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Quick Facts: Incarcerated Parents

This Quick Facts guide provides information on child support issues specific to incarcerated parents.

The Child Support Program¹ is a successful federal-state-tribal collaboration that seeks to promote economic stability for children whose parents live apart. Both parents should contribute financially and emotionally to raising their child. The child support program is responsible for assessing the relative contribution each parent should make, and is capable of making, to share the economic burden of child rearing. As a general rule, child support orders should be based on a parent's earnings, income and other evidence of ability to pay.

Child Support Orders While Incarcerated

When one parent is incarcerated, however, the family faces a loss of current child support, while the parent faces barriers to employment and resuming support payments following release from prison. Best practices across the nation try to lessen the impact of incarceration by modifying orders to reflect actual ability to pay in order to prevent arrears from accumulating during incarceration. These practices increase the likelihood of regular support payments following incarceration, help preserve a parent-child relationship for the benefit of the child, and improve the efficiency of the child support program. If a formerly incarcerated parent is not burdened with high arrears that accrued while the parent was incarcerated, the parent will also be less likely to enter the underground economy or engage again in criminal activity that may lead to further incarceration.

In most cases, parents have no income while incarcerated. Yet historically, and currently in a minority of states, incarcerated parents are not able to modify their child support orders, based upon a theory that incarceration is analogous to voluntary unemployment, and therefore child support obligation should not be reduced.²

More recently, state courts and child support programs have recognized the harm to the family and child in refusing to account for the parent's incarceration, and associated lack of income, when deciding the issue of child support. The child support system is an economic one and is not meant to be punitive. As one State Supreme Court explained, "imposing impossibly high support payments on incarcerated parents acts like a punitive measure, and does an injustice to the best interests of the child by ignoring factors that can, and frequently do, severely damage the parent-child relationship."³





If a parent has a child support order that accumulates arrears during incarceration, upon release, those arrears threaten:

- To create barriers to obtaining employment and housing
- Entry into the underground employment market to avoid overwhelming arrears
- Reincarceration for failure to pay support
- Emotional withdrawal from the child

When child support orders are based on the obligor's actual ability to pay, however, including those that are incarcerated, the likelihood the obligor will stay engaged in the child's life and contribute to the financial and emotional support of the child greatly increases. The OCSE also recognizes that modifying orders for incarcerated, reentering and unemployed parents can make child support a reliable source of income for children.⁴

Currently, almost 75% of States permit incarcerated parents to modify a child support order, and some state statutes expressly characterize incarceration as a "change in circumstances."⁵ The Office of Child Support Enforcement has published details on the policies in each State related to modification of support orders for incarcerated parents.⁶

In 2016, the federal Office of Child Support Enforcement changed federal regulations regarding the child support obligations of parents who are incarcerated for 180 days or more. Upon learning of the incarceration, child support agencies must now either set a case for review and if appropriate adjust the order, or notify both parents of their right to request a review.⁷ Additionally, states are prohibited from treating incarceration as voluntary unemployment in establishing or modifying orders.⁸

¹ Created by Title IV-D of the Social Security Act

² Realistic Child Support Orders for Incarcerated Parents, Office of Child Support Enforcement, PAID Series, No.4, June, 2012, p.3.

³ *Lambert v. Lambert*, 861 N.E.2d 1176, 1180 (Ind. 2007)

⁴ Realistic Child Support Orders for Incarcerated Parents, (see above) p.1.

⁵ Realistic Child Support Orders for Incarcerated Parents, (see above) p.2.

⁶ "Voluntary Unemployment," Imputed Income, and Modification Laws and Policies for Incarcerated Noncustodial Parents, Office of Child Support Enforcement, PAID Series, July 2012.

⁷ 45 C.F.R. 303.8(b)(2), 303.8(b)(7)(ii)

⁸ 45 C.F.R. 302.56(c)(3)

