

# Go to Jail, Pay \$200: Child Support Obligations of Incarcerated Parents

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**ABSTRACT.** Non-collection of child support disproportionately affects poor women. To address this problem non-custodial incarcerated parents are a potential source of child support payments. It is calculated that 37,820 custodial parents are owed approximately \$122 million in child support by people in prison. A policy and legal analysis elucidates this issue. [Article copies available for a fee from *The Haworth Document Delivery Service*: 1-800-342-9678. E-mail address: [getinfo@haworthpressinc.com](mailto:getinfo@haworthpressinc.com) <Web-site: <http://www.haworthpressinc.com>>]

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Since 1975, when Title IV-D of the Social Security Act became law, there has been a growing acknowledgment that children deprived of parental support have an enforceable right to that support.

The [Clinton] Administration estimates that the potential amount of child support obligations that could be collected yearly is \$47 billion annually (if every custodial mother has a child support order(s), support payments averaged \$5400 per year, and the *full amounts were paid*). However, only \$20 billion in child support obligations have actually been legally established, and in FY 1993 only \$13 billion was paid. Thus, the gap between estimated potential child support payments and actual payments was \$34

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billion annually. The Administration attributes this gap to the lack of a legally established support order, the low amount of existing awards and the failure of States to collect child support in a majority of cases. (Solomon & Stevens, 1995, p. 3)

Non-collection of child support is a multifaceted social and economic problem that disproportionately affects poor women (Beller & Graham, 1991; Nichols-Casebolt & Garfinkel, 1991; McLanahan & Sandefur, 1994; Pirog-Good, 1993). In its most recent report, the United States Census Bureau (1995) identifies some baseline information for 1991 finding that 11.5 million parents have custody of children less than 21 years of age. Of these parents, 9.9 million (86%) are mothers, and 1.6 million (14%) are fathers (Bureau of the Census, 1995). Of women entitled to support orders, only 39% of mothers below the poverty line have support orders compared to 56% of women generally (Bureau of the Census, 1995). Lack of enforcement and poor collection of payments is also a serious problem (Beller & Graham, 1993; Danziger, Sandefur, & Weinberg, 1994; Garfinkel, Oellerich, & Robins, 1991; National Commission on Children, 1991). Fifty-two percent of women who had a child support award received full payment, 24% received partial payment, and the remaining 24% received no payment at all (Bureau of the Census, 1995).

An often overlooked potential source of child support payments is from non-custodial parents who are incarcerated. The prison population in the United States is staggering, an estimated 1.6 million people in 1995 (Gilliard & Beck, 1996). By waging war on crime, have we inadvertently begun to wage war on the children of incarcerated parents? By one estimate (Centerforce, 1996), there are 2.5 million children who have one or more parents incarcerated. Gabel and Johnston (1995) estimate 1.5 million. There are no firm statistics on the number of these children who are recipients of child support, but the impact on them is undeniable. "Over 75% of the families that visit inmates have an income well below the federal criteria for poverty. Even when the remaining spouse works, the income tends to be low and the family remains in poverty" (Centerforce, 1996, p. 2). Roberts (1996) reports that child support payments do, in fact, make a significant difference for children living with only their mothers:

Mother-only families without a support award had an average income of \$10,226 per year; those who received some child

support averaged \$15,611 per year; and those whose child support was paid in full average \$19,310 per year. (p. 874)

Unfortunately, the less income a mother has, the less likely she is to have a support order (Bureau of the Census, 1995).

The Child Support Recovery Act of 1992 (CSRA) made criminal the willful failure to pay a child support obligation when the child lives in another state, the obligation has not been paid for more than a year, and the amount owed is more than \$5000. Since interstate cases comprise a third of all cases of non-payment (H.R. Rep., 1992), the numbers of inmates theoretically affected is immense. Using currently available statistics, we calculate that approximately 37,820 people are owed approximately \$122 million in child support by people in prison.

In calculating these statistics, we make the following assumptions: the percentage of people who owe child support in prison is equal to the percentage of people in the general population of the U.S. population who owe child support (2.38%); the average dollar amount owed in child support by inmates equals the average amount owed in the general populace. These two assumptions may present bias in the calculations, but since they pull in opposite directions (i.e., the percentage of inmates who actually owe child support may be greater than in the general U.S. population, while the average dollar amount owed may actually be lower than the unincarcerated's average) we conclude that these figures are good indications of the magnitude of the issue. The formulas used are as follows:

1. The percentage of incarcerated persons in the United States is determined by the following formula:

$$\text{Therefore: } \frac{\# \text{ inmates}}{\# \text{ of people in the U.S.}} = \frac{1,600,000}{261,600,000} = 0.61 \%$$

2. The amount of child support in the United States is \$20 billion.

Therefore, the amount of child support owed by inmates is  
\$20 billion  $\times$  .61% = \$122 million.

3. The number of persons who are owed child support in the United States is

6,200,000.

Therefore, the number of people who are owed child support by inmates is

$$6,200,000 \times 0.61\% = 37,820.$$

This article examines the issue of what happens, and what should happen, to the payment of child support where a noncustodial parent is imprisoned for a crime other than nonsupport. We explore legal precedents examining what courts around the United States have done to address the issue, and conclude with some policy suggestions and potential strategies on how best to proceed in addressing this issue.

### **COURT DECISIONS**

Courts, when analyzing what should be done in determining if, when, and how much a noncustodial parent imprisoned for crimes other than nonsupport is responsible for, divide their analyzes into three categories. The first, and the one most focused on, is the ability of the incarcerated parent to pay. Most states' divorce laws and statutes allow for changes in support arrangements to be made when the paying parent experiences a change of circumstances. How significant the change is, the definition, duration, and circumstance of that change are addressed (and disagreed upon) by the courts.

Another consideration in determining the ability of the incarcerated parent to pay is the existence or lack of assets. Courts have considered prior assets accrued from income, current assets from equity in property and pension, income from prison work, and some also considered future income potential. Two other considerations involve issues of the accrual of default payments, and contemplation of public policy issues.

There is no federal case law that addresses the issue of child support when the payor is incarcerated for offenses other than contempt for non-payment of support orders. Divorce laws and prisons are both under the purview of the states. While the state law cases often refer to each other either for support or in distinguishing the court's reasoning, one thing is clear: this is not a settled area of law.

The first of the considerations as to whether an order of child support payment should be modified is ascertaining whether the incarcerated parent's ability to pay has been altered by a change in circumstances. In 1981, an Oregon court held simply that "imprisonment and resulting indigence constitute a significant change of circumstances

such as to permit a court to modify a support obligation (Edmonds v. Edmonds, 1991). Relying on the Oregon court's holding, Alaska also held that imprisonment and resulting indigence result in change of circumstances such as to permit a court to modify a support obligation (Clemans v. Clemans, 1984). However, the state courts which have held that incarceration constitutes a change in circumstance also have recognized that if an obligor has assets available to meet a support obligation, a different conclusion might be reached (Cole v. Cole, 1990). Additionally, it is fairly settled that being incarcerated should not shift the burden of proof from the movant, but that the burden is on the party seeking to modify a support order to prove a material change of circumstances (see Nab v. Nab, 1988).

However, an application for a modification order based on a "material change in circumstances" was rejected by the Supreme Court of Nebraska. The court held that a modification order requires consideration of a variety of factors including the obligated parent's financial means, the needs of the child, and the good or bad faith motive of the obligated parent in sustaining a reduction of means, and the permanence of the change (Ohler v. Ohler, 1985). Ohler's application alleges a material change in circumstances in that Ohler was sentenced to fifteen years in prison and is "now totally devoid of any funds, savings, stocks, bonds or any other liquidable[sic] of valuable assets either real or personal; that he is unemployed, has no wages or other earnings currently available to him and has no income from any source currently available to him" (p. 616). The court rejected Ohler's petition, finding that Ohler had no cause of action. While the court conceded that there is no question but that incarceration constitutes an alteration and passage from one condition to another, they stated the issue as "whether the altered condition is such as to warrant a suspension, that is to say a temporary termination, of one's child support obligation" (p. 617). The court held it did not because "although unemployment due to diminution of earnings is a common ground for modification, a petition for modification will be denied if the change in financial condition is due to fault or voluntary wastage or dissipation of one's talents and assets" (p. 617).

Likewise, the state court in Ohio has held that the modification of a child support order involves a two-step process. First, the trial court must decide whether there has been a change of circumstances, and then, considering all the relevant factors, it can determine with "con-

siderable discretion" whether a child support order should be modified (see *Cole v. Cole*, 1990).

This concept of fault or voluntariness of the incarceration is another topic that is not settled. While it is clear that the court in *Ohler* found it clear that the condition the petitioner found himself in was due to his own doing, not all courts agree. The rule of law in Idaho is that "[t]he incarceration of the contemnor is not a voluntary or bad faith change in circumstance in the sense that the contemnor's act is self-disabling. We hold that a change of economic circumstances due to incarceration may form a valid basis for inability to comply with a contempt order" (*Nab v. Nab*, 1988, p. 1238). Likewise, in a case where the father was convicted of first degree manslaughter in New York and was sentenced to five-fifteen years, the New York Supreme Court Appellate division found that the defendant's default in child support payments due to incarceration was not willful, and therefore his support obligation could be retroactively reduced. The court ruled that the obligation to pay child support was suspended until the date he is released from prison (*Foster v. Foster*, 1984). To the contrary, a later case in New York held that

it is undisputed that petitioner's current financial hardship is solely the result of his wrongful conduct culminating in a felony conviction and imprisonment. Thus, it cannot be said that Family Court abused its discretion in determining that these "changed financial circumstances" warranted neither a reduction of petitioner's child support obligation nor a suspension in the accrual of the support payments during the period of petitioner's incarceration. (*Matter of Knights*, 1988)

The voluntariness aspect of incarceration is clearly not settled, and seems to revolve around subjective views and semantics. Some courts reason that where incarceration was not due to some act that was intended to relieve the defendant from child support obligations, the incarceration can not be deemed voluntary. Part of that view stems from the presumption that no one normally volunteers to be incarcerated, but that most people vehemently oppose the idea, and fight hard in their own defense to avoid such a sentence. However, another view is that people should be responsible for their own actions, and that those who are incarcerated are imprisoned as a result of illegal actions they voluntarily performed. In 1983, the Supreme Court of Iowa heard

its first appeal presenting the claim that a support order should be modified because of the incarceration of the parent ordered to pay. In that case the petitioner was arrested on the criminal charge of terrorism because it was alleged he fired a firearm through the window of his ex-wife's home while she and their children were at home. The husband wanted his child payment responsibilities modified because of his alleged change in circumstances. The court noted that a trend has been that any voluntariness in diminished earning capacity has become increasingly an impediment to modification (*Vetternack v. Vetternack*, 1983). One might ask how this plaintiff can assert that his incarceration was forced upon him, and was hence involuntary, since he voluntarily took the action that would almost certainly lead to incarceration. State courts which have held that incarceration is not a change of circumstances requiring suspension or termination of a support order have emphasized the willful nature of the conduct that led to incarceration.

Courts debate whether the loss of income due to being incarcerated is more like a person's inability to work because of a disability, or whether it is more akin to a person's quitting a job. While the Superior Court of Pennsylvania rejected the lower court's conclusion analogizing incarceration to a voluntary decrease in income and found it involuntary (*Leasure v. Leasure*, 1988), other courts have concluded that lack of work income due to incarceration does not eliminate the duty to provide for children pursuant to support orders. For example, in Utah, where a father was convicted of raping a child and sentenced to a minimum of five years in prison, the court held that "an able bodied person who stops working, as an exercise of personal preference or as a result of punishment for an intentional criminal act, nonetheless retains the ability to earn and the duty to support his or her children" (*Proctor v. Proctor*, 1989, p. 1391). In Ohio, the court held that "the accrual of a child support obligation while incarcerated as a result of a voluntary act is no more discriminatory than imposing that same obligation on one who is voluntarily unemployed" (*Cole v. Cole*, 1990, p. 194). Likewise, the Court of Appeals of Oregon saw "no reason to offer criminals a reprieve from their child support obligations when we would not do the same for an obligor who voluntarily walks away from his job. Unlike the obligor who is unemployed or faced with a reduction in pay through no fault of his own, the incarcerated person

has control over his actions and should be held to the consequences” (Willis v. Willis, 1991, p. 860).

Another aspect of “ability to pay” involves a further requirement imposed in some states that in order to claim a “change in circumstances,” one must show that the change is “permanent.” Again, there is no consensus as to what constitutes “permanence” so as to warrant a modification order. In 1980, an Idaho case set a general standard that “a modification of child support payments can be made only where there is shown to be material, permanent, and substantial change in conditions and circumstances” (Fuller v. Fuller, 1980, p. 1317).

In Iowa, *Vetternack*, which involved an ex-husband arrested on the criminal charge of terrorism involving firing a gun through the window of his ex-wife’s home while she and the children were there, the court expounded the principles that:

- (1) there must be a substantial and material change in the circumstances occurring after the entry of the decree; (2) not every change in circumstances is sufficient; (3) it must appear that continued enforcement of the original decree would, as a result of the changed conditions, result in positive wrong or injustice; (4) the change in circumstances must be permanent or *continuous* rather than temporary (emphasis in original); (5) the change in financial conditions must be substantial; and (6) the change in circumstances must not have been within the contemplation of the trial court when the original decree was entered. (p. 762)

In Pennsylvania the court held that where an appellant was sentenced to serve 1-2 years in prison, and would only serve nine months with pre-release, the court chose to compare this concept of permanence to the situation in which a parent loses a job, thus allowing for a modification order. Thus, there seems to be a loose consensus that incarceration is akin to a permanent change. However, one could argue that imprisonment with possibility of parole is actually no more permanent than an employee at will, who could be laid off, fired, could quit, or be injured at any time. This is perhaps a reason why incarceration is not in itself a bar to an order of modification.

Another area where the law has seen some shifts is in the application of the “clean hands doctrine” as applied to application for equitable relief from child support requirements. The clean hands doctrine is premised on the reasoning that one seeking equitable relief cannot take

advantage of one's own wrongdoing's. In 1981 in Oregon, the court rejected the application of the clean hands doctrine, holding that an incarcerated and obligated parent with no income should not be required to pay child support until he is capable of gainful employment (*Edmonds v. Edmonds*, 1981). The court wrote that "[g]ranted that the father's own misconduct has resulted in his imprisonment, this is not a proper case for the application of that equitable doctrine in the absence of some showing that he became imprisoned in order to avoid his support obligation" (where the father was incarcerated at time of his divorce, and was serving ten years for convictions of Theft I and Burglary I) (p. 5).

The holding of *Edmonds* was rejected by the Nebraska court which held that

where one seeks relief from the obligation to pay child support on the basis that he or she is incarcerated, the violation of the statute which resulted in the incarceration is directly connected with the matter of child support. Under those circumstances equity should not and will not act to give relief. (*Ohler v. Ohler*, 1985, p. 618)

Decisions prior to *Edmonds* in Oregon used the clean hands doctrine to bar a parent's claim. *Edmonds*, which changed this for a decade, was overruled in 1991 where the court remarked that "the law is well-settled that, if an obligor, acting in bad faith, voluntarily worsens his financial position so that he cannot meet his obligations, he cannot obtain a modification of support" (p. 859). The court reasoned that the incarcerated parent should not be able to escape his financial obligation to his children simply because his misdeeds have placed him behind bars. Now, current law in Oregon, similar to that of Nebraska, is that criminal conduct of any nature cannot excuse the obligation to pay child support.

Whether or not an incarcerated parent is liable for child support also depends on different jurisdictions' determination of whether assets other than income can be used for the support. Income, for purposes of child support, may include such items as social security benefits, veterans' benefits, stipends and scholarships, worker' compensation, disability benefits, unemployment compensation, and annuity distributions. In a recent case in Virginia, the court did not decide whether an incarcerated parent is "voluntarily unemployed" due to incar-

ceration, because the known resources of the payor parent provided an alternate means of computing an award. The Virginia court used guidelines found in the Virginia code that defined as a rebuttable presumption that child support is calculated as a percentage of the parents' combined gross monthly income. The court also relied on the Code @ 20-108.1(B), which listed factors to be considered as the "earning capacity, obligations and need and financial resources of each parent" and "imputed income to a party who is voluntarily unemployed or under employed." The court held that the financial resources of a parent, whether incarcerated or not, include the value of any assets and any potential income from those assets, and held that the trial court abused its discretion in failing to deviate from the presumptive amount of support from income, and not considering the husband's financial resources and the potential income from other resources.

Another case in Virginia also agreed that when making an award based on income, the trial court is authorized to consider earning capacity as well as actual income, but further held that the award must be based upon circumstances as they exist at the time of the award. In that case, in anticipation of a jail sentence (imposed because the father coerced sexual acts against the parties' daughters) the husband retired from his position with the Central Intelligence Agency. The court held that circumstances that led to the dissolution of the marriage had no effect upon marital property, its value, or otherwise and therefore need not be considered. It held that since the husband did not retire to avoid any obligation of support, and although the husband's misconduct contributed to the reduction in income by forcing his retirement, by retiring he at least guaranteed his pension. The court also held that basing imputed income on uncertain future circumstance is not permitted (*Donnell v. Donnell*, 1995, p. 427).

This holding was followed by another case where, although known resources were used in computing a child support award, the court held that since the husband was barred from the practice of law due to the loss of his license, his former employment is a legal impossibility and any imputation of income based on that would be speculative and impermissible. Generally, courts that permit imputed income include such items as fringe benefits of employment, non-income producing assets, and goods or services received from family or friends.

Before *Edmonds* was overruled in 1991 by *Willis*, that Oregon case

formulated a rule that the court should suspend the incarcerated father's support obligation until sixty days following his release, if there was an absence of any other income or assets from which to make payments. The case was actually relied on by both sides of the issue—those who were arguing that support obligations should be suspended until after incarceration ended, and also by those who argued that if there are any assets from which payments can be made, then they should be used. Other cases in other jurisdictions also relied on views expressed in *Edmonds*. For example, it was held in Michigan that where a noncustodial parent is imprisoned for a crime other than nonsupport, that parent is not liable for child support while incarcerated, unless it is affirmatively shown that parent has income or assets to make payments.

Adding a restriction on the use of outside assets, the court in New York found that if the custodial parent does not intend to sell the marital premises, then calculating equity in a home makes no sense, since the child requires current use of the premises (*Pierce v. Pierce*, 1987). The court instead followed the *Edmonds* rule, that the parent is not liable for child support payments while incarcerated unless it is affirmatively shown that he or she has income or assets to make such payments. This language states a presumption that there are to be no child support payments unless it is proved that the incarcerated parent has actual assets from which it can be paid.

Some states are less timid about considering equity. For instance, the Iowa Supreme Court held in its first appeal presenting the claim that a support order should be modified because of the incarceration of the parent ordered to pay, that courts should take into consideration each parent's earning capacity, economic circumstances and cost of living, and that the petitioner's equity in the house should be charged for the support payments he is unable to meet during the period of his incarceration (*Vetternack v. Vetternack*, 1983). As noted above, the *Edmonds* case was overruled by *Willis*. The court in *Willis* ruled in the mother's favor, when she argued that "in holding that a parent may avoid a child support obligation by going to prison, the rule in *Edmond's* is in conflict with other well-established principles of domestic relations law and should not be abandoned" (p. 859).

The Utah Code Ann. § 30-3-5 (1987) gives the trial court broad equitable power to order the payment of child support. The trial court was therefore not required to exercise its equitable powers to protect

the incarcerated's assets from his children, since his inability to provide for his children from an income was a direct consequence of his own misconduct (Proctor v. Proctor, 1989). The Court of Appeals also found no Utah authority equating the "ability to earn" with only actual income or earnings, but rather found that the trial court appropriately took into account the home equity awarded to the incarcerated father and his lack of living expenses during incarceration as relevant factors in determining the amount of prospective child support.

Another issue of interest is whether an inmate's incentive pay should be subject to child support obligations. One case is directly on point, and despite an aggressive dissent, the court answered in the affirmative. The case involved an incarcerated father who was sentenced to life imprisonment for attempted first degree murder (he shot his ex-wife in front her child). He petitioned for a modification of his child support order on the basis that his life sentence constituted a change in circumstance. The court did enter a reduction, but ordered the payments of child support out of the state penitentiary's incentive pay program, and it is from that order that the incarcerated father appealed. The father argued that his monthly personal expenses for items not provided by the State Penitentiary met or exceeded his monthly income, so he had nothing left with which to pay child support (Glenn v. Glenn, 1993). Wyoming Statute 7-16-203 (1992), cited by the court, allows a person in confinement to receive compensation which is to be used for personal necessities, victim compensation, support of dependents, reimbursement for the services of public defender or court appointed lawyer.

The appellant contended that the order in which the items are listed establishes their priority, and therefore that child support obligations are a lower priority than personal necessities, so he should pay nothing. He tried to rely on *Clemans*, which held that if an incarcerated parent has no ability to pay, he is not liable for child support. However, the court distinguished that case, since he did have the ability to pay something since he was receiving incentive pay. The court acknowledged that many courts follow the *Clemans* approach, that the incarcerated parent does not have to pay child support during his incarceration if he does not have an income, but followed the rule announced in *Pierce v. Pierce* (1987), that if the incarcerated parent does have assets or income while in prison, that income can properly be applied against the outstanding support obligation. The *Glenn* court ruled that when

an incarcerated parent has income, that income can fairly be applied to the child support obligation.

### **PUBLIC POLICY ISSUES**

There is no consensus among the states as to whether or not there should be accrual of the incarcerated parent's child support obligations that are not paid. In 1985, the Nebraska court ruled that there is no reason why those who have had to step in and assume the applicant's obligations should not be reimbursed by the applicant should his future position enable him to do so. Yet in Michigan in 1987, the court came to the conclusion that a noncustodial parent's support arrearage which accrued while the parent was imprisoned should be discharged unless there is some showing that the parent became incarcerated in order to avoid his support obligation. More recently, reasoning along the lines of *Ohler*, the Court of Appeals of Oregon held that a "[f]ather should not be able to escape his financial obligation to his children simply because his misdeeds have placed him behind bars. The meter should continue to run. Accordingly, we hold that father's support obligation continues to accrue during his incarceration" (*Willis v. Willis*, 1991, p. 860).

Equally undetermined is the states' conclusions on issues of public policy. There are, of course, several different, and at times competing, rights with which to be concerned. One public policy aspect that seems to have some consensus is the idea that one should not reap a benefit from committing a crime. Under this theory, it is the law in Utah that "in light of the latitude given the trial court to provide for the children's needs in an equitable manner, we find no abuse of discretion and no impermissible extra penalty on appellant in the court's order" [that child support payments can be charged against appellant's equity interest in the marital home] (*Proctor v. Proctor*, 1989, p. 1391). Likewise a standard was stated in Oregon in overruling *Edmonds*, that "[u]nder *Edmonds*, a man who had committed a crime against his children and was sent off to prison would be relieved of his support obligation. Such inequitable results must be avoided" (p. 860). The strongest voice against allowing accrual of child support is found in Judge Krivosha's dissent in *Ohler*, where he reasoned that even though the parent against whom the judgment runs has been convicted of violating a law and has brought the problem into being by reason of

his own act, the accrual is an imposition of an additional penalty and is not appropriate since the State addressed the violation and the individual is now paying the penalty. Judge Krivosha's dissent also points out that the pressures of paying a child support judgment, in many cases long after the child has grown, does little if anything to assist in rehabilitating the prisoner (p. 619).

Courts in other jurisdictions have cited the dissent in *Ohler*. For instance, the court deciding *Nab* in Idaho held that barring an incarcerated and indigent parent from seeking a modification due to past contempt provides no present benefit to the child. "Imposing upon the incarcerated parent a continuing support obligation, beyond his ability to pay, does not help the child. It simply adds to an accumulating burden which falls upon the parent at a time when he is least able to bear it—immediately upon release from prison" (p. 1238). Yet, the Supreme Court of Iowa pointed out that "the crucial thing is that, during petitioner's incarceration, it will continue to be necessary to care, feed, and provide for his children. He remains responsible for those expenses" (*Vetternack v. Vetternack*, 1983, p. 763). Additionally, the majority opinion in *Ohler*, which remains good law, responds that they "do not see how the best interests of the children from whom the support was ordered would be served by temporarily terminating the applicant's child support obligation" (p. 618).

### CONCLUSIONS

Recent studies of children and their incarcerated parents suggest that when the judicial and social service systems take into consideration the family as a whole, rather than focusing on the offender in isolation from his children, a positive effect may result (Johnston, 1994; Beckerman, 1994). Since the law and public policy of the states is not cohesive and settled, it is vital that courts and legislatures carefully reflect on the policy behind their proclamations. One way of addressing the overall problem is to analyze who is inconvenienced by the requirement, or lack thereof, of non-custodial incarcerated parents in continuing to pay child support (or having it accrue while they are incarcerated and unable to pay). It is axiomatic that a person should be held responsible for his or her actions. Incarcerated parents first took the responsibility of becoming parents, and then, by their own actions acted in such a way that resulted in their incarceration. By virtue of

their illegal actions, they should not be relieved of all responsibilities to their children. When people are incarcerated, they are not relieved of their other financial responsibilities, such as making car payments. A child should be afforded at least the same legal status. A reasonable response to the question of whether a non-custodial incarcerated parent has a continuing obligation to pay child support is to fashion the law so that if an incarcerated person has the ability to pay, either from savings, salary or pension, or other assets, they should. Incarcerated parents are no longer financially responsible for their own food, clothing and shelter, and therefore may have assets that no longer need to be reserved to provide for their own basic needs. These assets should be used to meet the needs of their children, for whom their responsibility does not end. Indeed, a child support obligation may not be discharged even in bankruptcy.

What the courts, legislatures, and IV-D agencies should be compelled to recognize is that the needs of children are not in any way lessened when an obligor is imprisoned. Children still require money to cover their basic needs such as food, clothing, shelter, childcare, and education. Many millions of dollars owed by incarcerated parents are still required to support these children. It is common sense and sound policy to require an incarcerated parent to meet any child support obligations to whatever extent possible.

When the imprisoned obligor is unable to pay while in prison, the state and welfare system often comes to the aid of the obligor's children. However, the state should not be viewed as providing relief to the incarcerated parent; rather, it is supporting the child temporarily while the obligor is unable to do so. Additionally, assuming the incarcerated parent completes the sentence or is released, the obligor should be required to reimburse the state as he or she is able.

A prison sentence is often termed payment for a debt to society. If the parent is unable to pay child support during incarceration, this literal debt can be repaid upon release. This is not an additional punishment or fine, but is simply repaying the state back what he or she was obligated to pay, in the first place. Likewise, public policy requires that other family members or private individuals who paid what was owed by the obligor in child support due to the incarceration of the obligor, should be reimbursed for their expenditures. Similar to the state, private individuals should not be forced to assume the responsibility and obligations of the incarcerated parent.

This policy should not be terribly difficult or expensive to implement. Mechanisms already exist to track child support obligations, and by October 1, 1997, every state has been mandated to have an approved automated tracking and monitoring system for child support obligations (P.L. 100-485). By requiring that prisoners be held responsible for child support orders, millions of dollars from state welfare programs will be saved, and attention will properly be re-focused on the best interests of our children.

The rush to hold accountable a child support obligor should be tempered by practical considerations. There are incarcerated parents who need assistance from social services agencies to help them hold their families together while they are in prison. Viewing the parent solely as a child support obligor in the financial sense overlooks the need to mobilize services which are family focused. After all, most incarcerated parents will return to be non-incarcerated parents at some point. We have limited information regarding many important collateral issues. What are the comprehensive socio-economic characteristics of the incarcerated parents and the children? How can we focus better on the family and community of the offender in order to enhance our advocacy efforts? Where and how can money be obtained to fund research and appropriate supportive efforts to these families? To what extent do we need "to distinguish among types of noncompliers, both in describing the problem and in proposing solutions" (Bartfield & Meyer, 1994, p. 233)? Until these questions are addressed, it is likely that the numbers of children of incarcerated parents who are not receiving adequate child support payments from incarcerated parents will only grow.

## REFERENCES

- Bartfield, J., & Meyer, D. (1994). Are there really deadbeat dads? The relationship between ability to pay, enforcement, and compliance in nonmarital child support cases. *Social Service Review, 68*(2), 219-235.
- Beckerman, A. (1994). Mothers in prison: Meeting the prerequisite conditions for permanency planning. *Social Work, 39*(1): 9-14.
- Beller, A. H., & Graham, J. W. (1993). *Small change: The economics of child support*. New Haven, CT: Yale University Press.
- Beller, A., & Graham, J. T. (1991). The effect of child support enforcement on child support payments. *Population Research and Policy, 10*, 91-116.
- Bureau of the Census. (1995). *Child support for custodial mothers and fathers 1991*. Current Population Reports, Series P-60, No. 187. Washington, DC: Author.

- Center for Children of Incarcerated Parents. (1991). *Data sheets on children of incarcerated parents*. Pasadena, CA: Author.
- Centerforce. (1996). *The Centerforce agenda*. San Quentin, CA: Author.
- Clemans v. Clemans*, 679 P.2d 1041 (Alaska 1984).
- Cole v. Cole*, 70 Ohio App.3d 188, 590 N.E.2d 862 (Ohio 1990).
- Danziger, S. H., Sandefur, G. D., & Weinberg, D. H. (Eds.). (1994). *Poverty and public policy: What do we know? What should we do?* Cambridge, MA: Harvard University Press.
- Edmonds v. Edmonds*, 633 P.2d 4 (Or. 1981), *rev'd Willis v. Willis*, 820 P.2d 858 (Or. 1991).
- Foster v. Foster*, 99 A.D.2d 284, 471 N.Y.S.2d 867 (1984).
- Fuller v. Fuller*, 607 P.2d 1314 (Idaho 1980).
- Gable, K., & Johnston, D. (1995). *Children of incarcerated parents*. New York: Lexington Books.
- Garfinkel, I., Oellerich, D., & Robins, P. (1991). Child support guidelines: Will they make a difference? *Journal of Family Issues*, 12, 404-429.
- Gilliard, D., & Beck, A. (1996). *Prison and jail inmates 1995*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics.
- Glenn v. Glenn*, 848 P.2d 819 (Wyo. 1993).
- H.R. Rep. No. 771, 102d Cong., 2d Sess. (1992).
- Johnston, D. (1994). *Child custody issues of offenders: A preliminary report of the CHICAS project*. Pasadena, CA: Center for Children of Incarcerated Parents.
- Leasure v. Leasure*, 549 A.2d 225 (Pa. 1988).
- Matter of Knights*, 71 N.Y.2d 865, 522 N.E.2d 1045, 527 N.Y.S.2d 748 (N.Y. 1988).
- McLanahan, S.S., & Sandefur, G. (1994). *Growing up with a single parent: What hurts, what helps*. Cambridge, MA: Harvard University Press.
- Nab v. Nab*, 757 P.2d 1231 (Idaho 1988).
- National Commission on Children. (1991). *Beyond rhetoric: A new national agenda for children and families*. Washington, DC: Author.
- Nichols-Casebolt, A., & Garfinkel, I. (1991). Trends in paternity adjudications and child support awards. *Social Science Quarterly*, 27(1), 89.
- Pierce v. Pierce*, 412 N.W.2d 291 (Mich. 1987).
- Pirog-Good, M. (1993). Child support guidelines and the economic well-being of children in the United States. *Family Relations*, 42, 453-462.
- Proctor v. Proctor*, 773 P.2d 1389 (Utah 1989).
- Roberts, P. (January, 1996). New child support data from the Census Bureau. *Clearinghouse Review*, 873-878.
- Solomon, C., & Stevens, G. (January 9, 1995). *Changes enacted or proposed in the 103rd Congress*. Report # 95-142EPW. Washington, DC: Congressional Research Service.
- Vetternack v. Vetternack*, 334 N.W.2d 761 (Iowa 1983).
- Virginia Code @ 20-108.2, cited in *L.C.S. v. S.A.S.*, 453 S.E.2d 580 (Va. 1995).
- Willis v. Willis*, 820 P.2d 858 (Or. 1991).