



National Parents Organization  
Issues in Child Support

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## Background

In 2016 alone, 15.6 million—one in five—children were served by the Child Support Program, according to the U.S. Office on Child Support Enforcement (OCSE). Compared to other federal programs in the human services field, the Child Support Program ranks third behind Medicaid (35.8 million) and the Supplemental Nutrition Assistance Program (19.9 million) in terms of the number of children it serves. To put these numbers in perspective, Temporary Assistance for Needy Families (TANF) serves 2.1 million children.

For families in poverty, child support represents 40% of their income when they receive it (Sorensen, 2010).

According to a recent study published by the Orange County California Department of Child Support Services Research Team, ***half of noncustodial parents who were previously classified as “not impoverished” became “impoverished” when child support payments were deducted from their income.*** 92% of the noncustodial parents in the study were fathers.

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## Parenting Time Offsets

### **Issue**

Many, but not all, states implement parenting time offsets to reflect the direct expenses incurred by child support payers during the time their child is in their care. When both parents are providing parenting time with the child, they each have fixed costs, such as those related to adequate housing and transportation, and variable costs, such as food, clothing, activity expenses, and entertainment. There is variation in how the states implement a parenting time offset.

- Some states consider only the variable costs, which “move with the child” in calculating their parenting time offset.
- Many states create “cliff effects”—parenting time offsets that result in large changes in presumptive child support based on negligible changes in parenting time.
- Many states use a 1.5 multiplier to increase the basic child support amount before calculating an offset.

### **Problems**

Many states current laws concerning parenting time offsets are unjust and harmful to children.

- *Deterrent to Shared Parenting:* Those states that have no, or inadequate, parenting time adjustments create a deterrent to shared parenting, which decades of scientific research shows is in children’s best interest.
- *Failure to Adequately Support Children:* Because shared parenting is in children’s best interest, the norm for separated parenting is, *and should be*, one in which children have two homes, not one home and a place where they visit. Since, under the best custodial arrangements, children will have two homes, they need adequate financial support in each of those homes.

Those child support models that do not have adequate parenting time offsets, leave children without adequate support in one of their homes.

- *Unfairness to Payers:* Those states that have a parenting time adjustment that does not take into account a payer parent's fixed expenses treat these parents unfairly. Housing and other fixed costs that are necessary in the children's home with the child support recipient parent are treated as a shared expense and those in the children's home with the payer parent are solely the responsibility of the payer parent.
- *Unjustified Methodology:* Those states that use a 1.5 multiplier to estimate child costs rely on an assumption that is not well justified by economic analysis. It often results in a parent who is already paying directly for fixed and duplicated child-related costs in that parent's home being required to, in effect, pay twice for the duplicated child-related costs.
- *Perverse Incentives for Conflict:* Those states that have cliff effects in their parenting time offset calculations introduce harmful incentives for parents to argue over insignificant differences in the parenting time schedule.

## **Solutions**

National Parents Organization strongly supports a parenting time offset that promotes the true sharing of parental responsibilities. In order to be equitable and beneficial to children, parenting time offsets should:

- recognize both the fixed and variable child-related expenses in both of the children's homes;
- treat any additional costs involved in a child's dual residency as an expense to be shared by both parents since this is the separated parenting arrangement that is in children's best interest; and,
- be gradual and linear to parenting time, starting with the first overnight of parenting time provided by the payer parent and continue on a linear trajectory until at 50% parenting time, where, unless there is a disparity in the parents' incomes, there would be no child support exchanged between the two households.



## **Retroactive Child Support Orders**

### **Issue**

There are tremendous differences among the states in how they apply retroactive child support. Six states do not allow retroactive child support and simply use the date that a petition for child support is filed as the commencement of the obligation. However, nine states allow child support to be made retroactive all the way back to the date that the child was born. The remainder of the states have a period of between one to six years for which they retroactively assess child support.

In 1986, Congress passed the “Bradley Amendment”, which prohibits child support orders that have been set by a state from being retroactively modified after they have been established. This was done to provide assurances to the recipient parents that the amount of the monthly order was something that they could budget for and plan around.

### **Problems**

The disparity in the handling of retroactive child support is arbitrary, unfair, and harmful to children.

- *Equal Protection Violations:* The disparity in state laws concerning retroactive child support means that the federal government is supporting programs that result in two parents, similarly situated but living in different states, being subjected to radically different legal obligations.
- *Unfairness to Payers:* The Bradley Amendment provided some assurance to child support recipients that there could not be retroactive adjustments in their child support that made it impossible for them to budget. The imposition of retroactive child support, sometimes for years or even decades and sometimes for a child the parent did not even know existed, treats child support payers very differently.

They have no opportunity to budget for and plan around such orders. This retroactive child support is often set at a time of increasing financial difficulty for the payers and many of them end up with arrearages that they are unable to pay. As the arrearages age, the state agencies implement their administrative enforcement tools resulting in further financial damage to the child support payers.

- *Perverse Incentive:* Mothers should be incentivized to identify the father of their children as early as possible. This is true for numerous reasons, including those of promoting children's well-being by ensuring adequate financial support and, even more importantly, by securing the active involvement of the father. Prohibiting retroactive child support obligations—obligations starting prior to the filing of a petition for child support—provides such an incentive. Allowing retroactive support orders removes this incentive.

### **Solution**

National Parents Organization opposes the issuing of retroactive child support orders.



## Imputing Income for Child Support Orders

### **Issue**

Courts frequently impute to child support obligors income that is not actually earned. They do this to penalize parents who they believe are voluntarily unemployed or under employed.

### **Problems**

Imputing income to determine child support is unjust, harmful, and counterproductive.

- *Equal Protection Violation:* The imputation of income for calculating a child support obligation violates equal protection requirements. Married parents are under no legal obligation to provide financial support for their children at the highest they are able to—to have their obligation to support their children based on income they *could* generate. Indeed, parents are often wise to choose less remunerative jobs if that allows them greater time to engage in the hands-on parenting tasks that are so important to a child's development. Basing a divorced or separated parent's obligation on income that doesn't exist, which often forces that parent to work excessive overtime or take on a second job, subjects married and divorced or separated parents who are otherwise similarly situated to disparate legal requirements.
- *Undermining a Child's Access to a Parent:* When parents divorce, it is vital their child's well-being that they are both kept as fully engaged as possible in the day-to-day tasks of child rearing. Many parents experience a decline in income during and after divorce for reasons that might be considered voluntary: parenting schedules might restrict options for overtime work; the need to move closer to one's children in order to facilitate shared parenting might require a change in occupation; and so forth. While this decline might be voluntary, it was the result of a conscious choice to be an involved and engaged parent.



In order to promote children's best interest, a parent's time available to co-parent their child should take precedence over any effort to increase child support.

- *Setting Up Parents for Failure:* Establishing a court ordered financial obligation on child support payers based on income that they should theoretically be making sets those parents up for failure at the outset of their case. Payment toward child support can be made only out of income that the payer parent actually receives. Courts fail to appreciate that the payer parents themselves have already suffered financially, having lost the ability to afford a lifestyle that they used to be able to enjoy. Child support can be a heavy financial burden for payers based on the *actual* income that they currently receive. The combination of a basic child support order based on actual income together with additional support for medical and child care, federal income tax, FICA tax, and state income tax can be financially devastating to payers. When imputed income is used to calculate child support obligation, payers can be left with only 50% of their gross pay (after all withholdings), down to as low as 35% under the federal Consumer Credit Protection Act (CCPA) guidelines.
- *Counterproductive Effects:* Most child support payers who have orders set based upon imputed income end up accumulating child support arrearages that will never be paid. As the arrearages continue to increase month to month, they will result in levels that will trigger child support administrative enforcement actions to be pursued against the payer parent who is in good faith trying to meet the obligation and might drive the payer into the underground economy, resulting in less support for the child.

### **Solution**

National Parents Organization believes that child support obligations should be based on the actual costs of raising a child and should not use imputed income to artificially inflate child support obligations.



## **Self-Support Reserves**

### **Issue**

Self-support reserves are intended to be used in setting child support orders so that payers have the ability to pay child support without undermining their ability to support themselves. States have begun to recognize that a payer parent needs self-sufficiency especially since many payers also have active roles in parenting their children.

New federal rules that were published on December 20, 2016 require states to consider the ability of the payer parent to meet the minimum necessary expenses of their own household. Many would argue that a living wage is \$15 an hour which is approximately \$30,000 of gross annual income. This amount represents approximately 235% of the 2020 federal poverty level (FPL).

### **Problem**

Child support orders that do not provide adequate self-support reserves create financial harm to parents which clearly is not in a child's best interest. According to a recent study published by the Orange County California Department of Child Support Services Research Team, half of noncustodial parents who were previously classified as "not impoverished" became "impoverished" when child support payments were deducted from their income. Pushing a parent into poverty is unfair and harmful to that parent. And it is harmful to the child in two ways: first, it leaves them inadequately supported in one of their homes; and, second, it deprives that parent of the ability to fully co-parent the child.

### **Solution**

National Parents Organization strongly supports a well-designed self-support reserve. A study by the Department of Urban Studies and Planning at the Massachusetts Institute of Technology (MIT), which was updated on December 30, 2018, provides a living wage calculator for each of the 50 States and the District of Columbia.

This study can be found at <https://livingwage.mit.edu/pages/about>. NPO believes this calculation should be used by the states in setting their self-support reserves.

Some states apply their self-support reserve to both the payer parent and the recipient parent. NPO supports this approach but only if an adjustment is made to account for the additional financial resources provided to the recipient parent under federal and state tax codes. This includes tax breaks for Head of Household Filing Status, the Earned Income Credit, the Child and Dependent Care Credit and Child Tax Credits (the Child Tax Credit is sometimes awarded in alternate years to the parents). Recipient parents also often benefit from various forms of public assistance to which the payer parents are typically not entitled; this should be included in a determination of a recipient parent's financial resources.



## **Child Support and Educational Support Orders beyond the Age of Majority**

### **Issue**

Multiple states require child support for a number of years after the child reaches the age of majority. For several reasons, this is unjust and, arguably, a violation of the constitutional guarantee of equal protection.

The legal definition of age of majority is: “the age when a person can exercise all normal legal rights, including contracting and voting.” It is the time at which minors cease to be considered such and assume legal control over their persons, actions, and decisions, thus terminating the control and legal responsibilities of their parents or guardians over them. The age of majority is 18 in all but three states. Alabama and Nebraska set the age of majority to 19 and Mississippi sets it at 21.

Many states require child support payers to continue to support their children after the age of majority. For example, support for postsecondary education can be ordered beyond the age of majority in numerous states: Maryland, Mississippi, Missouri, New York, Oregon, Utah, and Vermont until age 21; Connecticut, Hawaii, Iowa, and Massachusetts until age 23; New Jersey until age 24; and Illinois to age 25. In South Carolina the Court may order four years of college support under certain circumstances and in Washington State the court may, in its discretion and according to enumerated factors, award college support.

### **Problems**

- *Legal Incoherence*: Imposing a duty to support a child beyond the age of majority is inconsistent with the legal meaning of the age of majority: the age at which parents’ *legal* obligations to support their children end.

- *Equal Protection Violations*
  - *Divorced vs. Married Parents:* Parents who are together in a relationship currently have no *legal* responsibility to provide for a child after they reach the age of majority or when emancipation occurs. Because parents in intact marriages have no legal obligation to support their children beyond the age of majority it is unjust and discriminatory to impose such an obligation on child support payers.
  - *Disparities in Extent of Post-Majority Support Obligations:* There is an injustice when federal funds are used to support programs that impose such disparate postsecondary educational obligations on parents who are similarly situated based solely on the state in which their child support case resides.

### **Solution**

National Parents Organization believes that divorced parents should not be subject to obligations that married parents are not and, further, that a federally funded program should not subject similarly situated parents to disparate legal treatment. Therefore, NPO urges that ordinary child support orders be terminated at the state's age of majority.



## **The Use of Standard of Living (Lifestyle Support) to Compute Child Support Obligations**

### **Issue**

All states compute child support obligations based on the goal of maintaining the standard of living that child enjoyed before the divorce/separation or that the child *would* have enjoyed if the parents lived together. This is called the “standard of living adjustment” (SOLA) or “lifestyle support”. This goal was an invention of the states; federal statutes and regulations do not provide for lifestyle support; they speak only of “the cost of raising children” (45 CFR 302.56 (h)(1)).

### **Problems**

While maintaining the standard of living the child had *before* parental divorce/separation, or the standard of living the child *would* have had if the parents had not separated, might seem a worthy goal, it is generally impossible to maintain without treating the parents unfairly and unintentionally harming the children. If one parent abandons the family, it might seem reasonable to try to ensure that this doesn't economically harm the children. However, this is not the typical situation of divorce. For decades, researchers have known that the vast majority of divorces involving children are initiated by mothers. Most fathers do not abandon their families and very much want to continue to be parents to their children. Research also shows that children of divorce typically do best when they have homes with *both* of their parents and are in the care of each parent for substantially equal periods of time.

When separated parenting takes place in this preferred manner, the family has two households with children to maintain, with additional costs involved, and attempts to maintain the standard of living in one of those households necessarily impoverishes the other household.

Furthermore, child support payers in the middle and higher income ranges recognize that orders are often set at amounts that well exceed the cost of raising their child and is, in fact, hidden alimony. This frequently creates conflict between the parents, which clearly isn't in a child's best interest.

### **Solution**

National Parents Organization believes that child support should be set at a level that meets the basic financial needs of the child, and based on the parents' financial capacity. Child support obligations should not be calculated to provide lifestyle support or a standard of living adjustment.



## The Effects of Federal and State Income Tax

### **Issue**

There are several important items contained in the federal and state income tax codes that are related to child custody arrangements between divorced or separated parents. Custodial parents, but not noncustodial parents, are entitled the following benefits:

- *Head of Household Filing Status*: This provides them a higher standard deduction and saves them up to \$625 in federal taxes annually. There are additional federal tax savings through application of the tax rate schedules which are skewed in favor of custodial parents when filing as Head of Household.
- *Earned Income Credit*: Custodial parents, depending upon their income, can qualify for as much as \$3,584 in federal tax savings annually if they are claiming one child and significantly more if claiming up to three children. Non-custodial parents are never allowed to claim the child for the Earned Income Credit and therefore can only qualify for \$538 in federal tax savings annually, a difference of \$3,046.
- *Child and Dependent Care Tax Credit*: This is available only to custodial parents depending on their income and can be worth 20% to 35% of up to \$3,000 of child care and similar costs for a child under 13 if claiming one child, and 20% to 35% of up to \$6,000 of child care and similar costs for a child under 13 if claiming two or more children.
- *Child Tax Credit and the refundable Additional Child Tax Credit*: This is a very significant item in many parents' federal income taxes. Either the custodial parent or the non-custodial parent, but not both, can claim this credit if they have a qualifying child under the age of 17 and meet other qualifications. While this benefit is available to the noncustodial parent, that parent must have a signed release from the custodial parent in order to claim the credit. The maximum amount per qualifying child is \$2,000. Up to \$1,400 of the credit can be refundable for each qualifying child as the Additional Child Tax Credit.



## **Problems**

The asymmetry in how federal and state tax codes treat custodial and noncustodial parents is unfair and harmful. It is unfair to parents because even in a sole custody situation, the noncustodial parent typically has significant direct expenses on the children but is nevertheless not entitled to any of the tax benefits that are based on the recognition of such costs. Many noncustodial parents have their children in their care 35% of the time, or more, but typically have none of the tax benefits available to custodial parents. Federal and state tax codes are harmful to children because they further impoverish one of the children's parents which deprives the children of financial resources in that household.

The fact that these benefits are typically not considered in evaluating the parents' household incomes in setting child support obligations compounds these problems.

## **Solutions**

National Parents Organization believes that, because it is now clearly established that shared parenting is in children's best interest, federal and state tax codes should be revised to recognize the status of divorced parents as co-custodians of their children, each with direct expenses on the children. The tax benefits should be available to both parents in proportion to their direct support of the children.

Moreover, in evaluating the economic impact of child support transfer payments (funds transferred from one parent's household to the other through the child support system), the economic impact of the federal and state taxes on each of the parents must be factored in.



## **Enforcement Measures**

### **Issue**

To address the problem of willful noncompliance with child support orders, state legislatures have implemented significant enforcement measures provided for in the federal Social Security Act (SSA), Title IV-D (Child Support) Program. These measures include:

- Driver's license suspension/revocation
- Suspension/revocation of professional licenses and hunting/fishing/boating licenses
- Fines and penalties
- Liens and seizures of real and personal property
- Revocation of passport
- Dismissal from military service
- Seizure of tax refunds
- Denial of certain government benefits
- Jail time

One of the most immediate enforcement measures applied as required by federal and state statute is the reporting of an arrearage balance to credit bureaus by the state child support agency. The results of this reporting can be extremely damaging to child support payers in multiple ways, including: loss of the ability to borrow funds that could be used to help pay child support; loss of access to housing; impaired ability to obtain employment; increased insurance premiums; and more.

These enforcement measures are aimed at “child support evaders”—those who willfully fail to comply with child support orders—not at “good faith child support payers” who lack the ability to pay the ordered amount (18 U.S.C. § 228). However, the criteria state legislatures have enacted to trigger the use of these enforcement measures have unintentionally swept millions of good faith child support payers into the punitive system.

### **Problem**

The imposition of these enforcement measures on good faith child support payers who are willing, but unable, to meet their child support obligations is unjust, harmful to those parents and to their children, and counterproductive. It is manifestly unjust to impose a sanction on a person who is unable to comply with a requirement. And doing so unnecessarily harms not only that parent but that parent’s children as a result of the diminished capacity of that parent to provide for the child. A child’s best interest is the centerpiece of the child support program’s mission. Creating financial harm to good faith child support payers is clearly not in the best interest of their children. Finally, the unwarranted imposition of these penalties actually diminishes a parent’s ability to comply with child support orders going forward.

### **Solution**

National Parents Organization recognizes the importance of pursuing enforcement remedies against true child support evaders. At the same time, we have heard the pleas for help and seen for ourselves the urgent need to advocate for changes in state statutes that are causing unintended financial harm to good faith child support payers. While the states are required to establish these federal statutory enforcement requirements in their state’s statutes, they are given latitude in determining thresholds to put in place on them. NPO urges states to take effective steps to ensure that these severe enforcement measures are applied only to child support evaders, not to good faith child support payers.