

PROCEDURAL JUSTICE-INFORMED  
ALTERNATIVES TO CONTEMPT

PROJECT BRIEF  
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## Civil Contempt of Court for Child Support Noncompliance at the PJAC Demonstration Sites

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Child support programs seek to improve children’s well-being by emphasizing both parents’ roles in providing for them. Some families receive child support from noncustodial parents regularly.<sup>1</sup> For other families, however, payments may be sporadic, partial, or not received at all. Nationally, among all custodial parents owed child support payments in 2017, 24 percent received only part of the amount they were owed during that year, and 30 percent received no payments at all.<sup>2</sup> Parents who do not make their child support payments can be subject to enforcement measures such as income withholding, interception of tax refunds, liens on assets (see Box 1), or seizure of bank accounts. If these measures are unsuccessful, child support programs can refer nonpaying parents to the legal system for civil contempt of court (or, very rarely, for criminal nonsupport—see Box 1). Civil contempt proceedings require noncustodial parents to attend court hearings and may lead to arrest or jailing if they fail to appear in court or fail to meet the obligations of their child support orders.

In recent years, some child support policymakers and researchers have questioned the fairness and effectiveness of pursuing civil contempt to secure child support payments, particularly for low-income parents. Civil contempt proceedings are costly and burdensome, and are often counterproductive to the goals of the child support program as they can impede employment, increase child support debt, alienate noncustodial parents from their children, and decrease parents’ future cooperation with the program.<sup>3</sup> Even for noncustodial parents with the

means to meet their child support obligations, there is no evidence that contempt leads to future child support compliance through ongoing, regular payments on which families can rely. Often, contempt proceedings result in one-time “purge” payments, in which the noncustodial parent pays a lump sum to avoid continued court action or jail.<sup>4</sup>

The Procedural Justice-Informed Alternatives to Contempt (PJAC) demonstration project is a test of a

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<sup>1</sup>The noncustodial parent is the parent who has been ordered to pay child support, and is generally the parent who does not live with the child. The other parent is referred to as the custodial parent.

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<sup>2</sup>Grall (2020). Note that this 2017 statistic is based on all families owed child support, not just those receiving services from the child support system.

<sup>3</sup>Patterson (2008); May and Roulet (2005).

<sup>4</sup>Child Support Services Division (2020).

## BOX 1 Glossary

**Bench warrant.** A legal document issued by a judge that authorizes an individual's arrest.

**Credit reporting.** A process whereby child support agencies report to credit bureaus whether noncustodial parents are current on their support payments or behind on them.

**Criminal nonsupport.** Criminal charges that can be brought when a noncustodial parent willfully fails to pay child support.

**Levy.** The seizure and possible subsequent sale of assets, including personal property, to satisfy a child support debt.

**Lien.** A claim upon property to prevent that property from being transferred or sold until a debt is satisfied.

**Seek-work orders.** Orders to noncustodial parents who are not working, requiring them to seek employment actively and provide documentation of their job searches to the child support agency.

different approach. It integrates principles of procedural justice into enforcement practices in six child support agencies across the United States as an alternative to standard contempt proceedings. Procedural justice is fairness in processes that resolve disputes and result in decisions. Research has shown that if people perceive a process to be fair, they will be more likely to comply with the outcome of that process, whether or not the outcome was favorable to them.<sup>5</sup> The target population for the PJAC demonstration project is noncustodial parents who are at the point of being referred for contempt because they have not met their child support obligations, yet have been determined to have the ability to pay. PJAC services aim to address noncustodial parents' reasons for nonpayment, improve the consistency of their payments, and promote their positive engagement with the child support program and the other parent. As part of a study of PJAC's effectiveness, between 2018 and 2020 over 11,000 parents were assigned at random either to a program group offered PJAC services, or

to a control group who instead moved into standard contempt proceedings. The outcomes of these two groups will be compared over time.

The PJAC demonstration was developed by the federal Office of Child Support Enforcement, which is within the Administration for Children and Families in the Department of Health and Human Services. MDRC, in collaboration with research partners at MEF Associates and the Center for Court Innovation, leads the random assignment study of the model's effectiveness. Oversight of the evaluation is provided by the Georgia Division of Child Support Services. For an overview of the PJAC demonstration, see "[A New Response to Child Support Non-compliance: Introducing the Procedural Justice-Informed Alternatives to Contempt Project](#)."<sup>6</sup>

This brief explains which noncustodial parents are referred to civil contempt by the six participating child support agencies ("study sites"), based on both federal child support guidelines and other eligibility criteria commonly applied by those agencies. It provides a general description of the standard contempt proceedings for control group members. The brief also describes procedural justice-informed contempt adaptations implemented for program group members who are unwilling to participate in PJAC services and who, as a result, become eligible for contempt.

## WHEN IS A NONCUSTODIAL PARENT REFERRED TO CIVIL CONTEMPT?

The policy landscape surrounding civil contempt has shifted in recent years. In *Turner v. Rogers*, a 2011 U.S. Supreme Court decision, the court found that parents must be determined to have the ability to pay before they can be held in contempt or incarcerated for nonpayment.<sup>7</sup> In December 2016, OCSE advanced the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule, often referred to as "the Final Rule."<sup>8</sup> The Final Rule put forth several provisions, including civil contempt due process requirements for states to implement under the *Turner v. Rogers* court decision. To comply with the Final Rule requirements, state

<sup>6</sup>Mage, Baird, and Miller (2019).

<sup>7</sup>*Turner v. Rogers*, 564 U.S. 431 (2011).

<sup>8</sup>Office of Child Support Enforcement (2016).

<sup>5</sup>Swaner et al. (2018).

child support agencies must screen cases to determine whether noncustodial parents have the ability to pay or otherwise comply with their child support orders before filing civil contempt actions that could result in them being jailed.<sup>9</sup> Notably, while the Final Rule provides some guidance, each state must set its own policy for how to determine ability to pay, an assessment that is not always straightforward.

State child support agencies nationwide—including those participating in the PJAC demonstration—adjusted their contempt screening procedures in response to these new guidelines. By the time study enrollment began in February 2018, PJAC sites had largely begun implementing these new measures. Therefore, noncustodial parents enrolled into the PJAC study sample are individuals who have the ability to pay, according to their states' child support programs. For a description of the characteristics of noncustodial parents enrolled into the PJAC study and their reasons for nonpayment, see [“Who Is at Risk of Contempt of Court for Child Support Non-compliance? Characteristics of Parents Enrolled in the Procedural Justice-Informed Alternatives to Contempt Demonstration.”](#)<sup>10</sup>

An alternative to civil contempt, the PJAC demonstration tests a model in which child support case managers trained in the principles of procedural justice work with both parents to address the underlying reasons for nonpayment. PJAC aims to encourage parents to comply voluntarily by infusing procedural justice into [engagement efforts](#) and services such as [case conferencing](#), order modifications, child support debt forgiveness, and employment support.<sup>11</sup> If parents do make more consistent monthly payments voluntarily, PJAC could yield a stable source of income for children more cost-effectively than civil contempt.

Each participating PJAC agency applies its own

specific guidelines to verify that noncustodial parents are eligible for contempt before they are enrolled in the study. Common categories of eligibility criteria include:

- ▶ **Address verification.** The child support agency must have a valid address on file for a noncustodial parent so that parent can be served with a notice to appear in court.
- ▶ **Confirmation of nonpayment or severe underpayment for several months.** Enforcement workers will generally confirm that for multiple months, the parent has made either no payments or partial payments of less than half of the obligation amount.
- ▶ **No formal employment.** Enforcement workers will search various state and national employment databases to determine whether the noncustodial parent is formally employed. (Off-the-books and contract employment are not captured in these databases.) If formal employment is found, the enforcement worker will set up wage withholding to collect child support from the noncustodial parent's earnings and contempt proceedings will not move forward.
- ▶ **Multiple attempts to reach the noncustodial parent.** Enforcement workers will generally attempt to reach the noncustodial parent at least three times to discuss the case(s) before pursuing court action.
- ▶ **Exhaustion of administrative enforcement actions.** Beyond wage withholding, agencies attempt several other administrative actions to obtain payment before resorting to contempt. These actions include bank levies; property liens; driver's, professional, or recreational license suspensions; seek-work orders; interceptions of state and federal tax refunds; passport holds or denials; and credit reporting (see Box 1 for definitions of some of these terms).
- ▶ **Determination that a parent is able to pay.** As required by the Final Rule described above, enforcement workers and legal staff members investigate the noncustodial parent's ability to pay before proceeding with a contempt filing. They check whether the par-

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<sup>9</sup>This requirement went into effect as follows: “If State law revisions are needed, the compliance date is the first day of the second calendar quarter beginning after the close of the first regular session of the State legislature that begins after the effective date of the regulation. If State law revisions are not needed, the compliance date is 60 days after publication of the final rule.” See Office of Child Support Enforcement (2016).

<sup>10</sup>Cummings (2020).

<sup>11</sup>Kusayeva (2020); Webster (2020).



ent is receiving public benefits (such as disability insurance, cash assistance, Medicaid, Social Security, or unemployment insurance) or is incarcerated. If either is the case, it is unlikely that the parent will be able to pay. They also check state and national databases to assess the parent's formal employment history (to assess employability),<sup>12</sup> and may look at the parent's social media accounts for evidence of employment not captured in these databases—that is, self-employment, contract employment, and off-the-books employment.<sup>13</sup>

- ▶ **No open contempt proceeding.** The noncustodial parent must not be facing any pending actions from previous contempt filings that remain open.<sup>14</sup> At some PJAC sites, a contempt filing in the previous 12 months will make the noncustodial parent ineligible for a new contempt filing, even if the previous filing is closed.

### BUSINESS-AS-USUAL CONTEMPT PROCEEDINGS AT THE PJAC STUDY SITES

State and local policies and procedures guide the steps in the business-as-usual civil contempt proceedings that noncustodial parents in the control group experience. Following random assignment, child support staff members proceed to contempt filings for control group parents. First, they once again confirm contact information for each noncustodial parent, document details such as information on nonpayment, verify the child support debt balance, and check the case for errors. The child support agency then files a motion with the court asking the court to declare the parent in contempt. The court sets an initial hearing date, after which the child support agency serves the noncustodial parent with a notice to appear in court, otherwise known as “process service.” See Figure 1 for a gener-

alized diagram of contempt proceedings. Note that this diagram is simplified and illustrates the most common contempt procedures across the six PJAC study sites; it does not capture all variations that can occur within and across PJAC study sites, nor does it necessarily reflect the contempt procedures followed by non-PJAC child support agencies across the country.

Approaches to process service vary across the PJAC study sites. Most commonly, in-person service is required (as opposed to service by registered mail, for example). The PJAC study sites generally hire a third-party vendor or engage the county sheriff's office to serve noncustodial parents. In interviews with the research team, child support staff members said it can be difficult to serve noncustodial parents, often requiring several attempts. Cases are continued (that is, postponed) by the courts until successful service occurs; many noncustodial parents may never be served successfully. If a noncustodial parent is served and fails to appear for the hearing, generally the court issues a bench warrant (see Box 1). How actively the police seek out and arrest parents on these warrants depends on the local jurisdiction. In most localities, child support staff members indicated that bench warrants for failure to appear are typically executed only when a parent is arrested for another reason, and are not otherwise actively enforced.

Lawyers at the PJAC study sites commonly say that the goal of contempt hearings is to encourage noncustodial parents to meet their child support obligations. In normal contempt proceedings, cases are often continued several times and may stay active for years. An attorney from the child support agency represents the agency in the proceedings. At most PJAC study sites, the child support attorney meets with a noncustodial parent immediately before a scheduled contempt hearing. At the start of such a meeting, the attorney notifies the parent of his or her right to engage a lawyer.<sup>15</sup> At that point, the noncustodial parent may be assigned or request counsel, and the case will be continued until a rescheduled contempt hearing at a later date. If the noncustodial parent does have a lawyer, then that lawyer will be

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<sup>12</sup>For example, a strong previous employment record may suggest a parent is capable of earning income, and therefore has the ability to pay.

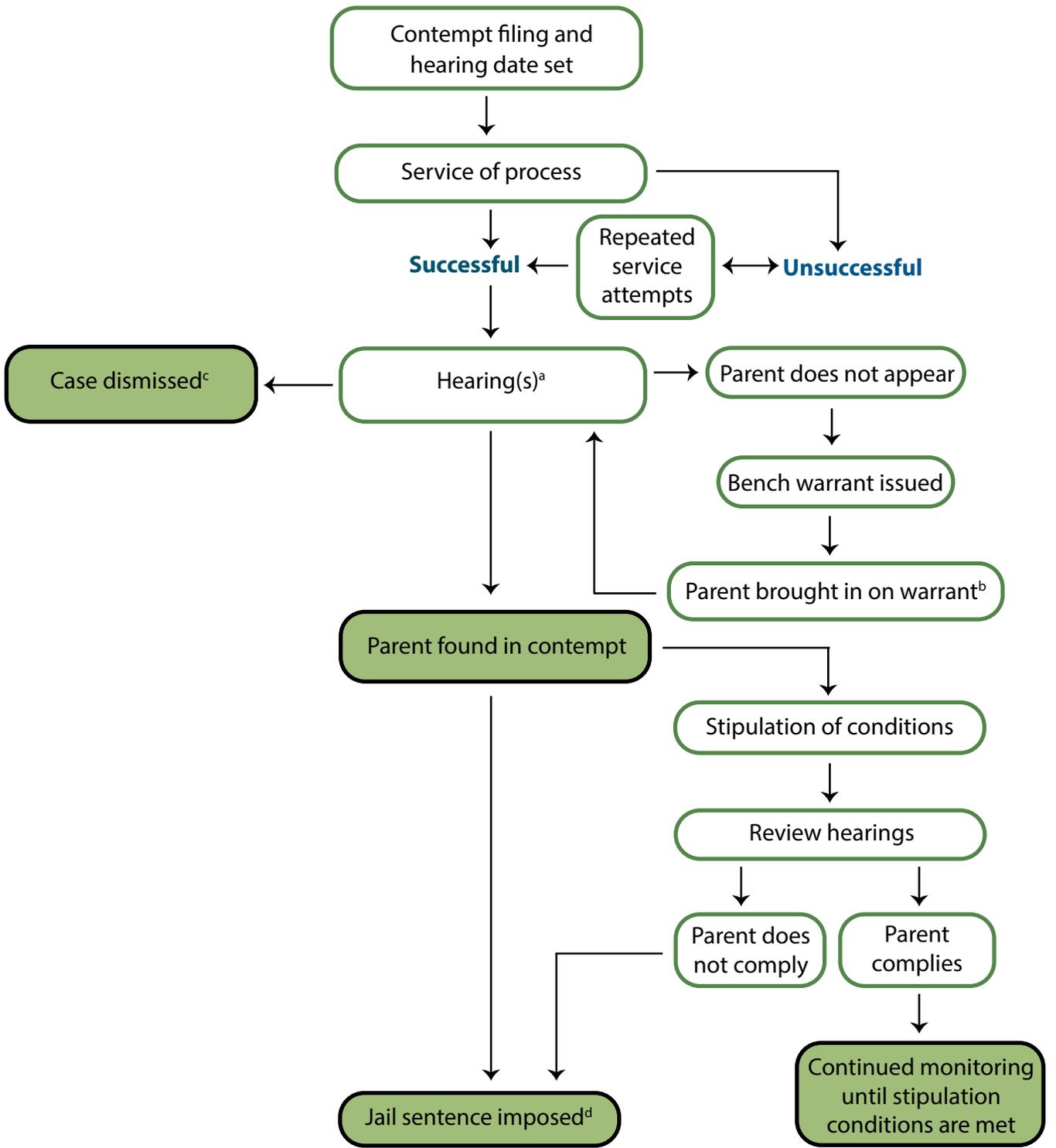
<sup>13</sup>If the noncustodial parent is ultimately found to be unable to pay, the enforcement staff may move to modify the parent's child support order and will not proceed with the contempt filing.

<sup>14</sup>If a previous contempt filing resulted in a suspended sentence, the child support staff can move to impose this sentence instead of filing a new contempt action.

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<sup>15</sup>In one PJAC location, noncustodial parents who do not already have legal representation are appointed counsel before meeting with child support attorneys.

**FIGURE 1.**  
**A Common Business-as-Usual Contempt Process at PJAC Study Sites**



(continued)



## FIGURE 1(continued)

NOTES: This diagram depicts a generalized, simplified overview of the standard contempt process at the six PJAC study sites and does not fully capture variation within and across jurisdictions and cases. Additionally, this diagram does not reflect the contempt process in non-PJAC jurisdictions.

<sup>a</sup>The number of hearings will vary based on whether noncustodial parents request counsel, on their compliance with stipulations, and on the magistrate or judge's willingness to work with them.

<sup>b</sup>Warrants are generally not actively enforced but may be executed if a noncustodial parent is arrested for another matter.

<sup>c</sup>A case might be dismissed if, for example, the noncustodial parent were found to be unable to pay or the child(ren) were living with the parent.

<sup>d</sup>It is rare for a jail sentence to be immediately imposed after a contempt hearing. Most commonly, a jail sentence is suspended and imposed at a later date if the noncustodial parent does not comply with the conditions of the stipulation. Some PJAC agencies may sentence parents to community service rather than jail.

present, and sometimes the custodial parent will be there as well. During this prehearing meeting, the child support attorney describes the case details and the contempt procedures, and attempts to learn the noncustodial parent's reasons for nonpayment and to identify next steps prior to going before the judge or magistrate who will oversee the contempt hearing.<sup>16</sup> The child support attorney and the noncustodial parent may discuss potential agreements for a payment plan or purge payments.

During the contempt hearing, the child support attorney presents evidence to the judge or magistrate. The noncustodial parent and the custodial parent (if in attendance) also have the opportunity to provide testimony. If the prehearing meeting resulted in any agreements, these will be presented to the judge or magistrate. If the noncustodial parent produces new evidence regarding the facts of the case—for example, information that the child actually resides with the noncustodial parent or that the noncustodial parent has a documented disability—that evidence may lead to a continuance until the order can be modified or ability to pay further assessed, or to an outright dismissal. More often, the contempt hearing results in a finding of contempt. Following some negotiation of the exact terms, the judge or magistrate will issue a ruling that often includes a suspended jail sentence and a stipulation for the noncustodial parent to follow a payment plan, make

a purge payment, or agree to engage in an employment program. A review hearing will be set for a later date (often 60 or 90 days in the future, though the time can vary between one and six months) for the noncustodial parent to return to court. At that time, the court will assess whether the terms of the stipulation were met.

Rarely is a noncustodial parent sent directly to jail from a contempt hearing. However, at the subsequent review hearing, the child support agency can ask the judge to impose a previously suspended jail sentence (that is, to remove the suspension so that the sentence goes into effect) if there is repeated noncompliance. When judges issue nonsuspended jail sentences in response to findings of contempt, these sentences can range from three days to 12 months, depending on the specifics of the case and the locality. Judges attach purge conditions to jail sentences, allowing parents to avoid jail time by making lump-sum payments on their child support debts or meeting other standards. If a noncustodial parent serves the full jail sentence, the contempt process concludes, though the child(ren) still may not have received any financial support.

Child support staff members said they had limited interactions with noncustodial parents during contempt proceedings, outside of hearings. Enforcement workers, who identify cases eligible for contempt, are generally removed from the proceedings once the case is referred for contempt. If the noncustodial parent has a defense attorney, the child support lawyer will communicate with that attorney. Though custodial parents are notified of contempt hearings, they generally do not need to attend.

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<sup>16</sup>In some PJAC locations, the individual who presides over contempt hearings may be a commissioner rather than a judge or magistrate.

## CONTEMPT PROCEEDINGS UNDER PJAC

While PJAC services are intended as an alternative to contempt, contempt filings remain an option PJAC case managers can use when their efforts to engage noncustodial parents have been unsuccessful and the parents continue not to comply with their child support obligations. Before sending noncustodial parents in the program group to contempt, case managers make multiple attempts to reach them using a variety of methods. PJAC case managers may also refer clients to contempt in instances where noncustodial parents responded to contact, but did not comply with their case action plans.<sup>17</sup>

Though the criteria for sending a PJAC case to contempt are similar across the six study sites, the procedures vary. At about half of the sites, once a noncustodial parent in the program group is sent to contempt, the proceedings are very similar to the standard proceedings experienced by control group members and the PJAC case manager has minimal contact with the parent after that point. At the other half of the sites, agencies modified their regular contempt procedures somewhat for program group cases to make the proceedings more procedurally just. For example, one adaptation was for the PJAC case manager to join prehearing meetings (usually only attended by the child support attorney) to try to engage noncustodial parents in PJAC services (see Box 2). PJAC case managers also said they were more involved with cases during contempt proceedings, either through testifying at hearings or explaining the process to parents.

Depending on the court, PJAC contempt cases may also be resolved in different ways than they would be otherwise. For example, rather than issue a contempt finding right away, a judge or magistrate may continue the contempt hearing and not impose penalties on the condition that the noncustodial parent complies with PJAC services or engages in supportive services offered by an outside provider (for example, employment support).

PJAC staff members offered examples of how they continue to apply procedural justice principles in

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<sup>17</sup>The case action plan is a document established by the PJAC case manager, the noncustodial parent, and the custodial parent (if participating) that sets agreed-upon next steps to address reasons for nonpayment and achieve consistent payments in the future.

### BOX 2

#### An Example of a PJAC Contempt Hearing

One PJAC study agency has modified contempt hearings for parents in the program group, using those hearings as an opportunity to engage them in services. At a prehearing meeting at the courthouse, the PJAC attorney and PJAC case manager meet with the custodial and noncustodial parent. Together they explain the services and assistance available through PJAC, highlighting that the program's goal is regular child support payments without the oversight of a judge. If the noncustodial parent agrees to engage in PJAC services rather than moving forward with contempt, the PJAC attorney and PJAC case manager then schedule a follow-up meeting and provide both parents with their contact information, emphasizing that they are available to answer any questions. At the hearing, the PJAC attorney explains to the judge that the parties have agreed to work with the PJAC case manager and requests a review hearing in 60 days instead of a contempt finding.

their work with parents during contempt proceedings. Many of these examples center on the procedural justice principle of understanding: supplying parents with information and answering their questions to make sure they comprehend the process and their options. PJAC case managers serve as an additional resource beyond the lawyers and court staff members normally charged with explaining the process to parents.

### CONCLUSION

Civil contempt is a complicated legal process often perceived as impersonal, confusing, punitive, and burdensome. Many times, contempt proceedings fail to deliver improved circumstances for struggling families. Designed as an alternative to business-as-usual civil contempt, PJAC services are intended to respond to families' specific situations and needs. The PJAC model uses the procedural justice principles of respect, understanding, voice, neutrality, and helpfulness to learn about noncustodial parents' reasons for nonpayment and to engage both parents in identifying and implementing solutions.

The aim is to increase the likelihood that children receive financial support from both parents.

Though the goal of PJAC is to preempt the need for a contempt filing altogether, some noncustodial parents in the program group are sent to contempt if they do not engage in PJAC services. Incorporating principles of procedural justice into contempt proceedings offers an opportunity to improve parents' experience in contempt and could lead to better compliance with the process and rulings. Aspects of the contempt process and court system,

however, limit the extent to which contempt proceedings can be modified for PJAC.

Future study briefs will analyze the impact of PJAC services on the use of contempt and the project's costs and benefits relative to business-as-usual contempt proceedings. Another future brief will draw on interviews with parents in the program and control groups to highlight noncustodial and custodial parents' perspectives on the contempt process.

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