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FACT SHEET 2015

SB 375

**Remove the Automatic Assumption of Earned Income for Incarcerated Parents
Considering Unemployment Due to Incarceration Will Improve Reentry, Restore Stability for Children, and
Improve Efficiency in the Attorney General's Child Support Division**

ASSUMPTION OF EARNED INCOME FOR CHILD SUPPORT IMPEDES REENTRY OF FORMERLY INCARCERATED PARENTS

When attempting to establish appropriate child support payment amounts, judges will presume that an individual is working 40 hours per week at minimum wage if no evidence is submitted of the parent's resources. This will often occur when a parent does not appear for divorce or child support hearings. In these instances, judges are authorized to issue "default judgments," with the assumption of earned income. Specifically, the judge will assume that the parent is making \$14,500 per year. If that parent has two children, the court will require 25% of that income to be paid in child support.¹

One of the reasons that absent parents do not appear for a hearing, however, is that they are incarcerated. An automatic assumption of earned income will result in an incarcerated parent owing substantial amounts upon release, resulting in additional barriers to reentry. For instance, **if the parent was incarcerated for three years, he or she would owe \$10,875 in arrears for a period of time when no income was earned.** Yet the average amount of child support debt owed by formerly incarcerated parents is typically much higher than that.

Excessive child support debt owed by formerly incarcerated parents is a problem on multiple levels:

- **Challenges for formerly incarcerated parents:** Individuals attempting to reenter the community after a period of incarceration already face major barriers to employment and housing. They are often forced to accept low-wage jobs without benefits, making it more difficult to attain financial stability.
- **Challenges for the children of formerly incarcerated parents:** Children have already faced years of hardship due to parental incarceration: They have endured housing instability and other stressors that have been shown to negatively impact development.² Formerly incarcerated parents are under enormous pressure to restore stability in the lives of their children, putting increased strain on a recently released parent who is already facing monumental challenges of reintegration. The pressure to meet child support obligations – combined with debt-collection efforts for child support arrears – may lead the parent to consider methods to obtain quick cash. This dynamic is not conducive to successful family reintegration.
- **Inefficiencies for the Office of the Attorney General:** Child support debt collection from formerly incarcerated parents causes additional expense and inefficiency on the state level. Much of the child support collection efforts are conducted by the Office of Attorney General (OAG), and a portion of collected payments goes toward recouping state expenditures on public assistance paid to the custodial parent or guardian. Studies have shown that state efforts to recoup unrealistic debt from formerly incarcerated parents is a major burden on the OAG's Child Support Division, draining resources that could be used to more effectively pursue realistic debt repayment.³

Continued on reverse.

KEY FINDINGS

- Nearly 52 percent of incarcerated individuals in state prisons have at least one child under the age of 18.⁴
- Officials at the Texas Attorney General's Office estimate that the average debt owed by an incarcerated non-custodial parent at the time of release is \$36,000.⁵ Other states report similarly high amounts of child support debt owed by formerly incarcerated parents upon release.⁶
- A full-time worker in the Child Support Division of the Texas Attorney General's Office handles, on average, 469 cases per year, and collects a mere \$1.1 million, which is then split between the state for public-assistance repayment, the custodial parent, and the federal government.⁷ Some of this inefficiency is related to docket congestion and efforts to recoup exceptionally high debt from formerly incarcerated parents.

COST-SAVING AND PUBLIC SAFETY-DRIVEN SOLUTION: SUPPORT SB 375 BY SENATOR JOSÉ RODRÍGUEZ

This bill will remove the automatic assumption of earned income when the absent parent is incarcerated for a period of 90 days or more. This bill will not force judges to set child support at \$0 just because the absent parent is incarcerated; judges must consider a range of factors, including available assets. The bill will simply remove the automatic assumption of earned income when a parent is incarcerated and unable to pursue paid employment. Child support orders can be revised once the parent is discharged or paroled. This bill will ensure that the parent is not released owing substantial amounts in arrears that cannot reasonably be paid.

Citations

¹ The Texas Office of the Attorney General (2014), "Child Support Information for Incarcerated Parents and Parents Returning to the Community," Available: <https://www.texasattorneygeneral.gov/files/cs/incarcerated.pdf>.

² National Conference of State Legislatures (2009), "Children of Incarcerated Parents," p. 1. Available: <http://www.ncsl.org/documents/cyf/childrenofincarceratedparents.pdf>.

³ Source: Krockner, Michael (2014), "Pursuing Child Support Against Incarcerated Parents: A Hopeless Endeavor," (State Bar of Texas Family Law Section Report, Volume 2014-15 Winter, p. 59-73).

⁴ National Conference of State Legislatures (2009), "Children of Incarcerated Parents," p. 3. Available: <http://www.ncsl.org/documents/cyf/childrenofincarceratedparents.pdf>.

⁵ Information provided by Oscar Esquivel, NCP Program Specialist for the Texas Office of the Attorney General.

⁶ Administration for Children and Families, U.S. Department of Health and Human Services, Office of Child Support Enforcement (2012), "Realistic Child Support Orders for Incarcerated Parents," (Child Support Fact Sheet Series, Number 4), Available: http://www.acf.hhs.gov/sites/default/files/ocse/realistic_child_support_orders_for_incarcerated_parents.pdf

⁷ Krockner, Michael (2014), "Pursuing Child Support Against Incarcerated Parents: A Hopeless Endeavor," (State Bar of Texas Family Law Section Report, Volume 2014-15 Winter), p. 61.