



CHILD SUPPORT

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Hidden or “collateral consequences” are additional penalties that may result from criminal convictions. They have a direct impact on critical areas of life such as: employment, housing, education, public benefits, parental rights, and voting, and can hinder an individuals’ ability to successfully reintegrate. Understanding the relevant legal and regulatory framework that creates these sanctions can be helpful to criminal defense attorneys, other advocates, and all residents of New Jersey affected by incarceration. Please note that these laws can and do change, and you should inquire about updates before relying on this information. [June 2006]

SUMMARY: Although child support debt (known as “arrears”) is not a direct collateral consequence of a criminal conviction, it is very often a serious problem for parents emerging from a period of incarceration. A national study from the Center for Policy Research indicates that incarcerated parents owe an average over \$20,000 when they are released from prison.¹

In recent years the federal government and the states have increased enforcement against parents who owe support. These laws don’t distinguish between parents who choose not to support their children and those that can’t pay due to extreme poverty or incarceration. When parents with child support obligations are incarcerated, arrears continue to mount – even though they earn little or no money while in prison. As a result, many leave prison with enormous debt.

In many states you cannot adjust support payments from prison, since incarceration is considered “voluntary” unemployment. However, in New Jersey, there is an opportunity for incarcerated parents to request (at a judge’s discretion) that support orders be suspended pending release based on their decreased earning

capacity². Unfortunately few prisoners are aware of this option, and legal support is rarely available.

More importantly, the federal “Bradley Amendment” eliminates a judge’s power to cancel arrears that have accrued *before* the request to modify is filed. By the time a parent understands the need to act – usually after release – he or she is already deeply in debt. A recent Appellate Division³ decision that requires the child support agency to begin adding interest to arrears will increase the likelihood of even greater future debt.

There are also other sanctions that stem from child support arrears which can hinder successful reentry, including: driver’s license suspension; garnishment of salary and other income up to the rate of 65%; a negative credit rating; income tax check intercepts; asset seizure; and re-arrest for failure to pay support. All of these serve to increase the likelihood that parents will join or re-join the underground economy or become reincarcerated.

This fact sheet lists consequences arising from child support arrears; a likely predicament for many incarcerated parents. You will find enabling statutes and cases, identify triggering arrearages, their consequences, and remedies where they exist.

Consequences Arising from Child Support Arrears

STATUTE, CASE OR REGULATION	CONVICTION OR OFFENSE	CONSEQUENCES	REMEDIES
Bradley Amendment 42 U.S.C.A. §666(a)(9)	Any accumulation of child support arrears.	Absolutely prohibits reduction or elimination of arrears which had already mounted (before date of the request for modification of the support order).	None. (Parent must make a request for modification as soon as possible to avoid further accumulation of debt).
<i>Halliwell v. Halliwell</i> 326 N.J. Super. 442 (App.	Incarceration of more than one year.	Incarceration <i>may</i> be considered “voluntary	<i>Halliwell</i> allows a judge to consider that

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Div 1999)		unemployment” which makes a prisoner ineligible for a downward modification of child support obligations.	incarceration creates a “substantial change” in financial circumstances qualifying a prisoner for a temporary modification of child support obligations only <i>from the day the request is filed with the court.</i>
N.J.S.A. §2A:17-56.23a	Failure to pay child support for six months; or provide health coverage for a child for six months if ordered by the court; or failure to submit to a paternity test	Driver, professional, or recreational license suspension	If suspension will result in significant hardship to the individual, legal dependents under age 18, or employees or persons obligor provides goods and services to, then the court has the discretion to set up a 12 month payment arrangement after parent has paid 25 percent of the amount owed up front (while paying on-going support). ⁴
15 U.S.C.A. §1673 (Federal Consumer Credit Protection Act) N.J.S.A. §2A:17-56.9	Arrears of 12 weeks or more. ⁵	Salary garnishment at the federal maximum of 65 percent (income withholding)	None. But deduction can be limited to 55 percent if obligor reports having a second family to employer.
N.J.S.A. §2A:17-56.21	When an obligor is in arrears of \$1,000. or more	State can report arrears to credit agencies issuing credit reports upon notice to obligor	None, except that an individual can request a review if he or she disagrees with the amount owed by sending a written request with 35 calendar days of receiving the notice to the N.J. Division of Family Development.
N.J.S.A. §2A:17-56.16, 56.53	When an obligor is in arrears for unpaid support of at least \$150 (for public assistance cases) and \$500 on non- public assistance cases)	Federal income tax check intercepted to offset child support arrears	Can be appealed: a) if amount of arrears is in error, or b) if it is a joint return and the other spouse is not responsible for child support debt
N.J.S.A. §2A:17-56.16, 56.53	When an obligor is in arrears equal to or more than one month	State income tax check intercepted to offset child support arrears	None, except that an individual can request a review if he or she dis-

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			agrees with the amount owed by sending a written request with 35 calendar days of receiving the notice to the N.J. Division of Family Development.
N.J.S.A. §2A:56.57	When an obligor is in arrears for three months	Assets seizure. (Child support orders are judgments by operation of law the day it becomes due and is not paid, and can be used as a lien against bank accounts and stocks and bonds).	Financial institution must provide notice of intent to levy and an opportunity to contest the levy within 30 days of the notice
N.J.S.A. §2A:56.8 N.J. Directives Dir. 10-95	If an individual: a) does not appear for court dates to establish paternity or support; or b) does not appear for an enforcement hearing for not paying support; or c) disregards the terms of the court order	Obligor is subject to a warrant for arrest (signed by a judge of the Family Court)	A “purge” amount may be set to have a warrant discharged for non-payment, or the obligor must return to court to resolve the matter.

¹ Esther Griswold, Jessica Pearson, and Lanae Davis, *Testing a Modification Process for Incarcerated Parents*, Denver, CO: Center for Policy Research, 11-12.

² *Halliwell v. Halliwell*, 326 N.J. Super. 442 (App. Div 1999)

³ *Pryce v. Scharff*, A-2190-04T3 (March 27, 2006). Requires the Department of Human Services to calculate prime rate interest on all child support arrears. This case is still in litigation.

⁴ Failure to comply with a court-ordered payment plan results in immediate suspension unless the parent has filed a motion with the court requesting an extension.

⁵ Income withholding is automatic upon filing of support order, but must be capped at 60 percent if parent is not in arrears. Unemployment benefits and worker’s compensation are also considered income for child support purposes.