



Modification of Child Support Due to Incarceration 2017/2018 Legislation and Existing Statutes

The state legislation information has been excerpted from NCSL's Child Support and Family Law Legislation Database, which is powered by StateNet, a product of LexisNexis. All bill summaries are excerpted from StateNet bill summaries. The statutes were accessed using Westlaw.

All bill text and language can be accessed on the Child Support and Family Law Legislation Database website.

State	State Legislation	State Statutes
Alabama		
Alaska		
Arizona		
California	2015-2016 CA AB 610 (Enacted): Specifies that the suspension of the child support order occurs by operation of law. Authorizes the local child support agency to administratively adjust account balances for cases managed by the agency if the agency verifies that arrears and interest were accrued in violation of these provisions. Provides procedures and actions regarding the adjustment of support while the obligor is incarcerated, if both parties agree. Provides agency adjustment if both parties disagree to the previous adjustment.	Cal. Fam. Code § 4007.5 (a) Every money judgment or order for support of a child shall be suspended, by operation of law, for any period exceeding 90 consecutive days in which the person ordered to pay support is incarcerated or involuntarily institutionalized, unless either of the following conditions exist: (1) The person owing support has the means to pay support while incarcerated or involuntarily institutionalized. (2) The person owing support was incarcerated or involuntarily institutionalized for an offense constituting domestic violence, as defined in Section 6211, against the supported party or supported child, or for an offense that could be enjoined by a protective order pursuant to Section 6320, or as a result of his or her failure to comply with a court order to pay child support. (b) The child support obligation shall resume on the first day of the first full month after the release of the person owing support in the amount previously ordered, and that amount is presumed to be appropriate under federal and state law. This section does not

		preclude a person owing support from seeking a modification of the child support order pursuant to Section 3651, based on a change in circumstances or other appropriate reason.
Colorado		
Connecticut	2017 CT HB 7131 (Enacted): requires modification of a child support order to zero dollars if the child support obligor is institutionalized or incarcerated, after a determination that the child support obligor has no other assets or income that could pay the support amount. Allows the custodial parent to object to the modification and provides the procedural requirements for the custodial parent to object. Requires the child support order to be reinstated to the prior amount ninety days after the obligor is released. Details procedural requirements necessary to modify and reinstate the child support order.	Conn. Gen. Stat. § 46b-215e (a) Notwithstanding any provision of the general statutes, whenever a child support obligor is institutionalized or incarcerated, the Superior Court or a family support magistrate shall establish an initial order for current support, or modify an existing order for current support, upon proper motion, based upon the obligor's present income and substantial assets, if any, in accordance with the child support guidelines established pursuant to section 46b-215a. Downward modification of an existing support order based solely on a loss of income due to incarceration or institutionalization shall not be granted in the case of a child support obligor who is incarcerated or institutionalized for an offense against the custodial party or the child subject to such support order.
Delaware	2017 DE SB 81 (Pending-Carryover): SYNOPSIS - According to the National Conference of State Legislatures, on average, an incarcerated parent with a child support order has the potential to leave prison with nearly \$20,000 in child support debt, having entered the system with around half that amount owed. This national statistic is consistent with Delaware, where the average child support debt for those currently incarcerated in Delaware is \$10,000. Failing to recognize the inability to pay while incarcerated undermines the obligor's ability to make a successful transition and meet their obligations post-release, including the ability to pay child support. Delaware Family Court Rules will consider a term of incarceration that exceeds 1 year as evidence of a diminished earning capacity but the incarcerated parent needs to file a motion asking the Family Court for relief from the Child Support Order. The vast majority of incarcerated parents do not have independent income, resources, or assets with which to pay an obligation of child support consistent with their pre-incarceration circumstances. This Act automatically suspends child support orders when a defendant is incarcerated or involuntarily committed for over 180 days unless the defendant has the means to pay support while incarcerated or involuntarily committed, the defendant is incarcerated for a crime of domestic violence against the custodial relative or the supported child or is incarcerated for failure to comply with an order to pay child support.	

Florida		
Georgia	2018 GA SB 427 (Enacted): A determination of willful or voluntary unemployment or underemployment shall not be made when an individual's incarceration prevents employment.	<p>Ga. Code § 19-6-15</p> <p>(4) Reliable evidence of income.</p> <p>(D) Willful or voluntary unemployment or underemployment. In determining whether a parent is willfully or voluntarily unemployed or underemployed, the court or the jury shall ascertain the reasons for the parent's occupational choices and assess the reasonableness of these choices in light of the parent's responsibility to support his or her child and whether such choices benefit the child. A determination of willful or voluntary unemployment or underemployment shall not be limited to occupational choices motivated only by an intent to avoid or reduce the payment of child support but can be based on any intentional choice or act that affects a parent's income. <u>A determination of willful or voluntary unemployment or underemployment shall not be made when an individual's incarceration prevents employment.</u> In determining willful or voluntary unemployment or underemployment, the court may examine whether there is a substantial likelihood that the parent could, with reasonable effort, apply his or her education, skills, or training to produce income. Specific factors for the court to consider when determining willful or voluntary unemployment or underemployment include, but are not limited to:</p>
Hawaii		
Idaho		
Illinois	2017 IL HB 236 (Pending): Amends the Public Aid Code, the Unified Code of Corrections, and the Marriage and Dissolution of Marriage Act; provides that subject to federal approval, a person's obligation to pay child support pursuant to a court or administrative order is suspended by operation of law during any period that the person is committed to the custody of the Department of Corrections or the Department of Juvenile Justice.	<p>Ill. Rev. Stat. ch. 750, § 5/505</p> <p>(3.3a) Minimum child support obligation. There is a rebuttable presumption that a minimum child support obligation of \$40 per month, per child, will be entered for an obligor who has actual or imputed gross income at or less than 75% of the most recent United States Department of Health and Human Services Federal Poverty Guidelines for a family of one person, with a maximum total child support obligation for that obligor of \$120 per month to be divided equally among all of the obligor's children.</p> <p>(3.3b) Zero dollar child support order. For parents with no gross income, who receive only means-tested assistance, or who cannot work due to a medically proven disability, incarceration, or institutionalization, there is a rebuttable presumption that the \$40 per month minimum support order is inapplicable and a zero dollar order shall be entered.</p>

<p>Indiana</p>	<p>2018 IN SB 179 (Enacted): Relates to child support; provides that incarceration of a parent may not be considered to be voluntary unemployment in determining an amount to be ordered for support of a child; provides that a court may modify the child support order, or approve a proposed modification, without holding a hearing, if a petition order based on incarceration of a party is filed, and if no party timely files an objection or a request for a hearing.</p>	<p>Ind. Code § 31-16-6-1 (f) In determining the amount to be ordered for support of a child, incarceration of a parent may not be considered to be voluntary unemployment.</p> <p>Ind. Code § 31-16-8-1 (d) Incarceration may constitute a change in circumstances so substantial and continuing as to make terms of an order unreasonable.</p> <p>Ind. Code § 31-16-8-4 Sec. 4. If: (1) a petition to modify a child support order based on incarceration of a party is filed; and (2) no party files an objection or request for a hearing within thirty (30) days after receiving notice; the court may modify the child support order, or approve a proposed modification, without holding a hearing.</p> <p>Ind. Code § 31-25-4-17 (a) The bureau shall do the following: (8) Beginning July 1, 2019, not later than fifteen (15) days after learning that an obligor in a Title IV-D case is or may be incarcerated for a period of at least one hundred eighty (180) calendar days, notify both parties of each party's right to request a modification of the child support order.</p>
<p>Iowa</p>		
<p>Louisiana</p>	<p>2017 LA HB 680 (Enacted): Suspends child support while a parent is incarcerated</p> <p>2018 LA HB 576 (Enacted): Relates to child support; provides relative to child support obligations; provides relative to the incarceration of the obligor; provides procedures for the temporary modification or suspension of child support orders.</p>	<p>La. Rev. Stat. § 9:311 (effective Jan. 1, 2019) D. A material change in circumstance need not be shown for either of the following purposes: (1) To modify a child support award to include a court-ordered award for medical support. (2) To suspend or modify a child support award in accordance with R.S. 9:311.1. E. If the court does not find good cause sufficient to justify an order to modify child support or the motion is dismissed prior to a hearing, it may order the mover to pay all court costs and reasonable attorney fees of the other party if the court determines the motion was frivolous.</p>

		<p>F. The provisions of Subsection E of this Section shall not apply when the recipient of the support payments is a public entity acting on behalf of another party to whom support is due.</p> <p>La. Rev. Stat. § 9:311.1 (effective Jan. 1, 2019)</p> <p>A. In accordance with the provisions of this Section, every order of child support shall be suspended when the obligor will be or is incarcerated for any period of one hundred eighty consecutive days or more, unless any of the following conditions exist:</p> <p>(1) The obligor has the means to pay support while incarcerated.</p> <p>(2) The obligor is incarcerated for an offense against the custodial party or the child subject to the support order.</p> <p>(3) The incarceration resulted from the obligor's failure to comply with a court order to pay child support.</p>
Maine		
Maryland		
Massachusetts		
Michigan		<p>Mich. Comp. Laws § 552.517</p> <p>(f) At the initiative of the office, if there are reasonable grounds to believe that the amount of child support awarded in the judgment should be modified or that dependent health care coverage is available and the support order should be modified to include an order for health care coverage. Reasonable grounds to review an order under this subdivision include any of the following:</p> <p>(i) Temporary or permanent changes in the physical custody of a child that the court has not ordered.</p> <p>(ii) Increased or decreased need of the child.</p> <p>(iii) Probable access by an employed parent to dependent health care coverage.</p> <p>(iv) Changed financial conditions of a recipient of support or a payer, including any of the following:</p> <p>(A) Application for or receipt of public assistance, unemployment compensation, or worker's compensation.</p> <p>(B) Incarceration or release from incarceration after a criminal conviction and sentencing to a term of more than 1 year. Within 14 days after receiving information that a recipient of support or payer is incarcerated or released from incarceration as described in this sub-subparagraph, the office shall initiate a review of the order.</p>
Minnesota		<p>Minn. Stat. § 518A.32</p> <p>Subd. 3. Parent not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis. A</p>

		<p>parent is not considered voluntarily unemployed, underemployed, or employed on a less than full-time basis upon a showing by the parent that:</p> <p>(1) the unemployment, underemployment, or employment on a less than full-time basis is temporary and will ultimately lead to an increase in income;</p> <p>(2) the unemployment, underemployment, or employment on a less than full-time basis represents a bona fide career change that outweighs the adverse effect of that parent's diminished income on the child; or</p> <p>(3) the unemployment, underemployment, or employment on a less than full-time basis is because a parent is physically or mentally incapacitated or due to incarceration, except where the reason for incarceration is the parent's nonpayment of support.</p>
Mississippi		
Missouri		
Nebraska	<p>2018 NE LB 702 (Enacted): Revises provisions relating to children's health care coverage; revises provisions relating to child support program modification procedures; revises child support procedures as relates to incarcerated individuals; provides that incarceration may not be treated as voluntary unemployment in establishing or modifying support orders.</p>	<p>Neb. Rev. Stat. § 43-512.15</p> <p>(1) The county attorney or authorized attorney, upon referral from the Department of Health and Human Services, shall file a complaint to modify a child support order unless the attorney determines in the exercise of independent professional judgment that:</p> <p>(a) The variation from the Supreme Court child support guidelines pursuant to section 42-364.16 is based on material misrepresentation of fact concerning any financial information submitted to the attorney;</p> <p>(b) The variation from the guidelines is due to a voluntary reduction in net monthly income. For purposes of this section, a person who has been incarcerated for a period of one year or more in a county or city jail or a federal or state correctional facility shall be considered to have an involuntary reduction of income unless (i) the incarceration is a result of a conviction for criminal nonsupport pursuant to section 28-706 or a conviction for a violation of any federal law or law of another state substantially similar to section 28-706, (ii) the incarcerated individual has a documented record of willfully failing or neglecting to provide proper support which he or she knew or reasonably should have known he or she was legally obligated to provide when he or she had sufficient resources to provide such support, or (iii) the incarceration is a result of a conviction for a crime in which the child who is the subject of the child support order was victimized; or</p>

		<p>(c) When the amount of the order is considered with all the other undisputed facts in the case, no variation from the criteria set forth in subdivisions (1)(a) and (b) of section 43-512.12 exists.</p> <p>(2) The department, a county attorney, or an authorized attorney shall not in any case be responsible for reviewing or filing an application to modify child support for individuals incarcerated as described in subdivision (1)(b) of this section.</p> <p>(3) The proceedings to modify a child support order shall comply with section 42-364, and the county attorney or authorized attorney shall represent the state in the proceedings.</p> <p>(4) After a complaint to modify a child support order is filed, any party may choose to be represented personally by private counsel. Any party who retains private counsel shall so notify the county attorney or authorized attorney in writing.</p>
Nevada		
New Hampshire		
New Jersey		
New Mexico		
New York		<p>N.Y. Family Court Act § 451</p> <p>3. (a) The court may modify an order of child support, including an order incorporating without merging an agreement or stipulation of the parties, upon a showing of a substantial change in circumstances. Incarceration shall not be a bar to finding a substantial change in circumstances provided such incarceration is not the result of non-payment of a child support order, or an offense against the custodial parent or child who is the subject of the order or judgment.</p> <p>N.Y. Dom. Rel. § 236</p> <p>(2)(i) The court may modify an order of child support, including an order incorporating without merging an agreement or stipulation of the parties, upon a showing of a substantial change in circumstances. Incarceration shall not be a bar to finding a substantial change in circumstances provided such incarceration is not the result of nonpayment of a child support order, or an offense against the custodial parent or child who is the subject of the order or judgment.</p> <p>(ii) In addition, unless the parties have specifically opted out of the following provisions in a validly executed agreement or stipulation</p>

		<p>entered into between the parties, the court may modify an order of child support where:</p> <p>(A) three years have passed since the order was entered, last modified or adjusted; or</p> <p>(B) there has been a change in either party's gross income by fifteen percent or more since the order was entered, last modified, or adjusted. A reduction in income shall not be considered as a ground for modification unless it was involuntary and the party has made diligent attempts to secure employment commensurate with his or her education, ability, and experience.</p>
North Carolina		<p>N.C. Gen. Stat. § 50-13.10</p> <p>(d) For purposes of this section, a child support payment or the relevant portion thereof, is not past due, and no arrearage accrues:</p> <p>(4) During any period when the supporting party is incarcerated, is not on work release, and has no resources with which to make the payment.</p>
North Dakota	<p>2017 ND SB 2277 (Enacted): 1. A monthly support obligation established under any provision of this code and in effect after December 31, 2017, expires by operation of law upon incarceration of the obligor under a sentence of one hundred eighty days or longer, excluding credit for time served before sentencing.</p>	<p>N.D. Cent. Code § 14-09-09.38</p> <p>1. A monthly support obligation established under any provision of this code and in effect after December 31, 2017, expires by operation of law upon incarceration of the obligor under a sentence of one hundred eighty days or longer, excluding credit for time served before sentencing.</p> <p>2. Notwithstanding subsection 1, a monthly support obligation may be established for an obligor who is incarcerated under a sentence of one hundred eighty days or longer if the obligation is based on actual income of the obligor and the moving party makes a prima facie showing that the obligor's income exceeds the minimum amount provided in the guidelines established under section 14-09-09.7.</p> <p>3. As used in this section, "incarceration" means placement of an obligor in a custodial setting in which the obligor is not permitted to earn wages from employment outside the correctional facility, and does not include probation or work release.</p> <p>4. The expiration of a monthly support obligation under subsection 1 does not affect any past-due support that is owed before the expiration of the obligation.</p>
Ohio		<p>Ohio Rev. Code § 3119.05</p> <p>shall not determine a parent to be voluntarily unemployed or underemployed and shall not impute income if the parent is incarcerated or institutionalized for a period of twelve months or more with no other available assets.</p>

Oregon	<p>2017 OR SB 682 (Enacted): Provides that obligor's incarceration and release from incarceration are substantial changes of circumstances to modify or suspend orders for support of child, permits modifications or suspensions of support orders involving incarcerated obligors to be ordered retroactive to date of initial incarceration, to another date during incarceration when obligor is unable to pay ordered support or to date that is 61 days following release from incarceration.</p>	<p>Or. Rev. Stat. § 25.247</p> <p>(1) An obligor who is incarcerated for a period of 180 or more consecutive days shall be rebuttably presumed unable to pay child support and a child support obligation does not accrue for the duration of the incarceration unless the presumption is rebutted as provided in this section.</p> <p>(2) The Department of Justice and the Department of Corrections shall enter into an agreement to conduct data matches to identify the obligors described in subsection (1) of this section or as determined by the court.</p> <p>(3) Within 30 days following identification of an obligor described in subsection (1) of this section whose child support obligation has not already been modified due to incarceration, the entity responsible for support enforcement services under ORS 25.080 shall provide notice of the presumption to the obligee and obligor and shall inform all parties to the support order that, unless a party objects as provided in subsection (4) of this section, child support shall cease accruing beginning with the first day of the first month that follows the obligor becoming incarcerated for a period of at least 180 consecutive days and continuing through the support payment due in the last month prior to the reinstatement of the support order as provided in subsection (6) of this section. The entity shall serve the notice on the obligee in the manner provided for the service of summons in a civil action, by certified mail, return receipt requested, or by any other mail service with delivery confirmation and shall serve the notice on the obligor by first class mail to the obligor's last-known address. The notice shall specify the month in which the obligor became incarcerated and shall contain a statement that the administrator represents the state and that low-cost legal counsel may be available.</p> <p>(9) An obligor's incarceration for at least 180 consecutive days or an obligor's release from incarceration is considered a substantial change of circumstances for purposes of child support modification proceedings.</p> <p>(10) Proof of incarceration for at least 180 consecutive days is sufficient cause for the administrator, court or administrative law judge to allow a credit and satisfaction against child support arrearages for each month that the obligor was incarcerated or that is within 120 days following the obligor's release from incarceration unless the presumption of inability to pay has been rebutted.</p>
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		<p>Or. Rev. Stat. § 416.425</p> <p>(11) An obligor's incarceration for a period of at least 180 consecutive days or an obligor's release from incarceration is considered a substantial change of circumstances for purposes of proceedings brought under this section.</p>
Pennsylvania		<p>Pa. Cons. Stat. tit. 23, § 4352</p> <p>(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.</p>
Rhode Island	<p>2017 RI HB 5553 (Enacted): Relates to domestic relations; relates to divorce and separation; allows for incarceration of an individual to be taken into consideration for the purposes of a motion to modify a child support order. If the obligor is incarcerated for 180 days or more, the department may automatically file a motion to modify.</p> <p>2017 RI SB 406 (Enacted): Establishes a procedure for modifying child support orders for incarcerated individuals</p>	<p>R.I. Gen. Laws § 15-5-16.2</p> <p>(c) (3) When the department of human services, office of child support services, becomes aware of the fact, through an electronic data exchange of information with the department of corrections, or by any other means, that the noncustodial parent is or will be incarcerated for one hundred eighty (180) days or more, the department may automatically file a motion to modify or a motion for relief, to be heard before the court via a video conference hearing or other type of hearing. A specific request for the filing of this motion need not be made in writing or otherwise by the incarcerated, noncustodial parent, but the parent shall be notified of the hearing and provided a meaningful opportunity to respond. The court shall schedule a hearing to determine the noncustodial parent's ability to pay, taking into consideration the assets and financial resources and any benefits the noncustodial parent may be receiving, the length of the sentence, and shall modify or suspend all child-support orders, after setting forth in its decision specific findings of fact that show circumstances upon which the court has decided to modify or suspend all child-support orders during the period of incarceration. Upon the obligor's release, the department of human services, office of child support services, shall file a motion for support, and a hearing shall be scheduled to determine the obligor's ability to begin paying child support pursuant to the child support guidelines in effect. This section does not apply to those individuals who are serving a sentence for criminal nonsupport in state or federal prison, or who are found to be in civil contempt for failure to pay child support and incarcerated for that reason.</p>

Texas	2015 TX HB 943 (Enacted): Relates to the applicability of a wage and salary presumption to an incarcerated person for purposes of determining child support obligations.	<p>Tex. Fam. Code § 156.401 (Effective Sept. 1, 2018)</p> <p>(a-2) A court or administrative order for child support in a Title IV-D case may be modified at any time, and without a showing of material and substantial change in the circumstances of the child or a person affected by the order, to provide for medical support or dental support of the child if the order does not provide health care coverage as required under Section 154.182 or dental care coverage as required under Section 154.1825.</p> <p>(b) A support order may be modified with regard to the amount of support ordered only as to obligations accruing after the earlier of:</p> <ol style="list-style-type: none"> (1) the date of service of citation; or (2) an appearance in the suit to modify. <p>(c) An order of joint conservatorship, in and of itself, does not constitute grounds for modifying a support order.</p> <p>(d) Release of a child support obligor from incarceration is a material and substantial change in circumstances for purposes of this section if the obligor's child support obligation was abated, reduced, or suspended during the period of the obligor's incarceration.</p>
Utah	2017 UT SB 153 (Enacted): Considers incarceration when setting child support, including: (6) Incarceration of at least six months may not be treated as voluntary unemployment by the office in establishing or modifying a support order.	<p>Utah Code § 78B-12-203</p> <p>(6) Incarceration of at least six months may not be treated as voluntary unemployment by the office in establishing or modifying a support order.</p>
Vermont		<p>Vt. Stat. tit. 15, § 660</p> <p>(a)(1) On motion of either parent, the Office of Child Support, any other person to whom support has previously been granted, or any person previously charged with support, and upon a showing of a real, substantial and unanticipated change of circumstances, the court may annul, vary, or modify a child support order, whether or not the order is based upon a stipulation or agreement. If the child support order has not been modified by the court for at least three years, the court may waive the requirement of a showing of a real, substantial, and unanticipated change of circumstances.</p> <p>(2) The Office of Child Support may independently file a motion to modify child support or change payee if providing services under Title IV-D of the Social Security Act, if a party is or will be incarcerated for more than 90 days, if the family has reunited or is living together, if the child is no longer living with the payee, or if a party receives means-tested benefits.</p> <p>(b) A child support order, including an order in effect prior to adoption of the support guideline, which varies more than ten</p>

		<p>percent from the amounts required to be paid under the support guideline, shall be considered a real, substantial, and unanticipated change of circumstances.</p> <p>(c) The following shall be considered a real, substantial, and unanticipated change of circumstances:</p> <p>(1) Receipt of workers' compensation, disability benefits, or means-tested public assistance benefits.</p> <p>(2) Unemployment compensation, unless the period of unemployment was considered when the child support order was established.</p> <p>(3) Incarceration for more than 90 days, unless incarceration is for failure to pay child support.</p>
Washington		
West Virginia		<p>W.Va. § 48-18-202</p> <p>(b) Upon receipt of notification that an obligor is incarcerated in a regional jail or a state or federal correctional facility, the Bureau for Child Support Enforcement shall determine whether the expected incarceration will exceed six months. If the incarceration will exceed six months, the bureau shall file a petition to modify child support.</p>
Wisconsin		
Wyoming		