



The Our American States podcast—produced by the National Conference of State Legislatures—is where you hear compelling conversations that tell the story of America’s state legislatures, the people in them, and the policies, process and politics that shape them.

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A New Approach to Child Support Nov. 14, 2021 | OAS Episode 146

Ed: Hello and welcome to “Our American States,” a podcast from the National Conference of State Legislatures. This podcast is all about legislatures: the people in them, the policies, process and politics that shape them. I’m your host, Ed Smith.

“What drove my passion personally for wanting to get involved was just looking at how the people we serve and how they are receiving services...”

“Procedural justice is the idea that fairness and transparency of processes used in decision making or dispute resolution are critical for parties involved in that dispute to accept and comply with the outcomes.”

Ed: That was Heather Noble, the Assistant Director of the Arizona Division of Child Support Services, and Michael Hayes, an official with the Federal Office of Child Support Enforcement. They’re my guests on the podcast.

State agencies charged with ensuring that custodial parents collect their full child support face a daunting challenge. Census Bureau data indicates that fewer than half of custodial parents receive their full support payments.

Traditionally, states have relied on civil contempt statutes to compel the noncustodial parent to pay up, but that process, which can result in onerous civil procedures and even jail time, often is unsuccessful. Some research shows states can end up paying more to collect the payments than the custodial parent receives.

Noble and Hayes talked about how a new procedural justice approach to child support seems to use principles such as respect, understanding and neutrality to increase the sense of fairness that parents often feel in what is often a difficult process. While the project is not finished, they discussed what the data show so far and the difference it appears to be making. They also explained the research that’s the foundation of the approach and the role legislatures can have in their states. Here’s our discussion.

Heather and Michael, welcome to the podcast.

Heather: Hi. Thank you for having us.

Michael: Hi, Ed, thank you. Glad to be here.

Time Marker (TM): 02:13

Ed: Thanks to both of you for coming on to the podcast to discuss the notion of procedural justice in relation to child support. This is not a concept with which most legislators or legislative staff are familiar.

So, let's start there. I wonder if you could describe the concept of procedural justice. Michael, why don't you start?

Michael: Sure. Procedural justice is the idea that fairness and transparency of processes used in decision making or dispute resolution are critical for parties involved in that dispute to accept and comply with the outcome.

So, in the legal or court context, we know people want to win, but it turns out that it's even more important for people that the process is respectful, transparent, they get to tell their side of the story, and they understand how the final decision was reached. So, even if they don't win, if all those other things are in place, that's what really matters as far as people accepting the outcome.

TM: 03:12

Ed: Well, that notion of fairness certainly sounds like a good idea to me, someone who is not particularly well versed in this. Heather, how would you frame the idea for someone unfamiliar with it?

Heather: To me, and within the State of Arizona, I would describe procedural justice as an innovative approach that looks at holistically addressing the full case that those parties are a part of. And it looks at not only the people involved in a particular child support case, but the overall factors within that case.

What we've found is it's more of a mindset and a methodology for how we, as the government entity, are interacting with those that we're serving. The concepts and principles, which you're going to hear us talk about later, make that interaction with those that we are serving and for us to provide the services that we have to offer, it creates this open dialogue with those that we're serving.

So, it truly is a support, which is one of the reasons why I think government programs were created, is really to support those that we're serving.

TM: 04:18

Ed: Heather, let me stay with you for a minute. Why are we starting to see this approach now? What kind of problem are you trying to solve?

Heather: Well, I would say, Ed, that this approach is not completely new and it's not new to Arizona. Years ago, many states across the nation looked at access to justice. It's very similar in nature and, again, within Arizona, there was a commission that was launched in alignment with our chief justice at the time, his strategic agenda.

The goals within that program are very similar to what we're seeing and how we're implementing procedural justice, which is promoting access for those that are participating in the system. So, in Arizona, it was more on the judicial side for access to justice for civil litigants. But a few years prior to this, the Arizona program was working collaboratively with the courts and our Arizona attorney general's office to bring more awareness to the families that we're serving around court rules and practices within the family court system, and there was a series of information campaigns launched.

Around the same time, the Federal Office of Child Support Enforcement was also initiating discussions with states around proposed rule making for our noncustodial parents' ability to pay and contempt.

So, Arizona is a judicial state, which isn't an uncommon practice. But in these processes, the child support program would typically remand NCPs for failure to pay. It was very heavy on compliance and compelling compliance for the parties that we're providing support to. And so, within Arizona, we had several different initiatives that really addressed these parties in a case at court to understand their willingness in paying their support.

So, what drove my passion personally for wanting to get involved was just looking at how the people we serve and how they are receiving services, so what their experience was. We had many times where we were attending hearings just observing what was taking place, and overall, within the access to justice in this initiative, there were many positive outcomes.

But we saw specifically what it did for the families that we serve in Arizona and the family dynamic was changing. It was changing in how they partnered with each other as parents in a case, but it also was positive collectively across our case load.

TM: 07:00

Ed: Michael, can you talk about some of the research behind this approach, what the evidence is behind it?

Michael: Sure. Thanks for asking, Ed. When the Federal Office of Child Support Enforcement was putting together the funding announcement for our demonstration project, which is called Procedural Justice Informed Alternatives to Contempt, we looked at the research out there because one of the things that federal government has been emphasizing the last ten years for certain is evidence-based decision making and evidence-based programs.

A lot of research has been done. One of the leading names is Tom Tyler. He's a professor of law and psychology at Yale. Others have done a lot of work, but he was who... we looked at a number of his research articles in putting that funding announcement together. There was

a quote from an article in the Court Review, which is the journal of the American Judges Association that really stood out, and that was that research suggests procedural justice is effective in creating positive dynamics within families and in facilitating long-term adherence to agreements.

A lot of the research looks at factors affecting whether people will accept the decision from an authority. That can be the courts, it can be government, it can be law enforcement – there's been a lot of work in law enforcement on this as well. There are three factors that impact other people to accept the decisions.

One is outcome favorability. People like the feeling of winning. That's kind of what we typically think of, the oh well, people will follow rulings if they win. But somebody loses, so what about them?

Another factor is what's called outcome fairness and in that thinking people basically feel like they deserved the outcome. And then the third is procedural justice or procedural fairness. And that kind of factor is where people feel like the process was fair regardless of the outcome. It's not the outcome that matters; it's the process that matters. And it turns out that procedural justice was about three to four times as powerful a predictor of whether people will accept the decision or not, regardless of whether they won.

TM: 09:10

Ed: So, Michael mentioned this demonstration project is in five states. One of them is Arizona. Heather, I wonder what your observations are so far and how well this has worked in your state.

Heather: As Michael just described, the procedural justice principles as they're applied in child support are predominantly done within what we call case management. They're not overly complex. The desirable thing about procedural justice in the program is the simplicity of how easy it can be to integrate these principles and practices into the program.

Many states as you know are looking at equity, diversity and inclusion, and there is some overlap with these principles as well. So, for states that haven't been involved in this demonstration grant, there is already likely work that has begun that's very closely aligned to what we're doing with the procedural justice principles.

Within Arizona, how we've approached the work is predominantly in three areas. I mentioned case management. What we're doing is there are two parties to a case: the parent that is paying support and the parent that is receiving support, all in the best interest of that child. But what we're doing is assessing the case a lot differently. We refer to that as case review. And we've always had this practice in the child support program.

Arizona was always looking at, at least a year's worth of information and history on the case to understand what the most recent actions were, to make sure that we understood what was going to happen next. But what we learned is that just that simple review, if you're not going back to the beginning to truly understand how a case started, it can have profound

impacts on the outcome of the case. And so, how a case or the parties within a case got to a certain point and us as a program understanding that can be incredibly helpful.

The other component of these procedural justice principles in action is related to outreach and engagement. Typically, we've worked with those that we serve, and it has always been a common practice to initiate conversation with them about what's taken place or what the next actions are.

But how we make contact has changed, and using the principles of procedural justice, utilizing different tools that state government typically doesn't use to conduct that outreach, like text messaging, working different hours, meeting the clients where they're at, not having them come into a government location, are all how we've really balanced ensuring that we're connecting with those that we're serving.

And then lastly, what we've seen in implementation of these principles is a concept of case conferencing. I mentioned two parties in a case. Typically, we conducted those conversations independently of one other in a child support matter. Not all families are amicable. And so, that was a new component for the Arizona team.

It was a little awkward at first, but our team really did see the value of bringing both parents together to have them participate in the process together. We saw great success with that and there are countless stories about families reconnecting, and in some cases even reconciliation within that family unit.

TM: 12:53

Ed: Michael, you've got this five-state overall perspective, so same question: What are you seeing so far? I know the full results won't be in until late 2022, but what stands out to you so far?

Michael: The demonstration was developed to identify and test what procedural justice informed child support strategies work. Before the demonstration, there hadn't been any real tests of what that looked like. The research that I referenced earlier had really been done in the civil courts. There had been some done in policing, but really nothing in child support.

Like Heather mentioned earlier, it's a mindset, but it's also the structure research-based approach. But I think it's child support back to its mission of helping children receive long-term, consistent support from both of their parents, and the parents seeing the system as a resource to help them maintain cooperation and manage financial and legal aspects of that long-term agreement they made when they had the child.

I think many parents have viewed child support as this impersonal enforcement-minded system, and typically child support enforcement can be driven by a lot of automated processes, enforcement actions that are taken blindly in fact when a parent misses a payment or automatically when a parent misses a payment. Typically, the parent has to fit into that system regardless of the reasons that they're not able to make their child support payment.

The demonstration flipped that script, and the sites adapted the system to the individual. The first step was to find out why payment wasn't happening, to look at the why. The typical child support approach has an automated system that tracks that oh, there wasn't a payment made, we need to take an enforcement action, and the automated system doesn't care why.

Heather talked about this a little bit, but the caseworkers got at the why in multiple ways: looking at the case histories, many of which were decades long, to see how the child support system had treated the parents, where they hadn't experienced a fair and transparent process.

In this case, workers talk with both parents, get each parent's side of the story, and then they took those perspectives and worked to bring the parents back together and back on track, working towards agreements they could honor as they fulfilled their long-term commitment to their children.

So, again, it's that idea that procedural justice promotes long-term adherence to agreements that was really critical for us from the Federal Office of Child Support Enforcement's perspective to test with this demonstration project.

TM: 15.27

Ed: Well, I'm sure all of us can imagine, given the last 18 months, that the individual approach probably works a lot better. So many people lost jobs and had other economic setbacks during the pandemic.

Michael: Just to speak to the pandemic, we heard, and so, working from the federal office, our federal perspective, we maintained very close contact with each of our demonstration projects, and we would have monthly calls. We would hear from caseworkers about what they were doing and during the pandemic, one of the things we heard across all the sites was caseworkers saying things like: "I've had parents call me to check in and see how I'm doing. That never happened when I was a regular caseworker because I was their adversary. But now I've become a facilitator for their parenting, for their access to financial resources."

These child support caseworkers became more like multipurpose caseworkers. They were helping people figure out unemployment; they were identifying where to get in for testing; housing eviction kind of assistance. So, it was a striking departure from that old way of doing child support business as parents responded to that.

TM: 16.40

Ed: Heather, let me ask you about how the pandemic affected this. It was just a chance that the pandemic and the project coincided. Any thoughts about how that affected people?

Heather: I think to the point of how the participants were moving through the program, I had mentioned earlier that we were going to where they were, so there was a lot more connection virtually. With the states, typically the parents that we're serving are invited into our physical offices. In a pandemic, it didn't make sense.

So, there was a lot more that we were doing to connect with folks virtually throughout the pandemic and I would say that it really did accelerate the families in terms of making sure that they were cared for. As Michael alluded to, the collections that we saw typically in the child support program – we have a lot of parents that are unable to pay for a variety of reasons due to many, many barriers.

But our procedural justice grantees, the states that had received this grant, were already trained and keen to what barriers people were going through. So, the pandemic threw a lot more at the families that we were serving, but our staff's keen ability to work through those barriers and, as Michael mentioned, getting them unemployment assistance, emergency rental assistance, making sure that they still were able to see their children, that was a big thing that we saw in the pandemic.

Because of isolation and quarantining, parents weren't having the ability to connect and do the parenting time that they were ordered and able to have. We saw a lot of that, but all in all our staff were readily available to start working through all of those new barriers that they didn't have prior to the pandemic, or different barriers that they had as a result of the pandemic.

TM: 18:31

Ed: Well, it sounds like the system had a stress test, as so many systems did. I guess it was a good opportunity for you all to see how it performed.

Michael, let me turn back to you. I understand there are five principles in this approach. Can you talk about that?

Michael: The Federal Office of Child Support Enforcement, we talk about five principles. Some researchers talk about four. I'll highlight the five we focus on. Voice and participation is one. In the child support process, that's the parent's perception that they've had the opportunity to tell their side of the story and that the decision maker, the authority, has taken the story into account when making the decision, listening to that story, giving that opportunity for a person to share their side of the story.

The second principle is neutrality, so the neutrality of the process. This is the parent's perception that the decision-making process is unbiased and trustworthy. I'm emphasizing the parent's perception because it's not what the authority thinks. You know, we oftentimes think our processes are fair and unbiased and we're following the rules. But it's not what we think as the authority. It's what the parent thinks. It's their perception.

The third principle is respect, and that's the parent's perception that the system treats the parents with dignity. The process there and the rules as they're applied are treating the parent with dignity.

The fourth is understanding, and this is really the parent's perception that they understand the process and how the decisions are made. We oftentimes in child support think oh, we

know what's going on, but we don't take the time to really explain the process and make sure the parent understands that.

And then the fifth principle that we focus on as well in our demonstration is the concept of helpfulness. That's a parent's perception that the system is interested in their situation, like Heather talked about with the caseworkers being interested in the individual's situation, and really trying to be helpful to the greatest extent that the law allows. So, not bending rules, but being helpful when the system can be helpful.

Ed: Thanks, Michael. We're going to take a quick break and come back with the rest of our discussion.

MUSIC and Gene VO

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TM: 21:20

Ed: I'm back with Heather Noble and Michael Hayes discussing a new approach for states working to ensure child custody payments are made.

Heather, I think you talked about this a little already. What do you see as the most promising practices coming out of this effort?

Heather: What we've found, Ed, is that our parents are dealing with some pretty traumatizing situations, whether they be barriers pertaining to past drug abuse, even suicide, what we saw in the pandemic, a lot of job loss. Our families are also in... when you think of a typical family unit, there are instances of domestic violence and family violence.

Within child support, many families are separated, in many cases divorced. And so, we're dealing with years of broken family units. So, what we see as the promising practices emerging from the work that's been done in our state is that our team of case managers is truly there and present for the parent through their toughest times.

In many cases, we've seen that children got to spend more time with the parent that wasn't predominantly playing a strong role in their lives. We're seeing parents who, after our involvement, are now working together, they're working with us, and it's all for the benefit of their children. And so, the parents that we're serving are no longer alone, they're no longer isolated, and we are truly here for them.

It's been a partnership in Arizona, not only the child support state-operated program, but the attorney general's office, our courts, and our commissioners – it's truly a system working together as it's been intended to. And the relationships our staff is developing with the parents that are paying support in this grant has been great to see.

It's no longer about the child support program using every tool in our toolbelt to compel compliance. It's more openness, it's options, it's sharing what we can do and what we cannot do in the legal context, and understanding. So, for government programs typically, they're very confusing, so the procedural justice principles truly do break down and provide the customers that we're serving with true understanding of what's happening, what they're experiencing.

And, as both of us have mentioned, the principles were meant for our parents; they absolutely were meant for the parents that we're serving to give them an experience that I think we've all ideally wanted for any government program. But when we as the program, the authority, have followed these principles, our parents finally understood what our role was, so how we were involved and, again, what we can and cannot do or why we did or didn't do something.

So, I think that is really powerful from a public perspective, and it's one of the promising practices, that the state and the government are partnering with these parents and it's mutual understanding. It's not us versus them; it's together in understanding what's going to be best for them and for their children.

TM: 24:50

Ed: So, Michael, how about for you? What do you see as the most promising outcomes in the overall five-state project?

Michael: I'll just mention the five states first. In addition to Arizona, the demonstration is also going in California, in Ohio, in Michigan, and in Virginia, so kind of coast to coast. We don't yet have the final evaluation. It won't be completed I think you mentioned at the beginning till fall of 2022.

But working with our evaluator, we've already published seven research briefs and more on the way looking at the early lessons and promising practices from the demonstration.

One of the briefs focused on the parents' positive response to this new procedural justice case management that Heather talked about, procedural justice informed dispute resolution, bringing parents together to resolve those disputes. There's a brief that also looked at some of the responses that the child support agencies had during the pandemic, during the first 18 months of the pandemic. Those are all on our Federal Office of Child Support Enforcement website.

I think the most significant thing we're seeing is that we've got much more parental engagement in child support processes. These are parents who have not talked to each other for years, many of them, they've not talked to a child support worker for even longer at times; they may have gotten letters and they've ignored those letters; they may have been served for contempt and just avoided service or avoided court; outstanding bench warrants.

We've got those parents coming back into contact, both with each other and with the child support program, to resolve these longstanding conflicts that were there. We've seen caseworkers help these parents identify creative ways to fulfill the financial needs of the children.

One story really stood out for me. We had a noncustodial parent who was tens of thousands of dollars in child support debt. This noncustodial parent happened to own a totally restored, very valuable, classic car. They worked out a deal with the custodial parent to fulfill the debt by transferring the ownership of the car to the custodial parent. In fact, we ended up with a picture of the son and the custodial mom standing by this car.

That's something that the old traditional, typical approach to child support would have never allowed. So, it's that kind of creativity of resolving conflicts that I think is the first thing that stands out for me.

TM: 27:24

Ed: Michael, let me stick with you for a minute. Our audience, of course, is primarily state legislators, legislative staff, and others with an interest in state policy. What's their role in all of this? What's the state legislative policy role?

Michael: In what's called the Title 4D child support program. Federal policy kind of provides the framework for that public program, as well as two-thirds of the funding. But the practical implementation of that program is at the state level.

So, child support enforcement strategies that are based on evidence of effectiveness such as those tested in this demonstration can help states reduce expenditures on costs associated with contempt, increase the public's trust in systems, and also result in long-term, positive adherence to the agreement the parents have made when they have a child.

State legislatures first can support investments in evidence-based strategies. That's a key focus here. Before working in the Federal Office of Child Support Enforcement, I worked as an administrator in a large state child support program. One of the duties I had there was responding to state legislators who had constituent complaints about child support.

And I think an added benefit of procedural justice and applying it in the child support program is that it's likely to reduce constituent complaints about child support. A lot of those complaints were because the bureaucratic child support process was not transparent, and it was confusing, and they didn't understand how decisions were made.

And so, when parents get to tell their side of the story, when the system respects them, when they feel like they were listened to and the process was unbiased and they see the child support agency is helpful, they're less likely to complain to their state legislature. I think that's a nice side benefit here.

TM: 29:21

Ed: Heather, how about in Arizona – what sort of involvement has the legislature there had with these efforts?

Heather: I would say in Arizona, I had mentioned we're a heavier judicial state. Programmatically, we were able to execute the procedural justice principles in our work without any legislation. I would say the heavier lift was in our program policy in adopting the new federal final rules that had come out around contempt, and really acquiring training from the subject matter experts.

Again, our case managers were unfamiliar with these concepts, and so getting outsider expertise on the subject matter at hand was critically important. But that training expanded beyond just the child support program, so the attorney general's office as well as the courts and commissioners that were hearing these matters.

In addition to that programmatically, we saw understanding and utilization of different outreach and communication tools and really working to understand how all of these tools and training can come together to ensure that we were, ourselves, understanding these concepts in the work that we do.

But being a judicial state where most actions are taken at court to enforce a case I think did put us at a different advantage. Many other states across the nation have administrative processes, and so, legislation can absolutely help within those states because administratively the state program is able to take action.

So, you have this mix of states in the grantee sites specifically for this grant; I do believe there is a mix of both judicial and administrative states. That's truly where I see legislators from across the nation understanding how the child support program is operated and how those laws govern how we programmatically ensure families are getting child support.

TM: 31:23

Ed: Well, that makes sense. The saying at NCSL is if you know one legislature, you know one legislature. Things differ across the country and states take pride in crafting their own solutions.

Heather let's stick with you as we wrap up and ask what you see coming down the road for this procedural justice approach, at least in your state.

Heather: In the State of Arizona, we are actively looking at implementation of all of these principles statewide. The demonstration grant was specific to one of our largest counties in Arizona and we are going to be expanding the procedural justice principles statewide within the next one to three years.

So, within the grant again, what we've learned is that if you can wrap around services and truly work with parents to understand their family dynamics, removing those barriers and obstacles that might be standing in their way, we are going to see the family units working more together for the benefit of their children. They will have more economic stability and support.

I do truly see within Arizona all of our families being able to see, feel and hear the change that our child support program is coming through. We truly are transforming. I had mentioned the work that many states are doing with equity, diversity, and inclusion, again, access to justice, but now procedural justice.

I really do see the next year looking at, again, those that we serve, and working with them in a different way and really making sure that, within our program, we understand and partner with the parents that are needing our services.

TM: 33:08

Ed: Well, not to get over our skis here, but that is starting to sound like success if you're expanding to other counties in Arizona.

Michael, really the same question for you. What do you see down the road? You get the last word.

Michael: Thanks, Ed, and thanks again for having both Heather and me on. The demonstrations focused on just one aspect of child support operations: contempt. It's a process that the public knows. A lot of people think oh, they're going to be held in contempt for nonpayment of child support.

But really, most child support professionals acknowledge that contempt really isn't that effective for most situations where support isn't being paid. In fact, one state study found that they spent more on the filing, the legal process, they spent more on contempt than they collected in support from payments linked to those contempt files.

And so, the procedural justice demonstrations have laid a groundwork for a redesign of that entire process. And beyond contempt, there are states that are already looking at implementing procedural justice principles in multiple steps in child support processes. The Federal Office of Child Support Enforcement is supporting those states as they look at taking what's been learned from the demonstrations and applying it to their program.

For instance, we have Wisconsin and Indiana. They're looking to use procedural justice at the very first step in child support when a case is being established. Texas is looking to use procedural justice when they are modifying child support orders when a parent's circumstances have changed, and they need to modify those child support orders.

Georgia is looking at it for a program in which they are connecting noncustodial parents who can't pay support because of unemployment to employment services, so applying the procedural justice principles in that process. As well as the five states which are doing the demonstration.

As Heather mentioned, like in Arizona, those other states are looking at how they integrate procedural justice beyond the demonstration project. And Heather mentioned the idea of transforming child support and I think integrating procedural justice into the very fabric of child support transforms the experience that parents have. It transforms a system that

typically reinforced the win/lose mindset that contributed to family conflict, and it creates a framework that promotes positive family dynamics as well as a framework that promotes the legitimacy of the child support program and that government service.

Ed: Well, I know an awful lot more about this topic than when we started. Thanks to both of you for breaking this down. Take care.

MUSIC

Ed: And that concludes this episode of our podcast. We encourage you to review and rate NCSL podcasts on Apple podcasts, Google Play, Pocket Casts, Stitcher, or Spotify. We also encourage you to check out our other podcasts: *Legislatures*, *The Inside Story*, and the special series *Building Democracy*. Thanks for listening.