

WORKING IT OFF: INTRODUCING A SERVICE-BASED CHILD SUPPORT MODEL

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This Article introduces a new model of child support for low to no-income noncustodial parents—usually fathers—who owe large amounts of child support arrearages. Instead of making little to no monetary payments to their child(ren)’s custodial parent(s)—usually mothers—these fathers would perform various forms of labor for the mothers. This model gives these fathers a way to avoid jail for failure to pay child support and provides mothers otherwise nonexistent support. This Article explains why the current child support system is failing poor families, discusses how this service-based model can improve the lives of all parties involved, and notes its points of strength and weakness.

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INTRODUCTION

Raising children is costly, and women, low-income women in particular, are bearing a disproportionate amount of this cost.¹ A 2013 report estimated that it costs \$164,160 to raise a child from birth to eighteen in a single-parent household.² While this number is extremely high for a low-income parent, it only includes monetary costs (housing, food, clothing, transportation, health care, and childcare expenses); it does not include other costs associated with the schedule constraints, emotional burdens, sleep deprivation, and additional errands that children create. Too often, low-income single mothers are taking on the majority of both types of costs. Most recent numbers indicate that only 62% of child support is collected,³ and of the \$70 billion in unpaid child support, noncustodial parents who make less than \$10,000 owe 70% of it.⁴ Even when fathers of children with low-income mothers do make child support payments, the government usually uses most or all of the money to reimburse itself for the welfare payments made to the mother.⁵

Contrary to the “deadbeat dad” narrative, the reason low-income fathers do not pay their dues is often because they cannot afford to pay, not because they refuse to pay. Many of these men have trouble finding employment due to a failure of the education system, substance abuse issues, and/or a lack of marketable skills.⁶ Additionally, about 30% of poor fathers who do not pay child support are in prison, as incarceration does not prevent child support payments from being due or from accruing in many states.⁷ Currently, fathers who are unable to pay support often end up in jail where they continue to accumulate child support debt and are unable to contribute in any meaningful way to the mother, the child, or the community.⁸ Not only are low-income fathers not financially assisting their children’s mothers, they are also not usually providing adequate nonmonetary support. One study reported that 34% of children with nonresident fathers had no contact with their father⁹ and another found that 32% of nonresident

¹ Over 80% of custodial parents are women. U.S. CENSUS BUREAU, CUSTODIAL MOTHERS AND FATHERS AND THEIR CHILD SUPPORT: 2007 7 (2007).

² U.S. DEPT. OF AGRIC., EXPENDITURES ON CHILDREN BY FAMILIES 14 (2013). The average income of a lower income single parent household in this study was \$27, 290. *Id.*

³ OFF. OF CHILD SUPPORT ENF’T, U.S. DEP’T OF HEALTH & HUMAN SERVS., FY 2009 PRELIMINARY REPORT, (2010).

⁴ OFF. OF CHILD SUPPORT ENF’T, U.S. DEP’T OF HEALTH & HUMAN SERVS., UNDERSTANDING AND MANAGING CHILD SUPPORT DEBT, STORY BEHIND NUMBERS 1 (2008).

⁵ See *infra* note 15 and accompanying text.

⁶ See Jane C. Murphy, *Legal Images of Fatherhood: Welfare Reform, Child Support Enforcement, and Fatherless Children*, 81 NOTRE DAME L. REV. 325, 354-55 (2005).

⁷ See Elaine Sorensen & Chava Zibman, *Getting To Know Poor Fathers Who Do Not Pay Child Support*, 75 SOC. SERV. REV. 420, 424-26 (2001); Tonya L. Brito, *Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Noncustodial Fathers and Their Families*, 15 J. GENDER RACE & JUST. 617, 633 (2012).

⁸ See generally, Brito, *supra* note 7 (decrying the criminalization of low-income noncustodial fathers).

⁹ Sandra L. Hofferth et al., *The Demography of Fathers: What Fathers Do*, in HANDBOOK OF FATHER INVOLVEMENT: MULTI-DISCIPLINARY PERSPECTIVES 63, 68 (Catherine S. Tamis-LeMonda & Natasha Cabrera eds., 2002).

fathers had not seen their children in the past year.¹⁰

Instead of demanding monetary contributions from noncustodial fathers who cannot pay and perpetuating a cycle of poverty by imprisoning them when they do not pay, this Article suggests a service-based system of child support for certain categories of low-income noncustodial fathers with arrearages.¹¹ This service-based support program would work as follows: when a father becomes delinquent on child support payments, the court assigns him a child support officer. This officer facilitates a negotiation between the mother and the father to determine what sorts of labor the father will complete. This labor could involve different forms of childcare and/or household chores. On a pre-determined schedule, the officer would reach out to the mother to verify that the father has completed his assigned tasks, check in with both parties for feedback and complaints, and mediate any conflicts or revise the agreement as necessary. Then, the officer converts the hours spent to money and deducts this amount from his child support arrearages. In cases where there are irreconcilable differences between the parents and/or where there has been a history of domestic violence, the father would perform labor for a different mother in the program and the original mother would receive service-based support from another father in the program.

This paper is organized as follows. Part I outlines the history of child support enforcement in the United States, explains how child support amounts are calculated, and notes why low-income mothers are not receiving much, if any, child support. Part II discusses the reasons why many fathers are unable to pay their child support dues, focusing on the lack of employment opportunities, high levels of incarceration, and required payment amounts that often do not reflect the actual income of the fathers. This section also describes how and why many poor fathers end up in jail for nonpayment. Part III addresses two ways in which federal and state governments have attempted but failed to ameliorate the problem of enforcing child support orders against indigent fathers: lowering their child support payments and enrolling them in employment programs. This part concludes that the former fails to meet the primary goal of child support – supporting mothers and children – and the latter has not been effective enough to increase the amount of money that mothers and children receive. Part IV explains why low income mothers are in desperate need of service-based support, describes the service-based support program in detail, and analogizes the program to three other models/programs already in existence: community supervision, restorative justice, and court diversion. This section concludes by examining the benefits and drawbacks of this model. Part V is a brief conclusion.

Before beginning its analysis, this Article needs to address the boundaries of the group of fathers that this program targets: “fathers who cannot pay.” This is a group whose membership is not so easily determined. A neoliberal definition of this group would be extremely narrow since it

¹⁰ CHRISTINE WINQUIST NORD & NICHOLAS ZILL, DEP'T OF HEALTH & HUM. SERVS. , NON-CUSTODIAL PARENTS' PARTICIPATION IN THEIR CHILDREN'S LIVES: EVIDENCE FROM THE SURVEY OF INCOME AND PROGRAM PARTICIPATION (Aug. 14, 1996), <http://fatherhood.hhs.gov/SIPP/noncusp1.htm>.

¹¹ Throughout this paper, I use “father” to refer to the noncustodial parent who is not paying child support, and use “mother” to refer to the custodial parent who is suffering from this lack of payment. I recognize that this assumption ignores families in which these gender roles are reversed as well as same sex and other non-traditional families. However, because the overwhelming majority of people suffering from the failure of the child support enforcement system are low-income women whose children’s fathers are not supporting their children, and because making this analysis gender neutral weakens some of the feminist critiques of child support enforcement, I find this generalization to be justified in this piece. Further research should be done to determine how child support enforcement impacts custodial father and non-traditional families.

would adopt the view that most fathers *can* pay child support, but they are choosing not to work hard enough to find a job and/or not willing to work jobs that may be undesirable. A progressive definition of this group would be more expansive and include most low-income fathers, blaming their poverty on systemic failures rather than individual ones. While recognizing this tension, this paper does not engage with it. For the purposes of this paper, “fathers who cannot pay” are simply those who have not been paying. This category includes 1) fathers who have been able to show the court that their income is sufficiently low to make nominal payments to their children’s mother(s) but have not been doing so;¹² 2) fathers who are just as poor as these fathers but do not have the knowledge or resources to have their income accurately represented in court and therefore are forced to pay more than they can afford; and 3) fathers who have the financial ability to pay their dues but are not paying – the “deadbeat dads.” As noted later in the paper, this last group of fathers is likely quite small and would not be the main type of fathers participating in this proposed program.¹³

I. GENERAL BACKGROUND OF LOW-INCOME CHILD SUPPORT ENFORCEMENT AND COLLECTION

a. *History and Current State of Child Support Enforcement*

From their origins, the local, state, and federal governments’ child support enforcement systems have not been successful at collecting money for low-income custodial parents and their children. The history of government-regulated child support began with the Social Security amendments of 1974. These amendments created a federal child support enforcement program under Part D of Title IV of the Social Security Act with state-level counter parts operating in compliance with federal law.¹⁴ Lawmakers saw this child support enforcement system as a way to recoup some of the Aid to Families with Dependent Children (AFDC) funds paid out to low-income mothers.¹⁵ Thus, in many cases, the money collected from absent fathers of low-income mothers would go directly back to the government as a reimbursement for welfare, leaving the woman and the child in the same financial situation that they were in before the child support order.

In 1984 and 1988, Congress passed two Child Support Enforcement Amendments that greatly increased enforcement initiatives and governmental oversight.¹⁶ These changes required states to create laws that provided for income withholding, liens against real and personal property, and deductions from tax returns from noncustodial parents in Title IV-D cases.¹⁷ Additionally, in order to increase cooperation from mothers on welfare who were receiving no financial benefit from child support payments, these amendments granted women access to the

¹² See *infra* notes 39-50 and accompanying text.

¹³ See *infra* note 33 and accompanying text.

¹⁴ 42 U.S.C. §§ 651-669 (2012).

¹⁵ *Id.*

¹⁶ Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (codified as amended in scattered sections of 42 U.S.C.); Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305 (codified as amended in scattered sections of 26 and 42 U.S.C.).

¹⁷ Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378 Sec. 3.

first fifty dollars of child support collected.¹⁸ The federal and state governments shared any remaining funds needed to reimburse themselves for welfare benefits.

Additional changes to child support policy and collection came in 1996 with the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). This law improved procedures for establishing paternity in non-marital births, created a national database of employees that child support agencies could use to locate those who owed money, and streamlined administrative procedures.¹⁹ PRWORA also repealed the mandate that states give the first fifty dollars per month of child support payments to eligible women.²⁰

Currently, individuals who do not pay child support are subjected to rigorous collection mechanisms including automatic withholding of child support payments from their paychecks; reductions of income tax refunds; seizing of bank accounts; revoking drivers, occupational, and professional licenses; and placing liens on properties.²¹ The enforcement system post-PRWORA has been described as follows:

If we do not know where a father is, policymakers can find him in one of many available databases. If we do not know which man is the father of a particular child, administrative agencies can order DNA tests. Formulas spit out order awards, and remote computers assess award levels. [Arrearages are] deducted from individuals' paychecks before they even know [the money] was there to begin with.²²

When it comes to low-income families, Temporary Assistance for Needy Families (TANF), which replaced AFDC through PRWORA, plays an important role in the child support enforcement structure for low-income parents.²³ To receive TANF benefits, custodial mothers are required to establish the paternity of their child(ren) and assign their child support collection rights to the government so it can reimburse itself for welfare benefits paid to mothers.²⁴ Thus, mothers on TANF are forced to assist the government but are not reaping substantial child support benefits from their cooperation. Some states "pass through" child support received, which means that mothers receive between \$50 and \$200 before the remaining amount is withheld by the state.²⁵ Although states with the pass-through program provide more assistance to mothers

¹⁸ *Id.* at Sec. 405.

¹⁹ *See generally*, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

²⁰ *Id.*

²¹ *See Brito, supra* note 7, at 650.

²² JOCELYN ELISE CROWLEY, *THE POLITICS OF CHILD SUPPORT IN AMERICA* 51 (2003).

²³ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-93, § 101-16, 110 Stat. 2105, 2184-85 (1996).

²⁴ Social Services Amendments of 1974 § 101(a); Daniel L. Hatcher, *Don't Forget Dad: Addressing Women's Poverty by Rethinking Forced and Outdated Child Support Policies*, 20 AM. U. J. GENDER SOC. POL'Y & L. 775, 780 (2012).

²⁵ U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-196, *CHILD SUPPORT ENFORCEMENT: DEPARTURES FROM LONG-TERM TRENDS IN SOURCES OF COLLECTIONS AND CASELOADS REFLECT RECENT ECONOMIC CONDITIONS* 23 (2011). If a state participate in the pass through program, it is not required to pay the federal government the typical

receiving TANF than states without it, the pass-through amount is not enough to make a substantial impact on the poverty level of the mother and child. Moreover, this pass-through program does not help mothers when the fathers have little to no income since there is nothing to pass through. Therefore, it is not surprising that researchers have found that child support payments to poor mothers and children reduce poverty by only 5%.²⁶

b. Methods for Calculating Amount of Child Support Payments

While enforcement mechanisms are equally aggressive throughout the country, states differ in their methods of calculating the amount of support due. States with an “income shares model” combine the income of both parents, calculate how much parents with that amount of income would spend on a child, and then determine how much each parent should contribute as a percentage of their income.²⁷ States with the “percentage-income model” simply take a predetermined percent of the noncustodial parent’s income.²⁸ Both of these models adjust for the number of children, generally lowering the amount per child as the number of children increases. However, this is only true for middle class fathers; poor fathers generally pay the same amount per month regardless of how many children they have. Moreover, the difference between these two models is of little consequence for poor fathers, as they usually end up owing around the same amount no matter what state they live in. For example, in New York – a state with a percentage-income model – a noncustodial father who makes \$15,890 or less is required to pay \$50 per month, regardless of the number of children he has.²⁹ Similarly, in North Carolina – a state with an income shares model – a father who makes less than \$13,164 is required to pay a total of \$50, regardless of the number of children he has.³⁰

II. CHILD SUPPORT AND POOR FATHERS

a. Why Poor Fathers Are Not Paying Child Support

As mentioned, most low-income noncustodial fathers are not paying child support because they cannot afford to. One study found that 23% of all noncustodial fathers are unable nonpayers,³¹ and individuals below the poverty line owe most of the unpaid child support.³² This data reveals that many noncustodial fathers not paying child support do not fit within the

amount. *Id.*

²⁶ See Elaine Sorenson & Chava Zibman, *To What Extent Do Children Benefit From Child Support*, URBAN INST.10 (2000), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/309299-To-What-Extent-Do-Children-Benefit-from-Child-Support-.PDF>

²⁷ See Stacy Brustin, *Child Support: Shifting the Financial Burden in Low-Income Families*, 20 GEO. J. ON POVERTY L. & POL’Y 1, 6-7 (2012).

²⁸ *Id.*

²⁹ See N.Y. DOM. REL. LAW § 240(1-b)(d).

³⁰ See ADMIN. OFF. OF THE COURTS, NORTH CAROLINA CHILD SUPPORT GUIDELINES (2015).

³¹ See Sorensen & Zibman, *supra* note 7, at 422.

³² See U.S. DEP’T OF HEALTH & HUMAN SERVS., *supra* note 4 and accompanying text.

stereotypical narrative of the “deadbeat dad,” the father who refuses to pay even though he can afford to do so. In fact, noncustodial fathers who make more than \$40,000 per year only account for 4% of fathers with child support arrearages.³³

The reasons indigent fathers are unable to obtain sufficient income to pay child support are unsurprising. Many are minors, substance abusers, or have mental or physical disabilities.³⁴ Many are not native English speakers, undereducated, and/or possess few marketable skills.³⁵ Additionally, the criminal justice system’s impact on nonpayment of child support is substantial. Approximately 30% of men who do not pay child support are incarcerated, where they are unable to contribute in *any* meaningful way to their children or mothers.³⁶ Moreover, once these fathers leave prison, their criminal records can limit their employment opportunities, especially for fathers of color who are less likely to get hired than white men with similar criminal backgrounds.³⁷ Not only do incarceration and its effects damage noncustodial fathers’ ability to pay, the child support enforcement system itself makes it more likely for noncustodial fathers to become incarcerated. Aggressive enforcement mechanisms combined with the threat of imprisonment for nonpayment, discussed further below, incentivize these fathers to participate in illegal activity for income.³⁸

Another reason indigent fathers are not meeting their support obligations, is because the courts order child support amounts that are unrealistically high and do not always correlate with these fathers’ actual income.³⁹ This discrepancy between the amount fathers are ordered to pay and the amount they can afford to pay is partially due to the fact that poor noncustodial fathers often do not attend their child support hearings. This causes the court to enter a default support order based on imputed earnings or an amount the court thinks the fathers are or should be earning, rather than their actual income.⁴⁰ Some poor fathers fail to appear at these hearings because they have not received a copy of their summons due to unstable and transient living conditions.⁴¹ Those that do receive notice of the hearing may not attend due to their lack of knowledge regarding the consequences of not attending and/or fear of being viewed as deadbeat

³³ U.S. DEP’T OF HEALTH & HUMAN SERVS., UNDERSTANDING CHILD SUPPORT DEBT: A GUIDE TO EXPLORING CHILD SUPPORT DEBT IN YOUR STATE 5 (2004).

³⁴ See Murphy, *supra* note 6, at 354.

³⁵ *Id.* at 354-55.

³⁶ Sorensen & Zibman, *supra* note 7, at 424.

³⁷ See Brito, *supra* note 7, at 658.

³⁸ See Brito, *supra* note 7, at 658-59 (“[L]ow-income fathers who lack the financial means to pay their support orders ‘have said they faced the choice between generating income in the underground economy or being caught by the child support enforcement and, possibly, imprisoned.’”).

³⁹ See *id.* at 640-43.

⁴⁰ See Elizabeth G. Patterson, *Civil Contempt and the Indigent Child Support Obligor: The Silent Return of Debtor’s Prison*, 18 CORNELL J.L. & PUB. POL’Y 95, 108 (2008); Rebecca May, Ctr. for Family Policy & Practice, *The Effect of Child Support and Criminal Justice Systems on Low-Income Noncustodial Parents: When You Need a Safety Net, but There’s Only a Dagnet* 5 (2004), http://www.cffpp.org/publications/CFPP_MayChildSup0406b.pdf.

⁴¹ See Rebecca May & Marguerite Roulet, Ctr. for Family Policy & Practice, *A Look at Arrests of Low-Income Fathers for Child Support Nonpayment: Enforcement, Court and Program Practices* 40 (2005), <http://www.cffpp.org/publications/LookAtArrests.pdf>.

fathers.⁴² Even when fathers do attend their hearings, it is often without legal representation, making it less likely that they will be able to adequately demonstrate their actual ability to pay.⁴³ A second reason many poor fathers face inflated support orders is that many states apply child support retroactively, often times all the way back to the birth of the child(ren).⁴⁴ Moreover, some courts include costs of “paternity testing, litigation costs, interest on the arrearages owed, and penalties for not paying [past dues]” in the order.⁴⁵

A third reason poor fathers are being charged beyond their capability to pay is because courts are unlikely to reduce payments when fathers’ financial situations change. Generally, state child support laws allow for adjustment of child support orders when there has been a substantial change in the obligor’s ability to pay.⁴⁶ However, these modifications are generally only allowed in situations when changes in circumstances are involuntary. When a court finds that a father is underemployed or unemployed by choice and/or in an attempt to reduce his child support payments, it will not allow a reduction.⁴⁷ Poor fathers face a number of obstacles in receiving modifications even when they are entitled to them. Many poor fathers are unaware that they are eligible for support adjustments or do not know how to seek a modification.⁴⁸ Furthermore, they are often unable to afford legal assistance and unlikely to file for a reduction *pro se*.⁴⁹ The burden of proof is on the father to show that he is entitled to a reduction in payment, and he must provide evidence of his finances both at the time of the modification as well as at the time the initial child support order was entered.⁵⁰ Thus, without an attorney, poor fathers have difficulty proving a change in financial circumstances that justifies reduction of child support payments.

Another reason poor fathers are unable to receive downward modifications of support is because some states consider incarceration to be a “voluntary” change in circumstances, categorically disqualifying fathers in prison from seeking adjustments.⁵¹ Even in states that do allow incarcerated obligors to request modifications, these fathers frequently do not file petitions because of lack of knowledge and/or resources to do so.⁵² Downward modification of support payments is a critical safety valve in the child support system that is supposed to ensure that

⁴² David J. Pate, Jr., *An Ethnographic Inquiry into the Life Experiences of African American Fathers with Children on W-2*, in W-2 CHILD SUPPORT DEMONSTRATION EVALUATION REPORT ON NONEXPERIMENTAL ANALYSES, at vi (Daniel R. Meyer & Maria Cancian, Inst. for Research on Poverty eds., 2002), <http://www.irp.wisc.edu/research/childsup/csde/publications/nonexp/vol2-final.pdf>.

⁴³ See Patterson, *supra* note 40, at 119-121.

⁴⁴ May & Roulet, *supra* note 41 at 13.

⁴⁵ See Brito, *supra* note 7 at 642.

⁴⁶ LAURA W. MORGAN, CHILD SUPPORT GUIDELINES: INTERPRETATIONS AND APPLICATIONS § 5.01 (2010).

⁴⁷ *Id.*

⁴⁸ Maureen R. Waller & Robert Plotnick, *Effective Child Support Policy for Low-Income Families: Evidence from Street Level Research*, 20 J. POL’Y ANALYSIS & MGMT. 89, 106 (2001).

⁴⁹ See Brito, *supra* note 7 at 643-44.

⁵⁰ See e.g., Melton v. Toomey, 350 S.W.3d 235 (Tex. App. San Antonio 2011).

⁵¹ Ann Cammett, *Deadbeats, Deadbrokes, and Prisoners*, 18 GEO. J. ON POVERTY L. & POL’Y 127, 151 (2011).

⁵² See Brito, *supra* note 7 at 645.

noncustodial parents are being charged an appropriate amount. For poor fathers, however, this protection is not working as it should, and they are being ordered to pay an unreasonable amount.

b. Incarceration for Failure to Pay Child Support

Noncustodial fathers who are extremely delinquent on their child support payments face incarceration for civil contempt of court.⁵³ When poor fathers are not paying their dues and have not been making sufficient efforts toward employment, the state child support enforcement agency often asks the court to find that these fathers have intentionally and willfully failed to comply with court-ordered child support.⁵⁴ Often times the court does not enter a contempt order because it determines that fathers did not have ample employment opportunities or because the fathers make a one-time payment to avoid jail.⁵⁵ States can also criminally charge indigent fathers for persistent non-payment. In these situations, fathers are appointed counsel,⁵⁶ but civil contempt of court arrests usually outnumber criminal ones. Therefore, indigent fathers are often faced with the prospect of incarceration without a lawyer⁵⁷ and are thus more likely to face prison time than wealthier fathers who can afford, but refuse, to pay child support.⁵⁸

The rate at which noncustodial fathers are being imprisoned for nonpayment has not been studied extensively, but some local data suggest that these numbers are not trivial. The Center for Family Policy and Practice (CFFPP) reported that an Indiana county imprisoned approximately 3,000 noncustodial parents each year for nonpayment, out of approximately 100,000 open cases.⁵⁹ In South Carolina, individuals incarcerated for civil contempt of court for child support nonpayment make up between 13% and 16% of the jail population.⁶⁰ Another study focusing on Wisconsin found that civil contempt is often used as an enforcement mechanism, although it was unable to extract exact numbers on the rate of incarceration.⁶¹

When indigent fathers cannot afford to pay child support, the current enforcement system often resorts to a fruitless last resort: incarceration. Not only are jailed noncustodial fathers unable to look for employment or contribute to their child(ren) or the mothers in any productive way, they are accruing additional arrearages and are crippled in future employment searches because of their now existent or more lengthy criminal record. Thus, while the possibility of jail time for nonpayment of child support *may* be an important “stick” to ensure mothers and children receive the assistance they deserve, other interventions need to be implemented first that increase the

⁵³ *See id.*

⁵⁴ *See* Honorable Milton C. Lee, *Fatherhood in the Child Support System: An Innovative Problem-Solving Approach to an Old Problem*, 50 FAM. CT. REV. 59, 60-61 (2012).

⁵⁵ *Id.*

⁵⁶ *See generally*, *Gideon v. Wainwright*, 372 U.S. 335 (1963) (holding that all criminal defendants have the Constitutional right to legal counsel).

⁵⁷ The Supreme Court held that there is no constitutional right to counsel for civil contempt of court charges even though there is a possibility of incarceration. *See Turner v. Rogers*, 131 S. Ct. 2507, 2520 (2011).

⁵⁸ *See Brito, supra* note 7, at 619.

⁵⁹ *See Id.* at 652.

⁶⁰ *See Id.* at 618.

⁶¹ *See Id.* at 654.

likelihood of a productive outcome.

III. OTHER REFORMS FOR CHILD SUPPORT ENFORCEMENT WITH INDIGENT FATHERS

Many states have recognized the problem of enforcing child support orders against indigent fathers and have implemented two types of remedies: 1) adjusting the amount of support fathers owe and 2) requiring these fathers to enter job search programs. While the former benefits the fathers, it does nothing to provide assistance to the mothers and children. And although the latter is aimed at improving the lives of the fathers, mothers, and children, these programs have not significantly increased the amount of support mothers and children receive.⁶²

a. Decreasing Amount of Child Support

Because overcharging fathers for child support and imprisoning them when they cannot pay does not meet the goals of child support enforcement, a large number of states require the noncustodial father to pay only what he can afford.⁶³ Twenty-eight states and the District of Columbia have a self-support reserve (SSR) built into their child support determinations.⁶⁴ The SSR is the amount of money the state determines the noncustodial father needs to support himself.⁶⁵ If his income is less than the SSR, the state reduces the presumptive child support payment;⁶⁶ if he earns more than the SSR, the SSR is subtracted from his income and the child support payment is calculated from this reduced amount.⁶⁷ SSR results in less money reaching the mother and child(ren) even in states with pass-through programs because less money is being collected from the father.⁶⁸

SSR's purpose is to ensure that noncustodial fathers are not overcharged for child support, which may increase compliance and reduce incarceration rates. However, this program provides no benefit whatsoever to custodial mothers and their children. It is pointless and detrimental to overcharge noncustodial fathers, but SSR does nothing to ameliorate the financial situation of poor custodial mothers. Perhaps SSR could be an equitable solution if TANF or other government programs made up for the assistance fathers are expected to provide but that is not how these programs are structured. In many states, TANF awards are capped at around \$400 per month or approximately 20% of the federal poverty line.⁶⁹ This limited amount of money combined with the numerous restrictions that TANF imposes make employment a more appealing

⁶² See *infra* notes 70-74 and accompanying text.

⁶³ See Brustin, *supra* note 28, at 12-13.

⁶⁴ See *Id.*; See, e.g., N.Y. FAM. CT. ACT § 413(1)(b)(6) (Lexis 2011) (“‘Self-support reserve’ shall mean one hundred thirty-five percent of the poverty income guidelines amount for a single person . . .”).

⁶⁵ *Id.* (requiring fathers who have no income to pay a nominal amount of child support); Cammett, *supra* note 51, at 143 (eliminating the small payment by poor fathers through SSR).

⁶⁶ See *supra* notes 29-30 and accompanying text (stating the presumptive amount for indigent fathers as typically being \$50 per month).

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.* at 23.

option for many low-income mothers. However, the average single-parent household earns \$19,900, which is not enough to support a family of three (one mother and two children), according to the Economic Policy Institute.⁷⁰ Thus, most working mothers are not able to replace the fathers' expected contribution through employment and/or public assistance.

b. Employment Programs for Noncustodial Fathers

Federal and state governments have attempted to remedy the problem of imposing child support obligations on indigent fathers by helping them find employment. In theory, employing indigent fathers would improve the financial situation of fathers – the only goal of the SSR program – while also aligning with the primary goal of child support, which is to provide financial assistance to custodial parents and children. However, most of these programs have not proven to be sufficiently effective to enable fathers to provide their fair share of support.

Between 1988 and 2000 the Office of Child Support Enforcement (OCSE) funded “Responsible Fatherhood” programs in eight states throughout the country.⁷¹ These programs included both fathers who voluntarily entered the program and those courts required to participate. To their credit, some of these programs increased the income and child support payments of many fathers.⁷² However, retention was a significant problem; dropout rates reached 70% in some programs.⁷³ Moreover, employment rates of the fathers who stayed in the program did not substantially increase, and those who were employed earned very little.⁷⁴

New York, Colorado, and Texas implemented their own versions of these “fatherhood programs” with mixed results. Although fathers who complete the program usually find employment, these programs have difficulty recruiting and retaining participants and employing fathers in jobs that pay enough for them to make meaningful financial contributions to their children’s mothers.⁷⁵ Moreover, many of these programs offer incentives that, like SSR, reduce the amount of support due while the father is in the program.⁷⁶ Though this incentive might be an effective recruitment tool, it undercuts the purpose of child support, and with the programs’ high dropout rates, it is unlikely that the mother will recoup this temporary reduction in support.

Adjusting support obligations to reflect the noncustodial fathers’ ability to pay reduces incarceration rates but does not benefit mothers and children. Employment programs targeting poor fathers have the potential to benefit mothers and children but are not achieving this result in practice. Thus, new ideas on how to divide the costs of childcare more equitably without excessively incarcerating indigent fathers are needed. In the following section, this Article proposes such an idea: service-based support in lieu of financial support.

⁷⁰ *Id.*

⁷¹ *Id.* at 36-37.

⁷² *See* Brustin, *supra* note 28, at 37.

⁷³ KARIN MARTINSON ET AL., URBAN INST., THE IMPLEMENTATION OF THE PARTNERS FOR FRAGILE FAMILIES DEMONSTRATION PROJECTS (2007), http://www.urban.Org/UploadedPDF/411511_fragile_families.pdf.

⁷⁴ *Id.* at 5.

⁷⁵ *See* Brustin, *supra* note 28, at 41, 44-45.

⁷⁶ *Id.* at 42.

IV. PROPOSED SOLUTION: SERVICE-BASED SUPPORT IN LIEU OF MONETARY SUPPORT FOR INDIGENT NONCUSTODIAL FATHERS

a. *Why Service-Based Support*

A false assumption underling the child support regime is that the only form of support noncustodial parents can and should provide is monetary support. The additional forms of labor custodial mothers perform due to having children are substantial and costly. Recent numbers estimate that it takes parents a total of 48.7 hours per week to complete all housework, including childcare.⁷⁷ In heterosexual relationships, women are the ones performing the majority of this work.⁷⁸ When it comes to single custodial mothers, this disproportionate distribution of labor is exacerbated. They are not doing most of it; they are doing *all* of it.

Because these women are spending around 50 hours per week on housework and childcare, they are incurring substantial opportunity costs. Instead of working additional hours at their current job (which may lead to a promotion to a higher paying position), searching for higher paying jobs, or trying to find employment, these mothers spend these hours engaging in unpaid household labor. Additionally, because raising children in a single-parent household creates schedule constraints, these mothers are limited in the types of jobs they can have.

There are also significant psychological and emotional costs related to being the only parent doing housework and childcare. Robin West describes these costs in her book *Caring for Justice*:

The[se] [household acts] are exhausting and not particularly pleasurable—menial domestic labor, and a good deal of child care as well, is repetitive, under-stimulating, physically demanding work. It is boring. It is also, of course, enraging to know that one is doing considerably more than one's fair share and to know that the consequence of insisting on domestic justice for oneself will very likely be child neglect and an unacceptable degree of filth. Rage, particularly impotent rage, is not carried lightly.⁷⁹

This is not to say that all custodial mothers feel this way or that they do not enjoy taking care of their children and their households. Nor does this Article claim that single motherhood is primarily a burden. But, when poor custodial mothers are deprived of the choice of whether they want to be the primary caretakers and are forced to bear *complete* responsibility for their children and households, it is reasonable to expect that some of these mothers incur the emotional costs that West describes.

Thus, not only are single custodial mothers expending almost 50 hours per week on

⁷⁷ See Bianchi et al., *Housework: Who Did, Does or Will Do It, and How*

Much Does It Matter?, 91 SOC. FORCES 55, 57-58 (2010) (stating that this number is derived from adding the total number of hours married women and married men spent on "total housework" and "childcare" 2009/10).

⁷⁸ See *id.* at 57-58 tbl.1 (showing that married women completed 18.3 hours of housework and 13.7 hours of childcare per week in 2009/2010 and married men completed 9.5 hours and 7.2 hours, respectively). See also ARLIE HOCHSCHILD, *THE SECOND SHIFT: WORKING FAMILIES AND THE REVOLUTION AT HOME* 4 (1989) ("Most women work one shift at the office or factory and a "second shift" at home.).

⁷⁹ ROBIN WEST, *CARING FOR JUSTICE* 126 (1997).

housework and childcare, they are incurring opportunity and emotional costs from this work as well. As West points out, these women also experience the stress that accompanies the possibility that the government could remove their children from their homes if these women do not perform this work to adequate standards. Sleep deprivation and sacrifices of personal time are additional consequences of increased household burdens these custodial mothers must face—burdens that noncustodial fathers do not. Therefore, redistributing non-financial costs of children should be an additional goal of the child support enforcement system.

b. The Details of the Program

The general premise of the service-based support program is as follows. When low-income noncustodial fathers are unable to meet their child support obligations, they can either voluntarily enter, or the court can order them to enter, a program that substitutes labor for monetary payments. In other words, instead of contributing financially to mothers and children, they perform labor for the mothers and/or children. To meet their *current* child support obligations, fathers would be required to work between five and ten hours per week, depending on how many children they have. To pay their *past due* child support, fathers would need to work a minimum of five additional hours per week, which would then be translated to dollars and subtracted from their child support debt.

When a father voluntarily or non-voluntarily enters the program, he is assigned a child support officer. Then, the mother communicates to the officer what types of labor she needs and feels comfortable with the father performing. For example, she could request different forms of childcare depending on her level of trust in him (e.g., babysitting, helping transport children to and from school/sports, assisting with homework), or she could request that he complete various household chores (e.g., laundry, dishes, washing the car, sweeping, mopping, dusting, home repairs, mowing the lawn, cleaning bathrooms, snow shoveling, cooking meals, preparing the child's lunches).

The officer then acts as an intermediary between the father and the mother as they negotiate what types of labor are performed and how often each particular type of labor is performed. Additionally, the parties would agree in advance how long it takes to complete a certain task. For example, if they agreed that cleaning the bathroom takes thirty minutes, the father would log thirty minutes no matter how long it took him. This predetermined time allotment prevents future conflict and ensures that the father is performing the tasks efficiently. Importantly, in this model, the mother would always retain ultimate control over determining which forms of service the father will perform, including the right to decide whether to participate in this program at all.

Once the mother and father come to an agreement, he begins completing the tasks, which he is in charge of tracking on a time sheet. After a certain amount of time has passed—ideally one or two weeks—the father turns in this sheet, along with any feedback or complaints he has, to the child support officer. The officer then communicates with the mother to confirm that the father has reported the correct information and to collect her feedback and complaints. If there are disagreements about the time sheet or issues with the agreement in general, the officer sets up and facilitates a mediation between the parents to resolve disputes, create a new agreement, or, in extreme circumstances, nullify the agreement and disenroll the father from the program. If there are no disagreements, the officer converts the number of hours into dollars based on the minimum wage in the particular state. This amount is deducted from the total amount that the noncustodial father owes.

Enrollment would be mandatory for fathers facing potential imprisonment for either civil contempt or criminal charges for unpaid child support. Thus, if the fathers in this program ultimately fail to comply with the agreement, they face potential jail time. Fathers who lose their jobs or are unable to meet their payments for other reasons but are not yet delinquent enough to be incarcerated could also voluntarily enroll in this program in order to avoid civil and/or criminal sanctions. Ideally, the voluntary enrollment would occur when these fathers seek modification of their child support payments.⁸⁰

To pay back their *past* support obligations, fathers would be “paid” the state minimum wage for their work. For example, if New York City implemented this program, fathers would earn \$8.75 for each hour they performed labor for the mother.⁸¹ This amount would then be applied to their child support debt. All fathers in the program would need to work at least five hours per week towards their back debt. They could choose to work more hours if they wanted to pay their debt off faster.

Importantly, the fact that fathers are working off their past debt does not relieve them of their current child support obligations. Therefore, these fathers would also need to work additional hours per week to cover their ongoing child support dues according to the chart below:

NUMBER OF CHILDREN	1	2	3	4	5
HOURS PER WEEK	5	7	8	9	10

Similar to the monetary-based child support guidelines, this program reduces the amount of labor per child as the number of children increases. Unlike monetary-based programs, the amount of labor required is not keyed to income level.

In cases where the mother and father’s relationship has broken down to the point where they are unable to communicate and/or in cases of domestic violence, the program would work as follows. The father (Father A), who has a poor relationship with his children’s mother, (Mother A), would provide this same service-based support for another mother in the program (Mother B). Ideally, Mother A would then be eligible to receive service-based support from another father in the program (Father B) who has a poor relationship with his children’s custodial mother. Father B could, but does not have to be, the father of Mother B’s children. All other aspects of the program would remain the same.

c. Analogies to Other Models

1. Community Supervision

This proposed amount of state regulation of individuals facing incarceration is not new. The criminal justice system has used community supervision (probation and parole) for decades to control the activities of individuals who would otherwise be in jail or prison. Each state has a

⁸⁰ The same limitations and problems with modification would also apply to this voluntary enrollment.

⁸¹ See BUREAU OF FISCAL & BUDGET STUDIES, INCOME ANALYSIS OF A \$13.13 MINIMUM WAGE IN NEW YORK CITY (2014) (noting that New York’s minimum wage increased from \$8 per hour to \$8.75 per hour in 2015).

set of mandatory conditions, including reporting and employment requirements.⁸² Most states allow courts to impose additional conditions of probation/parole including “the bizarre ([y]ou may never even sit in the front seat (of a car))” to the controversial (don’t get pregnant) to the downright dangerous (put a bumper sticker on your car announcing you are a sex offender).⁸³ This level of supervision does not intrude on offenders’ constitutional rights because “any conceivable term of release will be less punitive than the authorized term of confinement.”⁸⁴ Courts have upheld extremely intrusive conditions of supervision, reasoning that individuals’ constitutional rights are diminished during supervision.⁸⁵ Because the service-based model of child support is, as a whole, less intrusive on individual liberty than most community supervision programs, it is unlikely that it would be struck down on constitutional grounds.

Conditions under which community supervision programs are most effective can provide useful insight on how to make this service-based model successful. For obvious reasons, smaller caseloads are correlated with enhanced outcomes for offenders.⁸⁶ Additionally, positive relationships between officers and offenders, frequent and non-confrontational interactions, greater level of officer immersion in the life of the offender, and a case management approach instead of an enforcement-only approach by the officer can result in lower rates of recidivism.⁸⁷ However, too much supervision can cause higher than normal recidivism. Researchers suggest that this is because exposing offenders to higher levels of surveillance and more conditions makes it more likely that they will violate one of those conditions and be caught doing so.⁸⁸ Thus, child support officers in the service-based program must strike a balance between being involved enough to establish trust and ensure the father is in compliance and not imposing too many obligations on the father or constantly surveilling his actions.

A major problem with community supervision is that a significant number of individuals under community supervision often violate the terms of their probation or parole and are sent back to prison for acts that are not criminal offenses.⁸⁹ While the federal recidivism rate is fairly high (30%), it is much lower than that of the states, which ranges between 43% and 67%.⁹⁰ The

⁸² See Heather Barklage et al., *Probation Conditions Versus Probation Officer Directives: Where the Twain Shall Meet*, 70 FED. PROBATION 37, 37 (2006).

⁸³ Cecelia Klingele, *Rethinking the Use of Community Supervision*, 103 J. CRIM. L. & CRIMINOLOGY 1015, 1034 (2013) (citations omitted).

⁸⁴ *Id.* at 1032.

⁸⁵ *Id.*

⁸⁶ Ctr. on Sentencing and Corr. & Vera Institute of Justice, *The Potential of Community Corrections to Improve Communities and Reduce Incarceration*, 26 FED. SENTENCING REP. 128, 130-31 (“Under optimal circumstances, community supervision costs would be somewhat higher, caseload size lower, and outcomes would most likely improve.”).

⁸⁷ Christopher T. Lowenkamp et al., *When a Person Isn’t a Data Point: Making Evidence-Based Practice Work*, 76 FED. PROBATION 11, 16 (2012).

⁸⁸ Celesta A. Albonetti & John R. Hepburn, *Probation Revocation: A Proportional Hazards Model of the Conditioning Effects of Social Disadvantage*, 44 SOC. PROBS. 124, 135 (1997).

⁸⁹ Matthew G. Rowland, *Too Many Going Back, Not Enough Getting Out? Supervision Violators, Probation Supervision, and Overcrowding in the Federal Bureau of Prisons*, FED. PROBATION 3, 6-7 (2013).

⁹⁰ *Id.* at 7.

federal probation agency's approach to dealing with technical violations of the conditions of probation accounts for much of its success. Probation officers can exercise their discretion and balance a number of factors when deciding whether to report the violation to the court, instead of being forced to report violations regardless of the circumstances.⁹¹ Officers are encouraged to respond to each violation on a case-by-case basis, taking the seriousness of the offense and the circumstances under which it occurred into account and crafting an individualized intervention.⁹²

Because the service-based support and community supervision approaches have a common goal of keeping their participants out of jail and prison, the service-based support model would ideally adopt a philosophy toward noncompliance similar to that of the federal probation agency's philosophy. When fathers fail to uphold their part of the agreement, the response of the child support officer should not be immediately removing the father from the program. Instead, the officer should inquire into the specific reasons as to why the father did not comply with the agreement. Maybe his schedule changed, maybe his transportation was no longer reliable, or maybe he or one of his loved ones was sick. Once equipped with this information, the parents and the officers can come up with appropriate responses to his breach, such as adjusting the types and schedule of the tasks. Fathers in this program should always be required to make up any missed time or task, but the officers must first employ a problem-solving approach, rather than a punitive approach to noncompliance.

2. Restorative Justice

Restorative justice (RJ) is a response to crime that focuses on mending the harm the crime has inflicted on the victims, the offenders, and the community. Its goal is reconciliation, not punishment, and it serves as an alternative to litigation and other forms of mediation.⁹³ While there are varying forms of RJ, its guiding principles are to restore the relationships harmed by crime and to hold offenders accountable for their actions by requiring them to work to repair the harm they caused to themselves, the victims, and their community, instead of through punishment and criminalization.⁹⁴

Although most of the fathers in this program will not have been charged with criminal offenses⁹⁵ and many of them will not have willfully withheld child support payments, their lack of support has likely caused damage to their relationships with their children, the mothers, and the community. Many mothers probably harbor resentment towards these men for displacing the

⁹¹ *Id.* at 8 (“The violations do not have to be reported to the court if the probation officer determines (1) that such violation is minor, and not part of a continuing pattern of violations; and (2) that non-reporting will not present an undue risk to an individual or the public or be inconsistent with any directive of the court relative to reporting violations.”) (internal quotations omitted).

⁹² *See id.* at 7-9 (noting that when a defendant “repeatedly failed to follow probation officer instructions, missed treatment sessions and used alcohol despite an abstinence condition imposed by the court,” he was not sent to prison “but rather [completed] four months home detention . . . [.] read and report[ed] on books related to personal responsibility, and . . . maintained a written calendar with the times and dates of all treatment sessions”).

⁹³ J. Sophia H. Hall, *Restoring the Peace*, CBA REC. 30, 31 (2007).

⁹⁴ *See* Tony Ward et al., *Restorative Justice, Offender Rehabilitation and Desistance 2* RESTORATIVE JUSTICE: AN INT'L JOURNAL 24, 25 (2014).

⁹⁵ Recall that this is because most of these fathers will have been charged with civil contempt of court. *See supra*, notes 53-58 and accompanying text.

men's share of childcare and housework on them. Their lack of financial support has required their children's mothers to find other sources of income to support themselves and their children. Their lack of nonmonetary support has resulted in their children receiving less parental involvement and supervision. Father absence, both monetary and otherwise, strains the financial and emotional resources of mothers and communities.

This service-based model of child support as an alternative to jail aligns with the goals of RJ. Although its main goal is to more equitably redistribute housework and childcare between mothers and fathers, it can also function to restore trust and ease tensions between parents and build and strengthen relationships between fathers and children. Moreover, instead of punishing fathers for inflicting harm on their children and the mothers, this program gives them an opportunity to repair this harm by completing their portion of childrearing.

3. Court Diversion Programs

When individuals are arrested for certain low-level offenses, they can enter what are called court diversion programs instead of facing traditional prosecution and sentencing. These programs have been particularly popular with drug offenders who are also addicted to drugs and individuals with mental illnesses. For instance, in Delaware, when individuals are arrested for drug-related crimes, their cases may be heard in a special drug treatment court.⁹⁶ In these courts, judges require offenders to complete a drug rehabilitation program in lieu of going to prison.⁹⁷ When effective, these programs can relieve an overburdened criminal justice system, allow individuals to avoid prosecution, and improve the public health. Additionally, studies have shown that diversionary programs do not increase risk to the public's safety.⁹⁸ Though, unsurprisingly, these programs do not always work for everyone. A study examining the Delaware program found that "white, married or once married, better educated, employed, and less frequent users of drugs" participants tended to be the most likely to successfully complete the program—individuals least impacted by mass incarceration for drug offenses.⁹⁹

This service-based model of child support is a type of court diversion program. Instead of sending fathers to jail, it gives them an opportunity to repair the consequences of the offense and improve their community. But, unlike the more common court diversion programs in which the offenders are diverted to programs targeted at improving the lives of the offenders, this program diverts the fathers from jail with the intention of helping third parties—mothers and children. Thus, fathers may be more reluctant to comply with the requirements of this program because they are not the primary beneficiaries; though, they are receiving the benefit of not going to jail.

⁹⁶ See Clifford A. Butzin et al., *Factors Associated with Completion of a Drug Treatment Court Diversion Program* 37 *SUBSTANCE USE & MISUSE* 1615, 1617 (2002).

⁹⁷ See *id.* at 1618.

⁹⁸ See Henry J. Steadman & Michelle Naples, *Assessing the Effectiveness of Jail Diversion Programs for Persons with Serious Mental Illness and Co-Occurring Substance Use Disorders* 23 *BEHAVIORAL SCIENCES & L.* 163 (2005).

⁹⁹ See Butzin, *supra* note 97, at 1628.

d. *Benefits of the Service-Based Support Program*

1. Cost-Effectiveness

State and federal governments would have to allocate substantial funds to create and administer this program, but it would be cost-efficient in the long run. For one, it would decrease the number of people in jail, which is considerably more expensive than community supervision programs. Current estimates report that incarceration is \$25,600 more expensive than community supervision per year per person.¹⁰⁰ Thus, even if this service-based support program is more costly than probation and parole programs, it would be cost-efficient based on the decreased number of incarcerated people alone. Moreover, since these men are not in jail, they are able to search for employment, which can generate additional tax revenue for the government.

More indirectly, this program could save the government money simply because it provides support for poor mothers. Because of the labor these fathers provide, women have the flexibility to either look for employment or work longer and more effectively at their jobs, which can lead to increased wages and/or promotions. More lucrative employment opportunities for poor mothers mean the government can collect additional monies through taxes and save money by having fewer mothers receiving welfare.

2. Increases Chance that Fathers Will Contribute Monetarily

Additionally, this program may actually increase the likelihood that these fathers would pay child support if and when they found employment. Numerous studies have found that the presence of a child support payment, no matter how small, is correlated with an increase in the amount of time fathers spend with their children.¹⁰¹ This suggests that the correlation may work the other way as well: the more time fathers spend with their children, the more likely they are to pay support. Thus, fathers in this program who are providing childcare for the mothers may be more likely to comply with child support orders when they are financially capable. Fathers paying child support to poor mothers always saves the government money as it provides money for the government to recoup costs it paid to mothers on TANF and increases the likelihood that mothers will not be drawing on funds from welfare programs.

3. Provides Benefit to Poor Mothers

Unlike most states' current child support enforcement models, this program would actually provide a benefit to poor mothers. As discussed above, poor mothers are not receiving much, if any, of child support 1) because the government reimburses itself for welfare payments before disbursing funds to mothers, and 2) many low-income fathers cannot or are not paying. Even in states with pass-through policies, low-income mothers are only receiving between \$50 and \$200 per month.¹⁰² Instead of being required to assist the state in locating and collecting support

¹⁰⁰ See Rowland, *supra* note 89 at 9.

¹⁰¹ See e.g., H. Elizabeth Peters et al., *Legislating Love: The Effect of Child Support and Welfare Policies on Father-Child Contact* 2 REV. OF ECONOMICS OF THE HOUSEHOLD 127, 269 (2004) (finding that "fathers who pay any child support will see their children 25 more days per year than children whose fathers pay no support").

¹⁰² See U.S. GOV'T ACCOUNTABILITY OFFICE, CHILD SUPPORT ENFORCEMENT. DEPARTURES FROM LONG-TERM TRENDS IN SOURCES OF COLLECTIONS AND CASELOADS REFLECT RECENT ECONOMIC CONDITIONS 8, 22 (2011).

from the noncustodial parent for little in return, like the system works now, this program is 1) optional for mothers, 2) designed to give mothers optimal control and autonomy in these agreements, and 3) decreases the number of hours per week these women spend on housework and childcare duties.

e. Drawbacks and Challenges of this Model

1. Fathers Who do Not Live Close to the Mothers/Children

One of the major drawbacks to this program is that it would not work for fathers who do not live within a reasonable distance to their children and/or the mothers. This problem can be solved in the same way the domestic violence/problematic relationship problem was solved. Father (Father A), who lives far from his child's mother, (Mother A), could provide this same service-based support for another single mother in the program (Mother B) who lived in father A's vicinity. Mother A would then be eligible to receive service-based support from another father in the program (Father B) who lives far away from his children's custodial mother. If the father lived out of state, implementing this alternative would be more difficult since this program would likely start on a local or state-wide level and enforcing it in another jurisdiction would be problematic until and if the program expanded to more states.

2. Fathers Who Owe Large Amounts of Debt

Many fathers in this program are likely to owe a substantial amount of support, as states usually do not expend resources pursuing civil contempt or criminal charges for noncustodial parents who are not severely delinquent. In some cases, these fathers may owe tens of thousands of dollars, meaning it will take them years to work off the debt.¹⁰³ For example, if a father in New York City owed \$30,000, it would take him about six and a half years to pay it off if he worked ten hours per week at the \$8.75 minimum wage. Of course, if this father got a job that paid well enough for him to begin making monetary child support payments, he would not have to work for the mother for that long. However, facing such a lengthy term of service, some, if not many, fathers who owe this much may be reluctant to enter the program, even if it meant going to jail instead.

To mitigate this problem, the program could offer debt forgiveness incentives for these fathers. For example, if the father worked for two years, the remainder of his back debt would be forgiven and he would just need to work enough to cover his current child support payments.

3. Finding and Funding Qualified Child Support Officers

Because the child support officers in this program must act as mediators, negotiators, probation officers, and therapists, these individuals would need to be trained and qualified to operate in all these roles and paid adequately for their skills. Thus, finding enough individuals to fill these roles and the extra resources, at least initially, to pay for their salaries pose potential challenges for implementing this program. But, as mentioned above, the money the state will save by incarcerating fewer fathers and increasing the earning potential of mothers should counter the

¹⁰³ See Brito, *supra* note 7 at 619 (detailing the common story of a father in jail for civil contempt who owes \$20,000 in support).

additional costs of implementing this problem in the long run.

One way the state could ease its burden of finding and paying these child support officers, is to assign a certain number of these child support cases to qualified professionals in other jobs. The criminal justice system already does this, as many states mandate that lawyers take on pro bono cases as a condition of entrance in to the state's bar.¹⁰⁴ Using this as a model, states could require professionals who need some sort of license from the state to practice—like social workers or clinical psychologists—to take on a certain number of these service-based child support cases each year as a condition of their license.

4. Poor Mothers' Distrust of State Regulation of the Family

Poor mothers and especially mothers of color, the intended beneficiaries of this program, have continuously been regulated by the state against their will. For instance, poor pregnant mothers on Medicaid are often required to meet with nutritionists, social workers, health educators, and financial officers in order to receive pre-natal care.¹⁰⁵ Many of these professionals delve into aspects of these women's lives that have little to do with medicine or pre-natal care.¹⁰⁶ Thus, these poor women are subjected to heightened state surveillance and regulation compared to wealthier women.

Additionally, the child welfare system has grown increasingly punitive.¹⁰⁷ Instead of providing basic economic support to poor mothers, the child welfare system only intervenes in these women's lives when it suspects child abuse or neglect.¹⁰⁸ Because of stereotypes that mark black mothers as unfit, the child welfare system's intrusive and punitive interventions disproportionately affect poor black women.¹⁰⁹ These policies have understandably caused mistrust and apprehension of state intrusion in the family, something this program hinges on. If poor custodial mothers are not willing to participate in this program, it will fail, regardless of the willingness of the fathers, the amount of money spent, or the number of child support officers hired. Although the goals and structure of the program might alleviate some of these women's reservations, they will not likely be sufficient. Thus, during the rollout of this program and throughout its existence, sizeable resources should be devoted to community-based outreach programs that attempt to justify this program's presence in these women's private lives.

This section makes clear that this program will not work for all poor fathers and/or the custodial mothers. Some mothers will refuse to participate. Some fathers will violate the terms of the program and be sent to jail. However, this program is not meant to work for everyone and

¹⁰⁴ See e.g., *Madden v. Delran*, 126 N.J. 591 (1992) (upholding New Jersey's bar practice of assigning pro bono cases).

¹⁰⁵ See e.g., Prenatal Care Act of 1989, Ch. 584, (1989) N.Y. Laws 1224 (codified in N.Y. PUB. HEALTH LAW §§ 2521, 2522, 2529, (McKinney 1989).

¹⁰⁶ See Khiara M. Bridges, *Pregnancy, Medicaid, State Regulation, and the Production of Unruly Bodies*, 3 *Nw. J. L. & Soc. Pol'y.* 62, 63 (2008).

¹⁰⁷ See Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers* 59 *UCLA L. REV.* 1474, 1485 (2012) ("The main mission of child welfare departments became protecting children not from social disadvantages stemming from poverty and racial discrimination but from maltreatment inflicted by their mothers.").

¹⁰⁸ See *id.*

¹⁰⁹ See *id.* at 1485-86.

these downsides should not prevent it from providing some mothers with much-needed support and some fathers with an opportunity to avoid jail and to contribute to their children's well being.

V. CONCLUSION

As it currently stands, there are no winners in child support enforcement against indigent, noncustodial fathers. Low-income custodial mothers are receiving little to no monetary or nonmonetary support from low-income noncustodial fathers. The children are growing up with overworked mothers, without fathers, and in poverty. Because these fathers are overcharged for child support and unable to find adequate employment to pay their dues, they are accumulating massive debts and are often times incarcerated for failing to pay. The government is losing money because it is 1) not recouping significant amount of welfare payments because fathers are paying little to none of their dues, 2) incarcerating a significant number fathers, and 3) losing out on opportunities for tax revenue from mothers (because they have less time to work) and fathers (because they are incarcerated).

This service-based model of child support aims to address these shortcomings of the current system and produce favorable outcomes for all parties involved. Some of the time-consuming and stressful household and childcare tasks could be removed from mothers' plate. Fathers could have an opportunity to avoid jail, restore and build relationships with their children, and contribute to their children's lives in a meaningful way. The government would save money in the long term by diverting fathers away from jail and into situations where they are more likely to obtain employment and thus pay child support and taxes.

This is the first attempt to articulate a service-based model of child support. Although this piece points out potential limitations and downsides of this program, I am sure that I have overlooked some. This Article does not purport to set forth a perfect model of such a program, but instead it begins the conversation surrounding the possibility service-based forms of child support.