

# **Multiple Intervention Grant**

## **County Policies and Attitudes Towards Incarcerated NCPs**

**Esther Ann Griswold, M.A.  
Jessica Pearson, Ph.D.  
Center for Policy Research  
1570 Emerson Street  
Denver, CO 80218  
303/837-1555**

**April 2000**

Prepared under a grant from the Federal Office of  
Child Support Enforcement (Grant No. 90-XE-0007)  
to the Colorado Department of Human Services  
for the Multiple Intervention Grant

# **DOC/CSE Intervention**

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### **EXECUTIVE SUMMARY**

The number of incarcerated people in the U.S. is growing by an average of 6.5 percent annually. In Colorado, there were 4,820 admissions of individuals with new felony convictions to the Department of Corrections (DOC) in 1998, an increase of 3 percent from 1997. The 1998 average daily incarceration rate in DOC facilities was more than 13,000. The majority of individuals in this expanding population are also parents. The Colorado Division of Child Support Enforcement (CSE) estimates that approximately 30 percent of DOC inmates and parolees are part of the child support system. This represents 4 to 5 percent of the state CSE caseload of open and closed cases.

CSE has a demonstration/ evaluation grant awarded by the Federal Office of Child Support Enforcement (OCSE) to explore child support policies and practices for incarcerated/paroled parents. CSE has contracted with the Center for Policy Research (CPR) to evaluate the grant project.

As part of the DOC/CSE Intervention, the state CSE Division recently conducted two data collection efforts with county CSE units: a poll of county CSE administrators, and a survey of CSE personnel attending a statewide conference. The primary purpose of the poll and survey was to learn more about attitudes and practices of child support technicians at the county level who work with incarcerated noncustodial parents (NCPs). Approximately 40 percent of the county administrators responded to the poll, and 78 child support personnel completed the survey form. Findings of the poll and survey include:

- ' Forty-nine percent of survey respondents and 50 percent of responding administrators said their agency views incarcerated obligors as voluntarily unemployed and therefore ineligible for support order modification.
- ' Fifty-one percent of survey respondents and 35 percent of responding administrators said their agency favors modifying orders of NCPs in prison as an expedient way of keeping arrears from accruing to unmanageable amounts.
- ' Seventy-eight percent of survey respondents said their agency agrees that incarceration should be just one of many factors to consider when reviewing a case that has requested modification.

- ' Seventy percent of the survey respondents said their agency believes in pursuing support from obligors in prison, even though the amount collected may be minimal.
- ' Two-thirds of survey respondents favor a state law to standardize treatment of NCPs who are in prison.
- ' One-third of survey respondents prefer to leave decisions for treatment of incarcerated NCPs in the hands of the counties.
- ' Eight-two percent of survey respondents who favor a state law believe the policy for NCPs in prison should be to modify orders to a minimum of \$20 to \$50.

# **DOC/CSE Intervention**

## **County Policies and Attitudes Toward Incarcerated NCPs**

The number of incarcerated people in the U.S. is growing by an average of 6.5 percent annually. In Colorado, during 1998 there were 4,820 admissions of individuals with new felony convictions to the Department of Corrections (DOC), an increase of 3 percent from 1997. The 1998 average daily incarceration rate in DOC facilities was more than 13,000. The majority of individuals in this expanding population are also parents. The Colorado Division of Child Support Enforcement (CSE) estimates that approximately 30 percent of DOC inmates and parolees are part of the child support system. This represents 4 to 5 percent of the total state CSE caseload. With a demonstration/evaluation grant awarded by the Federal Office of Child Support Enforcement (OCSE), CSE is exploring child support policies and practices for incarcerated/paroled parents. CSE's objective is to limit the buildup of arrears and, at the same time, to acknowledge the responsibility of parents to pay some child support on a regular basis. CSE has contracted with the Center for Policy Research (CPR) to evaluate the grant project.

Colorado has 63 counties, each of which has a Child Support Enforcement office or unit or contracts with one for services. The county CSE units are state-supervised and county-administered. Therefore, each local agency has a great deal of latitude at this time in how it handles cases when the noncustodial parent (NCP) is incarcerated.

Until recently, it was rare for a county CSE office to know if NCPs in its caseload were incarcerated. Most agencies only learned of the fact if the NCP or the custodial parent (CP) informed the CSE worker. But it is now possible to identify this population through computerized matching of databases maintained by CSE and DOC. The first match was conducted in early 1999. It showed a great disparity in the number of incarcerated/paroled NCPs on county caseloads. For example, 28 counties were listed as having between zero and five NCPs in the DOC system. At the other end of the spectrum, 10 counties had 100

or more cases each involving incarcerated/paroled parents, with Denver County carrying one-third of the total number of cases (1,760 of 5,230).

Before shaping a state policy, CSE needs information on a number of questions, including:

- ' What are the current practices of county CSE units regarding treatment of incarcerated NCPs?
- ' Can a statewide policy be created that will effectively work with the current practices of county court systems?
- ' What are the benefits of modifying orders for NCPs who are in prison or recently paroled? How costly would it be to modify orders for all NCPs who are inmates?

As part of the DOC/CSE intervention, the state CSE Division recently collected information about county practices using two different techniques: (1) a poll of county CSE administrators; and (2) a survey of CSE personnel attending a statewide conference. The primary purpose of the poll and survey was to learn more about county attitudes and practices towards incarcerated NCPs.

Forty-one percent of the 63 county CSE administrators responded to the poll, with several giving information about the courts with which they work. A more detailed questionnaire was offered to people within the child support community at a state-sponsored conference, held in Denver March 7-8, 2000. Seventy-eight attendees from a range of small, medium, and large counties completed the survey, including county administrators, attorneys, supervisors, technicians, and paralegals. The survey asked about county and court philosophies towards incarcerated NCPs, the response of county agencies to requests for modification, and the methods used for collecting support from incarcerated NCPs. Respondents were also asked whether treatment of incarcerated NCPs should be left to county discretion or be established by a state law.

Both the poll and the survey are based on samples of convenience, rather than scientific surveys. Although the results cannot be generalized to the entire Colorado CSE community, analysis of the responses highlights the wide range of views held within the

state regarding treatment of incarcerated obligors. The following discussion has been augmented by information from informal phone interviews conducted with staff from five county agencies, including the three counties that have participated in the DOC/CSE grant project: Denver, Fremont, and Jefferson.

## **Current Philosophies of County Agencies**

In the poll submitted to the county CSE administrators, respondents were asked to select the statement that best described the philosophy of their agency and courts regarding the treatment of incarcerated NCPs. The choices offered were:

- ' Consider obligors voluntarily unemployed and do not base review and adjustment requests on their earnings while incarcerated;
- ' Consider the obligors' current circumstances and do base review and adjustment requests on their earnings while incarcerated;
- ' Upon discovery that an obligor is incarcerated, close the case to the extent Volume 6 rules allow, and move shorter-term incarcerated cases into Category 9.

In the survey, CSE personnel were asked to select the current philosophy of their agency regarding incarcerated NCPs with child support obligations. The respondents split evenly on whether NCPs serving time in prison should be considered voluntarily unemployed and therefore ineligible for a modification, or whether a modification should be granted, in order to reduce the buildup of arrears (see Table 1). A similar division of opinions was also found in the response of the county administrators to the above-noted question about treatment of incarcerated NCPs.

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**Table 1: Percent of Respondents Selecting Philosophy of Agency**

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| <b>Philosophy</b>   | <b>County Administrators</b> | <b>CSE Survey</b> |
|---|------------------------------|-------------------|
| Incarceration is voluntary unemployment and the child support obligation should not be modified         | 50%                          | 49%               |
| When an NCP is incarcerated, the order should be modified to a minimum, so that arrears don't build up. | 35%*                         | 51%               |

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\* 15% of county administrators said their agency prefers the practice of either closing the case or moving it to Category 9.

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However, more than three-quarters of the respondents for the CSE survey (78%) also said their agency favors the approach that "Incarceration should neither require nor inhibit modification, but should be just one of many factors to consider when modification of an obligation is requested." This suggests that agencies have not developed hard and fast policies for incarcerated NCPs, but are treating them on a case-by-case basis. In part, this may reflect the fact that CSE units usually are unaware of parental incarceration in their caseloads. Until now, only one county regularly attempted to identify incarcerated parents. Lacking the means to know what percentage of their caseloads are involved with DOC, counties have had little reason to develop a specific policy for working with incarcerated NCPs.

## **County Agencies and Courts**

County CSE units must work closely with local courts and magistrates. How do the philosophies of CSE units match up with those of the local courts? Table 2 shows what child support personnel reported as the attitudes held by their courts toward incarcerated obligors and modifying the obligation. (It should be noted that a number of survey respondents left the section on court attitudes blank, indicating either they did not know the court's attitude, or did not feel they should speak for the court.)

**Table 2: Attitude of Court Toward Incarcerated Obligor, as Perceived by County CSE Personnel (n=44)**

|   | <b>Court Agrees</b> |
|---|---------------------|
| Incarceration is voluntary unemployment and the child support obligation should not be modified   | 41%                 |
| When an NCP is incarcerated, the order should be modified to a minimum, so that arrears don't build up.   | 43%                 |
| Incarceration should neither require nor inhibit modification, but should be just one of many factors to consider when modification is requested. | 70%                 |

It is clearly helpful if the court and the agency share the same philosophy with regard to parents who are incarcerated. One county respondent explained, "We believe in modification of orders (for an incarcerated NCP), but we also believe in keeping the NCP paying something every month. Our judges are with us on this; they usually set the order at \$50, although sometimes they vary and set it lower." Another county described the agreement between the courts and the agency somewhat differently: "Our courts are not willing to enter orders when the NCP is incarcerated, and (this) county sees no value in accumulating arrears or trying to collect minimal payments."

Disagreement between the agency and the local court over treatment of NCPs in prison appears to be rare. Only six individuals who completed the survey identified actual differences of philosophy between the court and the agency. In four of these cases, the court was cited as supporting modification of the order while the agency was against such action. One respondent to the county administrators' poll described this conflict: "We feel the obligor is voluntarily unemployed. However, our Magistrate fights us every time and typically ends up giving a minimum order, i.e., \$50 per month. We will continue to fight this thinking and the minimum orders."

## Treatment of Requests for Modification

According to federal law, NCPs with child support orders who have experienced substantial change in circumstances can request a modification of their order (42 U.S.C. § 666[a] [10] [B]). Incarceration, with limited employment opportunities and minimal wages, is seen as one such circumstance by some courts (*Lewis v. Lewis*, 637 A.2d 70 [D.C. 1994]). However, many agencies and courts find that incarceration does not warrant modification of an order or establishment of a minimum order, because imprisonment is considered to be a voluntary act (*McDermott v. Bender*, 598 A.2d 709 [Del. Fam. Ct. 1990]). These opposing attitudes toward requests for modification by incarcerated parents are found in Colorado county CSE units and county courts. Here are statements by two counties showing contrasting viewpoints:

[Our county] does not modify orders for incarcerated parents. They make a choice when they commit a crime. . . . How could we modify an order for a convicted criminal, when we have low-income parents struggling with two or three jobs to pay their child support?

[This county] modifies the order to zero and sets a calendar review for the expected release of the NCP. The inmate does not have to request a review; we modify the order when we receive the information . . . . Instead of letting arrears accumulate or trying to collect small payments, we would rather work with the NCP upon release and probation, for finding employment.

A few counties report they have no set policy and respond on a case-by-case basis to requests for modification. In the survey of CSE personnel, respondents were asked how their county agency responds to a request from an incarcerated NCP for an order modification. Table 3 shows the different responses agencies take to such a request.

**Table 3: Response of County Agency to Request for Modification (n=68; respondent could choose more than one)**

|  |      |
|--|------|
| Review and modify the order to \$20 to \$30 a month                      | 20%  |
| Review and modify the order to \$50 a month                              | 17%  |
| Review and modify the order to minimum wage                              | 11%  |
| Keep order at the pre-incarceration amount                               | 4%   |
| Move the order to Category 9, with arrears continuing to build           | 37%* |
| Close the case   | 4%   |
| Review and modify, considering length of sentence and number of children | 7%   |

C In a number of cases, the respondent indicated the agency first modifies the order to a lower amount, and then moves the case to Category 9. Arrears will accrue, but at a lower rate.

The small number of respondents (4%) who said their agency is most likely to keep the order at the pre-incarceration amount is surprising, when compared with the percentage (49%) who identified incarceration as “voluntary unemployment and the order should not be modified” as the philosophy of their agency. This seeming contradiction is another indication that for many counties, the agency is still formulating and developing a policy and practices to respond to incarcerated obligors.

With regard to requests for modification, several people reported their unit entered a zero order amount until the NCP is released. Others linked the response to the length of the sentence: for short sentences (a year or less), the case is moved to category 9; for longer sentences the case is closed. A number of respondents said the agency arranges for a hearing with the magistrate, who has the responsibility of modifying or denying the request. In some counties, there has been a shift in practice. Said one person, "In the past, we moved the order to Category 9, and let the arrears build. But this practice is now discouraged. Now we modify the order to \$20, or even lower, if it makes sense."

It appears that county agencies generally do not believe it is their responsibility to tell NCPs who are in prison of their option to request a modification. When asked about the agency practice of informing incarcerated NCPs of the option to request a modification, 71 percent of the respondents said, "It is up to the NCP to be aware of the option and request a

modification." Only a few respondents noted that their agency conducts outreach programs to prisons in their county, explaining the modification option.

## **Should Support Be Collected When an Obligor Is Incarcerated?**

Even as some CSE personnel reported an interest in modifying orders for incarcerated parents, the majority of survey respondents also said their agency believes in pursuing support from this population. Seventy percent said their agency believes it should pursue support, even if the amount collected is much less than the set amount. Slightly more than a quarter of respondents disagreed, saying their agency does not believe in collecting from obligors who are incarcerated. Two individuals reported their agency would pursue support only if the amount collected is above a specified minimum.

For those counties that do pursue support from incarcerated obligors, income assignment was the only method of collection reported by survey respondents. Interviews with county agencies indicate that their experience in collecting income assignments through DOC has been uneven. Two factors that contribute to the complexities of collecting regular payments are that DOC does not yet have an automated system for tracking wages of inmates, and inmate "employment" tends to be erratic.

## **Would Counties Prefer a State Law and Policy Regarding Treatment of Incarcerated NCPs?**

Of those CSE personnel who completed the survey form, 63 percent support the idea of a state law to standardize treatment of incarcerated NCPs. Thirty-seven percent would rather have each county devise its own policy. As shown in Table 4, those who endorsed a state law indicated a preference for a law that orders be modified to a minimum amount.

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**Table 4: Percentage of Supporters of State Law Who Believe the Policy Should Be . . .**

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|   | <b>Agree</b> | <b>Disagree</b> |
|---|--------------|-----------------|
| Modification of orders to a minimum of \$20 to \$50 a month   | 82%          | 18%             |
| Post-release adjustment of arrears which accumulated during incarceration                                   | 50%          | 42%             |
| Case moved to category 9 during incarceration with arrears continuing to build                              | 32%          | 47%             |
| Suspension of obligation during incarceration in absence of earnings or resources from which to pay support | 13%          | 63%             |

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## **Discussion**

The results of the two data collection efforts with administrators of county CSE units and CSE personnel indicate an array of attitudes and practices toward incarcerated and paroled obligors. County philosophies appear to be fairly evenly divided between viewing incarcerated obligors as voluntarily unemployed and therefore not eligible for support order modification, or favoring modification of orders of NCPs in prison as an expedient way of keeping arrears from accruing to unmanageable amounts. Yet more than three-fourths of survey respondents also said their agency agrees with the philosophy that incarceration should be just one of many factors to consider when reviewing a case that has requested modification. Two-thirds of the survey respondents favor a state law to standardize treatment of NCPs who are in prison, but one-third are leery of a state policy and prefer to leave it in the hands of the counties. The majority (70%) of the survey respondents reported their agency believes in pursuing support from obligors in prison, even though the amount collected may be minimal.

Thus, at least half of those responding to the county samples seem to favor a compromising, or middle-of-the-road, approach to working with incarcerated NCPs. They are unwilling to totally shelve the obligations during the time of imprisonment, and indicate their interest in collecting *some* child support from a parent, yet they also show an inclination toward modification of orders and adjustment of arrears. This could, perhaps, be viewed as the most pragmatic approach to collections. The NCP is encouraged to keep

paying some child support, but an effort is made to match the order to the current earning capabilities of the inmate.

But some in the child support community question this approach, citing the low earning capacities of incarcerated obligors and the expense of modifying orders as major obstacles. One county CSE unit that currently modifies orders and establishes income assignments found that the average monthly earnings per inmate in 1999 was \$27, while the average support order was \$90. This county estimated that the greatest amount that could be collected per obligor was \$210 per year.

Meanwhile, counties have found that modification of orders is a lengthy and complicated process. Estimates of how long a modification takes range from 90 days to six months. As county CSE administrators pointed out during interviews, a flood of modification requests would carry a heavy workload impact. Counties with sizeable caseloads of incarcerated obligors are understandably reluctant to agree to review and modify all requests from people in prison, unless the process is simplified or streamlined. Additionally, some question how appropriate it is to devote worker time to modifying orders for obligors in prison, when there are other CPs and NCPs who are not in prison, but are waiting for services from the agency.

Thus, child support units have many questions about the best approach to take with incarceration of obligors. Talks with administrators and knowledgeable staff from county agencies suggest three areas where the state could provide some assistance to county agencies:

- ' A monthly or quarterly DOC/CSE automated interface that would provide the child support agencies with names and prison facility location of incarcerated/ paroled obligors. At this time, most counties have no way of easily identifying this group or knowing in which facility the obligor has been placed.
- ' The development of a standardized, automated process for filing income assignments for modified orders with DOC. Currently, DOC does not have an automated system for processing income assignments.

' A streamlined, automated process for modifying support orders for incarcerated parents, ideally avoiding the cumbersome practice of responding to modification requests on a case-by-case basis. This would alleviate some of the workload impact that counties trying to work with NCPs in prison are experiencing.

It is clear that the child support community in Colorado has a mixed view of the best approach for working with incarcerated NCPs. Yet there appears to be substantial support for a state policy to provide consistent treatment to obligors in prison. For CSE to shape a policy of standard treatment that is accepted by all counties, the state Division will have to convince a portion of the counties to alter their current attitudes and practices. Several CSE administrators have suggested that the adoption of a state law that would automatically modify orders for incarcerated NCPs would be the most practical and acceptable approach to take. This would eliminate the costly process of modification that counties now encounter, while preserving the principle of payment.