

Multiple Intervention Grant

**SURVEY OF STATE
CHILD SUPPORT
POLICIES,
PROCEDURES, AND
PROGRAMS FOR
INCARCERATED
PARENTS**

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SURVEY OF STATE CHILD SUPPORT POLICIES, PROCEDURES, AND PROGRAMS FOR INCARCERATED PARENTS

Between 1990 and 1999, there was a 245 percent increase in the number of prisoners in federal and state adult correctional facilities, local jails, and juvenile facilities, from 825,000 to 2,026,596. The demographic characteristics of this population have been well-documented, yet a largely overlooked aspect is that the majority of inmates are parents (Beck, 2000; U.S. General Accounting Office, 2000). It is estimated that as many as 1.5 million children have an incarcerated parent, while many thousands of others have experienced the incarceration of a parent at some point in their lives (Seymour, 1998).

Incarceration affects parents and children in many profound ways, including reduction in contact, frequent emergency placement of children, and potential loss of parental rights (Johnston, 1995; Katz, 1998). Child support issues are also relevant. While national statistics about the overlap between child support and corrections populations are not available, it has long been suspected that many incarcerated or paroled parents owe child support to the parent or guardian caring for their children or to the state if the family has received public assistance. The Colorado Division of Child Support Enforcement (CSE) estimates that approximately 30 percent of Colorado's 20,269 DOC inmates and parolees are part of the child support system and have a known child support case. This represents 4 to 5 percent of the state CSE caseload. As a group, these obligors owe more than \$53 million in unpaid child support.

Federal law permits noncustodial parents (NCPs) with child support orders who have experienced a substantial change in circumstances to request a modification of their order (42 U.S.C. § 666[a] [10] [B]). Incarceration is viewed as such a circumstance by some jurisdictions. Many requests to modify existing orders are denied, however, because the court and/or child support agency chooses to treat parental incarceration as a form of voluntary underemployment rather than a change of income. In Colorado, the response

of the county child support agencies to requests for modification varies, with some county agencies modifying orders of noncustodial parents in prison, and others declining to modify (Griswold and Pearson, 2000).

An inmate's failure to request a modification (and/or its failure to be awarded) may result in the accumulation of significant child support arrears during incarceration and the inmate's exposure to a host of punitive enforcement actions upon his or her release. Recent research from Colorado's Work and Family Center shows that while the average paroled client finds employment paying \$9 per hour, he owes \$148 per month in child support for each case, \$12,880 in past due support, and \$2,692 in restitution (Pearson and Davis, 2000). By law, parents who owe child support may have up to 65 percent of their take-home pay garnished. They may also have their driver's license and/or professional license suspended. Although there is no documented relationship between child support requirements and recidivism, some fatherhood advocates fear that standard child support payments, when combined with restitution and other expenses, have the potential to drive paroled and released parents away from their families and legitimate employment (National Center on Fathers and Families, 1998).

Prisons, courts, child welfare agencies, and child support agencies are just beginning to recognize the salience of parenting and child support issues for the incarcerated population (Sachs, 2000; National Center on Fathers and Families, 2000). For many child support agencies, awareness of incarcerated noncustodial parents as a significant subpopulation of their caseload is a recent phenomenon, and discussions of how to work with this group are filled with conflicting views. Not surprisingly, states are moving cautiously in the development of policies and procedures to handle the different aspects of establishment and enforcement for this caseload.

Colorado CSE is in the process of developing a statewide policy on the child support status and treatment of incarcerated parents. To inform that process, CSE retained the Center for Policy Research to survey other states on their practices and policies regarding imprisoned or paroled parents with child support obligations. Here we present the findings

of the survey, conducted in the summer of 2000 with state Child Support Enforcement agencies. The report discusses ways that states identify parents in prison, respond to requests for modification of orders, collect payments from individuals in prison, and work with released/paroled parents to reintegrate them into the community. We conclude with a discussion on the range of policies that have been adopted or are under consideration by states.

METHODOLOGY

Our report of incarceration policies and procedures is based on interviews with child support representatives in 30 states (see Appendix A for a list of participating states). States with the following characteristics were selected to be interviewed: a state-supervised, county-administered child support program; a caseload size similar to that of Colorado; a reputation for innovation in its child support practices; and/or being known to have a program that addresses the child support issues of incarcerated parents. The survey focused on the relationship of the state child support agency to the state Department of Corrections; the methods used by the agency to identify noncustodial parents who are incarcerated; the procedures developed for working with parents in prison (establishing paternity and orders, modifying orders, establishing wage withholding); methods of informing incarcerated obligors of their child support obligations; and programs designed to assist this population with employment and reintegration into the community following release or parole.

The interviews were conducted by telephone by two CPR staff members. Interviews lasted from 20 to 40 minutes. The questionnaire (see Appendix B) was developed by CPR in consultation with Colorado CSE staff. Respondents described how their agency identifies noncustodial parents in prison, and how requests for modification of orders are handled. They discussed the philosophy of their agency and the courts in their state with respect to incarcerated parents. The following paragraphs cover the major points that emerged during the interviews. This will be followed by a summary of the main issues for

dealing with parents in prison, and a discussion of the steps CSE agencies are taking that look most promising.

CSE METHODS OF IDENTIFYING AND LOCATING NCPs IN PRISON

Child support agencies use a variety of techniques to identify noncustodial parents in prison.¹ Of the 30 states interviewed, eight have an automated data match with the state Department of Corrections, and two are implementing such a system (see Table 1). The data matches are run monthly or quarterly. One state limits its automated data match to an annual run because, as explained by the respondent, what is collected from prisoners is fairly minimal, and the agency feels its resources and time are better spent elsewhere. Several agencies also run an automated data match with the Department of Probation and Parole.

Jails are ordinarily short-term facilities, supervised by county correctional departments rather than the state DOC. Therefore, there are no centralized databases for the inmates of jails. None of the state child support agencies that were interviewed has the means of systematically identifying noncustodial parents in local jails, and the agencies recognize this as a problem.

Table 1: CSE Methods of Identifying Noncustodial Parents in Prison

State	Automated Data Match	Searchable Computer Interface	Informal Methods Only
Alabama		X	

¹ Because the majority of noncustodial parents are fathers, as are the majority of incarcerated parents, we shall occasionally refer to “he,” “his,” or “him,” even though we recognize there are also mothers who are noncustodial parents and/or imprisoned.

Table 1: CSE Methods of Identifying Noncustodial Parents in Prison

Arizona		X	
California (Alameda & Los Angeles Counties)			X
Connecticut		X	
Florida	DOC, Parole		
Illinois	X		
State	Automated Data Match	Searchable Computer Interface	Informal Methods Only
Indiana	In planning stage		X
Iowa	X		
Massachusetts	X		
Michigan	In planning stage	X	
Minnesota		X	
Missouri	DOC, Parole		
Nebraska			X
New Mexico			X
New York	X		
North Carolina		X	
North Dakota			X
Ohio			X
Oklahoma			X
Oregon			DOC list of prisoners earning wages
Rhode Island			X
South Carolina		X	
Texas	X		
Utah		Parole	X
Virginia	Release dates only	X	
Washington	X		
West Virginia			X

Table 1: CSE Methods of Identifying Noncustodial Parents in Prison

Wisconsin			X
Wyoming			X
Colorado	Being tested in selected counties		Varies by county

Seven other states have a computer interface with DOC that can be searched in order to locate a particular individual. Information in a data match or interface may include prison facility and address where the inmate is serving his sentence; the inmate's DOC number; date incarceration began; reason for incarceration; possible parole date; projected release date; the latest possible release date; parole officer's name; verification of the inmate's name, date of birth, social security number, and last known address outside of prison; prison account information; and work status. The projected release date is a useful piece of information for CSE agencies. They can use it to put a tickler in their system to alert workers of when an inmate's status, and potential ability to pay, have changed.

Child support workers access information on incarcerated parents in a variety of ways. In states where private companies have contracts in prisons, new hire reporting can alert CSE to obligors in prison. This is true for inmates who are in a work-release program, too. One state reported that its Department of Corrections has a Web site that CSE workers can search; another told us that their local CSE office has access to the police computer system to help locate obligors. According to another respondent, federal prisons have an Internet site, as well as a telephone number, to locate prisoners in a federal prison anywhere in the country. Although Oregon does not have an automated match or interface with the DOC system, CSE receives a printed list each month, created manually by DOC,

of prisoners earning wages.² A county child support agency in Minnesota receives a daily list of admissions from the county jail, which shows both men and women and gives the length of sentences. A worker is assigned to review the list for matches.

The remaining states rely on informal sources of notification that a noncustodial parent is in prison, such as the custodial parent, the IV-A agency, or parole and probation officers. The child support agency may learn of an obligor's imprisonment directly from the inmate if he contacts CSE to request a modification. As one interviewee explained:

j We send out monthly bills to all obligors. . . . If an obligor receives his bill in prison, he will contact us because he can see interest and arrears are continuing to grow.¢

However, most states indicate that they rarely hear about prison from obligors and receive relatively few requests for review and modification.

RELATIONSHIPS BETWEEN CHILD SUPPORT AND CRIMINAL JUSTICE AGENCIES

Few state child support agencies report having a relationship with DOC that goes beyond an automated data match or interface. Illinois and Massachusetts are two notable exceptions. In 1996, the Illinois Paternity Establishment Liaisons (PELS) program began. The child support agency and DOC signed an inter-agency agreement, whereby CSE staff work with a DOC liaison to hold informational sessions on paternity establishment and meet individually with noncustodial parents in state prisons. DOC staff attend child support training sessions so that they can explain the child support program to inmates. The Director of PELS reported that more than 90 percent of inmates who meet with CSE staff sign the Acknowledgment of Paternity form.

² In 1994, Oregon passed a constitutional amendment mandating that all prisoners work 40 hours a week. Some inmates earn wages, while others work for non-monetary "credits."

The Massachusetts Department of Revenue (DOR) has worked with DOC since 1995 to develop the capacity for automated data matching of their populations, and to collect child support from the prison accounts of inmates. The two agencies, which recently signed a Memorandum of Understanding to formalize procedures for working together, are launching a program to address the child support responsibilities of parents in prison. This program includes a method of addressing modification requests, parenting and employment classes for inmates that incorporate child support information, and a system of administering levies against inmate accounts when child support orders are in place (see Appendix C for the Memorandum of Understanding).

Child support personnel reported uneven relationships with parole and probation officers. One interviewee explained, “Some parole officers take child support seriously and want to know if the client starts missing payments. Others are not interested.” Another respondent commented that in her state parole and probation workers are not receptive to working with CSE, although CSE tries to work with them. Sometimes establishing paternity and paying child support is made a condition of release, but the parole officer does not notify CSE when this is the case. According to the respondent:

j There needs to be collaboration. We don't want NCPs to violate their parole because they are trying to comply with us at CSE. We don't want these people going back to prison on a technicality. . . . We want them out and working.¢

CHILD SUPPORT PROCEDURES FOR NONCUSTODIAL PARENTS IN PRISON

How are the procedures of a child support worker altered when an obligor is incarcerated? What obstacles does an agency encounter when establishing or enforcing an order of someone in prison? In this section, we discuss the methods that child support agencies have developed to set orders and collect support from incarcerated noncustodial parents. These include establishing paternity, establishing an order, modifying an order, handling arrears, establishing wage withholding, and attaching prison accounts.

Establishing Paternity

When a child support agency locates a noncustodial parent in prison, the agency ordinarily proceeds with the first steps of establishing child support. Most of the states interviewed attempt to establish paternity for NCPs in prison. However, in some county-administered states, the practice appears to be inconsistent. One person reported that prisons in her state were not amenable to allowing phlebotomists to come into the facility or having the prison medical staff take blood samples. Several states require a guardian *ad litem* (GAL) for paternity establishment. A respondent for a state requiring a GAL and the attendance of the noncustodial parent at a court hearing reported that the expense of a court procedure generally kept the agency from establishing paternity for incarcerated parents.

Illinois, Indiana, Ohio, and Fresno County, California, are states that have developed child support outreach programs with a component of paternity establishment that either targets or includes parents in prison. For example, Ohio's program is focused on educating mothers in prison about child support and encouraging them to identify the fathers of their children, which is the first step in paternity establishment. In Fresno County, the District Attorney's Child Support Division sends the outreach coordinator into pre-release classes held in state correctional facilities to inform inmates about paternity establishment and the laws around families receiving public assistance. Other states are in the process of developing similar programs.

Establishing an Order

Once paternity has been established for an inmate, some child support agencies will establish a reserve order and/or set an order at a relatively low amount, such as \$20. West Virginia sets orders for incarcerated parents at \$5 or less (see Table 2). Respondents in these cases explained that an order is set at higher amounts when the inmate is in a work release program and earning "real" wages. Other states establish orders at levels that appear higher than what prisoners may earn, even if they are relatively low orders. For example, Wyoming generally sets orders for incarcerated parents at \$50 per month, with

a provision that the order amount will be increased 60 days after the inmate is released. North Dakota’s State Supreme Court has ruled that CSE may impute income to an incarcerated noncustodial parent based on minimum wage [*Surerus v. Matuska*, 548 N.W.2d 384 (N.D. 1996)].

Conversely, some states and county-administered agencies wait to establish an order until the incarcerated parent is released. Connecticut is one of these states; state law requires that the ability of a noncustodial parent to pay be demonstrated before an order is established. A handful of other states establish an order only if the NCP is on work release or otherwise has the resources to pay. For example, a bill passed by the Virginia Legislature in the 2000 session exempts establishing the presumptive minimum child support obligation of \$65 for imprisoned parents if they lack sufficient assets or “are otherwise involuntarily unable to produce income” (Code of Virginia, § 20-108.2). According to the respondent, the basis for this amendment to the child support guidelines was the realization by the guidelines review committee that NCPs were being released from prison with unmanageable arrearages.

Table 2. Practices for Establishing Child Support Orders, Modifying, and Establishing Wage Withholding for Incarcerated Obligor – Selected States

State	Establishing Orders	Modifying Orders	Wage Withholding/ Attachment of Earnings/Accounts
Alabama	May establish a reserve order, depending on the judge.	May modify if requested (varies by county and judge). If not work release, judge may suspend (arrears and interest continue to accrue).	Wage withholding if obligor is on work release.

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Arizona	Establish a \$0 order. If on work release, order based on guidelines or judge decides if income is quite low.	Uncommon. Receive few requests – most NCPs do not realize they can modify.	Limited wage withholding; most inmates do not earn enough to make the action worthwhile.
Connecticut	Generally not, because law requires ability to pay in order to establish. CSE sets review dates; establishes order upon release.	Varies. Uncommon to receive requests, but typically will suspend or modify prospectively.	Wage withholding for obligors who earn a wage.
Florida	Reserve order.	By law, NCP cannot be punished for owing child support if lacking ability to pay, so courts will modify if requested.	Wage withholding for obligors on work release.
Indiana	Varies by county; some impute minimum wage, others do not establish until NCP is released.	Rarely modify; incarceration considered “voluntary unemployment.”	Wage withholding if on work release. Account attached for lottery winnings.
State	Establishing Orders	Modifying Orders	Wage Withholding/ Attachment of Earnings/Accounts
Iowa	Yes, based on current income of NCP. If little income, set at minimum amount (\$50/mo. for 1 child, \$75 for 2).	Uses current income and assets to determine new CSO when modification is requested.	Wage withholding.
Massachusetts	Yes, for minimum amount of \$50.	Currently will modify to \$50, if requested.	Wage withholdings and levies against accounts.
Missouri	May postpone establishing order until NCP is released.	Will modify, but will also try to collect something.	Will attach accounts.
Nebraska	Varies by county. Court may establish a reserve order or a minimum order of \$50.	General disapproval of modifying orders.	Wage withholding if on work release; may attach accounts.
New York	Varies by county, but usually based on current income; set as a minimum order of \$25.	Varies by county.	No.

Table 2. Practices for Establishing Child Support Orders, Modifying, and Establishing Wage Withholding for Incarcerated Obligor – Selected States

North Carolina	Yes, if NCP has resources. If not, establish an order but suspend it.	Order is suspended when NCP has no resources and is not in a work release program	Wage withholding if on work release.
North Dakota	Yes, impute minimum wage.	Modification requests limited to every 3 years; incarceration not a basis for obligation reduction.	Wage withholding and attachment of obligors' accounts.
Ohio	Reserve order, if earning low or no income.	Guidelines permit modification based on change in circumstances, but county policies vary.	Wage withholding if in a work program. Inmates may earn up to \$16 a month. State law limits CSE to taking 25%, or \$4.
South Carolina	Generally establish order when NCP is released; if on work release, will establish.	Courts generally do not see imprisonment as grounds to modify.	Wage withholding if NCP earns a wage.
State	Establishing Orders	Modifying Orders	Wage Withholding/ Attachment of Earnings/Accounts
Texas	Yes, usually impute minimum wage.	Rarely modify; arrears and interest accrue.	Wage withholding; lien established for NCP with more than \$5,000 in arrears. Intercept lottery winnings.
Utah	Yes, for minimum amount of \$20.	No; incarceration is voluntary, and does not meet modification criteria.	Wage withholding if on work release. 50% can be taken from any earnings for child support.
Virginia	Only if on work release and earning over \$600/month.	Judges tend to deny modification; case law finds incarceration to be voluntary unemployment.	Wage withholding if NCP is on work release and earning over \$600/month.

Table 2. Practices for Establishing Child Support Orders, Modifying, and Establishing Wage Withholding for Incarcerated Obligor – Selected States

Washington	Yes, administrative action will establish at \$0 or \$25.	Will modify to \$0 or \$25 upon request.	If NCP is working for private industry in prison, CSE sends income assignment to company.
West Virginia	Yes, court sets it from \$0 to \$5.	Rare, but some judges will modify.	Rare, but may do withholding if on work release.
Wyoming	Yes, at minimum amount of \$50/month, with provision to start paying more 60 days after release.	The court usually modifies to \$50 per month.	Wage withholding for all incarcerated obligors.
Colorado	Varies by county.	Varies by county: some modify to \$20 to \$50 a month.	Wage withholding varies by county. New law permits liens against prisoner accounts for child support and restitution.

Modifying a Child Support Order

According to federal law, a noncustodial parent must demonstrate a substantial change in circumstances in order to request a modification of his order. Some states and jurisdictions accept incarceration as such a circumstance [*Lewis v. Lewis*, 637 A.2d 70 (D.C. 1994)]; others disagree on the basis that criminal activity is voluntary and therefore the obligor must take responsibility for the crimes committed and the repercussions that come with breaking the law [*Davis v. Vance*, 574 N.E.2d 330 (Ind. Ct. App. 1991)]. None of the states interviewed automatically grant modifications to noncustodial parents who

enter prison with an established order. As shown in Table 2, a number of states will *consider* modification when an inmate requests a review of his order.³ Three of the states interviewed will suspend orders for incarcerated obligors who are not on work release and do not have the resources to pay a current support order. Some states have modification practices that seem contradictory to their practices regarding establishing an order for an incarcerated parent. For example, as previously mentioned, West Virginia may set an order amount at \$5 or less for an obligor in prison; yet, according to the respondent, judges often refuse to modify orders that were established prior to the start of incarceration.

At one time, Iowa viewed incarceration as a voluntary reduction of income and would not consider orders of inmates eligible for modification. However, the state changed its policy after an obligor complained to the state ombudsman that he was receiving unfair treatment since his financial circumstances were changed due to incarceration. CSE issued an administrative directive in December 1998 that a current support order should be based on the current income and assets of an incarcerated NCP.

Several individuals indicated that modifications are rarely granted because their courts or enforcement agencies consider incarceration to be voluntary unemployment. According to one respondent, the courts in her state take the attitude that a person in prison chose to be there and should not benefit from incarceration by having his order suspended or modified to zero. Another CSE representative explained:

j Our policy is to oppose any motion to modify downward, when an obligor enters prison. Why should the child suffer because the parent commits a crime? And why should a criminal be pampered? So we are very careful to not plug the case into the guidelines, which would allow the order to be modified. Usually our courts agree with us. I would rather have everyone in prison request a review and modification, and turn them down. That way, they will know what they are facing when they come out.¢

³ Courts have been very reluctant, however, to modify or suspend obligations when the basis for conviction and incarceration is failure to pay support [*Commissioner of Human Resources v. Bridgeforth*, 42 Conn. Supp. 126,604 A.2d 836 (1992)].

This view was echoed by several of those interviewed. Case law in Indiana states that incarceration is not a rationale for modifying an existing order. The respondent explained that “our courts and appeals courts are vehemently against modification. Their attitude is ‘he put himself in jail.’ It would take a statute to change this.” State courts have also rejected incarceration as a compelling reason for retroactive modification of arrears [Massachusetts Supreme Judicial Court (*D’Avella v. McGonigle*, 1999)].

Sometimes a child support agency will close a case rather than modify the order if the noncustodial parent has received a long sentence. The rationale is that the support is uncollectible. Federal closure criteria permits a case to be closed if the noncustodial parent is incarcerated with no chance of parole. According to one respondent, her state agency closes a case if the sentence of the noncustodial parent exceeds the number of years the child will be a minor. However, another respondent noted that he opposed closing a case even if the parent has received a life sentence, “because I don’t want that person being released on some appeal or technicality, and then we are without an order.”

State CSE programs that are largely administrative may have more leeway than judicially driven states to modify orders of incarcerated obligors. For example, Washington State CSE, a heavily administrative system, has developed a policy that incarceration is *not* voluntary unemployment. Therefore, the agency will modify orders of inmates to \$25 or in some cases to \$0, upon request.

In contrast, the Massachusetts Probate and Family Court plays a large role in the child support process. Judges often respond to an incarcerated noncustodial parent’s request for modification by suspending the order. While this step stops arrears from accruing, it also eliminates the parent’s immediate responsibility for financial support. The Massachusetts Department of Revenue is considering a policy to hold modification requests of inmates in abeyance until the parent is released or paroled and employed. A worker will be assigned to work directly with inmates to file modification requests, thereby reducing the risks and costs of transporting offenders from prisons and jails to the courts

for a hearing. At the time of release, the order will be modified to fit the ability of the parent to pay current support, and an arrears settlement, based on a thorough analysis of the obligor's ability to pay, will be negotiated.

How does an incarcerated obligor know that he can request a modification of his order? Of the states that do modify upon request, most do not feel it is the responsibility of the agency to notify inmates beyond the notification methods used for the entire caseload, such as including an explanation in the original order of the right to request a review, or as a modification notice sent every three years, or periodically on the monthly billing statement. However, some of the outreach programs mentioned previously include informing obligors of their right to request modification. The District Attorney's CSE program in Alameda County, California, is unusual among the child support agencies interviewed for its new policy of notifying incarcerated obligors about the option to modify. Workers have been instructed that they are to send modification request forms to an incarcerated noncustodial parent if the family is receiving public assistance. For a non-public assistance case, the obligor in prison receives a letter informing him he has the right to request a modification.

Several states have talked about or are considering building modifications into the automated system, so that the incarcerated obligor would not need to apply. The idea is that as soon as an obligor is sent to prison, the system would modify the order, by reducing the order amount to fit the current income of the obligor or by suspending the order. However, agencies have reservations about this. First, inmates with past support due sometimes experience a windfall through a tax return, winning a lawsuit or the lottery, or inheriting money. CSE agencies like to be able to seize such winnings. Second, child support magistrates are sometimes reluctant to reinstate the former amount of a child support order once it has been modified. Also, some child support staff view automatic modification for obligors in prison as highly unfair, since a similar process is not offered to low-income obligors who are not in prison.

Individuals who advocate that automatic modification be tested point to the difficulty of inmates carrying out a *pro se* action through the courts. Several noted that the modification process in their state is cumbersome and slow. One interviewee reported that she and some of her colleagues have been lobbying for a policy to automatically modify an order if the noncustodial parent is sentenced to a certain number of months or years in prison. In response to the fears that the agency would miss chances to collect child support, she argued, “You can have language in the statute for exceptions – if the NCP wins the lottery, or is earning X amount of money, etc.” This person believes such a policy would simplify the process and reduce paperwork.

Handling Arrears

Some states grant modifications of orders when the obligor is in prison, but to amounts that may be higher than what incarcerated NCPs can pay. For example Wyoming courts will modify orders, but will not set the amount lower than \$50 a month. Oklahoma and Wisconsin will modify to a minimum wage-level order. These modifications will still leave prisoners with significant arrears when released if they are not on work release or are without other sources of income.

Respondents were careful to note, however, that many obligors enter prison with substantial arrears. While their debt is likely to increase during their stay in prison, incarceration is not the primary source of their arrears. Knowing this, some workers ask, “Why should CSE try to help these obligors while they are in prison, since they were not cooperating prior to prison?” One respondent, however, had a different perspective. He reasoned that the same kind of behaviors and attitudes that landed the obligor in prison also interfered with that parent paying child support. According to this interviewee, child support will never be collected unless there is a change in behavior and attitudes, so it makes sense for CSE to try to educate and redirect obligors in prison to improve their life situations.

A few states have laws or policies addressing the growth of arrears while an obligor is in prison. A North Carolina statute allows an order to be suspended without arrears

accruing when the prisoner has no resources and is not participating in a work release program (N.C. Gen. Stat. § 50-13.10[d][4]). Despite opposition from the CSE agency, the Arizona legislature recently passed a bill stating that an incarcerated NCP may request that interest not accrue on his arrears (A.R.S. § 25-327[D]). The Utah CSE agency is rescinding a policy that has been in place for more than 10 years calling for the discharge of arrears accrued in prison if the obligor paid the current support and assessed arrears payments for 12 consecutive months. The discharge policy was the result of an agreement between DOC and CSE. Workers in both Arizona and Utah oppose these policies on the basis that people in prison have committed a crime and should not be rewarded, and special treatment should not be given to inmates that is not extended to other obligors.

Establishing Wage Withholding

While nine of the 30 states interviewed rarely or never establish wage withholding for incarcerated obligors, the majority of states interviewed do garnish wages for at least some of their caseload in prison. Eleven states attach wages only for those obligors in a work release program (see Table 2 for details of selected states).

The California Department of Corrections operates the Joint Venture Program, which brings private businesses into state prisons and hires inmates as workers. Currently, Joint Venture has businesses in eight state prison facilities, employing 360 inmates. Of those, 25 have child support payments deducted from their wages. Wages are divided equally between room and board, mandatory savings, child support obligations, victim compensation, and the prisoner's trust account.

Washington State also establishes wage withholding for prisoners who work for private companies that have contracts with DOC. The agency sends the wage assignment to the company just as it does for a non-incarcerated obligor. Other inmates, however, may be in a "state work release program," and their wages are protected from child support withholding by state law. According to the respondent, "in these cases, we can only remind the obligors of their orders and obligations." Ohio law gives CSE legal authority to establish

wage withholding if the obligor is in a prison work program. Prisoners are allowed to earn up to \$16 a month, and state law allows CSE to take 25 percent, or \$4.

One of the main reasons given by respondents for establishing wage withholding of an obligor, even when there is little money involved, is that he is reminded monthly of his obligation, and he becomes familiar with having a portion of his income collected for support. Another rationale is that custodial parents are satisfied that the agency is taking action. At the same time, respondents also noted the negative aspects of wage withholding for parents in prison. Deducting child support from very low wages may discourage some obligors from working at all. Generally, wage withholding is not a cost-effective enforcement action, since the amounts collected are minimal. According to one respondent, her agency is careful to distinguish wage withholdings in prisons from traditional income withholding actions, so that audit criteria for regular withholding actions are not applied to those of inmates.

Wage withholding for inmates in correctional facilities is complicated by competing demands for the prisoner's income. Almost every respondent to this survey asserted that child support obligations take legal precedence over every other inmate obligation. However, in some instances, the state statute either specifies how wages will be divided, or incorporates child support into a lengthy hierarchy of deductions to be made from the wages of a prisoner. South Carolina, for example, has a law specifying how the wages of prisoners in work release programs or a prison industry program are to be divided:

- a) 20% for restitution if ordered; if not ordered by the court or has been satisfied, then 20% will go toward a victim assistance program;
- b) 35% for child support; if there are no child support obligations, then 25% for room and board of prisoner and 10% for incidentals;
- c) 10% for "the purchase of incidentals";
- d) 10% for savings, in an interest-bearing escrow account;

- e) the remaining must be used to pay federal and state taxes; with any left going to incidentals for the inmate (SC ST § 24-3-40).

Connecticut's law protects wages of inmates from levies or attachments, and places child support as sixth in the list of priorities, following federal taxes due, restitution, civil judgment payments, victims compensation, and state taxes due (Connecticut General Assembly, § 18-101 K.Sur; 6).

Attaching Prison Accounts and Other Methods of Collecting Money from Incarcerated Obligor

In general, few state CSE agencies attach monies from the personal accounts of inmates with support obligations. Some states will attach an account if the obligor wins the lottery or a large settlement, or carries a substantial balance. In most cases, the state Department of Corrections has the authority to set an amount that inmates are required to keep in their accounts, and that is not available for liens or levies.

But a few child support agencies are working closely with their state DOC to arrange for some monies from obligors' accounts to be taken on a regular basis and applied to the support obligation. Thus, the Massachusetts Department of Revenue (DOR) Child Support Enforcement and DOC agencies have an inter-agency agreement whereby DOR submits levies against the accounts of inmates with support obligations on a quarterly basis, once DOC has defined the accounts as having "adequate savings." Oregon plans to begin attaching accounts of NCPs who have been incarcerated for six months and have account balances of at least \$200. Colorado recently passed a law requiring that 20 percent of all deposits be deducted from an obligor's account and paid toward restitution and/or child support (C.R.S. § 26-13-122.5).

A few counties and states attach accounts even with very small balances. In North Dakota, inmates may work inside the prison, earning \$1.75 a day. CSE attaches prison accounts for these inmates, but not for inmates who do not earn a wage. One state does

not attach an obligor's prison account while he is incarcerated, but does so at the time the prisoner is released. However, most respondents said their agencies feel that it is not worth the effort to attach accounts in order to receive such small amounts

Finally, agency representatives reported applying standard enforcement procedures, such as seizing assets and tax intercepts, to collect from incarcerated obligors who are in arrears or who are not paying their CSO, when such monies are available. Sometimes an obligor in prison with past support due declares bankruptcy, and a child support worker will attend the bankruptcy hearing to make sure that CSE is included in the list of potential creditors.

CSE Programs for Incarcerated Parents

Increasingly, state CSE agencies are developing outreach programs to educate incarcerated parents about their child support responsibilities as a way of heading off unexpected high arrears payments and potential disaster when the obligor is released. Washington State CSE, for example, has started participating in pre-release programs and a work camp to provide information and materials regarding child support. Noncustodial parents with orders can request an individual interview to review their case with a worker and receive help in filing a modification form. Two of the agencies that were interviewed are developing materials and presentations to be used in the orientation process of the state correctional facilities, attended by all incoming inmates. Table 3 shows several programs in which the child support agency collaborates with DOC staff to educate and inform incarcerated obligors about the child support program.

Colorado has been testing an outreach program for two years (Pearson and Hardaway, 2000). The State Paternity Coordinator and the program attorney have developed a "parenting time program" and have been making presentations at 11 correctional facilities on a quarterly basis. The two-hour sessions include information on the legal responsibilities faced by incarcerated parents, the child support program and enforcement tools, and the process the parents must follow if they wish to adjust their child support obligation to reflect their financial circumstances while in prison. Inmates attending

these sessions who want to have their orders modified are encouraged to complete a “request for review” letter and financial affidavit and submit the papers to the child support agency handling their case. According to the attorney and State Paternity Coordinator, these presentations are most effective when integrated into an existing, broader program that covers parenting skills and the impact of incarceration on family dynamics.

Table 3. Programs with a Child Support Component for Incarcerated Parents

California	<p>Fresno County District Attorney’s Child Support Division Outreach program: Coordinator takes part in pre-release classes, covering topics of paternity and order establishment, enforcement, modification, parenting skills. Works with parole officers when inmates are released. Program has been expanded to California Youth Authority’s Fatherhood Parenting Program for young offenders who are parents.</p>
Illinois	<p>Illinois Child Support Paternity Establishment Liaisons (PELS): CSE liaisons make group presentations, and then meet individually with prisoners to establish paternity; close to 100% of the inmates who meet with the liaisons sign the Acknowledgment of Paternity form. DOC staff attend CSE training sessions.</p>
Indiana	<p>Fatherhood Outreach Coordinator for Marion County Prosecutor’s Office, CSE Division: Participates in 6-week pre-release program at private jail run by Corrections Corp. of America; gives information on paternity establishment, child support, payment plans.</p>
Ohio	<p>Ohio Reformatory for Women Child Support Project: Child support worker assigned full time to the Reformatory to counsel female inmates about employment and training, explain child support enforcement, and to encourage mothers to identify the fathers so that paternity can be established.</p>
Wash.	<p>Criminal Justice Program: A CSE worker attends pre-release programs and a work camp program to modify orders of inmates, and to inform them of child support expectations. Teams of paired child support workers and Community Corrections officers work with released obligors to help them with employment and management of budget and child support payments. The “conference board” process can be used to establish incentives for offender; for example, to forgive percentage of state-owed arrears upon completion of 6 to 12 months of employment.</p>
Colorado	<p>Parenting Time Program for Incarcerated Parents: State Paternity Coordinator and Program attorney make presentations inside correctional facilities on parent responsibilities and child support expectations and requirements, and assist obligors in filing for modification of orders.</p>

In addition to working with incarcerated parents, some agencies are beginning to look for ways to address the child support issues of paroled or released obligors, and to take part in projects that foster community reintegration. Current support orders and arrears payments are only one of many demands on the wages of a paroled/released offender. Others include room and board at a required halfway house or community corrections facility, restitution and penalties, substance abuse treatment, and/or counseling. Many of the current Responsible Fatherhood or Fragile Families projects, which were designed to help low-income fathers address child support problems, include some offenders in their caseload. Respondents to this survey said their agencies sometimes refer obligors, including offenders, to local community-based programs that provide employment and training programs for low-income, low-skilled individuals, even though there is not a child support component to the program. One respondent reported his state is just starting work on a Fatherhood Initiative that will focus on paroled parents with large arrears. The Fresno County program and the Washington Criminal Justice Program (see Table 3) work with both incarcerated and released/paroled obligors.

Colorado has been testing the Work and Family Center, a collaborative venture to contribute to the successful reintegration of offenders upon their release from state prisons (Pearson and Davis, 2000). This pilot project, which opened in August 1999, is jointly administered, funded, and staffed by the Division of Community Reintegration of DOC and the Colorado and Denver Divisions of CSE. The primary goals of the project are to reduce recidivism by increasing the employment and earnings of the paroled offenders, to modify their child support obligations to fit their earnings, and to promote family reintegration or contact. To achieve these goals, the project offers a coordinated set of services to paroled and released parents. The child support worker assigned full time to this project has assisted offenders in applying for modification of their order and having their driver's licenses reinstated following a child support enforcement action. To date, more than 200 offenders have participated in the program.

SUMMARY

Incarcerated obligors contribute a significant portion of past due support recorded by child support agencies. This is not surprising, since child support workers typically do not know when a noncustodial parent becomes incarcerated. Without notification, cases for incarcerated obligors remain unchanged and are usually treated as non-paying, open cases with a mounting delinquency. The incarcerated noncustodial parents incur increasing levels of debt as orders continue at their pre-incarceration levels. As a result of automated enforcement actions, the occupational and/or driver's license of a released obligor may be suspended. If the paroled offender does not pay his current support order or other required payments following release, he may be returned to prison for parole violation. His children, of course, do not receive child support benefits. And for the agency, the case represents a collections failure that will adversely affect its performance rating.

Should child support agencies develop policies and practices that can lessen the amount of arrears that accrue, or that educate the offender about his child support responsibilities, or direct the obligor into an employment and training program upon his release from prison? Some state CSE agencies believe that the problems faced by incarcerated obligors do not fall within their purview and decline to do anything differently for parents in prison. One respondent explained:

; We are an enforcement state. This is a state that believes in punishment. We still use the term 'deadbeat.' We just passed a state law that says the ten most wanted child support obligors will have their pictures in the paper. The idea of 'working with' people who owe child support is something that hasn't caught on here yet, and certainly not working with people who are in prison.¢

A number of agencies, however, are seeking effective approaches to containing the growth of arrears of incarcerated obligors. One suggested approach is to modify or suspend the orders of an obligor during the time spent in prison, based on a change in the financial circumstances of the parent. The stumbling block, however, is that in many cases the noncustodial parent does not know he has the option to request a review and

modification. Other agencies are creating outreach programs to inform obligors of their child support responsibilities and options, and to encourage them to work with the child support system. Still others, seeing a parallel between the problems of incarcerated and/or paroled parents and the problems of low-income obligors who want to pay child support but cannot, are developing programs to assist released/paroled parents to become solid wage earners and to reintegrate into the community.

A state agency wishing to address the child support issues of incarcerated parents faces a number of challenges. In addition to developing an efficient means of identifying noncustodial parents in prison and jail, the agency will need to cultivate relationships with their state departments of corrections, parole offices, and other criminal justice agencies. Finally, the agency will have to tackle a host of practical and political issues pertaining to the process of notifying incarcerated obligors of their rights and responsibilities and processing their cases, including effective modification in a cost-effective manner. Among the relevant parties to be notified are child support and corrections workers, custodial parents, judges, and incarcerated and paroled parents themselves.

The larger question of whether an agency should divert part of its limited resources to work with a population that currently provides little in the way of collections calls for long-term research. We do not yet know whether interventions such as outreach programs, parenting classes within correctional facilities, and modifying orders can help with reintegration and reducing the recidivism rates of offenders. Does sending child support workers into correctional facilities to take part in pre-release programs make a difference in payment patterns of offenders when they are released? Does modification activity coupled with employment programs induce paroled and released offenders to become successful earners and payers, and reduce their return to prison? Some of this research is underway through the Colorado Work and Family Center. But there is much more to be done. State agencies will be watching for the results, as they attempt to create a cohesive set of practices for this segment of their caseload.

REFERENCES

- Beck, Allen J., 2000. *Prisoners in 1999*. Bureau of Justice Statistics Bulletin. Washington, DC: U.S. Department of Justice. NCJ 183476.
- Griswold, Esther A. and Jessica Pearson, 2000. *County Policies and Attitudes Towards Incarcerated NCPs*. Denver, CO: Center for Policy Research.
- Johnston, D. 1995. "Parent-Child Visitation," in K. Gabel and D. Johnston, Eds., *Children of Incarcerated Parents*. Pasadena, CA: Pacific Oaks Center for Children of Incarcerated Parents.
- Katz, Pamela C. 1998. Supporting Families and Children of Mothers in Jail: An Integrated Child Welfare and Criminal Justice Strategy. *Child Welfare*, Vol. LXXVII, no.5: 495-511.
- National Center on Fathers and Families, 1998. *Fathers in Prison: A Review of the Data*. NCOFF Issue Brief. Philadelphia, PA.
- National Center on Fathers and Families, 2000. *State Policy Series on Family Support and Father Involvement: A Summary of Activities and Issues in Mid-Atlantic and New England States, 2000*. Philadelphia, PA.
- Pearson, Jessica and Christopher Hardaway, 2000. *Designing Programs for Incarcerated and Paroled Obligors*. Denver, CO: Center for Policy Research.
- Pearson, Jessica and Lanae Davis. 2000. *Preliminary Report on the Work and Family Center*. Denver, CO: Center for Policy Research.
- Sachs, Heidi. June, 2000. Support Services for Incarcerated and Released Noncustodial Parents. *Welfare Information Network, Issue Notes*, Vol. 4, no. 6. <http://www.welfareinfo.org>.
- Seymour, Cynthia. 1998. "Children with Parents in Prison: Child Welfare Policy, Program, and Practice Issues." *Child Welfare*, Vol. LXXVII, no. 5: 469 - 494.
- U.S. General Accounting Office, 2000. *State and Federal Prisoners: Profiles of Inmate Characteristics in 1991 and 1997*. GAO/GGD-00-117, May 2000.

APPENDIX A

STATES PARTICIPATING IN THE SURVEY REGARDING POLICIES FOR INCARCERATED PARENTS

Alabama
Arizona
California (Alameda County, Los Angeles)
Connecticut
Florida
Illinois
Indiana
Iowa
Massachusetts
Michigan
Minnesota
Missouri
Nebraska
Nevada
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
South Carolina
Texas
Utah
Virginia
Washington
West Virginia
Wisconsin
Wyoming

APPENDIX B

CHILD SUPPORT POLICIES FOR INCARCERATED AND PAROLED PARENTS

QUESTIONNAIRE FOR STATES

1. Does your state CSE have a standard policy or practice regarding treatment of incarcerated non-custodial parents?

If the state CSE program is county administered, does treatment of incarcerated non-custodial parents vary by county? Describe how it varies.

2. What is the relationship between CSE and the Department of Corrections? With the various levels of prisons and jails, the Sheriffs' departments, and so forth?

3. Does CSE identify (incoming) inmates who are parents involved with child support?
___ no ___ yes If yes, what is the procedure?

4. What procedures does your agency use for working with NCPs in prison:

- a. Without an order
- b. With an order
- c. Modifying orders
- d. Establishing wage withholding, attaching accounts

5. What methods of informing NCPs in prison about child support obligations and responsibilities does your agency use?

6. Describe any programs in your state that deal with paroled obligors and child support, such as Responsible Fatherhood projects:

7. Is treatment of incarcerated obligors a topic of debate in the child support community in your state? Discuss.

8. Do you know of other states that are working with incarcerated obligors, or programs that you would recommend we contact?

APPENDIX C

[MEMORANDUM OF
UNDERSTANDING BETWEEN
MASSACHUSETTS
DEPARTMENT OF
CORRECTION AND
MASSACHUSETTS
DEPARTMENT OF REVENUE]