

“BEST INTEREST OF THE CHILD”  
LOST CHILD SUPPORT COSTS \$1.3 BILLION

**SUMMARY**

*THIS STUDY PLEADS FOR THE PARTICIPATION OF FATHERS IN THE RAISING OF CHILDREN. HOWEVER, MANY A MOTHER, LEFT ENTIRELY OR NEARLY ENTIRELY, TO HER OWN DEVICES, HAS RAISED CHILDREN IN AN EXEMPLARY WAY DOING CREDIT TO THEMSELVES, THEIR CHILDREN AND THE COMMUNITY. There are not words enough to honor their accomplishment.*

This study begs for a paradigm shift regarding support for separate or parallel parenting. Title IV-D, an amendment to the Social Security Act, holds Orange County hostage in significant ways regarding collection of child support. Though well intended to aid collection of child support, it has often driven wedges between mothers and fathers; and, in essence divorced many children from their fathers. The results have devastating effects on all concerned. Fathers do not pay support; mothers do not receive support; children suffer, and the County is stuck trying to collect the uncollectable.

Orange County Child Support Services (CSS), created at the mandate of federal law<sup>1</sup>, collects less than two thirds of the support it is charged to collect. This costs the tax payers over \$60 million.<sup>2</sup> This uncollected support has grown to a current amount of almost \$1.3 billion.<sup>3</sup> Such a failure demands review. A major factor in the collection of child support is the father’s involvement in his child’s life<sup>4</sup>. Over ninety percent (90.2%) of fathers with joint custody pay support. Less than thirty eight percent (37.9%) of fathers pay support when denied any visitation.<sup>5</sup>

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<sup>1</sup> 42 USC 666(a)(9), CA Family Code §666(a)(9)

<b><u>Description</u></b>	<b><u>MOD Budget</u></b>
Salaries & Employees Benefits	\$49,172,000
Services-Supplies & Others	<u>10,628,000</u>
Total Appropriations	\$59,800,000
Intergovernmental Revenue (66% Fed 34% State)	\$55,270,605
Operating Transfer in from Fund 12C	<u>4,879,395</u>
Total Revenue	\$60,150,000
NET COUNTY CONTRIBUTION	\$ (350,000)

<sup>3</sup> Orange County Department of Child Support Services FY 2011-12 Budget

Annual budget for California Child Support Services (CSS) 2011-12 reported by the director of CSS.

<sup>4</sup> Though the payer of child support could be either the father or the mother, in by far the majority of the cases in Orange County (88%), the father is the payer and the mother is the recipient. The pejorative term often used for the payer is the “non-custodial parent” inferring some non-consequential relationship to the child other than to pay child support. The payer in this report shall be referred to as the father in respect to the fact that he is the payer 88% of the time. (88% comes from an interview with management of CSS October 2012.)

<sup>5</sup> 1988 Census “Child Support & Alimony: 1989 Series “P-60, No. 173 pages 6-7; and “US General Accounting Office Report” GAO/HRD – 92 39 FS Jan. 1992

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Children raised without paternal care are at high risk for deviant behavior, including juvenile detention, criminal incarceration, unwanted teen pregnancy, drug use and running away from home. All these behaviors are far more costly in both public financial costs and loss of human potential than the child support itself.<sup>6</sup>

Joint parenting will increase child support payments and reduce other social problems. This study advocates a five part program:

- (1) Increase the father’s shared time with his children to as close to 50% as possible.
- (2) Counsel fathers in parenting.
- (3) Counsel both parents in parallel parenting including developing a keen appreciation of the child’s view point.
- (4) Seek financial support from Mental Health Services Agency (MHSA),<sup>7</sup> which is required to spend 20% of its funds on prevention and early intervention with a focus on wellness and resiliency programs.
- (5) Establish an oversight committee. The committee would, among other things, monitor the effectiveness of educational and counseling<sup>8</sup> programs and control the funds to cover such programs.

**REASON FOR STUDY**

The lack of child support has profound ramifications, financial hardship being only one. Failure to pay support is symptomatic of abandonment of parental involvement. Statistical evidence indicates children growing up without the meaningful involvement of both parents suffer hugely disproportionate problems. These range from failure to graduate from high school, unwanted teenage pregnancy, drug usage and criminal incarceration. Fathers who are meaningfully involved with their children tend to pay support. This study makes recommendations to gain the participation of both parents and saves money.

**METHOD OF INVESTIGATION**

The research used to authenticate the findings and justify the recommendations of this study is the following:

1. A panel of five family law experts presented opinions regarding the collection of child support and parenting geared to “the best interest of the child.” The experts consisted of (1) a judicial officer, (2) a recently retired Child Support Services attorney, (3) a woman’s advocate social worker, (4) a family law

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<sup>6</sup> See Paternal Parenting, pages 7 and 8, which specifically identified such deviant behavior and vets the statements with authoritative footnotes.

<sup>7</sup> Prop 63 passed in November 2004 and later amended in March of 2011 created the Mental Health Services Act which in turn created the Orange County Mental Health Service Agency.

<sup>8</sup> No distinction is made between counseling and educational programs in this study.

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- attorney who is also an officer of a family educational/counseling program and (5) an officer of a child abuse prevention program.
2. The Grand Jury made a national search for statistics and professional analysis of children’s welfare in relation to paternal care.
  3. Members of the Grand Jury visited the orientation program for an eight week parenting program for separated parents.
  4. The Grand Jury met with Orange County CSS leadership which presented its analysis of what works and what doesn’t work regarding:
    - a. Child Support
      - i. Compliance with court orders,
      - ii. Collection of arrears,
      - iii. Effective child support orders, and
      - iv. Most significantly, orders affecting “THE BEST INTEREST OF THE CHILD.”
    - b. Statistical analysis regarding paternal involvement.
  5. The Grand Jury conducted legal research into both Family Code and Welfare and Institutions Code regarding child support and child care.
  6. The Grand Jury researched the newly amended Proposition 63 mandating dollars be spent on mental health prevention and early intervention programs. This is seen as a possible source of funding family and particularly paternal educational/ counseling.
  7. Information was obtained from the 2012/13 Orange County Grand Jury Criminal Justice Committee investigation regarding:
    - a. The effect of paternal influence on criminal incarceration.
    - b. The effect of paternal involvement or lack thereof in juvenile delinquency.
    - c. The cost of detention of both adults and juveniles.
    - d. The effect of recidivism.

## BACKGROUND AND FACTS

### CHILD SUPPORT

Almost \$193 million dollars (\$192,583,564) of child support was ordered in 2011/12 which fell upon Orange County Child Support Services (CSS) to collect and distribute.<sup>9</sup> Over \$122 million dollars (\$122,222,917) was actually collected by CSS (64%). This left over \$70 million dollars (\$70,360,647) uncollected.<sup>10</sup> This sum fell into arrears, that vast pit of support owed but never paid going back for many years. To its

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<sup>9</sup> Orange County Department of Child Support Services [CSS] FFY 2012 report prepared specifically for the 2012-13 Orange County grand jury, page 1

<sup>10</sup> Ibid page 1

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credit, CSS did reach down into those depths and pull out more than \$58 million dollars (\$58,133,428) in arrears (which included 10% simple annual interest on the unpaid support).<sup>11</sup>

From 1974 to 2002, child support enforcement was conducted by the District Attorney on a law enforcement model. Incarceration and threats of incarceration, liens and license suspensions were the order of the day. There was push back and the effectiveness of the District Attorney was questioned. In 2002, CSS became a separate County agency tasked to do the job of collecting child support, albeit restricted in its authority by state and federal law. CSS took a gentler, kinder customer oriented approach. The results were dramatic. CSS collections and parental compliance increased by over 50% (from collection rates of about 37% to about 65%).<sup>12</sup> Sixtyfive percent compliance is still unacceptable. The goal here is to significantly increase that figure.

One measure of the effectiveness of CSS is in the simple return on investment. To its credit, it is currently collecting about \$3.10 for every dollar it spends as compared to collection of \$2.29 by the state of California.<sup>13</sup> The total annual budget for CSS is more than \$60 million dollars (\$60,150,000).

Orange County CSS owes at least some of its success to its research into which orders for support are paid and which not. “[T]he...maximum compliance, consistency of payments and highest collection per child...” come from orders of 20% or less of a father’s income.<sup>14</sup> To clarify, if a father makes \$3,000 per month and the mother earns nothing and they have one child, the father will be ordered to pay about \$600 per month regardless of his time spent with the child. He will likely pay this. If he has three children, the order will likely be in excess of \$1,000.<sup>15</sup> Thus, he is likely to refuse and disappear. If a father has children with several women (not unusual); the mothers will likely get nothing.

Both parents and three children will be hard pressed to live on the available income and maintain two or more households on \$3,000 or even \$6,000 of gross income. This is no simple task. Paying taxes, rent, buying a car plus insurance and gas, buying clothes, putting food on the table plus supporting a child is a study well beyond the simple issue of child support. But, it is contended here that love of **both** parents is free and can smooth the rough edges of the struggle to get by.

The effectiveness of CSS needs to be measured in the *best interest of the child*<sup>16</sup>. The charge of CSS is supposedly limited to collection of dollars only. That is,

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<sup>11</sup> Ibid, pages 1, 5

<sup>12</sup> Figures supplied by CSS.

<sup>13</sup> Ibid, page 2

<sup>14</sup> Op Cit, page 2

<sup>15</sup> Calculations based upon FC § 4055

<sup>16</sup> California Family Code § 3040. (a) Custody should be granted in the following order of preference according to the best interest of the child...

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nowhere in Family Code § 17000 does it directly authorize CSS to set custody/visitation between parents, scrutinize incomes or potential to earn, or challenge any of the other factors affecting the amount of child support.

The time share each parent has with their child(ren) is significant in determining the amount of support a father must pay. Unfortunately, too many fathers simply accept a minimal time share resulting in higher support orders. Understandably, mothers are accepting of this so as to obtain higher support orders. An order is but a piece of paper with ink on it. Substance is actual payment.

ARREARS

The \$1.3 billion in arrears remains a dead fetid carcass tied to the delinquent father. It is basically beyond collection by CSS or the mother and the stink of the rot smothers the father. He owes it; he most often cannot afford to pay it, and it is beyond bankruptcy protection.<sup>17</sup> CSS can forgive it only if nothing is owed the mother. If the arrears are entirely owed the County for repayment of aid it provided the mother, the county can and does often forgive such indebtedness. However, if a single dollar is owed the mother, that is her dollar and no one has the right to demand she give it up. CSS is not relieved of its obligation to collect, not just her dollar, but also that owed the County. If the father owes \$10,000 in arrears and if the County had provided the mother \$9,500 in aid, not until the father pays the mother \$500 making her whole for the full \$10,000 owed her, can the County compromise the remaining \$9,500 of support owed by the father. Very often, the animosity bred from raising children entirely on her own without the ordered child support leaves the mother with little incentive to forgive the delinquent father. A mother’s loathing of the delinquent father may be less than admirable; but, it is hers and it is understandable.

**Lest the reader conclude that all child support is wrenched from fathers with a dentist’s pliers, it should be acknowledged that many millions of dollars of child support are paid by loving fathers committed to the welfare of their children without any involvement by CSS. CSS is primarily charged to act only when child support is delinquent.**

PATERNAL PARENTING

The panel of family law experts shared the opinion that payment of child support was symptomatic of a much greater problem; lack of paternal involvement in the lives of the children. Statistics show that fathers sharing time with their children pay child support much more regularly than fathers who do not. Over ninety percent (90.2%) of fathers with joint custody pay support. Less than thirty eight percent (37.9%) of fathers

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<sup>17</sup> The arrears can be a few dollars which can be collected. But years of non-payment of even modest amounts, e.g. \$300 per month, accruing over years plus 10% court rate interest often amount to \$60,000, \$80,000 and even hundreds of thousands of dollars of liability.

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pay support when denied any visitation.<sup>18</sup> The benefit of paternal involvement touches issues far beyond the support payments:

- 63% of youth suicides are from fatherless homes (U.S. Department of Housing and Human Services, Census Bureau),<sup>19</sup>
- 90% of all homeless and runaway children are from fatherless homes,<sup>20</sup>
- Girls whose parents separated between birth and six years old experienced twice the risk of early menstruation, more than four times the risk of early sexual intercourse, and two and a half times higher risk of early pregnancy when compared to girls in intact families,<sup>21</sup>
- 85% of all children that exhibit behavioral disorders come from fatherless homes,<sup>22</sup>
- 71% of all high school dropouts come from fatherless homes,<sup>23</sup>
- Children of absent fathers are 69.1% more likely to use drugs,<sup>24</sup>
- 70% of juveniles in state-operated institutions come from fatherless homes,<sup>25</sup>
- 85% of all youths sitting in prisons grew up in a fatherless home.<sup>26</sup>

The list goes on to touch a myriad of social ills disproportionately coming from fatherless homes: bullying, poor academic performance, promiscuity and teen pregnancy, mental health problems and more. As glaring as these statistics are, 50% of mothers “see no value in the father’s continued contact with his children.”<sup>27</sup> Only 11% of mothers value their ex-husbands’ input when it comes to handling problems with their children.<sup>28</sup>

The need for paternal involvement has not gone completely unnoticed. *Fatherhood 101*, as it existed in Orange County in the mid 1990’s was an eight week program. The family law court, empowered by Family Code §§ 3190-3191, offered

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<sup>18</sup>1988 Census “Child Support & Alimony: 1989 Series “P-60, No. 173 pages 6-7; and “US General Accounting Office Report” GAO/HRD – 92 39 FS Jan. 1992

<sup>19</sup> The Fatherless Generation 9 Feb 2011, <http://thefatherlessgeneration.wordpress.com/bibliography/>

<sup>20</sup> *ibid*

<sup>21</sup> National Fatherhood Initiative, 20410 Observation Dr. #107, Germantown, MD 20876, <http://www.fatherhood.org/media/consequences/statistics> quoting Robert J. Quinlan, “*Father’s absence, parental care and female reproductive development in evolution and human behavior*”, *Human Behavior* 24 November 2003:376-390

<sup>22</sup> The Fatherless Generation 9 Feb 2011, <http://thefatherlessgeneration.wordpress.com/bibliography/>

<sup>23</sup> “*I Need a Father-(A Fathers Role in Child Custody)*” 19 Oct 2010, [fathersrightsDallas.com/tag/national-principals-association-report-onsite-state-of-high-school/](http://fathersrightsDallas.com/tag/national-principals-association-report-onsite-state-of-high-school/)

<sup>24</sup> *Mail Online* – November 13, 2012, “*Absent fathers are fuelling drug addiction...*” by Jessica Satherly, <http://www.dailymail.co.uk.news>

<sup>25</sup> US Dept. of Justice, Special Reports, Sept 1988 (other more current research papers continue to reference this study)

<sup>26</sup> Kelly, Joan and Wallerstein, Judith, PhD: SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE, Basic Books, New York, 1980

<sup>27</sup> *Ibid*, page 125

<sup>28</sup> EDK Associates Survey on Women for Redbook Magazine, Redbook, Nov 1994, page 36

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fathers more time with their children and therefore a reduction in child support provided they complete the *Fatherhood 101* curriculum. The fathers entered the program reluctant if not outright hostile. Being a father was not “macho.” Their mindset was that mothers or grandmothers were responsible for raising children – not men. Within four weeks attitudes changed. By graduation, these men would walk through fire to be with their children – and they paid their ordered child support. They also reported significant change in their relationships with the mothers of their children. Respect beget respect and mothers, fathers and particularly children all profited. The program died for lack of financial support.<sup>29</sup>

Child Abuse Prevention Center, Inc., in Orange County has committed to reestablish a like program by July 2013 provided funds can be found to support it.

The National Fatherhood Initiative (NFI) from Germantown, Maryland was established in 1994, on the premise that, “Widespread fatherlessness is the most socially consequential problem of our time.”<sup>30</sup> The report suggests that this view is not hyperbole, but the essence of the fabric of a strong vibrant society. NFI began as a predominantly African American organization addressing the needs of a particular sub-culture. Likewise, Orange County, with one third Hispanic population<sup>31</sup>, needs to address the special issues of the Spanish speaking part of our community. About 64% of Spanish speaking fathers’ child support is in arrears.<sup>32</sup>

*Kids First* ([www.kidsfirst.org](http://www.kidsfirst.org)), established in Orange County around 1997, counsels both parents as well as the children of families of divorce and paternity. It consists of three hour session every Saturday for eight weeks. The Family Law courts, of their own initiative or at the suggestion of counsel representing a mother or father in the throes of custody and/or visitation disputes, order families to attend. Unfortunately these orders usually come only after the parents have figuratively torn limbs from their children, so corrupted are they in their anger throughout the divorce process. Nonetheless, the results of this parenting program has encouraged the courts to continue ordering this type of family counseling and thus obtain better compliance with court orders. The “*better*” compliance is witnessed by the court when the parties return with evidence of completion of the counseling program and stipulate to amenable orders for custody, visitation and support orders. By no means does this study suggest reunification of the family, but rather a better respect among the parties.

The Grand Jury learned that the actual cost for *Kids First* is about \$400 per participant – mother, father and each child. Currently, *Kids First* charges about \$280 per participant to make the program affordable. This cost factor is a limiting issue

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<sup>29</sup> As reported by Gene Kent, one of the founders of Orange County Fatherhood 101 and the facilitator for classes regarding Father’s legal rights and responsibilities.

<sup>30</sup> National Fatherhood Initiative, 20410 Observation Dr. #107, Germantown, MD 20876, fatherhood.org

<sup>31</sup> United States Census Bureau 8 September 2012, [www.quickfacts.census.gov](http://www.quickfacts.census.gov)

<sup>32</sup> Orange County CSS FFY 2012 report prepared specifically for the 2012-13 Orange County Grand Jury, page 5

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preventing more utilization. As valuable as counseling is, its continuation without financial support is questionable as witnessed by the demise of *Fatherhood 101*.

Orange County juvenile detention facilities recognize the value of paternal contact to the extent that it is providing incarcerated fathers the opportunity to hold, cuddle and bond with their children. This is referred to as the “Baby Elmo” program. The motivation is twofold. The first is to establish a relationship so powerful and important to the father that he will act responsibly and avoid any acts that might lead to his re-incarceration. The second is to provide the child with a father. This will improve the child’s chances for success in life.

The Orange County jails are currently investigating initiating a similar program for adult inmates who might reasonably benefit from such a program and who pose no security risk.<sup>33</sup>

The fact that both juvenile detention and the jails are seeking ways for father and child to bond speaks particularly well for paternal training similar to the defunct *Fatherhood 101* program.

COST OF PARENTING

The Grand Jury found three sources of money to cover the costs of counseling parents, and particularly fathers, as described above.

The first source is the individual himself. Family Codes §§ 3190, 3191, which authorizes the court to order counseling, makes no comment as to the cost of the counseling. The individuals ordered to attend are required to meet those costs themselves. The courts are conscious of an individual’s capacity to pay and generally make no orders that simply cannot be obeyed for lack of money.

The second source of funds to pay for counseling is the “lag” money. There is often child support due back to the date of a petition or motion for child support which isn’t brought to court for two to three months or longer. For example, a petition/motion for child support may be filed April 1, but not be ruled on until June 1. If, on June 1, the court orders \$500 per month support from April 1, the father is already responsible for \$1,000 in arrears. This \$1,000 is the “lag” money because the money due lags the actual order. It is conceivable that this lag money could be used to pay for the counseling. The court could rule on a case by case basis whether or not to add this lag money to the end of the father’s child support obligation with or without interest being added.

The third source of money could be obtained from the Mental Health Services Act. In 2004, MHSA levied a 1.0% income tax on personal income in excess of one million dollars (\$1,000,000). The tax generated hundreds of millions of dollars annually to fund mental health initiatives in the state. According to the County of Orange Health

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<sup>33</sup> So stated the Director of Inmate Services Division, Orange County Sheriff-Coroner Department August 2012

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Care Agency Behavioral Health Services FY 2012-13 annual update (May 24, 2012), the agency budgeted over \$100 million (\$101,347,346).

In 2007, the California Department of Mental Health developed guidelines for counties and dictated that 20% would go to help people who had never been diagnosed with mental illness or even shown any evidence of mental illness. The idea was to promote mental wellness, not just treat disorders.<sup>34</sup>

The change in law has become a lightning rod for criticism that funding originally meant for persons suffering from mental illness is now exempt and is being spent on wellness centers, yoga classes, gardening classes, etc. One of the most outspoken critics is the co-author of Proposition 63. Children and youth in stressed families are recognized as high risk of behavioral and emotional problems, and could thus potentially benefit from MHSA funds. Orange County recognizing this priority has committed 75% of the 20% for wellness to prevention and early intervention for those people under age 25. Further, OCMHSA considers financial support of parenting programs a benefit to children even though the money may be given to the parents of children.<sup>35</sup>

Program approval and allocation of funding is a complex process overseen by the Orange County Mental Health Services Oversight Steering Committee and ultimately voted upon by the County Board of Supervisors.

### COSTS OF NOT PARENTING

The cost in loss of human potential is beyond calculation. Neither this study nor any other can place a dollar amount on the pain of a runaway, a suicide, a drug addiction, a school drop-out, a juvenile detention, a rape, an unwanted pregnancy, a long term incarceration for commission of a felony or any number of other self-destructive acts. These costs relate directly to dollar costs. For this study, only those direct costs easily calculable are considered, namely:

Juvenile Detention: The Orange County bed costs per day to hold a juvenile delinquent is \$420.56. Obviously the removal of one child per year from the detention rolls will not save the County \$153,504 (\$420.56 times 365 days). There are fixed costs that must be met to keep the facility open. However, just clothing, food and household costs amount to \$6,431 per child per year.<sup>36</sup>

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<sup>34</sup> California Code of Regulations §3400: (b) Programs and/or services provided with MHSA funds shall: (1) Offer mental health services and/or support to individuals/clients with serious mental illness and/or serious emotional disturbance, and when appropriate their families. (A) **The Prevention and Early Intervention component is exempt from this requirement.** (Emphasis added)

<sup>35</sup> Orange County's commitment to its youth was reported by MHSA leadership.

<sup>36</sup> Bed Costs per Day 2012 for all juvenile detention facilities provided by Orange County Probation Dept.

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Criminal Career: A career criminal costs Orange County about \$65,000 for the first arrest. If criminal behavior persists resulting in a life sentence, the cost to the County will be about \$5.6 million.<sup>37</sup>

Orange County Financial Concerns: Social Services has a huge interest in the collection of support. Dollars that a father does not pay are dollars Social Services is committed to pay to assure the welfare of needy mothers and their children.

OVERSIGHT COMMITTEE

There is no public organization which monitors the welfare of children of separate parenting; however, there exists at least one citizen oversight committee in Orange County: Juvenile Justice Commission. It is specifically authorized by California Welfare and Institution Code §§ 225-231. It is to have 7 to 15 commissioners appointed by the presiding judge and is financed with a state budget of \$159,000 used primarily for administrative expenses. The significance of this commission is its precedence as a citizen’s oversight commission, not its review of children of separated parents.

A similar committee will be vital for the implementation of the recommendations of this study. It is envisioned that this committee would:

- (1) Propagate the availability of educational and counseling programs designed to improve parenting as described above.
- (2) Monitor the effectiveness of such programs. A CSS committee person could statistically report changes in child support payments by participating parents. A committee person representing the educational/counseling programs could share program completion questionnaires. A committee person from MHSA could measure the dollars spent against data from other committee members.
- (3) Act as a financial clearing house to assure parents who would likely benefit from counseling and education are not denied for lack of money.
- (4) Petition the Behavioral Health Director to appoint an Oversight committee person to sit on the MHSA Steering Committee.
- (5) Do such other things as become necessary to maximize a child’s opportunity to a good mother and father.

The committee members need to include among others:

- (1) A CSS representative,
- (2) A member from Court services -- Mediation,
- (3) An attorney from the Family Law Section of the Orange County Bar,
- (4) An attorney from the Hispanic Bar,
- (5) An attorney from Legal Aid,

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<sup>37</sup> “*New Evidence on the Monetary Value of Savings on High Risk Youth*” Dec 2007 by Mark A. Cohen, Vandenberg University and York University. Also referenced by the Orange County 2008/09 Grand Jury, “*Education of Parents and Developments of Strategies to Keep Their Children Out of Gangs*”

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- (6) A representative from the participating parent/child counseling programs in Orange County,
- (7) A social worker and
- (8) A representative from Orange County Behavioral Health Services familiar with the Mental Health Services Act (Prop. 63).

CSS brings a paid staff to initiate such a committee. In addition it brings a research department which tracks the effectiveness of support orders. Its many attorneys have more hands-on experience in the making of child support orders than any other entity short of the courts themselves.

Court Services -- Mediation, though beyond the jurisdiction of the Grand Jury would likely desire membership in as much as California Law mandates that parents contesting child custody must first consult with Mediation.<sup>38</sup> For Mediation to be most effective, it is imagined that it would want to work in harmony to influence child custody and the resulting support.

Attorneys from the Family Law Section of the Orange County Bar are the squires doing battle daily in the family law courts and the Child Support Courts. Their participation is essential as they and the CSS attorneys are the principal legal players involved.

An Attorney from the Hispanic Bar is essential in acknowledging that a huge percent of the families affected are Hispanic.

MHSA has an obligation under Prop 63 to fund prevention and early intervention programs for Orange County. MHSA currently does fund programs for divorced and separated parents.<sup>39</sup> MHSA can serve Orange County well by sponsoring programs that help assuage the hurt to children of divorced and separated parents. MHSA's hold on the purse strings would have tremendous influence on oversight.

## FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, the 2012/13 Grand Jury requests responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of child support and parenting in Orange County, the 2012/13 Orange County Grand Jury has arrived at seventeen (17) principal findings as follows:

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<sup>38</sup> Family Code § 3170

<sup>39</sup> For example, MHSA financially supports Children's Support and Parenting Program (CSPP provides an 11 week series of 1 ½ hour seminars).

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F1 The sum of uncollected child support ordered in 2011/12 (\$70,360,647) plus the accumulated arrears going back many years total over \$1.3 billion<sup>40</sup>. Uncollected dollars of this magnitude scream for attention

F2 The two most salient statistics that lead to payment of support as ordered are:

1. Orders that demand more than 20% of a father’s income tend not to be paid.
2. Orders that grant fathers significant custody/visitation with their children tend to yield payment as ordered.

F3 California Family Code § 4055 dictates what percent of a father’s income he must pay based primarily on his time share with his child(ren) and the parents’ respective incomes. The time share and the amount of income attributed to each parent is a matter of judicial discretion.<sup>41</sup> California Family Code charges CSS to set and collect child support. There is no provision for advocating for factors which will yield pragmatic orders; that is orders that will maximize income for the mothers and compliance by the fathers.

F4 Fathers routinely accept orders granting them about 20% time share with their children.

F5 Reasons for fathers’ acceptance of minimal time shares with their child(ren) are many and beyond the scope of this study; however, from anecdotal stories from the parenting programs referenced in this study, some reasons are:

1. Lack of appreciation of their own worth as fathers,
2. Perception they have no time to care for their children in spite of the fact that the mothers miraculously care for their children with utilization of the very same 24 hours per day,
3. Fear of the responsibility and “know how” of parenting,
4. Often parenting is not seen as “macho”,
5. Reluctance and outright refusal by mothers to permit fathers to have contact with “their” children due to:
  - a. Animosity toward the men who got them pregnant,
  - b. Animosity toward the men who have ignored their children to date,
  - c. Animosity toward the men who scorned them (“...hell hath no fury...”),

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<sup>40</sup> Orange County Child Support Services provided records back to 2000 when the arrears were reported to be \$1.095 billion to the present.

<sup>41</sup> Income is based upon three factors: “actual earnings” (a pay stub for example); “earning capacity” which will charge an individual with the ability to work even though he/she may not be working at the time; and, “life style”, which for example credits an individual with income when enjoying “free” rent. Each of these three means of determining income can lead to different interpretations of actual income.

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- d. distrust of a father’s capability to care for the child (they never saw “Three Men and a Baby”),
- e. Animosity over differing and/or conflicting parenting styles and issues.

F6 Orders for support that are more than 20% of a father’s income will likely result in less actual support paid. An order for \$400 for a man earning \$2,000 is likely to yield an actual payment of \$400. An order for \$600 for a man earning \$2,000 is likely to yield no payment at all. Even if CSS is able to enforce collection, the cost to collect the extra \$200 will likely be equal to or greater than the \$200. Fathers tend to take the attitude that if they are to be delinquent for a penny they might as well be delinquent for a dollar.

F7 Fathers who significantly participate in parenting their child(ren) pay the most child support. Aside from the actual support order, they can also be counted on to pay for the children’s extracurricular activities and luxury items.

F8 Payment or non-payment of child support is only symptomatic of a much greater parenting issue. Children raised without paternal parenting fall prey to a plethora of social ills ranging from dropping out of high school to criminal incarceration. Every child growing up without a father is not doomed; but, statistics show a hugely disproportionate number of children without paternal care suffer very serious human and social ills.

F9 Counseling men who have ignored their children can, and has, turned them into devoted fathers as evidenced by the success of the now defunct Fatherhood 101 program.

F10 Hispanics constitute over one third of the population of Orange County. This increasing demographic deserves sympathetic attention to their unique conditions, including among other things: language, culture, and economic status.

F11 Counseling the adult female, the adult male and the children of their union has and can have the following positive effects:

1. The counseling creates understanding and empathy between the adults for their respective roles as mothers and fathers. This is no small thing. It decreases the animosity and outright hatred between the adults that so often bleeds onto the children.
2. The understanding and empathy in turn results in
  - a. better compliance with support orders and
  - b. better compliance with custody/visitation exchanges and happier, less stressed children.

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F12 The law, California Family Code §§ 3190 – 3191 gives the court the authority to order counseling at its discretion and there exists the means to pay for the counseling for parents and children, specifically:

1. The parents themselves can pay,
2. Lag money can be used to pay,
3. Orange County MHSA (Prop 63) has discretionary money for counseling.

F13 Ignoring paternal parenting is too expensive to allow it to continue. The many hundreds of millions of dollars in unpaid child support and the social failings result in both an incalculable loss in human potential and the financial cost of incarcerating society’s failures.

F14 CSS had a \$350,000 net county contribution in 2011/2012.

F15 Orange County MHSA (Proposition 63) is obligated to use 20% of its budget for programs for prevention and intervention, and of that Orange County has committed that 75% is to be used for the County’s youth.

F16 Promotion of mental wellness includes, among other things, support of programs that prevent youth suicides, youth runaways, unwanted teenage pregnancy, behavioral disorders, juvenile delinquency and high school drop outs. Children of divorced and separated families are recognized as high risk for such behaviors.

F17 The existence of Orange County Juvenile Justice Commission (JJC), which reviews juvenile detention, provides precedence for the creation of a parenting commission.

**RECOMMENDATIONS**

In accordance with California Penal Code Section 933 and 933.05, the 2012/13 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of child support and parenting in Orange County, the 2012/13 Orange County Grand Jury makes the following six recommendations.

R1 Orange County Child Support Services is to recommend support orders that will most likely result in payment. Any proposed order in excess of 20% of the father’s income should be viewed as unlikely to be collectable. This study acknowledges CSS’s role per California Family Code § 17000 as an extension of federal law limiting it to the

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collection of support.<sup>42</sup> Again, this study recommends CSS actively aid parents in seeking orders that will most likely result in payment – not just printed numbers on paper orders. See Findings 1, 2, 3, 4, 5, 13, 14.

R2 CSS should recommend orders that offer the father lower current support so he can afford payment towards arrears.<sup>43</sup> See Finding 1, 2, 3, 4, 5, 6, 7.

R3 As appropriate, CSS should seek orders that mandate the father have counseling or attend an educational program. The word “*Appropriate*” in the prior sentence acknowledges the courts ultimate jurisdiction as to which fathers would benefit. Upon completion of such counseling, father time with the child(ren) should be increased resulting in affordable child support. The cost should be paid with lag money if possible and from Orange County MHSA funds if beyond the father’s ability to pay. See Findings 9, 10, 11, 12.

R4 As appropriate, CSS should seek an order as appropriate for both parents and the child(ren) to complete counseling. (A caveat to this recommendation is that a “counseling order” should not delay an immediate support order.) The cost of such counseling should be paid by the parties if they can afford it or with lag money if possible or from Orange County MHSA funds. See Findings 4, 5, 10, 11, 12.

R5 CSS should form a Parenting Commission composed of following:

1. At least one representative from CSS.
2. One member from Court Services – Mediation.
3. One attorney from the Family Law Section of the Orange County Bar,
4. One attorney from Legal Aid.
5. At least one representative from a participating counseling program.
6. One family oriented social worker.
7. One attorney from the Hispanic Section of the Orange County Bar.
8. One representative from Orange County MHSA.

The Commission should do, among other things:

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<sup>42</sup> CSS is not specifically authorized to advocate what orders should be. This is foolish considering CSS must inject some logical time share and incomes for the parents to determine child support. In fact, parents come to CSS ignorant of anything but their fear. Mother is fearful she will not get enough money to support herself and the children. Father, if he has the courage to meet with CSS at all, fears he will not have enough to live on after paying support. CSS knows that orders for more than 20% of father’s income will likely drive him underground and he will pay nothing at all. Father’s disappearance not only denies Mother of support, it deprives the children of a father.

<sup>43</sup> In total Mother should receive more actual support payment than she would otherwise. Father’s benefit is the opportunity to ultimately rid himself of the burden of arrears.

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1. Collect money and/or seek commitments from Orange County MHSA. Make the money available to mothers, fathers and children if ordered by the court to get counseling.
2. Monitor counseling programs to determine their effectiveness.
3. Work with other groups that might promote justice between separated mothers and fathers to protect children from the potential devastation of growing up without a father.<sup>44</sup>
4. Promote orders in the family law arena that will likely yield compliance and maximum contact with both parents.

Child Support Services should initiate the creation of this commission utilizing part of its County Contribution (\$350,000 in 2011/2012). Future costs should also be borne by CSS. See Findings 12, 13, 14, 15, 16, 17

R6 The Department of Mental Health Services should continue supporting counseling/educational of at least 18 hours. The curriculum should be geared to teaching fathers the skills, rights and responsibilities necessary for parenting. This may be best done with social service agencies in the community. The counseling should be sensitive to Hispanic issues and include classes in Spanish. See Findings F9, 10, 11, 12, 13, 14, 15, 16, 17.

***CAVEAT TO RECOMMENDATIONS:*** *The wisdom of the courts does and should supersede any recommendations of this report. Every mother, father and child is unique as are their circumstances. The courts bear an enormous burden in cyphering out justice. Nothing herein is meant to challenge the judgments the courts might make.*

It must be emphasized that the ultimate goal of this study is to relieve the suffering of the children of divorce and those born without the benefit of a coupled mother and father. They may become better parents improving the peace and joy of future generations. The financial savings to the County is but a side benefit. Near time financial savings may be realized in immediate compliance with more pragmatic child support orders. The big savings will pay off as the next generation escapes unwanted pregnancies, drug addiction, criminal incarceration and other social ills.

**REQUIREMENTS AND INSTRUCTIONS:**

The California Penal Code §933 requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the

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<sup>44</sup> Orange County Jails and Juvenile Detention Facilities are two such groups anxious to lower recidivism by encouraging men with children to assume their roles as fathers.

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Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section §933.05 (a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

(a.) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b.) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

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(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code section §933.05 are required from:

Responses Requested:

Orange County Child Support Services shall respond to: **Findings F1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14**

Orange County Mental Health Services shall respond to: **Findings F5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16.**

Orange County Child Support Services shall respond to: **Recommendations R1, 2, 3, 4, 5.**

Orange County Mental Health Services shall respond to: **Recommendations R4, 5, 6.**