

# Reducing Your Child Support Payments Due to Incarceration

## ARE YOU PAYING MORE IN CHILD SUPPORT EACH MONTH THAN YOU CAN AFFORD?

Even if your personal circumstances change, you still have to pay child support (this includes if you were incarcerated and owe a lot of back child support). Below are some tips to help you identify child support issues and possible steps to fix them.

### Important Terms:

- Custodial Parent: parent with whom the child primarily lives.
- Non-Custodial Parent: parent with whom the child does not primarily live.
- Child Support: court-mandated payments provided by the non-custodial parent until the child or children are 21 years of age.
- Current payment: what a non-custodial parent currently owes for a child support payment.
- Accrued: child support debt that has piled up/added up over time.
- Arrears: unpaid child support owed by a non-custodial parent
- Garnishing: court order stopping a person's earnings in order to pay a debt
- Exempted Sources: types of income that cannot be taken away, such as Social Security Income (SSI), Social Security Disability Income (SSDI), etc.
- Administrative Review: conducted by the Child Support Collection Unit to decide if a previous decision should continue unchanged without attending court.
- Child Support Modification: request made to the court to change the amount of the current child support payments.
- Arrears Cap: if the person who owes a debt has an income that is at or below the federal poverty level, there is a \$500.00 limit on the amount of child support debt owed..
- Self-Support Reserve: the amount of money a parent needs for his or her own support before they have to pay child support.

- Pro Se: person representing himself/herself in court, filing an action without attorney assistance.
- Confession of Judgment: Child Support Collection Unit tool. A non-custodial parent gives up their right to fight arrears or change the amount of their child support payment.

## Who is this information for?

1. Non-Custodial Parents who:
  - Cannot afford their current child support payments or
  - Have child support debt from while they were incarcerated (must have been incarcerated October 2010-Present).

## What should I do if I owe child support?

1. Find out how much you owe. You can check your current payments or balance:
  - through the link below by completing the steps: <https://www.ny.gov/services/find-status-your-child-support-payment-or-balance-online> or
  - by contacting your local Child Support Office and requesting a printout of your “child support balance.”
2. Request payment information.
  - If you have multiple child support orders, then you must request a balance statement for each obligation.
  - Request a copy of your payment history from your local Child Support Office to check that all payments have been correctly recorded.
    - Note: If payments are made directly to the custodial parent, the local Child Support Office will not have a record of these payments.
      - If both parties can agree on an amount, then the issue can be resolved through an administrative process at the Child Support Office.
      - If the parties cannot agree, then the non-custodial parent must make a motion, usually in Family Court, seeking credit for any direct payments.
      - The amount of direct credit given by the Child Support Collection Unit is determined in court through an application.

- If the payment information records are wrong, you have the right to request an administrative review. Your situation will be reevaluated to decide if the current decision should continue or be changed.
  - A Mistake of Fact form can be used to request a review of your child support balance if the amount is incorrect.
  - The Mistake of Fact Form can be found here:  
<https://childsupport.ny.gov/dcse/pdfs/mistakeFact.pdf>
- 3. Modify your payment. If you have to make child support payments right now, but you are low-income, your payment can be modified (reduced).

## **How do I know if my payment can be reduced?**

### **Your life circumstances have changed a lot since your last child support order was decided. Examples:**

- You are unable to work due to disability.
- You were incarcerated. This applies if your conviction is unrelated to the subject child or the non-custodial parent. For example, you are ineligible for a modification if you were convicted of harming your child or the child's parent.
- You are about to be incarcerated. If you know that you will be incarcerated soon, you can file a petition to reduce your payments from the time that you begin serving your sentence.
- Your previous order was issued over three years ago.
- Your income or the custodial parent's income has changed by 15% or more.

## **How do I modify my child support payments during or before incarceration?**

- First, you must file a petition with the appropriate Family Court. You may file the petition in the Family Court of the county where you live, or the county where the custodial parent lives.
- You should include in the petition that you want to modify your child support payment amount and explain why the court should accept your request.
- You must submit a completed personal information form with the petition:  
<http://ww2.nycourts.gov/forms/familycourt/childsupport.shtml>
- Visit <https://www.nycourts.gov/courthelp/>.
  - Under Families & Children, select Support.

- Select Getting Help and navigate to the Support Modification and Enforcement/Violation Program link.
- You will be given do-it-yourself resources to request a child support obligation modification on a pro bono basis.
- You may also contact the clerk's office of the Family Court in your county for forms and filing assistance.
- You should file for a modification as soon as possible because the court can change the order going back to the date of filing (but not before).

## **What Can I Do If I Have Arrears? (Unpaid Child Support That I Owe)**

### 1. Try to cap the amount.

- A non-custodial parent can file a motion asking the court to limit the arrears owed to \$500, if the debt added up while the non-custodial parent's income was at or below the federal poverty level.
- To apply for arrears to be capped (limited to \$500), the non-custodial parent must prove that their income was at or below the federal poverty level when the arrears were adding up. The federal Department of Health and Human Services determines the federal poverty level each year.
- If the arrears are related to incarceration, in order to be eligible to be capped, generally, the arrears must have accumulated (added up) under a child support order that was issued on or after October 13, 2010.
- Your motion should include proof of income.
  - In addition to documents showing evidence of earned income (for example, tax returns or W-2 statements), proof of unearned income may also show your income below the federal poverty level.
  - Documents showing receipt of Supplemental Security Income (SSI) or public assistance in a particular year will show your income was at or below the poverty level.
- You will need to submit proof of incarceration to show that you had no income.
- You must contact the facility where you were incarcerated to get documents showing your incarceration dates so that the Family Court can thoroughly review your request to cap child support arrears.

### 2. There are forms of income that cannot be garnished.

- Under New York State and Federal law, some kinds of income and benefits cannot be taken by a creditor and are protected from debt collection.
- The following sources of income are protected by law:
  - Social Security Income (SSI)
  - Social Security Disability Income (SSDI)
  - Veteran Benefits
  - Public Assistance (Welfare)
  - Spousal Support or Maintenance (Alimony) ordered by a Court
  - Child Support Ordered by a Court
  - Disability Benefits

### 3. How much can be garnished?

- The non-custodial parent is responsible for providing financial support for the child until they reach age 21. However, Child Support Unit can only garnish your wages:
  - Up to 50% if you are supporting other children who are not the subject of the child support order, and
  - Up to 60% for someone who does not provide for any other children.
- If the noncustodial parent's income is determined to be at or below the federal poverty level for a single person, the support amount is usually \$25 per month.
- When income is at or below the self-support reserve (135% of the federal poverty level), but above the federal poverty level, the support amount is \$50 per month.

## **What are possible consequences of having arrears?**

### 1. Driver's license suspension.

- To avoid suspension of your driver's license because of potential missed payments, you must make full payment within 45 days, enter a Satisfactory Payment Arrangement, or have a challenge upheld.
- You can challenge the suspension by completing a Driver License Suspension Request or Challenge and an Affidavit of Net Worth.
  - Return these forms to the Support Collection Unit (SCU), where your child support account is located.
  - If your challenge is upheld, your license will not be suspended.

## 2. Restricted license through the DMV.

- Your driver's license will be suspended if you are four months behind on child support payments.
  - When this happens, you will receive this notice in the mail: Notice Regarding Your Driving Privileges and Your Failure to Pay Child Support.
  - Contact your local child support collection unit to make a payment and clear the suspension.
  - By law, the DMV must be directed to clear/remove a child support suspension by the Office of Temporary and Disability Assistance (OTDA).
  - Once OTDA tells the DMV to lift the suspension, you may continue submitting your online request for relicensing.
- If your license has been suspended due to your failure to pay child support, you may qualify for a restricted-use license.
  - You are eligible as long as your license was not suspended or revoked under violations relating to alcohol or drugs.
  - This is a conditional or limited license that can only be used under certain conditions, including driving to and from your place of employment or education when required.
  - You must apply for a restricted use license in person at a New York DMV office.
  - Not all DMV offices have the ability to take these applications. Contact your nearest DMV to find out where to apply.

## 3. Tax refund withholding

- To avoid having your tax refund intercepted, you must either:
  - pay the total amount past due, or
  - file a challenge (Request Administrative Review) by the date in the notice.

## 4. Effects on your credit

- When your account is more than 2 months past due, or when the amount past due is more than \$1,000, your name may be submitted to the major consumer credit reporting agencies (credit bureaus).
- You may have difficulty getting a loan or other credit until the overdue child support is paid.
- You must:
  - reduce the past-due amount to less than \$1,000, or

- less than the amount to be paid for 2 months, or
- claim a mistake of fact within ten days.

#### 5. Bank seizure

- Only for non-exempted sources of income.
- Your bank account(s) may be frozen when:
  - your child support account is more than two months past due,
  - you owe more than \$300,
  - there is no income withholding order,
  - no payments have been received in 45 days, and/or
  - when the sum of the reported asset balances equals or exceeds \$3,000.
- If your bank account(s) have been frozen, you must either pay the amount shown in the notice or file a claim (mistake of fact or exempt funds) within 15 days.

### **Meeting with the Child Support Unit**

1. When meeting with the Child Support Unit, they may ask you to sign a Confession of Judgement form.
  - But, in doing so, you waive your right to challenge your arrears or modify your current child support payment.
  - Be aware that this should be the very last option that you have.

### **Additional Services**

The Pro Se or Self-Represented Services Help Center can provide you with assistance if you wish to take action on your own:

<https://ww2.nycourts.gov/COURTS/nyc/family/selfrepresented.shtml>.

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