

# Improving the Process for Modifying Child Support Orders:

Findings from Previous Research and Selected Promising Practices

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## Section 1: Introduction and Background

In September 2020, NCSEA hosted an idea exchange where NCSEA members discussed how to make order modifications timelier, particularly in light of the COVID-19 pandemic that affected the employment and incomes of many parents. This meeting ended up focusing much of its attention on establishing effective dates for modifications as quickly as possible to better capture the actual changed circumstances of the parents. To continue with this theme, the NCSEA Research subcommittee has developed this “Research Quick Facts” paper aimed at improving the modification process.

Having an effective review and modification process is an important step in ensuring that noncustodial parents comply with their child support order. For a process to be effective, it needs to be user-friendly, timely, and efficient. Unfortunately, the process for modifying child support orders can be complicated, time consuming, lengthy, and confusing for parents. In the absence of an effective system, particularly in an economic downturn, arrears may accumulate, further discouraging child support compliance and having other negative consequences.

The federal Office of Child Support Enforcement (OCSE) has provided several resources about order modification over the years. It currently has two resources aimed at helping parents who are interested in the child support program’s order modification process. The first is a guide on how to change a child support order, which was updated in June 2021.<sup>1</sup> The second is a State-by-State-How to Change a Child Support Order page that links to state child support agencies and their information on how to modify a child support order.<sup>2</sup>

The purpose of this “Research Quick Facts” paper is to summarize what has been learned about improving the modification process and discuss new ways to improve it. We start with a brief history and overview of modifications.

### Section 1A: Federal Requirements Pertaining to Review and Adjustment<sup>3</sup>

45 C.F.R. §303.8 Review and adjustment of child support orders.

\*\*\*\* (b) *Required procedures.* Pursuant to section 466(a)(10) of the Act, when providing services under this chapter:

(1) The State must have procedures under which, within 36 months after establishment of the order or the most recent review of the order (or such shorter cycle as the State may determine), if there is an assignment under part A, or upon the request of either parent, the State shall, with respect to a support order being enforced under title IV-D of the Act, taking into account the best interests of the child involved:

(i) Review and, if appropriate, adjust the order in accordance with the State's guidelines established pursuant to section 467(a) of the Act if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(ii) Apply a cost-of-living adjustment to the order in accordance with a formula developed by the State; or

(iii) Use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State. .

45 C.F.R. 303.8

<sup>1</sup> [https://www.acf.hhs.gov/sites/default/files/documents/ocse/changing\\_a\\_child\\_support\\_order.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ocse/changing_a_child_support_order.pdf).

<sup>2</sup> <https://www.acf.hhs.gov/css/outreach-material/state-state-how-change-child-support-order>.

<sup>3</sup> Detailed regulations can be viewed here: [https://www.acf.hhs.gov/css/resource-library?f%5B0%5D=program\\_topic%3A647&f%5B1%5D=type%3Apolicy\\_and\\_guidance](https://www.acf.hhs.gov/css/resource-library?f%5B0%5D=program_topic%3A647&f%5B1%5D=type%3Apolicy_and_guidance)

<p>(b)(2) The State may elect in its State plan to initiate review of an order, after learning that a noncustodial parent will be incarcerated for more than 180 calendar days, without the need for a specific request and, upon notice to both parents, review, and if appropriate, adjust the order, in accordance with paragraph (b)(1)(i) of this section</p>
<p>45 C.F.R. 303.8            ****(b)(4)(i) <b>Review</b> means an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine :            (A) The appropriate support award amount; and            (B) The need to provide for the child's health care needs in the order through health insurance coverage or other means.</p>
<p>45 C.F.R. 303.8            ***** (b)(4)(e) Timeframes for review and adjustment. Within 180 calendar days of receiving a request for a review or locating the non-requesting parent, whichever occurs later, a State must: Conduct a review of the order and adjust the order or determine that the order should not be adjusted, in accordance with this section.</p>
<p>***** (b)(5) The State must have procedures which provide that any adjustment under paragraph (b)(1)(i) of this section shall be made without a requirement for proof or showing of a change in circumstances.</p>
<p>***** (b)(6) The State must have procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under paragraph (b)(1) of this section, the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 467(a) of the Act.</p>
<p>* * * * * (b)(7) The State must provide notice— (i) Not less than once every 3 years to both parents subject to an order informing the parents of their right to request the State to review and, if appropriate, adjust the order consistent with this section. The notice must specify the place and manner in which the request should be made. The initial notice may be included in the order. (ii) If the State has not elected paragraph (b)(2) of this section, within 15 business days of when the IV-D agency learns that a noncustodial parent will be incarcerated for more than 180 calendar days, to both parents informing them of the right to request the State to review and, if appropriate, adjust the order, consistent with this section. The notice must specify, at a minimum, the place and manner in which the request should be made. Neither the notice nor a review is required under this paragraph if the State has a comparable law or rule that modifies a child support obligation upon incarceration by operation of State law.</p>
<p>(c) Standard for adequate grounds. The State may establish a reasonable quantitative standard based upon either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency between the existent child support award amount and the amount of support determined as a result of a review is adequate grounds for petitioning for adjustment of the order. Such reasonable quantitative standard must not exclude incarceration as a basis for determining whether an inconsistency between the existing child support order amount and the amount of support determined as a result of a review is adequate grounds for petitioning for adjustment of the order.</p>
<p>42 U.S.C. 666:            (a)            *** (9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—            *** (C) not subject to retroactive modification by such State or by any other State;            except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.</p>

## Section 2: Brief History and Overview of Order Modification

States have discretion in terms of how they administer their child support program, which may affect how orders are modified.<sup>4</sup> In many states, courts play a key role in order establishment and modification, as well as other aspects of the child support program. In others, the child support agency generally establishes and modifies child support orders administratively with no or little court involvement.<sup>5</sup>

<sup>4</sup> <https://www.ncsl.org/research/human-services/child-support-process-administrative-vs-judicial.aspx>

<sup>5</sup> Federal law (42 U.S.C. Sec. 666(a)(9)), More information about administrative and judicial processes can be found at: National Conference of State Legislatures. (April 2017.) *Child Support Process: Administrative vs. Judicial*. Retrieved from



Depending on the state, the administrative process may also include a hearing or conference, conducted by a non-judge, such as a hearing officer, who may be part of the agency rather than the court. In all, the extent that a state's order establishment and modification process is judicial or administrative is actually on a spectrum where on one extreme a judicial hearing is scheduled even if the parents consent to the modification. The other extreme is that an order can be modified without a judicial or administrative hearing as long as the modification is appropriate and the other parent is properly notified.

Historically, many states have required a parent to prove a substantial change in circumstances to review their order. Recognizing that this standard limited parents' ability to obtain modifications, Congress enacted a requirement as part of the Family Support Act of 1988 that state child support programs must review and adjust, when appropriate, child support orders in accordance with State child support guidelines at least every three years for public assistance cases and upon the request of either parent in non-public assistance cases. OCSE rule changes in 2016 also eased the process for incarcerated parents.<sup>6</sup> Many states, however, still require proof of a substantial change in circumstances to review an order if it has not been at least three years or the parent ordered to pay support is not incarcerated. Further, some states require the change in circumstance to be substantial and permanent.<sup>7</sup> In all, meeting these criteria can be difficult. It typically requires extensive paperwork including the gathering and submission of income verification documents and documentation of other factors considered in a state's guidelines calculation (e.g., documentation of the cost of the child's health insurance from the parent that is incurring the expense). In some cases, this results in protracted litigation.

Once a parent requests a review, the processes vary. For IV-D child support cases, the child support agency may review the request to determine if: the three-year time period has been met, the obligated parent is incarcerated, or there is a change in circumstance, where required. Assuming the request is approved or approval is not necessary to move forward, most agencies will respond by requesting that the parent initiating the review or both parents provide detailed financial information. Obtaining this information can be a lengthy process particularly if one party does not cooperate with the request and the child support worker has to use other sources to obtain information from the non-cooperative parent. Once financial information is collected about both parents and verified, the child support worker will use that information to calculate a child support order based on the state's guidelines. If the new order amount meets the state's threshold for modifying an order, then the child support worker will either request a court hearing where the new order amount will be set or notify both parents of the new order amount, allowing them to contest the new amount by requesting a court hearing or an administrative hearing, depending upon the processes in place in that state.

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[https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//dcl\\_03\\_15a.pdf](https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//dcl_03_15a.pdf) ; and, Gardiner, Karen, et al. (June 2002.). *Administrative and Judicial Processes for Establishing Child Support Orders*. Final Report to U.S. Department of Health and Human Services Office of Child Support Enforcement. Retrieved from [https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//dcl\\_03\\_15a.pdf](https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//dcl_03_15a.pdf).

<sup>6</sup> See 45 §303.8.

<sup>7</sup> Laura W. Morgan. (2014) *Child Support Guidelines: Interpretation and Application*. Second Edition. Wolters Kluwer Law and Business. 9-3.



As we discuss further below, there are many bottlenecks in this process that reduce the number of modifications completed and increase the amount of time needed to complete a modification. One of the key bottlenecks is that parents do not respond to the request for financial information, which significantly hinders the process.<sup>8</sup> States vary as to how they handle this situation, but generally if the requesting parent does not respond, the state discontinues the review. In a study of nine states, 40 percent of reviews were not completed and the most common reasons were that the requesting parent changed his/her mind or the requesting parent did not provide financial information.<sup>9</sup> Once a review is complete, another factor that reduces the number of modifications is whether a state has a quantitative threshold that must be met before an order will be modified. In a nine-state study, 8 to 17 percent of completed reviews are not modified because they did not meet the state's quantitative threshold.<sup>10</sup>

### Section 3: Prior Lessons Learned from the Great Recession

During the 2007-2009 Great Economic Recession, many child support agencies were overwhelmed by requests for order modifications and efforts were made to improve the order modification process. In 2012, OCSE reviewed many of these efforts and concluded that approximately 40 percent of states developed specific modification assistance or a review and adjustment program designed to simplify the process and assist parents with requesting a change in their orders.<sup>11</sup> They summarized these efforts into the following four approaches:

1. Technology and automation: Making forms available online and easier for parents to use; and the use of automated review and modification and electronic systems monitoring.
2. Target specific populations: Proactively reaching out to parents who have likely experienced a change in income, such as those recently unemployed.
3. Temporary Modifications: Innovative child support programs finding ways to address substantial, but temporary, changes in circumstances by offering modifications for a temporary period of time.
4. Outreach materials and increased publicity: Some child support programs publicize the benefits of child support modification to encourage parents to seek modifications when they have experienced a significant change in circumstances.

### Section 4: Key Components of the Modification Process Ripe for Innovation

Modification, like many parts of the child support process, sits at the intersection of policy and implementation frameworks and how individual parents engage with the process. On the policy front, there are longstanding policies that exist (e.g., review at regular intervals or when there is substantial change of circumstances) as well as salient new ones (e.g., 2016 OCSE rule changes and what it means for

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<sup>8</sup> Department of Health and Human Services. Office of Child Support Enforcement. 2006. The Story Behind the Numbers. *Impact of Modification Thresholds on Review and Adjustment of Orders*.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> [https://www.acf.hhs.gov/sites/default/files/documents/ocse/providing\\_expedited\\_review\\_and\\_modification.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ocse/providing_expedited_review_and_modification.pdf)

individuals who are incarcerated). In this section, we discuss key components of the modification process that we think are ripe for innovation and expansion of best practices.

- A. **Initiating a review: Who can initiate.** Allowing the child support agency to initiate a review may facilitate more reviews.
- B. **Responding to a request for review. How does the child support agency respond to a parent's request?** How a child support agency responds to a parent's request for a modification can facilitate more requests and reviews.
- C. **Obtaining information from the parents to document change in circumstances and calculate support.** Providing simple check lists, streamlining and simplifying the process, expanding the methods by which information is collected, allowing for digital/online forms and document submission, and simplifying the information needed will facilitate more modifications.
- D. **Notifying the other parent and service of process.** State laws and court rules may limit how parents are legally notified and served. Service of process can range from use of mail to personal service by a sheriff.
- E. **Establishing early effective dates.** Ensuring that it is as early as legally allowed will increase the timeliness of order modifications.
- F. **Meeting state-determined criteria for modification.** Broadening the definition and criteria for "change in circumstances" and/or lowering quantitative thresholds for change (e.g., at least a \$50 change) will facilitate more modifications.
- G. **Modifications when a parent is incarcerated.** This subsection explores ways to enhance practices for identifying cases and processing reviews for parents becoming incarcerated or being released.

#### Section 4A: Initiating a Review

As noted above, federal law requires that state child support programs review child support orders at least every three years for public assistance cases and upon the request of either parent in non-public assistance cases. A few states, however, allow others, including the court or the IV-D agency to initiate a review regardless of the TANF status.<sup>12</sup> Federal law allows states to initiate modifications based on evidence from automated sources (45 C.F.R. 303.8(b)(1)(iii)). For example, the Pennsylvania child support agency initiates modifications based on evidence from automated sources that the obligor is unable to pay, has no known income or assets, and there is no reasonable prospect that the obligor will be able to pay in the foreseeable future.<sup>13</sup>

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<sup>12</sup> Georgia, Michigan, and California are examples. Georgia law allows the child support agency, at its discretion, to initiate a frequent review of TANF cases and Non-TANF cases. The Georgia child support agency may also a review after three years on Non TANF cases. (State Authority / Reference: Georgia Law, §19-6-15; 19-11-8; 19-11-12; DHS Rule 290-7-1-.06, DHS Rule 290-7-1-.15, and DHS Rule 290-7-1-.17; OSAH Rule 616-1-2-.28. Michigan's code can be found at: MCL 552.517(1)(e) - (f). California is another example where the child support agency may initiate the modification process: <https://www.courts.ca.gov/1196.htm?rdeLocaleAttr=en>, <https://childsupport.ca.gov/overview/modify-my-payment/>

<sup>13</sup>See Pennsylvania Supreme Court Rule (Pa. R.C.P. 1910.19(f)) and Quinn, Patrick (Feb. 16, 2018). *Child Support Orders: Not Too High, Not Too Low, Just Right-Sized*. Presentation to the National Child Support Enforcement Association (NCSEA) Policy Forum.

Additionally, it may be possible for states to employ a limited (or targeted) review,<sup>14</sup> which would allow for quicker reviews. A state may choose to use an automated process to identify and review cases under 45 C.F.R. 303.8(b)(1)(iii), which may include only reviewing certain parts of the order that have experienced a change. For example, in a case that was recently entered that included health care and child care, but a change in income has occurred, the state may choose to use automated processes to only review and modify the support order directly impacted by the income change and leave other portions untouched (unless specifically asked for by a parent or otherwise uncovered by the reviewing body). By limiting the review to only those conditions that have changed, the process may be quicker and allow for an earlier implementation of the new order as compared to the standard review process.

During the COVID pandemic, Michigan explored ways to use its automated data to initiate modifications. They used unemployment data and compared that to historical financial data to assess whether to initiate a modification. In general, the Michigan child support agency is interested in moving toward a more proactive approach to order modifications by initiating this process more frequently based on automated data, but it is still exploring how to best use their automated data for this purpose.

The Alaska child support agency tested an automated method to review and modify child support orders in the late 1990s and early 2000s.<sup>15</sup> Called ELMO (short for Electronic Modification), the automated method did not require a parent to request a review. Rather, income data of the obligated parent received from automated sources available to the child support agency was plugged into an automated guidelines calculator and compared to the existing order amount. If the change was at least 15 percent, which is Alaska's modification threshold, the parents were notified. Alaska tested this approach on nearly its entire caseload (*i.e.*, about 40,000 cases). Over two-thirds (68%) of orders where the parents agreed to pursue a modification were eventually modified. ELMO-initiated reviews took 72 days on average to modify compared to 180 days allowable under federal regulation.

A limitation to the ELMO-approach is Alaska uses a percentage-of-obligor income model in calculating child support obligations, while most states use the income shares model. The income shares model requires income information from each parent as well as other financial information, which varies by state, but usually includes work related childcare expenses and cost of health insurance for the child. This complicates the information necessary for the child support agency to calculate child support because all of the required information is not available electronically.

#### Section 4B: Responding to a Request for Review

As noted above, child support agencies vary as to how they respond to a parent's request for a modification. Recent research conducted as part of the OCSE demonstration on Behavioral Interventions for Child Support (BICS) found that streamlining an agency's response to modification requests can significantly increase completed reviews. Ohio has a two-step process for modifications.<sup>16</sup> If a parent

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<sup>14</sup> Bannon, A., Nagrecha, M., & Diller, R. (2010). *Criminal justice debt: A barrier to reentry*. New York: Brennan Center for Justice at New York University School of Law.

[https://www.criminallegalnews.org/media/publications/brennan\\_center\\_for\\_justice\\_reentry\\_report\\_2010.pdf](https://www.criminallegalnews.org/media/publications/brennan_center_for_justice_reentry_report_2010.pdf)

<sup>15</sup> [https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//dcl\\_02\\_09a.htm](https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents//dcl_02_09a.htm)

<sup>16</sup> Braid, Peter, and Miller, Rhiannon. (May 2019.) *Streamline or Specialize. Increasing Child Support Order Modification Review Completion in Ohio*. Retrieved from <https://www.acf.hhs.gov/css/grant-funding/streamline-or-specialize-increasing-child-support-order-modification-reviews-ohio>.



expresses an interest in a modification, the Ohio child support agency sends a modification application to the requesting parent, which must be submitted to the child support agency before it will move to the second step, which is to initiate a review.

As part of the BICS demonstration, Cuyahoga County, Ohio conducted an experiment to test the impact of eliminating the first step of the Ohio modification process for cases that met one of two criteria – either the order had not been reviewed in more than three years or the noncustodial parent was incarcerated. During the experiment, parents who inquired about a modification were randomly assigned either to an intervention or a control group. If the parent was in the intervention group, the agency checked their records to see if the case met one of the two criteria. If it did, they sent out an affidavit packet and scheduled a review. For all other cases, including those in the control group, the agency followed standard procedure, sending the requesting parent a modification application. They found that the intervention group had nearly twice as many reviews scheduled, and over a third more reviews completed than the control group. The study also found that parents in the intervention group who received a modification had to wait an average of 68 days after random assignment to receive new order amounts, while parents in the control group who received a modification had to wait an average of 112 days.

Franklin County, Ohio, which was also part of the BICS demonstration, decided to conduct a different experiment. It redesigned the modification application and developed a one-page fact sheet that encouraged parents to complete the application. During the experiment, parents who inquired about a modification were randomly assigned to an intervention or control group. Parents assigned to the intervention group received the redesigned modification application and the one-page fact sheet. Parents assigned to the control group received the standard modification application. They found that this intervention increased the number of reviews scheduled by 9%, but it did not increase the number of reviews completed.

The results of the Ohio experiments show that eliminating Ohio's requirement that parents submit a modification application before initiating a review significantly increased the number of reviews completed. On the other hand, simply redesigning the modification application did not improve the number of reviews completed.

#### Section 4C: Obtaining Information from Parents

States can facilitate obtaining the information from parents that is necessary for a review. For example, when Georgia receives a request for a review, either verbally or in writing, they send a check list with required documents to the requesting parent advising what information is needed to be provided or refer the requesting parent to a website to download the check list and required documents.<sup>17</sup>

In the same OCSE demonstration project mentioned above, Franklin and Cuyahoga Counties conducted a second round of experiments. Franklin County utilized specialized staff that provided active and tailored outreach and assistance to the intervention group once they submitted a modification application.<sup>18</sup> It also simplified the affidavit packet, shortening it from 10 to 4 pages. In contrast, Cuyahoga County did not utilize specialized staff, but did simplify the affidavit packet to 2 pages. It also had agency staff attempt to

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<sup>17</sup> See <https://childsupport.georgia.gov/my-case/review-modification-support-order>.

<sup>18</sup> Braid, Peter, and Miller, Rhiannon. (May 2019.) *Streamline or Specialize. Increasing Child Support Order Modification Review Completion in Ohio*. Retrieved from <https://www.acf.hhs.gov/css/grant-funding/streamline-or-specialize-increasing-child-support-order-modification-reviews-ohio>.

telephone the intervention group to remind them to return the affidavit and sent a combination of letters, text messages, and automated telephone calls to the intervention group shortly before the deadline for returning the affidavits. In both counties, the control group received only the standard affidavit packet. The intervention in Franklin County increased the number of reviews completed by 31%, but the intervention in Cuyahoga County had no impact on the number of reviews completed. These results suggest that utilizing specialized staff that provide active outreach and assistance to parents completing the review process can substantially improve the number of reviews completed, but that only simplifying forms and providing reminders may not achieve similar results.

Another important factor is the sequencing of when information is obtained from each parent. Sending the non-requesting parent the Financial Disclosure Statement (FDS) after receiving financial information from the requesting parent can be more effective, but also take more time. This is the approach used in a Wisconsin county.<sup>19</sup> If the non-requesting parent responds, the agency performs the calculation and sends a letter to the parents essentially asking them if they agree (stipulate) or do not agree. A hearing is set if they do not agree. If the non-requesting parent does not respond at all, a hearing is also set. Alternatively, sending the FDS to both parents at the same time, can get a hearing on the court schedule more quickly. Service by mail and affidavit of mailing is all that is required, and then a hearing is only set because the other parent either did not respond or would not agree to the modified amount. .

Still, states could employ new ways to collect pertinent information from parents. For example, a state may consider making more of the information shared and collected electronically. For instance, Wisconsin uses eFile and parents can subscribe for a fee.<sup>20</sup> Alternatively, a state could make electronic filing free, which could potentially speed up the process.

#### Section 4D: Notification and Service of Process

State laws and court rules vary on how parents are notified and served. For example, Ohio uses regular mail service to the last known address of a parent recognizing that a parent has a continued duty to update the court and agency of their address.<sup>21</sup> Some states believe that service by mail with an affidavit of mailing is efficient for scheduling modification hearings when parents cannot agree or when one parent does not cooperate.

Even if personal service is required, there are ways to streamline it. For example, as part of the BICS grant, Georgia encouraged parents to accept service voluntarily by creating new outreach materials. These new materials highlighted the need for parents to respond, clearly stated what was needed when they respond, and emphasized that if they responded they would not be charged the cost of personal service.<sup>22</sup> Although the project was aimed at the establishment process, the percentage of parents accepting service

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<sup>19</sup><https://dcf.wisconsin.gov/cs/review>

<sup>20</sup>[https://www.wicourts.gov/forms1/circuit/ccform.jsp?FormName=&FormNumber=&beg\\_date=&end\\_date=&StatuteCite=&Category=12](https://www.wicourts.gov/forms1/circuit/ccform.jsp?FormName=&FormNumber=&beg_date=&end_date=&StatuteCite=&Category=12)

<sup>21</sup> See Ohio Revised Code 3121.29.

<sup>22</sup> Anzelone, Caitlin, Timm Jonathan, and Kusayeva, Yana. (Feb. 2018). *Dates and Deadlines Behavioral Strategies to Increase Engagement in Child Support*. Retrieved from [https://www.mdrc.org/sites/default/files/2018\\_BICS-Georgia%20Brief\\_final\\_2.pdf](https://www.mdrc.org/sites/default/files/2018_BICS-Georgia%20Brief_final_2.pdf)



voluntarily increased by eight percentage points due to improvements and simplifications of the agency's communication with the parent.

A Massachusetts demonstration project that set out to streamline the child support modification process experimented with service by first class mail.<sup>23</sup> Massachusetts found it reduced the timeframes for serving complaints from an average of 78.3 days for pre-pilot complaints to achieve service from the date of filing to 2.7 days for pilot cases. The child support agency also realized a significant cost savings with service by first-class mail. Massachusetts implemented the demonstration project in response to the 2007-2009 Great Recession and the lingering negative impacts it had on wage earnings.

#### Section 4E: Establishing Early Effective Dates

Federal law requires that child support orders cannot be retroactively modified.<sup>24</sup> Because a parent who experiences a change in circumstances is not able to request a modification until the change has happened, ensuring the earliest possible effective date for starting a new order can be very beneficial for the parent who has experienced the change in circumstances.

Currently, states have different practices regarding the effective date of a new order. In many states, the child support order begins the first day of the month after the date of the modification hearing. In others, the child support order is modified back to the date of filing for the modification hearing. Still others, the effective date is the date that the other parent is served to appear at the modification hearing. In addition, the effective date may vary depending upon the judicial or administrative process. According to federal law, the bar to retroactive modification does not apply "with respect to any period during which there is *pending a petition* for modification, but only from the date that notice of such petition has been given" (emphasis added). Therefore, by filing and serving a motion (as the "petition" required by the federal law), the earliest possible effective date is being preserved. (Not all cases need the earliest possible effective date, and this more involved approach should only be used in those cases that need that relief.)

During the COVID pandemic, some child support agencies tried to preserve the earliest effective date possible using various means. Since many courts were closed and not conducting hearings, relying on effective dates that occurred after court hearings became untenable. Efforts were made to use the date of filing for the modification hearing or the date the other parent was served as the effective date. Other efforts included using shortened financial information forms and filing for a modification hearing based solely on the shortened financial information from the requesting parent. Other agencies did away with the financial form all together and simply filed for a modification hearing based on the inquiry from the requesting parent. These agencies found that many modifications were withdrawn. In some cases, the additional unemployment payments that parents were receiving through the CARES Act meant their income hadn't changed sufficiently to meet the threshold for a modification in that state.

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<sup>23</sup>Massachusetts Department of Revenue, Child Support Enforcement Division, et al. (June 2012.) *Streamlining the Child Support Modification Process: Bristol County, Massachusetts*. U.S. Department of Health and Human Services Office of Child Support Enforcement. Grant No. 90FD0157.

<sup>24</sup> 42 U.S.C. 666c(9)(C). See Section 1A for text.

In response to a change in economic circumstance precipitated by the COVID-19 economy, Michigan developed simplified guidance<sup>25</sup> and a checklist<sup>26</sup> to help offices identify the most efficient and timely process for effective relief to the family. The ultimate goal of the guidance was to further inform the local offices, courts, and parents of the bar to retroactive modifications, how that impacts the timing of the effective date of the revised order, and give options to courts and offices to provide meaningful relief to parents. The guidance highlights the use of motions filed by the local office, or at the initiative of the court, to preserve the ability to use the earliest effective date of the order. It also highlights other options, like the use of temporary orders in uncertain times or conditions.

The Massachusetts modification demonstration initiated in response to the lingering negative impact of the 2007-2009 Great Recession was also able to reduce timelines by including a request for a temporary order in the motion. The court where the demonstration was conducted schedules hearings four to six weeks from when the motion is filed. This reduced the number of days between filing and assignment of hearing from 140 days for pre-pilot compliant filings to 30.2 days on average.

#### Section 4F: Meeting State-determined Criteria for Modification

Nearly all state child support programs have established quantitative thresholds that must be met before the program will pursue an order modification.<sup>27</sup> As discussed above, these thresholds are defined as a percentage and/or dollar change in the current child support obligation. Percentage thresholds range from 10% to 25%; dollar thresholds range from \$10 to \$50. These thresholds tend to limit the number of modifications that child support agencies complete. As noted above, a 2006 federal OCSE study found that 8% to 17% of completed reviews were not modified because they did not meet the state's quantitative threshold.<sup>28</sup>

In order to ensure parents qualify for a modification, states may consider relaxing these quantitative thresholds.<sup>29</sup> States may also consider relaxing these quantitative thresholds when certain extenuating conditions (*e.g.*, health pandemics or local economic downturns) occur.

As discussed above, federal regulation allows states to require a “substantial change in circumstances” to modify an order if less than three years has lapsed since the order was last changed or established. However, some states, such as Georgia and Michigan, have chosen to limit this requirement to cases where less than two years have lapsed since the order was last changed or established. Other states may want to consider doing the same to increase the number of orders that are modified.

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<sup>25</sup> <https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/FOC/Documents/FAQs/FAQ2020-01.pdf>

<sup>26</sup> <https://courts.michigan.gov/Administration/SCAO/OfficesPrograms/FOC/Documents/FAQs/Checklist.pdf>

<sup>27</sup> See Office of Child Support Enforcement, Intergovernmental Reference Guide, question K3 for information regarding state child support programs' quantitative criteria for order modification. <https://ocsp.acf.hhs.gov/irg/welcome.html>

<sup>28</sup> U.S. Office of Child Support Enforcement. (Dec. 2006) *The Story Behind the Numbers: Impact of Modification Thresholds on Review and Adjustment of Child Support Orders*. Retrieved from [https://www.acf.hhs.gov/sites/default/files/documents/ocse/im\\_07\\_04b.pdf](https://www.acf.hhs.gov/sites/default/files/documents/ocse/im_07_04b.pdf)

<sup>29</sup> We know of no state that currently provides for this in their modification criteria, but some states provide for natural disasters in the application of their low-income adjustment or deviation criteria. See Indiana and Louisiana child support guidelines retrieved from [https://www.in.gov/courts/rules/child\\_support/](https://www.in.gov/courts/rules/child_support/) and <http://www.legis.la.gov/legis/Law.aspx?d=107374>.



For example, Georgia uses the following circumstances to qualify as a “substantial change in circumstances” for cases that are being modified in less than two years since the last modification:

- a. Parent incurs a loss of health, e.g., a diagnosis of a serious illness or an accident that impacts the parent’s ability to work;
- b. Parent experiences an involuntary termination of employment, has an extended involuntary loss of average weekly hours or is involved in an organized strike;
- c. Similar involuntary adversity resulting in a loss of income of 25 percent or more;
- d. Either parent begins receiving TANF benefits since the last order;
- e. Parent receives an unanticipated windfall of money (e.g. parent winning a large sum from the lottery, inheritance);
- f. Noncustodial parent and dependent child(ren) begin or are no longer receiving Retirement, Survivors, and Disability Insurance (RSDI) or Supplemental Security Income (SSI) benefits after the initial obligation was established or since the most recent review of the order;
- g. Change in the current support obligation amount (SOA) that meets the 15% and \$25.00 standard (increase or decrease);
- h. Noncustodial parent is employed earning wages at his maximum potential (e.g. working 40 hours per week and the total of all current SOA exceeds the Consumer Credit Protection Act (CCPA) limits) and is unable to meet the full current support obligation on one or more cases;
- i. Notification that custody of a child has changed from the original custodian and receipt of supporting documentation; or
- j. Incarceration for more than 180 days.<sup>30</sup>

*Note: Georgia only uses the above as “guidelines only,” not as mandated policy.*

States may want to consider expanding their definition of substantial change in circumstances and remove the condition that the change be sustained to ensure that more cases qualify for modification. The sustained provision can be particularly burdensome given economic uncertainty including unpredictable employment opportunities and layoffs.

#### Section 4G: Special Case of Incarcerated Parents

Since the late 1970s, the prison population has increased substantially, reaching its peak in 2009. Since then, it has declined only slightly. It is estimated that one quarter of prison inmates are in the IV-D system.<sup>31</sup> Based on the current prison population, this suggests that approximately 360,000 inmates have a child support case.

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<sup>30</sup> Georgia Law, §19-6-15; 19-11-8; 19-11-12; DHS Rule 290-7-1-.06, DHS Rule 290-7-1-.15, and DHS Rule 290-7-1-.17 OSAH Rule 616-1-2-.28.

<sup>31</sup> Office of Child Support Enforcement. (2006). *Incarceration, Reentry, and Child Support Issues: National and State Research Overview*.

Incarcerated parents often enter prison with a child support order and arrears without any realistic ability to pay them. As a result, child support arrears are estimated to double while a parent is incarcerated.<sup>32</sup> Research shows these child support debts create a significant barrier to reentry.<sup>33</sup>

Research has shown that incarcerated individuals are less likely to initiate a review of their child support order.<sup>34</sup> Those who become incarcerated or are recently released are among those most in need of review and modification, but they often experience many adversities and become disengaged with the child support program.<sup>35</sup>

Many child support programs have taken steps to encourage incarcerated parents to participate in the child support process, help maintain parent-child contact during periods of incarceration, reduce or suspend orders during incarceration, manage child support debt after incarceration, and target child support services to parents who are recently released from prison.<sup>36</sup>

One study that examined ways to improve the modification process for incarcerated parents was conducted in Texas as part of the Behavioral Interventions to Achieve Self-Sufficiency (BIAS) Project.<sup>37</sup> In 2012, 28% of incarcerated parents owing support in Texas applied for an order modification. The BIAS team intervened by sending three messages via mail—first, a postcard with a simplified message about the opportunity to apply for a child support order modification, then a redesigned modification packet with certain fields of the application prepopulated, and finally, a reminder postcard. As a result of this effort, applications for order modifications increased by 11 percentage points, from 28% to 39%.

OCSE rule changes published in December 2016 recognized the need to increase modifications for incarcerated parents and provided states with options to better address this issue. Essentially, states can choose to do any of the following:

- 1) Send a notice of a right to review;
- 2) Modify the order by operation of law; or
- 3) Initiate a review without waiting for a request.<sup>38</sup>

Most states have chosen the first option. For example, Georgia provides for a structured approach and timeline for notifying noncustodial parents who have been sentenced to incarceration for at least 180

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<sup>32</sup> Nancy Thoennes, *Child Support Profile: Massachusetts Incarcerated and Paroled Parents*, Center for Policy Research, May 2002.

<sup>33</sup> Bannon, A., Nagrecha, M., & Diller, R. (2010). *Criminal justice debt: A barrier to reentry*. New York: Brennan Center for Justice at New York University School of Law. Retrieved from [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Criminal-Justice-Debt-%20A-Barrier-Reentry.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Criminal-Justice-Debt-%20A-Barrier-Reentry.pdf)

<sup>34</sup> For example, see Lindquist, C., McKay, T., Bir, A., & Steffey, D. (2015). *The experiences of families during a father's incarceration: Descriptive findings from the baseline data collection for the multi-site study on incarceration, parenting and partnering*. Research Triangle Park, NC: RTI International. <https://aspe.hhs.gov/system/files/pdf/137556/MFS-IP%20BaselineReport.pdf>; and Michigan Supreme Court. (Jun. 2006). *Michigan Prisoner Support adjustment Project: Final Report*. Report to Federal Office of Child Support Enforcement, Special Improvement Project Grant: 90FI0064/01. Retrieved from <https://courts.michigan.gov/Administration/SCAO/Resources/Documents/Publications/Reports/focb/PSAPReport.pdf>.

<sup>35</sup> Haney, L. (2018). Incarcerated fatherhood: The entanglements of child support debt and mass imprisonment. *American Journal of Sociology*, 124(1), 1-48. <https://doi.org/10.1086/697580>

<sup>36</sup> OCSE. (2006) Working with Incarcerated and Released Parents: Lessons from OCSE grants and state programs.

<sup>37</sup> [https://www.acf.hhs.gov/sites/default/files/documents/opre/bias\\_texas\\_report\\_2014\\_revised.pdf](https://www.acf.hhs.gov/sites/default/files/documents/opre/bias_texas_report_2014_revised.pdf)

<sup>38</sup> 45 C.F.R. 303.8.

days of their right to a review. The policy targets a noncustodial parent who has been sentenced to incarceration and has a least 180 days left in their incarceration term (regardless of whether the order is at least 36 months old). If these criteria are met, the following actions must be taken within 15 business days:

- A. Update the noncustodial parent address screen with the address of the institution housing the noncustodial parent.
- B. Send noncustodial parent the NIN (which is the Notice of Incarceration Review form) to the noncustodial parent.
- C. Send custodial parent the NIW (which is the Notice of Incarceration Review) to the custodial parent.<sup>39</sup>

Some states have chosen the second option. North Dakota, for example, took this approach. In North Dakota, any existing child support obligation established under North Dakota law will expire by operation of law upon the date of incarceration, in recognition that the accruing obligation is based on pre-incarceration income or earning ability that is no longer achievable.<sup>40</sup> In order to re-establish an obligation, the obligation must be based on the actual income of the parent rather than imputed income during incarceration and for six months following release.

Finally, some states have selected the third option. Michigan is an example of this approach. It created a policy that is binding on the local court offices administering the caseloads that states any condition causing a temporary period of 180 days or more that results in an inability to work or earn gives rise to an “incapacitation.” If prospective language (language attempting to account for contingencies) was included in the order, the charge is abated; however, if there was no prospective language, the office must review the case.<sup>41</sup> Incapacitation covers incarceration and other circumstances in which the parent has the inability to work or earn. Michigan is able to do this through its judicial process that allows the prospective language to be added to orders.<sup>42</sup>

Additionally, states could benefit from increased interfaces with local, state, and federal jail and prisons to more quickly identify cases. For example, in 2020, incarceration data from the California Department of Corrections and Rehabilitation (CDCR) began interfacing directly with the statewide centralized electronic child support case management system. On a regular basis, the incarceration status is updated in the parents’ casefile. Incarcerated parents can then be more easily identified, as well as the location where they are institutionalized.<sup>43</sup> Some of these interfaces are available from a private vendor for a fee,<sup>44</sup> which may be a barrier for states with cost limitations. Other options such as Vinelink, which is source for

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<sup>39</sup> Georgia Law, §19-6-15; 19-11-8; 19-11-12; DHS Rule 290-7-1-.06, DHS Rule 290-7-1-.15, and DHS Rule 290-7-1-.17; OSAH Rule 616-1-2-.28; and DCSS Policy Manual - Policy 2.0:

<sup>40</sup> <https://www.childsupport.dhs.nd.gov/sites/www/files/documents/pdfs/Partners%20-%20child-support-bulletin-2017-12.pdf>

<sup>41</sup> Section 4.20 of the Michigan IV-D Child Support Manual, 2021 MCSF 4.02

<sup>42</sup> <https://courts.michigan.gov/Administration/SCAO/Resources/Documents/Administrative-Memoranda/2019-03.pdf>

<sup>42</sup> <https://courts.michigan.gov/Administration/SCAO/Resources/Documents/Administrative-Memoranda/2019-03.pdf> and 2021 MCSF 4.02 and MCSF-S 3.04. See MCSF-S 3.04(E) for sample prospective language to include in orders.

<sup>43</sup> California Department of Child Support Service Directive Reference number 20-148, September 2020

<sup>44</sup> For example, see the NCSEA March 31, 2021 presentation, “Thomson Reuters’ Leveraging Unique Data Sets to Locate Hard-to-Find NCPs webcast” which show how CLEAR and incarceration data could assist in locating parents.

updated custody status and criminal case information,<sup>45</sup> appear to be useful. Partnerships with the jails and prisons could also help with the intake or reentry programs to further share the information of the availability, and rights, of a review.<sup>46</sup>

## Section 5: Conclusion

The COVID-19 pandemic highlighted one of the known obstacles in the child support modification process, preserving the effective date of the modification upon a change of circumstances. Since many courts were closed and not conducting hearings, relying on effective dates that occurred after court hearings became untenable. This nationwide review uncovered some promising practices, while excluding others. We hope the promising practices identified here are used, and improved upon, by child support programs endeavoring to make their modification process more effective and efficient.

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<sup>45</sup> For example, see <https://www.vinelink.com/#state-selection>.

<sup>46</sup> Aharpour, D., Ochoa, L., Stein, J., & Zukiewicz, M. *State strategies for improving child support outcomes for incarcerated parents*. Mathematica Policy Research. <https://aspe.hhs.gov/system/files/pdf/263901/cs-cj-issue-brief.pdf>



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