



## Modification for Incarcerated Parents

### Overview

The majority of federal and state prisoners are parents, and many have child support orders that were established before incarceration.<sup>1</sup> Incarceration can result in the accumulation of high levels of child support debt because parents have little to no ability to earn income while they are incarcerated and reduced ability to pay off the debt when released.<sup>2</sup> Studies find that incarcerated parents leave prison with an average of \$20,000 or more in unpaid child support, with no means to pay upon release.<sup>3</sup> This accumulated child support debt is rarely paid. Research finds that uncollectible debt substantially reduces noncustodial parent earnings, which in turn reduces child support payments to their families. One study found that people released from jail are unemployed 9 weeks more per year and annual earnings are reduced by 40%.<sup>4</sup> On the other hand, reducing uncollectible debt can increase payments.<sup>5</sup>

The goal of the [final rule](#) revisions is to increase consistent child support payments for children by setting child support orders based on the noncustodial parent's earnings, income, or other evidence of ability to pay, including for incarcerated parents. Children do not benefit when their parents engage in a cycle of nonpayment, underground income generation, and re-incarceration. Support orders modified for incarcerated parents, based on their current ability to pay, result in less debt accrual, more formal employment, more child support payments, and less need for enforcement after they are released.

Despite the significant research on the consequences of continuing the accrual of support when it is clear there is no ability to pay, about one quarter of states treat incarceration as “voluntary unemployment”. These “voluntary unemployment” rules typically pre-date the federal review and adjustment statute that requires states to modify support orders when parents experience a substantial change in circumstances, and block the federal rule's application.

### What is new

The final rule provides that state guidelines under 45 CFR 302.56(c)(3) may not treat incarceration as “voluntary unemployment” in establishing or modifying child support orders. The new rule prohibits states from legally barring modification of support obligations during incarceration. We have also revised § 303.8(c) to indicate that the reasonable quantitative standards that the state develops for review and adjustment must not treat incarceration as a legal bar for petitioning for and receiving an adjustment of an order.

Existing review and adjustment regulations specify the requirements that a state must meet for adjusting to child support orders in IV-D cases. The rule adds a requirement that state child support agencies may elect in its state plan to initiate review of an order after learning that a noncustodial parent will be incarcerated more than 180 calendar days. If the state has not elected this new option, then within 15 business days of learning that the noncustodial parent will be incarcerated more than 180 calendar days, the state must notify both parents of their right to request a review.

### How this affects states

States should determine whether they have “voluntary unemployment” policies or standards that legally prevent incarcerated parents from obtaining a review and adjustment of their orders upon a showing of a substantial change in circumstances. If so, they must conform their policies within one year after completion of the first quadrennial review of the state's guidelines that commences more than one year after publication of the final rule. Since states may elect to initiate the review upon learning of the noncustodial parent's incarceration for over 180 calendar days, we encourage states to implement this proactive approach to ensure that orders are based on the noncustodial parent's ability to pay during his or her incarceration. When modifying orders, states may consider an incarcerated parent's income and assets in setting the order amount. In electing this state plan option, the state may also need to consider whether further changes to state laws are required to implement this procedure.

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A number of states conduct data matches with correctional facilities in the state to determine whether a parent is incarcerated. We encourage, but are not requiring states to actively establish partnerships with federal, state, local, and private prisons to conduct data matches to locate, as well as to educate incarcerated parents about the child support program. We encourage states to develop electronic interfaces with corrections institutions to maximize the identification of incarcerated parents and to implement outreach strategies designed to educate incarcerated parents of their rights to request reviews of their support orders, which will help to increase program efficiency.

## How this affects families

Setting and modifying realistic child support obligations for incarcerated parents can improve their ability to provide consistent support for their children upon release from prison.<sup>6</sup> With this rule change, formerly incarcerated noncustodial parents will be more likely to meet their child support obligations, benefiting their children by improving child support compliance and reliability, and reducing uncollectable debt. Other collateral consequences associated with orders set beyond a noncustodial parent's ability to pay may also decline, such as increased underground employment activity and reduced contact with their children. We also expect that more incarcerated parents learn about their right to request a review of their child support orders early in their prison terms in an effort to manage their debt.

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1. Christopher Mumola, *Incarcerated Parents and Their Children*, Bureau of Justice Statistics Special Report, August 2000, NCJ 182335.
  2. Council of State Governments, *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*, Justice Center, 2005, available at: <http://www.csgjusticecenter.org/wp-content/uploads/2013/04/1694-11.pdf>. For further background, see Jessica Pearson's article, Pearson, Jessica, "Building Debt While Doing Time: Child Support and Incarceration," *Judges' Journal* 43:1, Winter 2004, available at: <https://csdaca.org/wp-content/uploads/2014/11/BuildingDebt-2.pdf>.
  3. U.S. Department of Health and Human Services, Office of Child Support Enforcement, *Incarceration, Reentry, and Child Support Issues: National and State Research Overview*, 2006; Pamela Ovwigho, et al., *The Intersection of Incarceration and Child Support: A Snapshot of Maryland's Caseload*, School of Social Work, University of Maryland, 2005; Esther Griswold and Jessica Pearson, *Twelve Reasons for Collaboration Between Departments of Correction and Child Support Enforcement Agencies*, *Corrections Today*, June 2003.
  4. See our, "Jobs not Jail Infographic", published October 2015 on OCSE website at: [http://www.acf.hhs.gov/sites/default/files/programs/css/jobs\\_not\\_jail\\_final\\_10\\_02.pdf](http://www.acf.hhs.gov/sites/default/files/programs/css/jobs_not_jail_final_10_02.pdf) and *Collateral Costs: Incarceration's Effect on Economic Mobility*. The Pew Charitable Trusts. (2010, September), available at: [http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes\\_assets/2010/collateralcosts1pdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2010/collateralcosts1pdf.pdf).
  5. For further information, see Carolyn J. Heinrich, Brett C. Burkhardt, and Hilary M. Shager, *Reducing Child Support Debt and Its Consequences: Can Forgiveness Benefit All?* (2010), available at: [http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/2007-09/FamiliesForward\\_3\\_19\\_10.pdf](http://www.irp.wisc.edu/research/childsup/cspolicy/pdfs/2007-09/FamiliesForward_3_19_10.pdf); Maria Cancian, Carolyn Heinrich, and Yiyoon Chung, *Does Debt Discourage Employment and Payment of Child Support?* (2009), available at: <http://www.irp.wisc.edu/publications/dps/pdfs/dp136609.pdf>; and Harry Holzer, Paul Offner, and Elaine Sorensen, *Declining Employment Among Young Black Less-Educated Men: The Role Of Incarceration and Child Support* (2004), available at: [http://www.urban.org/uploadedpdf/411035\\_declining\\_employment.pdf](http://www.urban.org/uploadedpdf/411035_declining_employment.pdf).
  6. Alicia Bannon, Mitali Nagrecha and Rebekah Diller, *Criminal Justice Debt a Barrier to Reentry*, Brennan Center for Justice, 2010; *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*, Council of State Governments, 2005; Esther Griswold and Jessica Pearson, *Twelve Reasons for Collaboration between Departments of Correction and Child Support Enforcement Agencies*, *Corrections Today*, June 2003.