

Realistic Child Support Orders for Incarcerated Parents

For child support to be a reliable source of income for children, parents who are incarcerated need child support orders that reflect actual income.¹ This fact sheet highlights opportunities to encourage incarcerated parents to engage with the child support system, to reduce or suspend orders during incarceration to avoid arrears, and to offer post-incarceration child support services.

With the increase in the prison population, the number of incarcerated parents has also increased. The majority of federal and state prisoners are parents.² One in 28 children has a parent behind bars, and 1 in 9 African-American children has a parent incarcerated.³ Many incarcerated parents were a primary source of support for their children before they went to prison. They have child support orders that were established before incarceration, but no longer have the income to pay support.

Research shows that incarcerated noncustodial parents often enter prison with child support obligations and arrears and without any realistic ability to pay them. As a result, unpaid child support is a significant source of debt for incarcerated parents. For example, the average incarcerated parent with a child support case has \$10,000 in arrears when entering state prison, and leaves with \$20,000 in arrears.⁴ Not only is this debt unlikely to ever be collected, but it adds to the barriers formerly incarcerated parents face in reentering their communities and may interfere with their ability to obtain housing and employment in order to support their child. Child support debt increases the likelihood that noncustodial parents released from incarceration will enter the underground economy.⁵

Modifying orders for incarcerated, reentering, and unemployed parents can make child support a reliable source of income for children.⁶ And, the safe and consistent presence of both parents in the lives of their children is usually emotionally, psychologically, and socially beneficial to the child.



The accumulation of substantial arrears discourages that presence and makes it less likely that the parent can begin to provide for their child after they leave prison. Therefore, to improve child support payment and otherwise improve child well-being, state and local child support programs are providing opportunities to encourage parents to participate in the child support process during incarceration, help maintain parent-child contact during periods of incarceration, reduce or suspend orders during incarceration, manage child support debt after incarceration, and offer post-incarceration child support services.

Modifying Orders to Reflect Actual Income

Federal law requires states to set child support orders using numeric support guidelines adopted by each state.⁷ These guidelines must be based on parental income and ability to pay. Once a child support order has been established, there are procedures, which vary by state, to seek a three-year review to modify or to suspend the order. Outside the three-year review cycle, parents may seek to modify a child support order at nearly any time. Federal law obliges states to review an order upon either parent's request if the requesting parent demonstrates a "substantial change in circumstances."⁸

Promising child support practices encourage states to permit incarcerated parents to obtain reduced child support orders reflecting their actual income. Policies related to modification of orders during incarceration has been an area of rapid policy change over the past several years.

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Since 2005, a number of states have changed their state laws and policies to permit reducing or suspending orders during incarceration.⁹ Almost three-fourths of states permit incarcerated parents to modify a child support order.¹⁰ Child support guidelines in a number of states include incarceration as a “change in circumstance” or list incarceration as a guidelines deviation factor. In many states, incarceration is not singled out by statute, but state court decisions permit downward modification due to incarceration. In these states, case law recognizes modification for incarcerated parents where the parent has a substantial change of income due to incarceration. Other states have administrative regulations and policies that permit modification.

At the same time, as a matter of practice in most states, child support orders are not routinely reduced when a parent enters prison, even where the parent lacks any real source of income. Therefore, it is important for child support programs to continue to facilitate incarcerated parents’ efforts to adjust their orders while incarcerated to reflect their actual income and should continue to reduce barriers to modification. The following states provide examples of laws and policies that promote modification or suspension of orders to reduce the accumulation of uncollectable child support debt:

California

California law, Senate Bill 1355, effective July 2011, suspends child support orders if the parent will be incarcerated more than 90 days, as long as the obligor does not have any means to pay the order.¹¹ Suspending the order means that the order is set at \$0 until the incarcerated parent is released. Additionally, upon release from incarceration, parents are entitled to ask for any arrears to be adjusted. Courts have the discretion to deny the suspension if the incarceration is a result of domestic violence against the parent, or an offense against the parent or child, or for nonpayment of child support. Under the state regulations, incarceration also triggers automatic review and the local child support agency is required to seek to adjust the current order.¹²

New York

New York statutes previously prohibited modification of a child support order if the petitioner’s request related to incarceration, since incarceration was determined to be the result of a voluntary act. In 2010, the state enacted changes to the New York Family Court Act and Domestic Relations Law.¹³ This new law specifically states that “incarceration shall not be a bar to finding a substantial change in circumstances” as long as the incarceration is not for nonpayment of support, or an offense against the custodial parent or child.¹⁴ The amendment now allows the courts to modify support orders for incarcerated parents whenever appropriate, preventing accumulation of uncollectible arrears.

Oregon

In Oregon, if the income of the incarcerated parent is less than \$200 per month, it is presumed that the obligor has zero ability to pay support.¹⁵ An affirmative request must be made in writing by one of the parties to adjust the order, and there is often a simple administrative hearing. If an order is suspended, the order goes back into effect 60 days after the parent’s release from incarceration.¹⁶ Like many state laws, this provision does not apply if the incarceration is a result of nonpayment of support. Additionally, the child support office will not initiate an action to establish support until 61 days after the obligor’s release from incarceration. Oregon provides a brochure that can be returned to request a modification. The tear-off, pre-addressed form in the brochure makes it simple for an inmate to initiate the request.

Massachusetts

State law permits a deviation from the child support guidelines where the parent “is incarcerated, is likely to remain incarcerated for an additional 3 years and has insufficient financial resources to pay support.”¹⁷ The state child support agency has a package of pro-se materials (which the incarcerated parent must request) for long-term incarcerated noncustodial parents who want to request modification of their child support orders.¹⁸

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Modified Orders Based on Change in Income Due to Incarceration

Despite the nationwide trend to permit downward modification of child support orders when a parent is incarcerated, a minority of states—through statute or case law—do not permit incarcerated parents to modify child support orders.¹⁹ These states treat incarceration as “voluntary unemployment” or impute income specifically to incarcerated parents.²⁰

Apart from existing state laws and policies that preclude modification during incarceration, incarcerated parents often face barriers to obtaining a reduction. Even in the majority of states that permit modifying or suspending a child support order, incarcerated parents typically must take proactive steps to ask for a modification; in the absence of a formal request from an incarcerated parent, most states do not proactively initiate a modification. Additionally, for incarcerated parents, the process of seeking a modification can be complex. For states with judicial processes, petitioning the court may present challenges as incarcerated parents often lack legal representation and do not have the knowledge, access, and wherewithal to petition the appropriate authority to adjust their support orders.

Improving Assistance to Modify Orders to Reflect Actual Income

In an effort to improve child support and employment outcomes, state child support programs are expanding their policies and practices related to incarcerated and recently released parents, including outreach, data sharing, enhanced case management, and modification assistance. Almost one-half of state child support programs have initiatives to assist prisoners with child support.²¹ Within states, many of the services vary by county or local agency, or may be in the pilot phase.

Many states have developed programs to identify incarcerated parents and provide modification assistance to those parents. Enhanced data-sharing is one way to improve collaboration between corrections departments and state child support offices: many state child support programs proactively identify incarcerated parents with child support orders, using computer interfaces with corrections departments and other means.²² This data-sharing is often a key component in identifying incarcerated parents with child support orders.

The child support strategies used to get orders right can cover a range of services, including child support staff visiting the facility or being stationed at the prison to meet individually with inmates,²³ child support staff making presentations,²⁴ or child support staff providing enhanced case management.²⁵ Many states have produced videos or other materials that are shown to incarcerated parents.²⁶ Several states provide modification materials directly to incarcerated parents and may provide additional assistance in completing the required paperwork.²⁷ In some states, enhanced collaboration has included the child support staff providing training to prison staff on child support issues.²⁸ A handful of states provide parenting classes or visitation services for incarcerated parents.²⁹ A number of state child support programs are offering front-end services for newly incarcerated parents, such as providing assistance at sentencing or at prison intake.³⁰ Still other states have designed processes to make the modification process easier for incarcerated parents, such as by providing incarcerated parents with access to telephone hearings or videoconferencing in child support cases.³¹ Moreover, many states have reentry programs that provide child support services to parents after their release from incarceration, such as through discharge services or reentry fairs.³² Seven states have received Prisoner Reentry Initiative (PRI) grants, issued by the Department of Justice and Department of Labor in partnership with OCSE, which include a child support component.³³

Each of these entry points provides an opportunity to reach out to incarcerated parents to help ensure that they take the appropriate steps to initiate a request to modify, reduce, or suspend an order, regardless of the state’s particular policies on adjusting orders for incarcerated parents.

Many states have promising state or local programs and practices that assist incarcerated parents in modifying orders. The following states provide examples of these practices:

California

California launched a statewide outreach program in 2011 that includes an incarcerated obligor video for fathers, posters, fact sheets and a request for information or modification of support form available to all counties and to state prisons. The video includes information on the incarcerated parent’s right to have their child support reviewed for modification during incarceration.

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The appropriate forms to seek review are available in the prison libraries, and may be submitted to one central office so that the incarcerated parent need not identify the specific agency or location with their child support case. Since implementation in March 2011, more than 500 requests for information and/or modifications have been received.

Connecticut

Since 2006, Connecticut's child support office has provided direct outreach to incarcerated parents. Through one-way data matching, the child support agency receives up-to-date information on incarcerated parents in the custody of the Department of Correction (DOC). Based on this data matching, the child support office identifies incarcerated parents with child support orders who have sentences greater than three years and corresponds directly with these inmates. The mailing advises parents of the modification process and provides the necessary paperwork for the inmate to seek review of a child support order. Connecticut reports that almost 70 percent of the incarcerated parents seek review of their orders and the vast majority of those orders are reduced to \$0 or minimum orders. Most of these modification hearings are conducted via videoconference. Due to collaboration between child support and the DOC, correctional staff also have current information and materials about review and adjustment services and modifications to provide to inmates during intake processing. Additionally, the child support office sends staff members to resource fairs held at correctional facilities across the state to speak with inmates who are close to release. In 2011, Connecticut passed a law authorizing two-way data matching, which will enable the DOC to identify inmates with child support orders and proactively offer these incarcerated parents enhanced support and services.

Michigan

Michigan's Friend of the Court (FOC) offices provide support to incarcerated noncustodial parents. The FOC office is part of the Family Division of the Circuit Court. Michigan's child support program contracts for FOC services in child support cases. Statutorily, the FOC has responsibility to generally do the following: investigate and make support recommendations to the court, periodically review and seek modification in post-judgment cases, implement income withholding, and initiate enforcement remedies to assure compliance

with the circuit court's order. The FOC must also make form motions, responses and orders available to a party seeking to modify child support without the assistance of an attorney. In terms of outreach to incarcerated parents, the Michigan Department of Corrections (MDOC) has "notification of incarceration" forms available to inmates. After the inmate completes the form and mails it to the FOC office that originated the child support order, state law requires review of the support order.³⁴ Additionally, some FOC offices have partnered with the Michigan Prisoner Reentry Initiative to provide outreach to prisoners with support orders. And, the child support enforcement computer system in Michigan provides for data matching to generate a list of incarcerated obligors.

New Jersey

New Jersey has an extensive collaboration between the New Jersey Department of Health and Human Services and New Jersey Department of Corrections to provide child support assistance to inmates in two state prisons. This includes showing inmates a child support video and offering parenting education classes. Social workers with the corrections office provide case management on child support issues, including distributing pro-se information packets on modifying orders. Child support casework continues during the reentry process to address arrears accumulation and modification issues.

Washington

The Washington State Division of Child Support provides outreach to incarcerated noncustodial parents. The program has a simple form for inmates to request a modification. Washington has also created an instructional DVD that explains modification to inmates when they go through an initial intake center into the prison system. Local-level child support professionals also visit nearby correctional facilities periodically and meet with noncustodial parents who are in day-reporting or work-release programs. Additionally, child support workers have live case management data system access on a portable laptop at the facilities. This has been an effective outreach and case management tool as the child support worker can look at the case records and take needed actions specific for that particular client on the spot.

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References

- ¹. In 2007, the Center for Law and Social Policy (CLASP) surveyed state child support administrators to obtain a picture of state initiatives, policies, and practices that have emerged for incarcerated and reentering parents. CLASP also reviewed statutes, rules and case law governing modification of support orders where a noncustodial parent is incarcerated. Building on this groundwork, in 2011, the federal Office of Child Support Enforcement contacted states to update information about services and programs available for incarcerated parents and to identify existing barriers for child support modification. OCSE wishes to thank Jan Justice for her work on this project.
- ². Christopher Mumola, *Incarcerated Parents and Their Children*, Bureau of Justice Statistics Special Report, August 2000, NCJ 182335.
- ³. Federal Interagency Reentry Council, *Reentry in Brief*, May 2011, p. 3, available at http://www.nationalreentryresourcecenter.org/documents/0000/1059/Reentry_Brief.pdf.
- ⁴. Nancy Thoennes, *Child Support Profile: Massachusetts Incarcerated and Paroled Parents*, Center for Policy Research, May 2002.
- ⁵. Vicki Turetsky, *Staying in Jobs and Out of the Underground: Child Support Policies that Encourage Legitimate Work*, CLASP Policy Brief, March 2007.
- ⁶. Office of Child Support Enforcement, *The Story Behind the Numbers: Understanding and Managing Child Support Debt*, U.S. Department of Health and Human Services, 2008.
- ⁷. 42 U.S.C. §667 (2011); 45 C.F.R. §302.56 (2011). Guidelines may be established by the state supreme court, legislature, or administrative agency and must be reviewed and updated at least once every four years.
- ⁸. 42 U.S.C. §666(a)(10)(B) (2011).
- ⁹. In 2005, the Council of State Governments, an association of all three branches of state government, published the *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*. Council of State Governments, January 2005, available at <http://reentrypolicy.org/Report/About>. Policy Statement 13 recommends modification of child support orders during incarceration. At the time the report was issued, almost half of states (21 states) considered incarceration to be an insufficient reason to suspend or reduce a support order. See also Jessica Pearson, *Building Debt While Doing Time: Child Support and Incarceration*, *Judges' Journal*, Vol. 43, No. 1, Winter 2004.
- ¹⁰. The legal standards in 36 states permit reduction of support orders for incarcerated parents. See, e.g., Alabama, Alaska, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. In addition, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands permit reduction.
- ¹¹. CAL. FAM. CODE §4007.5 (2011).
- ¹². CAL. CODE REGS. Tit. 22, §115530(a)(1) (2011).
- ¹³. N.Y. FAM. CT. ACT §451 (2011); N.Y. DOM. REL. §236, Part B (7) (2011).
- ¹⁴. N.Y. DOM. REL. §236, Part B (9)(b)(2)(i) (2011). The majority of states that permit modification will not allow incarcerated parents to reduce an order if the criminal activity was directed to the parent or child, or related to nonpayment of child support. See, e.g., California, Connecticut, Iowa, Oregon, Pennsylvania, and Nevada.
- ¹⁵. OR. ADMIN. R.137-055-3300 (2011).
- ¹⁶. OR. REV. STAT. §416.425(12) (2011).
- ¹⁷. Massachusetts Child Support Guidelines, available at <http://www.mass.gov/courts/childsupport/guidelines.pdf>.
- ¹⁸. Massachusetts reports that there is long-term modification process if prisoner has more than 1 year to serve. <http://www.mass.gov/Ador/docs/cse/parents/rapkg.pdf>.
- ¹⁹. A minority of states have a legal prohibition against downward modifications during incarceration. See, e.g., Delaware, Georgia, Kansas, Kentucky, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, and Virginia. In addition, Arkansas and Louisiana court decisions appear to strongly disfavor modifications.
- ²⁰. For example, less than a handful of states have statutes or guidelines that specify that incarceration is voluntary or willful unemployment, or otherwise impute income for incarcerated parents. See, e.g., S.D. CODIFIED LAWS §25-7-6.4 (2001); TENN. COMP. R. & REGS §1240-2-4.04(3)(a)(2)(ii) (2011).

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21. For a detailed state-by-state breakdown, please see the forthcoming table entitled “‘Voluntary Unemployment’, Imputed Income, and Modification Law and Policies for Incarcerated Noncustodial Parents.”
22. *See, e.g.*, Arizona, California, Connecticut, Hawaii, Iowa, Idaho, Maine, Massachusetts, Michigan, Nebraska, New Jersey, Nevada, Rhode Island, Texas, Washington, and West Virginia, which each reported extensive data-matching.
23. *See, e.g.*, Alaska, Kansas, Maine, Massachusetts, Minnesota, Rhode Island, Nebraska, and Vermont.
24. *See, e.g.*, Alaska, Hawaii, Iowa, Kansas, Ohio, Oregon, Maine, Missouri, Nevada, New Jersey, New York, Pennsylvania, Puerto Rico, Washington, and Wisconsin.
25. *See, e.g.*, Illinois, New Jersey, and Tennessee.
26. *See, e.g.*, California, Iowa, New Jersey, New York, Texas, Washington, and West Virginia.
27. *See, e.g.*, Connecticut, Maine, Minnesota, Oregon, New York, New Jersey, and Washington.
28. *See, e.g.*, Oklahoma, New York, and Texas.
29. *See, e.g.*, New Jersey, Georgia, and Tennessee.
30. For example, Michigan and the District of Columbia both require public officials to take affirmative steps when a parent is incarcerated and has a support order. The District of Columbia enacted two statutes that pertain to modifying child support orders for incarcerated parents. The first requires criminal court judges to inform defendants that they may request modification at the time of sentencing. The court must have petitions available for the defendant to complete and file in open court. D.C. CODE §23-112a (2011). The second requires the District of Columbia’s child support program to review child support orders of incarcerated parents upon receiving documentation that the parent is incarcerated. If the child support agency determines that a parent’s incarceration has resulted in a change of circumstances warranting a modification, the agency may request the court to suspend or modify the child support order. The court shall modify the order in accordance with the child support guidelines. D.C. CODE §16-0138 (2011); D.C. CODE §16-916.01(r)(5) (2011).
31. *See, e.g.*, Connecticut, Rhode Island, South Dakota, and Tennessee.
32. *See, e.g.*, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Indiana, Iowa, Kansas, Maryland, Missouri, Nevada, New Jersey, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, and Vermont.
33. PRI grants are located in Florida, Iowa, Kansas, Minnesota, Ohio, Oklahoma, and Tennessee. These grants were awarded in 2009. http://www.acf.hhs.gov/programs/cse/grants/abstracts/fy2009_1115_abstracts.html.
34. Incarceration is considered a change in financial condition, which is a reasonable ground to review and modify a support order. MICH. COMP. LAWS §552.517(1)(f)(iv)(B) (2011). Additionally, the Michigan Child Support Guidelines expressly permit deviation when an obligor is incarcerated and has minimal or no income or assets. MICH. CHILD SUPPORT FORMULA §1.04(E)(7) (2008). MICH. COMP. LAWS §2.004 permits, in domestic relations actions, incarcerated parties to participate telephonically and MICH. COMP. LAWS §3.210 and 3.215 permit, in domestic relations actions, testimony to be taken electronically in extraordinary circumstances.

