

**WISCONSIN DEPARTMENT OF CHILDREN AND FAMILIES  
Division of Family and Economic Security  
Bureau of Child Support**

**To: Child Support Directors  
Child Support Supervisors or Lead Workers  
Child Support Attorneys**

**From: André Small, Director  
Bureau of Child Support**

**CHILD SUPPORT  
BULLETIN**

**No.: 17-14**

**Date: 12/14/2017**

**Subject: Incarcerated Non-Custodial Parents**

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**Purpose**

This Child Support Bulletin (CSB) is to revise policy regarding Child Support Agencies' (CSAs) responsibilities when seeking and reviewing child support obligations for incarcerated Non-Custodial Parents (NCPs). With the publication of this Child Support Bulletin, CSB 13-04 is obsolete.

**Background**

The Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs final rule published on December 20, 2016 requires in 45 CFR 303.8(b) that after learning that a parent who owes child support will be incarcerated for more than 180 calendar days, the child support program either sends a notice to both parents of their right to request a review, or initiates the review without the need for a specific request within 15 days after learning of the incarceration.

Wisconsin's current policy on incarcerated payers provides that upon request by an incarcerated payer whose anticipated future period of incarceration is twelve months or more, the CSA shall evaluate their case(s) to determine whether an adjustment is appropriate. The CSA may elect to review a case if the period of incarceration is less than twelve months. Under the new rule, the length of incarceration required to initiate a review is reduced to a period that exceeds 180 days.

A CSA may not evaluate a case for review and adjustment under current policy if the payer is incarcerated for nonpayment of child support, the payer is incarcerated for a crime committed against any child, or the payer is incarcerated for a crime committed against a party in the child support case. Under the new rule there are no exceptions to the required review process. Please note that CSAs may share with their local court any information about the case they deem appropriate.

Federal Child Support Guidelines require states to review, and if appropriate, adjust support orders when either parent has experienced a substantial change in financial circumstances, so that the support order continues to reflect a parent's ability to pay. Under Wis. Stat. §767.59 (1f) (c), a change in the payer's income or earning capacity may constitute a substantial change of circumstances. The final rule requires that a state may not exclude incarceration from consideration as a substantial change in circumstances.

The Wisconsin Supreme Court addressed the factors that should be taken into consideration when reviewing the child support obligation of an incarcerated payer in *In re the Marriage of Rottscheit*, 262 Wis. 2d 292, 664 N.W.2d 525 (2003). The Court held that in determining whether

a parent's child support obligation should be modified because of his/her incarceration, the factors that should be examined include the length of incarceration, the nature of the offense and the relevant course of conduct leading to incarceration, the payer's assets, the payer's employability and the likelihood of future income upon release, the possibility of work release during incarceration, the amount of arrearages that will accumulate during the incarceration, and the needs of the children. When conducting a review, the CSA must consider these same factors.

## **Policy**

Effective upon publication, the CSA must consider the incarcerated parent's current ability to pay when seeking an order for support.

CSAs must send a Notice of the Right to Request a Review to both parents within 15 business days of learning that the noncustodial parent will be incarcerated for more than 180 calendar days. (see sample attached) The CSA may elect to review a case if the period of incarceration is less than 180 days. In addition, CSAs may not exclude incarceration from consideration as a substantial change in circumstances.

If a determination is made to seek a modification of the child support order, the CSA must ensure that the motion or petition for modification is filed and a hearing date set; or, if a stipulation/order is obtained, the CSA must ensure that the stipulation/order is filed timely with the court. The provision of a pro se packet to either of the parties is not sufficient to meet this requirement.

### *Setting and Reviewing Support Orders in Intergovernmental Cases*

Upon receipt of a request for a review in an intergovernmental case, the CSA must follow the guidelines outlined in this CSB for cases in which Wisconsin has CEJ (continuing, exclusive jurisdiction). If Wisconsin does not have continuing, exclusive jurisdiction to modify the order, the CSA may request that the jurisdiction with CEJ complete the review to determine whether a modification is appropriate.

## **Proposed System Change**

BCS has requested a change Service Request (SR17-023) to auto generate the Notice of Right to Request a Review when the date of incarceration is added to KIDS. Counties must generate their own notices to parties until the system work is completed to auto generate the notice.

If you have questions regarding this bulletin, please contact the Bureau of Child Support via KIDPOL Request Form.

Attachment - SAMPLE Notice of Right to Request a Review

cc: Kris Randal, Administrator  
BRO Regional CS Coordinators  
Phyllis Fuller/Nicole Price