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Child Support Enforcement: Incarceration As the Last Resort Penalty For Nonpayment of Support

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Summary

The Child Support Enforcement (CSE) program was signed into law in 1975 (P.L. 93-647) as a federal-state program to enhance the well-being of families by making child support a reliable source of income. The CSE program is based on the premise that both parents are financially responsible for their children. The CSE program is operated in all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands, and by several Indian tribes or tribal organizations. State CSE programs have at their disposal a wide variety of methods by which to obtain child support obligations. In addition, states under their own authority and the authority of their courts can use the threat of incarceration and/or actual incarceration.

Nonpayment of support may subject a noncustodial parent to criminal sanctions in three situations: (1) a finding of contempt of court for failure to obey a court's child support order, (2) prosecution under a state criminal nonsupport statute, or (3) prosecution under federal criminal penalties for nonpayment of child support. Contempt of court is classified as either "civil" or "criminal." Civil contempt occurs when an individual willfully disobeys a court order or rule. Criminal contempt occurs when an individual interferes with the ability of the court to function properly. Judges can sentence individuals to imprisonment upon a finding of contempt.

Many contend that the incarceration of persons for nonpayment of child support is both wrong and counterproductive. They say that criminalizing nonpayment of child support by making it a misdemeanor and/or felony disproportionately affects low-income noncustodial parents who more likely than not are just as poor or poorer than the mother and children owed child support payments. They assert that incarceration means that the noncustodial parent is not working and earning money and that having a criminal record lowers a person's job prospects. They also contend that the negative ramifications of being in jail include a weakened bond between the noncustodial parent and his or her children and family and a high probability that the individual will ultimately be re-incarcerated for nonpayment of child support or other infractions or crimes.

Others say that for some noncustodial parents, the threat of being incarcerated for nonpayment of support is not enough. For these persons, they say that incarceration is necessary. They contend that some noncustodial parents would rather quit their jobs, go from job to job, work in the underground economy (where earnings are not reported to anyone), or engage in illegal activity rather than meet their child support obligations. They argue that child support is a source of income that could mean the difference between poverty and self-sufficiency for some families. They say that children ought not to be short-changed because of recalcitrant noncustodial parents, and maintain that nonpayment of child support is a real crime and should be treated as such.

Using jail as an option for nonpayment of child support has many implications: Are low-income noncustodial parents who are unable to fulfill their child support obligations penalized for being poor? Should noncustodial parents charged with civil contempt of court be entitled to an attorney? Should noncustodial parents whose only offense is nonpayment of child support be incarcerated in settings known to be violent and dangerous? Should incarcerating noncustodial parents be eliminated as an option due to the high costs associated with incarceration? This report includes an **Appendix** that indicates that all 50 states and the District of Columbia have criminal penalties for nonpayment of child support. **Table A-1** shows state statute citations and the maximum penalties associated with nonpayment of child support.

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Introduction

Child support is the cash payment that noncustodial parents are obligated to pay for the financial support of their children. 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.

The Child Support Enforcement (CSE) program was signed into law in 1975 (P.L. 93-647, Title IV-D of the Social Security Act) as a federal-state program to help strengthen families by securing financial support for children from their noncustodial parent on a consistent and continuing basis and by helping some families to remain self-sufficient and off public assistance. The CSE program is based on the premise that both parents are financially responsible for their children. Basic responsibility for administering the CSE program is left to the states, but the federal government has a major role in dictating the major design features of state programs; funding, monitoring, and evaluating state programs; providing technical assistance; and giving states help in locating noncustodial parents and obtaining child support payments. Congress, through legislative changes, has broadened the mission of the CSE program. The CSE program has evolved over time from a "welfare cost-recovery" program into a "family-first" service delivery program that seeks to enhance the well-being of families by making child support a reliable source of income.[1]

Included in their available methods to collect child support obligations, states use the threat of jail and actual incarceration in jail.[2] Many states bring charges of civil or criminal contempt of court or criminal nonsupport against noncustodial parents who fail to pay child support.

All states have criminal statutes that relate to the failure to pay child support. Thus, in all states, failure to pay child support is technically a crime under the state's criminal nonsupport statutes. However, many states choose to treat failure to pay child support less harshly by treating it as a violation of a court order. A violation of a court order is usually referred to as contempt of court and, depending on the state, it may be considered a civil offense, a criminal offense, or both.

In the CSE program, although a general protocol is usually followed, the individual caseworker has discretion over how to manage a case. For example, the caseworker determines which child support collection methods to use. After the CSE caseworker determines that he or she has spent an appropriate amount of time trying to get a noncustodial parent to meet his or her child support obligation, the worker often has the authority to have a warrant issued to bring the noncompliant noncustodial parent before a judge. Some noncustodial parents contend that they appeared in court in compliance to a subpoena and then were immediately arrested and put in jail after the court hearing.

[1] For general information on the CSE program, see CRS Report RS22380, *Child Support Enforcement: Program Basics*, by Carmen Solomon-Fears.

[2] Note: This report primarily uses the term incarceration without mentioning whether the confinement is in a jail or a prison. Jails are correctional facilities that confine persons before or after adjudication of a case or confine individuals who have been convicted of a misdemeanor offense. Jails generally are operated by local law enforcement authorities. Jail sentences are usually for one year or less. Noncustodial parents who are incarcerated for violations related to nonpayment of child support are usually put in jail rather than prison. Although this is usually the case, it is not always handled this way. In some states, nonpayment of child support is a felony and noncustodial parents convicted of felony nonsupport charges usually are sent to prison. Prisons are operated by the state government or by the federal government. Persons serving a sentence of more than a year are usually put in prison.

The task of trying to persuade noncustodial parents to pay their child support obligation is an ongoing and, at times, futile duty for many judges. The threat of jail—or actual incarceration—for failure to pay child support is widely acknowledged to be just a temporary fix, but many judges contend that it is their most productive leverage in child support cases. Given that about 70% of child support arrearages (i.e., past due child support) are owed by noncustodial parents with no reported income or income of $10,000 or less per year, the inability of low-income noncustodial parents to pay child support will likely be a constant and ongoing problem.[3]

National data do not exist with respect to how often the incarceration option is used.[4] So, if incarceration of noncustodial parents for nonpayment of child support is viewed as an issue, there are no data to reflect the magnitude of the problem.

Background

The CSE program is operated in all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands, and by several Indian tribes or tribal organizations. 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 has at its disposal a wide variety of methods by which to obtain child support obligations. Collection methods used by state CSE agencies include

- income withholding,
- intercept of federal and state income tax refunds,
- intercept of unemployment compensation,
- liens against property,
- reporting child support obligations to credit bureaus,
- intercept of lottery winnings,
- sending insurance settlement information to CSE agencies,
- authority to withhold or suspend driver's licenses, professional licenses, and recreational and sporting licenses of persons who owe past-due support,[5]
- authority to seize assets of debtor parents held by public or private retirement funds and financial institutions, and
- authority for the Secretary of State to deny, revoke, or restrict passports of debtor parents.

In addition, federal CSE law requires states to enact and implement the Uniform Interstate Family Support Act (UIFSA) and expand full faith and credit procedures[6] (so as to effectively enforce

[3] The Urban Institute, *Assessing Child Support Arrears in Nine Large States and the Nation*, by Elaine Sorensen, Liliana Sousa, and Simon Schaner, July 11, 2007.

[4] According to one source, about 50,000 persons are incarcerated daily in U.S. jails and prisons as a result of child support debts. (Source: Douglas Galbi, *Persons in Jail or in Prison for Child-Support Debt*, March 22, 2011, http://purplemotes.net/2011/03/22/persons-in-jail-for-child-support-debt/.)

[5] For more information, CRS Report R41762, *Child Support Enforcement and Driver's License Suspension Policies*, by Carmen Solomon-Fears.

[6] In effect, the 1994 Full Faith and Credit for Child Support Orders Act (P.L. 103-383) requires all states and tribes to

interstate child support cases). Federal law also provides for international enforcement of child support. In addition, federal criminal penalties may be imposed in certain cases.[7] Moreover, all jurisdictions also have civil or criminal contempt-of-court procedures and criminal nonsupport laws (see the **Appendix**). This option means that it is possible for all states and jurisdictions to incarcerate certain noncustodial parents who owe past-due child support.

The most effective child support enforcement tool is income withholding, a procedure by which automatic deductions are made from wages or other income. Once initiated, income withholding can keep child support flowing to the family on a regular basis. In FY2010, about 67% of the $32 billion collected by the states for child support payments was obtained through income withholding, 6% from the unemployment intercept offset, 6% by way of the federal income tax refund offset, 4% from other states, less than 1% from the state income tax refund offset, and 16% ($5 billion) from other sources.[8] Sporadic data from the federal Office of Child Support Enforcement (OCSE) indicate that roughly $3.5 billion of the $5 billion amount from other sources is from child support collected through banks, credit unions, and other financial institutions pursuant to the financial institution data match program; and perhaps about $1 billion (per year) is from collections obtained due to the driver's license suspension program.[9] Based on these rough estimates, probably less than 2% of child support collections can be associated with the threat of incarceration. If a noncustodial parent is actually incarcerated because of nonpayment of child support, the likelihood of receipt of child support payments from that parent during the period of incarceration is very small.

It should be noted that even before the enactment of the CSE program in 1975, states individually and collectively tried to address the problem of nonpayment of child support. For example, in 1910 the National Conference of Commissioners on Uniform State Laws approved the Uniform Desertion and Non-Support Act, which imposed criminal penalties on fathers who failed to support their children. The 1910 act sought to improve the enforcement of the duties of support, but it did not take into account husbands and fathers who fled the jurisdiction.[10] As the U.S. population became more mobile and noncustodial parents and their children increasingly lived in different states, welfare agencies had to support some destitute families because the extradition process was inefficient and often unsuccessful. In 1950, The National Conference of Commissions on Uniform State Laws published the Uniform Reciprocal Enforcement of Support Act (URESA). The commission stated that, "The purposes of this act are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto." URESA sought to enforce the provisions in two ways: criminal enforcement and civil enforcement.[11]

Although jail has been a method to enforce child support obligations for a long time, from the outset many acknowledged that it was counterproductive to put the noncustodial parent in jail. Commentary on the 1950 version of URESA indicated the following:

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recognize and enforce a valid child support order of other states and tribes.

[7] 18 U.S.C. §228.

[8] Office of Child Support Enforcement, *Child Support Enforcement FY 2010 Preliminary Report*, May 2011.

[9] CRS Report R41762, *Child Support Enforcement and Driver's License Suspension Policies*, by Carmen Solomon-Fears.

[10] William J. Brockelbank, *Interstate Enforcement of Family Support (The Runaway Pappy Act)*, Second Edition by Felix Infausto, 1971, p. 3.

[11] State Laws for Child Support, http://www.child-support-guide.com/state-laws-for-child-support.html.

> Everyone was agreed that the return of the obligor to face criminal charges in the state from which he had fled was of limited value. If convicted, he would be put in jail and the state would still have the burden of support of the destitute family. Even when free again, he would be under the heavy handicap of "a man with a criminal record" in finding a job and supporting his family. However, the commissioners finally decided to leave criminal enforcement in the Act because it was the traditional method of solving the problem and it was not certain that civil enforcement would take care of all cases; and it was felt that, while actual extradition would be of little use, the threat of extradition might be a powerful weapon in the case of shiftless and slippery obligors.[12]

State and federal laws and procedures that penalize noncustodial parents for not paying child support by "locking them up" have gained sympathy in recent years from a wide range of interested parties. Child support experts and state policymakers now generally categorize noncustodial parents who do not consistently pay their child support obligation on a timely basis as "can't pay" and "won't pay" parents.[13] While policymakers and the public are somewhat sympathetic to those who cannot pay, they are angry with those that will not pay. In response, states and the federal government have developed and implemented aggressive child enforcement tools to pursue "won't pay" parents who refuse to meet their child support obligation despite having the financial resources to do so. The increasingly common use of criminal statutes and contempt of court orders in child support cases reflects society's growing frustration with "won't pay" parents.[14] (It should be noted that although this either-or delineation may at first seem straightforward, in practice it can be very complicated and many low-income noncustodial parents claim that they are mistakenly lumped into the "won't pay" group when in reality they do not have the income or resources to pay.)

Other countries also use the jail option. For example, in England and Wales if a nonresident parent refuses to pay the child maintenance he or she owes, the Child Support Agency can apply to the courts for a warrant of commitment. This warrant can legally send a nonresident parent to prison for up to six weeks.[15] Moreover, as in the United States, even if the nonresident parent is sent to prison, he or she is still obligated to pay all of the child support owed. Among the 14 countries studied in a 2009 report, 3 did not imprison persons for failure to pay child support arrears.[16] Two of the three countries that did not imprison were Australia and Finland. In addition, the report noted that although Denmark specifies criminal prosecution and imprisonment in

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[12] William J. Brockelbank, *Interstate Enforcement of Family Support (The Runaway Pappy Act)*, Second Edition by Felix Infausto, 1971, p. 17.

[13] During the 106th Congress, Representative Nancy Johnson, then chair of the House Ways and Means Subcommittee on Human Resources, stated, "To take the next step in welfare reform we must find a way to help children by providing them with more than a working mother and sporadic child support." She noted that many low-income fathers have problems similar to those of mothers on welfare—namely, they are likely to have dropped out of high school, to have little work experience, and to have significant barriers that lessen their ability to find and/or keep a job. She also asserted that in many cases these men are "dead broke" rather than "dead beats," and that the federal government should help these noncustodial fathers meet both their financial and emotional obligations to their children. (Source: U.S. Congress, House Ways and Means Subcommittee on Human Resources, "Hearing on Fatherhood Legislation," Statement of Chairman Nancy Johnson, 106th Congress, 1st Session, October 5, 1999, p. 4.)

[14] National Conference of State Legislatures, *Case in Brief: Courts Uphold Criminal Penalties for the Failure to Pay Child Support*, by Teresa A. Myers.

[15] Enforcement on Non-payment of Child Maintenance in England and Wales, http://www.nidirect.gov.uk/enforcement-of-non-payment-of-child-maintenance-in-england-and-wales.

[16] Christine Skinner and Jacqueline Davidson, *Recent Trends in Child Maintenance Schemes in 14 Countries*, International Journal of Law, Policy, and the Family 23, 2009, pp. 25-52, http://lawfam.oxfordjournals.org/content/23/1/25.full.pdf+html.

various documents, it has never in practice prosecuted or incarcerated anyone because of nonpayment of child support.[17]

As mentioned above, one of the services provided by the CSE program is review and modification of child support orders. A prevalent viewpoint holds that an effective modification process can help assure that child support orders remain appropriate and prevent the accumulation of inappropriate child support debt.

The section below discusses ways in which the nonpayment of child support can result in a noncustodial parent being incarcerated. Laws concerning most child support enforcement activities are civil, but nonpayment of child support may subject a noncustodial parent to criminal sanctions in three situations: (1) a finding of contempt of court for failure to obey a court's child support order—contempt of court is classified as either criminal or civil; (2) prosecution under a state criminal nonsupport statute; or (3) prosecution under the Child Support Recovery Act of 1992, as amended in 1998 (P.L. 102-521 and P.L. 105-187).[18] Anecdotally, it appears that it is not uncommon for low-income noncustodial parents to be incarcerated for nonpayment of child support or contempt of court charges that relate to nonpayment of child support.[19] Unfortunately, national data do not exist with respect to how often the incarceration option is used. CSE agencies generally do not track arrests for nonpayment of child support and the record-keeping of sheriffs' offices or prosecuting attorneys' offices on this topic is sporadic, nonexistent, and/or inconsistent across jurisdictions.[20]

Contempt of Court

Contempt of court is a legal term that means that the individual in question is not following a court order. State courts have the authority to punish individuals for violating their valid judgments or decrees. Certain acts or omissions that embarrass the court, lessen its authority or dignity, or obstruct the administration of justice constitute contempt. A judge who feels someone is improperly challenging or ignoring the court's authority has the power to declare the defiant person in contempt of court. Contempt is classified as either civil or criminal.[21]

If the purpose of the penalty imposed is for the benefit of a private party to the action, the contempt is generally classified as civil.[22] Civil contempt occurs when an individual willfully

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[17] Ibid.

[18] National Conference of State Legislatures, *Case in Brief: Courts Uphold Criminal Penalties for the Failure to Pay Child Support*, by Teresa A. Myers.

[19] Rebecca May, *The Effect of Child Support and Criminal Justice Systems on Low-Income Noncustodial Parents-When You Need a Safety Net, but There's Only a Dragnet*, June 2004, p. 9/22.

[20] Rebecca May and Marguerite Roulet, *A Look at Arrests of Low-Income Fathers for Child Support Nonpayment: Enforcement, Court and Program Practices*, Center for Family Policy and Practice, January 2005, http://www.cpr-mn.org/Documents/noncompliance.pdf. See pp. 13-38 for some state-by-state examples.

[21] U.S. Department of Health and Human Services, Office of Child Support Enforcement, *Essentials for Attorneys in Child Support Enforcement*, 3rd Edition, 2002, Chapter 10, http://www.acf.hhs.gov/programs/cse/pubs/2002/reports/essentials/. (Hereinafter, "HHS Child Support Essentials.")

[22] *International Union, United Mine Workers v. Bagwell*, 512 U.S. 821, 827-28 (1994); *F.T.C. v. Trudeau*, 579 F.3d 754, 769 (7th Cir. 2009)(internal citations omitted)("Generally, civil contempt is remedial and for the benefit of the complainant, while criminal contempt is punitive, to vindicate the authority of the court. In terms of monetary sanctions, civil sanctions fall in two categories. They can compensate the complainant for those losses caused by the contemptuous conduct. Or they can coerce the contemnor's compliance with a court order. A coercive sanction must afford the contemnor the opportunity to purge, meaning the contemnor can avoid punishment by complying with the court order") (internal citations omitted). See also Earl C. Dudley, Jr., *Getting Beyond the Civil/Criminal Distinction: A New Approach to the Regulation of Indirect Contempts*, 79 Va. L. Rev. 1025, 1038-39 (1993).

disobeys a court order or rule. This is sometimes referred to as indirect contempt because it occurs outside the judge's immediate realm and evidence must be presented to the judge to prove the contempt.[23] An individual who is found to be in civil contempt of court may be fined, jailed, or both as a consequence of his or her actions. The fine or jailing is meant to coerce the individual into obeying the court, not to punish the person, and the person is to be released from jail just as soon as he or she complies with the court order.[24] In family or domestic relations law, civil contempt is one way a court enforces child support orders that have been violated. In fact, parties seeking payment of child support often ask courts, through motions for civil contempt, to send the defendant (i.e., the noncustodial parent) to jail unless he or she comes up with the money owed.[25] In a civil contempt of court case, the individual is no longer in contempt (and thereby free) once he or she complies with the court's requirements (e.g., fully pay all child support arrearages, make timely child support payments in accordance with a court-sanctioned agreement, or participate in a work and/or training program so as to be able to make child support payments at a later date).

However, if the purpose of the penalty is to vindicate the authority of the court, the contempt is classified as criminal.[26] Criminal contempt occurs when an individual interferes with the ability of the court to function properly. For example, if an individual yells at the judge or jury, it could be considered criminal contempt of court. An individual who is found to be in criminal contempt of court may be fined, jailed, or both as punishment for his or her actions. Criminal contempt of court charges are punitive, in that their intent is to deter future acts of contempt by punishing the offender no matter what happens in the underlying proceeding. In other words, criminal contempt of court charges become separate charges from the underlying case. Unlike civil contempt sanctions, criminal contempt charges may live on after resolution of the underlying case.[27]

Although contempt of court proceedings are generally classified as either civil or criminal, it is generally agreed that it is often hard to determine how a particular act or infraction should be properly classified.[28] Interested parties also agree that judges should more carefully determine whether to impose civil or criminal contempt of court rulings. This is because "an incorrect decision (wrongly classifying the contempt proceeding as civil) can increase the risk of wrongful incarceration by depriving the defendant of the procedural protections (including counsel) that the Constitution would demand in a criminal proceeding."[29]

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[23] *United States v. Rangolan*, 464 F.3d 321, 325 (2d Cir. 2006).

[24] HHS Child Support Essentials.

[25] Ibid.

[26] In re Bradley, 588 F.3d 254, 263 (5th Cir. 2009)("Imprisonment is an appropriate remedy for either civil or criminal contempt, depending on how it is assessed, if the prison term is conditional and coercive, the character of the contempt is civil; if it is backward-looking and unconditional it is criminal.... Similarly, a fine that punishes past conduct is criminal, while a fine that accrues on an ongoing basis in response to noncompliance is civil"). See also Earl C. Dudley, Jr., *Getting Beyond the Civil/Criminal Distinction: A New Approach to the Regulation of Indirect Contempts*, 79 Va. L. Rev. 1025, pp. 1038-39 (1993).

[27] HHS Child Support Essentials.

[28] Earl C. Dudley, Jr., *Getting Beyond the Civil/Criminal Distinction: A New Approach to the Regulation of Indirect Contempts*, 79 Va. L. Rev. 1025, pp. 1038-39 (1993).

[29] *Turner v. Rogers*, 131 S.Ct. 2507, 2518 (2011), p. 16/33, available at http://www.supremecourt.gov/opinions/10pdf/10-10.pdf.

Civil Contempt of Court

According to CSE documents, civil contempt actions are generally brought against noncustodial parents who have very poor child support payment histories, are unemployed or self-employed, or have no regular income that can be withheld through income withholding.[30] The basic purpose of a civil contempt action is to encourage compliance with the child support order.[31] In fact, in general, a finding of current ability to pay is a prerequisite to a civil contempt ruling.[32] In a civil contempt action, the purpose is to force compliance by the noncustodial parent.[33] The sanction usually falls into three categories: (1) coercive/punitive fines (paid to the court), (2) compensatory/remedial fines (paid to the custodial parent), and (3) incarceration.[34] However, any fine or imprisonment is generally considered improper unless it benefits the custodial parent and the children and allows the noncustodial parent to purge himself or herself (i.e., avoid punishment) by complying with clearly stated and attainable requirements.[35]

According to arguments made during the *Turner v. Rogers* Supreme Court case, "A court may not impose punishment in a civil contempt proceeding when it is clearly established that the alleged contemnor is unable to comply with the terms of the order. And once a noncustodial parent who is delinquent in paying his or her child support obligation complies with the underlying order, he is purged of the contempt and is free."[36] Some commentators characterize this situation by saying that "He carries the keys of his prison in his own pockets."[37] The Court has made clear (in a case not involving the right to counsel) that, where civil contempt is at issue, the Fourteenth Amendment's Due Process Clause allows a state to provide fewer procedural protections than in a criminal case.[38] Further, a state may place the burden of proving inability to pay on the defendant.[39]

Some commentators assert that although the intent may be that persons who are unable to comply with court requirements because they do not have the money to pay child support obligations should not be charged with contempt of court, in practice this may occur because some noncustodial parents are mistakenly thought to be able to pay and many noncustodial parents cannot prove that they are not able to pay.

Criminal Contempt of Court

A strictly penal sanction is supposed to be imposed only in cases wherein the defendant is provided essential due process protections. These due process protections include the right to

[30] HHS Child Support Essentials.

[31] Ibid.

[32] Ibid.

[33] Ibid.

[34] Ibid.

[35] Ibid.

[36] *Hicks v. Feiock*, 485 U.S. 624, 638, n.9 (1988). See also: *Turner v. Rogers et al.*, p. 12/33, at http://www.supremecourt.gov/opinions/10pdf/10-10.pdf.

[37] *Turner v. Rogers*, 131 S.Ct. 2507, 2516 (2011)

[38] *Hicks v. Feiock*, 485 U.S. at 637-641.

[39] *Turner v. Rogers*, 131 S.Ct. 2507, 2516 (2011), p. 12/33 (quoting Hicks v. Feiock, 485 U.S. 624 (1988)), http://www.supremecourt.gov/opinions/10pdf/10-10.pdf.

notice of the offense, the right to present a defense, the right to call witnesses, an impartial judge, and, in some jurisdictions, the right to counsel and a trial by jury.[40]

A criminal contempt proceeding is considerably more complicated than a civil contempt proceeding. Initiation of the proceeding may require a more formal notice than is provided the civil defendant in the motion and order to show cause, although a formal indictment is not necessary.[41] The possibility of an indigency hearing, a jury trial, and a change of judge potentially makes the process a very long one.[42]

Nonetheless, there are occasions when criminal contempt may be effective. In cases where a noncustodial parent has been charged with civil contempt on several occasions but never voluntarily makes child support payments until the jail term is imminent, a criminal contempt action may change his or her attitude about compliance. In addition, a court may set consecutive jail terms for multiple contempt of court rulings. Moreover, criminal contempt might be the only available remedy to punish a noncustodial parent who willingly limited his or her ability to pay child support (out of spite) by quitting a job or taking one at a much lower salary.[43]

Supreme Court Case—Representation in Civil Cases

Parents can be jailed without a trial because failure to pay child support is usually handled as a civil matter—contempt of court. This means that if the noncustodial parent is found guilty of contempt of court and ordered to appear at a hearing, he or she can be sent to jail unless willing and able to satisfy the child support obligation. As mentioned, these civil defendants generally are not entitled to the constitutional protections that criminal defendants receive, including the presumption of innocence or the right to an attorney.

In contrast, indigent criminal defendants have a right to court-appointed attorneys, who typically are paid with tax dollars. Recently, the U.S. Supreme Court was asked to determine whether the Fourteenth Amendment's Due Process Clause requires a state to provide legal representation to an indigent noncustodial parent who is subject to a child support order and faces imprisonment due to noncompliance with that order.

In *Turner v. Rogers*,[44] the Court declined to rule that due process requires legal representation in such instances where other procedural safeguards exist. These safeguards center around a defendant's ability to pay and include

> (1) notice to the defendant that his ability to pay is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status; and (4) an express finding by the court that the defendant has the ability to pay.[45]

The case at issue was a South Carolina child support case wherein the defendant, Michael Turner, spent a year in jail for failure to pay back child support after a hearing conducted without legal representation. He presented some evidence of his inability to work, but the court made no

[40] See *United States v. Dixon*, 509 U.S. 688, 696 (1993)(holding that the Sixth Amendment grants an indigent defendant the right to counsel in criminal cases, including most criminal contempt proceedings).

[41] HHS Child Support Essentials.

[42] Ibid.

[43] Ibid.

[44] 131 S. Ct. 2507 (2011).

[45] *Turner* at 2519.

finding as to the defendant's indigent status or ability to pay. He was not convicted of a crime; the year in jail was not a punishment, per se. Turner was being held in contempt of court, and the jail time was a means to induce the payment of nearly $6,000 in past-due child support.[46]

In reaching its decision, the Court relied on factors set forth in *Mathews v. Eldridge*,[47] to determine what safeguards are required to make a civil proceeding fundamentally fair. Specially, the Court stated

> A requirement that the State provide counsel to the noncustodial parent in these cases could create an asymmetry of representation that would "alter significantly the nature of the proceeding.... Doing so could mean a degree of formality or delay that would unduly slow payment to those immediately in need. And, perhaps more important for present purposes, doing so could make the proceedings less fair overall, increasing the risk of a decision that would erroneously deprive a family of the support it is entitled to receive. The needs of such families play an important role in our analysis."[48]

The Court determined that the straightforward nature of child support proceedings, the lack of representation by the custodial parent, and the existence of other procedural safeguards outside of legal representation all suggested that the Due Process Clause did not mandate appointment of an attorney under the circumstances presented. However, the Court found that the lower court violated Turner's rights by not ensuring that he had counsel or other procedural safeguards to provide notice that his ability to pay was a critical issue or a form to elicit financial information to make such a determination.[49] It is important to note that this decision did not address instances where the child support is owed to the state (i.e., reimbursement of welfare funds) or where complex matters are presented.[50]

During discussion, debate, and arguments concerning the *Turner v. Rogers* case, the concept of whether nonpaying noncustodial parents should be viewed as deadbeats versus turnips[51] was a recurring point of contention.[52] Those who likened noncustodial parents with high child support arrearages to deadbeats argued that some defendants, most often fathers, somehow develop a belief that their financial and emotional obligations to their children ended when their relationship with the children's mother did. These observers also claimed that other noncustodial parents withhold child support in order to punish or control their ex-spouses. They asserted that for these two groups of defendants, sometimes the threat of jail, followed up by actual jail time (so as not to make the threat an empty one), is the only way to get such noncustodial parents to comply with their child support obligations.

Those who likened certain noncustodial parents to turnips claimed that many low-income child support defendants were turnips from whom no one—not the custodial parent, not the CSE caseworkers, not the judge—could squeeze one penny. They asserted that the majority of low-

[46] http://www.americanbar.org/content/dam/aba/publishing/previewbriefs/Other_Brief_Updates/10-10_Respondent.authcheckdam.pdf.

[47] 424 U.S. 319 (1976).

[48] *Turner* at 2519.

[49] Turner at 2520.

[50] *Turner* at 2520.

[51] Ronald B. Mincy and Elaine J. Sorensen, "Deadbeats and Turnips in Child Support Reform," December 7, 1998, *Journal of Policy Analysis and Management*, vol. 17, issue 1, Winter 1998, pp. 44–51.

[52] In the CSE literature, "deadbeats" is a term sometimes used for noncustodial parents who can afford to pay child support but choose not to do so unless forced. In contrast, "turnips" is a term used to describe noncustodial parents who cannot pay child support because they are too poor. It refers to the saying that "you can't get blood from a turnip." In other words, if they do not have it, you cannot get it.

income noncustodial parents who end up in jail are turnips, low-income defendants who cannot afford to purge themselves of contempt. According to several analysts and Turner's legal team, the turnips of the world are those who most often end up in jail, which both needlessly deprives them of freedom (and the ability to find a job) and fails to achieve the state's goal of inspiring compliance with child support.[53]

Because the defendant "holds the keys to his own jail cell" in a civil contempt case, with the ability to end the jail time by complying with the order, it has historically been considered differently than a jail sentence of a specified term for criminal contempt.

According to Turner, the problem was that he just did not have the money to pay. Further, because he did not have a lawyer at his contempt hearing, he was unable to prove it. Because he was sent to jail to force him to comply with a debt he could not pay, he likened his situation to debtors' prison. The mother of his children and her supporters, including the two U.S. Senators from South Carolina, argued that granting civil contempt defendants the right to counsel would actually lead to inequality in the justice system for custodial parents, who do not have such a right.[54]

Under prior U.S. Supreme Court rulings, indigent criminal defendants have a right to court-appointed attorneys, who typically are paid with tax dollars. But the Supreme Court has declined to grant similar rights in civil proceedings that could result in jail time and declined to do so again in *Turner*. However, the U.S. Supreme Court did find that the state court violated the defendant's constitutional rights by sentencing him to imprisonment without first determining whether he had the ability to pay.[55] Thus, the Court set aside a unanimous ruling by the South Carolina Supreme Court[56] and sent the case back to the lower court for "further proceedings not inconsistent with this opinion."[57]

Criminal Nonsupport

In many instances, CSE actions are not successful in collecting past-due child support. In those cases, the CSE caseworker via an attorney may pursue criminal charges against the delinquent obligor. There are criminal offenses for nonsupport of children at both the state and federal level.

State Actions

All 50 states and the District of Columbia have state-specific or jurisdiction-specific criminal statutes that relate to the failure to pay support in purely intrastate or intra-jurisdiction cases. In some of these states (including DC), the attorneys who establish and enforce child support obligations in civil court have the discretion to file criminal charges against a noncustodial parent.[58] Other states have a referral process where the child support attorney refers the case to the district attorney or prosecutor to review for criminal prosecution. Also, some states appoint

[53] Ronald B. Mincy and Elaine J. Sorensen, "Deadbeats and Turnips in Child Support Reform," December 7, 1998, *Journal of Policy Analysis and Management*, vol. 17, issue 1, Winter 1998, pp. 44–51.

[54] *Turner v. Rogers et al.*, Supreme Court, June 20, 2011, p. 18/33, http://www.supremecourt.gov/opinions/10pdf/10-10.pdf.

[55] Ibid, pp.18-20/33.

[56] *Price v. Turner*, 691 S.E.2d 470 (S.C. 2010).

[57] *Turner v. Rogers*, p. 20/33. See also Court Ruling Spurs Changes in Child Support Cases, by Rick Brundrett, July 7, 2011.

[58] HHS Child Support Essentials.

child support attorneys as special prosecutors solely for the purpose of bringing an action under the state criminal nonsupport statute.[59]

Although CSE program remedies such as income withholding and income tax refund intercept are still the most often used enforcement tools, criminal nonsupport proceedings can be a useful deterrent to noncompliance. In most states, the usual procedure is for all available civil remedies to be exhausted before resorting to the use of criminal nonsupport. It can be argued that where CSE remedies have proven unsuccessful or where the noncustodial parent has been evading civil remedies, a criminal charge can be effective in bringing about payment.

In most states, the normal rules of evidence apply to a criminal nonsupport action. Depending on local practice, the action is initiated by filing a criminal complaint or indictment. Based on the initial finding, a judge may issue a warrant or summons. Like other state criminal actions, the initial pleading must allege all elements of the crime in such a manner that allows the defendant to understand the charge and prepare a defense. State law defines the elements of the crime. The standard of proof in these cases is proof beyond a reasonable doubt. See **Table A-1** in the **Appendix** for a state-by-state listing of criminal nonpayment of child support statutes.

Federal Criminal Penalties

During the early 1990s, research revealed that a significant number of noncustodial parents were able to meet their child support obligations but intentionally chose not to do so. The chances of successfully escaping one's child support duties increased substantially when the noncustodial parent crossed state lines so as not to pay child support. The Child Support Recovery Act of 1992 (P.L. 102-521) addressed the problem of interstate enforcement of child support by taking the incentive out of moving to another state to avoid paying child support. According to the congressional report on the legislation, "The bill is designed to target interstate cases only. These are the cases which state officials report to be clearly the most difficult to enforce, especially the 'hard core' group of parents who flagrantly refuse to pay and whom traditional extradition procedures have utterly failed to bring to justice."[60]

P.L. 102-521 imposed a federal criminal penalty for the willful failure to pay a past due child support obligation to a child who resides in another state that has remained unpaid for longer than a year or is greater than $5,000. For the first conviction, the penalty is a fine of up to $5,000, imprisonment for not more than six months, or both; for a second conviction, the penalty is a fine of not more than $250,000, imprisonment for up to two years, or both.[61] This federal criminal penalty was seen as an additional child support enforcement tool or remedy to be used for especially difficult cases in which state-level options had been exhausted and the noncustodial parent with the ability to pay seemed to be intent on evading his or her child support obligations.[62]

After the 1992 law was implemented, there was concern that by providing for a maximum punishment of just six months in prison for a first offense, even very egregious cases of

[59] Ibid.

[60] U.S. Congress, 102nd Congress, 2nd Session, House of Representatives, Child Support Recovery Act of 1992, Report to Accompany H.R. 1241, August 2, 1992, H. Rept. 102-771, p. 6.

[61] 18 U.S.C. §228(a)(1).

[62] U.S. Department of Health and Human Services, Office of Child Support Enforcement, *Child Support Report*, vol. XVI, no. 7, "U.S. Attorney's Office Prosecutes Criminal Nonsupport Case," by T.J. Centrella, November 1994.

nonsupport were only considered misdemeanors.[63] In response to assertions that the 1992 law did not adequately address more serious instances of nonpayment of child support obligations, Congress passed the Deadbeat Parents Punishment Act of 1998 (P.L. 105-187). The law establishes two new categories of felony offenses, subject to a two-year maximum prison term. The offenses are (1) traveling in interstate or foreign commerce with the intent to evade a support obligation if the obligation has remained unpaid for more than one year or is greater than $5,000; and (2) willfully failing to pay a child support obligation regarding a child residing in another state if the obligation has remained unpaid for more than two years or is greater than $10,000.[64]

"Project Save Our Children" is the mechanism through which the federal criminal penalties for nonsupport law is carried out. The Project Save Our Children initiative is conducted by officials from the HHS Office of Inspector General, the OCSE, the Department of Justice, state CSE agencies, and local law enforcement organizations working together to pursue chronic delinquent parents who owe large sums of child support. Its goal is to increase child support collections through the identification, investigation, and, when warranted, prosecutions of flagrant, delinquent child support offenders.

According to HHS, in FY2006 Project Save Our Children, received over 10,000 cases from the states. As a result of the work of the task forces, in FY2006 986 arrests were made nationwide and 872 individuals were sentenced. Federal investigations resulted in a total of $39.6 million in restitution being ordered with $35.8 million actually collected in FY2006.[65] In FY2007, the Project Save Our Children program resulted in about $8.1 million in child support collections from 1,139 child support cases.[66]

Implications

Many policymakers argue that the threat of jail usually brings noncustodial parents who are employed or have access to income or assets into compliance with child support orders. In contrast, low-income noncustodial parents who do not have the money to pay their child support obligation go directly to jail (because they are unable to comply before the threat is actualized due to their lack of funds).[67]

The threat of jailing noncustodial parents who are delinquent in meeting their child support obligations is intended to coerce them to pay, but if they have no money, they cannot pay. Moreover, in many instances these noncustodial parents have used up their goodwill with relatives and friends and thus can no longer borrow from others to meet their obligations. Thus, in the case of some low-income noncustodial parents, jail becomes their reality because they do not have the income or assets to eliminate the threat.

According to many analysts, the threat of jail may be a good public policy tool, but actually making good on the threat generally is not productive. In other words, putting low-income noncustodial parents in jail, especially when it is known that they are unemployed and without the means to pay their child support obligations, does not seem to be effective in gaining financial or

[63] *Congressional Record*, Senate, Remarks on S. 1371 by Senator Kohl, November 13, 1997, p. S12667

[64] 18 U.S.C. §228(a)(2) and (3).

[65] Department of Health and Human Services, Office of Child Support Enforcement, *Office of Child Support Enforcement FY 2006 Annual Report to Congress*, 2007.

[66] Data on the number of persons arrested and sentenced under Project Save Our Children were not made available for FY2007 and no subsequent data on Project Save Our Children are in subsequent annual CSE reports.

[67] Bill Rankin, "'Deadbeat' parents caught in a debtor's prison," *Atlanta Journal-Constitution*, January 24, 2011.

emotional help for children. But, observers ask, how can use of a threat be effective if everyone knows that there are no teeth behind it?

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.[68]

Some commentators assert that jails are expensive, dangerous places in which people become aggressive in order to manage their fears or survive the sentence. Therefore, they contend that although most of these people may have been nonviolent before they were incarcerated, they often are no longer so after being in jail or prison.[69]

Noncustodial parents who are incarcerated for violations related to nonpayment of child support are usually put in jail rather than prison.[70] One widely held myth is that jails only hold nonviolent offenders. To the contrary, jails receive individuals pending arraignment and hold those awaiting trial, conviction, or sentencing. They also hold probation, parole, and bail-bond violators. Some of these individuals are violent persons.

It is generally agreed that violence is a part of prison life. It has been noted that the lack of outrage over prison violence is testament to the fact that it is considered a normal and acceptable part of behavior inside prison.[71] According to one report: "The rates of physical assault for male inmates is over 18 times higher than assault victimization rates for males in the general population, and rates for female inmates are over 27 times higher than their nonincarcerated counterparts."[72] Thus, many observers both inside and outside the criminal justice system concede that jails and prisons should primarily be used for violent offenders and that less harsh alternatives should be used for non-violent offenders such as those whose only offense is nonpayment of child support.[73]

According to a report by the American Civil Liberties Union (ACLU), "Incarceration has a devastating effect on men and women whose only remaining crime is that they are poor." Although the report pertains to legal financial obligations (i.e., fines and/or costs imposed on the defendant by a court), the following commentary could also apply to low-income noncustodial parents who are unable to handle their child support obligations.

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[68] National Women's Law Center and the Center on Fathers, Families, and Public Policy, *Family Ties: Improving Paternity Establishment Practices and Procedures for Low-Income Mothers, Fathers and Children*, 2000, pp. 9-11.

[69] Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment*, December 2001, pp. 5-8/16.

[70] Although this is usually the case, it is not always the case. In some states, nonpayment of child support is a felony and noncustodial parents convicted of felony nonsupport charges usually are sent to prison.

[71] Nancy Wolff, Cynthia L. Blitz, Jing Shi, Jane Siegel, and Ronet Bachman, "Physical Violence Inside Prisons: Rates of Victimization," *Criminal Justice and Behavior*, vol. 34, no. 5, Sage Publications, May 2007, pp. 588-599. See also Mark S. Fleisher and Jessie L. Krienert, *The Culture of Prison Sexual Violence*, November 2006.

[72] Nancy Wolff, Cynthia L. Blitz, Jing Shi, Jane Siegel, and Ronet Bachman, "Physical Violence Inside Prisons: Rates of Victimization," *Criminal Justice and Behavior*, vol. 34, no. 5, Sage Publications, May 2007, p. 595.

[73] Dahlia Lithwick, "Our Real Prison Problem—Why are we so worried about Gitmo?", *The Daily Beast*, June 4, 2009, http://www.thedailybeast.com/newsweek/2009/06/04/our-real-prison-problem.print.html.

> Upon release, they face the daunting prospect of having to rebuild their lives yet again. Even for those men and women with unpaid LFOs [Legal Financial Obligations] who do not end up back behind bars, their substantial legal debts pose a significant, and at times insurmountable, barrier as they attempt to re-enter society. They see their incomes reduced, their credit ratings worsen, their prospects for housing and employment dim, and their chances of ending up back in jail or prison increase. Many must make hard choices each month as they attempt to balance their needs and those of their families with their LFOs. They also remain tethered to the criminal justice system—sometimes decades after they complete their sentences—and live under constant threat of being sent back to jail or prison, solely because they cannot pay what has become an unmanageable legal debt.[74]

Some commentators note that jail generally increases a person's stress and negatively impacts his or her emotional/mental and physical health.[75] They claim that some inmates adopt an aggressive persona out of self-preservation (because the inmate believes that it's a matter of intimidate or be intimidated). They also contend that many persons self-medicate (i.e., use legal or illegal drugs) both inside and outside of jail/prison to counteract the negative impacts, which often results in further repercussions that usually negatively affect the building of positive, strong parent-child relationships and sometimes result in recidivism.[76] Many observers maintain that putting nonviolent persons in jail is often counterproductive especially in times of tight state and local budgets and/or when jail/prison overcrowding is an issue.

The United States incarcerates more individuals than any other nation.[77] In 2008, the Pew Center on the States reported that 1 in every 100 adults in the United States now lives behind bars. According to MDRC, a nonpartisan research organization, "Corrections costs exceed $65 billion per year, with most of the total borne by state and local governments."[78] To save costs and to increase the effectiveness and efficiency of the criminal justice system, many states and localities are making use of community service (i.e., unpaid community work), halfway houses, electronic monitoring, court supervision, and community sentencing as alternatives to incarcerating people in jail or prison.

Many policy analysts contend that the incarceration of persons for nonviolent offenses, such as nonpayment of child support, is both wrong and counterproductive.[79] They say that criminalizing nonpayment of child support by making it a misdemeanor or a felony disproportionately affects low-income noncustodial parents who, more likely than not, are just as poor or poorer than the mother and child (or children) owed child support payments.[80] They also contend that

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[74] American Civil Liberties Union, *In For A Penny: The Rise of America's New Debtors' Prisons*, October 2010, p. 6, http://www.acluohio.org/issues/criminaljustice/InForAPenny.pdf.

[75] Craig Haney, *The Psychological Impact of Incarceration: Implications for Post-Prison Adjustment*, December 2001.

[76] The Urban Institute, *The Impact of Incarceration and Reentry on Children, Families, and Communities*, edited by Jeremy Travis and Michelle Waul, 2003. See also Council on Crime and Justice, *The Collateral Effects of Incarceration on Fathers, Families, and Communities*, March 2006.

[77] Maria Cancian, Daniel R. Meyer, and Eunhee Han, "Child Support: Responsible Fatherhood and the Quid Pro Quo," *The Annals of the American Academy of Political and Social Science*, vol. 635 no. 1 (140-162), May 2011, p. 151. See also Adam Liptak, "U.S. Imprisons One in 100 Adults, Report Finds," *The New York Times.com*, February 29, 2008. See also Christian Henrichson and Ruth Delaney, *The Price of Prisons-What Incarceration Costs Taxpayers*, VERA Institute of Justice, Center on Sentencing and Corrections, January 2012 (updated).

[78] MDRC, *Building Knowledge About Successful Prisoner Reentry Strategies*, Issue Focus, February 11, 2009.

[79] Justice Policy Institute, *Baltimore Behind Bars: How to Reduce the Jail Population, Save Money and Improve Public Safety*, June 8, 2010.

[80] Rebecca May and Marguerite Roulet, *A Look at Arrests of Low-Income Fathers for Child Support Nonpayment: Enforcement, Court and Program Practices*, Center for Family Policy and Practice, January 2005, p. 6, http://www.cpr-mn.org/Documents/noncompliance.pdf.

criminalizing nonpayment of child support disproportionately affects noncustodial parents who are African American.[81]

Many CSE officials counter that noncustodial parents are not penalized for being poor but rather because they are "deadbeats." They contend that it is about demonstrating intent. They assert that most judges give noncustodial parents chance after chance to avoid jail as long as he or she demonstrates a sincere effort to pay their child support obligation. They maintain that persons who show that they are truly looking for a job—by providing proof that they are filling out applications and talking to prospective employers—and persons who can prove that they have little income by showing documentation of bills and/or income receipts usually succeed in convincing the court that they should not be put in jail, especially if they acknowledge their child support responsibilities and a willingness to meet those obligations.[82]

Some observers argue that although it is not a crime to be poor, if a noncustodial parent is not able to pay his or her child support obligation because he or she has no income, that noncustodial parent could land in jail. They say that although some people assert that jail is the place for deadbeat dads, the truth is that you do not have to be a deadbeat to end up in jail. They claim that if a noncustodial parent is unemployed and unable to meet his or her child support obligation, he or she may be lumped into the deadbeat category.[83] Thus, they contend that many law-abiding citizens face loss of freedom for failing to pay child support because they are poor.[84]

Some noncustodial parents claim that the deck is stacked against them. Many assert that their freedom is in the hands of CSE caseworkers. They contend that when a caseworker feels that enough time has been spent on trying to obtain payment, the caseworker has the authority to have a warrant issued to bring the noncustodial parent before a judge. They note that some noncustodial parents have the misfortune of being arrested and placed in jail immediately following the court proceeding.[85] Many of these noncustodial parents say that it does not seem to them that all other options are used before CSE caseworkers send their cases to the courts for adjudication.

Unlike other felons, noncustodial parents who are put in jail because of nonpayment of child support cannot get credit for child support owed for the time they serve in jail. In other words, a noncustodial parent cannot substitute time in jail in place of making child support payments.[86] Also, as discussed earlier, unlike other felons, most noncustodial parents who face jail time because of noncompliance with child support orders do not get a chance to speak to an attorney or to have an attorney speak on their behalf.[87]

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[81] Rebecca May, *The Effect of Child Support and Criminal Justice Systems on Low-Income Noncustodial Parents—When You Need a Safety Net, but There's Only a Dragnet*, June 2004, p. 9. See also Justice Policy Institute, *Baltimore Behind Bars: How to Reduce the Jail Population, Save Money and Improve Public Safety*, June 8, 2010.

[82] Rebecca May and Marguerite Roulet, *A Look at Arrests of Low-Income Fathers for Child Support Nonpayment: Enforcement, Court and Program Practices*, Center for Family Policy and Practice, January 2005, p. 6, http://www.cpr-mn.org/Documents/noncompliance.pdf.

[83] Ibid.

[84] Ibid.

[85] Elizabeth G. Patterson, "Civil Contempt And The Indigent Child Support Obligor: The Silent Return Of Debtor's Prison," *Cornell Journal Of Law And Public Policy*, vol. 18:95-141, 2008.

[86] Moreover, while the noncustodial parent is incarcerated the child support debt continues to accumulate unless he or she has requested and been granted a modification of the child support order by the CSE agency.

[87] As indicated earlier in the report, noncustodial parents charged with criminal contempt of court are to a certain extent better off than those charged with civil contempt of court because they are entitled to an attorney and other due-process protections.

Some observers maintain that incarceration isolates parents from their children and weakens parent-child bonds. They point to the social science literature that maintains that children who have a healthy relationship with both biological parents generally do better on a variety of social indicators than those who only interact with one parent. They note that the costs of incarceration are high and include much more than food, clothing, and shelter expenses. These observers argue that the social, psychological, and emotional impacts on children and families and the negative, disruptive impacts on communities should also be considered. They further maintain that persons with a criminal record have a hard time finding employment and thus a vicious cycle is started and continues.[88] In recent years, the concept of mandating work and/or training programs for low-income noncustodial parents who cannot afford to pay their child support obligations has been viewed by some as an alternative to incarceration.

Other observers say that noncustodial parents are given numerous chances to pay their child support obligation or meet the court's requirements before they are finally remanded to jail or prison. They point out that noncustodial parents who are unable to meet their child support obligation can request a downward modification of their child support order.[89] They contend that in many instances, the CSE agency will negotiate a payment plan with the noncustodial parent and in some instances forgive some of the child support arrearages.[90] They assert that there are many ill-effects that result from failure to pay child support, namely the reduced income/economic status of children. They contend that not meeting child support obligations is a crime and should be treated as such.[91]

Others point out that operating safe, secure, humane, and well-programmed prisons cannot be done inexpensively.[92] They contend that people are incarcerated for legitimate reasons and assert that nonpayment of child support is a legitimate reason for incarceration. They maintain that the cost of incarceration should not be an overriding factor if there is agreement that a crime has been committed.

Placing the Imprisonment Option in Policy Context

As mentioned earlier, imprisonment of noncustodial parents who are delinquent in making their child support payments is one of the older remedies that state CSE agencies are authorized to use for enforcing child support. Now, especially pursuant to the 1996 welfare reform law (P.L. 104-193), there are many more child support enforcement tools. Nonetheless, incarceration still remains among the tools used by the CSE program to enforce child support obligations.

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[88] Sharon M. Dietrich, "Every Door Closed-Barriers Facing Parents With Criminal Records," *Criminal Records and Employment: Ex-Offenders Thwarted in Attempts to Earn a Living for Their Families*, Center for Law and Social Policy and Community Legal Services, Inc., 2003.

[89] National Conference of State Legislatures, *Case in Brief: Courts Uphold Criminal Penalties for the Failure to Pay Child Support*, by Teresa A. Myers, June 1999.

[90] Paula Roberts, *An Ounce Of Prevention And A Pound Of Cure: Developing State Policy On The Payment of Child Support Arrears by Low Income Parents*, Center for Law and Social Policy, May 2001. Note: According to the federal Office of Child Support Enforcement (OCSE), as of September 2011, 44 states and the District of Columbia had policies to compromise child support debt owed to the state, see http://www.acf.hhs.gov/programs/cse/debt_compromise.html.

[91] Department of Health and Human Services, Office of the Inspector General, "Operation Lost and Found nets Chronic Child Support Defaulters," *OIG News*, September 15, 2003.

[92] Christian Henrichson and Ruth Delaney, *The Price of Prisons-What Incarceration Costs Taxpayers*, VERA Institute of Justice, Center on Sentencing and Corrections, January 2012 (updated), p. 12.

Discussions that occurred during the early years of the CSE program indicate that policymakers and administrators maintained that the threat of jail would be more than enough to persuade noncustodial parents to pay their outstanding child support debts—that noncustodial parents would pay rather than go to jail. The historical view was that the CSE program needed "sticks" for noncustodial parents who failed to meet their child support obligations. Many observers viewed imprisonment as the last resort and encouraged CSE administrators to give noncustodial parents several opportunities to comply with child support orders before punishing noncompliant offenders by sending their cases to court, which could result in their incarceration. In practice, this viewpoint is still held. As shown in **Table A-1** in the **Appendix**, all states have criminal sanctions for failure to pay child support.

It used to be that most noncustodial parents who were penalized with jail were there because they were trying to avoid their financial and moral obligations to pay child support for their children. They tried to hide themselves by moving from place to place or earn money "under the table" (i.e., in the underground economy). Some noncustodial parents have indicated that they did these things out of anger or spite because of animosity toward the children's mother and/or because they believed that the CSE agency was unfairly taking too much out of their meager income.[93]

The CSE program has become more effective and efficient over the years. The program's ability to locate noncustodial parents and their income and assets is well known. Thus, for many noncustodial parents who currently end up in jail because of nonpayment of child support violations, it is because they do not have the income or means to pay. As one analyst put it, they are dead poor, not deadbeats.[94] Other commentators have noted that large CSE caseloads lead to an increased likelihood that noncustodial parents will be viewed as "all the same," as making excuses, and as not trustworthy in their stated reasons for being unable to pay child support.[95] This increases the probability that many low-income noncustodial parents will end up in jail for nonpayment of child support.

Many observers argue that incarcerating people—knowing (1) the high costs associated with imprisoning people and (2) that it may significantly diminish their future ability to get jobs, pay taxes, and lift themselves and their families out of poverty—does not make sense.[96]

Although many custodial parents agree, to a certain extent, 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 and refusing to use the incarceration option. 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 the children. They assert that it is imperative

[93] Maureen Waller and Robert Plotnick, "A Failed Relationship? Low-Income Families And The Child Support Enforcement System," University of Wisconsin–Madison Institute for Research on Poverty, *Focus*, vol. 21, no. 1, Spring 2000, pp. 12-17.

[94] Elaine Sorensen and Chava Zibman, *Poor Dads Who Don't Pay Child Support: Deadbeats or Disadvantaged*, Urban Institute, April 2001.

[95] Rebecca May and Marguerite Roulet, *A Look at Arrests of Low-Income Fathers for Child Support Nonpayment: Enforcement, Court and Program Practices*, Center for Family Policy and Practice, January 2005, p. 46, http://www.cpr-mn.org/Documents/noncompliance.pdf.

[96] Mike Davis, "Illinois prison overcrowding is dangerous for everyone," October 13, 2011, http://www.occasionalplanet.org/2011/10/13/illinois-prison-overcrowding-is-dangerous-for-everyone/print/.

that the children not be short-changed, and that children not be made to suffer because of recalcitrant noncustodial parents who fail to meet child support obligations.[97]

According to the National Child Support Enforcement Strategic Plan: "Preventing the build-up of unpaid support (arrearages) through early intervention rather than traditional debt threshold-based enforcement" has been a recent objective and strategy of the CSE program. "That is, we built a system that intervened only after debt ... accumulated and often too late for collection to be successful, let alone of real value to the child. Severe enforcement remedies applied when necessary have their place. But this Strategic Plan signals our intent to build a culture of compliance, in which parents support their children voluntarily and reliably."[98] The CSE Strategic Plan lists the following as ways to strengthen the CSE system and thereby avoid the jail option:

1. modify orders to ensure that obligations stay consistent with ability to pay;[99]
2. contact noncustodial parents soon after a scheduled payment is missed;
3. update child support guidelines to recognize modern family dynamics and realities (e.g., shared custody, incomes of custodial parents, etc.);
4. use automation to detect noncompliance as early as possible; and
5. aim primarily at consistent, reliable payment of current support, even if it means compromising uncollectible arrears to bring the noncustodial parent back into the fold.[100]

Many observers maintain that an effective modification process can help assure that child support orders remain appropriate and prevent the accumulation of inappropriate child support debt.[101] Under the CSE program, states are given significant latitude regarding modifications and reviews of child support orders.[102] 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.[103] In order to prevent child support arrearages, especially for noncustodial parents who are unemployed or in prison, some analysts argue that child support modification laws should be changed so that they are more sensitive to periods of incarceration, unemployment, or injury/illness during which the noncustodial parent's ability to

[97] Jennifer L. Noyes, *Review of Child Support Policies for Incarcerated Payers*, Institute for Research on Poverty, University of Wisconsin-Madison, December 2006. See also Maria Cancian, Daniel R. Meyer, and Eunhee Han, "Child Support: Responsible Fatherhood and the Quid Pro Quo," *The Annals of the American Academy of Political and Social Science*, vol. 635 no. 1 (140-162), May 2011.

[98] Department of Health and Human Services, *National Child Support Enforcement Strategic Plan for FY2005-FY2009*, p. 2.

[99] According to the federal Office of Child Support Enforcement (OCSE), as of September 2011, at least 22 states and the District of Columbia were supporting various types of programs designed to ensure that child support orders reflect current earnings when the order is established and is modified when earnings change. See http://www.acf.hhs.gov/programs/cse/right_sizing_orders.html.

[100] Ibid.

[101] For information on noncustodial parents with high child support arrearages, see Elaine Sorensen, Liliana Sousa, and Simon Schaner, *Assessing Child Support Arrears in Nine Large States and the Nation*, Urban Institute, July 11, 2007, pp. 19-24, http://aspe.hhs.gov/hsp/07/assessing-CS-debt/.

[102] This flexibility and discretion only applies to prospective modification of child support orders. Federal law prohibits the retroactive modification of child support orders (Section 466(a)(9) of the Social Security Act).

[103] Some observers contend that the CSE program should aggressively advertise its modification process because many noncustodial parents are under the mistaken belief 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 the court when an explanation for nonpayment is given.

pay child support decreases. They contend that it is virtually impossible for most low-income noncustodial parents with those types of barriers to stay current in meeting their monthly child support payments.[104]

In addition, 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 low-income noncustodial parents find themselves.[105]

A wide body of research indicates that father absence has negative ramifications for children.[106] Given that incarceration separates parents from children, many analysts contend that severe enforcement remedies such as incarceration no longer serve a useful purpose. They assert that more innovative approaches to confinement such as probation, participation in drug abuse prevention programs, participation in work and training programs, house arrest, or placement in a halfway house are effective counter measures to the negative effects incarceration has on familial relationships and one's ability to obtain employment.

According to one former inmate: "When you come out of prison, you are facing a lot of issues like housing and transportation. Plus, you're a felon, and it's hard to find work. And you've got to pay child support and the court fees you owe."[107] Many observers contend that non-incarceration remedies are a better option for noncustodial parents, children, families, and ultimately the communities in which they live.[108]

The costs of using the criminal justice system for nonviolent offenders are high. The money from revamping/restructuring the criminal justice system might fund many alternatives. According to the Pew Center on the States, "With states facing the worst fiscal crisis in a generation and corrections costs consuming one in every 15 state discretionary dollars, the need to find cost-effective ways to protect public safety is more critical than ever."[109] Research from the Public Safety Performance Project and its partners details strategies—such as strengthening community supervision and reinvesting money currently spent on imprisoning the lowest risk inmates—to cut corrections costs and give taxpayers a better return on public safety dollars.[110]

There are now many state and federal initiatives with the purpose of trying to ameliorate some of the harmful impacts of father absence. Such initiatives include responsible fatherhood programs and CSE access and visitation programs. These initiatives are intended to provide low-income noncustodial parents with jobs, job training, and/or job skills so that they can earn a living and be

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[104] 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, September 2008, pp. 6-4 through-6-6.

[105] Tribal CSE programs, unlike state CSE programs, have the authority to allow noncustodial parents to use in-kind payments instead of cash to satisfy child support debt. For information on Tribal CSE programs, see CRS Report R41204, *Child Support Enforcement: Tribal Programs*, by Carmen Solomon-Fears.

[106] Wendy Sigle-Rushton and Sara McLanahan, *Father Absence and Child Well-Being: A Critical Review*, Princeton University, Center for Research on Child Wellbeing (Working Paper #02-20), November 2002.

[107] Ginnie Graham, "Program helps felons meet child support obligations," *Tulsa World*, December 12, 2011, http://www.tulsaworld.com/news/article.aspx?subjectid=11&articleid=20111212_11_A1_ULNSea29809.

[108] For more information, see CRS Report R40499, *Child Support Enforcement and Ex-Offenders*, by Carmen Solomon-Fears.

[109] The Pew Center on the States, *One in 100: Behind Bars in America 2008*. See also http://www.pewcenteronthestates.org/initiatives_detail.aspx?initiativeID=59068

[110] The Pew Center on the States, *Risk/Needs Assessment 101: Science Reveals New Tools to Manage Offenders*, September 2011.

able to meet their child support obligations—based on the premise that these noncustodial parents need extra help because people with a prison record are less desirable workers than people who have not been in jail from the standpoint of employers.

Policymakers, CSE analysts and administrators, and most commentators agree that imposing jail time on low-income noncustodial parents who cannot afford to meet their child support obligations can be counterproductive, since imposing jail time means the person is not working and earning money. Moreover, having a criminal record usually lowers a person's job prospects. Ex-offenders re-entering communities face a host of problems, a major one being barriers to employment because of their criminal records.[111] 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. Moreover, the inability of many people released from jails and prisons to meet their financial obligations can contribute to their being incarcerated again.[112]

According to a 2005 report:

> For most of these parents, their support orders will not be reduced while they are incarcerated and (unless they find some other means of continuing to pay during their incarceration), they will accumulate arrears and interest on these arrears. Moreover, in most states, if the custodial parent and child receive public assistance, the child support arrears are not owed to the child and custodial parents but to the state, and thus are of no direct benefit to the child, and cannot be forgiven by the custodial parent.
>
> The long-term consequences of these practices on individuals can be enormous. Whether they have been incarcerated for nonpayment of child support or on other grounds, the fact of having been incarcerated and having a criminal record, coupled with a large debt that can quickly reach an unpayable amount can make it virtually impossible for noncustodial parents to secure and maintain employment or to establish stability upon release. The lack of employment and continuing escalation of debt in turn greatly increase the likelihood that the noncustodial parents will be re-incarcerated for nonpayment of child support.[113]

Some commentators maintain that if required work and/or job training programs are used instead of the jail option, noncustodial parents and their children are better off. One CSE enforcement tool that can be used for noncustodial parents who have a child who receives Temporary Assistance for Needy Families (TANF) benefits allows judges to remand nonpaying noncustodial parents (of a child receiving TANF benefits) to a TANF work program, with the mandate to participate in the program, pay the child support owed, or be confined in jail.[114] This obligation can be monitored to ensure compliance by the noncustodial parent. If the parent is in fact working surreptitiously, it is likely that the work program will conflict with his or her other job, forcing the parent to admit to having earnings and thereby to pay child support. If the noncustodial parent really is jobless, the program can help him or her get a job. One example of a child support-driven employment project is the Texas Noncustodial Parent Choices Program.[115] Another example is the

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[111] Sharon M. Dietrich, "Every Door Closed—Barriers Facing Parents With Criminal Records," *Criminal Records and Employment: Ex-Offenders Thwarted in Attempts to Earn a Living for Their Families*, Center for Law and Social Policy and Community Legal Services, Inc., 2003.

[112] 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. See also Rebekah Diller, *The Hidden Costs of Florida's Criminal Justice Fees*, Brennan Center for Justice, 2010.

[113] Rebecca May and Marguerite Roulet, *A Look at Arrests of Low-Income Fathers for Child Support Nonpayment: Enforcement, Court and Program Practices*, Center for Family Policy and Practice, January 2005, p. 46, http://www.cpr-mn.org/Documents/noncompliance.pdf.

[114] 42 U.S.C. §666(a)(15).

[115] The Texas Noncustodial Parents (NCP) Choices Program provides enhanced child support case compliance

Fathering Court, which was first implemented in Missouri in 1998 and later launched in Alabama, Iowa, Louisiana, Texas, and Washington, DC. It is an alternative to the prosecution and incarceration of noncustodial fathers with significant child support arrearages.[116]

In addition, some noncustodial parents are participating in Transitional Jobs programs. Transitional Jobs programs provide time-limited wage-paying jobs that combine work, skill development, and supportive services to help participants, who have struggled to find or keep a job, quickly and successfully enter the labor force.[117]

Moreover, a number of state CSE programs have established employment programs in partnership with state and local workforce development boards and local courts for low-income noncustodial parents trying to meet their child support obligations.[118] According to data from the federal Office of Child Support Enforcement (OCSE), as of September 2011, at least 29 states and the District of Columbia were operating work-oriented programs for noncustodial parents with active CSE agency involvement. Most of the programs were not statewide.[119]

However, other observers pose the "what if" question. They wonder what would happen if mandatory work and training program were imposed on low-income noncustodial parents who are unable to pay their child support obligations and for whatever reason these parents are not contributing to their child's support after participating in such a program. Would not incarceration be an appropriate option for low-income noncustodial parents who flunked out of an imposed work/training program, dropped out of the program, or could not keep the provided job? They contend that incarceration as a penalty of last resort for nonpayment of child support is a logical and long-standing option given that noncustodial parents (like custodial parents) have a moral and

monitoring and employment services for noncustodial parents linked to a TANF/Medicaid case who are unemployed or underemployed and are not compliant with their child support obligations. Participation in the program is mandatory as ordered by CSE associate judges in the 14 sites currently funded by the Texas Workforce Commission and the Office of Attorney General (OAG). NCP Choices launched three new sites and expanded one existing site in spring 2010. According to the Texas CSE website, noncustodial parents ordered into NCP Choices have, on average, made no payments in the eight months prior to program entry and pay an average of $176 per month in the first year after program entry. Evaluation results show this as an overall 57% increase in child support payments for noncustodial parents participating in this program as compared to a control group of similar noncustodial parents in the OAG caseload, http://www.oag.state.tx.us/cs/ofi/index.shtml.

[116] "Noncustodial fathers who are in arrears with their child support have their criminal prosecution deferred while they participate in Fathering Court. This experience starts with a needs assessment and the development of an action plan by the father and a case manager to help the dad become a more responsible father. Community partners provide priority services to the dad [such as job training and employment] while he participates in fathering classes that use a tested curriculum. Classes equip him with knowledge and skills to become the father his child needs. When the father completes his action plan, the prosecution is dismissed." (Source: National Center for Fathering, *Fathering Court-Getting To The Heart Of Child Support*, Fathers.com, December 2009, p. 5.)

[117] The Employment and Training Administration (ETA) in the U.S. Department of Labor is currently sponsoring the Enhanced Transitional Jobs Demonstration (ETJD), which is designed to fund and rigorously test employment programs targeting noncustodial parents and individuals recently released from prison. The following seven grantees are participating in the demonstration: (1) Center for Community Alternatives, Syracuse, NY; (2) Goodwill of North Georgia, Atlanta, GA; (3) City and County of San Francisco, CA; (4) Tarrant County Workforce Development Board, Fort Worth, TX; (5) The Doe Fund Inc., New York, NY; (6) Workforce Inc., Indianapolis, IN; and (7) Young Women's Christian Association of Greater Milwaukee, WI. The following organizations are developing and implementing a random assignment framework for the demonstration and will evaluate the programs: MDRC, Abt Associates, and MEF Associates. (Source: MDRC, *The Enhanced Transitional Jobs Demonstration*, http://www.mdrc.org/project_25_106.html.)

[118] Department of Health and Human Services, Office of Child Support Enforcement, *Noncustodial Parents: Summaries of Research, Grants and Practices*, July 2009. See also Shane Spaulding, Jean Baldwin Grossman, and Dee Wallace, *Working Dads: Final Report on the Fathers at Work Initiative*, Public/Private Ventures, 2009.

[119] Office of Child Support Enforcement, Work-Oriented Programs for Noncustodial Parents with Active Child Support Agency Involvement, 2012, http://www.acf.hhs.gov/programs/cse/work_oriented.html.

financial obligation to support their children and not meeting that obligation is criminal and may have long-term negative consequences for their children. They note the fact that all 50 states and the District of Columbia have criminal sanctions for nonpayment of child support is not happenstance.

Appendix. State Laws

The failure to pay child support has been a crime in most states for many years. In the beginning, most of the laws were on the books but in practice rarely used. In the 1990s, nonpayment of child support was viewed as a serious crime. Many states even had a "most wanted" list for child support debtors. Moreover, a 1992 law also made nonpayment of child support a federal crime. By the late 1990s, most states had begun using jail as a last resort option after other CSE enforcement tools proved ineffective.

Table A-1 shows state statutes related to criminal sanctions for failure to pay child support. As seen in the table, the classifications of these statutes include such titles as nonsupport, abandonment of dependent child, desertion and nonsupport of children, flagrant nonsupport, and criminal nonsupport. The maximum penalty ranges from up to six months in jail in Rhode Island and the District of Columbia to a fine of up to $150,000 in Arizona and imprisonment between five and 20 years in Arkansas.

Table A-1 is an update of a table published in 1993 by the HHS Office of Child Support Enforcement in a now defunct publication titled the *Child Support Prosecutor's Bulletin*, which was published quarterly in coordination with the American Bar Association's Child Support Project. This update was compiled by Meredith Peterson and Carla Berry of the Knowledge Services Group of the Congressional Research Service (CRS).

Table A-1. State Criminal Sanctions for Failure to Pay Child Support

State	Citation	Classification	Maximum Penalty
Alabama	Code of Ala. §13A-13-4	Nonsupport	Class A misdemeanor; fine of up to $6,000, imprisonment for up to one year.
Alaska	Alaska Stat. §11.51.120	Nonsupport	Class C felony; fine of up to $50,000, imprisonment for up to five years.
Arizona	A.R.S. §25-511	Failure of parent to provide for child	Class 6 felony; fine of up to $150,000, imprisonment for up to two years.
Arkansas	A.C.A. §5-26-401	Nonsupport	Class B felony; fine of up to $15,000, imprisonment between five and 20 years.
California	Cal. Pen. Code §270	Failure to provide for child	Misdemeanor; fine of up to $2,000, imprisonment for up to one year, or both.
Colorado	C.R.S. 14-6-101	Nonsupport	Class 5 felony; fine of between $1,000 and $100,000, imprisonment for up to two years, or both.
Connecticut	Conn. Gen. Stat. §53-304	Nonsupport	Imprisonment for up to one year.
Delaware	11 Del. C. §1113	Aggravated criminal nonsupport	Class G felony; imprisonment for up to two years.
District of Columbia	D.C. Code §46-225.02	Criminal contempt remedy for failure to pay child support	Up to 180 days in jail.

State	Citation	Classification	Maximum Penalty
Florida	Fla. Stat. §827.06	Nonsupport	Third degree felony; fine of up to $5,000, imprisonment for up to five years, or both.
Georgia	O.C.G.A. §19-10-1	Abandonment of dependent child	Felony; imprisonment between one and three years.
Hawaii	HRS §709-903	Persistent nonsupport	Misdemeanor; imprisonment for up to one year.
Idaho	Idaho Code §18-401	Desertion and nonsupport of children	Felony; fine of up to $500, imprisonment for up to 14 years, or both.
Illinois	750 ILCS §16/15	Failure to support	Class 4 felony; fine of up to $25,000, imprisonment for one year, or both.
Indiana	Burns Ind. Code Ann. §35-46-1-5	Nonsupport of a child	Class C felony; imprisonment for two to eight years, may be fined up to $10,000.
Iowa	Iowa Code §726.5	Nonsupport	Class D felony; imprisonment for up to five years and fine between $750 and $7,500.
Kansas	K.S.A. §21-3605 (new codification: 21-5606(a)(1))	Nonsupport of a child	Level 10 nonperson felony; presumptive sentence is probation for five to seven years according to the Kansas nondrug sentencing grid.
Kentucky	KRS §530.050	Flagrant nonsupport	Class D felony; fine of between $1,000 and $10,000, imprisonment for one to five years.
Louisiana	La. R.S. 14:74	Criminal neglect of family	Imprisonment for up to six months, fine of $500, or both.
Maine	17-A M.R.S. §552	Nonsupport of dependents	Class E crime; imprisonment for up to six months, fine of up to $1,000.
Maryland	Md. Family Law Code Ann. §10-203	Nonsupport of and desertion of minor child	Misdemeanor; fine of up to $100, imprisonment for up to three years, or both.
Massachusetts	ALM GL ch. 273, §1	Nonsupport	Felony; carries a fine of up to $10,000, imprisonment in state prison for up to 10 years, or both.
Michigan	MCL §750.161	Neglect to provide shelter, food, care, and clothing	Felony; imprisonment for one to three years in a state correctional facility or county jail for three months to one year.
Minnesota	Minn. Stat. §609.375	Nonsupport	Felony; fine of up to $5,000, imprisonment for up to two years, or both.

State	Citation	Classification	Maximum Penalty
Mississippi	Miss. Code Ann. §97-5-3	Nonsupport	Felony; fine between $100 and $500, imprisonment for up to five years, or both.
Missouri	§568.040 R.S. Mo.	Criminal nonsupport	Class D felony; imprisonment for up to four years, fine of up to $5,000.
Montana	Mont. Code Anno. §45-5-621	Aggravated nonsupport	Imprisonment for up to 10 years, fine of up to $50,000, or both.
Nebraska	R.R.S. Neb. §28-706	Criminal nonsupport	Class IV felony; imprisonment up to five years, $10,000 fine, or both.
Nevada	Nev. Rev. Stat. Ann. §201.020	Nonsupport	Category C felony; imprisonment between one and five years, court may also impose fine of up to $10,000.
New Hampshire	RSA 639:4	Nonsupport	Class B felony; imprisonment for up to seven years, fine of up to $4,000, or both.
New Jersey	N.J. Stat. §2C:24-5	Willful nonsupport	Crime in the 4th degree; fine of up to $10,000, imprisonment for up to 18 months.
New Mexico	N.M. Stat. Ann. §30-6-2	Abandonment of dependent	Fourth degree felony; imprisonment for 18 months, court may also impose a fine of up to $5,000.
New York	NY CLS Penal §260.05	Nonsupport of a child in the second degree	Class A misdemeanor; imprisonment for up to one year, fine of up to $1,000.
North Carolina	N.C. Gen. Stat. § 14-322 and § 49-2	Abandonment and failure to support spouse and children	Class 2 misdemeanor; imprisonment for up to 30 days, fine of up to $1,000, or both.
North Dakota	N.D. Cent. Code, §14-07-15	Abandonment or nonsupport of child	Class C felony; fine of $5,000; imprisonment for up to five years, or both.
Ohio	ORC Ann. 2919.21	Nonsupport or contributing to nonsupport of dependents	Felony of the 5th degree; imprisonment between six and 12 months, fine of up to $2,500.
Oklahoma	21 Ok. St. §851	Desertion of children under age of 10 a felony;	Desertion is a felony punishable by imprisonment for one to 10 years.
		Omission to provide for a child	Omission to provide is a felony punishable by imprisonment for up to four years, a fine up to $5,000, or both.
Oregon	ORS §163.555	Criminal nonsupport	Class C felony; fine of up to $125,000, imprisonment for up to five years.

State	Citation	Classification	Maximum Penalty
Pennsylvania	23 Pa. C.S. §4354	Willful failure to pay support order	Misdemeanor of the 3rd degree; imprisonment for up to one year, fine of up to $2,500,
Rhode Island	R.I. Gen. Laws §11-2-1	Abandonment or nonsupport of spouse or children	Misdemeanor; imprisonment for up to six months.
South Carolina	S.C. Children's Code §63-5-20	Obligation to support	Misdemeanor; imprisonment for up to one year, fine of between $300 and $1,500, or both.
South Dakota	S.D. Codified Laws §25-7-16, 17	Failure to support child	Class 6 felony; fine of up to $4,000, imprisonment for up to two years, or both.
Tennessee	Tenn. Code Ann. §39-15-101	Flagrant nonsupport	Class E felony; imprisonment between one and six years, jury also may assess a fine of up to $3,000.
Texas	Tex. Penal Code §25.05	Criminal nonsupport	State jail felony; imprisonment between 180 days and two years and a fine of up to $10,000.
Utah	Utah Code Ann. §76-7-201	Criminal nonsupport	Felony of the 3rd degree; imprisonment for up to five years, fine of up to $5,000.
Vermont	15 V.S.A. §202	Penalty for desertion or nonsupport	Imprisonment for up to two years, fine of up to $300, or both.
Virginia	Va. Code Ann. §20-61	Desertion or nonsupport of wife, husband, or children	Misdemeanor; fine of up to $500, imprisonment for up to one year, or both.
Washington	Rev. Code Wash. (ARCW) §26.20.030 and §26.20.035	Family abandonment and nonsupport	Abandonment is a Class C felony; fine up to $10,000, imprisonment for up to five years, or both. Nonsupport is a gross misdemeanor; fine of up to $5,000, imprisonment for up to 364 days, or both.
West Virginia	W. Va. Code §61-5-29	Failure to meet an obligation to provide support to a minor	Felony; fine between $100 to $1,000, imprisonment between one and three years, or both.
Wisconsin	Wis. Stat. §948.22	Failure to support	Class I felony; fine of up to $10,000, imprisonment for up to three years and six months, or both.
Wyoming	Wyo. Stat. §20-3-101	Desertion of spouse or children	Misdemeanor; fine of up to $1,000, imprisonment between seven days and one year, or both.

Source: Table compiled by the Congressional Research Service, based on a table published in 1993 by the Office of Child Support Enforcement in conjunction with the American Bar Association.

Notes: Maximum penalties shown are for first-time offenders. In states that classify nonsupport as a more serious offense due to factors such as amount of arrearage, length of time arrearage is owed, or existence of a court order for support, the most serious offense and the maximum sentence are listed.

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