



Changing Incarceration from “Voluntary Unemployment” in Child Support Matters

Proposed Legislation: Under recent federal regulations, incarceration may not be treated as voluntary unemployment in establishing or modifying child support orders. 45 CFR § 302.56 (c)(3).¹ We propose an automated process to modify child support orders when someone is incarcerated for over 180 consecutive days.

Current System: Incarceration is treated as voluntary unemployment; child support orders are not modified.

Proposed Process change: Modification of child support orders will become an *automatic* process for those within SCDC. The same rights and obligations would apply for those in county jails, ICE detention facilities or involuntarily committed, but the process would not be automated as of yet. The support obligation for the time incarcerated would be set to \$0. There are carve outs (those who can afford to pay, offenses against the child).

Benefits:

- Necessary compliance with federal requirements.
- Judicial and agency efficiency and economy.
- Obligor will leave incarceration with the same amount of child support arrears that were due at the time of incarceration.
- Obligor will not be forced into underground employment in an effort to clear past child support arrears while also maintaining current child support payments.
- Studies show such a change increases the likelihood that the obligor will make on-time payments.
- It is less likely that obligor will be pushed out of child’s life, which has a significant benefit to the child.
- The process would reduce the amount of uncollectible debt that accumulates each year.
- Child support orders will reflect obligor’s ability to pay, which is also a required analysis under Supreme Court precedent and the federal regulations.
- **Most importantly, children benefit.**
 - “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.”²

Next steps:

- Continued stakeholder meetings: DSS, SCDC, County Jail Administrators, Court Administration, community groups.
- Build a community coalition.
- Identify sponsors, refine draft legislation and file.

¹ A full text of the rules is available at <https://www.govinfo.gov/content/pkg/FR-2016-12-20/pdf/2016-29598.pdf>.

² Modifications for Incarcerated Parents, Office of Child Support Enforcement, available at https://www.acf.hhs.gov/sites/default/files/programs/css/fem_final_rule_incarceration.pdf.