

Staying in Jobs and Out of the Underground: Child Support Policies that Encourage Legitimate Work

By Vicki Turetsky

By the end of 2005, nearly 1.5 million individuals were incarcerated in federal and state prisons—while more than three times as many people had a history of incarceration. Nearly everyone who is incarcerated returns to the community after serving time. Over 670,000 people were released from prison into the community in 2004. Yet more than two-thirds are rearrested, and half are back in prison within three years.¹ One-third of young black men will serve time before they are 35 years old.² Men leaving prison face difficult barriers to employment in a changing labor market, including limited education and job skills, lack of transportation and legal identification, substance abuse, poor health, unstable housing, and racial discrimination.³

Many of these men are fathers—55 percent of state prisoners have children under 18.⁴ About half of incarcerated

parents have open child support cases.⁵ Parents usually remain responsible for child support payments while in prison, even though they cannot meet their obligations. As a result, their child support debt continues to build during prison. Fathers typically enter prison with a \$10,000 child support debt and leave owing \$20,000 or more.⁶

High levels of child support debt accumulating during incarceration can create an untenable financial situation for fathers in low-wage jobs. The reality is that most of these fathers will never be able to pay off the debt. Child support debt discourages fathers from taking and keeping jobs in the mainstream economy and increases the likelihood that they will generate illegal income to make child support payments or to support themselves. Many fathers released from prison will respond to child support enforcement pressures by re-entering the underground economy and resuming their old way of life.

The ability of men released from prison to find jobs, recon-

ABOUT THIS PUBLICATION

This policy brief explains why policymakers and practitioners should manage the child support obligations of incarcerated and re-entering men to help them maintain regular employment, limit participation in the underground economy, reduce recidivism, and provide steady support to their children over time. A companion brief (Child Support #3) will outline specific child support strategies to help these parents reconnect to work and family.

nect with their families, and reintegrate into their communities has major implications for recidivism rates, family stability, and community safety. Research has shown that men released from prison who obtain steady jobs and maintain family relationships have lower recidivism rates.⁷ Because child support policies impact employment and family decision making, these policies may play a pivotal role in increasing or reducing recidivism.

Fathers Can Not Comply with Unrealistic Child Support Orders

In recent years, the child support program has become quite efficient in finding parents and their money, through strength-

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ened enforcement tools, interstate data matching, and improved funding. Most child support is collected automatically, through payroll deductions. In addition, enforcement tools such as passport denial, driver's license revocation, and financial asset seizure have resulted in significantly improved support for children by parents who have the ability to pay. These mechanisms have made paying child support the norm for employed fathers living apart from their children—a dramatic societal turnaround that has significantly increased family income and reduced child poverty.⁸

However, for fathers leaving prison with limited education and job skills, the story is different. Less than one-third of men in prison have finished high school. About 70 percent of parents in state prison were employed at least part-time during the month before arrest, but more than half reported incomes of less than \$1,000.⁹ While most men with limited education do work full-time, they usually are unable to maintain this level of employment over the course of a year.¹⁰ Once released, an individual's criminal record creates an additional barrier to employment. According to one estimate, a 10 percent decrease in an individual's wages may result in a 10 to 20 percent increase in his or her criminal activity.¹¹

Child support caseloads include a significant number of parents with a history of incarceration, particularly in large urban counties. For example, a recent study by the University of Maryland found that 16 percent of child support cases in the state child support caseload—and 30 percent of families that also participate in the Temporary Assistance for Needy Families (TANF) program—involve a non-custodial parent who has been incarcerated. In Baltimore, as many as one-fourth of child support cases have a parent who is or has been incarcerated.¹²

Child support orders set for incarcerated and re-entering fathers often do not reflect their ability to pay. Typical support orders range from \$225 to \$300 per month.¹³ Because most fathers have no real income while in prison, their child support debt continues to build every month.¹⁴ Even after they are released, most fathers have a limited ability to pay support—unless they resort to illegal money-making activities. If they start a job, the Consumer Credit Protection Act permits the child support agency to withhold up to 65 percent of their take-home pay to repay the debt.¹⁵ They also may have their driver's license revoked.¹⁶

A number of state policies and practices result in child support orders for fathers with poverty-level incomes that are not based upon a realistic assessment of ability to pay.¹⁷ These include

the use of a legal presumption that non-custodial parents have earnings from a full-time, full-year job, even when child support databases do not provide evidence of employment or income. In setting orders, most states impute income based on minimum or even median state wages. While some states do not initiate an order during incarceration, others routinely set a default order in the parent's absence. Orders are inflated by interest and fees, child support calculated retroactively to the child's birth, and state reimbursement for childbirth hospital bills paid by Medicaid.

All states are required to have a process for adjusting child support orders when the circumstances of either parent change.¹⁸ In most states, an incarcerated parent may request that the court or child support agency reduce an existing support order. In one-third to half of states, incarceration is considered to be “voluntary unemployment,” disqualifying parents in prison from obtaining reduced support orders. In other states, incarcerated parents may ask the child support agency or court to reduce their support orders, but the process in most states is cumbersome and lengthy, and few parents know how to access it.¹⁹

Compliance with support orders is strongly linked to ability to pay. The Office of the Inspector General concluded that child support orders set for low-

income parents are *ineffective* in generating child support payments when set too high relative to ability to pay, finding that compliance is significantly lower when a monthly order is more than 20 percent of a parent's income than when it is 15 percent or less. Similarly, a Washington State study found that when monthly child support orders exceeded 20 percent of reported gross wages, arrearages grew.²⁰

Children need the money, no doubt about it; but these fathers have trouble supporting themselves, let alone their children. And, under state welfare recovery rules, most of this money would not benefit their children, even if paid.²¹ When the children of incarcerated and re-entering parents receive welfare benefits, they are required to sign over to the state their rights to child support. The state withholds most collected child support to repay assistance costs; families do not receive it. There is evidence that this policy sends a mixed message about the purpose of paying child support and that it further contributes to cynicism about the child support system, reduces compliance with support orders, and increases participation in the underground economy.²²

The Problem of Uncollectible Child Support Debt

Parents who cannot keep up with their child support obligations fall deeply into debt. A

number of studies have found that most child support debt is owed by parents who do not have sufficient income to fully pay their child support orders.²³ Most debt is held by parents with less than \$10,000 in reported income.²⁴ An Urban Institute study of California child support arrears found that:

- 80 percent of unpaid child support debt is owed by parents with less than \$15,000 net income. Over half of the arrears are owed by debtors with less than \$10,000 income but more than \$20,000 in debt.
- Only 1 percent of child support debtors have net incomes over \$50,000.
- 76 percent of recent arrears are held by debtors who cannot afford to pay the full amount of their support orders.
- 71 percent of child support debtors have at least one support order set by default.
- 70 percent of the arrears are owed to the government—to repay welfare costs—rather than to families.
- 27 percent of the debt is unpaid interest.
- Nearly 75 percent of arrears have been held longer than two and one-half years.

Incarceration is one of the reasons child support goes unpaid. Researchers found that about 18

percent of arrears in Colorado child support cases and 16 percent of arrears in Maryland cases were owed by parents with a history of incarceration. A Washington State study determined that over 30 percent of cases with arrears of \$500 or more and no recent payment history involved parents with prison records. In California, the median arrears for incarcerated parents were 50 percent higher than for other debtors.²⁵

When child support orders are set too high, the result is uncollectible debt. Even when more aggressive enforcement strategies are tried, the likelihood of collecting this debt declines significantly after the first year and continues to decline over time.²⁶ As a consequence, states carry high debt balances on their books that will never be paid off. Because much of this debt is owed to the state to repay welfare benefits, families gain nothing by states carrying state-owed debt on their books. Fathers who see no end in sight to their child support debts have less reason to comply with their orders in the future or to cooperate with the child support system when their children will not see the money.²⁷

The Choice Between Employment and the Underground Economy

Over the last 20 years, employment and wages have declined for poor, less-educated young men, especially young black men.²⁸ The Urban Institute

found evidence that the combination of increased incarceration and strengthened child support enforcement account for most of the declines in labor force participation for young African-American men aged 25 to 34.²⁹ This connection between employment and child support policies create a major policy dilemma for policymakers concerned with poor families and communities: children usually receive long-term, reliable support only when their father is steadily employed.

The improved effectiveness of child support enforcement may have an unintended side effect—helping to push young men with criminal records back into the underground economy, illegal income generation, and prison.³⁰ Because most child support is collected through payroll deductions, payments are largely involuntary for parents who work in a regular job. *The main way to avoid child support is to avoid formal employment.* Fathers at the margins of the economy have a choice: they can take a part-time or short-term job; or they can make money in the underground economy. The clearest choice fathers face with regard to payment is whether to be employed at all.³¹

Fathers released from prison may obtain a job placement through an employment program; they may even find a low-paying job on their own. But they are overwhelmed by their ongoing child support obliga-

tions and accumulated debt. Many re-entering parents conclude that they cannot live on their take-home pay when two-thirds of it is withheld for child support. They quit their jobs or supplement their earnings by “hustling”—making money off the books or illegally.³² The reality of child support and other financial pressures draws them back into their old ways of making money. Data from the Fragile Families and Child Well-being Study of never-married fathers in seven cities indicate that almost three in ten fathers participate in the underground economy.³³ Participation in the underground economy increases the risk of crime, incarceration, and recidivism.

Child support enforcement does not, by itself, make poor men make the wrong choices. But it does ratchet up the pressure. Fathers enter the underground economy for reasons that have nothing to do with child support, but they also do so for a variety of child support-related reasons. They may want to make extra money to increase their ability to satisfy their support order, to avoid welfare cost recovery rules, to increase family income, or to support themselves. They may raise enough cash to satisfy a demand to make a “purge” payment (a lump sum payment to avoid a contempt of court order and incarceration for non-payment). They may be trying to meet parole conditions, to keep their driver’s license, or to qualify for an

occupational license. Or they simply may want to avoid paying support or contact with the child support system.

When fathers participate in the underground economy, child support collection rates and other program performance measures are lower.³⁴ At the same time, wasted enforcement efforts increase administrative costs. The likelihood of underground income does not suggest that child support programs should try to go after informal income—increased enforcement may be counterproductive and simply drive fathers deeper underground.³⁵

Realistic Child Support Policies Are in the Best Interests of Children

There is a positive correlation between having strong family relationships and maintaining employment, staying away from drugs, and rebuilding a social network after incarceration. When researchers from the Urban Institute asked recently-released men what kept them from returning to prison, the largest percentage singled out family support as the most important factor, followed by seeing their children. The men said that ties with family mattered even more than housing or employment.³⁶

Most men come out of prison hopeful and ready to change. Often, their children are at the center of their change in heart.³⁷ Roughly half of incarcerated

fathers lived with at least one of their children before going to prison, and almost two-thirds maintain contact with them while incarcerated.³⁸ Most re-entering fathers say they want to be good parents and lead more productive lives. They do not want to play the same limited role their own fathers played in their lives or to see their children make the same mistakes they did. Men believe that supporting their children is part of being a good father and that their children can provide them with a reason to get up and go to work every day.³⁹ And when fathers pay child support, their children are more likely to stay in school and get better grades.⁴⁰

Yet, when fathers walk away from jobs, they sometimes pull away from their families, too. Failure to maintain employment and pay support may exacerbate conflicts between the parents and reduce the likelihood that fathers will maintain meaningful contact with their children. Sometimes, fathers withdraw from their children when they do not have money or when they make their money the wrong way.⁴¹ These behaviors weaken already strained family ties and increase the likelihood of recidivism.

The point is that child support policies may influence both the employment behavior and family relationships of re-entering fathers. They can reinforce or undermine a father's efforts to turn his life around. Realistic

child support obligations can help reinforce parental responsibility, encourage paternal engagement, and provide needed financial help to children.⁴² Yet, unmanageable child support debt increases the pressure on recently-released men to leave low-paying jobs and return to the underground economy—a choice that can cause children to suffer in ways that go far beyond a lack of financial support. Unmanageable debt also helps fuel resentment toward the child support system and can decrease willingness to comply with the law.⁴³

Some policymakers are concerned that policies to reduce support obligations represent an unacceptable tradeoff between fathers and their children. They worry that if fathers have lower support orders, children will receive less money. But the tradeoff is rarely between making fathers pay and letting them off the hook: even though their children need the money, most incarcerated and re-entering fathers cannot afford to pay it. The debt may be on the books, but most of it is uncollectible and unrelated to ability to pay. The actual choice facing policymakers is between chasing after nonexistent or sporadic payments now and developing the potential for steady support over the long haul.

Other policymakers believe that if parents are making money through illegal means, they should be forced to spend a share on their children. But the

problem appears to be dynamic, because of the influence of child support policies on parents' decisions to participate in the underground economy and to make money illegally. Young men may get caught up in the drug trade without any push from child support. However, they may find it difficult to extricate themselves while trying to stave off unrealistic child support obligations.

Although the child support program is in the business of collecting child support, its underlying mission is to serve the best interests of children and increase their well-being.⁴⁴

When parents have been recently released from prison, the overriding goals of the child support agency must be to help them stabilize their lives, maintain regular employment, and make an enduring commitment to their children. Children receive the most benefit from *reliable, long-term* support from fathers, even if the payments are modest. And maintaining employment is a prerequisite to reliably paying support.

To support successful re-entry, child support policies should emphasize parental responsibility, while setting realistic obligations.⁴⁵ States can adopt a number of strategies to:

- Identify and address parental and child support status around prison intake.

- Facilitate participation in child support processes during prison.
- Improve parent-child contact during prison.
- Set realistic initial orders based on actual—not imputed—income, and discourage routine use of default hearings and add-on charges.
- Reduce or suspend support obligations at the beginning of the prison term, eliminating state policies that treat incarceration as “voluntary employment.”
- Manage child support debt after prison, reviewing policies that discourage employment and creating a standardized procedure to reduce arrears owed to the state to repay welfare debt when the parent lacks the ability to pay it.
- Eliminate welfare cost recovery policies and distribute support payments to families.
- Provide prison and post-release services to increase employment, parent-child contact during incarceration, safe family reunification upon release, and long-term parental involvement.

It is critical that child support programs take the long view, because children and society are not well served by parents who return to the streets or prison. Nationally, as many as 10 percent of all minor children have a

parent under criminal justice supervision.⁴⁶ Children need their fathers to stay positively and reliably involved in their lives. Given a choice between a parent who makes sporadic “purge payments” of child support to avoid jail and a parent who gets out of the drug trade for good, few children would choose the money. The best interests of children are served by realistic child support policies that help re-entering parents maintain employment, raise and support their children, and avoid criminal activity.⁴⁷

Conclusion

When parents are connected to work and family, they are less likely to return to prison. Child support policies should support legitimate employment, strengthen parental ties, increase the reliability of payments, and reduce recidivism. The challenge for policymakers is to find solutions that are efficient, balance the equities, and reinforce the message that parents are responsible for their children—but that also deal with the reality of poor men’s lives and the critical importance of bringing them out of the underground economy and into mainstream society.

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ABOUT CLASP

The Center for Law and Social Policy (CLASP) is a national nonprofit that works to improve the lives of low-income people. CLASP's mission is to improve the economic security, educational and workforce prospects, and family stability of low-income parents, children, and youth and to secure equal justice for all.

CLASP advocates reorienting the child support program into an

income support program by providing tailored services to both parents and integrating child support services into the welfare-to-work agenda. This reframing includes a focus on improving program performance; eliminating welfare cost recovery as a program function; expanding family distribution; setting realistic child support orders; managing arrears; expanding health care coverage through the child support program;

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CLASP POLICY BRIEF

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