AN OUNCE OF PREVENTION AND A POUND OF CURE:

Developing State Policy On The Payment of Child Support Arrears By Low Income Parents

By
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OVERVIEW and EXECUTIVE SUMMARY

Nearly 12 million mothers are raising children in single parent families.[1] Approximately 79 percent of these mothers work either full time (47%) or part-time (32%).[2] Despite this work effort, over 32 percent of their families are officially poor and most of the rest have incomes below 200 percent of poverty (near poor).[3] To help make ends meet, about 38 percent of these families participate in at least one public assistance program such as Temporary Assistance to Needy Families (TANF), Medicaid, Food Stamps, public housing or rental assistance, or General Assistance.[4]

Regular, timely child support payments could be of great help to these families and reduce their need for public assistance. The problem is that too few low and moderate income custodial mothers receive such support payments: 81 percent of poor children and 60 percent of near poor children with a non-custodial parent receive **no** child support.[5]

To improve the child support system, the federal government enacted Title IV-D of the Social Security Act. Pursuant to this Act, each state receives substantial federal funding to run a child support enforcement program. The program locates missing parents, establishes paternity when necessary, establishes and periodically modifies support awards, and enforces those awards. When the program is successful, it makes a real difference in children's lives:

- Custodial parent families with income below poverty that receive child support on average obtain about $1,979 per year. This amount is 26 percent of the family's income.

- Custodial parent families with income between 100 and 199 percent of poverty obtain on average $3,265 per year. This constitutes 15 percent of the family's income.[6]

[1] US CENSUS BUREAU, CHILD SUPPORT FOR CUSTODIAL MOTHERS AND FATHERS, P60-212 (October 2000), Table A., p. 6. . This publication and the Tables with underlying data are available at http://www.census.gov/prod/www/abs/custody.html. There are also 2.1 million custodial fathers. Id. About 11 percent of these fathers are poor. Id. Figure 5, p. 2. Unfortunately, considerably less is known about lower income custodial fathers and the non-custodial mothers of their children than is known about lower income custodial mothers and non-custodial fathers. For this reason, this paper will focus on what research tells us may be appropriate child support policies for low- income non-custodial fathers. However, in fashioning its policy, a state should apply the same principles and reasoning when addressing the issue of low-income non-custodial mothers as are deemed appropriate for low-income non-custodial mothers

[2] Id., p.1.

[3] The median income for mother-only families is $18,409. See, TRENDS IN THE WELL-BEING OF AMERICA'S CHILDREN AND YOUTH, 2000 edition, Section 2 Income Security, p.52, available on the web at http://aspe.hhs.gov/hsp/00trends. In 2000, 200% of poverty for a mother and one child was $22,500 and for a mother and two children it was $28,300.

[4] CHILD SUPPORT FOR CUSTODIAL MOTHERS AND FATHERS, supra note 1, Table 4. According to this table, about 14% receive housing assistance, 18% receive AFDC/TANF or General Assistance, 27% receive Medicaid and 28% participate in the Food Stamp Program.

[5] ELAINE SORENSEN, LOW-INCOME FAMILIES AND CHILD SUPPORT: LATEST EVIDENCE FROM THE NATIONAL SURVEY OF AMERICA'S FAMILIES , URBAN INSTITUTE (April 2000).

[6] Id.

Nonetheless, nearly $72 billion dollars in child support arrears are reported to be owed in cases using the public system. Some of this debt is real and some is not. Some is collectable and some is not. Nonetheless, each year this figure goes up when new arrears accumulate because current support is not fully paid.

There are many reasons why such a huge amount of arrears has accumulated. One is that some non-custodial parents who are able to pay go to great lengths to avoid their obligations. Recently, tools (e.g., administrative income withholding, financial institution data matches, license revocation) have become available to state child support agencies to pursue these deadbeat parents. States need to aggressively use these tools.

Another reason for the accumulation of arrears is states' inability to quickly capture changes in case status. For example, a non-custodial parent may die, ending his support obligation under state law. If this change is not recorded, arrears will continue to accumulate on the books although they are not actually owed. Similarly, the parents may informally change custody, making the former non-custodial parent the custodial parent of the children. If the order is not terminated, arrears will accumulate even though the parent who now has custody is fully supporting the children. Periodic review, followed by case closure where appropriate, would help address this problem.

Another problem is inaccurate payment records. For example, the obligated parent may have made direct payments to the custodial parent that are not reflected in the states system. This often happens if states do not serve income withholding orders on employers as soon as a support order is entered. During the interim between issuance of the support order and imposition of income withholding, the non-custodial parent may make direct payments to the custodial parent and these are not captured in the state's records. Early and aggressive issuance of income withholding orders should reduce the number of cases in which this is a problem. In addition, in interstate cases, payments may have been made in one state but credit for those payments may not be reflected in the records of another state. The Uniform Interstate Family Support Act's (UIFSA) one-order scheme should ultimately reduce the number of cases with multiple orders and payments going to different states. However, in the near term, states will have to develop ways to deal with problems related to inaccurate records in interstate cases.

In cases where the child was born outside marriage, the inability to quickly establish paternity has also contributed to the accumulation of substantial arrears. Child support obligations are generally established at the time paternity is determined. In the past, establishing paternity and a support order required a formal judicial process. Few parents willingly used this process, resulting in substantial delays between the time the child was born and when his/her paternity was legally established. When the order was finally obtained, many states imposed significant retroactive arrears. Recent changes in the law, which streamline the paternity and order establishment processes through voluntary acknowledgments and the use of administrative systems should reduce the gap and lead to lower retroactive obligations.

Finally, some non-custodial parents are facing child support obligations that are beyond their ability to pay. This is especially true of those whose children receive cash assistance.[7] However, the extent of this problem varies a good deal from state-to-state, depending on state policy and practice in a number of critical areas. (See Appendices 1-6 for specific state policies) These include:

- *Whether or not the state establishes retroactive support obligations when setting new orders.* Some states establish only prospective orders. The vast majority, however, will go back several years (or to the child's date of birth) and establish a retroactive obligation. This obligation may include payment for the child's health care coverage (including Medicaid-covered birthing costs) in addition to a lump sum representing cash support that should have been paid.[8] Thus, before the non-custodial parent has left the tribunal, he is in arrears. If the order is not established close to the time of the child's birth and/or when birthing costs or welfare debt are included, these arrears can be substantial.

- *The state's policy on interest*. Some states charge no interest on delinquent support payments. Others charge double-digit interest on payments missed after the date the order is established. If the obligated parent stays current, interest does not accrue. If he falls behind, he will owe a significant amount of interest. Still other states charge interest on the retroactive arrears established along with the original order (see above). This can add substantially to the amount owed from the outset.

- *How support payments are allocated.* In states that charge interest, how collections are allocated also affects the size of accumulated arrears. Collections can be attributed first to principal or to interest. If they are attributed to interest, the amount of principal goes down more slowly (if at all) and thus more interest accumulates. This can greatly prolong the time it takes to pay down the arrearage as well as the amount that has to be paid.

- *Whether the state includes significant fees or costs in the initial support order.* Some states do not charge non-custodial parents fees or costs. Others seek the cost of genetic testing when such tests have been requested. Still others pursue a variety of fees and costs (e.g., attorneys fees, court filing fees), which can add thousands of dollars in arrears onto the initial order.

[7] For more on this see Michael Brien and Robert Willis, "The Partners of Welfare Mothers: Potential Earnings and Child Support", 7 THE FUTURE OF CHILDREN 65-73 (Spring 1997); Elaine Sorensen and Robert Lerman, Welfare Reform and Low-Income Non-Custodial Fathers, 41 CHALLENGE 101-116 (July/August 1998).

[8] It is also worth noting that, in some older cases , the retroactive support amount represents the amount of public assistance benefits the custodial parent received, not the amount that the non-custodial parent would have paid under the state's child support guidelines. Since 1988, states have been required to use numeric, income-based child support guidelines in setting support orders both prospectively and retroactively. 42 USC Section 667. Prior to that time, states were supposed to use an income-based formula for setting awards in public assistance cases. However, many states did not do this, choosing instead to impose obligations based on the amount of cash assistance provided to the family. While this was both illegal and inappropriate, *Jackson v. Rapps*, 947 F.2d 332 (8th Cir. 1991), some older arrears may still reflect this problem.

- *How the state sets initial orders for current support*. All non-custodial parents physically able to do so should work and contribute to the cost of raising their children. The question is how much can they contribute. States now use income-based child support guidelines to set support orders. Some state's guidelines take into account the non-custodial parent's need to have at least a minimal amount of money (a "self-support reserve") to live on. Others have guidelines that set a minimal obligation even if the non-custodial parent has no ability to pay. This can be a particular problem if the non-custodial parent is in jail or prison and has no ability to earn wages that allow him to pay support. In states with these mandatory minimum orders, the accumulation of arrears is almost inevitable.

- *The extent to which the state relies on default orders*. Some states make significant attempts to obtain financial information about non-custodial parents before setting support orders. Even if those parents fail to appear and default orders are entered, those orders are based on reasonably accurate information. Other states set orders based on the information provided by non-custodial parents. In those states, if the parents do not appear and provide information, default orders are set based on imputed income. In imputing income, most states assume that the non-custodial parent is working full time. The amount of earnings imputed may be based on the minimum wage, the average state wage or the average wage in the industry where the non-custodial parent has a recent work history. If the amount imputed is substantially more than the father's actual income, the order will be well beyond his ability to pay. Again, the inevitable result is the accumulation of substantial arrears.

- *The ease with which orders can be modified when a parent suffers a precipitous drop in income.* Even when the initial order accurately reflects the non-custodial parent's ability to pay, circumstances may change. The father might lose his job altogether or face a reduction in hours or salary. A few states have policies that encourage obligors to quickly modify their orders if they experience a substantial decline in income. Others make it very difficult for obligors to seek or obtain a change even when the original order is clearly beyond the payment capacity of the non-custodial parent. When it is difficult to modify an order, modification is not sought and arrears accumulate under the unmodified order.

Fathers should be expected to support their children and it is quite appropriate for states to adopt policies that maximize the amount of support going to children. However, states are also beginning to recognize that the cumulative effect of some of these policies, leaves low-income fathers with overwhelming child support arrears. In some instances, the amount will never be paid and the state will carry large amounts of uncollectable arrears on its books. This contributes to a negative public perception of the child support program.

Moreover, attempts to pursue such arrears can have unintended, negative consequences. Up to 65% of the non-custodial parent's earnings may be taken to satisfy child support debt. If this amount is withheld, a low-income parent may be left with too little to live on. This may cause him to quit his job and move to another jurisdiction or join the underground economy. Then, the

child will receive no current support, arrears will continue to mount, and the state records will reflect even more child support debt.

This situation is tragic for custodial parents and their children who need the support to meet their basic needs. It has public consequences as well. If child support is not paid, some mothers will need public assistance. In particular, they may seek Temporary Assistance to Needy Families (TANF) or Medicaid. This creates public costs. Other mothers may already be receiving such assistance and –in the case of TANF—may be facing an end to their time-limited benefits. When families reach their TANF time limit, the state will have to either leave them destitute or provide assistance from state funds.

Recognizing the desirability of getting current support to such families and the barriers faced by a number of fathers in making payments, some states began developing programs to assist the most disadvantaged fathers in becoming better payors.[9] A few states had such programs in the early 1980's. A 1988 federal law created another set of such programs called the Parent's Fair Share Demonstration Project. Project sites offered employment-related services, peer support, mediation, and assistance in resolving child support issues. The projects ended in December 1996 and have generated a series of evaluation reports.[10]

While the Parent's Fair Share Demonstration Project has ended, there is a new foundation-supported set of activities called the Strengthening Fragile Families Initiative.[11] This Initiative is supporting a variety of activities designed to develop better research about and policy toward young, unmarried parents. In addition, federal law has changed so that states now have the option to use TANF funds to provide a variety of supports to the non-custodial parents of children receiving TANF benefits.[12] In addition, states can use funds from the Welfare-to-Work (WtW) Program to provide employment related services to low- income non-custodial parents. Under 1999 Amendments to the law, the WTW Program can now assist non-custodial parents who 1) are unemployed, underemployed or having difficulty paying their child support obligations; 2) have minor children who are *currently* eligible for or receiving TANF, Food Stamps, Supplemental Security Income (SSI), Medicaid, or State Children's Health Insurance (S-CHIP) benefits or *have received* TANF benefits during the

[9] For a description of some of the very early programs see PAULA ROBERTS, TURNING PROMISES INTO REALITIES, 61-64,CLASP PUBLICATIONS (1988). For a description of current efforts see STANLEY BERNARD and JANE KNITZLER, MAP AND TRACK State Initiatives to Encourage Responsible Fatherhood NATIONAL CENTER FOR CHILDREN IN POVERTY (1999) and APRIL KAPLAN, FATHER-CHILD RELATIONSHIPS IN WELFARE REFORM, WELFARE INFORMATION NETWORK (1998) available at www.welfareinfo.org.

[10] The most recent reports to come out of the evaluation are VIRGINIA KNOX, and CINDY REDCROSS, PARENTING AND PROVIDING The Impact of Parent's Fair Share on Paternal Involvement, MANPOWER DEMONSTRATION RESEARCH CORPORATION (2000) and JOHN MARTINEZ and CYNTHIA MILLER, WORKING AND EARNING The Impact of Parent's Fair Share on Low Income Father's Employment, MANPOWER DEMONSTRATION RESEARCH CORPORATION (2000).

[11] The Ford, Charles Stewart Mott, Annie E. Casey, John Danforth, William and Flora Hewlett, and the Kaiser Family Foundations are involved in this effort, as are the U.S. Departments of Health and Human Services and Labor. A detailed description can be found in STRENGTHENING FRAGILE FAMILIES INITIATIVE (1999), which can be obtained from the National Center for Strategic Non-Profit Planning and Community Leadership, 2000 L Street NW, Suite 815,Washington, DC.20036.

[12] See discussion at 64 Fed.Reg.17774 and 17817 (April 12, 1999).

preceding year; and 3) enter into a personal responsibility plan which includes establishing paternity and paying child support.

Many programs for non-custodial parents have experienced difficulty attracting participants, however. While there are a number of complex reasons for this,[13] one important one is that some of the child support policies and practices discussed above—particularly those relating to the establishment of substantial retroactive arrears and minimum orders irrespective of ability to pay-- make it unlikely that men will come forward, establish paternity, and/or agree to pay an amount that they perceive is likely to make them even more destitute.[14]

These concerns affect more than just those men trying to participate in a formal non-custodial parent program. A father who is working at a low-wage job who has not established a support obligation or one who has fallen behind in his payments faces exactly the same issues. If he enters the formal child support system, he may quickly find his wages garnished, his license revoked, or his Earned Income Tax Credit intercepted. He may have so little of his wages left that he finds himself homeless or hungry.

This has led some states to examine the relationship between arrearage payments and current support for a broader population of non-custodial parents. If the collection of arrears stands in the way of collecting current support, perhaps something should be done to lower the amount of arrears that have to be paid. In this regard, some states have developed an *ad hoc* approach, allowing individual workers discretion to compromise arrears owed to the state under a public assistance assignment, especially where the non-custodial parent will be in a better position to pay current support if arrears are forgiven. Federal guidance clearly allows this approach. More recently—and with encouragement from the federal government—some states have attempted to develop a more systematic framework within which to compromise or forgive arrears. (See Appendix 7) However, identifying appropriate approaches poses some fundamental public policy questions. These include:

- *What message do arrearage forgiveness programs send?* The goal of the child support program is the efficient and effective collection of support. To meet this goal, the program must convince parents that it is in their best interest to pay regularly and on time. It must also convince parents that there are serious consequences for non-payment. Writing off arrears owed by those who have not met their obligations undercuts this basic message and could lead some obligors to avoid payment in the hopes that the arrears will be forgiven in the future. This will damage the program's ability to meet its goal and hurt children.

[13] One major problem is child support distribution policies for families that currently receive TANF or have received cash assistance in the past. As a result of these policies, children often receive little or no benefit when their support is paid. See discussion below. See also, VICKI TURETSKY, WHAT IF ALL THE MONEY CAME HOME?, CLASP PUBLICATIONS (2000) available on the web at www.clasp.org

[14] The existence and effect of these barriers is discussed in DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF THE INSPECTOR GENERAL, STATE POLICIES USED TO ESTABLISH CHILD SUPPORT ORDERS FOR LOW INCOME PARENTS, OEI-05-99-00391 (July 2000) (hereafter OIG 1) and FRED DOOLITTLE and SUZANNE LYNN, LESSONS FOR THE CHILD SUPPORT ENFORCEMENT SYTEM FROM PARENT'S FAIR SHARE, MANPOWER DEMONSTRATION RESEARCH CORPORATION (1998).

- *How does the state distinguish between a deadbeat parent (who can pay but hasn't done so) and a dead broke parent (who truly can't pay)?* Many non-payors allege an inability to pay, even when they have substantial income. It is not easy for a state to determine where the line is between those who can and those who cannot pay or to make consistent, reasonable judgments about who fits in which category. Moreover, recent research suggests that ability to pay varies greatly over time. Someone who cannot pay today may well be able to pay in the future. This needs to be considered in policy development.

- *Is an arrearage forgiveness policy fair to those non-custodial parents who have struggled to meet their obligations?* No state wants to denigrate good behavior. Yet, writing off arrears for parents who have not met their support obligations while doing nothing for similarly situated parents who have done the right thing could be seen as doing just that.

- *How much say should custodial parents have in whether or not arrearages are forgiven?* If the arrears are owed to the custodial parent, there is near universal agreement that she should be the one who decides whether the arrears should be partially or wholly forgiven. If the arrears are owed to the state under a public assistance assignment, however, there is some disagreement about whether or not the custodial parent should be consulted on the compromise of state-owed arrears.

- *Should the source of the accumulated arrears matter?* As noted above, some arrears exist because the non-custodial parent has failed to meet his obligation under a legitimate order. Others exist because the state has adopted policies (e.g., imposition of retroactive support back to the date of birth, plus interest and birthing costs) that clearly contributed to the fact that large arrears exist irrespective of ability to pay. Some states are beginning to think about this distinction in developing a policy about what kinds of arrears should and should not be forgiven.

- *Should forgiveness of arrears be a one-time event or should it be tied to on-going behavior?* If the goal is simply reducing the amount of uncollectable arrears being carried on a state's books, a one-time forgiveness program is a simple and direct way to accomplish this objective. However, if the goal is to collect as much of the arrears as possible and/or encourage the payment of current support (and thus reduce the likelihood that arrears will accumulate in the future), a different approach might be better. For example, arrearage forgiveness might be tied to the non-custodial parent's participation in a fatherhood program. It might also involve writing down the arrears over time based on the parent's track record in meeting his current support obligations.

In grappling with these public policy issues, states can benefit from a four step process.

Step 1. Assess the caseload. Conduct an analysis of 1) who owes arrears; 2) to whom the arrears are owed (the family or the state); 3) how much is owed; 4) the source of the

arrears (support, interest, fees, costs); 5) the age of the debt; 6) any differences between in-state and interstate cases; and 6) the debtors current economic situation. This will assist the state in determining how much of what is owed is potentially collectable and what the best methods for collection might be.

Step 2. Examine state policies and practices that might be contributing to the problem. Undertake an honest assessment of current policies and practices in setting and enforcing support orders to identify the reason that substantial arrears have accumulated. Is a large part of the problem a time lag between establishment of the order and issuance of an income withholding order to the employer? Is the lack of protocols for handling interstate cases making those cases a particular source of difficulty? Alternatively, is a substantial part of what is owed attributable to the interest on retroactive support established along with the initial order, or the way the state allocates collections between interest and principal?

Step 3. **Develop a strategy for preventing problems in the future.** As a result of the analysis undertaken in Step 2, the state might want to change some of its policies so that less arrears will accumulate in the future. In this regard, a state might look at policies and procedures used to 1) establish initial orders; 2) quickly modify orders when circumstances substantially change; and 3) monitor orders to be sure that substantial arrears do not accrue without some action being taken. For example, if the caseload analysis reveals that most of the arrears are owed by low-income obligors whose orders were set using imputed income, thought might be given to using a variety of data bases (e.g., state employment, jail, and prison records) to gather the best available income information before setting default orders in the future. If it appears that inability to quickly modify orders when the obligated parent suffers a precipitous drop in income is a source of difficulty, the state might revise its policies and procedures in this area.

Step 4. Develop a system for assessing whether or not to consider forgiving arrears in existing cases. In addition to a preventative strategy, states will have to decide whether they wish to develop a forgiveness policy for arrears that have already accumulated. In making this determination, it may be useful to categorize the arrears into one of five possible sources.

Category 1. Arrears that were established at the time the order was initially set. This would include retroactive arrears, interest on retroactive arrears, fees and/or costs related to the litigation itself, and costs related to birthing expenses.

Category 2. Arrears that arose be cause the order did not take into account the obligated parent's ability to meet the obligation. This would include arrears that accumulated pursuant to orders set under mandatory minimum guideline rules when the minimum was clearly beyond the non-custodial parent's ability to pay given his income at the time. It would also include orders set by imputing income that was significantly higher than the obligated parent's actual income.

Category 3. Arrears that resulted from failure to modify an order downward when the non-custodial parent suffered a significant loss of income.

Category 4. Arrears that exist because a case that should have been closed was not. This would include situations where the non-custodial parent has died, been institutionalized or incarcerated for a lengthy period, or is totally and permanently disabled and has no earnings potential. It would also include other cases eligible for closure under federal regulations and cases where the statute of limitations on collection has expired so that the debt is no longer collectable.

Category 5. Arrears that accumulated after the order was established and were payable during a period of time in which the obligated parent had the ability to pay but failed to do so.

When arrears are categorized in this way, the state can develop a matrix for deciding how much (if any) arrears might be forgiven. (See Sample Matrix in Appendix 8). As part of this process, it should also determine at what point the custodial parent should be involved in the process, whether forgiveness policies should be related to current ability to pay, and whether such policies should be tied to behavior (e.g. successful completion of a fatherhood program, payment of current support regularly and on-time for a given period).

In short, there is ample room for states to balance the different public policy considerations discussed above and come up with a policy that fits the needs of the state and the parents in this area. Some states will be comfortable with a limited forgiveness plan will others will favor a broader and more far-reaching approach. The more sophisticated a state can be in breaking down the various issues and concerns, the more likely it is to develop an approach that works.

At the same time, states should be aware that more research is needed. Some studies have been done and several are in process. Hopefully, the federal Office of Child Support Enforcement will fund additional studies of innovative state practices and disseminate the lessons learned from state experimentation. Better policy will emerge if it is based on the experience of federal, state and local governments as well as advocates for fathers, mothers and children.

The information contained in the rest of this monograph brings together what is currently known. It describes the basic parameters of the child support and public assistance systems for those who need this background information before proceeding. It then describes in detail what state policies affect the accumulation of arrears, and what some states have already done to address the problems. Federal guidance on state parameters is discussed as are findings from existing research. Finally, steps that might be taken to develop an arrears forgiveness policy are described. This document is, however, a work in progress. Readers are invited to share their experience and ideas with the author and efforts will be made to periodically update the information herein.

THE ABC's of CHILD SUPPORT

In order to assess the arrearage problem and potential solutions, policy makers need to understand some of the basic dynamics of the child support system. These are explored briefly below.

Under the law of every state, *marital* children whose parents are separated or divorced are entitled to child support from their non-custodial parent. Child support includes both a periodic cash payment and medical support.[15] Usually, the amount will be set during the separation or divorce proceedings. *Non-marital* children whose paternity has been established are also entitled to cash and medical support from their non-custodial parent. In these cases, support is usually set during the paternity establishment process. If paternity is established through voluntary acknowledgment, however, there is no formal court or administrative process and thus no entity that can enter a support order is involved. In these situations, support must be set in a subsequent legal proceeding.

In some cases, the parties are represented by private counsel or proceed on their own (pro se). This is the common scenario in cases of separation or divorce and sometimes occurs in paternity cases. Parents seeking a support order may also request services from a public agency. Under Title IVD of the Social Security Act,[16] every state operates such an agency. These IVD agencies assist in locating an absent parent, establishing paternity, establishing a support order, periodically modifying that order, and enforcing it, depending on what services the family needs.

Thus, IVD agencies provide a variety of services in a range of cases. Some cases need every service the agency offers, while other come in with an existing order that simply needs to be enforced.

Establishing Paternity

The paternity of a non-marital child can be established in one of three ways. The parents can *voluntarily acknowledge* paternity at the time of the child's birth or any time thereafter. They do this by signing a form in the hospital or at the birth records agency. If one of the parents is not willing to sign a voluntary acknowledgment, then the parent wishing to establish paternity (typically the mother) can bring a legal action. *Genetic testing* will be ordered and results obtained. If the results yield a high probability of paternity, a presumption is created that the named man is the father of the child. At that point, the parents may decide to sign a voluntary acknowledgment, or a court or administrative agency may issue a paternity order based on the test results. If the test results are not conclusive, or the contesting party wants to rebut the presumption with more tests, then a *contested proceeding* will take place. At the end of that proceeding, an order will be entered .The order will either establish or negate the paternity of the alleged father. In cases where a court or agency is involved, a child support order will generally be entered along with the paternity order.

[15] Medical support can include an order that the child be placed on health insurance coverage available to one of the parents. In that case, it can also include provisions relating to any premiums, fees, deductibles or co-payments associated with the coverage. If coverage is not available or does not fully address the child's health care needs, the order may address how the uncovered costs are to be shared by the parents.
[16] 42 USC §§ 651 et seq.

Establishing Support

1. *Current Cash Support*. As required by federal law, every state has a set of numeric guidelines for establishing current cash support obligations. These guidelines are based on the income and resources of the parents. They serve as a rebuttable presumption of the correct amount of support to be paid by the non-custodial parent.[17]

There are three basic guideline models: the income shares approach which looks at the income and assets of both parents, the percentage of income approach which looks just at the financial capacity of the non-custodial parent, and the Melsen formula. The latter approach sets aside a certain amount of the non-custodial parent's income for self-support and calculates a child support obligation on income above that amount.

Regardless of their guideline methodology, many states have special guideline provisions for low-income parents. The definition of "low income" varies greatly from state to state, however. A number of states also have provisions for minimum orders. In some states the minimum must always be ordered while in others, the decision maker can order a lower amount (or no amount) if the non-custodial parent can show that the minimum order would be unjust or inappropriate.[18] See Appendix 2.

2. *Medical Support*. Child support guidelines must also address the health care needs of a child. In private cases, this can be dealt with in a variety of ways. In IVD cases, the agency must pursue health insurance coverage for a child if the non-custodial parent has access to such coverage through employment.[19]

3. *Retroactive Support.* In most states, the court or agency setting the order will also impose an obligation for past child support.[20] See, Appendix 1. This amount is referred to in the states as "arrears" or "retroactive support." (In this monograph, the obligation will be referred to as "retroactive support" to distinguish it from the unpaid amount that accrues *after* the order is entered. The latter amount will be referred to as "arrears".) The policies behind setting retroactive support are that:

- both parents are responsible for supporting their children. If the mother has been shouldering this burden while the father has not provided support, the father should be required to reimburse the mother for at least some of her past expenses. This is a matter of simple fairness.

[17] 42 USC §667 and 45 CFR § 302.56 (1999).
[18] It should be noted that some courts have found mandatory minimum orders to be unconstitutional. See, e.g. *Rose on behalf of Clancy v. Moody*,629 N.E.2d, 378, 607 N.Y.S.2d 906, 83 N.Y.2d 65 (1993), *cert denied* 114 S.Ct. 1837, 511 U.S. 1084; *Velasquez v. State*, 226 A.D.2d 141, 640 N.Y.S.2d 510 (App. Div.1996); *In re Marriage of Gilbert*, 88 Wash. 362, 945 P.2d 238 (Wash. App. 1997). Not all courts have taken this view, however. See, e.g., *Douglas v. Alaska*, 880 P.2d 113 (1994); *Hunt v. Hunt*, 648 A.2d 843 (Vt. 1994). See, also *Glenn v. Glenn*, 848 P.2d 819 (Wyo. 1993); *In re Marriage of Okonkwo*, 525 N.W.2d870 (Iowa App. 1994)
[19] Id. §§ 303.30 and 303.31.
[20] While many states limit this practice to paternity cases, a substantial number also seek retroactive support in separation and divorce cases. See Appendix 1. Similar rationales apply for seeking retroactive support under these circumstances as in paternity cases.

- Setting arrears discourages fathers from deliberately delaying the establishment of an order. This is a particular concern in paternity cases. If a father could avoid years of payment by refusing to sign a voluntary acknowledgment and/or avoiding service of process in a paternity proceeding, then he has a real financial incentive to be uncooperative. If he knows that retroactive support can be added to his order, then he does not have this financial incentive to avoid paternity establishment.

In a private case, a mother can decide whether she wishes to take advantage of state policy on retroactive support. If the IVD agency is handling the case, it will usually pursue such support if state law allows. There is, however, a great deal of difference between states on how far back they go in seeking payment. Some states go back to the birth of the child while others go back for a limited period (e.g., 3 years). See, Appendix 1.Obviously, shorter periods place at least some limit on the amount of arrears owed at the time an order is entered, while longer periods can lead to the establishment of substantial debt. For example, Nevada goes back four years prior to entry of the order for current support. A Nevada official estimates that, using this policy, the average amount of retroactive support in a IVD case is $12, 500.[21]

The retroactive support amount will generally be set under the child support guidelines and be based on parental income (if known) during the retroactive period. However, in public assistance cases, it is not uncommon for support to be set based on the amount of cash assistance paid to the custodial parent, regardless of the non-custodial parent's ability to pay.[22]

4. Other Financial Obligations That Can flow From a Support Order. In addition to cash and medical support, a child support order may impose a number of other financial obligations on the non-custodial parent. One such obligation is the payment of fees and costs. These include genetic testing costs in paternity cases if the tests reveal that the alleged father is the biological father.[23] They also include a range of fees and costs related to the establishment or enforcement of the order. These can include attorney's fees, court costs, and agency costs. See Appendix 3. Seven states also assess a fee for processing support payments and forty-six allow employers to assess a small charge for each income withholding payment.[24]

A significant number of states also impose interest on late payments. Some confine this practice to arrears that accrue after the order is entered: other charge interest on retroactive support as well. See Appendix 3.

Another practice—particularly in paternity cases—is to tack on to the order some or all of the costs associated with pregnancy and childbirth. See, also Appendix 3. If Medicaid has provided pre-and

[21] Material provided to the NPCL Peer Learning College by Hearing Master Thomas Leeds, December 27,2000.
[22] This practice is illegal, see *Jackson v. Rapps, supra* note 8. See, also OCSE Action Transmittal 93-04 (March 22, 1993).
[23] 42 USC § 666(a)(5)(B)(ii)(I).
[24] See OIG 1 *supra* note 15, p.2.

post- natal coverage t o the mother, some jurisdictions will seek reimbursement for the Medicaid costs.[25]

5. *Establishing Orders When Financial Information is Not Available*. The effective use of guidelines to establish current support and arrearage amounts depends on the availability of correct financial information. If both parents participate in the process, there is a reasonable chance that accurate information will be available. In default cases (where the non-custodial parent fails to respond to the complaint) and in cases where the non-custodial parent appears but does not provide adequate information, good information may not be available. The state may then impute income. See Appendix 4 for state policies in this regard. The court or agency may impute income based on 1) the best available information (e.g. old pay stubs, work history) 2) full time minimum wage income; 3) area wage and employment rates; and/or 4) the parent's education, skills and work history.[26] The result is that the order may be higher or lower than it would be if adequate information had been available.[27]

In the case of unemployed or incarcerated fathers, even if the state uses the minimum wage to impute income, the resulting order will exceed ability to pay. A similar result may occur if the state simply sets a minimum order (e.g., $50 per month). As a result, the obligation is not met and arrears accrue.

Periodic Modification

An order may be correct when entered but later become outdated. Especially for low- income obligors whose wages and hours constantly fluctuate, and those that lose their jobs or are incarcerated, a once reasonable order may need to be modified downward. The modification must be swift or arrears will quickly accumulate.

States must have authority to modify support orders when there has been a "substantial change in circumstances".[28] However, this involves going back to the court or administrative agency that originally set the order and this can be a time-consuming process. In some states, the modification will be dated back to the date the modification action was filed, but other states will modify only as to post-modification payments. In any case, there will be at least some excessive accumulation of arrears.

Also at issue is the definition of "substantial change in circumstances". If the change sought by the non-custodial parent does not meet the state's definition, no modification will be granted. Then the parent will have to wait for the modification procedure required in IVD cases. In these cases, either parent can request a review and modification proceeding at least once every three years.[29] While the standard for change here is likely to be less stringent than the substantial change in circumstances

[25] See, discussion in 21 MILLION CHILDREN'S HEA LTH : OUR SHARED RESPONSIBILITY, The Medical Child Support Working Groups Report to Hon. Donna Shalala and Hon. Alexis Herman, June 2000, Chapter 3 pp.29-32. The report is available on the OCSE website, www.acf.dhhs.gov/programs/cse
[26] OIG 1, *supra*, note 15, p.15.
[27] All but three states (Connecticut, the District of Columbia and Mississippi) impute income when actual information is unavailable. See, Appendix 4.
[28] 42 USC §666(a)(10)(B).
[29] Id § 666(a)(10)(A).

standard, most states do have a threshold change before they will act. See Appendix 5. These thresholds can be quite high in relation to the size of the order. In that case, there will be no modification and arrears will continue to accumulate.

This problem cannot be cured at a later time. Under the so-called Bradley Amendment, every child support obligation becomes a judgment by operation of law on the day it is due and cannot be retroactively modified.[30] Thus, if an order is not timely modified, a court or administrative agency cannot address the problem through the retroactive modification process.

Program Finances

The federal government pays 66 percent of the basic costs of the states' child support programs.[31] It also provides the states with incentive payments to encourage good performance. A new incentive payment system is currently being phased in. In the future, incentive payments will be based on state performance in five areas.[32] One of those areas is the state's success in collecting arrears. The measure is calculated by dividing the number of cases with an arrearage collection by the number of cases in which arrears are owed.[33] Obviously, if the state is carrying a large number of cases with arrears on which it has no reasonable hope of making any collection, this will negatively effect performance on this measure and limit the state's ability to obtain incentive payments

[30] Id. § 666(a)(9).
[31] Id. §§ 655(a)(1)(A) and (a)(2)(C).
[32] Id § 658a.
[33] Id. § 658a(b)(6)(D).

CHILD SUPPORT AND THE PUBLIC BENEFITS SYSTEM

To understand all of the issues involved, it is also helpful to know a little about the cash public assistance program called Temporary Assistance to Needy Families (TANF) and the Medicaid program as well as how these programs relate to the child support system.

TANF

TANF replaces the older program known as Aid to Families with Dependent Children (AFDC). To obtain TANF assistance, a family must have little or no income and few assets. It must meet other program requirements such as participation in work or work-related activities.[34] The family must also assign its support right to the state and cooperate in pursuing support.[35] Failure to cooperate without good cause can lead to a reduction in or termination of TANF benefits.[36]

The TANF support assignment covers the right to all the arrears that accrued *before* the family received TANF and all the support payments that are due *while* the family receives TANF. As long as the family participates in TANF-funded cash assistance, child support (up to the amount of assistance paid to the family) is the property of the state under the assignment. [37]

When the family leaves TANF, the assignment ends. The family regains the right to current child support and to any arrears that accrue after the receipt of assistance (post-assistance arrears). In some cases, it regains the right to pre-assistance arrears as well. Arrears that are owed for the time during which the family received assistance remain assigned to the state.[38]

Distribution of Collected Support

When the child support program makes a collection, it distributes the funds as follows:

- For a family that has never received AFDC/TANF, the money goes to the family.[39]

- For a family currently receiving TANF assistance, if support is collected, it must be divided between the state and federal governments to reimburse them for the

[34] Id.§601 et seq.
[35] Id. §608(a)(3).
[36] Id. §§ 608(a)(2) and 654(29).
[37] Id. § 608(a)(3). See, also HHS Action Transmittals 97-17 and 98-24.
[38] Id. §657(a)(2). Whether a family is entitled to its pre-assistance arrears depends on when the assignment was executed. If it was executed after October 1, 1997, then the family is entitled to its pre-assistance arrears. If the assignment was entered into before that date, the pre-assistance arrears belong to the state until AFDC/TANF has been fully reimbursed. Even if the assignment is post-1997, if the support is collected via federal tax intercept, the state will also be able to keep the money until public assistance has been repaid.
[39] 42 USC § 657(a)(3)

public benefits the family has received.[40] Only when all public assistance payment have been reimbursed does the family have a claim on the money.

- For a post-TANF family, when a collection is made through any method except federal tax intercept, the funds must first be given to the family to meet the current support obligation and pay any post-assistance arrears. If the family is owed pre-assistance arrears, those arrears are paid next. Only when all the current support and arrears owed to the family are paid-off can the state claim any during-assistance arrears owed to it under the assignment. If such arrears are collected, they must be shared with the federal government to reimburse for the public benefits paid to the family.[41]

Medicaid

Medicaid provides health care coverage to qualified adults and children. Families receiving Medicaid assign their medical support rights to the state.[42] The assignment lasts while the family receives Medicaid and ends when Medicaid coverage ceases. However, the state retains the right to any medical support due and owing during the time the family was covered by Medicaid.

Relationship of TANF and Medicaid Families to the IVD Program

Families participating in TANF and Medicaid are required to use the services of the state IVD agency. They receive services without having to pay an application fee and are generally exempt from other fees and costs.[43] They must also cooperate with the IVD agency in establishing paternity and securing support.[44] Custodial parents in TANF and Medicaid families cannot make informal arrangements with the non-custodial parent and by-pass the state.

[40] Id. § 657(a)(1). The state can pass some or all of its share to the family if it wishes to do so.
[41] Id. §657(a)(2). If the collection is made through a federal tax intercept, then the state can claim its arrears first. Id.
[42] 42 USC §1396k(a)(1)(A).
[43] Id. §654(6).
[44] Id.§§ 654(29) (TANF) and 1396k(a)(1)(B)(Medicaid).

STATE EFFORTS TO ADDRESS THE CHILD SUPPORT OBLIGATIONS OF LOW INCOME FATHERS AND THE RELATIONSHIP OF THESE EFFORTS TO ARREARAGE POLICY

Two different –although not mutually exclusive—approaches can be taken to addressing the child support obligations of low income fathers. One focuses on strategies that *prevent* unreasonable arrears from accumulating in the first place. The other focuses on what to do *after the fact*--when substantial arrears have accumulated and it is beyond the capacity of the father to pay them off and to pay an adequate amount of current support.

Some states have deliberately set out to examine one or both of these approaches and have adopted policies to address the issues. Other states have not had a conscious strategy, but have adopted policies or enacted laws that are useful in limiting the child support liability of low-income non-custodial parents to a reasonable level. A number of these efforts are described below. Some are more attractive than others in terms of both the scope of what they accomplish and the policy choices they embody. This chapter simply introduces a number of legally acceptable options.

Preventative Strategies

1. Adopting Guidelines That Are Sensitive to Low Income Parents. Since 1988, each state has been required to develop and use income-based child support guidelines. There are three primary mechanisms states use to accommodate low- income obligors in their guidelines.

- Adopting a guideline that provides a self-support reserve for a non-custodial parent. Delaware, Hawaii, Montana and West Virginia have all adopted this approach. The non-custodial parent's obligation is then set based on income above the self-support level.

- Excluding certain types of income—notably means tested public assistance—from the definition of income.[45] The current support obligation is then based on whatever countable income the parent has. For example, a parent who receives Supplemental Security Income (SSI) might have no countable income. If he receives SSI and also has earnings from a sheltered workshop, his current support obligation would be based on those earnings, but not the SSI.

[45] For examples, see FLA.STAT. §61.30(2)(c)(TANF not counted as income); GA. CODE ANN. §19-6-15(b)(2)(needs based public assistance not counted as income) CAL.FAMILY CODE §4058(c)(TANF, GA and SSI all excluded from the definition of income).

- Avoiding minimum orders. When application of a state's guideline to the non-custodial parents countable income yields a small (or no) order, thirty states will raise the amount to a designated minimum (e.g., $50/ month). This can be problematic for a parent who cannot possibly pay the minimum amount. Recognizing this, sixteen states make the minimum amount rebuttable so that the low- income parent can at least argue why the minimum should not be ordered. In thirteen states, there is no mandatory minimum order: if the guideline yields a low amount, then that amount is what is ordered. See Appendix 2.

In addition to these approaches, Virginia has recently enacted legislation that retains the minimum support order concept but exempts certain parents from its application. Exempt are parents with insufficient assets who are institutionalized in a psychiatric facility, imprisoned with no chance of parole, permanently disabled, or otherwise involuntarily unable to produce income.[46] Arizona law provides special treatment when a support obligation for an incarcerated person is established. The order is set at $0 as long as the person is in prison and for 30 days after release.[47]

All of these approaches can protect at least some low- income parents from having unrealistically high current support orders.

2. Limiting/Eschewing the Establishment of Retroactive Support. As noted above, at the time the order is entered most states will add retroactive support to the non-custodial parent's obligation. The state will collect this amount over time by adding an additional amount—designated as "arrears"—to the current support order. In addition, some states charge interest on these retroactive support payments. The result is a monthly support order that can take most or all of the father's earnings.

States have taken a number of approaches to minimize this problem. They include:

- Adopting a policy of not pursuing retroactive support. Nine states have adopted this policy. See Appendix 1.

- Pursuing retroactive support but limiting the time period during which such support is assessed. As can be seen in Appendix 2, four states will only go back two years from the date of the order or the date of filing, providing some limit on the retroactive period.

- Giving the decision-maker discretion to decline to decline to order retroactive support if paying such support would impose an undue economic hardship on the obligor. Five states have taken this approach.[48]

[46] Chapter 376 of Virginia Acts of Assembly 2000.
[47] ARIZONA REV. STAT. 25-327.
[48] See, e.g., TEXAS FAMILY CODE §154.131(b).

- Adopting a policy of not pursuing retroactive arrears if the record indicates that the non-custodial parent was incarcerated or had no income. The District of Columbia has taken this approach. [49]
- Limiting interest payments on retroactive support. As Appendix 2 shows, thirty-two states have chosen not to impose interest on retroactive support.

3. Minimizing the Number of Cases in Which Income is Imputed. As Appendix 4 indicates, all but three states will impute income when setting an award for an obligor who has failed to provide income information. Imputation may be based on full-time minimum wage work, the non-custodial parent's work history, educational attainment, or earning capacity. The alternative to not imputing income is that a support award is not established. This rewards the recalcitrant obligor, which is not a desirable result.

However, there are steps states take to obtain information even if the non-custodial parent does not provide it. Chief among them are:

- Making use of the data bases created as a result of New Hire reporting. In cases where the parent has provided little or no income information, a search of both the state and federal New Hire Directories may yield the most current information. This information is highly accurate.[50]

- Consider not imputing income in cases where it is unlikely that the non-custodial parent has income. For example, Virginia does not impute income in cases where it is known that the non-custodial parent is institutionalized in a psychiatric facility, incarcerated for an extended period, medically verified to be permanently disabled with no potential for paying support (including SSI recipients), or otherwise unable to produce income.[51]

4. Limiting the recovery of fees and costs. As detailed in Appendix 3, five states add fees and eight add costs onto the basic support order. These can be relatively minor amounts; however, in some states they are quite substantial and can include filing fees, court or administrative hearing costs, and lawyer's fees. When these costs are included in the support order, the father may be paying current support, a prorated amount on retroactive support, interest on that support, and a prorated share of the fees and costs. This can substantially increase the monthly obligation, making it difficult for the father to keep current in his obligation. For this reason, the vast majority of states do not pursue these add-ons to the support obligation.

- States could abolish all fees and costs for non-custodial parents. As indicated in Appendix 3, forty- three states have done this.

In contrast to the limited number of states that pursue fees and routine costs, thirty-nine states have the authority to pursue reimbursement for birthing costs. Many of these states do not routinely

[49] See NATIONAL CHILD SUPPORT ENFORCEMENT ASSOCIATION, 1999 INTERSTATE ROSTER AND REFERRAL GUIDE (December 1999), p.109.
[50] See *Verifying Employment with New Hire Data*, CHILD SUPPORT REPORT (JANUARY 2000) p.4.
[51] Chapter 376 of Virginia Acts of Assembly 2000.

exercise this option or do so under limited circumstances. However, many do pursue theses costs even when Medicaid has covered these charges, This adds several thousand dollars to the father's obligation, and, when prorated as part of the order, also contributes to an order that is beyond the capacity of the low-income obligor to meet.[52] States wishing to address this problem have:

- Adopted policies under which birthing costs are not pursued from low-income fathers.

- Limit the pursuit of birthing costs, especially in cases where Medicaid has covered the expenses.

5. *Abolishing Interest on Post-order Arrears*. Once the order is entered, if the non-custodial parent misses a payment or pays only part of what is owed under the order, post-order arrears begin to accumulate. Since, as noted above, each missing payment is a judgment by operation of law it may be subject to the same interest rate that would be owed on any delinquent judgment. Some states, however, set specific interest rates on child support judgments. If significant time passes before the father begins paying support again or pays off what is owed, the amount of accumulated interest can dwarf the support order itself. To address this issue, states have:

- Eliminated arrears on missed payments. As shown in Appendix 3, twenty-seven states have done this.

- Adopted a nominal interest rate applicable to child support arrears that is lower than the state's general interest rate on judgments. For example, Alaska charges 6 percent on missed payments and retroactive support as opposed to the 10.5 percent charged when arrears are reduced to a judgment.

6. Setting a Limit of the Percentage of the Obligated Parent's Income That Can be Withheld. If a non-custodial parent is low- income, he is likely to be a wage earner. His support obligation will be enforced though withholding from his wages. His employer will be notified of the obligation and instructed to take a certain amount out of each pay check. The amount will include current support and (depending on the state policies discussed above) may also include an amount toward the payment of any retroactive support, fees, costs or interest for which he is liable. When added together, this can be a substantial amount of the parent's pay check.

Federal law provides that no more than 65% of the earnings of a non-custodial parent with no dependents can be withheld to pay support and arrears. Even if the non-custodial parent has other dependents, up to 60% of his earnings can be taken. This may leave the parent too little to meet his basic needs and may cause him to quit his job and/or disappear into the underground economy. Then the family gets no support.

To combat this problem, states have:

[52] A typical state estimated that an uncomplicated birth adds about $3,100 to the base order while a Caesarean delivery adds $6,700. There is substantial anecdotal information that this discourages fathers from coming forward and establishing paternity. See discussion in 21 MILLION CHILDREN'S HEALTH, *supra* note 25.

- Set withholding limits well below the federal ceiling. As Appendix 6 indicates, sixteen states have done this.

- Kept the federal limits but given decision-makers discretion to adjust payments to a lower level. Pennsylvania has taken this approach. See Appendix 6.

7. Responding Quickly to the Need for Modification. Even when an order is initially set with due regard to the circumstances of the low-income parent, it may quickly become outdated. If his earnings increase, a parent may be able to pay more and –especially if he has been the beneficiary of the kinds of policies discussed above—it is appropriate to move quickly to adjust his current support obligation upward. On the other hand, if he losses a job, suffers a cutback in hours or becomes institutionalized or incarcerated, the obligation may need to be adjusted downward or eliminated altogether. To accomplish this, states need to have highly efficient and effective procedure for swiftly modifying orders. If they do not, as noted above, the obligated parent will accumulate arrears and there is no way to retroactively modify them.

Unfortunately, as noted in a recent study, few states have the capacity to rapidly respond to changes in parental circumstances.[53] Some actually refuse to do downward modifications or make the process very difficult.[54] Others set high thresholds for the degree of change that must occur before a request for periodic modification will be processed. However, as indicated in Appendix 5,some states have been sensitive to this problem and have:

- Agreed to process periodic modification requests in less than three years. Eight states have done this, typically moving to a 2 or 2 ½year standard.

- Processed the modification request when any change would occur under the guidelines. Twelve states have done this.

- Allowed even retroactive modification of arrears if the non-custodial parent was precluded from filing a timely modification petition because of a significant physical or mental impairment, or was a recipient of needs-based public assistance or disability benefits during the period for which modification is sought.[55]

In addition., there are few state examples of modification policies that seem particularly sensitive to low-income parents. The following should be noted:

- Wisconsin sets some support orders as a percentage of income rather than a fixed dollar amount. Thus, the order automatically adjusts itself upward or downward

[53] DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF THE INSPECTOR GENERAL, REVIEW AND ADJUSTMENT OF SUPPORT ORDERS, OEI-05-98-00100 (MARCH 1999).
[54] Id. p-9-10. The OIG reports that North and South Carolina will not do downward modifications and Mississippi will do them only if the obligor owes no arrears.
[55] MINN.STAT. §518.64.2d.

as the non-custodial parent's income increases or decreases. Evaluations suggest that this approach works quite well.[56]

- Ohio will conduct a review when an obligor who has no income or assets has been institutionalized or incarcerated for the duration of the child's minority.[57]

- North Carolina automatically suspends the child support obligation of a person who has been incarcerated if he is not participating in a work-release program and has no resources from which to pay support.[58] The incarcerated parent does not have to seek an actual modification of the order.

- Puerto Rico has agreements with several major employers. These employers notify the child support program when major lay-offs are anticipated. The child support agency then notifies the laid-off employees that they may be eligible for a downward modification.[59]

- Under West Virginia law, if the child support agency receives a notice from an employer that an employee has been laid-off or otherwise left employment, the agency sends a notice to the employee that he may be eligible for downward modification. The notice also tells him that services to accomplish this are available through the agency. The notice also explains that failure to seek a modification means that the previous order remains in effect and that substantial arrears might accumulate.[60]

After the Fact Strategies

When the approaches discussed above are in place, the number of situations in which huge arrearages pile up should be minimal. However, most states do not use a significant number of these approaches, and even when they do there will always be cases in which significant arrears accrue and the non-custodial parent cannot reasonably be expected to pay them all off. Even if he could, however, the money going to arrears, interest, fees and costs assigned to the state under a TANF or Medicaid assignment, could greatly reduce the amount available for current support. Since the children may be in great need of support (particularly if their family is just leaving TANF or doesn't qualify for aid under the new system), some states have begun looking at ways to lower the arrearage amount in at least some cases.

States are also facing the fact that they are carrying on their books huge arrearage amounts that they can never hope to recover. This can affect the public's perception of their performance as well as staff morale. In addition, as discussed above, states' ability to receive federal incentive payments is

[56] Judi Bartfeld and Irwin Garfinkel, *The Impact of Percentage-Expressed Child Support Orders on Payments*, 31 THE JOURNAL OF HUMAN RESOURCES PP.794-815 (Fall 1996).
[57] 1999 INTERSTATE ROSTER AND REFERRAL GUIDE, *supra* note 49, p.554.
[58] N.C. GEN.STATUTE 50-13.10(d)(4).
[59] This practice was reported at the Northeast Hub Managing Arrears Project held in Philadelphia. Pennsylvania April 2001.
[60] WEST VA. STAT. §48A-2-17.

negatively affected by the existence of a large number of cases in which there is no hope of any collection. Moreover, some of these arrears are not "real"—they exist because cases that should have been closed were not. This can happen when the non-custodial parent dies and his support obligation ends under state law; in situations in which parents have informally switched custody so that the support order should have been terminated but was not; and where the statute of limitations on the collection has expired but the claim has not been expunged.

Unlike the prevention strategies detailed above, after-the-fact strategies are somewhat constrained by federal law and policy. Until recently, it appeared that federal policy forbade (or at least discouraged) creative approaches. As discussed in the next chapter, new federal guidance opens opportunities for more creative approaches. Below is a discussion of some of the limited steps states have taken so far.

Giving Credit for Payments Made to the Children on their Parent's Behalf

Several states provide an automatic credit against the support obligation if the non-custodial parent is disabled and the child has received Social Security Disability Insurance dependent's benefits due to the parental disability. [61] This reduces both the amount of arrears owed and any interest that might be applicable to those arrears.

Modifying or Forgiving Interest Payments

As discussed above, many states impose interest on retroactive support and/or missed payments. Without modifying the underlying support obligation, some states forgive these interest payments under certain circumstances.

- In Minnesota, an obligor who has made 36 consecutive months of payments can petition the court for forgiveness of interest.[62]
- In West Virginia, if an obligor pays off his arrears in 24 months, then the interest that would normally accrue is forgiven.
- Oklahoma law permits the IVD agency to periodically offer an amnesty program under which accrued interest may be forgiven if an obligor pays his arrears within a certain period of time.[63]
- Arizona allows its courts to suspend the accrual of interest on arrears that accumulate during the incarceration of a non-custodial parent.[64]

[61] In some states this is done by statute. In others, it is a matter of case law.
[62] MINN.STAT.§548.091 subdivision. 1(a)(b).
[63] The West Virginia and Oklahoma policies are described in ESTHER ANN GRISWOLD, NEW APPROACHES TO CHILD SUPPORT ARREARS OVERVIEW OF RESULTS OF STATE SURVEY, CENTER FOR SUPPORT OF CHILDREN (May 2000).
[64] ARIZONA REV. STAT. 25-327(D).

Compromising Arrears

Most states allow the parties to a judgment to compromise the judgment. Since child support is a judgment by operation of law on the date it is due, the parties can certainly use these laws and agree to settle the matter for a lesser amount. So long as the children have not received AFDC, TANF or Medicaid, the custodial and non-custodial parents can take this step on their own.

If, however, the children are receiving or have received AFDC, TANF or Medicaid, as noted above, some or all of their child support rights have been assigned to the state. The state must then be a party to any compromise agreement. Some states have policy that allows them to forgive assigned arrears owed to the state on a case-by-case basis or when the father is participating in a fatherhood program.[65] See Appendix 7.

Other states are trying broader, more systematic approaches.[66] For example:

- Vermont has developed a policy under which delinquent parents can make a lump sum payment and then have the remainder of their arrears wiped out.[67] The size of the lump sum depends on the time the state estimates it would take to pay off the arrearages. If it would take 1-3 years, then 80% of the arrears must be paid in a lump sum and the state will forego the other 20%; if it would take 3-5 years, then a 75% lump sum is acceptable; if it would take 5-10 years, then 60% will suffice; and if it would take more than 10 years to pay off the arrears, then a 50% payment is sufficient. The state will compromise even more of the debt if the non-custodial parent is poor, in ill health, or has little or no work history. If agreement is reached and the non-custodial parent does not pay the agreed upon lump sum within the time allotted, then the entire debt is reinstated.

- Washington State has established a Conference Board. Any parent can ask the Conference Board to review the case and reduce the child support debt or enter into a lump sum compromise agreement.[68]

- Minnesota allows the state agency to compromise arrears owed to the state whenever it is in the best interests of the child to do so.

Oregon has developed a variation on this idea. Rather than forgiving arrears outright, that state operates a pilot project in which unemployed parents who are in arrears on their obligation can work off those arrears by performing community service. Participants can work up to 20 hours per week

[65] An unpublished, unverified 1998 survey by the Center for Law and Social Policy indicated that Alabama, Hawaii, and Idaho used this approach.
[66] The approaches discussed below are described in JAMES HENNESSEY and JANE VENOHR, EXPLORING OPTIONS: CHILD SUPPORT ARREARS FORGIVENESS AND PASS-THROUGH OF PAYMENTS TO CUSTODIAL FAMILIES,POLICY STUDIES INC. (2000) in Appendix 3, and pp 77-82.
[67] VT.STAT.ANN, TITLE 33 §3903.
[68] REVISED CODE OF WASHINGTON 74.20A.220, WASHINGTON ADMIN. CODE 388-14-385.

for community agencies, learn work skills, and receive credit against their obligation at Oregon's minimum wage.[69]

Capping Arrears

Another possibility is to put a cap on the amount of arrears that can be accumulated by a poor non-custodial parent. For example, New York places a $500 limit on the amount of arrears that can accumulate if the non-custodial parent's income is below the poverty level.[70] This does not constitute a retroactive modification of arrears so does not run afoul of federal guidance.

Forgiving Arrears

As noted above, there is interest in simply wiping out arrears owed to the state by low-income fathers. This is especially true in cases where low-income parents have married or reunited. The father is in the home and supporting the child. Any arrearage collection to recover the assigned AFDC/TANF arrears compromises his ability to provide for the child's current needs. To address this situation, Vermont law forbids pursuit of assigned child support arrears from a reunited family unless the family income exceeds 225% of the federal poverty line, this is in effect a forgiveness policy.[71]

There has also been some experience with wiping out arrears that accumulated during a period of incarceration. Utah allows the discharge of such arrears if the non-custodial parent pays current support and a payment on the arrears for twelve consecutive months.[72]

Amnesty Programs

Another approach used by some states or localities is amnesty programs. Typically, these programs are not targeted at low-income obligors but offer all those who are behind in their payments a one-time opportunity to come forward and enter into a re-payment agreement. The amnesty may include forgiveness of some or all of the debt, but more typically the amnesty is from civil or criminal contempt. Examples of these types of programs include:

- An Iowa pilot program that grants amnesty from arrearage payments to those who establish a record of current payments. A father who pays regularly for six months is granted amnesty from paying 15% of the arrearages; 12 consecutive months of regular payment yield a 35% amnesty; and 24 consecutive months of regular payment provide an 80% amnesty.

- An Oklahoma amnesty program that offers obligors the opportunity to pay their arrears. If they do so, the district attorney will take no enforcement action and

[69] This project is described in NEW APPROACHES, *supra* note 63 , Table 5.
[70] N.Y. FAMILY LAW §240(1-b)(g).
[71] VT. STAT. ANN. Tit.33, §4106(e). See, also WASH.ADMIN.CODE §388-14-385. In the survey described in note 65, *supra*, Maryland, New Hampshire, North Dakota, Oregon, South Dakota, and Utah indicate that they also have arrears forgiveness policies for reunited families. Tennessee reports such a policy if unmarried parents marry.
[72] See, NEW APPROACHES, *supra* note 63.

accrued interest on any amount owed to the state is written off. The custodial parent may also agree to waive interest on amounts owed to her.[73]

- A Virginia program notifies delinquent parents that unless they come forward and enter into a payment agreement, they will be referred for contempt. Those who come forward and enter an agreement are not jailed. Those who fail to respond to the notice are subject to periodic round-ups and may be jailed.

Recently, however, there has been some experimentation with amnesty programs for low-income obligors. Notable here are:

- A Maryland pilot program targeted on low income obligors in IVD cases in Baltimore City. Fathers who owe child support arrears to the state under a public assistance assignment enroll in a community-based fatherhood program. Those who complete the program and remain current in their support payments for 12 months, receive amnesty for 40 percent of the money owed to the state. Those who remain current for 24 months receive complete amnesty. (If an occasional payment is missed, the amount given amnesty is lowered. In the first year, for example, if 3 non-consecutive payments are missed, there is no amnesty.)

Case Cleanup

Some states also believe that a part of their problem has to do with continuing to count arrears owed in cases which should have been closed. For, example, in states that have a statute of limitations on the collection of child support judgments, there may be old cases in the system to which that statute applies. These cases could be closed as the money is uncollectable. Similarly, if, under state law, the support obligation ends upon the death of the non-custodial parent, any arrears owed post-mortem could be eliminated, and the case closed unless there are pre-death arrears that are collectable.

In addition, cases in which there has been an informal custody change could be reviewed and arrearages adjusted accordingly. For example, West Virginia gives its IVD agency statutory authority to adjust those cases.[74]

In other words, there are a wide variety of possible approaches states could draw on in thinking through their policy options in forgiving arrears in whole or in part.

[73] OKLAHOMA STATE CODE §56-234(B).
[74] W.VA. STAT. §48A-2-24a(b).

STUDIES OF STATE PRACTICES

In developing policy, there are also a number of studies that states can draw on. These are described below.

Preventative Strategies

The Use of Mandatory Minimum Orders

The HHS Office of Inspector General conducted a ten-state study of how orders where set when the absent parent is low-income. (Hereafter "OIG 2 study "). One of the issues addressed by this study is the use of minimum support orders. The study found a significantly lower payment rate on minimum support orders than other orders. The study concluded that the lower payment rate could be a reflection of limited earnings capacity and the fact that such awards are not based on actual income. The study also found that minimum orders were often used for incarcerated parents, setting obligations they could clearly not meet. [75]

Limiting /Eschewing the Establishment of Retroactive Support

The OIG 2 study also looked at the issue of retroactive support. It found that states that did not charge retroactive support had higher payment *rates* than those that imposed retroactive obligations. Moreover, the longer the retroactive period,the higher the likelihood that no support would be paid.[76]

There is also a Colorado study that focuses on the effect of retroactive arrears on the *amount* paid rather than the *rate* of payment. This study is based on a two-county demonstration project on the effect of establishing retroactive support on subsequent payment patterns of low-income ($10,716 to $16,800 per year) obligors. New intrastate cases were randomly assigned to an experimental and a control group. In the experimental group, the state's child support guidelines wee used to establish current support orders; however, there was no attempt to set retroactive support. In the control group, the state's child support guidelines were used to establish both current and retroactive support. A review conducted 6 and 12 months after each order was established showed that the non-custodial parents in both the experimental and the control groups had virtually identical payment records: each group paid 40 percent of what they owed in monthly child support. Nearly half of each group paid nothing and nearly a third of each group paid virtually all of what they owed. The researchers concluded that, after six months, the establishment of retroactive support generated no additional dollars for families or the state, and made collection patterns for the child support agency look

[75] DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF INSPECTOR GENERAL, THE ESTABLISHMENT OF CHILD SUPPORT ORDERS FOR LOW INCOME NON-CUSTODIAL PARENTS, OEI-05-99-00390 (JULY 2000) (hereafter OIG 2) p. 17.

[76] OIG 2, *supra* note 75, p.13. When the state did not pursue retroactive support, only 14 percent of parents made no payments in the first 32 months of the history of the order. When 1-12 months of retroactive support was tacked on, 23 percent of the obligors made no payments during that time period. When more than 12 months of retroactive support were added on, the complete default rate rose to 34 percent.

worse. At twelve months, the existence of a pre-order arrearage obligation results in slightly higher payments.[77]

Reducing the Use of Imputed Income and Default Orders

The OIG 2 study also looked at the effect of using imputed income on payment rates. The OIG found that cases in which income was imputed exhibited dramatically lower payment rates than non-imputed cases. Forty-four percent (44%) of the imputed income cases generated no payments over the first 32 months of the order. In contrast, only eleven percent (11%) of the non-imputed cases had no payment during that same period.

The OIG points out that this does not necessarily mean that there is a causal relationship between imputation and non-payment. Non-custodial parents who fail to provide information or are unemployed at the time of order establishment are potentially less likely to pay support than those who appear in court or are employed. What the data does establish is that imputing income is not a very effective method of getting parents to pay support. [78]

A similar conclusion was drawn by a Maryland researcher. He found that, when non-custodial parents participated in a negotiation conference and stipulated to the order amount (as opposed to the order being a default order based on imputed income), their payment pattern was significantly better.[79]

Reconsideration of Adding Fees, Interest and Costs to the Initial Order

The Minnesota legislature commissioned a study of arrears forgiveness. (See below) As part of that study, the authors identified practices that contribute to the initial build-up of arrears. The report identifies retroactive imposition of support obligations (Minnesota goes back two years) and the imposition of birthing costs, as policies that lead to large debts owed by lower income non-custodial parents and suggests review of these policies. The study also identifies levying interest, and the attribution of collections to interest before principle as problematic practices.

Greater Use of Negotiation and Explanation

Economics pays a key role in whether support is paid. More than economics is involved, however. The obligated parents attitude toward the order also plays a role. The Maryland study mentioned above found that the interaction of the father with the child support system has specific, measurable effects on payment over and above the effect of factors such as income and employment.

- Understanding. Obligors who did not understand the IVD process paid 2 percent less current support than those who did understand the process. Thus, the author concludes that

[77] JESSICA PEARSON, NANCY THOENNES and LANAE DAVIS, DROPPING DEBT: AN EVAUATION OF COLORADO'S DEBT AND RETROACTIVE SUPPORT INITIATIVE, CENTER FOR POLICY RESEARCH (September 1999).
[78] OIG 2, *supra*, note 75, pp.16-17.
[79] MICHAEL CONTE, RESEARCH ON CHILD SUPPORT ARREARS IN MARYLAND, RESEARCH INSTITUTE OF TOWSON UNIVERSITY (August 1998).

promoting a better understanding of the child support process would lead to a diminution in arrears. [80]

- Attitude. The attitude of child support workers toward obligors even more strongly affects payment patterns. Obligors who felt that they had been treated disrespectfully by the IVD agency paid 35.3 percent less arrears.[81] Thus, training staff to be more respectful and helpful would also result in fewer arrears.

Swift Enforcement

Another major factor in the accumulation of arrears is the state's ability to promptly implement income withholding. While not helpful to the unemployed or incarcerated, if a father is employed, the faster the order is delivered to his employer, the faster income withholding will take place. This greatly lessens the chance that post-order arrears will accumulate. The Maryland study suggests that a major source of that state's accumulated arrears was the result of a failure to implement income withholding in a timely manner.[82]

After the Fact Strategies

Modifying or Forgiving Interest Payments

As noted above, many states assess interest on retroactive support as well as on any payments that are not timely paid. In any effort to reduce the size of an arrearage that includes such interest, some states will forgive interest on support owed to the state (TANF/Medicaid assigned support). The OIG reports on one such effort in Denver, which will negotiate the interest in TANF cases as a way of brining non-custodial parents into compliance.[83]

Forgiveness of Arrears

The approach that has attracted the most recent interest is the outright forgiveness of accumulated arrears owed to the state.[84] Several states have commissioned studies on the advisability of adopting policy in this area.

Of special concern is the advisability of writing of such debt when it is potentially collectable. To address this issue, the Maryland study looked at collectability and found that *the single most significant determination of collectability of arrears is the age of the debt.* Holding all other factors constant, the state's ability to collect arrears decreases by 24% for each year of additional age.[85] At

[80] Id. p.34.
[81] Id.
[82] Id. p.33. It should be noted, however, that the author finds that income withholding is not a particularly useful strategy in cases where the custodial parent receives TANF. Wage withholding has only one-tenth the effect on TANF obligors as it has on non-TANF obligors. Id. p. 10.
[83] OIG 2, *supra* note 75, p.15.
[84] The OIG reports that most states will forgive arrears owed to the custodial parent if she agrees to waive the arrears. Some states require a court order to accomplish this while others do not. OIG 2, *supra* note 75, p.19.
[85] CONTE, *supra* note 79, p.1.

some point, the arrears are simply so old that there is no realistic possibility that they will be collected.

Another concern is the amount of effort that goes into collecting arrears. With limited resources, states need to assess whether additional collection efforts would be cost efficient. A Washington study of "hard to collect" cases addresses this concern.[86] "Hard-to-collect" cases were defined to be those in which 1) more than $500 in arrears were owed; and 2) other than through federal tax intercept, no collection had been made for at least 6 months. Between October 1996 and February 1999, close to 4,000 such cases were identified. Half (the control group) were left at the IVD field office and treated like all other cases. The other half went to a Special Collections Unit (SCU) for aggressive enforcement.

The SCU cases did have higher payment outcomes than those in the control group. Of the total amount collected, 52.2% came from SCU cases while 47.8% came from the controls. [87]However, the difference was largely found in arrears-only and non-assistance cases. The SCU work made no difference in current assistance cases.[88]

The effort also identified three serious barriers to collection. *First*, almost half of the non-custodial parents had multiple child support cases. The total amount owed in current support and arrears was beyond the capacity of these parents to pay. *Second*, over 30% of non-custodial parents were currently or recurrently receiving public assistance or SSI themselves. Many cases had long histories of intermittent employment, physical or mental illness, substance abuse, or other problems. *Third*, almost 31% had criminal records. Over 12% were incarcerated at some time during the project.[89] The author concludes that intensive collection efforts for current assistance cases are not likely to be very useful. Such efforts will be cost effective only if targeted on cases that have been pre-screened to eliminate those with serious payment barriers.[90]

A third area of concern is whether forgiveness policy should be state wide or left to local discretion. Minnesota had a local discretion policy and their state legislature authorized a study of the feasibility of having a statewide policy.(The study also explored options for passing-through and disregarding more support to TANF families.) [91] The authors conclude that letting each county have its own policy in this area has lead to wide variation and inequity. A state-wide policy would be fairer.

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[86] JO PETERS, OVERCOMING THE BARRIERS TO COLLECTION, WASHINGTON STATE DIVISION OF CHILD SUPPORT (JUNE 1999).
[87] Id., p. ix.
[88] Id., p. x.
[89] Id.
[90] Id. p. xii.
[91] HENNESSEY and VENOHR, *supra* note 66. The study contains a legal analysis, an assessment of the arrears owed in Minnesota, a description of compromise practices in other states, a presentation on county attitudes about changes in policies, and the results of a focus group discussion with custodial and non-custodial parents.

FEDERAL GUIDANCE

In the past, there has been some confusion about how much flexibility states have in developing policies sensitive to the situation of low-income obligors. A 1989 Action Transmittal and a 1999 Policy Interpretation Question (PIQ) provided very limited help to states trying to determine how much latitude they had.[92] However, in 2000, OCSE issued a PIQ that clarifies many issues, describes acceptable approaches, and offers states real options in designing a policy.[93] Citing the OIG studies discussed above, this PIQ **urges** states to scrutinize policies that may contribute to non-payment—especially front end policies. The PIQ notes that "Careful policy choices *up front in establishing obligations* should improve the obligor's incentive and ability to support his or her children, as well as improve a State's ability to enforce its orders."[94] Highlights of this PIQ are discussed below.

Preventative Strategies

State Child Support Guidelines May Not Provide for Irrebuttable Minimum Orders

In the 1991 Preamble to the final regulations implementing the requirement that every state have and use child support guidelines, OCSE advised states that guidelines that had to be followed in all support awards without the possibility of rebuttal did not comply with the requirements of federal law.[95] The PIQ reiterates this point and states "While States are allowed to use minimum orders, the *minimum amount must be rebuttable*."[96]

States Are Not Required to Establish Retroactive Support Obligations in Public Assistance Cases

States are free to set whatever policy they choose in regard to retroactive support. This includes:

- Never seeking awards for prior periods from low-income obligors in public assistance cases.
- Seeking retroactive support, but for a limited period.
- Seeking retroactive support in an amount lower than that provided under the state's child support guidelines in cases where the guideline amount would be unjust or inappropriate given the circumstances.

[92] See, OCSE-AT-89-06 and PIQ-99-03, which are posted on the OCSE web site, http://www.acf.dhhs.gov/programs/cse/poldoc.htm
[93] PIQ -00-03 (September 14, 2000). This is also posted on the OCSE website, *supra*.
[94] Id., p. 6, (emphasis added).
[95] 56 Fed. Reg. 22335 and 22337 (May 15,1991).
[96] PIQ-00-03, *supra* note 93, p.4 (emphasis added).

States Can Take Steps to Reduce the Number of Cases in Which Income is Imputed

While not required to do so, OCSE urges states to reduce the number of cases that rely on imputed income as the basis of the support award. Two Practices are highlighted:

- Limit imputation to cases in which the non-custodial parent has apparent assets or ability to pay but is refusing to provide current, valid information.

- Before imputing income, make genuine efforts to obtain the information needed. This includes using the State and National Directories of New Hires, the Financial Institution Data Match (FIDM) program and the Multi-state Financial Institution Data Match (MSFIDM) process.

States Can Adopt Policies That Facilitate Rapid Review and Modification When Appropriate

OCSE notes that review and modification processes are key to holding down the accumulation of arrears that are beyond the ability of the non-custodial parent to pay. States are encouraged to:

- Adopt procedures for automatically modifying orders for the incarcerated.

- Conduct outreach campaigns in prisons, as well as industries and government offices where lay-offs are expected.

After the Fact Strategies

States Have Discretion to Compromise Child Support Arrears, Penalties and Interest Permanently Assigned to the State.

The PIQ distinguishes between a change in the arrearage amount to which one of the parties does not agree and a change that is agreed upon by the parties. The former is a retroactive modification of arrears and must be prohibited by state law.[97] The latter is a compromise of arrears and is not barred so long as:

- the relevant parties agree. If the arrears are owed to the custodial parent, she must agree to take the lesser amount. If the arrears are owed to the state under a TANF/Medicaid assignment, the state must agree to take the lesser amount; and

- the agreement is in accordance with state law; or

- the agreement is on the same grounds as exist for the compromise of any other judgment.

[97] 42 USC §666(a)(9). See discussion in text *supra*.

The PIQ also notes that states might want to require administrative or judicial review of the agreement to ensure that the child's best interests are protected.

DEVELOPING AN ARREARAGE COMPROMISE POLICY AT THE STATE LEVEL

Many states are now interested in developing an approach to prevent arrears from accumulating in the future. These states can draw on some of the policies described earlier in designing a response appropriate to their state. This might include abolishing mandatory minimum guidelines, eliminating interest on retroactive support, eschewing the collection of birthing costs in Medicaid cases, developing new approaches to obtaining income information in default cases, swifter implementation of income withholding orders, and development of simple, pro se procedures for modification of orders. These types of changes do not pose substantial public policy questions.

Many states are also interested in developing sound public policy around when and if to compromise or forgive existing arrears. Recently issued federal guidance clearly allows states to do more in this areas. However, designing appropriate approaches in this area does present some fundamental public policy questions. These include:

- *What message do arrearage forgiveness programs send?* The goal of the child support program is the efficient and effective collection of support. To meet this goal, the program must convince parents that it is in their best interest to pay regularly and on time. It must also convince parents that there are serious consequences for non-payment. Writing off arrears owed by those who have not met their obligations undercuts this basic message and could lead some obligors to avoid payment in the hopes that the arrears will be forgiven in the future. This will damage the program's ability to meet its goal and hurt children.

- *How does the state distinguish between a deadbeat parent (who can pay but hasn't done so) and a dead broke parent (who truly can't pay)?* Many non-payors allege an inability to pay, even when they have substantial income. It is not easy for a state to determine where the line is between those who can and those who cannot pay the arrears they owe or to make consistent, reasonable judgments about who fits in which category. Moreover, recent research suggests that ability to pay varies greatly over time. Someone who cannot pay today may well be able to pay in the future. This needs to be considered in policy development.

- *Is an arrearage forgiveness policy fair to those non-custodial parents who have struggled to meet their obligations?* No state wants to denigrate good behavior. Yet, writing off arrears for parents who have not met their support obligations while doing nothing for similarly situated parents who have done the right thing could be seen as doing just that.

- *How much say should custodial parents have in whether or not arrearages are forgiven?* If the arrears are owed to the custodial parent, there is near universal

agreement that she should be the one who decides whether the arrears should be partially or wholly forgiven. If the arrears are owed to the state under a public assistance assignment, however, there is some disagreement about whether or not the custodial parent should be consulted on the compromise of state-owed arrears.

- *Should the source of the accumulated arrears matter?* As noted above, some arrears exist because the non-custodial parent has failed to meet his obligation under a legitimate order. Others exist because the state has adopted policies (e.g., imposition of retroactive support back to the date of birth, plus interest and birthing costs) that clearly contributed to the fact that large arrears exist irrespective of ability to pay. Some states are beginning to think about this distinction in developing a policy about what kinds of arrears should and should not be forgiven.

- *Should forgiveness of arrears be a one-time event or should it be tied to on-going behavior?* If the goal is simply reducing the amount of uncollectable arrears being carried on a state's books, a one-time forgiveness program is a simple and direct way to accomplish this objective. However, if the goal is to collect as much of the arrears as possible and/or encourage the payment of current support (and thus reduce the likelihood that arrears will accumulate in the future), a different approach might be better. For example, arrearage forgiveness might be tied to the non-custodial parent's participation in a fatherhood program. It might also involve writing down the arrears over time based on the parent's track record in meeting his current support obligations.

In grappling with these public policy issues, states can benefit from a four step process.

Step 1. Assess the caseload. Conduct an analysis of 1) who owes arrears; 2) to whom the arrears are owed (the family or the state); 3) how much is owed; 4) the source of the arrears (support, interest, fees, costs); 5) the age of the debt; 6) any differences between in-state and interstate cases; and 6) the debtors current economic situation. This will assist the state in determining how much of what is owed is potentially collectable and what the best methods for collection might be.

Step 2. Examine state policies and practices that might be contributing to the problem. Undertake an honest assessment of current policies and practices in setting and enforcing support orders to identify the reason that substantial arrears have accumulated. Is a large part of the problem a time lag between establishment of the order and issuance of an income withholding order to the employer? Is the lack of protocols for handling interstate cases making those cases a particular source of difficulty? Alternatively, is a substantial part of what is owed attributable to the interest on retroactive support established along with the initial order, or the way the state allocates collections between interest and principal?

Step 3. **Develop a strategy for preventing problems in the future.** As a result of the analysis undertaken in Step 2, the state might want to change some of its policies so that

less arrears will accumulate in the future. In this regard, a state might look at policies and procedures used to 1) establish initial orders; 2) quickly modify orders when circumstances substantially change; and 3) monitor orders to be sure that substantial arrears do not accrue without some action being taken. For example, if the caseload analysis reveals that most of the arrears are owed by low-income obligors whose orders were set using imputed income, thought might be given to using a variety of data bases (e.g., state employment, jail, and prison records) to gather the best available income information before setting default orders in the future. If it appears that inability to quickly modify orders when the obligated parent suffers a precipitous drop in income is a source of difficulty, the state might revise its policies and procedures in this area.

Step 4. Develop a system for assessing whether or not to consider forgiving arrears in existing cases. In addition to a preventative strategy, states will have to decide whether they wish to develop a forgiveness policy for arrears that have already accumulated. In making this determination, it may be useful to categorize the arrears into one of five possible sources.

Category 1. Arrears that were established at the time the order was initially set. This would include retroactive arrears, interest on retroactive arrears, fees and/or costs related to the litigation itself, and costs related to birthing expenses.

Category 2. Arrears that arose be cause the order did not take into account the obligated parent's ability to meet the obligation. This would include arrears that accumulated pursuant to orders set under mandatory minimum guideline rules when the minimum was clearly beyond the non-custodial parent's ability to pay given his income at the time. It would also include orders set by imputing income that was significantly higher than the obligated parent's actual income.

Category 3. Arrears that resulted from failure to modify an order downward when the non-custodial parent suffered a significant loss of income.

Category 4. Arrears that exist because a case that should have been closed was not. This would include situations where the non-custodial parent has died, been institutionalized or incarcerated for a lengthy period , or is totally and permanently disabled and has no earnings potential. It would also include other cases eligible for closure under federal regulations and cases where the statute of limitations on collection has expired so that the debt is no longer collectable.

Category 5. Arrears that accumulated after the order was established and were payable during a period of time in which the obligated parent had the ability to pay but failed to do so.

When arrears are categorized in this way, the state can develop a matrix for deciding how much (if any) arrears might be forgiven. (See Sample Matrix in Appendix 8). As part of this process, it should also determine at what point the custodial parent should be involved in the process. For example, the state might decide that in Category 4 cases, the

files should be closed and the arrears written off because they are no longer legally collectable. In category 5 cases, the state might decide that the arrears should never be written off unless and until the statute of limitations has expired. If the arrears are attributable to Categories 1, 2 or 3, the state might develop a policy of forgiveness as to any amount owed to the state under a public assistance assignment. Category 1, 2 or 3 arrears owed to the custodial parent might also be forgiven with her consent.

If a state chose the latter approach in Category 1, 2 or 3 cases (and cases where the arrears represent a combination of the factors) further refinements could be made. For example, a state might adopt a policy of partial—rather than complete—forgiveness. This would somewhat lessen the perception that the obligated parent is being rewarded for being irresponsible. In determining the amount to forgive, the state might consider 1) the size of the arrears relative to the obligated parent's current ability to pay; 2) the length of time it would take to pay off the accumulated arrears if the full amount were to be collected; 3) what part of the sum owed is principal, interest, fees or costs. With this type of analysis, a state might decide that it would consider forgiveness of interest, fees and costs but not the monthly support obligation itself. Alternatively—or additionally-- it might decide to might decide to consider writing down the excess support arrears that accumulated under an order that could have been modified downward but was not. In this scenario, the state would calculate the amount that would have been owed under a modified order based on the non-custodial parent's actual income at the time. This would be subtract this from the amount due under the unmodified order and the difference forgiven. The parent would still owe the guideline amount for the period in question based on his actual income at the time.

Forgiveness of some or all of the debt might also be tied to current financial status. For example, a state might forgive only those arrears owed by non-custodial parents with incomes below 200 percent of poverty. These are the parents that will have the greatest difficulty meeting their own subsistence needs, paying current support, and paying off arrears. As noted above, the state has an interest in keeping these parents in the above ground economy and making payments of current support. Writing off some or all of their arrears could be justified as supporting those public policy goals.

Forgiveness might also be tied to behavior. One approach would be to provide forgiveness to a non-custodial parent's successful completion of a fatherhood program. This would limit the number of parents who would be able to take advantage of a forgiveness policy since there are still very few fatherhood programs available. However, in a state that wishes to proceed cautiously, this might be a good initial step. In a state that wishes to take a more ambitious approach, the forgiveness might be tied to payment of current support. A certain percentage of the arrears could be forgiven for every year that the non-custodial parent meets his current support obligation, for example.

In short, there is ample room for states to balance the different public policy considerations discussed above and come up with a policy that fits the needs of the state and the parents in this area. Some states will be comfortable with a limited forgiveness plan will others will favor a broader and more far-reaching approach. The more

sophisticated a state can be in breaking down the various issues and concerns, the more likely it is to develop an approach that works.

APPENDIX 1

STATE IVD POLICIES ON RETROACTIVE SUPPORT

STATE	RETROACTIVE SUPPORT SOUGHT	MAXIMUM RETROACTIVE PERIOD	INTEREST ON RETROACTIVE SUPPORT SOUGHT
ALABAMA	YES	2 YEARS	YES
ALASKA	YES	6 YEARS	YES
ARIZONA	YES	FROM DATE OF FILING	YES
ARKANSAS	YES	NONE	NO
CALIFORNIA	YES	3 YEARS FROM DATE OF FILING	YES
COLORADO	YES	NONE	YES
CONNECTICUT	YES	3 YEARS	NO
DELAWARE	YES	2 YEARS	NO
D.C.	YES	NONE	NO
FLORIDA	YES	2 YEARS FROM DATE OF FILING	NO
GEORGIA	NO	N/A	N/A
HAWAII	YES	COURT DISCRETION	NO
IDAHO	YES	3 YEARS FROM DATE OF FILING	NO
ILLINOIS	YES	COURT DISCRETION	NO
INDIANA	YES	COURT DISCRETION	YES
IOWA	YES	3 YEARS FROM DATE OF FILING	NO
KANSAS	YES	DATE NCP KNEW OF CHILD'S BIRTH	YES
KENTUCKY	YES	4 YEARS	YES
LOUISIANA	YES	DATE OF FILING	NO
MAINE	YES	6 YEARS PRIOR TO DATE OF FILING	NO
MARYLAND	NO	N/A	N/A
MASSACHUSETTS	YES	NONE	YES
MICHIGAN	YES	NONE	NO
MINNESOTA	YES	2 YEARS FROM DATE OF FILING	YES
MISSISSIPPI	YES	COURT DISCRETION	NO
MISSOURI	YES	5 YEARS FROM DATE OF FILING	YES
MONTANA	NO	N/A	N/A
NEBRASKA	YES	NONE	YES
NEVADA	YES	4 YEARS PRIOR TO DATE OF FILING	NO
NEW HAMPSHIRE	YES	DATE OF FILING	NO
NEW JERSEY	NO	N/A	N/A
NEW MEXICO	YES	NONE	YES
NEW YORK	YES	DATE OF OPENING OF TANF CASE	NO
NORTH CAROLINA	NO	N/A	N/A
NORTH DAKOTA	YES	DATE OF BIRTH OR	NO

STATE	RETROACTIVE SUPPORT SOUGHT	MAXIMUM RETROACTIVE PERIOD	INTEREST ON RETROACTIVE SUPPORT SOUGHT
		FIRST CONTACT WITH IVD	
OHIO	YES	NONE	NO
OKLAHOMA	YES	60 MONTHS PRIOR TO DATE OF FILING	NO
OREGON	YES	DATE OF CONTACT WITH IVD	NO
PENNSYLVANIA	YES	DATE OF FILING	NO
PUERTO RICO	NO	N/A	N/A
RHODE ISLAND	YES	6YEARS PRIOR TO PATERNITY ESTABLISHMENT	NO
SOUTH CAROLINA	NO	N/A	N/A
SOUTH DAKOTA	YES	6 YEARS	NO
TENNESSEE	YES	DATE OF PATERNITY ESTABLISHMENT	NO
TEXAS	YES	NONE	NO
UTAH	YES	4 YEARS PRIOR TO DATE OF ORDER	NO
VERMONT	YES	DATE OF FILING	NO
VIRGINIA	YES	NONE	YES
WASHINGTON	YES	DATE STARTED TO RECEIVE PUBLIC ASSISTANCE OR APPLIED FOR IVD SERVICES	NO
WEST VIRGINIA	YES	NONE FOR PATERNITY CASES. DATE OF FILING FOR OTHERS	YES
WISCONSIN	YES	COURT DISCRETION	YES
WYOMING	YES	DATE OF FILING	YES

Note: None means the decision maker can go back to the date of the child's birth.

Sources:
DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF INSPECTOR GENERAL, STATE POLICIES USED TO ESTABLISH CHILD SUPPORT ORDERS FOR LOW INCOME NON-CUSTODIAL PARENTS, OEI-05-99-00391 (JULY 2000)
NATIONAL CHILD SUPPORT ENFORCEMENT ASSOCIATION, INTERSTATE ROSTER AND REFERAL GUIDE (1999)

APPENDIX 2

STATE POLICY ON MINIMUM SUPPORT ORDERS

STATE	PRESUMPTIVE MINIMUM AWARD	MANDATORY MINIMUM AWARD	NO MINIMUM SPECIFIED	COURT DISCRETION
ALABAMA				X
ALASKA		$50/MONTH		
ARIZONA			X	
ARKANSAS			X	
CALIFORNIA				X
COLORADO				$20-$50/MONTH
CONNECTICUT	$28/MONTH			
DELAWARE		$106/MONTH		
D.C.	$50/MONTH			
FLORIDA			X	
GEORGIA			X	
HAWAII	$50/MONTH			
IDAHO	$50/MONTH			
ILLINOIS				X
INDIANA				X
IOWA	$50-/MONTH			
KANSAS			X	
KENTUCKY		$60-$90/MONTH		
LOUISIANA				X
MAINE		10% OF INCOME		
MARYLAND	$20-50/MONTH			
MASSACHUSETTS	$50/ MONTH			
MICHIGAN		$21		
MINNESOTA			X	
MISSISSIPPI				X
MISSOURI	$20-$50/MONTH			
MONTANA	X			
NEBRASKA	$50			
NEVADA				X
NEW HAMPSHIRE		$50		
NEW JERSEY	$21-$179/MONTH			
NEW MEXICO	$100			
NEW YORK		$25-$50/MONTH		
NORTH CAROLINA			X	
NORTH DAKOTA		$50/MONTH		
OHIO		$50/MONTH		
OKLAHOMA			X	
OREGON	$50			
PENNSYLVANIA		$20-$50/MONTH		
RHODE ISLAND			X	
SOUTH CAROLINA	$50			
SOUTH DAKOTA			X	
TENNESSEE			X	
TEXAS			X	
UTAH	$20			

STATE	PRESUMPTIVE MINIMUM AWARD	MANDATORY MINIMUM AWARD	NO MINIMUM SPECIFIED	COURT DISCRETION
VERMONT		$85-$106/MONTH		
VIRGINIA		$65/MONTH		
WASHINGTON	$25			
WEST VIRGINIA		$50/MONTH		
WISCONSIN			X	
WYOMING		$50/MONTH		

Source:
DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF INSPECTOR GENERAL, STATE POLICIES USED TO ESTABLISH CHILD SUPPORT ORDERS FOR LOW INCOME NON-CUSTODIAL PARENTS, OEI-05-99-00391 (JULY 2000)

APPENDIX 3

POTENTIAL NON-GUIDELINE FACTORS IN IVD SUPPORT ORDERS

State	Interest Routinely Charged on Missed Payments	Fees Charged to Obligor	Costs Charged to Obligor*	Reimbursement for Birthing Costs Authorized**
Alabama	Yes	No	No	Yes
Alaska	Yes	No	No	
Arizona	Yes	No	No	Yes
Arkansas	Yes	Yes	Yes	Yes
California	Yes	No	No	Yes
Colorado	Yes	No	No	Yes
Connecticut	No	No	No	
Delaware	No	No	No	Yes
District of Columbia	No	No	No	
Florida	Yes	No	Yes	Yes
Georgia	No	No	No	Yes
Guam	Yes	No	No	Yes
Hawaii	No	No	No	Yes
Idaho	No	Yes	Yes	
Illinois	No	Yes	No	Yes
Indiana	Yes	No	No	
Iowa	No	No	No	Yes
Kansas	Yes	No	No	
Kentucky	Yes	No	No	Yes
Louisiana	No	No	Yes	
Maine	No	No	No	Yes
Maryland	No	No	No	Yes
Massachusetts	Yes	No	No	
Michigan	No	No	No	Yes
Minnesota	Yes	No	No	Yes
Mississippi	No	Yes	Yes	Yes
Missouri	Yes	No	No	
Montana	No	No	Yes	Yes
Nebraska	Yes	No	No	Yes
New Hampshire	No	No	No	Yes
New Jersey	Yes	No	No	Yes
New Mexico	Yes			Yes
New York	No	No	No	Yes
Nevada	No	No	No	Yes
North Carolina	No	Yes	No	
North Dakota	No	No	No	Yes
Ohio	Yes	Yes	Yes	Yes
Oklahoma	Yes	No	No	Yes
Oregon	No	No	No	
Pennsylvania	No	No	No	Yes
Puerto Rico	No	No	No	
Rhode Island	Yes	Yes	Yes	Yes
South Carolina	No	No	No	

State	Interest Routinely Charged on Missed Payments	Fees Charged to Obligor	Costs Charged to Obligor*	Reimbursement for Birthing Costs Authorized**
South Dakota	**No**	**No**	**Yes**	**Yes**
Tennessee	**No**	**No**	**No**	**Yes**
Texas	**Yes**	**No**	**No**	**Yes**
Utah	**No**	**No**	**No**	**Yes**
Vermont	**No**	**No**	**No**	
Virgin Islands	**No**	**No**	**No**	
Virginia	**Yes**	**No**	**Yes**	**Yes**
Washington	**No**	**No**	**No**	**Yes**
West Virginia	**Yes**	**No**	**No**	**Yes**
Wisconsin	**Yes**	**Yes**	**Yes**	**Yes**
Wyoming	**Yes**	**No**	**No**	**Yes**

Source:
NCSEA, 1999 Interstate Roster and Referral Guide updated by the OCSE Online State Roster and Referral Guide

* Every state but Vermont pursues reimbursement for genetic testing costs when paternity is established. A "yes" in this box indicates that some costs in addition to genetic tests are authorized.
** State policy in this area is somewhat confusing. In many states there is authority to pursue such costs but this authority is not exercised by the IVD agency or is exercised differently in different parts of the state.

APPENDIX 4

STATE POLICIES ON IMPUTATION OF INCOME

STATE	INCOME IMPUTED	WHEN
ALABAMA	YES	IF NCP FAILS TO PROVIDE INFORMATION
ALASKA	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
ARIZONA	YES	NCP UNEMPLOYED OR UNDEREMPLOYED
ARKANSAS	YES	NCP UNEMPLOYED OR UNDEREMPLOYED
CALIFORNIA	YES	NCP UNEMPLOYED OR UNDEREMPLOYED
COLORADO	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
CONNECTICUT	NO	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
DELAWARE	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
D.C.	NO	
FLORIDA	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
GEORGIA	YES	NCP UNEMPLOYED OR UNDEREMPLOYED
HAWAII	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
IDAHO	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
ILLINOIS	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
INDIANA	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
IOWA	YES	IF NCP FAILS TO PROVIDE INFORMATION
KANSAS	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
KENTUCKY	YES	NCP UNEMPLOYED OR UNDEREMPLOYED
LOUISIANA	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
MAINE	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
MARYLAND	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
MASSACHUSETTS	YES	NCP UNEMPLOYED OR UNDEREMPLOYED
MICHIGAN	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
MINNESOTA	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
MISSISSIPPI	NO	
MISSOURI	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
MONTANA	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
NEBRASKA	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
NEVADA	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
NEW HAMPSHIRE	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
NEW JERSEY	YES	NCP UNEMPLOYED OR UNDEREMPLOYED
NEW MEXICO	YES	NCP UNEMPLOYED OR UNDEREMPLOYED
NEW YORK	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
NORTH CAROLINA	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
NORTH DAKOTA	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
OHIO	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
OKLAHOMA	YES	IF NCP FAILS TO PROVIDE INFORMATION
OREGON	YES	NCP IS UN EMPLOYED OR UNDEREMPLOYED
PENNSYLVANIA	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
RHODE ISLAND	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
SOUTH CAROLINA	YES	NCP UNEMPLOYED OR UNDEREMPLOYED
SOUTH DAKOTA	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
TENNESSEE	YES	IF NCP FAILS TO PROVIDE INFORMATION
TEXAS	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
UTAH	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
VERMONT	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED

STATE	INCOME IMPUTED	WHEN
VIRGINIA	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
WASHINGTON	YES	IF NCP FAILS TO PROVIDE INFORMATION
WEST VIRGINIA	YES	NCP FAILS TO PROVIDE INFO OR IS UN/UNDER EMPLOYED
WISCONSIN	YES	NCP IS UN EMPLOYED OR UNDEREMPLOYED
WYOMING	YES	NCP UNEMPLOYED OR UNDEREMPLOYED

Sources:

DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF INSPECTOR GENERAL, STATE POLICIES USED TO EST ABLISH CHILD SUPPORT ORDERS FOR LOW INCOME NON-CUSTODIAL PARENTS, OEI-05-99-00391 (JULY 2000)

NCSEA, 1999 INTERSTATE ROSTER AND REFERRAL GUIDE

APPENDIX 5

THRESHOLDS FOR PERIODIC MODIFICATION

STATE	TIME PERIOD	MODIFICATION STANDARD
ALABAMA	3 YEARS	AT LEAST 10% CHANGE FROM CURRENT ORDER
ALASKA	3 YEARS	15% CHANGE FROM CURRENT ORDER
ARIZONA	3 YEARS	15% CHANGE FROM CURRENT ORDER
ARKANSAS	3YEARS	CHANGE IN NCP INCOME IN AMOUNT EQUAL TO 20% OR $100 PER MONTH
CALIFORNIA	3YEARS	CHANGE GREATER THAN $50 OR 30% FROM CURRENT ORDER
COLORADO	3 YEARS	ANY CHANGE UNDER GUIDELINES
CONNECTICUT	3YEARS	SUBSTANTIAL CHANGE IN CIRCUMSTANCES OR SUBSTANTIAL CHANGE FROM GUIDELINES (15% CHANGE REBUTTABLY SUBSTANTIAL)
DELAWARE	2 ½YEARS	10% FROM CURRENT ORDER OR ORDER IS MORE THAN 2 ½YEARS OLD
D.C.	3 YEARS	15% CHANGE FROM CURRENT ORDER
FLORIDA	3 YEARS	ANY CHANGE UNDER GUIDELINES
GEORGIA	3 YEARS	15% CHANGE FROM CURRENT ORDER WITH $25 MINIMUM
HAWAII	ON REQUEST	10% CHANGE FROM CURRENT ORDER
IDAHO	3 YEARS	ANY CHANGE FROM CURRENT ORDER
ILLINOIS	3 YEARS	20% CHANGE FROM CURRENT ORDER, WITH $10 PER MONTH MINIMUM
INDIANA	3 YEARS	20% CHANGE FROM CURRENT ORDER
IOWA	2 YEARS	20% CHANGE FROM CURRENT ORDER
KANSAS	3 YEARS	ANY CHANGE FROM CURRENT ORDER
KENTUCKY	3 YEARS	ANY CHANGE FROM CURRENT ORDER
LOUISIANA	3 YEARS	ANY CHANGE UNDER GUIDELINES
MAINE	3 YEARS	15% CHANGE FROM CURRENT ORDER
MARYLAND	3 YEARS	25% CHANGE FROM CURRENT ORDER
MASSACHUSETTS	3 YEARS	NEED FOR MEDICAL SUPPORT ORDER OR 20% CHANGE FROM CURRENT ORDER
MICHIGAN	2 YEARS	ANY CHANGE FROM CURRENT ORDER
MINNESOTA	2 YEARS	20% OR $50 CHANGE FROM CURRENT ORDER
MISSISSIPPI	3 YEARS	25% CHANGE FROM CURRENT ORDER
MISSOURI	3 YEARS	ANY CHANGE FROM CURRENT ORDER
MONTANA	2 ½YEARS	CHANGE OF AT LEAST $25 PER MONTH FROM CURRENT ORDER
NEBRASKA	3 YEARS	CHANGE OF AT LEAST 10% AND FINANCIAL CIRCUMSTANCES OF PARTIES WHICH HAVE LASTED AT LEAST 3 MONTHS AND ARE ANTICIPATED TO LAST AT LEAST 6 MONTHS
NEVADA	3 YEARS	15% CHANGE FROM CURRENT ORDER
NEW HAMPSHIRE	3 YEARS	20% OR $50 CHANGE FROM CURRENT ORDER
NEW JERSEY	3 YEARS	20% CHANGE FROM CURRENT ORDER
NEW MEXICO	3 YEARS	ANY CHANGE FROM CURRENT ORDER
NEW YORK	2 YEARS	ORDERS AUTOMATICALLY ADJUSTED IF 10% CHANGE IN CPI.PARENTS CAN ALSO REQUEST REVIEW
NORTH CAROLINA	3 YEARS	ANY CHANGE FROM CURRENT ORDER

STATE	TIME PERIOD	MODIFICATION STANDARD
NORTH DAKOTA	3 YEARS	15% CHANGE FROM CURRENT ORDER.
OHIO	3 YEARS	10% CHANGE FROM CURRENT ORDER
OKLAHOMA	3 YEARS	25% CHANGE FROM CURRENT ORDER
OREGON	2 YEARS	LESSER OF 15% OR $50 CHANGE FROM CURRENT ORDER
PENNSYLVANIA	3 YEARS	SUBSTANTIAL CHANGE IN CIRCUMSTANCES
RHODE ISLAND	3 YEARS	ANY CHANGE FROM CURRENT ORDER
SOUTH CAROLINA	3 YEARS	20% CHANGE FROM CURRENT ORDER
SOUTH DAKOTA	3 YEARS	20% CHANGE FROM CURRENT ORDER WITH A MINIMUM $25/PER MONTH CHANGE REQUIRED
TENNESSEE	3 YEARS	15% OR $15 PER MONTH CHANGE FROM CURRENT ORDER
TEXAS	3 YEARS	20% OR $100 CHANGE FROM CURRENT ORDER
UTAH	3 YEARS	10% CHANGE FROM CURRENT ORDER
VERMONT	3 YEARS	10% CHANGE FROM CURRENT ORDER
VIRGINIA	3 YEARS	10% CHANGE FROM CURRENT ORDER WITH A MINIMUM $25/MONTH CHANGE REQUIRED
WASHINGTON	3 YEARS	25% OR $100 CHANGE FROM CURENT ORDER WITH $2400 PROJECTED OVER LIFE OF ORDER
WEST VIRGINIA	3 YEARS	15% CHANGE FROM CURRENT ORDER
WISCONSIN	3 YEARS	ANY CHANGE FROM CURRENT ORDER
WYOMING	3 YEARS	20% CHANGE FROM CURENT ORDER

Sources:
NCSEA 1999 State Roster and Referral Guide
HHS Office of Inspector General, Review and Adjustment of Support Orders (1999), Table 2.

APPENDIX 6

STATE COLLECTION POLICIES

State	Income Withholding Limit	Statute of Limitations on Collection of Past Due Support
Alabama	Modified CCPA	20 years
Alaska	40% of disposable income; may go to 65%	NONE
Arizona	50% of disposable earnings	3 years from emancipation of youngest child subject to order unless reduced to money judgment; if so reduced, no limit
Arkansas	CCPA	5 years from time child reaches 18 unless reduced to judgment; if so reduced, 10 years w. option to renew
California	CCPA	NONE
Colorado	CCPA	NONE unless reduced to judgment, then 20 year limit.
Connecticut	First $145 of weekly disposable income exempt	NONE
Delaware	CCPA	NONE
District of Columbia	CCPA	NONE
Florida	CCPA	NONE
Georgia	CCPA	NONE
Guam	CCPA	6 years
Hawaii	CCPA	Child's 33rd birthday or 10 years after entry of judgment whichever is later
Idaho	50% of disposable income	Prior to the 23rd birthday of the youngest child subject to the order
Illinois	CCPA	NONE
Indiana	CCPA	10 years from emancipation unless reduced to judgment; if so reduced, 20 years.
Iowa	CCPA for court cases, 50% of disposable in come in agency cases	NONE
Kansas	CCPA	2 years from emancipation unless action taken; if action taken, can be extended indefinitely
Kentucky	CCPA	15 years from emancipation of youngest child.
Louisiana	50% of disposable earnings	10 years
Maine	CCPA	NONE but there is a presumption of payment after 20 years.
Maryland	CCPA	12 years
Massachusetts	CCPA	NONE
Michigan	CCPA	10 years after last installment due
Minnesota	CCPA	If reduced to judgment, 10 years which is renewable. If not reduced to judgment, state will pursue indefinitely using income

State	Income Withholding Limit	Statute of Limitations on Collection of Past Due Support
		withholding, tax intercept, credit bureau reporting, license suspension and contempt.
Mississippi	CCPA	7 years from date child reaches age of majority
Missouri	50% of disposable income	10 years from last payment on court record or other form of revival on court record
Montana	50% of wages and 100% of contract proceeds	10 years from termination of the obligation if obligor in state; different rules for out-of state obligors.
Nebraska	CCPA	NONE
New Hampshire	CCPA	20 years from date installment was due
New Jersey	CCPA	NONE
New Mexico	50%	14 years
New York	Amount for arrears capped at 40% of disposable income	20 years from date of default in payment
Nevada	CCPA	NONE
North Carolina	CCPA	10 years
North Dakota	CCPA	NONE
Ohio	CCPA	NONE
Oklahoma	CCPA	NONE
Oregon	CCPA	25 years from date of initial order
Pennsylvania	Court discretion	NONE
Puerto Rico	50% of income	5 years from date child attains majority
Rhode Island	CCPA	NONE
South Carolina	CCPA	NONE
South Dakota	50%	20 years from date due
Tennessee	50% after taxes, FICA and health insurance premium for child deducted	NONE
Texas	CCPA	NONE
Utah	50% of disposable income; may go to 65% in order to meet all current support obligations.	The age of majority of the last child plus 4 years.
Vermont	CCPA	NONE
Virgin Islands	CCPA	NONE
Virginia	CCPA	NONE
Washington	50% of disposable income	10 years from emancipation of youngest child subject to order
West Virginia	Arrears payments limited to 25% of the current support obligation unless certain trigger criteria are met.	10 years from date installment due
Wisconsin	CCPA	20 years
Wyoming	Not less than 35% nor more than 65% of gross after-tax income.	NONE

Source:
NCSEA 1999 Interstate Roster and Referral Guide Updated by OCSE Online Roster and Referral Guide.

APPENDIX 7

LOW INCOME FATHERHOOD PROGRAM-LINKED ARREARAGE FORGIVENESS PROGRAMS

State and Program	Implementation Date	Policy	Penalty for Non-Compliance
Iowa—Satisfaction to Support	October 2000	Pay current support: 1. for six consecutive months, 15%of arrears forgiven. 2. for twelve consecutive months, 35% of arrears forgiven. 3.for twenty-four consecutive months, 80% of arrears forgiven.	Yes
Maryland—State-Owed Debt Leveraging Program	July 2000	At successful completion of fatherhood program, 25% of arrears forgiven. Thereafter, pay current support: 1.For 12 consecutive months, another 40% forgiven. 2.For 24 consecutive months, 100% forgiven.	Yes
Minnesota- Partners for Fragile Families		Successful program participation for 12 months can lead to 100% forgiveness.	
Missouri—Parents Fair Share		Participants who sign an agreement, remain employed and pay their child support for six consecutive months after leaving the program can have up to 50% of their arrears forgiven. Another 40% can be forgiven if the participant makes full monthly payments for one year.	

APPENDIX 8

SAMPLE MATRIX ON ARREARS FORGIVENESS

Category	Source of Arrears	Arrears Forgiveness Possible	Partial/Full	Consult Custodial Parent	Additional Considerations
1.	Retroactive support; fees, costs and interest payments.	Yes	Full	Yes, if any arrears to be forgiven are owed to her.	Gradual reduction up to full amount based on regular payment of current support for a given period.
2.	Mandatory minimum orders, orders based on erroneous imputed income.	Yes	Partial	Yes, if any arrears to be forgiven are owed to her	In cases of erroneously imputed income, limit of forgiveness is difference between the amount under the order and the amount that would have been ordered based on actual income. Only in cases where custodial parent successfully completes fatherhood program.
3.	Failure to obtain downward modification based on substantial decrease in income	Yes	Partial	Yes, if any arrears to be forgiven are owed to her	Limit of forgiveness is the difference between the amount under the order and the modified amount that would have been ordered based on actual income.
4.	Failure to close case that should have been closed	Always	Full	No, so long as case closure procedures are followed.	None
5.	Failure to pay despite financial ability to do so	Never, unless custodial parent wishes to forgive arrears owed to her.	Not applicable	Not applicable.	None

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