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Shocking Data On Incarceration Of Fathers



March 16th, 2013 by Ned Holstein, MD, MS,

Founder and Chairman of the Board

A new report concludes that between 95% and 98.5% of all incarcerations in Massachusetts sentenced from the Massachusetts Probate and Family Courts from 2001 through

2011 have been men. Moreover, this percentage may be increasing, with an average of 94.5% from 2001 to 2008, and 96.2% from 2009 through 2011. It is likely that most of these incarcerations are for incomplete payment of child support.

Further analysis suggests that **women who fail to pay all of their child support are incarcerated only one-eighth as often as men with similar violations. Several possible explanations of these results other than gender bias are unsupported by the data, strengthening the view that gender bias against fathers is a major factor in the family courts.**

The report was painstakingly compiled by Fathers and Families member Terry Brennan, a task that required at least seven months and dozens of patient letters to Massachusetts officials. Invoking the Massachusetts Public Disclosure Law (“Freedom of Information Act”), Brennan wrote to the sheriff of each county and to the Massachusetts Department of Corrections to obtain the data. The sheriffs of three counties (Bristol, Hampden, and Worcester) either refused to provide data, or claimed their record systems made it impossible to do so. The absence of data from these counties is unlikely to change the overall results. Brennan deserves respect for his tenacity, intelligence, and patience in carrying out this valuable study.

The large majority of incarcerations from the Probate and Family Courts

are due to findings of contempt of court for incomplete payment of child support orders. A small number could be due to non-payment of attorney fees, GAL fees, or alimony. Violations of restraining orders are unlikely to be a factor in this data because violators are incarcerated after trials in the District Courts, not from the Probate and Family Courts.

Perhaps there are reasons other than gender bias that could account for the stunning gender differences in incarcerations from the Massachusetts Probate and Family Courts. Many more fathers than mothers are non-custodial parents, so it would be expected that more of them would be incarcerated for incomplete payment. The latest national data (<http://www.census.gov/prod/2011pubs/p60-240.pdf>) from the US Census Bureau shows that mothers are the custodial parents in 82% of cases, and fathers in only 18% (which may in itself reflect gender bias). (see Table below.) Even so, if incomplete payment of child support occurred in exact proportion to custodial status, then we would expect mothers to account for 18% of incarcerations, not 1.5% to 5%.

However, not all custodial parents have a court order entitling them to child support. In fact, only 54.9% of custodial mothers have such a court order, while only 30.4% of custodial fathers have such an order (this large disparity may again suggest gender bias). Taking the Census Bureau data further, we find that 58% of custodial mothers with a child support order did not receive the full amount — in other words, the fathers were in arrears in 58% of those cases where a child support order had been made against them. Custodial fathers failed to receive the full amount of child support ordered from the mothers in 65.9% of cases. In other words, mothers ordered to pay child support pay in full less frequently than fathers who are ordered to pay child support.

If one carries through the arithmetic, one finds that 12% of those in arrears are mothers, and 88% of those in arrears are fathers, based on national data. This disparity is mostly due to the fact that so few fathers are awarded custody of their children, and even when they are, so few of the mothers are required to pay child support.

Based on national data, if incarceration for non-payment of child support occurred at equal rates for men and women who are in arrears, 88% of those incarcerated would be men, not 95% to 98.5%, and 12% would be women (since 12% of those in arrears are women). If, as Brennan's report shows, as few as 1.5% of those incarcerated for non-payment of child support in Massachusetts are women, instead of the expected 12%, **then women in arrears are incarcerated at a rate eight times less than their numbers warrant.**

Perhaps it is possible that mothers in arrears escape incarceration because the amounts of money they owe are so small as to be unimportant. It is true, based on the national data from the US Census Bureau, that non-custodial mothers are not ordered to pay as much as are non-custodial fathers, but the difference is not large (\$5,601 versus \$5,997 per year). (Since child support amounts are governed by fixed formulae called Child Support Guidelines, they may be less susceptible to gender bias. This disparity is probably due to the fact that women on average earn less than men.)

How much of the child support order is paid, on average? Once again, fathers ordered to pay child support do better than mothers ordered to

pay child support, paying 45% of the order on average, versus 38% of the order on average paid by non-custodial mothers. Thus, the average dollar amount of arrearages is **greater for mothers** than it is for fathers (\$2,295 not paid by fathers versus \$2,542 not paid by mothers). Thus, although mothers with orders to pay child support have a higher rate of incomplete payment, pay a smaller percentage of their child support order, and have larger dollar arrears than fathers, they are incarcerated at lower rates.

In summary, Brennan's research shows stunning results: up to 98.5% of those incarcerated from 2001 through 2011 from the Massachusetts Probate and Family Courts are men. The majority of these incarcerations are for incomplete payment of child support.

For the first time, we have direct evidence that the large excess of fathers incarcerated for child support arrearages compared to mothers cannot be accounted for simply by the fact that there are more fathers ordered to pay child support. **Mothers with child support arrears are incarcerated at approximately one-eighth of the rate that would be justified by their numbers if fathers and mothers in arrears were treated equally. Mothers in arrears are incarcerated at lower rates even though they have higher rates of incomplete payment, pay a smaller percentage of their child support order, and have larger arrears than fathers. In the absence of other explanations, these data suggest that gender bias against fathers plays a large role in family court-ordered incarcerations.**

Child Support Arrears by Mothers and Fathers

<http://www.fathersandfamilies.org/enews/docs/ResearchBrennanIncarcerationGenderBiasFebruary2013.doc.pdf>

	Mothers	Fathers
Custodial Parent	82%	18%
Custodial Parents Who Have an Order to Receive Child Support	54.9%	30.4%
Child Support Orders Received in Full by Each Gender	42%	34.1%
Percent of Custodial Parents With Orders to Receive Child Support Who Are Owed Arrears	58%	65.9%
Gender Breakdown of Payers with Arrears	12%	88%
Average Amount of Child Support Ordered to be Received	\$5,997	\$5,601
Average Child Support Amounts Not Received by Each Gender	\$2,295 (38% of order)	\$2,542 (45% of order)

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