



CENTER FOR FAMILY POLICY AND PRACTICE

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Child Support Distribution for Low-Income Families

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Introduction

This paper and the accompanying chart are intended to clarify the meanings of specific policies related to child support distribution. For definitions of child support terms used in this paper, see Appendix A. They look at state law and policy on child support pass-through and disregard, and they provide an overview of the collection and distribution of child support at the federal level.

Policies that determine the amount of paid or owed child support that a family on welfare can receive vary from state to state because they are determined at the state level. Parents, caseworkers, and advocates often find the variances in policy confusing, particularly when they apply differently on questions of eligibility, the amount of the grant, or the state's policy on disregard of child support. The Center for Family Policy and Practice has examined laws for 50 states and the District of Columbia to sort out each state's laws, administrative codes, and policies on child support when the family applies for or receives welfare assistance.

A state has the discretion to create its own policy regarding the pass-through of child support collections to families that receive welfare, but the federal government controls the financial ease with which a state can do so. With the passage of the Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA) in 1996, the federal government removed a state requirement to pass-through to families receiving welfare assistance a minimum of \$50 per month of child support collected. PRWORA also eliminated the financial incentive for a state to choose the pass-through on its own by no longer relieving the state from paying back to the federal government its share of the child support passed through to the family. Thus, unless a state receives a federal waiver, a state that chooses to pass-through any amount of child support must now cover the cost of this policy on its own.

State policy regarding child support distribution for welfare families has a critical impact on the ability of families to become financially stable. In states that do not have a child support pass-through policy, families on welfare receive none of the child support paid on their behalf despite the state's often aggressive practices that pursue and collect payments from noncustodial parents. The government has historically viewed the primary purpose of the child support system for families on welfare as the recovery of the government's costs of providing welfare.

In practice, however, the cost recovery model means that noncustodial parents, who are often themselves extremely poor, are becoming increasingly in debt to the state for child support that they may never be able to pay. Enforcement tactics, such as driver's license suspensions, loss of professional licenses, and incarceration, often damage already vulnerable employment prospects. The custodial family, by virtue of receiving welfare assistance and signing over rights to child support to the state, does not stand to gain from child support payments when the state retains child support as welfare repayment. In addition, a custodial parent may live with a partner who has other children not residing in the household, but for whom the partner is ordered to pay child support that is retained by the state, thus diminishing the income available to both households.

National Child Support Collection and Distribution

One way to gain an understanding of the way in which the collection of child support contributes to the well being of low-income families is to look at aggregate data on a federal or state-by-state basis. A brief summary of recent information on collection and distribution follows.

- In fiscal year 2003, state governments collected more than \$21 billion in child support, almost \$19 billion of which was distributed to families. The states retained more than \$2 billion as reimbursement for welfare.
- For current assistance cases, the states retained \$958 million (52%) of the \$1.8 billion collected for child support as reimbursement for welfare payments.
- In fiscal years 2002 and 2003, 4% of all child support distributions went to families currently receiving welfare assistance; 38% went to families that had formerly received assistance, and 57% went to families that had never received assistance.
- Of the \$8.5 billion collected on behalf of custodial parents formerly on welfare, the states retained \$1.2 billion (14%) as reimbursement for assistance. Two factors account for this relatively high amount: (1) the movement of families off of welfare due to welfare-to-work requirements and (2) the increased proportion of child support collections retained through the federal tax intercept. State governments are required to intercept tax returns of noncustodial parents who are behind in child support payments and to distribute funds collected through the tax intercept first to the government as reimbursement for assistance, including former assistance.
- By far the greatest amount of child support (\$10.9 billion) was collected on behalf of custodial parents who have never been on assistance. (A custodial parent who has never needed to apply for welfare is likely to have a former partner similarly well situated and therefore the child support order is likely to be higher.) The government can retain payments only when the custodial parent has assigned rights to child support as part of the welfare application process, so by definition this group, who never had any government assistance, would receive a greater share of collected child support. Nearly all (\$10.8 billion) of the child support collected for this group was distributed to them.
- In fiscal year 2002, the government spent \$1 to collect each 55 cents in child support for families receiving assistance. For families not receiving assistance, the government spent \$1 for every \$3.33 collected. As of fiscal year 2003, this cost effectiveness figure is no longer available or included in the annual report of the Office of Child Support Enforcement.

The reports, from which this data is taken, *Child Support Enforcement Fiscal Year 2003 Preliminary Data Report* and *Fiscal Year 2002 Annual Statistical Report*, U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, are available on-line at www.acf.dhhs.gov/programs/cse/pubs.

Income and Status of Noncustodial Parents

It is important to bear in mind the poverty of many noncustodial parents who do not pay child support. When states fail to pass-through child support payments made by these parents, it increases the likelihood that they will not pay and prevents the family from benefiting from a payment that is likely to have been extremely difficult to make. Below are some facts that are particularly important to understand in the context of low-income noncustodial parents and child support.

- Of the more than \$70 billion in child support debt nationally, 70% is owed by noncustodial parents who have no quarterly earnings or with annual earnings of less than \$10,000. Only 4% of child support arrears are attributable to noncustodial parents with more than \$40,000 in annual income.
- In 1998, about 50% of low-income noncustodial parents had reported earnings that were below the poverty level of \$8,050 for one person. The median income for the entire sample was \$7,884.
- Not surprisingly, lack of income affects compliance with child support orders. Only 17% of noncustodial parents with no reported income in 1995 complied with their child support orders over a 32-month period. When orders were more than 20% of a noncustodial parent's income, only 20% complied with their support order. As the percent of income represented by the order decreased, compliance increased.
- The average amount of total support ordered for low-income noncustodial parents in 1996 represented 69% of earnings.
- Of the total child support debt nationally, 49% is owed to the government, not to the custodial parent, as repayment of the custodial parent's welfare benefits.
- In Arizona, California, Connecticut, and Maine more than 70% of child support debt is owed to the government. Wisconsin is the only state to pass-through the entire amount of a child support payment made on behalf of a family receiving TANF benefits, yet 58% of its child support debt is owed to the government. This is in part because states collect child support debt through the tax intercept, and because the pass-through in Wisconsin does not apply for debt that was incurred when a parent received Aid to Families with Dependent Children (AFDC), the precursor to Temporary Assistance for Needy Families (TANF).
- In only three states, Arkansas, Idaho, and Nevada, is less than 25% of the child support debt owed to the government. In Puerto Rico, just 12% is owed to the government.
- Ten percent of noncustodial parents who have child support arrears and no quarterly wage records are incarcerated.
- A California study of unpaid child support in 2001 found that 25% of parents with child support arrears had no recent income. Despite their lack of income and significant

barriers to employment, they had a median order of \$277 per month and median debt of \$14,129. This study found that the median net income of all child support debtors in California was \$6,349, or \$529 per month. The median arrears were \$9,447, and the median current child support order was \$300 per month.

(Urban Institute, "Examining Child Support Arrears in California: The Collectibility Study," March 2003, www.childsup.cahwnet.gov/pub/reports/2003/2003-05collectibility.pdf. Also see: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, "Understanding Child Support Debt: A Guide to Exploring Child Support Debt in Your State," May 2004, <http://www.acf.dhhs.gov/programs/cse/pol/DCL/2004/dcl-04-28a.pdf>. U.S. Department of Health and Human Services, Office of Inspector General (OIG), "Child Support for Children on TANF" (OEI-05-99-00392), February 2002, <http://oig.hhs.gov/oei/reports/oei-05-99-00392.pdf>.)

Legislation That May Affect Child Support Policy

Over the past several years, Congress has considered several bills that would significantly change child support policy. Although some bills contain provisions that would substantially benefit poor families, many have undergone alterations that diminish their impact. While it is not clear whether or in what form these bills will pass, it appears that child support policy will change significantly in the near future, either as legislation or as part of the impending TANF reauthorization.

Child support proposals contained in legislation in previous sessions or currently before Congress include the following:

- The option, at the state's discretion, to pass-through additional child support to families currently receiving TANF benefits. More recent proposals from the Bush administration and the House would limit federal financial participation in a state's cost for a pass-through to a \$50 per month increase from a state's current pass-through, or \$100, whichever is greater. This would clearly benefit the custodial and noncustodial parent and their children, but it is not clear whether incentives would persuade states to give up their policy of recovering welfare costs from noncustodial parents by retaining child support payments. It is also not clear if the current language, which stipulates that the pass-through and disregard could be applied only to families who have been on TANF for no more than five years, would prevent TANF participants with the most significant hardships from benefiting from the policy. Earlier proposals would have provided incentives for a pass-through of \$400 for a family with one child and \$600 for a family with two or more children if the family has been on TANF for no more than five years.
- The option for states to convert state-owed arrearages to the custodial parent. That is, child support arrearages owed to the state would be owed instead to the custodial parent. The current House bill does not, however, include this provision.
- Elimination of the child support assignment for pre-assistance periods. Under this provision, a parent would retain the right to any child support owed before receiving assistance. Current proposals in the House, however, do not contain this provision.
- A prohibition on the collection of birth costs by child support agencies from the father. The prohibition on collecting child support to repay Medicaid costs associated with the birth could potentially prevent many low-income noncustodial fathers from accumulating significant debt owed to the state.

In addition to federal legislation, many child support laws are enacted at the state level. It is important to keep up with legislation or policy changes a state may be considering so that those who work on behalf of low-income noncustodial parents can advance their concerns.

State-by-State Pass-Through and Disregard Chart

The accompanying chart represents the first attempt to categorize and lay out four aspects of each state's policy on the treatment of the assigned child support with the corresponding law or administrative code that authorizes the policy. CFFPP researched and cited statutes and administrative codes for each state and the District of Columbia to provide the law and policy, allowing for an immediate reference that could be useful to advocates, policymakers, and attorneys concerned with the treatment of low-income families.

The second column of the chart shows how each state treats child support when a custodial parent initially applies for TANF. What a state considers or disregards as income to determine initial eligibility for TANF can have a significant impact on obtaining welfare support, even if the family lives in poverty. If a state does not disregard the child support income, a family who would otherwise receive TANF assistance could become ineligible. Only Wisconsin does not count child support to determine initial eligibility for TANF. Connecticut, Kentucky, Massachusetts, Missouri, New Jersey, New York, Rhode Island, Texas, Vermont, and Virginia have provisions to disregard a small amount of monthly child support, generally about \$50.

The third column shows a second aspect of child support policy: how each state treats the assigned child support once a family is on TANF. As stated above, current federal law allows a state to retain this money. States share with the federal government retained support according to the state's federal medical assistance percentage. Before passage of the 1996 federal welfare legislation, the federal government required states to pass-through at least \$50 of collected child support.

Federal law no longer mandates states to pass-through any child support. Unless it has a federal waiver, a state that elects to pass-through the child support bears the full cost of the program and must continue to pay the federal share of the collections. A federal waiver enables Wisconsin to carry out its widely praised pass-through program.

The chart shows that 29 states and the District of Columbia keep all child support up to the amount of the grant paid by noncustodial parents to custodial parents who received government assistance. The chart also shows that 14 states keep most of the child support up to the amount of the grant but generally pass-through up to \$50 to the custodial parent who receives government assistance. West Virginia keeps all of the child support up to the amount of the grant but increases its cash assistance benefit in the amount of \$25 if the noncustodial parent pays the current month's support to a custodial parent who receives government assistance. Another state, South Carolina, passes-through \$75 per month of child support collected to custodial parents who receive government assistance. Georgia, Kentucky, and Tennessee have complicated systems to determine their pass-through amounts. In these states, with great variances in actual policy and practice, if the custodial parent receives TANF, the child(ren) can receive some child support if the custodial parent receives the maximum TANF grant amount for their family size. Wisconsin and Minnesota pass-through all child support to the custodial parent who receives government assistance, but they vary greatly in the implementation of their respective policies and benefits to families. These variances will be explained later in detail.

The fourth and fifth columns of the chart deal with a third and increasingly important aspect of child support policy: child support disregard (the amount of child support a family can keep

without losing or lowering TANF benefits). When a state disregards child support it allows a family to increase its monthly income based on the amount of child support collected on its behalf in any given month, maintaining the same level of cash assistance. If a state passes-through child support but does not disregard it when calculating the monthly grant, the TANF grant is eliminated or reduced.

Wisconsin, often credited with being an innovator in TANF policy, fully disregards all current child support paid by the noncustodial parent. The only child support that Wisconsin retains is for child support debt that accumulated before switching over to the TANF system.

Minnesota is an example of a state that passes-through current child support but does not disregard child support. If the noncustodial parent pays current child support, the state does not retain the money but it is passed-through to the family. If, however, the noncustodial parent fails to pay child support and it becomes an arrearage, this money is owed to the state instead of the family. When the child support is passed-through the state will decrease the amount of future TANF grant by the amount of child support the state passed through.

Minnesota child support officials have reported to CFFPP that this policy creates a number of problems. First, they find the program complicated and difficult to administer. Second, it is extremely problematic for TANF families. From interviews CFFPP learned that noncustodial parents are discouraged from paying child support because they realize that their children do not benefit from their payment. To them, the children get the same amount of money regardless of whether or not they make the payment. What is the point of making the payment, they reason, and decreasing the amount of money they could actually spend on the children?

CONCLUSION

The continuing debate over welfare reauthorization means that pending federal legislation could encourage states to pass-through and disregard additional child support to TANF families. It is hoped that this chart and the accompanying explanation will enable policymakers to make more informed decisions about these matters. The decisions of state legislatures on whether to pass-through and disregard child support payments to welfare and former welfare recipients will determine whether, in the words of Wisconsin United States Senator Herb Kohl child support agencies move away from the cost recovery model and begin “making child support payments truly meaningful for families.”

APPENDIX A

Definitions of Child Support Terms

Child Support Assignment

Under current law, families receiving TANF benefits must generally provide information to the state that will assist in locating the noncustodial parent to establish paternity and collect child support. The TANF recipient must also assign any rights to child support owed to them to the state, meaning that *the custodial parent is no longer the sole person in a position to make decisions regarding the collection of child support from the noncustodial parent*. The state is now empowered to use whatever means are legally available to obtain an order for child support, enforce the payment of the ordered child support, and to retain it as repayment for TANF benefits paid to the family.

Child Support Pass-Through

"Pass-through" refers to the amount of child support forwarded to TANF recipients. In assigning child support rights, the custodial parent gives up entitlement to any of the current child support collected unless the state has a policy of forwarding it rather than retaining it.

Child Support Disregard

"Disregard" refers to state's policies in the treatment of child support in relationship to its impact on eligibility for and amount of a TANF grant. A state may adopt a disregard policy that is applied at either or both of two different points. The first point occurs when the state determines a family's eligibility for welfare and considers child support income prior to the child support assignment. If a state does not disregard child support income when determining eligibility, a family could become ineligible for TANF assistance. The second point occurs only if a state elects to pass through child support to welfare recipients. If it passes through child support, the state disregard policy determines whether to include child support as income in determining a family's continued eligibility for TANF and the grant level. If a state passes-through child support but does not disregard it when calculating the monthly grant, a family could become ineligible for TANF or have its TANF grant reduced. Complete disregard of child support allows a family to increase its monthly income by the amount of child support collected on its behalf in any given month and still maintain the same level of cash assistance.

Under current federal law, the state must repay the federal government its share of the collected child support whether or not the support is passed-through to the custodial parent and disregarded in benefit calculations. Only if the state, such as Wisconsin, receives a waiver is it released from reimbursing the federal government. Without the waiver, states have little incentive to pass-through and disregard significant amounts of collected child support because they incur significant costs by doing so.

The disregard is important to bear in mind in any consideration of pass-through policy, *because without the second type of disregard, the family's monthly welfare grant is eliminated or decreased and the family may receive no additional income even if a state passes-through current child support to the family.*

Child Support Arrearages

"Arrearages" (or arrears) are amounts of child support that are owed and unpaid. Arrearages result from nonpayment of a monthly child support order. Interest on the unpaid child support, retroactive support charged from as early as the birth of a child, medical costs associated with the birth of the child, and the child's health insurance are debts that are also enforced by the child support agency.

Arrears can be owed to the custodial parent or the state. If the family has never received welfare, arrears are owed to the custodial parent, who makes any decisions regarding their enforcement or forgiveness. A judge may not eliminate or reduce this debt without the consent of the custodial parent. If the family has received welfare, the debt—and any interest due--could be owed to the state or in part to the custodial parent and to the state. If the arrears are owed to the state, the interest on those arrears will also be owed to the state. Only the state--not the custodial parent--has the power to reduce or forgive the child support arrears owed to the state.