

Incarceration and Child Support Obligations

A report to the Recidivism Reduction Committee of the Connecticut Sentencing Commission regarding the consequences of child support debt for incarcerated individuals, children and custodial parents, and the people of Connecticut

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INTRODUCTION

A recent paper on evidence-based reentry initiatives prepared for the Recidivism Reduction Committee of the Connecticut Sentencing Commission identified child support debt accumulation during incarceration as a serious barrier to reentry.¹ This paper further explores that barrier. It considers how and why individuals accumulate child support debt during incarceration, and it examines the consequences of that debt for the incarcerated individual, the custodial parent and child owed support, and the citizens of Connecticut.

EXECUTIVE SUMMARY

Governor Malloy has articulated two primary goals for the Connecticut justice system: reducing crime and maximizing efficiency.² State agencies involved in setting, modifying, and enforcing child support orders emphasize that setting realistic child support orders is critical to achieving these goals. The federal government echoes this sentiment. The United States Department of Health and Human Services Office of Child Support Enforcement has stressed that “for child support to be a reliable source of income for children, parents who are incarcerated need child support orders that reflect actual income.”³ Recognizing the importance of realistic child support orders, many state agencies have made concerted efforts to assist incarcerated individuals in modifying their orders, to support these individuals during reentry, and to encourage them to actively engage with and support their children in ways that extend beyond their financial obligations.⁴

Yet our findings suggest that many incarcerated parents continue to accumulate tens of thousands of dollars in child support debt during and after incarceration. Although Connecticut law permits noncustodial parents to modify their child support orders upon incarceration, eligible parents are frequently unaware of this right and continue to accrue debt while incarcerated. When these parents reenter, many cannot meet their ongoing child support obligations or pay off the child support debt they accumulated while incarcerated.

These financial burdens produce negative consequences for the parents, the child, and the State. Custodial parents and children rarely recover the child support they are owed, while the debt makes reentry even more difficult for formerly incarcerated non-custodial parents—a population already at risk of recidivism. Individuals may feel pressure to engage in high-risk, high-reward activity to pay off their orders and may face incarceration as punishment for nonpayment of child support. Constitutionally, the State may only incarcerate individuals who refuse to pay – not

¹ Linda Meyer and Sarah Russell, et al., *Evidence-based Reentry Initiatives Devoted to Strengthening Positive Social Relationships: A Report Prepared for the Recidivism Reduction Committee of the Connecticut Sentencing Commission*. Draft (Sep. 4, 2012).

² See 2011 Annual Recidivism Report, State of Connecticut Office of Policy and Management.

³ See <http://www.acf.hhs.gov/programs/css/resource/realistic-child-support-orders-for-incarcerated-parents>.

⁴ See, e.g., https://www.acf.hhs.gov/sites/default/files/programs/css/paid_no_4_companion.pdf.

those who are unable to pay – but Connecticut permits incarceration as punishment for violation of any court order. If the State is incarcerating people for poverty, its practice is unconstitutional.

This cycle of debt and incarceration is counterproductive as well as expensive. These expenses are compounded, as low child support collection rates decrease federal funding to state child support programs. Debt burdens also damage the obligors' social and familial relationships, hurting their chances at reentry and harming the best interests of the child.

Parents continue to accrue debt while incarcerated, despite the availability of modification, for several reasons. Under the current child support system, many incarcerated individuals do not receive the information they need to secure modification. The inmates who do obtain this information may not recognize the importance of filling out the paperwork because the problem feels distant while they are incarcerated. They may feel deterred by the complexity of the forms, the level of detail required to successfully complete the paperwork, and the number of procedural hurdles that must be overcome to secure modification. Those who start the process may have trouble completing every step correctly because they do not have access to legal assistance on family matters. Of those who learn about the option after incarceration, many fear appearing in court – a mandatory step in the modification process – due to the potential for arrest upon appearing. Furthermore, modification cannot be backdated. Taken together, these hurdles effectively bar incarcerated non-custodial parents from accessing the benefits of modification.

These findings suggest a link between unmodified child support orders and recidivism. While proving direct and proximate causation for recidivism is difficult, if not impossible, for any single factor, the accumulation of debt plainly adds to the challenges of reentry. Child support debt may not be the sole factor contributing to recidivism, but our findings suggest that, for many people leaving prison, this debt is one factor – and for some it is a driving factor.

In addition, the problems posed by child support debt accumulation are likely even greater than the data explored here suggests. This paper does not consider the accumulation of child support debt during the pre-trial process, nor is recent data available on the child support debt of the substantial number of inmates with sentences shorter than three years. As a result, the number of individuals affected and the amount of money involved in child support debt accumulation is likely even bigger than this report suggests.

These findings counsel action by this Committee. This Committee is uniquely positioned to drive change and mobilize key stakeholders on this significant and costly problem, which many participants in the child support system are eager to resolve.

This paper proposes several cost-effective changes that can lessen or remove the challenge for many of Connecticut's child support obligors. Automatically initiating modification proceedings, settling child support debt, providing professional support, and improving outreach to incarcerated parents might address the current shortcomings and reduce the likelihood that child support debt will trigger recidivism and produce a cycle of nonpayment and incarceration. Additional research, including data collection and interviews with individuals or agencies not represented in this report, will enhance these findings and help the Committee evaluate the authors' preliminary recommendations.

METHODOLOGY

This project included five phases of inquiry. In the first phase, the authors examined the legal landscape of child support obligations, including the mechanisms for modification and how they have changed over time. This phase involved analyzing relevant statutes and regulations that govern how officials set, modify, and enforce child support obligations.

In the second phase, the authors reviewed literature on a broad range of topics touching this matter. Those topics included evaluations of reentry initiatives as well as factors that correlate with recidivism. The authors also sought comparative perspectives by researching whether and how other states have addressed child support debt for incarcerated individuals. Finally, we investigated literature on the best interests of children.

In the third phase of the project, the authors interviewed professionals in the child support and reentry systems. Through this phase, the authors sought to understand how the legal regime identified in the first phase operates in practice – including how it succeeds or fails in meeting its goals of setting realistic and enforceable child support orders. Interview participants included representatives from Support Enforcement Services, the Department of Corrections, Families in Crisis, the New Haven Prison Reentry Initiative, and the Delinquency Defense and Child Protection Unit of Public Defender Services. In addition, the authors interviewed two state-appointed lawyers who represent individuals facing incarceration for nonpayment of child support orders.

In the fourth phase, the authors sought empirical perspectives by collecting and analyzing data relevant to this project. This data came from two sources: (1) state agencies engaged in child support enforcement and modification, and (2) individuals who owed child support debt following incarceration. State agency data came principally from a 2007 study conducted by Support Enforcement Services (SES). The authors also looked at data SES collected in 2011, however, that data was limited to child support obligors serving sentences of three or more years.

Because the 2007 study was conducted prior to certain administrative changes that were designed to ease the child support debt burden for incarcerated parents and because the 2011 study looked only at those with longer sentences, the authors gathered more recent data through interviews in the fifth and final phase. The authors collected personal accounts from formerly incarcerated individuals with child support debt. All of these individuals were male clients at Project Green, a program of Project MORE. Project MORE, a Connecticut-based reentry organization, works to reintegrate ex-offenders into the community and provides a variety of services to these individuals and their families. The Project Green program, which is funded by the State, helps clients build a foundation to restart their lives through a progressive program of community service, full-time employment, and ongoing counseling. The authors met with seven male clients at the New Haven facility on April 1, 2013.

A note on gender: Throughout this paper, the authors refer to the non-custodial parent owing child support in the male gender and the custodial parent owed child support in the female gender. The authors made this choice to improve the readability of the report and to recognize

that the vast majority of child support obligors are men.⁵ The authors acknowledge that not all obligors are men and that not all parents are opposite-sex couples.

LEGAL BACKGROUND

Setting Child Support Orders

Title 46b of the Connecticut General Statutes codifies a child's right to parental support. That Title gives the Connecticut Superior Court authority to determine "whether a child is in need of support and, if in need, the respective abilities of the parents to provide support."⁶ Several factors inform these determinations, including the "age, health, station, occupation, earning capacity, amount and sources of income, estate, vocational skills and employability of each of the parents, and the age, health, station, occupation, educational status and expectation, amount and sources of income, vocational skills, employability, estate and needs of the child."⁷

The Connecticut General Statutes establish a Commission for Child Support Guidelines to issue child support and arrearage guidelines for the courts.⁸ The most recent Child Support and Arrearage Guidelines became effective on August 1, 2005. The Guidelines include a worksheet that takes into account each parent's gross income, taxes, insurance, and other factors.⁹ This worksheet allows the court to calculate a net weekly income, which corresponds to a particular dollar amount of child support in the Schedule of Basic Child Support Obligations. The Schedule only covers net weekly incomes up to \$4,000. When the net weekly income exceeds that amount, courts make case-by-case determinations regarding child support obligations.

Courts may deviate from the Schedule's presumptive support amounts when they find one or more "deviation criteria."¹⁰ Deviation criteria include other financial resources available to a parent that are not captured by the worksheet; extraordinary expenses for care and maintenance of the child; extraordinary parental expenses; the needs of a parent's other dependents; coordination of total family support; and other special circumstances found by the court. Only these criteria warrant departure from the presumptive support amounts, and "it is an abuse of discretion for a court to deviate from the guidelines without making these findings."¹¹

Both the Connecticut Superior Court and family support magistrates have authority to modify and enforce orders for payment.¹² Family support magistrates have jurisdiction over cases in

⁵ See <http://www.census.gov/prod/2009pubs/p60-237.pdf>.

⁶ Conn. Gen. Stat. § 46b-56(e) (2011).

⁷ Conn. Gen. Stat. § 46b-84(d) (2011).

⁸ Conn. Gen. Stat. § 46b-215(a) (2011).

⁹ Conn. Agencies Regs. § 46b-215a-2b (2005).

¹⁰ Conn. Agencies Regs. § 46b-215a-3 (2005).

¹¹ *Wallbeoff v. Wallbeoff*, 965 A.2d 571, 574 (Conn. Super. Ct. 2009) (citing *Unkelbach v. McNary*, 710 A.2d 717, 726-27 (Conn. Super. Ct. 1998)).

¹² Conn. Gen. Stat. § 46b-215(a)(1) (2011).

which a party is receiving public assistance or in which a party has asked for state assistance in collecting child support. These are known as IV-D cases.¹³

Either party may appeal a child support order by filing Form JD-FM-111 (“Appeal From Family Support Magistrate”) with the court or magistrate that rendered the original order.¹⁴ They must also submit a Petition that explains the grounds for the appeal. The appeal must be filed within 14 days of the original order. The original order is effective until the appeal is decided, but the order issued pursuant to appeal may be retroactive to the date of the original order.

Modifying Child Support Orders

If a party to a child support order demonstrates a substantial change in the circumstances¹⁵ of either party, that party may ask the court to modify the order.¹⁶ Modifying a child support order is different than appealing an order, which is discussed above. Parties may start modification proceedings on their own or by asking Support Enforcement Services (SES) to prepare and serve the court forms.¹⁷ Modification requires the following steps¹⁸:

1. File a Motion for Modification (JD-FM-174)
2. File an Appearance (JD-CL-12)
3. Go to the Superior Court Clerk’s office to get the Motion for Modification signed
4. Serve papers on other party by a State Marshal (includes a fee)
5. If applicable, apply for Waiver of Fees/Appointment of Counsel Family (JD-FM-75), which requires an outline of assets, monthly income, expenses, liabilities and debts
6. Complete a Financial Affidavit at least 5 days before hearing date, which requires information regarding weekly income and expenses, liabilities/debts, and assets
7. Appear at the hearing
8. On the date of the hearing, complete an Affidavit Concerning Children (JD-FM-164), which requires residence information for the past five years for each child affected by the case and information about previous family violence/protective orders/termination of parental rights/adoption proceedings with the children

¹³ Conn. Gen. Stat. § 46b-231 (2011).

¹⁴ Conn. Gen. Stat. § 46b-231(n) (2011).

¹⁵ Changes in circumstances include changes in incarceration status, Conn. Gen. Stat. § 46b-215e (2006), and changes in custody, Conn. Gen. Stat. § 46b-224 (2007).

¹⁶ Conn. Gen. Stat. § 46b-86(a) (2011).

¹⁷ SES is a part of the Connecticut Judicial Branch. It administers Connecticut’s IV-D program. If the party has a IV-D case, he may ask SES to look into whether modification would be appropriate. SES would then prepare the court forms on behalf of that party and inform the party of the hearing date. *Support Enforcement Services Frequently Asked Questions*, STATE OF CONNECTICUT JUDICIAL BRANCH (Feb. 9, 2013), http://www.jud.ct.gov/childsupport/faq_eng.htm#1. See also Conn. Gen. Stat. § 52-362a-j (2011). Parties seeking the modification must attend the hearing. *Child Support Resource Center*, DEPARTMENT OF SOCIAL SERVICES (Feb. 9, 2013), <http://www.ct.gov/dss/cwp/view.asp?Q=305184&a=2353>. See also Conn. R. Super. Ct. Fam. §§ 25A-18, 25-26.

¹⁸ See <http://www.jud.ct.gov/forms/grouped/family/modification.htm>.

9. On the date of the hearing, complete a Worksheet for the CT Child Support and Arrearage Guidelines (CCSG-1, JD-FM-220), which requires details of the current arrangement and financial data from both parents, including gross income, taxes, health premiums, life insurance, union fees, mandatory uniforms and tools; net disposable income; unreimbursed medical expenses; child care contribution; arrearage payments; deviation criteria
10. On the date of the hearing, complete an Advisement of Rights Re: Income Withholding (JD-FM-71)

If a court finds that modification is appropriate, it may make the modification retroactive to when the motion was served, but not earlier.¹⁹ The modification process does not allow for changes to be retroactive to the date the relevant change in circumstances occurred.

The statutory scheme specifically addresses downward adjustment of child support obligations for institutionalized or incarcerated parties.²⁰ It authorizes downward adjustment based on the party's present income and assets unless the adjustment is based solely on a loss of income by a party who "is institutionalized or incarcerated for an offense *against the custodial party or the child* subject to such support order."²¹

Enforcing Child Support Orders

The Connecticut General Statutes provide avenues for custodial parents and the State to enforce child support obligations with and without court intervention. Enforcement mechanisms that do not require going to court include automatic offsets of back support against the noncustodial parent's income tax returns,²² reporting of arrears to credit reporting agencies,²³ and liens against

¹⁹ *Cannon v. Cannon*, 953 A.2d 694 (Conn. Super. Ct. 2008); Conn. Gen. Stat. § 46b-86(a) (2011).

²⁰ The statute reads as follows:

Notwithstanding any provision of the general statutes, whenever a child support obligor is institutionalized or incarcerated, the Superior Court or a family support magistrate shall establish an initial order for current support, or modify an existing order for current support, upon proper motion, based upon the obligor's present income and substantial assets, if any, in accordance with the child support guidelines established pursuant to section 46b-215a. Downward modification of an existing support order based solely on a loss of income due to incarceration or institutionalization shall not be granted in the case of a child support obligor who is incarcerated or institutionalized for an offense against the custodial party or the child subject to such support order.

²¹ Conn. Gen. Stat. § 46b-215e (2011) (emphasis added).

²² If amount in arrears exceeds \$500, or \$150 if custodial parent receives public assistance. Conn. Agencies Regs. § 52-362e-3 (2005).

²³ If amount in arrears exceeds \$1,000. Conn. Agencies Regs. § 52-362d-3 (2005).

property.²⁴ In-court enforcement mechanisms include withholding income from the noncustodial parent,²⁵ suspending his license(s) (driving, professional, occupational, and recreational licenses are subject to suspension),²⁶ and finding him to be in contempt of court.²⁷ A non-custodial parent found to be in contempt may be ordered to pay a sum of money, and may be imprisoned for up to a year upon failure to make payment.²⁸

To secure a contempt order, custodial parents may file an Application for Contempt Order, Income Withholding and/or Other Relief (Form JD-FM-15), *pro se* or with the assistance of an attorney. Parties with IV-D cases may ask the SES Unit for assistance. The court may “deny a claim for contempt when there is an adequate factual basis to explain the failure to honor the court’s order.”²⁹

FINDINGS

Connecticut Support Enforcement Services Has Made Significant Efforts to Improve Inmate Access to Modification.

The current child support statute is the result of 2003 legislation aimed at establishing support orders based upon actual earnings – a clear step toward Connecticut’s goal of setting realistic child support orders. Patricia Wilson-Coker, Commissioner of the Department of Social Services in 2003, stated the purpose of the law was to “avoid the accrual of large uncollectible arrearage amounts and to remove the psychological hurdle of large . . . usually hopeless, debt from the parent’s future.”³⁰ Such modification is also in line with federal initiatives that support state efforts to establish and maintain child support orders commensurate with current income.³¹

Support Enforcement Services (SES) was able to empirically investigate whether the law was accomplishing its goal for incarcerated parents after the Department of Corrections (DOC) began sharing its data with SES. In 2007, SES assessed how many individuals who owed child support had been or were incarcerated, and whether incarceration had any impact on payment rates.

²⁴ In IV-D cases, past due amounts of more than \$500 may be collected through liens on property. If a non IV-D case, liens must be pursued through private action. Conn. Agencies Regs. § 52-362d-2 (2005).

²⁵ Conn. Gen. Stat. § 52-362 (2005).

²⁶ Conn. Gen. Stat. § 46b-220 (2005).

²⁷ *Stoner v. Stoner*, 307 A.2d 146 (Conn. Super. Ct. 1972).

²⁸ Conn. Gen. Stat. § 53-304(a) (2005).

²⁹ *Marcil v. Marcil*, 494 A.2d 620, 622 (Conn. Super. Ct. 1985).

³⁰ Connecticut Human Services Committee Transcript from 3/11/2003, Testimony on H.B. 6517, codified as Conn. Gen. Stat. § 46b-215e.

³¹ Project to Avoid Increasing Delinquencies, Office of Child Support Enforcement, Administration for Children & Families, U.S. Department of Health and Human Services, “Realistic Child Support Orders for Incarcerated Parents,” June 2012.

The SES study found that 40% of non-custodial parents who owed child support had been or were incarcerated. SES also found that such parents were less likely to meet their orders. SES was able to collect payments from only 36% of such noncustodial parents, compared to 68% of parents who had never been incarcerated. In addition, the study discovered that more than 50% of previously or currently incarcerated parents had made no payments on their child support orders.³²

In 2006, Support Enforcement Services (SES) also increased efforts to alert incarcerated individuals about their modification rights through a targeted letter initiative. SES outreach now includes disseminating information about debt modification in correctional facilities, sending targeted letters to incarcerated parents, and presenting at reentry fairs.

1. **Disseminating information.** Upon entering the prison system, inmates should receive a packet of information from SES. Included in this packet is a trifold brochure informing inmates of their right to seek modification of their child support order.³³ The brochure includes contact information for SES and information on how to seek modification.
2. **Sending targeted letters.** SES also conducts a data match with DOC to identify incarcerated individuals with outstanding child support orders who have two or more years remaining on their sentence.³⁴ Twice each year, SES sends these individuals a plain language “outreach letter” informing them of their right to seek modification. Included in each outreach letter is an individualized modification form (in English and Spanish). Incarcerated parents need only enter their name and current income – the form comes preloaded with the other necessary information.

To secure modification, incarcerated parents must complete the form, submit the form, and attend a court hearing. Most courts allow incarcerated individuals to appear via video conferencing. Preloaded forms and video hearings are the results of concerted efforts by SES and DOC to make the modification process simpler for, and more accessible to, incarcerated individuals.

SES studies indicate that many inmates eligible for the letters take advantage of them. According to an internal SES study conducted in 2011, 1,909 inmates received outreach letters from February 2006 through March 2011. Of these inmates, 1,322 returned modification requests. This represents a 69% response rate. Furthermore, of the 1,322

³² Support Enforcement Services, “2007 Internal Self-Assessment Report Statewide ‘Crime Doesn’t Pay,’” Oct. 2007.

³³ The brochure is available at <http://www.ct.gov/doc/lib/doc/pdf/childsupportinfo.pdf>.

³⁴ According to Ms. Panke, the two-year limit stems from concerns that an incarcerated individual with a shorter sentence will seek modification while in prison, but will then fail to have his order modified when he leaves, resulting in inappropriately low support orders. This worry is addressed in the automatic initiation of modification preliminary recommendation.

cases in which inmates requested modification, 77% – over 1,000 cases – resulted in a nominal or zero order.³⁵

3. ***Presenting at reentry fairs.*** SES also attends reentry fairs to speak with inmates about their child support obligations and to inform them of their modification rights and options.

Despite Efforts by SES, Non-Custodial Parents Leave Prison with Thousands of Dollars in Child Support Debt.

Many inmates remain unaware of their modification rights.

Despite SES and DOC efforts, many incarcerated individuals remain unaware of their right to seek modification. Of the seven recently-released individuals interviewed for this report, only one knew he had the right to seek modification upon incarceration. None of them recalled receiving information during intake regarding modification rights.

Susan Quinlan, Executive Director of Families in Crisis, a Connecticut-based reentry organization, identifies this as a timing and prioritization problem. Ms. Quinlan commented that while agencies believe they are doing their part through outreach campaigns aimed at informing people of modification options, incarcerated people may be overwhelmed while in prison, and therefore unlikely to think about the arrears at first (or at all). In her experience of working with incarcerated and reentering parents, they confront the debt when they get out, at which point it is too late for them to alter that debt. Ms. Quinlan described child support debt as creating a legitimate barrier to employment, since as soon as reentering parents get a legitimate job, their pay is garnished at a predetermined rate. Such heavy wage garnishment may leave them destitute and decrease their incentive to work.³⁶

As a result, inmates with child support orders accumulate substantial debt.

Even with the 2003 statute enabling downward modification of child support orders upon incarceration, previously or currently incarcerated parents continued to face an average of \$17,340 in child support debt in 2007.³⁷ While the SES outreach letter initiative may have decreased this number since 2007, interviews show that practitioners familiar with the system and individuals affected by it continue to see high debts upon release from incarceration.

Of the four Project Green clients who shared personal financial information, two have debts approaching \$35,000. Eric Rey, Coordinator for the New Haven Prison Reentry Initiative,

³⁵ At the time of this study, the time remaining on incarceration requirement was three years. Since the study, SES has shorted the requirement to two years.

³⁶ Interview with Susan Quinlan, Executive Director, Families in Crisis, March 25, 2013.

³⁷ Support Enforcement Services, “‘Problem Solving’ Child Support and Incarceration” presentation, Jan. 26, 2010, slide 15.

reported working with clients who face as much as \$45,000 in debt.³⁸ Laureen Vitale, a state-appointed lawyer who represents clients facing prison time for nonpayment of child support orders, recounted representing clients with debts that range from \$2,000 to \$110,000.³⁹ In addition, a 2011 SES study found that 126 inmates who did not respond to their targeted letters will have collectively accumulated more than \$3 million in child support debt over their period of incarceration – an average of nearly \$24,000 in debt per person – if their orders remain unmodified.⁴⁰

These large debts impact a substantial portion of Connecticut's incarcerated population.⁴¹ According to a 2007 SES study, 3,016 of the State's 18,902 inmates were behind on child support payments.⁴² In other words, 16% of Connecticut's incarcerated population in 2007 had child support debt.⁴³ According to an internal study, the SES outreach letter initiative resulted in downwardly modified orders for approximately 1,000 incarcerated individuals from February 2006 through March 2011. Assuming that the number of individuals with child support debt in 2007 was representative of the 2011 population, even with these efforts, approximately 2,000 incarcerated individuals continued to accumulate child support debt. In addition, the 1,000 incarcerated individuals who decreased their orders going forward did not see any change in their existing debt as a result.

Many of These Parents Are Unable to Meet Their Child Support Obligations During and After Incarceration.

According to 2007 data from SES, the average currently or formerly incarcerated non-custodial parent who owes child support is a 37 year-old man with 1.5 minor children. He has been or will be incarcerated 4 times.⁴⁴ His support order is \$70 per week.

While incarcerated, he will be earning \$0.75-\$1.75/day.⁴⁵ If he earns the daily maximum and works 365 days/year, he will make \$638.75, but will accumulate a child support debt of \$3,380 over the same period, leaving him with an additional debt of nearly \$2,750 per year.

³⁸ Interview with Eric Rey, Coordinator for the New Haven Prison Reentry Initiative, March 25, 2013.

³⁹ Interview with Laureen Vitale, state-appointed attorney for individuals facing contempt of court charges for nonpayment of child support, April 17, 2013.

⁴⁰ Support Enforcement Services "Inmate Modification Outreach Project" April 2011, p. 8.

⁴¹ This analysis does not include individuals in the pre-trial phase, though they likely face similar challenges. The absence of data on these individuals suggests that unrealistic child support orders may burden an even larger population than what is captured by the State's most recent studies. Addressing child support orders and debt for those in the pre-trial phase would likely require a separate study and may lead to additional policy recommendations.

⁴² Available at <http://www.ct.gov/doc/cwp/view.asp?a=1505&q=330332>.

⁴³ An additional 23,465 of the non-custodial parents who owed child support debt at the time of the SES study had been incarcerated previously. Of all non-custodial parents who owed child support debt, 40% were or had been in prison.

⁴⁴ Support Enforcement Services, "'Problem Solving' Child Support and Incarceration" presentation, Jan. 26, 2010, slide 15.

When he is released from prison, he will be unlikely to find a job immediately. Instead, he will rely on unemployment, the most common source of income for non-custodial parents who owe child support debt. If he is able to find work, it will likely be low-wage or minimum-wage work with the Social Security Administration, state or local government, Yale, Walmart, UPS, or Dunkin' Donuts.⁴⁶ These jobs likely pay minimum wage, and are therefore unlikely to provide a substantial salary.⁴⁷ As a result, meeting his \$70 per week obligation in current support, in addition to any arrearages and living expenses, will be nearly impossible even once he is out of prison.

Collection data reflects this reality. SES's 2007 study found that more than 50% of non-custodial parents who had child support debt and had been or were incarcerated had made no payments on their orders.⁴⁸ As Joseph Auger, a state-appointed attorney who represents individuals in contempt for nonpayment hearings, explains, from the perspective of his clients their debt level does not determine how much money the State can collect. Rather, the State can only collect as much as the individuals can pay.

The Current Approach to Modification Presents Several Shortcomings.

This Child Support Debt Carries Negative Consequences for the Parents, the Child, and the State.

The high debt that results from such unrealistic child support orders poses serious problems for the custodial parent, the child, the State, and the incarcerated non-custodial parent. Though one goal of the system is and should be to support the custodial parent and child,⁴⁹ today's approach fails to accomplish this goal. Instead, because currently and formerly incarcerated individuals retain unrealistic orders, very little money flows to the custodial parent and child; the non-custodial parent continues to owe significant sums, which the State must then expend resources to collect; and the non-custodial parent is more likely to face reincarceration because of the pressure high debt places on individuals to join the underground economy and because the State can punish nonpayment with incarceration.

⁴⁵ See <http://www.cga.ct.gov/2011/rpt/2011-R-0191.htm>.

⁴⁶ Support Enforcement Services, "2007 Internal Self-Assessment Report Statewide 'Crime Doesn't Pay,'" Oct. 2007, p. 4.

⁴⁷ A full time minimum wage worker in Connecticut working 40 hours a week, 52 weeks a year, will earn \$66 per day, \$330 per week, and \$17,160 per year.

⁴⁸ Support Enforcement Services, "2007 Internal Self-Assessment Report Statewide 'Crime Doesn't Pay,'" Oct. 2007, p. 5.

⁴⁹ The Department of Social Services website explains, "The goal of the Child Support Enforcement Program is to improve the self-sufficiency of families through increased financial and medical support." See <http://www.ct.gov/dss/cwp/view.asp?a=2353&q=305184>.

The custodial parent and the child rarely recover the child support owed.

At every level of child support order – from \$0-25/week to more than \$150/week—the State collects less of the money owed by parents who have been or are in prison than it does from those who have not. Across all levels, the collection rate in 2007 for those with a criminal offense was 36%, which was 32 percentage points lower than the collection rate for those who have never been incarcerated.⁵⁰ An individual who has been involved with DOC is more than twice as likely to not pay any current support.⁵¹ In other words, few custodial parents and children are receiving child support payments from non-custodial parents who have been or are in prison.

This results in significant uncollectible child support obligations for the State. The 2007 SES Report found that, with 3,000 incarcerated individuals owing an average of about \$64 per week and serving an average sentence of more than four and a half years, the State will be unable to collect almost \$10 million per year in child support – the equivalent of 1.6% of the State’s 2013 DOC budget.⁵²

Not only does collecting this debt require the use of additional state resources, but it may also decrease federal incentive funding for the State program, which is determined in part by the amount of child support orders collected.⁵³ In addition, the State bears the costs of incarcerating an individual for nonpayment of child support debt and of providing counsel for indigent defendants in contempt hearings.⁵⁴

The child support debt increases the likelihood of recidivism and reincarceration.

The current system also makes recidivism more likely. Child support debt may lead formerly incarcerated parents back to prison, both because debt obligations place pressure on them to join the underground economy and because the State can punish failure to meet those obligations with incarceration.⁵⁵

⁵⁰ Support Enforcement Services, “2007 Internal Self-Assessment Report Statewide ‘Crime Doesn’t Pay,’” Oct. 2007, p. 2.

⁵¹ Ibid, p. 3.

⁵² Connecticut Office of Policy and Management, “Connecticut FY 2014-FY 2015 Biennium Governor’s Budget Summary,” Section B, p. 114.

⁵³ See Social Security Act §458(b)(4), available at http://www.ssa.gov/OP_Home/ssact/title04/0458.htm.

⁵⁴ Federal funding is not available for defendants in child support cases. See <https://www.acf.hhs.gov/programs/css/resource/prohibition-of-ffp-for-incarceration-counsel-for-absent-parents-final-rule>.

⁵⁵ Interview with Susan Quinlan, Executive Director, Families in Crisis, March 25, 2013; Interviews with Project Green clients, April 1, 2013.

In fact, nearly three-quarters of non-custodial parents who owe child support and have been incarcerated will go back to prison.⁵⁶ The average non-custodial parent owing child support will return to prison more than four times, with child support obligations mounting during each period of incarceration if he cannot secure modification.⁵⁷

The experience of attorneys reflects this reality: Ms. Vitale estimates that 85% of her clients have been involved in the prison system before their contempt hearings.⁵⁸ Mr. Auger estimates that more than half of his clients have previously been in prison.⁵⁹

High debt pressures ex-offenders to join the underground economy.

Faced with high levels of debt, formerly incarcerated non-custodial parents feel pressure to engage in high-risk, high-reward activity that is often illegal. One Project Green client explained that many people with child support debt perceive two options: “construction or selling drugs, the only way[s] to make over twenty bucks per hour.” Another Project Green client recalled feeling the pressure directly. After being released, he worked more than 80 hours per week at two jobs but took home less than \$90 per week because money was taken out of his wages to pay for child support. His employment began to feel hopeless and pointless. Mr. Rey has seen his clients confront the same problem, explaining that for his clients, this level of child support debt makes it very hard to “do the right thing” because it pressures men to go into the underground economy.

Many non-custodial parents face additional barriers upon reentry that add to the difficulties of finding a job. For example, 40% of formerly incarcerated people in Connecticut have not completed high school.⁶⁰ Across the United States, 80% of inmates have substance abuse issues. The rates of serious mental illness among the inmate population are two to four times those of the non-inmate population.⁶¹ And, as one Project Green client explained, a criminal record itself poses a serious obstacle. Because formerly incarcerated individuals have to wait five to seven

⁵⁶ Though the SES 2007 assessment (see footnote below) that provides this number does not specify the time period for this recidivism rate, this number suggests that recidivism may be higher for individuals with child support debt than for those without children or child support debt. For example, in the same year that the SES study was conducted, the Office of Policy Management found that 47% of those who were released without supervision were re-convicted of a crime in less than one year (Support Enforcement Services, “‘Problem Solving’ Child Support and Incarceration” presentation, Jan. 26, 2010, slide 12).

⁵⁷ Support Enforcement Services “2007 Internal Self-Assessment Report Statewide ‘Crime Doesn’t Pay,’” Oct. 2007, p. 7.

⁵⁸ Interview with Laureen Vitale, state-appointed attorney for individuals facing contempt of court charges for nonpayment of child support, April 17, 2013.

⁵⁹ Interview with Joseph Auger, state-appointed attorney for individuals facing contempt of court charges for nonpayment of child support, April 17, 2013.

⁶⁰ Support Enforcement Services, “‘Problem Solving’ Child Support and Incarceration” presentation, Jan. 26, 2010, slide 13.

⁶¹ Ibid.

years for expungement, they experience difficulty securing and keeping a job that will allow them to repay their child support debt or to meet their current orders.

Project Green clients explained that the pressure they felt to get money as quickly as possible came not only from the custodial parent, but also from the court. They said that judges at their nonpayment hearings had instructed them to come up with money in any conceivable way and demanded large sums the day of the court appearance. “Everything’s about paying today,” one Project Green client explained. This orientation by the court caused some Project Green clients to avoid the judicial system altogether, and others felt pressure to secure funding illicitly.

Parents can also face imprisonment as punishment for nonpayment.

Nonpayment itself can also lead to reincarceration. The United States Supreme Court has held that the government can only punish debtors who have the ability pay their debt but are refusing to do so.⁶² However, most states, including Connecticut, permit incarceration for any individual who violates a court order.⁶³ This includes child support orders. Therefore, parents who owe court-ordered child support debt may be incarcerated as punishment for nonpayment under a contempt of court charge.

Though “it is well settled that the ‘inability of [a] defendant to obey an order of the court, without fault on his part, is a good defense to the charge of contempt,’”⁶⁴ interviews suggest that indigent individuals believe they can be imprisoned for nonpayment.⁶⁵ As one Project Green client noted when asked how child support differs from other types of debt he faces, “You can go to prison for [it].”

When an indigent individual is charged with contempt for nonpayment of child support, the State appoints him a lawyer. Ms. Vitale and Mr. Auger are two of four such lawyers in New Haven. Mr. Auger estimates that he handles 200 to 250 contempt for nonpayment of child support cases per year, while Ms. Vitale has a current caseload of 150 such contempt cases. On the day we met, Ms. Vitale had argued seven cases and received three new ones.⁶⁶

⁶² *Bearden v. Georgia*, 461 U.S. 660 (1983).

⁶³ They can also face federal criminal charges for nonpayment under statutes enacted in 1992 and 1998, enforced by Project Save Our Children. Congressional Research Service, “Child Support Enforcement: Incarceration As the Last Resort Penalty For Nonpayment of Support,” March 2012, p. 12.

⁶⁴ *Afkari-Ahmadi v. Fotovat-Ahmadi*, 294 Conn. 384, 398 (2009) (quoting *Bryant v. Bryant*, 228 Conn. 630 (1994)).

⁶⁵ Interviews with Project Green clients, April 1, 2013. Though none had jobs, the clients feared arrest and imprisonment for nonpayment.

⁶⁶ Ms. Vitale estimated that approximately three-quarters of her hearings focused on showing the magistrate the steps her client had taken to improve his case—whether by paying some of his order, attending GED classes, or reaching out to community groups—and scheduling a date for repeat hearings until her client finds a job. In the other quarter of cases, however, prison is a real possibility.

Although Ms. Vitale and Mr. Auger agree that the hearings have become more sensitive to their clients, they continue to see injustice. According to Ms. Vitale, the saddest stories come from those clients who find a job after months of trying and agree to work for a week without pay as part of the employment arrangement. She has seen such clients sentenced to prison at their contempt hearings and losing their new jobs as a result.⁶⁷

Mr. Rey has lost a number of reentry clients to prison as a result of nonpayment. Mr. Rey estimated that out of a caseload of 100 people, 90 will be men, 25 of whom have child support orders.⁶⁸ He said he might lose as many as 10 to prison for nonpayment – and emphasized that this number is taking into account the help he provides to increase the odds that they will stay out of prison.⁶⁹ Thus, even with the benefits of state assistance, many individuals end up in prison for nonpayment.

Of those who owed child support debt in 2007, more than 2,800 individuals had been incarcerated specifically for nonpayment of child support debt. DOC estimates the daily cost of incarcerating each inmate to be \$93.29.⁷⁰ This means that Connecticut residents paid approximately \$270,000 per day to incarcerate those non-custodial parents for non-payment. In addition, taxpayers paid for the representation of indigent parents in their contempt hearings.

Connecticut residents also pay societal costs when the child support system drives obligors to recidivism. Beyond the costs associated with enforcement and incarceration, residents can experience physical, psychological, and economic harm when obligors recidivate.⁷¹

Not only does recidivism hurt society overall, it also creates an additional perverse outcome in the child support context: if the incarcerated individual has not modified his order, the debt will continue to accumulate while he is in prison, creating a vicious cycle of debt and imprisonment. This system, as currently enforced, undermines Governor Malloy's top goals for the State's justice system: reducing crime and maximizing efficiency.⁷² Large uncollectible child support debts feed crime rates and clog the court system, the enforcement agencies, and the prisons.

⁶⁷ Interview with Laureen Vitale, state-appointed attorney for individuals facing contempt of court charges for nonpayment of child support, April 17, 2013.

⁶⁸ Interview with Eric Rey, New Haven Prison Reentry Initiative, March 25, 2013.

⁶⁹ Ibid.

⁷⁰ Connecticut Department of Corrections, 2011 Annual Report, p. 1.

⁷¹ Linda Meyer and Sarah Russell, et al., *Evidence-based Reentry Initiatives Devoted to Strengthening Positive Social Relationships: A Report Prepared for the Recidivism Reduction Committee of the Connecticut Sentencing Commission*, pp. 10-11. Draft (Sep. 4, 2012).

⁷² See 2011 Annual Recidivism Report, State of Connecticut Office of Policy and Management.

Debt burdens damage relationships, harming the best interests of the child.

Debt burdens can also force distance between the noncustodial parent and his family members, including his child.⁷³ Yet strong relationships – including positive familial and social ties – have been identified by this Committee as factors that can reduce recidivism.⁷⁴ The federal Office of Child Support Enforcement has found that “for child support to be a reliable source of income for children, parents who are incarcerated need child support orders that reflect actual income.”⁷⁵

Not only does this hurt the noncustodial parent’s chance of successful reentry, but it may also lower his expectations of himself as a father, which in turn hurts his child. In direct contradiction to the goals of Connecticut’s Fatherhood Initiative, child support debt often leads former inmates to resist seeing their children and encourages them to diminish their conception of what being a father means.⁷⁶ Mr. Auger explained that about a third of his clients conceptualize being a father as only having to pay money, not actually engaging with their children. Ms. Vitale and Mr. Rey observed a similar phenomenon, noting that their clients can get discouraged from pursuing a relationship with their children when they fail to pay their orders.

This can have serious consequences for the child. As one study explains, “Children of incarcerated parents may fear that they have been abandoned, that relationships with significant others are not reliable, or that they cannot count on being taken care of.” This effect is likely to increase if the father continues not to see his child once he is out of prison but ostensibly has more choice. The study goes on to say that “the National Center on Fathers and Families reports that ‘children with absent fathers are at greater risk than those whose fathers are present for teen pregnancy, drug use, poor grades, incarceration, and suicide....’”⁷⁷ Thus, a father’s absence – which becomes more likely when high debt stands between him and his child – can seriously hurt his child’s life outcomes.

The current child support system can also negatively affect the relationship between the parents. Project Green clients reported that the system often pitted them against their child’s custodial parent.⁷⁸ The clients explained that the debt becomes a particularly active issue when their

⁷³ One Project Green client, who recently turned 18, discussed the effect of child support debt on his other family relationships. He spoke of the stress that his mother has faced as a result of trying to help him pay off his debt.

⁷⁴ State of Connecticut Sentencing Commission Annual Report, 2012, pp. 7-8.

⁷⁵ See https://www.acf.hhs.gov/sites/default/files/ocse/realistic_child_support_orders_for_incarcerated_parents.pdf

⁷⁶ Project to Avoid Delinquencies, Office of Child Support Enforcement, Administration for Children & Families, U.S. Department of Health and Human Services, “Realistic Child Support Orders for Incarcerated Parents,” June 2012, p. 1.

⁷⁷ Technical Assistance Resource Center of the Annie E. Casey Foundation, “Reentry: Helping Former Prisoners Return to Communities,” 2005, p.45, quoting Nation Center on Fathers and Families, “Constructing and Coping with Incarceration and Family: Perspectives from the Field,” 2001.

⁷⁸ Mr. Rey noted similar dynamics in his clients’ experiences. Interview with Eric Rey, Coordinator for the New Haven Prison Reentry Initiative, March 25, 2013.

relationship with the custodial parent is strained; threats concerning child support and the initiation of court proceedings were often used as a tool in their disagreements.⁷⁹ Such tension can have negative consequences for both the noncustodial parent and the child.

Inmates are not receiving the information they need to secure modification.

None of the Project Green clients with active child support orders knew they could request modification upon incarceration. Similarly, very few of Ms. Vitale's clients knew about the modification option before she began working with them. Mr. Rey and Ms. Quinlan also identified this information problem among the clients they serve.

Mr. Rey and Ms. Quinlan believe this is partly because child support orders are not an immediate concern for inmates: often, the impact of child support debt on reentry is not apparent or important to inmates at the time of intake. The SES modification information sheet distributed in DOC intake packets largely goes unnoticed, and the majority of inmates are never made aware of their right to seek modification through other channels.

This can be particularly detrimental for older individuals, who might rely on an outdated understanding of modification options. Mr. Auger explains that some of his older clients do not know that the law has changes to allow downward modification.

Of the few inmates Mr. Auger has seen who were aware of the possibility of modification, few were aware of how to correctly complete each necessary step. Inmate Legal Assistance Program, which provides legal services to incarcerated individuals, does not help men with family law matters. As a result, incarcerated men do not have access to attorneys who can explain their modification rights to them and help them through the onerous process. Mr. Auger noted that if individuals do not fill out the complex modification application forms exactly right while they are incarcerated, their orders will not change; by the time they get out and can more easily access legal assistance, they may no longer meet the criteria to modify their orders.

Formerly incarcerated individuals are fearful of appearing in Child Support Court.

Even if they were aware of their child support rights, formerly incarcerated individuals may not seek modification if the process required them to appear in Child Support Court for fear of getting arrested for nonpayment while there.

Owing child support debt is an arrestable offense, as explained above. Thus, presenting oneself before a magistrate carries both real and perceived risk. That risk is compounded by the fact that parents seeking modification do not have a right to counsel and many current and formerly incarcerated individuals do not have a full understanding of the law and processes of child support. As a result, although the law is clear that incarceration is grounds for modification and that inmates are entitled to orders that reflect their actual income and assets, many individuals

⁷⁹ Interviews with Project Green clients, April 1, 2013.

conclude that the risk of punishment for nonpayment outweighs the possible benefits of modification.

In addition, even if the formerly incarcerated individuals do come to court, the result may not be a modified order. As Ms. Panke explained, the court result is a “wild card.” A formerly incarcerated individual’s choice not to come to court may be the result of a rational weighing of the cost of potential arrest versus the benefit of potential modification.

PRELIMINARY RECOMMENDATIONS

Initiate Modification Proceedings Upon Incarceration.

The State could automatically initiate modification proceedings upon incarceration, either through SES or at an individual’s sentencing hearing. This would not require any legislative action. Instead, it would utilize existing DOC data-matching programs that SES already uses to identify incarcerated individuals with outstanding child support orders.⁸⁰ A Modification Form would be filled out on their behalf once they were identified. This measure would only start the modification process. Individuals would still need to attend a court hearing and meet current requirements to secure modification.

Automatically initiated proceedings would allow fuller execution of the law by giving both the individual and the court maximum flexibility to determine the appropriate timing and amount of downward modification. It would accomplish the policy goal of setting realistic orders because it could stop the arrearage clock at the date of incarceration. Currently, Connecticut law allows modification orders to be backdated to the date the motion for modification was served, but not before.⁸¹ Thus, individuals continue to accrue debt at pre-incarceration levels until they initiate modification proceedings. Automatic initiation upon incarceration, on the other hand, would preserve the individual’s right to seek modification of debt accrued during incarceration even if he does not immediately pursue modification proceedings on his own. This option would also give courts the greatest flexibility in implementing child support orders based on an individual’s actual income and assets, in accordance with the statute, by enabling them to take account of the individual’s incarceration history.

Automatically initiated modification proceedings would also combat the information problem by bringing individuals into the modification process upon incarceration. Incarcerated individuals would learn about the modification option because they would automatically be input into the process. Automatic initiation would also give inmates more faith in the system – both the child support system and the broader legal system – because it would serve as clear evidence of the State’s goals of setting realistic orders and fostering reentry.

⁸⁰ Public Service and Trust Commission, “Problem Solving In Family Matters, 2009 Interim Report,” p. 11.

⁸¹ *Cannon v. Cannon*, 953 A.2d 694 (Conn. Super. Ct. 2008); Conn. Gen. Stat. § 46b-86(a) (2011).

After the individual was released from incarceration, modification proceedings could again be initiated automatically – this time for upward modification. Ideally, the State would include a buffer period to allow time for the individual to get a job before this second modification. Colorado and Oregon modify the orders of released individuals back to pre-incarceration levels 60 or 90 days after release without a hearing.⁸²

If the individual's post-release wages differed from his previous income, he could go through the modification process to modify the automatic order. Ms. Quinlan suggested automatic modification as a possible solution to the information problem, and SES recommended a process that would reinstate an order to pre-incarceration levels after the individual's release. This recommendation recognizes both suggestions.

One way to accomplish automatic initiation is to address modification during the individual's sentencing hearing. The District of Columbia recently enacted legislation mandating that the court inform individuals of their modification rights during sentencing.⁸³ The D.C. law also requires the court to give individuals the opportunity to fill out modification forms during their sentencing hearing. This method of delivering information guarantees that everyone entering the prison system is informed of their modification rights and that they have the opportunity and the means to start the modification process.⁸⁴

An alternative to automatically initiated proceedings would be a presumption of modification upon incarceration. Los Angeles County has developed a "passive" expedited modification process in which modification due to incarceration is granted unless one of the parents objects.⁸⁵ The availability of a hearing assures that cases warranting individualized consideration due to unique circumstances can be decided on a case-by-case basis. Connecticut could adopt a similar system, though this option may require legislative action.

As an alternative or addition to this recommendation, the Committee should explore opportunities to streamline the modification process. At present, this process requires multiple steps for individuals seeking modification. If an individual falters on any of these steps, modification is denied. SES simplifies the process for some incarcerated individuals, preloading forms and assisting them through all steps of modification. Others who are unaware of SES assistance or otherwise cannot access its services are unlikely to achieve modification. The Committee can propose consolidating the six forms presently required into a smaller number of forms, waiving filing fees for incarcerated individuals, and ensuring that incarcerated individuals have an option of appearing in court via videoconference. These proposals, together or in isolation, will make securing modification more attainable for incarcerated individuals who are not able to meet ongoing child support obligations. Streamlined procedures would also benefit the court, as they would allow for more efficient handling of modification proceedings.

⁸² See https://www.acf.hhs.gov/sites/default/files/programs/css/working_with_incarcerated_resource_guide.pdf

⁸³ D.C. Code § 23-112a. The law was passed in 2005 as an amendment to D.C.'s code of criminal procedure. See also <http://cssd.dc.gov/page/incarcerated-parents-and-ex-offenders>.

⁸⁴ See https://www.acf.hhs.gov/sites/default/files/ocse/dcl_09_26a.pdf.

⁸⁵ See https://www.acf.hhs.gov/sites/default/files/programs/css/working_with_incarcerated_resource_guide.pdf

Settle Debt Upon Reentry.

Settling the debt of incarcerated individuals upon reentry is another alternative. Under this regime, the State would reach a settlement with incarcerated individuals, reducing their arrears and accrued child support debt to a manageable (and, therefore, payable) amount. This would apply in all cases where custodial parents had assigned the child support arrearages to the State.⁸⁶ If the custodial parent did not assign the arrearages to the State, the State could instead advise the custodial parent of her rights and interests in settlement.

The federal government has approved this approach.⁸⁷ Forty-four states and the District of Columbia,⁸⁸ have some sort of child support debt settlement program. Maryland explicitly permits settlement of child support debt accrued during incarceration.⁸⁹ This policy is in addition to Maryland's existing arrearage adjustment program.⁹⁰ Connecticut currently allows for child support arrearage reductions⁹¹ when non-custodial parents meet certain criteria, including making regular child support payments and participating in fatherhood programs.⁹² Connecticut could expand its existing program to mirror Maryland's for incarcerated individuals.

Debt settlement provides a way to retroactively reduce or eliminate child support debt accrued while incarcerated. It would give former inmates the opportunity to correct their debt situation once they leave prison and gain better access to legal services. Debt settlement would recognize that many other concerns weigh more heavily on prisoners while they are incarcerated, but that few create equally substantial pressure when they are out. A post-incarceration option would likely be utilized much more often than the current system and would still have the benefits of decreasing the debt-related pressures that lead people back to prison. This option does not require judicial intervention or resources; therefore, no additional burdens will be placed on the courts.

Train Professionals in the Criminal Justice System to Help.

The incarcerated individuals affected by child support debt are likely to interact with a number of government service providers, from public defenders to DOC employees. Mr. Rey noted that child support and corrections staff have easy access to individuals while they are incarcerated.

⁸⁶ Parents who are receiving TFA benefits must assign all child support payments to the State for the duration of the benefits period. See <http://www.ct.gov/dss/lib/dss/pdfs/support97.pdf>

⁸⁷ U.S. Department of Health and Human Services Administration for Children and Families, Office of Child Support Enforcement Memo PIQ-99-03, March 22, 1999.

⁸⁸ See http://archive.acf.hhs.gov/programs/cse/debt_compromise.html.

⁸⁹ See Family Law Article, §12-104.1, Annotated Code of Maryland. The law was passed in 2012 by a vote of 78-61 over objections that the measure was unfair to children (see <http://marylandreporter.com/2012/03/22/house-approves-suspension-of-child-support-payments-for-inmates/>).

⁹⁰ See Family Law Article, § 10-112.1, Annotated Code of Maryland.

⁹¹ Conn. Gen. Stat. § 17b-179b (2011).

⁹² See <http://www.ct.gov/fatherhood/cwp/view.asp?a=4122&q=481646&fatherhoodNav=%7C>

By integrating questions about child support orders into existing systems, the State could ensure that realistic orders are set and the problem of reincarceration is avoided.

Christine Rapillo, Director of the Delinquency Defense and Child Protection Unit of Public Defender Services, which oversees the lawyers who represent clients in contempt hearings, is exploring ways to connect the contempt-hearing lawyers with their clients' criminal lawyers. She is developing materials that train public defenders to ask each client if he has a child support order in place.

The Judicial Branch Problem Solving Initiative, launched in 2009 and discontinued in 2011, made similar recommendations.⁹³ The Problem Solving Court recommended in 2009 that DOC intake and assessment include questions about the existence or possibility of child support obligations.⁹⁴ The State could also train judges to inform individuals of their modification options and procedures during sentencing, mirroring the D.C. system discussed above. Such efforts would ensure that inmates who need help do not fall through the cracks. Building child support modification into existing processes would also help maximize efficiency by leveraging existing systems.

Improve Outreach to Inmates.

Each of the formerly incarcerated individuals with whom we spoke, as well as the social workers and attorneys who work most closely with them, identified lack of information as a key problem. While the State has worked to improve inmate awareness of the child support modification option, that information is not yet reaching enough inmates. Extending SES's letter outreach program to individuals serving shorter sentences could be a significant step forward.

Other states have found that using videos providing child support information is one of the most effective ways to deliver information to inmates.⁹⁵ Prison facilities could show videos at regular intervals – during intake procedures and in pre-release programs, for example. This would be both cost-effective and simple.

Child support workers could also meet with inmates to go over their options and the services available to assist them in obtaining modification. Colorado, Illinois, Massachusetts, Texas, and Washington child support agencies have found that prisons and jails are receptive to regular presentations by child support workers.⁹⁶

⁹³ The Problem Solving Initiative brought community service providers and state agencies together to design a multidisciplinary judicial process that would address the underlying issues confronting the parents who appear in family support court. See http://www.jud.ct.gov/committees/pst/problemsolving/NH_pilot/default.htm#Members.

⁹⁴ Public Service and Trust Commission, "Problem Solving In Family Matters, 2009 Final Report," p. 11.

⁹⁵ See https://www.acf.hhs.gov/sites/default/files/programs/css/working_with_incarcerated_resource_guide.pdf.

⁹⁶ Ibid.

In addition, given the fear that former inmates say they experience when faced with a court date, outreach should reframe the process as one meant to support them while coming to a realistic resolution. Rather than focusing on money owed, outreach could also recommend fatherhood programs or parenting initiatives, making the process's many goals clear to incarcerated individuals.

CONCLUSION AND NEXT STEPS

This report explores how and why child support debt accumulates during incarceration. It proposes alternatives to the existing system that might reduce the negative consequences of child support debt. These include automatic initiation of modification upon incarceration, debt settlement upon reentry, better training for criminal justice professionals, and improved outreach to affected individuals. These alternatives would serve state and federal policy goals – including reducing crime and maximizing efficiency through realistic child support orders.

The authors urge the Recidivism Reduction Committee to continue this important inquiry into child support debt and incarceration. This report serves as a starting point for understanding the deficiencies in the current system and considering viable alternatives. The Committee may wish to seek additional data, as well as perspectives from individuals and agencies that declined to speak with the authors of this report to further understand the problem and best target the solution.

Request Additional Data.

The Committee may wish to request additional empirical data from state agencies. The following data points, which the authors were not able to obtain, may assist the Committee in understanding the scope of the problem and the optimal solutions:

- Data regarding modification for incarcerated individuals with sentences of less than two years (including the number of incarcerated individuals with child support orders who have sentences of less than two years, how many of them seek child support modification, and how many of those are successful). This data would help clarify whether SES outreach is targeting the right population. In general, understanding the characteristics of the affected population would help in designing the solution.
- Costs associated with the current child support modification system (including the average prison sentence for someone found in contempt of a child support order, the amount spent annually on legal services for individuals seeking child support modification due to incarceration, and the amount spent annually on adjudication for individuals seeking child support modification due to incarceration or opposing a contempt charge).
- Data and financial models projecting fiscal impact due to modification efforts and reduction of arrears, including impact from federal incentive funding, program costs, and savings from improved compliance and reduced contempt hearings. Combined with the

bullet point above, this information would clarify the cost of today's system for the State and would likely make a compelling case for instituting change.

- Data regarding the ability of incarcerated individuals to meet obligations during and after incarceration (including employment rates following incarceration, prevailing wage rates for jobs obligors secure following release, average amount incarcerated individuals pay toward child support obligations while incarcerated). Such data would likely sharpen the point that individuals do not pay because they are not able to.
- Data regarding people who are prosecuted and incarcerated for failure to pay child support obligations (including indigence status of those serving such sentences, length of sentence, and debt owed). If the State is incarcerating indigent individuals for nonpayment of child support without modifying their orders, these individuals are caught in a particularly vicious catch-22: They continue to commit the act for which they were incarcerated while they are incarcerated. In addition, they continue to accumulate child support debt and all of the problems that accompany it. If this data shows that the State is incarcerating indigent individuals for nonpayment, an additional policy recommendation would be for Connecticut to discontinue this practice, which is contrary to the State's policy goals, messaging, and legal standards.
- Data regarding incarceration rates and policies for nonpayment of child support across various states. Such information could help Connecticut policymakers assess the viability and efficacy of this report's recommendations and may introduce them to additional options.

Seek Perspectives Not Captured in This Report.

The authors recommend seeking the perspectives and experiences of individuals or entities that did not participate in this report, such as:

- Incarcerated individuals who owe child support, with a variety of sentence lengths;
- Connecticut Superior Court judges and family support magistrates;
- Department of Social Services officials;
- Department of Corrections officials.

Information from these parties, as well as additional information from those that did participate in this report, will help further develop the findings explored here and will help the Committee determine which of the preliminary recommendations would best solve the problems identified in this report.

Gathering additional perspectives from other states may also be helpful. Speaking with legislators, administrators, and child support workers in states that have implemented policies Connecticut is interested in pursuing would be useful in gauging how successful their policies have been at increasing collections, reducing arrearages, and reducing recidivism.

Confirm Preliminary Recommendations.

The authors expect such additional information to confirm the findings of this report – specifically, that child support debt accumulated during incarceration remains a persistent, serious barrier to reentry. The authors anticipate that further investigation will also support the preliminary recommendations presented in this report as the best ways to meet state and federal policy goals for the child support system and to improve outcomes for affected parents and children, as well as the people of Connecticut.