

Forgiveness of State-Owed Child Support Arrears

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Executive Summary

Child support arrearages have become an issue of increasing public policy concern. This concern reflects the magnitude of such arrears, the growing awareness of the complex factors that contribute to arrears accumulation, and the possibility that arrears may have detrimental impacts on child support agencies, noncustodial parents, and custodial parents and children.

Concern about the scope of arrears, and the associated negative consequences, has led to increasing interest in the potential of public policy to provide remedies. This report considers one general policy approach to reducing child support arrears that have already accrued, the forgiveness of arrears owed to the state. The report provides an overview of the magnitude of arrears, the factors that contribute to arrears, and the problems stemming from high arrears. In addition, it provides an overview of current arrears-forgiveness programs around the country and highlights the many unanswered questions that remain about the impacts of such programs. Finally, the report provides a framework for thinking about the design of an arrears-forgiveness program, suggesting several goals and principles that could guide policy development. The focus of the report is on Wisconsin, although much of the discussion may be of relevance elsewhere as well.

Nationwide, the scope of child support arrearages is daunting. The federal Office of Child Support Enforcement (2001) reports nearly \$84 billion in arrears owed on behalf of children served by the Child Support Enforcement program during 2000—of which less than \$6 billion was collected. Arrears in Wisconsin are also substantial. Information from the Wisconsin Bureau of Child Support (2000) reveals total child support debt of over \$2.3 billion, of which 54.4 percent was owed to custodial families and 45.6 percent was owed to the state or counties.

A variety of factors contribute to the accumulation of child support debt. Arrears are sometimes the direct result of specific policies governing support obligations. For instance, orders may be ordered retroactively, noncustodial parents are frequently assessed birth-related costs and other fees, policies do

not provide for adjustments in the case of incarceration, and interest of 12 percent is charged on unpaid support. In other cases, arrears stem from noncustodial parents' limited ability to pay support, which itself can be influenced by support policies such as the use of minimum orders, default orders, and the inability to retroactively modify obligations that are found to be high relative to income. In still other cases, arrears reflect limited willingness to pay on the part of noncustodial parents. Understanding the factors that contribute to child support arrears is relevant to considering the merits of arrears forgiveness as a potential remedy.

The accumulation of child support arrears is troublesome in that it implies both a lack of resources provided to custodial families (in the case of arrears owed to families) and a lack of reimbursement to the state for expenses that could, at least in principle, be recovered. At the same time, the persistence of arrears creates its own problems—including difficulty meeting state performance targets; effort expended on enforcement efforts; hardships for low-income fathers, many of whom have little realistic prospects for paying off their debts; and secondary impacts on payments, because arrears may drive some fathers into the underground economy to avoid enforcement.

Concern about the scope of arrears, and the associated negative consequences, has led to increasing interest in arrears-forgiveness policies. Federal law permits states to compromise child support arrearages, subject to agreement by the relevant parties. Given this flexibility, states are increasingly experimenting with a range of arrears forgiveness policies. Policy is evolving rapidly in this area, with a broad range of initiatives ranging from statewide policies to small-scale pilot projects to informal practices arising from discretion granted by states to local offices. In Wisconsin, county child support agencies have the authority to forgive interest on state-owed child support debts. In addition, child support agencies may request permission from the Bureau of Child Support (BCS) to forgive principal owed to the state, on a case-by-case basis. However, there is no uniform policy or rule governing when

county agencies should exercise these options. County policies have thus far not been subject to formal evaluations.

Despite the widespread interest in arrears-forgiveness programs, and the growth of state and local policy in this area, virtually nothing is known about their impacts, either in Wisconsin or elsewhere. Likewise, there is thus far no empirical information about “best practices” or about the relative merits of various approaches. Nonetheless, it is clear that arrears-forgiveness programs could have a variety of impacts, both on child support agencies and on noncustodial parents.

States interested in developing arrears-forgiveness programs face a wide range of choices. Ultimately, decisions about the type of program to implement depend on a variety of factors. A useful starting point is to clarify program goals, as different goals have different implications for program design. Potential goals include making state child support systems more cost-effective, making the system fairer to noncustodial parents, and changing the behavior of noncustodial parents. In addition, it may be useful to establish a set of guiding principles that can provide a framework for assessing the pros and cons of possible approaches. Suggested principles include the following:

- ▶ Programs should minimize both the perception and the practice of rewarding noncompliance.
- ▶ Programs should not serve as deterrents to future payments.
- ▶ Programs should strive for horizontal equity.
- ▶ Programs should not implicitly or explicitly put pressure on custodial parents to forgive family-owed arrears.
- ▶ Programs should include rigorous evaluations.

Forgiveness of State-Owed Child Support Arrears

INTRODUCTION

Child support arrearages have become an issue of increasing public policy concern. This concern reflects the magnitude of such arrears, the growing awareness of the complex factors that contribute to arrears accumulation, and the possibility that arrears may have detrimental impacts on child support agencies, noncustodial parents, and custodial parents and children.

Concern about the scope of arrears, and the associated negative consequences, has led to increasing interest in the potential of public policy to provide remedies. A range of policies are relevant. These can be grouped broadly into two categories—policies to prevent the accumulation of arrears, and policies to reduce arrears that have accrued. This report considers one general policy approach to reducing child support arrears that have already accrued, the forgiveness of arrears owed to the state.

The purpose of this report is to provide background and guidance to state policymakers interested in developing arrears-forgiveness policy. My focus is on Wisconsin, although much of the discussion may be of relevance elsewhere as well. I begin with relevant background, including an overview of the magnitude of arrears, the factors that contribute to arrears, and the problems stemming from high arrears. Next, I provide an overview of current arrears-forgiveness programs around the country, highlighting the many unanswered questions that remain about the impacts of such programs. Finally, I provide a framework for thinking about the design of an arrears-forgiveness program, suggesting several goals and principles that could guide policy development in the absence of empirical evidence about the relative merits of various approaches.

BACKGROUND

This section provides an overview of the scope of child support arrears, examines factors that contribute to arrears accumulation, and discusses the potential problems that high arrears create for various stakeholders.

How Much Child Support Debt?

Nationwide, the scope of child support arrearages is daunting. The federal Office of Child Support Enforcement (2001) reports nearly \$84 billion in arrears owed on behalf of children served by the Child Support Enforcement program during 2000—of which less than \$6 billion was collected.¹

Arrears in Wisconsin are also substantial. Information from the Wisconsin Bureau of Child Support (2000) reveals total child support debt of over \$2.3 billion, of which 54.4 percent was owed to custodial families and 45.6 percent was owed to the state or counties.²

Child support debt has a variety of components:

- *Unpaid current support* refers to regular child support obligations that have not been paid. Unpaid support can be owed to the custodial family or to the state. The latter occurs when support was owed for a period in which the custodial parent received public assistance or when the child was in foster care.
- *Retroactive orders* are obligations that cover a period prior to the issue date of the order. Retroactive orders include “past support,” or retroactive orders that are not yet due because of a payment schedule that spreads such obligations out over a period of time, as well as “unpaid past support,” or retroactive orders that are past due. Retroactive orders can be owed to the custodial family or the state.³

¹The federal Office of Child Support Enforcement (OCSE) provides child support-related services to current welfare recipients (including those receiving Temporary Assistance for Needy Families [TANF], subsidized child care, food stamps, or Medicaid), past welfare recipients, and any other parents who seek assistance.

²These figures pertain to cases served by the state Child Support Program, as well as non IV-D cases that have debts owed to the state. Because these figures include all state-owed debt, including debt in non IV-D cases, the amounts differ from those reported to OCSE. Calculations are based on data in Wisconsin Bureau of Child Support (2000) and exclude arrears stemming from property settlements.

³In paternity cases, support can be ordered back to the date on which the support petition was filed. In the past, it was allowed—and common—to order support back to the date of the child’s birth. Existing orders cannot be changed retroactively.

- *Lying-in costs* are medical costs associated with the birth of the child, usually owed to the state to reimburse Medicaid costs.
- *Fees* are owed to the state or counties and cover such things as case processing, genetic testing and other charges.
- *Interest* is charged on obligations that are past due and contributes to total child support debt. Interest can be owed to the custodial family or the state.

Analysis of the composition of child support debt is informative (see Table 1). Nearly 69 percent of the debt owed to custodial families in Wisconsin consists of unpaid current support obligations. A small share, 1 percent, consists of retroactive orders (some of which are past due). Another small share, less than 1 percent, consists of costs associated with the birth of the child. Finally, the remaining share, 30 percent, consists of interest owed on arrears (author's calculations from Wisconsin Bureau of Child Support, 2000).

The composition of child support owed to the state is considerably different. Unpaid current support owed on behalf of welfare and foster care cases together constitutes 43 percent of state-owed debt, with arrears for past Aid to Families with Dependent Children (AFDC) cases forming the largest component. Retroactive orders account for 7.5 percent of state debt, while costs associated with the birth account for 15.5 percent. Fees owed to the state make up another 4 percent. Finally, interest constitutes a substantial share, 30 percent (author's calculations from Wisconsin Bureau of Child Support, 2000).⁴ Compared to family-owed debt, unpaid current support makes up a considerably smaller share of state-owed debt, while retroactive orders, fees, and costs associated with the birth make up substantially larger shares.

⁴These calculations include all arrears classified as state debt, but exclude arrears classified as "other government" debt. The latter, constituting 1.4 percent of the total child support debt, includes such components as arrears on behalf of foster care cases, fees owed to the county for blood tests, attorney costs, etc.

In dealing with the issue of child support arrears in Wisconsin, it is important to consider the state's unique policy with regard to child support obligations on behalf of public assistance recipients. Wisconsin received a federal waiver allowing the state to provide Wisconsin Works (W-2) recipients with all current child support paid on their behalf, rather than retaining such payments to offset welfare costs. This was initially implemented as a random-assignment experiment, but as of the summer of 2002, the policy pertains to all W-2 cases. State-owed arrears that continued to accrue for some W-2 cases during the period of the experiment have been reassigned such that they are now payable to the custodial parent.⁵ The effect of the pass-through policy on state-owed arrears is that the principal owed to the state will grow much more slowly than in the past, with new arrears limited to unpaid and retroactive support in Kinship Care and Foster Care cases as well as unpaid birth costs and fees. Unpaid and retroactive support on behalf of W-2 cases will only contribute to family-owed arrears. Interest, however, does continue to accrue on existing obligations.

Why Child Support Debt Accrues

A variety of factors contribute to the accumulation of child support debt. Arrears are sometimes the direct result of specific policies governing support obligations; in other cases, arrears stem from noncustodial parents' limited ability to pay support, which itself can be influenced by support policies; and in still other cases, arrears reflect limited willingness to pay on the part of noncustodial parents. Understanding the factors that contribute to child support arrears is relevant to considering the merits of arrears forgiveness as a potential remedy.

⁵The remaining arrears owed to the state stem from Kinship Care cases, Foster Care cases, and AFDC cases (from the pre-W-2 era).

TABLE 1**Child Support Debt in Wisconsin, 2000**

	Debt to Families		Debt to State	
	\$ (millions)	% of total	\$ (millions)	% of total
Unpaid current support	871.95	68.8	440.43	42.8
Retroactive orders	17.98	1.4	77.31	7.5
Birth-related costs	3.37	.3	159.49	15.5
Interest on arrears	374.37	29.5	312.76	30.4
Fees			38.10	3.7
Other			.49	.04
Total	1,267.67	100.00	1,028.58	100.00

Source: Wisconsin Bureau of Child Support (2000). Accounts Receivable Report, June 30. Madison:

The Bureau.

Direct Impact of Child Support Policies

A variety of policies appear to contribute to the accumulation of child support debt, including the following:

Retroactive orders. The majority of states utilize retroactive support orders, which make fathers responsible for support for some or all of the time between the birth of their child and the establishment of their order. At a minimum, the use of retroactive orders contributes to child support debt by creating a lump-sum obligation in addition to ongoing support. Furthermore, there is some evidence that the length of the period for which retroactive support is assessed may be negatively linked to compliance. The Office of the Inspector General (2000) found that in cases with no retroactive support, 86 percent of obligors made some payment, as compared to 77 percent in cases with retroactive support assessed for 1 to 12 months, and 66 percent in cases with retroactive support assessed for longer than 1 year. On the other hand, Pearson and colleagues (1999) found no short-term differences in payments between fathers who were randomly assigned to one of two groups, one receiving standard treatment and the other not given retroactive orders or other up-front charges.

In Wisconsin, retroactive orders can be issued to the date of initial filing. Interest is not charged on retroactive orders unless payment on them is past due (Pearson and Griswold, 2001). As previously noted, support owed retroactively accounts for 1 percent of Wisconsin child support debt owed to custodial families and 7.5 percent of debt owed to the state. Because retroactive orders for W-2 cases are now payable to the custodial parent rather than to the state, the use of retroactive orders will, in the future, be of relevance primarily to family rather than state-owed arrears.

Medical costs and other fees. States frequently charge fathers for a portion of the medical costs associated with the birth of their child, and may also charge for other fees, such as attorney costs and reimbursement for genetic testing (Roberts, 2001). This has the effect of creating large debts from the time an order is first issued, and may create an incentive to drop out of the child support system. For

instance, the Office of the Inspector General (2000) found that in cases where no charges were assessed on the noncustodial parent, 84 percent made a payment within the first 34 months, as compared to 74 percent when charges were assessed.

In Wisconsin, birth-related costs make up 15.5 percent of debt owed to the state, and fees constitute an additional 4 percent. Among fathers of W-2 recipients with current support obligations, 74 percent had an order to reimburse the state for birth-related costs (Bartfeld and Meyer, 2002).⁶

Lack of consideration for incarceration. The lack of specific policies governing child support obligations for incarcerated parents also contributes to child support arrearages. Not only are incarcerated parents unable to pay ongoing support obligations, but they also continue to accrue interest on past-due support. Previously, some noncustodial parents in Wisconsin had orders expressed as percentage of income, in which case the effective order would automatically adjust to the earnings reduction associated with incarceration. Due to the statutory end of percentage-expressed orders, however, automatic reduction is no longer a possibility. Although obligors in Wisconsin may petition for a change of order every 3 years, or more frequently in the event of a significant change in economic circumstances, there is no formal policy about how orders are to be modified in the event of incarceration. In practice, the outcome is highly variable, with some judges viewing criminal activity as an insufficient justification for revising an order despite the obvious impact on income (Fullin, 2002).⁷ In light of the conversion of percentage-expressed orders to fixed-sum orders, the impact of incarceration on child support arrearages in Wisconsin is likely to grow. Because of Wisconsin's pass-through policy, this will be of most relevance to family-owed arrears rather than state-owed arrears.

⁶Wisconsin Statute 767.51(3) indicates that orders to pay for costs associated with the birth should be based on the father's ability to pay, although in practice the vast majority of fathers appear to receive orders for birth-related costs (Pate, 2000b).

⁷A Wisconsin appellate court decision, *Parker vs. Parker* (152 Wis. 2nd 1 (Ct. App. 1989)), found that children should not be penalized by a voluntary act of a parent which reduced earnings. The courts have in some cases relied on this decision in determining whether orders should be revised due to incarceration.

Interest. The practice of charging interest on unpaid support has a major impact on arrearages. In Wisconsin, interest is currently charged at a rate of 12 percent.⁸ As of June 2000, 30 percent of all child support arrears owed to the state, and a comparable share of arrears owed to families, consisted of interest rather than principal. Although 30 percent of all child support debt consists of interest, there is considerable variation among obligors. For some noncustodial parents, interest on unpaid support constitutes the vast majority of the total amount of arrears. In light of the full pass-through policy in Wisconsin, under which child support owed to welfare recipients is passed through to the custodial parent rather than retained by the state, interest, rather than principal, will become an increasingly important share of state-owed debt.

Limited Ability to Pay Support

Arrearages stem in part from the limited ability of noncustodial parents to pay support.⁹ Ethnographic research has consistently found that lack of job skills and employment opportunities play a major role in contributing to nonpayment of support (see, for example, Johnson and Doolittle, 1998; Pate, 2002a). Ability to pay is also strongly linked to compliance with support orders in the quantitative literature. Early research found that fathers' higher earnings or incomes—or proxies for such—were associated with higher child support compliance (e.g., Beller and Graham, 1993; O'Neill, 1985; Sonenstein and Calhoun, 1990). Subsequent research demonstrated that the “burden” of the support order, that is, the amount owed relative to actual income, is also a strong predictor of compliance (Bartfeld and Meyer, 1994; Meyer and Bartfeld, 1996; Meyer, 1999). Furthermore, high-burden orders appear particularly detrimental to compliance among obligors with the lowest incomes (Bartfeld and

⁸This is a simple interest rate, not a compound interest rate. Prior to May 2000, the annual interest rate was 18 percent.

⁹Because the vast majority of research in this area pertains to noncustodial fathers, not noncustodial mothers, I use “noncustodial parent” and “father” interchangeably in this discussion.

Meyer, 1994). In Wisconsin, low-income fathers are more likely than are higher-income fathers to have orders that exceed the guidelines-specified share of income (Meyer, Cancian, and Melli, 1997).

Not surprisingly, then, researchers have found strikingly low incomes among high-arrears cases. For instance, a recent study of the California child support caseload revealed that, of \$14.4 billion in arrears, only \$6.3 billion was owed by parents with incomes over \$5,000 per year, \$3.4 billion was owed by parents with incomes below \$5,000, and \$4.7 billion was owed by parents with no recent income (Sorensen and Zibman, 2001, cited in Roberts, 2002). Comparing obligors with and without arrears in Minnesota, Hennessey and Venohr (2000) found that the former had considerably lower income distribution. For instance, half had monthly incomes below \$1,500, versus 29 percent among the no-arrears group.

In some cases, child support policies have a direct impact on noncustodial parents' ability to pay support, and hence on their accumulation of arrears. Policies of particular relevance involve minimum child support orders, default support orders, and order modifications.

Minimum orders and default orders. All states have income-based child support guidelines, but the use of minimum orders and/or default orders can result in orders that are high relative to actual income. Minimum orders may create large burdens for fathers who are unemployed or incarcerated, and default orders frequently overestimate the actual incomes of fathers who are unemployed or working on a part-time or intermittent basis (Roberts, 2001). Wisconsin does not have a minimum support obligation, but default orders can be and are used (Pearson and Griswold, 2001).

Modification of support orders. Policies governing periodic modification of support orders—as well as parents' understanding of those policies—have important implications for the ability to comply with support obligations, and thus for the accrual of arrears. Failure to modify a support order when a noncustodial parent's income declines can rapidly lead to the accumulation of substantial arrearages, if the order exceeds the new, reduced ability to pay support. Furthermore, orders cannot be modified

retroactively, so there is no straightforward recourse when timely revision is not achieved. Focus groups with parents in the Parents Fair Share demonstration reveal that noncustodial parents have little understanding of the need to revise support orders when income changes, or of the procedures for doing so (Johnson and Doolittle, 1998), and research with low-income fathers in Milwaukee documents extremely poor understanding among noncustodial parents regarding the overall child support process (Pate, 2002a).

In Wisconsin, child support agencies are required to review orders for possible modification at least every 3 years if either parent requests such a review. Agencies may agree to more frequent requests if there are unusual changes in economic circumstances (Wisconsin Department of Workforce Development, 2002). These criteria may be of limited use to fathers who have irregular or fluctuating incomes. Until recently, many cases in Wisconsin had orders expressed as a percentage of income, rather than as a fixed dollar amount; as noted earlier, such orders are no longer permitted in the state for cases served by the Child Support Enforcement system.¹⁰ The conversion of percentage-expressed to fixed orders will likely make it more difficult for orders to track current economic circumstances, which may have negative implications for the accrual of arrears.

Willingness to Pay

Child support arrears may also stem from the reluctance of some noncustodial parents to comply with support obligations. For instance, a Minnesota study found that noncustodial parents frequently report denial of visitation and/or custody disputes as a reason for noncompliance (cited in Hennessey and Venohr, 2000). On the other hand, given the increasing stringency of the enforcement system—including income withholding, tax intercepts, and reporting of new hires to a central directory—fathers’

¹⁰Parents outside of the Child Support Enforcement system maintain some discretion regarding percentage-expressed orders (Wisconsin Department of Workforce Development, 2002).

preferences for paying or not paying support may simply not be relevant for many fathers.¹¹ That is, many fathers who lack “willingness” to pay may nonetheless comply with support obligations, simply because routinized collections mechanisms make it difficult to “choose” nonpayment.

Characteristics of the child support system may affect parents’ willingness to pay, and hence the extent to which they comply with support obligations. Of particular relevance are policies governing the treatment of support paid on behalf of welfare recipients. Qualitative researchers have consistently found that the policy of retaining child support payments made on behalf of welfare recipients so that the state can recoup welfare-related costs discourages fathers from paying support through the formal system (see, for example, Waller and Plotnick, 2001). This is confirmed by the recent evaluation of Wisconsin’s full pass-through policy, which found that fathers whose families received the full pass-through are more likely to pay support than are comparable fathers randomly assigned to a more restrictive, partial pass-through policy (Meyer and Cancian, 2001). In light of Wisconsin’s full pass-through policy, concerns about support not going to the mother should become less relevant to the accumulation of child support arrears.

Why Arrears Are Problematic

The accumulation of child support arrears is troublesome in that it implies both a lack of resources provided to custodial families (in the case of arrears owed to families) and a lack of reimbursement to the state for expenses that could, at least in principle, be recovered. At the same time, the persistence of arrears creates its own problems—including difficulty meeting state performance targets; effort expended on enforcement efforts; hardships for low-income fathers, many of whom have

¹¹In fact, recent research in Wisconsin suggests that fathers’ willingness—or lack thereof—to pay support is most relevant for those fathers who are outside of the formal employment sector, and who thus maintain a greater degree of payment discretion (Bartfeld and Meyer, 2002).

little realistic prospects for paying off their debts; and secondary impacts on payments, because arrears may drive some fathers into the underground economy to avoid enforcement.¹²

Effort Expended on Collections

States devote considerable time, cost, and effort to collecting child support arrears, yet available evidence suggests that a substantial share of arrears may, for all practical purposes, be uncollectible. A study in Maryland found that payments on arrears decrease by 24 percent per year, such that arrears more than 4 years old are virtually uncollectible (Conte, 1998, cited in Pearson and Griswold, 2001). In the California study previously cited, researchers estimated that, based on incomes of obligors, only 20 percent of existing support arrears were likely to be collected over the next 10 years—during which time more than six times that amount would accrue in interest and new arrears on behalf of current obligors (Sorensen and Zibman, 2001, cited in Roberts, 2002).

Lower Score on Performance Incentives

Cases with arrears, and no payment activity, reduce state scores on federal performance measures, leading to lower incentive payments. Such payments are based on a set of indicators, one of which is the share of all cases with arrears in which a payment is collected and distributed (Roberts, 2002).

Hardships for Fathers

The qualitative research literature has paid considerable attention to the implications of high arrearages for low-income fathers. For instance, Pate (2002a) conducted in-depth interviews with 36 low-income African American fathers in Milwaukee and found that all of the fathers were overwhelmed by the large amounts of their child support debt. Their debt often proved a deterrent to continuing to work

¹²Because existing literature focuses on problems associated with child support arrears among noncustodial fathers—not among noncustodial mothers—noncustodial fathers are the emphasis of the current discussion.

due to the dramatic impact of arrears on take-home pay. These problems were magnified if an employer failed to adhere to the legal limit of 65 percent on the total share of income that can be withheld to satisfy current and past support obligations.¹³ Furthermore, the challenges of attempting to pay off substantial debts appear particularly profound when fathers are also attempting to support children in their current household.

Potential Decrease in Payments

Fathers who have high amounts of child support arrearages may have less incentive to cooperate with the child support system due to the low likelihood that they will be able to pay their debt fully. The detrimental impact of arrears on subsequent payments has been highlighted by a variety of qualitative research (see, for example, Pate, 2002a; Waller and Plotnick, 2001). Recent evidence from Wisconsin supports the contention that high arrearages contribute to low compliance with ongoing obligations. Focusing on fathers of W-2 recipients, Bartfeld and Meyer (2002) find that fathers with a higher likelihood of owing substantial arrearages to the state at the time their child(ren) enter W-2 are significantly less likely to comply with their ongoing obligations. In addition to the financial implications of noncompliance, some hypothesize that failure to pay support may exacerbate conflicts between noncustodial and custodial parents, and reduce the likelihood that fathers have meaningful contact with their children.

May Reduce Gains from Wisconsin's Full Pass-Through Policy

High arrears may reduce the gains from the full pass-through policy. The pass-through policy seeks, among other things, to increase child support payments by reducing payment disincentives

¹³The federal Consumer Credit Protection Act limits the amount of child support that can be withheld. This amount is limited to 50 percent of disposable income if an employee has a second family, or 55 percent if the employee's arrearages are 12 or more weeks overdue; and 60 percent of disposable income if an employee has no second family, or 65 percent if the employee's arrearages are 12 or more weeks overdue (Morgan, 2001).

associated with state retention of support. For fathers with high arrears, however, arrears can constitute a substantial share of the total support obligation, and state-owed arrears stemming from the pre-TANF era are not subject to the full pass-through policy. Any payment incentive created by the pass-through policy could, therefore, be diluted by the existence of pre-TANF obligations to the state.¹⁴

ARREARS-FORGIVENESS PROGRAMS

Concern about the scope of arrears, and the associated negative consequences, has led to increasing interest in the potential of public policy to provide remedies. A range of policies are relevant. These can be grouped broadly into prevention policies—that is, policies to prevent the accumulation of arrearages—and after-the-fact policies, or policies to reduce arrearages that have accrued. After-the-fact strategies range from efforts to increase fathers’ ability and willingness to pay (such as policies to increase earnings and help fathers navigate the child support system); efforts to increase the effectiveness of collections (such as enhanced enforcement tools); efforts to encourage payment by offering amnesty from prosecution for past nonpayment; and policies that forgive some or all of the outstanding obligations.

This report focuses on the forgiveness of accumulated arrearages. In this section, I discuss current policy and practice with regard to arrears-forgiveness programs. I clarify federal policy and provide an overview of some of the policies that have been implemented in other states. I also provide an overview of current policy in Wisconsin, including a brief description of how three counties have used the discretion afforded them by the state to implement local arrears-forgiveness programs. Finally, I

¹⁴In principle, a father could choose to pay current support, knowing it would be passed through to the custodial family, while not paying any state-owed arrears. In practice, the majority of support is collected through income withholding, and fathers subject to income withholding cannot choose to pay current support but not arrears. The clearest “choice” fathers face with regard to payment is not how much of their obligation to pay, but whether to be employed in the formal sector and thus to face withholding of both current support and arrears.

discuss the potential impact of arrears-forgiveness programs, highlighting the many unanswered questions that remain.

National Context

Federal law permits states to compromise child support arrearages, subject to agreement by the relevant parties. As such, arrearages owed to the custodial parent can be reduced if she/he is willing to accept the reduced amount, and arrearages owed to the state can likewise be reduced if the state is willing to accept the reduced amount (Roberts, 2001). Given this flexibility—clarified in a recent Policy Interpretation Question (PIQ) from the Office of Child Support Enforcement (2000)—states are increasingly interested in the pros and cons of forgiving child support arrears.

State and Local Responses

Considerable variation exists in states' policies with regard to arrears forgiveness (also known as debt compromise). Policy is evolving rapidly in this area, with a broad range of initiatives ranging from statewide policies to small-scale pilot projects to informal practices arising from discretion granted by states to local offices. This section provides an overview of a range of arrears-forgiveness policies that have been implemented around the country.¹⁵ Several efforts have been made to document the breadth of policy related to arrears forgiveness (see, for example, Pearson and Griswold, 2001; Roberts, 2001; U.S. Department of Health and Human Services, 2001), and this summary draws heavily from those studies, as well as from conversations with representatives of selected programs. This is not intended to be a comprehensive listing of relevant programs, but rather serves to illustrate the diversity that exists in this area.

¹⁵Unless otherwise noted, these programs all apply to state-owed arrears, not to family-owed arrears.

Programs Linked to Low-Income Fatherhood Programs

Several states include arrears forgiveness as a component of low-income fatherhood programs.

Arrears forgiveness is sometimes conditional on program participation, while at other times it is linked to ongoing payment of current support. For instance:

- Maryland operates the State Owed Child Support Arrears Leveraging Program, which credits noncustodial parents for some or all of their child support arrears conditional upon successful completion of a community-based program and subsequent regular payment of current obligations. Specifically, participants receive a credit for up to 25 percent of their TANF arrears following successful completion of a 6-month program designed to lead to eventual employment and ongoing support payment, followed by an additional 25 percent reduction for each subsequent 6-month period of regular support payment, up to the full amount of arrears. Participants must be referred by a participating community-based organization (U.S. Department of Health and Human Services, 2001). There are penalties for nonpayment, including loss of eligibility for arrears credit (Pearson and Griswold, 2001). Child support payments made by the first group of parents in the program increased by 142 percent as of 90 days after enrollment (Atkinson and Cleveland, Attachment 7, 2001). As of June 2002 the program was serving 102 enrollees, and approximately 47 to 49 percent of enrollees were paying in full each month (McCargo, 2002).
- Iowa operates the Satisfaction to Support Program, a pilot program that offers support-related incentives to participants in Fatherhood and Welfare-to-Work programs (Pearson and Griswold, 2001). Under this program, specified percentages of state-owed arrears are forgiven following payment of current support for designated amounts of time. Specifically, 15 percent of arrears are forgiven following payment of 6 months of current support; 35 percent following payment of 1 year of support; and 80 percent following payment of 2 years of support. Because some participating parents also have arrangements to temporarily lower their level of withholding, it may take up to a year to enter the arrearage forgiveness portion of the program. As of June 2002, 31 participants had some portion of their arrears forgiven. Given the short time frame and small size of the program, there is currently no systematic information on program impacts, though program staff feel that anecdotal evidence regarding impact on payments is promising (Frohwein, 2002).
- Minnesota has a responsible fatherhood program in which participating noncustodial parents qualify for full forgiveness of state arrears following a year of successful program participation (Pearson and Griswold, 2001).

Programs Targeting Incarcerated Noncustodial Parents

Incarceration is widely acknowledged to contribute to arrears accumulation, and a number of states have implemented, or are in the process of developing, arrears-forgiveness and order-reduction initiatives specifically targeting currently or recently incarcerated fathers.

- Maryland law permits local child support offices to expunge state-owed arrears accrued by noncustodial parents during incarceration. The practice is explicitly permitted by state law, but the decisions are made on a case-by-case basis by local child support offices (U.S. Department of Health and Human Services, 2002).
- Utah permitted the forgiveness of arrears stemming from periods of incarceration, provided the obligor paid current support as well as designated payments toward arrears for a 12-month period (Roberts, 2001), though Pearson and Griswold (2001) note that this law was to be rescinded.
- Some states (e.g., Arizona, Iowa, Oregon) have explicit policies for reducing support orders during incarceration, either on an automatic basis or subject to request by the noncustodial parent (Pearson and Griswold, 2001; Roberts, 2001; Roberts, 2002). While these differ from arrears-forgiveness programs, in that they are before-the-fact rather than after-the-fact, they reflect a proactive approach to the same issue.
- Many states appear to have policies that allow for arrears modification for incarcerated parents, but there is considerable local discretion—and hence local variability—in the application of these policies. In particular, there seems to be lack of consensus on the part of the courts as to whether incarceration should be considered voluntary or involuntary unemployment, and hence whether it should result in a modification (see, for example, Pearson and Griswold, 2001). This lack of consensus also characterizes treatment of incarcerated parents in Wisconsin (Fullin, 2002).

Policies for Reunited Families

Some states have arrears-forgiveness policies specifically targeting obligors who have reunited with the custodial parent. Typically these policies provide for arrears forgiveness if the parents remain together, and are consistent with current policy interest in promoting two-parent families. For instance:

- Vermont law forbids the pursuit of arrears owed to the state if the parents have reunited and have income below 225 percent of the poverty line (Roberts, 2001).
- California recently enacted legislation calling for arrears forgiveness for obligors who have reunited with the custodial parent, if arrears would undermine reunification (U.S. Department of Health and Human Services, 2002).
- Minnesota allows the suspension of collection effort for state-owed arrears if the parents have married, although the request for suspension must be made on an annual basis (Pearson and Griswold, 2001).

Policies Targeting “Deserving” Noncustodial Parents

Several states have arrears-forgiveness policies that target various categories of noncustodial parents who might be considered to be especially “deserving” of relief. These kinds of policies focus on arrears that, for a variety of reasons, are not consistent with the spirit of support guidelines. For instance:

- The Maryland Arrears Expungement Program allows child support offices to expunge some or all TANF-related debt, to the extent that such debt stems from failure to request a modification. This policy applies, for example, to instances in which orders could potentially have been adjusted downward due to incarceration, disability, or a change in custody. The program operates administratively under existing Maryland law (U.S. Department of Health and Human Services, 2002). Under this statewide program, expungement of arrears requires approval of the state child support director (Roberts, 2002). Participation is allowed only for obligors who are referred by local offices or community-based organizations (U.S. Department of Health and Human Services, 2002).
- Massachusetts is in the process of developing an “equitable adjustment” policy, involving forgiveness of arrears in cases in which the original order was flawed (Atkinson and Cleveland, 2001).
- In West Virginia, the child support office has statutory authority to adjust arrears in the event of an informal custody change (Roberts, 2001).

Policies Allowing Forgiveness of Interest

Some states have standardized policies that allow obligors to seek forgiveness for child support interest, conditional on meeting specified payment criteria. For instance:

- West Virginia statutes allow obligors who pay off their arrears within 24 months to have their interest dropped, provided all parties agree (Pearson and Griswold, 2001; Roberts, 2001).
- In Minnesota, obligors who have paid their support for 36 consecutive months can petition the court for forgiveness of interest (Pearson and Griswold, 2001; Roberts, 2001).

Policies Allowing Structured Arrears Forgiveness

Another approach is to have standardized rules for reducing arrears in response to establishing and adhering to a regular pattern of payments. For instance:

- Vermont permits the child support office to settle arrears for a lump sum payment of less than the full arrears amount, as an alternative to regular payment toward the full obligation. Request for such a settlement typically occurs following state initiation of an enforcement action. While there

is some flexibility, the parameters suggest a lump sum settlement of 80 percent of the obligation if it would otherwise be paid off in 1–3 years; 75 percent if it would be paid off in 3–5 years; 60 percent if it would be paid off in 5–10 years; and 50 percent if it would take at least 10 years to pay off the full obligation. Possible reasons for settling for a lower amount—which must be approved by a supervisor—include lack of income, poor health, new dependents, and little potential for future payments. Factors suggesting a higher settlement amount include having ready cash, arrearages of less than \$1,000, and a likelihood of collecting a tax offset (Hennessey and Venohr, 2000).

- Colorado is piloting the forgiveness of state TANF arrears for obligors who make regular payments over a 10-month period, under an Office of Child Support Enforcement demonstration grant (Pearson and Griswold, 2001).

Periodic Amnesty in Return for Payment

Periodic amnesty offers have frequently been used to encourage payment of past-due support. In some cases, amnesty from prosecution is offered in return for regular payment. Hennessey and Venohr (2000) review a variety of such programs and note a sizable increase in child support collections linked to the amnesty offer. In other cases—more relevant to the current topic—states or localities offer one-time or periodic amnesty from accrued interest (as compared to amnesty from prosecution) in return for specified payment. For instance:

- Oklahoma policy permits the child support agency to periodically offer an amnesty program involving the forgiveness of interest, provided outstanding arrears are paid within a specific time period (Pearson and Griswold, 2001; Roberts, 2001).
- West Virginia had a limited amnesty, which has since expired. Under this policy, obligors who fully satisfied obligation on their principal could have their arrears forgiven. Few noncustodial parents apparently availed themselves of this program (U.S. Department of Health and Human Services, 2002).

Other Innovative Policies

- Washington has created a conference board which has broad authority to forgive debt. Either parent can petition for a review, which can lead to reduced debt or a lump sum compromise agreement (Roberts, 2001). Hennessey and Venohr (2000) report on an interview with a conference board supervisor, who reports that there is broad acceptance of the process among workers, and that the approach seems to be very effective in leading to regular payment when the arrears forgiveness is conditional upon ongoing regular payment.

- Oregon has implemented a pilot project whereby unemployed obligors can perform up to 20 hours per week of community service, and in doing so, receive credit against arrears (at the minimum wage) while learning work skills (Pearson and Griswold, 2001; Roberts, 2001).
- Allegheny County, Pennsylvania, implemented a pilot project in which the Goodwill Foundation pays a percentage of an obligor's arrears, up to \$5,000, in return for participation in a program intended to lead to subsequent employment. The program lasts up to 6 months, and payments toward arrears are made at periodic intervals (U.S. Department of Health and Human Services, 2001). The program was to be expanded to a statewide, state-funded program in 2002 (U.S. Department of Health and Human Services, 2002).

Wisconsin Policy

State Context

In Wisconsin, county child support agencies have the authority to forgive interest on state-owed child support debts. In addition, child support agencies may request permission from the Bureau of Child Support (BCS) to forgive principal owed to the state, on a case-by-case basis. However, there is no uniform policy or rule governing when county agencies should exercise these options. As such, there is likely considerable intercounty variation. In this section, I provide a brief overview of how arrears forgiveness is handled in three Wisconsin counties identified by BCS as having arrears-forgiveness programs. Information was obtained from interviews with key program personnel.

*Pepin County*¹⁶

Pepin County has had an arrears-forgiveness program since 1993. The program targets noncustodial parents who have a long history of nonpayment, have state-owed arrears greater than \$5,000, and have been to court on child support-related issues on multiple occasions. Eligible participants are identified by the director of the county child support agency.

¹⁶All information in this section was provided in an interview with Katherine Hall, Director, Pepin County Child Support Agency.

Parents who enter the program coordinate a payment plan with the county child support office. In return for monthly payments over a 12-month period, the county agrees to forgive all interest owed to the state. In some cases, other fees—such as costs associated with the birth and with genetic testing—are also forgiven. The intent of the program is to establish regular payment patterns that will persist over the longer term. The county child support director, Katherine Hall, emphasizes the importance of the program adhering to stated rules about regular payments as a condition of participation.

According to Hall, an estimated 25–35 percent of the caseload has been involved in the arrears-forgiveness program over its 9-year period of operation. Of these participants, only 10 to 15 percent have successfully completed the 12-month payment period. Despite the low completion rate, Hall still views the program as a success. Furthermore, her perception is that the program has only minimal disincentive effects on payments among parents who would otherwise be cooperative, because the hassle and expense of dodging the system do not make it worth a parent’s time to avoid payment.

*Waukesha County*¹⁷

In March 2001, the Waukesha County Child Support Division began a pilot program involving forgiveness of interest on state-owed child support arrears. The goal of the Payments Against Interest Debts (PAID) program is to establish a repayment plan on delinquent cases involving state-owed debts in a way that provides an incentive to payers to make timely and consistent payments.

Eligible parents are identified by child support specialists. These parents generally have significant state-owed debts, including interest. They are delinquent in their payments and have no current arrearage repayment schedule. The obligor must cooperate and voluntarily enroll in the program because it is not made available if the case must go through the judicial enforcement process.

¹⁷All information in this section was provided in an interview with Deborah Price, Managing Attorney, Waukesha County Child Support Division.

The terms of the repayment agreement are reduced to writing in a Stipulation and Order. As an incentive for payment, the state's current interest rate is set to zero. Additionally, for each payment made toward the principal debt, the state grants a similar credit to the state's interest debt. Thus, if a payer pays \$500 in a month, the state's principal and interest debts are each reduced by \$500. Payers who fail to comply with the payment terms are removed from the program, at which time the state's interest rate is reset to the statutory rate of 12 percent simple interest, and no future credits take place.

Thus far only 12 cases have been enrolled in the PAID program, of which two have been removed for failure to comply with the payment terms. According to Managing Attorney Deborah Price, anecdotal evidence suggests that payments toward arrears increase once a cooperative payer enrolls in the program, and that the program is very successful for certain kinds of cases. Price does not see the PAID program creating payment disincentives. In contrast, she believes that payers are motivated to come forward and cooperate with a repayment plan to begin paying off the debts, get extra credits for payment, and avoid the effect of other enforcement tools.

At the same time, Price acknowledges some practical challenges with the PAID program. First, it is time-consuming to monitor and manually adjust each case on a monthly basis. Expansion of the program would include more time to monitor and manually adjust each payer's account. County child support agencies may not have sufficient resources to engage in such a program. Second, percentage-expressed child support orders have made it time-consuming to accurately determine all the arrears on some cases. A detailed reconciliation of payments is needed on percentage-expressed orders to determine whether a payer has arrears and the level of the arrears.

*Milwaukee County*¹⁸

Milwaukee County operates an arrears-forgiveness program that has thus far served 60 clients. The intent of the program is to create a pattern of regular payments by participants and to help alleviate distrust directed at the Office of Child Support Enforcement. Potential participants are referred to the child support agency by Legal Action, and they are assessed for possible participation by the deputy director of the county child support agency.

Upon entering the program, a parent's accrual of state-owed interest is frozen. If the parent pays regularly for a 6-month period, the county will forgive some or all of the interest owed to the state, and interest on remaining arrears remains frozen. Thus far, approximately half of the 60 participants have completed their 6-month obligations, and the majority of these have continued to maintain their subsequent support payments. According to Lisa Marks, deputy director of the county child support agency, a limiting factor is that participants do not notice the positive impact of the program immediately, which hinders fulfillment of program obligations.

The program does not create payment disincentives, according to Marks, because only state-owed arrears can be compromised. In light of the full pass-through policy, arrears stemming from current and future nonpayment are owed to custodial parents rather than the state and, as such, cannot be forgiven under this program. This suggests that the issue of forgiving state-owed arrears may become less relevant over time, as accrual of arrears is shifted from the state to custodial parents.

Potential Impacts

Despite the widespread interest in arrears-forgiveness programs, and the growth of state and local policy in this area, virtually nothing is known about their impacts, either in Wisconsin or elsewhere. Likewise, there is thus far no empirical information about "best practices" or about the relative merits of

¹⁸Information in this section was provided in an interview with Lisa Marks, Deputy Director, Milwaukee County Child Support Agency.

various approaches. Nonetheless, it is clear that arrears-forgiveness programs could have impacts in a variety of areas. In this section, I provide an overview of potential impacts of such programs, highlighting the many unanswered questions that remain.

Impacts on Child Support Agencies

Arrears-forgiveness programs have direct implications for child support agencies. In particular, such programs have the potential to clean up caseloads by wiping out debt that is uncollectible, thereby reducing time and effort spent on cases that offer few if any returns. More generally, they have the potential to affect the overall cost-effectiveness of a state child support program, given their potential to influence both costs and collections.

Impact on administrative costs. No specific data are available on the impact of arrears-forgiveness programs on administrative costs. However, research suggests that a substantial share of high-arrears cases are not collectible—even with enhanced collection efforts (see, for example, Peters, 1999). To the extent that states are expending resources on such cases, forgiving arrears has the potential to yield savings and to allow resources to be redirected elsewhere. At the same time, arrears-forgiveness programs have their own associated costs. Virtually all such programs currently in existence require that staff spend time on such activities as identifying eligible parents, negotiating payment plans, determining which arrears are eligible for forgiveness, monitoring compliance with negotiated plans, and adjusting automated systems to remove arrearages. Indeed, a spokesperson for the small-scale arrears-forgiveness program in Waukesha County, Wisconsin, specifically noted the practical constraints in using valuable staff time to manually adjust case records to remove selected arrearages (Price, 2002).

In sum, the net gain or loss in administrative costs associated with arrears-forgiveness programs remains unknown, although it certainly depends on such factors as the effort currently expended on high-arrears cases and the characteristics and scope of a particular forgiveness program. Assessing the impact

on administrative costs should be an important component of the evaluation of arrears-forgiveness programs in the future.

Impacts on cost-effectiveness of state child support program. Arrears-forgiveness programs could have substantial impacts on the overall cost-effectiveness of state child support programs. As noted above, arrears-forgiveness programs would likely have an impact on administrative costs, though the direction and magnitude are unknown. In addition, reducing the number of cases with arrears could lead to increases in federal performance incentive payments. Finally, forgiving arrears has the potential to increase subsequent payments (see below for discussion of potential impact on payments), though the extent to which it has this effect in practice is not known, and the benefits would not necessarily accrue to the state given the full pass-through policy.¹⁹ On the other hand, there are obvious costs to arrears-forgiveness programs, in terms of the potential for writing off debt that might otherwise have been collected.²⁰ In light of the many unknowns, it is difficult to predict the impact of arrears forgiveness on cost-effectiveness of the child support system. This is obviously critical to the ultimate support for these kinds of programs.

Impacts on Program Participants' Behavior

The potential to influence behavior of noncustodial parents is among the most compelling reasons to consider arrears forgiveness programs, yet we do not know the likelihood of producing such an impact in practice, nor do we know the specific programmatic features likely to lead to behavioral

¹⁹To the extent that arrears-forgiveness programs lead to greater payment of current support, the custodial parents would be the beneficiaries. If forgiveness programs involve only partial forgiveness of arrears, and if such programs have an impact on subsequent payment of both current support and arrears, then the state could recoup some of the costs of the forgone payments.

²⁰Currently, a portion of the collections on AFDC and Kinship Care arrears is used on programs that count toward the state's Maintenance of Effort under TANF. In addition, a portion of arrears collections has been used to supplement federal performance incentive payments to county child support agencies. Any arrears forgiveness that leads to lower collections could thus raise budget issues relating to TANF and county child support agencies. In addition, forgiveness of birth costs would affect county revenues because county child support agencies are paid a portion of all birth cost collections.

change. Related research suggests a number of potential impacts, including impacts on subsequent payments as well as impacts on employment.

Impacts on payments. How might the forgiveness of child support arrears affect subsequent payment behavior? As discussed earlier, evidence suggests that the presence of large arrearages serves as a deterrent to payment, particularly among fathers outside the formal employment system. If the existence of arrears decreases the likelihood of payment by creating seemingly insurmountable debt, then it stands to reason that reducing or eliminating arrears could have the opposite effect.²¹

Furthermore, the structure of some arrears-forgiveness programs is specifically intended to alter entrenched patterns of nonpayment. A number of current arrears-forgiveness programs require a period of regular payment before arrears are written off, thus using the prospect of a reduction in arrears as an incentive for parents to establish a pattern of regular payments. The hope is that any improvement stimulated by the prospect of reduced arrears would persist over time, thereby helping to convert long-term nonpayers into long-term payers.

Does the forgiveness of arrears in fact lead to an increase in payments? Unfortunately, only anecdotal evidence is available, and is limited to information on the extent to which participating parents cooperate with payment plans, when cooperation is a precursor to forgiveness of arrears. Estimates vary widely from program to program and are based on estimates from key personnel rather than formal evaluations. In Pepin County, Wisconsin, where 25 to 35 percent of the caseload over the past 9 years has participated in an arrearage–forgiveness program, only an estimated 10 to 15 percent of participants have completed the 12–month payment requirement that is a precursor to forgiveness of state-owed child support interest (Hall, 2002). In Milwaukee County’s newer initiative, which serves only a small fraction of the caseload (less than one-tenth of 1 percent), approximately half of participating fathers have

²¹If reducing arrears does lead to greater payments on current support, this could result in the additional benefit of higher federal performance incentives to the state.

successfully completed the 6-month payment period (Marks, 2002). In Maryland's Debt Leveraging Program, 47 to 49 percent of participants pay in full each month (McCargo, 2002).²²

Important questions about the impact of arrears forgiveness on subsequent payment remain unanswered. We know nothing about how short-term or longer-term payment outcomes compare to outcomes for comparable nonparticipants; we have no empirical evidence about specific program features that may influence payments; and we do not know which parents may be most responsive to payment incentives stemming from reduced arrears. These are critical questions for future research, and information in this area would be of tremendous value to policymakers seeking to make informed policy decisions.

Impacts on employment. Arrears-forgiveness programs could also have an impact on employment patterns among noncustodial parents. Child support arrears increase the share of earnings that parents have withheld from their paychecks, up to a maximum of 65 percent. Furthermore, Pate (2002a) found that employers sometimes withhold amounts in excess of these limits—up to the full amount of earnings—a finding also reported in the Parents Fair Share demonstration (Johnson, Levine, and Doolittle, 1998). There has been no quantitative research to assess the impact of arrears on noncustodial labor supply, but the potential of arrears to have such a dramatic impact on net earnings suggests that an impact on labor supply would not be surprising.²³ Indeed, fathers in Pate's study talked about their inability to continue working in the formal labor force when withholding of arrears routinely resulted in a paycheck with little if any remaining value (Pate, 2002a). On the other hand, it is notable that the quantitative literature has, in general, not documented clear impacts of child support enforcement on

²²These figures are broadly consistent with arrears-forgiveness programs outside the child support area. For instance, Pearson and Griswold (2001) note several examples of power companies entering into arrears-reduction agreements with low-income clients, with 40 to 70 percent of participants adhering to a payment schedule linked to arrears reduction.

²³Conventional economic theory predicts that increasing child support obligations would increase work effort due to an income effect. However, this does not consider the choice between formal and informal employment.

employment of noncustodial fathers (see Garfinkel, Heintze, and Huang, 2000, for a partial discussion of research in this area). The impact of arrears forgiveness on the nature and amount of noncustodial parents' employment remains an important policy question.

Impact on Nonparticipants' Payments

It is also possible that the presence of an arrears-forgiveness program would discourage payments among parents who, in the absence of such a program, would in fact comply with support obligations. Again, empirical data to address this question are not available. It is worth noting, though, that representatives of arrears-forgiveness programs in three Wisconsin counties do not perceive their programs as payment disincentives (Hall, 2002; Marks, 2002; Price, 2002), in part because of Wisconsin's full pass-through policy.

WHERE TO GO FROM HERE: ISSUES IN THE DESIGN OF AN ARREARS-FORGIVENESS PROGRAM FOR WISCONSIN

States interested in developing of arrears-forgiveness programs face a wide range of choices. Ultimately, decisions about the type of program to implement depend on a variety of factors. A useful starting point is to clarify program goals, as different goals have different implications for program design. In addition, it may be useful to establish a set of guiding principles that can provide a framework for assessing the pros and cons of possible approaches. Finally, policymakers should be guided to the extent possible by relevant research, although research in this area is thus far lacking.

I next offer a framework for thinking about the design and evaluation of an arrears-forgiveness program in Wisconsin. I outline the key decisions involved in the design of such a program; note how the potential goals of an arrears-forgiveness program lead to different kinds of policy decisions; and suggest a set of principles that could guide decisions in this area, illustrating how they might influence program design.

Program Decisions

Numerous decisions are involved in the design of an arrears-forgiveness program. Some of the fundamental decisions are highlighted below.

What Is the Scope of the Program or Policy?

Arrears-forgiveness policy can be addressed at the state or local level. Some states have opted for statewide policies governing arrears forgiveness; others have granted counties considerable leeway, leading to innovative local approaches. Options for Wisconsin include establishing administrative rules to standardize practice across counties; working with selected counties to implement smaller-scale arrears-forgiveness programs on a pilot basis; or a combined approach whereby policies are standardized statewide but selected counties are granted approval for piloting alternative approaches.²⁴ An evaluation component could be a condition of approval for such pilots.

Which Parents Qualify?

Targeting is a key feature of arrears-forgiveness programs. A variety of targeting criteria may be appropriate, depending on the goals and priorities of the program. Potential criteria include economic well-being (some current programs target very low income parents), current relationships between parents (some programs target reconciled parents), amount and/or duration of arrears (for instance, some programs target cases with arrears above a designated amount); and the circumstances that resulted in arrears accumulation (some programs target parents who might be considered more “deserving” of consideration, such as those whose arrears result from failure to request a modification, orders in excess of guidelines, etc.).

²⁴Note that policies for the forgiveness of costs or fees owed to a county—as opposed to fees owed to the state—would have to be determined at the county level.

Which Arrears Are Forgiven?

Child support debt stems from a variety of sources, including unpaid current support, retroactive orders, medical costs, fees, and interest. Policymakers may wish to target a particular kind of debt. For instance, programs may forgive interest, while leaving the principal intact (such as Wisconsin policy currently permits); or programs may opt to forgive support that was ordered retroactively; or programs may forgive arrears stemming from a designated set of circumstances (such as incarceration, failure to request a legitimate modification, etc.).

Is Arrears Forgiveness Contingent on Behavior of the Participant?

Some programs forgive arrears up front for eligible participants, whereas others tie forgiveness to the behavior of the participant. Most commonly, forgiveness of arrears is contingent on the participant adhering to a specified payment plan over a designated period of time (typically ranging from 6 months to 2 years). In other cases, forgiveness may be linked to participation in fatherhood programs, employment and training programs, etc. In some cases, forgiveness is conditional on parents' ongoing reconciliation.

How Is Arrears Forgiveness Structured?

An important decision involves how to structure arrears forgiveness, including how much to forgive and at what rate. Possibilities include forgiveness of all designated arrears, forgiveness of a proportion based on a specified set of rules, gradual forgiveness of arrears subject to continuing payment, or forgiveness of varying amounts subject to case-by-case negotiation. All of these approaches are currently used in one or more programs around the country.

Is Arrears Forgiveness Permanent?

Some programs permanently forgive specified arrears, either up-front or when participants have met established criteria (such as paying regularly for a designated amount of time, reconciling with the

custodial parent, etc.) Others programs, while granting “forgiveness” maintain the possibility of adding the arrears back if the desired behavior should change.

How Are Prospective Participants Notified and Selected?

Programs differ in terms of whether prospective participants are routinely notified about the possibility of participation, and in how the selection decision is made. Many of the programs currently in effect appear to lack formal procedures for notifying potential participants about the program, relying on word of mouth, referrals, requests from parents, or voluntary information provided by staff. An alternative approach would be to systematically notify those parents who appear to meet program criteria. Programs also differ in how interested parents are ultimately selected for participation. In many cases, participation is at the discretion of the child support agency (ranging from case workers to directors). An alternative approach would be to have a defined set of criteria by which to evaluate prospective participants.

Potential Goals of an Arrears-Forgiveness Program

Policymakers may be interested in arrears forgiveness for a variety of reasons. Although numerous goals are possible, I consider three broad goals in this discussion: (1) increasing the cost-effectiveness of the state child support system, (2) making the system fairer to noncustodial parents, and (3) changing the behavior of noncustodial parents. Prior to the design of an arrears-forgiveness program, policymakers should be clear on which of these (or other) goals they hope to achieve, as different goals lead to different policy choices.

Goal 1: Making State Child Support Systems More Cost-Effective

A carefully constructed arrears-forgiveness program could potentially result in a more cost-effective state child support system, and this may be an explicit policy goal. Arrears-forgiveness programs can potentially increase cost-effectiveness by reducing the amount spent on efforts to collect

from uncollectible cases, enabling states to do better on federal performance criteria (thus capturing larger incentive payments), and increasing support paid by currently noncomplying obligors.

Goal 2: Making the System Fairer to Noncustodial Parents

Policymakers may be explicitly interested in an arrears-forgiveness program as a way to make the system fairer to noncustodial parents. Concerns with fairness arise, for instance, when parents have arrears that have accrued for reasons beyond their control, or when arrears reflect orders that were not in keeping with support guidelines.²⁵

Goal 3: Changing Behavior

Many arrears-forgiveness programs seek to change the behavior of participants. Most important, many programs seek to change payment behavior by altering longstanding patterns of noncompliance. Programs may also seek to improve noncustodial parents' relationship with their children, increase parents' employment, promote reconciliation, etc.

Implications for Program Design

Although the above goals are not mutually exclusive, they do suggest very different priorities for what an arrears-forgiveness program would entail. Therefore, clarifying program goals is an important precursor to deciding on the nature and scope of the program. For instance, if the primary goal of an arrears-forgiveness policy is to make the child support system more cost-effective, this has a number of implications for program design:

- First, arrears forgiveness could focus on uncollectible debts by targeting those parents with the lowest likelihood of payment. Potential target groups include parents with longer-term debt,

²⁵Wisconsin is currently considering amending its child support guidelines to reduce the child support that would be ordered for low-income parents.

parents with very limited earnings capacity, and parents without current support obligations. Research suggests that these groups have extremely poor payment prospects.²⁶

- Second, programs could be structured so as to have a beneficial impact on federal performance incentive payments. Under current rules, such payments could be increased by reducing the total number of cases with arrears and/or by increasing the share of cases with at least some payment. Thus, there is an advantage to forgiving all rather than a portion of arrears (thereby reducing the denominator in the formula), and/or to linking partial forgiveness to at least some payment toward arrears (thereby increasing the numerator in the formula).
- Third, administrative simplicity should minimize staff time and thus reduce costs.
- Finally, programs that have positive impacts on subsequent payments could lead to greater cost-effectiveness, if the additional payments include payments toward remaining arrears. This argues for programs designed to promote both short- and long-term changes in payment behavior. However, programs designed to yield changes in behavior may be more labor-intensive than simple forgiveness of arrears because they would likely entail more one-on-one involvement and monitoring. Until more information is available on the feasibility and costs of changing payment behavior through arrears-forgiveness programs, the potential to increase cost-effectiveness with such an approach is unclear.

On the other hand, if the primary goal is to increase the fairness of the system for noncustodial parents, this would lead to a different set of decisions. For instance:

- Rather than targeting obligors with the poorest payment prospects, programs may opt to target those parents who, based on designated criteria, had arrears that accrued for reasons outside the control of the parent and/or for whom arrears create substantial current hardship. In practice, potential groups to target for arrears forgiveness could include parents who would likely have qualified for a downward modification had they requested it (such that arrears stem from orders that exceed ability to pay); parents whose initial orders were not consistent with ability to pay or with child support guidelines (such as in the case of default orders or orders based on imputed income); parents whose arrears accrued during a period of incarceration (though opinions differ widely on how incarceration should affect support obligations); and parents who have made informal custody or visitation changes not reflected in their support orders.²⁷
- To the extent that arrears forgiveness is intended to provide redress for parents who have been treated unfairly in the past, conditioning forgiveness on changes in behavior would not necessarily be warranted.

²⁶Research on child support debt in Maryland found that the likelihood of payment decreased sharply as the age of the debt increased, with virtually no probability of collecting on debts over 4 years old (Conte, 1998, cited in Pearson and Griswold, 2001). A Minnesota study found that arrears-only cases had substantially lower likelihood of payments in a given month than did current support cases (Hennessey and Venohr, 2000).

²⁷Pate (2002a) documents substantial amounts of shared and primary informal custody among fathers of welfare recipients in Milwaukee, and finds that these arrangements are rarely reflected in support orders. This may reflect, in part, difficulty in negotiating the child support system.

- Ensuring that all eligible parents are aware of the program may be an important component of programs designed to increase the fairness of the system to noncustodial parents.

Likewise, a program with a primary goal of changing behavior would also have a different set of priorities.

- Programs would target those parents for whom behavior change is sought. Thus programs seeking to increase payments would target those who are currently not paying support; programs seeking to increase employment would target the unemployed; and programs seeking to improve parental involvement would target those not actively involved with their child(ren).
- Programs seeking to change behavior would likely benefit from tying forgiveness of arrears to demonstrated behavior change. Thus, programs seeking to increase payment among nonpayers could condition forgiveness on successful payment over a specified period of time; programs seeking to increase employment could condition arrears forgiveness on participation in employment and/or job training activities; and programs seeking to increase parental involvement could condition on successful completion of fatherhood programs. As already noted, though, the extent to which arrears forgiveness can result in longer-term behavior change remains unknown.
- Programs seeking to change behavior may need to involve more than simply the forgiveness of arrears. For instance, programs that seek to increase regularity of payments may be most effective if they include strategies to address a range of payment barriers, recognizing that high arrears and entrenched patterns of nonpayment are only part of the problem.

Policy Considerations

In addition to agreeing on program goals, policymakers may find it useful to agree on a set of governing principles to guide decisions about the design and implementation of arrears-forgiveness programs. I suggest several such principles—though others are clearly possible as well—and note how these considerations could influence program decisions. Suggested principles include the following:

- *Programs should minimize both the perception and the practice of rewarding noncompliance.*
- *Programs should not serve as deterrents to future payments.*
- *Programs should strive for horizontal equity, or the similar treatment of parents in similar circumstances.*
- *Programs should not implicitly or explicitly pressure custodial parents to forgive family-owed arrears.*

- *Programs should include evaluations to increase the knowledge base about the impacts of forgiving child support arrears.*

As is apparent from the discussion that follows, it may not be possible to give all of these considerations equal weight. Indeed, policymakers may need to grapple with inherent conflicts among competing principles.

Programs Should Minimize Both the Perception and the Practice of Rewarding Noncompliance

Arrears forgiveness is a thorny policy issue in part because it appears to reward parents for failure to comply with support obligations. Rewarding noncompliance is at odds with the emphasis of child support agencies on aggressive enforcement. Furthermore, the perception that programs reward noncompliance could threaten support for any arrears-forgiveness program. On the other hand, the reality for many noncustodial parents is that arrears may have accrued not because of deliberate noncompliance, but because of an inability to keep up with orders that, relative to actual income, appear overwhelming. In such cases, “rewarding noncompliance” may be more a matter of perception than reality.

While virtually any arrears-forgiveness program could be construed as rewarding noncompliance, a number of program characteristics serve to mitigate this. If not rewarding noncompliance is an important consideration, several strategies are possible.

- Programs could be narrowly targeted so as to focus on debt that is not directly attributable to noncompliance with current support. For instance, programs could focus on reducing or eliminating debt stemming from retroactive support obligations and/or medical costs and fees. In Wisconsin, retroactive support, medical costs, and other fees constitute 27 percent of the debt owed to the state (author’s calculations from Wisconsin Bureau of Child Support, 2000).
- Another approach would be to forgive interest on arrears while leaving the principal intact. Although arrears do frequently accrue as a result of noncompliance, forgiveness of interest would be better characterized as reducing the penalty associated with noncompliance than as providing a reward. In Wisconsin, interest accounts for 30 percent of the debt owed to the state (author’s calculations from Wisconsin Bureau of Child Support).
- An alternative approach would be to target parents who have “legitimate” reasons for accruing arrears—such as disability, involuntary unemployment, etc. Although this does not entirely avoid

the problem of rewarding noncompliance, it does serve to focus the benefit on those parents who are least responsible for their situation.²⁸

- Alternatively, policymakers could mitigate the problem of rewarding noncompliance by tying arrears forgiveness to a strict payment schedule over a designated time period. This does not entirely resolve the problem of rewarding noncompliance. Nonetheless, linking forgiveness to the adherence to a stringent payment schedule at least serves to decouple arrears forgiveness from the initial noncompliant behavior, and conveys the message that forgiveness for past arrears must be earned by demonstration of responsible payment behavior.

Arrears-Forgiveness Programs Should Not Serve as Deterrents to Future Payments

An important concern is that arrears-forgiveness programs could discourage noncustodial parents from paying support, in the hopes of obtaining a better deal through subsequent participation in a forgiveness program. As discussed earlier, there is thus far no evidence as to whether arrears-forgiveness programs have such an effect. Furthermore, the increasingly stringent nature of the enforcement system—particularly income withholding and reporting of new hires to a central database—limits the extent to which compliance is a choice, at least for parents in the formal labor market. As a result, many parents are unable to “choose” nonpayment in hopes of a better deal down the road.

Concerns about deterring payments are much less relevant in Wisconsin than elsewhere. In light of Wisconsin’s full pass-through policy, unpaid current support is no longer payable to the state, even for welfare recipients, but rather accrues exclusively to the custodial parent.²⁹ The state does not have the authority to forgive arrears owed to the custodial parent, so there is little reason for noncustodial parents to avoid payment in the hopes of having their debt erased in the future. This provides policymakers with an advantage over their counterparts elsewhere, in that concerns about deterring future payments need not play as central a role in program design. Nonetheless, the state does continue to accrue interest on

²⁸This could prove to be a substantial share of the caseload. A study of hard-to-collect cases in Washington found that over 30 percent of obligors received public assistance or Supplemental Security Income (SSI) for at least a portion of the 2.5-year study period (Peters, 1999).

²⁹In certain cases, arrears are legally assigned to the state even though paid to the custodial parent. This is currently a gray area in which both the state and the custodial parent may have some role in deciding about arrears forgiveness.

existing debt, and some parents could potentially pay off their debt at a slower rate in the hopes of having some or all erased through an arrears-forgiveness program.

If policymakers are concerned that instituting an arrears-forgiveness program would deter payments among fathers currently outside of the program, a number of strategies are possible.

- Policymakers could consider implementing a small-scale, unpublicized program in which participants would be selected by caseworkers. Smaller programs are less likely to have macro effects, in that they remain at best a minor aspect of the policy landscape. (Note, however, that this raises concerns regarding horizontal equity, as discussed below.)
- Policymakers could also consider limiting eligibility to parents who have legitimate reasons for not having paid their support in the past, as distinct from parents whose arrears accrued due to noncompliance that could be construed as voluntary.
- Policymakers may wish to retain some degree of agency discretion in the granting of arrears forgiveness.
- One-time forgiveness of arrears—in contrast to an ongoing program—could help minimize possible payment disincentives.

Arrears-Forgiveness Programs Should Strive for Horizontal Equity, or the Similar Treatment of Parents in Similar Circumstances

Child support policy has been characterized by increasing standardization over the past two decades, particularly in the use of numerical guidelines to establish support obligations. Standardization was a response, in part, to dissatisfaction with the tremendous variability in how parents were treated both within and across jurisdictions under the traditional child support system. The current system of arrears forgiveness in Wisconsin, however, is not standardized. The earlier overview of approaches to arrears forgiveness in three Wisconsin counties provides some indication of the variability that currently exists both within and across counties. Although there may be some merit to tailoring policies to the circumstances of individuals, fairness dictates that policymakers endeavor to treat similarly situated parents in comparable fashions. The desirability of horizontal adequacy has a number of implications for arrears-forgiveness programs:

- Policymakers may wish to consider statewide rules regarding the forgiveness of arrears, rather than leaving the issue to the discretion of local offices and workers. This could be accompanied by making it possible for some counties to institute pilot programs with different rules while ensuring some uniformity through the presence of an overall state policy.
- Whether programs operate at the state or local level, efforts should be made to ensure that all potentially eligible parents are aware of the program, and that reasonably standardized criteria are used to select participants. Although it may be desirable for child support agencies to maintain some discretion, both to avoid disincentives and to ensure that arrears forgiveness is not treated as an entitlement, the principle of horizontal equity suggests that there ought to be clear guidelines for the circumstances in which forgiveness of arrears is offered.

Programs Should Not Implicitly or Explicitly Pressure Custodial Parents to Forgive Family-Owed Arrears

The subject of this report is forgiveness of arrears owed to the state, but custodial parents also have the option of forgiving child support debt. To the extent that forgiveness of state-owed arrears becomes more common, noncustodial parents may become more aware or interested in the prospect of having arrears owed to the custodial parent forgiven as well. This may become more of an issue over time, as arrears increasingly accrue to the custodial parent rather than the state due to the full pass-through policy. Should arrears-forgiveness programs prove to have a beneficial impact on subsequent payments, it may ultimately benefit some custodial parents to consider forgiveness of arrears. At the same time, there is a risk that custodial parents could be coerced into agreeing to reduced arrears due to the threat or occurrence of violence. In designing and implementing arrears-forgiveness programs, policymakers should ensure that they do not implicitly or explicitly convey the message that noncustodial parents are entitled to forgiveness of family-owed debt.

Programs Should Include Evaluations to Increase the Knowledge Base about the Impacts of Forgiving Child Support Arrears

The scarcity of empirical data on the impacts of arrears-forgiveness programs suggests that evaluation should be a central component of new policy initiatives in this area. There are innovative approaches to arrears forgiveness currently under way in Wisconsin counties, but these programs do not

have formal evaluations in place. As such, it will be difficult to use these programs to guide policy development. Wisconsin counties are not unique in this regard. The vast majority of policy innovation in the arrears-forgiveness area appears to have occurred without plans to systematically learn about program impacts. The importance of evaluation has several implications for policymakers:

- Evaluations should be planned at the front end of program design and implementation, to ensure that there is an adequate comparison group and that adequate data are collected.³⁰
- Potential impacts to study fall within the following areas: the amount of child support paid and received, the noncustodial parent's employment and earnings, the noncustodial parent's economic well-being, the noncustodial parent's involvement with his child(ren), the economic well-being of custodial families, and the net costs to the state and counties.
- State policymakers may wish to make local flexibility conditional on a formal evaluation plan. This would preserve the ability of counties to develop innovative approaches, but would ensure that the resulting programs lead to an increase in the existing knowledge base.

³⁰The specific evaluation design will depend on the nature and scale of the program and the resources at hand. Possibilities include, but are not limited to, pre-post comparisons, comparison of randomly selected participants to a randomly selected control group, and comparisons of participants to a reasonably equivalent control group. While randomization is considered the "gold standard," it is not feasible in all circumstances.

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