A Note from the Center for Fathers, Family, and Public Policy

PART of the mission of the Center on Fathers, Families, and Public Policy is to address and promote policy to remove the unique barriers faced by low-income fathers who want to support and provide for their children. At the foundation of this mission are principles that promote physical safety, economic viability, and personal choice for families and individual parents. We provide this handbook in support of those principles, and with the intention of easing conflict between parents and among family members.

Also, to the extent that current welfare, child support enforcement, and paternity establishment policies tend not to promote economic viability and personal choice for low-income parents and families, we provide this handbook to offer assistance for parents who need to support themselves and their children under current public policy.

A very low-income and unemployed father who intends to assume this responsibility may have to approach the child support and paternity establishment system cautiously in order to (1) protect himself and his ability to support the child financially and emotionally as a cooperative parent, (2) protect the child, and (3) respect the child’s relationship with the child’s mother. This manual is designed to provide information and assistance to social service practitioners and the fathers and families who use their services.
Child Support HANDBOOK

BY JACQUELYN BOGGESS

TABLE OF CONTENTS

Introduction ........................................ pages 5–7

Section I • Family Law and 
the Child Support System ................. pages 8–12

Section II • As a Practical Matter: 
Negotiating the Child Support System .... pages 13–32

Section III • Fatherhood Policy 
and Funding for Fatherhood Issues ...... pages 33–37

Section IV • What Does That Mean? ...... pages 38–40

Footnotes .............................................. page 41
Why this book is necessary

This document is a handbook for use in understanding and negotiating the child support system. It intended for service providers in community-based organizations that serve non-custodial parents, and for all parents who would benefit from a better understanding of the judicial and administrative child support enforcement processes. Specifically, this handbook is directed toward social services providers who work with very low-income fathers, unemployed fathers, or other non-custodial parents who may need information and direction when they are faced with unfamiliar legal documents and administrative procedures. Unfortunately, however, a handbook cannot address the individual situation of each parent who needs explanation and information about this complex and complicated system. So, in any particular case, further information gathering and assistance may be necessary.

In fact, each state child support law differs from that of the other 49 states, and the policies and practices of the child support offices within each state vary. Child support and family law administrative processes are complex and variable, particularly in situations where the child has received welfare benefits (Aid to Families [AFDC], Temporary Assistance to Needy Families [TANF]). Therefore, most parents faced with the necessity of dealing with the child support system should take advantage of any advice they can possibly get from a legal service professional (a private attorney, a paralegal, or a free legal services organization). However, because low-income, unemployed, non-custodial parents are often unable to access legal services, The Center on Fathers, Families, and Public Policy (CFFPP) has created this informational handbook to explain some of the general concepts of the child support and family law systems.
How this handbook is organized

THIS handbook is organized into four sections as follows: (1) **Family Law and the Child Support System** is an explanation of the legal basis of the child support system; (2) **As a Practical Matter: Negotiating the Child Support System** describes various situations that might be presented by participants in your program who come to you for assistance with child support problems; (3) **Fatherhood Policy and Funding for Fatherhood Programs** discusses the current national policy as it relates to “responsible fatherhood,” and the ways in which that policy trend is affecting the amount and the types of funding community-based programs can access to serve low-income fathers; and (4) **What Does That Mean?** can be used as a glossary. It contains definitions and explanations of the terms you may see in legal papers or hear from your clients or from child support officials.

The first section, **Family Law and the Child Support System**, is intended to help you and your client understand the basis and direction of all the documents he receives and the processes he must go through in the child support system. Many fathers do not understand what the child support payment represents; why men are often the parent who has to pay it; for some fathers of children who receive or have received welfare benefits, why their children may not receive the benefit of the payment; and why the payment is owed to the government.

Some of the issues raised and the questions practitioners and non-custodial fathers have with regard to this system can be addressed with the basic knowledge contained in this section. That does not mean that solutions will be less complicated or less frustrating, but this information can make it easier to ask questions of child support and court officials. It should also make it easier to understand the answers.

The next section, **A Practical Matter: Negotiating the Child Support System**, presents a series of situations and child support issues you may encounter with participants in your program. This section is intended to provide practical examples of the issues you may have to contend with, and possible actions you and the non-custodial parent might take to attend to the problem. The scenarios and suggestions are meant only to provide a general insight into the system. In your program, the facts of the particular situation at hand, the policies of your local court system or child support agency, and the details of the relationship of the father and other members of his family (the child, other children, his child’s mother) may determine the best steps for you and your client to take. These scenarios can be useful to send you in the right direction. Also, when you are using this section to find possible avenues to solutions or ways to address the concerns of your particular client, please use the first and third sections of this handbook in combination with this
one. This is the best way to provide yourself with the clearest understanding of your options.

Also included in this section, after each of the scenarios, is general information intended to further illuminate the issues involved and the possibilities for solution. The legal vocabulary of the child support system can put unrepresented low-income parents at a distinct practical disadvantage. When parents receive legal documents in the mail, or when they have conversations with someone from the child support enforcement agency or judicial representatives, they often see or hear unfamiliar, and in some cases indecipherable, legal terms. As a result, parents are unsure what is being asked of them. This may be especially true for non-custodial fathers, who are more likely to get the information on paper, through the mail, rather than in a face-to-face conversation with someone in an administrative agency. It is important that parents understand what is being asked of them. If, for example, they cannot decipher the terms or conditions of an agreement they are presumed to have made, they are in danger of being held in contempt, waiving their rights, or agreeing to terms they cannot possibly meet.

In each scenario there is a “Did You Know?” box. In this box, we provide bits of information about child support that many people are confused about or unsure of because of all the different things they have heard about it from friends and family. These isolated bits of information might help to dispel some of the myths and confusion about how the child support system, the welfare system, and the court system are connected. These “Did you know?” modules can help you clear up your knowledge, and help you make sure that what you thought about child support policy, and what you are telling your client, is right.

Section three is Fatherhood Policy and Funding for Fatherhood Programs. It may be useful to you to understand the policy context from which funding becomes available for programs that serve low-income fathers. Often, an understanding of the source of this funding—and the basis on which it is given—will help practitioners more clearly understand what is expected of them and of the fathers in their programs.

The final section What Does That Mean?, is a glossary of terms. There are definitions of some of the legal terms you and the participants in your programs will hear most often in the child support system. This can be helpful to you in many ways. The glossary can be used to clarify and simplify the information found in the other sections, and it can be used separately from this manual to define terms used in conversation with child support officials and in legal documents received by participants in your program.
Section I
Family Law and the Child Support System

Introduction

Many non-custodial parents find themselves confronted with a financial obligation generally and generically referred to as “child support.” Many parents wonder about this legal and public aspect of their family connections, and two questions are generally asked: Why does a biological father have to establish paternity? Why do men have to pay child support? The answers to these questions may not be made clear for individual parents. However, what is clear is the experience of many parents who become involved in the family law and child support systems that nonpayment of this obligation can lead to serious consequences including incarceration. Because of the seriousness of this issue, it may be useful to both custodial and non-custodial parents, and to social service practitioners, to have the basic concepts of child support policy and family law (as it relates to child support policy) explained.

“Child support”? 

Many non-custodial parents find themselves confronted with a financial obligation that has been called (by virtually everyone) “child support,” and they approach the child support system understanding that they are expected to pay a certain amount of money in “child support.” However, many aspects of the system, including the issues surrounding the reason for the payment of this money, and to whom it is paid, can be confusing and intimidating. For very low-income families, the money is not paid to, and may not be received by, the custodial parent.

Also, many non-custodial parents do not understand the terms that are used on many of the documents that they receive in the mail or that they sign in the child support office. Even more disconcerting is that terms that might be otherwise understood do not—within the jargon of the child support system—carry their ordinarily understood meanings. “Child support” often does not go to the direct and current support of a child; “waiver” (or notice) does not mean informed declination; and “contempt of court” does not necessarily mean that a party has willfully disregarded a court order. If the goal of the child support system is to accurately
discern the father of a child, and to facilitate a child support order based firmly on that father’s actual ability to pay, it is important to ensure that a father understands—on at least a basic level—how the system is supposed to work for him and his children.

The reality is that there is much confusion and misunderstanding, and many parents wonder about the legal and governmental aspects of their family connections and responsibilities. The actual experience of many parents (particularly low-income parents who cannot afford to pay for legal services) is that the process is daunting.

From family law through welfare law to child support policy

The following information about the legal basis of the requirement for “child support” is provided to help parents and social service providers understand how the responsibilities of financial support are assigned to mothers and fathers. We have included information here about how these responsibilities have a particular effect on very low-income custodial and non-custodial parents who have, at some time during their child’s life, felt it necessary to use government financial assistance.

This explanation explores the issue of child support from the perspective of families in four specific situations, upon divorce or separation; upon paternity establishment; when the child’s custodial family receives government assistance; and when the non-custodial parent is unemployed or has a very low income.

Child support upon divorce or separation

The term “child support” is based on and derived from a family law concept that it will be useful (though perhaps tedious) to explain from a family law perspective. Historically, when a couple with children was divorced, one of the parents retained custody of the children, and the other parent was required to pay money to the custodial parent to contribute to the financial support of the child. Basically, this is the way family law works now (though the exception to that process applies in the case where there is more court-ordered “visitation”).
In divorce or legal separation situations, the couple and their lawyers each present their cases to a judge, and the judge decides the custody arrangement and the amount of money to be paid by the non-custodial parent to the parent with whom the child lives most of the time. Payment of that money by the non-custodial parent is called “child support.” It is also important to note that, in some cases, courts may order child support to be paid by the non-custodial parent who is still married, but is legally separated, or has physically left the residence of the child.

**Child support upon paternity establishment**

Where the parents of a child are not married, the basic concept of child support is no different. However, the process is different. By law in every state, if a woman who is not married has a child, there is, legally, no father of the child (no legal paternity). The legal process in this situation is different from that of the divorcing couple because the court must first make a legal determination as to the identity of the baby’s father. Even if both the mother and the biological father of the baby know that he is the father, even if the baby’s paternity has been acknowledged among their friends and in their community, the child has no legal father until there is a court determination.

Once the court has legally identified the two parents, there can then be a decision as to which parent will have custody and which parent will pay financial support. Paternity must first be established by a court order. The non-resident parent (the parent who does not live with the child) will be ordered to pay child support. In both of the situations outlined to this point, divorce and paternity establishment, the court assumes that the child lives with one parent and does not live with the non-custodial parent. In fact, the reason a non-custodial parent is ordered to pay child support is because the law presumes that he is a non-resident parent, and, therefore, that he does not provide for the child. The legal concept of child support is based on the non-custodial parent being a person who does not live with the child.

It is important to know and to be able to explain the concept of child support to non-custodial parents who do not understand why the payment of this court-ordered amount is necessary. This basic understanding is especially important when two other issues complicate the situation: the poverty of the child’s custodial family and the poverty of the non-custodial parent.
Child support when the child’s custodial family receives government assistance

The basic concept of child support as explained above also applies for children whose families receive welfare (or TANF) assistance. In this situation, either of the scenarios outlined above may apply: the parents have gotten divorced or separated, or paternity must be legally established. However, if welfare benefits are going to the child’s family, the process and the policy look different. The following brief and summary explanation of the relevant aspects of the welfare system in this country is an attempt to make the connection clear.

When a mother who does not live with the father of her children makes application and is granted cash welfare benefits, she must (by federal law) sign a document that assigns her right to any child support she receives for any of the children she names in her application to the state government.2 That action (which is sometimes called “an assignment”) means that the state government has the right to collect the child support, which is owed to her from the non-custodial parent, and then decide what to do with it. To be clear: the state government requires that the custodial parent give up her right to collect the child support payment. The premise here is simple if controversial. The government is providing the woman and her child with cash assistance because they have been determined to be in poverty, and the assignment of the child support is considered to be reimbursement for cash benefits paid to her and the child.

State governments can keep the child support until it adds up to the amount the government has given the custodian for assistance over her life. Some states have decided that when they collect the child support payment from the non-custodial parent, they will give her some of the money (usually $50). Most states have passed laws that allow the state to keep the total amount of each child support payment.3

Child support when the non-custodial parent is unemployed or very low income

All of the issues described in the previous section are complicated by the fact that many of the men who find themselves faced with child support bills and complex legal processes are unemployed and very poor themselves. Many low-income parents find themselves faced with child support orders and arrears they cannot pay. However, by law, a child support order should be based on a non-custodial parent’s ability to pay—that is, it should be based on his income and his assets. Since
this “parent’s ability to pay” argument is a legal one, ideally it is a case that should be made by a legal advocate—a lawyer. The reality is that poor parents are unlikely to have access to legal services. Therefore, once the paternity establishment or child support process begins, the parents’ inability to understand or negotiate the system by themselves can lead to inappropriate order amounts, sanctions, insurmountable arrears, and possibly, incarceration. Section two of this handbook, entitled As a Practical Matter: Negotiating the Child Support System, will be useful in providing assistance to non-custodial parents in this situation.

Many fathers who come to social service programs and community-based organizations do not understand the connection between the government child support system and the welfare system. They do not understand that because of the requirements of the welfare law, they must be involved in the government child support system. The child’s mother may or may not intend to have him involved through this formal process.

Often fathers cannot reconcile their concept of child support with the bill they receive from their local child support agency, nor with the fact that their children may not receive direct benefit from the money they pay in child support. The amount owed may be impossibly high, and the bill may include many additional charges and assessments that cannot be considered “child support.” Most likely a change in social welfare policy is necessary in order to reconcile this confusion and discomfort. In fact, some state and federal legislators, and some child support enforcement officials on both the federal and state level are considering policies and legislative changes that can bring some order to the confusion and guarantee that more child support dollars get to the children for whom they are intended. However, adequate changes had not been made or proposed during policy discussions of the Temporary Assistance for Needy Families program as it was being considered for reauthorization in March 2003. In fact, of the suggestions for change that were made at that time, none mandated that states pass the total amount of child support paid through to the custodial families. Unless and until that change occurs, it is incumbent on practitioners in fatherhood programs to help their program participants understand how their child support payment will be disbursed and anticipate how the child support system will react to their ability (or inability) to pay.
SECTION II
As a Practical Matter:
Negotiating the Child Support System

Working with non-custodial parents

The legal system includes unique and often arcane processes that are adversely affecting many low-income, non-custodial parents, because legal services are generally unavailable to these parents. Under ideal conditions poor families would have access to a legal service professional whenever legal problems threaten their livelihood or their freedom. Under current conditions, however, these families, especially non-custodial fathers, find it extremely difficult to retain such services for a civil matter such as child support. Responsible fatherhood is not the primary mission of most community-based organizations that operate responsible fatherhood programs. Therefore, a lawyer or legal-paraprofessional is a luxury few responsible fatherhood program budgets can afford.

Our aim is to provide a resource for practitioners working with non-custodial parents. The organization of the remaining sections of this handbook is based on the child support issues of non-custodial parents who seek your assistance. Though it is not possible to provide you with a step-by-step guide to assessing and addressing the concerns of each of the fathers you will encounter in your programs, the following sections of this handbook can provide a generic outline of the issues based on individual examples. The best way to understand the process is to approach it from the perspective of your community.

Most practitioners and parents who have to deal with the child support system do so from a local perspective. In fact, it is most helpful to your program and to your individual clients to learn about the policies, the practice, and the people in your local child support office. It is important to keep in mind that practitioners or social service providers who are not legal professionals cannot provide legal advice or representation. However, parents will benefit greatly from a working relationship with a practitioner who has some knowledge—whether it is a basic understanding or a greater level of experience and expertise—of the child support system.
Myths

ONE of the services that information practitioners can provide is to disarm parents of some of the incorrect notions they have about child support and family law. We have found that low-income, never-married parents who have no access to legal services accept as true many of the myths about the welfare, child support, and judicial systems. This misinformation creates additional barriers such as confusion, fear, and anger at the system.

The prevailing attitudes about child support are various and complicated. Many old ideas and myths about how the child support system works are based in common sense and reason. For example, some people believe that if a father thought his partner was using birth control, he should not have to pay child support for a child he did not plan. The fact is that if a man can be proven to be the father of a child, he must pay child support, regardless of his assumptions about birth control.

With this manual, and with some investigative work and conversations with knowledgeable people in your community (lawyers, child support agency representatives), you can clear up some of the misinformation and confusion. Many parents and practitioners believe that if a man’s name appears on a child’s birth certificate, he will be considered the child’s “legal” father. This myth can be dispelled with an explanation of paternity establishment. Some parents believe that if a man is not paying child support he has no visitation rights. An explanation of the custody order and its independence of the child support order can provide clarity on this point.

Obtaining some control over the process

UNDERSTANDING the administrative processes and the legal jargon is difficult enough without misinformation. Parents need clarity and a basic understanding of how the system works. Moreover, without a working knowledge of basic legal terms and procedures that are routinely used in the child support enforcement system, it is very difficult for parents to retain any control over these processes. Therefore, a primary goal of this handbook is to demystify the processes and provide parents and practitioners with some ability to speak the language. This will empower low-income, never-married parents and put them on more equal footing with administrators and decisionmakers.

Of course, the questions here are obvious. Why should a man voluntarily submit himself to this system? What if he doesn’t have a job or he doesn’t make much money? Isn’t the system going to bury him under impossible child support pay-
ments? Honestly, there are no guarantees that he will not be treated unfairly by the child support system, even when he acts responsibly. However, he should understand how to assess the risks. There is also no guarantee that he can continue to avoid the system, or that he won’t be treated more harshly if he is caught after the authorities have spent so much time and effort to catch him. Nevertheless, a non-custodial parent would be well advised to approach the child support system before the system begins the process of looking for him as a delinquent and a deadbeat father. If he puts it off, when he is found, the consequences can be devastating.

**Your client:** Wonders why he has to pay for a baby he was not planning to create.

**SOMETIMES** one of the first reactions a man has to the knowledge that he is about to become a father is to express anger that he was not a part of the decision-making process that led to the pregnancy. Without going into details about biology and reproduction, or the politics thereof, one might say that he is, in some respects, correct in that assessment, and in other respects incorrect. As to family law in the United States, however, it is certain that the fact of his biological paternity dictates his responsibility to provide for the child. If he is the father—and either the state or the baby’s mother requests that he provide financial support—he has to pay child support. The legal system works this way because of common law and social practices that go back over 300 years in this country, and further back to old English law.

There are certainly logical arguments to be mounted in favor of men or women who do not want to be legally forced to parent, or to parent cooperatively with a person with whom they want no connection or relationship. However, those arguments have not prevailed in courtrooms, and current family law mandates equal rights and financial responsibility for both parents.

**Did you know?**

- It is a myth that a father who thought his partner was using birth control is not responsible to pay child support for the child he did not plan. The fact is that if a man can be proven to be the biological father of a child, he must pay child support, regardless of his assumptions about birth control or of his perception that the child’s mother deceived him.

- It is a very subtle, but important, point to note that child support is not money owed to the government. It is money owed to the child’s custodial parent. She is required to sign the money over to the control of the state government.
Your client: Has received a legal document in the mail naming him the father of a child that he believes is his.

Some low-income, non-custodial fathers know that the document in the mail leads him down a road ending in a child support order that he may be unable to pay. Some parents decide not to respond to the receipt of court papers about the paternity of a child who needs support. Some may think that they can ignore the legal documents they get in the mail about child support and paternity establishment, avoid the courts, avoid the obligation, and avoid financial liability. Others know that the financial charge is unavoidable, but they decide that to ignore the document is to bypass the court appearance and to delay the inevitable bills and charges. This non-response strategy often leads to a chain of events including default judgments of paternity, default child support orders, and insurmountable arrearages owed by fathers who do not learn of their child support obligations until years after the child support order was entered.

One of the most significant points to communicate with parents about dealing with the child support system—or any legal or administrative system—is that they should open the mail and respond in some way to the directions or questions contained in the document. An important aspect of the legal system is what is sometimes called the “notice” or “summons.” Our legal system is based on many fundamental requirements, and one of them is that if a legal decision is to be made about someone, they must get “notice” as to the day and time and place that the decision will be made. In the end, once the “notice” has been given, whether or not the person responds to it, the decision can be made. That is the reason practitioners often hear from their clients that they have a child support order or an order establishing paternity, but that they did not know about it. They did not appear in court when the decision was made. That is often because the mail that contained the notice was not opened or was not understood.

Also, some low-income parents with very unstable housing situations do not remain at one address for a long enough period of time to receive current mail. In those cases, the requirement for notice is met if the agency or the court simply sends the document to the last known address of the man they believe is the father of the child in question. For this reason, it is advisable for men who have some idea that important documents such as these are being sent to them to look for this mail at any address it might have been sent to.
The other important action is to respond to the document in some way. Show up in court on the appropriate date; call for an appointment with the child support agency representative; ask for a genetic test. It is important that the man provide some information about himself and about his possible paternity, because if the court believes that notice was sent, an order (for paternity establishment or child support) can be entered. If the non-custodial parent is not present when the order is entered, it is called a “default order.” When a decision is made in a default order, the order is just as valid legally as an order made when the parent is present at the hearing to present his side of the issue.

If a man wonders why he should be present at the hearing given the fact that an order can be entered whether or not he appears, there are many reasons he should be there to present himself and his financial situation. The two most important are: (1) if he is unsure of his paternity of the child, a genetic test can be taken to prove or disprove his paternity; and (2) he is the best person to provide his employment and financial information.

Any party in a paternity case has the right to ask for a paternity test, and the state is required to pay for the test (though, if the man is found to be the father of the child, he can be required to repay the expense of the test). It is most helpful to ask a representative of the court system or the child support enforcement agency about the exact process to be followed when genetic tests are requested in your state or county. Find out what happens in the situation where paternity is denied and the genetic tests show that he is, in fact, the father. Find out whether and under what circumstances a father has to deny paternity in order to request a genetic test.

**Your client:** Signed something in the hospital when his baby was born (or signed the birth certificate) and now is getting a bill for child support.

A “voluntary acknowledgment” is a document that both parents can sign in which they both acknowledge that the man is the father of the woman’s child. Each of the states has this kind of form that the parents can sign, but there are various names for it in the different states. Find out what it is called in your state. No matter what the state, when both parents sign it, it can quickly become binding on both of them. Within 60 days of the time it is signed (or sooner, if there is a court hearing before that), the voluntary acknowledgment document can be used just like a court order for paternity establishment. That is, the man who signs legally becomes the father 60 days after he signs the document.
This document is not the same thing as a birth certificate. Technically, a birth certificate is the document that makes a record of a child’s birth. It gives the gender of the child, and states the time and place of birth, and identifies the child’s parents. As a distinct document (without the voluntary acknowledgment), the birth certificate cannot legally declare a person to be a father. In fact, since 1996, the law has required that in order for a man’s name to appear on a child’s birth certificate, paternity must have been established or he must have signed a voluntary acknowledgment. Four things are particularly important to recognize here:

1. For a child born before 1996, the fact that a particular man’s name is included on a birth certificate as the father is not proof that he is the legal father of that child. Before 1996, a man’s name could be included at the simple request of the mother without legal paternity establishment.

2. If a man’s name is included on a birth certificate as the father of a child born after 1996, it is almost certain he is the legal father of that child.\(^5\)

3. Every state has a process that will allow one or both of the parents to rescind (or take back) their acknowledgment of paternity within 60 days of the signature. Most states process very few rescissions, and if a parent needs a form or more information about the process, both the form and the information may be difficult to obtain. So it would be advisable for parents in this situation to start the process as long before the end of the 60 day period as possible. Also, in many states the rescission is not technically a chance to take back the signature, but is actually more like a chance to contest the paternity of the man named on the acknowledgment. As a practical matter, this means that in most cases where a parent attempts to rescind their acknowledgement of paternity, the state will order genetic tests.

4. **In some states and counties, the voluntary acknowledgment is included on the birth certificate document.** In those situations, parents are asked if they want the father’s name on the birth certificate. If they say yes, and believe they are simply signing a document that says the father’s name will appear on the birth certificate, they may actually be signing a voluntary acknowledgment. Of course, once an acknowledgment is signed, paternity can be established, and a child support order can be entered.

When the voluntary acknowledgment document was first used in the early 1990s, the goal was to make paternity establishment an easier process for all parties concerned. Moreover, in 1993, a federal law mandated that the forms should be available in every hospital, and a 1996 law directed states to make the form widely available to parents. Mothers and fathers are asked in the hospital on the occasion
of the child’s birth whether or not they want to sign the form. The person providing the document is required to explain (orally and in writing) the contents and the significance of the form.

This document can be useful to parents who know that legal establishment of paternity is what they want for their child at that moment. It can be more convenient and comfortable to have this legal process occur outside the courtroom. Many parents would prefer this method, and those who do not get an opportunity to sign this document in the hospital should be able to inquire about the forms from the vital records office in the community. However, because the signing of this document results in a binding legal declaration, some parents might want to consider this step for a period longer than an obstetrics hospital stay. It may be in their best interest and the best interest of their child to get more information and direction about how the child support system and the family law system will impact their lives after paternity is established.

Did you know?

• For any father, in any state, who is charged with paying child support, or who has received a bill to pay medical support or for medical attention, or who has had money withheld from his paycheck for child support, or who has had his income tax refund taken, paternity must be established first. If any of these things have happened, paternity has already been established.

• A man’s name can only appear on a child’s birth certificate as father if he has either signed a paternity acknowledgment form or his paternity of the child has been established by a court of law.

• Once a man signs a paternity acknowledgment form, he has 60 days to rescind (to take back the acknowledgment). After the 60-day period, the acknowledgment is legally binding. The process of changing the fact of paternity establishment after that 60-day period would almost certainly require the services of a legal professional, and would be—even with a lawyer—difficult to accomplish.

Your Client: Has an appointment with someone from the child support office to talk about setting up a child support order. He has already had the blood test. The baby is his.

This meeting to discuss child support might be any one of a number of types of processes by which child support is established and enforced. It is another child
support process that takes various forms depending on the state or county in which
the parent or the child resides. Also, even in any one location, because there are
many workers and many offices, a particular type of case can be handled in various
ways. The United States child support enforcement system is complex and is based
on many complicated processes. It is difficult to explain and difficult to understand.
Often, individual agency representatives working on a particular aspect of the pro-
cess do not themselves understand or know the issues or processes involved in
other parts of the system. Consequently, figuring out what type of meeting is
scheduled and what might occur at that meeting can be difficult. The meeting
could be:

1. A pre-trial conference
2. A court hearing to determine child support or paternity
3. An appointment for a genetic test
4. An informational meeting

In addition, the person with whom the parent is scheduled to meet could be:

1. A judge, who has the power to make legally binding court orders. If these
   orders are not followed the person so ordered can be put in jail for “contempt.”

2. A court commissioner, who may have many of the same powers as a judge to
   enter paternity, child support, and custody orders. In many cases, however,
   the parent can request that a judge make the decision instead. (This option
   may be available before and after the commissioner makes his or her deci-
   sion.)

3. A child support attorney who is representing the state in the civil action
   against the parent. That person, though he or she may be in a position to have
   a very persuasive effect on the final decision, has no power to make that final
decision or order.

4. A child support administrative agent who may have the power to review
   and/or modify a child support order, make an administrative order establish-
ing paternity, or enter a new child support order.

5. A child support administrative agent who has no power to enter any type of
   order, but who will likely have a very persuasive effect on the judge’s or com-
mis sioner’s final decision.

These two lists can be used to ask questions about the meeting to find out
whether it is a meeting or a judicial hearing, the purpose of the meeting, and the
title and power of the person conducting or presiding over the meeting.
The child support enforcement system has become more complicated for low-income parents because child support enforcement has moved toward expedited and, very often, administrative processes. Paternity establishment has moved toward voluntary, summary processes carried out outside the courtroom. Since these administrative processes are judicial in nature, and the concepts involved are legal, parents frequently assume that the administrative staff with whom they interact have judicial status and that the decisions these staff make are judicial rulings. In fact these administrative staff people are representatives of the state, which is the complainant in many child support cases, and the positions they take are recommendations to the court. Parents do not understand that they may have a right to a hearing where they can present evidence that might persuade the court not to accept the states’ recommendation.

**Your client: Missed his court date**

A parent who is expected to attend an official hearing on a child support matter is supposed to receive quite a few “papers” to let him know that he has or will have a child support case. If he receives these papers, they are likely to include forms, a form letter, and other explanatory documents. However, the *summons* or the *notice* is usually the one that contains the urgent information about the hearing or his court date. It would likely include:

1. The date and time of the hearing
2. The place of the hearing
3. The reason for the hearing
4. The possible outcome if he does not appear at the time and date specified

The intent is that this document should be received by the parent within a sufficient amount of time to make arrangements to appear at the hearing. Because the law absolutely requires that this type of notice be given to the parent, if that person does not appear at the hearing, it is assumed that he or she chose not to appear. Perhaps even more important, it allows a decision to be made in that person’s case without their attendance. That decision made without the parent’s appearance, and without hearing that person’s side of the story or position in the matter, is called a default order.

An order (declaring paternity of a child, a child support payment amount, or other pertinent issues) entered without the input and evidence from the non-custodial parent or from the man presumed to be the child’s father might be based on
insufficient or incorrect information. Such an order may produce an inaccurate paternity order or a child support order that does not reflect the non-custodial parent’s ability to pay. An order that does not reflect the man’s ability to pay is very likely to occur if the non-custodial parent is not present to give evidence of his income and assets. Furthermore, if the hearing is a contempt hearing (one in which he is asked to explain why he has not paid his child support in the past), and he is not there to explain or provide information that might explain non-payment, a warrant may be issued for his arrest, and he may be threatened with incarceration.

It is important to encourage non-custodial parents to respond to legal notices. The information outlined above can be helpful to men who received the documents in the mail and still have some time to prepare themselves for court. It will help you explain to them that it is very important that they go, and that they ask questions so that they can understand what is happening to them. For those who have missed the court date, it can serve to explain why some non-custodial fathers do not know they have a child support order until the warrant is issued for their arrest, or they get a bad credit report, or their tax return is intercepted by the government to satisfy a child support order.

It is also important to note that some non-custodial parents cannot respond to a notice or summons either because they did not receive the notice, or they are no longer in residence at the address to which the notice was sent, or they are physically unable to appear at the hearing and have no resources to employ an attorney to appear on their behalf. This is a situation where an advocate can be very helpful. Practitioners can be helpful to individual non-custodial parents by contacting the agency and explaining that person’s incapacity, or by providing an address. Perhaps, even more useful is the practitioner who can become comfortable communicating with people at his local child support agency, explaining the probabilities and the possibilities that some men are not getting their notices, and encouraging the agency to make more pointed efforts to get the notices to men in unstable housing situations.

**Did you know?**

- It is very important that you advise non-custodial parents to watch closely for “child support papers” and to go to court or respond to the notices appropriately.
Your Client: Wants to be legally designated the father of his baby.

This may be the one area of the child support system for which it is difficult for a never-married parent to get the attention of the administrative agency: when a poor man without legal representation wants to establish paternity without the assistance of an attorney or other legal service provider. In the more common situation where the government initiates the court action because of a financial interest in reimbursement, parents find themselves quickly caught up in the carefully structured statutory process. In the case of a mother who wants to establish paternity or secure an order for child support, there are equally binding and structured (though perhaps less efficient) processes by which the state must pursue the man named as biological father of the child.

However, states are unlikely to have an established process or policy when the petition is initiated by the putative father. This is true even though there is a federal law requiring that each state allow a man to petition a court to have himself declared the father of a child. As a practical matter, the fact that there is no policy or predetermined process for men to establish paternity of their child has two import ramifications:

1. If a man has no attorney to advocate for him in this situation, there are rarely forms provided for him to bring the case himself. There is no one in the agency who has accumulated experience working through the process with putative biological fathers who can be helpful to him. Child support agency and court personnel are unfamiliar with the process to the extent that it is different than the process of establishing paternity at the request of the state or the custodial parent. It can be a frustrating, and virtually impossible endeavor for a poor man with few resources.

2. Often when a man makes a verbal request of an agent in the child support office that paternity be established, and a process is begun, he is made the defendant or respondent in the process. That is, the documents are prepared as if the mother or the state initiated the process. He is then put through the legal process as if he was an absent parent who has been caught in an attempt to absent himself from his child’s life. This point incorporates many legal concepts, the explanation of which may not be useful here. It is sufficient to say that the father will have a different experience, a different process, and perhaps a different outcome if he is treated as a defendant (or respondent) instead of a plaintiff.
Besides the reality of the possible difficulties of initiating this process, a man who wants to do it must prepare himself to provide very detailed information to the court. In addition to the genetic tests that would be performed in a contested case of this type, he should be prepared to explain his employment status and his financial situation so that the correct child support order can be entered at the initial hearing.

**Your client:** Is a man whose baby’s mother works and makes a good salary. She says that he is not paying her enough to take care of the baby every week. She says she is going to take him to court to get the money.

There are only a few parties who can bring a child support suit against the father of a child. The two most pertinent for our purposes here are the state government and the baby’s mother. The government brings suit on its own behalf when the baby has received some social service benefit from the state (welfare, child care, food stamps, etc). When that social service includes cash benefits, the state can bring the suit for child support, collect the child support and keep it as reimbursement for cash benefits.

Of course, the other likely party to bring suit for child support is the child’s mother. A non-custodial parent who **does not receive welfare benefits:**

- Can bring the suit herself. She can use an attorney or she can fill out forms provided by the court and file the suit herself (pro se).

- Can request that the child support enforcement agency use all of its resources to help her establish the paternity of her child and to secure an order for child support payments from the child’s father. The agency is required, by federal law, to provide this service to any mother who makes the appropriate request. In this case, where there were no welfare benefits, the fact that the child support enforcement agency brought the suit does not mean that it retains the money. They are required to pay the money on to the custodial parent.

When the mother brings a suit for paternity establishment and/or child support, and a man either admits that he is, or is found to be, the father, the court will almost certainly order the father to pay child support. Very often non-custodial parents who have very little ability to pay (because of unemployment or underemployment) are eager to find a way to provide financial support for their children. Sometimes even the low-income fathers can find a way to make enough money to sustain themselves and to give some money to the child’s mother. The child sup-
port issue is still inevitable: even in the situation where the state does not retain the child support payment, the goal of the Office of Child Support Enforcement is to collect child support. A child support order will be entered as soon as possible (likely on the same day paternity is established).

This inevitability is not a negative for parents and children in every situation. Going through a formal system may work better for some parents who cannot come to agreement about how much the father is able to pay and when. Also, of course, some low-income non-custodial parents can make small regular payments. Even in this best case scenario, some practitioners have to be prepared to respond to the non-custodial parent, who doubts that the child actually benefits from the money he sends given the fact that the custodial parent receives the check and uses it for the support of the household at her own discretion. An explanation of the equal responsibility required by the courts, in which part of the custodial parent’s responsibility is the housing and utilities and day-to-day expenses, would be effective.

Did you know?

- Even if a child’s mother is not cooperative or responsive to the father in their personal relationship, or denies him the opportunity to see the child, he is still required to pay child support. Fathers should be advised to pay court-ordered child support even when the mother is non-cooperative. On the question of visitation, he should be further advised because of the way that the child support system is separated from the family law system, that visitation and access are separate from the issue of financial support.

- In most jurisdictions, custodial and non-custodial parent will be required to address the court (not the child support agency) about visitation.

Your Client: Wants to work something out with his baby’s mother; he does not understand why the government and the courts have to be involved.

Many unmarried parents believe that they can make a good faith effort to take care of their children without the intervention of the government. In some situations, parents have no romantic connection, but both acknowledge the non-custodial parent’s willingness to provide financial support for their children. It is also the case that some unmarried parents have an emotional connection to each other and to their children, and have decided to work cooperatively to raise their children. Other unmarried couples consider themselves partners in their parenting responsi-
bility and in their lives. They may even live together and support their children in one household. Any one of these situations might be the case for unmarried fathers in your program, and they might be insulted by the intervention of the government in their personal lives. You may be asked why the intervention of the child support enforcement agency is necessary in their situation.

The reasons are not simple. However, one practical reason may be that the concept of child support enforcement originated in a time when there were far fewer unmarried parents working openly and cooperatively to support their children. The concept was created to insure that “absent” or non-resident fathers who had the ability to pay—but were likely to try to avoid paying their fair share of support—would be ordered by the judicial system to support their children. The child support order and the inherent threat of incarceration for non-payment was designed to ensure that fathers (who, in the general society, in a time of non-working mothers, had more income and more assets than mothers) did not take all the family money and assets and leave the children without support.

Even now, in a society where more child are born to unmarried parents and more divorces occur, parents who are not so trusting of each other’s motives, and custodial parents who are providing for the children on a day-to-day basis, need to know that they can count on a measurable and definite financial contribution to the maintenance and support of the child. Parents who feel sure that they can work out the child support issue on their own, or who live together with their children, can make the financial decisions for themselves so long as they both feel confident that no legal action is necessary, and neither of them has used state or federal social welfare services or cash benefits.

**Did you know?**

- Traditionally, child support payments were made directly to the custodial parent. That parent was either lucky enough to get a consistent, dedicated payer, or unlucky enough to have a non-custodial parent who was always late with the money or sometimes didn’t make the payment at all. The changes in the child support system that came with the 1984 federal child support laws call for income withholding and other enforcement tools designed to insure payment.

- Once a child support case becomes a part of the child support enforcement agency, most non-custodial parents, regardless of their payment history, make their payment to a central government distribution centers.
Your client: Cannot understand the amount of his child support bill. He believes it is too high because he did not have a job for two years, and then he got a lower paying job.

By law, in every state, a child support order should be based on the income of one or both of the parents. For two low-income parents, the state guidelines direct a relatively lower payment than for situations in which one or both of the parents has middle or higher incomes. When the child support order is entered, and the low income is substantiated by the non-custodial parent and accepted by the court, the order is usually set accordingly low.

However, there are two important reasons the order may have originally been set at an amount higher than the parent’s income would suggest. One is if the child support order is based on an incorrect income that is higher than the non-custodial parent’s actual income. This might have happened because the decisionmaker (judge, commissioner, child support agency representative) thought that the non-custodial parent had the ability to make more money than he actually did. The other possibility is that the non-custodial parent was not in court to give the actual amount of his income. In both of these cases the decisionmaker can “impute” an income to the non-custodial parent. To impute an income to him (which is higher than his actual income) in this kind of situation, is to make him responsible for earning a certain amount of money whether or not he actually does make that amount. In practice, people who set child support orders by imputing an income do so on the basis of some previous income the person might have earned, on the basis of the minimum wage, or on the basis of an amount that a person of a particular age, education and ability should be able to earn.

When the non-custodial parent is made responsible to pay based on an income which is higher than what he actually earns, the parent usually does not pay regularly or in full. For every time he is unable to make the payment, the amount accumulates as an arrearage. That debt will continue to grow to be an amount that is virtually impossible for the parent to pay. In a state where interest is charged against unpaid child support, the debt will continue to grow at an even greater rate.

The debt will continue to grow, that is, unless the order is modified by some person or agency with the power to do so. A modification of a child support order is a legal process, and a downward modification can be very difficult to come by.
Your client: Has changed jobs or no longer has a job and now he does not make as much money as he did when he when he first got his child supports order.

This is one of the most critical aspects of the child support enforcement process for low-income men and men who cannot afford the services of a legal professional. Child support orders can be modified. In fact, they can be modified up or down depending on the situations of one or both of the parents. A child support order should be based on a parent’s ability to pay. His ability to pay—the financial and physical circumstance in which he is able to pay—can change. Therefore, the law in every state is that in a situation where there is a substantial change in circumstances for one of the parties, the child support order can be changed.

The change made by the court based on a substantial change in circumstances is a modification of a child support order. A modification of a child support order is not the same process as a change in a child support order based on the child support agency review. The outcome is the same for the parents—the child support amount is changed. Still, it is important to know that there is an important difference in these two processes. The different processes are:

1. Judicial (or administrative) modification of a child support order—an “order” is an official judicial or administrative document. As a practical matter, there are only one or two positions or jobs that include the authority to sign an order. Usually the person with the power to the sign the order is a judge. In a minority of states, a few of the people who work in the child support enforcement agency have the authority to sign an administrative order. It is most important to know that a modification of a child support order requires a new order which makes the previous order void. The new order must be issued by a judge, or in a few states, a person in the child support enforcement agency who has the power to sign an administrative order.

2. Child support agency review—this is not a judicial process. Unlike the modification that is conducted by the judicial system, judges do not carry out this process and the child support agency performs the review. Every three years, either parent (or the child support enforcement agency itself in cases where the family has received social services) can request the review. In an administrative review, the amount of the child support award is compared to the state guidelines. The law is that if the order amount is different from the guideline amount, the child support agency can decide whether it is “appropriate” to
change the amount. Some states have laws or administrative rules that allow them to make an automatic “cost of living” adjustment.

This information is valuable because a man who loses his job needs to make sure that his child support order is at a level he can pay. The non-custodial parent needs to inform the child support enforcement agency that he has lost his job or changed jobs, or that there has been a reduction in his salary, but he also needs to try to officially (legally) have the amount of the child support order changed. If the order is not changed, or if the amount of his installment payment is changed for some short period or time, or if he is given a suspension of the order, it may be that the original order will continue to be charged against him. If that is the case, his arrears will continue to build (especially if he is being charged interest). It is essential to find out which of these situations apply when a non-custodial parent is given “a break” on his child support order. (It is also important to find out the details of modifications or suspension that are negotiated by programs with the child support office when the break is part of a collaboration or demonstration project, and is extended to all of the participants in the program.)

The non-custodial parent and his advocates should decide which type of request should be made on his behalf. They must choose to ask for a judicial modification of the child support order (based on a substantial change in circumstances), or an administrative review and change by the child support agency (this change brings the order in line with the state child support guidelines). The rules are different for each process, the decision is based on different considerations, and the power to change the order amount is different. In order to request a child support agency review, it is relatively easy to ask someone at the child support agency. Each agency has a process, and someone in that office should be able to direct the non-custodial parent through that process.

A request for a judicial modification of the child support order is usually in the form of a petition (written request) to a court. This request of the court will probably present more of a challenge for a parent without a lawyer. However, it is not impossible to have a successful outcome without legal representation. When a person files a petition without a lawyer it is called a pro se request. If a non-custodial parent is interested in this process, he must find the court that handles family law in the area and ask about the pro se procedure. A parent who owes child support can try both of these processes to have his child support order reduced. If he tries the child support agency review, and is denied, he can still approach the court for a judicial modification of the child support order.
Did you know?

- If a man has a child support order, and he cannot pay because his income is too low, or because he does not have a job, or because he was unable to work (sickness, incapacity, or incarceration), he is still liable to pay the current amount owed and any past-due amounts (likely with interest). Even if a non-custodial parent who was unable to pay tells the judge or the child support agency about the valid circumstances that kept him from paying, it is very unlikely that the agency or the court will be able to erase or reduce the past due amount owed.

- A child support order should be based on a non-custodial parent’s ability to pay, not on the amount paid to the custodial parent in welfare benefits.

- In addition, it is very important for the fathers in your program to know that a child support order can be changed, if circumstances change, and that change is substantial, and it can be proved.

Your client: Wants to see his child more often.

Parents and practitioners often hear that child support and visitation are separate issues and that neither is dependent on the other. However, most non-custodial parents who pay their child support obligations want to spend time with their children and become more involved in their children’s lives. The dearth of information or direction on the issue of visitation is one of the most frustrating elements of the child support system. Visitation law and policy and practice can be frustrating for everyone involved. In individual situations, the parents’ inability to come to agreement or follow through on previous agreements can cause distress for parents, their children, the practitioners who serve them, and the child support line staff with whom parents and practitioners interact.

It is often the case that immediately after the child support order has been entered, or the enforcement tactics have been employed, non-custodial parents will ask the custodial parent and anyone else who will listen whether and when they can visit their child. If there is no agreement between the parents, the non-custodial parent who asks for help is usually told that he must retain the services of an attorney or “go to court” to get visitation rights established. For many non-custodial fathers this advice is useless because they cannot afford the services of an attorney, nor can they adequately represent themselves in an adversarial judicial hearing.

With or without lawyers, this is an area of family law and family interaction
that can be very contentious and emotional. The difficulty inherent in providing a convenient, secure, and familiar residence for children in two different places is obvious. This difficulty can become an impossibility in situations where both parents are poor and do not have the resources to access the services of professionals who are trained to help them address the unavoidable difficult issues. In circumstances where the parents are poor and never-married, the obstacles can be overwhelming. Both custodial parents and non-custodial parents can be faced with these concerns:

1. In most instances, parents in paternity cases are given court orders with relation to child support and paternity establishment, but no visitation order. Even in cases where parents get a visitation (or placement) order, it is usually a very generic one that gives the non-custodial parent “reasonable visitation,” which as a practical matter means that they should both be reasonable about visitation. If one or both of the parents is unreasonable about visitation, the order is not a useful tool to determine where the child should be at any given time.

2. Very low-income parents are faced with the same placement issues and disagreements as are more financially stable families. However, because of their lack of resources, neither of them can afford a lawyer to present their case to the court and advocate for their preferences for visitation.

3. Most child support agencies cannot become involved in visitation or custody decisions. Therefore, because many paternity establishment cases begin the process in the agency and are directed to and prepared for the court by the child support agency, visitation may not be addressed at all. Additionally, in situations where it is addressed, there is not enough detail as to when and where the child will be placed with each parent.

   Parents—both custodial and non-custodial—who are facing the issues outlined above, and who cannot come to agreement for a visitation schedule, or who cannot comfortably count on an informal visitation arrangement, would best serve themselves and their children by getting a formal court order for visitation. Visitation or placement orders can be general (“reasonable” visitation for the non-custodial parent) or very specific (the non-custodial parent has the child every other weekend, two months in the summer, on Christmas and their father’s birthday). Very specific orders might not be necessary, but parents can use these legal documents with some details so that they both know where the child is expected to be at any given time.

   This section is not intended to encourage argument or disagreement between never-married parents. The practitioner is not advised to encourage single fathers
to go into court battles with their children’s mothers. The intention is to suggest to the practitioner to find ways to help the parents come to mutual agreement or work out their differences with as little conflict as possible.

In situations where it is possible, it is best for the parents to come to some agreement on visitation before approaching the court. Parents can—with support from advocates and the courts—request approval of their plan in a pro se petition to the court. A pro se document is one filed without a lawyer. A plan for which the parents came to a previous agreement could be relatively easy to present.

Whether or not the parents’ relationship is amicable enough to allow them to make the plan together, the visitation order can have a positive effect. Having the visitation order and having a definite schedule for visitation can be beneficial to everyone concerned.

**Did you know?**

- If a father does not live with his child, the time they spend together must be decided by agreement between the parents, or if the parents cannot come to agreement, by the court. In either case, it is advisable to have the terms of the visitation agreement endorsed by the court and written into a court order.
Section III
Fatherhood Policy and Funding for Fatherhood Programs

What about policy?

Many practitioners who work with low-income fathers find themselves so busy providing services to their clients making connections, and interacting with other people in the community, that they prefer not to further burden themselves with “policy” matters. This section is meant to suggest that it could be useful to social service providers and their clients to inform themselves on the policy issues related to non-custodial parents in their community.

In fact, following policy and attempting to have an impact on policy decisions is more than useful. It is particularly important to look at “fatherhood” policy from a broad perspective and use this knowledge to understand how funding, laws, and practices affect the families in your program. If a community service provider understands policy implications, he can make better, more informed decisions about involving his program and participants in demonstration projects and other grantmaker funded and directed ventures. Some of the projects guided and structured by government funding in particular can include goals, objectives and strategies that do not recognize the issues and barriers of the participants in your particular program. These ventures in which certain outcomes must be assured can actually be harmful to the men in the program.

What you should know about “fatherhood policy”

What you may already know is that in 2003, at the time of the scheduled reauthorization of the 1996 welfare reform, proposed legislation included funding and program structure guidelines for “fatherhood programs.” The set-aside of funds and the inclusion of programs directed at fathers in social welfare policy can certainly be considered an accomplishment for those who advocate for low-income fathers and their families. However, the excitement of reaching this goal should not cloud the rational thinking of those considering using this funding for programs that serve non-custodial poor fathers. Clear and determined decision-making is especially important for programs that serve never-married fathers and fathers with large amounts of “child support” owed to the state. Service providers in programs with a
substantial population of those participants must appreciate the fact that the funding guidelines may include expectations of grantees and child support payment requirements that will particularly (perhaps negatively) affect these men and their families.

The reason for this concern or trepidation is that much of the welfare reform fatherhood legislation in the spring of 2003 contains a requirement that funded programs concentrate on two service areas around which practitioners should be thoughtful and cautious before they proceed to create such programs. Specifically, those service areas are marriage promotion and collaboration with child support enforcement agencies.

**Marriage promotion**

In the relatively short history of the inclusion of services for low-income fathers in social welfare policy, marriage promotion has always been a part of that legislation. In the early drafts in the late 1990s, it was “promotion of two-parent families,” and by the time of welfare reauthorization of 2003, it was frankly “marriage promotion.” The proposals were to provide funding for programs that work with fathers and promote marriage. The proposals provide acceptable examples of marriage promotion such as teaching parenting skills, household management skills, and anger management skills. Programs that consider accessing such funding sources should carefully consider which goals and objectives will be expected in the programs being considered, and assess the chances of reaching such goals in that community. Perhaps a carefully written program plan could ensure that the goals of the grant-maker are practical ones for your program and your community.

**Child support collaboration**

Another strong push of welfare reform since the mid 90s has been toward stricter enforcement of child support. Research and policy analysis during that time period has suggested that children could be saved from poverty if their fathers were paying child support. Perhaps as a consequence of this analysis, state and federal governments have placed a much greater emphasis on strict child support enforcement. This was also a time, coincidentally, that there came a push from some community activists and advocates of “responsible fatherhood” to include men in social welfare policy and programs. The rationale was that men need social services and employment assistance in order to ensure that they would be able to pay their child support. It seemed a natural alliance, and federal and state funding for fatherhood
programs was directed toward programs that collaborated with local child support enforcement agencies. The premise of this collaboration is a valid one. Poor men who do not have the resources to obtain legal services, and who cannot decipher the complexities of the child support process themselves, should be connected to the child support enforcement agency through their advocates at the fatherhood programs. They could be informed and directed in order to avoid the pitfalls of accidental non-payment, and to correct (or be forgiven for) the mistakes and missteps they had made in the past. Many non-custodial parents are well served by being able to make a direct connection with their child support enforcement agency. It is helpful to men with child support problems to have a chance to explain their situation (with the assistance of a social service provider), and perhaps given more time and patient consideration to come into compliance with the order to pay child support.

However, there are two reasons practitioners who go into these collaborations are advised to study the practicality of this collaboration from the perspective of the men in the programs and their community. Men in the programs are required to commit to “pay their child support.” This means individuals in the programs have to sign a document that says they will pay, and the consequences of being unable to pay may be that they cannot continue to receive the services of the program.

There are two issues that arise here: one, for most men, in most programs, high arrears are not reduced. Some men approach the program in order to find employment and get themselves in a better position to help their children. They can become frustrated and feel helpless when their brand new paycheck is so reduced that they cannot use their income to support themselves or their children. The second concern is that for most men whose children receive or have in the past received welfare services, when they get a job, or a better job, and they finally are able to make enough money to help support their children, the “child support” they pay is retained by the state as repayment of past welfare benefits. Practitioners who provide employment services and job skills services for low-income men have expressed this frustration on behalf of the men they serve.

Finally, this is a very general discussion of this one aspect of fatherhood program/child support agency collaborations. Across the country, there are some state and federal demonstration projects that address the two concerns explored here. In your decision making process, please inquire whether there exists some arrears forgiveness program, or some state or federal demonstration waiver, that could allow the child support payments of fathers in your program of children whose families have in the past or currently receive welfare to passthrough the state and be paid to the child’s custodial parent.
It’s your decision

It is clear from our conversations with fatherhood program service providers that the politics of these issues are not nearly as immediately important as the practical implications for community-based organizations that serve non-custodial parents. Given the circumstances of the lives of these men and their children, including poverty, lack of resources, and lack of social power and sometimes efficacy, programs designed to insist that the non-custodial parents are or could easily be in a position to pay their child support or marry the mother of their children can lead to frustration. Practitioners, the parents they serve, and communities in which the services are being provided are well advised to create programs that best fulfill their community’s needs, without regard to popularity or currency of the issue for other people and other communities. It is advisable for service providers to survey the issues involved in marriage promotion and child support collaboration. The information gleaned from this research can help practitioners decide whether the perhaps much needed funds provided by the “fatherhood” funding streams can be accessed without compromising or endangering the financial and personal security of the families they serve.

How legal service professionals can help you

All of the issues addressed in this handbook can most likely be better and more successfully addressed with the help of a lawyer or some other type of legal service professional. It is very difficult for parents to serve the best interests of themselves and their children without legal advice and advocacy.

The legal vocabulary of the child support system can put unrepresented low-income parents at a distinct practical disadvantage. When parents receive legal documents in the mail, or when they have conversations with child support enforcement or judicial representatives, they often see or hear unfamiliar, and in some cases indecipherable, legal terms. As a result, parents, especially fathers, are unsure what is being asked of them. If they cannot decipher the terms or conditions of an agreement they are presumed to have made, they are in danger of being held in contempt, waiving their rights, or agreeing to terms they cannot possibly meet.

Very often, non-custodial fathers ask how, or whether, they can visit their child, immediately after the child support order has been entered, or the enforcement tactics have been employed. They are usually told that they must retain the services of an attorney or “go to court,” to get their visitation rights established. For many
non-custodial fathers this advice is useless because they cannot afford the services of an attorney, nor can they adequately represent themselves in an adversarial judicial hearing. Finally, they may not understand the difference between “court” and “child support office,” and therefore, feel that the child support system is “stacked” against them.

Community-based programs that serve non-custodial parents should seriously consider employing the services of legal services providers. Of course, legal services for low-income fathers are expensive and sometimes hard to find, but this goal deserves some imaginative thinking and serious consideration. If there are free legal services available in the community, there may be some way to explain the issues of the non-custodial parents in your program, and have that agency either work to provide the service or to help your program find a legal service professional who can help. There may be family lawyers in the community who are interested in providing “pro-bono” (free) services to the parents in your program.

Some programs that serve non-custodial fathers have tried to access legal services in this way or have these kinds of services in place. Many of the practitioners in those programs have said that the services have been of some help, but that they have not been as helpful as one might expect they would be. Free legal services agencies have been helpful to some extent, but they do not have the time or resources to provide services for non-custodial parents.

As to lawyers who are willing to provide pro-bono services: There is an important reason that that kind of service has been less successful than one might expect. For many very low-income non-custodial parents, a legal advocate’s knowledge and understanding of local welfare policy, practice and law would be vital to their child support case. Most lawyers (even those who regularly deal with child support and practice family law) do not have the experience or understanding and cannot afford to expend the time and effort to gain knowledge that they cannot use for paying clients.

If both the program and the legal service professional recognize these issues from the beginning there may be some potential to address and overcome the concerns. Maybe one could use law students. Maybe there is some funding available for such a program, and the lawyers could be paid for their services. It is advisable that community-based organizations confront these issues with regard to legal services and find new and imaginative ways to overcome the problems.
**Section IV**

What Does That Mean?

**Administrative process**—the part of the process that is not decided inside the court. It is the process created and followed by the child support agency.

**Child support enforcement agency** (also sometimes called a IV-D agency)—The government agency that is responsible for establishing a child’s paternity and collecting child support. Some of the required steps in the child support process are required by the law and the courts other parts of the process (the administrative process) are based on the police of the child support agency.

**Arrearages**—An amount of court-ordered child support that has come due, but has not paid. The amount of unpaid child support. In many states interest is charged on arrearages.

**Birth certificate**—Legal form that documents the birth of a child. The birth certificate includes the date and time of birth, the place of birth, and the identification of the parents. A man is the legal father of a child when his name appears on the child’s birth certificate. A married man is automatically named on the birth certificate if he was married to the mother when she became pregnant. An unmarried father’s name will not be added to the birth certificate until paternity is established or he signs a voluntary acknowledgment.

**Child support**—Financial support charge to parents. By law both parents have a financial obligation to support their children. If a parent does not live with his child, the court can then set a dollar amount to be paid by the non-resident parent.

**Child support order**—A legal statement that sets the dollar amount a parent must pay for the financial support of a child. A child support order is unrelated to a parent’s right to custody or visitation.

**Contempt**—To willfully disobey a court order. A person who disobeys a court order on purpose may face a fine, jail time, or both.

**Court order**—A court’s written instruction that commands a person to do something. For example, a child support order tells a person when, where and how much to pay in child support. Failure to follow a court order may result in contempt of court.

**Custody**—Responsibility for the care and control of a child. There are basically two types of custody: legal custody and physical custody. Legal custody is the right and responsibility to make major decisions that affect a child. Physical custody is the right to have possession and control of a child.
Default judgment—A judgment in favor of one party due to the other party’s failure to appear at a court hearing. An example of a default judgment is when an alleged father does not appear at a paternity hearing and the court declares him the father of the child.

Federal Parent Locator Service—Computer databases that are kept by the federal government and that contain detailed information on parents and children, such as outstanding support orders. Each state uses the information to aid in child support collection efforts.

Garnishment (wage garnishment or wage assignment)—When a portion of an employee’s check is withheld and used to pay a debt, such as child support.

Genetic test—A medical test used to determine a child’s paternity. Today, genetic tests are more popular than blood tests. The most common type of genetic test requires a sample to be taken by rubbing a cotton swab (q-tip) inside a person’s mouth. A genetic test requires a sample from the mother, alleged father and child.

Imputed income—A court estimate of the amount of income a person is capable of making. To estimate income, the court takes into account a person’s education, training, work experience, and the local job market.

Joint legal custody—When both parents have the equal right to make major decisions that affect the child.

Joint physical custody—When both parents have large periods of contact with the child in terms of physical possession and control.

Modification of court order—A legal change in a court order, such as a reduction in the amount of child support.

Non-custodial parent—The parent who does not have legal custody of the child.

Notice—Communication of an event.

Paternity—Refers to the legal father.

Paternity acknowledgment—When a man admits to being the father of a child. To legally establish paternity. See Paternity Establishment

Paternity establishment—A legal determination that gives a man the legal rights of a parent. The process of determining the legal father. When a man and woman are married at the time she first becomes pregnant, paternity is automatically established. When the father and mother are not married, a voluntary written statement from the child’s
parents or a court order is required to establish paternity.

**Paternity suit** (Petition to Establish Paternity)–A legal action to determine whether a man is the legal father of a child.

**Petition**–A form filed with the court that asks for a particular judgment on an issue in dispute.

**Putative father**–The father of the child in the eyes of the law.

**Rescind** (Rescission)–To cancel, terminate or call off. For example, when a Voluntary Acknowledgement of Paternity is rescinded, it is just as if it had never been signed.

**Summons**–A court order that requires a person to appear at a described place and time. Failure to appear may result in contempt.

**TANF** (Temporary Assistance to Needy Families Program)–Welfare program that replaced Aid to Families with Dependent Children (AFDC).

**Visitation** (physical placement)–A parent’s right to have a period of physical contact and control of a child. The time, place and manner of the period are usually set by a court order.

**Voluntary Acknowledgment of Paternity** (Declaration of Paternity, Affidavit of Paternity)–A legal form to be signed by the mother and alleged father that establishes paternity without the use of a court order. The form is given to an unwed mother and father at the time of the child’s birth. Once signed, the form may be rescinded within a certain period of time. However, once the time period to rescind passes, the form is legally binding.
Footnotes

1 Custody and visitation issues are now much more complex and involved than they were 50 years ago, and under many current state laws those issues change the basic dynamics of child support payment. Given the complexity of the child support issue in cases where custody is shared or where the court order grants a number of days for visitation, for the purpose of definition, this section will narrow the focus to child support in cases where court-ordered visitation is relatively infrequent (60-90 days per year).

2 This is, of course, also true when the parent who applies for welfare benefits is the father.

3 As of this writing, both the federal and state governments are reassessing the assignment and reimbursement laws.

4 The mechanism by which the custodial TANF family receives the child support payment in spite of the assignment is called a “passthrough.” You may notice that this word is also used for money that is transferred to custodial families who are not currently receiving cash benefits, but did at some time in the past.

5 One must be careful here because the law was not passed until August of 1996, and many states that needed to create laws to enforce this requirement took some time to do so.

6 This is a person who is not a judge, but who is usually a lawyer who is empowered to make some decisions and enter some binding court orders. Various court systems have different titles for this officer of the court, for example: family court commissioner, or

7 In some states, the amount of child support is based on the income of the non-custodial parent. In other states (in what is sometimes called an income shares model of child support guidelines) both parents’ income is considered in the calculation of the non-custodial parent’s child support payment. The one-parent income model is becoming less and less prevalent as even the states that consider only income in the sole custody situation, consider both incomes in situations where physical placement responsibilities are more evenly distributed between the parents.

8 Any arrears owed under the previous order, however, are still due and owing. The modification cannot retroactively change the amount of the previous unpaid child support.

9 The early proposals were for programs that serve low-income fathers who owe child support and have children who receive or have in the past received welfare cash benefits; then it was for low-income fathers; the 2003 legislation is for programs that serve men, at least 50% of whom are low-income fathers.
The Center on Fathers, Families and Public Policy is a national nonprofit policy organization that addresses the concerns of low-income families who receive federal and state assistance. Founded in 1995 as a policy arm of the Ford Foundation-supported Strengthening Fragile Families Initiative, the Center works with practitioners, researchers, and policy advocates throughout the country to promote the well-being of low-income men, their children, and their families. The Center provides technical assistance to direct service organizations, analysis of legislative and policy initiatives that affect low-income families, and advocacy for the creation of holistic laws that are supportive of all members of low-income families, whether or not they live together or are legally married.