

University of Missouri-Kansas City School of Law

## UMKC School of Law Institutional Repository

---

Faculty Works

Faculty Scholarship

---

2018

### It Takes a Village: Empowering the Dead Broke Parent

Wendy Ross

*University of Missouri - Kansas City, School of Law*

Follow this and additional works at: [https://irlaw.umkc.edu/faculty\\_works](https://irlaw.umkc.edu/faculty_works)



Part of the [Disability Law Commons](#), [Education Law Commons](#), [Family Law Commons](#), and the [Taxation-Federal Commons](#)

---

#### Recommended Citation

Wendy Ross, *It Takes a Village: Empowering the Dead Broke Parent*, 17 Whittier Journal of Child and Family Advocacy 42 (2018).

Available at: [https://irlaw.umkc.edu/faculty\\_works/985](https://irlaw.umkc.edu/faculty_works/985)

This Article is brought to you for free and open access by the Faculty Scholarship at UMKC School of Law Institutional Repository. It has been accepted for inclusion in Faculty Works by an authorized administrator of UMKC School of Law Institutional Repository.

**IT TAKES A VILLAGE:  
EMPOWERING THE DEAD BROKE PARENT**

*by Wendy Tolson Ross\**

TABLE OF CONTENTS

**INTRODUCTION..... 43**

**I.HISTORY OF CHILD SUPPORT ENFORCEMENT..... 49**

**II.ES TABLISHMENT OF CHILD SUPPORT LAWS & PROGRAMS..... 52**

    A. Federal laws..... 52

    B. Federal Programs ..... 55

    C. State Programs ..... 57

    D. Child Support Formula ..... 59

**III.TURNER V. ROGERS ..... 63**

**IV.FIGHTING CHILD POVERTY THROUGH CONSISTENT CHILD  
SUPPORT COLLECTION PRACTICES ..... 66**

    A. The Earned Income Tax Credit..... 67

        1. A Matter of Equal Rights: Equal Parents Equal  
           Credits..... 69

        2. Expansion of Tax Credits..... 71

    B. Debt Forgiveness..... 76

    C. Local Community Programs..... 77

**CONCLUSION..... 81**

---

\*Wendy Tolson Ross is a Professor of Law at Texas Tech University School of Law. The author wishes to thank her husband, Donald, for his support, encouragement, and patience. She also wishes to thank the following people for their assistance and support of this paper: Professor Vaughn James, Professor Jamie Baker, and M. Natalie Tarenko.

## INTRODUCTION

Although April and John could not make their relationship work and are no longer together, John still loves their little girl, Julie, very much, and little Julie loves him. Since his separation from April, John has had a difficult time making ends meet. He lacks a strong skillset and has very little education. Currently, John works as a dishwasher at a local restaurant. He barely makes enough to pay his monthly rent, utilities, and food, let alone his court-ordered child support payments. He falls short at times because the restaurant cuts his hours. When he misses child support payments, John does not get the opportunity to see his little Julie as much as he would like to. On those occasions, when he shows up to see his “sweet little girl,” April demands that he must pay the child support first.

April does not request the child support payments because she is trying to be mean and punish John. She simply depends on the child support payments to care for Julie—to buy her food, to pay rent, to buy clothes, to pay for daycare, and to cover medical expenses. So, whenever she does not receive the funds from John, she then seeks out the local Child Support Enforcement Agency to enforce her child support order against John. The Child Support Office then issues a citation for John: he must show up for a court appearance at which he must pay the child support arrearage, or go to jail for a period of up to six months.<sup>1</sup>

Many low-income noncustodial parents (“NCPs”), especially fathers, are just like John; they love their children and want to be involved, but they cannot afford to contribute financially to their children’s care.<sup>2</sup> A study by two social scientists, Kathryn Edin and Timothy Nelson, followed the lives of 110 low-income non-custodial fathers living in a poor, inner-city community.<sup>3</sup> The study uncovered “strong evidence that most NCPs care about the well-being of their children and want to be involved in their lives.”<sup>4</sup> According to the study,

---

1. See, e.g. TEX. FAM. CODE ANN. § 157.001 (Vernon 2017); see also TEX. FAM. CODE ANN. §157.166 (b) and (c) (Vernon 2017); *In re Green*, 221 S.W.3d 645, 649 (which held that nonpayment of child support “is punishable by contempt.”).

2. Harold Pollack, *Doing the Best I Can: Fatherhood in the Inner City*, WASH. POST (July 1, 2013), <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/07/01/doing-the-best-i-can-fatherhood-in-the-inner-city/> (Kathryn Edin & Timothy Nelson, *Doing the Best I Can: Fatherhood in the Inner City* (U. of Cal. Press, 2015)).

3. Kathryn Edin & Timothy Nelson, *Doing the Best I Can: Fatherhood in the Inner City* 14 (U. of Cal. Press, 2015).

4. Daniel Schroeder & Stephanie Chiarello, *Texas Non-Custodial Parent Choices:*

the parents' true reasons for noncompliance are far more complex than their unwillingness to satisfy their child support obligations.<sup>5</sup> For example, Edin and Nelson state that male NCPs, in particular, face many challenges such as "[l]acking the resources to contribute financially, not physically [being] present to assume practical child-rearing tasks, [and] hav[ing] no idea what they can really do"<sup>6</sup> to help raise their children. Moreover, some of these NCPs feel cheated by the "system," and see themselves as nothing more than a paycheck, when in reality, they want to be fathers.<sup>7</sup> In fact, Edin and Nelson report that they interviewed one father who told them: "I'm not just a paycheck! I'm a father!" Another man interviewed by Edin and Nelson stated, that "at every turn, an unmarried man who seeks to be a father, not just a daddy, is rebuffed by a system that pushes him aside with one hand while reaching into his pocket with the other."<sup>8</sup> This state of affairs led the researchers to conclude that:

The traditional nature of the legal system, our child support bureaucracies, and policy makers at both the state and federal level have created the 'deadbeat dad' laws with requirements that the courts have no choice but to enforce and this might be stroking this battle. Virtually every legal and institutional arrangement governing these father's lives tells them that they are a paycheck and nothing more.<sup>9</sup>

Historically, without a wife, partner, or child to support, these men ended up with more money.<sup>10</sup> Meanwhile, the women from these relationships

---

*Program Impact Analysis, Lyndon B Johnson School of Public Affairs* 8 (Ray Marshall Center, 2008) (citing Kathleen Sylvester & Jonathan O'Connell, *What About Fathers?*, WASH. TIMES, July 27, 2003, at B04).

5. *Id.* (stating that reasons "include general mistrust and suspicion of child support enforcement, use of informal supports, disputes with the custodial parent, and perhaps most importantly of all, lack of financial resources.").

6. Pollack, *supra* note 2.

Daniel Schroeder & Stephanie Chiarello, *Texas Non-Custodial Parent Choices: Program Impact Analysis, Lyndon B Johnson School of Public Affairs*

7. Edin & Nelson, *supra* note 3, at 216.

8. *Id.*

9. *Id.*

10. *History of Child Support, CHILD SUPPORT LAWS STATE BY STATE*, <http://www.child-support-laws-state-by-state.com/child-support.html> (last visited Mar. 4, 2018) (stating that, "even families that were well off financially before the divorce found that after the divorce, the father almost always profited and the mother almost

were left behind with the children—often in destitution and at the mercy of the community.<sup>11</sup> As time progressed, more women joined the ranks of the single parents in the community.<sup>12</sup> Increasingly, these women could not adequately provide for themselves or their children and ended up relying on their communities or public benefits to provide food, shelter, and basic care for their children.<sup>13</sup> “In response to the increase of single-mother families and their general financial disadvantage, both the federal and state governments have devoted considerable resources to child support enforcement in the past three decades.”<sup>14</sup> For years, the child support system has focused on the tools of punishment, such as garnishing wages, incarceration, and driver’s license suspension to force these men to satisfy their obligations.<sup>15</sup> The system has been determined to punish them for deserting their families, failing to support their dependents, and in return, has forced the mothers onto the public doles.<sup>16</sup>

Alas, society has believed that because these men are not contributing toward the support of their children, they have more disposable income.<sup>17</sup> Yet, the cold, hard facts indicate otherwise. Elaine Sorensen observed in her review of New York’s NCPs and their earned income tax credit, low-income non-custodial fathers “can be just as vulnerable to economic hardship as single mothers, yet they do not have access to the same government supports.”<sup>18</sup>

Although recent trends indicate that the child support system is showing some signs of progress towards family maintenance and preservation,

---

always became impoverished. This occurred because men were suddenly free from expenses of the family.”).

11. *Id.*

12. *Id.*

13. *Id.*

14. Chien-Chung Huang, *Trends in Child Support from 1994 to 2004: Does Child Support Enforcement Work?*, 9 J. OF POL’Y PRACTICE 36, 36 (2009).

15. Carmen Solomon-Fears, Alison M. Smith & Carla Berry, *Child Support Enforcement: Incarceration as the Last Resort Penalty for Nonpayment of Support*, CONG. RES. SERV., (Mar. 6, 2012), <http://www.ncsea.org/documents/CRS-Report-on-CSE-and-Incarceration-for-Non-Payment-March-6-2012.pdf>.

16. Edin & Nelson, *supra* note 3, at 1–5.

17. *History of Child Support*, *supra* note 10.

18. Elaine Sorensen, *Initial Results from the New York Noncustodial Parent EITC*, THE URBAN INSTITUTE (Aug. 2010), <https://www.urban.org/sites/default/files/publication/32936/412222-Initial-Results-from-the-New-York-Noncustodial-Parent-EITC.PDF>. (stating, “Despite the role that fathers could play, the fight against child poverty has centered on single mothers.”). *Id.*

the system needs work.<sup>19</sup> To ensure that children receive the support they so desperately need, the community needs to be more involved. For many years, low-income custodial mothers have been the focus of financial assistance,<sup>20</sup> and society—through various public programs and tax benefits—has directly provided assistance to custodial mothers with children.<sup>21</sup> Society needs to give this same type of help to noncustodial fathers. As Professor Brustin states in *Child Support: Shifting the Financial Burden in Low-Income Families*,<sup>22</sup> NCPs have few resources and more must be done to increase those resources.<sup>23</sup> This article agrees with Professor Brustin on that point.<sup>24</sup> However, this article disagrees with Professor Brustin as to when she argues that NCPs should not receive an allowance for living expenses when the court sets the amount for child support.<sup>25</sup> Child support in the United States should be reasonable and should be in line with the models adopted by the other industrialized countries, which calculate a small living allowance for the NCP before determining the child support amount.<sup>26</sup>

In their landmark study, *Fathers Under Fire: The Revolution in Child Support Enforcement*, Irwin Garfinkel, Sara S. McLanahan, Daniel R. Meyer, and Judith A. Seltzer maintain that “strong but reasonable enforcement plus incentives” help noncustodial fathers pay their child support orders.<sup>27</sup> Following this trend of thought, the Supreme Court suggested, in dicta, in *Turner v. Rogers*, that state courts should employ alternate techniques for noncustodial parents who do not have the ability to satisfy their child support obligations instead of subjecting them to incarceration.<sup>28</sup> This represents an

---

19. *Id.*

20. *Id.*

21. Chye-Ching Huang, *Working Family Tax Credits Lifts Millions Out of Poverty*, CTR. ON BUDGET & POL’Y PRIORITIES (Sept. 16, 2015, 1:30 PM), <https://www.cbpp.org/blog/working-family-tax-credits-lift-millions-out-of-poverty>.

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

23. Irwin Garfinkel et. al., *Fathers Under Fire: The Revolution in Child Support Enforcement in the USA* 11 (1998) [hereinafter *FATHERS UNDER FIRE*].

24. See Brustin, *supra* note 22, at 39.

25. *Id.* at 30.

26. Christine Skinner, et. al., *Child Support Policy: An International Perspective* 50–51 (Dep’t for Work and Pensions, 2007) (U.K.) (analyzing the Luxembourg Income Study).

27. *Id.*

28. *Turner v. Rogers*, 131 S. Ct., 2507, 2520–21 (2011).

excellent suggestion by the Court because the harsh reality is that many low-income NCPs live in some sort of level of poverty and are then not able to make ends meet at the end of the month.<sup>29</sup> Contrary to popular belief, many of these parents would like to provide for their children; they are “doing the best they can,” but simply lack the ability to provide.<sup>30</sup>

In light of these facts, this article argues that low-income NCPs (who are primarily low-income fathers) cannot support their children on their own. They need help from their communities and beyond. Indeed, these communities should help these NCPs regain their integrity by empowering them to make payments that children can rely on and to help fight against child poverty. The Office of Child Support Enforcement (“OCSE”) touts that its official policy is centered on family preservation, when in actuality, it spends a lot of money on traditional notions of child support enforcement.<sup>31</sup> Instead of following these failed methods and continuing to incarcerate fathers who cannot afford to satisfy their child support obligations, society should show that fathers are more than just paychecks and take active steps to help fathers be responsible. For far too long the government—at the federal, state, and local levels—has declared that the public policy is to ensure that every parent participates in the children’s lives and that fathers must be responsible.<sup>32</sup> Yet, these various policies do nothing to encourage male NCPs to play their part. Rather than using the public dole in this way, the government needs to recognize this new family dynamic and must invest more in fathers and their children. A means to do this would be to remove the barriers that currently prevent low-income male NCPs from satisfying their child support obligations. Society should help these NCPs, if not for the parent’s sake, then for the sake of the children.

In the final analysis, society should empower low-income NCPs by providing them a hand-up—not a handout—that will enable them to satisfy their child support obligations. These “hand-up” programs will ensure that the NCPs, poor as they may be, will religiously satisfy their child support obligations. As a result, throughout this land, “improvements in state child

---

29. *Id.* at 2512–13.

30. Edin & Nelson, *supra* note 3, at 222–23. See also Carmen Solomon-Fears & Jessica Tollestrup, *Fatherhood Initiatives: Connecting Fathers to their Children*, 9 (Dec. 28, 2016), <https://fas.org/sgp/crs/misc/RL31025.pdf>. Congressional research indicates that in 2007, 16% of NCPs are still married to the mothers, 40% NCP fathers were still involved with mothers and the children up to 5 years of child’s life; in cases where NCP father not involved, 43% had seen their children within last month.

31. Solomon-Fears, et al., *supra* note 15, at 3. The CSE’s mission had been changed from “welfare recovery” to “family first delivery program.” *Id.* at 1.

32. *Id.*

support enforcement would lead to advances in child support outcomes.”<sup>33</sup> But to achieve this goal, each player—the federal government, state government, and local communities—has to do more to fulfill its role. One may well query: how may this be done? This article answers through a three-pronged approach:

1. Increasing existing tax credits and/or expanding tax credits to NCPs;
2. State child support agencies providing debt forgiveness benefits or incentives for debt owed to the state by NCPs; and
3. Increasing job opportunities for unemployed NCPs and removing barriers to their obtaining jobs through partnerships at the local level using comprehensive models similar to the Virginia Intensive Case Monitoring System.

Part II of this article will outline the history of child support enforcement and will discuss how child support payments originated. Part III will discuss the establishment of child support laws and programs in the United States. Part IV will discuss the landmark Supreme Court case, *Turner v. Rogers*, which suggests in dicta that as a nation we need to look for an effective alternative to incarceration as a means to collecting child support payments.<sup>34</sup> Part V will look to the Internal Revenue Code for solutions to this problem. This section will propose that the Earned Income Tax Credit (“EITC”) be used as a tool to assist low-income NCPs in satisfying their child support obligations. The section will also advocate for fair and equal treatment of low-income NCPs under the Internal Revenue Code, and for the implementation of helping programs at various levels of government. Part VI, the Conclusion, will return to the theme that all levels of society must work together to empower NCPs to satisfy their child support obligations. If society succeeds, NCPs—especially low-income, male NCPs—will be able to make consistent child support payments that their children’s mothers can rely upon and then in return, the mothers, children, society, and the fathers, themselves, will be happier and more productive thereby.

---

33. Huang, *supra* note 14, at 43.

34. *Turner v. Rogers*, 131 S. Ct., 2507, 2520–21 (2011).



## I. HISTORY OF CHILD SUPPORT ENFORCEMENT

Historically, at common law, children had no legal right to child support payments, as we know them today.<sup>35</sup> Any such support paid by a noncustodial parent was merely a moral obligation.<sup>36</sup> Financially, children were totally subject to the grace of the parent.<sup>37</sup> William Blackstone reports that courts saw no need to enforce child support payments because of the “insuperable degree of affection” between parents and children.<sup>38</sup> Additionally, courts were reluctant to disturb the family unity by mandating child support payments.<sup>39</sup>

However, the onset of the Elizabethan Poor Laws brought with it notions of obligations of the parent to support his or her children monetarily.<sup>40</sup> Indeed, the rise in working class families who did not own land changed what was once a moral duty to support one’s children into a legal one.<sup>41</sup> One of the earliest cases on child support enforcement, *Stanton v. Wilson*,<sup>42</sup> dealt with whether a mother could seek compensation for child support payments from her first husband on behalf of her deceased second husband.<sup>43</sup> In allowing Mrs. Stanton’s right to recovery, the court found that the father was financially responsible for his children.<sup>44</sup> Further, once child support was established, third parties who had provided board, clothing, or food for the child could seek reimbursement in court for these necessities.<sup>45</sup> Thus, a child support

---

35. *History of Child Support*, *supra* note 10.

36. ROBERT E. OLIPHANT & NANCY VER STEEGH, *WORK OF THE FAMILY LAWYER* 307 (4th. ed. 2014).

37. Maria Roumiantseva, *Because Parents Owe it to Them: Unaccompanied LGBTQ Youth Enforcing the Parental Duty of Support*, 16 CUNY L. REV. 363, 372 (2013).

38. See OLIPHANT & VER STEEGH, *supra* note 36, at 307, (citing WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 435 (1898)).

39. *Id.*

40. *Id.* at 308.

41. *Id.* See also Roumiantseva, *supra* note 37, at 372.

42. *Stanton v. Wilson*, 3 Day 37, 37 (Conn. 1808) (one of the first cases to discuss child support and the legal obligation of the father).

43. *Id.* at 37, 45. *History of Child support*, *supra* note 10 (at this time, women could not sue for child support on their own behalf).

44. *Id.* at 20–21

45. *History of Child Support*, *supra* note 10.

order also allowed local communities to recover its costs for keeping people—the child and the mother—out of destitution.<sup>46</sup>

Later, this need for recouping community costs evolved into the need for public welfare programs for those who could not support themselves. Children would serve as apprentices to pay off the cost of their support.<sup>47</sup> It was not until the Industrial Age that courts began to shift the obligation of child support from society to the parent.<sup>48</sup> In fact, courts imposed this legal duty on parents to support their children without requiring that the children demonstrating a “need” for this support.<sup>49</sup> Initial proceedings for recovery of support involved a two-part test: the support must be for necessities, and the father must have been negligent in failing to provide support.<sup>50</sup> It is in this way that this obligation progressed over time from a parent’s moral obligation to a child’s legal right.<sup>51</sup> Additionally, these proceedings were limited to being civil in nature.<sup>52</sup>

It was “[o]nly in the latter part of the twentieth century, [did] all states recognize that both parents have a legal as well as moral obligation to support their children.”<sup>53</sup> Recently, child support enforcement has undergone significant and major changes from its earlier roots—one from public responsibility to private responsibility.<sup>54</sup> Fifty years ago, child support was premised on the fact that each child had the right to be supported by his or her parents.<sup>55</sup> Child support orders, however, “were based on the amorphous twin precepts of an obligor’s ability to pay as weighed against the needs of the child . . . [f]rom each according to his abilities, to each according to his need.”<sup>56</sup>

---

46. *Id.*

47. See OLIPHANT & VAN STEEGH, *supra* note 36, at 308.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* at 308-309

53. Linda Henry Elrod, *The Federalization of Child Support Guidelines*, 6 J. AM. ACAD. MATRIMONIAL LAW. 103, 105 (1990).

54. See Laura Morgan, *Child Support Fifty Years Later*, 42 FAM. L.Q. 365-66 (2008).

55. *Id.* at 365.

56. *Id.* at 365-66 (citing *Meek v. Meek*, 318 S.W.2d 851 (1958) stating that the reasonableness of amount that a father should pay for support of his children depends not only on children’s needs or requirements but also upon his earning capacity and

Originally, child support laws flowed out of Title IV-A of the Social Security Act of 1935—Aid to Families with Dependent Children ("AFDC").<sup>57</sup> This federally-funded program, working in conjunction with the states, provided monthly payments to qualifying households with dependent children.<sup>58</sup> The vast majority of these households were headed by single mothers.<sup>59</sup> These payments filled the gaps left by unpaid child support obligations of NCPs.<sup>60</sup> In essence, then, states were responsible for providing support to children.

This program lasted for almost forty years.<sup>61</sup> But "[i]n 1974, a subtle but definite change in public policy [came into being], whereby the cost of child support . . . shifted from the public to the private, that is, from the taxpayer to the parent."<sup>62</sup> The new policy expected states to "diligently" seek "to recover [child support] money from 'deserting parents.'"<sup>63</sup> Consequently, Congress passed the Family Support Act ("FSA") to require states to establish and enforce child support payments.<sup>64</sup> "The primary goal of the FSA was to reduce the federal cost of the AFDC program by sharpening enforcement of support obligations: the more child support collected, the less cost of AFDC to the federal government."<sup>65</sup> Congress began to shift the blame and the burden of supporting children from the government to the absent parent.<sup>66</sup> The government began to act as an "active stimulator, overseer and financier of state collection systems."<sup>67</sup> Thus, the government changed its focus from a model of preservation and maintenance of the family through "safety-net

---

financial ability).

57. *Id.* at 367 (explaining that these laws are now under Title IV-D of the Social Security Act. Social Security Amendments of 1974, Pub. L. No. 93-647, 88 STAT. 2337 (codified as amended at 42 U.S.C. §§ 651-65 (1974))).

58. *Morgan, supra* note 54, at 366.

59. *Id.* at 368.

60. *Id.* at 366.

61. *See supra* note 54.

62. *Morgan, supra* note 54, at 367.

63. *See generally*, *Taylor v. Martin*, 330 F. Supp. 85, 88 (N.D. Cal. 1971) (in this case, the Court discussed how caring for the children is the most important goal not forcing the custodial parent to sign a criminal complaint to ensure payment of child support).

64. *See Morgan, supra* note 54, at 366.

65. *Id.*

66. *Id.* at 367.

67. *Id.*

programs” to that of debt collection and reimbursement of the federal and state coffers. This shift to “‘parental responsibility’ masks governmental unwillingness to care for children by focusing on the private failures of individual fathers. Focusing on the private failures of individuals may lead to parents who have children with multiple partners being further demonized for failing to ‘take responsibility,’”<sup>68</sup> This inability to take care of their children causes those parents who have children by more than one parent to be “demonized” as “deadbeat dads.”<sup>69</sup> The real problem is that this characterization does not deal with the complex problem of “dependency.”<sup>70</sup> Part III discusses this subtle change of focus by the federal government as the years went by, a change from being one of overseers of the family maintenance program to being one of debt collectors of the child support payments to be collected as debt.<sup>71</sup>

## II. ESTABLISHMENT OF CHILD SUPPORT LAWS & PROGRAMS

In Part II, this article acknowledged that the United States’ early child support laws were based on the Old English common law and the Elizabethan Poor Laws enacted thereafter.<sup>72</sup> After 1776, these laws gave way to various state laws developed by the judiciary.<sup>73</sup> In time, these laws, too, gave way to federal law.

### A. Federal laws

In 1910, the Commissioners on Uniform State Laws (“the Commission”) proposed The Uniform Desertion and Nonsupport Act, which called for criminal sanctions for those fathers who “deserted or willfully

---

68. Adrienne Jennings Lockie, *Multiple Families, Multiple Goals, Multiple Failures: The Need for “Limited Equalization” as a Theory of Child Support*, 136 HARV. J. L. & GENDER 109, 136 (2008).

69. *Id.*

70. *Id.* at 137 (stating that both parents suffer from lack of resources and rely on government resources to meet their needs, and that these parents have the “universal problem of dependency” ((quoting Martha Albertson Fineman, *Child Support is Not the Answer: The Nature of Dependencies and Welfare Reform* 209, 219)).

71. Morgan, *supra* note 54, at 366–67.

72. *History of Child Support*, *supra* note 10 at 1.

73. See, e.g., *Stanton v. Wilson*, 3 Day 37, 49-52 (Conn. 1808); *Van Valkinburgh v. Watson*, 13 Johns 480, 480 (N.Y. Sup. Ct. 1816); *Tompkins v. Tompkins*, 11 N.J. Eq. 512, 517 (N.J. Ch.1858).

refused to support their children under sixteen.”<sup>74</sup> However, this Act failed to effectively enforce child support payments.

Accordingly, in 1950, the Commission passed the Uniform Reciprocal Enforcement of Support Act (“URES A”), to ensure that children who live in a different state from their obligor parent are supported.<sup>75</sup> The Act provided civil judgments for nonpayment of child support that could be enforced across state lines and provided a vehicle for extradition of NCPs from one state to another.<sup>76</sup> The Act provided an opportunity for the custodial parent to enforce a child support order by filing a suit against the NCP in the state where the NCP lived.<sup>77</sup>

In 1970, the Commissioners enacted the Uniform Marriage and Divorce Act (“UMDA”).<sup>78</sup> Under the UMDA, “both parents may be ordered to pay a reasonable amount of child support based on the financial resources of each parent and the child.”<sup>79</sup> This Act provides guidance to the court regarding the factors it should consider in determining child support awards,<sup>80</sup> provides consistent standards for judges to use in setting these awards where none existed before, and allows for factoring in parental resources and the needs of the children.<sup>81</sup>

In 1973, the Commission promulgated the Uniform Parentage Act [“UPA”] to establish uniformity for establishing paternity across the nation.<sup>82</sup> The UPA specifically lists nine factors the court should consider in establishing paternity.<sup>83</sup> Nevertheless, while the UPA added more factors to

---

74. Elrod, *supra* note 53, at 106.

75. *Id.* at 106 (explaining that URESA was later amended in 1952).

76. *Id.* at 105.

77. *Id.* See also Solomon-Fears et al., *supra* note 15, at 4 (“URES A sought to enforce the provisions in two ways: criminal enforcement and civil enforcement.”).

78. Elrod, *supra* note 53, at 106-107.

79. See generally, OLIPHANT & VAN STEEGH, *supra* note 36, at 308.

80. Elrod, *supra* note 53, at 106-07.

81. *Id.*

82. *Id.* at 108-09. See also, Uniform Parentage Act, 9B U.L.A. 295 (1988).

83. *Id.* at 109 (citing 9B U.L.A. 295, 324-325 (1988)) (Section 15(e) provides that these factors included: “1) the needs of the child; 2) the standard of living and circumstances of the parents; 3) the relative financial means of the parents; 4) the earning ability of the parents; 5) the need and capacity of the child for education, including higher education; 6) the age of the child; 7) the financial resources and the earning ability of the child; 8) the responsibility of the parents for the support of others; and 9) the value of services contributed by the custodial parent.”).

consider in setting child support awards, "it contains no normative standards for judges to follow based on parental income."<sup>84</sup> This defect in the standards continues to plague the efficacy of the enforcement system. Section D below will explore this issue further.

In 1988, Congress enacted the Family Support Act ("FSA").<sup>85</sup> This statute: (1) requires states to use guidelines for establishing child support; and, (2) makes it a federal crime for one parent to willfully fail to pay past due child support to a parent in another state.<sup>86</sup> In 1996, the Personal Responsibility and Work Opportunity Reform Act ("PRWORA"), instituted Temporary Assistance for Need Family ("TANF") (which became effective July 1, 1997), ended the AFDC program, and mandated that each state establish a child support enforcement office.<sup>87</sup> The PRWORA, better known as the "Welfare Reform Act," was enacted to help end reliance on public welfare and shift the burden on private individuals.<sup>88</sup> Under PRWORA, each state receiving block grant funds was required to establish a child support office to enforce and establish child support for its children.<sup>89</sup> In 1998, "about half of all child support eligible families were actually receiving government funded child support services."<sup>90</sup> By ending AFDC, the federal government provided money through block grants to the states.<sup>91</sup> Under this Act, states could get grants up to \$50,000 for mediation and counseling services,<sup>92</sup> and the Act established the new hires database for employers to report their newly hired employees for tracking NCPs' employment.<sup>93</sup> Section B presents a discussion of federal and state government programs and their role within the system to obtain support for poor children.

84. *Id.* at 109.

85. Family Support Act of 1988, Pub. L. No. 100-485, 102 STAT. 2346 (1988).

86. Morgan, *supra* note 54, at 368.

87. *Child Support Enforcement Program*, ALMANAC OF POL'Y ISSUES, [http://www.policyalmanac.org/social\\_welfare/archive/child\\_support\\_01.shtml](http://www.policyalmanac.org/social_welfare/archive/child_support_01.shtml) (last visited Feb. 19, 2018).

88. Morgan, *supra* note 54, at 368.

89. *Id.* at 367-368.

90. *See Child Support Enforcement Program*, *supra* note 87.

91. *Id.*

92. *See History of Child Support*, *supra* note 10.

93. *Id.*

### B. Federal Programs

Pursuant to PRWORA, several federal programs came into being to care for poor families with children.<sup>94</sup> In Part II, this article noted that the forerunner to these programs, the AFDC, was created by the Social Security Act of 1935 as one of the “New Deal” safety net programs.<sup>95</sup> Administered by the United States Department of Health and Human Services, the PRWORA program provided financial support for “dependent” children who were not being properly supported by their parents.<sup>96</sup>

The Child Support Enforcement (“CSE”) program, a federal program, was established in 1975 under Title IV-D of the Social Security Act to assist states in monitoring and administering child support payments.<sup>97</sup> The program was set up “to enhance the well-being of families by making child support a reliable source of income.”<sup>98</sup> The program’s original focus was only on those individuals who were receiving welfare.<sup>99</sup> Ten years later, the Child Support Enforcement Amendment of 1984 provided for an influx of federal funds by way of block grants to the Child Support Enforcement Program.<sup>100</sup> These Amendments provided \$15 million each year to test special projects to improve child support enforcement.<sup>101</sup> In 1996, PRWORA abolished AFDC, replacing it with TANF.<sup>102</sup> This change to the child support program was intended to improve and revise child support enforcement by increasing the number of paternity orders, establishing a network linking states together to

---

94. Morgan, *supra* note 54, at 369.

95. *Historical Background and Development of Social Security*, SOC. SEC. ADMIN., <http://www.ssa.gov/history/briefhistory3.html> (last visited Feb. 19, 2018).

96. *Id.*

97. Solomon-Fears et al., *supra* note 15, at 1 (stating that although the “basic responsibility” is up to the States, the CSE “has a major role in dictating the major design features of state programs; funding, monitoring, and evaluating state programs; providing technical assistance; and giving states help in locating noncustodial parents and obtaining child support payments.”).

98. *Id.*

99. Elrod, *supra* note 53, at 110 (explaining that states receive an incentive payment of 12% for collecting AFDC cases. Additionally, if a State fails to collect child support for those cases involving IV-D cases, there are penalties imposed upon the State).

100. *Child Support Enforcement Program*, *supra* note 87.

101. *Id.*

102. *Id.* See also Morgan, *supra* note 54, at 368.

locate absent parents, and revising rules on past due child support—all to further the goal of getting more child support money to the children.<sup>103</sup>

The child support enforcement program requires that those receiving help from the program agree to assist the state with tracking down absent parents, establishing paternity, and securing a child support order.<sup>104</sup> In exchange for receiving assistance from the program, custodial parents are required to agree to assign all their rights of child support to the state.<sup>105</sup> The program is available to all fifty states.<sup>106</sup> Today, the CSE provides the states with seven major services on behalf of children: “(1) parent location; (2) paternity establishment (3) establishment of child support orders; (4) review and modification of child support orders; (5) collection of child support payments; (6) distribution of child support payments; and (7) establishment and enforcement of medical support.”<sup>107</sup>

The main objective of the CSE agency is to help states with a variety of collection methods to obtain child support payments.<sup>108</sup> Recent changes to the child support program make it possible for states to receive special project grants or waivers to improve child support enforcement.<sup>109</sup> These collection methods include: income withholding (also known as wage garnishment), seizing income, tax refunds and lottery winnings, unemployment compensation withholding, securing property liens, credit bureau reporting, obtaining information from insurance settlements, driver’s license/professional license suspension, taking retirement or bank account funds, and revoking passports.<sup>110</sup> Among these methods, the most effective is income withholding.<sup>111</sup> In 2010, about 67 percent of the \$32 billion collected by the various states from all collection methods came from income withholding.<sup>112</sup>

---

103. *Child Support Enforcement Program*, *supra* note 87.

104. *Id.*

105. *Id.*

106. Solomon-Fears et al., *supra* note 15, at 2.

107. *Id.*

108. *Id.*

109. *Child Support Enforcement Program*, *supra* note 87.

110. Solomon-Fears et al., *supra* note 15, at 2–3.

111. *Id.* at 3.

112. *Id.* (explaining that this includes jail time, which accounted for less than 2% of child support being paid. According to this report, incarceration means that there are slim chances that child support will be paid during incarceration. The report says that the increasing use of criminal sanctions reflects societies’ frustration with those who are just unwilling to pay, although this use of criminal sanctions may include use



In light of these methods, the system has truly changed from being a maintainer of the family to a debt collection agency. The following section, Section C, is a discussion of the state's role in this debt collection system.

### C. State Programs

As a part of the IV-D federal assistance program, each state is required to cooperate and collaborate with the federal government and its policies.<sup>113</sup> Indeed, states are required to create IV-D services that measure up to federal standards.<sup>114</sup> Failure to do so will result in the federal government assessing penalties against the offending states.<sup>115</sup> On a more positive note, states receive "incentive payments" for "effectively" collecting child support.<sup>116</sup>

States often use contempt of court as a tool for charging NCPs in non-support cases filed in a court of law.<sup>117</sup> The goal is to enforce and collect outstanding child support obligations.<sup>118</sup> "Contempt of court is a legal term that means that the individual in question is not following a court order."<sup>119</sup> The term also refers to "[c]ertain acts or omissions that embarrass the court, lessen its authority or dignity, or obstruct the administration of justice . . ."<sup>120</sup> In the child support litigation context, contempt for non-payment of child

---

against a number of people who just do not have the ability to pay).

113. *Id.* at 1.

114. Carmen Solomon-Fears, *Child Support Enforcement Program Incentive Payments: Background and Policy Issues*, (May 2, 2013), <https://fas.org/sgp/crs/misc/RL34203.pdf>

("[S]tates are required to meet data quality standards. If states do not meet specified performance measures and data quality standards, they face federal financial penalties.").

115. *Child Support Enforcement Program*, *supra* note 87. ("[S]tates must annually review and report to the DHHS Secretary information adequate to determine the State's compliance.").

116. Elrod, *supra* note 53, at 110. *See also Child Support Enforcement Program*, *supra* note 87.

117. Solomon-Fears et al., *supra* note 15, at 5 (The goal of criminal contempt is to punish the individual and prevent future actions of nonpayment—regardless of whether or not the noncustodial parent complies later by paying his child support.).

118. *Id.*

119. *Id.*

120. *Id.*

support may be enforced through either, criminal or civil, sanctions.<sup>121</sup> Criminal sanctions allow the court to penalize NCPs who fail to pay their child support obligations by sentencing them to being locked up.<sup>122</sup> Three scenarios could result in an NCP being sentenced to jail: "1) a finding of contempt of court for failure to obey a court's child support order . . . ; 2) prosecution under a state criminal nonsupport statute; or, 3) prosecution under the Child Support Recovery Act . . ."<sup>123</sup> Generally, civil contempt charges are brought against those NCPs who have a spotty child support payment history, are unemployed or self-employed, or do not have regular employment from which a withholding order can be used to automatically deduct payments.<sup>124</sup> "In a civil contempt action, the purpose is to force compliance by the noncustodial parent."<sup>125</sup> This is done by "(1) coercive/punitive fines (paid to the court), (2) compensatory/remedial fines (paid to the custodial parent), and (3) incarceration."<sup>126</sup> A person who is guilty of criminal contempt may be fined, jailed, or both.<sup>127</sup> "Criminal contempt of court charges are punitive, in that their intent is to defer future acts of contempt by punishing the offender no matter what happens in the underlying proceeding."<sup>128</sup> The Office of CSE reports that for the most part, criminal contempt is effective against those who *just will not pay*—not those who *cannot pay*.<sup>129</sup>

Yet, it is difficult to tell whether a contempt proceeding is civil or criminal.<sup>130</sup> The problem with the contempt proceeding is that the child support guidelines that underlie the child support order are based upon a faulty formula. Section D presents a brief discussion of how child support obligations are determined. A faulty determination serves as the basis for the fallacy of the "deadbeat father" myth—the myth that all noncustodial fathers who do not regularly satisfy their child support obligations are evil, unfeeling,

---

121. *Id.* at 7, 17.

122. *Id.* at 4.

123. *Id.* at 5.

124. *Id.* at 7.

125. *Id.*

126. *Id.*

127. *Id.* at 6.

128. *Id.*

129. *Id.* at 8.

130. *Id.* at 6–7.

and maybe even unloving; a myth that does not in any way consider that these fathers may simply be unable to pay.<sup>131</sup>

#### *D. Child Support Formula*

Nationally, courts use three methods to establish child support awards.<sup>132</sup> Congress established a requirement that there be guidelines “to decrease the federal costs of the welfare system by shifting more of the economic burden for children [from the government] to their parents.”<sup>133</sup> The guidelines also require that all child support orders include medical support if it is available at a “reasonable cost.”<sup>134</sup> States may also charge late fees of between 3 and 6 percent for delinquent child support payments.<sup>135</sup>

Prior to October 1989, no established guidelines existed to help state courts set child support awards.<sup>136</sup> Child support was set at the total discretion of the courts.<sup>137</sup> Prior to the guidelines being established, child support awards were inconsistent and for low amounts.<sup>138</sup> These low amounts were insufficient to care for the needs of the children.<sup>139</sup> Thus, in an effort to

131. *The Myth of the “Deadbeat Dad” Label*, HUFFINGTON POST (Feb. 7, 2014, 3:40 PM), [https://www.huffingtonpost.com/joseph-e-cordell/the-myth-of-the-deadbeat-b\\_4745118.html](https://www.huffingtonpost.com/joseph-e-cordell/the-myth-of-the-deadbeat-b_4745118.html).

132. See Laura Wheaton & Elaine Sorensen, *Noncustodial Parents, Child Support, and Earned Income Tax Credit*, THE URBAN INST. (Nov. 28, 1997), <http://webarchive.urban.org/publications/407347.html>.

133. Elrod, *supra* note 533, at 110.

134. *Child Support Enforcement Program*, *supra* note 87.

135. *The Child Support Enforcement Process*, [http://www.policyalmanac.org/social\\_welfare/archive/child\\_support\\_02.shtml](http://www.policyalmanac.org/social_welfare/archive/child_support_02.shtml) (last visited Apr. 6, 2018).

136. Elrod, *supra* note 53, at 104.

137. *Id.*

138. *Id.* at 112, 119 (addressing the difficulty in drafting guidelines as there were differences in philosophies on what the guidelines should look like. However, many states settled on the principle that “child support should be a reasonable amount suitable to the child’s circumstances and situation in life and the parents’ financial ability to pay. The problem was converting this philosophy into a workable numerical model.” However, although child support commissions wanted to base guidelines on supportive studies that were developed from research with data based on family incomes and the correlating expense spent for each child, which was difficult to determine because of overlapping living expenses shared by the parents and the children.).

139. Elrod, *supra* note 53, at 111.

establish some uniformity, Congress required that each state establish guidelines for child support awards.<sup>140</sup> Even today, the states have not yet resolved the issue of how to treat low-income NCPs who have very little money and resources.<sup>141</sup> The result has been that “[i]n scenarios involving low-income or very low-income parents, the amount of support to be ordered varies significantly across the country.”<sup>142</sup>

Currently, courts use three models to set child support award guidelines.<sup>143</sup> The first model is the Income Shares Model.<sup>144</sup> It considers both parents’ income as if they were still living together as a unit.<sup>145</sup> After the combined incomes are calculated, the state guidelines determine the support amount based on the combined incomes.<sup>146</sup> The child support is then “prorated” between the parents based on the percentage of income between them.<sup>147</sup> Next, the model deducts the custodial parent’s share because they are assumed to be providing their share directly to the child.<sup>148</sup> The NCP is ordered to pay his share to support the child through child support payments.<sup>149</sup>

The second model is the Percentage-of-Income Model.<sup>150</sup> This model does not consider the custodial parent’s income.<sup>151</sup> Instead, it bases the child support award solely on the NCP’s income.<sup>152</sup> It sets the child support award on a percentage based on the number of children to be supported.<sup>153</sup>

---

140. *Id.* at 111–12.

141. Brustin, *supra* note 22, at 18.

142. *Id.*

143. OLIPHANT & VER STEEGH, *supra* note 36, at 311. (The Income Shares Model is based on the premise that the child deserves to enjoy the standard of living the child would have received if the parents were still together.)

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.*

148. Elrod, *supra* note 53, at 119–20.

149. *Id.* at 120.

150. *Id.* See also OLIPHANT & VER STEEGH, *supra* note 36, at 311.

151. Oliphant, *supra* note 36, at 311.

152. *Id.*

153. *Id.*

Lastly, the third model is the Melson Model.<sup>154</sup> In this model—which is a child support formula that includes the “self-support reserve” for each parent.<sup>155</sup> The “self-support reserve” is the minimal amount of money it takes for the parent to take care of himself or herself.<sup>156</sup> The idea is that the child would be supported with the remaining amount.<sup>157</sup> A percentage is then applied to the remainder income and the court sets the child support award.<sup>158</sup> This approach is used by few jurisdictions but considers post-tax income and is most favorable to the low-income obligor parent.<sup>159</sup> However, as pointed out by Professor Brustin, this child support method results in decreased amounts going to the custodial parent.<sup>160</sup> Accordingly, she states, it favors NCPs at the expense of children.<sup>161</sup> Yet, the Melson Model is the most reasonable method for determining child support awards because it accounts for the reality that NCPs have to live and pay for necessities themselves—expenses that cannot be ignored—and which, when taken into account, enable the noncustodial parent to live and work. Surely, it is unrealistic for a court to order child support awards that are not realistic for the NCP to pay and to thus continue to contribute to the cycle of his or her inability to pay.

As this review of the three existing guidelines demonstrates, the current child support system is built on a faulty premise and has many problems. The guidelines require NCP's to provide child support to support his or her child's needs.<sup>162</sup> However, the system does not account for [an NCP

---

154. *Id.*

155. Wheaton & Sorensen, *supra* note 132, at 8-9 (“Low income noncustodial parents could be made better off through two strategies: changing child support guidelines to take greater account of the effect of taxes on the well-being of noncustodial and custodial families, or changing the tax law to extend some of tax relief available to families with children to noncustodial parents who pay child support.”).

156. *Id.* at 8.

157. *See also* Elrod, *supra* note 53, at 121.

158. *Id.* *See also* OLIPHANT & VER STEEGH, *supra* note 36, at 311-12 (stating “As with the income shares formula, the percent is determined by the combined income of the noncustodial and custodial parent.”).

159. Elrod, *supra* note 53 at 121.

160. Brustin, *supra* note 22, at 20.

161. *See generally, id.*

162. Elrod, *supra* note 53, at 118-19 (addressing the difficulty in drafting guidelines, as there were differences in philosophies on what the guidelines should look like. However, many states settled on the principle that “child support should be a reasonable amount suitable to the child's circumstances and situation in life and the

having] more than one child in different households.<sup>163</sup> Additionally, child support orders are required to include for medical support for the child.<sup>164</sup> States may also charge late fees of between 3 and 6 percent for late child support payment,<sup>165</sup> thereby further saddling NCPs with more debt. In light of its punitive approach, the current child support system fails to provide for the “economic well-being” of the child and the parents that it was initially charged with accomplishing.<sup>166</sup>

Moreover, the federal child support policy “fail[s] to reflect [on] family complexity and the realities of parenting” in a meaningful way.<sup>167</sup> Without substantial resources available to the NCP, children who depend on child support payments have no chance of achieving “economic well-being” through the current system of child support enforcement.<sup>168</sup> The problem is that this child support collection and enforcement system forces “poor mothers [. . .] to name absent fathers and sue them again and again to try to collect child support but the fathers are also poor and generally cannot afford to pay.”<sup>169</sup> Furthermore, “federal child support laws fail to meet their self-described goals, and fail particularly acutely for poor families. Because of this, [the system produces a] fundamental disconnect between child support laws and the realities of parenting.”<sup>170</sup> In fact, most arrears are owed by parents who owe substantial amounts of arrears for some time. This and other characteristics make it difficult to collect arrears.<sup>171</sup> One study of nine large

---

parent’s ability to pay.” However, although child support commissions wanted to base guidelines on supportive studies that were developed from research with data based on family incomes and the correlating expense spent for each child, which was difficult to determine because of overlapping living expenses shared by the parents and the children).

163. Lockie, *supra* note 68, at 16-17.

164. *Child Support Enforcement Program*, *supra* note 87.

165. *Id.* (explaining that this child support may include an award that includes an award/judgment for back child support and late fees).

166. Lockie, *supra* note 68, at 109 – 110, 134.

167. *Id.* at 109.

168. *Id.* (stating that the “[c]hild support policy simply cannot ‘raise the income of a child support obligor or recreate the economies of scale available to an intact household.’”).

169. Melanie B. Jacobs, *Intentional Parenthood’s Influence: Rethinking Procreative Autonomy and Federal Paternity Establishment Policy*, 20 AM. U.J. GENDER SOC. POL’Y & L. 489, 497 (2012).

170. Lockie, *supra* note 68, at 109.

171. *Id.* at 131, 135.

states estimates that 40 percent of the arrears in those states were likely to grow by 60 percent during the period unless those states took steps to manage arrears growth.<sup>172</sup> It is because of situations like these that the system fails to help needy families with children.

Additionally, research shows that strong child support enforcement is actually counterproductive to getting more money to low-income children.<sup>173</sup> In reality, very little financial benefit actually trickles down to the child.<sup>174</sup> These measures only result in the government holding on to the funds collected to satisfy the federal and state economic interests and the children themselves receive precious little funds.<sup>175</sup> In *Turner v. Rogers*, the Supreme Court faced the issue whether an indigent parent has the right to counsel in a civil contempt case for child support enforcement.<sup>176</sup> The case reveals the flaws of the child support enforcement system and the “ability to pay” concept for the low-income NCP.

### III. TURNER V. ROGERS

In *Turner v. Rogers*, the Supreme Court addressed issues concerning an indigent father who was incarcerated for failing to pay child support.<sup>177</sup> The South Carolina family court had previously entered an order mandating that Turner pay \$51.73 per week to support his child.<sup>178</sup> The court determined on five different occasions that Turner had not paid his child support.<sup>179</sup> For the first four occasions, the court sentenced Turner to 90 days in jail.<sup>180</sup> However, on the fifth occasion, Turner ended up completing a 6-month sentence before being released.<sup>181</sup> After the last release, Turner was again

---

172. ELAINE SORENSON, LILIANA SOUSA & SIMON SCHANER, DEP'T OF HEALTH AND HUMAN SERVS., *Assessing Child Support Arrears in Nine Large States and the Nation* 66–67 (2007), available at <http://aspe.hhs.gov/hsp/07/assessing-CS-debt/report.pdf>.

173. Lockie, *supra* note 170, at 132.

174. *Id.* at 133.

175. *Id.*

176. *Turner v. Rogers*, 564 U.S. 431 (2011).

177. *Id.*

178. *Id.* at 436.

179. *Id.*

180. *Id.*

181. *Id.*

brought before family court for a "show cause" hearing.<sup>182</sup> At this point, Turner owed \$5,728.76 in back child support.<sup>183</sup> At the hearing, the Judge found Turner in "willful contempt" and sentenced him to 12 more months in prison without first determining whether he had the ability to pay the back child support.<sup>184</sup>

The Supreme Court considered the issue of the contempt procedure itself and whether the contemnor should be entitled as a matter of right to representation at such a hearing.<sup>185</sup> In examining the procedural process, the Court opined that it must decide which safeguards are in fact necessary to make the contempt proceeding (a civil proceeding) fundamentally fair.<sup>186</sup> The Court determined that the demarcation between civil and criminal proceedings is determined by the "ability to pay,"<sup>187</sup> and that questions about "ability to pay" are likely to arise frequently in child custody cases.<sup>188</sup> In this case, the Court noted that "there is a more than 'reasonable' likelihood that Turner will again be 'subjected to the same action again.'"<sup>189</sup> The Court came to this conclusion because he had frequently failed to make his child support payments, had been the subject of several civil contempt proceedings, had been imprisoned several times, and had, once again, been the subject of civil contempt proceedings for failure to pay.<sup>190</sup>

The Supreme Court indicated that the defendant's "ability to pay" is the first question that the Court hearing a contempt matter should address.<sup>191</sup> The Court noted that in government cases where reimbursements of state funds are involved, the authorities should adopt "alternative procedural safeguards" other than judicial proceedings.<sup>192</sup> These alternatives could include: (1) proper notice indicating that the NCP's "ability to pay" will be the

---

182. *Id.* at 435-36.

183. *Id.* at 437.

184. *Id.* See also Solomon-Fears et al., *supra* note 31, at 1.

185. *Turner*, 564 US. at 435.

186. *Id.* at 435 (citing *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976)).

187. *Id.* at 445.

188. *Id.* at 446.

189. *Id.* at 440.

190. *Id.*

191. *Id.* at 446. (This case involved a parent versus another parent. The Court noted that had this been the government versus another parent, additional safeguards would have been necessary).

192. *Id.* at 448.



central determination before the court; (2) use of a form requesting critical financial information from the NCP; (3) the NCP be given the opportunity to answer questions and make statements in court; and, (4) the court make a specific determination at the close of the hearing about the NCP's ability to pay.<sup>193</sup> This finding ultimately affects whether sanctions are mandated and what sanctions the court will levy. The Court concluded that, although the State is not required to provide counsel, if it does not provide representation, the hearing must be a fair process.<sup>194</sup> This process must "assure a fundamentally fair determination of the critical incarceration-related question, [that is] whether the supporting parent is able to comply with the support order."<sup>195</sup> The proof as to inability to pay is done by the parent showing the court "that he is not in contempt, say, by showing that he is not able to make the required payments. . . . If he fails to make the required showing, the court may hold him in civil contempt. And it may require that he be imprisoned unless and until he purges himself of contempt by making the required child support payments."<sup>196</sup> Nevertheless, the Court strongly emphasized that it "attach[es] an important caveat, namely, that the State must nonetheless have in place alternative procedures."<sup>197</sup>

Pursuant to the Court's directives in *Turner v. Rogers*, child support enforcement should entail, first, a determination of whether the NCP can pay his or her child support.<sup>198</sup> If the NCP is determined to be indigent (by present proof of financial inability), he or she should be funneled into an alternative enforcement process. Although *Turner* has changed the child support enforcement landscape in the right direction, the underlying problem of "ability to pay" is yet to be adequately addressed by the community.

In sum, the current child support system does not work, and more work must be done to get it to function properly. The small amount of court-ordered support that is successfully collected is still not enough and the "reality of child support collection and enforcement does not accord with our current system."<sup>199</sup> Additionally, the current child support guidelines in most

---

193. *Id.* at 447-48.

194. *Id.* at 435.

195. *Id.*

196. *Id.* at 436.

197. *Id.* at 435.

198. *Id.* at 445.

199. See Jacobs, *Supra* Note 169. This article also cites Daniel Hatcher's *Child Support Harming Children: Subordinating the Best Interests of Children to the Fiscal Interests of the State*, 42 WAKE FOREST L. REV. 1029, at 1030-31 (2007), (where the article discusses that the current child support collection system does not work.).

states, along with the federal tax laws, make it difficult for the low-income parent to survive after paying taxes and child support.<sup>200</sup> Surely, "improvements in state child support enforcement would lead to advances in child support outcomes."<sup>201</sup>

#### IV. FIGHTING CHILD POVERTY THROUGH CONSISTENT CHILD SUPPORT COLLECTION PRACTICES

The United States can do a better job fighting child poverty by ensuring more consistent child support payments. Other successful industrial countries have discovered that to ensure that children are adequately provided for with basic provisions, requires a joint venture between society and the children's parents.<sup>202</sup> Neither the government, nor society, nor the parents themselves, are regarded as having the sole responsibility to provide for the nation's children.<sup>203</sup>

In many Scandinavian countries, children receive guaranteed advance maintenance payments.<sup>204</sup> In fact, Sweden, (which is credited as being highly effective—greater than the United States, in collecting child support.<sup>205</sup>), guarantees a minimum level of support for every child in the form of an "advanced maintenance payment".<sup>206</sup> This is paid to the custodial parent "regardless of the absent parent's willingness or ability to pay."<sup>207</sup> This minimum amount includes cases where the NCP is unable to pay or where the private agreement between the parents are lower than the basic support

---

200. Wheaton & Sorensen, *supra* note 132.

201. Huang, *supra* note 14, at 43.

202. Garfinkel & Sorensen, *Sweden's Child Support System: Lessons for the United States* 27 SOCIAL WORK 509, 510, 513 (1982). See also Garfinkel, Harris, Waldfogel, & Wimer, *Doing More for Our Children: Modeling a Universal Child Allowance or More Generous Child Tax Credit*, THE CENTURY FOUND 2 (2016) [hereinafter *Doing More for Our Children*] (explaining that many countries subsidize the care of children by providing Universal allowances. "Most Countries...already provide universal child benefits or child allowances, often augmenting these with additional cash benefits for the neediest families.").

203. FATHERS UNDER FIRE, *supra* note 23, at 37–38.

204. Garfinkel & Sorensen, *supra* note 202, at 509–10.

205. *Id.* at 511.

206. *Id.* at 510. (This article describes Advanced Maintenance Payment as "child support payments up to a certain amount from the government, which in turn became responsible for collecting the debt from the absent parent.".) *Id.*

207. *Id.* at 513.

amount.<sup>208</sup> This basic amount takes into consideration the NCP's basic living and housing allowances.<sup>209</sup> Thus, the government, with its resources, along with private individual responsibility, ensures that children are properly cared for.

Here, in the United States, the federal and state governments have tried to improve child support collection. Yet, "[t]he child poverty rate in the United States is stubbornly high, with more than 12 million American children—16.5 percent of all children—currently living in poverty. This poverty rate is higher than [that of] other rich countries."<sup>210</sup> Societal policy "can do a great deal to reduce child poverty. The high child poverty rate in the United States is not an inevitable outcome of demographics, the labor market, or other factors, but rather reflects social policy choices."<sup>211</sup> It is about ensuring human dignity, fundamental equity, and providing hope for the low-income NCP. Keeping this in mind, "[i]mprovements in state child support enforcement would lead to advances in child support outcomes."<sup>212</sup> The following sub-section discusses some of these support outcomes including the Earned Income Tax Credit, state debt forgiveness, and partnership ventures with the local community.

#### A. *The Earned Income Tax Credit*

The Federal and State Earned Income Tax Credit ("EITC") as how it now stands, does not work. It does not provide the benefits it was intended to provide. Yet, "[c]ontemporary [supplemental poverty measure] estimates from the Census Bureau [] confirm the crucial role played by social policies such as tax credits for families with children."<sup>213</sup> With this in mind, a proper "child-based" EITC (and other tax credits) must be given to low-income NCPs.<sup>214</sup>

---

208. *Id.* at 511. (The "basic amount...[is] the amount considered the minimum income needed by an individual...It is also used to determine the absent parent's ability to pay.").

209. *Id.*

210. Garfinkel et al., *supra* note 202 (stating that statistics reveal "half of all children living with single-parent moms live below the poverty line.").

211. *Id.*

212. Huang, *supra* note 14, at 43.

213. Garfinkel et al., *supra* note 202.

214. Wheaton & Sorenson, *supra* note 132, at 2. Child-based EITC are those that receive EITC because they have a qualifying child that lived with them for over 6 months. *Id.* (explaining that most NCPs that claim the favorable taxes for personal exemptions for the children are middle class NCPs. "Fewer than 12 percent have

The current federal EITC needs to be expanded, or other tax credits provided, so that low-income NCPs receive more money to assist them.

The EITC is a refundable credit designed to offset the cost of the Social Security tax and incentivize work.<sup>215</sup> Congressional intent behind the establishment of the credit was “to partly offset the effect of increased consumption and payroll taxes on low-income workers and to provide an incentive to work.”<sup>216</sup> Because the EITC is a refundable credit, if the amount of the credit exceeds the amount of federal income taxes that the taxpayer overpaid the treasury during the year, the taxpayer receives an income tax refund.<sup>217</sup> Hence, it is possible for a taxpayer, who is not due an income tax refund, in the true sense of the word, to receive a sizeable check from the treasury, with such check coming in the form of the EITC.<sup>218</sup> According to Sorensen, the EITC is an anti-poverty program which, among other things, “is designed to encourage work and child support payments and to keep noncustodial parents from falling into poverty.”<sup>219</sup> Furthermore, she states, the program is designed to help subsidize the income of poor workers and encourage work.<sup>220</sup> For adult taxpayers in households with children, at least one child must reside with the taxpayer-parent for over 6 months or the parent must pay over fifty percent of the child’s needs.<sup>221</sup> The Federal EITC increases with income, but ultimately levels out, until it eventually phases out.<sup>222</sup>

Twenty-six states and the District of Columbia have followed the federal government in establishing EITC programs.<sup>223</sup> “All states, except Minnesota, set their credits based on the federal credit; however, the

---

adjusted gross income below \$15,000.”).

215. *Id.*

216. Wheaton & Sorensen, *supra* note 132, at 27.

217. Sorensen, *supra* note 18, at 1.

218. See 26 U.S.C. § 32 (2015).

219. Sorensen, *supra* note 19, at 1 (“The federal EITC is one of the largest antipoverty programs in the country providing \$43 billion in benefits to 8 million low-income working families with children and \$1 billion benefits to 5 million low-income workers without children in 2006.”).

220. *Id.*

221. *Id.*

222. *Id.*

223. Jessica Hathaway, *Tax Credits for Working Families: Earned Income Tax Credit (EITC)*, NAT’L CONF. OF ST. LEGISLATORS (Apr. 5, 2017), <http://www.ncsl.org/research/labor-and-employment/earned-income-tax-credits-for-working-families.aspx>.

percentages used vary greatly from state to state.”<sup>224</sup> In 22 of the states and the District of Columbia, the EITC is fully refundable if the credit amount is greater than the taxes owed.<sup>225</sup> “In Delaware, Maryland, Ohio, Oklahoma and Virginia, the EITC can only reduce a [taxpayer’s] tax liability, not provide a refund.”<sup>226</sup> “All the states that offer credits, except Wisconsin, allow workers without qualifying children to be eligible for the EITC.”<sup>227</sup> New York takes the EITC one step further: it provides the credit not only for married and single parents, but also for NCPs.<sup>228</sup>

### 1. A Matter of Equal Rights: Equal Parents Equal Credits

Social justice demands equality, and so, NCPs must be given equal rights; rights equal to those given to custodial parents. This is also true for tax rights. To achieve that goal, we, as a country, must amend the Internal Revenue Code to extend “child based” EITC benefits and other tax allowances, deductions and/or credits to include NCPs who support their children. In today’s world, it takes two—two to make a baby, and two to support a baby. Each parent must do his or her part to support the child, and each parent should be able to reap the tax and financial benefits of parenthood. Equal protection and justice under the law demands that fair treatment must be given to the NCP.

Unfortunately, the current Internal Revenue Code discriminates against NCPs, whom are predominantly men. The EITC Program was designed to help “provide tax relief and subsidize the incomes of low income working families, thus providing an incentive for work.”<sup>229</sup> Originally, tax benefits such as the EITC were implemented to help low-income single women with children.<sup>230</sup> The Internal Revenue Code provides EITC for low-

---

224. *Id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. N.Y. TAX LAW § 606(d-1)(2)(C) (McKinney 2017).

229. Laura Wheaton & Elaine Sorensen, *Extending the EITC to Noncustodial Parents: Potential Impacts and Design Consideration*, THE URBAN INST. (May 23, 2009), <https://www.urban.org/sites/default/files/publication/30411/411906-Extending-the-EITC-to-Noncustodial-Parents-Potential-Impacts-and-Design-Considerations.PDF> [hereinafter *Extending the EITC*].

230. Arloc Sherman, *Working Family Tax Credits Lift Millions of Mothers and Children Out of Poverty*, CTR. ON BUDGET AND POL’Y PRIORITIES (May 10, 2013). See also, Marr, Chye-Ching Huang, Cecile Murray & Arloc Sherman, *EITC and Child Tax*

income individuals and families with “qualifying children” who reside with them.<sup>231</sup> Meanwhile, the NCP, such as childless individuals older than 25 years of age but younger than 65, may qualify for the EITC if his or her income is less than a certain amount for the year (the amount was \$15,010 for the tax year in 2017).<sup>232</sup> This tax benefit fails to fully recognize the monetary contributions of the NCP for supporting the child.<sup>233</sup> Yet, both parents are expected to contribute equally to the support of the child. Furthermore, under the current version of the Internal Revenue Code, all monies received for child support are given to the custodial parent as a windfall, and the monies are not counted as income to him or her.<sup>234</sup> This practice is based on an antiquated notion of support and does not recognize the current family situations. Society must deal NCPs—who consists of primarily men—a more even hand. They, too, face many of the same myriad of barriers as the custodial parent—such as poverty, poor job skills and poor education.<sup>235</sup> Our current tax policy results in disparate treatment against the NCP and “impose[s] a disadvantage, a separate status” to the NCP.<sup>236</sup> Additionally, the current tax policy

---

*Credit Promote Work, Reduce Poverty, and Support Children's Development, Research Finds*, CTR. ON BUDGET & POL'Y PRIORITIES (updated October 1, 2015), <https://www.cbpp.org/sites/default/files/atoms/files/6-26-12tax.pdf>. (“One highly regard study found that EITC expansions in 1990's did more to increase employment among single mothers than the 1996 welfare law.”).

231. Marr et. al., *supra* note 230, at 3, 5.

232. 26 U.S.C. § 32(b)(2) (2015).

233. 26 U.S.C. § 152(e) (2008) (indicating that the Internal Revenue Code provides that the parent who resides with the child or provides more than 50 percent of the child's care is entitled to the child's support. Typically, the custodial parent is the parent who is entitled to claim the child on their taxes. More affluent or middle class fathers have an advantage over the low-income father in that the tax code provides a loophole for them to claim their children as a tax deduction. If they provide for over half of their support, they may claim the child as a deduction.) *See also* Wheaton & Sorensen, *supra* note 132, at 42 (“Currently, a custodial parent could receive any amount of child support and still be eligible for EITC, since child support income is not considered in calculating the EITC benefit.”).

234. IRC 71(c)(1); *see also* Wheaton & Sorensen, *supra* at 132, at 29 (“Child support payments are taxed as income for the noncustodial parent but not for the custodial parent.”).

235. *See* Sorenson, *supra* note 18. *See also*, Loraine Sorensen, *New York Initiative Helps Fathers Increase their Earnings and Child Support Payments*, URBAN INST. (Nov. 2011), <https://www.urban.org/research/publication/new-york-initiative-helps-fathers-increase-their-earnings-and-child-support>.

236. *United States v. Windsor*, 133 S. Ct. 2675, 2681 (2013). This case dealt with the fact that DOMA imposed on their liberty of marriage and affected their children as

disadvantages this group of parents by refusing to acknowledge them as parents, and it denies them rights of parenthood.<sup>237</sup> The NCP is the only parent who does not receive a child-based tax benefit from the child he or she is actually supporting—married couples are provided a benefit, and the custodial parent is provided a benefit—but very little is given to the non-custodial parent, who is actually supporting his or her child.<sup>238</sup>

## 2. Expansion of Tax Credits

If the Internal Revenue Code is to serve as a conduit of equal justice for all, it must in the future, provide an EITC program that provides equally for all low-income parents—married, single, custodial, and non-custodial. Surely, expansion of the EITC would incentivize NCPs to pay child support. The federal government should consider expanding the current child-based EITC provided for custodial parents—which are primarily low-income mothers—for low-income NCP.<sup>239</sup> The EITC has proved to be effective at incentivizing work and making an impact on poverty for single mothers.<sup>240</sup> According to the Center on Budget and Policy Priorities, the EITC program is one of the single-most factors to have increased the percentage of single mothers entering into the workforce during the early 1990's.<sup>241</sup> In fact, between 1984 and 1996, a period during which “welfare and tax policy were changed to encourage” single mothers to work,<sup>242</sup> changes in the EITC

---

well.

237. *Id.* (indicating that DOMA could not deny the liberty of marriage because it is protected by the Due Process Clause of the Fifth Amendment.).

238. *Id.* at 2683.

239. Wheaton & Sorenson, *supra* note 132 (advocating for a NCP EITC. “Under current federal income tax rules, low-income noncustodial parents are ineligible for the EITC benefits available to low-income families with children, even when they support their children through full payment of child support.”).

240. Isabel Sawhill & Quentin Karpilow, *Raising the Minimum Wage and Redesigning the EITC*, CTR. ON CHILDREN & FAMILIES (Jan. 30, 2014), <https://www.brookings.edu/wp-content/uploads/2016/06/30-Raising-Minimum-Wage-Redesigning-EITC-sawhill.pdf>. See also Sherman, *supra* note 230.

241. *Id.* (stating that the rate of increase rose by 7%). See also Wheaton & Sorensen, *supra* note 132. (“Studies estimate that anywhere from 35 to 60 percent of the increase in employment among single mothers during the 1990’s was due to the expansion of the EITC.”).

242. Bruce D. Meyer & Dan T. Rosenbaum, *Welfare, The Earned Income Tax Credit, and the Labor Supply of Single Mothers*, Q. J. ECON. 1063, 1063 (Aug. 2001).

accounted for a 60% increase of single women being employed.”<sup>243</sup> Indeed, some commentators credit the EITC with “lift[ing] approximately 7 million individuals out of poverty.”<sup>244</sup>

The current EITC properly provides for only single parents or married couples with “qualifying” children—those children who reside with their parent(s) for more than 6 months a year.<sup>245</sup> No similar credit is given to NCPs—those parents who do not reside with their children, but are supporting them.<sup>246</sup> The only federal credit NCPs may receive under the Earned Income Tax program is the “Childless EITC” provision—a credit for individuals without children.<sup>247</sup> This has nothing to do with parenthood.<sup>248</sup> The amount of the credit is significantly lower than the credit given to the custodial parent under the “traditional EITC” program.<sup>249</sup> To remedy this inequity, Congress should change the program so that noncustodial parents will receive the same treatment as their custodial counterparts. Congress should remove the residential requirement that a child must live with the parent for over 6 months of the year in order for the parent to claim the EITC. This would allow all parents—custodial and noncustodial—to claim the same amount of EITC benefit if they support their children.

These low-income parents—custodial and noncustodial—need the assistance of the public to help provide for their children. According to Sorensen, these parents face the same social barriers, and have identical needs.<sup>250</sup> Currently, as far as finances are concerned, single NCPs are expected to care and provide for the needs of their children in the same manner as custodial parents, but they receive very little tax relief therefore.

---

243. *Id.*

244. *Id.* See also Sawhill & Karpilow, *supra* note 240 (“the tax credit lifted approximately 7 million individuals out of poverty ((over 3 million of whom were children)) in 2009, and reduced poverty and child poverty rates by roughly 10 and 16 percent, respectively, in 2007.”).

245. See Sorenson, *supra* note 18, at 118.

246. Wheaton & Sorenson, *supra* note 132. See Sawhill & Karpilow, *supra* note 240 (Additionally, the NCP does not get to receive the “head of household” status, or the standard tax deduction for dependent children as well because that is provided only for the custodial parent.)

247. See Sorenson, *supra* note 18.

248. *Id.*

249. *Id.* at 3 (revealing that in 2008 the EITC for one child is \$2,917 for earnings of \$8,550, while the maximum childless EITC is \$438 for those workers who earn between \$5,700 and \$7,200).

250. *Id.* at 14.



This often means that they are expected to pay child support and also foot the bill for the expenses for the period during which they have physical possession of the child. Accordingly, the NCP is faced with double expenses—twice the cost of food, shelter, and entertainment costs for the child.<sup>251</sup> In the final analysis, NCPs are required to be responsible parents, showing love and displaying caring instincts and behavior without being given the tax benefits custodial parents receive for the same display of love. This should not be the case, since both types of parents are expected to provide support for the child.

Furthermore, the “childless EITC” (the only type of EITC that would possibly be available to low-income NCPs without a “qualifying” child) is significantly disproportionate in value to the EITC given to custodial parents.<sup>252</sup> The “childless EITC” is designed to help all other low-income workers—as the name suggests, those without children qualify for it—and is nominal in nature.<sup>253</sup> In fact, when one considers all tax credits received by low-income taxpayers, the difference in EITC received by a custodial parent and that received by a childless taxpayer is quite significant.<sup>254</sup> In 2017, for example, the maximum credit available to a single parent with one child was approximately 1.5 times larger than that available to a single childless taxpayer.<sup>255</sup> “So young people just starting out—including low-income men, who have disturbingly low labor force participation—receive [few] of [the EITC program’s] proven benefits.”<sup>256</sup> In fact, the taxes these low-income childless taxpayers pay have a greater effect on them because it forces them “deeper into poverty.”<sup>257</sup>

Under these circumstances, the low-income childless worker sinks deeper into poverty.<sup>258</sup> The truth is, that just to make ends meet, low-income

---

251. Wheaton & Sorensen, *supra* note 132. They are still expected to pay child support for the child while the child is with the custodial parent and also pay actual expenses for the child when the child is in their possession.

252. Wheaton & Sorensen, *supra* note 132, at 30–34.

253. *Id.*

254. Sawhill & Karpilow, *supra* note 240.

255. See 26 U.S.C. § 32(b)(A) (2015). (A single parent with one qualifying child received an earned income credit of \$6,330; a single parent with no qualifying child received an earned income credit of \$4,220).

256. Chuck Marr, *Extending the EITC’s Pro-Work Success to a Left-Out Group*, CTR. ON BUDGET & POL’Y PRIORITIES, <http://www.cbpp.org/sites/default/files/atoms/files/7-18-13tax> (last visited Feb. 6, 2018).

257. *Id.*

258. Chuck Marr, Chye-Ching Huang, Cecile Murray & Arloc Sherman,

noncustodial parent must have earnings of 50 to 100 percent higher than his or her custodial counterpart,<sup>259</sup> yet the authorities still expect such a worker to fully satisfy his or her child support obligation. Another flaw in the EITC for childless workers provision is that it does not consider or incorporate into its schemata the reality that childless workers “also pay state and local taxes.”<sup>260</sup> By the time these workers pay state and local taxes, the small EITC they would receive is wiped out and they are back to where they began, with nothing to show for their efforts.

Further, this group is harmed in ways not properly addressed by current policy governing the EITC program. As stated earlier, in order to be eligible for the federal childless EITC, a taxpayer must be at least 25 years old.<sup>261</sup> Childless workers over the age of 25 receive a small EITC equal to 7.65 cents for every dollar the taxpayer earns until the credit is phased out at \$6,610.<sup>262</sup> In *Strengthening the EITC for Childless Workers Would Promote Work and Reduce Poverty*, the authors argue that this miniscule amount of earned income credit does nothing to “encourage[] and reward[] work and offset[] federal payroll and income taxes” as the EITC program was established to do.<sup>263</sup> Marr, Huang, Murray, and Sherman challenge their readers to:

Consider, for example, a 21-year-old just starting out in the workforce and making poverty-level wages of about \$12,500 for manual labor. This worker has \$956 in payroll taxes deducted from his paycheck and pays \$214 in federal income taxes. Because the worker receives *zero* EITC (childless workers under age 25 are ineligible), he is taxed \$1,170 into poverty – that is, the taxes leave him \$1,170 below the poverty line. A 30-year-old woman making the same low wages in a retail store owes the same taxes, and she does qualify for an EITC (she is age 25 or older), but her credit is

---

*Strengthening the EITC for Childless Workers Would Promote Work and Reduce Poverty*, CTR. ON BUDGET & POL’Y PRIORITIES, <https://www.cbpp.org/research/federal-tax/strengthening-the-eitc-for-childless-workers-would-promote-work-and-reduce> (April 1, 2016).

259. Wheaton & Sorensen, *supra* note 132, at 22.

260. Sorenson, *supra* note 18, at 3.

261. 26 U.S.C. § 32(c)(1)(A)(ii)(II) (2012).

262. CTR. ON BUDGET & POL’Y PRIORITIES, *The Earned Income Tax Credit*, <https://www.cbpp.org/sites/default/files/atoms/files/policybasics-eitc.pdf> (Mar. 17, 2018).

263. Marr et. al., *supra* note 258.

only \$184—with the result that she, too, is taxed into poverty.<sup>264</sup>

Legislatures have been experimenting with creative ways of providing NCPs with some type of EITC as a reward for consistently making their child support payments.<sup>265</sup> The results have shown that these programs themselves lead to NCPs being more consistent in making their child support payments.<sup>266</sup> One such example is the New York NCP EIC program,<sup>267</sup> which is funded by the National Fatherhood Initiatives grant.<sup>268</sup> In fact, New York was the first state to provide an EIC for its NCPs.<sup>269</sup> To qualify for New York's NCP EIC, the taxpayer must meet certain criteria.<sup>270</sup> Unlike the custodial parent, who is able to claim the children and both, federal and state, EITC, the NCP may not receive both, the federal and state EIC.<sup>271</sup>

Although this program increased the child support payments paid by NCPs, it also reveals the disparities in benefits received by the custodial parent and the NCP on EIC.<sup>272</sup> According to the New York report, a custodial parent without children may receive a maximum combined credit from the federal EIC and New York state EIC of \$536, but a qualifying custodial parent with one child may receive a maximum of \$3,571, and \$5,896 for two children.<sup>273</sup> Further, the report revealed that many NCPs were not able to take full advantage of the program because of obstacles such as not paying New York child support, not paying their entire child support for the year, or not having an order for the entire year.<sup>274</sup> Thus, with improvements, this EIC program will better serve NCPs and will likely yield even greater success.

---

264. *Id.*

265. See Sorensen, *supra* note 18 at 1.

266. *Id.*

267. See *Noncustodial Parent Earned Income Credit*, NEW YORK STATE DEPT. OF TAXATION & FINANCE, available at <https://www.tax.ny.gov/pit/credits/nceic.htm> (last visited November 13, 2017).

268. Wheaton & Sorensen, *supra* note 132, at 1.

269. Sorensen, *supra* note 18, at 1.

270. NEW YORK STATE DEPT. OF FINANCE, *supra* note 267 (explaining that qualifiers must: (1) have a New York custody order; (2) have paid all child support owed for entire year; (3) must be at least 18 years of age and under 64 years old; and (4) must have a New York child support order. New York's EITC is 30% of the federal EITC.).

271. *Id.*

272. *Id.*

273. See Sorensen, *supra* note 18, at 2.

274. *Id.* at 7–8.

In the alternative, the government could provide NCPs another type of a child tax credit—similar to the amount paid for spousal support—for child support payments up to a certain amount. Credits have proven to be a success in the past.<sup>275</sup> Thus, the federal government should expand on the idea of credits and consider providing a specific tax credit—like the Child Tax Credit (CTC), or spousal support credit—encouraging NCPs to work and pay child support. Evidence exists that in addition to the EITC, the Child Tax Credit (CTC) also helped boost employment and pulled many families out of poverty.<sup>276</sup> The CTC is “designed to help [families] offset the costs of raising children.”<sup>277</sup> Children also benefit greatly from families who have this credit available.<sup>278</sup> Although both credits reward work and reduce poverty for low-income and moderate-income working families with children, they also help families in every stage of life.<sup>279</sup> As a result, authorities should tie these types of credits to compliance with child support orders, and thus, ensure that no person who is obligated to pay child support will benefit from the tax unnecessarily. Additionally, the amount, who paid, and how much child support was paid should be reported by the child support agencies directly to the federal government. Then, at the end of the year, the NCP should be provided with a form containing this information so that he or she may use it in preparing his or her income tax return.

### B. Debt Forgiveness

States must also contribute to the effort of eliminating child poverty through improving child support collection. This article has already lamented the practice of many states of saddling NCPs with late fees and interest, medical costs (including Medicaid repayment costs), and back child support.<sup>280</sup> By the time an NCP goes to court, these fees can accumulate. The NCP ends up with a tremendous amount of debt that takes years, if ever, to repay. Thus, to preserve the family unit and help the family, the law should be amended to require (or at least, allow) states to waive these state and local costs and fees, especially those fees that are due to repayment of TANF money and Medicaid costs.

---

275. Marr et. al., *supra* note 230, at 2.

276. *Id.*

277. *Id.* at 4

278. *Id.*

279. *Id.*

280. See Solomon-Fears et al., *supra* note 15, at 2.

Additionally, states need to forgive the interest attached to child support judgments. Congress also needs to amend federal law to allow (without a waiver or penalty) or even mandate that states use debt forgiveness where low-income parents are in compliance and are trying to pay their child support. This allowance would, in return, contribute greatly to helping the family stay together.

### C. Local Community Programs

It is also essential for local communities to help the low-income NCPs. Local community leaders should step into the gaps and take leadership roles to find unique solutions to ensure that parents are employed and working. Just as the Supreme Court determined in *Turner v. Rogers*,<sup>281</sup> communities should create alternatives for low-income parents who lack the ability to pay. Indeed, through these alternatives, local towns and villages would be able to step in where federal and state governments do not or cannot, in order to help with intensive monitoring and implementing problem-solving strategies to remove the various barriers faced by NCPs. This also guarantees that the interests of the state to recover state funds will not interfere or supersede the interests of the family.

One such example is the Responsible Fatherhood Initiative.<sup>282</sup> The Responsible Fatherhood Initiative is funded through a federal grant administered by the Department of Health and Human Services pursuant to the Claims Resolution Act of 2010.<sup>283</sup> This law assists enforcement agencies and local communities with child support collection.<sup>284</sup> The program itself was developed to help absent parents develop accountability and to take responsibility for their children.<sup>285</sup> Specifically, it was designed to help NCPs catch up on child support and reunify fathers with their children.<sup>286</sup> Also, the

---

281. See *Turner v. Rogers*, 564 U.S. 431 (2011).

282. *Responsible Fatherhood*, OFFICE OF FAMILY ASSISTANCE, <http://www.acf.hhs.gov/ofa/programs/healthy-marriage/responsible-fatherhood> (last visited Oct. 28, 2016).

283. Claims Resolution Act of 2010, H.R. 4783, 111th Cong. (2010), <https://www.gpo.gov/fdsys/pkg/PLAW-111publ291/pdf/PLAW-111publ291.pdf> (last visited March 8, 2018).

284. *Id.*

285. *Responsible Fatherhood*, *supra* note 282.

286. *Id.*

program was designed to remove barriers that prevent non-compliant parents from paying their child support.<sup>287</sup>

Returning to the notion of communities coming together, one example is the Virginia Intensive Case Monitoring System.<sup>288</sup> In 2008, the Virginia General Assembly authorized the Virginia Department of Social Services to create this pilot program.<sup>289</sup> The purpose was “to reduce jail overcrowding, provide less costly enforcement alternatives to incarceration, maximize the potential for consistent child support payments by breaking the cycle of noncompliance, and promote the involvement of noncustodial parents in their children’s lives.”<sup>290</sup> Recognizing that the traditional method of child support enforcement was not effective for those having problems paying child support, Virginia decided to adopt a problem-solving solution that involves intensive monitoring.<sup>291</sup>

The Virginia Program begins in the court system.<sup>292</sup> To be eligible for the program, the NCP must not have a felony criminal record and must have a current child support obligation.<sup>293</sup> If both of those are met and the NCP is in jeopardy of facing jail time due to nonpayment of child support, then the court will refer the NCP to the program.<sup>294</sup> Once referred, the court will assign the NCP a case manager, who identifies the barriers that prevent him or her from paying child support and obtains assistance for the NCP from local community partners.<sup>295</sup> If the NCP is ultimately accepted into the program, the participant must sign a contract.<sup>296</sup> Afterwards, the NCP’s caseworker develops an individualized plan to help the NCP pay his or her support obligation.<sup>297</sup> The caseworker is also responsible for keeping contact with the community partners, tracking the NCP in the program, updating and

---

287. Solomon-Fears, et al, *supra* note 15, at 18.

288. *Future Trends in State Courts 2012: Special Focus on Courts and Community*, NAT’L CTR. FOR ST. COURTS 50 (2012), <http://www.ncsc.org/~media/Microsites/Files/Future%20Trends%202012/PDFs/TRENDS%202012%20BOOK.ashx> (last visited Apr. 7, 2018).

289. *Id.* at 50.

290. *Id.*

291. *Id.*

292. *Id.* at 51.

293. *Id.*

294. *Id.*

295. *Id.*

296. *Id.*

297. *Id.*

securing more partners, and keeping track of data information.<sup>298</sup> Therefore, caseworkers are the keys to the success of the program. Additionally, caseworkers “must be creative in finding services for participants’ needs and must develop strong relationships with the community partners.”<sup>299</sup> They are the ones who develop relationships with the NCPs and help encourage them along their path to success.<sup>300</sup>

The initial results of the program demonstrate that unemployment has been the main barrier to nonpayment of child support.<sup>301</sup> The NCP may not be employed due to a lack of education, a language barrier, or a substance abuse problem.<sup>302</sup> These underlying problems often required the caseworker to spend a lot of time with the NCP to identify these problems, and then design a customized plan to overcome them.<sup>303</sup> Additional problems, such as job searching, parenting, and financial issues, are also problems that the caseworker can help the NCP with.<sup>304</sup> As a result of the help that the caseworker provides, this program has been a success and Virginia has planned to expand the program.<sup>305</sup>

In its entirety, the Virginia Model is a good example of capitalizing on the resources of the community—that is, the child support enforcement community of judges, lawyers, and case managers—for the good of the most vulnerable members of society, the children.<sup>306</sup> “[This] shift . . . has seen the rise of new partnerships between child support enforcement, the courts, social service agencies and fatherhood programs seeking to figure out what’s keeping parents from paying the child support they owe. And then—this is the seismic part—helping those parents address their issues instead of locking them up.”<sup>307</sup> This program is part of a movement across the nation.<sup>308</sup> This

---

298. *Id.*

299. *Id.*

300. *Id.*

301. *Id.* at 52.

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.* at 50.

306. Tina Griego, *Locking up Parents for Not Paying Child Support Can be a Modern-Day Debtor’s Prison*, WASH. POST (Sept. 26, 2014), <http://www.washingtonpost.com/news/storyline/wp/2014/09/26/locking-up-parents-for-not-paying-child-support-can-be-a-modern-day-debtors-prison/>.

307. *Id.*

308. *Future Trends in State Courts 2012*, *supra* note 288, at 50.

movement involves replacing the stick or punitive remedies with an approach that calls for problem-solving methods.<sup>309</sup> The main difference between this program and other programs out there is that this program distinguishes itself by helping those parents, who would otherwise pay, but are simply unable to pay.<sup>310</sup>

This Virginia program further demonstrates the type of help that is needed by the low-income NCP, which is an intensive, tailor-made program.<sup>311</sup> By establishing a rapport with the NCP, the Virginia Program serves as a direct intervention to tear down barriers for the NCP.<sup>312</sup> The program not only focuses on employment barriers, but on life barriers, such as housing, education, and lack of job skills, as well.<sup>313</sup> In addition, the caseworker is able to provide emotional support, and not just financial support. It is the caseworker's responsibility to connect the parent with the services needed and hold the NCP responsible.<sup>314</sup> "[T]he main bar to work is a lack, not of specific skills, but of very basic work discipline—the ability to show up at jobs on time, take orders, and cooperate with coworkers."<sup>315</sup> "[L]ow-skilled men are often distracted from regular work by the allure of selling drugs or conflicts in their private lives."<sup>316</sup> Successful programs ensure that program participants not only obtain jobs, but also, that they retain them. "The best programs follow-up with clients after placement to help work out problems that might prevent job retention. Skill enhancement. . . is secondary."<sup>317</sup>

At the same time, the caseworker must also develop or find partner programs that address the needs and concerns of the NCP, whether it be financial or otherwise.<sup>318</sup> Thus, the caseworker is able to plug into unique community resources and programs, and also, keep NCPs in the program

---

309. *Id.* at 51. See also Nick Young, *Virginia's Intensive Case Monitoring Program*, NAT'L CHILD SUPPORT ENFORCEMENT ASSOC. (Last visited Apr. 8, 2018).

310. *Id.* at 1.

311. *Future Trends in State Courts 2012*, *supra* note 288, at 54 (explaining why the Virginia Model is effective).

312. *Id.*

313. *Id.* at 52.

314. *Id.*

315. Lawrence M. Mead, *Why We Need Work Programs For Fathers*, 29 J. P. ANALYSIS & MGMT, 610, 612 (2010).

316. *Id.* at 612.

317. *Id.* at 613.

318. *Future Trends in State Courts 2012*, *supra* note 288, at 51.



accountable. The local community, with its local programs, such as the Virginia Model, can also effectively help to remove many of the barriers preventing NCPs from paying their child support. Such programs empower the NCP by allowing him or her to keep his or her dignity by helping him or her get on track to be the parent he or she needs to be and restore the "insuperable degree of affection between the parent and the child"<sup>319</sup> that Blackstone talked about.

### CONCLUSION

For the NCP to pay his or her child support—and provide for our neediest citizen, the child—everybody must work together. Caring for the child is not the sole responsibility of either, the NCP or society. In reality, it takes a village—everyone doing his or her individual part to raise a child. There is no silver bullet. New approaches are needed. The approach put forth in this article is one that provides the NCP with hope, dignity, and the will to work with the system, instead of giving up. Indeed, "no oppressed people will *fight*, and *endure* . . . without the promise of something better . . .,"<sup>320</sup> and "the essential dignity of the individual human being, of the fundamental equality of all men, and of certain inalienable rights to freedom, justice, and a fair opportunity."<sup>321</sup> These parents have broken hearts and defeated souls. We, as a society, must lead the way by empowering the NCP to see that he or she can be responsible.

---

319. OLIPHANT & VER STEEGH, *supra* note 36, at 307, (citing WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 435 (1898)).

320. Eric J. Sundquist, *King's Dream* 25 (Yale University Press, 2009).

321. *Id.*