

## Procedural Justice: Alternatives to Civil Contempt in Child Support Cases

BY JENNA BANNON, MICHAEL HARTMAN AND KATE BRYAN

Child support is an important economic support for many families, particularly low-income families struggling to achieve financial stability. Yet less than half (43.5%) of custodial parents received the full amount of child support owed according to the [United States Census Bureau](#). More than \$33 billion in child support went unpaid in 2015, the most recent year for which data is available.

When noncustodial parents fall behind on child support payments, regardless of reason, they can be held in civil contempt (i.e., noncompliance with a court order), which often results in judges ordering purge payments (i.e., lump sum payments to avoid civil contempt), community supervision/probation and even jail time. Contempt proceedings are costly for the state child support program, the courts, and county jail systems and may result in noncustodial parents losing employment if they are jailed as a result of the contempt action. There is also independent research that contempt proceedings do not increase rates of collection or improve reliable support payments to families. In fact, data from Illinois revealed that in fiscal year 2010, the state experienced a net loss of \$315,000 as a result of civil contempt filings.

In recent years, state and federal policymakers have realized most child support policies do not distinguish between noncustodial parents, usually fathers, who evade paying support from those who would pay support if they had the financial means. As a result, both levels of government are evaluating the cost, fairness and effectiveness of civil contempt as a tool to increase child support payments.

### Federal Action

In *Turner v. Rogers*, a 2011 U.S. Supreme Court decision, the court held that the Due Process Clause does not require that counsel be provided in failure to



pay child support civil contempt cases, but the state must provide procedural safeguards in child support enforcement hearings. Those procedural safeguards must, at a minimum, provide (1) adequate notice of the importance of the ability to pay, (2) a fair opportunity to present relevant information, (3) a fair opportunity to dispute relevant information, and (4) express court findings as to the supporting parent's ability to comply with the support order.

The court said that a parent's ability to pay constitutes the "critical question" in a civil contempt case and adequate safeguards must be in place for the court to decide if the failure to pay is willful.

In response to the ruling, the federal Office of Child Support Enforcement (OCSE) promulgated a

### Did You Know?

- According to the [U.S. Census Bureau](#), the average amount of child support due was \$5,760 per year or about \$480 a month.

- To increase payments, [Georgia enacted legislation](#) in 2015 allowing counties to operate work release programs for parents who have been found in civil contempt for nonpayment of child support.

- Georgia, Indiana, Maryland, Wisconsin and Texas are implementing procedural justice interventions using lessons from PJAC. State and county child support office staff receive training, coaching and support from OCSE and PJAC grantees to incorporate procedural justice principles into a wide range of child support processes, including paternity establishment, order modification and noncustodial parent work programs.

[final rule](#) establishing best practices for procedural safeguards in 2016. They were designed to “make Child Support Enforcement program operations and enforcement procedures more flexible, more effective, and more efficient by recognizing the strength of existing state enforcement programs, advancements in technology that can enable improved collections rates, and the move toward electronic communication and document management.”

This rule also included due process requirements for states to implement to comply with the Supreme Court ruling. It requires child support agencies to screen and determine if noncustodial parents have the ability to pay before filing civil contempt actions that could result in them being jailed.

Shortly before the final rule was published, OCSE awarded grants to child support agencies in Arizona, California, Michigan, Ohio and Virginia to fund [Procedural Justice-Informed Alternatives to Contempt](#) (PJAC) projects. These projects were, in part, based on the research from Tom R. Tyler, professor of psychology and law at Yale University. His evidence shows that people’s willingness to accept a legal decision is strongly linked to whether they feel the decision was fairly made, even if the outcome is not favorable to them. The grants were used to “increase reliable payments, reduce arrears, minimize the need for continued enforcement actions and sanctions, and reduce the inappropriate use of contempt” using the following principles from Tyler’s research:

- **Respect:** Parents should believe they were treated with dignity and respect and their concerns were taken seriously.
- **Understanding:** Parents should understand the child support process and have their questions answered.
- **Voice:** Parents should have a chance to be heard by sharing their perspectives and expressing their concerns.
- **Neutrality:** Parents should perceive the decision-making process to be impartial.
- **Helpfulness:** Parents should feel the child support agency was helpful and interested in addressing their situations.

Focusing on noncustodial parents who are in serious debt for nonpayment of child support, the PJAC demonstration is evaluating an approach that provides an alternative to charges of civil contempt. The process requires child support enforcement agencies to “reframe their work with families as a respectful, problem-solving endeavor focused on how to engage with the entire family and increase the likelihood that children receive financial and emotional support.”

Working with both parents to avoid contempt pro-

ceedings and increasing consistent payments are goals for the program. The PJAC demonstration sites train their case managers in procedural justice concepts, dispute resolution, responding to domestic violence, and trauma-informed practices. Case managers begin the process by reviewing the case history and reaching out to each of the parents to hear their perspective on the child support case and concerns that may be contributing to non-payment. Case managers then schedule in-person or telephone case conferences tailored to the unique circumstances of each case. Overall, PJAC case managers report finding case conferences beneficial and note they allow parents to better understand each other’s situations and how the child support rules apply to their situation.

## State Action

While the full evaluation of the federal PJAC demonstration project won’t be released until 2022, there is burgeoning interest in procedural justice models throughout the country and multiple state child support agencies are adapting strategies from the demonstration sites to test procedural justice interventions in their jurisdictions.

Procedural justice principles have also been used in other legal settings. California, for instance, implemented procedural fairness initiatives in 19 trial courts with a focus on cases involving traffic, small claims, family and other civil matters. In a [2011 report](#) on the California initiatives, the Center for Court Innovation concluded that “opportunities to signal that the justice system is capable of meting out fair and impartial justice” can be achieved by providing litigants greater access to the court and legal proceedings, establishing resources designed to explain legal processes, cultivating positive interactions with court staff and bench officers, and ensuring that litigants felt that their voices were being heard.”

States and communities are experimenting with a variety of innovations to increase child support collections and some policymakers are questioning the benefits, effectiveness and fairness of pursuing civil contempt. In 2021, [over 800 bills](#) were considered in all 50 states related to family law and child support. Though no state enacted procedural justice requirements for child support, Mississippi and Oklahoma both enacted legislation requiring task forces or more legislative oversight in awarding and calculating child support.

With promising results from demonstration sites, procedural justice models are emerging as a cost-effective way to increase child support payments, improve cooperation among parents and reduce the use of contempt of court and incarceration. State legislators can draw on lessons learned from the demonstration sites to increase timely and consistent child support payments, while also improving parents’ experience and trust in the child support system.

## Additional Resources

- [The Justice Collaboratory, Yale Law School](#)
- [Child Support Tutorial, NCSL](#)
- [Child Support and Family Law Legislation, NCSL](#)

## NCSL Contact

[Jenna Bannon](#)  
303-856-1359