

Incarcerated and Ordered to Pay Child Support: What Happens Next?

What happens to the child support if one of the parties to the case is incarcerated?

What if the case you have is another state's order?

What if the party incarcerated is the payee (custodial parent)?

How does this affect your state and the child support order?

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- What happens to support if a party is incarcerated?
- Less than 6 months or house arrest –party or court may initiate modification
- 6 months or longer - administrative process
 - Following 45 CFR 302.56 and 45 CFR 303.8 (b)(2)
 - 23 Pa. Consolidated Statutes 4352 (a)(2)
 - Effect of incarceration.--Incarceration, except incarceration for nonpayment of support, shall constitute a material and substantial change in circumstance that may warrant modification or termination of an order of support where the obligor lacks verifiable income or assets sufficient to enforce and collect amounts due.



Administrative Modification and Likely Closure

- Pa Rules of Civil Procedure 1910.19 (f)
 - Upon notice to the obligee, with a copy to the obligor, explaining the basis for the proposed modification or termination, the court may modify or terminate a charging order for support and remit any arrears, all without prejudice, when it appears to the court that:
 - (1) the order is no longer able to be enforced under state law; or
 - (2) 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.

PA Rules of Civil Procedure 1910.16-2 (d) (2) (ii)

Administrative process - other party is sent notice of administrative closure and has 60 days to object to closure and request hearing.

At issue is always ability to pay.

Exceptions

- A party's incarceration shall not constitute an involuntary income reduction when the incarceration is due to support enforcement purposes or a criminal offense in which the party's dependent child or the obligee was the victim; and
- The trier-of-fact makes a written finding that downwardly adjusting the incarcerated party's monthly net income would be unjust or inappropriate and, in a child support action, takes into consideration the child's best interest

Example- assets, trust funds, passive income

Pennsylvania





Establishment and Paternity

Incarcerated Defendant Paternity Packet

The DRS mails a packet of information to the putative father at the correctional facility. The packet includes:

- The Cover Letter – Incarcerated Defendant form that provides:
 - Information about the support action;
 - Instructions related to the documents in the packet;
 - DRS contact information for questions the incarcerated individual may have;
 - A deadline for reply; and
 - Details regarding how the support action will proceed based upon the putative father's response or lack thereof.
- The Acknowledgment of Paternity – Waiver of Trial form;
- The Stipulation form;
- The Minimal Date of Release from Incarceration form that is to be returned to the DRS with the estimated minimum date of the putative father's release from incarceration; and
- The Actual Date of Release from Incarceration form that is to be returned to the DRS at the time of the putative father's actual release from incarceration.
- Additional publications and documents sent: • Child Support Folder, • Child Support Handbook, • Child Support Information for Incarcerated Parents; • Establishing Paternity For Your Child Is In Your Hands; • Why Should I Ask To Modify My Support Order?, • A Petition for Modification of an Existing Support Order ;• A DRS telephone and address list; • A form letter for NCPs to use to initially contact the DRS regarding modifying a support order; and, • An information sheet about the Pennsylvania Institutional Law Project

Custodial Parent Incarceration

- Notice often comes from other parent or third party/agency
- Modification may be scheduled by request of a party or custodian of the children
- Modification may be scheduled sua sponte

Pennsylvania

Effect of release

- PA Rules of Civil Procedure 1910.17 Change in Circumstance
- Party Initiated

Re-entry process/effect

- Varies by county
- Employment search orders



Interstate cases

Pennsylvania

- Petition for Establishment
 - Paternity establishment
 - Order /responding state's laws apply
- Charging PA/local order – PA law applied
 - Plaintiff/custodial party incarcerated
 - Defendant/non-custodial party incarcerated
- Charging other state order – follow other state laws
 - Plaintiff/custodial party incarcerated
 - Defendant/non-custodial party incarcerated





Issues

- Notice – interface with prisons is limited and access for genetic testing is taking longer since 2020
- Federal and state run prisons are more uniform in contact
- Private owned/run prisons are difficult and changeable
- Local jails and re-entry centers vary greatly
- Parents do not think to contact the DRS
- We cannot talk with 3rd parties without a release
- Re-entry
 - Growing programs in populous areas are good, not in rural areas
 - Employment, housing, transport, etc.

Child Support & Incarceration

Illinois Law (750 ILCS 5/505(3.3b)):

- Zero-dollar child support order for parents with no income, means-tested assistance, disability, or incarceration.
- **Rebuttable Presumption:** Standard \$40/month minimum order does not apply.

Illinois

Case Law: *IRMO Hari*, 345 Ill. App. 3d 1116 (4th Dist. 2004)

- Incarceration alone does not eliminate child support obligations.
- Trial courts consider:
 - Parent's assets
 - Reason and length of incarceration
 - Potential for work release

Office Policy

- No acceptance of cases where incarceration is due to offense against custodial parent or subject child(ren)



Impact of Another State's Order on Incarcerated Parent

UIFSA Enforcement

- **750 ILCS 22/607(a)**: Incarceration not a defense against child support order registration.
- Burden of proof lies on contesting parent (8 defenses; incarceration not included).

Application of Issuing State's Law

- **750 ILCS 22/604(a)**: Law of issuing state governs support order logistics.
 - Includes payment amount, duration, arrearages, and interest.
- ***IRMO Jones***, 2016 IL App (3d) 150237: Illinois must apply issuing state's law (GA law – a parent does not have a duty to pay for a child's expenses beyond the age of 18).

DCSS Process for Incarceration Cases

- Illinois (as responding state) notifies issuing state of incarceration.
- For modification requests, other state may retract upon learning of zero-dollar order in Illinois; or Illinois could keep registration referral pending until released, then register and modify.



Illinois

Incarcerated Custodial Parent (Payee)

Custody Change Implications

- **Illinois Law:** Incarceration of custodial parent may trigger custody modification.
 - *Naylor v. Kindred*, 250 Ill. App. 3d 997, 1013 (4th Dist. 1993): Incarcerated CP akin to deceased CP.
 - **IMDMA:** Presumption in favor of CP retaining custody may be rebutted if in child's best interest.

Illinois

DCSS Procedures

- **Documentation Required:** CP, NCP, or new caretaker must document child's new residence.
 - **Custody Transfer:** Child support terminated retroactively if NCP gains custody.
 - **Guardianship/Payee Change:** Child support redirected to new caretaker.

Interstate Considerations

- Varies by state; DCSS consults other state's guidelines for payee change.





Effect of Incarceration on Illinois Child Support Orders

Key Issues

- **Arrearages:** Legislative changes to address overwhelming debt.
 - *Turner v. Rogers*: Incarceration for civil contempt is now rare.

Financial Impacts

- **Ongoing Obligation:** Child support continues until modified; incarceration is not “voluntary unemployment.”
 - **Rebuttable Presumption:** Zero-dollar order supports “right-sized” obligations

Potential Income Sources: Disability, rental income, dividend/interest, savings, etc.

Post-Release Resources

- **Project CHILD:** DOC/DCSS collaboration to inform inmates of modification options
 - **Modifications:** Options for downward adjustment.
 - **Referral to HFS:** Access to family resources and support upon release.
 - **Family Resource Connection**

Present Day Re-entry Program in Tennessee

Tennessee

- Modifications for Incarcerated Parents
- Presence in 3 TN Department of Correction Facilities
- Strong Community Presence
- ServiceNow as Case Management System
- 100% TANF Funded



TN Department of Correction Partnership

- Dedicated monthly visits
 - Meet with parents that are scheduled to be released within the next 60 days
 - Meet with parents that have parole hearings within the next 60 days
 - Guest Speakers at TDOC classes
 - Town Halls
 - Resource Fairs
 - ✓ Within the facility
 - ✓ One Stop Shops outside the facility
- Contact in each facility
- Attend monthly meetings
- Individual meetings with facility leadership



Community Presence

Tennessee

TN Fatherhood Conference

Drivers License Clinics

Child Support Offices

Urban League

UpRise Nashville

Local Criminal Court Events

TN Prison Outreach Ministry

CareCuts Resource Fairs

Transitional Houses

American Job Centers

Day Reporting Centers

Tennessee Re-entry Collaboration



Results

Parents Served and Modifications Initiated 2023

- 488 Parents Served
- 574 Modifications Initiated
- 71 Unique Facilities
- 58.12% reduction in monthly child support obligation

Tennessee

Since July 2021

- 1501 Parents Served/1840 Cases
- 34 Direct Service Cases



Future of Re-entry

- Proactively identifying cases for modification
- Presence in all TN Department of Correction facilities
- Focus on family reunification
- Stronger community presence
- Strengthen relationships with our parents, TN Department of Correction, community partners, transitional homes, employers, etc.



What happens to the child support if one of the parties to the case is incarcerated?

- If it is the obligor, review is initiated by our re-entry unit after confirming the obligor will be incarcerated for more than 180 calendar days.
- Income and Expense Affidavit (Notice of Review) is sent to both parties.
- Re-entry staff work directly with the obligor for obtaining and completing information.

What happens to the child support if one of the parties to the case is incarcerated? (continued)

- After 30 days, the income shares worksheet is completed.
- Notice of Review Findings is sent to the obligee and to the obligor through re-entry staff.
- If no objection is filed, an Administrative Order is entered for the modified amount.
- In TN, the modified amount for current support will be our minimum order amount of \$100





What if the case you have is another state's order?

- If another state has Continuing Exclusive Jurisdiction (CEJ), the obligor's residential state is determined and modification request sent to the applicable state if appropriate.
- Re-entry staff assist with the logistical challenges and work directly with the obligor for completing necessary forms, i.e. General Testimony.

What if the party incarcerated is the payee (custodial parent)?

- Caseworker confirms the incarceration location, duration and inmate identification.
- If current is still owed, appropriate legal action is taken based upon the incarceration details.

How does this affect your state and the child support order?

Tennessee

- Tennessee order would need to be modified
- Current support may need to be set for a third party.



What happens to the Child Support if one of the parties to the case is incarcerated?



Child Support Computation Modification

Effective Date For Modification:

Modification are effective the 1st day following the month of filing rather than the date of filing.

Incarceration: Incarceration is now defined as a change of circumstance for a modification

MCNCA Title 6, § 6-232E

Muscogee (Creek) Nation

Effective:
November 1, 2021



E. After November 1, 2021, there shall be a rebuttable presumption that an obligor who is incarcerated for a period of one hundred eighty (180) or more consecutive days is unable to pay child support. Incarceration means an obligor is in custody on a full-time basis in a local, state or federal correctional facility. Incarceration shall not include probation, parole, work release or any other detention alternative program that allows the obligor to be gainfully employed.

1. The obligor's child support obligation shall be abated without court action effective the first day of the month following the date of entry into the correctional facility or jail and shall not accrue for the duration of the incarceration unless the presumption is rebutted by a showing of means to pay under this Title.
2. Upon release from incarceration, the monthly child support obligation shall revert to the pre-incarceration order amount beginning the first day of the month following a lapse of ninety (90) calendar days after release from incarceration.
3. The abatement of a monthly support obligation under this subsection shall not affect any past-due support that has accrued prior to the abatement of the obligation.
4. If any of the crimes for which the obligor is incarcerated are a result of indirect contempt of court for failure to pay child support, the crime of omission to provide child support or for any offense for which the obligee's dependent child or the obligee was a victim, the abatement shall not be presumed and the child support obligation shall continue to accrue.



Abate Child Support While Incarcerated:

Incarcerated means more than 180 consecutive days.

Hope centered & not punitive as NCP has no income while in jail to pay

NCP's child support order shall be abated automatically with no need to modify 1st day of month after goes in prison/jail

Child support does not accrue while incarcerated

Unless presumption is rebutted by showing of obligor's means to pay per

90 days after release, child support reverts back to pre-incarcerated amount

Abatement does not affect any past-due support accrued before incarceration

No abatement if crime is for indirect contempt of court for failure to pay child support or in prison for crime of omission to provide support

Consistent with CSS project to modify incarcerated NCP orders to actual income of \$-0-



Muscogee (Creek) Nation

What if the case you have is
another state's Order?



Muscogee (Creek) Nation

We will work with the state or
tribe to find the most equitable
and just solution



Muscogee (Creek) Nation

What if the party incarcerated
is the payee (custodial parent)?



The Child Support follows the child, more than likely current child support would be stopped or held in abeyance. If the new custodian applied for services, we would continue to collect current support for the new custodian. We typically do an Arrears to Judgment for anything owed to the original custodial parent

Muscogee (Creek) Nation

How does this affect our tribe and the Child Support Order?



Muscogee (Creek) Nation

The child support
order would be
modified





Child Support Computation:

Incarceration Abatement Exceptions:

1. Crimes related to the child support payment

2. Felony or Misdemeanor omission to provide support

Victim of Crime:

If the child or CP is the victim of the crime

Muscogee (Creek) Nation

Case Scenario:



Muscogee (Creek) Nation

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Coming Soon

The ERICSA Bulletin Board

We are thrilled to announce the upcoming launch of The Bulletin Board for ERICSA! This new platform will be your go-to source for the latest news, updates, and essential information in the child support community.

Key Features:

- Upcoming Events
- State, Regional, Tribal, and International Community Insights
- Legislative Updates



Send us your Best Practices



ERICSA is in the process of gathering intergovernmental best practices from the states, territories, tribes, and our international partners, to disseminate to all of our members at future ERICSA events. Please use the email address info@ericsa.org and the heading “Intergovernmental Best Practices” in the subject field and send us the top ideas you have seen different jurisdictions use when working interstate cases. We will gather your recommendations and send them out shortly. Thank you so much!

2024
Intergovernmental
Webinar



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THANK YOU FOR ATTENDING
