



CENTER ON FATHERS, FAMILIES, AND PUBLIC POLICY



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# The Effect of Child Support and Criminal Justice Systems on Low-Income Noncustodial Parents

BY REBECCA MAY





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*When You Need a Safety Net, but There's Only a Dragnet*

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## **INTRODUCTION**

Over the course of the past several years, the Center on Fathers, Families, and Public Policy (the Center) has gathered information on the relationship between incarceration and child support enforcement, and the impact of both on low-income noncustodial parents and their families. We have investigated policy and law, reviewed the relevant literature, and most important, conducted a series of focus groups (with participants from Georgia, Florida, the District of Columbia, Maryland, and Wisconsin) and interviews with noncustodial parents and caseworkers, in order to understand and convey the experience of noncustodial fathers whose voices are rarely a part of policy discussion in this area. Specifically, we were interested in two circumstances:

- The increasing use of the criminal justice system to enforce child support, and
- The impact of incarceration, regardless of the reason, on child support obligations and debt, and on family relationships.

While the noncustodial parents who experience either of these two

**A** family on welfare will not benefit from an incarcerated father's child support payment or accumulated debt, and yet in discussions of, or in court cases concerning, the modification of child support for incarcerated parents, this critical element in determining a child's best interest is rarely considered.

types of child support issues would be expected to share many of the same characteristics and barriers, these are distinct policy issues. In the first case, a parent who does not make child support payments for whatever reason, is incarcerated due to his child support debt. In the second, an incarcerated father may or may not be aware of a child support debt, but will have to contend with many serious consequences for failure to maintain regular payments during the period of incarceration.

Our interest in looking at these issues is focused exclusively on the non-custodial parent who is poor. Many noncustodial parents could afford to pay child support, but choose not to. Laws that can have devastating consequences for parents and families when noncustodial parents cannot afford to pay are justified and rational when applied to parents with the means to pay. But the harshest of enforcement tools, particularly that of incarceration, have a disproportionate impact on low-income noncustodial parents because these are the parents who cannot avoid jail either through the payment of child support arrearages or by retaining a lawyer to modify their child support obligation so that it reflects what they can afford to pay.

For poor noncustodial parents, the failure to pay child support does not in itself signify a lack of emotional attachment between the parent and child. Many of the fathers with whom we spoke were at least a part-time caretaker for their children. Others were involved in their children's lives in important, if not financial, ways. And still others described the pain and difficulty of being unable to be with their children, either because of incarceration, conflict with the custodial parent, or a lack of visitation rights.<sup>1</sup>

In the focus groups, we attempted to solicit as much information as we could from participants regarding their child support cases, their access to information and assistance with child support issues, their experiences related to child support before, during, and after incarceration, and their experience of and understanding of the many systems that they contend with as low-income, noncustodial parent offenders: the criminal justice system, the child support enforcement system, and the welfare system, among others.<sup>2</sup>

For this report, our focus is on the systems that contribute to hardship, even as they purport to be helping. In particular, we have looked at the intersection of the child support and criminal justice systems, finding that they impact noncustodial parents in critical ways, but are not often the focus of policy discussion by either the child support or the corrections

communities. This preliminary report identifies some of the key experiences of noncustodial parents who have been involved in the criminal justice system, and describes trends and policies that play a role in the circumstances in which they find themselves. The project will continue to investigate policy and practice in this area, looking closely at specific practices at the local child support enforcement agency level and within criminal justice systems that are most in need of attention and change, and most amenable to both.

The information that we gathered leads us to make some findings that seem particularly important for policy development and advocacy on these issues:

- Arresting fathers for nonpayment of child support results in payment primarily from fathers who can afford to avoid jail by paying child support. Fathers who are behind in payments because they are without financial resources and have a poor work history are more likely to spend time in jail, and less likely to have a family benefit from this enforcement tool.
- Incarceration for the nonpayment of child support has unintended consequences that are at cross purposes with the goals of the child support system. Some of the participants in our focus groups and interviews lost employment that was only recently obtained because they were put in jail for nonpayment of child support. In many cases, such arrests also separated resident fathers from their current families when the nonpayment charge was for children from a previous relationship.
- Court-ordered employment programs for noncustodial parents who are behind in child support payments need to address a full range of concerns and barriers that could otherwise interfere with prospects for long-term employment. Such programs should at a minimum include an assessment of barriers to employment. Many noncustodial parents fall behind in child support payments due to substance abuse, health issues, lack of stable housing, or family instability, among many other reasons. Without attention to these aspects of a parent's life, employment retention is unlikely. Case management and peer support are also important components of any such program.
- High rates of incarceration for all offenses disproportionately affect low-income noncustodial parents and place vulnerable families at yet

more risk of the hardship associated with poverty. The child support system plays a role in exacerbating hardship for these families when it fails to make a concerted effort to adjust child support policy and practice when contending with fathers who do not have the means to pay current child support orders.

- In most states, when a noncustodial parent is incarcerated and the custodial parent receives welfare benefits, the accumulated debt is owed to the state and not the family.
- Recent dramatic increases in the rate of arrests and convictions nationally are connected to an accelerating trend toward the involuntary relinquishment of parental rights. The Adoption and Safe Families Act of 1997 has imposed a timeframe for permanency planning for children, and incarcerated fathers are far less likely to manage the regular contact and/or child support payments that could forestall an unwanted termination of parental rights.

## *Nonpayment as a Route to Incarceration*

### **POVERTY AND CHILD SUPPORT PENALTIES**

Low-income noncustodial parents are very poor. In 1998, about 50% of low-income noncustodial parents had reported earnings that were below the poverty level of \$8,050 for one person. Median income was \$7,884.<sup>3</sup> An assessment of child support arrearages in California revealed that in that state, 25% of parents with child support arrears had no recent income whatsoever.<sup>4</sup>

In our focus groups and interviews, most of the fathers who participated had children whose families had at some point received government assistance, and for most of them, this point of assistance was the point at which the child support case was initiated. This connection between welfare receipt and child support enforcement is based on statute and policy. A parent who receives welfare benefits is required to assign her legal right to collect child support to the state from which she receives benefits. She is also required to cooperate with the state child support enforcement agency by providing information on the noncustodial parent so that the state can collect and—based on the assignment—retain the child support payment as reimbursement for state and federal welfare costs.<sup>5, 6</sup>

In 28 states, the total amount of child support payments that are made by a noncustodial parent while the family receives welfare benefits are retained by the state.<sup>7</sup> These state policies, and the prevalence of policies that retain child support paid on behalf of a welfare family, are important to bear in mind when considering child support enforcement tools aimed at poor families, particularly when the noncustodial parent is incarcerated and payments are implausible. A family on welfare will not benefit from an incarcerated father's child support payment or accumulated debt, and yet in discussions of, or in court cases concerning, the modification of child support for incarcerated parents, this critical element in determining a child's best interest is rarely considered.

In each of the regions in which we conducted focus groups, it was reported as common for states and counties to arrest fathers who are behind in child support payments. Arrest and incarceration are a more likely consequence for nonpayment when the noncustodial parent is poor because such a parent clearly has less access to resources with which to pay the required child support or a private lawyer.

While the child support system has been structured in such a way that incentives are based on collecting child support from the poorest fathers—those who have children with a mother who receives government benefits—the irony is that these are the fathers least able to pay and most likely to suffer the harshest penalties for nonpayment. Child support caseloads in every state contain huge arrearages owed by fathers who are not ever likely to have the means to pay them. For every one of these cases, child support penalties and their potentially devastating impact will eventually come into play.

As states have become increasingly concerned about the volume of unpaid child support, there has been increased interest in debt forgiveness and amnesty programs. At the local level, however, when there is no federal or state mandate or incentive to forgive arrears, aggressive enforcement tools appear to be the norm.

## How Do Noncustodial Parents Get Behind in Child Support Payments?

**T**here are any number of factors at play when noncustodial parents get behind in child support, three of which will be discussed below: 1) when

**A**ll but two states allow for the imputation of income if the noncustodial parent does not provide adequate information. Imputed income is often based on 40 hours per week of minimum wage or the last reported income, amounts that far exceed the actual earnings of most low-income parents.

paternity is established and child support ordered judicially or administratively by default; 2) when a noncustodial parent loses employment but fails to obtain a child support modification; and 3) when child support enforcement actions lead to a diminished ability to retain employment and make payments. Each of these are less of a factor for noncustodial parents who are willfully attempting to evade child support in spite of having the means to pay, but are prevalent when the noncustodial parent is low-income.

### *Default Child Support Orders*

Default orders, in which the noncustodial parent or alleged father fails to appear in court and so paternity and a child support order are established in his absence, are at the root of many of the cases that result in child support debt and subsequent arrest for child support nonpayment. From the perspective of the noncustodial parent, there are many reasons for not appearing in court.

The parent may in fact never have received a subpoena to appear, which can happen for any number of reasons. The mobility and instability of housing for poor noncustodial parents is a constant factor, and mail sent at one point in time to a correct address can arrive too late to reach the addressee before he has moved on. Some low-income fathers are not on any lease but alternate between homes and shelters. The belief on the custodial parent's part that an inaccurate address might help the noncustodial parent avoid the child support system (and so allow him to provide informal contributions to the family rather than formal contributions that are retained by the state), can also lead her to provide faulty information as a means to safeguard this arrangement. There is also the possibility that the notice will be received by someone in the household who fails to pass it on.

If a subpoena does not reach its intended recipient, an appearance in court is precluded, and a process is under way that is almost assured to result in harsh enforcement actions down the road. Paternity will be established by default (in his absence), and a child support amount will be ordered. If the court does not know the noncustodial parent's actual income, the order may include an imputed income that would depend on state child support guidelines and the discretion of the judge. All but two states allow for the imputation of income if the noncustodial parent does not provide adequate information.<sup>8</sup> Imputed income is often based on 40 hours per week

of minimum wage or the last reported income, amounts that far exceed the actual earnings of most low-income parents.<sup>9</sup>

In many states, fathers start off with a debt to the state for costs such as retroactive child support (45 states), birth costs (39 states), or court fees (11 states).<sup>10</sup> Twenty-five states also charge up to 12% in annual interest on unpaid child support, leading to the swift accumulation of substantial additional debt. The noncustodial parent might not even be aware of the debt until there is a wage garnishment or an enforcement action.

Even when a noncustodial parent receives notice to appear in court, there are many reasons why he might choose to stay away. One is the fear of going to court, and of the child support system itself. As child support agencies become more efficient in their use of enforcement tools, many noncustodial parents will conclude that the system cannot help their family, yet is capable of doing them great harm. The fear of what may happen in court if child support is not paid may even be exaggerated among noncustodial parents. As one participant said, “Everybody says, yes, man, you can go to jail for life, man, if you ain’t paid no child support.” Such rumors will increase the likelihood that the most punitive measures will in fact be brought to bear on poor noncustodial parents, since they will encourage parents to avoid the system for as long as possible. In fact, several times participants referred to going to court to contend with child support, even if it was to establish an initial child support order, as “turning myself in.”<sup>11</sup>

### *Difficulty in Obtaining Modification of Child Support*

Noncustodial parents who have had a substantial change in their circumstances since the order was entered, and whose child support orders do not reflect their current ability to pay, have the right to request a downward modification in their child support order, but a modification is difficult to obtain. Requests for modification are granted less often for noncustodial parents whose families receive welfare assistance than for other groups, and nonwhite noncustodial parents have been shown to be significantly less likely than white noncustodial parents to obtain a child support modification.<sup>12</sup>

Many noncustodial parents do not initiate a request for modification when their employment situation worsens, for many different reasons. Among them is the fear of court and of an unfavorable outcome, a lack of

knowledge about their right to request a modification, a lack of access to legal counsel, and the actual likelihood that a request for a downward modification will not lead to a favorable outcome. Many participants described the harsh treatment they received from judges who were skeptical of their inability to maintain the income on which their child support order was based. One child support lawyer suggested to Center staff that the child support agency in his jurisdiction views a modification request as a “red flag” that indicates a case with arrearages and an address that can be used to pursue collections. Such practices deter noncustodial parents from initiating a request for a modification, even when not doing so results in escalating arrearages and enforcement actions.

One participant, who had tried diligently to obtain a modification of his child support order since losing his job, described his attempts to secure a modification after losing employment:

*I've been at Home Depot for five years as a designer, and since September 11th, we was laid off, and I went in front of the judge to try and get it reduced . . . he still wouldn't reduce, and I've been back four times, and they still not hearing it. . . I'm not incarcerated yet . . . I only have one more year of college left. There goes that, and then at the same time I get locked up, there still goes my child support issues stacking back up against me, and when I get out, that's just even harder than what I am right now. You know what I'm saying?*

### *Child Support Enforcement Actions Can Impair Ability to Pay*

Child support enforcement practices themselves can lead to difficulties in keeping employment, and so to child support debt and subsequent risk of arrest for nonpayment. One issue that came up in all regions and was felt to be particularly counterproductive was that of driver's license revocation. For parents who can afford to pay their child support arrearage, but have avoided doing so, revoking a driver's license is a useful tool, and the revocation can be cured by paying the child support arrearage. But for low-income noncustodial parents whose only hope for catching up with a growing child support debt is to find gainful employment, this penalty can be the difference between success and jail. One participant described his loss of a commercial driver's license (CDL):

*I had my CDL since 1996. So when they suspended my license, I was like, well, y'all taking away my livelihood from me, because I'm a tow truck driver. I was driving a tow truck, but I was hauling heavy equipment—all the rigs and everything, I hauled that. That's what I do. That's what I was doing for a living. I said, well, now, you want us to pay. But you're taking the food outta my son's mouth because you're not letting me do my livelihood. What you expect somebody to do with a suspended license, if you're in a state where there's no public transportation to get back and forth to some of these jobs?*

*My son was with me 24/7. I was driving tow trucks before I was trying to go back into the trucking field. My son was with me inside my tow truck, wherever I went. It wasn't the problem that I wasn't taking care of my son.*

Driver's license revocation is entangled in issues of child support in other ways as well. When a noncustodial parent loses a license for any reason, child support issues can come into play, either because employment is hampered or incarceration results. One participant in Wisconsin was serving a 15-month sentence for driving after his license was revoked. Once he was in jail, his child support debt began to climb. This participant described the sadness he felt that for him, parenthood was not looked upon as a positive role but instead felt “like eighteen years of probation.”

## **STATE CHILD SUPPORT LAWS AND LOCAL PRACTICE**

### **Criminal Nonpayment**

The aggressive pursuit of delinquent child support obligors (the parent responsible for making child support payments) who have little real income or employment history frequently contributes, perhaps unintentionally, to the impoverishment of low-income families. When a noncustodial parent is incarcerated for nonpayment, prospects for future employment are diminished if not lost. In addition to accumulating sometimes insurmountable child support debt while in prison, these parents irretrievably lose out on a part of their children's life. In welfare cases most of the debt for which they pay such a high price is owed not to the family, but to the state.

The use of arrests as a child support enforcement tool and the outcome of arrests varies widely by jurisdiction, making it difficult to document

In Dane County, which surrounds and includes the city of Madison, Wisconsin, there were 2,899 bookings to jail for nonpayment of child support (felony, misdemeanor, and civil contempt) from January 2000 to August 2003. Of these, more than 1,400 or 48% were African-American and 50% were white. This in a county whose African-American population in 2000 was a mere 4% of the total population.

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the magnitude of the practice. The lack of documentation and publicity allows for a system that is hardly known to exist by the public and one that appears to have little oversight. Low-income fathers who owe child support have very few places to turn for assistance or support. And minority communities are disproportionately affected by child support enforcement practices.

For low-income noncustodial parents, getting stopped by the police for any infraction can be the point at which they are found to be behind in child support payments. It has been a well-documented problem that police stop people more frequently who are minority or who live in poor neighborhoods.<sup>13</sup>

From evidence we have found at the local level in Wisconsin, where there is a higher rate of arrests for nonpayment of child support for low-income minority parents than for other parents, it appears that racial disparities exist in the enforcement of nonpayment laws. Disparities in more general policing activities would explain different rates of arrest for child support nonpayment that are not fully attributable to higher rates of nonpayment among minority parents.

Madison and Milwaukee, Wisconsin, provide two examples of cities in which arrests for nonpayment of child support occur far more frequently among minority communities.

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In Milwaukee County, a similar pattern is evident in the county's records. From April 1999 to April 2001, over 6,200 people who were booked to the county jail had nonpayment of child support listed as one of their

offenses. Unlike the Dane County arrest numbers, child support delinquency was not necessarily the initial reason for apprehension or arrest, however. In the overwhelming majority of the cases, initial police contact occurred because of an alleged traffic violation. Disturbance of the peace was the second most common reason for police contact that led to arrest.<sup>16</sup> Once arrested on one charge, however, warrants for nonpayment of child support were discovered, and penalties applied.

One participant who was unaware of having a child support order described a common scenario: “They pulled me over and I gave my I.D., and they ran my name through. I had a warrant for child support.” This participant spent nine months in jail with child support debt and interest growing, and currently had a child support arrearage of \$10,000.

We have recently documented state laws to confirm that every state has statutes making nonpayment of child support a misdemeanor or felony.<sup>17</sup> Actual implementation of the laws vary by state and within states, however.

In an attempt to ascertain the level of active implementation of nonpayment statutes, we conducted a cursory review of news stories related to nonpayment of child support. This simple review identified at least 32 states in which persons are arrested for nonpayment of child support.<sup>18</sup>

Some states are particularly aggressive in applying criminal laws to the nonpayment of child support. In Wisconsin, for example, state law creates a Class A misdemeanor for less than 120 consecutive days of nonpayment and a Class I felony when no payments are made for 120 days.<sup>19</sup> Fathers can be charged with multiple felonies for each child or for each 120-day period as well, making their arrest record an even more serious impediment to any future ability to support their children. For example, a noncustodial parent charged with nonpayment for three children over a period of 120 days could be charged with three counts of felony nonpayment.

## Civil Contempt

Civil contempt charges are made when a noncustodial parent does not comply with a judge’s order (in this case to pay child support). Payment of the child support debt will result in compliance with the order, and freedom. Although the time spent in jail for civil contempt is particularly hard to track, it represents a significant, if not routine, means by which low-income noncustodial parents land in jail. For noncustodial parents who miss sev-

**A**lthough the time spent in jail for civil contempt is particularly hard to track, it represents a significant, if not routine, means by which low-income noncustodial parents land in jail. For noncustodial parents who miss several days of low-pay work in jobs where they can be easily replaced by an employer, the consequences of even a short time in jail can be devastating.

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► *Morris has three children who live in Wisconsin. He lost a stable job that was the basis for his child support order in 1992. At this point, he left Wisconsin for Illinois where he was unable to find employment. In 1996, he was extradited from Illinois to Wisconsin for nonpayment of child support and put on three years of probation, which was contingent on regular child support payments. He asked about modifying his child support at this point, but never followed through on filing for a modification. In 1998, he was working two jobs in Madison: one at a grocery store and another in a managerial position. He was paying child support regularly, and was on the verge of opening his own carpet cleaning business, when his probation officer called one of his employers to confirm his employment, and in doing so, informed the employer of Morris' probation status. He was fired for falsifying his job application. He now could no longer afford to start his carpet cleaning business so had to give that up. ►*

Arrests for contempt garner very little attention from the media or advocates. But for low-income obligors with high arrearages, civil contempt can result in sentences that are longer for the poorest parents, since they do not have the means to pay their child support debt or a “purge bond” that a judge might set as the cost of their freedom. We have not been able to find much recorded data or information on the extent to which civil contempt affects noncustodial parents. But it appears to be a common method for enforcing child support in many if not most jurisdictions. For example, in a meeting of the Indiana Child Custody and Support Advisory Committee, the Assistant Chief Deputy Prosecutor for the Marion County Child Support Division reported that out of 80,000 to 100,000 open child support cases each year, about 3%, or 2,400 to 3,300, result in incarceration for nonpayment. Roughly 15–20 of these are criminal charges, and the rest are civil contempt. According to the child support prosecutor, “Civil enforcement is typically a more efficient way to collect a child support arrearage.”<sup>20</sup> While an efficient tool for able-paying parents, when the practice is applied to all noncustodial parents regardless of ability to pay, primarily poor parents will end up in jail.

## Breaking Up Families in the Name of Family

As discussed previously, child support enforcement tools can have the unintended effect of making it yet more difficult for a poor noncustodial parent to pay child support. Arresting a parent for nonpayment can have grave consequences for children in families that are already vulnerable by virtue of their poverty.

## Child Support Cooperation Requirement Can Lead to Custodial Father's Arrest for Nonpayment

A number of participants in each jurisdiction that we visited reported that they lived with and supported their children and the mother of their children, but had been arrested for nonpayment of child support. For some fathers, this was because they had lived with the mother but were not on the lease. As one participant described:

*I was with my daughter's mother. We lived together. I was paying the rent, taking care of the bills, and all of a sudden I received a letter one day saying that I owe \$3200 in back pay for child support. I'm like, how? I've been taking care of my daughter. We've been living together for years, and just come to find out she'd been receiving TANF. I was like, well, how was she able to receive TANF? It didn't come to the house. So where, I mean, where was all the information going? But she was definitely receiving TANF, and I didn't know. That could have led to my incarceration.*

Another participant was jailed for nonpayment under similar circumstances:

*Well, I was summoned to court, and it's like I didn't even know I owed her no child support, because me and my girl, we've been together since day one, since my girl was born, and I'm paying bills and all this right here. So all of a sudden, I get a letter in the mail. I owe \$13,000. I'm paying—you know what I'm saying?—bills, taking care of my daughters, all the schooling and everything they need and doing all that. And we still staying together, and I'm still paying child support and paying bills...Me and my girl, we been together for like sixteen years, you know what I'm saying?*

This father was continuing to pay child support, and to report any changes in employment regularly to his caseworker. He was once jailed for nonpayment when he was unemployed for three weeks, in spite of the fact that his debt to the state had been repaid, and all of his payments were currently being returned to their home.

Describing similar situations, one caseworker reported:

*A lot of the fathers I work with, they just never knew. I mean, they was taking care of the children . . . it's a matter of living in public housing as her household. Or he's not there to receive the mail that's coming to her.*

When child support orders proceed in default, noncustodial parents are more likely to accumulate debt, and will be at risk of incarceration for nonpayment for children with whom they live. Arresting such a parent for nonpayment has the perverse effect of breaking up a stable family in order to enforce a remedy created for separated families.

Nonpayment arrests can also have the unintended consequence of breaking up a stable family when the arrest is for child support from a pre-

► The amount of time Morris missed to contend with these issues led to the loss of his job at the grocery store. For several months, he failed to pay child support or make contact with his probation officer. He was subsequently arrested for felony child support nonpayment and sentenced to one year in jail. He was near the end of his sentence at the time of the interview. The period of incarceration had made his child support debt escalate: with his large monthly obligation that had never been modified, and the 12% interest charged in Wisconsin, he reported that he owed approximately \$90,000. Morris reported that he has always seen his children regularly and has a close relationship with them. He said that he is not a criminal, knows he should pay child support, and does not want to duck his responsibility.

► *Jim was living in Illinois with his girlfriend and two young sons when he was arrested for a burglary at an apartment for which he had been entrusted with the key. He maintains his innocence on this charge and says it was only his possession of the key that led to his initial arrest. He was two weeks away from completing his sentence on this charge, his first arrest, when he was extradited to Wisconsin to face a felony charge for nonpayment of child support for an older daughter currently residing in the state with her mother. Although he had managed to stay current with child support until his arrest, the child support debt began accumulating while he was in prison. He served nine months in a county jail in Wisconsin and faced a potential parole condition of maintaining his residence in Wisconsin, separated indefinitely from his young children in Illinois.*

vious relationship, but the father is currently living in a new family consisting of a girlfriend or wife and their children. One study found that 30% of children in single-mother households will live with a stepfather (through marriage or cohabitation) before reaching the age of 18, providing an indication of the prevalence of these living arrangements.<sup>21</sup>

Extradition of a noncustodial parent from one state to another for nonpayment is a particularly blunt use of child support enforcement tools. Extradition risks breaking up a family by both jail and distance. When such policies are applied without consideration of the circumstances of a particular case and family, the enforcement system will inevitably become an agent against its own stated aims of supporting children and instead can cause irreparable harm to children.

## *The Impact of Incarceration On Child Support*

### **INCREASING ARREST RATES ARE DISPROPORTIONATELY DIRECTED AT MINORITIES AND POOR**

To put the issues of this paper in perspective, it is important to be aware of the sheer number of parents who are in jail. At yearend 2002, more than 2 million adults were incarcerated in the United States.<sup>22</sup> The number of persons in jail or prison increased by 71% from 1990 to 2001.<sup>23</sup> If adults on probation and parole are included in the figures, almost 6.6 million persons were involved in the criminal justice system in 2001, up from 4.35 million in 1990.<sup>24</sup> About one of every 32 adults were incarcerated or on probation or parole in 2001.<sup>25</sup>

The growth in incarceration rates can be linked, at least in part, to the tripling of drug arrests since 1980, spurred by President Reagan's initiation of a "war on drugs" policy in 1982.<sup>26</sup> The Federal Bureau of Investigation reports the number of arrests for drug offenses climbed from 580,900 in 1980 to 1,579,566 in 2000.<sup>27</sup> Mandatory sentencing laws enacted in every state over the same period have also increased the average time spent in prison for drug offenses, from 22 months in 1986 to 62 months in 1999. Although one might expect that the arrests targeted dangerous and life-threatening drug use, more than 40% of drug arrests in 1999 were for marijuana offenses.<sup>28</sup>

Not surprisingly, the growth in arrests and convictions is mired in race bias. While arrest rates have soared generally, they are staggering for minority males. Of all males in prison with sentences of more than one year at the end of 2002, 45% were African-American, 34% were white, and 18% were Hispanic.<sup>29</sup> Put another way, more than 10% of African-American males in the United States between the ages of 25-39 were in prison on December 31, 2001, and one-third of African-American males will spend some part of their life in jail compared to one in 20 white American males.<sup>30</sup> When arrests for drug offenses are broken down by race, the disparity becomes yet more evident. In 1999, African-Americans represented 13% of monthly drug users in the United States, but 35% of those arrested for a drug crime, 53% of drug convictions, and 58% of drug-offender prisoners.<sup>31</sup>

One study of a poor inner-city community demonstrates the devastating impact that arrest rates can have when concentrated, as they often are, on racially segregated and economically deprived neighborhoods. In the low-income Chicago neighborhood of North Lawndale, a recent report found that up to 57% of all adults who lived in the community were involved in the criminal justice system (either in prison, or on probation or parole) in 2001. Up to 24% had received a new sentence to prison or probation in 2001.<sup>32</sup> When communities are subject to such high arrest rates, they become yet more vulnerable, and more entrenched in crime, poverty, and instability.

In Dane County, Wisconsin, arrest rates for African-Americans have been shown to be 35 times those of white residents.<sup>33</sup> Such striking racial disparities in arrest rates may be typical for areas with a small but not insignificant African-American population, and where that population is politically weaker and economically more marginalized than the white population. In larger, more urban areas, the arrest rates of African-Americans are not necessarily lower than in smaller metropolitan areas, but the differences between white and African-American arrests are smaller.<sup>34</sup>

The disparity in incarceration rates has grown to such proportions that in 1996, if incarcerated African-American males between the ages of 22 and 30 were included as part of the labor force in calculations of unemployment for this group, their unemployment rate as a whole would have increased by almost one-third, from 23.5% to 35% (Western and Pettit, 1999). In fact, Western and Pettit suggest that over the period from 1982-1996, observed increases in earnings among African-American males were biased upward because they did not account for the large cohort of incarcerated

**E**xtradition of a noncustodial parent from one state to another for nonpayment is a particularly blunt use of child support enforcement tools. Extradition risks breaking up a family by both jail and distance.

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**F**or low-income obligors with high arrearages, civil contempt can result in sentences that are longer for the poorest parents, since they do not have the means to pay their child support debt or a “purge bond” that a judge might set as the cost of their freedom.

males whose earnings, if included in the analyses, would have significantly dropped the estimated average income for African-Americans.

Arrest disparities are also present in non-drug related arrests. A common perception is that just being minority in many communities is grounds for being stopped on the street or pulled over, leading to a records check and the discovery of a disproportionately high number of warrants. This is borne out by studies that have documented racial profiling in police stops for various reasons.<sup>35</sup>

One common complaint in our Madison focus groups was related to the perception of participants that Madison residents, and police in particular, feel that minorities from Chicago are to blame for crime in the city of Madison. This fits with other remarks from participants that point to a city with a punitive corrections system that stops minorities for small offenses, creates a record, and then identifies them as repeat offenders. Participants had this to say on the subject:

“You going to go to jail. It’s just like a scientific fact. I mean, you’re jail-bound when you come across the border to Wisconsin.”

“You come to Madison on vacation, and leave on probation.”

“We had a father that was supposed to come [to the focus group] this morning, but he is locked up for a year because of driving without a license. Driving after revocation. He’s eighteen.”

“Look, I worked at Burger King for two years, and the college students went there after hours on bar nights. They come in there, tore out the floor. Ain’t no charge against them. But let me go in there, just stand in there too long. . . .”

A city loitering ordinance (that has now been lifted) meant that the cycle of arrests could start just for standing too long in one location.<sup>36</sup> One participant described his experience with this ordinance: “They were arresting everybody for loitering and giving them ordinance violations. So they punished the ordinance violations by suspending their drivers’ licenses, and so it’s all related to loitering.”

Dramatic increases in incarceration rates translate into alarmingly high numbers of parents who are in prison. The Bureau of Justice Statistics reports that in 1999, there were over 720,000 parents in prison and an estimated 1.3 million children whose parents were in prison. Forty-six percent

of these parents reported that they resided with their children prior to incarceration. From 1990 to 1999, the number of children with parents in prison increased by 500,000. Minority families are particularly hard-hit. In 1999, African-American children were nine times more likely to have an incarcerated parent than white children.<sup>37</sup>

Incarcerated parents are more likely than the general population to be from poor neighborhoods, and to be poor themselves. In 1996, 36% of adult jail inmates were unemployed before entering jail, and of those with income, 64% reported incomes of under \$1,000 per month. Twenty-five percent had incomes of less than \$300 per month.<sup>38</sup> The poverty of adult inmates who are parents means that these parents are likely to be associated with custodial parents who are themselves poor, and so receive some form of public assistance. Even if a family had been very poor, but able to avoid welfare prior to the arrest, a father's incarceration can compel a custodial parent to seek government assistance, triggering child support actions against the father.

A noncustodial parent with a current child support order who is incarcerated on charges unrelated to nonpayment of child support faces additional barriers to getting back on his feet when his child support debt continues to grow during his period of incarceration. He may be kept from appearing in court to contend with any child support issues, is unlikely to be aware of the status of his child support obligation, and can even come out of prison only to face a warrant for his arrest for the nonpayment of child support, as was the case for several fathers we interviewed. Probation conditions also often carry a requirement to make regular child support payments, giving powerful discretion to the probation officer to revoke probation with any missing or late payment.

### Build-up of Child Support Debt While in Prison

Incarcerated child support obligors often assume that their unpaid child support obligation will not continue while they are incarcerated. Several of those interviewed and many focus group participants stated that they expected that the child support agency would be aware of their incarceration, recognize that this would prohibit their making payments, and suspend the order for the duration of their sentence. Without exception, participants who had been incarcerated on charges not related to child support

► *One father who was interviewed in Madison had served a five-year sentence for burglary. Prior to his sentence, he had regular employment, paid his child support order regularly, and had no arrearages. He assumed that his child support would be suspended during his incarceration. Upon release from prison, he was placed in a halfway house. After his first week of working at a minimum-wage job, he was served with a warrant for his arrest. He was arrested for felony nonpayment of child support for the period in which he had been incarcerated. At the time of the interview, he had served this sentence and was attempting to find employment, but was unsuccessful at getting employers to consider him given his felony convictions.*

reported that they received no unsolicited information at any point in their period of incarceration regarding child support. Except in a small number of programs that have implemented a system for assisting incarcerated non-custodial parents with their child support cases, there is little information available. Noncustodial parents tend to expect that the child support and corrections systems communicate and that the child support system would suspend their child support order, recognizing that they have no means by which to pay it. If a father is unaware of a child support obligation upon entering prison he may serve his entire sentence without knowing that he has a child support debt, let alone that it is growing while he is in prison.

One caseworker reported:

*We have just begun to get a lot of calls from guys who are incarcerated now —or were incarcerated—who weren't aware of being on child support or in the system too. So a lot of young men are angry when they come out, because they get a paper that says you are five or six thousand dollars in arrears on child support, and they had no idea of being on child support, and they've been incarcerated for ten years. . . . They don't have no means of paying that kind of money, and a lot of them will shy away from the court because there's no way they can pay that kind of money.*

Incarcerated parents are particularly at risk of running afoul of state statutes regarding nonpayment of child support. Several fathers in Wisconsin reported that at the point of finishing their prison sentence, a search of outstanding warrants was conducted that revealed a warrant for the nonpayment of support. Although not aware that they were obligated by law to continue payments while in prison, these fathers found themselves unable to leave prison until serving an additional sentence for nonpayment.

Child support debt can add up very quickly for an incarcerated parent, even if there was no child support debt upon entry to prison. For example, in Wisconsin a 12% interest charge on unpaid child support and an initial charge for birth costs if the mother was on Medicaid at the time of the birth speed the accumulation of debt.

### Modification of Child Support While in Prison

As stated previously, there are a number of reasons that initiating a request for a child support modification is not a simple or straightforward step for low-income noncustodial parents. The difficulty of initiating a modification

request from prison (e.g., lack of access to court documents and forms, lack of information on the disposition of one's case, lack of legal counsel) makes this step even more challenging. But if an incarcerated parent were able to take all of the correct steps to petition for a modification of his child support order so that it reflected his actual income and assets while in prison, he would still be faced with an uncertain outcome. By their nature, court rulings are inconsistent and this has prevented a standard approach toward modifying child support downward during periods of incarceration.

When a petitioner is low-income and without assets, the most critical factor in a court's determination is whether the incarceration is considered voluntary or involuntary. Courts that have viewed incarceration as voluntary do so on the basis that those who are incarcerated are imprisoned as a result of illegal actions they voluntarily performed.<sup>39</sup> Some courts, however, have taken the view that if incarceration was not intended to relieve the defendant from child support obligations, the incarceration cannot be deemed voluntary.<sup>40</sup> If a court views incarceration as a voluntary act, it will likely view any release from a child support obligation during the period of incarceration unfavorably.

In a 1999 appellate court ruling in New Jersey, the court found that comparing incarcerated obligors to those who reduce their earnings by choice fails to acknowledge that the incarcerated obligor does not have the choice to *rectify* the situation by increasing his earnings. The court also devised a new method for resolving modification motions. The defendant's request for a child support modification was put on an inactive calendar, thereby postponing a decision on his modification request until his release from prison, at which time his ability to pay would be determined.<sup>41</sup> The Florida Supreme Court recently used this decision as a basis for a nearly identical ruling.<sup>42</sup>

A recent California court decision provides an even stronger argument for granting relief from a child support order during incarceration. The Fifth District Court of Appeals in California decided in 1999 and then reaffirmed its decision in 2001, holding that "earning capacity cannot be substituted for actual income. Thus, if appellant does not have an opportunity to work, whether in prison or not, the earning capacity test is not satisfied and cannot be used to determine his child support payments."<sup>43</sup>

The view that incarceration is not grounds for a modification of child support is prevalent among child support officials, however. With their

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focus on preventing noncustodial parents from avoiding child support payments, the child support community is predisposed to see most actions of child support obligors as evasive. One caseworker we interviewed, for example, was told by a child support attorney that suspending child support payments for noncustodial parents who are incarcerated was a bad idea because "people would go to jail to get out of child support if you suspended it."

While case law in this area is important, it is equally important to remember that most incarcerated noncustodial parents lack the information or the capacity to seek a modification for the period of their incarceration. For low-income noncustodial parents, case law has less import than local administrative policy.

### Effect of Child Support Debt on Successful Re-entry

Child support debt that has grown during incarceration is particularly threatening to men who are struggling with getting back into a legal, employed status and must already contend with the barriers to employment, housing, and services associated with a felony record.

Many participants described the desperation that would lead them to illegal activity as the only means of getting by. One father said:

*Basically I always lied to my kids and their mother, and I felt ashamed about it, because I always tell them, well, I live with my mother over here. But I ain't lived nowhere, and I struggled a long time all my life, and I'm sorry to say, but I did everything and anything to support my children and I'm sorry if it had to be taking something or working that job or doing that. I would do anything to get a piece of bread or pay installment on any of the children. I don't care. I know it's my responsibility.*

According to a caseworker from Florida:

*The fathers, probably about ten actually who are having problems with child support and incarceration, and they typically dodge the system by working underground, either through drugs or basically just taking odds and ends . . . that may be a little more difficult on them and their self-esteem. A lot of them really wanted to come above-ground. But through child support and their incarceration, it just made it difficult for them. Not that it couldn't be done. It just made it difficult for them."*

Upon release, low-income fathers must contend with a myriad of issues. Housing is often a primary concern and difficult to obtain. Employment is made more difficult by virtue of the prison record. There may be health issues to contend with and family relationships to restore. Added to these complicated challenges, child support debt can diminish the hope of getting back on one's feet.

A noncustodial parent who is released from prison with child support debt will find that his credit rating is affected, diminishing his chances of finding independent housing. His driver's license might be revoked. Without employment, his debt will continue to climb and put him at risk of re-arrest. If he can find employment, his wages might be garnished at a level that leaves him with little to get by on. Getting established and in stable economic condition can become an unattainable goal.

One child support enforcement action that was mentioned often by participants as particularly harsh was the federal tax intercept.<sup>44</sup> The intercept is an innovative and effective means by which custodial parents who have never received welfare can receive needed support from noncustodial parents who are shirking their responsibility. But if a parent has ever received welfare, the intercepted money is kept by the state to repay a family's previously incurred welfare costs, even after they leave welfare. For the many fathers whose debt is out of proportion to their ability to pay, and particularly for fathers who have been incarcerated and who are most likely to be associated with families that have depended at some point on welfare benefits, the intercept is a blow to their own precarious finances, and yet it will not benefit their family. In fact, the intercept has become a substantial portion of child support collections that are retained by the government.

Retention of the intercept is also harmful to the economic stability of a custodial parent who is attempting to leave welfare and become self-sufficient. In a Statement for the Record submitted to the U.S. House of Representatives Subcommittee on Human Resources, the Children's Defense Fund noted that, "the practice of the government paying itself first from intercepted federal tax refunds can result in much-needed additional child support income being withheld from families at the critical time of their transition to work."<sup>45</sup>

Another issue that was raised repeatedly by focus group participants was the difficulty of meeting probation conditions that often include the regular payment of child support. Under these conditions, if a parent is late with

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a payment, the probation officer has the discretion to return the parent to jail. On top of finding a means to make child support payments, noncustodial parents on probation are often responsible for paying fees for probation supervision, adding to the financial burden. Whether an instance of nonpayment is treated as a violation is dependent on some factors that are impossible for the noncustodial parent to control, such as the access of the probation officer to information from the IV-D child support system, the probation officer's opinion of the parent, and even the whims and personality of the probation officer.

### Termination of Parental Rights: The Ultimate Penalty

Incarceration may be increasingly spurring a process that permanently ends parent-child relationships, and child support debt can contribute to this irreversible legal action.

The Adoption and Safe Families Act of 1997 (ASFA) has hastened the timeline for permanency planning for children, requiring states to seek termination of parental rights whenever a child has been in foster care for 15 of the most recent 22 months. Of particular concern with regard to child support is the fact that in many states nonpayment can be grounds for terminating parental rights. In 2002, 35 states had laws that gave states the authority to terminate parental rights based on a parent's failure to provide support.<sup>46</sup> Nonpayment may not be the sole criterion used to base a decision to terminate rights in all of these states, but can at a minimum lend support to a case for termination.

A felony conviction or incarceration were also grounds for termination in 42 states, and "failure to maintain contact" was grounds for termination in 36 states. From 1999 to 2002, the number of states with laws making these categories grounds for terminating parental rights increased by two to five states for each category.<sup>47</sup>

Many states have applied the law broadly or lack the resources to distinguish individual cases, and overburdened caseworkers and courts are inclined to find foster care placement a safe option when they are unable to fully assess a case.<sup>48</sup> Incarcerated parents may be more difficult to judge as parents than other parents who have at least intermittent contact with their children, leading to a negative assessment of an incarcerated parent as a potential future caregiver. When a child is placed in foster care, the place-

ment is the impetus for both permanency planning and child support debt, both of which can converge to result in the termination of parental rights. The interplay of child welfare and child support laws have thus created public policy that can ultimately strip poor parents of their children as a side penalty to the sentence they are serving.

In an examination of related state court decisions in 1990, even before the added emphasis on permanency planning due to the passage of ASFA, it was found that incarceration was often treated as a sufficient reason for the permanent termination of parental rights. An incarcerated parent's capacity to play a meaningful role in the child's life was not found to bear on the court decisions.<sup>49</sup> If a noncustodial parent has been found delinquent in making child support payments, this would seem likely to add yet another negative element to the court's decision regarding his ability to be a responsible parent.

As states and counties continue to follow both policies, that of arresting delinquent obligors and at the same time complying with AFSA by proceeding toward the termination of parental rights, even when the noncustodial parent is incarcerated, there will be numerous unintended consequences. The most harmful of these will no doubt be felt by the poorest noncustodial parents who are least able to have their cases represented adequately in court, regardless of the actual relationship they may have had with their children. Clearly more research into the impact of these policy shifts is needed.

## Court-Ordered Employment Programs

There has been an acknowledgment at all levels of government that the barriers faced by low-income noncustodial parents need to be addressed, and that primary among the needs is that of employment.

Many states, local jurisdictions, and courts have put resources into programs as an alternative to a jail sentence. When noncustodial parents are unable to pay child support because they cannot find employment, one increasingly popular remedy is to court-order the parent into a program that is intended to help him find and keep employment. In concept, this trend represents a positive shift. But for many of the fathers most in need of assistance, the devil may be in the details of funding, sanctions for noncompliance, and unaddressed employment barriers.

In remarks at a national child support policy conference, Office of Child Support Enforcement Commissioner Sherri Z. Heller spoke of the need to stress these programs. Court-ordered employment programs are seen in the child support community as a social service that can be provided to non-custodial parents who fail to make child support payments because they are underemployed or unemployed. Many of the programs do operate as a social service, with caseworkers taking an interest in the noncustodial parent and working to ensure that a proper job placement is found so that the father can begin to make child support payments. Such programs provide an alternative to the questionable logic behind putting low-income fathers in jail as a means to ensure that they meet their child support obligations. Instead of being found in contempt by a judge and sent to jail, fathers are found in contempt but sent to a program for a specific period of time during which they are to find employment and begin making payments.

The court-ordered employment programs that were discussed by focus group participants, however, had few of the case management features that are critical to assisting clients with multiple barriers. In Wisconsin, the program is called Children First. It operates in 43 counties (of 72 total) and one tribal agency. To complete the program and avoid jail, participants must either make full and timely child support payments for three consecutive months or complete 16 weeks of program activity. The program was budgeted to serve 2,850 participants in each year from 1999—2001, but in 2000, enrollment was 4,958 statewide.<sup>50</sup>

In Dane County, the Children First program is critically understaffed, with just one full-time designated caseworker. The program has had a contract with a nonprofit organization for peer/fatherhood support services. The court-ordered aspect of the program means that any time a client fails to meet one of the program's criteria, he might be subject to a "fact-find," found noncompliant, and sent back to court where he would likely be found in contempt of court, leading to a jail sentence. Participants in Dane County felt that, at the time of this particular focus group, the employment assistance that they got through the program was minimal. From their perspective, the program's goals were unclear. Since the desired outcome was employment and child support payments, it was expected that there would be a full range of assistance to overcoming employment barriers. But the program did not have the resources needed to provide enough job development or case management, and fathers were repeatedly threatened with

noncompliance for infractions of program rules. The program itself was in turn under pressure to meet contract requirements for successful job placements. Because there were insufficient resources for meeting the employment and training needs of clients, however, clients were often pressed to accept jobs even when the job was clearly not workable or suitable. Once the program's maximum 16-week period ended, clients were liable to be sent to jail if they did not have employment.

Several participants reported that they had first heard about the Children First program from the state child support attorney, who led them to believe that the program was voluntary and would provide them with the resources to find a good job. They agreed to try the program, only to realize after the fact that they had signed a stipulation and were court-ordered into Children First, with all of the program's mandatory requirements and non-compliance rules.

Case management services and peer support provided by a sub-contracting nonprofit organization were a positive aspect of the program for participants. These subcontracted services allowed noncustodial parents to find helpful advice, support, and true allies and advocates in a system that was otherwise punitive and judgmental.

In Dekalb County, Georgia, the Georgia Fatherhood Program operates like Wisconsin's Children First in many respects. Clients are given 90 days to find employment and begin making child support payments, and during that period receive assistance from caseworkers and job developers. Once the 90-day period ends, the program has to refer the client back to the court. One caseworker explained:

*They will go to jail, because child support feels like they've given them a chance, because in the beginning they could have sent them directly to jail. But they said, oh, this person might be a good candidate to get some additional training, to get himself employed and find some direction. So there is a time frame. But that clock is ticking for payment."*

## **RECOMMENDATIONS**

### Related to Preventing Incarceration for Nonpayment of Child Support:

- Reconsider state laws that create felony penalties for the nonpayment of child support, or develop a means to distinguish between noncustodial parents with the ability to pay and those for whom the child support obligation and arrearages surpass their ability to pay.
- Eliminate the child support cooperation requirement and assignment, and pass-through all child support collections. This would reserve severe child support enforcement actions for cases in which a custodial parent deems that such actions are appropriate and would benefit the family. It would also reduce instances of noncustodial parents serving time in prison for a debt that is owed to the state.
- Reduce default orders by establishing a higher standard for the service of a subpoena to appear in court on a paternity or child support action. Short of this, income imputation should be confined to cases where it can be established that the noncustodial parent has the capacity to earn full-time minimum wage employment.
- Establish child support guidelines that distinguish low-income parents and reduce child support obligations for fathers with poor work histories or who are disabled or incarcerated. New Hire Directories can provide reliable current information on income.
- Emphasize jobs programs for noncustodial parents who are not paying child support, and suspend child support payments during participation in the program.

### Related to Treatment of Child Support During Incarceration:

- Suspend child support orders for low-income parents who are incarcerated. This would prevent the build-up of insurmountable and unavoidable debt that results when child support obligations continue as though there were a means to pay them.
- Short of a blanket policy that would suspend child support orders, develop a better system for the modification of child support orders for incarcerated noncustodial parents. Courts, states, and child sup-

port agencies should reconsider the view that incarceration, because it results from a voluntary action, is not grounds for a downward child support modification.

- Forgive child support arrearages when they are owed to the state and when they are applied to low-income parents. State-owed arrearages not only form the basis for arrests for nonpayment in many states, but their continued accrual during incarceration forms a significant barrier to post-release success and future ability to pay child support.
- Provide information on child support to noncustodial parents upon entry into prison or jail. At a minimum, this could be written materials that explain state law and local child support practices regarding the treatment of a child support obligation during incarceration. Better would be to have resources available to provide legal information specific to each case.
- Increase communication and collaboration between corrections and child support agencies on behalf of noncustodial parents. This could allow inmates to be updated on their child support case and any child support actions being taken. Corrections personnel should be made aware of the importance of an inmate's timely appearance in court or filing of paperwork and have systems in place to assist in meeting these requirements.

A general recommendation to courts, counties and states is to improve public access to records and proceedings regarding child support actions that result in incarceration. When these practices and records are shielded from public oversight and monitoring, positive change on behalf of poor families becomes that much more of a challenge.

## **CONCLUSIONS**

One goal of strengthening the child support enforcement system when welfare reform was crafted in 1996 was to make noncustodial parents aware that having a child carried responsibilities, and that the government would no longer allow them to shirk this responsibility. In our discussions, it was clear that this goal has in many respects been met.

The fathers we encountered were painfully aware that society views their most important role toward their children as the payment of child support. They were also, however, searching for the means by which to

fulfill these financial responsibilities while also longing for, or wanting to safeguard, a meaningful relationship with their children. Enforcement tools, while effective at letting fathers know what is expected of them, can take a heavy toll on poor families.

Fathers to whom we talked in the course of our focus groups and interviews had a very different view of the child support enforcement system than they did of the criminal justice system, with regard to the fairness of the punishment they received from each. It was common for participants who had been incarcerated for a crime not related to child support to refer to mistakes they had made in the past, and to refer without judgment to their having paid for the mistakes. But child support enforcement was seen as a system that punished them unfairly. Many participants stated that they felt it was right for a father to support his children, or referred to the need they felt, or the current priority they placed, on “being there” for their children.

Their willingness to pay child support, however, counted for little in the face of child support orders that were beyond their reach, and child support enforcement actions that prevented them from making progress toward paying the child support owed. Fathers seemed far less accepting of the goals of child support enforcement than they were of the criminal justice system, and were particularly skeptical of the goals of the system, given the fact that their payments often went to the reimbursement of welfare expenses.

As a final note, we found that our focus groups and interviews provided the participants with a sorely needed outlet for many of their frustrations. It was made clear in each of the settings that for the participants, being given the opportunity to speak for themselves and to be seen as individuals with unique stories and situations was rare.

The systems with which noncustodial parents are confronted when they become unable to support their children and/or have committed a crime become inflexible, cold, and harsh. Caseworkers or other representatives of government systems (e.g., probation officers), were seen as viewing them judgmentally, as “deadbeats” who have not taken responsibility for their children, as persons not to be trusted, or as a threat. Although a different perspective on the part of such workers toward poor noncustodial parents will not solve their material needs, it would go a long way toward creating an atmosphere of good faith and respect, both sorely missing in the frontlines of many of these bureaucracies. As one participant put it:

*Don't look at me because I might to you look like a criminal, or I'm an ex-offender. I'm also a human being. I'm a person who wants to change his life. I have that right as a person who can change my life, and I want to be not just a person, but I want to be somebody, to myself, but most of all, somebody to my kids.*

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## FOOTNOTES

- <sup>1</sup> We did not have the capacity to determine if in these cases, visitation had been denied based on incidents of child abuse or domestic violence.
- <sup>2</sup> Readers with policy expertise may recognize that the experiences and perspectives of participants do not always fit with formal policy and rules. It has been our experience over many years of confronting the gap between formal policy and actual practice at the local level, however, that the reports from focus group participants reflect a reality that cannot be ascertained from an understanding of formal policy alone.
- <sup>3</sup> U.S. Department of Health and Human Services Office of the Inspector General, *Child Support for Children on TANF* (OEI-05-99-00392), May 2002.
- <sup>4</sup> Sorensen, Elaine, Heather Koball, Kate Pomper and Chava Zibman, *Examining Child Support Arrears in California: The Collectibility Study*, prepared for the California Department of Child Support Services, March 2003.
- <sup>5</sup> 42 USC § 608(a)3, 657(a)(2)
- <sup>6</sup> Every state requires an assignment to the state of a custodial parent's right to collect child support, but policies vary for the disbursement of child support payments. In 18 states, a family may receive up to \$50 of every monthly child support payment that is made, and the rest is retained by the state. Other states have particular policies that result in a range of child support collections that actually make it to the custodial parent and family. Another aspect of the child support system that impacts poor families is the federal incentive structure. Paternity and child support order establishment, and child support payments from fathers whose families receive welfare provide the state with additional federal incentive payments that increase as performance on each of the criteria increase. The more child support that the state can collect from these fathers, the more it stands to retain. As a result, states pursue these fathers aggressively.
- <sup>7</sup> Roberts, Paula and Michelle Jordan, *State Policies Regarding Pass-Through and Disregard of Current Month's Child Support Collected for Families Receiving TANF-Funded Cash Assistance*. Center for Law and Social Policy, April 2002.
- <sup>8</sup> Roberts, Paula, *An Ounce of Prevention and a Pound of Cure: Developing State Policy on the Payment of Child Support Arrears by Low Income Parents*, Center for Law and Social Policy, May 2001.
- <sup>9</sup> The U.S. Office of the Inspector General reported in *Child Support for Children on TANF* (OEI-05-99-00392) that the average amount of total support ordered for low-income noncustodial parents in 1996 represented 69% of earnings. This percent exceeds limits set by federal law that prohibit states from garnishing more than 50% to 65% of income.
- <sup>10</sup> Roberts, op. cit., p. 29
- <sup>11</sup> A report from the Social Policy Action Network, *Expanding the Goals of Responsible Fatherhood Policy*, by Juliane Baron and Kathleen Sylvester (November 2002), notes very similar characterizations of courts and the child support system made by low-income noncustodial parents: "Almost without exception, fathers found that the courts were unfair, punitive, and disinclined to believe that low-income fathers can improve their ways. Consequently, fathers tried to avoid interactions with the courts or any agencies they perceived as linked with the courts."
- <sup>12</sup> Turner, Mark D. and Elaine Sorensen, *Nonresident Fathers and Child Support Modifications*,

The Urban Institute, Washington, DC., October 1998.

<sup>13</sup> See, e.g., Council on Crime and Justice, *Minneapolis Police Traffic Stops and Driver's Race Analysis and Recommendations: A Report to the Minneapolis Police Department*, April 13, 2001, and *Racial Bias and Policing: A Study Guide Prepared by the ACLU and Plaintiffs as part of their Advocacy for Reforms Under the Collaborative Agreement*, November 14, 2003. See [www.cincinatti-oh.gov/police/pages/-511-1](http://www.cincinatti-oh.gov/police/pages/-511-1).

<sup>14</sup> Data provided by the Dane County Jail, August 2000 and August 2003.

<sup>15</sup> Dane County QuickFacts from the U.S. Census Bureau.

<sup>16</sup> Pate, David, Jr., *The Life Circumstances of African American Fathers with Children on W-2: An Ethnographic Inquiry*, Focus, Vol. 22, No.2, Summer 2002.

<sup>17</sup> See [www.cffpp.org](http://www.cffpp.org) for a chart of statutes by state.

<sup>18</sup> States are included in this number if we found sufficient evidence through news reports or website records of arrests for nonpayment. This process is unlikely to capture all of the states where arrests for nonpayment occur regularly.

<sup>19</sup> WI St. 948.22; 939.51; 939.50.

<sup>20</sup> Indiana Child Custody and Support Advisory Committee, Meeting Minutes, September 30, 2002, <http://www.in.gov/legislative/interim/committee/ccsa.html>.

<sup>21</sup> Bumpass, L.L., Raley, K.R., and J.A. Sweet, *The Changing Character of Stepfamilies: Implications of Cohabitation and Nonmarital Childbearing*, 1993.

<sup>22</sup> Harrison, Paige M. and Jennifer C. Karberg, *Prisoners in 2002*, Bureau of Justice Statistics Bulletin, U.S. Department of Justice, Office of Justice Programs, July 2003.

<sup>23</sup> Harrison, Paige M. and Jennifer C. Karberg, *Prison and Jail Inmates at Midyear, 2002*, Bureau of Justice Statistics Bulletin, U.S. Department of Justice, Office of Justice Programs, April 2003

<sup>24</sup> Glaze, Lauren E., *Probation and Parole in the United States, 2001*, Bureau of Justice Statistics Bulletin, U.S. Department of Justice, Office of Justice Programs, August 2002.

<sup>25</sup> Ibid.

<sup>26</sup> *Drug Policy and the Criminal Justice System*, The Sentencing Project, 2001.

<sup>27</sup> Federal Bureau of Investigation, *Crime in the United States: Uniform Crime Report, 2000*.

<sup>28</sup> Ibid.

<sup>29</sup> Harrison, op.cit. 43

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Lisa McKean and Jody Raphael, *Drugs, Crime, and Consequences: Arrests and Incarceration in North Lawndale*, Center for Impact Research, 2002.

<sup>33</sup> Oliver, Pamela. *Racial Disparities in Incarceration: Some Basic Information*, IRP Focus 21 (3) pp. 28-31. Spring 2001

<sup>34</sup> Oliver, Pamela, *Racial Disparities in Criminal Justice: Madison and Dane County in Context*, Institute for Research on Poverty Discussion Paper no. 1257-02, November 2002.

- <sup>35</sup> Op.Cit., Council on Crime and Justice, 34
- <sup>36</sup> The “Loitering for Purposes of Illegal Drug Activity” ordinance was made city law and given a two-year trial period in 1997, another two years in 1999, and an additional one-year trial period in 2001. Mayor Bauman vetoed the ordinance when the City Council voted to make it permanent in 2002.
- <sup>37</sup> Mumola, Christopher J, *Incarcerated Parents and Their Children*, Bureau of Justice Statistics Special Report, U.S. Department of Justice, Office of Justice Programs, 2000.
- <sup>38</sup> Harlow, Caroline Wolf, *Profile of Jail Inmates 1996*, Bureau of Justice Statistics Special Report, U.S. Department of Justice, Office of Justice Programs, April 1998.
- <sup>39</sup> Kavanaugh, Karen Rothschild and Daniel Pollack, *Child Support Obligations of Incarcerated Parents*, Cornell Journal of Law and Public Policy, Winter 1998.
- <sup>40</sup> Ibid.
- <sup>41</sup> *Halliwell v. Halliwell*, 326 N.J. Super. 442.
- <sup>42</sup> *Department of Revenue v. Jackson*, 780 So. 2d 342 (Fla. 5th DCA 2001).
- <sup>43</sup> *State of Oregon v. Vargas*, 83 Cal.Rptr.2d 229; *In re the Marriage of Debra D. Smith and Michael Steven Smith*, 108 Cal.Rptr.2d 537.
- <sup>44</sup> 42 USC Sec. 666. The law requires that state child support agencies intercept any tax refunds that are otherwise due to noncustodial parents who owe more than \$150 in child support to a custodial parent or more than \$500 to the government.
- <sup>45</sup> The Children’s Defense Fund, *Statement for the Record before the U.S. House of Representatives Subcommittee on Human Resources Committee on Ways and Means*, Hearing on Child Support and Fatherhood Proposals, 2001.
- <sup>46</sup> The Administration for Children and Families National Clearinghouse on Child Abuse and Neglect Information, *Statutes-at-a-Glance 2002: Grounds for Termination of Parental Rights*.
- <sup>47</sup> Ibid.
- <sup>48</sup> Schneider, Peter, *Criminal Convictions, Incarceration, and Child Welfare: Ex-Offenders Lose Their Children*, In “Every Door Closed: Barriers Facing Parents With Criminal Records”, 2002.
- <sup>49</sup> Genty, Philip M., *Procedural Due Process Rights of Incarcerated Parents in Termination of Parental Rights Proceedings: A Fifty State Analysis*, Journal of Family Law, vol. 30, no. 4, 1991-
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