

## **CALIFORNIA'S CHILD SUPPORT PROGRAM PERFORMANCE: - Achieving Reform?**

**A Short History - Reform:** Organizational changes were made to the State of California's Child Support Program under the 1999 legislative session for the purpose of improving the Child Support Program in California.<sup>1</sup> Low performance rankings (based upon newly established federal performance measures)<sup>2</sup> along with a focused advocacy movement and the failure to successfully obtain federal certification of a single automated child support system,<sup>3</sup> resulted in strong political pressure to reform the program.

The program was being previously managed organizationally, at a very low state level which was at a unit level under the Health and Welfare Agency's Department of Social Services and within the Welfare Division of that Department.<sup>4</sup> The Child Support program was at the same organizational level as other welfare benefit unit programs, such as Food Stamps and the Aid to the Aged and Blind.

Creating a Department within the California Health and Human Services Agency to administer all services and perform all functions necessary to establish, collect and distribute child support was added by statutes in 1999.<sup>5</sup> Additionally, at the county level, programs were under local Family Support Divisions within District Attorney's operations throughout the state, with allegedly different approaches and priorities, some with better results than others. These organizations were required to transition over to separate and independent Departments within each county and relabeled as Local Child Support Agencies (LCSAs), based on the *reform* legislation. These changes were to address the lack of leadership at the state level and to improve performance and customer service at the local levels. Making these changes would not only improve performance but would also "...reduce the cost of, and increase the speed and efficiency of child support enforcement operations."<sup>6</sup>

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<sup>1</sup> California Family Code Sections 17303 – 17305 added by Stats. 1999 c. 478 (A.B. 196), Section; Stats. 1999, c. 480, (SB. 542) Section 8.

<sup>2</sup> P.L. 105-200 Child Support Performance and Incentive Act of 1998 (enacted July 16, 1998) revised an older incentive program that existed since 1975, which had been solely based on collections (initially for welfare-related collections and later incorporated non-welfare collections in the formula; a single factor relating to the state's ratio of collections to the state's child support expenditures.

For a more in-depth analysis see: *Analysis of Federal-State Financing of the Child Support Enforcement Program*, Congressional Research Service, Carmen Solomon-Fears, Specialist in Social Policy, July 19, 2012.

<sup>3</sup> Chapter 479 (AB 150 Aroner), amending Section 15200.95 of, and to repeal and add Chapter 4 (commencing with Section 10080) of Part 1 of Division 9 of the Welfare and Institutions Code.

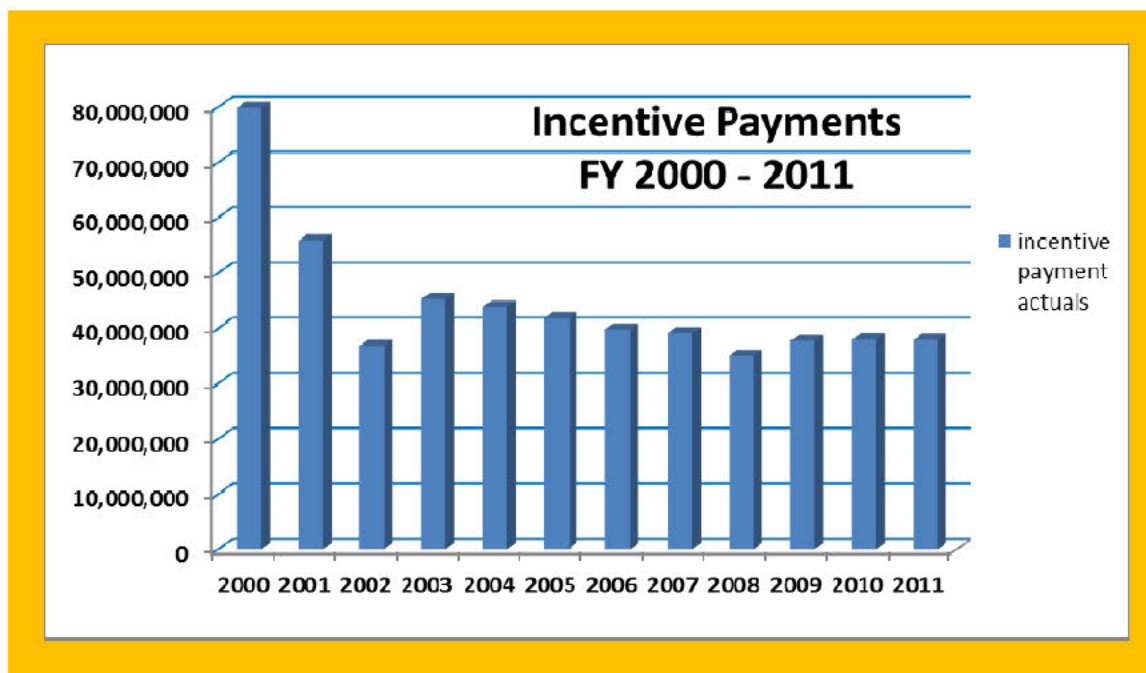
<sup>4</sup> Part 302, Title 45 Code of Federal Regulations, Chapter III, Section 302.12 which references State Plan Requirements: Single and separate organizational unit shall be established to administer the IV-D plan. Such unit is referred to as the IV-D agency. (1) *The IV-D agency may be: (i) Located in any other agency of the State; or (ii) Established as a new agency of the State.* Subsection (3) provides the authority to delegate any of the functions of the IV-D program to any other State or local agency or official, under provisions of a cooperative agreement...which the State continues to do utilizing California political subdivisions (counties).

<sup>5</sup> Stats. 1999 c.478 (A.B. 196) Section 1.

<sup>6</sup> Section 17208 California Family Code, subsection (a). Subsection (b): *The department shall maximize the use of federal funds available for the costs of administering a child support services department, and to the maximum extent feasible, obtain funds from federal financial incentives for the efficient collection of child support, to defray the remaining costs of administration of the department consistent with effective and efficient support enforcement.*

Federal performances in most of the five federal measures have noted increases over what they have been in the past, but federal incentive dollars which are the basis for rewarding states for such performance has slowly declined over the past 12 years for the State of California.<sup>7</sup>

CALIFORNIA	STATEWIDE PEP	PERCENT OF CASES WITH ORDERS	PERCENT OF CURRENT COLLECTIONS	PERCENT OF ARREARAGES	COST EFFECTIVENESS RATIO
	FM1	FM2	FM3	FM4	FM5
FFY 2000	179.7*	69.1	40.0	53.4	\$3.23
FFY 2012	101.62	87.88	61.37	63.52	\$2.47



Note: Total phase in with the new federal Child Support Performance and Incentive Act of 1998 P.L. 105-200 was fully implemented in FFY 2002. California had previously optimized the older incentive system, and was receiving the highest amounts in the nation.

\* A misinterpretation of federal instructions resulted in the State being out of compliance, and “substantial penalty in addition to the loss of incentives” took place. A negative Data Reliability Audit (requiring a 95% standard of reliability) for FPM # 1, reduced overall incentives for this specific year. Ref: LCSA Letter No. 01-29 – (Subject: Status of Federal Data Reliability Audits), August 27, 2001.

<sup>7</sup> Solomon-Fears, op cit., p. 23.

The federal performance measures (FPM) were developed with the concept of developing measures that were key outcomes for helping families being served by the program and retaining a cost effectiveness component. Rewarding states for these performance outcomes would expand the original concept provided by Congress, back in 1974-75, under the provisions set forth in Public Law 93-647 to provide collection incentives to states and local political subdivisions of said states.<sup>8</sup> By connecting each of the individual FPM's to a "base collection" amount, the program would still retain the importance of maximizing collections. Base collections are a critical part of the formula for a state in optimizing their share of the federal incentive dollars.<sup>9</sup>

Base collections are dollars collected and distributed during the federal fiscal year (October 1<sup>st</sup> – September 30<sup>th</sup>). Those dollars include non-welfare dollars (never-assisted) families, who have applied for child support services. Added to these dollars are the collections made and distributed to those families who are currently assisted, those receiving TANF (temporary assistance to a needy family) and also collections which are distributed to those families who were formerly assisted. The currently assisted and the formerly assisted collections are considered double the weight of the never assisted cases. So the formula is multiplied by 2 x those collections and added to the never assisted collections to arrive at the State's base collections.

California since the time of the "reform" has had insignificant increases in their collection totals and has instead been focused on at least two of the individual federal measures; two measures that one would think would result in increased collections. Those two measures are the percentage of current owed compared to child support being collected (FPM 3) and the percentage of cases that have received a payment during the federal fiscal year (FPM 4). Both of these measures are not only impacted by the actual increase for the measure (numerator), but higher percents can be obtained by decreasing the individual item actually being measured (denominator). This can be a major problem for measuring outcomes that are percentage driven.

One can obtain a higher percentage for a specific measure by decreasing the item being measured. Instead of increasing the numerator decreasing the denominator can have the same effect for improving one's performance. This can be accomplished by establishing low orders for support or reducing the number of cases within a caseload. Higher percent gain for the federal

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<sup>8</sup> Ibid, p 7, 22.

Note: Federal law requires states to reinvest incentive payments back into the child support program and in the past federal draw down based on the available sharing ratio was allowed. However, currently there is no federal match (draw-down) on incentive payments. Also refer to CFR Title 45, Chapter III, Section(s) 302.55 & 303.52 (Pass-Through of incentives to political subdivisions) requirements. Section 458 of the Social Security Act (42 U.S.C. 658) P.L. 95-30 Tax Reduction and Simplification Act of 1977 eliminated the different rates of 25 and 10 percent and substituted 15 percent rate to apply to collections. Different rates were based on collections that either originated within or outside a states' jurisdiction.

<sup>9</sup> <http://www.acf.hhs.gov/programs/css/resource/child-support-performance-and-incentive-act-of-1998> CSPIA, Section 458A (Incentive Payments to State), (b) (2) (A) Incentive Payment Pool was at 483 million in 2008 + CPI for subsequent years. Section (b) (5) both (i) and (ii) are critical areas for calculating a state's base for the specific FFY and is critical for maximizing federal incentive dollars – it is the collection base for the State.

performance measures can be obtained by reducing the denominator for the individual measures.<sup>10</sup>

Again, the importance of the “base collection” cannot be overstated. It is a critical part of the Child Support Performance and Incentive Act of 1998 (CSPIA) and may not be fully understood or leveraged for optimizing the federal incentive program for the State of California. Also, by not increasing the collection totals for the State of California, the state continues to be ranked with one of the poorer cost effectiveness ratios (FPM 5) at \$2.47, placing California at 51<sup>st</sup> out of the 54 reported jurisdictions for 2012.

Improvement for (FPM 3) percentage of current collections compared to current amount due, has improved greatly, from only a 40.0 percentage amount in FFY 2000 to a 61.4 percentage for FFY 2012. This is a 21.4 percentage increase in this twelve year period of time. California is ranked now at 29<sup>th</sup> for FFY 2012.<sup>11</sup> This particular measurement has been a highly focused measure from the beginning of the reform period. However, the determined focus for this individual measure has also resulted in reducing the denominator in this particular measure and as well with others measures.<sup>12</sup> The reducing of the measured amounts has resulted in lowering the opportunity to increase the “base collection” amount resulting in the state receiving each year a lower amount from the federal incentive pool.

The state administration prior to the 1999 reform made a decision, which has resulted in fewer cases being referred to the Child Support Services program.<sup>13</sup> The below short analysis provides “best practice” information as to how the State can improve the “base collection” amounts, increasing and maximizing federal incentive dollars. Picking up this “best practice” and implementing a proper court directed referral to the Child Support Services program would result in additional federal dollars flowing into the State of California and would properly serve more of the children in the State of California.

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<sup>10</sup> Percent of cases with a support order established (FPM 2); percent of collections on current support (FPM 3); Percent of cases with collections on arrears (FPM 4); Cost effectiveness ratio (FPM 5), but can impact the numerator at the same time.

<sup>11</sup> OCSE FFY 2000 & 2012 Preliminary Data Report, – Unaudited Performance Incentive Scores.

<sup>12</sup> Caseload for California in FFY 2000 was at 2,028,851 and in FFY 2012 reported 1,332,942 active cases. In the past 5 years from FFY 2008 to FFY 2012 the California Child Support Program has experienced a reduction of - 383,699 children within their active caseload. Texas gained over +268,483 children for this same period of time with a positive caseload gain from FFY 2000 of 1,058,180 to FFY 2012 of now 1,345,121. *OCSE FFY 2000, Table 11.A.1; FY 2012 Preliminary Report Table P 9 (Total Caseload for Five Consecutive Fiscal Years) and Table P-15 (Total Number of Children in IV-D Cases for Five Consecutive Fiscal Years).*

<sup>13</sup> OCSE-AT-94 –02 (Statutory reference 42 U.S.C. 666 (a) (8) (B) Section 101 of the Family Support Act of 1988, P.L. 100-485) required that effective January 1<sup>st</sup>, 1994 all states are required to implement immediate withholding in all support orders. Action Transmittal 94-02 provided specific instructions for states to effectively implement this provision of the Act. The State of California made the decision that individual custodial parents could obtain their own wage withholding orders under the premise that this method was an effective and efficient process that would qualify as an “alternative system” under the federal instructions.

## Statement of Problem:

The current California process of receiving cases within the “never assisted” category as a “complaint driven/reactive” process instead of a “directed court referral/proactive” process will continue to result in this caseload category being underrepresented in California. This will result in California continuing to have difficulties in obtaining a higher ranking for the cost effectiveness ratio FM5 and will continue to have less and less incentive funding coming into the program, even with higher percent gain for other measures, due to the “base collection” not substantially increasing. There is no reason to believe that California’s child support federal performance measures would not respond in a corresponding fashion as other large states have experience with this proactive approach to their “never-assisted” caseload.

**Analysis:** Comparing California with other highly populated states indicates a very disproportionate amount of distributed collection in the “**never assistance**” category representing a higher percent of collections and caseload for those comparable states.<sup>14</sup>The fundamental difference between California and other large states, is that other large states have implemented effective regulations and policies to proactively reach out to the “never-assisted” caseload and subsequently make those cases part of the state’s overall IV-D caseload. Consequently, those states create the following advantages:

- Collections on those cases are counted for purposes of the “base collection” that increases the individual state’s share of the federal incentive pool, resulting in gaining more federal incentive dollars;
- The state or local IV-D program does not have to wait until this type of case falls into arrears and costly enforcement and financial services are requested along with increased court time in determining the amounts owing;
- Creates a proactive solution-oriented process rather than a reactive high cost enforcement approach to the never assisted caseload and lowers the potential of having obligors falling into delinquency modes regarding their child support obligation.

In 1994, Federal instructions/requirements for all states and jurisdictions to maximize the use of wage withholding in all court ordered cases was largely not instituted by the State of California. A decision based upon it being too expensive to implement.

The election by the State of California officials within the child support program to allow individuals who were not in the IV-D system to obtain their own wage withholding orders resulted in a very poor and inefficient system for the collection of child support for families who are in need. When wage withholding does take place as a non-IV-D case they do not qualify for any federal incentives, and the State cannot claim any federal matching funding for processing payments through the Statewide Distribution Unit.

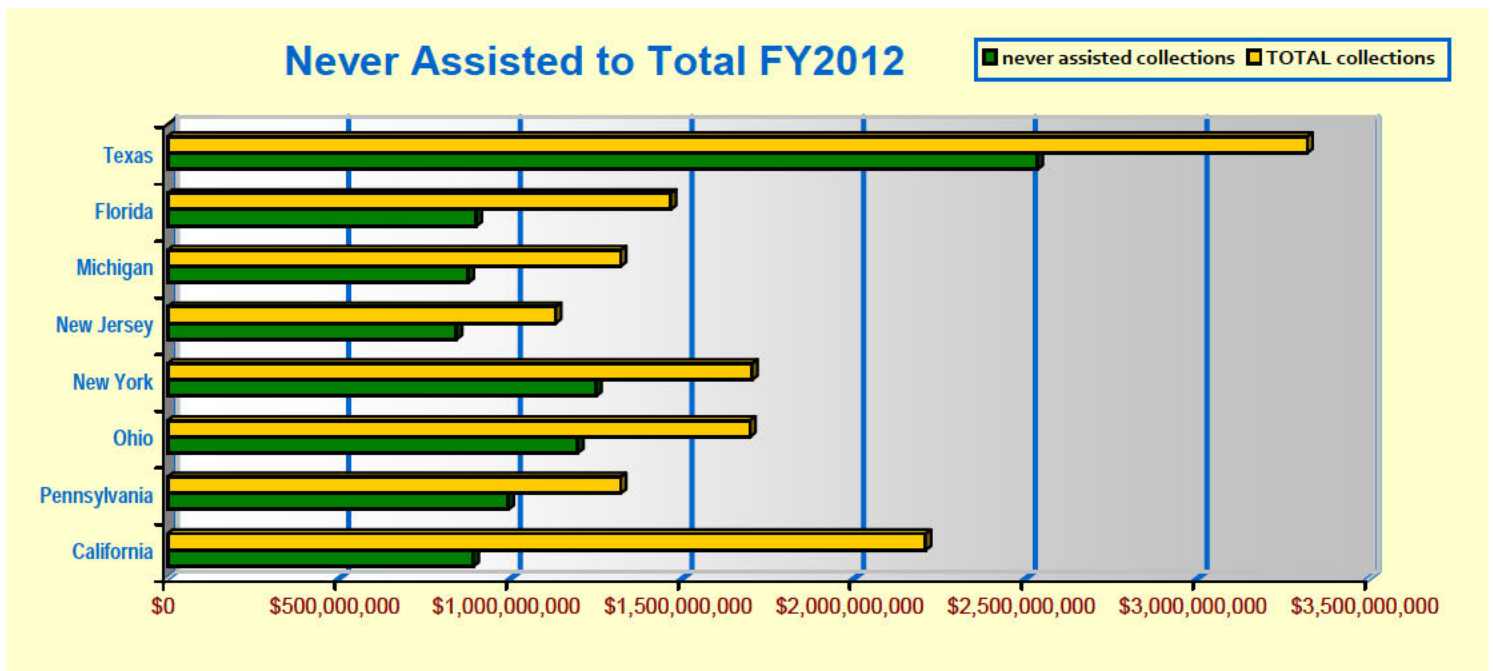
Many of the states that knew of the importance of early intervention and monitoring and enforcing support obligations had previously had system or rules of court making sure that court orders for support would be honored. Michigan, Pennsylvania, Ohio and others are considered

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<sup>14</sup> This analysis includes only those populated states that have reported distributed collections of at least 1 billion dollars or more for the individual selected federal fiscal year.

“universal order” states, in that they have for years had an immediate monitoring and enforcement mechanism for all child support orders.<sup>15</sup>

Additionally, the states that have implemented programs that allow for a court referral process to the individual IV-D agencies, show major improvements in other measurements which include the collection to cost ratio (FPM 5). Texas, for example, has increased this measure from \$4.96 in 2000 FFY to \$11.11 in FFY 2012. Texas reported total distributed collections for their “never assisted”<sup>16</sup> caseload of \$2,534,500,107, with a total of 859,805 cases in this category. California reported distributing \$891,186,221 with a caseload of only 306,097 for the federal fiscal year ending September 30<sup>th</sup> 2012.

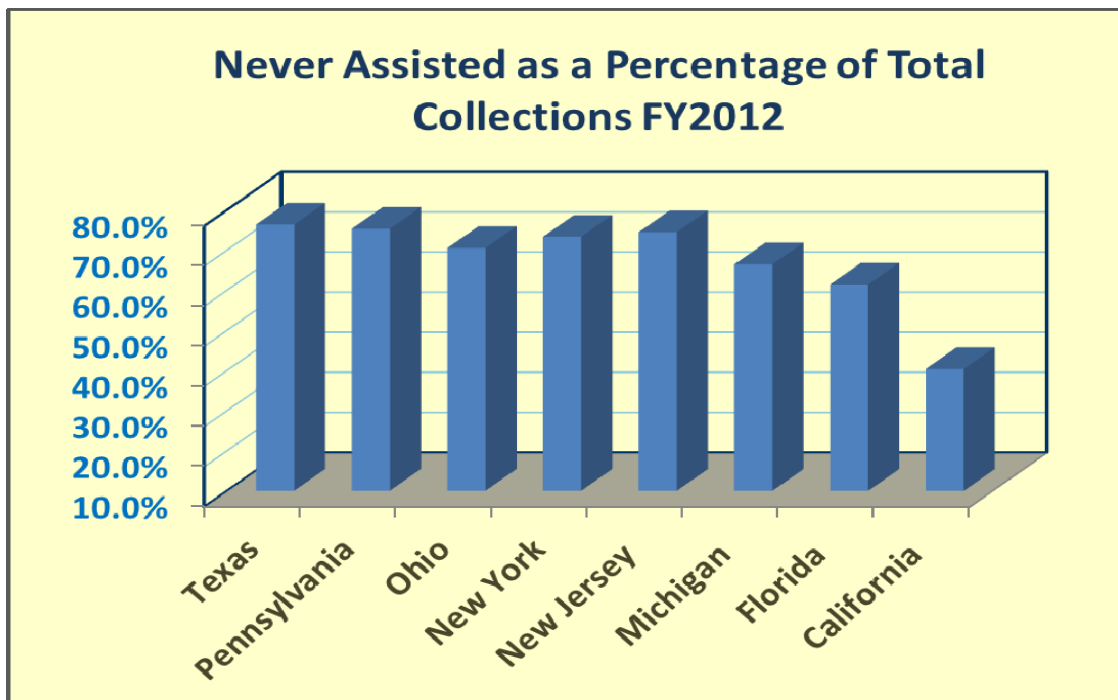


The 2012 data shows that the States of Texas, Pennsylvania, Ohio, New York, New Jersey, Michigan and Florida collected “never assisted” payments at an average percent of their total

<sup>15</sup> The State of Texas on March 21<sup>st</sup> 1996 received federal waivers to provide IV-D services to non-AFDC cases in county child support registries without an application for IV-D services under Section 454 (6) (A) and also a Section 454 (1) waiver allowing the project to be conducted on a less than statewide basis. The project obtained court orders directly from the courts, within three political subdivisions within their state, providing a process of showing the importance of an “early intervention” system and providing an immediate delinquency monitoring system (self-starting enforcement system) for individuals under court orders. Other states have developed methods of obtaining simple applications for IV-D (Child Support Enforcement Services). States show a much higher percent of overall collection for current support as well as improved performance. Note: Federal law requires a IV-D agency to have on file a signed application for service; Texas obtained a waiver to not have such on file.

<sup>16</sup> Never assisted collections include collections that are made on behalf of families that fall into the Medicaid Never Assistance category. Receiving services under Title IV-D of the Social Security Act, and who currently received or who have formerly received Medicaid payments under Title XIX of the Social Security Act, but who were not currently receiving and who have never formerly received assistance under either Title IV-A (TANF or AFDC) or Title IV-E (Foster Care) of the Social Security Act.

collections of 71.08%. California, on the other hand collected only 40.35 percent for “never assisted” cases out of its total collections. If California would institute a process similar to that of other states, particularly the State of Texas in implementing a proper and streamlined court referral process, utilizing the existing Child Support Case Registry Form (form FL-191) and amending such to include an application for Child Support Services (IV-D), as an opt out process, California’s total collections would increase by \$151,750,498<sup>17</sup>, and would make California eligible for additional federal incentive funds.<sup>18</sup> Also, because these cases are now IV-D cases matching federal funds would be available to help offset operational costs at the Statewide Distribution Unit.



<sup>17</sup> Increase is based on an 80% compliance payment rate for the non IV-D caseload that opt into the IV-D program. An estimate that 50% will opt in, based on other state research. The higher payment compliance rate is based upon other jurisdictions who have implemented this early intervention, direct court ordered referral process to the IV-D program. See Integrated Child Support System – Annual Progress Report (Attorney General of Texas) July 2003, “The waiver of the application requirement extends the benefits of early monitoring to a much larger number of child support obligees...only fifty percent of custodial parents participated in the early monitoring program when there was a requirement for a signed application.” p. 31.

<sup>18</sup> According to research by the Child Support Directors Association (CSDA), the infusion of the non IV-D never assisted cases into the state and local caseload would result in an increase in the amount of performance incentives the program receives. In FFY 2011 California received only \$37,894,749 and Texas went from FY 2002 at \$33,815,354 to \$59,639,748 in FFY 2011. Currently there is \$560,000,000 available in the national incentive pool. California’s results would see within the first year and estimated increase of \$141,816,917 and in the second year with the referrals becoming an accumulated amount, an increase of \$545,449,680 and the third year an increase of \$1,210,898,290. (Refer to Appendix A) spreadsheet.

The average percent of the never assisted caseload for the other six most populated states is substantially greater than that of California. The category of the caseload is reflective of the collection amount, creating a greater disadvantage for California with only 40.35 percent of the caseload falling into the “never assisted” category. Florida is at 61.38 percent; Texas was at 42.33 percent in 2003 and is 76.33 percent, a 55.4 percent increase. Michigan has a never assisted caseload of over 66 percent, New York is at 73.29 percent, Ohio is at 70.48 percent and Pennsylvania is at 75.27 percent.

It should be noted that California’s percentage in this category from September of 2003 was at 27.01 percent with 496,496 cases and in FFY 2012 reported a caseload of only 306,097 cases for the 22.9 percentage of all cases. **California actually has decreased the number of cases in this category, whereas others have dramatically increased their percent of cases within this category and leveraged more federal funds for their programs.**

### **Opportunity to Maximize Federal Funding:**

A proposal is needed for the legislature to amend the California Family Code Section 4201 to change the language to shall instead of may for directing the local child support agency to monitor and enforce the child support order. Amending the FL 191 form (Procedures for child support case registry form) adding/changing Rule 5.330 of the California Rules of Court to incorporate an application for IV-D services with an “opt out” provision is also needed or would facilitate in achieving our goal of more “never assisted” cases. (Appendix B)

Unless California receives a waiver for not having an application on file from one of the parties we would have to obtain an application and have it on file to obtain federal funds relating to the enforcement or other actions associated with the case. This type of legislative action or adoption of a statewide rule of court would be similar to other large states that have taken proactive steps to include “never assisted” cases into the state and local IV-D caseload.

The result would be an increase in federal performance measures, an increase in reported total collections, and finally an increase in overall federal assistance to California based on the state being entitled to a larger share of the federal incentive pool. The most important program performance improvement would be that California would actually have a new process (reform) that would serve the children of the State in a much more effective and efficient manner.

*Graphics: S. Liu*

### **CALIFORNIA’S CHILD SUPPORT Program Performance – Achieving Reform?**

Date: January 22, 2014

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*Stephen Kennedy has over 40 years of experience in the program of establishing and collecting child support. He has for the past 20 years been employed with the Monterey County program and started his career in San Luis Obispo County and migrated up to Humboldt County serving as the administrator for the Family Support Division. He has served on the National Child Support Enforcement Association Research Committee and has been a member and has chaired other research and performance measurement committees within the State of California via the California Family Support Council and the California Child Support Director’s Association. He is a graduate of Cal Poly, Pomona.*