A recent study for the U.S. Office of Child Support Enforcement (OCSE) looked at state practices used to establish child support orders. Nine states were studied with a particular interest in differences between administrative and judicial processes. Among the report’s findings:

- Using a taxonomy devised to identify the level of a state’s child support processes, 26 states were identified as judicial, 17 as using a mixture of judicial and administrative processes (quasi-judicial), and 8 were primarily administrative. The actual process for establishing orders varied within states and even across offices, however. Procedures were sometimes determined by staff preferences.

- The nine states vary widely in terms of what is considered service of process (by which states notify noncustodial parents of the intention to establish child support). States whose child support processes are administrative tend to use certified mail for service of process, and judicial states were more likely to use in-person (via sheriff or private process server) service.

- A state’s use of judicial procedures for establishing child support orders does not ensure that a client will see a judge or enter a courtroom, but only links the process to a court calendar and court clerks. In judicial states, efforts are often made to have a client stipulate (agree) to a support order in order to avoid a hearing and expedite the establishment of the order. In the judicial states studied, only contested cases actually went before a judge.

- In Colorado, counties differed in whether caseworkers calculated debt owed to the state or retroactive support.

- Seven of the nine states use minimum wage at 40 hours per week to impute (ascribe) income in the absence of financial information. The other two states used a higher standard (e.g., average wage in the state) for imputing income. Income is imputed when there is no available financial information on which to base an order, or when the noncustodial parent is not present at the establishment of the order.

- Caseworkers in administrative states often have discretion to deviate from state child support guidelines, while their counterparts in judicial states do not. States reported that generally guidelines are presumed to produce the correct child support order, however, and that deviations from the guidelines are rare.

- States did not track default rates, but interviews with child support staff indicated an estimated default rate of 20-35% for all orders.

The report, Administrative and Judicial Processes for Establishing Child Support Orders, June 2002, was prepared by the Lewin Group and is available at [www.acf.dhhs.gov/programs/cse/](http://www.acf.dhhs.gov/programs/cse/). Go to Policy Documents, Dear Colleague Letters, DCL03-15. As of this writing, the report was not available at the Lewin Group website.
On June 11, the House of Representatives passed an extension of the Temporary Assistance for Needy Families (TANF) program (H.R. 2350) by a vote of 406-6. The action would continue the TANF program with no major changes to policy or funding through September 30, 2003. The extension is likely to be taken up in the Senate soon. Reauthorization of the TANF program is expected to occur in July. Points of continued disagreement between the Senate and House versions of reauthorization legislation include the extent of a work requirement, allowable work activities, child care funding, superwaiver authority and child support provisions.

A good resource for following TANF reauthorization is the website of the Midwest Partners, www.midwestpartners.org.

On June 25, the Wisconsin Supreme Court upheld a Court of Appeals decision that refused the child support modification request of a father whose income was reduced from almost $2,000 per month to $60 per month during his 3-year period of incarceration. The father had argued that his $543 monthly child support order was impossible for him to pay given his current incarceration and lack of assets, and that the resulting $25,000 debt would be insurmountable for him upon release. While the Court found it appropriate to consider incarceration as a factor when reviewing a request for a modification, it was persuaded against the modification request by the fact that the father had a relatively short sentence and, according to the court, would not be prevented from earning his former salary upon release. The Court also considered the nature of the father’s criminal history, which involved repeated arrests for driving while under the influence of alcohol and cocaine possession to be moral grounds that a court may appropriately consider in determining whether to grant a child support modification to an incarcerated parent.

The majority stated, however, that a longer sentence could tip the balance in favor of a modification, and that incarceration could not be considered analogous to "shirking" (intentionally avoiding) one’s child support obligation. The majority opinion also noted that this was not a clear-cut case and that there are factors weighing both ways in this case. Yet the court was not prepared to overrule the decision of the trial court because the majority believed the trial court had looked at the appropriate factors in this type of case.

In her dissent, joined by Justice Ann Walsh Bradley, Chief Justice Shirley Abrahamson noted that:

• Failure to modify child support for incarcerated noncustodial parents with no assets undermines the goal of maintaining a child’s standard of living in both the short term and the long term, and is not in the best interest of children.
• She agreed with the Amicus Brief jointly submitted by the Center on Fathers, Families, and Public Policy and the Wisconsin Council on Children and Families that "child support orders that are beyond a noncustodial parent’s ability to pay are not in the best interests of the child."
• The consequences of incarceration for future employment are significant and would contribute to the difficulty of paying off the accumulated debt upon release.
The case is *In re the Marriage of Toni L. Rottscheit v. Terry L. Dumler*, Case number 01-2213.

The U.S. Office of Child Support Enforcement (OCSE) has issued final regulations that implement changes made to child support laws by federal legislation, including the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and the Child Support Performance and Incentive Act of 1998. The regulations have been distilled and summarized by the Center for Law and Social Policy (CLASP) in a memorandum by Paula Roberts. Some of the analysis of the substantive changes and issues brought about by the regulations are copied (with permission) verbatim here:

- The former regulations contained a provision that, once all [child] support had been properly distributed, if there was money left it was to go to the family. This provision was deleted from the Interim Final regulation. CLASP requested that the provision be maintained so that it was absolutely clear that a state could not retain more in child support than it had paid in benefits to a family. OCSE declined to do this since the statute is clear on this point. However, it did state that, "...the basic principle of ensuring that the State never retains more assigned support collections than the total amount of assistance paid to the custodial parent is still in effect. This provision is found in section 457(a)(1)(B) of the Act (see also two Action Transmittals on distribution, OCSE-AT-97-17 and OCSE-AT-98-24)."

- The Response to Comments reiterates that state income tax intercepts are to be distributed under the family-first distribution rules, not the rules applicable to federal tax intercepts. This is very important to post-assistance families. Under 42 USC § 657(a)(2), this money is supposed to go to these families until all of their arrears are paid. However, some states have been retaining these funds to pay arrears owed to the state under the public assistance assignment. OCSE clearly states that this is wrong: "There is no discretion in federal law to allow State income tax refund offset collections to be distributed like federal income tax refund offsets. 68 Fed. Reg. 25295. Advocates may wish to check with their state to make sure these funds are being distributed properly.

- The new regulations make explicit that states must adjust orders to provide for children’s health care needs even if no change in cash support is necessary. 45 CFR § 303.8(d). The final regulations do not make other major changes in medical support. However, the Response to Comments does discuss what happens when an order requires the noncustodial parent to provide private health care coverage, but the custodial parent already provides such coverage and does not wish to switch to the noncustodial parent’s coverage. The Response states that the state agency should seek to have the order changed. As long as the order requires the noncustodial parent to provide private coverage and such coverage is available, the agency must enforce the order and send the noncustodial parent’s employer the National Medical Support Notice. 68 Fed. Reg. 25300. While consistent with the law, the guidance is at odds with common sense as well as the recommendations of the congressionally established Medical Child Support Working Group.

The memorandum is available at www.clasp.org.
Several states used Father's Day as an opportunity to arrest fathers who owe child support. It is not clear from available information whether or not states made efforts to distinguish between able-paying and low-income fathers in conducting the sweeps.

- In Cook County, Illinois, where 72 fathers were arrested, the county sheriff is quoted as saying that the Illinois Department of Public Aid generated many of the warrants. This would suggest that much of the child support owed by the noncustodial parents who were arrested was support that had been assigned to the state as reimbursement for public assistance, and was not destined for their children.
- In New Jersey, a three-day state-wide sweep led to 717 arrests for nonpayment as well as for failing to appear at court hearings to establish a child support order or order for medical support.
- In the state of Washington, 90 people were arrested as part of a sweep in King County. The county has arrested more than 300 this year on civil-contempt warrants. In Clark County, 15 were arrested.
- Dallas County, Texas is reported to have served 800 warrants for nonpayment of child support as part of a statewide sweep. Contempt-of-court charges will be filed against these parents for failure to appear in court and failing to pay child support.
- In Tift County, Georgia, 40 people were arrested in a crackdown on nonpayment.

The Hispanic population in the U.S. has become the largest minority group, according to new figures released by the Census Bureau. In July 2002, 38.8 million Hispanics, or 13.4% of the total population, lived in the U.S., slightly more than the U.S. African American population of 38.3 million. High population growth since the 2000 census was conducted accounts for the milestone having been reached earlier than expected. Earlier estimates anticipated that Hispanics would become the country’s largest minority by 2014, but in the two years since 2000, Hispanics have accounted for more that half of the total U.S. population growth. Three in five Hispanics who live in the U.S. were born here. The report is available at http://eire.census.gov/popest/data/national/asropopbriefing.php.

Please Note: The next Policy Briefing will be available in August.