

Forum

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Officials Must Close Loophole for Child-Support Misuse

By Fred Silberberg

California public policy is intended to protect the interests of children by requiring parents to pay child support. Courts use a complicated formula to determine the amount of child support to be paid. The formula is mandatory, with some narrow exceptions.

When the issue of child support gets media attention, it is almost always in the context of "deadbeat dads" who refuse to pay. It is unfortunate, but true, that there is a significant percentage of cases where in the party ordered to pay child support does not comply with the order.

There is, however, something else which happens, although perhaps with less frequency. It can be equally as harmful to children, and it is not addressed by existing legislation, nor are there any methods in place to correct the problem.

The problem is that of custodial parents who do not spend the child support they receive on the children. Some non-custodial parents abide by the court's order and pay what is required, but the parent receiving support is not required to account for the money. They can do

with the money as they please. Since child-support statutes do not address this situation, there is nothing that the paying parent can do about it.

Most family law practitioners have received complaints from parents that the child support they pay is not getting to their child. These parents receive phone calls from their children routinely asking for such things as spending money, clothing and school supplies. These noncustodial parents are being asked to pay for those expenses by their children, or sometimes by the custodial parent, despite the fact that they pay child support on a timely basis.

Clearly, child support does not go only to offset direct expenses incurred by a child. A portion of any family's housing, utilities and day-to-day living costs must be offset by child support.

There are, however, situations when those daily living costs are not incurred by a child, such as when a child attends boarding school with tuition paid by the noncustodial parent in addition to child support or where the custodial parent lives expense-free in property paid for or

owned by another family member.

The mandatory guideline does not account for these situations, and there is no way to ensure that the parent receiving support is spending it on the child and not on the latest fashions for himself or herself.

Because the supporting parent cannot control how the money is disbursed or save it for the child's future expenses, such as higher education, nothing under existing law can prevent the receiving parent from using the money for self-indulgence.

We have numerous disclosure requirements in family law proceedings. Parties are required to disclose assets, liabilities, income and expenses, but there is nothing that requires an accounting to show how child support is spent.

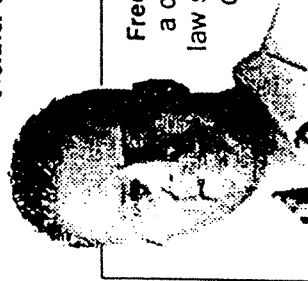
The child-support statutory scheme should be modified to require people to account for the use of this money. While this might be burdensome, that burden would be outweighed by the benefit of knowing that the support is being used for the children, as was intended.

If the accounting is not provided, or if

such an accounting shows that the money is not going to the children but is going instead to the parent, the court should be empowered to do something about it, such as modify support or escrow the funds so that they are disbursed only for the benefit of the child.

Under existing law, parents are obligated to contribute to the support of their children equally. This public policy statement should be bolstered by legislation ensuring that this in fact happens, and if it does not, the statute should provide for consequences.

"Deadbeat parents" come in more than one form. There are those that don't pay for their children, and then there are those that don't spend for their children. Neither one is acceptable



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