THE INTERSECTION OF FAMILY LAW AND THE JUSTICE SYSTEM

NCSL’S CAPITOL FORUM
NCSL’S WORK ON
CHILD SUPPORT AND FAMILY LAW POLICY

- Contract with OCSE to create clearinghouse of policy resources
- Track 50-state legislation on child support
- Connect legislators and child support directors
- Prepare policy briefs, 50-state comparisons, child support 101, quarterly newsletter
- Convene meetings, testify before state legislative committees
- Highlight state innovations

CHILDREN AND FAMILIES

Promoting Parental Employment to Boost Child Support

BY MISHAAMMUCAWKI

In Fiscal year 10, 20 million noncustodial parents were required to pay near-
ly $50 billion in support on behalf of the 9 million children served by the Title IV-D child support program. Over three of four (75.6%) non-
custodial parents were unemployed and/or had a parent income below $25,000. States that invest in parental employment programs report significant increases in child support collections, as participants target employment at the state’s lowest poverty rate. In a recent analysis of state child support efforts, two states highlighted the importance of parental employment and its role in child support collection.

States, along with the federal government, have recently renewed their focus on increasing child support payments. States have implemented several strategies to increase child support payments, including parental employment initiatives. These programs have helped many states increase child support payments, and several states have implemented innovative approaches to supporting parents.

Several states have implemented employment-focused child support programs in order to encourage noncustodial parents to seek employment. These programs provide financial incentives to parents who find employment and are committed to making child support payments. These programs have been successful in increasing child support payments and decreasing delinquency rates.

In conclusion, parental employment is an important strategy for increasing child support payments. States that invest in these programs have seen significant increases in child support collections. However, it is important to note that parental employment alone is not sufficient to ensure that parents are able to make child support payments. Additional supports, such as social and financial services, are needed to support noncustodial parents and increase child support payments.
INTERSECTIONS

- Child Support and Parenting Time Orders
- Child Support Enforcement
- Child Support and Incarceration
CHILD SUPPORT AND PARENTING TIME ORDERS

- Married vs. Unmarried Parents
  - 40.2% of births in 2014 were to unwed mothers
  - Less than half (48.7%) of custodial parents had child support agreements

- State Strategies
  - Some states provide court assistance with paperwork or questions about how to set parenting time orders. (e.g., California and Michigan)
  - Florida and Texas use a standard parenting time order to set parenting time in all child support cases, unless the parties agree otherwise.
  - Utah has statutory parenting time schedules that can be used by the courts.
  - Approximately 36 states and D.C. have a parenting time adjustment in their child support guidelines.
Not all child support enforcement mechanisms require court involvement.

All 50 states have a civil and criminal contempt procedure for failure to pay child support.

There has been an ebb and flow in child support programs between using punitive enforcement and providing services to support payment.
CHILD SUPPORT AND INCARCERATION

Incarcerated for failure to pay child support

OR

Incarcerated for another offense and a child support order has been established
CHILD SUPPORT AND INCARCERATION: 2016 FEDERAL RULE

- Prohibits states from treating incarceration as voluntary unemployment for purposes of child support modification.
- Requires courts to examine the noncustodial parent’s ability to pay prior to finding them in contempt for failure to pay child support
Since adoption of the federal rule in December 2016, 10 states have enacted legislation (AR, CT, GA, IN, LA, NE, ND, OR, RI, UT).

These policies include:
1. Stating that incarceration will not be treated as voluntary unemployment;
2. 180 days in prison as the trigger; OR
3. Specific provisions detailing the modification or suspension.
4. Reinstatement procedures.

Source: NCIL's Child Support and Incarceration

INCARCERATION AND CHILD SUPPORT: MODIFICATION

States that Allow for Modification or Suspension of Child Support During Periods of Incarceration

States that Allow Modification in Statute
States that Do Not Allow Modification in Statute
RESOURCES

- NCSL’s Child Support and Parenting Time Orders
- NCSL’s Child Support Homepage
- NCSL’s Child Support and Incarceration
- Assistant Secretary for Planning and Evaluation, An Examination of the Use and Effectiveness of Child Support Enforcement Tools in Six States
QUESTIONS?

Meghan McCann
Senior Policy Specialist
NCSL’s Children and Families Program
Meghan.McCann@ncsl.org
303-856-1404
MARICOPA COUNTY SUPPORT ENFORCEMENT PROGRAM

Judge Bruce R. Cohen
Family Department Presiding Judge
Maricopa County Superior Court
December 2019
CHILD SUPPORT COLLECTION IS CHALLENGING
Office of Child Support Enforcement (OSCE)

According to the Federal Offset Program of OCSE, well over $100 billion in past-due child support was owed in 2017.
Tools at your disposal:

- Incarceration with a Purge—payment of an amount of money to get out of jail
- Incarceration with Work Release or Work Furlough
- Next-Day Purges or Purge by Specific Date
So how’d we do?
Insanity: doing the same thing over and over again and expecting different results.

-Albert Einstein
Maricopa County Enforcement Court
A.C.E. Workshop

A.C.E. stands for Accountability Court and Enforcement Court

Used for “chronic” non-compliance support cases

Must have had at least two contempt findings for non-payment in last six months. For IV-D cases, must have had at least one contempt finding for non-payment in last six months.

These are “problem solving courts.”
Accountability versus Enforcement Court
Accountability Court

- Unable to pay but is making an effort and would benefit from services
- Team approach, staffing
- Unemployed for 2-3 months or has difficulty maintaining gainful employment
- No full support payment for last 4 to 6 months
Accountability Court
Enforcement Court

• Unwilling to pay or not making sufficient efforts
• No staffing
• In excess of $3,000 in arrears and no full support payment for last 4 to 6 months
The Process

Once referred from ACE Workshop to either Enforcement Court or Accountability Court:

- Monthly Review Hearings
- Parent owing arrears must appear in person
- Parent who is owed the arrears may appear in person, by phone, or waive appearance
- Updated payment histories at each hearing
What they expect

YES
I SEE YOU.
NO
I DON'T CARE.
What we offer

I HEAR YOU
Where do we start?

"First rule of holes: When you're in one stop digging."

Whether you think you can, or think you can't, you're right.

(Henry Ford)
SUCCESS IS LIKE A SNOWBALL...
YOU HAVE TO GET IT GOING AND
THE MORE YOU ROLL IN THE RIGHT DIRECTION
THE GREATER IT GETS.

Steve Ferrante
Monthly Review Hearings

• Set short term goals that are achievable
• Buy-in... “What will you be able to do in the next 30 days?”
• Praise success/assess the basis for failure
• Create the “habit” of child support as part of addressing on-going and past support.
• Challenge the owing parent to exceed expectations.
Punishing Failures

View incarceration as a last resort option.
What constitutes “Success?”

- As the owing parent begins to achieve short term success, hearings may be conducted every other month rather than monthly. Alternatively, they may be permitted to appear telephonically at next hearing.
- Once they achieve six consecutive months of compliance, the owing parent is “released” from the program.
- BUT...with the order of release is a procedure for falling out of compliance any time within the following 12 months through the filing of an Affidavit of Non-Compliance.
So...how are we doing?

One Measure

Fiscal Year 2019
156 participants/54 released from program
Success rate of 34.61%

Fiscal Year 2020 (to date)
98 participants/35 released from program
Success Rate of 35.71%
PJAC Demonstration Grant: The California Perspective
INLAND EMPIRE DEMOGRAPHICS (2016)

Combined Population – 4.5 million
Percentage below Poverty – 16.5 %
Unemployment Rate – 6.1%
Caseload Size – 194,334
Former Assistance – 53.2 %
Never Assistance – 17.1%
Current Assistance – 29.7%
Child Support

- Department of Child Support Services Establishes and Enforces Orders for Child Support, Medical Support and Establishes Parentage
  - Social Security Act: [42 USC §§601-687]
    - Title IV-D: DCSS is Responsible for Establishing and Enforcing Support [42 U.S.C. §§651-669]
  - California Child Support is a State run, County administered program
    - Funded - State (34%) and Federal (66%)

- Enforcement of Child Support includes a variety of tools including:
  - Wage Withholding
  - License Suspension
  - Contempt
Enforcing Support through Contempt Action

- Federal Final Rule – Critical element is ability to pay

- California Statute
  - When a court of competent jurisdiction makes an order compelling a parent to furnish support or necessary food, clothing, shelter, medical attendance, or other remedial care for his or her child, proof that the order was made, filed, and served on the parent or proof that the parent was present in court at the time the order was pronounced and proof that the parent did not comply with the order is prima facie evidence of a contempt of court.
  - Quasi-criminal proceeding – penalty of up to five days jail per count

- Typically an enforcement action of last resort
Procedural Justice Informed Alternatives to Contempt (PJAC)
5-year, Section 1115 demonstration project launched in FFY 2017

Testing whether providing alternatives to contempt that are guided by procedural justice principles will increase cost-effectiveness and reliable child support payments.
PJAC Program Sites

- Arizona – Maricopa County
- California – San Bernardino & Riverside Counties
- Michigan – Muskegon County
- Ohio – Franklin County
- Ohio – Stark County
- Virginia – Richmond & Newport News District Offices
What is Procedural Justice?

How individuals regard the justice system has less to do with perceived fairness of the outcome and more to do with...

...perceived fairness of the process and how they were treated
Key Elements of Procedural Justice

- Voice & Participation
- Neutrality of the process
- Respect
- Understanding
- Helpfulness
Vision for the PJAC Grant

- Increase reliable child support payments
  - Compliance with child support orders
  - Trust and confidence in the child support agency

- Cost-effective alternatives to the use of contempt

- Build evidence of what works

- Provide best practices guidance
PJAC Target Cases

[Diagram showing a scatter plot with axes labeled 'Greater Ability', 'Greater Willingness', 'Able/Willing', 'Less Ability', 'Less Willingness', 'Unable/Willing', 'Able/Unwilling', and 'Unable/Unwilling'.]

www.SBCounty.gov

Child Support Services
The PJAC Process in California

- Identify non-paying child support case

- Evaluate case for Contempt
  - Valid Court Order
  - Non-Payment of Support for at least 3 to 6 months
  - Ability to Pay
  - Not Cash Aided or receiving needs based services

- If Contempt eligible, randomly placed in control or treatment group
  - Cases in control group = Contempt process as usual
  - Cases in treatment group = Enhanced casework services to identify and address barriers to payment of support
PJAC Treatment Group Training

- Dispute Resolution Skills
- Mediation Training
- Procedural Justice in Action
- Assessing for Domestic Violence
- Collaborative Negotiations
- Motivational Interviewing
- Self Care
- Working with Difficult Cases
PJAC Treatment Group Barriers and Referrals

- Evaluation of case needs:
  - Assessment regarding Domestic Violence
  - Conversations with Customer(s) and referral to services:
    - Legal Assistance – Family Law Facilitator
    - Jobs Programs
    - Mental Health Services
    - Domestic Violence Services
    - Substance Abuse
    - Housing Instability
    - Transportation
  - Establishing/Re-establishing trust with the child support agency
  - Establishing/Re-establishing trust with the other parent
### Early Results

- **Average Age**: 38.7
- **Average number of open cases per NCP**: 1.3
- **Average monthly amount of child support**: $510
- **Average Arrears owed per NCP**: $33,580
- **NCPs with Previous Contempt Filing**: 7.0%

- **Effect on collections and cost-effectives currently unknown until the end of study**
  - Independent evaluator to evaluate effectiveness of the program
Early Results

- What was proposed versus actual
  - Perceived Barriers
    - Substance abuse
    - Employment
    - Domestic Violence
  - Actual Barriers
    - Some unemployment, DV, substance abuse issues
    - Agency distrust
    - Emotions/Relationship with the other parent
  - Approach to Barriers
    - Training
    - Tools
    - Outreach and education
    - Enhanced communication with Customers
Lessons Learned (So Far)

• Personal attention on the front pays off
• Smaller caseloads enhance success
• Educating customers and providing resource referrals is important
• Important to encouraging participant on what they CAN do
• Building rapport and effective communication with customers is imperative
• Developing trust is key
• Cases are intense so self care for caseworkers is important
• Contempt is still a necessary tool for some cases
PJAC in Action

• A PJAC success story…
Marci Jensen-Eldred, Chief Attorney
San Bernardino County Department of Child Support Services
Marci.Jensen-eldred@hss.sbcounty.gov
(909) 478-6976