

# CRS Report for Congress

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## **Child Support Enforcement and Visitation: Should There be a Federal Connection?**

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### **Summary**

From time to time, the issue arises of whether the federal Child Support Enforcement (CSE) program should be actively involved in enforcing visitation rights. Both federal and state policymakers agree that denial of visitation rights should not be considered a reason for stopping child support payments. Historically, Congress has treated visitation and child support as legally separate issues, with only child support enforcement activities under the purview of the federal government. However, Census Bureau data (1995) show that noncustodial parents are more likely to make payments of child support if they have either joint custody or visitation rights. In recent years, Congress has moderated its position against using federal CSE funds to promote enforcement of visitation rights. In 1988, it authorized CSE funding for child access demonstration projects in six states, and in 1996 it (1) permitted the Federal Parent Locator Service, which is under the direction of the Administrator of the federal Office of Child Support Enforcement, to provide information on the location of custodial parents and children to noncustodial parents and (2) authorized an annual \$10 million entitlement of CSE funds to states to establish and operate access and visitation programs. Some view these recent steps as too intrusive on state and domestic court authority, while others contend they are long overdue and do not go far enough.

### **Background**

Many noncustodial parents argue that it is unfair to look at the child support issue only from the viewpoint of the custodial parent. Traditionally, they argue, courts have sided with mothers in awarding custody, and have paid insufficient attention to enforcing visitation rights of fathers. As a result, they say, mothers have had the rewards and obligations connected with rearing children, while fathers have sometimes had no share in the rewards, but have the continuing obligation to pay support. To be fair, it is argued,

federal laws and procedures should be reformed not only with respect to enforcement of the child support obligation, but also with respect to visitation and custody rights.<sup>1</sup>

Empirical research seems to support the contention of noncustodial parents that child support payments and visitation are complementary. According to 1995 Census Bureau data, paying child support was more common among noncustodial parents that were allowed to visit their children than among noncustodial parents that did not have visitation or joint custody rights. In 1995, 74% of noncustodial parents with visitation rights and/or joint custody paid child support and only 35% of noncustodial parents with neither joint custody or visitation rights paid child support.<sup>2</sup>

Most policymakers oppose conditioning the obligation to pay child support on noninterference with visitation rights. They maintain that denial of visitation rights should be treated separately and should not be considered a reason for stopping support payments.

Current literature and studies<sup>3</sup> suggest that in most cases visitation with the noncustodial parent is important to the healthy emotional development of children. Children with regular contact with their noncustodial parent often adjust better than those denied such contact. Moreover, it is generally thought to be in the best interest of the child to receive social, psychological, and financial benefits of a relationship with both parents. Visitation (i.e., contact with one's children) is the primary means by which noncustodial parents carry out their parenting duty.<sup>4</sup>

The terms "visitation" and "access" are not defined in federal CSE law. Generally, access means contact with one's children and therefore would include visitation rights. Policymakers and the public usually use the terms access and visitation together or interchangeably. In some cases, access and/or visitation are legally-established obligations mandated by a court. In other instances, they are informal privileges. For a specific legal

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<sup>1</sup> CRS Report 84-796 EPW, *The Child Support Enforcement Amendments of 1984*, Margaret Malone. p. 10.

<sup>2</sup> University of Wisconsin-Madison. Institute for Research on Poverty. *Focus*, Volume 21, Number 1, Spring 2000. Child support and child access: Experiences of divorced and nonmarital families by Judith Seltzer. p. 54-57. See also: Urban Institute. *To What Extent Do Children Benefit From Child Support?* by Elaine Sorensen and Chava Zibman. Discussion Papers, 99-11. January 2000.

<sup>3</sup> *Children benefit from fathers' involvement—New studies examine men's role in the family*. June 16, 2000. [<http://www.cnn.com/2000/HEALTH/children/06/16/father.studies/index.html>] See also: *What Do Fathers Contribute to Children's Well-Being?* by Suzanne Le Menestrel and *The Meaning of Father Involvement for Children* by Tamara Hale. Child Trends Research Brief.

<sup>4</sup> H.R. 3073, the Fathers Count Act of 1999, would provide \$140 million in grants over four years to public and private entities to achieve three purposes: (1) promote marriage, (2) promote successful parenting, and (3) help noncustodial parent improve their economic status. H.R. 3073 was passed by the House on November 10, 1999, but has not been acted on by the Senate. H.R. 4469, the Child Support Distribution Act of 2000, introduced on May 16, 2000 also includes many of the provisions related to fatherhood that are contained in H.R. 3073. One of the goals of the proposed fatherhood grant program is to increase the parental involvement (social, emotional, psychological, and financial) of noncustodial parents in the lives of their children.

definition of the terms, one would need to examine individual state statutes and, of course, the terminology and definition would apply only to the state in question.

**1984 Law – State Commissions to Examine Visitation Issues.** P.L. 98-378, the Child Support Enforcement Amendments of 1984, required the Governor of each state to appoint a State Commission on Child Support, which was to report its findings and recommendations by October 1, 1985. One of the duties of the Commission was to examine the problems associated with visitation rights.

The Commissions' discussions of visitation issues generally covered two areas: the relationship between visitation and support, and methods of enforcing visitation rights.

*Some commission reports cite research that shows a correlation between regular, high-quality visitation and payment of child support, but no causal relationship has been established. Certainly, however, statements in public hearings offer anecdotal evidence of such a link. Noncustodial parents often testified at public hearings that “She won’t let me see my children, so why should I pay support,” while custodial parents argued, “He doesn’t pay a dime, why should I let him see the children.”<sup>5</sup>*

The Commissions generally favored the following methods of enforcing visitation rights: (1) contempt of court/jail, (2) allowing parents to take the missed visitation at a later time, (3) supervised visitation, (4) criminal penalties, (5) mediation, (6) fines, and (7) change of custody.<sup>6</sup> The 1984 law also set forth as the sense of the Congress that “state and local governments must focus on the vital issues of child support, child custody, visitation rights, and other related domestic issues that are properly within the jurisdiction of such governments.”

**1988 Law – Child Access Demonstrations.** P.L. 100-485, the Family Support Act of 1988, authorized \$4 million for each of FY1990 and FY1991 to permit states to conduct one or more demonstrations to develop, improve, or expand activities designed to increase compliance with child access provisions of court orders. In October 1990, the Office of Child Support Enforcement (OCSE) funded four demonstration projects in the states of Florida, Idaho, and Indiana. These projects were designed to test whether mediation services for couples with child access problems would alleviate parental conflict, reduce interference with visitation rights, and encourage full, voluntary compliance with child support obligations. In October 1991, OCSE funded four additional demonstration projects in Arizona, Idaho, Iowa, and Massachusetts. The goal of this second round of demonstration projects was to test the effectiveness of a broader range of interventions in resolving and/or preventing disputes between parents regarding access to their children.<sup>7</sup>

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<sup>5</sup> U.S. Dept. of Health and Human Services. Office of Child Support Enforcement. *Summaries of Reports by State Commissions on Child Support Enforcement*. Washington, May 1986. p. xiii-xiv.

<sup>6</sup> Horowitz, Robert, and G. Diane Dodson. *Child Support, Custody, and Visitation: A Report to State Child Support Commissions*. American Bar Association, July 1985. p. 3-8.

<sup>7</sup> *Evaluation of the Child Access Demonstration Projects—Report to Congress*. Prepared by (continued...)

These eight demonstration projects were funded to develop, improve, or expand activities designed to increase the compliance with child access provisions of court orders. The 1996 report on the evaluations of the demonstration projects indicates that when both parents attend mediation sessions, parenting plans can be agreed to in 65% to 70% of cases that had experienced child access problems. The evaluations found that there was some increase in both visitation and child support compliance in the experimental groups compared to the control groups, relitigation on child access cases was low but unaffected by the demonstrations, and the time to resolve disputes also was not affected. In addition, they found that other interventions (e.g., educating parents about their responsibilities to their children, improving communication skills, sensitizing parents to the other parent's point of view, and counseling) for more long term and problematic cases did not have a significant impact and that it was difficult to assess the impact of the demonstrations on the child's emotional adjustment to divorce and separation.

## Current Rules

P.L. 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, took two significant steps in the area of visitation/child access. One step involved authorizing grants to states to implement access/visitation programs, and the other step provided that noncustodial parents in certain circumstances could obtain access to information on the whereabouts of a custodial parent that was denying him or her visitation or custody rights. Noncustodial parents successfully argued that if custodial parents refuse to make children available for court-ordered visitation, they should have access to information in the Federal Parent Locator Service (FPLS) to locate the custodial parents and children.<sup>8</sup>

**Mandate to Provide Locator Information on Certain Custodial Parents.** P.L. 104-193, expands the scope of the FPLS, which is under the purview of the OCSE, to provide for the provision of location information on custodial parents. Under current law, the FPLS must obtain and submit to authorized persons information on, or that facilitates the discovery of, the location of individuals (1) who are under obligation to pay child

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<sup>7</sup> (...continued)

Pearson, Jessica, Nancy Thoennes, David Price, and Robert Williams for the Office of Child Support Enforcement, U.S. Department of Health and Human Services. July 1996. p. 2.

<sup>8</sup> The FPLS can access data from the Social Security Administration, Internal Revenue Service and other federal agencies, and the state Employment Security Agencies. The FPLS provides social security numbers, addresses, employer information, wage and income information, and information on assets and debts to state and local CSE agencies to establish and enforce child support orders. The FPLS conducts weekly or biweekly matches with most of the agencies. Each agency runs the cases against its data base and the names and social security numbers that match are returned to the FPLS and via the FPLS to the requesting state or local CSE office. Upon request, the Department of Health and Human Services (HHS) Secretary must provide to an "authorized person" (i.e., an employee or attorney of a CSE agency, a court with jurisdiction over the parties involved, the custodial parent, etc.) the most recent address and place of employment of any absent parent if the information is contained in the records of HHS, or can be obtained from any other department or agency of the United States or of any state. The FPLS also can be used in connection with the enforcement or determination of child custody and in cases of parental kidnaping.

support, (2) against whom such an obligation is sought, (3) to whom such an obligation is owed, or (4) who has or may have parental rights with regard to the child. The mandate requires that location information be given to any agent or attorney of the state who has CSE authority or child custody or visitation duties or to the court.<sup>9</sup>

**Funds for Access and Visitation Programs.** P.L. 104-193 also authorizes grants to states (via CSE funding) to establish and operate access and visitation programs. These programs are to facilitate noncustodial parents access/visitation to their children. An annual entitlement of \$10 million from the federal CSE budget account is available to states for these grants. Eligible activities include but are not limited to mediation, counseling, education, development of parenting plans, visitation enforcement, and development of guidelines for visitation and alternative custody arrangements. The amount of a grant to a state will be equal to the lesser of 90% of state expenditures during the fiscal year for eligible activities or the allotment for the state for the fiscal year. The allotment formula is based on the ratio of the number of children in the state living with only one biological parent in relation to the total number of such children in all states. The amount of the allotment available to a state will be this same ratio to \$10 million. The allotments will be adjusted to ensure that there is a minimum allotment amount of \$100,000 for any year after FY1998. The access and visitation programs are required to supplement rather than supplant state funds. States may use the grants to create their own programs or to fund programs operated by courts, local public agencies, or nonprofit organizations. The programs do not need to be statewide. States must monitor, evaluate, and report on their programs in accord with regulations issued by the HHS Secretary.<sup>10</sup> In 1997, states reported serving about 20,000 persons in their access/visitation programs.<sup>11</sup>

## Concerns

A lingering question about the CSE program is whether the CSE program should be actively involved in enforcing visitation rights. Historically, Congress has held that visitation and child support should be legally separate issues; and that only child support should be under the scope of the CSE program. Since the 1980s, however, Congress has taken several significant steps in the area of visitation/child access.

**Is the Federal Government Becoming Too Intrusive in Family Law Policy?** Congress does not have general authority to pass laws dealing with family law issues, unless there is a connection or “nexus” between such legislation and one of the areas in which it is authorized to act. In the case of the CSE program, the federal nexus is the

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<sup>9</sup> P.L. 105-33, the Balanced Budget Act of 1997, which was signed into law on August 5, 1997 includes safeguards that prohibit the FPLS from providing information on the whereabouts of the custodial parent (and child or children) in cases where there is reasonable evidence of violence or abuse and a possibility that disclosure of information could be harmful to the custodial parent or child.

<sup>10</sup> In September 1997, all 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands were awarded access and visitation grants. In 1998 and 1999, all states and jurisdictions, except for Guam (which didn't apply for one), received an access/visitation grant.

<sup>11</sup> *State Child Access and Visitation Programs: A Preliminary Report Fiscal Year 1997 Funding.* American Institutes for Research. Prepared for Office of Child Support Enforcement, Department of Health and Human Services. 1999.

billions of federal dollars used to fund the Temporary Assistance for Needy Families (TANF) program. Before enactment of the CSE program in 1975, Congress had perceived a connection between the failure to pay child support and a growth in the number of families receiving cash welfare benefits.

Some observers contend that, by requiring states to use specific procedures to enforce child support, Congress inserted itself into matters of family law to such a degree that it may be obligated by political forces and by a sense of fairness to respond to demands of noncustodial parents for action in the areas of visitation and custody. Although most reports of the state Commissions (see discussion of 1984 law) agreed that visitation and child support should be legally separate issues, many also pointed out that visitation rights usually are not rigorously enforced through the courts.<sup>12</sup> Others are concerned that by allowing the FPLS to provide information on the location of custodial parents to noncustodial parents, the federal government may have gone too far.

**Should the Federal Government Promote Access/Visitation Rights?** Many fathers' rights groups argue that by being solely concerned about increasing child support collections, the federal government is limiting its approaches to access/visitation issues.

According to the child access project evaluations, relatively few noncustodial parents (18%) attributed their access problems to disputes about child support, while this was mentioned by about half of custodial parents (48%). Generally, noncustodial parents cited economic factors such as low wages, unemployment, or job instability as reasons for nonpayment as opposed to access or visitation disputes.<sup>13</sup>

There is some evidence that indicates that among fathers who visit their children, fathers who do not pay their child support are more likely to have frequent contact with their children (many on a daily basis) than fathers who pay their child support.<sup>14</sup> Some fathers' rights groups would argue that spending time with one's children (especially on a daily basis) should be counted in terms of reducing that father's financial obligation.

More generally, advocates of increasing parental responsibility would argue that it is now time for the federal government to focus more attention on the "non-financial" benefits associated with preserving the connection between noncustodial parents and their children. Many policymakers and analysts maintain that a distinction must be made between men who are "dead broke" and those who are "deadbeats." They argue that the federal government should help dead broke noncustodial fathers meet both their financial and emotional obligations to their children and vigorously enforce CSE laws against deadbeat parents.

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<sup>12</sup> Some analysts argue that like the courts, the federal government would be ineffective in enforcing visitation and custody rights unless it adopted measures that would adversely affect children and be inconsistent with former federal policy (e.g., reduce child support payments if it is proved that the custodial parent is preventing the noncustodial parent from visiting the child).

<sup>13</sup> *Evaluation of the Child Access Demonstration Projects—Report to Congress*. Prepared by Pearson, Jessica, Nancy Thoennes, David Price, and Robert Williams for the Office of Child Support Enforcement, U.S. Department of Health and Human Services. July 1996. p. ix.

<sup>14</sup> *Monthly Labor Review*, June 1992. Interrelation of child support, visitation, and hours of work, Veum, Jonathan R. p. 45-47.

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