

PUBLIC BENEFITS AND CHILD SUPPORT ARREARS

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I.

PUBLIC BENEFITS: STATUTORY APPLICATION DELAYS AND MEDICAID

A. Introduction

Individuals who are released from prison or jail and who need financial assistance until they are able to get on their feet are likely to apply for aid both from Safety Net Assistance (“SNA”), the New York State public assistance program for adults who do not share a household with children, and from Medicaid. The State should actively facilitate these applications and change policies that create practical and legal barriers for people leaving jail or prison. Ultimately, increased access to SNA and Medicaid for this population can reduce both recidivism and long-term costs.

B. Safety Net Assistance

An applicant for Safety Net Assistance incurs a forty-five day waiting period, beginning from the time she applies for benefits, before she may receive any SNA payments (although, in the interim, the State must meet all of the applicant’s emergency needs).¹

In 1993, the New York State Department of Social Services (“SDSS”), now titled the Office of Temporary and Disability Assistance (“OTDA”), recognized that this waiting period may be problematic for those recently released from prison. Accordingly, the then-SDSS issued an “Informational Letter” stating that local Social Services districts should accept public assistance applications from a person in prison forty-five days *before* her release date so that benefits may begin on the date of release.²

With the advent of welfare reform and the State’s strong preference in favor of county flexibility, the OTDA then took the position that the directive contained in the Informational Letter provides guidance, but is not mandatory. Thus advocates for people in jail or prison are stymied either in counties that refuse to let their clients apply for benefits, or in counties that accept applications but employ a tactical block: subsequently denying them on the ground that the

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1. See N.Y. Soc. Services Law. § 153(8).

2. See 93 INF-11, question 4.

applicant is not “needy” because her³ needs are being met in prison.

When a local Social Services district refuses to accept an application from a person in prison who has identified housing in a particular community, the action will often result in adverse consequences. If the person cannot find family or friends to take her in as an alternative, she may turn to a homeless shelter, which costs the New York taxpayers much more than if that Social Services district had accepted the application. For other incarcerated persons eligible for discharge, the State imposes a release condition that they identify a place to live. It follows that if a person in this situation is without family or friends to take her in, she will remain in prison past her conditional-release date. Finally, for other people released from jail or prison, money may present an extra barrier. Indeed, a reentering person’s lack of money for rent, transportation, or even clean clothes thwarts her successful transition to the world of work.

Therefore, it is critical that the OTDA: (1) adopt a consistent, uniform policy requiring the State to accept public assistance applications from people in jail or prison beginning forty-five days before their release dates; and, (2) allow the interim between application and release to count toward the forty-five day waiting period. In the alternative, this matter may be similarly resolved by amending the New York Social Services Law.

C. Medicaid

Another critical factor in the successful re-entry of people from jail or prison is appropriate access to medical insurance or to Medicaid. The correctional population faces significant health issues that combine to form a public health crisis. This group is subject to disproportionate public health vulnerabilities than the general population, including higher rates of past abuse, homelessness, HIV infection and other infectious or chronic diseases, substance abuse, and mental illness.⁴ Despite these acute medical needs, shockingly few people released

3. [Eds.: The authors would like to remind the reader that the *N.Y.U. Review of Law & Social Change* customarily uses feminine pronouns for the third person singular when the pronoun is used generically, despite the fact that, according to the U.S. Census Bureau, almost ninety percent of noncustodial parents are male.]

4. See, e.g., McGregor Smyth, *Holistic is Not a Bad Word: A Criminal Defense Attorney’s Guide to Using Invisible Punishments as an Advocacy Strategy*, 36 U. TOL. L. REV. 479, 483 (2005); 1 NAT’L COMM’N ON CORR. HEALTH CARE, THE HEALTH STATUS OF SOON-TO-BE-RELEASED INMATES ix (2002), available at http://www.ncchc.org/pubs/pubs_stbr.html; DORIS J. JAMES, U.S. DEP’T OF JUSTICE, PUB. NO. NCJ 201932, PROFILE OF JAIL INMATES, 2002 (July 2004, rev. Oct. 12, 2004), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pji02.pdf>; CAROLINE WOLF HARLOW, U.S. DEP’T OF JUSTICE, PUB. NO. NCJ 195670, EDUCATION AND CORRECTIONAL POPULATIONS (Jan. 2003, rev. Apr. 15, 2003), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ecp.pdf>; PATRICK A. LANGAN & DAVID J. LEVIN, U.S. DEP’T OF JUSTICE, PUB. NO. NCJ 193427, RECIDIVISM OF PRISONERS RELEASED IN 1994 (June 2002), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf>; CHRISTOPHER J. MUMOLA, U.S. DEP’T OF JUSTICE, PUB. NO. NCJ 182335 INCARCERATED PARENTS AND THEIR CHILDREN (Aug. 2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/iptc.pdf>; DORIS JAMES WILSON, U.S. DEP’T OF JUSTICE, PUB. NO. NCJ 179999, DRUG USE, TESTING, AND TREATMENT IN JAILS (May 2000, rev. Sept. 29, 2000),

from correctional facilities have health insurance or can afford necessary medical care. A recent review of New York City agency data revealed that of those incarcerated for more than thirty days, only twenty-six percent had Medicaid upon admission to Riker's Island, and less than thirteen percent had Medicaid upon their release.

Many of those incarcerated cycle through the criminal justice system, in part, because of interrelated social problems—addiction or health problems, for instance—that existing social services have failed to address.⁵ Procuring proper medical care (and, necessarily, providing proper medical insurance) for this special-needs population is a fundamental step in the process of stopping the cycle of recidivism and reducing costs.

Research indicates that proper and immediate access to Medicaid can reduce recidivism and reduce costs. A recent study of women leaving New York City jails showed that insured women, those who enrolled in Medicaid in the year after their release, were less likely to be re-arrested and less likely to report illegal activity than uninsured women, those without Medicaid coverage.⁶ The study also found that women with Medicaid coverage, as compared to those without such coverage, were: (1) more likely to have a regular source of health care; (2) more likely to participate in residential drug treatment programs; and (3) less likely to report that they went without needed medical care in the last year.⁷ Other studies corroborate these findings, indicating that Medicaid enrollment can reduce long-term health costs.⁸

To promote access to care by eligible individuals, the State should implement a system whereby the State merely suspends, rather than terminates, the Medicaid benefits of people entering jail or prison upon their incarceration. The United States Department of Health and Human Services has strongly recommended this approach to combat homelessness and establish a continuum of care.⁹ Furthermore, the State should also actively help all incarcerated persons apply for Medicaid upon their release from jail or prison, either through

available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/duttj.pdf>.

5. See, e.g., McGregor Smyth, *Bridging the Gap: A Practical Guide to Civil-Defender Collaboration*, 37 CLEARINGHOUSE REV., May-June 2003, at 56, available at <http://www.reentry.net>.

6. See Joshua Lee, David Vlahov, Nicholas Freudenberg, *Primary Care and Health Insurance Among Women Released from New York City Jails*, 17 J. OF HEALTH CARE FOR THE POOR AND UNDERSERVED 200, 207, 213 (2006), available at <http://www.reentry.net>; Nicholas Freudenberg, DrPH, Jessie Daniels, PhD, Martha Crum, MS, Tiffany Perkins, PhD & Beth E. Richie, PhD, *Coming Home From Jail: The Social and Health Consequences of Community Reentry for Women, Male Adolescents, and Their Families and Communities*, 95 AM. J. OF PUB. HEALTH 1725, 1732 (October 2005), available at <http://www.reentry.net> (finding similar results for men and women).

7. See *id.*

8. See United Hospital Fund, *Estimating the Cost of Enrolling New York City's Eligible but Uninsured Adults in Medicaid* (2004).

9. See Letter from Glenn Stanton to State Medicaid Directors (May 25, 2004) (on file with author), available at www.reentry.net/ny (last visited Apr. 21, 2006).

Medicaid-only applications or attached to SNA. Last, but not least, local Social Services districts should regularly visit correctional facilities and process these applications or, alternatively, pursue other equally-effective methods in collaboration with local social services providers.

II.

CHILD SUPPORT ARREARS

It is important that individuals released from prison make their transitions to the outside world in ways that do not encourage recidivism. One significant barrier facing formerly incarcerated parents in their transitions to the outside world is the accrual of child support arrears while they were in prison. New York law currently prohibits incarcerated people from obtaining modifications to their support orders while they are in prison.¹⁰ This not only overwhelms a parent with penalties, upon her release, for the arrears that have accrued, but it also impedes her ability to find employment and support her children.

New York courts have taken the position that “support orders” may not be modified downward while a person is incarcerated, for an incarcerated parent’s “current financial hardship is solely the result of his wrongful conduct.”¹¹ In *Gloria T. v. Timothy S.*,¹² the Fourth Department, relying on the *Knight* case, specifically held that Family Court Act Section 413(1)(g), which limits arrears to 500 dollars when a person’s income is below the poverty level, does not apply to someone in prison.¹³ The court held that an incarcerated parent cannot be allowed to “benefit from the conduct that led to his or her incarceration.”¹⁴ This policy means that upon release, most of these parents are faced with overwhelming arrears that have accrued during a time that they had had no ability to make payments. Should the formerly incarcerated parent find a job, up to sixty-five percent of her income may be subject to income execution in the State’s effort to recover child support arrears.¹⁵ Additionally, arrears of more than four months will likely result in the loss of the parent’s driver’s license and any occupational licenses.¹⁶ Finally, if the court reduces the amount to a money judgment, the State can seize a parent’s bank accounts or other assets in their entirety, making a parent’s reentry even more difficult.¹⁷

New York’s rule prohibiting modification, called the “no justification” rule, is shared by Kansas, Indiana, North Dakota, Nebraska, New Hampshire, and

10. See, e.g., *Knights v. Knights*, 71 N.Y.2d 865 (1988).

11. *Knights v. Knights*, 71 N.Y.2d 865 (1988). See also *Zaid S. v. Yolanda N.*, 24 A.D.3d 118 (N.Y. App. Div. 1st Dept. 2005); *Furman v. Barnes*, 293 A.D.2d 781 (N.Y. App. Div. 3d Dept. 2002); *Powers v. Jackson*, 212 A.D.2d 1056 (N.Y. App. Div. 4th Dept. 1995).

12. 294 A.D.2d 27 (N.Y. App. Div. 4th Dept. 2002).

13. *Gloria T. v. Timothy S.*, 294 A.D.2d at 29.

14. *Id.*

15. N.Y. C.P.L.R. § 5242(c)(2)(i),(ii) (McKinney 2005).

16. N.Y. Family Court Act §§ 458 (a-c) (2005).

17. See *id.* at §§454, 460; N.Y. C.P.L.R. §§ 5201-03.

Louisiana.¹⁸ Such policies are, in fact, counterproductive. They create substantial barriers to successful reentry and increase individual pressures that lead to recidivism. Moreover, they undermine the actual goal of promoting the payment of child support, as they impede a parent's acquisition of lawful employment and may even incentivize illegal acts (*i.e.*, induce a parent to enter the underground economy).¹⁹

In cases where the support obligor has been sentenced to a lengthy period of incarceration and has no assets, New Jersey transfers modification petitions to an inactive calendar, pending the obligor's release. Upon release, the court makes a determination of the appropriate amount of current support and arrears, basing its determination upon the parent's ability to pay.²⁰ Such an approach is currently impossible in New York, for the Family Court Act prohibits a court from retroactively reducing or annulling arrears.²¹

We recommend that the legislature amend the Family Court Act and allow an approach similar to that used in New Jersey. Such an amendment would give those who are released from prison realistic support orders and would not overwhelm an indebted, non-custodial parent who would otherwise be forced into the underground economy. In the interim, state agencies may take significant steps to mitigate the effects of the current policies. Because many children of incarcerated parents receive public assistance, a substantial percentage of the child support arrears of people returning from jail or prison is owed to the OTDA. While courts cannot currently waive child support arrears, the OTDA has the discretion to forgive arrears owed to the state agency. At a minimum, the OTDA should craft more equitable policies that forgive arrears accrued during incarceration.

18. See *Halliwell v. Halliwell*, 741 A.2d 638, 644-645 (N.J. Ct. App. Div. 1999) (surveying different states' approaches to the issue). See also Jessica Pearson, *Building Debt While Doing Time: Child Support and Incarceration*, 43 ABA JUDGES' JOURNAL 1, at 6 (Winter 2004).

19. See, e.g., Ann Cammett, *Making Work Pay: Promoting Employment and Better Child Support Outcomes for Low-Income and Incarcerated Parents*, N.J.I.S.J. (Feb.2005), available at <http://www.reentry.net>; Harry J. Holzer, Paul Offner, & Elaine Sorensen, *Declining Employment among Young Black Less-Educated Men: The Role of Incarceration and Child Support*, 24 J. OF POL'Y ANALYSIS & MANAGEMENT, No. 2, 329-350 (2005).

20. *Halliwell*, 741 A.2d at 648.

21. See N.Y. Family Court Act § 451.

