

## **Review of Child Support Policies for Incarcerated Payers**

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More than 2.1 million people were incarcerated in prisons and jails in the United States as of June 30, 2005 (Harrison and Beck, 2006). A majority of these individuals were likely parents of minor children, based on a 1999 study in which 55 percent of state and 63 percent of federal prisoners reported having a child under the age of 18 (Mumola, 2000). It is estimated that 1.5 million children had a parent in state or federal prison in 1999. Black children were nearly nine times more likely than white children to have a parent in prison; Hispanic children three times more likely.

Although there are many issues related to incarcerated parents of minor children, an emerging set of concerns relates to incarcerated noncustodial parents (NCPs) and their payment of child support. At issue is whether it is appropriate to continue to hold NCPs to the terms of child support orders, given the change in their circumstances. The purpose of this report is to provide information related to this issue. In particular, this report:

- Provides background information about the extent to which NCPs are incarcerated and the implications of this incarceration on the child support system;
- Outlines the major policy and practice options under consideration in the United States related to the treatment of child support orders of incarcerated NCPs;
- Provides examples of particular policies and practices as adopted by six states in various regions of the country, including their underlying purpose as described by state staff;
- Reviews the extent to which the outcomes of current policies and practices have been evaluated; and
- Outlines the implications of the information provided.

In order to complete this study, a review of existing literature was completed. From this information, a sample of states was selected for which relevant state statutes, policies, and procedures were analyzed. Interviews were then conducted with child support enforcement staff in six of these states in order to develop a better understanding of their policies and practices. This information was supplemented further by discussions with researchers who had completed studies in several of the selected states.

## BACKGROUND

There is no national database regarding the extent to which incarcerated parents have child support orders. However, available statistics provide some indication of the extent to which the potential for such orders exists. For example, of those incarcerated in 1999 who were parents, 48 percent were never married and 28 percent were divorced or separated. In addition, 64 percent of parents did not live with their children prior to admission (Mumola, 2000).

Research completed at the state and local levels provides some additional insight (see, e.g., Griswold and Pearson, 2003; Pearson 2004; Administration of Children and Families, 2006a). For example:

- 21.7 percent of inmates under the jurisdiction of the Massachusetts Department of Corrections and 22.5 percent of inmates within the Suffolk County House of Corrections were part of the child support caseload, based on a data match completed in 2001 (Griswold and Pearson, 2003).
- 26 percent of inmates in state prison facilities and 28 percent of parolees were involved in the child support system based on a data match completed in Colorado in 2001 (Griswold, Pearson, and Davis, 2001).

In sum, while there is no single definitive estimate, the available information suggests that a majority of prisoners have minor children, and that a majority of incarcerated parents were not living with their children prior to their incarceration. Since not all NCPs have an order to pay support, the state estimates of 22 to 28 percent of inmates or parolees involved in the child support system are not inconsistent with these estimates of parental status among the incarcerated population.

As reflected in the literature, the incarceration of NCPs can have several consequences. First, in most instances, it substantially decreases the income available from which child support can be paid. Second, this lack of payment leads to the accumulation of arrears, which are often added to those existing prior to incarceration. Third, interest and penalties further add to the debt. The accumulated effect of this process is reflected in the often cited findings of several studies, including:

- A 2001 study completed in Massachusetts, which looked at the experience of 650 incarcerated NCPs (Thoennes, 2002), found that they entered prison with an average of \$10,543 in unpaid

child support.<sup>1</sup> Based on existing law and the length of their prison terms, it was estimated that they would accumulate another \$20,461 in child support debt, plus interest and penalties, by the time they were released.

- A study completed in Colorado, in which an order modification process for incarcerated NCPs was piloted in four county child support enforcement units, found that on average, the NCPs identified to participate in the pilot had entered the correctional system owing \$10,249 in arrears (Griswold, Pearson, and Davis, 2001). This amount had grown to \$12,208 by the time the NCPs were offered the opportunity to modify their child support orders.

While these figures suggest that child support is an important issue for individual prisoners, it is also noteworthy that the prisoners and their interactions with the child support system are of consequence for the system as a whole. For example, incarcerated and formally incarcerated NCPs accounted for 16.2 percent of Maryland's active child support cases in September 2004. Yet, they accounted for a disproportionate 25 percent of total statewide arrears (Ovwigo, Saunders, and Born, 2005).

The lack of payment and the related accumulation of arrears have implications from several different individual as well as organizational perspectives.

- The NCP who will face, upon release, a significant debt that could contribute to the challenges ex-offenders face related to their re-entry into society and discourage the NCP's participation in the formal economy.
- The custodial parent, who not only does not receive the amount due to him or her for support of a child as delineated in an order while the NCP is incarcerated, but may also not receive payments subsequent to release if large arrears discourage the NCP's participation in the formal economy.
- The child support enforcement system, whose ability to collect current support, reduce current arrears, and prevent the accumulation of additional debt may be compromised.
- The correctional system, which has an interest in eliminating barriers to ex-offenders' successful re-entry into society, thereby minimizing recidivism.

## POLICY AND PRACTICE OPTIONS

Given these consequences, questions have been raised about whether policies and practices related to the treatment of incarcerated NCPs' child support orders can or should be developed. However, the range of policy and practice options that might be available in a given jurisdiction can differ, based on

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<sup>1</sup>It should be noted that it is not clear whether the 650 incarcerated NCPs included in this study are representative of the entire population.

the prevailing legal environment. Of importance are standards regarding whether incarceration constitutes a “substantial change of circumstances” for the purposes of order review and adjustment as allowed under federal law [42 U.S.C. § 666(a)(10)(B)].

### Legal Considerations

As reflected in the literature, voluntarily quitting a job is not usually considered a significant change in circumstances in relation to the obligations established under a child support order. Rather, the courts have observed that the economic support that children need from both parents does not decrease simply because of a voluntary action on the part of a NCP (Hennepin County Child Support Division and Center for the Support of Families, Inc., 2003; Pearson, 2004). This concept of voluntariness exists in considering the child support obligations of incarcerated NCPs. The fundamental question is “whether incarceration is a voluntary or involuntary act and whether incarceration is thus a basis for modification” (Pearson, 2004, p. 5).

The response to this question is not uniform throughout the country or even within many states. The key variable is the differing interpretations of judges and magistrates as to whether incarceration is viewed as a voluntary or involuntary act; even if it is considered to be involuntary, there are different interpretations as to whether incarceration alone is the sole criteria to be used in determining whether an order should be modified. As reflected in the most recent comprehensive review of approaches to the effect of incarceration on child support obligations, completed by Pearson in 2004, the 46 states included in her analysis fall into three general groupings.

- In 21 states, incarceration is insufficient to justify elimination or reduction of an existing child support obligation, largely because the courts have held that those who are incarcerated are there because of the illegal actions they voluntarily performed.
- In 14 states, incarceration is sufficient to relieve the NCP from child support obligations.
- In 11 states, including Wisconsin, incarceration is one factor among many to consider in determining if an order should be reviewed and adjusted.

It should be noted, however, that the courts within a state may take different positions at different points in time. For example, Pearson's study noted that a 2003 court decision had overturned Pennsylvania's long-standing case law that an incarcerated NCP did not have to pay child support. As a result, in 2003 Pearson considered Pennsylvania to be a state in which incarceration was insufficient to justify elimination or reduction of an order. However, the Pennsylvania Supreme Court subsequently amended relevant rules related to child support. As of May 19, 2006, support orders of an incarcerated obligor with no verifiable income or assets are considered unenforceable and uncollectible; therefore, incarceration is a factor to be considered in determining whether an order should be reviewed and modified (Supreme Court of Pennsylvania, 2006).

#### Alternative Approaches

Even in those states in which the courts have held that incarceration does not constitute a substantial change of circumstances leading to the review and adjustment of an order, there are a number of options related to the treatment of obligations while a NCP is incarcerated. These include policies and practices related to the:

- accumulation of arrears and/or the forgiveness of arrears when they are to the state;
- application of penalties and interest; and
- treatment of income earned during incarceration.

Policy and practice options related to these three areas are also relevant in those states in which the courts have held that incarceration is either sufficient for or can be considered a factor in determining whether an order should be reviewed or modified. However, these states also have the option to develop policies and practices related to:

- the suspension of the order and a block on the accrual of arrears during the period of incarceration; and
- modification of the order to a minimum amount.

In addition, all states have policy and practice options available to them regarding the provision of information about child support to NCPs upon entry into prison or jail as well as of assistance following release.

#### SELECTED STATE EXAMPLES

The broadest range of policy and practice options are available in those jurisdictions in which the courts have determined that incarceration is or can be a factor in order review and modification; therefore, our review focused on six states in this category. Several broad conclusions can be reached regarding each of the policies and procedures reviewed.

- No state automatically modifies the child support order of an incarcerated NCP; all those that allow it require a request be made for order review and modification (Griswold and Pearson, 2003). There are, however, significant differences in the policy and practices of each state reviewed as part of this study, with the key difference being how proactively order review and modification is pursued. These same differences are also reflected in each state's approach to arrears accumulation and/or suspension.
- The prevailing state position in relation to order review and modification also applies to the establishment of new orders while a NCP is incarcerated. In most instances, the incarceration of a NCP is taken into account at the time of order establishment in that the order is suspended until release.
- Although all states acknowledge that income earned while incarcerated should be considered for the purposes of collecting child support, one state—Colorado—has a statutory requirement designating that a percentage of funds in an incarcerated NCP's prison account is automatically garnered in order to meet child support obligations. Most other states garnish the wages of NCPs involved in work release programs, similar to NCPs employed in the regular labor market.
- There is a range of approaches to issues related to NCPs' re-entry into society, many of which vary by locality within a state.

It appears that, at least to some extent, the differences in the states' approaches are driven by differences in what they are trying to accomplish by addressing the issue of child support orders in relation to incarcerated NCPs.

## Colorado

Colorado has adopted several different policies and practices related to incarcerated NCPs. According to state child support enforcement staff, the main purpose of these actions is to allow NCPs to better reintegrate into society and reduce recidivism. They have been informed by a series of studies undertaken in the past several years to address specifically the issue of collecting child support from incarcerated and paroled obligors in Colorado. These studies have suggested that child support debt could hinder reintegration and possibly contribute to recidivism (see, for example, Griswold, Pearson, and Davis, 2001).

***Order Suspension or Modification*** — All incarcerated NCPs may request a modification of their support order and have their order reduced; information about how to request order modifications is provided at the time of incarceration during prisoner orientation. In addition:

- if the custodial parent receives public assistance, the Division of Child Support Enforcement can initiate the action to modify the order;
- if the custodial parent does not receive public assistance, a letter is sent to the incarcerated NCP informing him or her that a request can be made to modify the order.

In either case, if a request for review and modification is made and neither party contests it, action is taken administratively. If it is contested, then it goes before a magistrate. According to state staff, because there is not a consistent statewide policy, whether or not a modification will ultimately occur in a contested case varies, depending on judicial preferences.

Colorado state statutes require a minimum monthly order of \$50 if an obligor's income is less than \$850 a month. While it is possible to deviate from this minimum, state officials indicate that such a deviation requires judicial approval. As a result, in cases where the reduction of an incarcerated NCP's order was handled administratively, a request to reduce the order lower than \$50 a month is typically not made in a county where the court does not generally modify the orders of incarcerated NCPs in a contested case. This is not done because child support staff do not want the modification to be refused altogether.



**Arrears** — Unless affected by an order modification, arrears continue to accumulate in Colorado for incarcerated obligors.

**New Orders** — The court may take into account the circumstances of the incarcerated NCP and set the initial order at \$50, or if the magistrate is willing to deviate, \$20.

**Income While Incarcerated** — In 2000, Colorado enacted a law permitting the child support enforcement agency to issue a notice of administrative lien and attachment to obligors in state prison facilities and to collect monthly up to 20 percent of their prison bank accounts to be paid toward any outstanding criminal case or for child support (C.R.S. § 16-18.5-106). State statute also explicitly delineates that an administrative lien and attachment can be placed on an inmate's bank account by the child support enforcement agency (C.R.S. § 26-13-122.5).

**Re-entry** — According to state child support enforcement staff, parole officers and county child support staff work together on promoting compliance with child support orders once a NCP is released from prison. In the Denver area, for example, where 55 percent of all inmates are released, actions are coordinated through Work and Family Centers. Possible actions may include reinstatement of driver's licenses, order adjustments, or wage assignment delays. However, if the released NCP is not working with a parole office, then it is up to the NCP to contact the child support enforcement agency in order to pursue an action specific to their situation.

## Maryland

The approach in Maryland appears to have been generally influenced by concerns that incarcerated NCPs cannot pay child support, resulting in large accruals of arrearages that are not only difficult to collect but also may have a negative influence on payments subsequent to a NCP's release. In order to gain a better understanding of the situation, Maryland undertook a study—completed in July 2005—to determine the overlap between the child support and the correctional systems. The purpose of the report was to document how many NCPs were incarcerated or had been previously incarcerated, the characteristics of obligors' child support cases, the amount of arrears owed by incarcerated as well as ex-

offender obligors, and the extent to which ex-offenders pay child support after they are released from prison (Ovwigbo, Saunders and Born, 2005).

***Order Suspension or Modification*** — All incarcerated NCPs may request a review and modification of their order. Although there is currently an effort underway to work with the corrections system to develop materials as well as train prison staff to provide information about child support to NCPs during their initial orientation, Maryland does not take any proactive steps to promote order review and modification. Rather, an incarcerated NCP must file a motion for review and modification with the court, similar to any other obligor. In addition, each county varies in its procedures, including whether order review and modification is completed administratively or if court review is required. According to state staff, although the minimum order established by statute is \$20, it is possible that a court will reduce an order to zero. However, the usual response is to suspend the case while the NCP is incarcerated; a new order is then established upon release.

***Arrears*** – Unless affected by an order modification, arrears continue to accumulate in Maryland for incarcerated obligors. Legislation (SB277) introduced in the 2004 Session of the Maryland General Assembly related to arrears accrual while an obligor is incarcerated did not pass. The legislation had specified that a child support payment is not past due and arrearages may not accrue during any period in which the obligor is incarcerated and continuing for 60 days after release if the obligor was in prison for 12 consecutive months, not on work release and has insufficient funds to make child support payments, and did not commit a crime with the intent of being incarcerated or otherwise impoverished.

***New Orders*** — The court may take into account the circumstances of the incarcerated NCP in establishing the order. Although the exact handling depends on the case, often the court will suspend the case and establish a support order upon the NCP's release from prison.

***Income While Incarcerated*** — According to state child enforcement staff, there is usually not enough money in a prison account to collect for the purposes of child support. In particular, in Maryland,

the first draw on any funds is to cover a facility fee associated with the institution in which the NCP is housed. However, obligors on work release will have their wages garnished.

***Re-entry*** — Several options are available. In particular, however, Maryland will reinstate a driver's license following suspension for nonpayment while incarcerated. Orders will also be adjusted at the time of release, although it is not clear whether this is done systematically or on a case-by-case basis.

### Massachusetts

According to state staff, Massachusetts' interest is in encouraging responsible management of child support by incarcerated NCPs. Policies and practices are therefore not necessarily focused on compliance with orders, as it is recognized that incarcerated NCPs may not be able to make payments while incarcerated. In addition, the intent is not to change state policies for incarcerated parents, but to make minor modifications to those that already exist in order to help inmates access the child support system. Massachusetts' efforts in this area have been informed by a study completed in 2004 that focused on developing ways of communicating with and serving incarcerated NCPs (Griswold, Pearson, Thoennes, and Davis, 2004).

***Order Suspension or Modification*** — All incarcerated NCPs can request a review and modification of their order. However, unlike most other states, Massachusetts makes a proactive effort to:

- Identify incarcerated NCPs through a match between child support and incarceration data designed to identify them; and
- Contact NCPs through written communication informing them that their order can be modified and that staff is available to assist them with their child support issues.

Because some incarcerated NCPs are missed in the data match, information about child support order modification is also provided during initial inmate processing.

Whether an incarcerated NCP's request for order modification will be granted is a matter of court discretion; such modifications are not made administratively. In addition, although the forms designed to facilitate order review and modification indicate that the lowest an order can be reduced to is \$80, which

is the minimum determined in state statute, the court can choose to deviate from this amount. The procedures to be followed are the same for all NCPs: there is no special policy for incarcerated NCPs.

**Arrears** — At their own request, incarcerated NCPs may be exempted from interest and penalty charges if they are participating in a program to improve their ability to pay child support upon release. According to state officials, the interpretation of what constitutes such a program is loosely interpreted and may include, for example, job skills or parenting training.

**New Orders** — The court may take into account the circumstances of the incarcerated NCP and set the initial order at \$80. The court can choose to deviate from this amount.

**Income While Incarcerated** — In Massachusetts, the income of incarcerated NCPs on work release is considered; state staff stated that all other income is so minimal it is not considered. In addition, it is rare to collect child support from inmate accounts unless they receive some sort of settlement while incarcerated or there is a high balance for some other reason. If for some reason an incarcerated NCP receives a financial settlement while incarcerated, the child support enforcement agency is notified.

**Re-entry** — Massachusetts' proactive approach reflects its goal of ensuring a NCP's order is modified during his or her incarceration in order to minimize re-entry issues following release. NCPs are instructed to contact the child support office upon their release, at which time an effort is made to work with the NCP on an individual basis. It should be noted, however, that the report completed in 2004 found that NCPs do not often communicate with the child support agency upon their release (Griswold, Pearson, Thoennes, and Davis, 2004).

### Michigan

A report recently issued in Michigan (Michigan Supreme Court, 2006) focuses on the large amount of debt that can accumulate when the child support orders of incarcerated NCPs are not modified. Although it is implied that the accumulation of arrears creates difficulties for these NCPs upon their release, whether this is Michigan's predominant concern is not clear. Rather, it appears there is an interest

in ensuring the processes that are in place regarding order review and modification are operating as efficiently and effectively as possible, as this would be of benefit to all involved parties.

***Order Suspension or Modification*** — Michigan law explicitly states that the incarceration or release from incarceration for a term of more than one year constitutes a “substantial change in circumstance” for the purpose of a review and modification of a support order [MCL §552.517(1)(b)]. State statute further requires that the Friend of the Court (FOC) initiate a review of support within 14 days after receiving information that a recipient or payer is incarcerated after a criminal conviction and sentencing to a term of more than one year as well as upon release. This information can be received from various sources, such as the party or a relative or automated data matching. Review and modification can result in the establishment of zero orders as well as the discharge of interest.

The concern in Michigan, as identified in the recently released report, is ensuring that the FOC is made aware of the incarceration of a NCP because without this notification, the review and modification process will not be instigated. According to state staff, all prisoners are given information about child support, including the review and modification process. Automated data matching is not standard practice, although it was recently evaluated as part of the study completed in 2006. However, state staff note that, even when incarcerated NCPs are identified and informed of their options, many will not act on it to request a modification and thus begin the process.

***Arrears*** — Similar to the process for order review and modification, NCPs may request suspension of arrearages and interest during incarceration. The discharge of interest is specifically allowed under state statute (MCL § 552.603d).

***New Orders*** — The circumstances for deviation listed in Michigan’s child support guidelines include incarceration. It is possible for an order to be set at zero.

***Income While Incarcerated*** — According to state staff, although the potential exists to collect small amounts of income from incarcerated NCPs, this is not standard practice. A policy has, however, been established that child support should collect 50 percent of all funds received by a prisoner over \$50

each month (Wright, 2006). This policy was put in place in response to the Department of Correction's former practice of not honoring income withholding notices. The \$50 floor was established based on the Department of Correction's belief that it is necessary to maintain security and to prevent bartering, since prisoners need monies for personal need items, medical co-pay, and other similar needs. In addition, work release income is subject to withholding.

***Re-entry Issues*** — As previously noted, the FOC is, by statute, supposed to review orders upon the NCP's release, just as they do when the NCP becomes incarcerated. Practices differ depending on particular FOCs, but these orders are reviewed similarly to other cases, including decisions made regarding the development of repayment agreements to handle arrears and interest.

### Minnesota

According to state staff, Minnesota is trying to encourage payment of child support and avoid overwhelming obligations when the NCP has no ability to pay. Its actions in this area have been informed by research, including a study completed in July 2003 that focused on strategies for working with low-income NCPs (Hennepin County Child Support Division and Center for the Support of Families, Inc., 2003). A specific population of interest was incarcerated NCPs; strategies related to the review and modification of orders were implemented on a pilot basis.

***Order Suspension or Modification*** — Minnesota allows for incarcerated NCPs to have child support orders reduced or suspended while incarcerated, although the court may consider several factors relating to incarceration when determining whether to approve a request for modification. Although there is a minimum basic support amount, if the court finds the obligor receives no income and completely lacks the ability to earn income, the minimum basic support amount does not apply; orders can be set at zero. In addition, as of January 1, 2007, Minnesota will no longer allow retroactive modification of a support obligation beyond the time period when the motion was pending. This had been allowable if the party seeking the modification was institutionalized or incarcerated for an offense other than nonpayment of child support.

Minnesota does not proactively identify incarcerated NCPs. Rather, according to a brochure designed for incarcerated obligors, a written request for modification is needed and the modification must result in an order that is 20 percent and at least \$50 higher or lower than the existing order.

***Arrears*** — Previously incarcerated NCPs are allowed to request the retroactive removal of arrears and interest accumulation during incarceration. This is done by the filing of a motion asking the court to remove arrears, including principal and interest.

***New Orders*** — The court may establish paternity and reserve a ruling on the amount of support until the NCP is released, or the court may establish an amount conditional on release that is suspended while the NCP is incarcerated. However, if the NCP has work release or Huber privileges, the order will be set based on that income.

***Income While Incarcerated*** — Small amounts of income earned in the facility where the NCP is incarcerated are not considered. According to state staff, the amounts are too small to be useful and it would probably cost more to try to collect it than would actually be collected. Income received from work release programs would be subject to collection.

***Re-entry*** — Information provided to incarcerated NCPs indicates they should contact the court, child support agency, and the other parent about their employment status and efforts to obtain employment on release so that a new order can be set based on their ability to pay. Information is also provided about driver's license reinstatement.

## Pennsylvania

State staff discussed Pennsylvania's goal in relation to incarcerated NCPs from the perspective of the custodial parent: the goal is to ensure that child support is a reliable source of income for custodial parents. Whether this position will change as a result of recent modifications to relevant state rules is not clear.

***Order Suspension or Modification*** — As previously noted, as of May 19, 2006, incarceration is recognized as rendering orders unenforceable; therefore, the order may be suspended until release.

Review and modification can be initiated at the request of either party or, in a nonpublic-assistance case, if the custodial parent cannot be reached within 30 days despite attempts by both phone and at least one certified letter and the obligor is unable to pay. Currently, Pennsylvania does not appear to be proactive in providing information to incarcerated NCPs regarding their ability to request review and modification of their order or in identifying those NCPs who might be incarcerated. However, this could occur in the future as steps are taken to fully implement the new rule.

***Arrears*** — The court can remit any arrears during incarceration.

***New Orders*** — Under the new rule, new orders may not be set during incarceration if an obligor has no verifiable income or assets.

***Income While Incarcerated*** — The income and assets of incarcerated NCPs are considered and are subject to collections.

***Re-entry*** — State staff indicated there are number of programs with which a NCP may become involved after release, many of which include components related to child support or are designed to promote employment, resulting in an increased ability to meet child support obligations.

## OUTCOMES

Clearly, several different approaches that have been taken to date relating to the treatment of the child support obligations of incarcerated NCPs. Unfortunately, however, very little is known about whether these policies and practices are having their intended effects related to outcomes for NCPs, custodial parents, the child support enforcement system, and the correctional system. First, many of the studies undertaken to date have been descriptive, focusing on more clearly delineating the interrelationship between the child support systems and the correctional systems. Second, those studies of pilot or demonstration projects that have been completed have focused on inputs and process measures.

For example:

- A 2001 study designed to test a support order modification process for incarcerated parents in four Colorado child support enforcement units focused on the extent to which modifications occurred and whether additional payments were made while in prison (Griswold, Pearson, and



Davis, 2001). According to the study's authors, no report on the payment patterns after the adjustment and release from prison was possible given the study's short time frame.

- The 2003 study completed efforts in Hennepin County, Minnesota, to work proactively with incarcerated NCPs to modify their orders, as well as to encourage timely payment of orders for recently released obligors, focused on process issues (Hennepin County Child Support Division and Center for the Support of Families, Inc., 2003). These issues related in particular to barriers to access. Although information about child support payments and arrears accumulation by those incarcerated NCPs who did receive an order modification is included, the researchers note that conclusions based on these results cannot be reached based on the small sample size.
- A study completed in 2003 by the State of Washington was undertaken in order to determine whether efforts to address the child support issues of and provide employment assistance to incarcerated NCPs make a difference in terms of payment following release (Washington Department of Social and Health Services, 2003). Although the researchers were able to draw some conclusions from the study, the statistical data necessary to answer the questions raised had not been obtained. Ultimately, although the study makes several recommendations, those involved were "unable to make a firm recommendation to other states to adopt a high effort or low effort outreach program to incarcerated NCPs" (Washington Department of Social and Health Services, p. 18).
- Michigan's 2006 study, as previously noted, focused on an effort to improve judicial processing of the child support cases of incarcerated NCPs and to overcome procedural barriers (Michigan Supreme Court, 2006). As a result, the report focuses on the extent to which steps taken, such as enhancing prisoner access to legal information and court forms, led to a more efficient and accessible process. Accomplishments noted emphasize the number of order modifications that occurred, the number of hearings and incarcerated NCP participation therein, and the extent to which user-friendly materials were sent to inmates.

In considering these studies, as well as others identified through a review of the literature, it is evident that additional investment is needed in determining the outcomes of efforts to modify policies and practices related to incarcerated obligors. An example of this type of study is currently underway at the Institute for Research on Poverty at the request of the Wisconsin Department of Workforce Development. This study will attempt to identify the impact of suspending initial orders for support when a payer is incarcerated on subsequent payment patterns. The literature review reported here suggests that the ongoing Wisconsin study may be the first to evaluate the impacts of suspending orders on subsequent earnings and child support payments.

## POLICY AND PRACTICE CONSIDERATIONS

The treatment of the child support obligations of incarcerated obligors is a complex issue. A central concern is how to best balance concerns about the financial burdens placed on incarcerated NCPs who have no substantial source of income to fulfill their obligations with the concepts of equity and fairness in relation to other, non-incarcerated NCPs as well as the custodial parent. In some states, the courts have already determined that no special treatment should be accorded incarcerated NCPs. Incarceration is insufficient to justify elimination or reduction of an existing child support obligation largely because the courts have held that those who are incarcerated are there as a result of the illegal actions they voluntarily performed.

However, in those jurisdictions such as Wisconsin where incarceration can be considered as one of many factors in making a determination about whether a support order should be reviewed and modified, finding and maintaining the appropriate balance of competing interests can be a challenge. To adequately assess the potential benefits and costs, more information is needed regarding the implications of policy alternatives for post-incarceration employment, child support payments, and recidivism. In this regard, the ongoing evaluation of new approaches in Wisconsin has the potential to inform policy in Wisconsin and nationally.

There are a range of policy options to be considered. Of particular importance are the following questions:

- To what extent should an effort be made to inform incarcerated NCPs that they can request review and modification of their child support order?
- If an effort is to be made, how proactive should this effort be? Should it involve data matching? Should routine information dissemination at the time of initial incarceration be established? Should efforts involve individualized contact?
- Once a request for review and modification is made, how should it be processed? For example, will administrative processes rather than hearings (unless one party objects) occur?
- At what point should a NCP be expected to resume his or her child support obligations following release? Should resumption of obligations occur immediately or at a later date?

Further complicating matters are the difficulties that can arise in practice when a decision is made to become more proactive in working with this population. Given the focus of past evaluations in this area, there is a significant amount of information available about the practice challenges inherent in striving to take a more proactive approach. Lessons learned relate to the best strategies for obtaining information about the incarceration status of NCPs, including release dates; initiating contact; developing appropriate forms, such as affidavits; and communicating with correctional facilities (see, e.g., Administration for Children and Families, 2006b). Overall, it is apparent that efforts in this area have significant workload implications, not only in relation to modifying existing processes but also in relation to maintaining those processes as standard operating procedures.

Finally, regardless of what decisions are made, the ultimate decision regarding any particular order may be influenced by local preferences. The courts continue to play a role in determining whether the specific situation constitutes a “substantial change of circumstances” for the purposes of order review and adjustment as allowed under federal law. As evidenced by recent events in Pennsylvania, legal interpretations can and do change. Wisconsin’s current environment, in which incarceration is not always viewed as involuntary unemployment, will need to be taken into account when considering appropriate responses that balance potentially competing interests in relation to incarcerated obligors.

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