

**REPORT OF THE
VIRGINIA DEPARTMENT OF SOCIAL SERVICES ON**

**THE NEED FOR THE REGULATION OF
PRIVATE CHILD SUPPORT COLLECTION
FIRMS**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 26

**COMMONWEALTH OF VIRGINIA
RICHMOND
1995**



COMMONWEALTH of VIRGINIA

Office of the Governor

George Allen
Governor

Kay Coles James
Secretary of Health and Human Resources

January 6, 1995

TO: The Honorable George Allen

and

The General Assembly of Virginia

This report contained herein is pursuant to House Joint Resolution 164, agreed to by the 1994 General Assembly.

This report constitutes the response of the Department of Social Services' Division of Child Support Enforcement, in conjunction with the Fraud Division of the Office of the Attorney General, to the request to study the need for the regulation of private child support collection practices.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Kay Coles James", written over a horizontal line.

Kay Coles James
Secretary of Health and Human Resources

TABLE OF CONTENTS

EXECUTIVE SUMMARY

I. INTRODUCTION

Study Charge	1
Background	1
Study Objectives.....	1
Approach and Methodology	1

II. EXPERIENCES WITH PRIVATIZATION OF CHILD SUPPORT ENFORCEMENT	2
---	---

III. OVERSIGHT OF PRIVATE CHILD SUPPORT COLLECTION AGENCIES.....	4
--	---

APPENDICES

Appendix A	House Joint Resolution 164
Appendix B	Allegations Concerning Private Child Support Collection Agencies

HOUSE JOINT RESOLUTION 164

EXECUTIVE SUMMARY

- House Joint Resolution 164 directed the Department of Social Services' Division of Child Support Enforcement (DCSE) and the Office of the Attorney General to study the need for regulation of private child support collection agencies.
- DCSE contracts with two private collection firms for selected cases and fee recoveries.
- Collection of child support is not covered by the federal Fair Debt Collections Practices Act. Private child support collection firms are not regulated by any state agency.
- There have not been widespread complaints registered with DCSE or other state agencies concerning private firms' practices.
- There have been a number of individual allegations of inappropriate child support collection business practices reported to DCSE offices and to General Assembly members, including the chief patron of this study.
- It appears to be in the interests of both customers and the Commonwealth to allow the use of private child support collection firms by customers who believe it will be advantageous to them.
- There is insufficient data at this time to suggest extensive regulation or oversight of the conduct of these firms.
- This study, therefore, recommends registration of all businesses engaged in child support collection services within the Commonwealth; issuance of approved child support collection guidelines which must be provided to all customers of the private collection firms; and a 24-month assessment of the nature and number of complaints concerning private child support enforcement practices, to be conducted by an agency or board. The agency or board will determine the ultimate need, if any, for regulation.

I. INTRODUCTION

Study Charge

- The 1994 General Assembly passed House Joint Resolution 164, requesting the Department of Social Services' Division of Child Support Enforcement (DCSE), in conjunction with the Fraud Division of the Office of the Attorney General, to study the need for the regulation of private child support collection agencies.
- The study committee shall submit its findings and recommendations to the Governor and the 1995 Session of the General Assembly.

Background

- The methods used by the Commonwealth for enforcing a parent's duty of support are varied, but collection of delinquent support obligations in selected cases is now being undertaken by private entities on behalf of individual custodial parents who contract with them.
- The resolution states there is some evidence that these entities may be overreaching in their collection efforts. In some instances these companies may misrepresent to the obligee their ability to collect the debt and the cost to the obligee of their collection services.
- The fees and collection methods used by these entities are not regulated by the Commonwealth.

Study Objectives

- To study the need for the regulation of private child support collection practices.
- To assess the need for criminal penalties to address fraudulent collection practices.

Approach and Methodology

- Sources of Data:
 - * Delegate Harry R. Purkey, chief patron
 - * Office of the Attorney General
 - * DCSE regional and district offices
 - * Attorneys for the Division of Child Support Enforcement
 - * National Child Support Advocacy Coalition (NCSAC)

- * Association for Children for Enforcement of Support (ACES)
- * Better Business Bureau of Greater Hampton Roads

■ Methodology Utilized:

- * Surveyed DCSE regional and district offices to ascertain their knowledge of and working relationships with private child support collection agencies.
- * Surveyed organizations and individuals to collect available information concerning collection firms:

Chamber of Commerce

Better Business Bureau of Central Virginia

Better Business Bureau of Greater Hampton Roads

State Corporation Commission

Virginia Poverty Law Center

Association for Children for Enforcement of Support

Professional Investigations

Former Child Support Enforcement Advisory Committee members:

- * Wendell Waller, Assistant City Attorney, Suffolk
- * Betty Murphy, National Child Support Advocacy Coalition
- * Cathy Burch, Parents Action for Child Support Enforcement
- * Murray Steinberg, Family Resolution Council
- * Paul Robinson, Fathers United for Equal Rights
- * Emily McCoy, Commission for Women

- * Surveyed custodial parents who had enlisted the services of private child support collection firms.
- * DCSE staff met with Delegate Purkey, chief patron of the resolution, in order to clarify the intent of the resolution and to elicit information regarding existing situations and problems with collections firms.

II. EXPERIENCES WITH PRIVATIZATION OF CHILD SUPPORT COLLECTIONS

- DCSE's caseload in 1993 was approximately 310,000; currently it is approximately 350,000 cases. Nearly 3,000 cases are added monthly. This rapidly growing demand for child support services has outdistanced the resources currently available. DCSE has been expanding its capacity through privatization efforts.

- Two district offices are currently privatized and a Request for Proposals has been issued for privatization of two additional offices.
- DCSE currently contracts with two private collection agencies for assistance in collecting for extremely difficult cases and for selected services. A contract was entered into with G. C. Services in June, 1992 for selected child support collection cases for which all DCSE efforts have been exhausted. To date DCSE has referred 23,485 cases to them, resulting in a total collection of \$2,194,078. A contract was entered into with Dozier and Associates in July, 1992 for certain legal and blood testing fees arising from court cases. To date DCSE has referred 13,138 cases to them, resulting in a total collection of \$375,134.

DCSE's experience with these particular firms has been positive. It is familiar with the advantages and capacities of private child support collection firms and is supportive of custodial parents who wish to utilize their services. Concern exists, however, regarding treatment received by custodial parents from private collection firms and the potential for victimization.

- Research conducted indicates there is currently no state agency or regulatory body responsible for registering or regulating private child support collection firms. For example, private investigation firms are regulated by the Department of Criminal Justice Services, which requires licensing of investigators. No such requirement exists for private child support collection firms.
- Available information relative to other states does not provide evidence of statutory requirements on such private businesses. A few states, like Virginia, are beginning to consider the issue, but have taken no legislative or regulatory action of which we are aware.
- While data concerning private child support collection firms is not maintained, DCSE staff report a decrease in the number of customers seeking the assistance of private child support enforcement firms during the past year.
- Although some recipients of private child support collection agencies are satisfied with the work performed by the firms, the surveys of DCSE district offices and custodial parents indicate isolated reports of negative allegations. These reports were on individual cases and do not represent any statistically valid sample. While these reports were not validated, examples of allegations are provided in the Appendix.
- The chief patron also noted the existence of anecdotal information alleging inappropriate behavior or business practices on the part of private child support collection firms.

III. OVERSIGHT OF PRIVATE CHILD SUPPORT COLLECTION AGENCIES

- The collection of child support does not fall under the requirements and practices of the federal Fair Debt Collections Practices Act (FDCPA). Child support is not a debt because it does not arise from a transaction, but rather a parental duty.
 - ◆ The U. S. District Court for the Western District of Virginia, Big Stone Gap Division, recently heard the case of **Mabe v. G. C. Services, L. P.** The court ruled that G. C. Services was not required to comply with the FDCPA in its pursuit of child support debts. The case was appealed to the U. S. 4th Circuit Court of Appeals, which has upheld the lower court's ruling.
- Virginia does not have a state law or regulation governing private child support collection firms, nor is accurate, reliable data available to determine the incidence or prevalence of inappropriate practices on the part of private collection firms. The available information is almost universally anecdotal and has not been investigated.
- A child support advocacy group in the state of Pennsylvania is developing recommendations it plans to submit to the state for possible legislative action, although nothing has yet been finalized. Those recommendations include:
 - ◆ The private agency must present proof that all agency employees who handle money or have check writing authority are adequately bonded.
 - ◆ The private agency's agreement with the custodial parent must provide that payment be transmitted to the custodial parent, minus fees and costs, within 24 hours of receipt.
 - ◆ There should be a maximum cap on the percentage of collections retained by the firm.
 - ◆ The private enforcement agency must obtain a signed authorization from the custodial parent. It must expressly state that the custodial parent understands that child support checks provided by the noncustodial parent will be sent directly to the private enforcement agency, not the custodial parent's home address.
 - ◆ The private agency's agreement with the custodial parent provides that no fee or costs will be charged on collections resulting from payment of current support payments from income attachments and payments resulting from court enacted enforcement proceedings such as contempt.

- Another national advocacy group recommends private child support collection firms be regulated or otherwise required to include the following:
 - ◆ Families entitled to child support should be allowed to cancel any contract with a private collection agency at any time.
 - ◆ There should be a maximum cap on the fees allowed to be charged to the family entitled to the support.

- This study identifies the lack of valid information related to inappropriate practices of private child support collection firms operating within the Commonwealth. Allegations are present in some number, but in the absence of confirmation and investigation of those reports, the quantity and precise nature of any illegal or inappropriate behavior on the part of these firms cannot be determined.

- Virginia has for some time recognized the benefits of expanded private sector participation in the child support enforcement program in several principal ways.
 - ◆ DCSE now contracts with private firms for services and expertise not available or feasible to provide in-house, e.g., DNA blood testing and development of sophisticated support guidelines formulae.
 - ◆ DCSE utilizes private collection firms to pursue some delinquent accounts and specialized charges (e.g., attorney and blood-testing fees in certain cases) that would be at most marginally productive for in-house enforcement staff, given their high volume of higher-priority active caseloads. These firms are able to concentrate the needed resources and focus their collection techniques with flexibility and single-mindedness not feasible in a district office, with its ongoing responsibilities and goals.
 - ◆ DCSE has already privatized two full-service district offices, and has recently issued a request for proposals (RFP) to establish two more such offices. Another RFP will be issued soon to privatize most of the centralized processing of child support payments. These experiences will allow increased flexibility in adjusting staffing and other resources to workloads, permit the application of cutting-edge technology more quickly than government bodies can, and reduce the need for more in-house resources.

- The just-cited experiences and plans underscore the Commonwealth's commitment to utilizing the flexibility and expertise of the private sector wherever it is advantageous to the program -- and especially to its clients. As the workload continues to mushroom at a rate far in excess of government's capacity to deploy staff and other resources to keep up, private firms, operating under appropriate oversight, are already proving their worth.
- Child support clients may choose to avail themselves of private collection firms for any number of reasons. They may seek these services to get their support more quickly or fully, while being treated honestly and fairly. From the findings noted herein, the Commonwealth is reluctant to place undue restrictions on the availability of such private services, absent any extensive record of abuse.

This study therefore recommends the following:

- 1) That an agency or board be named which can collect annual registration information on each private, for-profit organization which engages in the collection of child support within the bounds of the Commonwealth;
- 2) That each registering child support collection entity be provided Commonwealth approved child support collection guidelines, which shall be provided to each customer engaging or contracting with the firms for child support collection services; and that the guidelines include the registering agency or board's name, address, etc, to which any complaints should be filed; and,
- 3) That a 24-month assessment of the nature and number of complaints regarding private child support enforcement collection firms be conducted by the identified agency or board, in order to determine the need, if any, for regulation.

GENERAL ASSEMBLY OF VIRGINIA -- 1994 SESSION

HOUSE JOINT RESOLUTION NO. 164

APPENDIX A

Requesting the Department of Social Services' Division of Child Support Enforcement, in conjunction with the Fraud Division of the Office of the Attorney General, to study the need for the regulation of private child support collection practices.

Agreed to by the House of Delegates, March 10, 1994

Agreed to by the Senate, March 9, 1994

WHEREAS, children are the most valuable resource of society; and
WHEREAS, in recent years the duty of ensuring that parents adequately provide for their children has fallen, with increasing frequency, upon the Commonwealth; and

WHEREAS, the methods used by the Commonwealth for enforcing a parent's duty of support are varied, but collection of delinquent support obligations is now being undertaken by private entities; and

WHEREAS, there is some evidence that these entities may be overreaching in their collection efforts and may in some instances fraudulently represent to the obligee their ability to collect the debt and the cost to the obligee of their collection services; and

WHEREAS, the fees and collection methods used by these entities are not regulated by the Commonwealth; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Department of Social Services' Division of Child Support Enforcement, in conjunction with the Fraud Division of the Office of the Attorney General, be requested to study the need for the regulation of private child support collection practices. The study shall include an assessment of the need for criminal penalties to address fraudulent collection practices.

The Department of Social Services' Division of Child Support Services shall complete its work in time to submit its findings and recommendations to the Governor and the 1995 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

APPENDIX B

Examples of allegations concerning private child support collection agencies include:

-Coercing/convincing clients to agree on lower settlements without benefit of proper counseling to meet private company quotas.

-Accepting post-dated checks for future payments, and then claiming them as successful collections, only to have the noncustodial parent cancel payment on checks.

-Misrepresenting collection statistics and ability to collect.

-Being uninformed regarding statute of limitations and impact of inability to collect arrearages in other states.

-Counting the interception of state-issued IRS tax refunds as private company collection, and as a result, assessing their fee for monies not collected by them.

-Accepting cases where there is a wage withholding in effect and taking their fee out of future monies collected through a state-implemented collection method.

-Going out of business within a few months after families have paid application fees ranging as high as \$75 to \$150.

-Contracts may not disclose to the families seeking services that collections will be subcontracted to another collection agency and that the subcontracted collection firm may change many times.

-Charging fees after money has been collected because, for example, location efforts were extremely difficult or excessive long distance telephone calls were placed.

-Threatening noncustodial parents with arrest if immediate payment on child support arrears is not made.