

The Collaboration of the Ohio Department of Rehabilitation and Correction, the Ohio Department of Job and Family Services Office of Child Support, and the Ohio CSEA Directors' Association

January 20, 2009

Terry Collins, Director
Ohio Department of Rehabilitation and Correction
770 West Broad Street
Columbus, Ohio 43222

Doug Lumpkin, Director
Ohio Department of Job and Family Services
30 East Broad Street
Columbus, OH 43215

Dear Directors Collins and Lumpkin:

With great respect, the collaborative group of the Department of Rehabilitation and Correction (DRC), the Department of Job and Family Services, Office of Child Support (OCS), and the Ohio CSEA Directors' Association (OCDA) submits to you this report of recommendations designed to empower parents so that they can successfully remove barriers to the payment of child support.

Approximately one year ago, a collaborative group was formed to develop a comprehensive plan for a more effective way to work with incarcerated and formerly incarcerated parents who have child support obligations. The group produced this report of recommendations and developed networks to share information and increase our collective organizational knowledge.

Members of the collaboration included representatives of DRC, OCS, and OCDA, Child Support Enforcement Agency personnel, county probation and parole officers, court administrators, and attorneys. Group members invested countless hours into the project. Their dedication to the children and families of Ohio is appreciated.

We are honored to have contributed to this effort, and we look forward to your input and feedback.

Sincerely,

Carri Brown	Linda Janes	Kim Newsom-Bridges
Asst. Deputy	Deputy	Executive Director,
Director, OCS	Director, DRC	OCDA

Office of Child Support/
Department of
Rehabilitation and
Correction/ Ohio CSEA
Directors' Association
Collaboration

***Letter to Directors
January 20, 2009***

**Table of
Contents**

Executive Summary	3
Collaborative Group Membership	7
Collaborative Group Purpose Statement	8
Subgroups and Their Charges	9
The Collaborative Group's Recommendations	10
Future Action Steps	29
Chart of Recommendations	30
<i>Exhibits</i>	31
A: Criminal Non-Support	31
B: Driver's License Suspension	32
C: ODRC Grant Results	33
D: Practices and Good Ideas at the Local Level	
Auglaize County	37
Cuyahoga County	38
Fairfield County	39
Hamilton County	40
E. Drafted Legislation for Consideration	42
F: Summary of Current, Pending Legislation	
House Bill 130	47
House Bill 610	49
Responsible Fatherhood & Healthy Family Act	50
G: Lambert Case, Indiana Supreme Court	51
Glossary	61
Endnotes	62
Letters of Support	63

Executive Summary

The Department of Rehabilitation and Correction - Child Support Collaboration was initiated near the end of 2007 by Ohio Department of Rehabilitation and Correction (DRC), the Ohio Department of Job and Family Services Office of Child Support (OCS), and the Ohio Child Support Enforcement Agency Directors' Association (OCSA). The purpose of the group, dedicated to the children of incarcerated or formerly incarcerated parents, was to develop targeted, specific initiatives and recommendations designed to empower parents so that they can successfully remove barriers to the payment of child support. An additional objective was to share information about the correctional system and child support services.

Members of the group included representatives of DRC, OCS, ODJFS Office of Family Stability, OCSA, county probation and parole officers, court administrators, attorneys, and child support enforcement agency (CSEA) professionals. The group energy level was high, and participants reported that the group's work immediately helped them in providing services to children and families. The group took time to delve into identifying current practices and researched ideas to improve efficiency and effectiveness in serving the target population.

From a strategic perspective of the child support program, increasing collaborations to share information about and increase access to child support services makes good policy sense. It is important to design unique strategies for targeted populations, including incarcerated and formerly incarcerated child support obligors (people under the duty of an order to pay child support).

In Ohio, there are thirty-two prisons at or above capacity, with more than 51,200 inmates statewide. More than half of these inmates have a child support order. Many more will have such an order at some point in the future.

The majority of these offenders are not incarcerated due to non-payment of child support. In fact, criminal prosecution for enforcement of child support orders is often a last resort enforcement technique. CSEAs primarily pursue felonious non-payment charges once administrative and civil remedies have been exhausted.

In 2006 and 2007, 773 inmates were incarcerated annually because of felony convictions for non-payment of child support. These "non-support offenders" generally serve sentences of less than one year.

Executive Summary

Executive Summary

With prison costs increasing (the average cost to incarcerate an inmate in Ohio is \$25,000 annually), criminal non-support is also a very expensive enforcement technique.

The workgroup recognized the need promote ways to rehabilitate non-support offenders without the high costs of incarceration.

Sub-groups

The collaborative workgroup identified five areas for improvement and assigned responsibility of determining potential strategies for those areas to five subgroups: Connecting Child Support Information with Programs; Incarcerated Obligor; Diversion Activities; Developing Ongoing Exchanges of Information; and Improving Understanding of Child Support. In addition, the workgroup recommended building stakeholder buy-in. Finally, by consensus the workgroup developed twenty recommendations.

Recommendation Categories

Connecting Child Support Information with Programs

These recommendations identify methods and means to increase professional collaboration and knowledge, improve customer service, and ultimately empower incarcerated and formerly incarcerated child support obligors to manage their support obligations. There are six recommendations in this category:

1. Develop staff outreach and education from DRC to OCS/CSEAs.
2. Develop staff outreach and education from OCS/CSEAs to DRC.
3. Create educational videos regarding child support for incarcerated parents.
4. Establish communication between CSEAs and wardens to increase participation of incarcerated obligors in prison programming.
5. Establish communication between CSEAs and regional administrators to increase participation of formerly incarcerated obligors in reentry programming.
6. OCDA to survey county CSEAs to measure agency involvement in outreach to prisons and participation in reentry fairs.

Incarcerated Obligor

This category focuses on how to deal more effectively with the establishment or modification of a child support order when an obligor is incarcerated. This category also deals with managing arrears (delinquent or past-due child support, also called arrearages) that are assigned (owed to the state) and unassigned (owed to the custodial parent). There are four recommendations in this category:

7. Draft and promote legislation to include incarceration as a reason to request an administrative review of a child support order for eligible obligors.
8. Draft and promote legislation to require the use of the obligor's income during incarceration when establishing or modifying a child support order for eligible obligors, and to consider the obligor's status as a convicted felon when imputing the income of a formerly incarcerated obligor. *NOTE: For consensus, the workgroup favored recommending issuing minimum \$50 per month orders relating to recommendation 7 and 8. Including the minimum orders in the draft statutory language will require additional work.*
9. Draft and promote legislation for a statewide approach to the compromise of assigned arrears (for all qualifying Obligor – not just those formerly incarcerated) - to leverage debt in order to increase collections for families.
10. Draft and promote legislation to:
 - Fund court-facilitated services for mediation and compromising unassigned arrears.
 - Authorize the CSEA to deviate from the guidelines calculations when issuing a child support obligation any time that the parents approach the CSEA in agreement with the deviation, as long as the deviation is not in violation of state or federal law.

Diversion Activities

These recommendations deal with developing diversion activities as a pro-active approach to being "smart on crime." Diversion programs piloted in seven Ohio counties have demonstrated promise through focusing on employment, supervised probation, and providing the courts with alternative sanctions for non-payment of child support. There are two recommendations in this category:

11. Increase funding for existing Community Correction Act grant diversion programs, to decrease DRC costs and increase child support collections.
12. Fund a continuum of diversion services – from felony conviction, from incarceration, and from re-offending – to address the varying needs of the target population.

Developing Ongoing Exchanges of Information

This category of recommendations recognizes the importance of developing ongoing communication networks when agencies serve the same population. The exchange of information is important not just to improve services to clients but also to increase the probability of obtaining federal grant funding. There are four recommendations in this category:

13. Station a child support expert at the prisons to help with reentry plans.
14. By using low tech and high tech approaches, OCS and the CSEAs should obtain information from DRC to help avoid released obligors from "slipping through the cracks."
15. Create a process for incarcerated obligors, DRC staff, and community-based programs staff to contact CSEA-DRC liaisons to obtain case information and child support services. The liaisons should also network regularly with one another in order to share good ideas and practices that work.
16. Support the Ohio Offender Reentry Coalition with grant acquisition and development of long term strategic plans.

Improving Understanding of Child Support

This subgroup conducted face-to-face interviews with incarcerated parents and gauged their understanding of child support procedures and practices. Based on those interviews, there are three recommendations in this category:

17. Include financial management, cooperative parenting, child support, and job opportunity topics in education and outreach materials provided to DRC inmates.
18. Continue to seek input and feedback from incarcerated parent regarding child support by conducting surveys and on-site visits at prisons.
19. Include "third party release" forms (also known as release of information forms) in outreach packages provided to inmates so that incarcerated obligors may authorize the CSEAs to speak to the obligors' family members regarding their cases.

Finally, to increase buy-in with stakeholders, such as courts, legislators, advocates, parents, tax payers, and others, the group has a final recommendation:

20. Continue to seek input from partners and stakeholders while communicating the group's recommendations. Conduct on-going analysis of business process reviews to determine how to increase efficiency, improve services for the incarcerated population, and build new or stronger partnership, such as strengthening existing connections with the Ohio Benefit Bank initiative.

Collaborative Group Membership

Sara Andrews – ODRC, Adult Parole Authority, Superintendent
Carri Brown – ODJFS, Child Support, Assistant Deputy Director
John Brunner – Auglaize County CSEA, Attorney/Administrator
Cheryl Casto – ODRC, Adult Parole Authority, Mansfield Region, Parole Officer
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Carole Crockett-Harris – ODRC, Pickaway Correctional Institute, Unit Manager/Administrator
Deb Cunningham – Hamilton County CSEA, Enforcement Section Chief
Heather Donnelly – ODJFS, Child Support, Policy Analyst
Rona Dorsey – ODRC, Office of Prisons, South Region Programs Administrator
Michael Falatach – Cuyahoga County CSEA, Direct Services Manager
Deborah Franklin-Jones – ODJFS, Child Support, Human Services Program Consultant
Erica Gordon – Seneca County DJFS, CSEA, Staff Attorney
Rose Handon – ODJFS, Children & Families, Family Services Bureau Chief
Alicia Handwerk- ODRC, Community Sanctions Bureau Chief
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Linda Janes – ODRC, Parole and Community Services, Deputy Director
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Patrick Welsh – Fairfield County CSEA, Attorney
Mike Willets – Lorain/Medina Community Based Correctional Facility, Executive Director
Gary Yates – Butler County Common Pleas Court, Administrator

***Collaborative Group
Purpose Statement***

"The purpose of the Department of Rehabilitation and Correction - Child Support Collaboration group dedicated to the children of incarcerated or formerly incarcerated parents is to develop targeted, specific initiatives and recommendations designed to empower parents so that they can successfully remove barriers to the payment of child support.

"An additional objective is for the agencies to share information regarding their program services."

Subgroup A - Connecting Child Support Information with Programs

The subgroup will develop recommendations on how to incorporate specific child support information into existing DRC orientation and program materials and how to increase child support professionals' knowledge of the DRC process.

Subgroup B – Incarcerated Obligor

Taking into account research on successful programs already implemented in other states, stakeholder input, and Child Support Guidelines Commission recommendations, the subgroup will develop recommendations, including draft legislation, regarding establishment and modification of child support orders when obligors are incarcerated and regarding Ohio's potential options for compromising child support arrears.

Subgroup C - Diversion Activities

The subgroup will develop recommendations on how agencies should implement diversion activities in order to be “smart on crime”, potentially reducing the growth rate of felony non-support cases, and increasing collections of child support for families.

Subgroup D - Developing Ongoing Exchanges of Information

The subgroup will develop recommendations to maintain ongoing communication between DRC and OCS and the CSEAs, considering “low tech” solutions and “hi tech” exchanges of data.

Subgroup E – Improving Understanding of Child Support

The subgroup will determine how to best solicit information from parents involved in both the DRC and child support program regarding their understandings of services and specific needs.

Recommendations

Connecting Child Support Information with Programs

Subgroup A - Connecting Child Support Information with Programs

The subgroup developed recommendations on how to incorporate specific child support information into existing DRC orientation and program materials and how to increase child support professionals' knowledge of the DRC process.

These recommendations identify methods and means to improve customer service, increase professional knowledge, and ultimately empower incarcerated and formerly incarcerated parents to take an active role in managing their child support cases. There are six recommendations:

1. Develop staff outreach and education from DRC to OCS/CSEAs.
2. Develop staff outreach and education from OCS/CSEAs to DRC.
3. Create educational videos regarding child support for incarcerated parents.
4. Establish communication between CSEAs and wardens to establish and increase participation of incarcerated obligors in prison programming.
5. Establish communication between CSEAs and regional administrators to establish and increase participation of formerly incarcerated obligors in reentry programming.
6. OCDA to survey CSEAs to measure involvement in outreach to prisons and participation in reentry fairs.

The first recommendation of the subgroup is to develop staff outreach and education from DRC to OCS and the CSEAs.

The subgroup envisions annual training sessions conducted by DRC personnel for state and county child support personnel. The objective of the training sessions is to help increase the attendees' knowledge base of DRC practices, especially as such practices relate to the targeted population, incarcerated parents with child support obligations.

Training topics should include:

- DRC terms (e.g., transitional control)
- Probation vs. Parole
- Intake process
- Timeline from intake to release
- Assessment of inmates for prison classes
- Reentry programs offered at each institution
- Supervisory and reentry accountability plans
- A calendar of resource fairs and special events to encourage CSEA participation

The expected outcome of the first recommendation is an increased understanding by child support personnel of the institutional process from intake to release, and an increased understanding of the programs and events offered at each institution. The expectation is that with this increased understanding, additional collaboration between the two entities (DRC and OCS/CSEAs) is encouraged.

The second recommendation is to develop staff outreach and education from OCS and the CSEAs to DRC.

The subgroup believes that education and outreach sessions to DRC staff from OCS and the CSEAs will be just as helpful as sessions conducted to OCS and the CSEAs from DRC staff.

Training topics should include:

- Child support terms (e.g., arrears, assignment)
- Child support application processes
- Rights of parents
- How incarceration impacts case management
- Paternity establishment
- Administrative and judicial enforcement tools
- Ohio's Child Support Guidelines
- Modification of a child support order

The expected outcome of the second recommendation is to increase knowledge of DRC employees that deal with the incarcerated parent population. The increased knowledge will help dispel myths and will better equip these employees to respond to inmate inquiries about the proper procedures of the child support agencies.

Training sessions may be held at each institution or cluster of institutions. However, while face-to-face exchanges of information are ideal for trainings, video-conferences could also be used as a cost-savings measure.

In Colorado, child support staff provided one-day training sessions to correctional department staff. Topics included child support, custody, and state-wide resources. The training was so well-received that it led to the development of a similar training program for incarcerated parents.¹

Parents need accurate and consistent information to empower them to manage their own child support cases. If the first two recommendations are not implemented, it will continue to be difficult to provide accurate information to the parents served by both DRC and child support programs.

Recommendations

Connecting Child Support Information with Programs



A video that provides child support information is one of the most efficient methods of presenting child support information to people in prison or jail.



Legislation is not needed to implement these recommendations. Stakeholder buy-in is needed, as is the approval of department heads. The risk is that the education and outreach efforts will fall behind more pressing priorities during times of economic downturn and budget constraints.

During an intensive evaluation of programs serving fathers involved in the criminal justice system, researchers identified eight elements present in the programs that met the "model" (versus "promising" or "emerging") program criteria.ⁱⁱ

Using diverse methods of delivering program services was one of these elements. All of the model programs utilized more than just a traditional class-room lecture setting.ⁱⁱⁱ

In line with this theory, the subgroup reviewed videos and pamphlets used in other states that have successful child support outreach and education programs in their prisons.

This led to the third recommendation, creating educational videos regarding child support for incarcerated parents.

The subgroup recognizes that people learn in a variety of methods. A video that provides child support information is one of the most efficient methods of presenting child support information to people in prison or jail. It can be shown in a variety of settings, such as in the reception centers that process all incoming inmates and in pre-release program settings. Minnesota, New Hampshire, Oregon, Texas and Washington have all had successes with using videos.

Using the current prison equipment, the DRC/OCS partnership should create visual informational materials to cover general child support information best viewed at the time of incarceration.

A second video should be prepared with information that will help parents upon reentry, viewed at the point of pre-release or entry into a halfway house. The second video would concentrate on how to contact child support agencies, identifying the services and help available.

Using a visual educational tool, in an up-to-date fashion including actors who visually identify with the targeted audience would be helpful. Again, the goal is to increase knowledge and remove barriers to the payment of child support.

Information should be included in the Prison News Network. Publishing short informational articles about child support (including OCS and CSEA contact information) in prison newsletters should also be considered.

The fourth and fifth recommendations of the subgroup are to build communication between child support and DRC personnel to increase participation of incarcerated obligors in prison programming and formerly incarcerated obligors in reentry programming.

Many county CSEAs already are collaborating with DRC personnel located in their counties. The subgroup recommends increasing these collaborations in all regional areas where there are DRC institutions, with multiple county CSEAs working collectively to provide education and outreach materials to the target population and attending related DRC programming, perhaps on a rotational basis.

The subgroup proposes increased involvement by CSEAs inside the prison system by integrating child support information into soft skills class curricula (e.g., responsible family life skills, parenting).

The CSEA employees can serve as guest instructors on topics such as paternity establishment, order modification, and order termination, and provide inmates and DRC personnel with informational pamphlets, fact sheets, and local county CSEA and court contact information.

Incarcerated parents respond positively to child support outreach. Child support staff in Colorado, Illinois, Massachusetts, Texas, and Washington reported that making regular presentations about child support to inmates was appreciated by facility staff and incarcerated parents.

Recommendations

Connecting Child Support Information with Programs

A Question and Answer period following the presentation to allow inmates to interact with the child support professional would be a valuable tool in reducing misunderstandings about child support.



Recommendations

Connecting Child Support Information with Programs

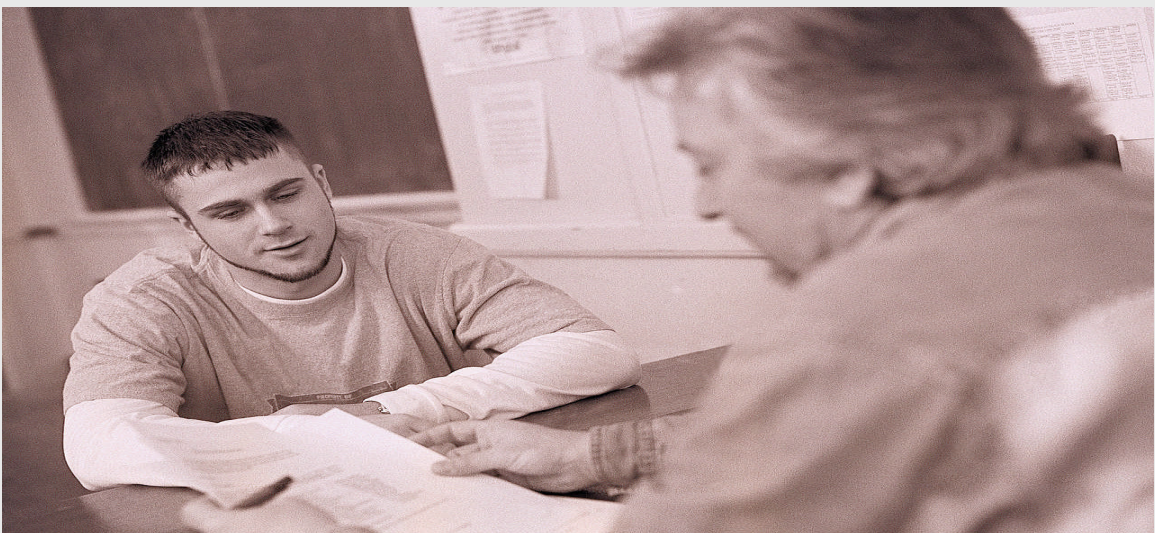
Outreach can be an important component of reentry programs in helping inmates and formerly incarcerated inmates make a successful transition into society. Assistance with child support may be one of the greatest needs. In fact, paroled and released offenders served at the Work and Family Center in Colorado requested child support assistance over transportation, clothing, employment, and housing assistance.^{iv}

As with other recommendations, the risk is that the education and outreach efforts will fall behind more pressing priorities during times of economic downturns and budget constraints.

The subgroup's final recommendation is for OCDA to survey the county CSEAs to measure each agency's involvement in providing outreach services to prisons and participating in prisoner reentry fairs.

The survey should identify which of the eighty-eight county CSEAs provide these services. Of the CSEAs that do provide these services, the survey should determine how often the CSEAs provide these services, the approximate number of inmates served, and the CSEAs' levels of interest in increasing partnerships and communication with DRC personnel. In addition, the survey should identify any barriers to increased outreach and education efforts.

The subgroup recommends that CSEA personnel provide outreach services instead of OCS personnel because the agency staff is familiar with the procedures and expectations of its local court.



Recommendations

Dealing with the Status of a Child Support Order when the Obligor is Incarcerated



Subgroup B – Incarcerated Obligor

Taking into account research about options used in other states, stakeholder input, and Ohio Child Support Guidelines Commission recommendations, the subgroup developed recommendations, including draft legislation. These recommendations pertain to dealing proactively with the status of a child support order when an obligor is incarcerated and to Ohio's potential options for compromising arrears. The four recommendations are:

7. Draft and promote legislation to include incarceration as a reason to request an administrative review of a child support order for eligible obligors.
8. Draft and promote legislation to require the use of the obligor's income during incarceration when establishing or modifying a child support order for eligible obligors, and to consider the obligor's status as a convicted felon when imputing the income of a formerly incarcerated obligor.

NOTE: For consensus, the workgroup favored recommending issuing minimum \$50 per month orders relating to recommendation 7 and 8. Including the minimum orders in the draft statutory language will require additional work.

9. Draft and promote legislation for a statewide approach to the compromise of assigned arrears (for all qualifying obligors – not just those formerly incarcerated) - to leverage debt in order to increase collections for families.
10. Draft and promote legislation to:
 - Fund court-facilitated services for mediation and compromising unassigned arrears.
 - Authorize the CSEA to deviate from the guidelines calculations when issuing a child support obligation any time that the parents approach the CSEA in agreement with the deviation, as long as the deviation is not in violation of state or federal law.

The subgroup reviewed how other state Title IV-D agencies and courts address requests for reviews of existing child support orders when obligors are incarcerated. About half of states consider incarceration a reason for modification or suspension of a child support order, while the other half does not.

In Ohio, the Revised Code does not address the issue. Incarceration is not identified as a reason to review a child support order nor is it identified as a reason to deny a request for a review. (Ohio law also does not address the suspension of a child support order.)

Current administrative and court practices are primarily based on Ohio case law, which tends to consider incarceration as voluntary unemployment and therefore ineligible as a reason to review a child support order.

The workgroup invested time in reviewing *Lambert vs. Lambert*, a court case from Indiana (see Exhibit G). In this case, the Supreme Court of Indiana ruled that the obligor's pre-incarceration income should not have been used to determine the child support obligation due while the obligor was incarcerated.

The court issued its decision based on multiple factors, including its findings that:

- The child support system is an economic system, not a punitive system.
 - It serves to measure each parent's relative contribution to fairly share the costs of child rearing.
- Sociological evidence indicates that imposing impossibly high support payments on incarcerated parents:
 - Acts like a punitive measure.
 - Does an injustice to the best interests of the child by ignoring factors that can, and frequently do, severely damage the parent-child relationship.

The workgroup also met with stakeholders about potential advantages and disadvantages to changing Ohio law to allow incarceration of the obligor as a reason to review a child support order. During one session, a panel of county judges met with the group to share their views "from the bench."

Finally, the subgroup considered the recommendation of the 2005 Ohio Child Support Guidelines Council to amend the Ohio Revised Code. The Council recommended permitting either waiving the monthly child support obligation or authorizing a minimum monthly child support obligation amount when the obligor is incarcerated for an extended period of time and has a resulting income that is at or less than the federal poverty level.

The subgroup concluded that in some circumstances the best interest of the child is served when incarceration is considered a reason for modification. The subgroup drafted legislation based on this conclusion (see Exhibit E).



"Analysis reveals that when the support order has produced large arrearages, there is a significant decline in compliance with the order."^v

Parameters

In order to accommodate situations where incarcerated obligors have substantial financial assets and to comply with existing Ohio law, all of an obligor's assets and an obligor's *current* income would have to be considered when completing such modifications. This is consistent with the decision issued by the Indiana Supreme Court in Lambert vs. Lambert.

Due to pre-imposed timeframe requirements regarding the review and adjustment process, an obligor would be ineligible when the incarceration sentence is less than twelve months. While incarcerated, the obligor would be required to agree to enroll in parenting and financial management classes available to the obligor at the penal institution.

An incarcerated obligor would be ineligible for a modification when the incarceration is due to criminal non-support or when the victim of the crime is the obligee or the child of the child support order.

Upon release from prison, the child support order would return to the original ordered amount the first of the month following 60 days after the release date unless the obligor contacted the CSEA or the court to request further modification. When a child support order is issued or modified post-incarceration, the parent's status as a convicted felon would have to be considered when imputing income for the obligor.

Other state IV-D programs, including Colorado and Illinois, have succeeded in using the review and adjustment process to avoid the accumulation of uncollectible arrears. The workgroup believes that the far-reaching impact of adopting these recommendations will be a decrease in arrears, and an increase in obligors' contact with their children, and with the CSEAs.

The subgroup also researched how arrears are addressed once obligors are released from prison. The Washington State Title IV-D program decided to establish a realistic policy to adjust or settle assigned arrears that accrued during incarceration to address the issue of accumulating insurmountable arrears and promote the payment of current child support.^{vi}

The subgroup's third recommendation is developing legislation to support a statewide approach for the compromise of assigned arrears (for all qualifying obligors – not just those formerly incarcerated) - to leverage debt in order to increase collections of support for families.

Finally, the fourth recommendation is drafting and promoting legislation to:

- Fund court-facilitated services for mediation and compromising unassigned arrears.
- Authorize the CSEA to deviate from the guidelines calculations when issuing a child support obligation any time that the parents approach the CSEA in agreement with the deviation, as long as the deviation is not in violation of state or federal law.

Parents in agreement of an order are likely to comply with the order and will feel more empowered in their own case management.

The workgroup recognizes that the third and fourth recommendations extend beyond the scope of this report by encompassing all obligors, not just incarcerated or formerly incarcerated obligors. However, it would be unjust to exclude other obligors from these recommendations, as the unintended results would be rewarding some obligors for being incarcerated and penalizing other obligors for never being incarcerated. Thus, the subgroup expanded the third and fourth recommendations to apply to all obligors.

The other reason for expanding the recommendations beyond the target population is to address the larger issue of managing arrears and avoiding the accumulation of uncollectible arrears. Extensive research has shown a correlation between an increase in arrears and a decrease in support payment.^{vii}

A legislative, rather than administrative, change is required because it would have a more far reaching and uniform effect on the orders being reviewed. (Administrative rules only govern administrative child support orders; legislative statutes govern both administrative and judicial child support orders.)

The Responsible Fatherhood and Healthy Family Act of 2007, pending federal legislation co-sponsored by President-elect Barak Obama calls for similar provisions (see Exhibit F), including considering incarceration to be involuntary employment and authorizing adjustment to assigned arrears.

If these recommendations are not implemented, incarcerated obligors will continue to accrue insurmountable arrears amounts. Without intervention, child support arrears increase about 60% during an obligor's period of incarceration.^{viii}

Recommendations

Dealing with the Status of a Child Support Order when the Obligor is Incarcerated

Recommendations

Recommending Diversion Activities to Be Smart on Crime

In counties where pilot programs have been implemented, the number of cases in the programs that are receiving child support payments has nearly doubled.

Subgroup C - Diversion

This subgroup developed recommendations on providing diversion services to the target population, to pro-actively be "smart on crime", to potentially reduce the growth rate of non-support cases, and to increase child support collection amounts going to these obligors' families. For the purposes of this report, "diversion" means diversion from a felony conviction, from incarceration, or from re-incarceration. There are two recommendations in this category:

11. Increase funding for existing Community Correction Act Grant diversion programs, to decrease DRC costs and increase child support collections.
12. Fund a continuum of diversion services – from felony conviction, from incarceration, and from re-offending – to address the varying needs of non-support offenders.

Diversion programs already piloted in seven Ohio counties have demonstrated success by providing employment services, supervised probation programs, and alternatives to incarceration for non-support offenders (see Exhibits C and D). The programs are funded through Community Correction Act grant funds.

Butler County started a non-support court docket modeled after drug courts. Clermont County hired an employment specialist and collaborated with the community based correctional facility for programming and sanction options. Franklin County focused on probation violators and began a seven week cognitive behavioral class focused on thinking errors and issues specific to this population. Hamilton, Lucas, Lorain and Delaware Counties each added an intensive probation officer whose entire caseload is dedicated to non-support offenders.

In about a one year period, these programs served 549 parents. In three of the seven counties, there was a marked decrease of non-support offenders admitted to prison, although the overall commitments to prison remained flat. The collection rate for child support payments in four of these counties increased by 95% - compared to collections before the offenders entered the programs.

In August 2008, State Representative Ted Celeste introduced House Bill 610, legislation that would support the expansion of these diversion activities (see Exhibit F). The subgroup's first recommendation is the need for continued funding, so that the existing programs may provide services beyond expiration of the grant funding.

Non-support offenders represent a small but significant percentage of the prison population. Nearly 800 of Ohio's 51,200+ inmates are incarcerated due to non-payment of child support. That figure is less than one percent of Ohio's prison population, but considering the average daily cost to house an inmate is approximately \$68.50, the result is that these nearly 800 offenders alone cost the state nearly \$54,794 per day.

Fortunately, funding diversion programs is a less costly investment option.

Reducing prison over-crowding and ensuring that obligors meet their child support obligations are not the only objectives the subgroup considered. The subgroup was also concerned with the problem these obligors face of finding employment post-incarceration with a felony conviction.

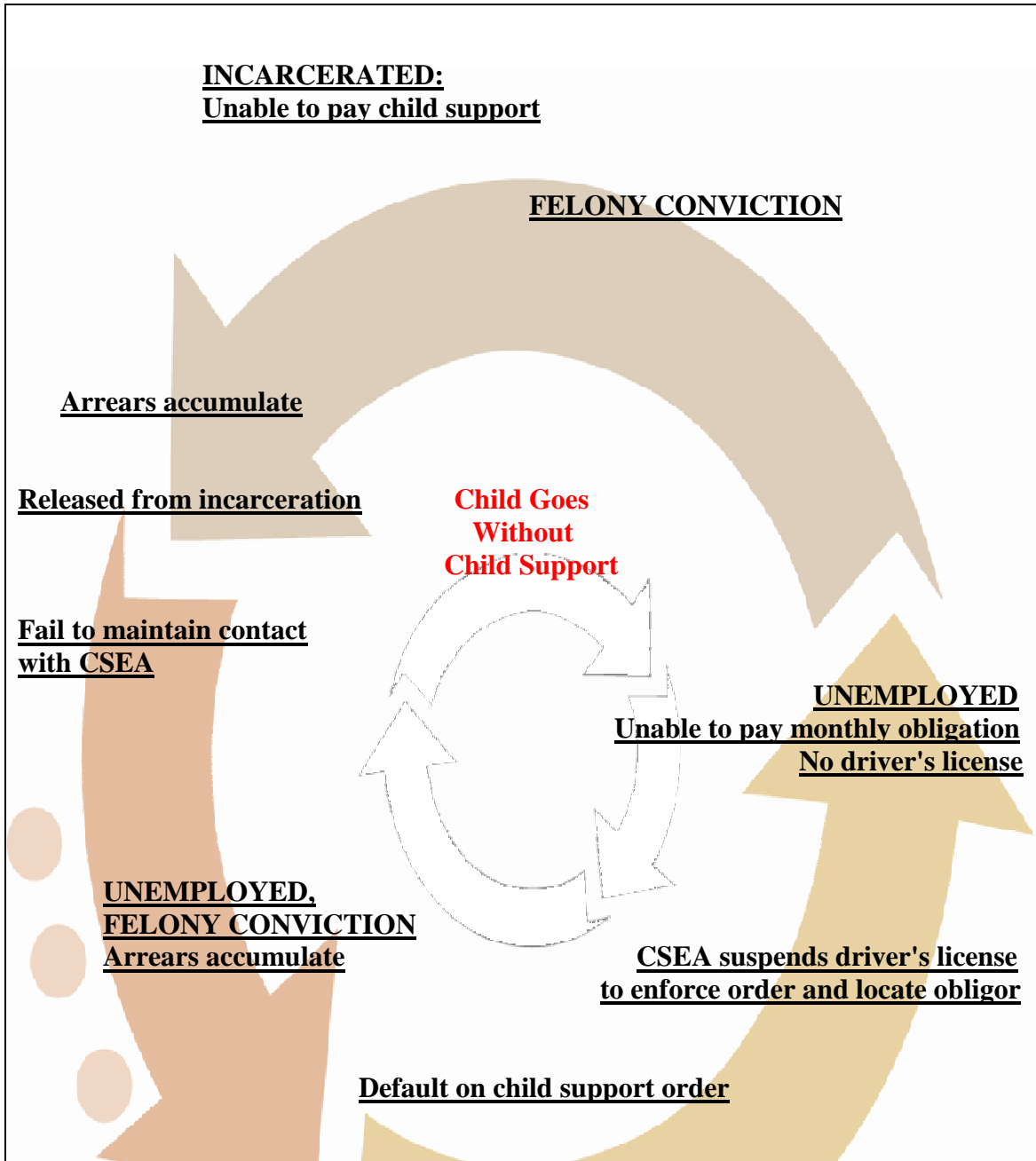
A common scenario goes as follows: An incarcerated parent is unable to pay the child support obligation while in prison. Following release, a felony conviction greatly reduces the earning potential of even the most motivated obligor. The reality is that more and more arrears accrue, and consequently the obligor "go into hiding" from the CSEA. The CSEA may suspend the obligor's driver's license not only as a means of enforcing the order but also in order to simply locate the obligor (see Exhibit B). This further reduces the obligor's ability to pay child support.

Thus, for the second recommendation, the subgroup proposes funding a continuum of diversion services – from felony conviction, from incarceration, and from re-offending – to address the varying needs of non-support offenders. All three intervention levels:

- Emphasize the need for these obligors to meet their child support obligations while striving to maintain their highest earning potential;
- Acknowledge that some obligors may be more recalcitrant than others and may require escalating levels of sanctions, up to and including incarceration; and
- Provide programming to address additional contributing factors.

With the implementation of these recommendations, a significant reduction in the numbers of offenders placed in prison on felony non-support charges is expected. In addition, an increase in the number of obligors paying child support should be realized.

Common Pitfalls of the Incarcerated Obligor



Diversion from a Felony Conviction:

1. Establish a Prosecutorial Diversion Program that emphasizes obtaining and maintaining employment.
2. Offer supervised treatment programs, similar to Intervention In Lieu, instead of a felony conviction for non-support offenders with no prior felony convictions.
3. In order to monitor and compel the defendant's compliance, add a supervision component to the case's progress through Domestic Relations court before entering the criminal complaint.

Diversion from Incarceration:

1. Replicate successful evidence-based Non-Support Diversion Programs (see Exhibit D).
2. Sanction non-compliant offenders to "fast track" programming at a halfway house, community-based correctional facility, or similar work release program.
 - a. Programming should assist offender in obtaining employment and paying child support.
 - b. Programming should include substance abuse and/or mental health services when needed.
3. Partner with faith-based and not-for-profit agencies to provide mentoring and responsible parenting programs.

Diversion from Re-Offending:

1. Target Non-Support offenders for participation in Transitional Control.
2. Provide educational assistance to offenders lacking GED or high school diploma.

***Diversion
from ...***



Recommendations

Developing Ongoing Exchanges of Information to Help Parents

Subgroup D - Developing Ongoing Exchanges of Information

This subgroup developed recommendations for ongoing communication between the Office of Child Support (OCS) and the Department of Rehabilitation and Correction (DRC) through “low tech” solutions and “hi tech” data exchanges.

OCS and DRC each have information that when shared, may remove barriers for the payment of child support through communication, education and support. By opening up a line of communication, OCS and DRC will become a combined force in empowering incarcerated obligors to be better parents by providing them with a better understanding of their rights and responsibilities in regards to child support while incarcerated and upon reentry into society.

This category of recommendations recognizes the importance of developing and maintaining ongoing communication networks. This exchange of information is also important to increase the probability of obtaining federal grant funding, especially with opportunities posed by the Second Chance Act.

There are four recommendations in this category:

13. Station a child support expert in the prisons to help with prisoners' reentry plans.
14. CSEAs should obtain information from DRC via available hi tech data exchanges in order to identify non-support offenders and prevent released non-support offenders from "slipping through the cracks."
15. Create a process for incarcerated obligors, DRC staff, and community-based programs staff to contact CSEA-DRC liaisons regarding child support services and case-specific information. The liaisons should also network regularly with one another to share good ideas and practices that work.
16. Support the Ohio Offender Reentry Coalition with grant acquisition and development of long term strategic plans.

Stationing child support personnel in criminal justice facilities is an effective way to work with DRC staff and to meet with individual inmates regarding their child support orders.

The Minnesota Department of Corrections (DOC) employs a Child Support Liaison that facilitates bi-weekly child support information classes, assist with developing reentry plans, and helps inmates submit modification request. By providing these services, the liaison allows other DOC case managers to focus on providing different services.^{ix}

If budgeting constraints prohibit the implementation of the first recommendation, the importance of the next three recommendations increases.

The child support system often does not know that an obligor has been incarcerated. To help address this information gap, OCS and DRC need to conduct periodic, automated data matches to identify inmates with child support orders and their projected release dates.

The Victim Information and Notification Everyday (VINE) website at www.vinelink.com is currently available to Ohio county CSEA workers. VINE provides the offender's custody status and projected release date, and allows the CSEA worker to register to receive telephone and e-mail notification when an offender's custody status changes.

The flow of information from DRC to OCS and the CSEAs should also include an obligor's:

- o Address provided upon release
- o Employment provided upon release (if any)
- o Parole/Probation Officer (if applicable)
- o Parole/probation revocation (if applicable)

In order to obtain the additional information, the subgroup proposes implementing the following "low tech" solution:

Several incarcerated obligors have active wage withholding orders for child support.

When one of these obligors is scheduled to be released to the Adult Parole Authority (e.g., released from prison but "on parole"), the DRC case manager will forward a copy of the computer screen that contains the obligor's projected release information (i.e., address, employment, parole officer) to OCS or the appropriate CSEA.

The CSEA case worker will contact the obligor directly regarding the status of the child support order and to assist with strategies necessary to comply with the order.

By having the ability to proactively reach out to recently released obligors, CSEA case workers can immediately work with obligors to develop action plans for supporting their child(ren). Early intervention allows a child support case worker and an obligor to identify strategies which may be appropriate for the managing the case, such as linkage with job skills training.

www.vinelink.com
lets child support
workers register
to be notified by
telephone and e-
mail when an
offender's custody
status changes



In order to implement this process, an inmate must authorize DRC to release information to OCS and the CSEA.

In addition, DRC case managers must be willing to take the extra steps necessary to:

- Identify inmates with active child support wage withholding orders in place;
- Obtain the inmates' written consent to release the information; and
- Forward the information to OCS and the CSEA.

Consequently, OCS and the CSEA must quickly respond to the information received, and link with the obligor as soon as possible. Recently released individuals tend to move from the original address provided upon release within a short time period.

The subgroup's third recommendation is for each of the 88 county CSEAs to identify a child support case worker to serve as the agency's CSEA-DRC liaison. The liaison will be the first point of contact for inmates, DRC staff, community-based programs staff, other CSEA employees, CSEA consumers, and the general public regarding issues dealing with incarcerated parents.

Case-specific inquiries from inmates, DRC staff, and community-based programs staff should be referred to the liaison, allowing the liaison to establish a professional rapport and provide timely customer service.

The liaisons should also network regularly with each other in order to share good ideas and practices that work. A list of the liaisons for each CSEA should be posted on the DRC, OCS, ODJFS, and community agency websites.

Obligors often times go into hiding from the child support system because they don't understand the parameters of their child support orders or their parental rights. This communication barrier ultimately decreases the monetary support provided to the families while increasing the potential for the obligor to return to incarceration.

If these recommendations are not implemented, there will be no change in current processes that leads to incarcerated obligors often "slipping between the cracks" upon release.

Finally, the subgroup recommends supporting the Ohio Offender Reentry Coalition with grant acquisition and with the development of long term strategic plans.

Subgroup E – Improving Understanding of Child Support

This subgroup surveyed incarcerated parents in Ohio about their general understanding of the child support program. Based on those interviews, there are three recommendations in this category:

17. Include child support, financial management, cooperative parenting, and job opportunity topics in all education and outreach materials at DRC.
18. Continue to seek input and feedback from parents through surveys and on-site visits at prisons.
19. Include "third party release" forms (also known as release of information forms) in outreach packets provided to inmates so that incarcerated obligors may authorize the CSEAs to speak to the obligors' family members regarding their cases. *(Without these consents, the CSEAs legally are not able to disclose any case-specific information.)*

Members of the subgroup went to two state prisons, the Ohio Reformatory for Women and the Pickaway Correctional Institute.

While there were some consistent themes at both locations (see "Lessons Learned" on page 27), the need to provide inmates with third party release forms is what made the strongest impression on the subgroup.

At both prisons, multiple inmates reported frustration that their own family members were not able to contact the CSEAs on their behalves. What most of the inmates were previously unaware of was that the same laws that protect their rights to privacy also restrict what information the CSEAs may (and may not) release, and to whom.

Without a signed third party release form, a CSEA may not release any case information to an obligor's family member unless the family member is also the obligor's legal guardian. When an obligor is incarcerated, this regulation is still in effect.



Recommendations

Improving Understanding of Child Support



Lessons Learned

- Once inmates learned that employees from the state and county child support offices were available to meet with them and answer their questions, the response was overwhelming.
- Some of the incarcerated obligors that we met with had existing child support orders upon entering prison and some had their orders established during incarceration.
- There was such a high volume of comments about frustration over family members not being able to contact the child support enforcement agencies (CSEAs) on the inmates' behalves that Recommendation #19 is included in this report.

Recommendation #19 is to provide inmates with "third party release" forms (also known as release of information forms) so that they may authorize the CSEAs to speak to their family members regarding their cases. Without these consents, the CSEAs legally are not able to disclose any information.

- Multiple incarcerated obligors wanted to contact their county CSEAs but didn't know how to reach them. Many said they never asked prison personnel about the issue because they didn't know who to ask or simply assumed that prison personnel would also not know how to contact the CSEA.



One on One with Incarcerated Obligors

Recommendations

Building Stakeholder Buy-In and Increasing Partnerships

Finally, to increase buy-in with stakeholders and partners, such as courts, legislators, advocates, parents, tax payers, and others, the group recommends:

20. Continue to seek input from partners and stakeholders while communicating the group's recommendations. Conduct on-going analysis of business process reviews to determine how to increase efficiency, improve services for the incarcerated population, and build new or stronger partnership, such as strengthening existing connections with the Ohio Benefit Bank initiative.



***Future
Action Steps***

The collaborative workgroup has designated an implementation team of:

Carri Brown, OCS
Tiffany Chinn, OCS
Cheryl Casto, ODRC
Heather Donnelly, OCS
Rona Dorsey, ODRC
Michael Falatach, Cuyahoga County CSEA
Alicia Handwerk, ODRC
Linda Janes, ODRC
Angi Lee, ODRC
Scott Neely, ODRC
Kim Newsom Bridges, OCDA
Sherri Rose, ODRC
Athena Riley, OCS
Amy Roehrenbeck, OCDA
Valerie Rust, Richland County CSEA

The implementation team will seek input and feedback from the Directors of the Ohio Department of Job and Family Services and the Ohio Department of Rehabilitation and Correction.

The first meeting date of the implementation team is February 9, 2009. The team will consult with members of the collaborative workgroup as needed and will update members during a future workgroup follow-up meeting.

A copy of this report will also be submitted to the 2009 Child Support Guidelines Council.

Checklist of Recommendations, DRC/OCS/OCDA Collaboration

		Stakeholder Support Needed	Programmatic Legislation Needed	Additional Funding Needed
1	Develop Outreach and Education from DRC to OCS/CSEAs.	X		
2	Develop Outreach and Education from OCS/CSEAs to DRC.	X		
3	Create educational videos regarding child support for incarcerated parents.	X		X
4	Establish communication between CSEAs and wardens to increase participation of incarcerated obligors in prison programming.	X		
5	Establish communication between CSEAs and regional administrators to increase participation of formerly incarcerated obligors in reentry programs.	X		
6	OCDA to survey county CSEAs to measure agency involvement in outreach to prisons and participation in reentry fairs.	X		
7	Draft and promote legislation to include incarceration as a reason to request an administrative review of a child support order for eligible obligors.	X	X	
8	Draft and promote legislation to require the use of the obligor's income during incarceration when establishing or modifying a child support order for eligible obligors, and to consider the obligor's status as a convicted felon when imputing the income of a formerly incarcerated obligor.	X	X	
9	Draft and promote legislation for a statewide approach to the compromise of assigned arrears (for all qualifying Obligor – not just those formerly incarcerated) - to leverage debt in order to increase collections for families.	X	X	
10	Draft and promote legislation to: Fund court-facilitated services for mediation and compromising unassigned arrears; Authorize the CSEA to deviate from the guidelines calculations when issuing a child support obligation any time that the parents approach the CSEA in agreement with the deviation, as long as the deviation is not in violation of state or federal law.	X	X	X
11	Increase funding for existing Community Correction Act grant diversion programs, to decrease DRC costs and increase child support collections.	X	X	X
12	Fund a continuum of diversion services – from felony conviction, from incarceration, and from re-offending – to address the varying needs of the target population.	X	X	X
13	Station a child support expert at the prisons to help with reentry plans.	X		X
14	By using low tech and high tech approaches, OCS and the CSEAs should obtain information from DRC to help avoid released obligors from "slipping through the cracks."	X		X
15	Create a process for incarcerated obligors, DRC staff, and community-based programs staff to contact CSEA-DRC liaisons to obtain case information and child support services. The liaisons should also network regularly with one another in order to share good ideas and practices that work.	X		
16	Support the Ohio Offender Reentry Coalition with grant acquisition and development of long term strategic plans.	X		
17	Include financial management, cooperative parenting, child support, and job opportunity topics in education and outreach materials provided to DRC inmates.	X		X
18	Continue to seek input and feedback from incarcerated parent regarding child support by conducting surveys and on-site visits at prisons.	X		
19	Include "third party release" forms (also known as release of information forms) in outreach packages provided to inmates so that incarcerated obligors may authorize the CSEAs to speak to the obligors' family members regarding their cases.	X		
20	Continue to seek input from partners and stakeholders while communicating the group's recommendations.	X		



Possible penalties for a CNS conviction:

*First offense = first degree misdemeanor; maximum of 6 months in jail and/or \$1,000 fine on each count

*First offense + failed to provide support for 26 out of 104 consecutive weeks = fifth degree felony; maximum of 12 months in prison and/or \$2,500 fine on each count

*Repeat misdemeanor offense = fifth degree felony; maximum of 12 months in prison and/or \$2,500 fine on each count

*Repeat felony offense = fourth degree felony; maximum of 18 months in prison and/or \$5,000 fine on each count

EXHIBIT A

What is criminal non-support?

Criminal non-support (CNS) is a tool used collaboratively by a child support enforcement agency (CSEA) and their local prosecutor's office to enforce the duty to support a child. CNS is governed by section 2919.21 of the Ohio Revised Code, and may be a misdemeanor or felony offense.

In order to substantiate a charge of criminal non-support, the prosecution must demonstrate that the obligor acted recklessly (i.e., was aware of and able to pay the support obligation but chose to not pay the obligation as ordered).

When a CSEA refers a case to the local prosecutor's office for CNS prosecution, the CSEA must demonstrate that the case meets minimum criteria. The prosecutor's office must weigh the evidence, take into account other considerations, such as community expectations in regard to CNS prosecution, and decide if prosecution is warranted.

Questions CSEAs and prosecutors ask include:

- Over a period of 104 consecutive weeks, has there been a total of 26 weeks where no payments were received? This requirement is used to differentiate between felony and misdemeanor charges and highlights the fact that non-support is based on the length of time in which the individual failed to comply with the child support order - not the amount of money that should have been paid during that time.
- Has the CSEA exhausted location and enforcement techniques available?
- Has the CSEA pursued civil contempt charges for the failure to comply with the child support order? Why or why not?
- Is there pending court action relating to the court child support order? The CSEA may refrain from pursuing criminal charges until the disposition of any other proceeding is clear.
- Is there evidence that indicates that the obligor has the means to comply with the support order? Or does the obligor have known barriers to employment (e.g., criminal record, drug/alcohol addiction, disability, homelessness)?

EXHIBIT B

Driver's License Suspension and Reinstatement

Suspension Requirements

The CSEA may notify a licensing entity to suspend an obligor's driver's license when both of the following occur:

- (a) The obligor is subject to a final and enforceable determination of default; **and**
- (b) The obligor fails to comply with a subpoena or warrant issued by the court or CSEA.

Reinstatement Requirements

The CSEA must notify the licensing entity to reinstate the obligor's suspended driver's license when at least one of the following occur:

- (a) The obligor makes full payment of the arrears.
- (b) The CSEA verifies that the obligor has employment or another attachable income source (e.g., a bank account), issues an order to deduct funds from the obligor's paycheck or other income source, and the obligor complies.
- (c) The child support order is modified and the obligor complies with the modified child support order.
- (d) The court or CSEA removes the warrant or determines that the obligor has complied with the subpoena.



Driver's License Suspension and Reinstatement Process



EXHIBIT C

Ohio Department of Rehabilitation and Correction
 Bureau of Community Sanctions
 Non-Support Programs

FY 2008 Fourth Quarter Updates

Table: Updated Child Support Collection by County

County	Amount of Child Support Paid while on probation but before entering program	Amount of Child Support collected during program participation	Percentage Increase of Child Support Paid
Clermont	\$49,979	\$88,965	94%
Butler	\$66,804	\$117,773	76%
Lucas	\$30,389	\$66,869	120%
Franklin	not available	\$20,672	n/a
Delaware	not available	\$53,972	n/a
Lorain	\$37,564	\$59,276	59%
Hamilton	\$84,930	\$127,307	50%
Totals	\$269,666	\$460,252	71%

Table: Non-Support Program Statistics –
 Inception of Program thru July 2008

County	Number of Offenders Served thru July 2008	Number of Participants Terminated and Sent to Prison	Number of Offenders Currently in Program	Percentage of Current Offenders Employed
Clermont	106	2	42	48%
Butler	107	15	58	66%
Lucas	70	4	43	72%
Franklin	67	7	10	0%***
Delaware	58	3	27	93%
Lorain	47	5	35	77%
Hamilton	195	12	159	64%
Totals	650	48	374	67%***

***The Franklin County program serves offenders who are in jeopardy of probation revocation, as a result of non-compliance with supervisions requirements including failure to obtain and maintain employment and pay child support. The 'last-chance' seven week intensive intervention programs focus on changing offender attitudes, including responsible parenting. Upon program completion, the offenders are returned to a standard probation status, where they are required to obtain and maintain employment and pay child support.

**ODRC – FY 2007
 Grant Funding for
 Prison Diversion
 Programs**

Results

**ODRC – FY 2007
Grant Funding for
Prison Diversion
Programs**

Results

Table: Prison Commitments for Non-Support Only –
1st half 2007 vs. 1st half 2008

County	Offenders Sent to Prison for Non-Support Convictions Only – Jan 2007 to June 2007	Offenders Sent to Prison for Non-Support Convictions Only – Jan 2008 to June 2008	Percentage Increase or Decrease
Clermont	23	8	↓65%
Butler	28	31	↑11%
Lucas	23	25	↑9%
Franklin	34	31	↓9%
Delaware	5	8	↑60%
Lorain	9	13	↑44%
Hamilton	34	34	0%
Totals	156	150	↓3.8%

*These offenders were committed to prison for the offense of Non-Support of Dependents only. If the offender was convicted of another offense in addition to Non-Support they were not included in this chart.

Return on Investment

The Department of Rehabilitation and Correction Bureau of Research indicates the most recent raw data for calendar year 2007 for the average length of commitment to prison for a conviction of Non-Support of Dependents is .67 months or approximately 245 days.

Using the average number of days along with the 2007 marginal cost per offender plus the average intake cost for offenders provides an approximate cost to the Department per offender of \$2751.98. (245 days times \$10.10 plus \$277.48).

Average Commitment Length	245 days
2007 Marginal Cost	\$10.10
Intake Cost for Male Offenders	\$277.48

Total Cost for Prison Commitment: \$2,751.98

Average cost for Prison diversion placed in a Community Correction Act program for 2007:	\$1656.00	ODRC – FY 2007 Grant Funding for Prison Diversion Programs
Average savings per Non-Support offender placed in CCA versus Prison:	\$1095.98	
Average Earnings of Offenders in CCA Programs in these 7 counties for FY 08:	\$2,110.00	
Number of Offenders placed in Non-Support Programs:	650	
Number of Offenders violated to prison sanctions from programs	48	
Number of successful Non-Support diversions	602	
Approximate Total Earnings of Offenders: (\$2110 X 602)	\$1,270,220	
Approximate Amount of Taxes Paid:	\$127,022	
Average length of time in Non-Support Programs: (does not include Franklin County's 7 week program)	9-12 months	
<hr/>		
Assuming that all participants in the Non-Support programs could have been committed to prison, what is the cost of keeping them in the community compared to the cost of placing them in prison?		
Number of successful Non-Support diversions	602	Results
Average cost for Non-Support Prison Commitment	\$2751.98	
Total	\$1,656,692	
Number of successful Non-Support diversions	602	
Average Cost for CCA program	\$1,656	
Total	\$996,912	
Offenders placed in Non-Support Program revoked and sent to prison:	48	
Average cost for CCA program	48X\$1,656	
Prison commitment cost:	48X\$2,271.98	
Total Cost for revoked CCA offenders:	\$211,583	
Total Cost Savings (without	\$659,780	

revocations)		
Total Cost Savings (with revocations)	\$448,197	

RESULTS

Average child support payment collected while incarcerated: **\$4 per month**

Average child support payment while on Community supervision in CCA program: **\$63 per month**



Projected Impact

An allocation of an additional \$2 million dollars to CCA programs assists the remaining 81 [Ohio] counties to develop or enhance Felony Non-Support programs that would serve an additional 1,200 non-support offenders. This total is greater than the 773 offenders incarcerated in FY 07, allowing programs to intervene with Non Support offenders sooner, before they have accumulated large arrearages in child support. Early intervention benefits both DRC by reducing the number of offenders committed to prison and the county and community by reducing time and expenses spent on revocation hearings.

Average child support payment collected while Offender is serving a prison sentence:	\$4 per month
Average child support payment while on Community supervision in CCA program:	\$63 per month
(\$460,252/12/# of offenders)	

If the average number of months a Non-support offender spends in prison is eight, the average total payment for that period would be approximately \$32. If the same offender is in a community based Non-Support program, the average total payment for those eight months would be \$504, a difference of \$472.

EXHIBIT D
AUGLAIZE COUNTY I.M.P.R.E.S.S. PROGRAM
Intensive Management for
Pre-Release Employment & Social Services

GOAL: Reduce our community's recidivism and crime rates and promote self-sufficiency by connecting inmates with employers willing to hire them in living wage jobs.

DESCRIPTION: Created in November, 2005 by the Auglaize County Department of Job and Family Services (ACDJFS), IMPRESS is a non-profit prisoner reentry program, working with inmates who have minor children and who are within 120 days of being released. The program focuses on addressing employment, housing and mental health issues prior to release.

Inmates are contacted via letter and/or personal visit to introduce the program. A comprehensive interview is then conducted to determine the barriers and needs of the inmate once released. A release plan is developed and the information is shared with the collaborative partners. We Care Center of Auglaize County provides intensive job search assistance and counseling for these individuals.

RESULTS

Statistics for October – December 2007:

19 referrals: 8 obtained employment; 5 received family support services; 1 re-offended; 2 violated probation. Average wage rate was \$9.25 per hour.

Statistics for July – September 2007:

20 referrals: 7 obtained employment, 3 received family support services; 1 re-offended; 1 violated probation.

LOCATION: Auglaize County, population approximately 47,060 in rural west central Ohio. There is no public transportation.

FUNDING: Title IV-A Temporary Assistance to Needy Families (TANF) money is used for this project.

REPLICATION ADVICE

It is important to partner with a mental health agency that can provide adequate mental and behavioral health follow-up. Group counseling for the family, children or caretaker is also helpful for successful reentry into the family.

Achieving self-sufficiency to include a living wage, obtaining health insurance and paying child support obligations are an important focus.

Remote access via VPN is beneficial during interviews at

Partners in the program include:

We Care Center of Auglaize County

Auglaize County Correction Center

Sheriff's Department and Adult Probation Department

Department of Rehabilitation/Allen Correctional Institute



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the Correction Center for reviewing support obligations, SCOTI registration and job search.

**Current
Programming:**

Cuyahoga County

"Reentry is picking yourself up and walking in the right direction. That is exactly what happened to me when I walked into the Employment Connection - Virgil Brown Career Center (EC-VEB) in April, 2007. The Workforce Development staff provided me with excellent services and enabled me to secure a good job," stated Kent, a 39-year old ex-offender.

The Cuyahoga County Office of Reentry addresses the challenges associated with community reintegration and recidivism.

The 2008 Reentry Priorities are:

- 1) Service Directory – Finalize revisions and distribute new directories by 1st quarter 2008
- 2) Citizen Circles – Support seven existing and establish three additional Citizen Circles
- 3) Office of Reentry – Fully implement and maintain operations of County Office of Reentry
- 4) Integrated Case Management Pilot – Implement three-year Integrated Case Management Model
- 5) Rental Assistance Program – Implement three-year EDEN Tenant-based Rental Assistance Program
- 6) Neighborhood Service Center – Establish at least one (1) Neighborhood Service Model
- 7) Data Collection & Research – Evaluate outcomes and effectiveness of the Reentry Integrated Service System.

An Overview of Prisoner Reentry in Ohio

- Between 1982 and 1998, Ohio's prison population nearly tripled in size from 17,147 to 48,171, mirroring the national trend in prison population growth. By 2004, Ohio had the 7th largest prison population in the US and the 25th highest incarceration rate.
- With Ohio's rising population came a significant increase in the number of prisoners released annually. In 2005, 24,630 inmates were released from Ohio prisons, three times the number of inmates released two decades earlier.

Information comes from *Developing News, the newsletter of the Cuyahoga County Departments of Development and Workforce Development, Fall 2007*

EMPLOYMENT SPECIALIST SERVICES GRANT PROJECT

MAXIMUS was the managing partner with the Fairfield County Department of Jobs and Family Services (FCDJFS), Child Support Enforcement Agency (CSEA) for the Child Support Employment Specialist Services grant project—commonly referred to as the “Job Opp” project. The Fairfield County Courts supported non-custodial parents' participation in the project as a viable alternative to incarceration for non-payment of child support.

The Job Opp project was sponsored by the Ohio Department of Jobs and Family Services and funded with Title IV-A Temporary Assistance to Needy Family (TANF) dollars. The FCDJFS CSEA administered the project and MAXIMUS provided services. Service delivery efforts started the first week of July 2006; following a six-month contract extension, MAXIMUS ended project operations on December 31, 2007.

Employment Specialists (ESs) partnered with CSEA case managers to address the complex problems of the project's identified customers: noncustodial parents that fell within 200% of poverty income level and custodial parents receiving TANF benefits. The primary goals of the project were to: remove barriers to securing employment; finding and securing employment; and collecting child support to benefit custodial families by having the additional dollars in their family budgets.

The project was designed for four full-time ESs to provide intensive case management services to a total of 330 customers. One ES would serve as the team leader and carry a caseload of 39 cases; the other three ESs would each maintain a full caseload of 97 cases.

Referrals quickly exceeded the objective limit of 330 customers. An executive decision was made to accept additional referrals and reduce the level of case management services provided to the customers. Upon completion, 766 customers were served (224% above the established goal).

Even with the additional caseload, ESs were able to deliver quality services to customers, develop relationships with employers, and participate at court hearings. Staff turnover had only minor impacts on the delivery of services to the customer.

The ESs' holistic approach of collaborating with CSEA case managers in order to serve mutual customers proved

Successes achieved during the project.

- √ Jobs placement for one out of every two customers that came into Job Opp program.
- √ More than \$1.1 million dollars in child support collections
- √ Average of \$169 per month in child support for 375 children and families
- √ \$3.00 collected for every \$1.00 spent
- √ Alternative solution for Courts and Child Support Agency to enforce hard-to-collect cases.



effective in supporting the successful outcomes for the project.

Overall, child support collections totaled \$1,140,607, an average of \$169 per month for the 375 families.



Coming Home/Children of Incarcerated Parents (CIP)

Coming Home is a collaborative project between Talbert House, Ohio Department of Rehabilitation and Correction (ODRC), Ohio Department of Job and Family Services (ODJFS), Urban League of Greater Cincinnati, Transformation Cincinnati/Northern Kentucky, Council of Christian Communion and University of Cincinnati. Through this cooperative effort, services are provided to assist incarcerated individuals through the transition from prison to the community and build healthy family relationships. Services include customized case management for the entire family prior to and following the inmate's release; enhanced visitation twice a month; pre-release planning; family counseling; employment readiness, training, and placement; reentry resource linkage to employment, housing, transportation, legal aid, education, and social services and events; parenting groups and corrective thinking groups. Funded by the Governor's Office of Faith Based and Community Initiatives (GOFBCI), Talbert House delivers one of three CIP programs in Ohio.

Recent Events and Initiatives

- Plans to enhance the program include providing services to families outside of Hamilton County and strategies to help select families that will most benefit from services.
- Representatives from the Hamilton County Child Support Enforcement Division presented on child support at Dayton Correctional Institution.
- A graduation dinner/celebration for recent graduates was held and a year end family outing at a local amusement park during the summer.

Fiscal Year 2008 Statistics

One hundred and two (102) families were served in FY 2008. Of those served:

- 56 clients were provided with post-release employment services and 36 obtained employment.
- 25 parenting partners received employment services and 15 received obtained employment.
- 56 families received legal services to reduce barriers/improve circumstances. Examples include child support adjustments, driver license restoration, child custody, parental visitation and probation obligations.
- 38 families received mentoring services from our faith-based partner, Transformations Cincinnati/Northern Kentucky.
- 102 families received direct assistance (bus tokens, gift cards birth certificates, etc.) and 93 were linked to a new community resource (food pantry, community mental health, etc.).

Child Support Programming at Spring Grove Center

Since 2007, Talbert House has provided services to link fathers with the appropriate tools so they are able to pay their child support. These services have been provided at its Spring Grove Center halfway house for men. This program is provided in partnership with Hamilton County Department of Job and Family Services, Hamilton County Probation Department, and Hamilton County Department of Pre-Trial Services. Program partners act as referral sources for the program. Once enrolled, clients receive programming tailored to their individual needs and based on their level of risk. Services may include Cognitive Behavioral Therapy, Money Management, Parenting, ABLE (Adult Basic Literacy Education), Workforce Reentry services, legal services, and Alcohol and Other Drugs treatment.

Clients are enrolled in the program for a minimum of 90 days and attend all required programming prior to seeking employment. Once pre-requisites are completed, clients work closely with an Employment Specialist to secure employment. Once employment is secured, all paychecks are managed by the program while the client learns financial literacy skills. Child support payments are automatically deducted and program staff work in conjunction with a liaison from the Child Support Enforcement Agency to ensure information is accurate and up-to-date.

A client is successfully discharged from the program once the client has been in the program for a minimum of 90 days and followed all program rules; successfully completed all required number of groups; has a full time job; and has made two full months of child support payments.

Statistics

- From June to December 2007, 49 clients were referred; 26 clients or 84% successfully completed the program; approximately \$12,000 was collected for child support.
- During FY 2009, seven clients have entered the program and three have secured employment; over \$3,100 has been paid in child support.

***Current
Programming:***

Hamilton County



**Draft
Proposed
Legislative
Language**

EXHIBIT E

The following language was drafted by Subgroup B. The expectation is that this language is used as a guideline, and that further discussion and research is completed in order to eventually propose amended and revised statutory language.

The language proposed by the subgroup is identified in underlined text.

**3119.01, Calculation of Child Support Obligation
Definitions**

(A) As used in the Revised Code, “child support enforcement agency” means a child support enforcement agency designated under former section 2301.35 of the Revised Code prior to October 1, 1997, or a private or government entity designated as a child support enforcement agency under section 307.981 of the Revised Code. ...

(C) As used in this chapter: ...

(11) “Potential income” means both of the following for a parent who the court pursuant to a court support order, or a child support enforcement agency pursuant to an administrative child support order, determines is voluntarily unemployed or voluntarily underemployed:

(a) Imputed income that the court or agency determines the parent would have earned if fully employed as determined from the following criteria:

(i) The parent’s prior employment experience;

(ii) The parent’s education;

(iii) The parent’s physical and mental disabilities, if any;

(iv) The availability of employment in the geographic area in which the parent resides;

(v) The prevailing wage and salary levels in the geographic area in which the parent resides;

(vi) The parent’s special skills and training;

(vii) Whether there is evidence that the parent has the ability to earn the imputed income;

(viii) The age and special needs of the child for whom child support is being calculated under this section;

(ix) The parent’s increased earning capacity because of experience;

(x) The parent’s decreased earning capacity because of a criminal conviction;

~~(xi)~~ Any other relevant factor.

3119.05, Imputing Income for Incarcerated Obligors

When a court computes the amount of child support required to be paid under a court child support order or a child support enforcement agency computes the amount of child support to be paid pursuant to an administrative child support order, all of the following apply: ...

(K) A court or agency shall not consider a parent to be voluntary unemployed when the parent is incarcerated within a facility under the control of the department of rehabilitation and corrections or a facility under the control of the department of youth services for a sentence in excess of twelve months and shall not impute income to that parent, unless not making such determination and not imputing income would be unjust, inappropriate, and not in the best interest of the child. However, a parent so incarcerated shall be considered voluntarily unemployed when:

(1) The parent is incarcerated for the offense under sections 2919.21 or 2919.22 of the Revised Code.

(2) The parent is incarcerated for any offense resulting in the abuse or neglect of a child as those terms are defined in chapter 2151 of the Revised Code against the child who is the subject of the parent's child support case.

(3) The parent is incarcerated for committing any offense under Title XXIX of the Revised Code against the child who is the subject of the parent's child support case or is incarcerated for committing any offense under Title XXIX of the Revised Code against the obligee in the parent's child support case.

**Draft
Proposed
Legislative
Language**

3119.221, Administrative Deviation from Child Support Guidelines

(A) A child support enforcement agency administrative officer employed in accordance with section 3111.53 of the Revised Code may order an amount of child support that deviates from the amount of child support that would otherwise result from the use of the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, if,

(1) An agreement signed by the parties stipulating grounds for deviation based on the factors and criteria set forth in section 3119.23 of the Revised Code, including the amount calculated pursuant to the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, and the agreed upon new obligation amount, is presented to the administrative officer; and

(2) After considering the factors and criteria set forth in section 3119.23 of the Revised Code, the administrative officer determines that the amount calculated pursuant to the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, would be unjust or inappropriate and would not be in the best interest of the child.

(3) The order or recommendation is issued in accordance with division (C).

(B) If the administrative officer deviates, the administrative officer must enter in the administrative order or recommendation the amount of child support calculated pursuant to the basic child support schedule and the applicable worksheet, through the line establishing the actual annual obligation, its determination that that amount would be unjust or inappropriate and would not be in the best interest of the child, and findings of fact supporting that determination.

(C) If the administrative officer is not a licensed attorney at law, a licensed attorney at law that is employed by the agency or that has entered into a written agreement with the agency in accordance with section 3125.14 shall review and approve the administrative order or recommendation.

(D) A child support order or recommendation that contains a deviation based on an agreement executed by the parties issued in accordance with this section, shall remain subject to the right of either party to object to such order or recommendation to the court in the county of the agency that issued the order or recommendation.

(E) The director of job and family services shall adopt rules under Chapter 119. of the Revised Code that provide for standards, forms, or procedures to implement this section.

3119.631, Review When Obligor Is Incarcerated

(A) The incarceration of an obligor within a facility under the control of the department of rehabilitation and correction or a facility under the control of the department of youth services shall not be considered voluntary unemployment and shall be considered a change of circumstances sufficient to warrant a review and adjustment of an administrative child support order or court child support order provided the sentence of incarceration is not less than twelve months.

(B) The request for review and adjustment may be filed with the court with jurisdiction over the support order or child support enforcement agency administering the child support order. The obligor may request a court review of a revised amount of support calculated by the child support enforcement agency.

(C) The provisions of division (A) of this section do not apply to obligors who are incarcerated in a facility under the control of the department of rehabilitation and correction or the department of youth services if:

(1) The obligor is incarcerated for an offense under section 2919.21 or 2919.22 of the Revised Code.

(2) The obligor is incarcerated for any offense resulting in the abuse or neglect of a child as those terms are defined in chapter 2151 of the Revised Code against the child who is the subject of the child support order.

(3) The obligor is incarcerated for committing any offense under Title XXIX of the Revised Code against the child who is the subject of the child support order or is incarcerated for committing any offense under Title XXIX of the Revised Code against the obligee of the child support order.

(D) If a child support enforcement agency modifies an administrative child support order, or a court modifies a court child support order, based on an administrative review conducted pursuant to this section, the agency or court shall:

(1) Include a provision stating that the obligor shall agree to enroll in parenting and financial management training if available to the obligor at the institution in which the obligor is incarcerated.

(2) Include a provision stating that, except as other wise provided in division (E) of this section, upon the obligor's release from the incarceration, after a period of sixty days has elapsed, on the first day of the following month the modification shall terminate and the prior amount(s) of support shall be reinstated.

***Draft
Proposed
Legislative
Language***

3119.631, Review When Obligor Is Incarcerated, cont.

(E) If the obligor has requested a modification pursuant to section 3119.60 of the Revised Code and rules adopted by the department of job and family services pursuant to section 3119.76 of the Revised Code during the sixty day period, the modification shall remain until the support order is reviewed in accordance with those provisions.

(F) The director of the department of job and family services shall adopt rules pursuant to Chapter 119. and section 3119.76 of the Revised Code to implement this section.

3125.25, Compromising Arrears

The director of job and family services shall adopt rules under Chapter 119. of the Revised Code governing the operation of support enforcement by child support enforcement agencies. The rules shall include, but shall not be limited to, provisions relating to plans of cooperation between the agencies and boards of county commissioners entered into under section 3125.12 of the Revised Code, requirements for public hearings by the agencies, and provisions for appeals of agency decisions under procedures established by the director.

The rules shall also include provisions for the compromise and waiver of child support arrearages owed to the state and federal governments, such compromises or waivers to be consistent with federal law and regulations governing the Title IV-D program, 42 USC 651 et. seq.

State Legislation

*Proposed Substitute
House Bill
Number 130 of the
127th General
Assembly*

EXHIBIT F

**Proposed Substitute House Bill Number 130 of the 127th
General Assembly**

Ohio State Representatives John White and Tyrone Yates introduced House Bill 130 in 2007. An amended version of the bill was subsequently passed by the House of Representatives.

The bill seeks "...to authorize courts to participate in the supervision of released prisoners, to provide released prisoners with identification cards and additional procedures for access to social services, to make other changes relative to opportunities for prisoner training and employment, to modify procedures for...intervention in lieu of conviction, to grant the Adult Parole Authority more flexibility in determining periods of post-release control, to adopt other cost-control measures, to create the Ex-offender Reentry Coalition, ...and to terminate the ex-offender reentry coalition on December 31, 2011..."

The charge of the proposed Ex-offender Reentry Coalition is to identify barriers that inmates face when reentering society, the effect of such barriers on the inmates, their children, and their families, and recommendations to alleviate the negative impact of such barriers.

Proposed statutory language regarding the coalition reads as follows:

Sec. 5120.07. (A) There is hereby created the ex-offender reentry coalition consisting of the following seventeen members or their designees:

- (1) The director of rehabilitation and correction;
- (2) The director of aging;
- (3) The director of alcohol and drug addiction services;
- (4) The director of development;
- (5) The superintendent of public instruction;
- (6) The director of health;
- (7) The director of job and family services;
- (8) The director of mental health;
- (9) The director of mental retardation and developmental disabilities;
- (10) The director of public safety;
- (11) The director of youth services;
- (12) The chancellor of the Ohio board of regents;
- (13) The director of the governor's office of external affairs and economic opportunity;

(14) The director of the governor's office of faith-based and community initiatives;

(15) The director of the rehabilitation services commission;

(16) The director of the department of commerce;

(17) The executive director of a health care licensing board created under Title XLVII of the Revised Code, as appointed by the chairperson of the coalition.

(B) The members of the coalition shall serve without compensation. The director of rehabilitation and correction or the director's designee shall be the chairperson of the coalition.

(C) In consultation with persons interested and involved in the reentry of ex-offenders into the community, including but not limited to, service providers, community-based organizations, and local governments, the coalition shall identify and examine social service barriers and other obstacles to the reentry of ex-offenders into the community. Not later than one year after the effective date of this act and on or before the same date of each year thereafter, the coalition shall submit to the speaker of the house of representatives and the president of the senate a report, including recommendations for legislative action, the activities of the coalition, and the barriers affecting the successful reentry of ex-offenders into the community. The report shall analyze the effects of those barriers on ex-offenders and on their children and other family members in various areas, including but not limited to, the following:

(1) Admission to public and other housing;

(2) Child support obligations and procedures;

(3) Parental incarceration and family reunification;

(4) Social security benefits, veterans' benefits, food stamps, and other forms of public assistance;

(5) Employment;

(6) Education programs and financial assistance;

(7) Substance abuse, mental health, and sex offender treatment programs and financial assistance;

(8) Civic and political participation;

(9) Other collateral consequences under the Revised Code or the Ohio administrative code law that may result from a criminal conviction.

State Legislation

Proposed Substitute House Bill Number 130 of the 127th General Assembly

State Legislation

Proposed Substitute House Bill Number 610 of the 127th General Assembly



Proposed House Bill Number 610 of the 127th General Assembly

Ohio State Representative Ted Celeste introduced House Bill 610 in August 2008. The bill was assigned to the House of Representatives Juvenile and Family Law Committee.

The bill seeks to amend Ohio Revised Code sections 2919.21 and 2929.17, the existing Ohio laws regarding sentencing for criminal non-payment of child support.

Proposed language in the bill includes:

Revised Code Sec. 2919.21. (A) No person shall abandon, or fail to provide adequate support to:

- (1) The person's spouse, as required by law;
- (2) The person's child who is under age eighteen, or mentally or physically handicapped child who is under age twenty-one;
- (3) The person's aged or infirm parent or adoptive parent, who from lack of ability and means is unable to provide adequately for the parent's own support.

(B) No person shall abandon, or fail to provide support as established by a court order to, another person whom, by court order or decree, the person is legally obligated to support.

(G)(1) ...If the violation of division (A)(2) or (B) of this section is a felony of the fourth or fifth degree, the court shall sentence the offender to one or more community control sanctions authorized under section 2929.16, 2929.17, or 2929.18 of the Revised Code. If the court imposes a nonresidential sanction under section 2929.17 of the Revised Code, the court shall include as a condition of the sanction that the offender participate in and complete a community corrections program, as established under sections 5149.30 to 5149.37 of the Revised Code, if available in the county in which the court imposing the sentence is located.

Sec. 2929.17 ... (O) If the offense is a felony violation of division (A)(2) or (B) of section 2919.21 of the Revised Code, a requirement that the offender participate in and complete a community corrections program, as established under sections 5149.30 to 5149.37 of the Revised Code, if available in the county in which the court imposing the sentence is located.

Proposed Senate Bill 1626 and Proposed House Bill 3395, the Responsible Fatherhood and Healthy Family Act of 2007

United States Senator Evan Bayh introduced Senate Bill 1626 in June 2006. United States Congressman Danny Davis introduced a companion bill, House Bill 3395 in August 2007. The proposed legislation, known as the Responsible Fatherhood and Healthy Family Act of 2007, is currently being reviewed by the Senate Finance Committee and the House of Representatives Subcommittee on Department Operations, Oversight, Nutrition and Forestry.

The act would have a significant impact on incarcerated and formerly incarcerated child support obligors and their families.

The legislation would:^x

- Prohibit treating incarceration as voluntary unemployment.
- Require courts and child support agencies to use the review and adjustment procedure to make adjustments in assigned arrears.
- Require states to assess policies that create barriers to employment and making child support payments.
- Provide grant funding for court-supervised or child support agency-supervised programs that seek to increase employment and child support payments by non-custodial parents and improve parent-child relationships.



Pending Federal Legislation

Proposed Responsible Fatherhood and Healthy Family Act of 2007



Lambert vs. Lambert

*Indiana
Supreme Court*

EXHIBIT G

IN RE THE MARRIAGE OF, JEFFREY LAMBERT,
Appellant (Petitioner below), v. JILL LAMBERT, Appellee
(Respondent below).

No. 32S01-0604-CV-136

SUPREME COURT OF INDIANA

861 N.E.2d 1176; 2007 Ind. LEXIS 94

February 22, 2007, Decided
February 22, 2007, Filed

PRIOR HISTORY: [**1] Appeal from the Hendricks Superior Court, No. 32D01-0207-DR-104. The Honorable Robert W. Freese, Judge. On Petition to Transfer from the Indiana Court of Appeals, No. 32A01-0412-CV-535. Lambert v. Lambert, 839 N.E.2d 708, 2005 Ind. App. LEXIS 2336 (Ind. Ct. App., 2005)

COUNSEL: FOR APPELLANT: Mark Small, Indianapolis, Indiana.

FOR APPELLEE: Richard A. Clem, Indianapolis, Indiana.

FOR AMICUS CURIAE, STATE OF INDIANA, Steve Carter, Attorney General of Indiana; Thomas M. Fisher, Solicitor General of Indiana; Frances Barrow, Julie A. Hoffman, Deputy Attorneys General, Indianapolis, Indiana.

JUDGES: Shepard, Chief Justice. Dickson, Sullivan, Boehm, and Rucker, JJ., concur.

OPINION BY: Shepard

OPINION

[*1176] Shepard, Chief Justice.

When appellant Jeffrey Lambert and his former wife were about to be divorced, it was already apparent that Lambert was soon headed for prison. The trial court issued a child support order based on Lambert's wages from his existing private employment. It was appropriate to base support after release on that rate of income, and thus place the burden on Lambert to establish after his release, through petition to modify, that his income might be lower than it had been before his conviction. While our Child Support Guidelines obligate every parent to provide [**2] some support even when they have no apparent present income, it was error to set support based on employment income that plainly would not be there during incarceration.

Facts and Procedural History

Jeffrey Lambert and Jill Lambert married in October 1995. Seven years later, two of Jill Lambert's nieces accused Jeffrey of molesting them. The couple subsequently separated and filed for divorce.

As part of a provisional agreement, Jeffrey agreed to pay \$277 per week to support [*1177] the couple's two children. Apparently, this figure was based on Jeffrey's bi-weekly income at the time, about \$3,100, derived from rental properties and his work as a computer consultant. After the provisional order took effect, but before the final hearing on the dissolution, Jeffrey was convicted of two counts of "improper and inappropriate physical contact with [Jill's] minor nieces" and sentenced to a period of incarceration. (Appellant's App. at 17; Tr. at 18.) Jeffrey was in jail at the time of the final hearing and, therefore, earning virtually nothing. Still, the Final Decree ordered that he continue to pay the \$277 per week in support. The court concluded that because Jeffrey's "incarceration [**3] [was] due entirely to his own voluntary actions" it was proper "to impute income to [him] consistent with the original child support calculation." (Appellant's App. at 18.)

Jeffrey appealed, arguing that the court erred in imputing to him pre-incarceration income in calculating the child support payment. A divided panel of the Court of Appeals rejected this argument and affirmed. *Lambert v. Lambert*, 839 N.E.2d 708, 717 (Ind. Ct. App. 2005), vacated. The majority concluded that criminal activity constituted voluntary unemployment or underemployment under Ind. Child Support Guideline 3(A)(3), and justified the calculation of the child support payment based on Jeffrey's potential, or pre-incarceration, income. Id. at 712-15.

We granted transfer, vacating the decision of the Court of Appeals. 1 Guided by the lodestar of support issues -- the best interests of the child -- and following examination of the various approaches to this issue, we hold that incarceration does not relieve parents of their child support obligations. On the other hand, in determining support orders, courts should not impute potential income to an imprisoned parent based [**4] on pre-incarceration wages or other employment-related income, but should rather calculate support based on the actual income and assets available to the parent.

1 Jeffrey also raises a claim that the trial court erred in dividing the marital estate equally between the parties. (Appellant's Br. at 14-17.) We summarily affirm the decision of the Court of Appeals as to that portion of the appeal. Ind.

*Lambert vs.
Lambert*

*Indiana
Supreme Court*

Appellate Rule 58(A).

Lambert vs. Lambert

**Indiana
Supreme Court**

I. Alternative Approaches Reflected in Other States

By some estimates, nearly a quarter of all state prisoners are parents who have open child support cases. Reentry Policy Council, Report of the Reentry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community 190, 198 (2004).² It is thus not surprising that several states have dealt with how to treat incarceration for the purposes of determining income when setting or modifying child support obligations. Most of these reported cases deal with whether incarceration should justify the reduction of an ^[**5] existing support order, and we must be careful to distinguish that issue from the case at hand. See Frank J. Wozniak, Annotation, Loss of Income Due to Incarceration As Affecting Child Support Obligation, 27 A.L.R. 5th 540 (1995).

² See also Jessica Pearson, Building Debt While Doing Time: Child Support and Incarceration, Judges' J., Winter 2004, at 5, 5.

Among the relatively small number of cases that deal directly with this issue, a number of separate approaches have been articulated. We examine these approaches here briefly to provide the basis for further discussion.

A. Absolute Justification Rule. Some seven states consider imprisonment absolutely ^[*1178] sufficient grounds to justify modifying or suspending child support. *Yerkes v. Yerkes*, 573 Pa. 294, 300 n.4, 824 A.2d 1169, 1172 n.4 (2003). A typical example of this approach is the case of *Leasure v. Leasure*, 378 Pa. Super. 613, 549 A.2d 225 (1998). There, the Pennsylvania Superior Court ordered ^[**6] a non-custodial parent's support obligation suspended during incarceration because imprisonment represented a change in circumstances sufficient to justify modification. *Id.* at 618, 549 A.2d at 228. The court rejected the argument that imprisonment constituted voluntary unemployment or underemployment, and instead noted that continuing the support order would excessively burden the parent least likely to be able to pay the debt. *Id.* at 616-17, 549 A.2d at 227.

While the Pennsylvania Supreme Court later disapproved *Leasure*, we mention it here because it typifies other state authority and is roughly analogous to the issue presented here in the sense that the outcome is the same no matter when the support order is set. That is, if incarceration is a sufficient non-voluntary change in circumstances to justify a modification or suspension of the obligation, it could also support an approach where no obligation is imposed on an individual who is imprisoned at the moment the order is set.

B. Imputation of Pre-Incarceration Income Allowed.

A number of states have concluded that it is appropriate to impute pre-incarceration income to the non-custodial [**7] parent. See *Wozniak, supra, at 587-91*.

In most of these cases, the question turns on whether incarceration constitutes a voluntary reduction of income. In *In re Marriage of Olsen, 257 Mont. 208, 848 P.2d 1026 (1993)*, for example, the Montana Supreme Court considered whether a trial court had improperly imputed pre-incarceration income to an individual who was imprisoned at the time the final order was entered. Affirming the decision to impute that income, the court specifically rejected the parent's contention that "while his criminal conduct was voluntary, the resulting unemployment . . . was involuntary and unforeseeable under the circumstances." *Id. at 215, 848 P.2d at 1031*. Instead, the court followed the reasoning of its prior cases that "a criminal should not be offered a reprieve from [his] child support obligations when we do not do the same for one who becomes voluntarily unemployed." *Id. (citing Mooney v. Brennan, 257 Mont. 197, 200-01, 848 P.2d 1020, 1022-23 (1993))*.

Similar decisions linking criminal conduct with the voluntary reduction of income are found elsewhere. See, e.g., *In re R.H., 2004 ND 170, 686 N.W.2d 107 (N.D. 2004)*; [**8] *Proctor v. Proctor, 773 P.2d 1389 (Utah Ct. App. 1989)*.

C. Disallowing Imputation of Pre-Incarceration Income.

In at least one case, a state supreme court has cited the state's child support guidelines as a basis for holding that a trial court cannot impute pre-incarceration income to an individual imprisoned at the time the order is set.

***Lambert vs.
Lambert***

***Indiana
Supreme Court***

Lambert vs. Lambert

Indiana Supreme Court

In *State v. Porter*, 259 Neb. 366, 372-74, 610 N.W.2d 23, 28-29 (2000), the Nebraska Supreme Court concluded that imposing pre-incarceration income on a felon would conflict with the state's child support guidelines precisely because an imprisoned individual had no "earning capacity." It likened the situation to other cases in which it had "approved the use of earning capacity instead of actual earnings in an initial determination under [the guidelines]" and concluding that in those cases, "there has been evidence that the parent had the present ability to achieve his or her earning capacity." *Id.* at 372-73, 610 N.W.2d at 28. Unlike those cases, the court concluded, a prisoner has no present [*1179] ability to achieve the income. *Id.* at 374, 610 N.W.2d at 29.

The court specifically [**9] rejected the notion that his voluntary choice to commit a crime led to the reduction in his income by stating that so long as "earning capacity is used as a basis for an initial determination of child support . . . there must be some evidence that the parent is capable of realizing such capacity." *Id.* It imposed the minimum child support obligation as outlined in the state's guidelines and noted that income does not consist solely of wages, thus leaving open the possibility for a higher support obligation. *Id.*

II. What Is Most Likely to Produce Support?

We conclude that the approach taken in Nebraska is the most consistent with the Guidelines and applicable statute, with one caveat. It seems appropriate to impute pre-incarceration income to the obligor after release and place the burden on the obligor to seek modification if such is warranted. We lay out below the basis for this holding.

A. Suspending Support Inconsistent with Statute.

Adopting a system that considers incarceration an absolute justification for the reduction or suspension of child support appears inconsistent with the policy embedded in Indiana's statutes.

The Indiana Code provides that "[t]he [**10] duty to support a child under [law] ceases when the child becomes twenty-one (21) years of age" unless the child is emancipated, or the court determines that the child is at least eighteen, not attending school, and supporting herself through employment. 3 *Ind. Code Ann.* § 31-16-6-6 (West 2006). Given the robust approach our legislature has taken to ensure that all children are supported adequately by their parents until the age of majority, we cannot imagine that the legislature intended for incarcerated parents to be granted a full reprieve from their child support obligations while their children are minors. Consequently, we think it would be inappropriate to adopt a practice of "absolute justification." 59

3 The statute also provides that child support will last beyond the twenty-first birthday when a child is incapacitated "[i]n [which] case, the child support continues during the incapacity or until further order of the court." *Ind. Code Ann. § 31-16-6-6(a)(2)* (West 2006).

Moreover, adopting such [**11] a position would cut against the established common law tradition that has long held parents responsible for the support of their offspring. In this state, that tradition extends back a very long time. See, e.g., *Haase v. Roehrscheid*, 6 *Ind. 54, 66, 68 (1854)* ("[i]t is the duty of a father to support and educate his minor children"). It makes little sense to choose a path that cuts against the grain of statute, legal tradition, and natural instinct so completely.

B. No Justification Rule Inconsistent with Guidelines.

Indiana child support policy has long looked to an obligor's capacity to earn. Obligor's who could work and do not, or appear regularly underemployed, face demands to do better by their dependent children.

The Guideline provisions on "voluntary unemployment or underemployment" reflect this approach. The commentary to *Ind. Child Support Guideline 3(A)(3)* states: "Potential income may be determined if a parent has no income, or only means-tested income, and is . . . capable of earning more." *Child.Supp. G. 3(A)(3)* (emphasis added). As the example most relevant to the current situation, the commentary uses the case of a parent who "is capable of [**12] entering the work force, but voluntarily fails or refuses to work or to be [*1180] employed." *Child.Supp. G. 3 cmt. 2(c)(2)* (emphasis added). This provision indicates that the concept of "voluntary unemployment or underemployment" as used in the Guidelines requires both the ability to earn more income, and the conscious choice on the part of a parent to reduce income.

Our statutes complement this interpretation. *Indiana Code § 31-16-6-1(a)(4)* instructs courts to consider "the financial resources and needs of the noncustodial parent" when setting support orders. This strongly implies that it is actual present ability of the non-custodial parent to pay the support ordered that a court is to consider.

***Lambert vs.
Lambert***

***Indiana
Supreme Court***

Lambert vs. Lambert

**Indiana
Supreme Court**

The Court of Appeals was correct to note that most criminal activity reflects a voluntary choice, and carries with it the potential for incarceration and consequent unemployment. *Lambert*, 839 N.E.2d at 714. Still, the choice to commit a crime is not quite the same as "voluntarily fail[ing] or refus[ing] to work or to be employed." *Child.Supp. G.* 3 cmt. 2(c)(2). Chief Justice Abrahamson clarified the relationship between the choices best when she observed that "[a] ^{**13} parent's moral culpability in the events that [led to incarceration] is relevant . . . to the extent that it demonstrates an intent to reduce available income or assets to avoid paying child support." *In re Marriage of Rottscheit*, 2003 WI 62, 262 Wis. 2d 292, 326, 664 N.W.2d 525, 541 (2003) (Abrahamson, C.J., dissenting). The choice to commit a crime is so far removed from the decision to avoid child support obligations that it is inappropriate to consider them as identical.

We believe the conclusion is also supported by the overarching policy goal of all family court matters involving children: protecting the best interests of those children. The child support system is not meant to serve a punitive purpose. Rather, the system is an economic one, designed to measure the relative contribution each parent should make -- and is capable of making -- to share fairly the economic burdens of child rearing. *Child.Supp. G.* 1. Considering the existing sociological evidence, it seems apparent that imposing impossibly high support payments on incarcerated parents acts like a punitive measure, and does an injustice to the best interests of the child by ignoring factors that can, and frequently ^{**14} do, severely damage the parent-child relationship.

Individual reactions to economic realities can have profound effects on the behavior of non-custodial parents. Substantial sociological research has focused on the effects child support obligations and incarceration have on the behavior of non-custodial parents. ⁴ These studies have generally concluded that the existence of unsustainable support orders actually leads to greater failure of non-custodial parents to pay their support obligations. ⁵

⁴ See, e.g., Judi Bartfeld & Daniel R. Meyer, *Child Support Compliance Among Discretionary and Nondiscretionary Obligor*s, 77 Soc. Serv. Rev. 347 (2003); Harry J. Holzer & Paul Offner, *The Puzzle of Black Male Unemployment*, Pub. Int., Winter 2004, at 74; Harry J. Holzer et al., *Declining Employment Among Young Black Less-Educated Men: The Role of Incarceration and Child Support* (2004); I-Fen Lin, *Perceived Fairness and Compliance with Child Support Obligations*, 62 J. Marriage & Fam. 388 (2000).

5 For a more detailed description, see the sources cited above. For support for the opposite conclusion, that enforcement policies have limited impact on non-custodial parent compliance or participation in the legitimate labor market, see Richard B. Freeman & Jane Waldfogel, *Does Child Support Enforcement Policy Affect Male Labor Supply?*, in *Fathers Under Fire: The Revolution in Child Support Enforcement* 94 (Irwin Garfinkel et al. eds., 1998).

[**15] [*1181] The Council of State Governments has created the Reentry Policy Council to promote study and innovation in this field, and federal departments such as Justice and Labor have supported its work. The Council has produced a comprehensive report on the difficulties of readmitting prisoners into society. The report identified child support obligations, especially arrearages, as a barrier to successful reentry into society because they have a tendency to disrupt family reunification, parent-child contact, and the employment patterns of ex-prisoners. Reentry Policy Council, *supra*, at 327.

Among the factors identified as contributing to lack of compliance with support orders is the perception among obligors, whether incarcerated or not, that the imposition of high support orders is punitive or other-wise unfair. Lin, *supra* note 4, at 395-96. Analysis reveals that when the support order has produced large arrearages, there is a significant decline in compliance with the order. Bartfeld & Meyer, *supra* note 4, at 365. The ultimate implication of this research is that when a parent is finally released from prison with a large child support arrearage, the parent is less likely to [**16] comply with the order.

Moreover, once released, non-custodial parents tend to view the methods employed to collect support and arrearages as a disincentive to seek legitimate gainful employment. Research suggests that high maximum garnishment rates 6 and other enforcement mechanisms tend to discourage employment, particularly among the lower socioeconomic strata, which tend to view employment as elastic in nature. Holzer & Offner, *supra* note 4, at 79-80; Holzer et al., *supra* note 4, at 24. When combined with the difficulty faced by felons in obtaining employment, there is thus a strong incentive to seek work in the "underground economy" where it is difficult for authorities and custodial parents to track earnings and collect payments. Reentry Policy Council, *supra*, at 327.

***Lambert vs.
Lambert***

***Indiana
Supreme Court***

Lambert vs. Lambert

**Indiana
Supreme Court**

6 See, e.g., *Ind. Code Ann. § 24-4.5-5-105(3)* (West 2006) (up to 65% of disposable earnings).

The ultimate lesson to be drawn from this research is that when high support orders continue through a period of incarceration [**17] and thus build arrearages, the response by the obligor is to find more methods of avoiding payment. To the extent that an order fails to take into account the real financial capacity of a jailed parent, the system fails the child by making it statistically more likely that the child will be deprived of adequate support over the long term.

C. Not Imputing Income Is the Best Solution.

Ultimately, adoption of the non-imputation approach preserves the traditional rule imposing support without ignoring the realities of incarceration. Unlike the absolute justification rule, the non-imputation approach allows courts to comply with the Guidelines by imposing at least the minimal support order as provided by *Ind. Child Support Guideline 2*. This serves the child support system by ensuring that all non-custodial parents remain responsible -- at least to some degree -- for the support of their children.

The most obvious examples of the unfair results that would occur under an absolutist approach are the case of the very wealthy and the very poor non-custodial parent. Under an absolute justification system, the very wealthy but incarcerated parent is absolved of support obligations when, [**18] in fact, there is the likelihood that sources of income exclusive of wages could reasonably be expected to pay the cost of [*1182] support. On the other hand, the imputed income rule unfairly burdens the very poor incarcerated parent under circumstances in which he lacks the capacity to pay his support obligations.

None of the foregoing precludes setting support orders that reflect the actual income or resources of an incarcerated parent. It merely counsels against imputing pre-incarceration wages, salaries, commissions, or other employment income to the individual. A court may, obviously, still consider other sources of income when calculating support payments. See *Child.Supp. G. 3(A)*. Consequently, unlike the absolute justification rule, prisoners who do have the capacity to pay higher support obligations remain responsible for that support level.

Moreover, a court could well order an increased support payment as soon as the incapacity caused by prison is removed from a non-custodial parent's ability to earn income. In other words, a court could prospectively order that child support return to the pre-incarceration level upon a prisoner's release because following release, the parent [**19] is theoretically able to return to that wage level. Such an order has multiple benefits. First, it encourages non-custodial parents to track carefully their support obligation, as it would require an incarcerated parent to seek modification of the order upon their release. Second, it relieves the custodial parent from the added burden of tracking the expected release date of the obligor and filing for modification upon that release.

Conclusion

Here, the court was justified in predicting that the obligor might re-attain something like his pre-incarceration income -- and placing on the obligor the burden to petition for a modification. Ordering that same support during incarceration was error, however, unless there were other means (like the obligor's income derived from rental properties and his portion of the property division) to meet it. The record here suggests that such means might exist in this case.

We affirm the trial court's support order as respects the period after Lambert's incarceration and remand for entry of such current amount as reflects Lambert's actual present resources.

Dickson, Sullivan, Boehm, and Rucker, JJ., concur.

***Lambert vs.
Lambert***

***Indiana
Supreme Court***



Glossary of Terms & Acronyms
As Appearing in this Report

Arrearages (also called **Arrears**) – Delinquent or past-due child support.

Assigned Arrears – Arrears that are owed to ODJFS because they accumulated when the obligee and/or child was receiving TANF.

CSEA (Child Support Enforcement Agency) – The county office of child support services. Each of the 88 Ohio counties has its own CSEA.

Default (on a child support order) – To be past due by the amount of at least one month's monthly obligation.

Intervention In Lieu – Sentence issued by the court for substance abuse treatment instead of criminal conviction when certain criteria are met.

IV-D (Pronounced “4” D) – A section of federal law that authorizes enforcement remedies to collect child support and provides federal funding for the county CSEAs.

Modification – A change to any of the provisions of an existing child support order, such as the amount of the monthly child support obligation. Sometimes called an adjustment.

Monthly obligation – The amount that an obligor owes each month for child support. This amount may include a payment for arrears.

Obligee – The person, including a state or political subdivision, to which the child support is owed.

Obligor – The person that owes the child support.

OCSE (Office of Child Support Enforcement) – The federal office of child support.

Parole – Released from prison and under the control of the Ohio Department of Rehabilitation and Correction, Adult Parole Authority.

Probation – Requirement to maintain contact with designated supervisor when not incarcerated; may include additional requirements (e.g., mandatory drug testing).

Reentry - A broad systems approach to managing offenders successfully returning to the community following incarceration.

Review and Adjustment – Process of reviewing an existing child support order to determine if any of the provisions should change, including the amount of the monthly child support obligation. Sometimes the adjustment is called a modification.

Second Chance Act (Public Law 110-199) – Legislation signed into law 4/9/2008 by President Bush to authorize federal grants to government agencies and community and faith-based organizations to provide services to reduce probation violations, parole violations, and re-offending.

TANF (Temporary Assistance to Needy Families) – a public assistance program, called "Ohio Works First" in Ohio.

Unassigned Arrears – Arrears that are owed to the obligee.

Wage Withholding Notice – A notice issued by the CSEA that requires an employer, financial institution, or other payor to deduct child support payments directly from the income (usually wages) of the obligor.

Endnotes

ⁱ Hardaway, Chris, and Pearson, Jessica. August 2000. Designing Programs for Incarcerated and Paroled Obligor. *Welfare Information Network* Vol.1, No.2.

ⁱⁱ Bronte-Tinkew, Jacinta, Burhauser, Mary, Ericson, Sara, and Metz, Allison. September 2008. "What Works" In Programs Serving Fathers Involved in the Criminal Justice System? Lessons from Evidence-Based Evaluations. National Responsible Fatherhood Clearinghouse Child Trends. September 2008.

ⁱⁱⁱ Ibid.

^{iv} Davis, Lanae, and Pearson, Jessica. 2001. Serving Parents Who Leave Prison: Final Report on the Work and Family Center. Center for Policy Research, <http://www.centerforpolicyresearch.org/reports/WFCfinalreport.pdf>.

^v Lambert v Lambert, No. 32S01-0604-CV-136 Indiana Supreme Court 861 N.E.2d 1176; 2007 Ind. LEXIS 94 (2007).

^{vi} Roberts, Paula and Sorensen, Elaine, " Strategies for Preventing the Accumulation of Child Support Arrears and Managing Existing Arrears: An Update," *Center for Law and Social Policy* (October 6, 2005), <http://www.clasp.org>.

^{vii} U.S. Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement. The Story Behind the Numbers (May 2008), <http://www.acf.dhhs.gov/programs/cse/>.

^{viii} Pearson, Jessica. 2006. Working with Incarcerated and Released Parents: Lessons from OCSE Grants and State Programs. Presentation at the National Child Support Enforcement Training Conference, September 11-13, 2006, in Arlington, VA.

^{ix} Lofrano, Lori. 2008. Life on the Inside. Presentation at the National Child Support Enforcement Association Web-Talk Incarceration Programs: Does working with Incarcerated and Released Parents help Families and the Child Support Program?, November 13, 2008.

^x Turetsky, Vicki, "Legislation in Brief: Responsible Fatherhood and Healthy Family Act of 2007," *Center for Law and Social Policy* (May 28, 2008), <http://www.clasp.org>.