The Irrationality of Child Support Enforcement in the United States: Harming Children and Punishing the Poor

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The Irrationality of Child Support Enforcement in the United States: Harming Children and Punishing the Poor

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INTRODUCTION

Child support debt in the United States, known as arrears, has increased tenfold over the past thirty years to over $115 billion. Yet, in 2020, less than $11 billion was paid toward this staggering national arrearage. The gap between this staggering debt and meager payment is the result of a stringent and punitive child support system that fails to sufficiently take into account a parent’s ability to pay, thereby straddling poor noncustodial parents with infeasible child support obligations. In response to nonpayment, states have turned to the drastic enforcement measure of incarcerating noncustodial parents. However, incarceration for nonpayment of child support is an irrational and senseless policy that contravenes the best interests of the child and harms low-income noncustodial parents with little success in procuring child support payments.

Part I addresses the history and evolution of child support in the United States, the current state of the child support system and support debt, and how the modern approach of strict enforcement leads to incarceration of noncustodial parents. Part II discusses how incarceration of noncustodial parents for nonpayment harms both the children intended as the beneficiaries of support and the noncustodial parents trying to meet their support obligations. Part III advocates for an end to the practice of incarceration for nonpayment of child support.

I. THE TRANSFORMATION OF THE CHILD SUPPORT SYSTEM AND THE CURRENT STATE OF ARREARS AND ENFORCEMENT

A. Shifting Societal and Political Attitudes Toward Child Support

The federal government has legislated in the area of child support since the New Deal. In 1935, Congress enacted the Social Security Act, which established Aid to Dependent Children, later renamed to Aid to Families with Dependent Children (AFDC). AFDC was a federal program that contributed funds to state
“mothers’ aid programs” which provided “monthly payments to families who met certain requirements.” AFDC’s threshold requirement was a lack of support by an absent parent, which often meant a deceased father. By the 1970s, the nature of AFDC’s caseload had dramatically changed, with the majority of children needing aid because their parents were separated, divorced, or never married. Congress then identified a link between the custodial parents living in poverty and absent fathers who did not pay support.

“[W]idespread denigration of absent fathers” and the narrative of the deadbeat dad propelled child support reforms in the 1970s. In 1974, Congress passed the Family Support Act (FSA), requiring “states receiving AFDC funds to establish and enforce child support obligations.” The FSA signaled the federal government’s intent to transfer the responsibility of child support from the government’s safety net to the noncustodial parent. Although “early failure to actually collect” child support payments from low-income parents revealed issues with uniform enforcement and suggested that some parents might be unable, without other support, to lift their children out of poverty, the federal government addressed the lack of collection by tightening enforcement provisions.

The narrative of the deadbeat dad strengthened in the 1990s. During this time, there was “widespread societal hostility toward ‘deadbeat dads,’ a term that was applied indiscriminately to all noncustodial fathers who were delinquent on their payments.” The public saw noncustodial fathers behind on payments as those who could afford to make their child support payments but deliberately chose not to pay. Political leaders contributed to this perception with heated rhetoric, including President Bill Clinton’s public remarks that failure to pay child support was a serious crime akin to robbery. President Clinton threatened nonpaying parents: “[I]f you owe child support, you better pay it. If you deliberately refuse to pay it, you can find your face posted in the Post Office. We’ll track you down.” The media further fueled public outrage, with coverage frequently conveying the image

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5 Id. at 134.
6 Id. at 134–35.
7 Id. at 135–36.
8 Id. at 136.
9 Id.
10 Id. at 137, 137 n.47.
11 Id. at 137.
12 Id. at 138.
14 Id.
15 Id.
16 Cammett, supra note 3, at 140.
17 Id.
of “a father who enjoyed an affluent standard of living yet shirked his child support obligation while his children lived in abject poverty.”\(^\text{18}\)

In 1996, the child support system received a “comprehensive overhaul.”\(^\text{19}\) Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).\(^\text{20}\) PRWORA ended the AFDC program and replaced it with Temporary Assistance to Needy Families (TANF), which “provided block grants to states to run their own public assistance programs.”\(^\text{21}\) As such, PRWORA shifted the responsibility of helping poor families to state and local governments.\(^\text{22}\)

Along with these reforms came the requirement that families receiving TANF benefits assign their right to child support to the state,\(^\text{23}\) meaning that child support owed to these families must be paid to the state as reimbursement for government assistance.\(^\text{24}\) As a result, approximately 20% of “total arrears are owed to the government.”\(^\text{25}\) If the custodial parent does not cooperate with the state in the establishment and enforcement of child support obligations, the family may lose all TANF benefits.\(^\text{26}\) As discussed in Part I.B, these reforms rendered child support systems automated and enforcement more stringent and punitive.\(^\text{27}\)

### B. Changes in Child Support System Lead to Insurmountable Arrears

PRWORA implemented systemic change in the adjudication of child support proceedings.\(^\text{28}\) Instead of judicial or quasi-judicial individualized proceedings, automated mass case proceedings are now facilitated by databases containing information about noncustodial parents.\(^\text{29}\) Under this shift to automated enforcement, “[f]ormulas spit out order awards, and remote computers assess award levels. Support is deducted from individuals’ paychecks before they even know it was there to begin with.”\(^\text{30}\)

The Family Support Act of 1988 mandated states adopt statewide guidelines for establishing child support.\(^\text{31}\) The guidelines provide that the amount of the support order should be based on the noncustodial parent’s income or the

\(^{18}\) Brito, supra note 13, at 628.

\(^{19}\) Cammett, supra note 3, at 138.

\(^{20}\) Id. at 139.

\(^{21}\) Id.

\(^{22}\) Id.


\(^{25}\) Brito, supra note 23, at 960.

\(^{26}\) See Hatcher, supra note 24, at 1045.

\(^{27}\) Brito, supra note 13, at 632.

\(^{28}\) Id. at 631.

\(^{29}\) See id. at 631–32.

\(^{30}\) Id. at 631.

\(^{31}\) See id. at 635.
proportionate share of both parents’ income. The two most prevalent formulas used by states to calculate child support orders take into account the income of noncustodial parents. Moreover, guidelines may allow judges to deviate from the prescribed formula where warranted by the circumstances, and some states have alternative approaches to determining child support orders in cases involving low-income noncustodial parents.

Nonetheless, child support awards ordered by courts, in practice, often bear no relationship to the actual incomes of no- and low-income noncustodial parents and exceed their ability to pay. The disparity between the support obligations established and the noncustodial parents’ ability to pay stems from several systemic practices, outlined below.

i. Orders Established from Inadequate Information

Orders established from inadequate information lead to infeasible child support orders. Courts often lack required information concerning the noncustodial parent’s income, particularly in the case of low-income parents. Even if parents appear, they may have incomplete or confusing evidence concerning their income and employment, especially when lacking a steady job. Frequently, indigent parents’ only evidence of their income and assets comes from their own testimony, which courts “may discount as self-serving and lacking credibility.” Nonetheless, courts will establish support orders without adequate information, which renders support obligations “nothing more than an educated guess.”

\[\text{Id.}\]

\[\text{Id. at 636-37.}\]

\[\text{Id. at 636.}\]

\[\text{Id. at 637.}\]

\[\text{Id. at 639.}\]

Where possible, this Part and the remainder of this Note will refer to noncustodial parents broadly, regardless of gender, because all noncustodial parents are impacted by the child support system. See id. at 618 n.8. However, most likely because noncustodial parents are predominantly fathers, many articles regarding child support refer solely to noncustodial fathers, and in order to convey the information from these articles accurately, this Note will sometimes refer to noncustodial fathers specifically. See TIMOTHY GRALL, CUSTODIAL MOTHERS AND FATHERS AND THEIR CHILD SUPPORT: 2017 3 (May 2020), http://census.gov/content/dam/Census/library/publications/2020/demo/p60-269.pdf.

\[\text{Brito, supra note 13, at 639.}\]


\[\text{See id. at 108.}\]

\[\text{Id.}\]

\[\text{Id.}\]
ii. Default Orders

Judges frequently enter a default order and impute income when a noncustodial parent fails to appear for a child support hearing. Many low-income noncustodial parents fail to appear because, due to insecure living arrangements, they never receive their summons and are unaware of the proceedings. Even if they receive notice, low-income parents may choose not to appear due to their experiences with the child support system. For example, one study showed that noncustodial fathers may not appear because of the negative perception at the courthouse that they were “deadbeat dads.” Moreover, noncustodial parents may not appear because they do not appreciate the consequences of failing to appear—entry of a default order and the resulting financial obligation. “Word gets out that ‘turning yourself in’ to child support means facing a system that will force you to pay what you don’t have or go to jail, so parents avoid courts,” unaware that this will result in a default order that puts them further behind and at risk of incarceration.

Default orders establishing support orders routinely result in an overestimation of the actual income of no- and low-income parents, which causes unmanageable orders that lead to significant arrears. Despite their inherent flaws, default orders are widespread. For example, “in 2000, [70%] of the noncustodial parents with arrears in California had their orders established by default.”

iii. Imputed Income

Courts may establish support orders by imputing income to noncustodial parents in disregard of their actual earnings. Courts often assume how much

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43 Brito, supra note 13, at 640.
45 See Brito, supra note 13, at 640.
46 Id.
47 Id. at 640–41.
49 See Brito, supra note 13, at 640–41; MAY & ROULET, supra note 48, at 9.
50 See Brito, supra note 13, at 641.
51 Id.
52 Id.
53 See id. at 639.
noncustodial parents earn or should earn, generally imputing the ability to earn minimum wage at a full-time, forty-hour work week.\textsuperscript{54} Even worse, courts may exercise broad discretion in imputing income, effectively “taking] a stab in the dark.”\textsuperscript{55} In Florida, courts can impute the state’s median income, regardless of how little the noncustodial parent earns or the fact that the median income in the parent’s locality within the state may be significantly lower.\textsuperscript{56} As such, imputation of income results in an overestimation of earnings for parents who lack stable employment or work fewer than forty hours per week.\textsuperscript{57}

Judges typically impute income in conjunction with a default order for failure to appear.\textsuperscript{58} Additionally, courts are likely to impute income where noncustodial parents appear without representation, because it is unlikely that they will be able to effectively provide evidence of their inability to pay.\textsuperscript{59} A court may impute income if it determines the noncustodial parent is underemployed and has greater earning capacity than evidenced by their actual income.\textsuperscript{60} Imputation of income higher than a noncustodial parents’ actual income inherently leads to unaffordable support orders and arrears.\textsuperscript{61}

iv. Minimum Orders

More than half of states require minimum child support orders that generate excessive support orders for low-income parents.\textsuperscript{62} Minimum orders range from $20 per month to $179 per month, with the most common being $50 per month.\textsuperscript{63} The minimum order “may be ordered regardless of the actual income or employment prospects of the obligor, on the theory that all parents, regardless of income, should make some financial contribution to their child.”\textsuperscript{64} Minimum orders result in obligations that are a disproportionate share of or in excess of the noncustodial parents’ income\textsuperscript{65} and thus cause substantial arrears.

\textsuperscript{54} See id. at 639–40.

\textsuperscript{55} Patterson, supra note 39, at 109.

\textsuperscript{56} See Hyson, supra note 1. In Gainesville, Florida, the “median income is about $20,500.” Id. In Alachua County (where Gainesville is located), “[t]he median income of Black households . . . is about half that of white households.” Id.

\textsuperscript{57} Brito, supra note 13, at 640.

\textsuperscript{58} See id.

\textsuperscript{59} Id. at 641.

\textsuperscript{60} See Patterson, supra note 39, at 108.

\textsuperscript{61} See Brito, supra note 13, at 641.

\textsuperscript{62} See Patterson, supra note 39, at 109.

\textsuperscript{63} Id.

\textsuperscript{64} Id. at 109–10.

\textsuperscript{65} Id. at 110.
v. Retroactive Orders

Courts may issue retroactive support orders, requiring noncustodial parents to reimburse the state for welfare costs that the state accrued prior to the imposition of the initial child support order.66 For divorced or cohabitating parents, arrears are typically imposed based on the date of separation.67 For other nonmarital parents, arrears may be dated back to the birth of the child.68 Courts may also retroactively require noncustodial parents to pay fees for paternity testing, litigation costs,69 or costs associated with the birth of the child.70 In conjunction with imputed earnings, retroactive orders frequently result in child support orders exceeding 50% of low-income fathers’ reported earnings.71 Retroactive support orders impose, from the outset, an unmanageable child support arrearage for many noncustodial parents,72 totaling thousands of dollars and causing parents to “enter a state of permanent arrearage.”73

vi. Failure to Modify

The failure to modify child support orders when a noncustodial parent’s financial circumstances have worsened further contributes to unmanageable support obligations. Noncustodial parents may seek modification of their child support orders if a substantial change in financial circumstances, such as involuntary unemployment or underemployment, warrants adjustment.74 However, child support modifications are difficult to obtain.75 Some states find that “only changes that were unforeseeable at the time of the original order can serve as grounds for modification.”76 This requirement may prevent modification in cases involving employment instability, which is generally foreseeable for low-income noncustodial parents.77 Many states also require that the change in circumstances be involuntary or in good faith.78 Courts consider termination for employee wrongdoing voluntary, and courts are likely to consider continued unemployment

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66 See Brito, supra note 13, at 642.
67 Patterson, supra note 39, at 110.
68 Id.
69 Brito supra note 13, at 642.
70 Patterson, supra note 39, at 111.
71 Brito, supra note 13, at 642.
72 Id.
73 Patterson, supra note 39, at 111.
74 Brito, supra note 13, at 643.
76 Patterson, supra note 39, at 113.
77 See id.
78 See id.
voluntary if they find the parent has undertaken insufficient efforts to find employment. 79 Additionally, some courts may view imprisonment as voluntary, based on the “voluntariness” of the crime. 80

Low-income fathers are unlikely to have counsel who can help with modification, and they are unlikely to file pro se. 81 Moreover, many low-income fathers are unaware of their ability to seek downward modification or the steps needed to do so. 82 The Bradley Amendment, a federal prohibition on retroactive modification, prevents noncustodial parents from obtaining modification of obligations already accrued, even where a support order was set inappropriately high to begin with or a parent may have been previously eligible for a modification but failed to petition for one. 83 In addition to procedural obstacles and lack of access to justice, general hostility to downward modification generates adverse policies creating barriers to modification. 84

vii. Obligations of Incarcerated Parents

Incarcerated parents face systemic failures in both the criminal justice and child support systems that lead to high arrears. Some states treat incarceration as voluntary unemployment and decline to suspend arrears during confinement. 85 This policy is based on the perspective that non-custodial parents should not be relieved from their support obligation through their “own voluntary criminal acts” and that incarceration due to criminal acts is foreseeable, thereby failing to justify suspension of arrears. 86

Even where incarcerated noncustodial parents would be eligible for modification, they are unlikely to receive modifications because they often do not file a legal request for modification. 87 Incarcerated parents lack the ability to undertake the necessary process of seeking relief, which would require visits to government agencies, court appearances, and research. 88 The impact that the failure to modify support obligations of incarcerated parents has on mounting arrears is apparent, as “[30%] of fathers with support orders released from prison

79 See id.
80 Id.
82 Brito, supra note 13, at 644.
83 See Patterson, supra note 39, at 115.
84 See id. at 113. One study by the Department of Health and Human Services Inspector General found that even absent an explicit policy disfavoring requests for adjustment by noncustodial parents, “local administrators may nonetheless deny noncustodial parents the opportunity for review and adjustment.” Id.
85 Cammert, supra note 3, at 151.
86 Id.
87 See Brito, supra note 13 at 645.
rank help with support debt as their most urgent need, above obtaining work and housing.89

viii. Arrears Resulting from These Practices

Many of these practices result in larger disparities between actual income and support obligations for Black and Latinx noncustodial parents than white noncustodial parents. According to 2019 census data, for every dollar of income the median white household earns, the median Black household earns only sixty-one cents, and the median Hispanic household earns only seventy-four cents.90 Black people are at least twice as likely as white people to be poor or unemployed.91 The poverty rate among Latinx individuals is about 15–20% higher than that of white individuals.92 As a result, practices of establishing support orders that bear no relationship to a parent’s ability to pay—such as default orders, imputed income, and minimum orders—will result in larger gaps between affordable obligations and the actual orders imposed upon Black and Latinx noncustodial parents and cause them to accumulate greater arrears at a faster rate than white noncustodial parents.

For example, as mentioned above, courts in Florida may impute the state’s median income, about $28,000, to noncustodial parents if they cannot prove their income or fail to appear.93 However, in Alachua County, Florida, the median income is about $20,500, and the median income of Black households in the county is about half that of white households.94 Thus, the imputation of income in Alachua County, Florida, will have a more devastating impact on Black noncustodial parents than on white noncustodial parents.

Additionally, the continual failure to modify support obligations of incarcerated parents disproportionately impacts Black and Latinx noncustodial parents. In state prisons, Black people are incarcerated at nearly five times the rate of white people, and Latinx people are incarcerated at 1.3 times the rate of white people.95 Because Black and Latinx parents are more likely to experience

89 Hyson, supra note 1.
93 See Hyson, supra note 1.
94 See id.
incarceration, they are more likely to improperly accrue arrears because of the barriers that prevent incarcerated noncustodial parents from obtaining downward modification of their support obligations.

All in all, these policies result in insurmountable arrears for low-income noncustodial parents. In 2020, over $115 billion in arrears was owed in the United States, but less than $11 billion was paid. About 70% of child support debt is owed by noncustodial parents earning $10,000 or less per year. These parents are “expected to pay, on average, 83 percent of their income in child support.” In contrast, noncustodial parents earning more than $40,000 annually owe only 4% of total arrears. Sixty percent of parents with arrears exceeding $100,000 have no reported income, and these parents owe 22% of total arrears in the United States.

C. Strict Child Support Enforcement Leads to Incarceration

The evolution of the child support system throughout the late twentieth century has included a shift to strict enforcement. According to Paul K. Legler, an attorney for the U.S. Department of Health and Human Services who was involved in developing federal legislation concerning child support, the federal model of enforcement was “based on the premise ‘that the payment of child support should be automatic and inescapable—“like death or taxes.”’” Thus, judicial discretion was replaced with “expedited administrative proceedings and mass processing of enforcement activities.”

The first methods of enforcement to be attempted are wage garnishment and seizure of assets. “A vast network of automated systems provides the child support agency with information on obligors’ bank accounts, tax filings, and assets, Disparity-in-State-Prisons.pdf. When considering federal and state prisons, the disparity in incarceration rates between white people and both Latinx and Black people is slightly higher. See John Gramlich, The Gap Between the Number of Blacks and Whites in Prison Is Shrinking, P E W R S C H. CTR. (Apr. 30, 2019), https://www.pewresearch.org/fact-tank/2019/04/30/shrinking-gap-between-number-of-blacks-and-whites-in-prison/.

96 OFF. OF CHILD SUPPORT ENF’T, supra note 2, at 91.
97 Id. at 92.
98 Hyson, supra note 1.
100 Brito, supra note 13, at 649.
102 Id.
103 Patterson, supra note 39, at 100–01.
104 Id. at 101.
105 See id. at 100.
as well as means for effecting automated seizures of certain assets, including tax refunds.\textsuperscript{106}

If wage garnishment and seizure of assets are ineffective or insufficient to meet the noncustodial parents’ obligations, coercive mechanisms are employed:\textsuperscript{107} driver’s license suspensions;\textsuperscript{108} “revocation of occupational, driver’s, and other licenses;”\textsuperscript{109} passport denials;\textsuperscript{110} liens on property;\textsuperscript{111} reporting of noncustodial parents with arrears to consumer reporting agencies;\textsuperscript{112} additional fines; warrants; extended supervision; and incarceration.\textsuperscript{113}

Nonpayment of child support may result in incarceration in two ways: (1) a finding of civil contempt, or (2) a conviction in a criminal non-support action initiated by the government.\textsuperscript{114} Civil contempt is more common than criminal contempt, and the jail sentence for civil contempt is typically less severe.\textsuperscript{115} However, all states have statutes criminalizing failure to pay child support.\textsuperscript{116} Penalties under criminal nonsupport statutes may be as severe as twenty years of incarceration (Arkansas) or a $100,000 fine (Kansas).\textsuperscript{117}

Elizabeth Patterson, a professor of law specializing in child and family issues who has written about child support enforcement law,\textsuperscript{118} found that “the facts of appellate cases from throughout the nation . . . show[ed] indigent obligors being jailed for civil contempt with little attention to the economic circumstances underlying their noncompliance.”\textsuperscript{119} Subsequently, in \textit{Turner v. Rogers}, the Supreme Court held that there was no categorical right to counsel in civil contempt proceedings for nonpayment of child support, but stated that courts cannot incarcerate noncustodial parents without explicitly finding that they have the

\textsuperscript{106} \textit{Id.}
\textsuperscript{107} \textit{Id.}
\textsuperscript{109} Patterson, \textit{supra} note 39, at 100.
\textsuperscript{110} Cammett, \textit{supra} note 3, at 144.
\textsuperscript{111} Brito, \textit{supra} note 13, at 650.
\textsuperscript{112} Patterson, \textit{supra} note 39, at 100.
\textsuperscript{113} See NAGRECHA ET AL., \textit{supra} note 88, at 6.
\textsuperscript{115} See \textit{id.}
\textsuperscript{116} \textit{See Child Support Tutorial, NAT’L CONF. OF STATE LEGISLATURES} (Apr. 13, 2021), https://www.ncsl.org/human-services/child-support-tutorial. Generally, the government “must prove that 1.) the defendant acted knowingly or intentionally; and 2.) the defendant failed to provide support.” \textit{Id.} These statutes may make criminal nonsupport a felony or misdemeanor. \textit{Child Support and Incarceration, supra} note 114.
\textsuperscript{117} \textit{Ark. Code Ann.} § 5-26-401(b)(2)(C); \textit{id.} § 5-4-401(a)(3); \textit{Kan. Stat. Ann.} § 21-5606(b); \textit{id.} § 21-6611(a)(3).
\textsuperscript{118} Elizabeth Patterson, \textit{UNIV. OF S.C.}, https://sc.edu/study/colleges_schools/law/faculty_and_staff/directory/patterson_elizabeth.php (last visited June 16, 2023).
\textsuperscript{119} Patterson, \textit{supra} note 39, at 118.
ability to pay. However, findings of inability to pay may not be accurate, particularly where the parent does not have a lawyer.

In civil contempt proceedings, “absence of willfulness is treated as a defense, and the initial burden is on the contemnor to plead and present evidence of . . . inability to comply with the order.” In some states, the defendants have the full burden of proof regarding willfulness or inability to pay. But, proving inability to pay may be “factually complex,” involving the noncustodial parent’s economic circumstances, work history and potential to work, available assets, and subsistence needs. Other issues may increase the complexity, such as “good faith responsibility for other obligations, voluntariness of . . . underemployment, and the availability of borrowed funds or assets owned by others” that could be used to satisfy the debt.

Moreover, there is often a “lack of hard evidence . . . [showing] inability to pay.” Low-income noncustodial parents rarely retain the records necessary to prove their inability to pay, and courts may find noncustodial parents’ “testimony concerning inability to pay insufficient evidence or lacking in credibility absent corroborating documentary evidence.”

To make matters worse, the insulation of findings of fact in contempt proceedings, due to the “clearly erroneous” standard of review, allows judicial bias to play a large role in adjudicating ability to pay. Thus, despite the Supreme Court’s ruling that courts must specifically find that the parent has the ability to pay before jailing them for civil contempt, the difficulties surrounding proof of inability to pay may render this requirement meaningless, especially where the parent lacks counsel.

My experience working in legal aid at Indiana Legal Services, Inc., (ILS) confirmed that the Court’s mandate in Turner is not realized in practice. In Indiana, indigent noncustodial parents have the right to have counsel appointed when they are at risk of incarceration for nonpayment of child support. However, because of flaws in the judicial system, having appointed counsel may do more harm than good in practice. During my time at ILS, I worked with a client who had been sentenced to jail for civil contempt—despite having a disability that prevented him from

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120 See 564 U.S. 431, 448–49 (2011); see Robles & Dewan, supra note 99.
121 See Robles & Dewan, supra note 99.
122 Patterson, supra note 39, at 119.
123 See id.
124 Id.
125 Id. at 120–21.
126 Id. at 119.
127 Id. at 121.
128 Id. at 122.
129 ILS is a nonprofit organization that provides free civil legal assistance to low-income individuals in Indiana. About Us, IND. LEGAL SERVS., INC., https://www.indianalegalservices.org/about (last visited Aug. 21, 2022).
working and rendered him unable to make support payments—because his court-appointed attorney did little to argue his case. According to the former Managing Attorney at my ILS office, who was an attorney at ILS for thirty-eight years and had observed this scenario many times, having a court-appointed attorney may not prevent a finding of contempt where the parent lacks the ability to pay, and in fact, may make matters worse. He explained that an uninterested or unmotivated court-appointed attorney may poorly argue the noncustodial parent’s inability to pay. Nonetheless, the court may take the fact that the parent had representation as a carte blanche to hand out a jail sentence without considering the facts surrounding inability to pay. In sum, whether parents lack counsel or have representation, many are at risk of incarceration for nonpayment of support, even where they cannot afford their support obligations and are not willfully choosing to miss their payments.

Due to a lack of recordkeeping and data collection by government agencies, the number of parents incarcerated for nonpayment of child support is unknown. "Child support agencies do not typically track arrests for nonpayment, so finding documentation often depends on the record-keeping of sheriff’s or prosecuting attorney’s offices, and the meaning of the records is not always clear.” However, the data available suggest that “the number is substantial.” A review by the Center for Family Policy and Practice found thirty-six states in which arrests for nonpayment of support were reported in the media. For example, the Marion County (Indiana) Child Support Division reported that about 2,400 to 3,300, or 3%, of open child support cases each year result in incarceration for nonpayment. The Montgomery County (Maryland) Sheriff’s Office arrested 350 parents for nonpayment in one year. A different study found that in South Carolina, 13.2% of county jail inmates were incarcerated for civil contempt due to nonpayment of child support.

Yet, despite widespread incarceration for nonpayment, it is ineffective at procuring child support payments. Due to reforms that strengthened child support enforcement, parents who can afford to pay support, in fact, make their payments. “That problem has been solved,” said Vicki Turetsky, former

131 Interview with Tom Frohman, Managing Att’y, Ind. Legal Servs., Inc., in Bloomington, Ind. (Feb. 8, 2022).
132 Id.
133 Id.
134 See MAY & ROULET, supra note 48, at 11.
135 See Patterson, supra note 39, at 116–17.
136 MAY & ROULET, supra note 48, at 11.
137 See Patterson, supra note 39, at 117.
138 MAY & ROULET, supra note 48, at 12.
139 Id. at 20.
140 See id. at 23.
141 Child Support and Incarceration, supra note 114.
142 See Brito, supra note 23, at 960–61.
Commissioner of the Office of Child Support Enforcement. Because less severe enforcement measures are effective against parents with the employment and income security needed to pay support, incarceration is effectively reserved for parents who cannot afford their payments. But if parents cannot afford their payments, “no threat of conviction and punishment [will] draw blood from that stone.”

II. INCARCERATION FOR NONPAYMENT HARMs CHILDREN AND PARENTS

A. Incarceration of Poor Noncustodial Parents Harms the Children for whom Support is Intended

Courts have long maintained that serving the best interests of children is the “paramount purpose” of child support. This jurisprudence developed into a legal standard, and the best interests of the child is today “the controlling legal standard applied to child support proceedings.” “Although there is no standard definition of ‘best interests of the child,’ the term generally refers to the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve a child, as well as who is best suited to take care of a child.” However, incarcerating noncustodial parents for nonpayment of support contravenes the best interests of children in crucial ways and harms the children intended as the beneficiaries of support.

   i. Reduction in Amount of Support Received

Incarceration of noncustodial parents for nonpayment harms children by reducing the frequency and amount of support the child's custodial parent will receive. Incarceration reduces low-income parents’ potential earning power, thus rendering it less likely that they can provide financial support to their children. The onset of incarceration will cause many parents to lose any current

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143 Id.
144 See Brito, supra note 13, at 650.
145 See id. at 651.
146 Cortney E. Lollar, Criminalizing (Poor) Fatherhood, 70 ALA. L. REV. 125, 142 (2018).
147 Hatcher, supra note 24, at 1032.
148 Id. at 1059.
149 CHILDREN’S BUREAU, DETERMINING THE BEST INTERESTS OF THE CHILD 2 (current through June 2020), https://www.childwelfare.gov/pubpdfs/best_interest.pdf. Frequent guiding principles of best interests determinations among the states include family integrity; avoidance of removing of children from their home; the health, safety, and protection of the child; timely permanency decisions; and “care, treatment, and guidance that will assist the child into developing into a self-sufficient adult.” Id. Common factors required for consideration by state statutes include emotional ties and relationships between children and their family; “capacity of parents to provide a safe home and adequate food, clothing, and medical care”; “mental and physical health needs of the child”; “mental and physical health of the parents”; and presence of domestic violence. Id. at 2–3.
150 See Cammett, supra note 3, at 146.
employment. During incarceration, few parents will earn income, and for those who do, the income will be negligible.

Upon release, if noncustodial parents were incarcerated for criminal nonsupport (as opposed to civil contempt), their record will reduce their employment prospects. Employers are less likely to hire people with a criminal record, and a noncustodial parent’s record might disqualify them “from some skilled and licensed occupations.” Even if they are incarcerated for civil contempt and do not acquire a criminal record, the gap of employment during their incarceration will have long-term ramifications for finding future employment.

Where noncustodial parents can find employment upon release, they will likely “earn significantly less [income] than they did prior to their incarceration,” as individuals released from incarceration earn approximately 40% less than their income prior to incarceration. As such, the practice of incarceration for nonpayment has drastic negative effects on parents’ earning power, which directly translates to a reduction in support payments that the child, through their custodial family, will receive.

Moreover, the mere threat of incarceration can cause parents to take actions that will lead to less support being collected for children. Noncustodial parents might turn to underground employment to avoid detection and incarceration, which prevents the state from garnishing their income for child support and ultimately reduces the support received by children.

t. Family Separation

The incarceration of parents for nonpayment of support harms children by disrupting the family relationship and pushing noncustodial parents out of the child’s life. Even before a parent may be at risk of incarceration, the child support system’s imposition of unrealistic expectations on parents to pay support that they cannot afford actively discourages parental contact. “[F]or unmarried parents, child support is often ‘a source of tremendous acrimony and divisiveness,’” which leads to increased paternal disengagement. Moreover, the child support system reinforces the idea “that a father’s only worth to his child is financial,” further

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151 See Robles & Dewan, supra n. 99; Brito, supra note 13, at 658 n.334.
152 See Brito, supra note 13, at 658, 658 n.329. Prison wages average eighty-six cents per hour, and in some states, incarcerated people receive no pay. Brito, supra note 23, at 976.
153 See Brito, supra note 13, at 658.
154 See id.
155 See id.
156 See Lollar, supra note 146, at 137.
157 See Brito, supra note 13, at 658.
158 See id. at 658 n.333.
159 See id. at 659.
160 See Lollar, supra note 146, at 129.
161 Id. at 152.
contributing to disengagement. Studies on this matter have shown a correlation between the frequency of support payments and paternal contact.

In addition, the use of incarceration as an enforcement mechanism further drives family separation. To avoid incarceration for arrears, noncustodial parents may take steps that ultimately break up the family. Parents who cannot catch up on payments may “go off radar” to avoid the child support system. They may engage only in underground or informal work, keep no bank accounts, and maintain no credit. These parents may disengage from their family, including their children, to stay off radar. Noncustodial fathers may even seek to disestablish paternity through genetic testing to avoid incarceration for arrears, leaving children legally fatherless and depriving them of nurturing, nonbiological fathers.

Incarceration itself drastically disrupts children’s relationships with their parents. Many parents will be “incarcerated at facilities far from home in locations largely inaccessible via public transportation.” In 2004, 62% of parents in state correctional facilities and 84% of those in federal facilities were incarcerated more than one hundred miles from their residence. Even if geography or transportation pose no barrier to visitation, prison policies might. “Most visits are regulated,” and there is “tremendous variation in prison visiting conditions.” Prison policy may actively deter visitation or target children for exclusion. Often, prisons lack “visiting facilities that are child-friendly.” One study found that almost 42% of incarcerated fathers who did not live with their children prior to incarceration had contact with their children “once a month or less while incarcerated.” “Fifty-nine percent of parents in state correctional facilities and 45% in federal facilities reported never having . . . a . . . visit from their children.” Moreover, 21% of parents incarcerated in state facilities and 9% in federal facilities “reported never having visits, phone calls, or mail[] from their children.”

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162 Id. at 152–53.
163 See id. at 153.
164 Hyson, supra note 1.
165 See id. This helps parents avoid the child support system by preventing automated enforcement mechanisms from tracking their income. See Brito, supra note 13, at 658–59.
166 Hyson, supra note 1.
167 See Brito, supra note 13, at 657.
168 Lollar, supra note 146, at 153.
170 Lollar, supra note 146, at 153.
171 Boudin, supra note 169, at 98.
172 See id. at 103.
173 See id. at 99.
174 Id. at 103.
175 Lollar, supra note 146, at 153.
176 Boudin, supra note 169, at 102–03.
177 Id. at 103 n.160.
Post-incarceration, collateral consequences further disrupt family relationships and discourage reunification after release.\textsuperscript{178} As discussed above, incarceration can have a lasting effect on noncustodial parents’ employment and income prospects.\textsuperscript{179} Unemployment and poverty after incarceration, and the resulting inability to pay support, will discourage noncustodial parents from engaging with their family, depriving children of their relationships with their parents.\textsuperscript{180}

Past incarceration also diminishes housing prospects. Private landlords frequently reject formerly incarcerated parents from renting their housing units.\textsuperscript{181} Further, many formerly incarcerated parents will be barred from living in affordable public housing, including prohibitions on living with their family members in public housing, due to their record.\textsuperscript{182} Homelessness and the housing insecurity of formerly incarcerated noncustodial parents pose a significant barrier to a child’s relationship with their parent, making it difficult for children to see and maintain contact with their parents.\textsuperscript{183}

By isolating noncustodial parents, incarceration for nonpayment deprives children of a healthy relationship with both parents, “one of the most critical determinants of a child’s wellbeing.”\textsuperscript{184} Studies have shown “that a father’s absence doubles the likelihood of a child’s incarceration.”\textsuperscript{185} Moreover, the absence can lead children to have “increased mental health issues, diminished . . . school achievement,” increased likelihood of involvement with the juvenile justice system, and “greater risk of adolescent pregnancy.”\textsuperscript{186} That certainly cannot be in furtherance of the child’s best interest.

\textbf{B. Incarceration for Nonpayment of Support Criminalizes Poverty and Harms Poor Noncustodial Parents}

In addition to harming the children to whom child support is owed, the use of incarceration to enforce child support obligations harms noncustodial parents with support obligations.

\begin{itemize}
\item \textsuperscript{178} See Cammett, \textit{supra} note 3, at 147.
\item \textsuperscript{179} See supra text accompanying notes 151–59.
\item \textsuperscript{180} See id.
\item \textsuperscript{181} See Cammett, \textit{supra} note 3, at 147 & n.109.
\item \textsuperscript{182} See id.
\item \textsuperscript{184} Lollar, \textit{supra} note 146, at 129.
\item \textsuperscript{185} \textit{Id.} at 151.
\item \textsuperscript{186} \textit{Id.} at 151–52.
\end{itemize}
i. Criminalization of Poverty

Incarceration punishes low-income parents for not being able to afford court-imposed child support obligations in excess of impoverished parents’ ability to pay, effectively criminalizing poverty. As previously discussed, conventional collection methods are effective for noncustodial parents with stable employment and financial means, and thus, incarceration is primarily imposed upon low- or no-income parents.  

However, most low- and no-income parents are not intentionally defying their support orders and choosing not to pay; rather, they cannot afford them. When low-income parents cannot afford their obligations, incarceration for child support debt is not punishment for choosing to defy their child support obligations—it is punishment for living in poverty.

ii. Economic Harm, Perpetuation of Poverty, and the Cycle of Debt and Incarceration

Incarceration for accumulation of arrears perpetuates poverty, driving low-income noncustodial parents into a cycle of reincarceration that continually renders it more difficult to ever pay off arrears. As previously discussed, low-income parents account for a disproportionate share of arrears in the United States and are the most likely to become incarcerated for nonpayment of support. Further, incarceration inflicts significant and irreversible harm upon affected noncustodial parents, including substantial negative effects upon their earning capacity.

As such, incarceration for nonpayment pushes parents further into poverty and prevents them from paying down their arrears. This leads poor noncustodial parents to permanently face the threat of incarceration and “cycle in and out of the criminal justice system” for the remainder of their lifetimes.

iii. Racial Inequality

Incarceration for nonpayment disproportionately impacts men of color, particularly Black fathers. As previously discussed, the methods for establishing support obligations that are not based on real income—default orders, imputed income, and minimum orders—result in larger gaps between support orders and income for Black and Latinx noncustodial parents. Moreover, because Black and

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187 See supra text accompanying notes 145–46.
188 Recall that 70% of arrears in the United States are owed by parents earning $10,000 or less per year. See Hyson, supra note 1. In contrast, noncustodial parents with an annual income exceeding $40,000 “hold only [4%] of . . . arrears.” See Brito, supra note 13, at 649.
189 See supra text accompanying notes 103–107.
190 See supra text accompanying notes 151–59.
191 Lollar, supra note 146, at 137.
192 See id. at 167.
193 See supra text accompanying notes 89–93.
Latinx individuals are incarcerated at higher rates than white people, they are disproportionately impacted by the frequent failure to modify the child support orders of incarcerated people and the resulting arrear accumulation.\footnote{See supra text accompanying note 94.}

As a result, men of color are at higher risk of incarceration for nonpayment of child support. “Sixty percent of [low-income] fathers who do not pay child support are racial and ethnic minorities.”\footnote{Brito, supra note 13, at 647.} Additionally, “several studies suggest that arrests for nonpayment . . . occur far more often in minority communities.”\footnote{Lollar, supra note 146, at 171.} The association between incarceration for child support and recidivism is especially strong among Black fathers.\footnote{Hyson, supra note 1.} In sum, men of color are more likely to accrue excessive arrears that would expose them to child support enforcement measures, and states are more likely to carry out the strictest sanction, incarceration, against men of color.

iv. Family Separation and the Deadbeat Dad Stereotype

Incarceration harms noncustodial parents by perpetuating the deadbeat dad stereotype. Strict child support enforcement stems from the view that noncustodial fathers who are delinquent on support payments are deadbeat dads who voluntarily choose not to support their children and who are lazy, loathsome, and evasive of responsibility.\footnote{See Lollar, supra note 146, at 139.} Although this Note discounts that assumption, incarceration as an enforcement mechanism for nonpayment perpetuates that stereotype by aggravating the conditions that lead society to view noncustodial fathers as deadbeat dads.

As previously discussed, the threat of incarceration, incarceration itself, and collateral consequences of incarceration prevent parents from meeting their support obligations and push fathers to be absent from their child’s life.\footnote{See supra Section II.A.} Not only does the resulting family separation harm parents in and of itself by depriving them of a relationship with their children, it also perpetuates the deadbeat dad stereotype. As with all stereotypes, the deadbeat dad stereotype can inflict significant harm on noncustodial parents, causing anxiety that depletes cognitive resources and leads to confirmation of the negative stereotype.\footnote{See generally Magdalena Zawisza, The Terrifying Power of Stereotypes – and How to Deal with Them, THE CONVERSATION (Aug. 28, 2018, 7:09 AM), https://theconversation.com/the-terrifying-power-of-stereotypes-and-how-to-deal-with-them-101904.}
III. RETHINKING CHILD SUPPORT ENFORCEMENT

Part of the solution to the harms inflicted by the child support system is simple: we must end the practice of incarcerating parents for nonpayment of support. It is irrational, senseless policy that accomplishes nothing while inflicting devastating consequences on many. Moreover, it decreases the likelihood that children (or the government) will ever receive payment. For some, ending entirely the practice of incarcerating people for nonpayment may feel like a solution that goes too far. But discussions of mass incarceration, a new perspective on welfare, and the potential for reallocation of government resources will illuminate how ending incarceration for nonpayment is the only logical way forward.

A. Rethinking Our Understanding of Mass Incarceration

In recent decades, the United States has adopted incarceration as a one-size-fits-all solution to various societal problems and come to incarcerate more of its people than any other country in the world—a phenomenon referred to as mass incarceration. “Mass incarceration is a network of policing, prosecution, incarceration, surveillance, debt, and social control . . . .” Conversations surrounding mass incarceration predominantly approach the issue from a numbers perspective, focusing on the exponential growth in incarceration and the sheer volume of people incarcerated. When people discussing mass incarceration go further and invoke problematic areas of criminal enforcement, they tend to refer either broadly to all nonviolent or victimless crimes or narrowly to nonviolent drug crimes. A close look at the use of incarceration to address nonpayment of child support, however, shows that, in order to fully comprehend and tackle the problem of mass incarceration, discussions of mass incarceration must also call to attention the specific violations for which we incarcerate people and the ways in which incarceration in those specific contexts may be counterproductive and harmful.

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201 This Note does not address much needed reforms in establishing and modifying support obligations to comport with parents’ ability to pay. For an excellent discussion of these reforms, see Tonya L. Brito, Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Noncustodial Fathers and Their Families, 15 J. Gender Race & Just. 617, 663–70 (2012).


There appear to be four purposes behind incarcerating parents for nonpayment: (1) procuring child support payments for children and custodial parents;\(^\text{207}\) (2) procuring reimbursement to the government for welfare provided to custodial families;\(^\text{208}\) (3) deterring noncompliance;\(^\text{209}\) and (4) punishing parents for choosing not to pay their support obligations.\(^\text{210}\) As this Note has demonstrated, none of these purposes are served by incarceration. The first two purposes are frustrated by incarceration because incarceration prevents noncustodial parents from earning income during the period of incarceration and decreases employment outcomes and earning power after incarceration, thereby reducing the amount of support custodial families or the government receive.\(^\text{211}\) The third and fourth purposes are not served by incarceration because the vast majority of parents who reach the point of incarceration are those who lack the economic means to make their payments and will be unable to comply regardless of the enforcement mechanisms thrust at them.\(^\text{212}\) Low-income parents cannot be deterred from nonpayment when they are simply incapable of meeting their support obligations and have no choice but to miss or fall short on payments. Likewise, they should not be punished for living in poverty and being unable to afford their obligations—a choice they did not make. While achieving none, and even frustrating some, of its intended purposes, the practice of incarceration for nonpayment severely harms both parents and children in a magnitude of ways, as previously discussed.\(^\text{213}\) As such, incarcerating parents because they cannot afford their support obligations is a completely senseless policy. Yet, the United States continues to do so, feeding into its impulse to use incarceration as a Band-Aid for any and all social problems.\(^\text{214}\)

Ending mass incarceration requires that states and the federal government stop turning to incarceration as a one-size-fits-all solution to every problem society faces. Research and scholarship on mass incarceration should incorporate more analysis of incarceration for specific crimes and violations, including how incarceration may frustrate or fail to further the intentions behind incarcerating individuals for specific crimes and violations, to reveal how the resort to incarceration is often irrational policy. Discourse in this light will lead to a better understanding of mass incarceration and identify more areas where incarceration is entirely ineffective and counterproductive.

\(^{207}\) See Cammett, supra note 3, at 155 & n.145

\(^{208}\) See Hatcher, supra note 24, at 1045.

\(^{209}\) See Cammett, supra note 3, at 136.

\(^{210}\) See Lewis v. Lewis, 637 A.2d 70, 73 (D.C. 1994).

\(^{211}\) See supra text accompanying notes 145–55.

\(^{212}\) See supra text accompanying notes 139–41.

\(^{213}\) See supra Section II.A.

\(^{214}\) See Cullen, supra note 201.
B. Rethinking Our Perspective on Welfare

As previously discussed, child support reforms in the latter half of the twentieth century were promulgated to shift the burden of support for poor families from the government to noncustodial parents. This included legislation empowering the government to collect child support payments to reimburse itself for welfare benefits.\(^{215}\) Placing paramount importance on reimbursement to the state motivated the shift to strict enforcement, including incarceration. This evolution in child support policy demonstrates that the government views welfare as temporary financial assistance that must be repaid.\(^{216}\) However, this is a skewed view of welfare where the government provides loans, not bona fide assistance.

The government and the public should understand welfare as the state’s responsibility and privilege to provide for its residents in need. The reality is that there are, and always will be, individuals who need government support, whether it be due to systemic racism, disabilities, poverty, natural disasters, incarceration, or countless other circumstances. Fortunately, in the United States, the wealthiest country in the world,\(^{217}\) the government has ample means and resources to provide that support. When the resources of United States residents, particularly wealthy individuals who do not need assistance, are pooled, they can be used to uplift those who are struggling. Not only should this be viewed as the government’s (and, as the ultimate funders of welfare, the well-off taxpayers’) responsibility, but it should also be celebrated as one of the most vital and valuable roles government can play. Under this conception, the government’s reduction of welfare from bona fide assistance to loans is inappropriate.

From this understanding of welfare, incarceration for nonpayment of child support is unconscionable. The parents who are incarcerated live in poverty and could never afford their support obligations. As such, incarceration for nonpayment punishes low-income noncustodial parents for their inability to pay enough support to lift custodial families out of poverty and ameliorate their need for welfare. Put simply, it is punishment for the inability to repay welfare. Under a proper understanding of welfare, however, the government has no role to play as a loan shark and punish people for their inability to repay welfare. As such, rather than seeking reimbursement for TANF benefits, the government should accept that poor noncustodial parents have no means to pay support and accept the responsibility and privilege of providing for those in need. When the government and the public cease to villainize welfare and those who need it, and ultimately cease seeking repayment of welfare, it will become a natural inclination that there is no reason to incarcerate people for their inability to pay child support.

\(^{215}\) See supra text accompanying notes 24–27.

\(^{216}\) Indeed, the welfare program that primarily spurned the move to strict enforce is named Temporary Assistance to Needy Families. See supra text accompanying notes 21–25.

C. Reallocating Resources to Lift Noncustodial Parents Out of Poverty

Incarceration is expensive. In 2015, the annual cost of incarceration in state prison averaged $33,274 per person, with a yearly cost as high as $69,355 in New York.\(^{218}\) In federal prison, the annual cost of incarceration per person was $35,347 in 2019.\(^{219}\) Because government agencies do not keep records or statistics regarding the number of individuals incarcerated for nonpayment of child support,\(^{220}\) it is impossible to calculate the total amount spent on incarceration for nonpayment of child support. Nonetheless, given the substantial cost of incarcerating just one noncustodial parent and the known widespread use of incarceration to enforce support orders,\(^{221}\) it is evident that the cost of incarcerating noncustodial parents significantly burdens states’ wallets. By eliminating the practice of incarcerating parents for nonpayment of support, which only hinders support payments, states could reallocate financial resources wasted on counterproductive and harmful incarceration to beneficial, productive investments.

Funds presently used to incarcerate parents for nonpayment could be reallocated to programs that would improve the financial circumstances of no- and low-income noncustodial parents and enable them to meet their support obligations. Currently, thirty-two states operate employment programs for noncustodial parents owing child support;\(^{222}\) states without these programs could repurpose funds spent on incarceration to establish these programs. Further, many of these employment programs already in place merely provide skills training and job search assistance.\(^{223}\) Funds spent on incarcerating parents could be reallocated to expand these programs to include job placements with private companies or state or local government agencies. Such job placement programs already exist outside the child support context; for example, New York City has launched an initiative, not specific to noncustodial parents, that includes not only job training, but also placement in private construction and industrial jobs.\(^{224}\) As such, states need not reinvent the wheel in establishing such programs.


\(^{219}\) Annual Determination of Average Cost of Incarceration Fee (COIF), 86 Fed. Reg. 49,060, 49,060 (Sept. 1, 2021).

\(^{220}\) See supra text accompanying notes 129–31.

\(^{221}\) See supra text accompanying notes 129–31.


\(^{223}\) See id.

Additionally, funds currently spent to incarcerate parents for nonpayment of support could be used for general antipoverty programming that would help lift all no- and low-income individuals, including noncustodial parents, out of poverty. For example, increased investment in public transportation could help low-income individuals attain financial security by improving their access to jobs, grocery stores, and schools. Additional spending for public health insurance could allow an expansion in eligibility to more low-income individuals and an increase in coverage, lifting more Americans out of poverty. These are merely examples, as the possibilities for reallocation of money from incarcerating noncustodial parents to antipoverty measures are nearly endless. Any measure that will result in an overall reduction in poverty would contribute to improving no- and low-income noncustodial parents’ economic circumstances, thereby enabling them to make support payments.

Whether financial resources are invested in programs directly targeted towards noncustodial parents owing child support or programs that generally promote financial security for no- and low-income individuals, reallocating funds toward this aim will certainly do more to help lift no- and low-income parents out of poverty and enable them to make child support payments than incarcerating them. Moreover, investing in support for noncustodial parents (or low-income individuals more broadly) will improve their quality of life, rather than destroy it by incarcerating them and unleashing incarceration’s direct and collateral consequences. The potential to reallocate the resources currently wasted on incarcerating noncustodial parents demonstrates that eliminating incarceration for nonpayment is not radical—it is common sense.

CONCLUSION

Child support reforms have created an unsustainable system that establishes support obligations lacking any relationship to no- and low-income parents’ ability to pay. Strict enforcement has led to widespread incarceration of parents for nonpayment of debt that they cannot afford and should never have accrued. Incarceration for nonpayment contravenes children’s best interests, reducing any prospect of receiving financial support and robbing them of a healthy relationship

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with their noncustodial parents. Moreover, it harms the parents subject to incarceration by criminalizing their poverty, driving them further into poverty and creating a cycle of reincarceration, and perpetuating income and racial inequalities and the deadbeat dad stereotype. A more holistic look at the failures of mass incarceration, a more compassionate and responsible understanding of welfare, and the ability to achieve a more productive use of government funds currently slated for incarceration call for an end to the practice of incarcerating parents for nonpayment of support.