



ERICSA

On the Road Again

A
VIRTUAL
ROAD
TRIP

MAY 24 – 26, 2021

A New Road for Incarcerated and Incapacitated Payers

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Session Description

- There are several groups of payers [incarcerated, injured, disabled, or ill ... “incapacitated”] who present special challenges trying to maintain support amounts based on a present ability to pay while putting the brakes on retroactive modification. Michigan Courts implemented several visionary procedures that bypass the need for conducting a review in these cases by prospectively abating support amounts while keeping amounts modifiable while a future outcome is uncertain (e.g., conviction, qualification for benefits, or winning a lawsuit).

Join the Michigan team as they share what has been learned so far and what child support professionals can do to work with incapacitated payers on their own caseloads.



No Brainer that person cannot pay ordered amount

- Freak tripping accident – bad skull-brain injury.
- Bad car accident – parent in coma.
- Recalled my caseload:
 - Parents arrested and awaiting trial at various jails
 - Parents: heart attack, closed head injury, stroke, cancer, mental breaks...

What are three things that situations like these have in common?



No Brainer that person cannot pay ordered amount

– brain injury, – parent in coma, -- awaiting trial at various jails, --heart attack, --stroke, cancer, --mental breaks...

What are three things that situations like these have in common?

- (1) severely restrict a parent's ability to pay current support,
- (2) limit parent's ability to act in self-interest,
- (3) often no direct requirement for review/mod



Where MI was

- Finding out long after injury or incarceration, frustrated by bar to retroactive modification to deal with case before modification paperwork filed with court.
- 2005 statute required review when parent incarcerated > 1 year.
- Application of guideline produced small order. Incarceration was a reason to deviate.
- Federal Regulation Review and Modification updated –
 - Requiring action in cases where payer incarcerated 180 days or more.
 - Workgroup – Michigan Office of Child Support (OCS) policy initiating reviews and suggesting later legislation.



What Michigan Did

- IV-D Policy and system created report and required initiating a review.
- Courts issued a policy – www.courts.mi.gov
 - search for Memorandum 2019-03: Adjusting Current Support Due to Incapacitation – explains many legal issues and suggestions
- Modified Next Guideline (2021) www.courts.mi.gov/mcsf
- Office of Child Support sought legislative change for incarcerated parents, effective end of 2021. Chose not to include injured or disabled because 2016 reg was only for incarcerated parents.



Incapacitation

- Incapacitation means
 - ✓ the **inability to pay** currently-ordered support
 - ✓ caused by a parent being unable to earn an income
 - ✓ for a period that will **likely** last 180 days or longer
 - ✓ due to disability, mental incompetency, serious injury, debilitating illness, or incarceration
- Recognize that Incapacitation often limits the person's ability to act in own self-interest.
- Length of Incapacitation – often begins with uncertain duration
 - Likely >180 days, @ court discretion <180
 - Duration > child's minority, **MODIFY** before case closure



Dealing with Bar to Retroactive Modification

- Incapacitation indicates substantial change in ability to pay – need ability to quickly modify charges
 - Quickly start action to preserve modification date
 - Uncertainty over 180 day threshold delays decision
- Use of temporary orders during period of uncertainty
- No need to modify for incapacitation when
 - Already at zero
 - Documented income or assets (i.e., has ability to pay)
 - Prospective order provision dealing with situation



Prospective Language in Support Orders

When friend of the court becomes aware that payer's condition that meets the definition of incapacitation as defined in the current or subsequent Michigan Child Support Formula, monthly support charges shall abate and are temporarily reduced to zero effective the date the friend of the court office provides notice of the abatement to the parties and to the court. Support charges shall be reinstated effective 60 days after the incapacitation ends. The office shall provide notice of reinstatement to the parties and to the court that specifies the date charges will be effective.

Either party may object to the abatement or reinstatement by filing a written objection with the court within 21 days following when the notice was filed, or by filing a motion. If a timely objection is received, the friend of the court shall either set the objection for hearing or complete a support review with an effective date no earlier than the date of filing of that notice.

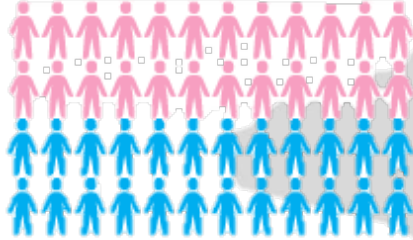
Based on a motion by either party or a recommendation following a review by the friend of the court, the amount abated may be later corrected based on the parties' incomes or ability to pay during the abatement period.



173,566

POPULATION

50.5% female
49.5% male



23,918

IV-D CASELOAD

19,981 cases (84%) of cases
have an attached child
support order.



Muskegon

**MEDIAN HOUSEHOLD
INCOME**



\$50,854

13.5% of county residents
are in poverty

MI



INCARCERATED

#7 highest rate of incarceration
out of 83 counties (in 2015)

8,341



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Muskegon Co. Continued

- Proactive approach to incarcerated individuals
- Standard language has been in orders for over 6 years that states support is abated upon notice of incarceration and reinstated upon release
- Form for parties to complete to notify court of incarceration
- Receive Judgment of Sentence from the court
- State-managed incarceration report



Muskegon Co. Continued

- In 2017, updated policy
- Changed standard language to include incapacitated situations, added that while support will reinstate, a review and modification will also be triggered upon release
 - Note: Incapacitated situations are still a work in progress!
- Stopped retroactive abatements (these do not comply with the law)
- Abatements are implemented in the form of a recommended order
 - Allows both parties the opportunity to object to the abatement.



Muskegon Co. Continued

- Benefits
 - Being proactive results in fewer mandated reviews
 - Improvement in performance
 - Arrears case percentage is doing better
 - Cases are not impacting current support percentage
 - NCP's are not saddled with debt that they will likely never be able to pay
 - Office resources can be devoted to enforcing other cases
- Cons
 - Not a perfect system
 - Federal or other state information is not always available
 - CPs are not always happy



How Can You Make This Work on a Local Level



Last Things...

- Cost of doing nothing
- MCSF next manual
- Your questions:



Thank you!

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