
Deadbeat or Deadbroke: Redefining Child Support for Poor Fathers

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INTRODUCTION

Millions of children are growing up without their fathers. Many of these children "lost" their fathers when their parents separated or divorced, but many others never even lived with them. Although both divorced and never married fathers¹ disengage from their children at alarmingly high rates, men who were never married to their children's mothers are even less likely to be involved in their children's upbringing or to share a close relationship with them.² They are also less likely to pay child support and, according to policymakers, more likely to be African-American.³

Approximately seventy percent of African-American children, as compared to twenty-three percent of white children, are born to never married women.⁴ For decades, government officials have focused on

¹ For purposes of this Article, I will refer to fathers who were never married to their children's mothers as "never married fathers" even if they later married another woman.

² ELAINE SORENSEN & MARK TURNER, BARRIERS IN CHILD SUPPORT POLICY: A LITERATURE REVIEW, May 1996, at 14, available at <http://www.ncöff.gse.upenn.edu/litrev/sb-litrev.pdf> (finding that only 60% of nonmarital children had seen their nonresident fathers in past year as compared to 82% of marital children whose parents were separated or divorced); John W. Graham & Andrea H. Beller, *Nonresident Fathers and Their Children*, in HANDBOOK OF FATHER INVOLVEMENT 431, 447 (Catherine S. Tamis-LeMonda & Natasha Cabrera eds., 2002); Glendessa M. Insabella et al., *Individual and Co-Parenting Differences Between Divorcing and Unmarried Fathers*, 41 FAM. CT. REV. 290, 302 (2003) (never married fathers are generally less involved with their children than divorced fathers).

³ Marcia J. Carlson & Sara S. McLanahan, *Fragile Families, Father Involvement, and Public Policy*, in HANDBOOK OF FATHER INVOLVEMENT, *supra* note 2, at 461, 480 (never married mothers are less likely than divorced or separated mothers to obtain child support order); Rebekah Levine Coley & P. Lindsay Chase-Lansdale, *Fathers' Involvement with Their Children over Time*, 4 POVERTY RES. NEWS 12, 12 (2000) (only 25% of never married fathers pay consistent formal child support); Sandra K. Danziger et al., *The Problems and Promise of Child Support Policies*, in YOUNG UNWED FATHERS: CHANGING ROLES AND EMERGING POLICIES 235, 236 (Robert I. Lerman & Theodora J. Ooms eds., 1993) [hereinafter YOUNG UNWED FATHERS] (child support payment rates are lower for nonmarital and minority children than for general population); Insabella et al., *supra* note 2, at 291, 293 (stating that lower percentages of never married fathers pay child support as compared to divorced or separated fathers and only 20% of nonmarital children receive all of child support to which they are entitled); *id.* at 293 (although 60% of eligible families have child support order, only 23% of never married mothers do); Maria Cancian et al., *Importance of Child Support for Low-Income Families*, (Sept. 2003), <http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/csincsrc.pdf> (only 27% of never married fathers pay consistent formal child support). *But see* Robert I. Lerman, *A National Profile of Young Unwed Fathers*, in YOUNG UNWED FATHERS *supra*, at 46 (finding that never married African-American fathers are more likely than never married white fathers to pay child support, 39% as compared to 34%, but amount paid by white fathers is significantly higher).

⁴ Jason DeParle, *Raising Kevion*, N.Y. TIMES, Aug. 22, 2004, § 6, at 27 (68% of African-American children are born to never married women as compared to 23% of white children

paternal absence in African-American families,⁵ treating “[f]atherlessness . . . as a distinctly Black problem,”⁶ and blaming absent fathers for many of the social ills plaguing African-American communities — poverty, teen pregnancy, high delinquency and incarceration rates, poor academic performance, and idleness.

Although social science research suggests that children raised in two-parent homes do better than children raised in single-parent homes, recent studies have found that many of the negative effects associated with growing up in a single parent family can be reduced by nonresident fathers’ significant involvement with their children.⁷ Children with involved nonresident fathers perform better academically and have higher self-esteem and fewer social and behavioral problems than children who have little contact with their fathers.⁸ This is good news for African-American children because recent studies have found that low-income,⁹ never married African-American nonresident fathers are *more* involved with their children than are nonresident fathers of other races.¹⁰ According to policymakers, however, African-American fathers are the most absent; abandoning their children at disproportionately high rates and never looking back. Why are policymakers unaware of the higher rate of paternal involvement amongst low-income, nonresident African-American fathers? Because, when measuring responsible fatherhood,

and 43% of Latino children); *see also* JENNIFER HAMER, WHAT IT MEANS TO BE A DADDY 2-3 (2001) (noting that 70.4% of all African-American births are out of wedlock and that at this rate, over 85% of African-American children will spend some portion of their childhood fatherless). It is estimated that as many as 80% of African-American infants in the poorest inner cities are born to never married mothers. Lee Smith, *The New Wave of Illegitimacy*, 129 FORTUNE 81 (1994).

⁵ See, e.g., DANIEL P. MOYNIHAN, OFF. OF PLANNING AND POLICY RES., U.S. DEP’T OF LABOR, THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION (1965).

⁶ Dorothy Roberts, *The Absent Black Father*, in LOST FATHERS: THE POLITICS OF FATHERLESSNESS IN AMERICA 145, 146 (Cynthia R. Daniels ed., 1998).

⁷ Welfare Reform Reauthorization Proposals: Hearing on H.R. 14 Before the Comm. on Ways & Means, 107th Cong. § 2 (2002) (statement of Elaine Sorenson, Principal Research Associate, Urban Institute), available at <http://waysandmeans.house.gov/legacy.asp?file=legacy/humres/107cong/4-11-02/records/testimony-sorenson.htm> [hereinafter Sorenson Statement]; *see also* HAMER, *supra* note 4, at 203 (“It may be that having never-married parents and a ‘very involved father’ is better for the emotional stability and well-being of children than having lived with married parents who subsequently divorce.”).

⁸ See *infra* Part I.

⁹ For purposes of this Article, a father is “poor” or “low-income” if he earns less than 130% of the poverty threshold. In 2004, the poverty threshold for an individual was \$9,827. U.S. CENSUS BUREAU, POVERTY THRESHOLDS 2004, available at <http://www.census.gov/hhes/poverty/threshld/thresh04.html>.

¹⁰ See *infra* Part II.B.

only formal child support payments count.

Many of the social problems in African-American communities are the result of poverty. African-American children are disproportionately poor¹¹ and rarely receive child support, depending instead on public assistance for their financial needs. Thus, it is not surprising that policymakers have aggressively pursued African-American "deadbeat" fathers who do not pay child support. Pursuing these fathers, however, has presented many challenges because most are poor themselves and the majority are unemployed.¹²

Although child support enforcement agencies and community organizations have created programs to help these fathers obtain stable, well-paying jobs,¹³ most participating fathers did not find steady jobs or stay employed long enough to significantly increase their child support payment frequency or amounts.¹⁴ However, some participating fathers did increase their level of contact and involvement with their children. That is the focus of this Article: how can the law encourage never married poor fathers, the majority of whom are African-American,¹⁵ to be involved in their children's lives?

Although the majority of poor, nonresident African-American fathers do not pay child support,¹⁶ many make in-kind and nonfinancial contributions to their children.¹⁷ Child support enforcement officials have not recognized these contributions, crediting only formal child

¹¹ Two out of three African-American children living with a never married mother are poor. William Julius Wilson, *The Woes of the Inner-City African-American Father*, in BLACK FATHERS IN CONTEMPORARY AMERICAN SOCIETY 9, 10 (Obie Clayton et al. eds., 2003) [hereinafter BLACK FATHERS]; Daniel T. Lichter, *Poverty and Inequality Among Children*, ANN. REV. SOC. 121, 130 (1997) (citing 1996 U.S. Bureau of the Census study showing that in 1994, 43.8% of all African-American children were poor, as compared to 16.9% of white children and 41.5% of Latino children).

¹² Theresa J. Feeley, Issue Brief, *Low-Income Noncustodial Fathers: A Child Advocate's Guide to Helping Them Contribute to the Support of Their Children*, NAT'L ASS'N OF CHILD ADVOCATES, Feb. 2000, at 2 (noting that "most children of low-income mothers also have low-income noncustodial fathers," and that low-income custodial mothers and low-income noncustodial fathers are disproportionately African-American).

¹³ See JOHNSON ET AL., FATHERS' FAIR SHARE: HELPING POOR MEN MANAGE CHILD SUPPORT AND FATHERHOOD 1-2 (1999) (discussing goals of Parents' Fair Share program).

¹⁴ *Id.* at xi, 168.

¹⁵ See SORENSEN & TURNER, *supra* note 2, at 5.

¹⁶ Elaine Sorensen & Chava Zibman, *To What Extent Do Children Benefit from Child Support?*, in ASSESSING THE NEW FEDERALISM 3-4 (Jan. 2000), available at <http://www.urban.org/uploadedpdf/discussion99-19.pdf> [hereinafter Sorensen & Zibman, *To What Extent*].

¹⁷ See *infra* Part II.B.

support payments. As a result, poor, African-American fathers are perceived as greater deadbeats and as less involved in their children's upbringing than other fathers.¹⁸ This failure to recognize informal contributions may drive poor fathers away and make it more difficult for them to maintain relationships with their children. I propose that the law recognize all of the contributions poor nonresident fathers make to their children and credit them against formal child support obligations.¹⁹

This Article proceeds in three parts. Part I examines the literature suggesting that paternal involvement benefits children even when their fathers do not live with them. Part II looks at the informal contributions poor, nonresident African-American fathers make to their children and critiques policymakers' failure to recognize these contributions.²⁰ Part III explores how the law can encourage poor nonresident fathers' involvement in their children's lives by redefining child support to include informal and nonfinancial contributions.

I. FATHERS MATTER

The majority of nonresident fathers are not involved in their children's upbringing. Many have little, if any, contact with them.²¹ Indeed, only twenty-five to thirty-five percent of children see their nonresident fathers one or more times a week²² and forty percent see them less than once a

¹⁸ JOHNSON ET AL., *supra* note 13, at 4 (stating fathers of children on welfare "are almost universally stigmatized [They are] widely viewed as uncaring and irresponsible").

¹⁹ Nonresident mothers are even less likely than nonresident fathers to pay child support. See Sorensen & Zibman, *To What Extent*, *supra* note 16, at 3-4. However, because mothers have residential custody in roughly 85% of cases, child support enforcement agencies pursue primarily fathers. See *id.* at tbl.1. Thus, this Article will focus on nonresident fathers.

²⁰ Although paternal disengagement is a significant problem in Latino communities as well, my focus is on African-American fathers because there are few studies addressing Latino fathers' involvement with their children. To the extent that poor Latino fathers or fathers of other races make substantial contributions to their children's care, my recommendations would apply to them as well.

²¹ Frank F. Furstenberg Jr., *Fathering in the Inner City: Paternal Participation and Public Policy*, in FATHERHOOD 119, 120-21 (William Marsiglio ed., 1985) ("The great majority of fathers who live apart from their children see them infrequently and support them irregularly."); Valerie King, *Nonresident Father Involvement and Child Well-Being: Can Dads Make a Difference?*, 15 J. FAM. ISSUES 78, 79 (1994) ("[T]he great majority of nonresident fathers have infrequent contact with their children").

²² Sara McLanahan, *Growing Up Without a Father*, in LOST FATHERS, *supra* note 6, at 85, 91-92 (finding that only thirty-five percent of children see their fathers weekly); Judith A. Seltzer, *Relationships Between Fathers and Children Who Live Apart: The Father's Role After*

year, or never.²³ However, fathers matter to most children and child development experts believe that a relationship with both the father and mother may be important to children's development. Studies have found that children who have infrequent contact with their fathers are more likely to experience academic,²⁴ social, and emotional problems than children who grow up with two parents.²⁵ For example, they are more likely to engage in early sexual activity,²⁶ abuse drugs, and engage in delinquent behavior.²⁷ They also tend to have lower levels of

Separation, 53 J. MARRIAGE & FAM. 79, 85 (1991) (finding that only twenty-five percent of children see their fathers weekly).

²³ Wade F. Horn, *Is It Working? Early Evaluations of Fatherhood-Renewal Programs*, in BLACK FATHERS, *supra* note 11, at 138, 147 (40% of children had not seen their nonresident fathers in over one year).

²⁴ See Solangel Maldonado, *Beyond Economic Fatherhood: Encouraging Divorced Fathers to Parent*, 153 U. PA. L. REV. 921, 951 (2005) (noting "positive correlation between paternal involvement and both higher IQ and better school performance.").

²⁵ There is little research on the development of nonmarital children. However, numerous studies on children of divorce suggest that children benefit from a close relationship with their nonresident fathers. See JUDITH WALLERSTEIN & JOAN B. KELLY, SURVIVING THE BREAKUP: HOW CHILDREN AND PARENTS COPE WITH DIVORCE 219 (1980) ("[G]ood father-child relationships appeared linked to higher self-esteem and the absence of depression in children of both sexes and at all ages."); James W. Loewen, *Visitation Fatherhood*, in FATHERHOOD TODAY: MEN'S CHANGING ROLE IN THE FAMILY 195, 196 (Phyllis Bronstein & Carolyn Pape Cowan eds., 1988) ("Empirical studies are unanimous that one of the most important indicators of success is the quality of post-divorce relationships with both parents."); Jana Singer & William Reynolds, *A Dissent on Joint Custody*, 47 MD. L. REV. 497, 500 (1988) (children adjust better to divorce if they have frequent contact with both parents); Marilyn Ihinger-Tallman et al., *Developing a Middle-Range Theory of Father Involvement Postdivorce*, in FATHERHOOD: CONTEMPORARY THEORY, RESEARCH, AND SOCIAL POLICY 57, 60 (William Marsiglio ed., 1995) ("[F]ather contact is associated with fewer behavioral problems, higher self-esteem, and other positive indices of children's development."). But see Frank F. Furstenberg, Jr. & Kathleen Mullan Harris, *When and Why Fathers Matter: Impacts of Father Involvement on the Children of Adolescent Mothers*, in YOUNG UNWED FATHERS, *supra* note 3, at 117, 134 (finding that regular contact with poor African-American nonresident fathers had little effect on positive outcomes for African-American adolescents).

²⁶ Bruce J. Ellis et al., *Does Father Absence Place Daughters at Special Risk for Early Sexual Activity and Teenage Pregnancy?*, 74 CHILD. DEV. 801, 813-17 (2003) (finding that teen pregnancy rates among girls from father-absent homes are five times higher than among girls from two-parent homes).

²⁷ Nancy Gibbs, *Bringing Up Father*, TIME, June 28, 1993, at 52, 54-55 (noting that although only forty percent of children in United States do not reside with their fathers, seventy percent of children in juvenile reform institutions come from father-absent homes); Barbara Dafoe Whitehead, *Dan Quayle Was Right*, ATLANTIC MONTHLY, Apr. 1993, at 77 (children from single parent homes are more likely "to abuse drugs and to be in trouble with the law."). But see FRANK F. FURSTENBERG JR. & ANDREW J. CHERLIN, DIVIDED FAMILIES: WHAT HAPPENS TO CHILDREN WHEN PARENTS PART 72-73 (1991) (finding that teenagers who saw their noncustodial fathers regularly were as likely as teens who had

cognitive development²⁸ and lower self-esteem than children who share close relationships with their nonresident fathers.²⁹

Although millions of children grow up having little contact with their fathers, almost all express a desire for a father and feel rejected when their fathers are not involved in their lives.³⁰ African-American children are no exception.³¹ African-American adults recall longing for their fathers while growing up, even when other men such as stepfathers, grandfathers, or uncles played a paternal role.³² As Frank Furstenberg noted in his study of fatherhood in low-income African-American communities, "in a culture where biological daddies are in short supply and other men often step in to fill the breach, children still speak longingly (and sometimes bitterly) about the fathering they missed out on."³³ In short, because children want to have a relationship with both parents, nonresident fathers' involvement is likely to contribute to children's happiness and well-being.³⁴

Paternal disengagement also harms children indirectly. Fathers who see their children frequently are much more likely to pay child support than fathers who see their children rarely.³⁵ The benefits of child support

little contact with their fathers to engage in delinquent acts and early sexual behavior).

²⁸ See Karen Czapanskiy, *Volunteers and Draftees: The Struggle for Parental Equality*, 38 UCLA L. REV. 1415, 1441 (1991) ("There is some evidence that a child's mental, cognitive and emotional development may be improved when the child has a close relationship with two parents."); Natasha Cabrera et al., *Low Income Fathers' Involvement in Their Toddlers' Lives*, 2 FATHERING 5, 10 (2004) (nonresident fathers' involvement has positive effect on their children's cognitive development).

²⁹ WALLERSTEIN & KELLY, *supra* note 25, at 218-19 (noting that children have lower self-esteem when they see their nonresident parent infrequently); Wendy D. Manning & Pamela J. Smock, *New Families and Nonresident Father-Child Visitation*, 78 SOCIAL FORCES 87, 88 (1999).

³⁰ Janice Laakso, *Key Determinants of Mothers' Decisions to Allow Visits with Noncustodial Fathers*, 2 FATHERING 131, 133 (2004) (discussing never married mothers who felt loss of their own fathers as children and as result, realize importance of fathers in their own childrens' lives); Ross A. Thompson & Deborah J. Laible, *Noncustodial Parents*, in PARENTING AND CHILD DEVELOPMENT IN "NONTRADITIONAL" FAMILIES 103, 108 (Michael E. Lamb ed., 1999) (citing numerous studies finding that children intensely desire continuing contact with both parents and are dismayed when the visiting parent sees them inconsistently or not at all).

³¹ Furstenberg Jr., *supra* note 21, at 128; see also DeParle, *supra* note 4, at 29 (discussing African-American men who wish they had grown up with father).

³² DeParle, *supra* note 4, at 29.

³³ Furstenberg Jr., *supra* note 21, at 128.

³⁴ Thompson & Laible, *supra* note 30, at 113.

³⁵ Seltzer, *supra* note 22, at 87. Only 20% or less of fathers who have no contact with their children pay child support as compared to thirty-seven percent of never married

are twofold. First, children who receive child support are less likely to be poor than children who do not. Second, children whose fathers pay child support have fewer academic, emotional, and behavioral problems than children whose fathers do not pay support, regardless of the amount paid.³⁶ Thus, in addition to financial assistance, child support also confers intangible and nonpecuniary benefits on children. These benefits, such as increased academic achievement and fewer behavioral problems, derive from increased contact with their nonresident fathers.³⁷ Unfortunately, fathers who rarely see their children are unlikely to pay child support, and thus, are unlikely to confer these benefits on their children.³⁸

The evidence strongly suggests that, barring exceptional circumstances,³⁹ paternal involvement benefits most children. Fortunately, most nonresident fathers want to be involved in their children's upbringing and most mothers want them to be involved.⁴⁰ Thus, policymakers should encourage paternal involvement. In the next section, I explore poor, African-American fathers' involvement in their

fathers. See Lerman, *supra* note 3, at 45-46.

³⁶ See Scott Altman, *A Theory of Child Support*, 17 INT'L J.L. POL'Y & FAM. 173, 190 (2003); Douglas B. Downey, *The School Performance of Children from Single-Mother and Single-Father Families: Economic or Interpersonal Deprivation?*, 15 J. FAM. ISSUES 129, 132 (1994) (noting that "the father's financial support [is] related to lower problem behavior among children"); King, *supra* note 21, at 80 ("The strongest effects of father involvement are found in studies that examine the payment of child support.").

³⁷ Social scientists have speculated that child support may serve as a proxy for paternal characteristics that have positive effects on children such as the willingness to assume responsibility for the well-being of their children. See Altman, *supra* note 36, at 190 (arguing that "[c]hildren who receive support feel less rejected and have fewer behavioral problems and perform better in school[.]" and thus, "[c]hild-support dollars provide a larger benefit . . . than dollars from other sources"); Graham & Beller, *supra* note 2, at 446 ("Child support income is at least as beneficial as other sources of income, but may have additional benefits known to result from greater contact with the nonresident parent."); *Id.* (noting that "child support increased educational attainment" and cognitive test scores "more than income from other sources").

³⁸ See *supra* note 35 and accompanying text.

³⁹ I would not encourage paternal involvement where there is a history of or risk of domestic violence. However, studies have found that a relatively small proportion (4%) of never married fathers are physically violent towards their children's mothers. See Carlson & McLanahan, *supra* note 3, at 482 n.17. Interestingly, 70% of mothers reporting violence wanted the fathers to be a part of their children's lives. *Id.*

⁴⁰ Carlson & McLanahan, *supra* note 3, at 468 (over 90% of never married mothers want father to help raise child); Paula England & Nancy Folbre, *Involving Dads: Parental Bargaining and Family Well-Being*, in HANDBOOK OF FATHER INVOLVEMENT, *supra* note 2, at 387; Laakso, *supra* note 30, at 133 (99% of never married fathers expressed desire to be involved in their children's upbringing and 93% of mothers wanted them to be involved).

children's upbringing.

II. NONRESIDENT FATHERS' CONTRIBUTIONS

When measuring nonresident fathers' contributions to their children, policymakers and child support enforcement agencies have looked exclusively at formal child support payments and ignored nonmonetary contributions.⁴¹ Based on this criteria, few poor African-American fathers support their children.⁴² However, when one acknowledges informal contributions, it becomes evident that some poor African-American fathers are contributing more to their children's upbringing than previously believed.⁴³ Some are even contributing more than middle-class white fathers with higher child support rates.⁴⁴

A. Child Support

In recent years, child support enforcement agencies have aggressively pursued nonresident parents who do not pay child support.⁴⁵ They do so by garnishing their wages,⁴⁶ intercepting their tax returns,⁴⁷ suspending their drivers' licenses,⁴⁸ initiating criminal proceedings,⁴⁹ and

⁴¹ See JOHNSON ET AL., *supra* note 13, at 93 ("Under federal and state statutes, only child support payments made through governmental agencies are credited against the [noncustodial parent's] obligation when the custodial parent is receiving public assistance.").

⁴² See Sorensen & Zibman, *To What Extent*, *supra* note 16, at 3.

⁴³ See *infra* Part II.B.

⁴⁴ See Roberts, *supra* note 6, at 153.

⁴⁵ See Elaine Sorensen & Robert Lerman, *Welfare Reform and Low-Income Noncustodial Fathers*, CHALLENGE, July-Aug. 1998, at 101, 109.

⁴⁶ 42 U.S.C. § 666(a)(8), (b)(3) (2000).

⁴⁷ Ronald K. Henry, *Child Support at a Crossroads: When the Real World Intrudes Upon Academics and Advocates*, 33 FAM. L.Q. 235, 239 (1999).

⁴⁸ State Dep't of Rev. v. Beans, 965 P.2d 725, 726 (Alaska 1998).

⁴⁹ Child Support Recovery Act ("CSRA"), 18 U.S.C. § 228(a) (2000) (providing for federal criminal prosecution of parents who owe \$5,000 or more in child support obligations or have arrears dating one year or longer). Courts are split as to the constitutionality of the CSRA. See United States v. Fasse, 265 F.3d 475, 485-86 (6th Cir. 2001) (finding that Congress did not exceed its constitutional power in enacting CSRA); United States v. Bongiorno, 106 F.3d 1027, 1029 (1st Cir. 1997) (same); United States v. Hampshire, 95 F.3d 999, 1003-04 (10th Cir. 1996) (same). But see United States v. Pillar, 387 F. Supp. 2d 1053, 1057 (N.D. Cal. 2005) (holding that CSRA is unconstitutional).

even booting their vehicles to shame them into complying with child support orders.⁵⁰ However, the majority of fathers do not fully comply with such orders⁵¹ and never-married fathers, who are disproportionately African-American,⁵² are even less likely to pay formal child support.⁵³

Policymakers, the media, and most Americans assume that fathers who fail to support their children simply refuse to do so.⁵⁴ State agencies and the press post photographs and "wanted ads" of fathers who are delinquent on their payments, labeling them "deadbeats."⁵⁵ Many Americans support incarcerating fathers who owe back child support because they believe that most deadbeat fathers enjoy a comfortable

⁵⁰ Elizabeth S. Scott, *The Legal Construction of Norms: Social Norms and the Legal Regulation of Marriage*, 86 VA. L. REV. 1901, 1926 (2000).

⁵¹ BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CHILD SUPPORT: 1999 tbl.4 (2000) (showing that majority of nonresident parents do not comply fully with child support orders). In two states the total collection rate is less than 10%. JANE KNITZER & STANLEY BERNARD, NAT'L CTR. FOR CHILDREN IN POVERTY, MAP AND TRACK: STATE INITIATIVES TO ENCOURAGE RESPONSIBLE FATHERHOOD app. C at 162, tbl.6 (1995).

⁵² As noted above, approximately 70% of African-Americans children, as compared to 23% of white children, are born out of wedlock. See DeParle, *supra* note 4. In contrast, the majority of white children growing up in single parent homes do so as a result of their parents' divorce or separation. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE U.S. 64 (114th ed. 1994).

⁵³ See Danziger et al., *supra* note 3, at 236; Insabella et al., *supra* note 2, at 291, 293. Never married fathers' income is generally half of that of divorced fathers. See Timothy J. Nelson et al., *Sustaining Fragile Fatherhood*, in HANDBOOK OF FATHER INVOLVEMENT, *supra* note 2, at 525, 527. Thus, it is not surprising that their child support payment rates are lower.

⁵⁴ See JOHNSON ET AL., *supra* note 13, at 93 (there is an "assumption that [noncustodial parents] are able but unwilling to pay child support."); SORENSEN & TURNER, *supra* note 2, at 1.

⁵⁵ See, e.g., L.A. County Child Support Servs. Dep't, Most Wanted Delinquent Parents, <http://childsupport.co.la.ca.us/dlpARENTS.htm> (last visited Nov. 23, 2005); N.M. Human Servs. Dep't, Child Support Enforcement Div., 25 Most Wanted, Wanted by the State of New Mexico for Neglecting their Children for Not Paying Child Support, <http://www.state.nm.us/hsd/wanted.html> (last visited Nov. 23, 2005); Ariz. Dep't of Econ. Sec., Div. of Child Support Enforcement, Wanted for Failure to Pay Child Support, <http://www.de.state.az.us/dcse/wanted.asp> (last visited Nov. 23, 2005); see Susan Edelman, *Deadbeat-Dad Dragnet: Feds Nab Well-Off Men Whose Kids Live in Poverty*, N.Y. POST, Aug. 4, 2002, at 12 (listing New York's top ten deadbeat fathers), available at 2002 WL 24774401; Heidi Evans, *City's Deadbeat Dads' Hall of Shame: Millions Owed by the Men Who Shirk Child Support*, N.Y. DAILY NEWS, Feb. 3, 2002, at 6, available at 2002 WL 3165597; see also Paul Rioux, *Cops Book 14 Parents as Suspected Deadbeats: 130 Sought by Authorities*, TIMES-PICAYUNE (New Orleans), Oct. 10, 2002, at B1, available at 2002 WL 25259499; Jason Straziuso, *Miss. Seeks '10 Most Wanted' Deadbeat Dads*, COM. APPEAL (Memphis), Sept. 4, 2002, at B7 (reporting that state of Mississippi will post photographs and information about ten most wanted deadbeat parents in post offices, in county buildings, and online).

lifestyle while their children live in poverty. Although some fathers who do not pay child support can afford to pay the amount awarded,⁵⁶ the majority of fathers who do not pay simply cannot afford to do so.⁵⁷ In fact, over two and one half million nonresident fathers of poor children are poor themselves, earning less than \$6,000 a year.⁵⁸

Depending on the jurisdiction, child support awards are generally based on the income of the nonresident parent or his proportionate share of both parents' combined income. For example, the guidelines in a state that bases child support awards on the nonresident parent's income alone, may provide that support for one child shall equal 20% of the nonresident parent's income.⁵⁹ An award for two children may equal 28% of the nonresident parent's income, and so forth.⁶⁰ In states that look at the combined income of both parents, the guidelines may provide that a child is entitled to receive 20% of his parents' combined income.⁶¹ That 20% will be allocated between the resident and nonresident parent in proportion to their respective incomes.⁶² These guidelines, however, do not apply to low-income nonresident parents, usually defined as those whose income is below the poverty threshold.⁶³ Some statutes provide that low-income parents must pay only \$20 or \$25 per month in child support, rather than a certain percentage of their income.⁶⁴

⁵⁶ Elaine Sorensen & Chava Zibman, *A Look at Poor Dads Who Don't Pay Child Support*, in ASSESSING THE NEW FEDERALISM 3 (2000), available at <http://www.urban.org/Uploadedpdf/discussion00-07.pdf> [hereinafter Sorensen & Zibman, *Poor Dads*] (43% of fathers who do not pay child support can afford to pay amount awarded); Thompson & Laible, *supra* note 30, at 115.

⁵⁷ See JOHNSON ET AL., *supra* note 13, at xii (finding that poverty is "a cause of lack of child support"); Sorensen & Turner, *supra* note 2, at 11 (studies have found that ability to pay child support is strong predictor of payment rate). Nearly all nonresident fathers who pay formal child support have incomes above the poverty level. Sorensen & Zibman, *Poor Dads*, *supra* note 56, at 3.

⁵⁸ Sorensen & Zibman, *Poor Dads*, *supra* note 56, at 13 (citing 1997 National Survey of America's Families) (2.6 million nonresident fathers have incomes below poverty line); see also Sorensen & Lerman, *supra* note 45, at 102 (3.1 million noncustodial fathers were low-income, meaning that they earned 130% or less of poverty line). Sorensen & Zibman, *Poor Dads*, *supra* note 56, at 5 (deadlocked fathers earned on average \$5,570 in 1996).

⁵⁹ See 705 ILL. COMP. STAT. ANN. 5/505 (West 1992).

⁶⁰ *Id.*

⁶¹ See N.Y. FAM. CT. ACT § 413(b)(3) (Consol. 2005).

⁶² See N.Y. FAM. CT. ACT § 413(c) (Consol. 2005).

⁶³ See CAL. FAM. CODE § 4055(b)(E)(7) (West 2005) ("In all cases in which the net disposable income per month of the obligor is less than \$1,000 per month, there shall be a rebuttable presumption that the obligor is entitled to a low-income adjustment."); N.Y. FAM. CT. ACT § 413(d) (Consol. 2005); N.J. CT. R., 1969 R. APPENDIX IX-A (2005).

⁶⁴ NY FAM. CT. ACT § 413(d); N.J. CT. R., 1969 R. APPENDIX IX-A (2005).

In theory, since child support awards are based on income, an award should never exceed a parent's ability to pay. However, poor fathers accumulate thousands of dollars in arrears each year. Indeed, seventy percent of the \$96 million owed in back child support in 2003 was owed by men earning \$10,000 per year or less, many of whom were unemployed or employed part-time.⁶⁵ How do poor fathers accumulate such high arrears when the statutes authorize payments as low as \$20 per month? The answer is simple. Child supports awards are not based on actual income, but rather on imputed income.⁶⁶ Thus, an unemployed father could be ordered to pay \$400 per month in child support based on the court's determination that a man of his age and skill level should be able to secure a job earning \$20,000 per year.⁶⁷ As a result, fathers are frequently ordered to pay significantly higher amounts than they can afford.⁶⁸

Further, fathers sometimes accumulate arrears before a court even establishes a formal child support order. A court can order a father to repay the state for all of the public assistance benefits paid to the mother and child.⁶⁹ A poor father who is ordered to reimburse the state for Medicaid expenses and other public assistance benefits incurred for the child, may be in significant arrears before the initial child support award

⁶⁵ Leslie Kaufman, *Tough Child Support Laws Put Poor Fathers in a Bind*, N.Y. TIMES, Feb. 19, 2005, at B1. Fathers earning more than \$40,000 were responsible for less than four percent of the money owed. *Id.* Most deadbroke fathers were not employed year round and worked, on average, only 29 weeks in 1996. Sorensen & Zibman, *Poor Dads*, *supra* note 56, at 5.

⁶⁶ Monroe County Support Collect'n Unit v. Wills, 801 N.Y.S.2d 650, 651 (App. Div. 4th Dep't 2005) (family court has considerable discretion to impute income for purpose of determining child support obligation when there are no reliable records of parent's employment income or evidence of genuine and substantial effort to obtain gainful employment); Robert I. Lerman & Elaine Sorensen, *Child Support: Interactions Between Private and Public Transfers*, in MEANS-TESTED TRANSFER PROGRAMS IN THE U.S. 587, 593 (Robert A. Moffitt ed., 2000).

⁶⁷ See Feeley, *supra* note 12, at 3 (judges do not always base child support on nonresident fathers' actual income, but rather impute income assuming at least full-time minimum wage job); Sorensen & Lerman, *supra* note 45, at 105 (noting that if noncustodial father fails to appear in court, judge imputes income assuming full-time minimum wage job, even when father is not employed). If a father fails to appear for child support hearing, many states allow court to set child support at state's minimum basic standard of care (i.e. \$423 per month in California), which is much higher than what deadbroke fathers can afford. *Sorensen Statement*, *supra* note 7. Indeed, seventy percent of child support orders in California are set by default. *Id.*

⁶⁸ See Feeley, *supra* note 12, at 3 (noting that courts often impute unrealistic income earning capacity to low-income and unskilled fathers).

⁶⁹ JOHNSON ET AL., *supra* note 13, at 10.

is even issued and will likely remain in arrears even if the child support award is set at only \$25 per month.

The law has failed to distinguish between fathers who can pay child support but refuse (the true deadbeats), and those who are unemployed or severely underemployed (those who are deadbroke).⁷⁰ Many of these deadbroke fathers (forty-one percent) are African-American.⁷¹ Over thirty-eight percent of never-married African-American fathers earn less than \$10,000 a year.⁷² Thus, it is not surprising that so few pay formal child support.⁷³ Unfortunately, deadbroke African-American fathers have evoked neither empathy nor sympathy, but are instead perceived by society as irresponsible men unwilling to support their children.⁷⁴

B. Nonfinancial Contributions

*[I]f we want to imagine nurturing fatherhood, decoupled from the patriarchal economic model, we might begin by looking to Black fathers.*⁷⁵

The exclusive focus on formal child support payments has led society and policymakers to underestimate poor African-American fathers' contributions to their children and to erroneously conclude that they

⁷⁰ Deadbroke fathers are defined as those who are "too poor to pay even minimum child support awards." Ronald Pincy & Hillard Pouncy, *The Responsible Fatherhood Field*, in HANDBOOK OF FATHER INVOLVEMENT, *supra* note 2, at 555, 563. One study found that one in six deadbroke fathers is incarcerated, and of the remaining fathers, only 8% had full-time jobs. *Sorensen Statement*, *supra* note 7. Forty percent had not worked at all in the year before the study and the median earnings of those who had worked was only \$5,000 in 1998. *Id.*

⁷¹ See Sorensen & Zibman, *Poor Dads*, *supra* note 56, at 3-4.

⁷² HAMER, *supra* note 4, at 10. Eighty-six percent of never married African-American fathers earned less than \$20,000. *Id.* Approximately half of all young, unskilled African-American men are unemployed. HAMER, *supra* note 4, at 104 (citing 1990 U.S. Dep't of Labor statistics) (approximately 60% of all African-American 16-24 year olds have no work experience); DeParle, *supra* note 4, at 27, 29 (noting that only 52% of young, unskilled African-American men reported having job in late 1990s).

⁷³ Only 12% of low-income African-American fathers pay formal child support. Susan Rich, *A Study of African-American Fathers' Involvement With Their Preschool Children* 46 (2002) (unpublished Ed.D. dissertation, Seton Hall University) (on file with author); see also Sorensen & Zibman, *Poor Dads*, *supra* note 56, at 3 (only 3% of poor nonresident fathers pay child support).

⁷⁴ HAMER, *supra* note 4, at 1, 25. Poor African-American fathers are more likely to be arrested for nonpayment than fathers in other demographic groups. *Id.* at 126. They also face restrictions on their right to procreate. See *State v. Oakley*, 629 N.W.3d 200, 200-01 (Wis. 2001), cert. denied, 537 U.S. 813 (2002) (upholding order prohibiting low-income African-American man from having any more children as condition of probation).

⁷⁵ Roberts, *supra* note 6, at 153.

have abandoned them. However, not all nonresident fathers are absent, even when they rarely pay formal child support. Many deadbroke African-American fathers contribute to their children's support in nonmonetary ways: by making in-kind contributions and by parenting them.⁷⁶

Studies have found that the majority of deadbroke, never married African-American fathers make in-kind contributions to their children⁷⁷—buying them diapers, baby formula, and groceries as well as clothing, toys, and baby furniture.⁷⁸ Fathers prefer to make in-kind contributions, purchasing “a few symbolically important items” (such as diapers and sneakers), rather than make cash payments.⁷⁹ To a father with limited resources, providing these items may have greater value and significance than giving the custodial mother their cash equivalent. These items are tangible evidence of a father’s efforts to support his children despite his economic circumstances.⁸⁰ Likewise, in-kind contributions are visible.⁸¹ Fathers can see their contributions and feel pride whenever their children wear clothing or play with toys that they bought for them.⁸² They can point to the sneakers, outfits, or strollers that they bought for their children and believe, for as long as these items last, that they are doing their share to support their children. In contrast, cash contributions lack the same visibility and durability. Cash can disappear in seconds when used to pay utilities or rent and the community will not see a father’s cash contribution as easily as it will see the stroller or sneakers he bought for his child.

⁷⁶ See *infra* notes 77-78, 88-90 and accompanying text.

⁷⁷ Nelson et al., *supra* note 53, at 548. However, only about one-third of mothers receiving public assistance report that nonresident fathers provided in-kind payments. England & Folbre, *supra* note 40, at 403. Mothers may not always count in-kind contributions as support. See Nelson et al., *supra* note 53, at 549. This might explain the discrepancy between mothers’ and fathers’ reported rates of fathers’ contributions.

⁷⁸ JOHNSON ET AL., *supra* note 13, at 44 (listing contributions); Danziger et al., *supra* note 3, at 245 (same); Robin Jarrett et al., *Fathers in the “Hood”: Insights from Qualitative Research on Low-Income African-American Men*, in HANDBOOK OF FATHER INVOLVEMENT, *supra* note 2, at 211, 229 (same).

⁷⁹ England & Folbre, *supra* note 40, at 403; Nelson et al., *supra* note 53, at 548, 550 (noting “cultural symbolism” for low-income fathers of purchasing diapers and sneakers for their children).

⁸⁰ Nelson et al., *supra* note 53, at 548.

⁸¹ Carlson & McLanahan, *supra* note 3, at 479 (in-kind contributions are directly seen by mother and child).

⁸² Nelson et al., *supra* note 53, at 548 (fathers purchasing of clothing, diapers, and other items for their children culturally demonstrates that fathers do willingly support their children).

In-kind contributions may facilitate paternal involvement.⁸³ Many fathers believe that they are not as important to their children as mothers and that their influence over their children is minimal if they do not live with them.⁸⁴ However, when fathers bring their children toys and books, for example, they are, in a sense, present during play time or bedtime, making them feel they are contributing to their children's development.⁸⁵ In contrast, because fathers who pay child support do not determine how the money will be spent or know whether it will be used for the child, they sometimes believe that their cash contributions are not benefiting the child.⁸⁶ Furthermore, fathers typically deliver in-kind contributions in person, thereby providing them with an opportunity to spend time with their children.⁸⁷ Formal child support, in contrast, does not facilitate direct father to child contact because payments are generally made remotely. At most, formal child support payments bring fathers to the courthouse or to the enforcement agency.

Deadbroke never-married African-American fathers also make nonpecuniary contributions by taking care of their children in ways often associated with custodial mothers.⁸⁸ They take their children to and from school, help them with their homework, take them to the doctor, and watch them while their mothers work or run errands.⁸⁹ Regardless of

⁸³ England & Folbre, *supra* note 40, at 403.

⁸⁴ Maldonado, *supra* note 24, at 942 & n.105.

⁸⁵ DANA REICHERT, NAT'L CONF. OF STATE LEGIS., BROKE BUT NOT DEADBEAT: RECONNECTING LOW-INCOME FATHERS AND CHILDREN 11 (1999), available at <http://www.calib.com/peerta/pdf/broken.pdf>.

⁸⁶ HAMER, *supra* note 4, at 147 (low-income black fathers claim that mothers use child support to satisfy selfish needs and do not spend money on child). See Wendy Sigle-Rushton & Irwin Garfinkel, *The Effects of Welfare, Child Support, and Labor Markets on Father Involvement*, in HANDBOOK OF FATHER INVOLVEMENT, *supra* note 2, at 409, 411 (mother determines how child support will be used and mother may utilize child support as her personal income).

⁸⁷ England & Folbre, *supra* note 40, at 403 (in-kind contributions can more effectively lead to establishment of emotional relationship than just purely giving to family's income).

⁸⁸ HAMER *supra* note 4, at 202 (black non-residential fathers perform duties of child care such as preparing meals and bringing children from school); Jarrett et al., *supra* note 78, at 237 ("Some men assume daily domestic chores associated with housework and child care. Although their contributions are less than children's mother's, men's involvement is significant to household.").

⁸⁹ Rich, *supra* note 73, at 46-47; see also Waldo E. Johnson, Jr., *Paternal Involvement in Fragile African-American Families: Implications for Clinical Social Work Practice*, 68 SMITH C. STUD. IN SOC. WORK 215, 220 (1998) (noting that time nonresident African-American fathers spend with their children "generally amounts to more than just weekend visits, but may also include daily childcare, well-baby and child visits, accompanying their children to and from school, meeting with school and social service personnel regarding their children's

how they spend time with their children, recent studies suggest that the majority of poor nonresident African-American fathers see their children regularly.⁹⁰ Scholars have speculated that these fathers may be attempting to compensate for their inability to financially support their children by spending more time with them.⁹¹ Indeed, one study found that eighteen months after their children's birth, the majority of poor, never-married African-American fathers saw their children three to six times per week.⁹² This level of paternal contact is surprisingly high especially when compared to studies showing that relatively few children see their nonresident fathers weekly.⁹³ Further, although nonresident fathers' involvement with their children generally decreases over time,⁹⁴ many poor African-American fathers remain involved for many years.⁹⁵ To illustrate, six to ten years after their children's birth, never-married African-American fathers are more likely than white or Latino fathers to remain involved in their children's upbringing.⁹⁶

development and welfare").

⁹⁰ Cabrera et al., *supra* note 28, at 10; *see also* Rich, *supra* note 73, at 45-46 (discussing studies). Most are also involved with the pregnancy, are present at birth, and are committed to helping to raise their children. Cabrera et al., *supra*; Carlson & McLanahan, *supra* note 3, at 468 (finding that over 80% of never married fathers contributed financial support during pregnancy).

⁹¹ HAMER, *supra* note 4, at 11, 13; Johnson, *supra* note 89, at 219-20; Roberts, *supra* note 6, at 153 ("many presumably 'absent' Black fathers actually play an important role in child rearing."); *id.* ("Many Black men stay closely tied to their children even when they are not married to the mother or are unable to provide financial support."); *see* HAMER, *supra*, at 85-86 (discussing African-American fathers who visit their children almost daily).

⁹² HAMER, *supra* note 4, at 133 (citing study finding that "18 months after a child's birth, the majority of [African-American adolescent fathers] reported visiting the child at least three to six times a week").

⁹³ *See supra* note 22 and accompanying text.

⁹⁴ Maldonado, *supra* note 24, at 948 n.129.

⁹⁵ HAMER, *supra* note 4, at 202 (stating that never married African-American nonresident fathers "may continue their involvement in their children's development-from infancy through adolescence"); Vivian Gadsden et al., *Situated Identities of Young, African American Fathers in Low-Income Urban Settings: Perspectives on Home, Street, and the System*, 41 FAM. CT. REV. 381, 395 (2003).

⁹⁶ Robert Lerman & Elaine Sorensen, *Father Involvement with Their Nonmarital Children: Patterns, Determinants, and Effects on Their Earnings*, in *FATHERHOOD: RESEARCH, INTERVENTIONS AND POLICIES* 137, 150 tbl.5, 152 (H. Elizabeth Peters et al. eds., 2000). Thirty percent of African-American nonresident fathers saw their nonmarital children ages 2-6 at least once a week as compared to only 13.9% of Latino men and 14.8% of white men. *Id.* at 150 tbl.5. Six to ten years after the child's birth, almost 25% of African-American nonresident fathers saw their children at least weekly as compared to only 10.5% of Latino men and 11.4% of white men. *Id.* Although by this time, 31.3% of white never married fathers and 17.5% of Latino never married fathers had not seen their children in the past

In short, although fatherlessness is perceived as a "Black problem," "poor African-American, officially absent fathers actually [have] more contact with their children and [give] them more informal support than [do] White, middle-class absent fathers."⁹⁷ However, because informal support and in-kind contributions do not count under our current definition of child support,⁹⁸ and a disproportionate number of African-American fathers are deadbroke, African-American fathers are perceived as the worst fathers of all.⁹⁹

III. REDEFINING CHILD SUPPORT

A. *Dominant v. Community Norms*

The duty to provide monetary support is central to nonresidential fathers.¹⁰⁰ Ultimately, society judges nonresident fathers based on their ability to provide for their children financially. As one commentator has argued, in our society, "a good father is first and foremost a provider," and a man's "ability to provide economically for his family is

year, only 10.3% of African-American nonresident fathers had not seen their children for that long. *Id.*

⁹⁷ Roberts, *supra* note 6, at 153; see also HAMER, *supra* note 4, at 202 (never married nonresident African-American fathers "may be more 'consistently' involved with their children" than divorced fathers); Nelson et al., *supra* note 53, at 527 (noting never married African-American fathers' "extraordinarily high" rates of paternal involvement with very young children).

⁹⁸ Lerman & Sorensen, *supra* note 66, at 587 (noting in-kind contributions are received by community and custodial parent but not recognized by formal child support structures).

⁹⁹ Gadsden et al., *supra* note 95, at 385 (rebutting "common stereotypes about the persistent tendencies of African-Americans fathers towards irresponsibility."); *id.* at 385-86 ("Most studies about low-income African-American fathers are predicated on the assumption that they do not systemically provide for the children financially . . . the studies are focused on why low-income fathers do not provide for their children with little focus on whether and how they provide."); *id.* at 395 (finding that "contrary to societal stereotypes", African-American fathers are involved with their children). See generally Harry D. Krause, *Reflections on Child Support*, 1983 U. ILL. L. REV. 99, 111-12 (noting that "subculture theories . . . relegate black fathers to lower levels of social responsibility" than middle class whites, although many black "unmarried fathers voluntarily aided their illegitimate children.").

¹⁰⁰ Maldonado, *supra* note 24, at 940 (noting that "being a father is equated with being an economic provider" and so long as nonresidential father "pays child support — even if he does nothing else for his children — he is perceived as a . . . good father."); see also HAMER, *supra* note 4, at 104 (arguing that paternal responsibility has been defined financially and state mandates and family policies define nonresidential fatherhood in economic terms).

concomitant to his being a father.”¹⁰¹ This norm of “economic fatherhood,”¹⁰² which is strongest in white communities¹⁰³ and which drives child support enforcement policies, is also present to a lesser extent, in African-American communities.¹⁰⁴ Interestingly, although African-American mothers believe that a father’s primary responsibility is to meet his children’s economic needs,¹⁰⁵ they rarely pursue their children’s fathers for child support.¹⁰⁶

Given poor African-American mothers’ need for child support and their belief that good fathers support their children, their refusal to formally pursue fathers for child support might appear foolhardy.¹⁰⁷ It is not. As shown above, many deadbroke fathers contribute to their children’s support in informal ways not recognized by the law or child enforcement authorities.¹⁰⁸ Poor African-American mothers, however, do

¹⁰¹ HAMER, *supra* note 4, at 19.

¹⁰² Maldonado, *supra* note 24, at 939-41 (discussing social and legal norms of nonresidential fatherhood as economic).

¹⁰³ See Nelson et al., *supra* note 53, at 550 (working class white men view breadwinning as fathers’ primary responsibility). See generally Linda C. McClain, *Care as a Public Value: Linking Responsibility, Resources and Republicanism*, 76 CHI.-KENT L. REV. 1673, 1701 (2001) (noting that whites with sufficient economic resources have traditionally viewed role of father as “breadwinner”).

¹⁰⁴ See *infra* note 116 and accompanying text.

¹⁰⁵ HAMER, *supra* note 4, at 110 (finding that African-Americans mothers are more likely than African-American fathers to emphasize men’s economic role as ideal father).

¹⁰⁶ *Id.* at 121, 125.

¹⁰⁷ African-American never married mothers receiving public assistance are less likely than mothers of other races to identify their children’s father or to provide the child support enforcement agency with necessary information for them to pursue fathers for child support. *Id.* at 104-05; Sorensen & Turner, *supra* note 2, at 10.

¹⁰⁸ See *supra* Part II.B. In addition to in-kind and nonpecuniary contributions, many fathers provide custodial mothers with cash payments that are never reported to the child support enforcement agency. For example, one study of mothers receiving welfare benefits found that the percentage receiving informal cash or in-kind contributions from their children’s fathers was the same as those receiving formal child support. England & Folbre, *supra* note 40, at 403. Fifty percent admitted not reporting these informal payments even though they risk losing their welfare benefits if discovered. See generally Sorensen & Lerman, *supra* note 45, at 108. Formal child support payments made on behalf of children who have received or are currently receiving public assistance are used to reimburse the state (and federal government) for benefits provided to the child. *Id.* at 103. The states can retain every dollar paid in child support. Although until 1996, states distributed the first \$50 paid in child support each month to the custodial parent, the 1996 Personal Responsibility and Work Opportunity Reconciliation Act eliminated this \$50 pass-through, allowing states to retain the entire child support payment. 42 U.S.C. § 657(a)(1) (1996); see Carlson & McLanahan, *supra* note 3, at 479 (noting that most states retain entire amount of child support collected and do not forward any payments to custodial parent). Thus, fathers have little incentive to make formal child support payments and prefer to give

recognize these contributions of diapers, clothing, and toys as a form of support.¹⁰⁹ Further, although they want fathers to financially support their children, they also recognize that many nonresident African-American fathers lack the means to do so.¹¹⁰ Thus, these mothers distinguish the ideal father who supports his children from the economic reality of deadbroke African-American fathers. Because their children's fathers are often poor, African-American mothers focus on securing fathers' presence and involvement with their children rather than obtaining formal child support.¹¹¹ They are "willing to forego economic support," which deadbroke fathers cannot provide, in exchange for a paternal relationship for their children.¹¹² Mothers also fear that pursuing deadbroke fathers for support they cannot afford might jeopardize their children's relationships with their fathers.¹¹³ As a result, although some custodial mothers deny fathers visitation if they have not paid child support, poor African-American mothers often allow fathers access to the children even when they do not pay.¹¹⁴ As one never-married mother expressed "I don't care about the child support. Just see

money to the custodial mother directly. *Id.* at 479. For similar reasons, custodial mothers have an incentive not to report fathers' direct cash contributions. Cf. Johnson, *supra* note 89, at 223, 225 (noting that nonresident fathers often give mothers money under table).

¹⁰⁹ HAMER, *supra* note 4, at 125-26; Jarrett et al., *supra* note 78, at 229 (noting that fathers' nonmonetary contributions such as diapers, toys, clothing "serve as proxies for monetary support and are typically accepted by mothers as evidence of traditional involvement"); Sorenson & Lerman, *supra* note 45, at 105 (mothers value in-kind contributions and consider them paternal involvement).

¹¹⁰ Elizabeth Peters, *Can Child Support Policies Promote Better Father Involvement? The Role of Coercive vs. Supportive Policies*, http://www.jcpr.org/newsletters/vol4_no2/articles.html#story_1 (last visited Nov. 8, 2005) (many mothers who do not have child support awards claim that father is unable to pay or that he pays informally what he can).

¹¹¹ HAMER, *supra* note 4, at 125-26.

¹¹² *Id.* (mothers expect fathers to support their children financially whenever possible but expect them to be consistently physically present in their children's lives); Jarrett et al., *supra* note 78, at 230 (noting that mothers recognize African-American fathers' difficulties securing employment and as result, "broaden their expectations of fathers to include alternative forms of support"); Laakso, *supra* note 30, at 142 ("[M]others as well as fathers want the non-custodial parent to have a relationship with the child, even if the father does not pay child support.").

¹¹³ Sorenson & Turner, *supra* note 2, at 10; see also HAMER, *supra* note 4, at 122-23. (mothers recognize that identifying their children's deadbroke and unemployed fathers and obtaining child support award might result in fathers' incarceration while doing nothing to improve their children's financial situation).

¹¹⁴ Laakso, *supra* note 30, at 141-42 (stating that "mothers may encourage father-child interactions even if there is no financial gain," because they see fathers' role as more than that of financial provider).

[the child].”¹¹⁵

Most African-American fathers agree that they should support their children, and many have embraced the dominant view of nonresidential fatherhood as primarily economic.¹¹⁶ However, many deadbroke African-American fathers reject the norm of economic fatherhood and emphasize instead social and emotional interactions with their children.¹¹⁷ They define fatherhood in noneconomic terms – spending time with their children, disciplining them, providing them with emotional support and security, being a caregiver, and serving as a role model, teacher and guide.¹¹⁸ Indeed, they rarely mention economic support unless prompted by the interviewer, focusing instead on “being there” for their children.¹¹⁹ Scholars have noted that “Black men have their own style of fathering”¹²⁰ and for them “child support is more than money . . . it’s about showing their children a way of life unlike what

¹¹⁵ *Id.* at 141 (quoting never married mother who states that it is very important for children to have relationships with their fathers).

¹¹⁶ See Johnson, *supra* note 89, at 228 (“Most fathers, regardless of . . . ability to support their children financially, believe that providing that support is crucial to becoming a responsible father.”). But see HAMER, *supra* note 4, at 21 (finding that older African-American fathers’ views of what makes a good father diverge from those of whites and are less likely to reflect norm of economic fatherhood).

¹¹⁷ HAMER, *supra* note 4, at 110, 125; cf. Johnson, *supra* note 89, at 217 (noting that “African-American men define their manhood, and especially parenthood, in terms of their provider role success, although not to the degree of exclusivity that the provider role is viewed by [white men]”).

¹¹⁸ Jarrett et al., *supra* note 78, at 229-30 (noting that some African-American fathers “give priority to time, not money.”); Nelson et al., *supra* note 53, at 550 (noting that working-class white men have traditionally viewed breadwinning as father’s primary responsibility, while African-American fathers place equal value on the relational aspects of fathering). Even African-American fathers who were paying child support every month considered it “one of the least important aspects of their fathering.” HAMER, *supra* note 4, at 149. Many African-American fathers recall how as children, they wished their nonresidential fathers would have visited them and spent time with them. *Id.* at 134-36. Thus, their assessment of what their children need most from them is based on their own experiences growing up without a father. Jarrett et al., *supra* note 78, at 226.

¹¹⁹ Jarrett et al., *supra* note 78, at 230 (discussing fathers lamenting that “system” emphasizes economic support and devalues intangible support); Nelson et al., *supra* note 53, at 543-44 (discussing study of African-American fathers and noting that many expressed that being good father meant “being there for their children”). Poor nonresident fathers were confident that their children’s basic needs were being met by their mothers, relatives, or the government. HAMER, *supra* note 4, at 148.

¹²⁰ Roberts, *supra* note 6, at 153; see also NANCY DOWD, IN DEFENSE OF SINGLE-PARENT FAMILIES 107 (1997) (noting that African-American fathers “demonstrate a positive model of fathering which extends the concept of fathering beyond the economic father” and where they “cannot economically provide support, their involvement includes services or in-kind contributions”).

they themselves experienced growing up”—a life without a father.¹²¹

African-American communities have similarly defined nonresidential fatherhood more broadly than policymakers and dominant society.¹²² They expect poor nonresident fathers to bring groceries, clothing, and toys to their children and to provide childcare and spend time with them “in lieu of financial contributions.”¹²³ They take into consideration fathers’ economic circumstances and recognize nonmonetary contributions as evidence of paternal involvement and assumption of paternal responsibilities.¹²⁴ Unfortunately, the law does not yet value this broader definition of fathering.¹²⁵ In the next section, I address how and why it should.

B. *Involved Fathering*

For decades, child support enforcement agencies have targeted fathers of children receiving public assistance, claiming that they must take responsibility for their children.¹²⁶ The law has defined paternal responsibility narrowly: the consistent payment of child support.¹²⁷ This definition is both under and over inclusive. Fathers who pay child support may be uninvolved in their children’s lives and have little contact with them, while fathers who do not pay child support may be significantly involved in their children’s upbringing and support them in nonfinancial ways. As shown, some poor, nonresident African-American fathers’ “level of parental presence and involvement with children is far greater than the physical and emotional involvement of

¹²¹ JOHNSON ET AL., *supra* note 13, at 94.

¹²² Sorensen & Turner, *supra* note 2, at 12.

¹²³ Sorensen & Lerman, *supra* note 45, at 104-05 (law’s failure to credit in-kind contributions and time spent providing child care as child support is at odds with “practice in most poor communities of accepting in-kind contributions of food, clothing, toys, child care or other assistance in lieu of financial contributions”); Sorensen & Turner, *supra* note 2, at 12.

¹²⁴ Sorensen & Turner, *supra* note 2, at 12.

¹²⁵ Karen Czapanskiy, *Child Support and Visitation: Rethinking the Connections*, 20 RUTGERS L.J. 619, 620 (1989) (“[T]he sole legally cognizable paternal contribution is money, no matter what the level of nurturing a particular father may have been giving to his children.”).

¹²⁶ See generally W. Craig Williams, *The Paradox of Paternity Establishment: As Rights Go Up, Rates Go Down*, 8 J. LAW & PUB. POL’Y 261 (1997) (noting that increase in child poverty rates since 1970’s and “the escalating costs of governmental child support have led to a legislative crusade to find absent fathers.”).

¹²⁷ See *supra* notes 41, 98 and accompanying text.

many fathers who provide financially for their children.”¹²⁸

In a previous article, I argued that the legal and social expectations of post-divorce nonresidential fatherhood as primarily economic may discourage fathers from remaining involved in their children’s lives.¹²⁹ This may be especially true of deadbroke African-American fathers who are less likely to have lived with their children and who lack the means to provide for them financially. I am not asserting that most deadbroke nonresident fathers are significantly involved in their children’s upbringing or that they cannot do a better job of supporting their children financially and emotionally. Indeed, fathers themselves acknowledge that they could and should do more for their children.¹³⁰ However, the negative perceptions of absent African-American fathers must be balanced against positive images of African-American fathers who see their children regularly and contribute to their well-being (even if they cannot afford to pay child support). The law’s failure to acknowledge these contributions may discourage deadbroke fathers from nurturing their children. By measuring a father’s worth by his ability to provide economic support, the law signals to deadbroke fathers that they have little to contribute to their children. Fathers who believe they have nothing to offer their children are more likely to disengage from them entirely. As scholars have noted, defining nonresident fathers’ “responsibility solely in terms of cash support . . . [makes] it more difficult for [them] to offer inputs of time or emotional effort in their place, contributing to paternal disengagement.”¹³¹ In order to encourage deadbroke fathers to remain involved with their children, even if they cannot pay child support, the law must redefine child support to include not only cash payments, but in-kind and nonfinancial contributions as well.

As shown, poor African-American fathers prefer in-kind contributions to formal child support payments.¹³² Poor fathers cannot afford to make both formal payments and continue to bring their children clothing or toys, or take them out for ice cream when they visit. If deadbroke fathers are forced to pay formal child support they cannot afford, these in-kind contributions that bring them to their children’s homes, and which are

¹²⁸ Johnson, *supra* note 89, at 220.

¹²⁹ Maldonado, *supra* note 24, at 938-46.

¹³⁰ HAMER, *supra* note 4, at 88 (noting that African-American men believe that men are not doing what is expected of them as fathers).

¹³¹ England & Folbre, *supra* note 40, at 402.

¹³² *Id.*; see also *supra* notes 79-82 and accompanying text.

likely to lead to paternal involvement,¹³³ might decrease or cease altogether. Indeed, the few programs that succeeded in moderately increasing poor fathers' formal child support obligations noted a simultaneous decrease in fathers' in-kind contributions.¹³⁴ Some fathers have suggested that they would rather not see their children at all than show up empty-handed.¹³⁵ Indeed, as noted above, some African-American mothers do not formally pursue poor fathers for child support because they fear it would discourage them from visiting their children and from contributing at all.¹³⁶ Custodial mothers are in a better position than policymakers to predict what their former partners will do if pursued relentlessly for formal payments they cannot afford.

Enforcement of child support may also prevent deadbroke fathers from maintaining relationships with their children because current policies drive poor fathers into hiding. A father who owes child support risks incarceration if he makes his whereabouts known.¹³⁷ Thus, it is in his interests to hide from anyone who might reveal his identity and residence to the child support enforcement authorities.¹³⁸ Ironically, child support enforcement might also make it more difficult for fathers to secure legitimate employment. By criminalizing nonpayment of child support and pursuing deadbroke fathers without first ensuring that they can pay the amount awarded, the law turns these men into felons, the

¹³³ See *supra* notes 83-87 and accompanying text.

¹³⁴ CYNTHIA MILLER & VIRGINIA KNOX, THE CHALLENGE OF HELPING LOW-INCOME FATHERS SUPPORT THEIR CHILDREN (2001), available at <http://www.mdrc.org/publications/104/overview.html>.

¹³⁵ See generally Nelson et al., *supra* note 53, at 546, 551 (noting that spending quality time with their children requires fathers to have some money or something to give them such as few dollars to buy ice cream); *see also id.* at 551 ("Fathers sometimes said that when they could not contribute, they felt too guilty to have ongoing contact with their children. . . ."); *id.* at 548 (noting one father gives his children money — "little dollars or fives").

¹³⁶ See *supra* notes 113-15 and accompanying text.

¹³⁷ See Child Support Recovery Act, 18 U.S.C. § 228(a) (2000) (authorizing imprisonment of parents who owe \$5,000 or more in child support obligations or have arrears dating one year or longer where obligor and child reside in different states); N.Y. FAM. CT. ACT § 454(3)(a) (Consol. 2005) (anyone who willfully fails to pay child support may be imprisoned for up to six months); State v. Oakley, 245 Wis. 2d 447, 452 (2001) (holding that father convicted of criminal nonpayment of child support could be sentenced to imprisonment for six years); JOHNSON ET AL., *supra* note 13, at 87 (finding that poor fathers who owed back child support "believed it was possible and not unlikely that they would go to jail for not paying child support.").

¹³⁸ Thompson & Laible, *supra* note 30, at 116 (noting that sometimes fathers unable to pay child support drop out of their children's lives because they wish to avoid detection).

least desirable employees.¹³⁹

Child support enforcement may be of little or no benefit to the children of deadbroke fathers. First, the vast majority of children of poor fathers receive, or have received, public assistance in the past.¹⁴⁰ Consequently, any formal child support payments that fathers make will not go to their children, but will be used exclusively or primarily to reimburse the government.¹⁴¹ Second, although studies have shown that child support income benefits children more than income from other sources,¹⁴² recent studies have found the positive effects to be less evident when fathers are forced to pay child support as compared to when payments are voluntarily made.¹⁴³ Thus, involuntary payments of child support may not necessarily benefit children more than other sources of income such as public assistance. In contrast, a strong emotional bond between nonresident fathers and their children, along with fathers' active parenting — helping with homework, listening to problems, and disciplining — is more predictive of a child's well-being than child support.¹⁴⁴ Third, child support enforcement may lead to greater conflict between parents. To illustrate, fathers may not be aware that mothers must cooperate with the child support enforcement agency or lose their welfare benefits. As such, they may become angry when mothers turn the law on them.¹⁴⁵ Similarly, a custodial mother who does not receive child support payments because the state retains them to offset welfare

¹³⁹ See Michael D. Mayfield, *Revising Expungement: Concealing Information in the Information Age*, 1997 UTAH L. REV. 1057, 1064 (1997) (noting that "job applicants with criminal records face substantial obstacles in gaining work because of the biases held against them by employers."); cf. 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, 504 n.80 (2005) (noting that although criminal record is "major barrier" to employment, "a white person with a criminal record [is] more likely to get a call-back interview than an African-American without one.").

¹⁴⁰ Poor women are more likely to have children by poor men and receive some form of government assistance. Martha Albertson Fineman, *The Nature of Dependencies and Welfare Reform*, 36 SANTA CLARA L. REV. 287, 314 n.41 (1996) ("[P]oor men are the most likely partners for poor women."). Cf. JOHNSON ET AL., *supra* note 13, at 3 (finding that noncustodial fathers of children receiving welfare are chronically unemployed or underemployed and have little or no assets).

¹⁴¹ See *supra* note 108 (discussing law).

¹⁴² See *supra* note 37 and accompanying text.

¹⁴³ Graham & Beller, *supra* note 2, at 446-47.

¹⁴⁴ Thompson & Laible, *supra* note 30, at 112-13.

¹⁴⁵ Carlson & McLanahan, *supra* note 3, at 481 (citing studies showing that child support enforcement is associated with higher conflict among low-income parents); Graham & Beller, *supra* note 2, at 448.

costs, and who no longer receives informal contributions from the father because he is paying formal support, may erroneously believe that the father is not contributing at all.¹⁴⁶ These erroneous assumptions may create conflict between the parents or lead mothers to deny fathers access to their children,¹⁴⁷ both of which contribute to paternal disengagement.¹⁴⁸

To recap, formal payment of child support by deadbroke fathers is unlikely to improve their children's standard of living, and instead, will likely lead to greater conflict with the custodial mother and less contact with their children. In those cases, the negative effects of child support enforcement may outweigh any benefits to children or the public fisc.¹⁴⁹ In contrast, fathers' in-kind and nonfinancial contributions have positive effects on children because they lead to greater access to the child and paternal involvement.¹⁵⁰ Rather than focusing on collecting child support from deadbroke fathers, policymakers should focus on encouraging informal contributions by crediting in-kind and nonfinancial contributions as child support.

Although African-American fathers have rarely been perceived as positive role models,¹⁵¹ the law must start recognizing their informal and noneconomic contributions to their children. Rather than encouraging

¹⁴⁶ Carlson & McLanahan, *supra* note 3, at 480-81.

¹⁴⁷ Deadbroke African-American fathers are unlikely to seek legal enforcement of their visitation rights. First, many deadbroke African-American fathers distrust the legal system and try to avoid contact with government authorities. Second, fathers who owe back child support and are subject to arrest and incarceration are highly unlikely to seek legal enforcement of their visitation rights for fear of alerting the child enforcement authorities as to their whereabouts. See REICHERT, *supra* note 85, at 8-9; see also Richard R.W. Brooks, *Fear and Fairness in the City: Criminal Enforcement and Perceptions of Fairness in Minority Communities*, 73 S. CAL. L. REV. 1219, 1224 (2000) ("[T]he majority of African Americans believe that the American legal system treats Blacks unfairly").

¹⁴⁸ Cf. Maldonado, *supra* note 24, at 979 nn.292-93 and accompanying text (noting that civil relationship with custodial mother is strong predictor of paternal involvement).

¹⁴⁹ Increasing child support payment rates will do little to reduce welfare costs. See Laura Wheaton & Elaine Sorensen, *Reducing Welfare Costs and Dependency: How Much Bang for the Child Support Buck?*, 4 GEO. PUB. POL'Y REV. 23, 23 (1998). Even if all custodial mothers obtained child support orders that were fully paid (an unrealistic scenario), the government would reduce its welfare costs for Temporary Aid to Needy Families, Food Stamp Program and Medicaid by only 8%. *Id.* This does not include the costs associated with establishing and enforcing child support orders. *Id.* Approximately 60% of custodial mothers have child support orders and only 50% receive full payment. *Id.* at 24. Thus, the actual savings would be significantly lower than 8%. *Id.*

¹⁵⁰ See *supra* notes 83-87 and accompanying text.

¹⁵¹ See Roberts, *supra* note 6, at 147-48 (noting that since slavery, African-American fathers "have never been considered suitable mentors for their children").

"responsible fathering," which has been narrowly defined as paying formal child support, policymakers should encourage "involved fathering." Involved fathering would encompass all of the ways that nonresident fathers contribute to their children with cash, in-kind, and nonfinancial contributions. This broader definition would allow poor fathers, who cannot fulfill the role of economic provider, to support their children in other equally important ways.

The law can show its commitment to "involved fathering" by waiving the child support arrears owed by deadbroke dads. Many deadbroke fathers owe thousands and even tens of thousands of dollars in back child support.¹⁵² Most will never be able to pay even a fraction of their arrears.¹⁵³ Yet, the U.S. spends billions of dollars each year in an attempt to collect child support payments not only from fathers who can pay, but also from those who cannot.¹⁵⁴ Criminalizing nonpayment of child support by deadbroke fathers penalizes men for having children while being poor. Courts should have the authority to reduce or forgive arrears owed by fathers with no assets, low incomes, and low-income earning capacity in the same way courts can discharge other debts in bankruptcy.¹⁵⁵ The amounts currently spent pursuing the poorest fathers would be better spent if applied to improving their children's standard of living.

The law should also credit deadbroke fathers for the informal contributions they make to their children. To illustrate, if a deadbroke father is expected to pay child support in the amount of \$100 per month, he should be able to make this payment by spending significant amounts of time with his children and making in-kind contributions — i.e., by bringing them groceries, diapers, school supplies, etc. Fathers who spend significant amounts of time with their children may already be contributing \$100 in food, toys, clothing, and most importantly, time.

I am not the first commentator to suggest crediting poor nonresident

¹⁵² See generally Kaufman, *supra* note 65 (discussing plight of some deadbroke fathers).

¹⁵³ See Blaine Harden, 'Dead Broke' Dads' Child-Support Struggle, N.Y. TIMES, Jan. 29, 2002, at A1 ("Many poor absentee fathers simply cannot pay their monthly child-support orders, nor do they have a reasonable chance of paying their arrears.").

¹⁵⁴ The U.S. spends over \$3 billion annually on child support enforcement. Ronald Henry, *Child Support at a Crossroads*, 33 FAM. L.Q. 235, 237 (1999). Sometimes, states spend more in child support enforcement than what they ultimately recover from fathers. *Id.*

¹⁵⁵ Currently, child support arrears cannot be forgiven or adjusted even if the obligor files for bankruptcy. See Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 304, 108 Stat. 4106, 4132-33 (codified in scattered sections of 11 U.S.C.).

fathers for in-kind and non-monetary contributions as child support.¹⁵⁶ At least one child support enforcement agency has allowed young, low-income fathers whose children were receiving public assistance to make child support payments through in-kind contributions. For example, the "Teen Alternative Parenting Program" in Indianapolis allowed teen fathers to earn credits toward payment of child support by participating in job training or GED classes, maintaining visitation, and participating in child care classes.¹⁵⁷ The program was successful in increasing participants' paternal involvement and the value of their in-kind contributions.¹⁵⁸ However, other states and national policymakers have never seriously considered allowing deadbroke fathers to make child support payments by in-kind or nonmonetary contributions. Most Americans are likely to oppose crediting nonmonetary contributions as child support because they fear that a broader definition of child support would send the wrong message — that poor fathers do not have a responsibility to support their children.¹⁵⁹ However, crediting in-kind contributions will not absolve deadbroke fathers of their responsibility to support their children. Fathers seeking credit for informal and in-kind contributions would have to show not only that they are deadbroke, but also that they are actively searching for employment. To receive credit for their in-kind contributions, fathers must be willing to participate in any available fatherhood programs, including job training, vocational training, GED classes — anything that might provide them with the necessary skills and qualifications to obtain stable jobs in the foreseeable future. They would also have to show that they see their children for a minimum number of hours each week and that they are significantly

¹⁵⁶ See Danziger et al., *supra* note 3, at 248.

¹⁵⁷ Maureen Pirog-Good, *In Kind Contributions as Child Support: The Teen Alternative Parenting Program*, in YOUNG UNWED FATHERS, *supra* note 3, at 251, 254. Indianapolis used to allow program participants to pay all of their weekly child support obligations though in-kind payments or credits but has since altered its program to require that teen fathers pay at least half of their child support payments in formal cash payments to the child enforcement agency. *Id.* at 263.

¹⁵⁸ *Id.* at 255-59. Seventy-seven percent of the program participants, the majority of whom were nonwhite, visited with their children and received credit for visitation. *Id.* at 258. In contrast, only 44% of nonresident fathers in the general population maintain contact with their infant children. *Id.* at 259. Further, "when the value of in-kind contributions [was] considered," the program participants "outperformed the comparison group in reimbursing" the state for benefits provided to their children. *Id.* at 264.

¹⁵⁹ See generally Harry D. Krause, *Child Support Reassessed: Limits of Private Responsibility and the Public Interest*, 1989 U. ILL. L. REV. 367, 381 (noting public perception that absent father is responsible for supporting his children, and if he cannot pay, he is irresponsible).

involved in their upbringing. For example, they would have to show that they take their children to school, help them with their homework, attend their school activities (plays, sporting events, etc.), or perform other parenting tasks. In short, establishing that one has made significant in-kind contributions should be sufficiently burdensome to disqualify fathers who are truly absent from their children's lives from seeking to satisfy their child support obligations through in-kind contributions.

Even individuals sympathetic to the plight of deadbroke fathers might oppose crediting in-kind contributions as child support because they fear that it will reduce the income of custodial mothers and children who are just as poor as nonresident fathers.¹⁶⁰ For many single-parent families, child support can make the difference between living in poverty and enjoying an adequate standard of living.¹⁶¹ However, as noted, formal child support provides little or no benefit to the children of deadbroke fathers because the payments are used to reimburse the state for benefits provided to the child.¹⁶² Further, any amounts that deadbroke dads could realistically contribute are so minimal that they are likely to have little or no effect on their children's standard of living.¹⁶³ Thus, poor custodial mothers and children might be no worse off if deadbroke fathers were allowed to pay child support through in-kind contributions. To the contrary, custodial mothers and children might benefit if the law credited fathers' in-kind contributions because deadbroke fathers would have an incentive to make in-kind contributions and spend more time with their children. Paternal engagement not only benefits children but may also give mothers a break from parenting if only for a few hours. Parents who share parenting responsibilities are better parents.¹⁶⁴

There is another reason custodial mothers might benefit from a

¹⁶⁰ Cf. Fineman, *supra* note 140, at 314 n.41 (noting that poor women are likely to have children with poor men).

¹⁶¹ Cf. Sorensen & Zibman, *supra* note 16, at 5-6 (noting \$3,795 average amount of child support received in 1996 per family as important source of income for children who received it).

¹⁶² See *supra* note 108 and accompanying text.

¹⁶³ As previously mentioned, many deadbroke fathers should be ordered to pay no more than \$20-\$25 per month. See *supra* note 64 and accompanying text (discussing child support laws). This amount is unlikely to increase their children's standard of living. Further, even if it could, in most jurisdictions, the money would be retained by the state. See *supra* note 108 and accompanying text.

¹⁶⁴ See Andrew Schepard, *Taking Children Seriously: Promoting Cooperative Custody After Divorce*, 64 TEX. L. REV. 687, 705 (1985) ("Regular contact with both parents . . . increases the quality of parenting the child receives.").

broader definition of child support that includes in-kind contributions and time spent with children. Our society still does not value the caregiving that mothers provide on a daily basis because it has no monetary worth. Crediting in-kind contributions and child care provided by deadbroke fathers assigns value to the work that mothers have traditionally done and continue to do.¹⁶⁵ In order to credit fathers' nonfinancial contributions as child support, the law would have to assign a monetary value to these contributions. To illustrate, policymakers could determine that eight hours spent with a child, taking him to and from school, helping him with his homework, or just talking to him is worth a credit of \$100. The law would have to assign the same value to the work that custodial mothers (and all mothers) do. This is a step in the direction of recognizing the economic worth of the caregiving traditionally treated as women's work.

My proposal is not a long-term solution to the problems faced by deadbroke fathers and their children. So long as fathers are poor, their children will likely continue to be poor as well. The solution appears to lie with programs dedicated to helping fathers acquire the necessary skills to obtain jobs that will enable them to support themselves and their children. In the 1990s, community organizations, together with child support enforcement agencies created pilot programs in which low-income fathers with child support arrears could participate as an alternative to incarceration.¹⁶⁶ These programs provided fathers with paid vocational training (such as construction and carpentry skills), assistance securing employment, and parenting classes.¹⁶⁷ Program proponents hoped that once nonresident fathers established nurturing relationships with their children, they would be motivated to secure employment and support their children.¹⁶⁸

¹⁶⁵ I thank Professor Angela Onwuachi-Willig for this point.

¹⁶⁶ Graham & Beller, *supra* note 2, at 431, 444 (discussing Parents' Fair Share program which provided unemployed low-income fathers with child support arrears with job training and responsible fatherhood training); Barbara Morrison-Rodriguez, *Building a Fatherhood Movement in South Carolina*, in BLACK FATHERS, *supra* note 11, at 105, 120 (discussing program in South Carolina).

¹⁶⁷ Graham & Beller, *supra* note 2, at 444; Morrison-Rodriguez, *supra* note 166, at 120.

¹⁶⁸ JOHNSON ET AL., *supra* note 13, at 158 (listing goals of Parents' Fair Share program: "to help [noncustodial fathers] to become working fathers who pay child support and to help [them] become involved fathers."); Horn, *supra* note 23, at 140; Lerman & Sorensen, *supra* note 96, at 141, 157; Wornie L. Reed, *Fatherlessness in African-American Families*, in BLACK FATHERS, *supra* note 11, at 125, 127 (describing program in Cleveland that provided workshops for low income, predominantly African-American fathers, intended to lead fathers to reconnect with their children and in turn make them more likely to obtain and

Unfortunately, most of these programs did not lead to significant increases in employment rates or child support payments.¹⁶⁹ Indeed, fathers in one program actually paid less child support and were less consistent in their payments than fathers in the control group.¹⁷⁰ The few programs that saw modest increases in the amount and consistency of child support payments also saw a reduction in the levels of informal support and failed to increase the amount of time nonresident fathers spent with their children.¹⁷¹

It is not surprising that most of these programs failed to increase child support payment rates. Providing fathers with construction and carpentry skills will not create low skill jobs in an increasingly service oriented economy or make men with criminal histories, who lack a high school diploma and the social skills for a work environment, attractive to employers.¹⁷² We also cannot ignore the role of race. In one program, all of the white participating fathers (except one) found jobs relatively quickly despite having substance abuse problems and few skills.¹⁷³ The same was not true of African-American participants.¹⁷⁴

Even if these programs did not increase child support payments, one might have expected them to significantly increase fathers' involvement with their children. There are a number of reasons why they did not. First, the ultimate goal of all of these programs was to collect child

hold jobs).

¹⁶⁹ Feeley, *supra* note 12, at 2 (reporting that Parents' Fair Share program, which was implemented in seven sites and had over 2000 participating fathers, had "few significant effects on the employment and earnings of low-income men."); *id.* at 3 (noting that Parents' Fair Share "impacts on child support payments were sporadic and generally not statistically significant," and "no site produced a statistically significant increase in overall earnings."); Horn, *supra* note 23, at 140 (program did not change employment rates or payments of child support).

¹⁷⁰ See Horn, *supra* note 23, at 141 (discussing program in Wisconsin). The fathers in the control group received only court-ordered job search services while fathers participating in the program received individualized case management, employment services and parenting skills training. *Id.* at 142. However, the fathers in the control group paid \$466 per month in child support as compared to \$375 per month paid by fathers who received extensive services. *Id.*

¹⁷¹ *Id.* at 143-44; Miller & Knox, *supra* note 134.

¹⁷² Sorenson Statement, *supra* note 7 (40% of deadbroke fathers lack high school diploma); JOHNSON ET AL., *supra* note 13, at 111, 113 (noting many poor fathers lacked technical and interpersonal skills and the difficulties of convincing employers "to change their perceptions of low-income minority males").

¹⁷³ JOHNSON ET AL., *supra* note 13, at 68-69.

¹⁷⁴ *Id.*

support.¹⁷⁵ Although they attempted to increase fathers' involvement with their children, they did so with the expectation that stronger emotional bonds would lead fathers to find jobs and increase their child support payments.¹⁷⁶ Thus, the programs' success depended on fathers' abilities to secure stable employment and increase child support payment rates and amounts, not on whether they were spending time with their children.¹⁷⁷ To illustrate, although some programs allowed participating fathers to reduce their child support payments temporarily, they were expected to begin full payment after a short period of time, regardless of their income.¹⁷⁸ This focus on child support may have alienated fathers whose negative experiences with child support enforcement made them distrust the programs in the first place.¹⁷⁹ Second, the focus on increasing child support may have resulted in giving less recognition to fathers' noneconomic contributions.¹⁸⁰ In the end, the primary goal of these programs was to collect child support.¹⁸¹ Thus it is not surprising that father-child involvement did not increase.

If structured differently, these programs might facilitate paternal involvement. Participants were very satisfied with the fatherhood peer support groups and credited them, in part, with helping them to become better parents.¹⁸² Thus, the programs' short-term objectives should include increasing fathers' time with their children. However, increasing employment rates will take time, possibly years, as fathers obtain relevant educational and vocational training that will help them obtain jobs in growing industries.¹⁸³ Fatherhood programs should focus first on

¹⁷⁵ Horn, *supra* note 23, at 145.

¹⁷⁶ HAMER, *supra* note 4, at 213 (noting that few programs that have attempted to encourage paternal engagement have focused on child support).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 216 (discussing program in Missouri).

¹⁷⁹ JOHNSON ET AL., *supra* note 13, at 92 (noting that many fathers who owed child support and were facing prosecution reacted to offers of job training programs with suspicion and fear that program was part of sting operation); Horn, *supra* note 23, at 139-40.

¹⁸⁰ Horn, *supra* note 23, at 145.

¹⁸¹ *Id.*

¹⁸² *Id.* at 140. Ninety-seven percent of fathers in one program agreed that the program taught them to be responsible parents and influenced them to provide psychological and emotional support to their children and to spend more time with them. *Id.* at 141; see JOHNSON ET AL., *supra* note 13, at 159-61 (reporting that Parents' Fair Share program helped some fathers forge relationships with their children even if they were not successful in finding employment or paying child support arrears).

¹⁸³ See generally John M. Martinez & Cynthia Miller, *The Effect of Parent's Fair Share on the Employment and Earnings of Low-Income, Noncustodial Fathers*, 21 FOCUS, Spring 2001, at 23,

increasing paternal involvement. Once this objective is met, they can then focus on the long-term goal of helping fathers obtain well-paying, stable jobs which will enable them to support their children financially. Fathers can only support their children if we first help them acquire the skills to support themselves.

CONCLUSION

This Article does not seek to excuse deadbroke fathers from paying child support. All parents should support their children and be actively involved in their upbringing. However, so long as fathers are deadbroke, they are unlikely to pay formal child support. Until the government is successful in helping poor fathers obtain stable, well-paying jobs, child support policies should encourage them to contribute to their children in ways that do not require cash payments. Many poor, African-American fathers are already making these contributions. The law must start recognizing and crediting these contributions as child support.