

FEDERAL LAW AND THE ENFORCEMENT OF CHILD SUPPORT ORDERS: A CRITICAL LOOK AT SUBCHAPTER 4 PART D OF THE SOCIAL SERVICES AMENDMENTS OF 1974

I INTRODUCTION

Over the past sixteen years, state and federal expenditures for welfare have been growing at escalating rates. During this time, expenditures have increased by over 800 percent from \$1.02 billion in 1960 to \$8 billion in 1974.¹ Much of the money spent on welfare goes to Aid to Families with Dependent Children (AFDC) for the purpose of child support, with an estimated 80 percent of AFDC recipients receiving assistance because of a deserting parent.² Between the years 1961 and 1973, the number of children eligible for AFDC because of a deserting parent more than tripled.³ These dramatic increases have been due in large part to weak enforcement of child support orders at the state, interstate and federal levels.⁴ Insufficient funding, crowded courts, and lack of interstate cooperation in support cases have all contributed to the enforcement problem.⁵

Congress considered various proposals to deal with the tremendous escalation of state and federal welfare expenditures over the years, but it was not until 1975 that it enacted any legislation. On January 4, 1975, Subchapter 4, Part D of the Social Services Amendments of 1974⁶ became law. For the first time, Congress provided a comprehensive scheme of child support enforcement procedures under federal law.

The stated purposes of 4D include the enforcement of support obligations, the location of absent parents, the establishment of paternity, and the obtaining of child support.⁷ The act provides for a federal parent locator service and proposes a method of operation.⁸ General requirements for state plans⁹ are

1. *Hearings on S. 1842 and S. 2081 Before the Senate Comm. on Finance*, 93d Cong., 1st Sess. 69 (1973).

2. See 1974 U.S. CODE CONG. & AD. NEWS 8146.

3. SENATE COMMITTEE ON FINANCE, SOCIAL SERVICES AMENDMENTS OF 1974, S. REP. NO. 1356, 93d Cong., 2d Sess. 42 (1974).

4. See text accompanying notes 18-21, 63-68 *infra*.

5. *Id.*

6. SOCIAL SERVICES AMENDMENTS OF 1974 SUBCHAPTER 4 PART D, 93d Cong., H.R. 17045, Jan. 4, 1975 (codified at 42 U.S.C. §§ 651-60 (Supp. V 1975)) [hereinafter cited as 4D].

7. 42 U.S.C. § 651 (Supp. V 1975).

8. *Id.* § 653.

9. *Id.* § 654.

followed by a detailed description of how proceeds are to be distributed, incentive payments are to be made to individuals, and how states are to be reimbursed.¹⁰ Provisions are made for incentive payments to complying states.¹¹ In addition, 4D permits the garnishment of wages of federal employees¹² and authorizes federal court jurisdiction in certain circumstances without regard to the amount in controversy.¹³

This Note will first examine the legislative history of 4D, and then look in detail at each of its major provisions, including those dealing with the establishment of a federal parent locator service, the role of the states as assignees of delinquent claims, and the responsibilities of the welfare parent and the delinquent obligor. It will next critically analyze some of the potential problems with 4D, including damage to the interests of the children if the parent on welfare is penalized, potential jurisdictional problems of the federal courts, increased administrative costs to the federal government and to the states, due process taking issues raised by the mandatory assignment of the welfare parent's claim and violations of the right to privacy. Other problems will be explored, including: the lack of interagency cooperation in the early phases of the program, the danger of unwarranted expansion of individual files, the possibility that 4D will have a devastating effect on delinquent obligors and will further separate husbands and wives, and the possibility that state penalty provisions will hurt the mother.

II

ENFORCING SUPPORT ORDERS: PAST PROBLEMS AND THE RESPONSE OF CONGRESS

A. *Background*

Prior to 4D, child support enforcement was primarily the responsibility of the state. Federal legislation contained no provisions for either the supervision of or technical assistance to state enforcement programs.¹⁴ In fact, states were not obligated to start support enforcement proceedings at all. As there were no monetary incentives for states to comply, federal requirements for cooperation in enforcement proceedings were often not met.¹⁵

Many state systems for the enforcement of child support were simply ineffective. A study published in the Congressional Record found that in the first year after the issuance of a child support order, 42 percent of the obligors failed to pay any support, and an additional 20 percent paid only a nominal amount.¹⁶ After the tenth year of a child support order, 79 percent of the obligors failed to pay any support and an additional 8 percent paid less than the stipulated amount.¹⁷

10. *Id.* § 657.

11. *Id.* § 658.

12. *Id.* § 659.

13. *Id.* § 660.

14. 120 CONG. REC. 22,523 (daily ed. Dec. 20, 1974).

15. S. REP. NO. 1356, *supra* note 3, at 2.

16. 120 CONG. REC. 21,748 (daily ed. Dec. 17, 1974).

17. *Id.*

In many communities, understaffed local prosecutors' offices placed a very low priority on child support cases. Indeed, in some jurisdictions, traffic violations were given higher priority.¹⁸ Part of the reason for this had been the lack of sufficient funding for child support enforcement. Although states recovered 50 percent of their enforcement expenses from the federal government,¹⁹ many states could not afford to pay their own share.²⁰ The low sheriff's fee obtained in support cases further undercut the incentive for enforcement proceedings. Due to the shortage of funds needed to do an adequate enforcement job, many states diverted federal monies allocated for the enforcement of child support into other areas of their budgets.²¹

Another problem with the enforcement of child support was the overcrowding of the family courts. In some courts, a judge might hear fifty to sixty child support cases a day.²² As a result, an inadequate amount of time was spent on the handling of each individual case. Often, the statement of facts contained in a defendant's file was insufficient to form the basis for a decision.

Early proposals to strengthen the enforcement of child support orders generally failed to obtain Congressional approval. In 1941, Congress considered but did not pass a bill which would have made it a federal crime to leave a state with the intent to avoid payment of a child support order.²³ The federal district courts would have been granted jurisdiction over such suits for enforcement purposes. In 1950, Congress added section 402(a)(11) to the Social Security Act, requiring state welfare agencies furnishing Aid to Families with Dependent Children to notify law enforcement officials of parents who had deserted their children. This notification procedure did very little to solve the child support problem.

Subsequent bills were introduced into Congress which included the garnishment of salaries of federal employees and the use of Social Security records to locate runaway fathers.²⁴ In 1965, Congress passed Public Law No. 89-97, which provided that the state or local welfare agency could obtain the addresses or place of employment of an absent parent from the Secretary of Health, Education and Welfare (HEW) in certain situations. In 1967, Public Law 90-248 added section 410 to the Act to provide for the obtaining of addresses and related information from the Internal Revenue Service. Sections 402(a)(17), (18), (21), and (22) of the Social Security Act, also added by the 1967 amendments, provided that as part of its AFDC program, each state was required to create a single organizational unit to establish paternity and collect support for children receiving public assistance, who had been deserted by their

18. See M. WINSTON & T. FORSHER, NONSUPPORT OF LEGITIMATE CHILDREN BY AFFLUENT FATHERS AS A CAUSE OF POVERTY AND WELFARE DEPENDENCE (1971); excerpts in 1974 U.S. CODE CONG. & AD. NEWS 8146-8148.

19. 9 UNIFORM LAWS ANN. 809 (1973).

20. W. BROCKELBANK & F. INFAUSTO, INTERSTATE ENFORCEMENT OF FAMILY SUPPORT 108-09 (2d ed. 1971).

21. Foster, Freed & Midonick, *Child Support: Quick and the Dead*, Title XX, *Social Security Act*, N.Y.L.J., March 25, 1975, at 6, col. 5.

22. Foster, *Dependent Children and the Law*, 18 U. PITT. L. REV. 579, 610 (1957).

23. S. 1265, 77th Cong., 1st Sess. (1941).

24. H.R. 12,497, 92d Cong., 2d Sess. (1972); H.R. 12,330, 91st Cong., 2d Sess. (1970); H.R. 5268, 90th Cong., 1st Sess. (1967); H.R. 817, H.R. 538, 87th Cong., 1st Sess. (1961); S. 2380, H.R. 6866, H.R. 6831, H.R. 6673, H.R. 4750, H.R. 4713, H.R. 2446, 86th Cong., 1st Sess. (1959).

parents. The states were required to utilize reciprocal arrangements adopted with other states and to enter into cooperative arrangements with appropriate courts and law enforcement officials.

One of the weaknesses that pervaded many early legislative proposals, including the 1967 Amendments, was their failure to assist parents who had not obtained a prior support order.²⁵ Another was the failure to levy criminal charges and penalties against parents who did not pay support orders.²⁶ By 1972, it became clear that the states were not fully implementing the 1967 child support amendments.

Child support legislation with provisions similar to those of the present law was finally passed by the Senate in 1973, but was tabled by the House Ways and Means Committee.²⁷ The basic difference between this bill and 4D was that the Justice Department, under the direction of the Attorney General, would have been responsible for implementing and administering the locator service, rather than the Department of HEW and its Secretary. Other differences included the extent to which the states would be held responsible for operating the child support program, the manner by which collections were to be distributed, the amount of incentive payments to be paid to states for collections made, and the lack of provisions through which the United States district courts could be used to enforce child support orders, and eligibility requirements for participating parents. Also, the emphasis placed in HR-1 on the use of voluntary agreements as a basis for the support obligation was deleted in 4D.

Two similar bills died in the Senate that year, and an attempt to include them as an amendment to the Social Security Act in 1973²⁸ failed in the Conference Committee. The failure to pass any of this legislation was due primarily to objections to unrelated provisions that accompanied the child support portions of the various pieces of legislation and to an insufficient amount of time to resolve all problems before adjournment. The child support legislation was re-introduced in 1974 as an amendment to the Social Security Act, and was then finally passed by Congress.²⁹ The requirement of the unsuccessful 1973 bill that the child support program be headed by an Assistant Secretary was deleted and a requirement was substituted that the head of a separate organizational unit to administer the program report directly to the Secretary of HEW. The Conference Committee also deleted the requirement that the Secretary establish regional blood laboratories.

B. The Provisions of 4D

1. Federal Supervision and State Responsibilities

Under 4D, the federal government assumes a more active role in the enforcement of child support orders. The statute creates a new federal structure, the Parent Locator Service,³⁰ which operates within the Department of Health,

25. Note, *Domestic Relations: Interstate Enforcement of Support Orders: Necessity and Feasibility of Federal Legislation*, 48 CORNELL L. REV. 541, 547 (1963).

26. *Id.*

27. H.R. 1, 93d Cong., 1st Sess. (1973).

28. H.R. 3153, 93d Cong., 1st Sess. (1973).

29. 120 CONG. REC. 11,412 (daily ed. Dec. 7, 1974); *id.* at 21,768 (daily ed. Dec. 17, 1974).

30. 42 U.S.C. § 653 (Supp. V 1975).

Education and Welfare (HEW). It complements state locator services required under the new law.³¹ It is expected that state services will be administered by a child support unit of the State Welfare Department. The federal Parent Locator Service will have access to all federal files and records, except confidential files of census matter and information involving the possible impairment of national security.³²

If a claimant is on welfare, her³³ support claim is assigned to the state³⁴ and the state seeks to enforce the support order.³⁵ In the case of AFDC welfare families, this state enforcement structure continues to operate beyond the time when the support payments collected exceed the AFDC requirements.³⁶ The structure is also available for the use of non-welfare parents upon payment of a \$20 application fee.³⁷

The federal legislation also provides for monitoring the enforcement of child support orders. First, states are required to submit plans to the federal government which meet federal standards under 4D.³⁸ Second, state progress in collecting child support monies and in dispersing allocated funds must be recorded³⁹ and reported in the annual report to Congress by the Secretary of HEW.⁴⁰ Finally, the Secretary of HEW conducts annual audits of state governments to insure that state monies have been spent properly.⁴¹

In addition to its oversight activities, the federal government employs a system of rewards, incentives, and penalties to improve child support enforcement efforts by the states. Federal funding will cover 75 percent of the initial expense of developing new or improved state enforcement procedures.⁴² States assume the remaining 25 percent share of the costs. Federal funds are used to reward the states for locating absent parents. In the first twelve months of support collections, states receive federal funds equivalent to 25 percent of monies that they collect.⁴³ Thereafter, they receive 10 percent of the monies collected.⁴⁴ States that fail to meet their responsibilities suffer a loss of 5 percent of federal funds.⁴⁵

31. *Id.* § 654(8).

32. *Id.* § 653(b).

33. The claimant may be either male or female under the legislation. However, for the sake of simplicity, and because female claimants outnumber male claimants, the feminine pronoun will be used throughout.

34. 42 U.S.C. § 602(a)(26)(A) (Supp. V 1975).

35. *See id.* §§ 654(4)(B), 656(a).

36. *Id.* § 657(c).

37. *Id.* § 654(6). The exact amount of the fee varies from state to state. The filing fee in New York State is \$20.

38. *Id.* § 654.

39. *Id.* § 654(10).

40. *Id.* § 652(a)(4),(10); Foster, Freed, & Midonick, *supra* note 21, at 6, col. 6; *See also* U.S. DEPT. OF HEALTH, EDUCATION, AND WELFARE, OFFICE OF CHILD SUPPORT, FIRST ANNUAL REPORT TO THE CONGRESS ON THE CHILD SUPPORT ENFORCEMENT PROGRAM (1976).

41. 42 U.S.C. § 652(a)(4) (Supp. V 1975).

42. *Id.* § 655(a).

43. *Id.* § 658(a)(1).

44. *Id.* § 658(a)(2).

45. *Id.* § 603(h).

2. *Inducing Cooperation by the Welfare Parent*

There is a similar system of rewards, incentives, and penalties to encourage the welfare parent to cooperate. Under 4D, the welfare parent is required to provide her social security number to the state child support agency⁴⁶ and assign her support rights to the state.⁴⁷ The statute requires this cooperation both in establishing the paternity of children born out of wedlock (if she claims aid for them) and in obtaining support or other property due to the mother (guardian) or child from the obligor spouse.⁴⁸ However, the parent need not cooperate if she can show that it would not be in the best interests of the children.⁴⁹

Between July 1, 1975 and September 30, 1976, a cooperating welfare parent would receive 40 percent of the first \$50 collected without any decrease in AFDC payments.⁵⁰ After the end of this period, collected money would be used to offset AFDC welfare payments for that month.⁵¹

If the parent fails to cooperate with the state, a penalty is imposed. A percentage of the welfare monies that would have otherwise gone directly to her is deducted from her monthly check.⁵² In theory, the children continue to receive their allowances regardless of the parent's conduct⁵³ by means of "protected payments." However, the statute does not specify the particular way in which this protection is to be accomplished.

Under 4D, the obligor submits his support payments directly to the state⁵⁴ and the state uses the money to offset the AFDC payments.⁵⁵ If the obligor's payments fail to exceed AFDC payments, the deserted parent continues to receive assistance checks.⁵⁶ If the obligor's payments exceed AFDC payments, the deserted parent receives the additional money.⁵⁷ The deserted parent continues to receive additional monies collected over the AFDC amount, up to the recognized family support rights.⁵⁸ When the obligor's payments exceed that level, the state and federal government use the additional monies to pay off their past welfare expenses.⁵⁹

For a period of up to three months beyond the time the deserted parent stops receiving AFDC assistance, the child support payments continue to be paid to the state.⁶⁰ However, even after this period, if the obligor fails to send his checks directly to the deserted parent she can continue to utilize the state's enforcement service upon the payment of a \$20 application fee.

46. *Id.* § 602(a)(25)(A).

47. *Id.* § 602(a)(26)(A).

48. *Id.* § 602(a)(26)(B).

49. *Id.*

50. *Id.* § 657(a)(1).

51. *Id.* § 657(b)(1).

52. *See id.* § 606(f).

53. *Id.*

54. *See id.* §§ 654(5), 657.

55. *Id.* § 657(a)(2), (b)(1).

56. *Id.* § 657(a)(1).

57. *Id.* § 657(b)(2).

58. *Id.*

59. *Id.* § 657(b)(3).

60. *Id.* § 657(c)(1).

3. Greater Access to Federal Courts and Broadened Remedies

Other provisions of 4D which aid in the federal enforcement of child support obligations include the utilization of the Internal Revenue Service collection apparatus, the use of the federal courts, the garnishment of federal wages, the elimination of bankruptcy as a defense, and federal technical assistance to the states.

The IRS collection apparatus is utilized to collect money in non-welfare cases as well as welfare cases.⁶¹ The federal courts may assume jurisdiction, without regard to amount, in particular child support cases.⁶² The use of federal courts enables local child support orders to be enforced against obligors who have crossed state lines to avoid payment.

In the past, cooperation between states in the enforcement of child support orders was poor. For example, if a parent sued to recover child support in her home state under the Uniform Reciprocal Enforcement of Support Act (URESA),⁶³ the prosecutor in the absent parent's state was required to locate the obligor and to collect child support. However, due to the shortage of funds for child support enforcement, many of these interstate enforcement actions were given low priority and were not carried out.⁶⁴ Another reason for the reluctance of prosecutors to enforce child support orders in interstate cases was the likelihood that the enforcement of such an order would lead to the obligor's receiving welfare assistance.⁶⁵

The enforcement of child support orders across state lines was also hindered by the resistance of courts in other states. In theory, a parent could enforce a child support order in the obligor's state under the full faith and credit clause.⁶⁶ In practice, the sister state would often refuse to comply with the parent's request. One of the reasons for this was that the child support orders issued by courts of a parent's home state were not considered to be "final." A second state could modify a support order of the home state by awarding a different amount of money.⁶⁷ The Supreme Court has held that such modifiable support orders obtained in the home state could not be enforced in other states under the full faith and credit clause.⁶⁸

A solution to the problem of uncooperative state courts might be found in the provisions of 4D relating to federal jurisdiction. Two prerequisites for federal court jurisdiction are established: the issuing and obtaining of a support order by the local courts in the claimant's jurisdiction⁶⁹ and the consent of the Secretary of HEW.⁷⁰

61. 26 U.S.C. § 6305 (Supp. V 1975); 42 U.S.C. § 652(b) (Supp. V 1975).

62. 42 U.S.C. § 660 (Supp. V 1975).

63. 9 UNIFORM LAWS ANN. 809 (1973).

64. COUNCIL OF STATE GOVERNMENTS, CONFERENCE SUMMARY OF THE TWENTY-FIRST NATIONAL CONFERENCE ON UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT 4 (1972).

65. *Family Support From Fugitive Fathers: A Proposed Amendment to Michigan's Long Arm Statute*, 3 PROSPECTUS 399, 407 (1970).

66. U.S. CONST. art IV, § 1.

67. *Smith v. Smith*, 43 Cal. 2d 381, 270 P.2d 613, 125 Cal. App. 2d 154 (1954); *Allain v. Allain*, 24 Ill. App. 2d 400, 164 N.E.2d 611 (1960); *Moore v. Moore*, 252 Iowa 404, 107 N.W.2d 97 (1961).

68. *Sistare v. Sistare*, 218 U.S. 1 (1910).

69. See 42 U.S.C. § 652(a)(8) (Supp. V 1975).

70. *Id.* § 660.

The legislation also permits courts to garnish the wages of any federal employee in the enforcement of child support obligations.⁷¹ For the first time, there is a chance to reach into the military for attachment. Since there is no federal law with regard to garnishment procedures, state garnishment laws are followed.⁷² States differ as to the availability of garnishment as a remedy, the amount that may be garnished, and the procedural mechanisms of garnishment.

When a garnishment action is brought, the United States or a federal official must be named as defendant if a spouse wishes to utilize the federal courts to enforce a support order.⁷³ In two recent district court opinions, federal court jurisdiction in this situation was sharply limited.⁷⁴ In one district court case, a number of divorcees brought garnishment actions to enforce the child support obligations of their former husbands.⁷⁵ The court held that the federal courts lacked removal jurisdiction since no federal officer was subject to personal liability or penalty under 28 U.S.C. § 1442(a).⁷⁶ Similarly, the court lacked original jurisdiction under 28 U.S.C. § 1441(a) since there was no claim against the United States until a traverse was filed to its answer.⁷⁷ Even in a case in which government employees were the objects of a 4D garnishment action,⁷⁸ a district court limited federal jurisdiction to cases in which the Secretary of HEW has issued a "certificate of necessity."⁷⁹

With the enactment of 4D, bankruptcy is no longer a defense for the delinquent obligor.⁸⁰ A delinquent cannot avoid his child support obligations by a declaration of bankruptcy under the Bankruptcy Act. One court even upheld the elimination of this defense under the common law.⁸¹ This circuit court held that recoupment of public assistance is essentially an obligation for "maintenance or support" and as such falls within the provision of the Bankruptcy Act, excepting debts in form of maintenance or support from being discharged in bankruptcy under 11 U.S.C. § 35(a)(7).⁸²

Federal technical assistance to the states⁸³ is another feature of 4D. The federal government assists states in establishing effective systems for collecting support payments and in determining paternity. Although a provision for regional blood testing centers (with signed expert witnesses in state courts) has not been enacted, the blood testing facilities of military hospitals may be made available to states lacking these facilities.⁸⁴

71. *Id.* § 659.

72. This is implied in the provision that the United States shall be subject to garnishment "as if [it] were a private person." 42 U.S.C. § 659 (Supp. V 1975).

73. *Id.*

74. *West v. West*, 402 F. Supp. 1189 (N.D. Ga. 1975); *Bolling v. Howland*, 398 F. Supp. 1313 (M.D. Tenn. 1975).

75. *West v. West*, 402 F. Supp. 1189 (N.D. Ga. 1975).

76. *Id.* at 1191.

77. *Id.* at 1192.

78. *Bolling v. Howland*, 398 F. Supp. 1313 (M.D. Tenn. 1975).

79. *Id.* at 1316.

80. 42 U.S.C. § 656(b) (Supp. V 1975).

81. *Williams v. Department of Social Services*, 529 F.2d 1264 (9th Cir. 1976).

82. *Id.* at 1269; *See also Dunbar v. Dunbar*, 190 U.S. 340 (1903); *Poolman v. Poolman*, 289 F.2d 332, 335 (8th Cir. 1961); *In re Hubbard*, 98 F. 710 (N.D. Ill. 1899).

83. 42 U.S.C. § 652(a)(7) (Supp. V 1975).

84. *Id.* *See also* CONF. REP. NO. 1643, JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE, 93d Cong., 2d Sess. (1974).

III CRITICAL ANALYSIS: POTENTIAL PROBLEMS WITH 4D

A. *Damage to the Interests of the Children*

If a parent on welfare is penalized under 4D, her children's interests may be jeopardized. A parent who fails to provide her social security number to the state, assign her claim, or cooperate with the state (where cooperation is required), will lose some of her welfare benefits.⁸⁵ In theory, the children will not be hurt as their payments are protected.⁸⁶ For example, monies due to children may be paid to third parties in instances in which the parent is being penalized.⁸⁷ However, according to at least one administrator deeply involved in child support enforcement affairs, this safeguard has scant hope of working out in practice.⁸⁸ Such a procedure is much too difficult to administer. It is therefore often the case that when a parent is penalized, the children's protected payments will most likely still be included in the parent's welfare check. It therefore appears likely that some children may suffer as a result of a penalty imposed against the parent.

B. *Federal Court Jurisdiction*

Whether the federal courts will in fact exercise their jurisdiction is an open question. One district court has held that the state courts have more expertise than the federal courts in deciding the factual questions which arise in divorce cases, even where jurisdiction is based on diversity.⁸⁹ Similarly, in a child support case,⁹⁰ a circuit court found that:

There are many criteria to be considered in child support cases, such as the standard of living, employment and wages of the father, most of which are intimate to the parties and dependent upon the particular conditions existing in the area where the parties reside. State courts deal with these problems daily and have developed an expertise that should discourage the intervention of federal courts. As a matter of policy and comity, these local problems should be decided in state courts. Domestic relations is a field peculiarly suited to state regulation and control and peculiarly unsuited to control by the federal courts.⁹¹

However, at least one court has indicated that the federal courts should assume jurisdiction to enforce the provisions of a state divorce decree.⁹² In addition, a federal court has assumed jurisdiction where the issue involved was the enforcement of an existing child support order.⁹³ It is therefore somewhat uncertain that the 4D provisions allowing federal courts to assume original

85. See 42 U.S.C. § 606(f) (Supp. V 1975).

86. *Id.*

87. Interview with Barry Dorfman, attorney, Child Support Office, New York State Department of Social Services, in New York City (March 26, 1976).

88. *Id.*

89. *Lutsky v. Lutsky*, 310 F. Supp. 517 (S.D.N.Y. 1970).

90. *Buechold v. Ortiz*, 401 F.2d 371 (9th Cir. 1968).

91. *Id.* at 373.

92. *Williamson v. Williamson*, 306 F. Supp. 516, 517 (W.D. Okla. 1969).

93. *Harrison v. Harrison*, 214 F.2d 571 (4th Cir. 1954).

jurisdiction in suits where the states act as plaintiffs in support actions will be followed.

Some questions remain, however, as to the actual impact of 4D on the federal court workload. Access into the federal courts under 4D is subject to two requirements. First, the state in which the runaway obligor is living must not have begun enforcement proceedings within a reasonable time after the spouse obtains a support order in her home state. Second, the federal suit must be the only "reasonable" means of enforcing the order. One administrator has suggested that, on the basis of his experience, since the Secretary of HEW or his designate must give his consent to those cases which will be heard in federal courts, in practice only those cases which have substantial publicity value will reach the federal courts.⁹⁴ If it does turn out that relatively few enforcement cases reach the federal courts, the ultimate effectiveness of 4D will be undercut. Since one of the principal problems with the enforcement of child support orders prior to 4D was the lack of full faith and credit between states, it is unclear how support orders will be enforced in other states if few cases do in fact reach the federal courts. However, it is too early to determine whether this will be the case.

C. Questionable Constitutionality

1. Due Process and Equal Protection

The mandatory assignment of the parent's child support claim to the state may violate the due process clause of the fifth amendment. If a parent's AFDC payments represent her only means of support and the state reduces those payments because she refuses to assign her claim, this may amount to a denial of food, clothing and shelter.⁹⁵ Such a denial might be challenged as a denial of the means necessary for life⁹⁶ and an arbitrary denial of financial assistance to the needy.⁹⁷ Under *Goldberg v. Kelly*,⁹⁸ such a denial also has an adverse impact on basic governmental interests⁹⁹ and requires a prior hearing.¹⁰⁰ In *Goldberg*, the Supreme Court held that recipients of AFDC benefits are entitled, under the due process clause, to an evidentiary hearing before those benefits can be terminated. The Court found that the interest of the eligible recipient in continued public assistance payments, which provide her with essential food, clothing, housing and medical care, coupled with the state's interest that payments not be terminated on mistaken grounds, clearly outweighed the state's interest in preventing any increase in its fiscal and administrative burden.¹⁰¹

The parent might argue further that any termination in her welfare benefits

94. Dorfman interview, *supra* note 87.

95. *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970); *Green v. Philbrook*, Doc. No. 75-232 (D. Vt., filed October 20, 1975).

96. 397 U.S. at 264.

97. *Smith v. King*, 277 F. Supp. 31, 39-41 (M.D. Ala. 1967), *aff'd on other grounds*, 392 U.S. 309 (1968).

98. 397 U.S. 254 (1970).

99. *Id.* at 265.

100. *Id.* at 262-65.

101. *Id.* at 266.

will infringe on her freedom to raise her children as she wishes, since she will be forced either to draw on her children's welfare benefits or to leave child rearing in order to seek and hold a job. Thus, in *Roe v. Wade*,¹⁰² the Supreme Court held that the right of privacy includes an individual's freedom to make decisions about bringing up children.¹⁰³ Laws which restrict such a fundamental right must serve a compelling governmental interest.¹⁰⁴ A mere showing of governmental fiscal needs is an inadequate justification for such laws.¹⁰⁵

Mandatory assignment might also be challenged as creating a "suspect classification," as it tends to stigmatize a politically weak minority group—welfare parents.¹⁰⁶ However, this equal protection argument is questionable. A suspect classification is usually one which is based on immutable, innate traits, notably race. Here the classification is based on a trait which is created by the government and subject to great change: welfare eligibility. In addition, the Burger Court has not been receptive to the expansion of suspect classifications.¹⁰⁷

The mandatory assignment provision might also be questioned on the ground that it is not the only means of recovering welfare expenditures from the runaway obligor. Prior to 4D, states had the power to sue runaway obligors for the purpose of recovering welfare payments the state had made to the obligors' children.¹⁰⁸ Such a suit could be brought without the parent's co-operation.¹⁰⁹

One possible justification for the mandatory assignment requirement is that the mother is under no compulsion to go on welfare. In fact, one effect of the provision might be to discourage some mothers from applying for assistance. From the government's point of view this could be seen as one way of cutting welfare costs. However, this would also hurt poor families in need of aid. One commentator has noted that:

It is fair to conclude that there are three groups of families aggrieved [by welfare provisions such as the mandatory assignment of claims]: those who refuse to comply and are denied public assistance; those who are denied assistance during the period of time necessary for compliance; and those who do comply and suffer possible economic harm or emotional trauma.¹¹⁰

2. Privacy Rights

The provisions of 4D may also be attacked on the ground that they violate the privacy rights of both the welfare parent and the runaway obligor.

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

103. *Id.* at 152-53, citing *Meyer v. Nebraska*, 262 U.S. 390 (1923) and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

104. *Id.* at 155; cf. *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969).

105. 394 U.S. at 627-29.

106. Cf. Note, *Developments in the Law: Equal Protection*, 82 HARV. L. REV. 1065, 1124-27 (1969).

107. Cf. *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1 (1973); Note, *Sex Discrimination and Equal Protection: The Question of a Suspect Classification*, 5 N.Y.U. REV. L. & SOC. CHANGE 1, 7-8 (1975).

108. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT, 9 UNIFORM LAWS ANN. §§ 3, 8 (1973).

109. *Id.*

110. Redlich, *Unconstitutional Conditions on Welfare Eligibility*, 1970 WIS. L. REV. 450, 455.

Upon signing the Act, former President Ford briefly stated his concern that the law might threaten privacy rights.¹¹¹ He indicated that:

Certain provisions of the legislation go too far by injecting the Federal government into domestic relations. Specifically, provisions for use of the Federal courts, the tax collection procedures of the Internal Revenue Services and excessive audit requirements are an undesirable and unnecessary intrusion of the Federal government into domestic relations.¹¹²

In a recent federal case, *Hoyt v. Philbrook*,¹¹³ a mother's parental privacy right was recognized. Prior to the enactment of 4D, the father in that matter had paid his support checks (which did not satisfy the judgment) directly to the mother in front of the children. Under 4D it was required that the checks be sent directly to the state. The mother challenged the requirement on the ground that the handing over of the check in front of the children was beneficial to them. She claimed that the requirement that the checks be sent to the state violated her parental privacy right. Under the terms of the stipulation of dismissal, the state agreed to permit the father to continue handing over the checks to the mother in front of the children. (To comply with the intent of the law, state administrative officials required that the check be made payable to the state and that the mother promptly turn over the check to the state).

In addition to her parental privacy rights, a parent might argue that she has sexual privacy rights which are being violated under the provisions of 4D. She might cite the concurring opinion of *Doe v. Norton*,¹¹⁴ which stated that:

It is true as the Court observes, that the inquiry of the challenged statute focuses on the father's identity, but the mother cannot respond to the inquiry without disclosing a very private fact—the name of the person with whom she had sexual relations.¹¹⁵

An argument might be made by the runaway obligor that he has privacy rights which have been violated by the provisions of 4D. He might make a claim that he has a privacy right not to have personal information exchanged by federal agencies, as he has not been accused of a crime. This issue has never been dealt with by any court.¹¹⁶

The runaway obligor would next have to show that his privacy right had been violated by operation of the federal or state parent locator service. A court would have to weigh any interest which the obligor might have in maintaining his secrecy against the government's interest in recovering welfare monies.¹¹⁷ The court would also have to consider just what kind of personal information was given out in a particular case.¹¹⁸ However, if this information was limited to the obligor's name and address and was given for the express

111. 11 WEEKLY COMP. OF PRES. DOC. 20 (Jan. 13, 1975).

112. *Id.*

113. Doc. No. 75-239 (D. Vt., filed Oct. 31, 1975).

114. 365 F. Supp. 65 (D. Conn. 1973), *vacated and remanded*, 422 U.S. 391 (1975).

115. 365 F. Supp. at 85.

116. Baugher, *Interagency Information Sharing: A Legal Vacuum*, 9 SANTA CLARA LAWYER 301, 306-08 (1969).

117. Van Den Haag, *On Privacy*, in PRIVACY 159 (R. Pennoch & J. Chapman eds. 1971).

118. *Id.*

purpose of obtaining child support, the obligor's argument might be weak. For example, one district court held that the IRS may notify the Justice Department as to the address and name of a person who may have violated federal law.¹¹⁹

D. Limited Cost Effectiveness

There is some question as to whether the additional support monies collected exceed the administrative costs of operating the new enforcement structures. According to Horace Churchman, Director of Management for HEW in New York, states which have implemented programs similar to that mandated under 4D have found them to be cost effective.¹²⁰ In all states surveyed by HEW the cost effective ratio varied from 2/1 to 7/1.¹²¹ The State of Michigan, with a program almost the same as that mandated under 4D, achieved a cost effective ratio of 4/1.¹²² Somewhat similar findings of the expected cost effectiveness were reported in the Senate Finance Committee's Report on 4D.¹²³

Despite these favorable statistics, there are a number of indications which suggest that the economic gain under 4D may not be as great as predicted by HEW. In the establishment of the federal and state parent locator services, initial administrative expenditures will be necessary. Additional monies will be needed to permit the federal supervision of state programs. For example, in the operation of the enforcement program, the federal government will now be reimbursing states at the rate of 75 percent of costs rather than the previous rate of 50 percent of costs.¹²⁴ The total amount of state monies spent on child support enforcement is expected to increase with the enactment of 4D; this increase should expand the fiscal burden on the federal government. In addition, when states comply with the terms of the law, they receive a monetary reward of 25 percent of collected funds in the first twelve months and 10 percent thereafter, also paid for by the federal government.¹²⁵ Prior to October 1, 1976, state and federal funds were also used to pay the incentive payments to welfare parents.¹²⁶

Aside from the increase in administrative costs, there may be other indirect costs generated by the 4D program. The full costs of operating the 4D program at federal and state levels are simply not known. It is estimated that the in-house costs to HEW for the first year of the program should be approximately \$3.7 million.¹²⁷ In the Senate report on 4D it was estimated that the total first year costs of the program to the federal government would be ap-

119. *United States v. Tucker*, 316 F. Supp. 822 (D. Conn. 1970).

120. Telephone interview with Horace Churchman, Director of Management, United States Department of Health, Education and Welfare, in New York City (March 25, 1976). This information was not yet public at the time of writing of this Note.

121. *Id.*

122. *Id.*

123. S. REP. NO. 1356, *supra* note 3, at 42.

124. 1974 U.S. CODE CONG. & AD. NEWS 8153.

125. *Id.* §§ 658(a)(1), (2) (Supp. V 1975).

126. *See id.* § 657(a)(4).

127. Churchman interview, *supra* note 120.

proximately \$40 million.¹²⁸ This expense would result in an initial loss to the federal government.¹²⁹ Although most of the provisions of 4D had become effective during 1975, Congress did not appropriate any money for the operation of the program until March, 1976. The reason for this was the hope that HEW could find sufficient funds within its existing budget for payment of its expenses.¹³⁰ With the appropriation of additional funds to set up the parent locator service, Congress in effect abandoned this possibility.

Results from the first year of operation suggest that while the federal program showed itself to be cost effective, its initial revenue was somewhat less than predicted. In figures recently released, HEW reported a collection of \$300 million from runaway fathers.¹³¹ This represents more than two dollars collected for every one dollar of administrative costs.¹³² The heaviest collection of money comes from California, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, Ohio, Pennsylvania, and Washington.¹³³ Yet, informed estimates suggest that the total amount of uncollected child support amounts to over \$1 billion per year.¹³⁴

E. Other Problems

Other problems with 4D include the lack of interagency cooperation in the early phases of the program, the danger of the unwarranted expansion of individual files, the possibility that 4D will have a devastating effect on delinquent obligors and will further separate husbands and wives, and the possibility that state penalty provisions will hurt the parent on welfare.

Under 4D, HEW seeks the cooperation of many federal agencies, including the Internal Revenue Service (IRS), in obtaining data needed to locate delinquent fathers.¹³⁵ Some opposition to this function has already been voiced by IRS, and the implementation of this provision remains to be worked out.

The danger exists that the locator services will begin to accumulate potentially incriminating information against private individuals. The problem may be minimized if the information sought is limited to names, addresses, and phone numbers.

There are no provisions in 4D to encourage runaway obligors to assume the voluntary payment of child support. During the entire time in which an obligor's payments fail to exceed AFDC amounts, and for at least three months after the family ceases to receive assistance, the obligor will be barred from directly paying the other parent and children.¹³⁶ There is the danger that the impersonal character of the payment procedure, under which checks are sent to the state, will only further alienate delinquent obligors rather than encourage them to meet their obligations to their children.

128. S. REP. NO. 1356, *supra* note 3, at 56.

129. *Id.*

130. Churchman interview, *supra* note 120.

131. \$300 Million in Support Paid by Runaway Fathers, N.Y. Times, Oct. 23, 1976, at 8, col. 6.

132. *Id.*

133. *Id.*

134. Saxon, *Welfare Drive Seeks to Locate Absentee Fathers*, N.Y. Times, Aug. 8, 1976, at 39, col. 5.

135. 26 U.S.C. § 6305 (Supp. V 1975); 42 U.S.C. § 653(b)(2) (Supp. V 1975).

136. 42 U.S.C. §§ 654(5), 657(b), (c) (Supp. V 1975).

HEW data suggests that most delinquent obligors are poor. A 1975 staff report for the Senate Finance Committee reports that most delinquent support cases involve payments by fathers of less than \$100 per month or less than \$1200 per year.¹³⁷ Approximately 70 percent of delinquencies on voluntary payments occur where the scheduled payments are less than \$100 per month.¹³⁸ More than 50 percent of delinquencies on court orders occur where the orders are for less than \$100 per month.¹³⁹

The limited resources of these low-income fathers raise several questions about the effectiveness of 4D. For example, how likely is it that an obligor will be persuaded or able to change his ways under 4D if he is now refusing to pay his children \$5 to \$25 per week? How many delinquent obligors are the military, bankruptcy, and garnishment provisions likely to affect? Can the federal government adequately enforce family obligations where more immediate influences such as conscience and community pressure have failed? Can family relations become a focus for government economy measures in a sensitive, constitutional way? Given the poor state of criminal law enforcement in ghetto areas,¹⁴⁰ is it realistic to assume that civil enforcement procedures under 4D will be more effective? The provisions of 4D would appear to have their greatest impact on middle class obligors, whose incomes would be significantly higher and who would be more sensitive to the reach of court action and the stigma of community reputation.

It is not clear to what extent the Federal Parent Locator Service is required to deal with the "inter-state support problem." A RAND Corporation study found that delinquent obligors usually can be found in the same county as their children.¹⁴¹ If this is the case, why is the federal service required? This would seem to be an overly broad interference in a traditional preserve of states—family relations. In addition, it is not clear how effective the service will be against those runaways who lack steady employment and family ties and do not settle in an area long enough to be subjected to judicial scrutiny or police enforcement.

If a state fails to comply with the provisions of 4D, it will lose 5 percent of its federal aid.¹⁴² The effect of this funding cutback may be felt by children and deserted parents who will share in a reduced budget.

IV

MODEL OF THE LAW IN OPERATIONS:

HOW THE ENFORCEMENT PROVISIONS OF 4D MAY BE UTILIZED

The following series of examples may be useful in understanding how the major provisions of 4D will work. In all of the examples, the following fact pattern will be used for greater clarity and simplicity.

137. SENATE COMM. ON FINANCE, CHILD SUPPORT DATA AND MATERIALS, 94th Cong., 1st Sess. 166-67 (1974).

138. *Id.*

139. *Id.* at 168-69.

140. *Cf.* PRESIDENT'S COMM. ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: POLICE 148 (1967).

141. WINSTON & FORSHER, *supra* note 18, at 15-16.

142. 42 U.S.C. § 603(h) (Supp. V 1975).

Jane Smith is married and has three children: John, 10; Mary, 7; and Jim, 1. Her husband Dick left their New York home last year for the Southwest. Dick was employed by the United States Army. He has refused to support his children. One of the reasons for Dick's leaving home was the birth of Jim. There was some question as to who Jim's father was, since Dick had been overseas for the previous three years. Because Dick refuses to support Jane or her children, Jane has been forced to go on welfare. Presently, she is receiving \$40 per month in welfare (AFDC) assistance for each of her children. Jane has gone into a New York court and has obtained an order against Dick forcing him to pay \$100 per month for the support of John and Mary. Jane has been having difficulty enforcing this order, since Dick's current whereabouts are not certain. Jane heard that Dick was staying for a time in the State of Abbott. However, the Supreme Court of the State of Abbott held that since New York's order was modifiable, the Abbott court would not give full faith and credit to it.¹⁴³ Jane seeks to make use of the enforcement provisions of 4D, in collecting child support from Dick. She would also like to obtain child support for Jim.

A. Enforcing New York's Child Support Order

1. The Assignment of Jane's Claim

Jane must utilize the provisions of 4D to enforce her child support order if she wishes to continue receiving the full amount of her welfare checks. In order to do so, however, she is required first to assign her \$100 per month claim against Dick to New York State.¹⁴⁴ She will be expected to provide her social security number¹⁴⁵ and to cooperate with New York authorities in obtaining support from Dick.¹⁴⁶ She may be expected to supply such information as addresses, phone numbers, employer's name (United States Army in this case), and place of last known residence (State of Abbott in this case). She will also be expected to cooperate with New York in establishing who Jim's father is.¹⁴⁷ Jane may be freed from these obligations if she shows that performing them would jeopardize the best interests of the children.¹⁴⁸ For example, if Dick has threatened to harm the children, then this requirement will not be imposed upon her. Otherwise, if Jane fails to provide her social security number, assign her claim, or cooperate with the State of New York, she will lose her personal welfare assistance.¹⁴⁹ John, Mary, and Jim will each continue to receive the \$40 per month check, regardless of their mother's conduct. Although the law provides for these checks to be protected, in many instances Jane will receive their checks.

143. See *Sistare v. Sistare*, 218 U.S. 1 (1910); *Smith v. Smith*, 43 Cal. 2d 381, 270 P.2d 613, 125 Cal. App. 2d 154 (1954); *Allain v. Allain*, 24 Ill. App. 2d 400, 164 N.E.2d 611 (1960); *Moore v. Moore*, 252 Iowa 404, 107 N.W.2d 97 (1961).

144. 42 U.S.C. § 602(a)(26)(A) (Supp. V 1975).

145. *Id.* § 602(a)(25)(A).

146. *Id.* § 602(a)(26)(B)(ii).

147. *Id.* § 602(a)(26)(B)(i).

148. *Id.* § 602(a)(26)(B).

149. See *id.* § 606(f).

2. *The Locating of Dick and of Jim's Father*

Upon the assignment of Jane's claim, New York becomes the party in interest and will seek to enforce the support order through the various enforcement provisions of 4D, including the New York Parent Locator Service. State law enforcement officials will have access to all available data files that might provide some clues as to the whereabouts of Dick and of Jim's father. Since it is believed that Dick is living outside New York, the Federal Parent Locator Service might be utilized. Law enforcement officials of this service will have access to IRS, United States Army, and virtually all other federal data, except Census information.¹⁵⁰ HEW officials will seek the addresses and phone numbers of Dick and of Jim's father. Any such information obtained by the federal or New York State locator services will be withheld from the public.¹⁵¹

3. *The Use of the Federal Courts by New York*

As New York has an outstanding child support order against Dick, and as it appears likely that Dick has run away to a state which does not give full faith and credit to New York child support orders, New York may turn to the federal courts.¹⁵² New York officials will have to satisfy several jurisdictional requirements, including a showing of the following: that the state in which Dick is living did not begin enforcement proceedings within a reasonable time after Jane obtained her support order in New York, that a federal suit would be the only "reasonable" means of enforcing the order and that the Secretary of HEW (or his designate) has given his consent to this suit before the case can reach the federal court. New York State may bring its action without regard to diversity or to amount in controversy.¹⁵³ Such a civil action may be brought in New York, where the claim arose and the plaintiff resides, or in the judicial district where Dick is residing.¹⁵⁴

4. *The Elimination of Bankruptcy as a Defense by Dick*

In any civil action brought by New York State officials, Dick might seek to avoid payment by filing for bankruptcy under the Bankruptcy Act. Such a defense is not permitted under 4D.¹⁵⁵ Dick will still be subject to the garnishment of his army wages and pension and the attachment of any assets which he may have had before the bankruptcy declaration.

B. Collecting the Money

1. *Garnishment of Dick's Federal Wages/Pension*

Under 4D, Dick's army wages may be garnished.¹⁵⁶ The New York State Child Support Office will first need to obtain a local writ of garnishment or

150. *Id.* § 653(b).

151. *States Warned to Withhold Data on Deserting Parents*, N.Y. Times, July 13, 1975, at 31, col. 1.

152. 42 U.S.C. §§ 652(a)(8), 660 (Supp. V. 1975).

153. *Id.* § 660.

154. *Id.*

155. *Id.* § 656(b).

156. *Id.* § 659.

attachment. Abbott garnishment laws will apply in determining the extent to which the remedy is available in the present case.¹⁵⁷ There is no applicable federal garnishment law under 4D.

Assuming the New York State Child Support Office has obtained a writ of garnishment and/or attachment, the writ must be received and processed by an appropriate representative of the United States Army. Similar officials would be contacted in the other branches of the armed forces and in other federal agencies if the runaway father was one of their employees.

2. *The Use of the IRS Collection Mechanism*

If New York State wants federal assistance in collecting child support monies from Dick and from Jim's father it may utilize the tax collection services of IRS, provided it first obtains certification of the collection amount from the secretary of HEW.¹⁵⁸ The requirements for certification include: 1) obtaining a court order for the amount to be collected (satisfied in Dick's case; unsatisfied as to the father of Jim), 2) a showing by New York State that it has made "diligent and reasonable efforts to collect such amounts utilizing its own collection mechanisms"¹⁵⁹ and 3) an agreement by New York to reimburse the federal government for costs involved in collecting the money. Once certified, the monies will be collected by the IRS,¹⁶⁰ as if it were a tax. The principal differences from a tax collection are that no interest or penalty is imposed, collection is not extended to garnished amounts and there is a sixty day period between notice of collection and actual collection in the first assessment against a particular individual. Moreover, no court shall have jurisdiction to review collection, and the Secretary of HEW will have no power to review the decision.¹⁶¹ While this last provision suggests that the IRS may have been given a carte blanche to harass the runaway obligor, neither Dick nor Jim's father has been deprived of all legal remedies. Both may bring legal or administrative actions against New York State in state court or against the Welfare Department in an administrative proceeding.¹⁶²

C. *Disbursement of the Money*

Payments collected from Dick, up to Jane's assistance allowance of \$40 per child will be used by New York State and federal officials to repay monies spent on the current month's welfare expenditure.¹⁶³ If Dick's payments exceed \$40 in a given month, Jane will receive the additional money, up to the \$100 per month per child amount specified in the New York State court order.¹⁶⁴ If Dick's payments exceed \$100 per month per child, New York State

157. This would seem to undercut Congressional efforts to achieve uniformity of the child support enforcement laws of the various states.

158. 42 U.S.C. § 652(b) (Supp. V 1975).

159. *Id.*

160. 26 U.S.C. § 6305(b) (Supp. V 1975); 42 U.S.C. § 652(b) (Supp. V 1975).

161. 26 U.S.C. § 6305(b) (Supp. V 1975).

162. *Id.*

163. 42 U.S.C. § 657(b)(1) (Supp. V 1975). Prior to October 1, 1976, the cooperating parent would receive 40 percent of the first \$50 collected from the obligor parent, as a reward for cooperation. *Id.* § 657(a)(1).

164. *Id.* § 657(b)(2).

and the federal government will use the additional monies collected to pay off their past welfare expenses to this particular family.¹⁶⁵ Jane will continue to receive welfare checks for her children's support so long as the amounts collected from Dick fail to exceed \$100 per month. For a period of three months beyond the time Jane goes off the welfare rolls, Dick will continue paying his support check to New York State.¹⁶⁶ After this time, Jane may request that New York officials continue collecting child support money from Dick.¹⁶⁷ The additional costs of collection will thereafter be deducted from the support checks she receives.¹⁶⁸

*D. New York's Reimbursement for Program Expenditure
and Reward for Cooperation with the Federal Government*

Let us assume that during the first twelve months of collection New York State and the federal government have received \$1,000,000 from Dick and other obligors for the purpose of paying back past welfare expenditures. Under 4D, New York State will receive a reward for cooperating, which will take the form of 25 percent of the monies collected or \$250,000 during the first twelve months of collection.¹⁶⁹ Thereafter, the reward is reduced to 10 percent of the monies collected or \$100,000 for every \$1,000,000 collected.¹⁷⁰ If more than one jurisdiction is involved in collecting money from Dick, the reward shall be distributed in a manner determined by the Secretary of HEW.¹⁷¹

As far as reimbursement for New York State's expenditures in locating Dick (and other runaway obligors) is concerned, the federal government, under 4D, is committed to paying 75 percent of New York State's expenses.¹⁷² This means that if New York spends \$1000 on locating Dick, the federal government will pay \$750 of New York's costs.

If New York lacks an effective program to locate Dick and/or other obligors, the federal government will, after January 1, 1977, decrease its welfare aid to New York by 5 percent.¹⁷³ Conceivably this action might hurt Jane more than the State of New York, as the cut in aid could be passed along in the form of a smaller "welfare pie."

V
CONCLUSION

The provisions of 4D were carefully drafted to enable federal and state governments to recover welfare expenditures from obligors who refuse to pay child support. However, in the drafting of the law a number of problems were overlooked which undercut its overall effectiveness. These problems, as dis-

165. *Id.* § 657(b)(3).

166. *Id.* § 657(c)(1).

167. *Id.* § 657(c)(2).

168. *Id.*

169. *Id.* § 658(a)(1).

170. *Id.* § 658(a)(2).

171. *Id.* § 658(b).

172. *Id.* § 655.

173. *Id.* § 603(h).

cussed above, include injury to the interests of the children, injury to the rights of the mother and father, and the possibility that 4D may be too massive and complex for federal courts and agencies to handle. The provisions of 4D are often insensitive to the constitutional rights and human needs of the very people (children and mother) whom AFDC and support laws are intended to protect. Viewed as a long arm statute, 4D may not be effective against poor runaway fathers who, due to their transiency and periodic unemployment, are more likely to slip through even the finest locator net.

As of this date, the federal and state programs under 4D are in their early phases of implementation. While the federal program has shown itself to be cost effective after one year of operation, its ability to recover child support has fallen short of the level predicted by HEW officials. It is too early to assess what the overall effectiveness of 4D will be, especially on the federal level, where very little data now exists. Additional research is needed on both the operation of the various 4D programs, as well as the litigation that will arise under the law, before a more definitive statement can be made.

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