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Feds Pushing to Keep Poor Parents Out of S.C. Jails for Unpaid Child Support

by [Rick Brundrett](#)
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Potentially thousands of South Carolina child-support enforcement cases are on hold because the federal government contends the state isn't doing enough to protect the rights of indigent parents facing jail time for not paying child support.

In a July 19 administrative order, S.C. Supreme Court Chief Justice Jean Toal indefinitely suspended a family court rule allowing county clerks of court, in certain cases, to issue orders directing parents to appear in court to explain why they are behind in their payments.

If parents fail to appear in court as ordered, family court judges can issue bench warrants for their arrest.

Toal in her order said that based on a directive from the federal Administration for Children and Families, the S.C. Department of Social Services won't request the issuance of court-appearance orders or bench warrants in federal "Title IV-D" cases "until further notice."

A primary goal of the federal directive, which applies to all states administering federally supported enforcement plans, is to make jail time a last resort for parents who are behind on their child support payments but don't have the ability to pay. Critics of South Carolina's family court system claim some judges have turned jails into modern-day debtors' prisons.

Toal said the June 18 directive is a response to a 2011 U.S. Supreme Court ruling in a South Carolina case that received extensive coverage by *The Nerve*.

In a divided ruling in *Turner v. Rogers*, the nation's top court said an S.C. family court judge violated the rights of an Upstate indigent father, who didn't have an attorney in his 2008 hearing, by jailing him after a civil-contempt hearing without first determining whether he had the ability to pay his back child support. Michael D. Turner, who claimed he could no longer afford his payments, was jailed for a year, owing \$5,728 in back payments, according to court records.

On any given day in South Carolina, there are about 1,500 people in jail for non-payment of child support, the vast majority of whom were sentenced for civil contempt, according to research in 2005 and 2009 by Elizabeth "Libba" Patterson, a former state DSS director and a University of South Carolina law professor.

The number of child support cases affected by Toal's order is unknown, though it could easily be in the thousands. As of June 30, DSS was handling 156,619 Title IV-D cases in which there were court orders to pay child support, according to agency records.

Those cases include custodial parents who sought DSS' help in collecting child support, and a smaller percentage of cases in which DSS took child-support collection action against non-custodial parents as reimbursement for state and federal welfare payments to custodial parents.

Toal's order does not affect private child support cases.

Larry McKeown, director of DSS' Child Support Enforcement Division, told *The Nerve* on Friday that the S.C. Supreme Court's order was modified last week to limit the suspension period to 30 days. He said his agency could have new federally approved procedures in place as soon as this week.

"That is our goal – working with the feds to make sure to get their blessing," he said.

Federal dollars could be at risk if South Carolina doesn't comply with the directive from the Administration for Children and Families, a division of the U.S. Department of Health and Human Services, McKeown said. For the fiscal year that started July 1, more than \$27 million in federal funds was appropriated to DSS to help cover operating expenses of the agency's Child Support Enforcement Division, according to agency information.

The federal directive "goes beyond" the U.S. Supreme Court ruling in part by requiring DSS to do additional screening of parents before civil-contempt

hearings to determine if they have the ability to pay their back support, McKeown said.

"The federal policy does not want this (potential jail time) to be a default position," McKeown said, though he added, "We think that the powers-of-contempt remedy is a very effective tool for collection."

According to the directive, "Civil contempt that leads to incarceration is not, nor should it be, standard or routine child support practice."

The U.S. Supreme Court's ruling last year set aside a 2010 state Supreme Court ruling that said the indigent Upstate father wasn't entitled to an attorney. The state's top court said in contrast to a criminal-contempt charge, a person jailed for civil contempt can "hold the keys to his cell" if he pays his court-ordered amount after being jailed.

The nation's top court ruled, however, that states have to offer "alternative procedural safeguards" in civil-contempt cases, including:

- Adequate notice of the importance of the ability to pay;
- A fair opportunity to present and to dispute relevant information; and
- Specific court findings as to the supporting parent's ability to comply with the court order.

Critics contend that jail time is overused in child support cases in South Carolina and often is counter-productive because incarcerated parents can't earn money when they are behind bars, causing them to fall further behind on their payments.

"It's all good in terms of process to really pay attention (to determining a parent's ability to pay) rather than locking people up in jail and throwing the key away," Greenville attorney Derek Enderlin, who represented the Upstate father at the center of last year's U.S. Supreme Court ruling, told *The Nerve* when contacted Friday.

Enderlin said he thinks the new federal rules will help improve child-support collection rates. In the 2010 federal fiscal year, DSS' Child Support Enforcement Division had a nearly 52 percent collection rate, according to agency records.

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