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*Legal Services and Noncustodial Parents Who Owe Child
Support*

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July 7, 2005

Abstract. Pending welfare reauthorization legislation (H.R. 240 and S. 667) includes incentives for states to send more of the child support collected on behalf of custodial parents to the family itself, additional CSE enforcement tools, funding for marriage promotion programs for low-income persons, and funding for programs designed to help noncustodial fathers meet both their financial and emotional responsibilities to their children. Supporters of the welfare reauthorization legislation claim that its passage will result in more noncustodial parents paying child support. They contend that noncustodial parents who can afford to, but do not, pay child support will not be able to escape their duty because of the strong enforcement apparatus, and that noncustodial parents who cannot afford to pay will be offered services that may improve their financial ability to pay, as well as their willingness to pay. In situations in which noncustodial parents find themselves at loggerheads with custodial parents and the CSE system with respect to paternity and child support, some have encouraged legal services providers to play a more "balanced" role. They maintain that providing legal services to noncustodial parents could result in child support payments becoming a more reliable source of income for custodial parents if noncustodial parents were provided better access to the legal system and were satisfied that "they had their day in court" and thereby more amenable to paying child support. This report describes some of the child support issues faced by noncustodial parents and discusses areas in which legal services providers funded by the Legal Services Corporation (LSC) are authorized to support poor noncustodial parents.

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Legal Services and Noncustodial Parents Who Owe Child Support

July 7, 2005

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Legal Services and Noncustodial Parents Who Owe Child Support

Summary

Enforcement of child support often results in custodial parents and noncustodial parents being in an adversarial relationship. Noncustodial parents often view it as an unbalanced relationship, because custodial parents have access to a network of federal and state resources (e.g., the Child Support Enforcement (CSE) agency and the welfare agency) that are not available to the noncustodial parent.

Pending welfare reauthorization legislation (H.R. 240 and S. 667) includes incentives for states to send more of the child support collected on behalf of custodial parents to the family itself, additional CSE enforcement tools, funding for marriage promotion programs for low-income persons, and funding for programs designed to help noncustodial fathers meet both their financial and emotional responsibilities to their children. Supporters of the welfare reauthorization legislation claim that its passage will result in more noncustodial parents paying child support. They contend that noncustodial parents who can afford to, but do not, pay child support will not be able to escape their duty because of the strong enforcement apparatus, and that noncustodial parents who cannot afford to pay will be offered services that may improve their financial ability to pay, as well as their willingness to pay.

In situations in which noncustodial parents find themselves at loggerheads with custodial parents and the CSE system with respect to paternity and child support, some have encouraged legal services providers to play a more “balanced” role. They maintain that providing legal services to noncustodial parents could result in child support payments becoming a more reliable source of income for custodial parents if noncustodial parents were provided better access to the legal system and were satisfied that “they had their day in court” and thereby more amenable to paying child support. This report describes some of the child support issues faced by noncustodial parents and discusses areas in which legal services providers funded by the Legal Services Corporation (LSC) are authorized to support poor noncustodial parents.

The LSC is a private, non-profit, federally funded corporation established by Congress to provide financial support for civil legal assistance for persons unable to afford legal help. In FY2004, the LSC distributed \$316.6 million of its \$335.3 million appropriation in the form of grants to 143 local legal services programs. Local programs provide legal assistance to individuals based on locally determined priorities that meet local community conditions and needs. Thus, to a certain extent, it is necessary for noncustodial parents to advocate on their own behalf, that is, to make the communities in which they live aware of the problems that they face with regard to countering unjustified allegations of paternity, obtaining fair child support orders, meeting their child support obligations, getting child support orders modified when they have a change in financial circumstances, seeking custody or visitation rights, and re-establishing family and community ties after incarceration. With only an estimated 20% of eligible clients receiving legal services (when they need such services), low-income noncustodial parents must now compete to be included as clients in a program that does not have the resources to serve all who are eligible for its services. This report will not be updated.

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Legal Services and Noncustodial Parents Who Owe Child Support

Introduction

Enforcement of child support often results in custodial parents and noncustodial parents being in an adversarial relationship. From the perspective of the noncustodial parent it is often seen as an unbalanced relationship because the custodial parent is backed by the Child Support Enforcement (CSE) agency and in many cases the “Welfare” agency as well. Although the CSE agency views itself as working for the state on behalf of dependent children, the custodial parent in effect receives the benefits of federal/state intervention because the child is in her or his care. This situation is even more pronounced in the case of low-income custodial parents and children because they have a link to public welfare agencies. Thus, the custodial parent has access to a network of federal and state resources that are not available to the noncustodial parent.

During the last several years Members of Congress and others have acknowledged that the “best interests of the child” are generally served when both parents are part of the equation. They have commented that many low-income noncustodial parents have low levels of education, poor work histories, and significant barriers to work. They have debated child support issues in terms of “dead broke” rather than “deadbeat” noncustodial parents and have remarked that responsible parenthood involves both financial and emotional relationships with one’s children. Some contend that public policies are needed to support the father’s role as nurturer, disciplinarian, mentor and moral instructor.¹ This new federal/state governmental perspective is seen in the CSE agency’s funding of access and visitation programs for noncustodial parents and in pending welfare reauthorization legislation (H.R. 240 and S. 667, 109th Congress) that would provide funding for marriage promotion and responsible fatherhood programs.

The pending welfare reauthorization legislation (mentioned above) contains incentives for states to send more of the child support collected on behalf of custodial parents to the family itself, additional CSE enforcement tools, funding for programs designed to promote marriage among low-income persons as a way to improve the economic well-being and development of children, and funding for programs designed to help noncustodial fathers meet both their financial and emotional responsibilities to their children. Supporters of the welfare reauthorization legislation claim that its passage will result in more noncustodial parents paying child support. They contend that noncustodial parents who can afford to pay child support but who

¹ Wade F. Horn and Isabel V. Sawhill, *Making Room for Daddy: Fathers, Marriage, and Welfare Reform*, Brookings Institution Working Paper, Apr. 26, 2001, p. 4.

do not want to pay will not be able to escape their duty because of the strong enforcement apparatus, and that noncustodial parents who cannot afford to pay will be offered services that may improve their financial ability to pay as well as their willingness to pay.

The reader should note that this new more forgiving attitude toward noncustodial parents has brought with it a wariness among custodial parents. Some mothers contend that an emphasis on the importance of fathers may lead to undervaluing single-parent families maintained by mothers — that services for fathers may be at the expense of services for mothers — and that the “pro-fatherhood” discourse might give fathers’ rights groups additional leverage in challenging child support, child custody, and visitation arrangements.

Although noncustodial parents often find themselves at loggerheads with custodial parents and the CSE system with respect to paternity and child support, the situation is usually more complicated than deadbeat dad vs. dependent mom. Sometimes a noncustodial parent is really not the father and sometimes noncustodial parents who are trying to meet their financial obligation to their children have been burdened with a child support order that is too high. In these situations, some maintain that legal services providers should do more to help alleviate the problem. Supporters of this approach maintain that providing legal services to noncustodial parents may result in child support payments becoming a more reliable source of income for custodial parents because noncustodial parents would have had greater access to the legal system and be more satisfied that “they had their day in court” and thereby be more amenable to fulfilling their child support obligations.

The LSC is a private, non-profit, federally funded corporation that was established by Congress in 1974. Part of the LSC’s mission is to provide high quality legal assistance to those who otherwise would be unable to afford adequate legal representation and to assist in improving opportunities for such persons. The LSC is funded through congressional appropriations. The LSC does not provide legal services directly, but rather it provides grants to independent local legal services programs selected through a competitive process. The primary responsibility of the LSC is to manage and oversee the congressionally appropriated federal funds that it distributes in the form of grants to local legal services providers that in turn provide civil legal assistance to low-income clients in the 50 states, the District of Columbia, and five U.S. territories. In FY2004, the LSC distributed \$316.6 million of its \$335.3 million appropriation in the form of grants to 143 local legal services programs. The remaining funds were allocated for management and administration, information technology, and its Office of the Inspector General.

LSC funding accounts for about half of all funding in the United States for civil legal services for the poor. In 2004, there were approximately 45 million persons who were potentially eligible for LSC-funded services,² but according to LSC

² Legal services provided by LSC funds are available only in civil matters to individuals with incomes less than or equal to 125% of the federal poverty guidelines. In 2004, 125% of the federal poverty guidelines amounted to \$11,638 for a family size of one, \$15,613 for (continued...)

surveys only about 20% of those eligible for and in need of services actually received services. Although low-income noncustodial parents who owe child support are among the persons eligible for LSC-funded services, they aren't among the groups that have traditionally been helped by legal services programs and therefore may have a hard time accessing services that are already in short supply.

Child Support Issues Faced by Noncustodial Parents

The Child Support Enforcement (CSE) program (Title IV-D of the Social Security Act) was enacted in January 1975 (P.L. 93-647). The CSE program is a federal/state program that promotes self-sufficiency of families in which one of the biological parents is living outside of the home by ensuring that noncustodial parents meet their financial responsibility to their children. The CSE program provides seven major services on behalf of children: (1) parent location, (2) paternity establishment, (3) establishment of child support orders, (4) review and modification of child support orders, (5) collection of child support payments, (6) distribution of child support payments, and (7) establishment and enforcement of medical child support. All 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands operate CSE programs and are entitled to federal matching funds. While the federal government plays an important role in setting program standards and policy, evaluating state performance, and providing technical assistance and training, states are responsible for administering the CSE program (directly or through local CSE agencies and family or domestic courts).

Given that the main purpose of the CSE program is to act in the best interest of the child to obtain any financial support that a child is due, it usually is the case that the state and local government along with the custodial parent are in an adversarial relationship with the noncustodial parent. In many instances the CSE agency collects owed child support via income withholding and no problems occur. In other cases, especially cases in which the parents were never married, paternity and a child support order must be established before the CSE agency can obtain child support on behalf of the custodial parent. In such cases, paternity may be contested and the financial ability of the noncustodial parent to pay a specific amount of child support may be questioned.

This section discusses some of the problems that noncustodial parents maintain that they encounter; namely: (1) false allegations of fatherhood, (2) child support obligations that are unfair and unreasonable, (3) high arrearages that are financially beyond their capability to pay, (4) incarceration because of unreasonable child support demands, (5) loss of the means to their livelihood (e.g., driver's license, professional license, passport) because they fall behind in meeting their child support

² (...continued)

a family size of two, \$19,588 for a family size of three, and \$23,563 for a family size of four (higher amounts are allowed for persons living in Alaska and Hawaii). For a comprehensive listing of the 2004 federal poverty guidelines for the LSC (for all family sizes), see 45 C.F.R. Appendix A to Part 1611, p. 397 (Oct. 1, 2004 edition).

obligation, (6) poor relationships with their children, and (7) tenuous connection to their families and with their community after serving time in jail or prison.

Paternity Issues

Some noncustodial fathers and alleged fathers contend that the paternity establishment process in recent years has focused on efficiency, at the expense of the father's right to due process and his right to representation. They argue that in some instances alleged fathers are not fully informed about the consequences of voluntarily acknowledging paternity and do not fully understand the implication of their statement before they are encouraged to legally acknowledge paternity. Some noncustodial fathers argue that they were deceived into believing that if they voluntarily acknowledged paternity, any child support they paid would be helping their child. They contend that this is not so if the child's mother is receiving benefits under the Temporary Assistance for Needy Families (TANF) block grant program because instead of directly benefitting their children, their child support payments are used to pay the state back for cash welfare payments that the family is receiving or received in the past.³

There is widespread agreement by the CSE and legal services communities that the due-process rights of noncustodial parents should not be overlooked even if doing so could be interpreted as being in the best interest of the child. Advocates for noncustodial parents maintain that if there is a question about a child's paternity it should be addressed by blood or DNA tests (in some cases even if the parents were married). Although blood or genetic testing is the standard procedure in contested paternity cases, many people view such tests as an affront to their integrity and an indication of a lack of trust. This situation is exacerbated in the case of an older child. According to some focus group discussants, for many couples, once one of the partners or alleged partners indicates that a paternity test is needed, any future chance for cooperative parenting is greatly diminished because of lingering animosity over the father not stepping forward and meeting his financial responsibility or the mother not being honest about her fidelity or use of birth control.⁴

Federal law requires states to have procedures which create a rebuttable or, at the option of the state, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the actual father of the child. Most states have a rebuttable presumption paternity threshold that ranges from 95%-99.9%. This means that in some states blood test results that indicate a 98% or greater probability of paternity are not rebuttable, which raises the possibility

³ National Women's Law Center and Center on Fathers, Families, and Public Policy, *Family Ties: Improving Paternity Establishment and Practices and Procedures for Low-Income Mothers, Fathers, and Children*, Nov. 15, 2000.

⁴ Ibid. See also Center for Law and Social Policy, *An Ounce of Prevention and a Pound of Cure: Developing State Policy on the Payment of Child Support Arrear by Low Income Parents*, by Paula Roberts, May 2001. See also Center for Family Policy and Practice, *National Question and Answer Handbook for Noncustodial Parents: A Question and Answer Resource on Paternity Establishment and Child Support*, 2001.

that 2% of the putative fathers tested may be wrongly assigned paternity, and thereby wrongly burdened with an 18-year financial obligation.

For additional information on issues related to child support and paternity establishment, see CRS Report RL31467, *Paternity Establishment: Child Support and Beyond*.

Child Support Orders Established by Default

If a noncustodial parent gets a notice or a summons about child support or paternity establishment but does not appear in court at the stipulated date and time, the court can enter a child support order against the noncustodial parent by default. If the noncustodial parent does not show up to tell his or her side of the story, the court can decide that the evidence against that person must be true. Thus, a “no-show” by the noncustodial parent may result in the establishment of paternity and the establishment of a child support order, effective whether or not the noncustodial parent actually has a job or an income source. Further, if the noncustodial parent is not in court to provide information about his or her job/income, the court may base the child support order on information provided by the custodial parent or the CSE agency, even if this information is incorrect. Moreover, if the noncustodial parent is not in court to present his or her evidence, the court or CSE agency may impute the noncustodial parent’s income (which may be based on incorrect assumptions).

Some observers argue that the practice of using default judgments (i.e., judgments made in the absence of the alleged father) has adversely affected many putative fathers who claim they are not the father of the child in question but, for whatever reason, did not show up in court to deny the allegations. Many analysts and observers maintain that the standards governing default judgments should balance the rights of the putative father to proper notice and the opportunity to be heard before paternity is established and a child support order is set, against the right of the child to obtain a determination of paternity and support (on a timely basis) from a father who knowingly fails to appear in court.⁵

Child Support Arrearages

Child support arrearages can be accumulated in several ways, depending upon the guidelines established by the state. The first and most prevalent way is through nonpayment of child support. For each month that a noncustodial parent fails to meet the full child support obligation, the unpaid support is added to the amount the noncustodial parent owes (i.e., this is generally referred to as past-due payments or arrearages). A second way that arrearages mount occurs because in many states and localities child support orders remain payable and in effect even when the noncustodial parent is unemployed or incarcerated; further, in all states, arrearages remain due (for various time periods) even after the child reaches the age of majority. Another way that arrearages accumulate occurs because in addition to current

⁵ Urban Institute, *Recommendations on TANF Reauthorization from the Strengthening Fragile Families Initiative*, Statement before the U.S. Congress, House Ways and Means Subcommittee on Human Resources, by Elaine Sorensen, May 3, 2002.

support, some states choose to establish retroactive support when setting new orders. Depending on the state's policy, these retroactive arrearages may extend from two to six years prior, or they may be unlimited in their scope, extending back all the way to the time of the child's birth. Arrearages can also be incurred for costs and fees; particularly attorney fees, court filing fees, fees for blood tests associated with the determination of paternity, and the costs associated with the child's birth. Finally, some states charge interest on arrearages thereby increasing the amount owed.⁶

Arrearages are enforced and pursued, usually through income tax intercepts and attachment of property to encourage parents to meet their obligations regularly and on time and to send the message that there are serious consequences for nonpayment of child support.

In FY2004, \$130.3 billion in child support obligations (\$28.0 billion in current support and \$102.4 billion in past-due support) was owed to families receiving CSE services, but only \$23.2 billion was paid (\$16.5 billion current, \$6.7 billion past-due). This meant that the CSE program only collected 18% of the child support obligations for which it had responsibility. If current collections are examined separately, the data indicate that the CSE program collected 59% of all current collections in FY2004. If collections on past-due support (i.e., arrearages) are examined separately, the data show that the CSE program collected less than 7% of arrearage payments in FY2004. In other words, the total amount of arrearages reported in FY2004 for all previous fiscal years was \$102.4 billion; but only \$6.7 billion was collected in FY2004. Although only a relatively small percentage of arrearage payments were collected in FY2004, about 60% of obligors continued to make payments on their child support arrearages.

The CSE FY2003 Preliminary Data report states:

In 1999, 53% of the child support cases had arrearages owed. In 2003, the proportion was up to 68%. We obtained collections in 60% of these cases, so we know that child support professionals are working hard on them and that obligors are trying to work on their debts. But we collected an average of \$600 per arrearage case, while the average amount of arrears per arrearage case is \$9,000. So, even though we're collecting significant amounts of arrears, we don't seem to be making a dent in the problem, and the overall debt continues to grow.⁷

In many cases, arrearages are quite high and often deter noncustodial parents from paying any child support. In fact, when noncustodial parents perceive that the system is unfair or that the debt is too great to be overcome, the likelihood that they will pay *any* support decreases. (For additional information on child support

⁶ National Women's Law Center and Center on Fathers, Families, and Public Policy, *Dollars and Sense: Improving the Determination of Child Support Obligations for Low-Income Mothers, Fathers, and Children*, Aug. 19, 2002.

⁷ U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, *Child Support Enforcement FY2003 Preliminary Data Report*, June 2004, at [http://www.acf.dhhs.gov/programs/cse/pubs/2004/reports/preliminary_data/].

arrearages, see CRS Report RL31167, *Child Support Enforcement and Low-Income Fathers: Arrearages, Current Support, and Compliance.*)

Modification of Child Support Orders

Many noncustodial parents believe that if they fall behind in their child support payments at a time when they are legitimately unable to make the payments, the amount they owe can later be reduced or discounted by the court when an explanation for nonpayment is given. However, this is not the case. If the noncustodial parent waits to explain his or her changed financial circumstances, the court will not be able to retroactively reduce the back payments (i.e., arrearages) that the noncustodial parent owes.⁸

Under the CSE program, states are given significant latitude regarding modifications and reviews of child support orders. Federal law requires that states give both parents the opportunity to request a review of their child support order at least once every three years, and states are required to notify the parents of this right. States can also request reviews for modification or shorten the time period between reviews, but they are not required to review orders on a regular basis.⁹

In order to prevent child support arrearages, especially for noncustodial parents who are unemployed or in jail, advocates have recommended that child support modification laws be changed so that they are more sensitive to periods of incarceration, unemployment, or injury/illness during which the noncustodial parent's ability to pay child support decreases.

Issues Related to Custody and Visitation

There is near unanimous agreement among federal and state policymakers that denial of visitation rights should not be considered a reason for stopping child support payments. Historically, Congress has treated visitation and child support as legally separate issues, with only child support enforcement activities under the purview of the federal government. However, in recent years, Congress has moderated its position against using federal CSE funds to promote enforcement of visitation rights.

Many noncustodial parents argue that it is unfair to look at the child support issue only from the viewpoint of the custodial parent. Traditionally, they argue, courts have sided with mothers in awarding custody, and have paid insufficient attention to enforcing visitation rights of fathers. As a result, they say, mothers have

⁸ Section 466(a)(9) of the Social Security Act (P.L. 99-509), referred to as the Bradley Amendment, prohibits the retroactive modification of child support arrearages. Congress passed the "Bradley Amendment" in 1986 because it maintained that allowing courts to retroactively reduce child support arrearage payments negatively impacted custodial parents and their children.

⁹ According to Section 466(a)(10) of the Social Security Act, states must allow either parent to request a review every three years. States may create a shorter cycle for review, if they so choose, but orders cannot be modified for retroactive support.

had the rewards and obligations connected with rearing children, while fathers have sometimes had no share in the rewards, but have the continuing obligation to pay support. To be fair, they argue, federal laws and procedures should be reformed not only with respect to enforcement of the child support obligation, but also with respect to visitation and custody rights.

Some advocates of increasing parental responsibility argue that it is now time for the federal government to focus more attention on the “non-financial” benefits associated with preserving the connection between noncustodial parents and their children. Many policymakers and analysts maintain that a distinction must be made between men who are “dead broke” and those who are “deadbeats.” They argue that the federal government should help dead broke noncustodial parents meet both their financial and emotional obligations to their children and vigorously enforce CSE laws against deadbeat parents.¹⁰

Criminal Nonsupport Laws versus Civil Enforcement of Child Support

All states have laws that enable them to bring charges of criminal nonsupport or civil or criminal contempt of court against noncustodial parents who fail to pay child support. The crime of nonsupport has been on the books in most states for many years.¹¹ There are two schools of thought with regard to criminal nonsupport laws: One view holds that criminal nonsupport should be used as a last resort, only after civil remedies fail. The other school of thought maintains that nonpayment of child support is a serious offense often with dire consequences for the custodial parent and child; thus criminal nonsupport laws should be used whenever appropriate. The use of arrests in criminal nonsupport cases and the outcome of those arrests varies widely by jurisdiction, making it difficult to document the magnitude of the practice.¹²

Civil contempt charges are made when a noncustodial parent does not comply with a judge’s order to pay child support. Payment of the child support debt results in compliance with the order, and freedom from jail. Although the time spent in jail for civil contempt is particularly hard to track, it represents a significant, if not routine, means by which low-income noncustodial parents land in jail.¹³

For noncustodial parents who miss several days of low-pay work in jobs where they can be easily replaced by an employer, the consequences of even a short time in

¹⁰ National Conference of State Legislatures, *Broke But Not Deadbeat — Reconnecting Low-Income Fathers and Children*, by Dana Reichert, July 1999. See also U.S. Congress, Hearing before the House Ways and Means Subcommittee on Human Resources, *Fatherhood Legislation*, Statement of (then) Chairman Nancy Johnson, 106th Cong., Serial 106-30, Oct. 5, 1999, pp. 4-6.

¹¹ State Criminal Nonsupport, *Child Support Prosecutors’ Bulletin*, vol. 2, Aug. 1993.

¹² Center for Family Policy and Practice, *The Effect of Child Support and Criminal Justice Systems on Low-Income Noncustodial Parents*, by Rebecca May, June 2004.

¹³ *Ibid.*

jail can be devastating. Needless to say for noncustodial parents who serve longer sentences based on a criminal conviction of nonpayment of child support, the consequences of a criminal record can often be very far-reaching. (See **Issues Related to Incarcerated and Newly Released Noncustodial Parents** below.)

It also should be noted that with the enactment of the Child Support Recovery Act of 1992 (P.L. 102-521), nonsupport is now also a federal crime. Building on the 1992 legislation, P.L. 105-187, the Deadbeat Parents Punishment Act of 1998, established two new federal criminal offenses (subject to a two-year maximum prison term) with respect to noncustodial parents who repeatedly fail to financially support children who reside with custodial parents in another state or who flee across state lines to avoid supporting them.

Issues Related to Incarcerated and Newly Released Noncustodial Parents

According to a 2003 study by the Center on Law and Social Policy (CLASP) and Community Legal Services, Inc. of Philadelphia,¹⁴ about 1.5 million children have parents who are currently incarcerated and more than 10 million children in the United States have parents who were imprisoned at some point in the children's lives. The study stated that approximately 400,000 mothers and fathers finish serving prison or jail sentences each year and return home to try to reestablish family ties. Most of these ex-offender parents lived with or had regular contact with their children before going to prison. The study indicates that about 25% of inmates have open child support cases. Incarcerated noncustodial parents generally owe between \$225 to \$313 per month in child support; and on average they go into prison owing about \$10,000 in child support arrearages and leave prison owing more than \$23,000 in arrearage payments.¹⁵ More than half of these arrearages are owed to the state to repay welfare costs.

Ex-offenders re-entering communities face a host of problems, such as employment barriers stemming from their criminal records (sometimes for many years after completing their jail time or prison sentences), denial of federally subsidized housing because of criminal records, denial of federal grants and student loans because of a conviction for possession or sale of controlled substances (even if the conviction occurred when the person was a minor), and denial of welfare benefits if the person has a criminal record. Also, unrealistically high child support orders or arrearages may discourage ex-offenders from finding a regular job vulnerable to income withholding, tempting them to find jobs in the underground economy and thereby lessening their chances of successfully establishing ties with their families and communities. (In some cases, incarceration is considered "voluntary unemployment," which does not justify reduction of the child support order, thereby resulting in high arrearages.) Moreover, in some cases, dissolution of

¹⁴ Center on Law and Social Policy (CLASP) and Community Legal Services, Inc. of Philadelphia, *Every Door Closed: Fact Sheet Series*, Sept. 29, 2003.

¹⁵ See also American Public Human Services Association (APHSA), "Incarcerated Parents and Child Support — A Conversation With Jessica Pearson and Ester Griswold," *Policy and Practice*, Dec. 2002.

parental rights results from criminal convictions (even those unrelated to the parent's ability to care for the child). According to a report by the Center for Family Policy and Practice,¹⁶ a felony conviction or incarceration was grounds for termination of parental rights in 42 states, and "failure to maintain contact" was grounds for termination of parental rights in 36 states. Finally, in the case of immigrants with children who are U.S. citizens, criminal convictions may result in deportation of the immigrant parent.¹⁷

President Bush in his 2004 State of the Union Address announced a new plan to bring local and faith-based groups together with federal agencies to help recently released prisoners make a successful transition back to society — reducing the chance that they would be arrested again. This four-year, \$300 million initiative would have provided transitional housing, basic job training, and mentoring.¹⁸ Although this proposal has not yet been authorized, there is a federal program that provides mentoring services for children of prisoners.¹⁹

Legal Services and Noncustodial Parents

Low-income noncustodial parents who owe child support have very few places to turn for assistance or support. However, one potential source of aid for noncustodial parents who owe child support is legal services.

As mentioned earlier, the Legal Services Corporation (LSC) is a private, non-profit, federally funded corporation established in 1974 by Congress. Part of the LSC's mission is to provide high quality legal assistance to those who otherwise would be unable to afford adequate legal representation and to assist in improving opportunities for such persons.

The LSC-funded programs do not handle criminal cases, nor do they accept fee-generating cases that private attorneys are willing to accept on a contingency basis. In addition, in 1996 a series of new limitations were placed upon activities in which LSC-funded programs may engage on behalf of their clients, even with non-LSC funds. Among them are prohibitions on class actions, challenges to welfare reform, collection of attorneys' fees, rule making, lobbying, litigation on behalf of prisoners, representation in drug-related public housing evictions, and representation of certain categories of aliens.

¹⁶ Center for Family Policy and Practice, *The Effect of Child Support and Criminal Justice Systems on Low-Income Noncustodial Parents*, by Rebecca May, June 2004.

¹⁷ Ibid.

¹⁸ State of the Union Address by President George W. Bush, Jan. 20, 2004.

¹⁹ An earlier proposal of this Administration, the Mentoring Children of Prisoners program, began operating in 2003. In FY2005, the program, which is administered by the Department of Health and Human Services, Administration for Children and Families, provided \$49.6 million to 233 public and private grantees to provide mentoring activities to children and youth (ages 4 to 15) whose parents were incarcerated.

The legal services delivery system is based on several principles: local priorities, national accountability, competition for grants, and a strong public-private partnership. Local programs are independent entities, governed by Boards of Directors drawn from the local bar and client community. All legal services programs must comply with laws enacted by Congress and the implementing regulations promulgated by the LSC.

LSC funding accounts for about half of all funding in the United States for civil legal services for the poor.²⁰ The LSC does not provide legal services directly, but rather it provides grants to independent local legal services programs selected through a competitive process. In FY2004, the LSC distributed \$316.6 million of its \$335.3 million appropriation in the form of grants to 143 local legal services programs. The remaining funds were allocated for management and administration (\$13.2 million), information technology (\$2.9 million), and the LSC Office of the Inspector General (\$2.6 million).

In FY2004, there were approximately 45 million persons who were potentially eligible for LSC-funded services. Data from the LSC suggest that only about 20% of persons eligible for LSC-funded services actually had access to those services when they needed them (based on geographic boundaries, service areas, funding, local priorities, etc.).²¹ According to the LSC's 2003-2004 Annual Report:

Despite LSC's current congressional support, the unmet legal needs of America's poor remain staggering. To qualify for LSC-funded assistance, an individual's annual income cannot exceed \$11,638; a family of four's cannot exceed \$23,563. Yet current federal funding is clearly inadequate to serve the civil legal needs of the more than 45.2 million poor Americans eligible for LSC-funded legal assistance. Millions of eligible clients are forestalled from pursuing justice every year. Still millions more — whose incomes are just above the federal poverty threshold but who nonetheless cannot afford adequate legal representation — are effectively denied access to the U.S. civil justice system as well.²²

²⁰ According to the LSC: in FY2004, LSC grantees leveraged federal funds to raise \$346 million annually in other government and private revenue to help support their activities. In addition, LSC-funded programs promote pro bono service from private attorneys. See [http://www.lsc.gov/pressr/pr_fact.htm]

²¹ According to the LSC, the last national survey on the legal needs of low and moderate income Americans was conducted by the American Bar Association in 1994. That study found that about 80% of the civil legal needs of poor Americans are unmet. Several state studies were conducted after 2000 and reported similar findings. As part of its Justice Gap initiative, the LSC is collecting data from its legal services providers on the number of potential, eligible clients that legal services providers turn away because of insufficient resources. The LSC expects to receive data from the legal services providers in mid- 2005. See Legal Services Corporation, Board of Directors, *LSC — America's Partner for Equal Justice, Semiannual Report to the Congress for the period October 1, 2004-March 31, 2005*, May 31, 2005, pp. 10-11.

²² Legal Services Corporation, *2003-2004 Annual Report*, p. 18. See [<http://www.lsc.gov/annualreport/04120101.pdf>].

LSC grantees close about 1 million cases annually in addition to handling another 4 million legal service “matters” (such as helping self-represented (i.e., *pro se*) litigants obtain the information they need to pursue their lawsuit, disseminating legal services materials in communities, referring clients to appropriate services, providing mediation assistance, staffing courthouse help desks, etc.).

During 2004, legal services attorneys closed 901,067 cases. Family issues such as child support, divorce, separation, and domestic violence were the substance of about 40% of cases handled by legal services offices; housing issues, including eviction cases, homeownership problems, and public housing assistance comprised about 25% of cases; income maintenance issues, including benefit claims for veterans and senior citizens, and Medicaid and Social Security disability claims represented another 15% of cases; and consumer, finance (including bankruptcy and debt relief assistance), and individual rights issues comprised about 20% of cases. Most of the cases handled by legal services providers are resolved through advice and referral. Only about 14% of cases were resolved in court, primarily because they involved family law issues (e.g., protective orders, child support, etc.) in which court action was required by state law.

Local Priorities

As noted above, the LSC does not provide legal services directly. Rather, it funds local legal services providers, which are referred to by the LSC as “grantees.” Grantees may include non-profit organizations that have as a purpose the provision of legal assistance to eligible clients, private attorneys, groups of private attorneys or law firms, state or local governments, and certain sub-state regional planning and coordination agencies. Each local legal services program is headed by its own board of directors, of whom about 60% are lawyers admitted to a state bar and one-third are eligible clients. Each local program must spend an amount equal to at least 12.5% of its basic grant to encourage participation by private attorneys in the delivery of legal services to low-income clients. Local programs establish their own eligibility criteria, which may not exceed 125% of the federal poverty guidelines. Local programs hire staff, contract with local attorneys, and develop pro bono programs for the direct delivery of legal assistance to eligible clients. These local programs provide legal assistance to individuals based on locally determined priorities that meet local community conditions and needs.

Thus, to a certain extent, it is up to noncustodial parents to advocate on their own behalf and to make the communities in which they live aware of the problems that they face with regard to countering unjustified allegations of paternity, obtaining fair child support orders, meeting their child support obligations, getting child supports orders modified when they have a change in financial circumstances, seeking custody or visitation rights, and re-establishing family and community ties. With only an estimated 20% of eligible recipients receiving legal services (when they need such services), low-income noncustodial parents must compete to be included as customers in a program that does not have the resources to serve all who are eligible for its services.

Outreach

Legal assistance is generally advisable in matters as serious and complex as paternity establishment and child support. The outcome of such cases may result in significant redistribution of income from the noncustodial parent to the custodial parent and child for many years. However, most low-income noncustodial parents cannot afford to hire an attorney to help deal with these complicated matters.

For millions of Americans, legal services represent their only way to access the justice system. Legal services' clients are very diverse, encompassing all races, ethnic groups, and ages. They include families receiving public assistance, the working poor, veterans, family farmers, persons with disabilities, victims of domestic violence, and victims of natural disasters. Many of these persons were formerly middle class, and became poor because of age, unemployment, illness, or the breakup of a family. LSC-funded programs are intended to provide individuals with the legal information they need to help themselves and instruct clients on both their rights and responsibilities under the law. LSC's help is intended to assist families to maintain their incomes, homes, health benefits, and ties to their children and their communities.²³ According to the LSC, about 70% of their clients are women, most with children, and another 10% are senior citizens.²⁴

Legal services providers have the ability to help noncustodial parents in a number of ways. They can provide information on the benefits and responsibilities of fatherhood before an alleged father voluntarily acknowledges paternity. They can counsel alleged fathers to contest paternity if the man does not believe that the child is his. They can warn noncustodial parents of the negative consequences that often result from default judgments. They can advise noncustodial parents of the benefits of appearing in court at the appointed date and time to present their side of the story in paternity and child support cases. They can represent noncustodial parents in court, presenting evidence that counters the awarding of unreasonably high child support orders. They can disseminate information encouraging noncustodial parents to seek a modification of the child support order if their financial circumstances change because of a loss of a job, illness/disability, jail or prison sentence, or additional dependents. They can represent such persons in the modification hearing. They can advocate on their client's behalf to get driver's licenses, professional licenses, or passports reinstated. They can advise noncustodial parents of their rights regarding child custody and visitation. They can petition the court for custody or visitation rights on the noncustodial parent's behalf. They can refer noncustodial parents to appropriate resources to help them meet their emotional and financial responsibilities to their children. They can help noncustodial parents get arrest or conviction records expunged.

The LSC has invested about \$3 million over the last couple of years from its information technology budget to provide that every state has a comprehensive legal services internet website where clients can access important legal materials. Other

²³ Legal Services Corporation, *Fact Sheet*. See [http://www.lsc.gov/pressr/pr_fact.htm]

²⁴ Legal Services Corporation, *2003-2004 Annual Report*, p. 8. See [<http://www.lsc.gov/annualreport/04120101.pdf>]

information technology grants have supported the creation of websites specifically designed to assist self-represented litigants by offering downloadable self-help materials, referrals to legal and social services providers, and other useful links.²⁵

Recent efforts on the part of legal services programs to coordinate and improve client outreach and community legal education provide one way for noncustodial parents to gain assistance in resolving many of their child support issues. Just as divorce, paternity issues, child custody, visitation, eviction, etc., are important issues for mothers who historically have received help from legal services, they also are pivotal for fathers as well.

²⁵ Ibid., p. 10.