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# ENFORCEMENT OF CHILD SUPPORT OBLIGATIONS OF ABSENT PARENTS—SOCIAL SERVICES AMENDMENTS OF 1974

by Barbara B. Locker

As of June 1974, over eighty percent of the children of families receiving Aid to Families with Dependent Children (AFDC) required the aid due to noncompliance with child support orders by fathers<sup>1</sup> absent from the home.<sup>2</sup> Child support orders have been enforced against absent parents in three ways: (1) contempt proceedings;<sup>3</sup> (2) a long-arm statute to obtain in personam jurisdiction over the deserting parent;<sup>4</sup> and (3) use of the Uniform Reciprocal Enforcement of Support Act<sup>5</sup> which permits filing a complaint in one state and action on the complaint in the state to which the parent has fled. Each of these methods, however, is time-consuming and expensive. Further, each method is obviously useless if the parent responsible for support has disappeared.

Although the states have historically been responsible for support of deserted children,<sup>6</sup> Congress recognized, in view of the increasing number of children being supported by AFDC, that state programs were neither locat-

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1. Generally the father will be the parent ordered to pay child support. Many states, however, have imposed such a duty on the mother. H. CLARK, *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* 488-89 (1968). The Social Services Amendments of 1974 apply to the child's "parent." 42 U.S.C.A. § 651 (Supp. 1976).

2. SENATE FINANCE COMM., *SOCIAL SERVICES AMENDMENTS OF 1974*, S. REP. NO. 93-1356, 93d Cong., 2d Sess. (1974), reprinted in 1974 U.S. CODE CONG. & AD. NEWS 8133, 8145-46 [hereinafter cited as 1974 S. REP.; page numbers are those of the reprint in U.S. CODE CONG. & AD. NEWS].

AFDC was established "[f]or the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation . . . to needy dependent children . . . to help maintain and strengthen family life . . ." 42 U.S.C. § 601 (1970). It is estimated that there are eleven million recipients of AFDC.

3. A parent may be adjudged in contempt for failure or refusal to comply with a support order. *Sikes v. Sikes*, 242 So. 2d 494 (Fla. App. 1970); *Woodard v. Woodard*, 172 Ga. 713, 158 S.E. 569 (1931); *Burger v. Burger*, 156 Tex. 584, 298 S.W.2d 119 (1957); *Guercia v. Guercia*, 150 Tex. 418, 241 S.W.2d 297 (1951). A prima facie case is established by production of the original support order and proof of nonsupport. *Ex parte Carpenter*, 36 Cal. App. 2d 274, 97 P.2d 476 (1939). However, present ability to pay is essential to the validity of a civil contempt order. *Ex parte Sedillo*, 34 N.M. 98, 278 P. 202 (1929). Further, intent not to pay is essential. *Pennsylvania v. Brown*, 9 Ohio App. 2d 131, 223 N.E.2d 370 (1964).

4. See generally Friedman, *Extension of the Illinois Long-Arm Statute: Divorce and Separate Maintenance*, 16 DEPAUL L. REV. 45 (1966).

5. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT, 9C UNIF. LAWS ANN. 1 (1967); see notes 35-45 *infra* and accompanying text. For an excellent discussion of the Act see W. BROCKELBANK, *INTERSTATE ENFORCEMENT OF FAMILY SUPPORT (THE RUNAWAY PAPPY ACT)* (2d ed. 1971).

6. See generally 4 C. VERNIER, *AMERICAN FAMILY LAWS* 56 (1936). The state has an interest in the physical and mental well-being of its future citizens. *State ex rel. Stearns County v. Klasen*, 123 Minn. 382, 143 N.W. 984 (1913). In addition, the state has an interest in preventing the abandoned child from becoming a public burden. *State v. Thornton*, 232 Mo. 298, 134 S.W. 519 (1911); *Willits v. Willits*, 76 Neb. 228, 107 N.W. 379 (1906); *Coler v. Corn Exch. Bank*, 250 N.Y. 136, 164 N.E. 882 (1928), *aff'd*, 280 U.S. 218 (1930).

ing "runaway pappies"<sup>7</sup> nor enforcing support orders.<sup>8</sup> Attempting to ameliorate this situation, Congress passed the Social Services Amendments of 1974.<sup>9</sup> The Amendments provide for greater federal supervision of state child support collection programs<sup>10</sup> along with creation of a parent locator service<sup>11</sup> designed to make available records from all federal agencies for use in ascertaining the current address and place of employment of the wandering parent.<sup>12</sup> Although President Ford signed the bill into law, he expressed concern that the Amendments thrust the federal government into the state's activities and that the parent locator service might be a violation of the parent's right of privacy.<sup>13</sup>

This Comment discusses the background of the law concerning child support and the difficulty the states have encountered in enforcing child support orders. The attempts of Congress to deal with the problem of child support enforcement are examined and the various provisions set forth in the child support section of the Amendments are explained. Next this Comment analyzes and attempts to resolve some of the issues raised by these Amendments,<sup>14</sup> such as whether they constitute an impermissible intrusion into the state's sphere by the federal government, whether the best interests of the child will be served, and whether creation of a parent locator service violates the deserting parent's right of privacy. Finally, this Comment discusses whether the Amendments are a practical solution to the child support problem since the low-income parent they are designed to locate will generally be unable to support his child no matter what penalties he faces.

#### I. TRADITIONAL APPROACHES TO COLLECTION OF CHILD SUPPORT PAYMENTS FROM ABSENT PARENTS

At common law the duty of a parent to support his minor child was merely a moral obligation;<sup>15</sup> a parent could not be held civilly liable in a suit by

7. See W. BROCKELBANK, *supra* note 5, for a discussion of the "Runaway Pappy" Act.

8. Under title IV of the Social Security Act information concerning the whereabouts of a deserting parent of a child eligible for AFDC may be divulged to a state agency. 42 U.S.C. §§ 601-06 (1970). Additionally, the parent's address may be obtained from the federal social security records. 42 U.S.C. § 1306(c)(1)(A) (1970). Finally, one may gain access to the files of the Internal Revenue Service. 42 U.S.C. §§ 602(a)(21), 610 (1970).

9. 42 U.S.C.A. § 1397 (Supp. 1976).

10. The Amendments create a separate organizational unit under the direction of the Secretary of the Department of Health, Education, and Welfare (HEW). This unit will establish standards for state programs for locating absent parents, establishing paternity, and obtaining child support payments. *Id.* § 652.

The estimated cost of the program is \$40 million during the first year. In later years, however, a net savings to the taxpayer will result as collection efforts succeed. 1974 S. REP. 8159.

11. 42 U.S.C.A. § 653 (Supp. 1976).

12. *Id.* § 653(b).

13. 11 PRESIDENTIAL DOCUMENTS, Gerald R. Ford 20 (1975).

14. This Comment examines the federal law generally and does not purport to discuss specific state law.

15. *Floyd v. State*, 115 Fla. 625, 155 So. 794 (1934); *Hooten v. Hooten*, 168 Ga. 86, 147 S.E. 373 (1929); *Baker v. Baker*, 169 Tenn. 589, 89 S.W.2d 763 (1935). For an historical discussion of the child's right to support see *Greenspan v. Slate*, 12 N.J. 426, 97 A.2d 390 (1953).

the child<sup>16</sup> or in actions by third persons for the child's needs.<sup>17</sup> Eventually, statutes were enacted making failure to support a minor child a criminal offense and allowing the child to sue to compel his parent to support him.<sup>18</sup> The duty of support is now recognized as a continuing duty which remains with the parent unless removed or shifted in some way recognized by law.<sup>19</sup>

### A. Obtaining In Personam Jurisdiction

Difficulties in collecting child support from a defaulting parent are compounded when the parent either disappears or leaves the state in which the support order was granted<sup>20</sup> because enforcement of the support order requires acquisition of in personam jurisdiction.<sup>21</sup> If a parent is a non-resident, the court may obtain service of process only within the forum state or by the parent's general appearance in the suit.<sup>22</sup> Service by publication has generally been held to be insufficient.<sup>23</sup> Thus, the dependent will usually

16. *Cf. Glaze v. Hart*, 225 Mo. App. 1205, 36 S.W.2d 684 (1931) (father could be criminally liable for failure to support minor child but the child could not sue).

17. Early judicial opinions interpreted the duty of support as giving rise to quasi-contractual liability to third parties seeking reimbursement for necessities furnished the child, but the suit could apply only to past support and not to a future award. *See, e.g., Saltzman v. Saltzman*, 189 F. Supp. 36 (E.D. Pa. 1960); *Cartwright v. Juvenile Court*, 172 Tenn. 626, 113 S.W.2d 754 (1938); *Garza v. Garza*, 209 S.W.2d 1012 (Tex. Civ. App.—Eastland 1948, no writ). Often the remedy was unworkable since difficulty arose in determining precisely what was "necessary." Hence, a merchant might be furnishing goods at his own risk. *Michigan Sanitarium & Benevolent Ass'n v. Clayburgh*, 145 Misc. 403, 260 N.Y.S. 194 (New York City City Ct. 1932). Furthermore, a clear and palpable omission on the parent's part often needed to be shown. *Watkins v. Medical & Dental Fin. Bureau, Inc.*, 101 Ariz. 580, 422 P.2d 696 (1967); *Charbonneau v. Norton*, 263 Ill. App. 341 (1931); *Griston v. Stousland*, 186 Misc. 201, 60 N.Y.S.2d 118 (Sup. Ct. 1946).

18. *See generally* H. CLARK, *supra* note 1, at 188; C. VERNIER, *supra* note 6, at 66. One purpose of these statutes was to enforce by threat of criminal punishment the civil duty of the parent to support his child. *Miller v. Commonwealth*, 225 Ky. 576, 9 S.W.2d 706 (1928); *State v. Bell*, 184 N.C. 701, 115 S.E. 190 (1922). However, one authority states that the fear of jail does not induce a low-income father to share his limited resources with a family he has deserted. Willging & Ellsmore, *The "Dual System" in Action: Jail for Nonsupport*, 1969 U. TOL. L. REV. 348, 373. The authors quote a study which indicates that the absent father complied with his support order to some extent in only 18.3% of cases involving AFDC families despite widespread legislation designed to enforce his duty. A second reason these statutes were enacted was to prevent the child from becoming a public charge. *Brooke v. State*, 99 Fla. 1275, 128 So. 814 (1930); *State v. Thornton*, 232 Mo. 298, 134 S.W. 519 (1911). *See also* note 6 *supra*. Some statutes were simply remedial in nature and were designed to secure and recover the child support. *State v. Waller*, 90 Kan. 829, 136 P. 215 (1913); *State v. Bess*, 44 Utah 39, 137 P. 829 (1913).

19. *See, e.g., Huff v. Merchants Parcel Delivery Co.*, 106 Ind. App. 110, 18 N.E.2d 471 (1939); *Tullis v. Tullis*, 138 Ohio 187, 34 N.E.2d 212 (1941); *Hart v. Hart*, 177 Okla. 428, 60 P.2d 747 (1936). Thus, an agreement which either expressly or impliedly relieves a parent of his duty to support a minor child permanently offends public policy and is void. *Warrick v. Hender*, 198 So. 2d 348 (Fla. App. 1967).

20. Obtaining a judgment in child support cases often marks the beginning rather than the end of the dependent's trouble. Despite legislation designed to remedy the situation the parent can by simply crossing the state line effectively prevent his dependents from enforcing support obligations. *Murphy, Uniform Support Legislation*, 43 Ky. L.J. 98, 111-12 (1954).

21. *Glaston v. Glaston*, 69 Cal. App. 2d 787, 160 P.2d 45 (1945); *Dorman v. Friendly*, 146 Fla. 732, 1 So. 2d 734 (1941); *Cohen v. Cohen*, 17 Misc. 2d 427, 187 N.Y.S.2d 394 (Sup. Ct. 1959).

22. If the parent has property situated within the state, however, a quasi in rem proceeding will usually lie. *Pennington v. Fourth Nat'l Bank*, 243 U.S. 269 (1917); *State ex rel. Nelson v. Williams*, 249 S.W.2d 506 (Mo. App. 1952).

23. *Adams v. Adams*, 218 So. 2d 777 (Fla. App. 1969); *Proctor v. Proctor*, 215 Ill.

find it impossible to sue in his home state and will face the expense and inconvenience of interstate litigation.<sup>24</sup> Moreover, the possibility exists that due to a difference in laws governing child support the forum state may not award child support payments despite the right given in the dependent's state.<sup>25</sup> If the dependent does manage to pursue the deserting parent to his new residence, he may find the parent will flee the second state as easily as he did the first.<sup>26</sup>

In addition to the problem of obtaining personal jurisdiction over the absent parent, the dependent may find that the full-faith-and-credit clause impedes effective interstate enforcement of a judgment rendered in his state. The United States Supreme Court has interpreted the full-faith-and-credit clause as requiring a final judgment<sup>27</sup> and as not requiring the enforcing state to offer the same equitable remedies (such as contempt) available in the first forum.<sup>28</sup> Moreover, the Court has ruled that alimony payments are protected by the full-faith-and-credit clause only as to those payments which are overdue;<sup>29</sup> not protected are those future payments, like child support, which are still subject to the discretion of the rendering court.<sup>30</sup> Consequently, the

275, 74 N.E. 145 (1905). See generally A. EHRENZWEIG, CONFLICT OF LAWS § 71 (1962). The Supreme Court has held that due process requires a defendant to be notified of the proceedings against him in a manner reasonably calculated to give him a chance to appear and defend. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950). If the defendant is not personally served, the least the plaintiff can do is use that method of service most likely to apprise him of the pendency of the action. However, publication may be sufficient if the address of the defendant is unknown. *Schroeder v. City of New York*, 371 U.S. 208 (1962).

24. See, e.g., *Stanley v. Stanley*, 271 A.2d 636 (Me. 1970).

25. Cf. *Loeb v. Loeb*, 4 N.Y.2d 542, 152 N.E.2d 36, 176 N.Y.S.2d 590 (1958), cert. denied, 359 U.S. 913 (1959) (wife who moved to New York after husband divorced her was denied relief for not meeting the statutory requirement of being a "New York wife").

26. If the dependent is unable to obtain personal jurisdiction and is unable to pursue the parent, he may still be given relief if his state carries criminal penalties for desertion and nonsupport. Most states have enacted such statutes. See generally H. CLARK, *supra* note 1, at 200-06. When the dependent's state does carry such criminal penalties it can extradite the obligor as a fugitive from justice under the extradition provisions of the federal constitution and statutes. U.S. CONST. art. IV, § 2, cl. 2. The federal statutes implementing this section are 18 U.S.C. §§ 3182, 3194, 3195 (1970). Many courts, however, have interpreted these provisions as applicable only to criminal acts committed within the state. See, e.g., *Hyatt v. People ex rel. Corkran*, 188 U.S. 691 (1903); *State v. Hall*, 115 N.C. 811, 20 S.E. 729 (1894). See also notes 49-51 *infra* and accompanying text.

27. Alimony and child support orders are not final judgments since they are subject to modification by a showing by either party of good cause and change of circumstances. Due process seems to demand that the defendant be given "an opportunity to raise defenses otherwise open to him" including the defense of change of circumstances. *Griffin v. Griffin*, 327 U.S. 220, 228 (1946). See also *Lynde v. Lynde*, 181 U.S. 183 (1901).

28. See generally Ehrenzweig, *Interstate Recognition of Support Duties—The Reciprocal Enforcement Act in California*, 42 CALIF. L. REV. 382 (1954); Foster, *The Enforcement of Foreign Alimony Decrees*, 4 S.C.L.Q. 341 (1952); Scoles, *Enforcement of Foreign "Non-final" Alimony and Support Orders*, 53 COLUM. L. REV. 817 (1953); Note, *Long-Arm Jurisdiction in Alimony and Custody Cases*, 73 COLUM. L. REV. 289 (1973); Note, *Domestic Relations: Interstate Enforcement of Support Orders: Necessity and Feasibility of Federal Legislation*, 48 CORNELL L. REV. 541 (1963).

29. *Sistare v. Sistare*, 218 U.S. 1 (1910). See also *Loughran v. Loughran*, 292 U.S. 216 (1934); *Yarborough v. Yarborough*, 290 U.S. 202 (1933); *Bates v. Bodie*, 245 U.S. 520 (1918).

30. The finality test for enforcement of support payments has recently been subject to growing criticism. The rationale behind this criticism is that courts should not let states with laws favorable to the father become sanctuaries within which deserting fathers may hide with impunity. *Light v. Light*, 12 Ill. 2d 502, 147 N.E.2d 34, 39

dependent faces the expense and inconvenience of a multitude of suits since he can sue only after payments have become delinquent.

To alleviate the hardship caused by requiring the court of the dependent's state to obtain in personam jurisdiction over the parent, many states<sup>31</sup> have enacted long-arm statutes which permit the state of the matrimonial domicile to obtain personal jurisdiction over the defaulting parent.<sup>32</sup> Most of these statutes are based on public policy since the dependent will be remediless if the defaulting parent leaves the state with all his property and the dependent is unable to pursue him and institute an action in another state. The state should not require the dependent to follow the defaulting parent from state to state when the dispute could easily and equitably be settled in the first state.<sup>33</sup> Another reason for the enactment of long-arm statutes is that the state will have to support the dependent if he is denied relief elsewhere; thus, the dependent's state has a greater interest in the adjudication of support liability than does the defaulting parent's new state.<sup>34</sup> Despite the desirability of such legislation, some states have not enacted long-arm statutes giving their courts in personam jurisdiction over absent parents; this often leaves dependents without the support to which they are legally entitled.

#### B. *Uniform Reciprocal Enforcement of Support Act*

Possibly the best approach to collecting child support payments from parents who have left the state is the Uniform Reciprocal Enforcement of Support Act (URESA).<sup>35</sup> This Act permits two-state suits: a complaint filed in the dependent's state and an order for support entered in the state to which the parent has fled. As a result, the dependent family is able to file a petition

(1958). See also *People ex rel. Franks v. Franks*, 126 Ill. App. 2d 51, 261 N.E.2d 502 (1970); *Hatch v. Hatch*, 431 P.2d 832 (Ore. 1967). A few courts now permit suits based on non-final support orders. See, e.g., *Worthley v. Worthley*, 44 Cal. 2d 465, 283 P.2d 19 (1955); *Rule v. Rule*, 313 Ill. App. 108, 39 N.E.2d 379 (1942); *McCabe v. McCabe*, 210 Md. 654, 123 A.2d 447 (1956). See also Note, *Interstate Enforcement of Modifiable Alimony and Child Support Decrees*, 54 IOWA L. REV. 597, 617 (1969).

31. Examples include FLA. STAT. ANN. § 48.193(1)(e) (Supp. 1976-77); IDAHO CODE § 5-514(e) (Supp. 1976); ILL. REV. STAT. ch. 110, § 17(1)(e) (1968); KAN. STAT. ANN. § 60-308(b)(8) (Supp. 1975); NEV. REV. STAT. § 14.065(2)(e) (1973); N.M. STAT. ANN. § 21-3-16(A)(5) (Supp. 1975); OKLA. STAT. ANN. tit. 12, § 1701.03(a)(7) (Supp. 1975-76); UTAH CODE ANN. § 78-27-24(6) (Supp. 1975); WIS. STAT. §§ 247.057, 247.055(1m) (Supp. 1975-76). See also CAL. CIV. PRO. CODE § 410.10 (West 1973); R.I. GEN. LAWS ANN. § 9-5-33 (1970).

32. Some states use the idea of "minimum contacts," analogizing the marital relationship to the case where the individual commits a single tortious act which brings him within the ambit of a long-arm statute. Thus, living in a marital relationship within the state provides sufficient contact to justify extending personal jurisdiction. *Soule v. Soule*, 193 Cal. App. 2d 443, 14 Cal. Rptr. 417 (1961). See also *Mizner v. Mizner*, 84 Nev. 268, 439 P.2d 679, cert. denied, 393 U.S. 847 (1968).

33. See generally Comment, *Extending "Minimum Contacts" to Alimony: Mizner v. Mizner*, 20 HASTINGS L.J. 361 (1968). See also *McDuffie v. McDuffie*, 19 So. 2d 511, 512-13 (Fla. 1944); *Wooton v. Wooton*, 283 Ky. 422, 141 S.W.2d 561, 563 (1940); *Friedman*, *supra* note 4.

34. See *Friedman*, *supra* note 4.

35. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT, 9C UNIFORM LAWS ANN. 1 (Supp. 1967). The Act is based on New York's Uniform Support of Dependents Law passed in 1949 and later borrowed by ten other states. In 1950 the National Conference of Commissioners on Uniform State Laws began reviewing all the current laws and passed URESA. Most states have enacted URESA or a similar act. *Id.* at 9-12. See also *W. BROCKELBANK*, *supra* note 5, at 4-5.

in its state of residence (the initiating state); this petition will then be mailed to the state where the parent is residing (the responding state). The court of the responding state will then obtain personal jurisdiction of the obligor, grant him a hearing, and, if it finds him liable for the support of his dependents, determine the amount and collect the money by its ordinary processes.<sup>36</sup> The advantages of URESA are several: (1) the prosecuting attorney has a duty to represent the petitioner upon request of the court or welfare official;<sup>37</sup> (2) since financial need is not a prerequisite, any person may file a petition in the local court of the initiating state;<sup>38</sup> (3) similarly, any person with legal custody of the child may file a petition without the necessity of being appointed guardian *ad litem*;<sup>39</sup> (4) if the court of the initiating state has reason to believe the defaulting parent may flee the jurisdiction of the responding state, it may request that state to arrest him if allowed by that state's law;<sup>40</sup> and (5) the defendant may answer the complaint giving any defenses he has to the suit.<sup>41</sup> If a defendant does not appear, or if he appears and admits the allegations, the court in the responding state may immediately determine the amount due and the time period for payment.<sup>42</sup>

Although URESA circumvents the necessity for a long-arm statute, it has been criticized as inefficient and unworkable. In most cases the dependent is represented by the county prosecutor's office, and the claim is frequently given low priority.<sup>43</sup> Furthermore, the forum is often so distant that the dependent will find it nearly impossible to travel to that state to testify. Thus, the dependent must rely on a local officer with whom his only contact has been a form sent by mail.<sup>44</sup> The petitioner must depend on the responding state to find the defaulting parent and trust its courts since all the evidence is taken there.<sup>45</sup> In addition the parent may have consciously chosen to move to the responding state in view of its favorable laws regarding child support. If an award is granted by the court of the responding state, it may well be inadequate since the responding state is likely to be less sympathetic

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36. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT §§ 20, 22. Constitutional challenges to URESA have been unsuccessful. For example, in *Smith v. Smith*, 125 Cal. App. 2d 154, 270 P.2d 613 (1954), the court faced the question of whether the proceedings deny a defendant the opportunity to confront and cross-examine the petitioner. The court found no denial of due process since the defendant had the right to cross-examine by using depositions in the initiating state. See generally W. BROCKELBANK, *supra* note 5, at 29-31.

37. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT § 11.

38. The Act defines "obligee" as any person to whom a duty of support is owed. *Id.* § 2(8). See also *id.* § 8 which gives the state the right to invoke the Act to obtain reimbursement for any support it has furnished a deserted dependent.

39. *Id.* § 12.

40. *Id.* § 15.

41. *Id.* §§ 20, 22.

42. *Id.*

43. See, e.g., Nelson, *Family Support from Fugitive Fathers: A Proposed Amendment to Michigan's Long-Arm Statute*, 3 PROSPECTUS 399 (1970). The author states that in Michigan some 40% of URESA cases filed are never pursued. *Id.* at 405.

44. Comment, *Enforcement of Support Obligations: A Solution and Continuing Problems*, 61 KY. L.J. 322, 329 (1972).

45. Kelso, *Reciprocal Enforcement of Support: 1958 Dimensions*, 43 MINN. L. REV. 875, 883 (1959).

to the dependent than his own state.<sup>46</sup> Finally, URESA, as well as the long-arm statutes, will only be usable if the deserting parent's whereabouts are known, which often is not the case.

## II. CONGRESSIONAL RECOGNITION OF THE DIFFICULTY OF ENFORCING CHILD SUPPORT ORDERS—THE SOCIAL SERVICES AMENDMENTS OF 1974

Congress early took note of the inadequate remedies available to dependents when the parent chose to leave the state in which the support order was enforceable. In 1941 a bill was first introduced which would have made it a federal crime to leave a state with the intent to avoid child support payments to a minor child.<sup>47</sup> In 1947 a bill was proposed which provided for civil remedies for nonsupport and abandonment. It would have authorized registration of orders made in the dependent's state, thereby providing for the subsequent enforcement of the order in the state to which the parent had moved.<sup>48</sup> In 1948 Congress passed the Fugitive Felon Act which provides that anyone traveling in interstate commerce to avoid prosecution for a felony under state law is also guilty of a federal offense.<sup>49</sup> Since most states make abandonment and nonsupport a felony,<sup>50</sup> the Fugitive Felon Act should be widely applicable, allowing the FBI to join the search for the deserting parent. This Act, however, has generally been considered inapplicable to many cases of child support defaults.<sup>51</sup> Additionally, the Act merely incarcerates the parent which does not solve the primary problem of support for the child.

### A. *The Social Security Act*

In 1935 Congress passed the Social Security Act<sup>52</sup> which was initially designed to encourage state adoption of active public relief programs such

46. See Note, *Long-Arm Jurisdiction in Alimony and Custody Cases*, 73 COLUM. L. REV. 289, 306 (1973). The author states that the dependent may receive help if the responding state has adopted the 1958 URESA Amendments. If the initiating state in that situation has a long-arm statute, the dependent may be allowed to register the child support order from his own state and the responding state will be required to abide by it. *Id.* For a discussion of the problems faced by indigent fathers under URESA see Willging & Ellsmore, *supra* note 18, at 356-60.

47. The bill was introduced in three successive sessions of Congress with no success. S. 1265, 77th Cong., 1st Sess. (1941); S. 761, 78th Cong., 1st Sess. (1943); S. 453, 79th Cong., 1st Sess. (1945). See also H.R. 1538, 81st Cong., 1st Sess. (1949); H.R. 5974, 81st Cong., 1st Sess. (1949). These bills were similar to the earlier three bills and had the same lack of success. See generally Note, *Domestic Relations*, *supra* note 28.

48. H.R. 4580, 81st Cong., 1st Sess. (1949). Other bills patterned after H.R. 4580 were H.R. 285, 85th Cong., 1st Sess. (1957); S. 353, H.R. 495, H.R. 5486, 86th Cong., 1st Sess. (1959); H.R. 3968, 87th Cong., 1st Sess. (1961). For a discussion of the registration of child support orders see Legislation, *Enforcement of Foreign Non-Final Alimony Decrees*, 18 VAND. L. REV. 830, 833-37 (1965).

49. 18 U.S.C. § 1073 (1970); see note 26 *supra*.

50. H. CLARK, *supra* note 1, at 200-06.

51. The difficulty arises because the crime must be prosecuted in the district in which it was committed, the dependent's state. Prosecution additionally requires the approval of the United States Attorney General or an Assistant Attorney General. See Note, *Domestic Relations*, *supra* note 28, at 549.

52. Act of Aug. 14, 1935, ch. 531, § 1, 49 Stat. 620, as amended, 42 U.S.C. § 301 (1970).



as AFDC.<sup>53</sup> While states are not required by the Act to participate in the programs, they are induced to do so by a reimbursement for state welfare expenditures used in establishing state programs which conform to federal guidelines.<sup>54</sup> One of the problems the Act undertook to solve was that of nonsupport of children. For example, AFDC offers welfare payments to families in which the father is dead, absent, disabled,<sup>55</sup> or, at the state's option, unemployed.<sup>56</sup> When first enacted, AFDC primarily provided support for children whose father was dead.<sup>57</sup> By 1973, however, four out of five AFDC families were receiving aid because the father had voluntarily left the home.<sup>58</sup> When the father is absent, it is generally found that the marriage has broken up or that the father never had married the mother.<sup>59</sup>

The large increase in the number of welfare families receiving AFDC is due partly to the incompetence and apathy of the courts, prosecutors, and welfare officers in executing the laws already enacted.<sup>60</sup> Some lawyers and officials are actually hostile to the idea of the father's being held responsible for the support of his minor children.<sup>61</sup> The failure of the officials is further emphasized by the fact that often the father has not disappeared but is living in the same county as his children and could be easily located.<sup>62</sup> Often the father does not have many other children to support,<sup>63</sup> and the amount of the child support awarded is generally not large.<sup>64</sup>

In response to the lack of enforcement of child support orders which was causing the ballooning of welfare payments, Congress in 1967 amended the Social Security Act.<sup>65</sup> Provisions of the amended Act require the states to seek contribution from financially-able absent parents and to provide several tools for locating such parents and persuading them to contribute.<sup>66</sup> The State is required to use any reciprocal arrangements adopted with other states to obtain or enforce child support.<sup>67</sup> In addition, access is authorized to both Social Security<sup>68</sup> and, if there is a court order, Internal Revenue Service<sup>69</sup>

53. See note 2 *supra* and accompanying text.

54. See generally Note, *Aid to Families with Dependent Children—A Study of Welfare Assistance*, 44 DENVER L.J. 102 (1967).

55. 42 U.S.C. § 602(a)(17)(A) (1970).

56. *Id.* § 644.

57. The portion of the caseload eligible because of the father's death was 42% in 1940, 7.7% in 1961, and 4% in 1973. 1974 S. REP. 8146.

58. In 1961, 66.7% (2.4 million people) received AFDC due to the father's voluntary absence, 75.4% (5.5 million recipients) in 1969, and 80.2% (nearly 8.7 million recipients) in 1973. *Id.*

59. In 46.5% of the AFDC families on welfare in 1973 the father was either legally divorced or separated from the mother without a court decree. The father had never married the mother in 33.7% of the cases (3.7 million recipients in 1973). From 1971 to 1973 there was an increase of 21.7% in the number of AFDC families in which the father was not married to the mother. *Id.*

60. *Id.* at 8147.

61. *Id.*

62. *Id.*

63. "Ninety-two percent of the nonsupporting fathers had a total of three or fewer children." *Id.*

64. If there was a court order for support, it was generally \$50 per month. In 33% of the nonwelfare cases the order was for \$50 or less. *Id.*

65. 42 U.S.C. § 601 (1970).

66. *Id.* §§ 602(a)(11), (17), (18), (21), (22), 610(a).

67. *Id.* § 602(a)(17)(A)(ii).

68. *Id.* § 602(a)(21).

69. *Id.* § 610(a).

records as aids for locating deserting parents.

Due to inadequate attention by HEW there has been little feedback on the effectiveness of these state programs. HEW has neither monitored the states' child support enforcement programs nor required the states to report their progress. Furthermore, due to lack of regional staff, HEW has not emphasized child support activities in its overall welfare program. The Senate Finance Committee, in concluding that most states have not successfully implemented the provisions of the present child support law,<sup>70</sup> stated it "believe[d] that new and stronger legislative action [was] required in this area which [would] create a mechanism to require compliance with the law."<sup>71</sup>

#### B. *The Social Services Amendments of 1974*

On December 9, 1974, the House of Representatives passed a new social services bill to amend the Social Security Act by adding title XX, dealing with social services.<sup>72</sup> The Senate Finance Committee substituted the text of an earlier bill,<sup>73</sup> and on December 20, 1974, the House and Senate passed the amended version, known as the Social Services Amendments of 1974, which was signed by President Ford on January 9, 1975.<sup>74</sup> Under the Amendments the states generally have the ultimate authority to fashion their own social services programs since HEW "can neither mandate meaningful programs nor impose effective controls upon the States."<sup>75</sup> The states are required, however, to provide information on their use of federal funds in the form of an annual audit.<sup>76</sup>

*Child Support Program.* Although the states are allowed flexibility in establishing and administering most programs, the Amendments provide a very structured child support program<sup>77</sup> which must be implemented before a state

70. 1974 S. REP. 8149-50. The Report bases its analysis on the March 13, 1972, study of current child support programs performed by the General Accounting Office. The Committee also surveyed about twenty states to determine the amounts collected on behalf of AFDC recipients in 1973. The Committee found that the states of Washington (\$7,706,000 collected), Massachusetts (\$17,016,000), Michigan (\$28,100,000), and California (\$53,000,000) had the best collection programs. For every dollar collected the state's administrative collection cost was approximately twenty cents.

71. *Id.*

72. H.R. 17045, 93d Cong., 2d Sess. (1974).

73. H.R. 3153, 93d Cong., 1st Sess. (1973); see SENATE FINANCE COMM., SOCIAL SERVICES AMENDMENTS OF 1973, S. REP. NO. 93-553, 93d Cong., 1st Sess. (1973).

74. Social Services Amendments of 1974, 42 U.S.C.A. § 1397 (Supp. 1976). See also PRESIDENTIAL DOCUMENTS, *supra* note 13, at 20.

75. 1974 S. REP. 8138. Thus, the Amendments provide that the states will have maximum freedom to determine which services will be offered, the eligibility requirements, and any limitations upon the services. This allows the states to structure programs to meet their particular needs. Only a few programs are required to be established before the state can get general funds for its own special programs. An example is the requirement that there be at least three types of services for individuals receiving supplemental security income benefits. 42 U.S.C.A. § 1397c(2)(B) (Supp. 1976). This group includes the blind, aged, and disabled. 42 U.S.C. § 1381 (1970).

76. 42 U.S.C.A. § 1397b (Supp. 1976). The annual report should also provide information on the extent to which social service funds were used for services to persons not actually on welfare and the extent to which such funds were used to purchase services from organizations outside the welfare agency. Burdensome and complex reporting procedures, however, are not to be imposed on the states. 1974 S. REP. 8139.

77. 42 U.S.C.A. § 654 (Supp. 1976).

is eligible to receive matching federal funds.<sup>78</sup> To assist and oversee the operation of state child support programs the Secretary of HEW is required to set up a separate organizational unit under the direct control of an appointee of the Secretary.<sup>79</sup> The purpose of this agency is to review and approve state child support plans,<sup>80</sup> evaluate and conduct annual and special audits of each state plan,<sup>81</sup> and maintain adequate records of and publish reports on the operation of the state's program.<sup>82</sup> The agency also provides technical assistance to the states to help them establish effective systems for determining paternity and collecting child support.<sup>83</sup> Additionally, if a prosecuting attorney or court in another state refuses to enforce an order against a deserting parent within a reasonable time, the agency has authority to grant officials in the complaining state the permission to sue in a federal district court.<sup>84</sup>

*Parent Locator Service.* Another new provision of the Amendments is the establishment of a federal parent locator service which has access to all federal records and will make them available to the states for use in locating a deserting parent who owes child support.<sup>85</sup> A state, however, must first exhaust all means it has for tracing absent parents and enforcing child support orders before requesting aid from the federal service.<sup>86</sup> As a further aid in location efforts, welfare information formerly withheld from public officials under regulations concerning confidentiality is made available under the Amendments.<sup>87</sup> The only limitation on the sources of information made

78. The federal government will match the state's efforts. The Amendments increase the federal contribution from 50% to 75%. *Id.* § 655. However, states not complying with the requirements would face a penalty in the form of reduced matching federal funds for AFDC payments (the Secretary could impose a penalty equal to 5% of the federal funds to which the state was otherwise entitled as matching funds for AFDC payments made by the state in the year the audit was conducted). *Id.* §§ 603(h), 652(a)(4). A state will not be found to have an acceptable program unless it adequately cooperates in obtaining child support payments from the absent parent of an AFDC child. In evaluating the adequacy of a state's program the Secretary should consider the effective implementation of URESA. He also should note if another state has been forced to request access to the federal courts because the state under scrutiny has failed to enforce a support order. 1974 S. REP. 8151.

79. 42 U.S.C.A. § 652(a) (Supp. 1976).

80. *Id.* § 652(a)(3).

81. *Id.* § 652(a)(4).

82. *Id.* § 652(a)(6).

83. *Id.* § 652(a)(7).

84. *Id.* § 652(a)(8); see notes 102-06 *infra* and accompanying text.

85. 42 U.S.C.A. §§ 653, 653(b)(1) (Supp. 1976). The Freedom of Information Act, 5 U.S.C. § 552 (1970), permits disclosure of federal records to "any person" who requests the information without a showing of need or particular interest. However, release of information concerning an absent parent would be limited since the Freedom of Information Act provides an exception to the general release of information if "specifically exempted from disclosure by statute." *Id.* § 552(b)(3). Since the Amendments provide that only welfare officials and courts be given access to the information, the exception is applicable. Another exemption under the Act relates to nondisclosure of personnel files if a clearly unwarranted invasion of privacy is shown. This exemption might also be effective to prohibit wholesale disclosure of an absent parent's file. *Id.* § 552(b)(6). See generally Comment, *The Freedom of Information Act and Its Internal Memoranda Exemption: Time for a Practical Approach*, 27 Sw. L.J. 806 (1973).

86. 42 U.S.C.A. § 653(f) (Supp. 1976). The pre-existing state programs were established by 42 U.S.C. §§ 601-06 (1970). See note 8 *supra*.

87. 42 U.S.C.A. § 653(e)(2) (Supp. 1976). The prior regulations provided safeguards which restricted use or disclosure of information about applicants or recipients to

available through the service is that national security or highly confidential material such as census data may not be divulged.<sup>88</sup> Local or state officials with support collection responsibility under the program, a court with support order authority, and the agent of a deserted child not on welfare all have authority to request and receive information from the service.<sup>89</sup> Other important provisions of the Amendments include the assignment of family support rights to the states,<sup>90</sup> state use of the Internal Revenue Service to collect child support payments,<sup>91</sup> garnishment of federal wages,<sup>92</sup> provision for establishment of paternity,<sup>93</sup> and support collection for non-welfare families.<sup>94</sup>

### III. PROBLEMS RAISED BY THE AMENDMENTS

The Amendments consolidate heretofore localized collection efforts into a national bureau and provide strong collection power by allowing officials seeking to collect support payments access to information contained in Internal Revenue Service files. They also expand the group of people subject to the laws since the federal government consents to garnishment of federal employees' wages to pay overdue child support debts. To a limited extent the federal courts will now be available to hear suits brought to enforce support claims. Undoubtedly, centralization of collection efforts and expansion of facilities to locate absent parents will result in more efficient and, therefore, less costly collection services.<sup>95</sup> Moreover, if payments are effectively collected from runaway parents, the taxpayer should reap a savings in the form of reduced welfare payments.<sup>96</sup> Nevertheless, both President Ford and

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purposes directly connected with the administration of AFDC. 42 U.S.C. §§ 602(a)(9), 1306(a) (1970). This provision was designed to prevent harrassment of welfare recipients. 1974 S. REP. 8152. The Amendments were written to make it clear that this requirement may not be used to prevent qualified public officials from obtaining information they need to perform such duties as collection of child support. *Id.*

88. 42 U.S.C.A. § 653(b) (Supp. 1976).

89. *Id.* § 653(c).

90. *Id.* §§ 656, 602(a)(26).

91. *Id.* § 652(b). This remedy will be available only if the state can establish to the satisfaction of HEW that it has made diligent but unsuccessful efforts to collect the payment through other processes.

92. *Id.* § 659. Prior to the Amendments the wages of federal employees, including military personnel, were not subject to attachment for purposes of enforcing a court order for child support. This exemption is based on the immunity of the United States (and hence its employees) from suits to which it has not consented. 1974 S. REP. 8157.

93. 42 U.S.C.A. § 652(a)(1) (Supp. 1976). "[A]n AFDC child has a right to have its paternity ascertained in a fair and efficient manner unless identification of the father is clearly against the best interests of the child." 1974 S. REP. 8154-55. *See* notes 116-21 *infra*.

94. 42 U.S.C.A. § 654(6) (Supp. 1976). Although the Amendments are designed primarily to improve state programs for collection of child support for welfare recipients, the Senate Committee realized "the problem of nonsupport is broader than the AFDC rolls and that many families might be able to avoid the necessity of applying for welfare in the first place if they had adequate assistance in obtaining the support due from absent parents." 1974 S. REP. 8158. The Amendments, therefore, provide for location of absent parents and establishment of paternity for the non-welfare child. A small fee will be charged for this service.

95. In a study conducted by the National District Attorneys Association it was reported that if the program is properly implemented by prosecutors, "taxpayers can get a return of at least \$5.05 on every dollar spent to track down runaway welfare parents." *Dallas Times Herald*, Oct. 5, 1975, at 16, col. 11.

96. HEW estimates the new legislation could save taxpayers one billion dollars per year in welfare payments. *Id.*

members of Congress have questioned whether the benefits of the new program are worth the cost.<sup>97</sup> Their concern focuses on what they see as over-reaching by the federal government into areas traditionally controlled by the states. In addition, they fear the Amendments will fail to protect the best interests of the child and the deserting parent's right of privacy.

### A. *Improper Federal Intervention*

The Amendments provide for use of the Internal Revenue Service to collect child support payments when a state has diligently but unsuccessfully tried to collect from the parent.<sup>98</sup> The IRS is certainly one of the most effective collection agencies available to the Government since it has already established collection procedures and since it could collect the support payments concurrently with taxes due from the obligor. The procedure is not revolutionary because the IRS already collects social security payments along with withholding taxes due from an employee.<sup>99</sup> That type of collection, however, is related directly to the employment of the obligor whereas the collection of child support is based upon a court order. It has been argued that the IRS was not created to collect judgments; its function is to collect taxes only.<sup>100</sup> In view of the extreme difficulty the states are having with their collection procedures, however, Congress felt justified in expanding the authority and power of the IRS to include collection of defaults of child support payments. Any possibility of undue harassment is significantly reduced by specific safeguards designed to protect the parent from overbearing tax collection methods.<sup>101</sup>

Congress also extended the control of the federal government by providing the federal courts with jurisdiction to enforce delinquent orders for child support without regard to any amount in controversy.<sup>102</sup> The Amendments

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97. See H.R. 8598, 94th Cong., 1st Sess. (1975); PRESIDENTIAL DOCUMENTS, *supra* note 13, at 20. H.R. 8598 was passed by the House on July 21, 1975. No Senate action had been taken on the bill, however, by Aug. 1, 1975, the effective date of the Amendments. The sponsors of the bill had encouraged speedy action by the Senate because many states faced the loss of matching federal funds for not having a proper program organized by the time the legislation went into effect. In order to give the states more time to pass enacting legislation the House proposed that any state making a good faith effort to comply would not be penalized. H.R. 8598, *supra*, § 404(c).

98. 42 U.S.C.A. § 652(b) (Supp. 1976). See also 26 U.S.C.A. § 6305 (Supp. 1976) which amends the Internal Revenue Code of 1954 and provides the mechanism whereby the child support obligation is collected. The Code treats the obligation as if it were a tax except that no interest or penalties are assessed.

99. The Federal Insurance Contributions Act provisions are found in 26 U.S.C. §§ 3101-25 (1970). The IRS collects the employment tax as if it were income tax. *Id.* § 3501.

100. 121 CONG. REC. 7141 (daily ed. July 21, 1975) (remarks of Rep. Corman).

101. The Amendments provide that in all cases efforts must be made by the states to collect using their own mechanisms, and the IRS is only the final source of relief. 42 U.S.C.A. § 652(b) (Supp. 1976). A court order must exist for the support obligation before the IRS may be utilized. *Id.* Further, the assessment by the IRS will "not preclude any legal, equitable, or administrative action against the State by any individual . . . to determine his liability . . . or to recover any such amount collected from him." 26 U.S.C.A. § 6305(b) (Supp. 1976).

102. 42 U.S.C.A. § 660 (Supp. 1976). H.R. 8598 urges repeal of this section because the federal courts are already too crowded. See 121 CONG. REC. 7142 (daily ed. July 21, 1975) (remarks of Rep. Vander Jagt).

provide that support rights must be assigned to the state;<sup>103</sup> upon nonpayment of child support the dependent's state is entitled to request aid in collecting the payments from the state to which the parent fled.<sup>104</sup> If the state is uncooperative, the Amendments permit the originating state to file a complaint with the Secretary, who will authorize access to the federal courts to aid in enforcement of the order.<sup>105</sup> This provision considerably alleviates the problems arising from unsympathetic state courts in the parent's new state.<sup>106</sup> Certainly, if the broad policies promoted by Congress to solve the child support problem are to be effective, enforcement of support orders must be facilitated once the absent parent is located.

In addition to allowing use of the federal tax collection mechanism and more effective use of the federal courts to collect overdue child support, Congress also provided a closely controlled program which the states must implement to be eligible for federal funds.<sup>107</sup> The program will be audited annually<sup>108</sup> and will be under the supervision of an HEW appointee.<sup>109</sup> Since the states had in the past been allowed to set up their own programs, this federal supervision has been criticized.<sup>110</sup> The states have generally had the responsibility for enforcing child support orders for two reasons: (1) the dependent's state has a greater interest in protecting its citizen than does another state; and (2) the deserted parties, if not supported by the absent parent, may become public charges who must be supported by the local community.<sup>111</sup> These reasons were sufficient to leave enforcement to the states prior to the entry of the federal government into welfare areas in the 1930's. Since that time, however, it has been established that welfare and social security programs administered by the federal government are constitutional<sup>112</sup> and that the federal government, as a condition for payment of matching funds, may require a state to conform to federal standards.<sup>113</sup> Thus, the federal government clearly has the power to extend federal responsibility for collection efforts. In addition, the vast sums expended for welfare payments<sup>114</sup> give the federal government at least as great an interest in the

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103. 42 U.S.C.A. §§ 656, 602(a)(26) (Supp. 1976).

104. *Id.* § 652(a)(8).

105. *Id.*

106. See notes 20-26 *supra* and accompanying text.

107. 42 U.S.C.A. § 654 (Supp. 1976).

108. *Id.* § 652(a)(4).

109. *Id.* § 652.

110. See PRESIDENTIAL DOCUMENTS, *supra* note 13, at 20. In urging the passage of the amendments to the Social Services Amendments, Rep. Vander Jagt said that H.R. 8598 corrects oversights in the 1974 Act which would seriously disrupt the AFDC program and restores to the states their proper role in undertaking child support activities. 121 CONG. REC. 7142 (daily ed. July 21, 1975).

111. See note 6 *supra*.

112. *Charles C. Steward Mach. Co. v. Davis*, 301 U.S. 548 (1937) (federal social security act not invalid as coercive against the states).

113. *Guerrero v. Schmidt*, 352 F. Supp. 789 (W.D. Wis. 1973); *Marotti v. White*, 342 F. Supp. 823 (D. Conn. 1972). Upon electing to participate in the federal program the state must maintain a system consistent with federal legislation on the subject. *Rodriguez v. Vowell*, 472 F.2d 622 (5th Cir.), *cert. denied*, 412 U.S. 944 (1973); *Reyna v. Vowell*, 470 F.2d 494 (5th Cir. 1972). Further, inconsistent regulations render the program invalid. *Parks v. Harden*, 354 F. Supp. 620 (N.D. Ga. 1973); *Grubb v. Sterrett*, 315 F. Supp. 990 (N.D. Ind.), *aff'd*, 400 U.S. 922 (1970).

114. "Federal matching for social services prior to . . . 1973 was mandatory and

recipients' well-being as the state where they reside. The state no longer has the sole responsibility under the Amendments for supporting deserted dependents. Rather, the federal government will pay seventy-five percent of the support costs.<sup>115</sup> Since the federal government has such a large financial stake in the management of matching funds federal intervention to prescribe standards for state welfare agencies charged with collecting child support payments is warranted.

### B. *Cooperation by the Mother in Locating the Absent Father*

The Amendments require, as a condition of eligibility for welfare, that a mother assign her right to support payments to the state<sup>116</sup> and cooperate with state efforts to locate the father.<sup>117</sup> This mandatory cooperation requirement has been criticized for causing a situation which could "subject the mother or child to substantial danger or physical harm or undue harrassment."<sup>118</sup> A "good cause" exception has been suggested which would waive the cooperation requirement if, in the judgment of the welfare officer, it is in the best interest of the child that the father not be named.<sup>119</sup> Such a situation could arise in cases of rape, incest, or threat of harm from an angry father.<sup>120</sup> The inflexible cooperation requirement of the Amendments should be amended to provide the welfare official with discretion to determine whether disclosure of the father's identity is in the best interests of the child. Of course such an amendment must contain explicit guidelines designed to allow the use of discretion by a welfare officer only in cases which merit a waiver of the cooperation requirement.<sup>121</sup>

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open-ended. Every dollar a State spent for social services was matched by three Federal dollars." 1974 S. REP. 8135. The amount paid by the federal government in 1973 was estimated to be \$4.7 billion. *Id.*

115. 42 U.S.C.A. § 655 (Supp. 1976).

116. *Id.* § 656(a).

117. *Id.* § 602(a)(26)(B). The ineligibility of a non-cooperating mother would apply only to her and not to her children; assistance payments would be made to the children under a protective payment plan to assure they get the benefits of such payments. In the past courts have held that state restrictions which deny the child aid are invalid as beyond the scope of the Social Security Act. *Meyers v. Juras*, 327 F. Supp. 759 (D. Ore.), *aff'd*, 404 U.S. 803 (1971). *See also Saddler v. Winstead*, 332 F. Supp. 130 (N.D. Miss. 1971); *Doe v. Schmidt*, 330 F. Supp. 159 (E.D. Wis. 1971). Many cases involve mothers who refuse to comply with welfare department regulations requiring that they institute an action against the abandoning father. *See, e.g., King v. Smith*, 392 U.S. 309 (1968) (protection of dependent needy children is the paramount goal of AFDC and, therefore, a state cannot frustrate that goal in the name of the subservient goal of securing support from the abandoning parent). *See also Taylor v. Martin*, 330 F. Supp. 85 (N.D. Cal.), *aff'd*, 404 U.S. 980 (1971). Similarly, children are entitled to support although the mother refuses to name the father, *Doe v. Shapiro*, 302 F. Supp. 761 (D. Conn. 1969), *appeal dismissed*, 396 U.S. 488 (1970), or refuses to cooperate in locating the father, *Lascaris v. New York State Dep't of Social Services*, 67 Misc. 2d 17, 323 N.Y.S.2d 567 (Sup. Ct. 1971). *See generally Redlich, Unconstitutional Conditions on Welfare Eligibility*, 1970 WIS. L. REV. 450, 454; Note, *Social Security and Public Welfare: Invalidity of Public Welfare Regulations Requiring Parent to Cooperate with District Attorney in Obtaining Child Support from Abandoning Parent*, 25 OKLA. L. REV. 438 (1972).

118. 121 CONG. REC. 7141 (daily ed. July 21, 1975) (remarks of Rep. Corman). *See also* remarks of Rep. Vander Jagt, *id.* at 7142; remarks of Rep. Fraser, *id.* at 7143.

119. H.R. 8598, *supra* note 97, § 7(a).

120. 121 CONG. REC. 7141 (daily ed. July 21, 1975) (remarks of Rep. Corman).

121. *Id.* at 7143 (remarks of Rep. Bauman).

C. *Invasion of Privacy*

Federal agencies have compiled an estimated 2.8 billion pieces of information on individual citizens.<sup>122</sup> While not all files are constantly updated, some files, such as income tax records and motor vehicle registration files, are likely to have current information about an individual's whereabouts. Under the Social Services Amendments the states by use of the federal parent locator service can obtain access to many of these records. This broad access to information about a deserting parent may raise serious privacy and administrative issues.<sup>123</sup>

Under prior law information contained in the records of HEW, the Social Security Administration, and the Internal Revenue Service was made available to the states upon a court order for support.<sup>124</sup> The most useful information obtainable through the federal parent locator service is, therefore, already available on the state level. The service consolidates and centralizes all location efforts, however, and thereby provides greater efficiency and economy.<sup>125</sup>

A state is required to check its own records first. If the individual is not on file, the state may immediately seek help from the national bureau rather than request another state to check its files. Properly implemented, the parent locator service should be able to locate any person who disappears in order to avoid a child support obligation. The subjugation of the individual's right to refuse disclosure of confidential information to the goals of modernization and efficiency has, however, been criticized.<sup>126</sup> It has been suggested that Congress should rid itself of the "misconception that whatever technology can produce should be used" and "that whatever is efficient is desirable."<sup>127</sup> Simply because the federal government has the resources to find a deserting parent does not mean it must do so. On the contrary, a person has the right to make a "fresh start"<sup>128</sup> and "[t]he right to be let

122. As of 1973 the following agencies or departments were compiling files on individuals: The FBI had more than 17 million personal files; the IRS had a file on every person filing an income tax return; the House Internal Security Committee had in 1970 a list of 63,000 names on record; the Civil Service Commission had a list of 2,120,000 names in a "security file" with 10,250,000 names in an "index;" the Secret Service had a list of 100,000 names and 50,000 dossiers; the Department of Defense had a list of 25,000,000 names; the Army had 7 million files in its investigative records depository; and the Justice Department had approximately 5 million files. Comment, *The Computer Data Bank—Privacy Controversy Revisited: An Analysis and an Administrative Proposal*, 22 CATHOLIC U.L. REV. 628, 640 (1973). See generally Countryman, *The Diminishing Right of Privacy: The Personal Dossier and the Computer*, 49 TEXAS L. REV. 837, 854-62 (1971).

123. PRESIDENTIAL DOCUMENTS, *supra* note 13, at 20.

124. 42 U.S.C. §§ 601-06 (1970).

125. See Comment, *Privacy, Law Enforcement and Public Interest: Computerized Criminal Records*, 36 MONTANA L. REV. 60 (1975), for a summary of the values of centralizing information sources.

126. In response to President Ford's statements about possible invasion of privacy the House Ways and Means Committee decided to urge reenactment of essentially the same provisions that were in effect prior to the enactment of the Amendments. H.R. 8598, *supra* note 97, § 453. Representative Corman emphasized that prior law represented "a reasonable compromise between the individual's right to privacy and the needs for information which exists in the administration of welfare and other programs where assistance" is based on financial need. 121 CONG. REC. 7141 (daily ed. July 21, 1975).

127. Countryman, *supra* note 122, at 869.

128. One of the tenets of American philosophy has been that anyone has a right to



alone."<sup>129</sup>

*Constitutional Right of Privacy.* Privacy is an elusive concept which has only recently been granted constitutional status by the Supreme Court.<sup>130</sup> The Constitution does not explicitly provide a right of privacy. Acquisition of information about an individual may, however, constitute a violation of the first amendment's protection of free speech and association,<sup>131</sup> the fourth amendment's protection against unreasonable searches and seizures,<sup>132</sup> the fifth amendment's guarantee against self-incrimination,<sup>133</sup> and the fourteenth amendment's due process protection.<sup>134</sup>

In *Griswold v. Connecticut*<sup>135</sup> the Court described privacy as a right which "emanates" from certain "zones of privacy" and which is to be protected

start anew with society being able to "forgive and forget." See *The Computerization of Government Files: What Impact on the Individual?*, 15 U.C.L.A.L. REV. 1374, 1414-15 (1968).

129. *Public Util. Comm'n v. Pollak*, 343 U.S. 451, 467 (1952) (Douglas, J., dissenting).

130. *Griswold v. Connecticut*, 381 U.S. 479 (1965) (Connecticut anti-contraception law violated privacy of married person). See notes 135-41 *infra* and accompanying text. To be distinguished from the constitutional right of privacy established in *Griswold* is the common law tort of invasion of privacy. See Warren & Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890). Currently four types of invasion have been described: (1) intrusion upon the seclusion of another; (2) public disclosure of embarrassing private facts about another; (3) appropriation of another's name or likeness; (4) publicity which unreasonably places the plaintiff in a false light before the public. W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 117 (4th ed. 1971). The *Restatement of Torts* divides privacy into four branches in much the way Prosser does. RESTATEMENT (SECOND) OF TORTS, §§ 652A-E (Tent. Draft No. 13, 1967). See also F. HARPER & F. JAMES, THE LAW OF TORTS § 96, at 682 (1956).

131. *Gibson v. Florida Legislative Investigation Comm.*, 372 U.S. 539 (1963); *NAACP v. Alabama*, 357 U.S. 449, 460-64 (1958).

132. See *Wolf v. Colorado*, 338 U.S. 25, 27 (1949), in which Mr. Justice Frankfurter commented: "The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society." See also *Mapp v. Ohio*, 367 U.S. 643 (1961) (right of privacy forbids unrestrained search and seizure). In *Olmstead v. United States*, 277 U.S. 438 (1928), the Court held that tapping of a telephone was not a violation of fourth amendment rights because a physical intrusion and seizure of material was necessary for an actionable constitutional violation. However, Justice Brandeis in his dissent gave privacy its most quoted judicial recognition when he stated that the framers of the Constitution had "conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." *Id.* at 478. *Olmstead* was overruled in 1967 in *Katz v. United States*, 389 U.S. 347 (1967), which established the principle that no physical intrusion is necessary for violation of the fourth amendment.

133. *Tehan v. Shott*, 382 U.S. 406 (1966). In referring to the privacy element of the fourth and fifth amendments the Court has said: "It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offense; but it is the invasion of his indefeasible right of personal security, personal liberty and private property, where that right has never been forfeited by his conviction of some public offense,—it is the invasion of this sacred right which underlies and constitutes the essence of [the] judgment." *Boyd v. United States*, 116 U.S. 616, 630 (1885).

134. The due process clause of the fourteenth amendment may be violated if the acquisition of information about an individual occurs without prior notification to the individual. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971). See also *Wolf v. Colorado*, 338 U.S. 25 (1949) (due process clause incorporates the spirit of the fourteenth amendment, making it binding on the states although not to the same extent the federal government is bound).

135. 381 U.S. 479 (1965).

under the "penumbra" of the first, third, fourth, fifth, and ninth amendments.<sup>136</sup> Mr. Justice Goldberg in a concurring opinion asserted that privacy is a fundamental right which is entitled to constitutional protection even though it is not explicitly mentioned in the Bill of Rights.<sup>137</sup> He deemed privacy a fundamental personal liberty since it emanates "from the totality of the constitutional scheme under which we live."<sup>138</sup> Since privacy is a fundamental right, a state may not regulate an activity merely by exhibiting a rational relationship between the regulation and the effectuation of a proper state purpose.<sup>139</sup> Rather, to regulate an activity the state must show a compelling state interest.<sup>140</sup> In *Griswold* Mr. Justice Goldberg did not find that the state had the requisite interest in regulation; the anti-contraception law was "merely rationally related to the accomplishment of a permissible state policy."<sup>141</sup> The state, therefore, had no constitutional power to regulate it.

In *Roe v. Wade*<sup>142</sup> the Court declared that an expectant mother's right of privacy prevents a state from denying her an abortion.<sup>143</sup> The Court, however, stated that this right is not absolute since at some point in the woman's pregnancy the state's interest in protecting the life of the mother and fetus becomes compelling. The state's interest will then outweigh the woman's right of privacy and her request for an abortion may be refused.<sup>144</sup> The

136. *Id.* at 484.

137. *Id.* at 486 (Goldberg, J., concurring). The fifth and fourteenth amendments "protect certain fundamental personal liberties from abridgement by the Federal Government or the States." *Id.* at 492. Mr. Justice Goldberg argues that by the ninth amendment fundamental rights may exist even though they are not explicitly mentioned in the Bill of Rights. The right of privacy is such a fundamental right. *Id.* at 493.

138. *Id.* at 494, quoting *Poe v. Ullman*, 367 U.S. 497, 521 (Douglas, J., dissenting). The Court should look to "the traditions and [collective] conscience" of the people to determine whether a principle is fundamental. 381 U.S. at 493 (Goldberg, J., concurring), quoting *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934). See also Tribe, *Foreword: Toward a Model of Roles in the Due Process of Life and Law*, 87 HARV. L. REV. 1, 42-44 (1973).

139. 381 U.S. at 497 (Goldberg, J., concurring).

140. *Id.*, quoting *Bates v. Little Rock*, 361 U.S. 516, 524 (1960).

141. 381 U.S. at 497 (Goldberg, J., concurring), quoting *McLaughlin v. Florida*, 379 U.S. 184, 196 (1964).

142. 410 U.S. 113 (1973).

143. *Id.* at 154. Mr. Justice Rehnquist says *Griswold* and *Roe* speak to special types of privacy—that is, they bar legislative regulation of an entire area of conduct. The relationships involved in these two cases were thought to be sufficiently intimate that the government is prohibited from substantively regulating them. This is contrasted to what Rehnquist calls the "core area" of privacy, the restraint on government action embodied in the fourth amendment. This "core area" involves an area the individual has chosen to keep private and away from prying eyes. Rehnquist, *Is an Expanded Right of Privacy Consistent with Fair and Effective Enforcement? or: Privacy, You've Come a Long Way, Baby*, 23 U. KAN. L. REV. 1, 3-5 (1974).

144. 410 U.S. at 154. The Court held that "the State does have an important and legitimate interest in preserving and protecting the health of the pregnant woman," and also that the state "has still another important and legitimate interest in protecting the potentiality of human life." *Id.* at 162. These interests are separate and distinct but "each becomes compelling" as the woman approaches term. *Id.* at 163. The Court determined at precisely what point the state may intervene: (1) until the end of the first trimester the abortion decision must be left up to the woman and her physician; (2) after the first trimester the state may regulate abortion procedures to protect the mother's health; (3) at viability (around seven months) the state may regulate or even proscribe abortion to protect its interest in the fetus. *Id.* at 164-65. Thus, the Court balanced the beneficial and harmful consequences of state regulation of abortion and determined that the constitutional result differed from trimester to trimester. The Court was not choosing between pregnancy and abortion so much as it was deciding who should make the decision, the woman or the state. Tribe, *supra* note 138, at 10-11. It has been suggested

Court found another basis for limiting the right of privacy in *Cox Broadcasting Corp. v. Cohn*.<sup>145</sup> In *Cohn* the Court found a rape victim's right to confidentiality was restricted by the first amendment right of freedom of the press and the right of the public to be informed, at least when the information is obtainable from the public files.<sup>146</sup>

*Data Banks.* With the invention of the computer, the right of privacy took on a new dimension since information concerning an individual became almost instantly accessible. The National Crime Information Center (NCIC), created in 1971, provides a centralized source of information for the Federal Bureau of Investigation.<sup>147</sup> The NCIC has been criticized for the laxity with which it allows release of information and because many of the records which it maintains are thought to be unnecessary.<sup>148</sup> Although courts have traditionally been unwilling to interfere with the handling of criminal data because its availability is necessary for effective law-enforcement,<sup>149</sup> courts have recently been willing to take notice of disabilities result-

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that in substantive due process cases such as *Roe* a workable approach is to use a "role-allocation" model. Using this type of analysis "the Court may determine that the due process clause is violated whenever the state either assumes a role the Constitution entrusts to another, or fails to assume a role the Constitution imposes upon it." *Id.* at 15. Use of this method involves balancing interests as the Court did in *Roe*, but only those interests directly influencing the allocation of roles. *Id.* at 51. That is, the Court should focus on the various interests of the state, church, father, and mother, as opposed to deciding the pros and cons of early abortion. In cases involving the right of privacy of a deserting parent the Court might decide that the role of locating the deserter should not, as a general matter, be reposed in the government.

145. 420 U.S. 469 (1975).

146. *Id.* at 487-97. In this case the victim's father sued, contending the public broadcast of his daughter's name violated his right of privacy. The Court ruled that a state statute which makes it a misdemeanor to broadcast a rape victim's name is unconstitutional. *Id.* at 491. See also *Time, Inc. v. Hill*, 385 U.S. 374 (1967), in which the Court overturned a lower court's award of \$30,000 in damages for invasion of privacy for erroneously identifying plaintiff as the subject of a controversial play. The Court declared that without proof that the defendant made a statement with knowledge of its falsity or in reckless disregard of the truth, there can be no invasion of privacy.

147. The NCIC is tied to twenty-four computerized terminals throughout the country and contains more than 1.7 million personal files and more than 195 million sets of fingerprints. Countryman, *supra* note 122, at 854-56; see Comment, *Protection of Privacy of Computerized Records in the National Crime Information Center*, 7 U. MICH. J.L. REFORM 594 (1974). Benefits from the national center include on-the-spot information concerning persons and objects; this gives the investigating officers an opportunity they otherwise would not have to arrest or confiscate. A major cost of the system is the ease with which unauthorized persons can receive the information. *Id.* at 595-97. See generally A. WESTIN, *PRIVACY AND FREEDOM* 23-26 (1967).

148. See *Menard v. Mitchell*, 328 F. Supp. 718 (D.D.C. 1971) (if arrest is made with probable cause but suspect is exonerated, the FBI may have the duty to note the exonerated status on its files). See also *United States v. Kalish*, 271 F. Supp. 968 (D.P.R. 1967); *Eddy v. Moore*, 5 Wash. App. 334, 487 P.2d 211 (1971). For commentaries on these cases see Steele, *A Suggested Legislative Device for Dealing with Abuses of Criminal Records*, 6 U. MICH. J.L. REFORM 32 (1972); Comment, *Branded: Arrest Records of the Unconvicted*, 44 MISS. L.J. 928 (1973); Comment, *Retention and Dissemination of Arrest Records: Judicial Response*, 38 U. CHI. L. REV. 850 (1971). But see Rehnquist, *supra* note 143, at 8, in which the author suggests the central question is the use to which the record will be put. Since an arrest is not a "private" event (that is, it is a matter of public record) it is not an invasion of privacy to keep a record of the event. See also *Roe v. Wade*, 410 U.S. 113 (1973) (Rehnquist, J., dissenting) (an abortion is not "private" in the ordinary usage of the word). However, the citizen should be able in certain circumstances to demand eradication or limited disclosure of the information, at least if no conviction is made. Rehnquist, *supra* note 143, at 8.

149. Believing that the plaintiff's right to privacy is not outweighed by the need for law enforcement officials to have complete files so they will recognize potential crimi-

ing from criminal record disclosures.<sup>150</sup> These disabilities include injury to an individual's reputation and serious economic loss.<sup>151</sup> Some courts have suggested there be greater sanctions against improper use of the material in the NCIC as well as more administrative safeguards against its dissemination.<sup>152</sup>

Congress also took note of the problem of invasion of privacy when it refused to authorize creation of the National Data Bank (NDB) proposed by the Bureau of the Budget.<sup>153</sup> Governmental agencies traditionally remain independent in their information gathering, and their use of computers is generally internal to each agency. The NDB would have collected all information from twenty federal agencies in one centralized, efficient unit. Due to the great number of congressional hearings on the subject, the NDB was never established. Congress obtained from the Bureau of the Budget a commitment that before a central data bank would be established, the problems of invasion of privacy would be evaluated by a panel of experts including lawyers, computer experts, and representatives of Congress.<sup>154</sup>

Both the NDB and the NCIC involve the idea of *centralizing* all records into one huge complex, with computers transmitting information instantaneously. The parent locator service, on the other hand, merely provides *access* to the information contained in government files.<sup>155</sup> The Amendments do not explicitly authorize creation of a data bank to disseminate the information.<sup>156</sup> It could be argued, therefore, that since the information is properly filed in another agency's records dissemination by a federal locator service is not an invasion of privacy of the type involved in gargantuan "Big Brother" data banks. It has been suggested, however, that if one bureau is allowed access to another's files, a data center could come into existence in fact, if

nals, courts have often refused to grant any relief citing a lack of statutory authority. *See, e.g., Purdy v. Mulkey*, 228 So. 2d 132 (Fla. 1969); *Fernicola v. Keenan*, 136 N.J. Eq. 9, 39 A.2d 851 (Ch. 1944). Another reason courts have denied plaintiffs relief has been that there was no injury. *See, e.g., Hershall v. Drya*, 365 F.2d 17 (7th Cir. 1966).

150. *Menard v. Mitchell*, 430 F.2d 486, 490-91 (D.C. Cir. 1970); *Morrow v. District of Columbia*, 417 F.2d 728, 741-43 (D.C. Cir. 1969).

151. *Menard v. Mitchell*, 430 F.2d 486, 490 (D.C. Cir. 1970).

152. *Menard v. Mitchell*, 328 F. Supp. 718, 726-27 (D.D.C. 1971). Suggestions have been made concerning specific approaches to the problem of safeguarding the functions of the computer bank itself. Included are controls on data bank content which would limit the acquisition and maintenance of certain types of data, ensure accuracy of data, and provide that certain types of records be expunged. *See* note 168 *infra* and accompanying text.

153. *See generally Hearings on Federal Data Banks, Computers and the Bill of Rights Before the Subcomm. on Constitutional Rights of the Senate Comm. on the Judiciary*, 92d Cong., 1st Sess. (1971); *Hearings on the Computer and Invasion of Privacy Before the Subcomm. of the House Comm. on Gov't Operations*, 89th Cong., 2d Sess. (1966). *See also* Countryman, *supra* note 122, at 862; Comment, *supra* note 122; Note, *Privacy and Efficient Government: Proposals for a National Data Bank Center*, 82 HARV. L. REV. 400 (1968).

154. H.R. REP. NO. 1842, 90th Cong., 2d Sess. 22-23 (1968).

155. 42 U.S.C.A. § 653 (Supp. 1976).

156. On the other hand, they do not prohibit the creation of a data bank. The section of the Amendments which establishes the parent locator service merely provides that the Secretary of HEW shall "establish and conduct a Parent Locator Service . . . to obtain and transmit . . . information as to the whereabouts of any absent parent," such information to be obtained from the files of HEW or any other agency. 42 U.S.C.A. §§ 653(a), (b) (Supp. 1976).

not in name.<sup>157</sup> Congress continues to be concerned about this problem and has suggested abolishing the parent locator service because it presents the opportunity for invasion of privacy on an unprecedented scale.<sup>158</sup>

*Balancing Interests.* Both Congress and the courts recognize a constitutional right of privacy; similarly, both recognize the need to retain a centralized data bank like the NCIC in order to facilitate crime prevention. In many instances, however, these interests will be in direct conflict. Increased privacy may mean less effective enforcement of the law<sup>159</sup> or a less-informed citizenry.<sup>160</sup> Certainly no one denies that children should be supported by their parents. Not only will deserted children be psychologically upset by the parent's disappearance but in many instances they will be destitute and forced to accept state aid. Clearly, then, the state has a legitimate interest in locating the parent; contribution to a child's support by a parent reduces the state's burden. The problem is whether that interest should prevail over the parent's constitutionally protected right of privacy.<sup>161</sup> Improperly managed, the parent locator service might inhibit a person's right to travel as he pleases or the right to refuse disclosure of confidential information to a casual inquirer. Although privacy is a fundamental right as established in *Griswold* and *Roe*, it is not an absolute right.<sup>162</sup> A showing that the state has a compelling interest in the challenged regulation may supersede the right.<sup>163</sup> The Court in *Roe*, for example, said the state has a compelling interest past a certain point in the woman's pregnancy to protect mother and child. This interest overcomes the constitutionally protected right of privacy. Similarly, states have an interest in assuring that their citizens receive adequate maintenance,<sup>164</sup> and a law which permits the states to find absent parents for the purpose of enforcing a child support order is "not merely rationally related, to the accomplishment of a permissible state policy."<sup>165</sup> Rather, such a law is "necessary" to the valid state policy of aiding a dependent's collection of child support. Without such provisions it would often be impossible to locate a clever parent who has fled the state without leaving an easily ascertainable record of his whereabouts.<sup>166</sup> In this case the state's interest should be defined as compelling and should, therefore, supersede the deserting parent's right of privacy.

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157. Countryman, *supra* note 122, at 867.

158. H.R. 8598, *supra* note 97, at 7141 (remarks of Rep. Corman).

159. An example is the exclusionary rule of *Mapp v. Ohio*, 367 U.S. 643 (1961) (evidence improperly obtained may not be used at trial).

160. See, e.g., *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975).

161. Conflicting cases should be "carefully analyzed not only in terms of the values they would advance but in terms of the values they would displace." Rehnquist, *supra* note 143, at 3. There appears to be an "inverse correlation between increasing governmental regulation and more governmental benefit programs on the one hand, and privacy enjoyed by the individuals who live under those governments on the other. This is a natural, if not inevitable, consequence of the vast expansion of the role of government." *Id.* at 17.

162. *Roe v. Wade*, 410 U.S. 113, 154 (1973).

163. *Id.* See also note 144 *supra* and accompanying text.

164. See note 6 *supra*.

165. *McLaughlin v. Florida*, 379 U.S. 184, 196 (1964). See also note 141 *supra* and accompanying text.

166. See *McLaughlin v. Florida*, 379 U.S. 184, 196 (1964).

Simply, for the state to assume the "role" of locator in nonsupport cases is constitutionally permissible.<sup>167</sup>

*Safeguarding Privacy.* Although the possibility for abuse of the parent locator service is present in the Amendments, a few minor changes would be sufficient to guard against indiscriminate release of information about a deserting parent. Such changes might include the following: (1) when information is disclosed, the recipient agency must not make a further disclosure of the information except as it relates specifically to parent location; (2) the programs which can disclose information and the agencies which can receive this information must be precisely and completely delineated by the Secretary of HEW; (3) eligibility of agencies to receive information should be conditioned upon their standards of disclosure and confidentiality; and (4) an individual's access to his own files for the purpose of correcting erroneous information should be permitted.<sup>168</sup> While these changes in the Amendments would not entirely dispel the threat of invasion of privacy, they would still enable the parent locator service to find a parent who has committed a crime by refusing to support his minor child.

#### IV. PRACTICALITY OF THE AMENDMENTS

Under prior law the states had access to Social Security and Internal Revenue records.<sup>169</sup> If it is impossible to locate an absent parent through either of these two methods, it is unlikely he will be employed. If he is not employed, he will probably not have the financial capacity to pay child support, no matter how strong his moral and legal obligation may be. Thus, the only reason to locate him would be to imprison or harass him.<sup>170</sup> Although this may be what he deserves for nonsupport,<sup>171</sup> a careful reading of the legislative history of the Amendments provides ample proof that Congress did not merely wish to locate debtors to harass them. On the contrary, Congress' goal is to have deserted children supported by the deserting parent.<sup>172</sup> Location merely for harassment is a waste of time, effort, and the taxpayers' money. Imprisonment would cost even more since then the taxpayer would be supporting *both* the parent and child. Therefore, it is arguable that the Amendments are useless, at least for the purpose of enforcing child support obligations from the lower income parents whose children make up the bulk of welfare recipients.<sup>173</sup>

The parent locator service will be very effective in coercing middle-income parents to fulfill their obligations.<sup>174</sup> A middle-income parent is almost cer-

167. See Tribe, *supra* note 138. See also note 144 *supra*.

168. H.R. 8598, *supra* note 97, at 7143 (remarks of Rep. Koch). See also Countryman, *supra* note 122.

169. 42 U.S.C. §§ 601-06 (1970).

170. See Willging & Ellsmore, *supra* note 18.

171. *Id.*

172. 1974 S. REP. 8158.

173. *Id.* at 8145-46.

174. The Senate Report emphasizes the "number of well-off physicians and attorneys whose families ultimately are forced onto welfare because of insufficient mechanisms for enforcement of obligations to support. [This situation is due] to the difficulty of proving the income of the self-employed, the ease with which unwilling fathers can

tain to seek and find employment in his new location. As a result, his name will appear on the records available to the parent locator service. After his dependents assign their right to support to the state, the state can sue the absent parent in federal court to collect overdue payments.<sup>175</sup> If he refuses to pay, then the IRS collection mechanism may be implemented.<sup>176</sup> If he is a federal employee, his wages may be garnished.<sup>177</sup> In other words, the Amendments will help dependents of a middle-income parent obtain the support to which they are legally entitled. Such potentially differing results suggest that the Social Services Amendments of 1974 are class legislation directed at the middle and upperclass parent, yet worded to encompass any parent who defaults on child support payments. The Amendments are more a policy statement against the evils of defaulting on child support obligations than a successful method by which all deserted children are assured support by their parents, many of whom are, in fact, scarcely able to support themselves.

## V. CONCLUSION

By enacting the Social Services Amendments of 1974 Congress recognized the morass in laws concerning child support. The child has a right to be supported and the taxpayers have a right to expect the child's parent to support him. Traditional methods of enforcing child support obligations such as enactment of long-arm statutes and the use of the Uniform Reciprocal Enforcement of Support Act are not workable due to the expense and lack of interest on the part of other states. Further, they are not usable when a missing parent cannot be found. State procedures to locate the absent parent are not efficient and are not often used. The Social Services Amendments of 1974 attempt to consolidate efforts to locate the deserter and provide strong tools to enforce the support obligation once he is located. Although the federal government is intervening in what has traditionally been a state's concern, this intervention is justified by the national government's interest in the deserted child who will be supported through federal tax dollars if his parent is not located. If appropriate safeguards are implemented, the parent's right of privacy will not be impermissibly violated. The Amendments cannot, as a practical matter, greatly reduce the amount paid to welfare children because most deserting parents do not have the funds to assume the support obligation. However, they represent congressional awareness of a steadily growing problem and a first step toward assuring that parents capable of supporting their children will fulfill that obligation.

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conceal their assets, the statutory barrier to collecting from military personnel and Federal employees, and the low priority given child support investigations by understaffed district attorney's offices." *Id.* at 8147.

175. See notes 102-06 *supra* and accompanying text.

176. See notes 98-101 *supra* and accompanying text.

177. See note 92 *supra* and accompanying text.