

# PAYING SUPPORT TO

## Child Support Policy Fact Sheet

### What the Research Shows

Custodial families have more income when child support payments are passed through to them and disregarded in determining cash assistance under the Temporary Assistance for Needy Families (TANF) program.<sup>1</sup> More noncustodial fathers pay child support, and they pay more, when it is passed through and disregarded. Fathers are also more willing to establish the paternity of their children. Higher disregard amounts result in increases in cases with paternity established, paying cases, and child support payments.<sup>2</sup> In Wisconsin, screened-in child maltreatment reports decreased when child support payments were passed through and disregarded, suggesting a lower risk of child maltreatment.<sup>3</sup>

### What Isn't Working

Not all children receive the child support paid by their noncustodial fathers. Families participating in the TANF program must sign over their child support rights to the state to pay back cash assistance.<sup>4</sup> In 2019, states collected \$28.8 billion in child support, and while most of that money was paid to families, states held back \$1.1 billion in assigned support.<sup>5</sup> These retained child support payments are treated as government revenues and used to help fund the TANF program, the child support program, and other government services. Even when families no longer receive TANF cash assistance, states keep some of their child support payments. Although state policies vary, more than half—60 percent—of total retained child support payments are for families who no longer receive TANF cash assistance.<sup>6</sup>

### Why It Matters to Families

When states keep child support, noncustodial fathers are less likely to comply with their child support orders. Although noncustodial fathers are told that their children need their financial support, they often know that their child support payments will be kept by the state and will not go to their children. Because their children do not receive their support payments, noncustodial fathers sometimes pay out of both pockets—some payments to the state and some informal support to their children. Sometimes, fathers stay away from formal employment to avoid wage withholding that does not benefit their children. This can lead to nonpayment and debt.<sup>7</sup>

### Why It Matters to States

Welfare cost recovery policies send a mixed message about the importance of supporting children, contribute to distrust and avoidance of the child support program, and undercut the program's family-centered goals.<sup>8</sup> They increase state establishment and enforcement costs, and negatively impact federal incentive funding by depressing paternity and collection rates. Although welfare cost recovery policies produce state revenues, they are very expensive to maintain—costing as much as 6 to 8 percent of total child support program expenditures.<sup>9</sup>

States with smaller TANF caseloads and higher federal Medicaid reimbursement rates should take a particularly close look at the economics of retaining collections. States share retained collections with the federal government according to each state's Federal Medical Assistance Percentage (FMAP).<sup>10</sup> States with higher rates must send back a larger share to the federal government. 10 states have regular FMAP rates above 70 percent, meaning these states pay the federal government more than 70 percent of retained collections.<sup>11</sup> Enhanced FMAP rates authorized by the Families First Coronavirus Act of 2020 during the pandemic apply in reverse to child support collections, resulting in states temporarily paying an even higher share of collections to the federal government.<sup>12</sup>

## A Better Way to Do Business

Putting child support dollars in families' hands results in more income for families and helps them cover essentials like children's food, clothes, and school supplies. States can direct that money to families at home, rather than to the federal government. Family pass-through and distribution policies incentivize noncustodial fathers to pay through the formal child support program and can increase federal incentive payments by improving child support program performance. States may also count the state share of child support passed through to families toward their TANF Maintenance of Effort (MOE) requirement.<sup>13</sup>

Because welfare cost recovery now plays a much more limited role in the child support program and contributes far less revenue to state budgets, it is more feasible and cost-effective than in the past for states to forego child support revenues and replace needed program funding with general funds. Child support revenues from retained collections are half of what they were even a decade ago. A particularly good time to reassess family distribution policies is during a child support computer system replacement or major enhancement project.

States have the opportunity to realign the mission of the child support program to support families and improve performance, leverage the federal share to increase family income, reduce program complexity and long-term systems and

operational costs, and make child support payment more meaningful for fathers and families. Because family distribution policies increase family income and therefore can affect family eligibility for other family-serving programs, it is important to bring these programs to the table.

Section 1 of this fact sheet describes the most robust state pass-through and disregard policies that benefit families currently receiving TANF cash assistance. More than half of states pass through and disregard at least some support for families receiving cash assistance, and two states—Colorado and Minnesota—pass through all ongoing monthly support with different disregard policies.

Section 2 identifies five states that have adopted more generous distribution rules for families no longer receiving cash assistance, and section 3 describes the set of child support distribution options available under federal law that, if taken together, would result in 100 percent of child support being paid to families.

## 1. TANF Pass-Through

Under federal law, states have the authority to set their own TANF pass-through and disregard policies. Two separate policies are involved: (1) the pass through, which is the amount of assigned child support paid to families, and not kept by the state, and (2) the disregard, which is the amount of child support income not counted in determining eligibility for and the amount of TANF cash assistance.

States may pass through and disregard support payments, with no dollar limit, to families receiving cash assistance. States may pass through and disregard any amount of ongoing monthly support payments, arrears collections, or both. If a state decides to pass through and disregard support for families receiving cash assistance, the state does not have to pay the federal share on amounts up to \$100 disregarded for one child and \$200 disregarded for two or more children.<sup>14</sup>

More than half of states pass through and disregard at least some child support to families receiving cash assistance. States have the flexibility to pay the pass-through amount either through the child support program, such as Colorado, or through the TANF program, such as Montana.<sup>15</sup>

- + **Colorado** passes through and disregards all current support.
- + **Minnesota** passes through all current support but limits its disregard to \$100 for one child and \$200 for two or more children.
- + Eight states (**Illinois, Maryland, Michigan, New Mexico, New York, Oregon, Pennsylvania, and West Virginia**) pass through and disregard \$100 for one child and \$200 for two or more children.
- + **California** will pass through and disregard \$100 for one child and \$200 for two or more children, effective January 1, 2022.<sup>16</sup>
- + The **District of Columbia** passes through and disregards \$150.
- + **Wisconsin** passes through and disregards 75 percent of payments.
- + Three states (**Montana, New Jersey, and Virginia**) pass through and disregard \$100, regardless of family size.
- + **Washington State** passes through and disregards \$50 for one child and \$100 for two or more children.
- + **Texas** passes through and disregards \$75, regardless of family size.
- + Five states (**Delaware, Georgia, Maine, South Carolina, and Tennessee**) pay child support to families through traditional fill-the-gap policies, a budgeting mechanism that combines benefit levels with child support income up to the state's TANF standard of need.<sup>17</sup>
- + Seven states and **Puerto Rico** pass through and disregard \$50.<sup>18</sup>

No state passes through assigned arrears collections to families receiving TANF, largely because states would continue to owe a federal share on the amount passed through above the \$100 and \$200 limits on the federal share waiver.

State pass-through and disregard laws are tracked on the National Conference of State Legislatures (NCSL) website.

+ **COLORADO**<sup>19</sup>

The Colorado legislature enacted a full TANF pass-through and disregard of current support payments, which was implemented by the state in 2017. Under the policy, the Department of Human Services passes through all monthly child support payments to families receiving cash assistance. The state keeps arrears collections. The child support program's Family Support Registry distributes the passed through child support amounts to the family based on the distribution option selected by the family. This can include direct deposit, debit card, or check.



To pay for the policy, the Colorado General Assembly appropriates general fund dollars each year to cover the federal share and backfill half of county revenues (the counties receive 50 percent of all dollars passed through). Colorado has a 50 percent FMAP, which means that the federal share is equal to half of the assigned collections above \$100 for one child or \$200 for two or more children. Under the pass-through policy, the federal share averages about 23 percent of the total amount of support paid to families receiving cash assistance.

A little over 3,000 families receive pass-through payments of \$167 on average each month, increasing the TANF benefit amount by 33 percent for a single mother with two children. For the first two years after implementation, families received \$11.7 million more than they did before the pass-through policy was implemented. A recent study commissioned by the Colorado Department of Human Services found that child support payments increased by 4.4 percent and cases with collections increased by 2.2 percent as a result of the policy. Total monthly collections made in current assistance cases rose 76 percent and established cases rose 13 percent during the first 18 months following implementation.<sup>20</sup>

+ **MINNESOTA<sup>21</sup>**

Twenty years ago, the Minnesota legislature adopted a full TANF pass-through of current child support payments, implemented in 2001. The original legislation counted child support income in calculating TANF benefits.<sup>22</sup> In 2014, the legislature amended the law to adopt a disregard of \$100 for one child and \$200 for two or more children. This means that families receive their full monthly child support payment. For payments up to \$100 for one child and \$200 for two or more children, families also receive full TANF benefits. However, any amount passed through above the \$100 and \$200 is counted as income in the TANF program, reducing TANF benefits. The state keeps arrears collections. The Child Support Payment Center distributes the passed through amount to the family's debit card or bank account. The Minnesota legislature pays for the disregard policy through a state appropriation.



In 2019, 9,623 cases received at least one pass-through payment, averaging \$1,041 in 2019. The 2019 median amount was \$556. Between 2015 and 2016, state collections in current assistance cases increased 48 percent: In 2015, the state collected \$11 million in current assistance cases, and in 2016 it collected \$16.3 million. During the same period, collections per case in current assistance cases increased by 42 percent.<sup>23</sup> Minnesota has a 50 percent FMAP and pays the federal government half of collections above the \$100 and \$200 amounts.

## 2. Paying Tax Offset Collections to Families

Beginning with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Congress adopted “family-first” distribution to increase support payments to families no longer receiving cash assistance. The Deficit Reduction Act of 2005 (DRA) further expanded family distribution and provided states with broad flexibility to pay more or all support to families who receive or used to receive cash assistance.<sup>24</sup>

When families receive cash assistance, child support that becomes due during the assistance period is assigned to states. The basic distribution rule is that payments are used to pay current support obligations before arrears. States may either keep support payments or pass some or all of it through to families. If there is money left, payment of state-owed arrears has priority over family-owed arrears.

Once families stop receiving cash assistance, distribution priorities are flipped, and families receive most of the child support collected on their behalf. First, current support is paid to families. Remaining child support collections are used to pay off family-owed arrears. If there is money left, it is kept to pay state-owed arrears.

However, PRWORA made one exception to this family-first distribution rule, called “PRWORA distribution.” The exception is that states keep federal tax offset collections to pay off state-owed arrears before paying current support orders and family-owed arrears, even after families no longer receive cash assistance.<sup>25</sup> These are the collections that the IRS offsets, or deducts, from federal tax refunds owed to noncustodial fathers to pay child support arrears.

The DRA eliminated the federal tax offset exception. Under “DRA distribution,” federal tax offset collections are distributed like any other collections:

- + If a family is receiving cash assistance, federal tax offset collections are paid first to current support orders, then to state-owed arrears, then to family-owed arrears.
- + If a family is no longer receiving cash assistance, federal tax offset collections are paid first to current support orders, then to family-owed arrears, then to state-owed arrears.

The DRA requires states to elect either “DRA distribution” or “PRWORA distribution” in their state plans.<sup>26</sup>

When a family is receiving cash assistance, the practical difference between PRWORA and DRA distribution is whether federal tax offset collections are allocated to current support orders before arrears. The DRA rule increases support paid to families in states with a pass-through policy.

When a family is no longer receiving cash assistance, the difference is whether federal tax offset collections are used to pay current support orders and family-owed arrears before paying state-owed arrears. The DRA rule increases current support and arrears paid to families. States may also pass through any amount of assigned support to families who no longer receive cash assistance. States electing DRA distribution do not owe a federal share on increased collections paid to families no longer receiving cash assistance.

Five states – Alaska, California, Pennsylvania, Vermont, and West Virginia – have elected DRA distribution, which means that they pay federal tax offset collections to families first. The remaining states have elected PRWORA distribution, which means they retain federal tax offset collections to pay off state-owed arrears before paying support owed to families.

Some states may be taking another look at child support distribution rules because of the unintended effects of a provision in the CARES Act, which authorized up to \$1,200 payments to individuals with incomes of \$75,000 or less. These CARES Act payments were intended to help people stay afloat during the pandemic. The CARES Act largely protected the \$1,200

payments against IRS offsets, for example – to pay back taxes, educational loans, and other government debts.<sup>27</sup>

However, the CARES Act did not protect the payments of noncustodial parents owing child support arrears from federal tax offsets. Noncustodial parents did not receive the \$1,200 if they owed child support arrears. Since noncustodial fathers with limited incomes often owe arrears, many of the fathers who most needed the \$1,200 payment did not receive it. In the five states with DRA distribution, families received payment priority. However, in states that elected PRWORA distribution rules, many CARES Act payments were used to pay back cash assistance, with the lion's share returned to the federal treasury.

### 3. Paying 100 Percent of Child Support to All Families

Through a set of options, the DRA gives states the flexibility to move incrementally toward paying all child support collections to families—those who currently receive TANF cash assistance and those who used to receive it. Taken together, the set of federal options allow states to pay families every dollar they collect, and in that way, finally end the practice of keeping child support payments to pay back cash assistance.

This set of state options includes:

- + Electing DRA distribution to treat federal tax offset collections like other collections,<sup>28</sup>
- + Passing through any amount of assigned collections to families who no longer receive cash assistance,<sup>29</sup>
- + Passing through any amount of current support and arrears to families receiving cash assistance, and determining the disregard amount,<sup>30</sup> and
- + Eliminating older assignments.<sup>31</sup>

Although states enacting a 100 percent pass-through for families currently receiving cash assistance would pay a federal share on the amount of support passed through above the \$100 and \$200 limits, states do not owe any federal share on increased support paid to families no longer receiving cash assistance. In addition, reductions in state revenues would be partly offset by savings attributable to better performance, reduced operational costs, and better outcomes for families.

States also have the option to cancel old assignments. Typically, the support assigned in these cases is uncollectible but still carried on the

books, hurting state performance numbers. Half of states have cancelled old assignments.<sup>32</sup>

**This fact sheet is part of a series produced by Ascend at the Aspen Institute and GOOD+ Foundation to highlight examples of states adopting more pragmatic and family-centered child support policies.**

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<sup>1</sup> Both fathers and mothers living apart from their children are legally responsible for paying child support, regardless of gender. Although the focus of this fact sheet is on noncustodial fathers, gender-neutral terms are used to accurately describe specific state policies.

<sup>2</sup> Michael Martinez-Schiferi, Tom Zolot and Larry Desbien, *Poster Paper: Effects of Child Support Pass through on Colorado Families in Need*, Colorado Department of Human Services, 2019; Tom Zolot, *Pass-Through: Direct Support for Children*, Final Presentation, 2019; Kye Lippold, Austin Nichols, and Elaine Sorensen, *Evaluation of the \$150 Child Support Pass-Through and Disregard Policy in the District of Columbia*, Urban Institute, 2010; Laura Wheaton and Elaine Sorensen, *The Potential Impact of Increasing Child Support Payments to TANF Families*, Urban Institute, 2007; Maria Cancian, Daniel R. Meyer, and Jennifer Roff, *Testing New Ways to Increase the Economic Well-Being of Single-Parent Families: The Effects of Child Support Policies on Welfare Participants*, Institute for Research on Poverty, University of Wisconsin-Madison, 2007; Laura Wheaton and Elaine Sorensen, *Benefits and Costs of Increased Child Support Distribution to Current and Former Welfare Recipients*, Urban Institute, 2005; Jane C. Venohr, David Price, Laurie Davis Van Wert, and Christa M. Anders, *Child Support Passthrough in Minnesota: A Process and Outcomes Evaluation*, Policy Studies, Inc., 2002.

<sup>3</sup> Maria Cancian, Kristen Shook Slack, and Mi You Yang, *The Effect of Family Income on Risk of Child Maltreatment*, Institute for Research on Poverty, University of Wisconsin-Madison, 2010.

<sup>4</sup> Families must assign to the state their rights to child support that accrue during the assistance period (not exceeding the total amount of assistance paid to the family) as a condition of assistance. 42 U.S.C. § 608(a)(3). States also have a claim to child support collected on behalf of children receiving foster care maintenance payments under title IV-E of the Social Security Act. 42 U.S.C. §§ 671(a)(17) and 657(e). Under federal policy, states may only use child support to repay "assistance paid to the family," that is, provided "in the form of money payments in cash, checks, or warrants immediately redeemable at par to eligible families" under a state plan approved under titles IV-A or IV-E. For example, states may not use child support to pay back childcare vouchers or third-party payments paid for with TANF funds or the cost of foster care other than title IV-E foster care maintenance payments. Office of Child Support Enforcement, *Definition of "Assistance Paid to the Family" for Child Support Enforcement Collection Purposes*, OCSE-AT-99-10 (Sept. 15, 1999).

<sup>5</sup> In 2019, states retained 4% of total collections to reimburse cash assistance, returning \$613 million, or 56%, to the federal treasury and keeping \$487 million, or 44%, as state revenues. Office of Child Support Enforcement, *Preliminary Report FY 2019*, Administration for Children and Families, U.S. Department of Health and Human Services (table P-1).

<sup>6</sup> Although state policies vary, states overall retained \$441 million, or 68% of collections made on behalf of families currently receiving TANF and \$659 million, or 8% of collections made on behalf of families who formerly received TANF. *Ibid.*

<sup>7</sup> Maureen R. Waller, Allison Dwyer Emory, and Elise Paul, "Money, Time, or Something Else? Measuring Noncustodial Fathers' Informal and In-Kind Contributions," 39 *Journal of Family Issues* 3612-3640 (2018); David Pate, "Fathers of Children in W-2", in Maria Cancian, Emma Caspar, and Daniel R. Meyer, *W-2 Families in W-2 Child Support Demonstration Evaluation: Reports on Nonexperimental Analyses*, Institute for Research on Poverty, University of Wisconsin-Madison, 2002; Maureen Waller and Robert Plotnick, "Effective Child Support Policy for Low Income Families: Evidence from Street Level Research," *Journal of Policy Analysis and Management*, 20(1): 89-110, 2001; Frank F. Furstenberg, Jr., Kay E. Sherwood, and Mercer L. Sullivan, *Caring and Paying: What Fathers and Mothers Say About Child Support*, MDRC, 1992.

<sup>8</sup> Dan Bloom and Kay Sherwood, *Matching Opportunities to Obligations: Lessons for Child Support Reform from the Parents' Fair Share Pilot Phase*, MDRC, 1994.

<sup>9</sup> Total program expenditures were \$6.0 billion in 2019; 6 to 8% of child support program expenditures equaled \$361 to \$481 million. These estimated costs exclude additional TANF program expenditures attributable to cost recovery activities. Paul Legler and Vicki Turetsky, *More Child Support Dollars to Kids: Using New State Flexibility in Child Support Pass-Through and Distribution Rules to Benefit Government and Families*, Policy Studies, Inc. and Center for Law and Social Policy, 2006 (footnote xvi).

<sup>10</sup> 42 U.S.C. §§657(a)(3) and (c).

<sup>11</sup> *Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2019 Through September 30, 2020*, U.S. Department of Health and Human Services, 83 Fed. Reg. 61157 Nov. 28, 2018).

<sup>12</sup> Families First Coronavirus Response Act, H.R. 6201, Pub. L. 116-127, § 6008(a), enacted on March 18, 2020.

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- <sup>13</sup> The state share of assigned collections passed through to families receiving TANF assistance is considered to be cash assistance and treated as a “qualified state expenditure” under 42 U.S.C. § 609(a)(7)(B)(I)(aa). Office of Child Support Enforcement, *Instructions for Assignment and Distribution of Child Support*, OCSE-AT-07-05 (July 11, 2007).
- <sup>14</sup> 42 U.S.C. § 657(a)(1) and (6)(B); OCSE-AT-07-05.
- <sup>15</sup> National Conference of State Legislatures, *Child Support Pass-Through and Disregard Policies for Public Assistance Recipients*; Michigan Department of Health and Human Services, *Michigan IV-D Child Support Manual*, § 7.1, Pass-Through (Client Participation Payment [CPP]), Dec. 23, 2019; Social Security Administration, *Program Operations Manual System (POMS)* for Maine fill-the-gap information; *Delaware State Plan for TANF*, for Delaware fill-the-gap information.
- <sup>16</sup> *California Enacted State Budget for 2020-21*, signed June 29, 2020.
- <sup>17</sup> Delaware and Maine also provide a \$50 pass-through and disregard.
- <sup>18</sup> States and territories with a \$50 pass-through and disregard policy include: Alaska, Connecticut, Delaware (in addition to a fill-the-gap policy), Maine (in addition to a fill-the-gap policy), Massachusetts, Puerto Rico, Rhode Island, and Vermont. California maintains its \$50 pass-through and disregard policy until Jan. 1, 2022.
- <sup>19</sup> Colorado Revised Statutes, title 26, Human Services Code § 26-2-111(3)(a)(V); 9 Code of Colorado Regulations, 2503-6, Income Maintenance, Vol. 3, 3.605.3(E).
- <sup>20</sup> Michael Martinez-Schiferi, Tom Zolot and Larry Desbien, *Poster Paper: Effects of Child Support Pass through on Colorado Families in Need*, Colorado Department of Human Services, 2019; Tom Zolot, *Pass-Through: Direct Support for Children*, Final Presentation, 2019.
- <sup>21</sup> Minn. Stat. §§ 256J.21, subd. 2(49); 256J.33, subd. 4(5); 256P.06, subd. 3(xvi).
- <sup>22</sup> Venohr, *et al.*, 2002.
- <sup>23</sup> Office of Child Support Enforcement, *Preliminary Report FY 2018* (tables P-6 and P-55).
- <sup>24</sup> 42 U.S.C. § 657(a)(2) and (6), (b)(b), 654(34); OCSE-AT-09-03, *Assignment of Support Rights and Distribution of Child Support Collections under the DRA of 2005* (July 28, 2009); OCSE-AT-07-05, *Instructions for Assignment and Distribution of Child Support*, (July 11, 2007); Legler and Turetsky, 2006. This statutory flexibility does not apply to collections made in cases of children receiving foster care maintenance payments. Federal law mandates cost recovery in these cases. 42 U.S.C. § 657(e).
- <sup>25</sup> The current statute, 42 U.S.C. § 657(a)(2), does not contain a federal tax offset exception. The only place the federal tax offset exception appears is in a legislative note to the DRA legislation referring to the provision enacted in PRWORA.
- <sup>26</sup> 42 U.S.C. § 654(34); OCSE-AT-09-03; OCSE-AT-07-05.
- <sup>27</sup> Coronavirus Aid, Relief, and Economic Security (CARES) Act, H.R. 748, Pub. L. 116-136, § 2201(d), enacted on March 27, 2020.
- <sup>28</sup> 42 U.S.C § 654(34).
- <sup>29</sup> 42 U.S.C. § 657(a)(6)(A).
- <sup>30</sup> 42 U.S.C. § 657(a)(1) and (6)(B).
- <sup>31</sup> The DRA narrowed the scope of assignment to support owed during the assistance period, eliminating assignment of support owed before the family began receiving assistance, called “pre-assistance” assignment. States have options under the DRA to cancel pre-1996 assignments and pre-2009 pre-assistance assignments. 42 U.S.C. § 657(b).
- <sup>32</sup> Ten states responding to our survey reported that they had cancelled old assignments (Colorado, Indiana, Iowa, New Hampshire, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, and Vermont), while 17 additional states and territories reported to the Intergovernmental Reference Guide (IRG) maintained by OCSE that they had cancelled old assignments (Alaska, Arkansas, Connecticut, Florida, Hawaii, Kansas, Massachusetts, Minnesota, Mississippi, New Jersey, North Dakota, Puerto Rico, Rhode Island, Virgin Islands, West Virginia, Wisconsin).