



Child Support Bulletin – December 2017

Inmates and Low-Income Obligor

Beginning January 1, 2018, there will be a [change](#) in how child support obligations are determined for low-income parents, including parents incarcerated under a sentence of 180 days or more.

A parent with less than \$750 net income per month will no longer have a child support obligation, in recognition of the fact the parent lacks the means to support himself or herself at a subsistence level and there are other economic supports available for the child. As a practical matter, these cases will be infrequent, because able-bodied parents who are unemployed or underemployed will have income imputed at least at federal hourly minimum wage for 40 hours per week, which is higher than the \$750 threshold. For parents who can show that imputation of income is not appropriate under the guidelines, their obligation will now be reserved or set at zero rather than a small amount under the previous guidelines. This change reflects a low-income parent's lack of actual ability to pay and implements a 2016 federal requirement that state child support guidelines provide for the subsistence needs of the parent "by incorporating a low-income adjustment, such as a self-support reserve." 45 CFR § 302.56(c)(1)(ii).

The change in the child support guidelines for low-income parents coincides with the effective date of a new state law regarding parents who are sentenced to incarceration of 180 days or more and are therefore unable to work. The law, [N.D.C.C. § 14-09-09.38](#), does two things. First, any existing child support obligation established under North Dakota law expires 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. Second, in order to re-establish an obligation while the parent remains incarcerated, the obligation must be based on the actual income of the parent (which will almost never exceed the \$750 minimum in the guidelines) rather than imputed income. The corresponding amendments to the child support guidelines provide that income will not be imputed to the obligor for six months following release. If the parent becomes employed within the first six months after being released, a child support obligation can be re-established using the parent's actual income. Again, all of these changes are limited to parents who are incarcerated under a sentence of 180 days or more; the obligation of parents who are incarcerated under a shorter sentence will not be changed under the new law.

The 2016 federal rulemaking required states to adopt procedures for changing the obligation of parents who are incarcerated for more than 180 days. One of the options available to states under the federal rule was to change the parent's obligation by operation of law. This option was selected to conserve judicial resources, since there are few, if any, disputed facts relevant to a child support obligation when the parent is incarcerated with no ability to earn income.

North Dakota's law also departs from the minimum required in the federal rule by looking at the length of the parent's sentence, as opposed to the length of time the parent is incarcerated. The actual amount of time a parent will be incarcerated is often difficult to know at the time of sentencing, and the parent's loss of ability to pay begins immediately upon incarceration. The approach under the new law will help reduce the accrual of uncollectible arrears. In part, North Dakota took this approach because the Child Support Division is available to help re-establish obligations after the parent is released, even if the actual period of incarceration is shorter than 180 days.

Based on questions arising during legislative testimony, floor debate, and discussions within the Child Support Division, the following details may be helpful:

- The law does not condone the behavior of the incarcerated parent, but recognizes the collectability of the arrears and the difficulty the arrears can create when the parent has been released and is trying to become self-sufficient.
- The law applies to incarceration as a result of a sentence, and thus does not apply to civil commitment or incarceration as a sanction for contempt of court.
- The law applies prospectively to any parent who is incarcerated on or before January 1, 2018, under a sentence of 180 days or more, even if the parent will soon be released. Any accruals of support prior to January 1, 2018, will not be affected.
- If the obligation is the result of equal or split residential responsibility, the offset cannot be implemented and the obligation of each parent will expire.
- The phrase "child support" usually includes spousal support if owed under the same order to the same payee (N.D.C.C. § 14-09-09.10(3)), "unless the context or subject matter requires otherwise." The context of the new law is the monthly support obligation determined under the child support guidelines, which does not include any spousal support.
- The duty to provide health insurance or other medical support for the child is a component of the child support obligation as defined in N.D.C.C. § 14-09-09.10(3), and thus expires along with the monthly amount determined under the guidelines.
- When a parent is released, the monthly support obligation does not automatically revert to the obligation prior to incarceration, since a convicted parent's earning ability is often significantly compromised by his or her criminal history.

The changes in the child support guidelines do not supplant the next quadrennial review of the guidelines, which is scheduled to begin around May 2018.

Parents affected by the law change will be notified by the Child Support Division. We are also working with court administration for obligations to expire on the state's official records.

Questions may be directed to James Fleming, Child Support Director, at 328-3582 or jfleming@nd.gov.