

## The Costs of Imprisoning Nonpaying Parents

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Tonya L. Brito, *Fathers Behind Bars: Rethinking Child Support Policy Toward Low-Income Noncustodial Fathers and Their Families*, 15 *J. of Gender, Race & Justice* 617 (2012), available at [SSRN](#).

There are well-known problems with child support, the court-ordered financial obligations that non-custodial parents—whether divorced or separated from the other parent, or never married to that parent—owe to custodial parents for the care of the children. It has been long documented that such support awards are often too low, and are far too frequently under-paid or not paid at all. Over the last few decades, a panoply of federal, state, and interstate laws and procedures have been created to try to increase the enforcement of support awards and to increase the amount of money reaching children and their caregivers. By most accounts, these efforts have been successful, at least to some degree. However, legal reforms often have unintended consequences, and, as often as not, these negative consequences often affect groups that are already disadvantaged. As [Tonya Brito](#) explains in her important article, *Fathers Behind Bars*, these negative consequences are happening with enforcement measures for child support, especially the use of incarceration for non-payment.

In some states, those in prison for non-payment of support make up a significant portion of the jail population. This is perhaps not surprising. Imprisoned parents (usually, but not always, fathers) often are ensnared in a cycle in which they are incarcerated because they cannot earn money to pay off their obligations; their incarceration record hinders their employment opportunities after incarceration, placing them in the unenviable position of risking additional imprisonment because they are *still* unable to pay off their support obligations. To illustrate this troubling cycle, Brito focuses on the story of Michael Turner, who had been in prison six times since 2005 for nonpayment of child support.

As Brito points out, more affluent non-custodial parents, who can pay off their indebtedness but have (for whatever reason) chosen not to, rarely end up in prison. Instead, these parents merely have the back-due amounts garnished from their wages or their tax refunds. Even when these parents face criminal or civil contempt actions for non-payment, they are more likely to avoid prison because they can afford to hire good lawyers.

What gets lost in the rhetoric of child support enforcement orders against “deadbeat dads” is that a significant portion of child support obligors are unlikely to ever pay their indebtedness, either because they are in prison, they are disabled, they cannot find work, they have trouble keeping their jobs, or the jobs they can get do not pay enough. As Brito reports, many of these poor parents have been given support obligations they cannot afford, either because states have mandatory minimum obligations regardless of the obligor’s ability to pay; because the courts may have imposed large retroactive support obligations; because obligors, for various reasons, have failed to participate in the process and are then subject to default judgments; or because courts have imputed income to obligors, concluding—sometimes without warrant—that those parents could be earning significantly more money than they currently do.

Brito’s appropriate concern is that the whole child support enforcement process has become too focused on reimbursing the state for its benefit payments and too little concerned with getting more resources to poor families. Where a custodial parent has received support payments from the state, child support payments by the non-custodial parent go to the state directly, as most states do not allow any “pass through” to the custodial parent. Brito would have support orders for low-income parents turn on an individualized assessment of ability to pay, greater job-related support for low-income parents, and greater public responsibility for helping the children of lower-income families.

The argument throughout the paper is consistently sensible and well-grounded in policy arguments and empirical research. What is sad is how hard it is to be optimistic that her suggested reforms, or anything like them, will be enacted widely—a pessimism that Brito seems to share. Concern for the poor is at an all-time low on the political agendas of both parties. Further, in times of great state and federal budgetary stress, it will be hard to gain momentum for proposals that would increase costs and take revenue away, especially when the immediate beneficiaries would be portrayed as noncustodial parents who are not making their support payments because of incarceration or unemployment. However, if even just one jurisdiction would take Brito's approach, we all might discover, as Brito predicts, that the costs saved from unnecessary incarceration may make up for any additional costs elsewhere, and the longer-term benefits to low-income families and their children, and eventually to society as a whole, would be substantial.

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