Center For Family Policy and Practice

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States Moving to Avoid Jailing Low-Income Defendants Who Are Awaiting Trial

The Indiana Supreme Court has barred judges from jailing defendants who are low income and cannot afford bail, unless the defendant poses a flight risk or a risk of danger to themselves or others. The ruling will go into effect immediately as a pilot in nine counties, and statewide in January of 2018. This allows a 16-month period in which courts can train and make necessary changes so that judges use the risk assessments consistently when deciding whether a defendant should be held on bond.

The order is based on recommendations of a committee formed by the court in December 2013 to study potential new rules for addressing the number of persons in jail who are awaiting trial. In Marion County, for example, 90 percent of the 2,638 current inmates are awaiting trial and the county jails are overflowing.

The state's actions pre-date a US Department of Justice letter that was sent to state judges nationwide in 2015, asking them to stop practices that threaten jail time for people who cannot afford to pay fines. That letter frequently cites the US Supreme Court decision in *Turner v. Rogers*, which states that courts must not incarcerate a person for nonpayment of child support without first conducting an indigency determination and establishing that the failure to pay was willful.

The Indiana changes will have an impact on noncustodial parents who are jailed for nonpayment of child support and cannot afford bail. One article on the new court order describes a parent who was jailed for falling behind in child support payments after losing his job. Despite having recently found employment, the parent was arrested and bail was set at the amount of child support he owed, leading him to lose both his job and apartment.

Indiana Supreme Court Chief Justice Loretta Rush said the "prompt release" of arrestees who do not pose a public safety risk is associated with lower county jail expenses and fewer instances where a person returns to criminal behavior.

http://www.ncsea.myindustrytracker.com/en/article/99272?utm_source=ElasticEmail-ncsea&utm_medium=newsletter&utm_campaign=Ncsea-1439-t-en-140916

http://www.indystar.com/story/news/crime/2016/09/09/supreme-court-no-bail-unless-defendant-dangerous-flight-risk/90125346/

In a related development in New Mexico, if a November ballot measure passes, it would amend the state constitution to make it illegal for judges to impose bail amounts that low-income defendants cannot afford. Judges would have to determine the risk posed by a defendant's release in determining bail, but when there is no risk, as in more than 90 percent of the cases in US jurisdictions, defendants could not be held in jail while waiting for their court date. In 2013, more than half of those in jail were awaiting trial and the average number of days that people remained in jail had increased from 14 days in 1983 to 23 days in 2013.

Since 2013, there have been some states, including Colorado, the District of Columbia, and New Jersey, that have changed their pretrial release policies so that the danger defendants pose to the community and their likelihood of fleeing are the main factors that determine whether they can leave jail. In DC, the shift away from monetary bail has resulted in most defendants being released. According to *The Washington Post,* about 90 percent are not rearrested before their case is resolved, and among those who do get arrested, the majority are not charged with a violent crime.

http://www.governing.com/topics/public-justice-safety/gov-new-mexico-bail-ballot-measure.html

TANF Families Suffer High Rates of Trauma, Program Does Not Address It

A new study from the Center for Hunger-Free Communities at Drexel University documents the high rate of exposure to violence and the high level of adversity experienced by Temporary Assistance for Needy Families (TANF) program participants. TANF requires non-exempt participants to work 20 hours per week as a condition of receiving benefits. For families that have suffered trauma, compliance with this already challenging requirement is even more difficult.

The study is part of an evaluation of a demonstration program designed to address challenges faced by TANF families through trauma-informed peer support groups and financial empowerment classes. The report describes baseline data from a survey of participants. Baseline findings include:

- Of the 103 participants (94 percent of whom were women), 65 percent had seen someone who was seriously wounded by violence and 27 percent saw someone being killed. On top of that, 60 percent said they'd been slapped, punched or hit, 30 percent said they'd been beaten up or mugged and over 17 percent said they'd been attacked or stabbed with a knife.
- Regarding their childhood experience, 43 percent of the participants reported substance abuse by a household member, 37 percent reported emotional abuse and 18 percent had been sexually abused.
- Almost 60 percent of the participants reported depression and just over half said they felt their food situation was threatened or unsecure.
- Among participants, 14.6 percent had spent time in an adult correctional institution, and 48.5 percent of the fathers of the youngest child had spent time in prison.

The center's director notes that, "Programs like TANF require participants to overcome overwhelming stress without proper support. Participants face adversity in their childhoods that cause lifelong mental health challenges and can be barriers to success. By acknowledging exposure to trauma and toxic stress and by building peer support into TANF, programs like our Building Wealth and Health Network can better prepare families for the workforce and help them to break out of poverty."

The full study report can be accessed here:
http://www.ncbi.nlm.nih.gov/pubmed/27421287

A report summary is available at:
http://drexel.edu/now/archive/2016/September/TANF_HealthandWealth/
https://www.sciencedaily.com/releases/2016/09/160901125053.htm

Impact of Payday and Auto Title Loans on Families with Low Income Described in New Report

A recent report from the Center for Family Policy and Practice (CFFPP) looks at how payday and auto title loans work and who uses them and why, as part of a project focused on the economic security of families of color with low incomes in Georgia, Louisiana, Mississippi and Wisconsin. Among the report's key points:

- Although marketed as short-term loans to families with low incomes, payday loans have annual percentage rates that range from 300% to more than 1,000%. Beyond showing some form of current income, lenders are not currently required to assess a borrowers' ability to repay their loan. Borrowers typically take out multiple loans and renew them an average of eight times. When the loans are not paid in full on the due date, subsequent regular payments only cover interest and fees and not the principal.

- Auto title loans are structured so that the borrower typically gives the lender the clear title to the vehicle and often an extra set of keys in exchange for the loan's value. A typical practice is to mount a GPS tracking device on the borrower's vehicle to expedite the lender's repossession of the vehicle if the loan payments are not made on time. Up to 71% of title loan customers have their vehicles repossessed, with particularly negative impacts, because the vehicle is needed to travel to school or work (80% of borrowers), or to medical appointments (95%), and/or to buy food and other household goods (98%).
- Nearly half of all payday and auto title loan users have annual incomes of less than $25,000.
- African Americans are 103% more like to use a payday loan than whites. Nationwide, people who identify as Asian or white are least likely to take out payday and auto title loans and people who identify as African American or American Indian/Alaskan are most likely to be drawn into the loans.
- Among borrowers, 89% do not have college degrees. Borrowers are also twice as likely to be unemployed as employed.
- The largest banks in the country (Wells Fargo, JPMorganChase, US Bank and Bank of America) have positioned themselves to maximize profits by failing to locate banks in the neighborhoods most affected by payday lending and have in fact encouraged payday lending practices by offering lines of credit to payday and auto title lenders.

The report, *Payday Lending and Auto Title Lending: Who Borrows and Why?*, is available at http://cffpp.org/wp-content/uploads/2016/09/I-I-Payday-and-Auto-Title-Lending-Borrowers.September-21.2016-Autosaved.pdf

Two Governors Under Fire After Privatizing Welfare Services

New Mexico is again faced with allegations of fraud on the part of a private contractor (see CFFPP August 2016 Policy Briefing), this time directed at SL Start and Associates, a private company that has contracted with the state to manage its TANF program. A program supervisor has filed a lawsuit against the company, accusing five managers of instructing her to "make misrepresentations of hours on activity time sheets and client work participation agreements, in addition to other documents...in order to provide inaccurate numbers so as to make it appear that federal participation numbers had been met." SL Start took over New Mexico's management of TANF in 2011 as Governor Martinez began her term. The company has since won contracts with the state worth more than $80 million; the TANF contract totals more than $52 million. The company appears to have failed to exempt those who have experienced domestic abuse and those with disabilities from the work requirements as required by federal law, with the lawsuit charging that people are routinely denied exemptions because SL Start does not screen them out.

In Maine, despite the fact that Fedcap Rehabilitation Services has been the target of more than twelve lawsuits in recent years and has paid over $400,000 in settlements for workplace discrimination and disability and wage complaints, Governor Paul LePage is pursuing a $62.5 million contract with the company to provide job training and placement services for the state's TANF participants. TANF requires that participants who have been designated "able-bodied" enroll in the state's program that is designed to provide assistance with finding work. The state claims that the private contract is intended to avoid federal penalties for its poor performance with regard to TANF work participation requirements, but others note that remedies exist that would avoid the penalties. The state has sought to outsource many social service programs under the LePage administration, including Meals-on-Wheels. Multiple attempts by the state to privatize services have led to excessive costs and poor results.

The state of Maine has a $110 million surplus in federal TANF funds due to the number of low-income families it has dropped from the program over the past five years, and approximately 16 percent of Maine households are food insecure. According to Rep. Drew Gattine (D-Westbrook), co-chair of the House Health and Human Services Committee, "Since Paul LePage became governor and Mary Mayhew took the reins at DHHS, Maine has experienced the highest growth in the percentage of children who live in extreme poverty of any state in the country."

http://nmpoliticalreport.com/90497/lawsuit-company-managing-nm-welfare-program-told-employees-to-commit-fraud/

http://freepressonline.com/Content/Top-Scrolling-Area/Top-Scrolling-Area/Article/Eye-on-Augusta-Maine-DHHS-Finalizing-Plans-to-Privatize-Welfare-Program/126/724/47869

http://bangordailynews.com/2016/09/19/mainefocus/after-denying-it-misused-millions-in-welfare-funds-maine-changed-its-spending-to-follow-the-law/

Rising Inequality Expanding the Black-White Wage Gap

A report from the Economic Policy Institute explores the ways in which discrimination and increasing inequality are expanding the black-white wage gap. The study examines data trends since the 1980s to determine the percent by which wages of black workers lag wages of their white peers. According to the report:

- In 2015, black men make 22 percent less, and black women make 34.2 percent less, than the average hourly wages of white men with the same education, experience, size of metropolitan area of residence, and region of residence.

- Black women earn 11.7 percent less than their white female counterparts.
- Black men's average hourly wages were 22.2 percent lower than those of white men in 1979 and declined to 31 percent lower by 2015.
- In 1979, black women were near parity with white women, with an average hourly wage gap of 6 percent. By 2015, however, this gap had grown to 19 percent.
- In 1979, black women's wages were 42.3 percent lower than those of white men and 25.4 percent lower than those of black men. By 2015, these differences had narrowed, but remain significant at rates that were 34.2 percent and 12.2 percent lower than those of white and black men, respectively.
- Black male college graduates (and those with post-college education) started the 1980s with less than a 10 percent disadvantage relative to white male college graduates, but by 2014, similarly educated new entrants to the job market were at an approximately 20 percent disadvantage.

The report, *Black-White Wage Gaps Expand with Rising Wage Inequality*, is available at:
http://www.epi.org/event/how-discrimination-and-rising-overall-inequality-are-expanding-the-black-white-wage-gap/

Incomes Up for Most in US in 2015, But Poverty Increased for Working-Age Adults and Children

The US Census Bureau has released its annual report on income, poverty, and health insurance in the United States in 2015. Key points include:

- Median household income increased by 5.2 percent between 2014 and 2015, and the official poverty rate decreased by 1.2 percent. Over the same period, the percentage of people without health insurance coverage decreased.
- The increase in median income to $56,516 from the 2014 median income of $53,718 is the first annual increase in median household income since 2007, the year before the most recent recession.
- The official national poverty rate was 13.5 percent in 2015, with 43.1 million people in poverty, 3.5 million fewer than in 2014. The 1.2 percentage point decrease in the poverty rate from 2014 to 2015 represents the largest annual percentage point drop in poverty since 1999.
- The rate of individuals without health insurance coverage in 2015 was 9.1 percent, down from 10.4 percent in 2014. The number of people without health insurance declined to 29.0 million from 33.0 million over the period from 2014 to 2015.
- The poverty rate among children and working-age adults, however, has not declined. Among working-age adults, poverty is approximately 4 percent higher than in 2000 and among children, it is approximately 5 percent higher.

- Nearly one-third of the US population has income at or below $33,000 for a family of three.
- The median Asian family earns $14,000 more than the median white family, which earns nearly $18,000 more than the median Hispanic family, which earns approximately $8,000 more than the median black family.

http://census.gov/newsroom/press-releases/2016/cb16-158.html

http://blogs.wsj.com/economics/2016/09/13/u-s-poverty-and-income-inequality-in-9-charts/

State TANF and Child Support Enforcement News

- The US Court of Appeals for the Eleventh Circuit in **Florida** ruled on August 23 that police executing a 'civil writ of attachment' on a man who had disobeyed a court order to pay child support were authorized to search him for weapons under the search-incident-to-arrest exception to the Fourth Amendment. In the case, Ted Phillips was searched upon arrest for nonpayment of child support and found to be in possession of a gun. Because he was a felon with three or more prior convictions for a "serious drug offense," he was subject to a mandatory minimum sentence of 15 years. The court's decision stated that, "Because bench warrants and writs of bodily attachment for unpaid child support are virtually indistinguishable, the long historical pedigree of the former convinces us that the latter also passes constitutional muster."

  The court's decision:
  https://www.bloomberglaw.com/public/desktop/document/United_States_v_Phillips_No_1414660_2016_BL_273057_11th_Cir_Aug_2?1474575667

  A short description of the case:
  http://www.bna.com/weapons-frisk-ok-n73014447047/

- The **Texas** Attorney General's office has begun sending out letters of notification to parents who are 180 days delinquent in their child support payments that beginning in December, they will be blocked from accessing services like vehicle registration renewals, license plate replacements and temporary permits. Once a hold has been placed on the account, clerks will not be able to help the residents until they talk to the Attorney General's Office. People who do not get their registrations renewed could face a $259 fine each time they are cited.

  The *San Antonio Express News* has expressed concern that the new policy will harm the efforts of a parent to pay child support because it will prevent their ability to travel to and from work. If parents who cannot afford to pay their child support debt drive illegally in an attempt to retain their job, they will be subject to tickets and fines that will place them deeper in debt. The paper's op-ed states, "We worry about parents unable to pay, perhaps because of sudden or chronic unemployment or underemployment. And then we worry that this policy will make already deep holes deeper. The state already has tools to compel the 12,000 to 24,000 seriously delinquent parents in the state to pay up. The state can have employers withhold earnings or suspend or not renew drivers and other licenses. It can seek jail in serious delinquency cases. It can file liens on bank and other financial accounts and intercept tax refund checks."

Also Of Note

- In a two-year pilot program authorized by the 2014 Farm Bill, the USDA will allow Illinois residents on food stamps (SNAP) to buy their groceries online starting next summer. The ability to shop for food online is intended to increase food access for the poor and for persons who have disabilities that prevent leaving home or shopping in stores. Low-income families often live in "food deserts" where there are no grocery stores and must rely on public transportation to carry groceries home. Online food services are growing in popularity and allow for the convenient purchase of healthy food (for those with internet access). The goal is for the services to expand their delivery ranges as an alternative to building new brick-and-mortar stores. Online grocery sales are expected to grow from $7 billion in 2015 to $18 billion in 2020. The test run will allow the program to work out any kinks before its expected national launch.

- An Iowa man who was ordered to pay child support for a child who was not his biological child has won his case in court. Joe Vandusen had been estranged from his wife for 16 years, but the couple had never legally divorced. Even though the couple had not had contact over these years, the child was considered legally his, because the law in Iowa, as in most states, holds that if a couple is married, the man is the legal father whether or not he is the biological father. A DNA test is capable of determining paternity, but the law does not provide for this option in cases where the couple is married, and so the only remedy is to petition the court to "de-establish" paternity. Vandusen was unable to afford a lawyer for a divorce, and was unemployed at the time of the court case, but a GoFundMe campaign raised enough funds for the lawsuit.

- A recent report from the Urban Institute looks at the potential of the Affordable Care Act (ACA) to provide Medicaid coverage for the estimated 4 in 10 uninsured veterans with incomes below 138 percent of the federal poverty level. The report finds that:

- Between 2013 and 2015, the rate of uninsured nonelderly veterans fell by an estimated 42 percent, declining from 11.9 percent in 2013 to 8.5 percent in 2014, and falling again to 6.8 percent in 2015.
- Veterans in the 26 states that had expanded Medicaid under the ACA by 2014 were more likely to be insured than veterans in non-expansion states.
- If Medicaid expansion decisions are not changed by 2017, approximately 604,000 veterans are projected to be uninsured in 2017 and 54 percent of them will be living in states that have yet to expand Medicaid.