



# Child Support Enforcement and Ex-Offenders

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## Summary

According to recent estimates, about 1.7 million children in the United States have parents who are currently incarcerated in state or federal prisons. Among the approximately 700,000 persons who are released from prison each year about 400,000 of them are fathers and mothers. The current economic crisis together with overcrowded prisons and state budget shortfalls are likely to result in a significant number of inmates convicted of nonviolent offenses getting early release dispensations. How these former inmates reconnect to their families impacts not only the children involved but society at large and is of great interest to Congress and the nation.

Ex-offenders re-entering communities face a host of problems, a major one being barriers to employment because of their criminal records. Most employers now conduct background checks, with the result that people are often denied employment or even fired from jobs because of their criminal records. Research indicates that employment and family support are important predictors of an ex-offender's successful re-entry into his or her community. Given that employment opportunities are scarce and may become more limited in the current economy, family support is even more important for formerly incarcerated parents.

The Child Support Enforcement (CSE) program is a federal-state program whose mission is to enhance the well-being of children by helping custodial parents and children obtain financial support from the noncustodial parents, including those in prison or who were formerly incarcerated. Child support payments enable parents who do not live with their children to fulfill their financial responsibility to their children by contributing to the payment of childrearing costs. Parents who make regular child support payments are more likely than those who do not to have better family relationships. Also, prisoner re-entry programs and responsible fatherhood programs sometimes help noncustodial parents establish positive, productive connections to their children. Research indicates that positive family relationships increase family stability and can help reduce recidivism.

Connecting children to their noncustodial parents has become a goal of federal social policy. Promoting coordination among federal and state programs may help programs optimize their resources. Some prisons and local communities are helping noncustodial parents acknowledge their child support responsibilities by offering parenting programs, informational sessions on how to deal with the CSE agency, conflict-resolution classes, and job readiness preparation. Research highlights the common ground between the prison system and the CSE system. For example, studies show that family support is one of the key factors in lowering the probability that ex-offenders will return to prison and research further indicates that being involved in the lives of one's children promotes responsible behavior, such as making regular child support payments and being productive citizens. Federally-mandated program coordination in certain areas may be one way to increase child support collections and simultaneously reduce recidivism.

This report focuses on the CSE program. It examines the CSE program within the context of large numbers of former inmates re-entering local communities. It raises several issues related to noncustodial parents who are ex-offenders (i.e., former inmates). The report also presents policy options that could help increase child support collections from low-income noncustodial parents, some of whom are former inmates. A by-product of increased child support collections could be a positive, productive relationship between ex-offenders and their children, which could result in lower recidivism rates among inmates who are noncustodial parents. This report will not be updated.

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## Introduction

About 1.7 million children in the United States have parents who are currently incarcerated<sup>1</sup> and more than 10 million U.S. children are separated from one of their parents during a portion of their childhood because of the parent's incarceration.<sup>2</sup>

According to the Bureau of Justice Statistics, of the 1.5 million inmates held in the nation's prisons (federal and state) in mid-2007, approximately 809,800 of them (53%) were parents of minor children. Of the estimated 700,000 persons who are released from prison each year,<sup>3</sup> about 400,000 of them are fathers and mothers.<sup>4</sup>

For the last 30 years, states have locked up more persons (many for longer periods of time) and have built more prisons to hold them. Now many states faced with reduced resources and huge prison costs are reevaluating their prison policies and practices.<sup>5</sup> The current economic crisis together with overcrowded prisons and state budget shortfalls may lead to thousands of parents convicted of nonviolent offenses (e.g., persons with drug offenses, burglary, check fraud, or theft convictions) getting out of prison months (in some cases, a year or more) earlier than they were sentenced. How former inmates reconnect to their families impacts not only the children involved but society at large and is of great interest to Congress and the nation.

More now than in the past, corrections institutions are acknowledging that most of their population will eventually be released, and probably sooner than the maximum time allowed by their sentence. Thus, they are moving toward a position that will allow them to effectively help inmates successfully transition back into local communities.<sup>6</sup> Successful re-entry means lower recidivism and thereby reduced costs for penal institutions. It also means safer communities.<sup>7</sup> A broad array of research indicates that the two most important factors in successful re-entry are employment and a healthy connection to one's family.<sup>8</sup>

The Child Support Enforcement (CSE) program is a federal-state program whose mission is to enhance the well-being of children by helping custodial parents and children obtain financial

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<sup>1</sup> Lauren E. Glaze and Laura M. Maruschak, "Parents in Prison and Their Minor Children," U.S. Department of Justice, Bureau of Justice Statistics Special Report, August 2008.

<sup>2</sup> "Every Door Closed: Facts About Parents With Criminal Records," Center for Law and Social Policy (CLASP) and Community Legal Services, Inc., 2003.

<sup>3</sup> "Building Knowledge About Successful Prisoner Reentry Strategies," MDRC, February 11, 2009.

<sup>4</sup> "Every Door Closed: Facts About Parents With Criminal Records," Center for Law and Social Policy (CLASP) and Community Legal Services, Inc., 2003.

<sup>5</sup> Jennifer Steinhauer, "To Cut Costs, States Relax Prison Policies," *The New York Times*, March 25, 2009.

<sup>6</sup> Amy L. Solomon, Jenny W. L. Osborne, Stefan F. LoBuglio, Jeff Mellow, and Debbie A. Mukamal, "Life After Lockup: Improving Reentry From Jail to the Community," May 2008. See also: John M. Jeffries, Suzanne Menghraj, and Creasie Finney Hairston, "Serving Incarcerated and Ex-Offender Fathers and Their Families," February 2001.

<sup>7</sup> Amy L. Solomon, Jenny W. L. Osborne, Stefan F. LoBuglio, Jeff Mellow, and Debbie A. Mukamal, "Life After Lockup: Improving Reentry From Jail to the Community," May 2008.

<sup>8</sup> Vicki Turetsky, "Realistic Child Support Policies that Support Successful Re-entry," Center for Law and Social Policy, revised January 2007. See also: Nancy La Vigne, Elizabeth Davies, Tobi Palmer, and Robin Halberstadt, "Release Planning for Successful Re-entry: A Guide for Corrections, Service Providers, and Community Groups, The Urban Institute, September 2008. [[http://www.urban.org/UploadedPDF/411767\\_successful\\_reentry.pdf](http://www.urban.org/UploadedPDF/411767_successful_reentry.pdf)]

support from the noncustodial parents, including those in prison or who were formerly in prison. Child support payments enable parents who do not live with their children to fulfill their financial responsibility to their children by contributing to the payment of childrearing costs. There is a growing consensus that the CSE program is one of the financial keys to helping families remain self-sufficient. According to the most recently available data, on average, child support constitutes about 17% of family income for households who receive it. Among poor households who receive it, child support constitutes about 30% of family income.<sup>9</sup> Parents who make regular child support payments are more likely than those who do not to have better family relationships. Research indicates that positive family relationships increase family stability and can help reduce recidivism. The intersection of the mission of state and federal correction facilities (i.e., successful re-entry of former prisoners into local communities) and the mission of the CSE program (i.e., consistent payment of child support obligations) provides both systems with an opportunity to marshal their efforts in a way that results in positive outcomes for children. Both Congress and the Obama Administration are examining federal programs in an effort to reduce waste in the federal budget. Although programs are often evaluated in isolation, the likelihood of reduced federal and state funding may promote more innovative thinking and collaboration among agencies involved in administering the criminal justice system and CSE program.

This report examines the CSE program within the context of large numbers of former inmates re-entering communities. It provides a brief review of the CSE program and data related to parents who are in state or federal prisons. Next, it analyzes several issues that relate to the payment of child support by incarcerated or formerly incarcerated parents. Then it presents policy options that address the problem of nonpayment of child support. For example, it discusses ways in which the CSE program can help ex-offenders who are parents reconnect with their children and communities. It also suggests strategies that may lead to both lower recidivism and more parents making child support payments.

## **Background**

This report focuses on the CSE program to explore ways to deal with nonpayment of child support by noncustodial parents who are or were in prison. As higher numbers of inmates are released, the CSE program will face more pressure to perform better in the area of increasing child support collections and reducing child support debt. If it is successful, a positive consequence may be fewer parents returning to prison. It is thought that even under current economic conditions, a positive family life will encourage formerly incarcerated noncustodial parents to keep looking for legitimate employment and to steadfastly maintain law-abiding behaviors. This section provides a brief overview of the CSE program. It also presents information and data related to noncustodial parents who are incarcerated or who were formerly incarcerated.

## **The Child Support Enforcement (CSE) Program**

The CSE program was enacted in 1975 as a federal-state program (Title IV-D of the Social Security Act) to help strengthen families by securing financial support for children from their

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<sup>9</sup> Elaine Sorensen and Chava Zibman, "Child Support Offers Some Protection Against Poverty," Urban Institute, March 15, 2000. Also see Elaine Sorensen, "Child Support Gains Ground," Urban Institute, October 6, 2003.

noncustodial parent on a consistent and continuing basis and by helping some families to remain self-sufficient and off public assistance. The CSE program provides seven major services on behalf of children: (1) parent location, (2) paternity establishment, (3) establishment of child support orders, (4) review and modification of child support orders, (5) collection of child support payments, (6) distribution of child support payments, and (7) establishment and enforcement of medical support. The CSE program serves both families that receive Temporary Assistance for Needy Families (TANF) benefits and those who do not. All 50 states and four jurisdictions (the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands) operate CSE programs.<sup>10</sup> The CSE program is administered by the federal Office of Child Support Enforcement (OCSE) which is in the Administration on Children and Families (ACF) within the Department of Health and Human Services (HHS). Most child support collections on behalf of families receiving TANF benefits are used to reimburse state and federal governments for TANF payments made to the family. Child support collected on behalf of nonwelfare families goes to the family, usually through the state disbursement unit.

The federal government and the states share program costs at the rate of 66% and 34%, respectively. The federal government also pays states an incentive payment to encourage them to operate effective CSE programs. Federal law requires states to reinvest CSE incentive payments back into the CSE program or related activities. In FY2007, the CSE program collected \$24.9 billion in child support payments from noncustodial parents and served nearly 15.8 million child support cases. On average, the program collected \$4.73 in child support payments for each \$1 spent on the program. In that year, CSE expenditures amounted to nearly \$5.6 billion.<sup>11</sup>

Although there is a general consensus that the CSE program is performing well,<sup>12</sup> in FY2007, the CSE program only made collections for about 55% of its caseload and collected only 19% of child support obligations for which it had responsibility. Part of the reason for these low performance figures is that the CSE program cannot enforce a child support obligation until one is formally established either through an administrative process (via the state CSE system), a judicial process (via the state court system), or a combination of the two (i.e., via a quasi-judicial system). Moreover, a child support order can only be established if the issue of paternity has been settled.<sup>13</sup> In FY2006, approximately 5 million of the 17 million children in the CSE program (i.e., 29%) had not been issued child support orders on their behalf.

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<sup>10</sup> States were historically required to provide CSE services to Indian tribes and tribal organizations as part of the CSE caseloads. The 1996 welfare reform law (P.L. 104-193) allowed direct federal funding of tribal CSE programs at a 90% federal matching rate. In FY2007, twelve Indian Tribes or tribal organizations operated CSE programs. They are the Cherokee Nation, Chickasaw Nation, Forest County Potawatomi, Lac du Flambeau Tribe, Lummi Nation, Menominee Tribe, Navajo Nation, Osage Nation, Port Gamble S'Klallam, Puyallup Tribe, Sisseton-Wahpeton Sioux Tribe, and the Tlingit and Haida Tribe.

<sup>11</sup> In FY2007, the federal share of CSE total program costs was nearly \$3.7 billion (66%) and the states' share was nearly \$1.9 billion (34%). In FY2007, the statutory maximum for federal CSE incentive payments to states (in aggregate) was \$471 million.

<sup>12</sup> In 2004, the CSE program was cited by the Office of Management and Budget (OMB) as being the most cost-effective program among all social services and block grant/formula programs reviewed government-wide.

<sup>13</sup> Every child has a biological father, but if a child's parents are not married, the law does not accept or recognize the biological father as the legal father. Unmarried parents generally establish paternity by signing a voluntary acknowledgment of paternity form or having a court determine paternity. Although the CSE program now establishes paternity for more than 95% of all newborns, it does less well in legally identifying the fathers of older children. According to the Office of Child Support Enforcement (OCSE), in FY2006 paternity was established for about 86% of the children who needed paternity established. This meant that about 2.4 million children could not receive child support payments because they did not have a legally identified father. Note that another 2.6 million children could not (continued...)

Another reason for the poor performance figures is that many of those who owe child support have low incomes. A 2007 Urban Institute survey of three states—Florida, Illinois, and Pennsylvania—indicated that “Across these three states, the average monthly earnings of non-custodial parents were only \$23 higher than the average monthly earnings of custodial parents. Employed non-custodial parents in Illinois had the highest monthly earnings at \$2,765 per month, and those in Pennsylvania had the lowest, at \$1,297 per month.”<sup>14</sup> Although there are no recent data that provide a good estimate of how many low-income parents do not pay child support because they are financially unable to pay, most policymakers agree that the number is significant.<sup>15</sup>

## **Incarcerated Parents and Child Support Obligations**

According to the Bureau of Justice Statistics, in mid-2007, about 53% of 1.5 million U.S. prisoners<sup>16</sup> held in the nation’s prisons were parents of minor children. (See **Figure 1**.) These parents (52% of state inmates and 63% of federal inmates) reported having 1.7 million minor children.

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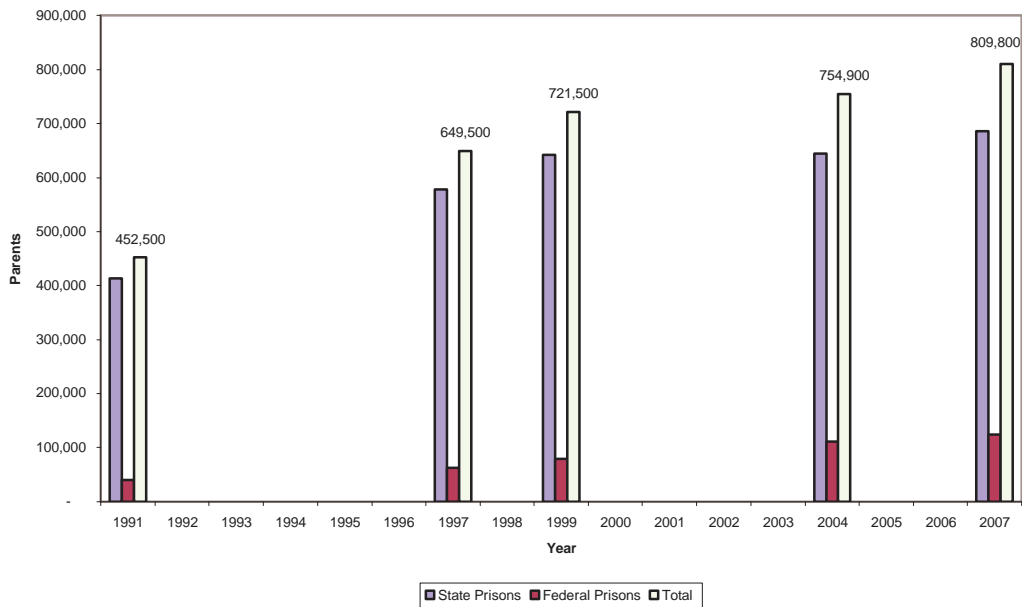
receive child support payments because a child support order had not been established on their behalf.

<sup>14</sup> “Demographic Survey Results From Nine State IV-D Programs,” Courtland Consulting (MI) and the Urban Institute, December 18, 2007. (In 2006, the Census Bureau poverty threshold was \$10,294 for one person, \$13,167 for a two-person family, \$16,079 for a three person-family, and \$20,614 for a four-person family.)

<sup>15</sup> Based on 1997 data, it appears that about 34% of fathers with income below the poverty threshold did not pay child support because they were not able to do so. (Elaine Sorensen and Chiva Zibman, “Poor Dads Who Don’t Pay Child Support: Deadbeats or Disadvantaged?,” The Urban Institute, April 2002, p. 2.)

<sup>16</sup> According to a recent report, in June 2007, there were about 2.3 million persons in federal and state prisons and local jails. (Source: Mindy Herman-Stahl, Marni L. Kan, and Tasseli McKay, “Incarceration and the Family: A Review of Research and Promising Approaches for Serving Fathers and Families,” RTI International (North Carolina), September 2008, p. 1-1.) The data in this report focus on inmates or former inmates of state or federal prisons. Thus, the 1.5 million prisoners mentioned in the body of the report does not include an additional 0.8 million persons who are in jail. Persons in jail may be awaiting trial or sentencing, waiting for transport to a state or federal prison after they have been convicted or in local prisons, or serving time on a misdemeanor sentence (usually less than one year).

**Figure I. Estimated Number of Parents in State and Federal Prisons—Data for 1991, 1997, 1999, 2004, and 2007**



**Source:** Chart prepared by the Congressional Research Service, based on data from the Bureau of Justice Statistics Special Report entitled, “Parents in Prison and Their Minor Children,” August 2008.

There are no national data that differentiate inmates from other noncustodial parents in terms of percentage with child support orders, average monthly amount of child support owed, average amount paid, and amount of arrearages (i.e., past-due payments) owed, but it is widely held that inmates and former inmates pay the lowest amount of child support. Moreover, there is some anecdotal information that indicates that child support arrearages of inmates and former inmates are very high.<sup>17</sup>

According to one study, about 25% of inmates have open child support cases. Incarcerated noncustodial parents generally owe between \$225 to \$313 per month in child support; and on average they enter prison owing about \$10,000 in child support arrearages and leave prison owing more than \$23,000 in arrearage payments.<sup>18</sup>

## Issues

Given the high cost of state and federal prison systems<sup>19</sup> and the high recidivism rates,<sup>20</sup> it is not surprising that policymakers at all levels of government are interested in promoting policies and

<sup>17</sup> Pamela Caudill Ovwigho, Correne Saunders, and Catherine E. Born, “The Intersection of Incarceration & Child Support: A Snapshot of Maryland’s Caseload,” July 2005.

<sup>18</sup> “Every Door Closed: Facts About Parents With Criminal Records,” Center for Law and Social Policy (CLASP) and Community Legal Services, Inc., 2003.

<sup>19</sup> According to a report by the Pew Charitable Trusts, total state spending on corrections—including bonds and federal contributions—totaled \$49 billion in 2007 (up from \$12 billion in 1987). In 2005, the average per prisoner operating cost was \$23,876, ranging from a high of \$44,860 in Rhode Island to a low of \$13,009 in Louisiana (note that these (continued...))



strategies that help former inmates successfully reunite with their children and families and effectively reintegrate into their communities. Research suggests that family support and employment are the two most important predictors of an ex-offender's successful re-entry into his or her community.

During this time of reduced resources at both the state and national level, policymakers and program administrators are interested in ensuring that programs are effective and efficient. The Obama Administration has stated that there will be increased scrutiny of federal programs in an effort to reduce waste in the federal budget.<sup>21</sup> Also, Congress, as part of its budget duties and oversight authority, will be reviewing programs for their effectiveness.

This section examines the CSE program within the analytic framework of addressing the impact of huge numbers of inmates that may be released back into local communities sooner than expected because of state and federal budget shortfalls and overcrowded prisons. It begins with a discussion of how unrealistic child support orders and high child support debt may be adversely affecting overall CSE program results and public perceptions about the program. Although most CSE data cannot be disaggregated to isolate inmates or former inmates who owe child support, many ex-offenders are low-income noncustodial parents.<sup>22</sup> Thus, any of the proposals that would help resolve child support issues related to the low income levels of noncustodial parents would also impact a significant percentage of inmates and former inmates who are parents. This section also discusses how the increase of mothers in prisons may impact the CSE program. Further, it looks at federal law that permits the termination of parental rights of ex-offenders.

## **Unrealistic Child Support Orders**

A child support order legally obligates noncustodial parents to provide financial support for their children and stipulates the amount of the obligation (monthly obligation plus arrearages, if any) and how it is to be paid.

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costs do not include capital expenses). The report indicates that corrections budgets are consuming an increasing share of state general funds, leaving significantly fewer dollars for other needs. For example, Pew found that over the 20-year period 1987-2007, inflation-adjusted general fund spending on corrections rose 127% while higher education expenditures rose just 21%. Source: "One in 100: Behind Bars in America 2008," The Pew Center on the States, Public Safety Performance Project, February 2008.

<sup>20</sup> About 66% of persons released from prisons in the United States are rearrested within three years of their release and more than 50% are re-incarcerated. (Source: "Report of the Re-Entry Policy Council—Charting the Safe and Successful Return of Prisoners to the Community," 2004, p. xviii.)

<sup>21</sup> Jason Miller, "Obama offers glimpse into management reforms," Federal News Radio, February 27, 2009. <http://www.federalnewsradio.com/index.php?nid=110&sid=1612040>

<sup>22</sup> Data from the Bureau of Justice Statistics for 2004 indicate that, among parents who said they had provided primary financial support for their children, 30% of inmates in state prisons and 27% of inmates in federal prisons had income of less than \$1,000 in the month before they were arrested. With respect to parents who said that they were not the one providing primary financial support for their children, 40% of inmates in state prisons and 38% of inmates in federal prisons had income of less than \$1,000 in the month before they were arrested. (Source: Lauren E. Glaze and Laura M. Maruschak, "Parents in Prison and Their Minor Children," U.S. Department of Justice, Bureau of Justice Statistics Special Report, August 2008, p. 17.)

## **Brief History of Child Support Order Establishment**

Before October 1989, the decision of how much a parent should pay for child support was left primarily to the discretion of the courts. Typically, judges examined financial statements from mothers and fathers and established awards based on children's needs. The resulting awards varied greatly. In an attempt to increase the use of objective criteria, the Child Support Enforcement Amendments of 1984 (P.L. 98-378) required each state to establish guidelines for determining child support award amounts. However, the 1984 provision did not make the guidelines binding on judges and other officials who had the authority to establish child support obligations. It was the Family Support Act of 1988 (P.L. 100-485) which required that the state-established child support award guidelines be considered the appropriate child support amount unless the court or CSE agency determined (i.e., successfully made the case) that a different amount would be in the best interest of the child.

By requiring the states to establish child support guidelines, the federal government hoped to accomplish four main goals: (1) increase the adequacy of child support awards; (2) increase the consistency and predictability of child support awards; (3) increase compliance through perceived fairness of child support awards; and (4) increase the ease of administration of child support cases.<sup>23</sup> States generally use one of three basic types of guidelines to determine child support award amounts: “Income shares,” which is based on the combined income of both parents (37 jurisdictions);<sup>24</sup> “percentage of income,” in which the number of eligible children is used to determine a percentage of the noncustodial parent’s income to be paid in child support (13 jurisdictions);<sup>25</sup> and “Melson-Delaware,” which provides a minimum self-support reserve for parents before the cost of rearing the children is prorated between the parents to determine the award amount (3 states).<sup>26</sup> One jurisdiction, Puerto Rico, did not specify which guideline it follows.<sup>27</sup>

## **Current Problems Associated With Child Support Orders**

There is a lot of variation among the states with regard to the amount of the child support obligation established by the state-established child support guidelines, particularly at the lower

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<sup>23</sup> Morgan, Laura W, “Child Support Guidelines: Interpretation and Application, 1996. <http://www.supportguidelines.com/book/chap1a.html>

<sup>24</sup> The first step in the income shares approach is to determine the combined income of the two parents. A percentage of that combined income is used to calculate a “primary support obligation.” Many states add child care costs and extraordinary medical expenses to the primary support obligation. The resulting total child support obligation is apportioned between the parents on the basis of their proportionate share of total income. The noncustodial parent's share is the child support award.

<sup>25</sup> The percentage of income approach is based on the noncustodial parent's gross income and the number of children to be supported (the child support obligation is not adjusted for the income of the custodial parent). The percentages vary by state. In Wisconsin, for example, child support is based on the following proportions of the noncustodial parent's gross income: one child—17%; two children—25%; three children—29%; four children—31%; and five or more children—34%.

<sup>26</sup> The Melson-Delaware formula starts with net income. After determining net income for each parent, a primary support allowance is subtracted from each parent's income. This reserve represents the minimum amount required for adults to meet their own subsistence requirements. The next step is to determine a primary support amount for each dependent child. Work-related child care expenses and extraordinary medical expenses are added to the child's primary support amount. The child's primary support needs are then apportioned between the parents.

<sup>27</sup> Laura Morgan, “Child Support Guidelines,” National Conference of State Legislatures, 2009. <http://www.ncsl.org/programs/cyf/models.htm>

end of the income spectrum. The variance in child support orders widens further because many states specify an income threshold below which child support orders are established differently than under the state's regular guideline rules.<sup>28</sup> Moreover, there are several controversial issues associated with child support awards that also increase the range in child support awards among states. These issues include whether child care costs, extraordinary medical expenses, and college costs are taken into account in determining the child support order; how the income of stepparents is treated; how the income of the noncustodial parent is allocated between first and subsequent families; whether a minimum child support award level regardless of age or circumstance of the noncustodial parent should be imposed; and the duration of the support order (i.e., does the support obligation end when the child reaches age 18; what happens to arrearages once the child reaches the age of majority).

The bottom line is that in many cases current levels of child support exceed what many middle and lower income noncustodial parents can afford to pay.<sup>29</sup> Also, there is much acrimony between noncustodial parents and the CSE system because noncustodial parents contend that the CSE program does not consider "affordability" as a legitimate factor in calculating child support award amounts. They point to the fact that in many states the basic living expenses of the noncustodial parent such as rent, food, and car payments are often not taken into account in determining the child support order.<sup>30</sup>

In addition to the guidelines, the child support obligation is dependent on the way in which the state determines the amount of income to which the guidelines should be applied. When information about actual income is not available, considered unreliable, or when a decision-maker contends that the noncustodial parent's low income is the result of voluntary unemployment or underemployment, income may be attributed to the noncustodial parent and the child support award guideline calculation is then based on that imputed income even if the imputed income is based on incorrect assumptions.

Setting child support orders at a level that exceeds a noncustodial parent's ability to pay may in some cases decrease the amount of child support received by the custodial parent because of the noncustodial parent's low income and/or because of the noncustodial parent's contention that the CSE system is unfair.<sup>31</sup> In contrast, CSE policies that result in realistic child support orders, especially for persons at the lower end of the income scale, may result in more child support from low-income noncustodial parents, many of whom are former inmates.

## **High Child Support Arrearages**

Despite record collections by state CSE programs, considerable sums of child support go unpaid every year. In FY2007, \$138.0 billion in child support obligations (\$30.8 billion in current support and \$107.2 billion in past-due support) was owed to families receiving CSE services, but

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<sup>28</sup> "Dollars and Sense: Improving the Determination of Child Support Obligations for Low-Income Mothers, Fathers, and Children," National Women's Law Center and the Center on Fathers, Families, and Public Policy, 2002, p. 4.

<sup>29</sup> Ex-offenders re-entering communities face a host of problems including employment barriers stemming from their criminal records.

<sup>30</sup> "Issues Behind the Message of Equal Parents' Week," Children's Rights Council, 2004, <http://epweek.tripod.com/issues.html>.

<sup>31</sup> Ingrid Rothe and Daniel R. Meyer, "Setting Child Support Orders: Historical Approaches and Ongoing Struggles," University of Wisconsin-Madison Institute for Research on Poverty, Focus, v. 21, no. 1, Spring 2000, p. 61.

only \$26.1 billion was paid (\$18.8 billion in current support and \$7.3 billion in past-due support).<sup>32</sup> This meant that the CSE program only collected 19% of the child support obligations for which it had responsibility. If current collections are examined separately, the data indicate that the CSE program collected 61% of all current child support payments in FY2007. If collections on past-due support (i.e., arrearages) are examined separately, the data show that the CSE program collected less than 7% of arrearage payments in FY2007. In other words, the total amount of arrearages reported in FY2007 for all fiscal years (i.e., FY2007 and all previous years) was \$107.2 billion; but only \$7.3 billion was collected in FY2007.

## **Child Support Debt Accumulation**

Child support arrearages can be accumulated in several ways, depending upon the guidelines established by the state. The first and most prevalent way is through nonpayment of child support. For each month that a noncustodial parent fails to meet the full child support obligation, the unpaid support (i.e., this is generally referred to as past-due payments or arrearages) is added to the amount the noncustodial parent owes.<sup>33</sup> Another way that arrearages accumulate is of special importance to ex-offenders. The arrearages mount because in most states and localities child support orders remain payable and in effect even when the noncustodial parent is unemployed or incarcerated.<sup>34</sup>

CSE law recognizes that a child support order, which can be in effect for 18 years or longer, may not be appropriate for the duration of the order.<sup>35</sup> Nevertheless, child support orders are not automatically changed when the child's or the parent's circumstances change. In order for a noncustodial parent to have his or her child support order lowered, the CSE program and the courts generally require that there be a change in the financial circumstances of the noncustodial parent. Next, the noncustodial parent must petition the CSE agency or the court to have his or her child support order modified. Although no state automatically modifies child support orders whenever there is a change in financial circumstances, CSE law now requires (pursuant to P.L. 109-171) states to review and, if necessary, adjust child support orders on behalf of children who receive TANF benefits at least once every three years. Nevertheless, in many states, being in prison is not a basis for child support modification. To the contrary, some states (courts and CSE

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<sup>32</sup> "Child Support Enforcement (CSE) FY 2007 Preliminary Data Report," U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, April 2008.

<sup>33</sup> As noted earlier, child support payments are collected through a state collection and disbursement unit. CSE law requires that a State Disbursement Unit be used to collect and disburse child support payments, to keep an accurate identification of child support payments, to promptly disburse money to custodial parents or other states, and to furnish parents with a record of the current status of child support payments.

<sup>34</sup> Other ways in which child support arrearages accumulate include the following: (1) In all states, arrearages remain due (for various periods of time) even after the child reaches the age of majority; (2) In addition to current support, some states choose to establish retroactive support when setting new child support orders—depending on the state's policy, these retroactive arrearages may extend from two to six years prior, or they may be unlimited in their scope, extending back all the way to the time of the child's birth; (3) Child support arrearages can also be incurred for costs and fees; particularly attorney fees, court filing fees, fees for blood tests associated with the determination of paternity, and the costs associated with the child's birth; and (4) Some states charge interest on arrearages thereby increasing the amount owed. (Source: "Dollars and Sense: Improving the Determination of Child Support Obligations for Low-Income Mothers, Fathers, and Children," National Women's Law Center and Center on Fathers, Families, and Public Policy, August 19, 2002.)

<sup>35</sup> There are many reasons why a child support order may need to be changed. For instance, the financial circumstances of the parents may change; the necessity of child care might be eliminated; and the costs of food, clothing, medical care, school, and extracurricular activities may increase or decrease.

agencies) view incarceration as voluntary unemployment. They hold that, because imprisonment is the result of an intentional criminal act, incarceration and the loss of income are voluntary acts. In some states, incarceration is just one among many factors that are examined in determining whether or not to lower the child support order. In other states, incarcerated parents who petition the state (court or CSE agency) are usually determined eligible to have their child support order modified to a lower amount.

Unlike in earlier times (pre-1996), the CSE program has a vast array of enforcement methods that it can use to collect child support arrearages.<sup>36</sup> A premise of the CSE program is that having and using such enforcement tools encourages parents to meet their obligations regularly and on time and also sends the message that there are serious consequences for nonpayment of child support.

### **Current Problems Associated With High Child Support Arrearages**

Many noncustodial parents mistakenly believe that if they fall behind in their child support payments at a time when they are legitimately unable to make the payments, the amount they owe can later be reduced or discounted by a court when an explanation for nonpayment is given. In fact, if a noncustodial parent waits to explain his or her changed financial circumstances, the court will not be able to retroactively reduce the back payments (i.e., arrearages) that the noncustodial parent owes.<sup>37</sup>

The large accumulation of child support arrearages is a major concern for several reasons. If these arrearages could be collected, the additional income would help the children and families who are owed this child support. Also, large balances of arrearages give the impression that state CSE programs are not performing competently. People tend to assume that if the child support debt is growing, it means that locate and enforcement tools are not working and that child support workers are not effective.<sup>38</sup> However, this perception may be overly simplistic because not all of the arrearage problems are within the control of the CSE program or its workers. An Urban Institute report states: “The reason we estimate that less than half of the arrears will be collected over 10 years is because so much of the arrears are owed by obligors with no or low reported income. It is very difficult to collect from obligors who have no or low reported income.”<sup>39</sup>

The CSE program provides services to both welfare and nonwelfare families. Child support collected on behalf of nonwelfare families goes to the family (via the state disbursement unit). Collections on behalf of families receiving benefits from the TANF block grant are in part used to

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<sup>36</sup> The CSE agency can collect child support arrearages through federal and/or state income tax refund intercepts, intercept of unemployment or workers’ compensation, liens against property, seizure of awards and settlements, and seizure of assets held in financial institutions. The CSE agency also has the authority to withhold or suspend the use of driver’s licenses, professional licenses, and recreational and sporting licenses of persons who owe past-due child support payments.

<sup>37</sup> The Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509), among other things, in effect, prohibited the retroactive modification of child support obligations thereby making it very difficult for courts and administrative entities to forgive or reduce child support arrearages.

<sup>38</sup> “Office of Child Support Enforcement FY 2006 Annual Report to Congress,” U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, March 2009. Also see Elaine Sorensen, Liliaana Sousa, and Simon Schaner, “Assessing Child Support Arrears in Nine Large States and the Nation,” The Urban Institute, July 11, 2007. [<http://aspe.hhs.gov/hsp/07/assessing-CS-debt/>]

<sup>39</sup> Elaine Sorensen, Liliaana Sousa, and Simon Schaner, “Assessing Child Support Arrears in Nine Large States and the Nation,” The Urban Institute, July 11, 2007, p. 7. <http://aspe.hhs.gov/hsp/07/assessing-CS-debt/>

reimburse state and federal governments for TANF payments made to the family. The CSE strategic plan for the period FY2005-FY2009 states the following: “Child support is no longer primarily a welfare reimbursement, revenue-producing device for the federal and state governments; it is a family-first program, intended to ensure families’ self-sufficiency by making child support a more reliable source of income.”<sup>40</sup> One of the goals of the 1996 welfare reform law (P.L. 104-193, which established TANF) with regard to CSE distribution provisions was to create a distribution priority that favored families once they leave the TANF rolls. This “family first” policy was further advanced by P.L. 109-171 (the Deficit Reduction Act of 2005).<sup>41</sup> In 2007, 92% of child support collections went to families, nearly half of whom had previously received TANF benefits, and the remaining 8% went to reimburse the state and federal governments for TANF payments made to families.<sup>42</sup> It is estimated that about 50% of the uncollected \$107.2 billion in past-due payments (i.e., arrearages) is still owed to state and federal governments.

Even though the CSE program is collecting billions of dollars in arrearages each year, it does not seem to be making much progress in reducing the problem, and the overall child support debt continues to grow. In some cases, high arrearages may deter noncustodial parents from paying any child support. According to research on arrearages, when noncustodial parents perceive that the system is unfair or that the debt is too great to be overcome, the likelihood that they will pay *any* support decreases.<sup>43</sup>

Many noncustodial fathers maintain that the CSE system is dismissive of their financial condition and continues to pursue child support payments (current as well as arrearages) even when it knows that many of them can barely support themselves. They argue that for welfare families, the CSE program generally does not improve their child’s well-being because their child support payments are used to benefit the state and federal government (i.e., welfare reimbursement) rather than their child. They contend that the CSE program causes conflicts between them and their child’s mother because the women often use it as leverage by threatening to report them to CSE authorities, take them back to court, have more of their wages garnished, or have them arrested.<sup>44</sup>

## **Incarcerated Mothers**

The female prison population has increased dramatically since the early 1990s. According to the Bureau of Justice Statistics, data from 2007 indicate that about 57% of the 114,420 women in a state or federal prison are mothers.<sup>45</sup> Between 1991 and 2007, the number of mothers in prison

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<sup>40</sup> “The National Child Support Enforcement Strategic Plan FY2005-2009,” U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, 2004. See [http://www.acf.hhs.gov/programs/cse/pubs/2004/Strategic\\_Plan\\_FY2005-2009.pdf](http://www.acf.hhs.gov/programs/cse/pubs/2004/Strategic_Plan_FY2005-2009.pdf).

<sup>41</sup> P.L. 109-171 simplifies CSE distribution rules and extends the “families first” policy by providing incentives to states to encourage them to allow more child support to go to both former welfare families and families still on welfare.

<sup>42</sup> TANF recipients now make up just 14% of the CSE caseload. The largest group in the CSE caseload, representing about 46% of the cases, are families who formerly received TANF benefits. Families who never received TANF assistance comprise 41% of the CSE caseload. (The figures are based on preliminary FY2007 data from the federal Office of Child Support Enforcement.)

<sup>43</sup> “Dollars and Sense: Improving the Determination of Child Support Obligations for Low-Income Mothers, Fathers, and Children,” National Women’s Law Center and the Center on Fathers, Families, and Public Policy, 2002, p. 2.

<sup>44</sup> “Family Ties: Improving Paternity Establishment Practices and Procedures for Low-Income Mothers, Fathers and Children,” National Women’s Law Center and the Center on Fathers, Families, and Public Policy, 2000, p. 9-11.

<sup>45</sup> Heather C. West and William J. Sabol, “Prisoners in 2007,” U.S. Department of Justice, Bureau of Justice Statistics Bulletin 224280, December 2008.

(state and federal) increased 122%, from 29,500 in 1991 to 65,600 in 2007. In 2007, 8.1% of the parents in prison were mothers compared to 6.5% in 1991.<sup>46</sup> The rising share of female inmates has been attributed to mandatory sentencing laws for drug offenses.

While there is a growing consensus that father-child bonds are just as important as mother-child bonds, many analysts contend that the short-term social impacts on children may be greater and more detrimental when mothers are imprisoned. In part, this is because mothers are still the primary caretakers of children.<sup>47</sup> Generally, children of incarcerated fathers continue to live with their mothers and usually do not experience a change in their living arrangements. However, children of incarcerated mothers typically have more varied and uncertain living arrangements.<sup>48</sup> The increase in mothers in prison is very significant because children are more likely to be removed from the home when mothers are incarcerated than they are when fathers are incarcerated.<sup>49</sup> Although women with children comprise only 8% of state or federal inmates who are parents (2007 data), their absence from their children as the principal caretaker greatly impacts children, many of whom have to go live with grandparents or other relatives and some of whom are placed in foster care.<sup>50</sup>

Data from 2004 show that 61% of female inmates of state prisons lived with their children just prior to incarceration compared to 42% of male inmates.<sup>51</sup> With respect to federal prisons, 78% of female inmates lived with their children just prior to incarceration compared to 51% of male inmates.<sup>52</sup> Some commentators have argued that it is almost impossible to punish women for their crimes without ruining their children's lives.<sup>53</sup>

As indicated above, most but not all mothers in prison were living with their children before they went to prison. They were the caretaker parent.<sup>54</sup> Although father absence is associated with a myriad of negative economic, social, and psychological outcomes for children, the stigma, trauma, and shame associated with the incarceration of their mothers may be more complex and

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<sup>46</sup> Lauren E. Glaze and Laura M. Maruschak, "Parents in Prison and Their Minor Children," U.S. Department of Justice, Bureau of Justice Statistics Special Report, August 2008, Appendix Table 1, p. 13. Also see Ross D. Parke and K. Allison Clarke-Stewart, "Effects of Parental Incarceration on Young Children," working paper prepared for the National Policy Conference (The Urban Institute)—From Prison to Home: The Effect of Incarceration and Reentry on Children, Families and Communities, January 30-31, 2002.

<sup>47</sup> Ross D. Parke and K. Alison Clarke-Stewart, "Effects of Parental Incarceration on Young Children," working paper prepared for the National Policy Conference (The Urban Institute)—From Prison to Home: The Effect of Incarceration and Reentry on Children, Families and Communities, January 30-31, 2002.

<sup>48</sup> Nancy G. LaVigne, Elizabeth Davies, and Diana Brazzell, "Broken Bonds: Understanding and Addressing the Needs of Children with Incarcerated Parents," The Urban Institute, February 2008, p. 3.

<sup>49</sup> Christopher A. Swann and Michelle Sheran Sylvester, "The Foster Care Crisis: What Caused Caseloads to Grow?," *Demography*, v. 43, no. 2, May 2006, p. 309-335.

<sup>50</sup> Bureau of Justice Statistics data from 2004 indicates that inmates who were mothers (11%) were five times more likely than inmates who were fathers (2%) to report that their children were in the care of a foster home, agency, or institution. Source: Lauren E. Glaze and Laura M. Maruschak, "Parents in Prison and Their Minor Children," U.S. Department of Justice, Bureau of Justice Statistics Special Report, August 2008.

<sup>51</sup> Lauren E. Glaze and Laura M. Maruschak, "Parents in Prison and Their Minor Children," U.S. Department of Justice, Bureau of Justice Statistics Special Report, August 2008, p. 16.

<sup>52</sup> *Ibid.*, p. 16.

<sup>53</sup> Tammerlin Drummond, "Mothers in Prison," *Time*, October 29, 2000.

<sup>54</sup> For statistical information on custodial fathers, see "Custodial Mothers and Fathers and Their Child Support: 2005—Supporting Detailed Tables," U.S. Census Bureau, P60-234, August 2007. <http://www.census.gov/hhes/www/childsupport/cs05.html>

difficult to address.<sup>55</sup> It has been suggested that alternatives to prison be considered for “low-risk” women who are mothers of dependent children. Such alternatives could include court diversion programs such as community-based half-way houses, community-based drug rehabilitation programs, home detention programs, or electronic monitoring programs.<sup>56</sup>

## **Termination of Parental Rights Due to Criminal Offenses**

It is the intention of most incarcerated parents to reunite with their children and families after they are released from prison. However, reunification is often a difficult process and in some cases incarceration can lead to permanent severance of parental rights.<sup>57</sup> In some cases, dissolution of parental rights results from criminal convictions (even those unrelated to the parent’s ability to care for the child). According to a report by the Children’s Bureau (in the U.S. Department of Health and Human Services), a felony conviction or incarceration was grounds for termination of parental rights in 27 states.<sup>58</sup>

Moreover, the Adoption and Safe Families Act of 1997 (P.L. 105-89), among other things, required as a condition of receiving federal funds, that child welfare agencies file for termination of parental rights if a child had been in foster care for 15 of the last 22 months. One consequence of P.L. 105-89 is that the mandatory time limit in the law makes termination of parental rights a more likely outcome for incarcerated parents who have children in foster care. According to Bureau of Justice Statistics data, 26% of inmates in state prisons and 32% of inmates in federal prisons had already served five or more years in prison in 2004.<sup>59</sup>

One of the three exceptions to the mandatory time limit in the foster care rule pertains to children being cared for by a relative. If a parent is serving a long prison sentence but has relatives available to care for the child (or children), the child welfare agency may place the child with a relative of the inmate and thereby avoid the strict, adoption-oriented requirement of the federal statute.<sup>60</sup>

Some critics of the federal mandatory time limit in foster care provision argue that women in prison who were the primary caretaker of their children are at greater risk than imprisoned fathers of losing all legal ties to their children if the children are placed in foster care while they are serving their sentences. In other words, incarcerated fathers are less likely to be subjected to the federal provision because the children in question are already living with their mothers. In contrast, incarcerated mothers are more likely to be subjected to the federal provision because

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<sup>55</sup> Nancy G. LaVigne, Elizabeth Davies, and Diana Brazzell, “Broken Bonds: Understanding and Addressing the Needs of Children with Incarcerated Parents,” The Urban Institute, February 2008.

<sup>56</sup> “Supporting Families with Incarcerated Parents,” National Human Services Assembly, Family Strengthening Policy Center, Policy Brief No. 8, September 2005.

<sup>57</sup> Creasia Finney Hairston, “Children with Parents in Prison: Child Welfare Matters,” *Child Welfare (CW)* 360<sup>0</sup>, Spring 2008, p. 4.

<sup>58</sup> “Grounds for Involuntary Termination of Parental Rights: Summary of State Laws,” U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau, Child Welfare Information Gateway, data current through June 2007. (Note that the 27 states were tabulated by the Congressional Research Service.)

<sup>59</sup> Lauren E. Glaze and Laura M. Maruschak, “Parents in Prison and Their Minor Children,” U.S. Department of Justice, Bureau of Justice Statistics Special Report, August 2008, p. 20. Note that the published breakouts for “length of time in prison” were only for large time spans such as 12 months to 59 months.

<sup>60</sup> Philip M. Genty, “The Inflexibility of the Adoption and Safe Families Act and its Unintended Impact upon the Children of Incarcerated Parents and Their Families,” *Child Welfare (CW)* 360<sup>0</sup>, Spring 2008, p. 10.



most of their children have absent fathers. Most incarcerated fathers (88%) report that at least one of their children is in the care of the child's other parent; whereas, only 37% of incarcerated mothers make that claim.<sup>61</sup>

Some observers contend that it is important for family members to become involved in the care of children with incarcerated parents as soon as they learn of the parent's arrest if they want to keep the children out of the foster care system and preserve parental ties to the children. They also maintain that it is important for child welfare agencies to recruit relatives as caregivers for children with incarcerated parents. A recently enacted law (P.L. 110-351, the Fostering Connections to Success and Increasing Adoptions Act of 2008) authorizes funding for states to locate relatives of children and to reimburse the relative caretakers of children who are placed with them.<sup>62</sup> However, in most cases the child welfare agencies do not have information on whether a child in their caseload has an incarcerated parent. Some analysts assert that the prisons should have a database on parents who are inmates and transmit such information to CSE agencies and child welfare agencies.<sup>63</sup>

A second exception to the mandatory time limit in foster care rule occurs when the state child welfare agency has documented in its state plan a compelling case that filing a termination of parental rights petition would not be in the best interest of the child. The third exception occurs when a case can be made that the parent has not been provided with the services required by the service plan for the reunification of the parent with the child.<sup>64</sup>

As noted previously, it is generally agreed that (1) parents in prison are less likely to recidivate if they have family support and maintain connections to their children and (2) children who have a positive relationship with their incarcerated or formerly incarcerated parent are more likely to have successful outcomes than children who are legally cut off from parents. Thus, many analysts and observers maintain that termination of parental rights because of the parent's incarceration should be a last resort that is rarely used.<sup>65</sup>

In addition to the emotional and psychological costs on children and parents, the termination of parental rights by definition means that the parent is no longer legally obligated to provide financial support to his or her child. In fact, the parent is legally obligated to stay away from the child and to have no contact (financial or otherwise) with the child.

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<sup>61</sup> Figures based on data from 2004 for inmates of state prisons. Source: Lauren E. Glaze and Laura M. Maruschak, "Parents in Prison and Their Minor Children," U.S. Department of Justice, Bureau of Justice Statistics Special Report, August 2008, p. 5.

<sup>62</sup> For more information, see CRS Report RL34704, *Child Welfare: The Fostering Connections to Success and Increasing Adoptions Act of 2008*, by (name redacted).

<sup>63</sup> Philip M. Genty, "The Inflexibility of the Adoption and Safe Families Act and its Unintended Impact upon the Children of Incarcerated Parents and Their Families," *Child Welfare (CW)* 360<sup>0</sup>, Spring 2008, p. 11.

<sup>64</sup> "Grounds for Involuntary Termination of Parental Rights: Summary of State Laws," U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, Child Welfare Information Gateway, data current through June 2007.

<sup>65</sup> Nancy G. LaVigne, Elizabeth Davies, and Diana Brazzell, "Broken Bonds: Understanding and Addressing the Needs of Children with Incarcerated Parents," The Urban Institute, February 2008.

## Policy Options

This section looks at ways in which some of the problems discussed above might be resolved. Continuing a historical precedent, many of the proposals or suggestions for the CSE program that are presented below originated with the states.<sup>66</sup> The future success of the CSE program is tied to its ability to continue to be proactive in finding and implementing services and/or approaches that resolve the many problems that the program now faces. The competition for scarce state and federal dollars makes this challenge more difficult and more imperative. This section discusses three policy options: establishment of realistic child support orders, modification of child support obligations, and program coordination.

### Establishment of Realistic Child Support Orders

Many policymakers and analysts maintain that parents should share in the cost of supporting their children according to their ability to pay. They assert that the best way to do this is to set initial child support orders at appropriate levels, modify orders promptly when family circumstances change, and immediately intervene when child support is not paid.<sup>67</sup> This policy option may be particularly important given the current economic downturn, and the change in many families' economic circumstances.

Although some policymakers recognize that establishing child support orders that are “too low” may deprive many children of the financial support they need, they also realize that setting child support orders “too high” may lead some noncustodial parents to seek to escape their child support obligations by opting to work in the underground economy, thereby hiding income and assets. Others caution that noncustodial parents' failure to pay onerous child support orders may increase the likelihood of incarceration, further diminishing the prospects for increasing financial support to the child and raising questions about fairness. They also note that stringent CSE efforts may also alienate noncustodial parents from their children.<sup>68</sup>

There is a general consensus among advocates for low-income mothers and advocates for low-income fathers that economic realities must be taken into account in the determination of child support obligations. They agree that for some low-income noncustodial parents there should be a low presumptive child support award, but not zero. They emphasize the positive difference that even small amounts of child support can add to children's well-being. They also view the establishment of some monetary obligation as an affirmation that noncustodial parents, however poor, must recognize their responsibility to provide economic support to their children. Finally, they agree that having the child support award guidelines establish presumptive minimum orders could protect the poorest noncustodial parents, if decision-makers set awards at the minimum level instead of basing them on unrealistically high levels of imputed income.<sup>69</sup>

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<sup>66</sup> States have always been at the forefront with respect to incorporating innovative ideas/strategies into the CSE program. In 2004, the CSE program was cited by the Office of Management and Budget (OMB) as being the most cost-effective program among all social services and block grant/formula programs reviewed government-wide.

<sup>67</sup> “Office of Child Support Enforcement FY 2006 Annual Report to Congress,” U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, March 2009.

<sup>68</sup> Ingrid Rothe and Daniel R. Meyer, “Setting Child Support Orders: Historical Approaches and Ongoing Struggles,” University of Wisconsin-Madison Institute for Research on Poverty, *Focus*, v. 21, no. 1, Spring 2000, p. 61.

<sup>69</sup> “Dollars and Sense: Improving the Determination of Child Support Obligations for Low-Income Mothers, Fathers, (continued...)”

In a strategy referred to as the Project to Avoid Increasing Delinquencies (PAID), the federal Office of Child Support Enforcement (OCSE) and state CSE agencies have put forth several suggestions for improving the way in which child support orders are established. They include:

- Directing state CSE agencies to use income data (e.g., quarterly wage reports from the national and state directories of new hires; state income tax data; Social Security Administration information related to retirement, survivors, and disability benefits) to help determine child support orders that more accurately reflect the noncustodial parent's true income.
- Instructing state CSE agencies and courts to presume income at a reasonable level when no income information is available (e.g., presuming state minimum wage income rather than state average earner income).
- Revising child support guidelines to account for a self-support reserve amount to accommodate the basic needs of low-income noncustodial parents.
- Limiting the use of retroactive support amounts and other add-on amounts (such as court costs and birthing costs).
- Reducing the number of default orders by encouraging noncustodial parents to participate in child support hearings.
- Allowing default orders to remain open for a specified period of time to allow for easy amendment if the noncustodial parent provides new and/or contrary information.<sup>70</sup>

Many of the PAID suggestions from CSE administrators could perhaps be implemented administratively. But, having the Congress pass legislation that would require all states to implement such changes might be quicker and more efficient.<sup>71</sup> Moreover, given the new impetus to release hundreds, if not thousands, of inmates before their prison sentences are completed, Congress may want to direct the CSE program to find ways of encouraging these ex-offenders, many of whom are noncustodial parents, to fulfill their child support responsibilities by setting child support orders at levels that might be considered more “realistic” from the perspective of noncustodial parents.

## **Modification of Child Support Obligations**

Although only a relatively small percentage of arrearage payments were collected in FY2007, 61% of obligors continued to make payments on their child support arrearages. One interpretation of this information is that many noncustodial parents simply have too many financial obligations

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(...continued)

and Children,” National Women’s Law Center and the Center on Fathers, Families, and Public Policy, 2002, p. 11.

<sup>70</sup> “PAID—Project to Avoid Increasing Delinquencies (Practices Guide, version 2.0),” Federal Office of Child Support Enforcement, Administration for Children and Families, July 2008.

<sup>71</sup> The CSE program is a federal-state program in which the federal government inserted itself into an arena that had historically been considered family or domestic relations law which was under the purview of a state’s court system. The federal nexus was the billions of federal dollars used to fund programs that assisted low-income single-parent families in which one parent was deceased, incapacitated, unemployed, or absent from the home. Traditionally, it has been the practice of the Congress to impose its child support enforcement mandates on the states by requiring the states to enact state laws that implement certain policies in exchange for federal matching funds for the CSE program.

(e.g., food and shelter for themselves) to cover with their limited incomes; thereby, they may always be a little or a lot behind in meeting their child support obligations.

An Urban Institute study revealed the following findings: (1) high debtors were expected to pay a larger percentage of their income for current child support orders—the median child support order for high debtors was 55% of their income compared to 13% for non-debtors and 22% for those who owed less than \$30,000 in child support arrearages; (2) high debtors with a current support order tended to have older orders than other obligors; (3) high debtors were more likely to have multiple current child support orders than non-debtors; (4) high debtors were less likely to pay support than non-debtors; (5) high debtors were less likely to have a known address; and (6) high debtors were twice as likely to have an interstate child support case as a non-debtor.<sup>72</sup>

Under the CSE program, states are given significant latitude regarding modifications and reviews of child support orders.<sup>73</sup> Federal law requires that states give both parents the opportunity to request a review of their child support order at least once every three years, and states are required to notify the parents of this right. In order to prevent child support arrearages, especially for noncustodial parents who are unemployed or in prison, many analysts have recommended that child support modification laws be changed so that they are more sensitive to periods of incarceration, unemployment, or injury/illness during which the noncustodial parent's ability to pay child support decreases. They note that it is virtually impossible for most incarcerated parents to stay current in meeting their monthly child support payments.

Some observers argue that if states are not inclined to waive or reduce the child support obligations of noncustodial parents who are in prison, the states could at least prohibit interest charges on overdue child support payments of these parents. They claim that interest and other charges just add to the original debt which the inmate does not have the money to pay. They argue that charging interest on uncollectible child support arrearages does not encourage noncustodial parents to make timely payments but rather alienates them and may encourage them to make no payments.<sup>74</sup> In contrast, others assert that charging interest is the correct approach because children need whatever support can be collected, and because paying interest on debts is something all Americans understand. They say that charging interest sends the message that if a person does not keep current with payments, he will owe more. They assert that charging interest is a fairness issue in that the custodial parent is due a child support payment at a certain time and if the money is not paid on time, the custodial parent should be further compensated.<sup>75</sup>

Also, as noted earlier, about 50% of the uncollected past-due child support payments (arrearages that totaled \$107.2 billion in FY2007) are owed to state and federal governments.<sup>76</sup> Some program analysts and other interested parties contend that child support arrearages owed to state governments should be leveraged in a way that encourages the payment of current child support.

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<sup>72</sup> Elaine Sorensen, Liliana Sousa, and Simon Schaner, "Assessing Child Support Arrears in Nine Large States and the Nation," The Urban Institute, July 11, 2007, p. 19-24. <http://aspe.hhs.gov/hsp/07/assessing-CS-debt/>

<sup>73</sup> This flexibility and discretion only applies to prospective modification of child support orders. As discussed earlier, federal law prohibits the retroactive modification of child support orders.

<sup>74</sup> Jennifer L. Noyes, "Review of Child Support Policies for Incarcerated Payers," Institute for Research on Poverty, University of Wisconsin-Madison, December 2006.

<sup>75</sup> "Colorado Multiple Initiative Grant, A Study of Interest Usage on Child Support Arrears, State of Colorado," PSI, Achieving Excellence in Child Support Program Operations, June 1, 2000.

<sup>76</sup> Elaine Sorensen, Liliana Sousa, and Simon Schaner (The Urban Institute), "Assessing Child Support Arrears in Nine Large States and the Nation," July 11, 2007. <http://aspe.hhs.gov/hsp/07/assessing-CS-debt/>

They caution that it should be done in a way that avoids sending the message that noncustodial parents can ignore child support obligations because of the possibility that the state may eventually accept less than the full amount owed. They recommend that certain groups of low-income noncustodial parents who are most likely to accumulate child support debt be targeted for interest amnesty or debt compromise programs.<sup>77</sup>

The current OCSE Strategic Plan proposes the following procedures for reducing high child support arrearages.

- Update child support guidelines regularly and simplify child support order modification;
- Modify orders to ensure that child support obligations stay consistent with the noncustodial parents' ability to pay;
- Use automation to detect non-compliance as early as possible and contact noncustodial parents soon after a scheduled child support payment is missed;
- Update child support guidelines to recognize modern family dynamics and realities (e.g., shared custody, incomes of custodial parents, etc.); and
- Consider creative ways to promote regular payment of current support, even if it means "compromising" uncollected child support arrearages to bring the noncustodial parent back into consistently paying current child support payments.<sup>78</sup>

With regard to the last proposal, in an effort to reduce or eliminate child support debt, some states use debt compromise, a process whereby a state forgives a portion or all of the child support debt owed to the state by the noncustodial parent.<sup>79</sup> It is important to note that the federal share of such debt is still owed to the federal government. In order for the federal portion of the child support debt to be compromised or eliminated, Congress would have to pass legislation to that effect and such legislation would have to be enacted.

It has also been recommended that Congress revise consumer protection limits with respect to garnishment of child support. CSE officials can garnish as much as 65% of a noncustodial parent's wages toward the payment of child support debt.<sup>80</sup> For parents released from prisons and jails, this practice may increase the difficulty of securing and maintaining housing, transportation, and employment that are necessary for making future child support payments.

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<sup>77</sup> "The Story Behind the Numbers: Who Owes the Child Support Debt?," U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, July 2004.

<sup>78</sup> "The National Child Support Enforcement Strategic Plan FY2005-2009," U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, 2004. See [http://www.acf.hhs.gov/programs/cse/pubs/2004/Strategic\\_Plan\\_FY2005-2009.pdf](http://www.acf.hhs.gov/programs/cse/pubs/2004/Strategic_Plan_FY2005-2009.pdf)

<sup>79</sup> "State Use of Debt Compromise to Reduce Child Support Arrearages," U.S. Department of Health and Human Services, Office of Inspector General, October 2007. Most child support is collected through payroll withholding. Under the Consumer Credit Protection Act [15 USC 1673(b)], 50%–65% of a parent's disposable earnings may be deducted from the noncustodial parent's paycheck.

<sup>80</sup> At the same time, a separate court or probation officer could require that an individual dedicate 35% of his or her income toward the combined payment of fines, fees, surcharges, and restitution. Such a situation could encourage a person to return to the behavior and illegal activities that resulted in the person's incarceration in the first place. In other words, aggressive collectors representing distinct agencies could end up contributing to a person's failure to meet his or her financial obligations and, by extension, their revocation of probation or parole.

Other recommendations of policymakers and observers include<sup>81</sup> (1) enabling courts to consider an individual's obligations to his or her children at the time of sentencing;<sup>82</sup> (2) prohibiting incarceration from being defined as "voluntary unemployment" (a term used to describe someone who has chosen not to work),<sup>83</sup> thereby allowing a noncustodial parent's child support order to be modified when he or she enters prison;<sup>84</sup> and (3) requiring states to automatically modify (or forgive) child support orders of noncustodial parents who are in prison (during the prison-intake process—only for the length of their prison sentence) unless the custodial parent objects because the inmate has income and/or assets that can be used to pay child support.<sup>85</sup>

Although many custodial parents to a certain extent agree that some noncustodial parents are "dead broke" rather than "deadbeats," they contend that the states and the federal government need to proceed with caution in lowering child support orders for low-income noncustodial parents. They argue that child support is a source of income that could mean the difference between poverty and self-sufficiency for some families. They emphasize that lowering the child support order is likely to result in lower income for the child. They argue that even if a noncustodial parent is in dire financial straits, he or she should not be totally released from financial responsibility for their children. Others agree, and argue that policymakers, when considering policies related to reducing the child support obligations of prisoners, must also consider equity issues related to the treatment of low-income noncustodial parents who may be unemployed as opposed to in prison. They assert that it is sending the wrong message to unilaterally lower payments of persons who have broken the law and not make similar allowances for law-abiding citizens who are unemployed.<sup>86</sup>

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<sup>81</sup> The *proposed* Responsible Fatherhood and Healthy Families Act of 2007 (S. 1626 was introduced by Senators Bayh and Obama and H.R. 3395 was introduced by Representative Danny Davis et al.) which was introduced in the 110<sup>th</sup> Congress would have prohibited a state from considering a period of incarceration as voluntary unemployment in determining or modifying a noncustodial parent's child support obligation. It also would have required states to temporarily suspend the child support obligation and any interest on the child support obligation during the period a noncustodial parent is incarcerated. However, it would have required the state to provide the custodial parent with an opportunity to request that the child support obligation continue on the basis that the noncustodial parent has sufficient income or resources to continue to make child support payments during the noncustodial parent's period of incarceration. In addition, the bills would have required states to review, and if appropriate, reduce the balance of child support arrearages permanently assigned to the state in cases where the noncustodial parent (1) does not have the ability to pay the arrearages, (2) did not seek a modification during his or her incarceration, (3) will be more willing (because of the adjustment) to pay current child support payments consistently and on time, and (4) it is in the best interest of the child for the state to make such a reduction.

<sup>82</sup> Federal law prioritizes child support obligations above all other debts owed to the state, including restitution, and court and prison fines, fees, and surcharges. The proposed provision would allow judges, when ordering that an individual pay fees to reimburse the state for the costs of his or her incarceration, to reduce this order by the amount of the individual's child support obligations.

<sup>83</sup> Some judges have ruled that incarcerated parents are responsible for their disadvantaged financial circumstances which resulted from their criminal activities because imprisonment is a foreseeable result of criminal behavior. In contrast, other judges have refused to equate incarceration with voluntary unemployment and have argued that incarcerated parents rarely have any actual job prospects or potential income and cannot alter their employment situation. Source: Jessica Pearson, "Building Debt While Doing Time: Child Support and Incarceration," 2004.

<sup>84</sup> In states that classify incarceration as "voluntary unemployment," a person's child support order may not be modified when he or she enters prison or jail.

<sup>85</sup> Jessica Pearson, "Building Debt While Doing Time: Child Support and Incarceration," 2004.

<sup>86</sup> Jennifer L. Noyes, "Review of Child Support Policies for Incarcerated Payers," Institute for Research on Poverty, University of Wisconsin-Madison, December 2006.

Large child support arrearages result in millions of children receiving less than they are owed in child support, reduced cost-effectiveness of the CSE program, and a perception that the CSE program does not consider the financial situation of low-income noncustodial parents, many of whom may be in dire economic situations. There is widespread agreement that preventing the build-up of unpaid child support through early intervention rather than traditional enforcement methods is essential to the future success of the CSE program.<sup>87</sup> Some commentators point out that such a proactive approach to addressing the huge accumulation of child support arrearages may help many children whose parents were former inmates. Some fathers' rights group would like Congress to pass legislation that would repeal the federal provision that prohibits the retroactive modification of child support obligations. It also has been suggested that it may be easier for Congress to mandate some of the child support arrearage remedies outlined in the CSE FY2005-2009 Strategic Plan and elsewhere, rather than wait for states to develop individual remedies that only apply to the state that implements the policy.

## **Program Coordination**

Given the current economic crisis, states are looking to find creative ways to maximize the use of their resources. State and federal prison officials and CSE officials may find that it is mutually beneficial to work together on behalf of inmates who are parents. Some analysts have suggested that state and federal prisons can strengthen their re-entry programs by incorporating information on CSE obligations and services. Further, CSE programs can make their programs more successful by identifying parents with child support obligations while they are in prison so that parents are more able to avoid the accumulation of excessive child support arrearages and also provide information to prisoners that highlight the benefits of including child support payments in their post-release plans.<sup>88</sup>

Several strategies have been suggested that would involve both the criminal justice system and the CSE program to proactively address the advent of more ex-offenders being released back into local communities. They include (1) making inquiries about a prisoner's parental status and whether or not he or she is required to pay child support during the prison intake process; (2) encouraging prisoners to contact the CSE agency regarding questions about the paternity and child support order establishment rules, due process procedures, collection methods, and other concerns; (3) informing inmates about how to have their child support orders modified so that they do not incur high child support debt while in prison; (4) encouraging inmates to maintain contact with their children while they are in prison; and (5) helping former inmates develop a plan to pay their child support obligations.<sup>89</sup> It has also been suggested that prison intake procedures include an automated data match or weekly population list exchange among corrections and CSE agencies and that policies be implemented that assist with the child support modification process, such as providing noncustodial parents with forms, addressed envelopes, and postage.<sup>90</sup>

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<sup>87</sup> "The National Child Support Enforcement Strategic Plan FY2005-2009," U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, 2004. See [http://www.acf.hhs.gov/programs/cse/pubs/2004/Strategic\\_Plan\\_FY2005-2009.pdf](http://www.acf.hhs.gov/programs/cse/pubs/2004/Strategic_Plan_FY2005-2009.pdf).

<sup>88</sup> Esther Griswold and Jessica Pearson, "Twelve Reasons for Collaboration Between Departments of Correction and Child Support Enforcement Agencies," *Corrections Today*, v. 65 Issue 3, June 2003, pp. 87-90,104.

<sup>89</sup> Vicki Turetsky, "Realistic Child Support Policies that Support Successful Re-entry," Center for Law and Social Policy, revised January 2007.

<sup>90</sup> "Report of the Re-Entry Policy Council—Charting the Safe and Successful Return of Prisoners to the Community," 2004. See also: Rachel L. McLean and Michael D. Thompson, "Repaying Debts," U.S. Department of Justice, Bureau (continued...)

Although CSE funds may not be used to pay for criminal justice functions or employment and training activities, states are permitted to use CSE funds for child support case identification, tracking, referral, and development of payment plans. Also, Special Improvement Project (SIP) grants<sup>91</sup> and Section 1115 demonstration grants<sup>92</sup> provide funding for projects that are designed to help families achieve self-sufficiency and promote stability for children, mothers, and fathers. Both the SIP grants and the Section 1115 grants have funded projects that focus on helping incarcerated parents.<sup>93</sup>

In addition, federal law (pursuant to the 1996 welfare reform law—P.L. 104-193) gives CSE agencies and courts the authority to require unemployed noncustodial parents who owe child support to a child receiving TANF benefits to participate in appropriate work activities. Thus, judges can remand nonpaying noncustodial parents to a TANF work program, with the mandate to participate in the program, pay the child support owed, or be confined in jail. This obligation can be monitored, so that the noncustodial parent cannot evade it. If the parent is in fact working surreptitiously, the work program will conflict with his or her other job, forcing the parent to admit to having earnings and thereby to paying child support. If the noncustodial parent really is jobless, the program can help him or her get a job.<sup>94</sup> Moreover, state CSE agencies may use their federal performance incentive payments and federal parental access and visitation grants<sup>95</sup> to fund child-support case management services for incarcerated and formerly incarcerated parents.

Some observers contend that responsible fatherhood programs and ex-offender re-entry programs/services together with the CSE program could do more to help former inmates successfully reconnect to their children and communities if they worked in tandem, or at least formally recognized the potential contributions that they each make or could make to the ultimate well-being of children. Given that an overall goal of the aforementioned programs is to increase opportunities for families to stay connected even if a parent is or was incarcerated,<sup>96</sup> some observers assert that children should not be disadvantaged because they do not live in states with innovative policies that increase child support collections. They contend that some state-

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of Justice Assistance, 2007.

<sup>91</sup> The Special Improvement Project (SIP) grant program provides federal funding for projects that further the national child support mission and goals and help improve program performance. Under the authority of Section 452(j) of the Social Security Act, SIP grants provide federal funds for research and demonstration programs and special projects of regional or national significance. Eligible grant applicants include state and local public agencies, nonprofit agencies (including faith-based organizations), and Tribal organizations.

<sup>92</sup> Section 1115 of the Social Security Act authorizes OCSE to fund demonstration project grants.

<sup>93</sup> In FY2006, a SIP grant was awarded to a faith-based organization in Louisiana to partner with the local CSE agency and a district court to help non-custodial parents find employment and increase their understanding of the court process and their knowledge of child support so they are better able to meet their parental obligations. Also, in FY2006, Maryland and the District of Columbia received section 1115 demonstration funds to develop court and other business practices for quick review and adjustment of child support orders associated with incarcerated parents. (Source: "Office of Child Support Enforcement FY 2006 Annual Report to Congress," U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, March 2009.)

<sup>94</sup> Lawrence M. Mead, "Toward a Mandatory Work Policy for Men," *The Future of Children* (Princeton-Brookings), v. 17, no. 2, Fall 2007, p. 56.

<sup>95</sup> In order to promote visitation with children and better relations between custodial and noncustodial parents, the 1996 welfare reform law (P.L. 104-193) provided \$10 million per year for grants to states for access and visitation programs, including mediation, counseling, education, and supervised visitation.

<sup>96</sup> "Incarceration, Reentry and Child Support Issues: National and State Research Overview," Center for Policy Research, Policy Studies, Inc., March 2006.



established policies and/or proposals may need to be mandated by Congress so that children, regardless of where they live, may benefit from the most positive CSE developments and innovative prisoner re-entry strategies. Below are brief descriptions of responsible fatherhood programs and ex-offender re-entry programs/services.

## **Responsible Fatherhood Programs**

Responsible fatherhood programs seek to promote the financial and personal responsibility of noncustodial parents to their children and increase the participation of fathers in their children's lives.<sup>97</sup> Responsible fatherhood programs, in affirming the importance of fathers to their children's well-being, have to a certain extent reduced the animosity between noncustodial parents and the CSE program. It is sometimes the case that positive, constructive communication between noncustodial parents and CSE agencies leads to more child support for children.

Responsible fatherhood programs have been debated in Congress since the 106<sup>th</sup> Congress (1999), but it was not until the Deficit Reduction Act of 2005 (P.L. 109-171) that specific funding was provided for these programs.<sup>98</sup> P.L. 109-171 included a provision that provides up to \$50 million per year (for each of the five fiscal years 2006-2010) in competitive grants to states, territories, Indian tribes and tribal organizations, and public and nonprofit community organizations (including religious organizations) for responsible fatherhood programs.<sup>99</sup>

Most responsible fatherhood programs include parenting education; training in responsible decision-making, conflict resolution, and coping with stress; mediation services for both parents; problem-solving skills; peer support; and job-training opportunities.<sup>100</sup> According to data from the Administration for Children and Families (ACF) in the U.S. Department of Health and Human Services (HHS), grantees were awarded five-year contracts to implement responsible fatherhood programs. The contracts (in aggregate) amounted to \$41 million per year.

Historically, there has been tension between noncustodial parents and the CSE program. Noncustodial parents often claimed that by exclusively focusing on financial support, the CSE system devalued their role as nurturer, disciplinarian, and mentor. Most responsible fatherhood

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<sup>97</sup> Although programs that seek to help fathers initiate or maintain contact with their children and become emotionally involved in their children's lives are usually referred to as "fatherhood" programs, the programs generally are gender-neutral. Their underlying goal is participation of the noncustodial parent in the lives of his or her children.

<sup>98</sup> Other sources of federal funding for fatherhood programs include the TANF program, TANF state Maintenance-of-Effort (MOE) funding, CSE funds, and Social Services Block Grant (Title XX) funds. According to HHS, many states use TANF funds for responsible fatherhood programs. In addition, many private foundations provide financial support for responsible fatherhood programs.

<sup>99</sup> Under P.L. 109-171, responsible fatherhood funds can be spent on activities to promote responsible fatherhood through (1) marriage promotion (through counseling, mentoring, disseminating information about the advantages of marriage and two-parent involvement for children, etc.), (2) parenting activities (through counseling, mentoring, mediation, disseminating information about good parenting practices, etc.), (3) fostering economic stability of fathers (through work first services, job search, job training, subsidized employment, education, etc.), or (4) contracting with a nationally recognized nonprofit fatherhood promotion organization to develop, promote, or distribute a media campaign to encourage the appropriate involvement of parents in the lives of their children, particularly focusing on responsible fatherhood; and to develop a national clearinghouse to help states and communities in their efforts to promote and support marriage and responsible fatherhood.

<sup>100</sup> For more information on responsible fatherhood programs, see CRS Report RL31025, *Fatherhood Initiatives: Connecting Fathers to Their Children*.

programs clearly explain the goals and duties of the CSE program and encourage noncustodial parents to interact with CSE agencies in a proactive manner.

Many responsible fatherhood programs recognize that a substantial proportion of noncustodial parents are inmates or former inmates. According to HHS data, responsible fatherhood programs in 16 states and the District of Columbia include inmates and/or former inmates as part of their target population.<sup>101</sup> In fact, in two states, Indiana and New Jersey, one of the responsible fatherhood program operators/grantees is the State Department of Correction. There are also a number of healthy marriage demonstration programs that support the provision of services to promote or sustain healthy relationships for couples with children, where one of the parents is incarcerated or otherwise involved with the criminal justice system (e.g., recently released from incarceration or under parole or probation).<sup>102</sup>

### **Re-entry of Former Inmates Back into Communities**

It is generally agreed that programs that promote personal responsibility also are likely to promote parental responsibility which may translate into consistent payment of child support obligations. Thus, successful prisoner re-entry programs may increase the effectiveness of the CSE program along with reducing recidivism and promoting safer communities.

Most children who grow up in mother-only families, father-only families, step-parent families, or families in which the mother is cohabiting with a male partner become well-adjusted, productive adults. Nonetheless, a large body of research indicates that children who grow up with only one biological parent in the home are more likely to be financially worse off and have worse socioeconomic outcomes (even after income differences are taken into account) compared to children who grow up with both biological parents in the home.<sup>103</sup> It has been stated that nothing frays family ties like prison. According to some observers, supporting programs that help fathers, mothers, and children to maintain positive family bonds despite incarceration of one of the child's parents is likely to improve child well-being and may also help reduce recidivism.<sup>104</sup>

According to some data, with the exception of health care, spending on corrections has increased faster than any other item in state budgets. Supporting approaches that result in successful re-entry of ex-offenders back into society means both safer communities and the improved use of tax dollars.<sup>105</sup> The federal government's involvement in ex-offender re-entry programs usually occurs through grant funding, which is available through a wide array of federal programs at the Departments of Justice, Labor, Education, and Health and Human Services. However, only a few of these grant programs explicitly specify funds for offender re-entry purposes. Re-entry

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<sup>101</sup> Information on the responsible fatherhood grants in each of the 10 HHS regions is available at <http://www.acf.hhs.gov/programs/ofa/hmabstracts/index.htm>.

<sup>102</sup> Pursuant to the Deficit Reduction Act (P.L. 109-171), the Healthy Marriage Promotion program is funded at approximately \$100 million per year to support research and demonstration projects by public or private entities.

<sup>103</sup> Sara McLanahan and Gary Sandefur, "Growing Up With a Single Parent: What Hurts, What Helps" (Cambridge, MA: Harvard University Press, 1994); see also L. Bumpass, "Children and Marital Disruption: A Replication and Update," *Demography*, vol. 21(1984), pp. 71-82.

<sup>104</sup> Wade F. Horn, "Responsible Fatherhood and the Role of the Family," Remarks at the Serious and Violent Offender Reentry Initiative Grantee Conference in Washington, D.C., September 30, 2002.

<sup>105</sup> "Report of the Re-Entry Policy Council—Charting the Safe and Successful Return of Prisoners to the Community," 2004.

programs vary widely in content and scope. Re-entry generally includes all the activities and programming conducted to help former inmates live as law-abiding citizens. Re-entry programs are typically divided into three phases: programs that prepare ex-offenders to reenter society while they are in prison, programs that connect ex-offenders with services immediately after they are released from prison, and programs that provide long-term support and supervision for ex-offenders as they settle into communities permanently.<sup>106</sup>

Some inmates use their time in prison to reflect on their lives and come to realize the importance of their children and other family relationships. They have the time and the desire to improve themselves and are thereby amenable to participating in whatever programs, classes, and activities that the prison offers. According to Bureau of Justice Statistics data for 2004, 85% of mothers and 78% of fathers in *state* prisons reported having telephone, mail, or person visits with their children while in prison. Similarly, 96% of mothers and 91% of fathers in *federal* prisons reported having some type of contact with their children while in prison. Moreover, 12% of parents in state prisons and 26% of parents in federal prisons reported that they had attended parenting or childrearing classes in the prison.<sup>107</sup> Both of these activities, contact with children and participation in parenting classes, are good preparation for reconnecting ex-offenders with their children and families upon their release from prison. Some observers have suggested that state and federal prisons routinely include information on responsible fatherhood and healthy marriage programs in the packets of information for persons who are soon to be released.

## Concluding Remarks

Ex-offenders re-entering communities face a host of problems, a major one being barriers to employment because of their criminal records. Most employers now conduct background checks, with the result that people are often denied employment or even fired from jobs because of their criminal records. Research indicates that employment and family support are important predictors of an ex-offender's successful re-entry into his or her community. Given that employment opportunities are scarce and may become more limited in the current economy, formerly incarcerated parents may want to strengthen positive connections to their children, family, and community.

The inability of many people released from prisons and jails to meet their financial obligations can contribute to their being incarcerated again.<sup>108</sup> CSE policies that are receptive to noncustodial parents with a recent history of incarceration, unemployment, or low-wage jobs have been shown to increase the prospects that such individuals will maintain steady employment, regular child support payments, and contact with their children.<sup>109</sup> It probably would benefit both entities if the staff of CSE agencies collaborated with the staff of corrections facilities to develop policies that

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<sup>106</sup> CRS Report RL34287, *Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism*, by (name redacted).

<sup>107</sup> Lauren E. Glaze and Laura M. Maruschak, "Parents in Prison and Their Minor Children," U.S. Department of Justice, Bureau of Justice Statistics Special Report, August 2008, p. 18 and p. 20.

<sup>108</sup> Katherine A. Beckett, Alexes M. Harris, Heather Evans, "The Assessment and Consequences of Legal Financial Obligations in Washington State," Washington State Minority and Justice Commission, August 2008.

<sup>109</sup> "Report of the Re-Entry Policy Council—Charting the Safe and Successful Return of Prisoners to the Community," 2004, p. 327.

promote positive child support outcomes as well as successful reintegration of individuals released from prison or jail.

As noted earlier, about 53% of the 1.5 million inmates in state or federal prisons are parents with dependent children. About 57% of ex-offenders who are released from state or federal prisons each year are parents. The current economic situation is likely to increase the number of persons released from prison. According to a 2009 news report, federal judges in California ruled that California may have to reduce the number of inmates in its overcrowded prison system by up to 40%. The judges reported that the state's prison system was at about 200% of capacity. The judges suggested a two- to three-year time frame for reducing the number of inmates in the prison system.<sup>110</sup>

Although it is true that a child's needs for financial support do not diminish just because a parent is incarcerated, most custodial parents realize that they probably will not receive any child support while the noncustodial parent is in prison,<sup>111</sup> but they do expect to receive child support payments after the noncustodial parent is released from prison. However, this is not what usually happens. Instead of resuming their child support payment schedules, many newly released noncustodial parents have little or no income or assets available to them, and therefore do not make their payments. Moreover, most former inmates have difficulty finding employment after they are released from prison and they often have to rely on family members for food and shelter.

Also, when they leave prison, many parents find they have accumulated significant child support debt that they are expected to begin paying off as soon as they become employed (or sooner). Without intervention, they may face wage attachments of up to 65% of their disposable earnings to cover their child support obligations. They may also face CSE remedies such as driver's license suspension, which could limit their work options. Advocates for incarcerated parents are concerned that unrealistically high child support orders or arrearages may discourage ex-offenders from finding a regular job because regular employment allows a person's paycheck to be subject to income withholding procedures. Some advocates argue that policies and practices that allow for up to 65% of a person's disposable earnings to be garnished tempts many former inmates to find jobs in the underground economy which may lessen their chances of successfully establishing ties with their children, families, and communities and may contribute to recidivism.<sup>112</sup>

There are several evaluations and studies underway that will provide evidence of the effectiveness or ineffectiveness of various re-entry programs, but results from those studies are not yet available. Evaluation findings are very important because the current economic situation is causing many states to quickly reduce their prison populations, and successful re-entry of ex-offenders can reduce recidivism and thereby save both state and federal dollars.<sup>113</sup> Evaluations

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<sup>110</sup> "California may have to cut prison population by 40 percent," CNN.com, February 10, 2009. <http://www.cnn.com/2009/CRIME/02/10/california.prisons/index.html>

<sup>111</sup> In most cases, past-due support accumulates while the noncustodial parent is in prison. But, unless he or she has assets, such as property, bank accounts, or any income such as wages from a prison job, it is unlikely that child support can be collected while the noncustodial parent is in prison.

<sup>112</sup> Rachel L. McLean and Michael D. Thompson, "Repaying Debts," U.S. Department of Justice, Bureau of Justice Assistance, 2007, p. 22.

<sup>113</sup> "Building Knowledge About Successful Prisoner Reentry Strategies," MDRC, Issue Focus, February 11, 2009. Also see Mindy Herman-Stahl, Marni L. Kan, and Tasseli McKay, "Incarceration and the Family: A Review of Research and Promising Approaches for Serving Fathers and Families," RTI International (NC), September 2008. See also "The (continued...)"

also are underway, but not yet available, with respect to healthy marriage and responsible fatherhood programs that are focusing their services on incarcerated parents or formerly incarcerated parents.<sup>114</sup> Evaluation findings will provide some insights about the delivery and effectiveness of marriage and family-strengthening programs for populations involved with the criminal justice system.<sup>115</sup>

Extreme poverty sometimes means that a person cannot take advantage of opportunities that make good financial sense. In some cases, noncustodial parents who are former inmates may be so disadvantaged that even programs that attempt to help them deal with huge child support debts (e.g., child support arrearage forgiveness or reduction programs) are of no benefit to them because they simply do not have any funds to give to their children (thus preventing them from participating in such programs). Custodial parents warn that the precarious financial situation of children must be a primary concern of policymakers in their efforts to help low-income noncustodial parents who often have only a high school education (or less), low skills, and little work experience, and may be unemployed or recently released from prison. Some policymakers contend that progress must be made in making the CSE program fair for noncustodial parents at every income level while simultaneously ensuring that children are not short-changed. It has periodically been suggested that in some cases in which the child support obligation cannot be met, in-kind assistance (such as providing child care) may be one way in which society can steadfastly adhere to the tenet that both parents are responsible for the well-being of their children while recognizing the reality of the dire financial situation in which many ex-offenders find themselves.

Connecting and/or reconnecting children to their noncustodial parents has become a goal of federal social policy.<sup>116</sup> Promoting coordination among federal and states programs may help programs optimize their funds and resources. Some prisons and local communities are helping noncustodial parents meet and/or acknowledge their child support responsibilities by offering parenting programs, informational sessions on how to deal with the CSE agency, conflict-resolution classes, and job readiness preparation. Research highlights the common ground between the prison system and the CSE system. For example, studies show that family support is one of the key factors in lowering the probability that ex-offenders will return to prison and research further indicates that being involved in the lives of one's children promotes responsible behavior, such as making regular child support payments and being productive citizens.<sup>117</sup> Federally-mandated program coordination in certain areas may be one way to increase child support collections and simultaneously reduce recidivism.

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National Evaluation of the Responsible Fatherhood, Marriage and Family Strengthening Grants For Incarcerated and Re-entering Fathers and Their Partners,” U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, ASPE Research Brief, December 2008.

<sup>114</sup> Tasseli McKay and Christine Lindquist (RTI International), “The National Evaluation of the Responsible Fatherhood, Marriage and Family Strengthening Grants for Incarcerated and Re-entering Fathers and Their Partners,” ASPE Research Brief, December 2008.

<sup>115</sup> *Ibid*, p. 2.

<sup>116</sup> Such is the case for the following federal programs: CSE visitation programs, responsible fatherhood programs, healthy marriage programs, and the Temporary Assistance for Needy Families (TANF) statute (see purpose language of Title IV-A of the Social Security Act).

<sup>117</sup> Esther Griswold and Jessica Pearson, “Twelve Reasons for Collaboration Between Departments of Correction and Child Support Enforcement Agencies,” *Corrections Today*, June 2003.

Incarceration has high costs not only for the inmate but for his or her children and family as well as society in general. Incarceration, health care, education, and other important programs, including the CSE program, are now competing with one another for state and federal funding. Given the current economic downturn state and federal agencies may start to work together to further the goals that they have in common.

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