, Focus: University of Wisconsin-Madison Institute for Research on Poverty, Vol. 21, No. 1, at 75 (2000).