Quick Facts: Incarcerated Parents

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

The Child Support Program[1] is a successful federal-state-tribal collaboration that seeks to promote economic stability for children whose parents live apart. The program collects $4.37 for every $1 in public funds invested. In FY 2023, $31 billion was collected in 12 million cases for 12.7 million children.[2]

It is the mission of the child support program that parents should contribute financially and emotionally to raising their child. The child support program is responsible for assessing the relative contribution each parent is capable of making to share the economic burden of child rearing. Typically, child support orders are based on a parent's earnings, income, and other evidence of ability to pay.

When non-custodial parents are incarcerated, many do not realize that child support continues to accrue during their incarceration despite the lack of ability to pay it. Most incarcerated parents have little to no income and lack the realistic ability to pay support.[3] The incarcerated parent ultimately faces barriers to employment and resuming support payments following release from prison.

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

- 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
- Participating in illegal activities to support their children and themselves to pay down their debts[4]

Historically, incarcerated parents have not been permitted to modify their order. This philosophy has centered on the idea that incarceration is analogous to voluntary unemployment and therefore child support obligations should not be reduced.[4] More recently, best practices across the nation try to lessen the impact of incarceration by modifying orders to reflect actual ability to pay. These practices aim to prevent arrears from accumulating during incarceration and to increase the likelihood of regular support payments post release. They also help preserve a parent-child

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

[2] Office of Child Support Services (OCSS) FY 2023 Preliminary Report

[3] *Centering Child Well-Being in Child Support Policy*, Good+Foundation, Ascend at the Aspen Institute, August 2020, p. 11

[4] *Ibid,* p. 12

relationship for the benefit of the child and improve the efficiency of the child support program. When child support orders are based on the obligor's actual ability to pay, 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.

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."[5] 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 lack of income when deciding the issue of child support. Child support is an economic program, part of the overall safety-net system for low-income families and is not meant to be punitive.

The federal Office of Child Support Services (OCSS) also recognizes that modifying orders for incarcerated, reentering, and unemployed parents can make child support a reliable source of income for children.[6] In 2016, OCSS issued 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 the case for review and adjust the order if appropriate or notify both parents of their right to request a review.[7] A notice or review is not required under the federal regulations if the state has a comparable law or rule that modifies a child support obligation upon incarceration by operation of law. Additionally, states are prohibited from treating incarceration as voluntary unemployment in establishing or modifying orders.[8]

Currently, 81% of states permit incarcerated parents to modify a child support order, and some state statutes expressly characterize incarceration as a "change in circumstances."[9] OCSS has published details on the policies in each state related to modification of support orders for incarcerated parents.[10]Currently, 43% of states automatically initiate a modification of support upon learning that the obligor is incarcerated for a specific period of time;[11] 14% of states provide the parties notice that the case is eligible for a review of the order upon learning that the obligor is incarcerated;[12] and 6% of states automatically abate or adjust support by operation of law upon learning the obligor is incarcerated.[13]

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[5] *Realistic Child Support Orders for Incarcerated Parents*, Office of Child Support Enforcement, PAID Series, June 2012, p. 3

[6] *Lambert v. Lambert*, 861 N.E.2d 1176, 11780 (Ind 2007)

[7] 45 C.F.R. 303.8(b)(2) and (b)(7)(ii)

[8] 45 C.F.R. 302.56(c)(3)

[9] *Realistic Child Support Orders for Incarcerated Parents* (see above), p. 2

[10] *"Voluntary Unemployment," Imputed Income, and Modification Laws and Policies for Incarcerated Noncustodial Parents*, Office of Child Support Services, PAID Series, July 2012

[11] AL, AK, CO, CT, ID, KS, ME, MN, NV, NH, NJ, NM, NC, OK, OR, PA, TN, VT, WA, WV, DC

[12] IL, IN, IA, MO, NE, SD, TX

[13] CA, DE, LA, MD, MI, ND,