

HOW CAN I PAY CHILD SUPPORT IF I'M LOCKED UP?

What You Need to Know about Paying Child Support in Michigan if You Are, Were, or Might be Incarcerated

**Prepared in July 2003 by:
Western Michigan Legal Services
89 Ionia NW
Grand Rapids, MI 49503**

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This publication is not intended to replace the advice of an attorney.
Because laws and procedures can change and because every individual situation is different, Western Michigan
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I. Introduction

This brochure is designed to help you deal with child support issues in Michigan if you are, were, or might be incarcerated. If you are being prosecuted, and are facing jail or prison time, child support might seem like the least of your worries. Or, if you are currently incarcerated, child support might seem like something you can deal with after you get out. But if you have been incarcerated in the past, and have been released, you probably know that owing a lot of back child support can be a tremendous problem. If you don't deal with your child support issues now, they will only get worse. Whether you are facing time, serving time, or have finished your time, the sooner you deal with your child support problems, the better off you'll be.

II. What Happens If You Get Behind on Child Support

If you are like most parents, you want what's best for your kids. Your kids need your love. But they also need your money, because taking care of kids is expensive. Even if you don't have a relationship with your children, you still have a legal duty to support them.

The State of Michigan has been cracking down on parents who don't pay support. If you don't pay your support, you will start to owe back support (which is also called "arrearage"). Fines can be imposed, which will mean that you owe even more. You can have your wages garnished. Sometimes so much will be taken out of your paycheck that it can be hard to live on what is left. If you let your arrearage build up, you can end up owing so much back support that you'll never be able to pay it off. If you fail to pay those arrearage, you can get taken to court on a show cause. A bench warrant can be issued. If you are on probation or parole, a failure to pay support can get you into trouble with your probation or parole officer. You can lose your driver's license or occupational license. Your property can be seized. You can be jailed for contempt. You can even have your parental rights terminated.

III. Why You Should File a Motion to Reduce Child Support AS SOON AS You Get Locked Up

How much child support you have to pay depends on how much you are able to pay. While there is a complicated formula to determine exactly how much you should pay, in general the more money you make, the more support you pay. The less money you make, the less support you pay. If you are incarcerated, you probably won't have much of an ability to pay child support. You may have no earnings at all while you are incarcerated. Or you might be earning a little bit of money through a prison job or work release program. How much you need to pay in child support will depend on how much income you earn while you are locked up.

THE FIRST IMPORTANT THING TO KNOW ABOUT CHILD SUPPORT IS THAT THE AMOUNT YOU OWE EACH WEEK WON'T CHANGE UNLESS YOU FILE A MOTION WITH THE COURT ASKING FOR A MODIFICATION IN CHILD SUPPORT. The Court doesn't automatically change your child support just because your income changes. And it isn't enough to tell the Friend of the Court that your income has gone down. If you don't file a motion with the Court to ask for a change in child support because you are incarcerated, you will continue to be charged child support at the pre-incarceration rate.

Let's take an example. Say you are supposed to pay \$100 a week in child support. Then you get locked up from January 1 to December 31. Since you didn't have any earnings in jail, you should owe \$0 per week. If you filed a motion on January 1 to change your child support, your child support would get reduced to \$0 per week. (Even if your motion isn't heard by the Court for a couple of months, your child support should get changed back to the date on which you filed your motion, so long as that is also when the other party is notified. It is important to make sure that the other party receives notice of your motion. In Kent County, the court will do this for you when you file your motion. However, in some other counties you may have to serve the other party yourself.) So, at the end of the year you would owe \$0. However, if you do not file a motion, your child support would keep charging at \$100 a week. At the end of the year you would owe \$5,200.

THE SECOND IMPORTANT THING TO KNOW ABOUT CHILD SUPPORT IS THAT, IN MOST CASES YOU CAN ONLY CHANGE CHILD SUPPORT FOR THE FUTURE, NOT FOR THE PAST. What that means is that even if you can later prove to the court that you were locked up and therefore couldn't afford to pay your child support, the court usually will not wipe out the amount of back support you owe. The court will only change your support from the date you provided notice of your motion to the other parent.

Let's look at our example again. Say that you never filed a motion to modify your child support. When you get released you owe \$5,200. As a general rule, you will be stuck with that \$5,200 debt, even if you can prove to the court that you were incarcerated and couldn't afford to pay support. Now let's say you filed your motion and sent it to the other parent on July 1. Even if your motion isn't heard until the fall, you can have your child support reduced back to the date you sent the motion to the other parent. You will still owe support for the period up until you filed your motion on July 1: about 26 weeks of support at \$100, or \$2,600. But if your support gets reduced to zero, you won't owe support for the period after July 1. Remember, because it is so hard to get child support debt erased once you've got it, your best bet is to file your motion to change your child support as soon as you get locked up.

How do you file a motion to change child support? Attached to this packet is the standard form and instructions for changing child support in Kent County. If your child support case is in another county, call the Friend of the Court in that county and ask if they can send you child support motion packet for that county. If you are unable to get a packet for that county, use the Kent County forms as an example. You will have to pay a filing fee to file your motion. However, if you cannot afford the motion fee, ask the court clerk for a fee waiver form.

IV. What to Do If You Already Owe Back Support From When You Were Locked Up

What are you supposed to do if you already owe a lot of back child support from a time when you were incarcerated? First, you should find out to whom the child support is owed. In most cases, your back child support will be owed either to the custodial parent (that is, the parent who has custody) or to the State of Michigan. Child support is owed to the State of Michigan if the other parent is or was receiving welfare. Sometimes support will be owed to another private person, such as the child's guardian. The Friend of the Court can give you a break-down of how much support you owe to the other parent, to the State of Michigan, or to any other person.

A. If You Owe Support to the Other Parent or Another Private Person

If you owe back support to the custodial parent or to another private person, such as the child's guardian, it may be possible to come to an agreement with that person about wiping out the back support you owe. It is up to the person to whom the support is owed to decide whether he or she wants to forgive the back support. If you get along with that person, and that person understands why it was impossible for you to pay support while you were locked up, that person might just agree to forgive all the back support you owe. Or, you might be able to make a deal. For example, you could agree that if you come up with a lump-sum payment for a part of the support, the custodial parent agrees to forgive the rest. Alternately, you might agree to increase the amount of your current support payments in return for forgiveness of your back support.

Once you and the other person have made your agreement, you need to notify the Court about that agreement. Check with your local Friend of the Court office to find out if they want you both to come to the office in person, to file a stipulation with the Court, or simply to file a notarized agreement with the Friend of the Court itself. If the Friend of the Court gives you a form to use, use that. If not, you can use the sample agreement form that is attached at the end of this packet. If you owe support in Kent County, you can use the sample agreement form.

If you cannot get the other parent to agree to forgive your back child support, you can always try and file a motion to eliminate or reduce your back support, or to set up more reasonable payments towards what you owe. However, since these motions are very hard to win, it will be much easier for you if you and the custodial parent can reach an agreement.

B. If You Owe Support to the State of Michigan

If you owe support to the State of Michigan, the custodial parent won't be able to forgive the support you owe. Only the party to whom the support is owed can forgive a child support debt. Therefore, if you owe support to the State of Michigan, you need to contact the Friend of the Court to see if they can assist you to reduce your back support or modify the payments you are required to make. It is important to provide all of the information that the Friend of the Court needs. Make sure you have copies of all of your documents showing exactly when you were incarcerated, and how much – if anything – you earned while you were locked up. If you are employed, bring copies of your current paystubs. If you are unemployed, make a list of all the jobs you have applied for, to show that you are looking for work. If you are currently incarcerated, submit documentation showing whether you currently have any earnings.

Not all counties handle incarceration-related child support in the same way. Check with your local Friend of the Court office about what you need to do. In some counties you may need to file a form or meet with a caseworker. In other counties you will need to file a motion. You may want to combine a motion to adjust your arrears with a motion regarding the current amount of your support. (See Section VI below.)

V. How Reducing Support Payments Affects Your Parental Rights

In Michigan, child support is not tied to parenting time. The fact that you owe back child support is not a basis to prevent you from seeing your children. If the other parent is preventing you from seeing your children, file a motion for parenting time.

A failure to pay child support can, however, make it more likely that your parental rights will be terminated. One of the factors courts look at in deciding whether to terminate your parental rights is whether or not you have been paying support. For that reason, sending even a small amount of money to your children on a regular basis will help to prevent termination of your rights. Even if the support you provide is very small, making regular payments for the care of your kids shows that you are a committed parent. The fact that you make regular payments is probably more important than how much money you send. If your payments are not being made through the Friend of the Court, make sure to keep good records of what you have paid.

In considering non-support in relation to parental rights termination, courts are supposed to consider whether you have the ability to pay support. You won't look like a good parent if you have a high support amount that you can't pay, which leaves you owing a lot of back support. Therefore, filing a motion to reduce your child support payments generally looks better to the court than having a huge unpaid support amount. However, if you are currently engaged in a parental rights termination case, consult with your attorney before filing a motion to reduce your support payments.

If you are worried about losing your kids, but you don't have the money to make even small regular child support payments, make sure that you support your kids in other ways. If you are incarcerated, make sure you write and call your children regularly. Keep a record of your contacts, so that, if anyone ever tries to terminate your parental rights, you can prove that you've been there for your kids. If you are not incarcerated, make sure to use your parenting time.

VI. How to Make Sure Your Current Child Support Amount is Correct

It is important not just to deal with any back child support you owe, but also to make sure your current support amount reflects what you can actually pay. Otherwise, you'll fall behind again, and have the same problem all over.

If you are currently incarcerated, and do not have earnings through a prison job or work release program, your ongoing support amount should probably be close to or at \$0. If you are on SSI, your child support amount should also be close to or at \$0. (However, if you are receive regular Social Security income or a pension, your support amount will be based on your income.)

In some cases you can be pretty sure that your support amount is too high. For example, if your support amount was calculated based on a well-paying job you no longer have, then the support amount is probably too high. Or, if you used to be able to work, and now you are disabled, then you will want to file a motion to change your support. Or, if you used to pay support because the other parent had the kids, but you now have the kids, then you shouldn't have to pay support at all.

In other cases, it is more difficult for the average person to know whether the support amount is correct, since support is calculated based on a complicated formula. Some of the factors are how much you make, how much the other parent makes, how many children there are, whether you pay support in other cases, how many overnights you have with the kids, what the childcare costs are, and who gets the tax deductions. Just because the support amount seems high to you, doesn't mean it is necessarily wrong. And just because you are unemployed doesn't mean you won't owe support. Unless you have a reason that you can't work, such as a disability, the Friend of the Court will "impute" income to you. This means that the Friend of the Court

will assume you could be working, and will base its calculations on what it thinks you could be making. The Friend of the Court will assume you could be earning at least minimum wage, and may assume that you could be earning even more. If the other parent is not working, the FOC will also impute income to that parent, unless there is a reason why that parent can't work.

If you think your support is too high, file a motion to reduce your child support. You and the other parent will need to provide information about your income, and then the Friend of the Court will calculate how much support you owe. If you file a motion to reduce your support, it could turn out that you are actually supposed to be paying more support. In that case, your support payments could go up. If you think that you might end up paying more support, consult an attorney before filing a motion to reduce support.

VII. Sample Support Schedule Under the 2002 Child Support Guidelines

If both parents make \$6.50/hour for 40 hours a week, support (not including child care) would be approximately:

1 child	\$54/week
2 children	\$78/week
3 children	\$79/week
4 children	\$81/week

If both parents make \$6.50/hour for 40 hours a week, and you already pay \$50 in support per week towards another child with a different mother/father, support (not including child care) would be approximately:

1 child	\$25/week	Total \$75/week for 2 kids
2 children	\$28/week	Total \$78/week for 3 kids
3 children	\$29/week	Total \$79/week for 4 kids
4 children	\$31/week	Total \$81/week for 5 kids

If the custodial parent makes \$6.50/hour for 40 hours a week, and you make \$10 hour for forty hours a week, support (not including child care) would be approximately:

1 child	\$74/week
2 children	\$114/week
3 children	\$146/week
4 children	\$165/week

If both parents make \$10/hour for 40 hours a week, support (not including child care) would be approximately:

1 child	\$71/week
2 children	\$109/week
3 children	\$140/week
4 children	\$158/week

Sample Agreement To Forgive Child Support:

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF _____

FAMILY DIVISION

(Plaintiff's Name),

HON. **(Name of judge here)**

Plaintiff,

CASE NO: **(Your Casenumber here)**

vs.

(Defendant's Name),

STIPULATION AND ORDER

Defendant.

(Address of Plaintiff)
(Telephone of Plaintiff)

(Address of Defendant)
(Telephone of Defendant)

NOW COME the parties and stipulate and agree as follows:

1. **(Name of Person to Whom Support is Owed)** hereby agrees to forgive all back child support owed by **(Your Name)**.
2. **(Fill in Any other Conditions of Your Agreement here.)**
3. **(Fill in Any other Conditions of Your Agreement here.)**

Dated: _____

Plaintiff

State of Michigan)

) ss

County of Kent)

On _____, _____ personally appeared before me, a Notary Public in _____ County, Michigan, and made oath that s/he has read and signed the above Stipulation and Order; that s/he knows the contents thereof and that the same is true of her/his own knowledge, except as to those matters therein stated to be upon information and belief, and as to those matters s/he believes them to be true.

Notary Public

Dated: _____

Defendant

On _____, _____ personally appeared before me, a Notary Public in _____ County, Michigan, and made oath that s/he has read and signed the above Stipulation and Order; that s/he knows the contents thereof and that the same is true of her/his own knowledge, except as to those matters therein stated to be upon information and belief, and as to those matters s/he believes them to be true.

Notary Public

ORDER

At a session of said Court sitting
in the _____ County Circuit Court, _____,
Michigan, this _____ day of _____, 200__

PRESENT: HON. _____
CIRCUIT COURT JUDGE - FAMILY DIVISION

NOW THEREFORE, IT IS SO ORDERED.

Hon.
Circuit Court Judge - Family Division