

Child Support Answers for MDI

How can CSED expect incarcerated fathers to pay out hundreds of dollars or more in child support payments when we can barely support ourselves on the subsistence wages of \$1.26 to \$4.00 per day? The majority of us make \$2.00 or less per day and for long term inmates, this makes things extremely difficult.

ANSWER: The CSED must enforce your support order as it reads. The CSED is unable to give special consideration to any parent, including incarcerated parents, in regard to the support obligation.

What steps do incarcerated fathers have to take to lower their monthly payments and keep the interest from growing faster than payments can cover the principal?

ANSWER: The Montana Supreme Court decision *Mooney vs. Brennan 848 P.2d 1020 (1993)* ruled incarceration cannot be the sole basis for a modification review. A review may be granted if there is a proven 25% change in net income that is not related to the incarceration **and** the incarcerated party waives any right he or she would have to an in person hearing during the course of the modification. Modifications are not retroactive.

At this time, the CSED does not accrue interest for any support order entered in the state of Montana. However, the custodial party may file an action to collect interest through the district court. If the support order is from a state that does accrue interest and they request the Montana CSED to enforce the order, the interest will continue to accrue while you are incarcerated.

Why do child support payments vary so much from one case to another when involving similar or exact situations?

ANSWER: Although some cases involve similar circumstances, no two cases are exactly the same. Child support payments will vary from case to case based upon the unique circumstances of each case in regard to each party involved. Whether or not a parent participated in the action to establish the support order, or the fact that a state other than Montana may have established the order, are a few examples of how persons with similar financial situations may have different child support obligations.

Does the law stating that the maximum payment for an incarcerated father is \$36.00 for the first child and \$18.00 for each additional child still exist in the state of Montana?

ANSWER: There is no such law in the state of Montana.

As fathers, how do we know that the monies we are paying for child support go to benefit our children's needs and welfare, and not those of the mother's personal needs or habits without a receipt stating our payment, and written statements showing the use of that money, assuring proper care and use of those funds by the mother?

ANSWER: Child support payments are payable to the custodial party of the children who may use the funds as they see fit. This is Montana law, according to the Montana Supreme Court decision *Williams v. Budke*. The CSED does not monitor how the funds are spent as we do not have the authority or the ability to do so.

What is the minimum monthly child support payment for an incarcerated father?

ANSWER: There are no special considerations for any parent, including incarcerated parents, in regard to the child support obligation. The minimum monthly payment is the amount of the current ongoing support obligation, plus a payment toward the arrearages. The payment on the arrearages is usually 1/24th of the entire arrearage debt owed or 25% of net income. It is possible a temporary reduction in the arrearage payment may be granted; however certain requirements must be met. The CSED must be collecting the payments through income withholding and you must first be making your entire current support payment. This is referred to as a "Hardship" for the arrears. If a hardship is granted, the amount of debt owed is not lowered, just the payment. For cases in which current support is no longer due, the minimum payment would be based upon the above information regarding arrearages.

If I am refused visitation by the mother or family of my child, do I still have to pay child support for that child?

ANSWER: Yes. Payment of a child support obligation and exercising visitation rights are two separate issues, which are treated as such. Your child support obligation is still due each month, regardless if you are able to exercise your court ordered visitation. Visitation issues are out of the scope of the CSED's abilities and should be addressed in District Court.

Do I still have to pay child support or back child support after the child reaches the age of eighteen?

ANSWER: Yes. A parent that is legally obligated to pay child support is required to do so until the child emancipates. In most cases, the emancipating event will be the child reaching the age of 18 or graduating from high school, whichever comes later, but no later than the child's 19th birthday. Once that qualifying event occurs the obligation to pay current supports ends. Any arrears owed at that time are still due and payable.

If I am already paying child support, does the CSED take my income tax refund as well?

ANSWER: It depends on whether you owe past-due child support. If you owe past due debt of at least \$150.00 for any debt due the State (for the time period the children received public assistance) or \$500.00 for any debt owed directly to the custodial party, the CSED has the ability to intercept, or offset, any federal income tax refund claimed by the non custodial parent, including incarcerated parents. The CSED may offset a state income tax refund, or a variety of other state payments, if the non-custodial parent owes past due child support. The CSED offsets tax refunds regardless if payments are being made toward the support debt.

If the mother of my child did not file for any child support after our separation or divorce, can she legally file for back child support anytime she so chooses?

ANSWER: Yes. A party involved in a child support action has the ability to seek a child support order at any time prior to the child's emancipation. According to MCA 40-5-226 the CSED has the ability to enter a support order with an effective date beginning at the child's date of birth or the date of the parties separation. The effective date of a support order is determined based on the specific circumstances of the case.

When is neglect of child support payments considered a misdemeanor or felony offense?

ANSWER: As defined under MCA 45 -5-621 (1) Nonsupport means a person commits the offense of nonsupport if the person fails to provide support that the person can provide and that person knows the person is legally obliged to provide to a spouse, child, or other dependant. (2) A person commits the offense of aggravated nonsupport if the person has left the state without making reasonable provisions for the support of a spouse, child, or other dependant; or been previously convicted of the offense of nonsupport.

Penalties:

- (a) Except as provided in (b) and (c), a person convicted of nonsupport shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.
- (b) A person convicted of nonsupport who has failed to provide support under a court or administrative order for 6 months or more or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support shall be fined not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.
- (c) A person convicted of aggravated nonsupport shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

Under MCA 45-2-101, "Misdemeanor" means an offense for which the sentence imposed is imprisonment in the county jail for a term or a fine, or both, or for which the sentence imposed is imprisonment in a state prison for a term of 1 year or less. "Felony" means an offense in which the sentence imposed is death or imprisonment in a state prison for a term exceeding 1 year.

If my parental rights have been terminated, am I still held responsible for child support payments?

ANSWER: If the court has terminated your parental rights you are no longer obligated to pay your current support obligation. You may be held liable for any arrears that exist prior to the termination.

A signed relinquishment that does not lead to a termination may not relieve you of your child support obligation. With a relinquishment there must be another person or state agency willing to assume legal custody of the child. This is usually accomplished through an adoption or the state foster care agency agreeing to assume responsibility of the child.

Does Montana CSED recognize and uphold child support rulings from states other than Montana?

ANSWER: Yes. Support orders from other states, Indian tribes, and foreign countries are recognized by the CSED.

Can the CSED take money from me for child support without a court ruling me to pay child support?

ANSWER: The CSED cannot require you to pay child support until a child support order has been entered against you by a court or administrative agency, such as the CSED. We do however, accept voluntary payments for the benefit of your child prior to entry of a child support order.

Why would the CSED take my driver's license from me knowing that I am unable to make my child support payments while in prison?

ANSWER: The CSED is required to take any enforcement action available to attempt collection of your child support debt. Although you may not be able to meet your full support obligation while incarcerated, you are obligated to pay your support to the best of your abilities.

Why do letters from incarcerated fathers to the CSED go unanswered when there are court time frames and rulings to be decided?

ANSWER: Letters to the CSED from incarcerated parents should never go unanswered if there are issues to be addressed. Our CSED workers have caseloads of approximately 480 -550 cases each, and work diligently to address all case issues.

If I have no parental rights, are there options available for me to set up visitation with my child?

ANSWER: The CSED does not have the appropriate authority to address or become involved with custody and visitation issues. You may wish to consult a private attorney regarding custody and visitation issues.

If there was no child support claim filed by the mother of my child, how can I set up payments for a child that I have no contact with or know the whereabouts of?

ANSWER: The services of the CSED are available to either parent, or any third party custodian of the child through an application process. Although the CSED does not establish a support obligation while a parent is incarcerated, we can forward any voluntary payments you would like to make to your child. Once you are released from a secured facility we would take the necessary steps to establish a legal support obligation for the benefit of the child.

My ex-wife's mother is the legal guardian of my child and I pay child support, but because my ex-wife gave our children to DCFS while I was incarcerated, would she still be liable to pay child support as well?

ANSWER: The state foster care agency, Child and Family Services Division (CFSD), does refer cases to the CSED for children in foster care. Depending upon the circumstances of each case, CFSD has the ability to refer both parents for collection of child support.

I have a seven year old daughter who due to my incarceration I do not have to pay child support for, but I also have a twelve year old son who lives out of state that I have to pay child support on. Why do I have to pay child support for one and not the other while incarcerated?

ANSWER: Child support laws vary from state to state. Some states require payment of support while incarcerated and others do not.

Can the CSED make available caseworkers that can come to the prison and other state detention facilities to work with incarcerated fathers on their individual child support issues and cases?

ANSWER: Representatives from the CSED can periodically travel to the prison to provide educational information about the CSED and the child support program. Case specific issues are best addressed directly with the caseworker assigned to the case.

Can the CSED provide informational packets that cover all state child support laws and regulations on child support that deal directly with what we should expect to happen when we come into the system? This will allow us to start a good plan to work with the CSED.

ANSWER: To obtain informational packets from all states will require time and research. The CSED can assist you in obtaining the information over the course of a few months. As a group please send a listing of states, in the order of importance, from which you would like to receive information.

Can the CSED guidelines be amended for incarcerated fathers to ease the financial burden while incarcerated?

ANSWER: To amend the guidelines to ease the financial burden of incarcerated parents would require various law changes. At this time, it is not the intention of the CSED to sponsor or pursue such changes.

Can the CSED work to better protect the rights of fathers with custody and visitation while incarcerated?

ANSWER: The CSED does not have the appropriate authority to address or become involved with custody and visitation issues. You may wish to consult a private attorney regarding custody and visitation issues.

Can the CSED provide incarcerated fathers with child support payment receipts and written statements of the use of the child support payments?

ANSWER: A month by month debt/payment history is available to the parties of a case upon request, but the CSED does not require the custodial party to provide written statements in regard to the use of the child support payments.

Can the CSED provide incarcerated fathers with the necessary forms on hardship due to incarceration?

ANSWER: The CSED definition of a hardship differs from what is considered hardship due to incarceration. The CSED hardship is discussed in the answer to question 6.

Can the CSED provide incarcerated fathers with monthly child support balance statements?

ANSWER: A month by month debt/payment history is available to the parties of a case upon request.

Would the CSED be willing to do DNA testing for incarcerated fathers?

ANSWER: Maybe, if the paternity of a child has not already been determined by genetic testing, court order, or by existence of a presumption of paternity under Montana law. The CSED can assist incarcerated parents in obtaining genetic tests if the circumstances of the case warrant testing.

Can the CSED incorporate easier obligations on child support payments and visitation issues for fathers re entering society?

ANSWER: When an incarcerated parent is released from a secured facility, it is recommended contact be made with the CSED caseworker. Although the CSED cannot give special consideration to any parent, including incarcerated or recently released parents; we can work with the parent in reviewing the case and addressing any issues that need attention in respect to the child support case.

The CSED does not have the appropriate authority to address or become involved with custody and visitation issues. You may wish to consult a private attorney regarding custody and visitation issues.

CSED Commentary:

The CSED understands the difficulties that can arise when transitioning from incarceration. Because of this, you are encouraged to contact the caseworker assigned to your case IMMEDIATELY after your release to discuss any options that may be available to you to assist in this transition. The CSED can assist you in petitioning for a hardship adjustment to the amounts you will be required to pay toward any of your debt. Additionally, your circumstances may allow you to seek a review and, if appropriate, modification of your support order. There is a good chance the CSED will be in contact with your parole officer as well; therefore it is very important that you work with the CSED as part of your transition.

If you do not know the name or address of the caseworker assigned to your case, please send a request for the information to CSED, Attn: CSED/DOC Liaison, PO Box 202943, Helena MT 59620.