Won’t Pay, or Can’t Pay: An Analysis of Contempt as a Remedy for Child Support Arrearages owed by Low-Income Obligors

Abstract: This paper investigates contempt as a remedy for child support arrearages. The thrust of the author’s argument is this: while contempt is a perfectly acceptable remedy when the contemnor has the ability to pay, it cannot (and does not) work if the obligor has little to no income. Fortunately, there are viable alternatives to contempt currently being experimentally and actively used by various states and jurisdictions. These alternatives range from creating more workable support orders, to restructuring debt, to using alternative means to keep the matter out of the courts entirely.
A Case Study and Introduction

I: The Case Study

Hugh and Wendy were married for seven years. The marriage produced one child, a boy named Sean. The two divorced due to “irreconcilable differences,” but maintain a good relationship. While not friends, they are certainly friendly to each other. Hugh—the non-custodial parent—is very accommodating to Wendy’s schedule, shuffling around visitation when necessary and looking after Sean when he is not required to do so. Even more importantly, Hugh is a great father; he is actively involved in Sean’s life, maintains the visitation schedule, is always willing to spend extra time with his son, and is a very positive figure in his son’s life.

Until recently, Hugh has been very good at maintaining his court-ordered child support payments; in fact, he has never missed a single payment. However, Hugh recently lost his well-paying job as a mechanic and is having real difficulty finding steady work. Hugh pays what support he can manage from working a series of odd jobs, but it is next to nothing. Eventually, as he is merely trying to survive, Hugh ceases payment entirely. This creates a serious problem for Wendy. Wendy cannot work full-time; she is too busy caring for Sean and her elderly, infirm mother. She had been relying on Hugh’s support payments as a primary means of income.

Fortunately for Wendy, she lives near a law school with a student-run clinic that offers free legal advice. Unfortunately, she discovers that her options to fix the problem are not ideal. The law student with whom Wendy meets informs her that a court could compel Hugh to seek
work.¹ Further, should Hugh continue to be delinquent on his payments, the court could hold him in contempt and jail him until he pays Wendy the amount sought.

Neither of these choices is particularly attractive to Wendy. She knows that compelling Hugh to pay support will accomplish nothing; he tries to pay what he can when he can. She does not see what a court forcing Hugh to find work will solve, either. He has been to every mechanic’s shop in the area, but none of them have any vacancies. Wendy also has no desire to see Hugh jailed; it would prevent him from finding work and providing the desperately-needed payments. More importantly, it would rob Sean of his doting father and likely ruin the good working relationship Hugh and Wendy have.

II: Introduction

Hugh and Wendy’s situation is not atypical. Child support arrearages are a massive issue for the low-income individuals dealing with them. Custodial parents below the poverty line are often faced with a situation in which they must choose between receiving no support payments or hauling the other party in for contempt. Further complicating the situation is a key defect in the traditional remedy system: jailing obligors for contempt due to failure to pay child support simply does not work if the obligor has little or no income. This process often has the opposite effect, rendering obligors unable to find work and destroying what little good will the parties may have once had. Fortunately, some states are beginning to address this issue. Various programs, both remedial and educational in nature, are being tested in an attempt to get low-

¹ Seek work orders are often issued when a party cannot pay child support. For an example of what a seek work order is, see OHIO REV. CODE ANN. § 5101:12-50-17 (West 2015).
income custodial parents the money due to them, render payments manageable for obligors, and to simply make the system work.

This paper is divided into three sections. The first makes use of census data to outline the problems surrounding child support arrearages, namely who owes arrearages and who is affected the most by the failure to pay them. The second section provides a brief overview of contempt. It outlines the relevant form of contempt (coercive civil sanctions) for this paper, making mention of potential remedial measures at the legal system’s disposal and the rights support obligors may have. The third section discusses possible issues surrounding and alternatives to contempt. It makes mention of remedial, educational, and other programs various states have created and tested that seem to hold great promise.

**A: The Data**

Data from the most recent census sheds some light on the complexity of the issue of child support and single-parent households. According to the 2013 census, an estimated 23.4 million children under the age of 21 lived with a custodial parent while the other parent lived elsewhere. These children represented 28.1 percent of all children under the age of 21 living in families. Women and minorities form the majority of custodial parent families: 81.7 percent of custodial parents were mothers and 50.6 percent of children living in single-parent families were black.

There is a strong link between minority status and poverty. While the poverty level of single parent families had declined in the past two decades, as of the time the census was taken,

---


3 *See id.*

4 *See id.*
this level was still roughly twice that of the general population. Custodial-mother families, at a 31.8 percent poverty rate, were also far more likely to be impoverished than custodial father families, 16.2 percent of which were impoverished. The Census Bureau also found a strong link between education and poverty; only 9.3 percent of custodial mothers with a bachelor’s degree or higher fell below the poverty line.

The data also show the impact that poverty has on child support. The Census showed that roughly 43.4 percent of all custodial parents owed child support received all of what they were due. A slightly smaller portion of custodial parents below the poverty line—39.6 percent—received the totality of their payments. More notable than the slight percentage difference of full support received by custodial parents above and below the poverty line is just how great of an impact support payments had on income. Child support payments comprised 10.2 percent to 19.8 percent of custodial parents’ income on average, depending on whether they received some or all of the support due. However, child support payments accounted for 66.7 percent of the income of custodial parents who lived below the poverty level—provided they received the entirety of the sum due to them.

This data illustrates just how common Wendy’s situation is. Due to her gender, she is far more likely to be below the poverty line than Hugh would be, were he the custodial parent.

---

5 The poverty rate of custodial parent-families fell from 33.3 percent in 1993 to 23.4 percent in 2001. However, that rate had risen to 28.9 percent of custodial-parent families in 2011, almost twice that of the general population (15.0 percent). See id.
6 See id.
7 Additional factors were at play in the Census Bureau’s report, including participation in public assistance programs and the number of children in each family. See id.
8 See id.
9 See id.
10 See Id.
11 See Id.
Further, while Wendy is only slightly less likely than a woman above the poverty line to receive all of the payments due to her, these payments constitute the majority of her income. Hugh’s inability to pay, however involuntary, is crushing to Wendy.

B: A Brief Overview of Contempt

Suppose Wendy decides that she needs child support payments from Hugh badly enough to pursue judicial means. What would her remedies be? The answer to this question will vary slightly from state to state, as each state has its own contempt regime. Since the main purpose of this section is simply to provide an overview of a typical state’s contempt proceedings for child support, the focus of this section will be Virginia’s procedures.12

I. Contempt

The most common remedy for failing to pay child support is contempt. Both state and federal courts hold that “deadbeat” parents—noncustodial parents with outstanding child support arrearages—may be held in contempt of court and jailed.13 Courts may confine the contemnor (the party failing to pay child support) to jail, a city farm, a workhouse, or a work squad for a period of time not to exceed 12 months.14 Funds earned by the party while incarcerated are to be used for the support of the children meant to benefit from the support decree.15

There are two types of contempt, civil and criminal, but only civil contempt is relevant for the purposes of this paper. Civil contempt arises when the court imposes punishment to

---

12 Virginia’s child support proceedings are typical of other states. The author is also most familiar with Virginia law. For an example of how other states treat contempt, see OHIO REV. CODE ANN. § 2705 (West 2015); CAL. PENAL CODE § 166 (West 2015).
13 See LESLIE JOAN HARRIS, ET. AL., FAMILY LAW, 514 (5th Ed., 2014).
15 See VA. CODE §§ 20-63, 16.2-292(B) (2014).
coerce compliance with an order of the court.\textsuperscript{16} There are two different subsets of civil contempt punishments: remedial civil sanctions and coercive civil sanctions. A civil contempt sanction is remedial if fines imposed by the court are intended to compensate an injured party.\textsuperscript{17} These fines must bear a rational relation to the pecuniary loss suffered by the injured party.\textsuperscript{18}

Coercive sanctions arise when the court imposes sanctions to enforce its orders. These sanctions can range from the payment of fines to confinement to jail.\textsuperscript{19} Coercive civil sanctions—even confinement to jail—are not punitive in nature; since the court uses coercive civil sanctions to enforce its orders, a contemnor “can end the sentence and discharge himself at any moment by doing what he had previously refused to do.”\textsuperscript{20} If a contemnor is no longer able to purge himself of the contempt by obeying the court’s order, the contemnor must be released from custody.\textsuperscript{21}

Using contempt as a main method by which to coerce payment of child support is not without its inherent controversies. Potentially facing up to 12 months in jail for what many consider to be a relatively trivial sum of money could be considered harsh. Further complicating the situation is the fact that, due to the nature of civil contempt, indigent contemnors have no

\textsuperscript{18} See \textit{Id}.
\textsuperscript{20} Id.
\textsuperscript{21} See \textit{Id}.
inherent right to counsel. This is due to the fact that the government, represented by counsel, is not the accuser.\textsuperscript{22}

The Supreme Court addressed this exact issue in its \textit{Turner v. Rogers} decision. In this case, Michael Turner owed $5,728.76 in child support arrearages.\textsuperscript{23} The court below found Turner, who was unrepresented by counsel at the time, to be in contempt of court for failure to pay child support and sentenced him to 12 months in prison.\textsuperscript{24} Turner claimed that the proceedings violated his Sixth Amendment “right to counsel.” The South Carolina Supreme Court rejected his claim.\textsuperscript{25}

The Supreme Court quickly noted that the Sixth Amendment does not hold in civil contempt cases as they are civil matters. Civil contempt proceedings exist to coerce a defendant to do what a court had previously ordered him to do.\textsuperscript{26} A court may not impose punishment in a civil contempt proceeding when the contemnor is unable to comply with the terms of a court order.\textsuperscript{27} The Court also remarked that, once a civil contemnor complies with the underlying order (in this case, paying child support), he is purged of the contempt and is free.\textsuperscript{28}

\textit{II. Alternate Means}

Contempt is not the only method by which states governments ensure child support payments are made. Some states permit courts to order an obligor to maintain an insurance

\textsuperscript{22} See \textit{Turner v. Rogers}, 131 S. Ct. 2507 (2011).
\textsuperscript{23} See id.
\textsuperscript{24} See id.
\textsuperscript{25} See id.
\textsuperscript{26} See id.
\textsuperscript{27} See id. (quoting \textit{Hicks v. Feiock}, 485 U.S. 624, 638, n. 9 (1988)).
\textsuperscript{28} See id.
policy payable to the child in the event of the obligor’s death.\textsuperscript{29} The policy must be in a sufficient amount to provide for the ordered support.\textsuperscript{30} This practice is not universal; some state courts consider such an order to be postmortem alimony, something which can only be entered into pursuant to an agreement between all relevant parties.\textsuperscript{31}

States also commonly empower agencies with the authority to collect child support debts. An example of an entity with the power to do this is the Department of Child Support Enforcement (DCSE) of the state of Virginia. DCSE may assert a lien against the personal or real property of a debtor, including the debtor’s wages.\textsuperscript{32} DCSE may also seize the property of support debtors.\textsuperscript{33} If a noncustodial parent has overdue payments, DCSE may insist that the parent post security or bond or some other guarantee to ensure the payments arrive.\textsuperscript{34} The Commissioner may make demand for immediate payment of the support debt should the payments appear to be in jeopardy.\textsuperscript{35}

Potential DCSE remedies are not limited to placing liens on property or garnishing wages. If an obligor neglects to pay support an obligee—or DCSE acting on behalf of an obligee—may petition the court to suspend any license to engage in a “business, trade, profession or occupation, or recreational activity issued to the obligor by the Commonwealth.”\textsuperscript{36} DCSE may also suspend a delinquent obligor’s driver’s license.\textsuperscript{37} The DCSE also has the

\textsuperscript{30}See id.
\textsuperscript{31}See LESLIE JOAN HARRIS, ET. AL., FAMILY LAW, 514 (5th. Ed., 2014).
\textsuperscript{32}See VA. CODE §§ 63.2-1927, 63.2-1929 (2014).
\textsuperscript{33}See VA. CODE § 63.2-1933 (2014).
\textsuperscript{34}See VA. CODE § 63.2-1936 (2014).
\textsuperscript{35}See VA. CODE § 63.2-1939 (2014).
\textsuperscript{36}VA. CODE § 63.2-1937 (2014).
\textsuperscript{37}See VA. CODE § 63.2-1941 (2014).
authority to publish a most wanted delinquent parent list and coordinate arrests with state and local law enforcement agencies.\(^{38}\)

The federal government provides further means by which a party may obtain child support. Federal law mandates that, if a parent may provide medical insurance to his children through an employment-based plan, the employer must permit the employee to enroll children who do not live with him.\(^{39}\) Children outside the home are treated like any other dependents under these policies, and employers must admit them regardless of whether the noncustodial parent may claim them as dependents.\(^{40}\) However, additional rules exist for these policies; the custodial parent has the right to enroll the children in the policy should the noncustodial parent refuse to do so, and may submit claims without the approval of the noncustodial parent.\(^{41}\)

The federal government also provides further alternative means to obtain child support through the Employee Retirement Income Security Act, or ERISA. ERISA requires group health plans to honor a qualified medical child support order (QMCSO), which creates or recognizes the right of a child to benefit from a parent’s group health care plan.\(^{42}\) QMCSOs must include the name and last known mailing address of the plan participant and an “alternate recipient” covered by an order (the child), a reasonable description of the type of coverage provided by the plan, the period to which the order applies, and each plan to which the order applies.\(^{43}\) There are limits to

---


\(^{39}\) See 42 U.S.C. § 1396g-1.

\(^{40}\) See id.

\(^{41}\) See id.

\(^{42}\) See 29 U.S.C. § 1169.

\(^{43}\) See id.
QMCSOs; they cannot require the plan to provide a type or form of benefit that it does not otherwise provided and they only apply to the plan named in the order.\textsuperscript{44}

C: Issues and Alternatives

I: Issues

The available remedial methods—from withholding income to jailing for contempt—to ensure payment of child support arrears all share one key issue; they require money to properly function. As noted above, civil contempt necessitates “purging,” or paying the required funds in order to avoid jailing.\textsuperscript{45} If an individual does not have the income to pay the arrears—as the case would be with Hugh—he must be released, as it is impossible to coerce from someone funds he simply does not have.\textsuperscript{46}

In a case such as Hugh’s, jailing for contempt would accomplish nothing, and would likely cause more problems than it would solve. Incarceration for child support arrears has been shown to increase the debt non-custodial parents owe.\textsuperscript{47} Jail time could also impact Hugh’s ability to earn money in the future, as well.\textsuperscript{48} Formerly incarcerated persons have real difficulty finding work; one study indicated that only 31 percent of a group of recently-released individuals (who formerly had an employment rate of 68 percent) had employment 2 months after release.\textsuperscript{49}

\textsuperscript{44} See id.
\textsuperscript{45} See supra., note 18.
\textsuperscript{46} See supra., note 19.
Finally, Hugh’s spending time in jail would likely have extremely negative effects on the family dynamic. First, it would prevent Hugh from seeing Sean, an outcome that goes against what both experts and the courts deem is in the child’s best interest.\footnote{See Steve Christian, \textit{Children of Incarcerated Parents, National Conference of State Legislatures}, 2009; see also Elisa B. v. Superior Court, 117 P. 3d 660, 669 (Cal. 2005) (noting that it is in the best interests of the child and the taxpayers that a child have two parents).} Incarceration could also damage Hugh’s relationship with both Wendy and the legal system, making him less likely to cooperate with either or both in the future.

The impact Hugh’s incarceration would have on Sean is immeasurable. As a child in a “fragile family,” or a family with nonmarital parents, Sean is especially vulnerable to any further changes in the family dynamic. Children of fragile families do not tend to fare as well as their peers; they perform more poorly in cognition tests and demonstrate symptoms of aggression.\footnote{See \textit{Fragile Families and Well-Being Study Fact Sheet}, Fragile Families available at http://www.fragilefamilies.princeton.edu/documents/FragileFamiliesandChildWellbeingStudyFactSheet.pdf.} Sean would be especially vulnerable to these behavioral issues, as this aggression is more common in boys.\footnote{See \textit{Id.}} Much of this is due to the inherent complexity of fragile families; these units are often comprised of multiple families, including half and step-siblings. The loss of a father figure—in particular a positive one such as Hugh—and the stability such a figure provides would likely only compound Sean’s feelings of isolation, confusion, and aggression.

\textit{II: Alternatives}
What, then, is the solution to this difficult issue, one which even the Court in its *Turner* decision acknowledges?\(^{53}\) There does not seem to be a uniform answer to the issue of poverty and child support arrears. Different states have addressed the problem to varying degrees of effectiveness. Each of these methods will be examined in turn.

\textit{a: Remedial Alternatives}

The sheer amount of child support arrears is a serious problem at the macro level. One study showed that noncustodial parents owe an estimated $110 billion in child support arrearages.\(^{54}\) Even more alarming than the high volume of arrears owed is the fact that only around 40 percent of these arrearages will be collected in the next decade.\(^{55}\) Much of this is due to the fact that most of these arrearages are owed by obligors with little to no income; although comprising only one quarter of the persons owing arrears, low-income obligors held roughly 40 percent of the total arrearages.\(^{56}\)

What can be done to prevent arrearages from accumulating in the first place? Furthermore, how can at least some of the child support debts currently owed be collected? The sections below explore each of these matters in turn. The first looks at improved communication,

\(^{53}\) See *Turner v. Rogers*, 131 S. Ct. 2507, 2512 (2011) (noting that, while the State need not provide counsel in a civil contempt hearing that may result in jail time, the State “…must nonetheless have in place alternative procedures that assure a fundamentally fair determination of the critical incarceration-related question, whether the supporting parent is able to comply with the support order.”)


\(^{56}\) See Id., at 22.
a strategy with a high amount of potential in establishing more viable orders. The second looks at remedial measures, usually employed where an obligor owes arrearages to the state.

1.1: Communication is key

A central issue of establishing support orders is collaboration. Communication between both parents and state officials is key in order for child support orders to function. To address these concerns some state agencies have coupled their support collection programs with enhanced outreach efforts. San Francisco County’s Enhanced Parental Involvement Collaboration program used telephone calls to reach out to noncustodial parents, resulting in a participation rate of more than 70 percent.57 A Colorado project reached similar results, finding that workers could meet with most noncustodial parents at the early stages of case processing, and that routine attempts to contact the parents were extremely beneficial.58 The benefits extended both ways, helping both workers and parents; worker-initiated outreach was linked to a significant drop in default orders and an increase in those established by mutual parental consent, while workers who had telephone or in-person contact with noncustodial parents “…were more likely to identify income using objective data sources and parent affidavits.”59

Some states have taken other steps to improve the process of communication in regards to the reviewing, adjusting, and modifying of support orders. These methods include the use of automated review systems, making modification forms available online, targeting newly unemployed noncustodial parents for expedited review, and developing outreach methods aimed

57 See Alternatives to Incarceration.
58 See Id.
59 See Id.
at convincing parents to seek modification due to an unforeseen change in circumstances. Alaska uses an automated review system, called ELMO, to review child support amounts annually. If, during its yearly review, the calculation results in a 15 percent difference in the order amount, ELMO targets the order for manual review. ELMO went online in 2000 and has greatly streamlined Alaska’s child support order review process; before ELMO support orders often took 6-8 months to investigate and modify. Now, ELMO initiated orders are modified within 120 days.

Puerto Rico’s Department of Labor and Human Resource’s Unit for Dislocated Workers and Employees took even more drastic steps to address communication in relation to arrearages. The Department sponsored a “Rapid Response Task Force,” which went to employers anticipating layoffs, closures of facilities, or other matters that may affect employment status and notified noncustodial parents of the impact that this would likely have on their support payments. This task force then encouraged the parents to get in touch with child support staff to adjust income-withholding orders, and to request modification of their orders based on a substantial change in circumstances.

1.2: Improving orders and minimizing debt

---

60 See Id.
62 See id., at 43.
63 See id., at 44
65 See Id.
While establishing good communication is vital in ensuring one parent pays another, what is to be done when a parent owes the state? While communication has the potential to help ameliorate this problem as well, it cannot return to the states the money they are owed. State agencies have begun to address this problem in different ways. Various states have implemented the practice of using income-based orders to ensure compliance. These orders are established through various methods, including “using data sources to obtain accurate income information, limiting the use of imputed income, minimizing default orders, permitting self-support reserves, developing appropriate guidelines for low-income parents, and providing enhanced case management through automated data analytics.”66 Preliminary studies indicate that setting an income-based order means that parents are more likely to regularly pay child support over time.67

While income-based orders are effective at ensuring earlier compliance, they do not address the issue of outstanding arrearages. In order to confront this problem, several states have instituted debt compromise programs in order to limit the use of contempt as a remedy for failing to pay arrearages.68 Debt compromise programs tend to fall into two categories: settlement programs and incentive programs.69

The aim of settlement programs is “to reduce uncollectable debt and collect some state-owed arrears.”70 These programs are aimed at obligors who can pay some of the debt but not all

66 Alternatives to Incarceration.
69 See Alternatives to Incarceration.
70 Id.
of the arrears; to accomplish this, settlement programs often require an upfront lump sum payment as part of a settlement. Settlement programs can vary greatly from state to state. In Massachusetts, the Child Support Commissioner may waive all or a portion of the interest and penalties owed to the Commonwealth if the Commissioner determines that this waiver is in the best interests of the Commonwealth and will maximize the chances of collection of both past and present support duties.\(^71\) New Mexico has created the Fresh Start Arrears Management Program, which is designed to eliminate uncollectable state-owned debt.\(^72\) The program targets cases with a minimum of $1,000 in arrears and has reduced state arrears balances by over $17 million.\(^73\)

The goal of incentive programs is slightly different from settlement programs. Incentive programs aim to reduce uncollectable debt and increase the collection of current support obligations; obtaining state-owed arrears is a secondary goal.\(^74\) These programs incentivize support payments by forgiving state-owed debt in exchange for on-going support payments. Several states have implemented incentive programs. Project Clean Slate, an Illinois program, permits noncustodial parents to apply for forgiveness of assigned arrears in exchange for payment of current support.\(^75\) To be eligible, noncustodial parents must have been unable to pay

\(^71\) The Commissioner’s powers in this regard extend beyond waiving interest; he may also accept a payment amount that is less than the full amount owed if there is serious doubt that the debts can be collected and may adjust the amount of arrearages owed if the obligor will likely never have the ability to pay the arrearages in full. See 830 CMR 119A.6.2 (2015).
\(^74\) See Alternatives to Incarceration.
the support at the time it was due and must meet low-income standards.\textsuperscript{76} Maryland’s Payment Initiative Program is only available to noncustodial parents with incomes below 225 percent of the poverty level.\textsuperscript{77} The program has additional standards aside from poverty; the child support program must consider whether the noncustodial parent has the resources to pay the arrearages, whether reduction of arrearages will enhance the noncustodial parent’s economic stability, and whether the agreement serves the best interest of the children.\textsuperscript{78} If enough of these factors are met, child support must agree to reduce state-owed arrearages by 50 percent after 12 consecutive months of continuous payment of the agreed-upon amount, and must forgive the remaining arrearages after 24 consecutive months of payment.\textsuperscript{79}

\textit{b: Extra-Remedial Measures}

While the above-mentioned remedial measures are certainly helpful in addressing the issues of overdue payments or ensuring that payable orders are established, they do not solve all of the problems surrounding child support debts. What if Wendy decides to take Hugh to court? If the two parties cannot afford a lawyer, how could they understand the legal system? What good would a “seek work” order do if Hugh cannot find a job on his own?

\textit{1.1 Employment Programs}

State agencies have created and implemented several categories of programs to address the concerns mentioned above. The first of these involves the usage of employment programs as an alternative to incarceration. The main goal of these programs is to ensure that noncustodial parents are employed and thus capable of making child support payments.

\textsuperscript{76} Id.
\textsuperscript{78} Id.
\textsuperscript{79} Id.
Employment programs can be divided into two groups: court-ordered programs and voluntary programs.

The primary goal of court-ordered programs is to keep child support obligors out of jail. Imprisoning noncustodial parents for child support arrearages benefits no one; the obligor will be unable to pay the support while in jail, the custodial parent and the child will not receive the money they are owed, and the state will have to pay the cost of maintaining another prisoner.80 “Jobs not jail” programs aim to address these issues. These programs primarily offer job search assistance, but can aid in job placement and job retention services, as well.81

Some initiatives go farther than “jobs not jail” programs. So-called “problem-solving courts” take a broader view of child support issues than the possibility of contempt.82 Problem-solving courts are judge-driven; in these courts, judges look at each case individually, focusing on collaboration, accountability, and individualized justice.83 When applying a problem-solving court approach to child support cases, judges must take an active role. The judge must treat each case individually, examining the circumstances of the matter deeply. Problem-solving judges also work closely with the noncustodial parent, building a

80 Keeping inmates in jail is expensive; caring for and guarding prisoners cost New York City an annual rate of $167,731 per inmate in 2012. See Marc Santora, City’s Annual Cost per Inmate is $168,000, Study Finds, N. Y. TIMES, available at http://www.nytimes.com/2013/08/24/nyregion/citys-annual-cost-per-inmate-is-nearly-168000-study-says.html?_r=0.
81 See Alternatives to Incarceration. For an example of a “jobs not jail” program, see The South Carolina Center for Fathers and Families, Jobs not Jail, available at http://www.scfathersandfamilies.com/impact/outcomes_and_cost_benefit/jobs_not_jail/.
83 See id., at 5.
rapport and seeing the party as a person, not a “case.” Finally, judges in a problem-solving court operate alongside support agencies, establishing reasonable child support duties while minimizing incursions into either party’s area of authority.

Voluntary programs exist to offer unemployed noncustodial parents an opportunity to find work and pay off their child support arrearages. While courts can refer individuals to these programs, most referrals come from child support agencies themselves. Voluntary programs provide similar services to court-ordered programs, although voluntary program job placement services are usually more intense and these programs frequently include a fatherhood component mandatory programs often lack.

The details of these voluntary programs can vary greatly from state to state. Much of this variation concerns the role of support agencies; from an active leadership position (contracting with a workforce development firm, deciding who will be served, and monitoring quality) to a more supportive role (providing one-on-one services, offering workshops, and operating as part of a support team). California’s Stanislaus County Child Support program partnered with a workforce services provider and a local nonprofit in its Pathways to Self-Sufficiency Project. This partnership provides “employment services, fatherhood/parenting services, enhanced child support services, and intensive case management.” Milwaukee County Child Support Services has partnered with several

---

84 See id, at 6.
85 See id.
86 See Alternatives to Incarceration.
87 See id.
88 See id.
90 See id.
private organizations to create Milwaukee County Pathways to Responsible Fatherhood, which provides services to low-income fathers to permit them greater financial and emotional involvement with their children.\(^{91}\)

### 1.2: Alternative Dispute Resolution

Taking child support cases out of the court system entirely can be beneficial to all parties involved; parents can attempt to solve their disputes amicably, while preventing additional cases from appearing on judges’ dockets aids the already-overtaxed court system. The two common types of alternative Dispute Resolution (ADR) in child support cases that hold the most promise are mediation and case conferencing.\(^{92}\)

ADR mediation for child support follows the traditional mediation format. Both parties meet with a third-party mediator in order to establish a workable support order.\(^{93}\) While courts still must issue the final support order, the amount the parents agreed to is usually just inserted into the order.\(^{94}\) Mediation has its benefits; it can maintain a working relationship between parents and can ensure that all parties involved are well-informed as to each parent’s abilities and needs, leading to more accurate orders.\(^{95}\)

Case conferencing provides a more all-encompassing approach than ADR mediation. While parties taking part in mediation simply agree upon an order, case conferencing focuses on

---

91 See id. The grant for this program expired September 30, 2014.
92 See Alternatives to Incarceration.
94 See id.
95 See id.
educating parents about their rights and responsibilities as they attempt to work out an order. In fact, parents may not be required to agree on an order. Research shows that case conferencing can be an efficient way to resolve child support issues; Texas’ Child Support Review Program took an average of 20 days to obtain an order, compared with a 100 day average when the matter went through the court system.

1.3: Access to Justice

An often-overlooked issue when addressing child support arrearages is that of lack of counsel. Low-income families often appear in court pro se, meaning that they represent themselves. As illustrated by the Turner case, the fact that many low-income parents are pro se is not without its inherent controversies, particularly when considering that contempt—and possible incarceration—is a potential remedy. This creates numerous issues, as the legal process can be complex and rather arcane at times, all but ensuring that many low-income parents do not receive adequate representation.

This issue is not merely confined to the difficulties pro se litigants face in bringing child support matters to court; aiding parties in representing themselves is also in the interest of the state, as providing information related to the trial process ensures more accurate orders, increases the likelihood of compliance, and helps—in some small way—to relieve an over-congested legal system. To that end, various state agencies have instituted methods to aid low-income child support litigants, including court facilitators, self-help centers, and online tools. The Kentucky

---

96 See Alternatives to Incarceration.
97 See id.
98 See supra sec. B, subsec. I.
99 See Alternatives to Incarceration.
100 See Id.
Department of Child Support instituted several of these programs by partnering with Jefferson County Attorney’s Office and the Legal Aid Society to create an online legal information service which includes online videos tutorials on child support processes, ready-made forms, and child support calculators.101

Court facilitators can be an invaluable tool to parents seeking to adjudicate their dispute and navigate the legal system. Court facilitators perform services that range from giving legal information and advice to providing a place for parents to negotiate a resolution to their disputes. Each county in California has a Family Law Facilitator to accomplish these exact purposes.102 The practice of using facilitators has spread to Washington, as well. The Washington Family Law Courthouse Facilitators are attorneys who work with parents to demystify the court system.103 They provide services ranging from assistance in filling out forms to attending pro se hearings.104

Several states use self-help hotlines and centers to provide legal aid to needy parents. Self-help hotlines provide parties with free legal advice, but not representation.105 These hotlines are usually staffed by attorneys who work with callers to decrease confusing and ensure cooperation between parents. Self-help centers typically provide in-person services similar to those offered by self-help hotlines; staff at these centers are available to aid pro se litigants in

103 See Alternatives to Incarceration.
104 See id.
filling out forms, explaining procedure and terminology, and providing information on what to bring to court.\textsuperscript{106}

The use of online tools in helping parents understand the child support process and how to modify an order is increasing. Numerous states now offer free online child support calculators.\textsuperscript{107} Like members the previously mentioned Kentucky partnership, other legal aid groups feature ready-made support forms on their website.\textsuperscript{108} Some states go further than offering an online calculator or ready-made forms. The Minnesota Department of Human Services offers a child support modification service known as ezDocs.\textsuperscript{109} The ezDocs platform allows registered users to request that their order be reviewed for changes by the relevant county child support office, to respond to a request made by another parent for review of an order, or to file a pro se motion to request a modification of a support order.\textsuperscript{110}

**Conclusion**


\textsuperscript{110} See *Id.*
Contempt can be an effective means by which to enforce child support orders. However, contempt is simply not a viable remedy when the parties involved lack the funds to purge the contempt by paying their arrears. Fortunately, various alternatives measures—both remedial and extra-remedial—have been successfully implemented. Through the use of programs such as these, Hugh could potentially pay Wendy an adjusted sum, or find the work he so desperately needs in order to pay his support obligations. Such alternatives would get Wendy her much needed support, put Hugh in a position to complete his obligations, maintain their working relationship, and (most importantly) keep Hugh out of prison and in Sean’s life.