



CENTER FOR FAMILY POLICY AND PRACTICE

~New Thinking

Policy Briefing

February 2012 – Vol. 14 – No. 1

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Class Action Lawsuit Challenges Georgia’s Jailing of Indigent Parents for Child Support; Black Parents More Likely to be Jailed

The Southern Center for Human Rights (SCHR) in Atlanta filed a class-action lawsuit in March, 2011, “to remedy the State of Georgia’s persistent failure to guarantee legal representation to indigent parents who face incarceration in child support contempt

proceedings, as required by the Georgia Constitution and the United States Constitution.” On December 30, 2011, Judge Jerry Baxter, of the Fulton County Superior Court, granted class certification to all indigent parents who face jail time for not paying child support, specifically in contempt proceedings where the state’s Department of Human Services (DHS) is represented by attorneys being paid for by the state. The outcome of this case, *Miller v. Deal*, could potentially affect hundreds of indigent parents in Georgia who are currently incarcerated for not paying child support, as well as thousands who face the threat of jail in child support contempt proceedings.

Judge Baxter’s fact findings state that “...the sanction of imprisonment has become a routine part of child support enforcement practice in Georgia. As of October 2011, about 845 parents were incarcerated in Georgia for child support debt in the course of DHS-initiated contempt proceedings. In addition, since January 1, 2010, [until October, 2011] at least 3,538 parents have been jailed, without counsel, in DHS-initiated civil contempt hearings.” According to SCHR: “This number, moreover, is underinclusive because it is based on data from only 36 of the 59 SAAGs [Special Assistant Attorneys General] who prosecute child support contempt actions for DHS in Georgia.”

The lawsuit asserts that an indigent parent in Georgia who owes child support and faces a threat of incarceration is entitled to legal representation according to the due process safeguards provided for by the Sixth and Fourteenth Amendments to the U.S. Constitution, as well as Article I of the Georgia Constitution. Additionally the lawsuit argues that the Georgia Constitution prohibits incarceration for debt, citing a 1953 decision where the Supreme Court of Georgia held that “we do not allow imprisonment for debt in this State.”

According to Sarah Geraghty, the senior attorney handling *Miller v. Deal*, the Southern Center for Human Rights became involved in this issue when clients it represented in other civil matters became unemployed, then had trouble paying their child support, and were threatened with being jailed indefinitely. Geraghty states that “indefinitely can mean a year or longer in many cases. It was entirely standard for people to be jailed, without counsel, for 6 to 12 months or longer before SCHR filed this lawsuit. Now the state is suggesting that incarcerations be reviewed every 30 days.”

This lawsuit reveals how the child support enforcement system works in Georgia, as well as the circumstances of noncustodial parents who are either incarcerated for not paying, or are threatened with

incarceration. Below are stories from three of the five plaintiffs in *Miller v. Deal*, highlighting the lengths of time that Georgia's courts held these parents in jail, and the amounts of money in question:

- Lance Hendrix was jailed four months after failing to make a payment of \$80. His current child support order is \$480 per month. Although Mr. Hendrix is employed, he has an income below the poverty line, is indigent, and faces being sent to jail again for arrears owed.
- Reginald Wooten was jailed four times totaling longer than a year, including one time for being \$330 behind on payments. He has a current child support order of \$300 per month. Mr. Wooten is underemployed and indigent, living with and providing care for a terminally ill parent, and faces being jailed again for child support owed.
- Joe Hunter was jailed three times for a total of longer than eight months. The court jailed him one time for being \$528 in arrears. Another time, Mr. Hunter remained in jail because he was unable to pay the purge fee of \$250. He has a current order of \$264 per month, is indigent, and could be jailed again for child support owed.

According to SCHR's survey of Georgia's jails in June 2010, black people are more likely to be jailed by Georgia's courts for not paying child support. In six of the counties that responded to SCHR's Open Records Act request, 100% of all parents jailed for not paying child support were black. These counties included the medium-sized county where Augusta is located, as well as five small counties. Two other medium-sized counties, Bibb and Muscogee, reported that black people were 89% of all those in jail for not paying child support. Black people account for about 31% of the population of Georgia, and about 51% of the people in the medium-sized counties discussed above. Additionally, black people experience poverty at a rate of about 2.2 to 2.5 times that of white people in all the counties mentioned above, according to CFFPP's analysis of U.S. Census data.

Sarah Geraghty, the senior attorney with SCHR, notes that "individual Special Assistant Attorneys General (SAAGs) have a lot of discretion about when to seek contempt. We documented numerous cases in which jail was the sanction of first resort. . . . When one watches child support contempt hearings, one comes to the inescapable conclusion that the SAAGs often run the proceedings. Indigent, unrepresented parents stand little chance when they are forced to litigate against trained, state-funded lawyers, who specialize in the prosecution of child support contempt cases."

Financial incentives for collecting child support arrears may increase the likelihood that indigent parents are jailed for contempt. The federal government provides cash incentives to state governments for achieving certain child support enforcement goals. States are paid a larger incentive based on the number of child-support cases reporting a collection, regardless of the amount actually collected. Therefore, states have a financial incentive to pursue even indigent parents, who might pay only a token amount. According to Judge Baxter's findings of fact, three SAAGs surveyed handled an average of 2,881 cases per year over two years. Sarah Geraghty notes that "SAAGs who prosecute these cases are paid by the hour, and they make a tremendously good living prosecuting these cases—some make hundreds of thousands of dollars per year—and there is some incentive, unfortunately, to bring a large volume of cases. Doing so essentially increases the lawyers' profit. These are contract attorneys—the more contempt cases they bring, the more they get paid."

In Georgia, there is a legal precedent from 1998 that addresses the incarceration of indigent parents who owe child support and do not have the ability to pay. In the case of *Hughes v. Dep't of Human Res.*, the

Supreme Court of Georgia held that a parent must be released from incarceration if that person has no ability to pay, stating: “As we have long held, the moment it appears that there is *inability*, it would clearly be the duty of the judge to discharge the party.” SCHR states in its petition that this legal protection “is widely disregarded” in practice.

Responding to this situation, while a decision in *Miller v. Deal* is pending, SCHR developed a *pro se* petition that indigent people in Georgia can use to ask the court to release them from incarceration for child support debt. Because the petition relies on the *Hughes* decision described above, the form can only be used by persons who are indigent and have been jailed for child support debt in a civil contempt proceeding initiated by Georgia’s Department of Human Services. SCHR’s *pro se* petition, which includes instructions and a legal argument based on the *Hughes* decision, can be found at:

<http://www.schr.org/files/post/CHILD%20SUPPORT%20PETITION.pdf>

The Supreme Court of the United States recently decided a related case, *Turner v. Rogers*. The Turner case involved an indigent parent who was jailed for not paying child support. In that case, both the noncustodial parent and the custodial parent appeared in court without the assistance of an attorney. The Supreme Court held that due process requires that an explicit inquiry and fact finding about the noncustodial parent’s ability to pay must be made in cases where both parties do not have lawyers, but stopped short of finding that an attorney must be provided to the parent facing the threat of jail. An important difference between the Turner case and *Miller v. Deal* is that when Georgia’s child-support enforcement agency seeks to hold a parent in contempt for child support debt, it is always represented by a state-funded attorney.

The Turner decision emphasized that the key question a court must answer before it can send a parent to jail for not paying child support is whether that person, in fact, has the ability to pay. According to the SCHR, in the cases involving the plaintiffs in *Miller v. Deal*, none of the courts that sent the noncustodial parents to jail made any explicit findings that the person had an ability to pay. Georgia’s Department of Human Services (DHS) promotes the use of standardized forms for proposed contempt orders. However, according to SCHR, prior to June 2011 in at least 82% of the child support offices, “the form contempt orders prepared and promulgated by DHS did not contain the phrase ‘ability to pay.’”

Following the Turner decision, Sarah Geraghty reports that Georgia’s DHS created new forms for courts to use that emphasize the ability to pay issue. However, she notes that: “these changes are not likely to have much impact in most cases. The fact of the matter is that lay people are not in a good position to plead for their liberty, against trained and experienced Special Assistant Attorneys General who are trying to send them to jail. That fact is not changed by the provision of a form to the indigent parent.”

For more information about *Miller v. Deal*, please visit the Southern Center for Human Rights website:

<http://www.schr.org/childsupport>

Large Federal Wage Subsidies Proposed to Break “The Crisis of African American Unemployment”

The Economic Policy Institute’s Algernon Austin proposed a bold new federal policy in a recent paper titled “A Jobs-Centered Approach to African American Community Development: The Crisis of African American Unemployment Requires Federal Intervention.” Austin’s plan “targets communities with persistently high unemployment, [and] includes three main components: creation of public sector jobs, job training with job-placement services, and wage subsidies for employers.” Policymakers and advocates for low-income noncustodial parents may be especially interested in this plan because any person experiencing long-term unemployment in a targeted community would be eligible. Austin’s wage-subsidy proposal is stronger than recent federal programs, such as the Work Opportunity Tax Credit (WOTC). The WOTC was available until the end of 2011 for certain people—younger workers, SNAP recipients, recent ex-felons, among others—and continues to be available to certain veterans until the end of 2012.

Arguing for large-scale federal intervention, Austin notes the length and depth of the unemployment crisis among black people. “African American adults are about twice as likely to be unemployed as whites... Unemployment rates for African Americans have been far higher than those of whites for the past 50 years, even in good times. In fact, since 1960 the black unemployment rate has been about twice the white rate.” Unemployment disparities between black and white people also persist regardless of education: “...African Americans are more likely to be unemployed than whites at every educational level.”

Employment discrimination against black people “has been well documented in urban areas, [and] likely exists in suburban areas as well.” Austin cites a study by Hellerstein, et al, “Spatial Mismatch or Racial Mismatch?” that concludes: “the problem is not a lack of jobs, per se, where blacks live, but a lack of jobs into which blacks are hired.” Hellerstein’s study found that “It is primarily black job density that influences black employment, whereas white (or non-black) job density has little if any influence on the employment of blacks.” In other words, a black person is more likely to find a job in places where other black people already have jobs. This is likely due to a combination of employers’ hiring discrimination, occupational segregation due to race-segregated social networks, and segregated housing patterns.

Austin proposes a “concerted national effort” consisting of a federal policy to “support targeted job creation for communities experiencing persistently high unemployment.” Targeting criteria include:

- “Communities of 25,000 people or more in counties and metropolitan areas”
- “Experienced unemployment of more than 6 percent every year in the previous 10 years”
- After unemployment falls below 6 percent, communities phase out of the program over 5 years.

An unemployment rate of 6 percent serves as an important threshold in Austin’s job-creation policy. He notes that white unemployment has often been below 6 percent, but that black unemployment has not dipped below the 6-percent threshold in the past 40 years.

Individuals would be eligible for Austin’s proposed program according to the following criteria:

- Reside “in an eligible community for a prolonged period”
- “Unemployed or out of the labor market for at least six months”

Austin’s proposed federal policy has three separate programs, summarized below:

1. “Direct public sector employment”: This program would consist of federal funding to local governments to create jobs, with a focus on community-driven priorities such as “infrastructure, safety, health, ... housing stock and green spaces; ... education of children; ... [and] other community projects.”
2. “Job training and job placement”: This program would provide funds for organizations to train people in “skills that are in high demand in the local economy,” “develop strong relationships with employers and aggressively market qualified black job candidates.”
3. “Wage subsidies”: This program would provide a subsidy of 75% of the minimum wage to employers that hire people from targeted communities for full-time jobs with benefits. The subsidy would be reduced to 33% for jobs that either do not provide benefits or are part time. If the employer is also located in the target community, the subsidy would be 10% higher.

The wage subsidies that Austin outlines for hiring long-time unemployed people into full time jobs are larger than the tax credits that other federal programs provided to employers for hiring people from various targeted groups, such as 18-39 year old SNAP (food stamp) recipients, or ex-felons within one year of conviction or release. The following is a comparison between Austin’s proposed wage subsidies, and the tax credits provided by selected current and former programs:

Proposal or Program	Maximum Wage Subsidy	Notes
Austin Job-Creation Plan	\$11,310 to \$12,818 for full time job with benefits; \$4,976 to \$6,484 for full time job without benefits, or part time job	Amounts based on federal minimum wage of \$7.25 per hour, and working 40 hours, 52 weeks per year
Work Opportunity Tax Credit (WOTC)—Veterans target groups	\$9,600 for disabled veterans unemployed longer than 6 months; \$5,600 for other veterans unemployed longer than 6 months	Set to expire at end of 2012
WOTC—other target groups	\$9,000 for long-term TANF recipients; \$2,400 for most other groups	Expired at end of 2011
Empowerment Zones	\$3,000 for new hires or existing employees who live in target areas	Expired at end of 2011

Nearly all of the above federal tax credits for hiring targeted groups expired at the end of 2011. The one exception is the Work Opportunity Tax Credit (WOTC) for veterans, which the Vow to Hire Heroes Act of 2011 extended until the end of 2012. Many of these programs began in the mid-1990s during the era of welfare reform. These programs included: the WOTC, which ran from 1996 until expiring at the end of 2011 for people besides veterans; the Welfare to Work Tax Credit, which ran from 1997 until merging with the WOTC program in 2006; and employer tax credits in the federal Enterprise Zones, Enterprise Communities, and Renewal Communities programs that ran from 1994 until expiring between 2004 and the end of 2011.

Empowerment Zones, Enterprise Communities, and Renewal Communities were federal programs that targeted more than 145 “economically distressed communities” in both urban and rural areas. The most recent urban Empowerment Zones, which expired at the end of 2011, included metropolitan areas such as Fresno, California; Jacksonville, Florida; Oklahoma City, Oklahoma; and San Antonio, Texas. Prior urban Renewal Communities that expired in 2009 included major cities such as Atlanta, Chicago, Detroit, Los Angeles, Milwaukee, Newark, New Orleans, and Philadelphia. Rural areas in these programs were located in 30 states, including Alabama, California, Georgia, Florida, Illinois, Kentucky, Louisiana, Mississippi, New Mexico, and Texas.

A recent study of employment impacts in the federal urban Empowerment Zone (EZ) program during the 1990s suggests that the stronger policies that Austin recommends could be more effective. Matias Busso, et al, in a 2011 study titled “Assessing the Incidence and Efficiency of a Prominent Place Based Policy,” examined the first Empowerment Zones from 1994 to 2000, which were six groups of census tracts in urban areas averaging 113,340 people each, with poverty rates averaging 48% in 1990. Busso found that “neighborhoods receiving EZ designation experienced substantial (13% – 19%) increases in total employment... [and] hourly wages paid to zone residents working inside the zone also appear to have increased significantly (by approximately 8%) relative to controls.”

Federal policies, such as Austin’s job-creation proposal, that focus on increasing employment in specific, local communities may be especially effective at reaching black people because of persistent segregation. As Austin notes, “African Americans still reside mainly in separate and unequal communities. ... In Washington, D.C., for example, the challenge is not how to provide economic development for the city as a whole but how to provide economic development for Ward 8 and similar wards.” Although Austin’s plan is designed to primarily benefit black people and communities experiencing high rates of long-term unemployment, the policies use a race-neutral mechanism that “would also provide benefits to Latino, American Indian, and white communities in which unemployment has remained high.”

To read Algoner Austin’s complete proposal, please visit the Economic Policy Institute’s website at:

<http://www.epi.org/publication/bp328-african-american-unemployment/>

Mission Statement

The mission of the **CENTER FOR FAMILY POLICY AND PRACTICE (CFFPP)** is to strengthen society through the expansion of opportunities for low-income parents – mothers and fathers – to protect and support their children. CFFPP operates as a policy think tank to remove the unique barriers and negative public perceptions that affect low-income men of color. Through technical assistance, policy research and analysis, and public education and outreach, CFFPP works to support low-income families and develop public awareness of their needs.

Contact Us: If you would like to share comments, questions, ideas for future briefing topics, or to sign up for our email list, please contact Nino Rodriguez, Program and Policy Specialist, at nrodriguez@cffpp.org, or visit the CFFPP website at: <http://www.cffpp.org/emailupdates.php>

This policy briefing is made possible in part by the generous support of the Ford Foundation and Community Shares of Wisconsin. Any opinions, errors or conclusions expressed herein do not necessarily represent the views or positions of CFFPP’s funders.