

“Voluntary Unemployment,” Imputed Income, and Modification Laws and Policies for Incarcerated Noncustodial Parents

For child support to be a reliable source of income for children, parents who are incarcerated need child support orders that reflect actual income. This chart, which reviews practices, laws, and policies in different jurisdictions, is a companion to the “Realistic Child Support Orders for Incarcerated Parents” fact sheet, PAID fact sheet No. 4.¹



Area	Reduction allowed?*	Modification Practices†	Modification Barriers‡	Legal Authority
AL	Yes	The Alabama Department of Human Resources (DHR) collaborates with the Department of Corrections to provide inmates with information at the time of entry into the prison system about the child support program and their ability to request a review of their child support order. DHR considers incarceration to fall within the definition of significant change meriting modification. DHR staff are not instructed to automatically impute income for an incarcerated individual.	Judicial discretion results in the imputation of income for some incarcerated noncustodial parents. Rule 32 of the Alabama Rules of Judicial Administration requires income to be imputed for an individual who is voluntarily unemployed or underemployed.	Suggs v. Suggs, 54 So.3d 921 (Ala. Civ. App. 2010); Alred v. Alred, 678 So.2d 1144 (Ala.Civ.App.1996); Grogan v. Grogan, 608 So.2d 397 (Ala.Civ.App.1992); Rotar v. Weiland, 591 So.2d 893 (Ala.Civ.App.1991).
AK	Yes	Incarcerated parents can modify to a \$50 minimum order if incarcerated for more than 6 months. Alaska has a Jail Outreach Program where the child support program visits with inmates in all 12 correctional facilities.		Bendixen v. Bendixen, 962 P.2d 170 (Alaska, 1998).
AZ	Yes	Practice is to obtain a \$0 order for incarcerated parents. Through computer interfaces with the corrections department, the child support program identifies incarcerated parents and submits their cases for review (by referral to court for modification).	The primary obstacle is the inability to serve process on the custodial parent in order to proceed with the modification.	State ex rel. Dept. of Economic Sec. v. McEvoy, 955 P.2d 988 (App. Div.1 1998); State ex rel. Dept. of Economic Sec. v. Ayala, 916 P.2d 504 (Ariz. App. Div. 1, 1996).

¹ OCSE wishes to thank Jan Justice and Aaron Nelson, the Center for Law and Social Policy, for their earlier work identifying state policies and projects.

Chart data is based on state child support agencies’ responses as of April 2011.

* May incarcerated parents obtain a reduced or suspended support order that reflects their actual income?

† Does the state have practices that support or encourage modification?

‡ Do additional barriers to modification exist?

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AR	No		While there may not be an absolute ban against reducing orders, the courts do not appear to favor modification.	Allen v. Allen, 82 Ark. App. 42, 110 S.W.3d 772 (Ark. App. 2003); Reid v. Reid, 944 S.W.2d 559 (Ark. App. 1997); Reid v. Reid, 57 Ark. App. 289, 944 S.W.2d 559 (1997).
CA	Yes	Parents incarcerated for more than 90 days may receive a suspension with an order for \$0 if there is no source of income. California launched a statewide outreach program in 2011 which included an incarcerated obligor video for fathers, posters, fact sheets, and a request for information or modification of support form available to all counties and to state prisons. The forms to seek review are available in the prison libraries, and may be submitted to one central office so that the incarcerated parent need not identify the specific agency or location with their child support case. Local child support agencies perform outreach to incarcerated noncustodial parents in their counties via brochures and presentations. The state child support office has an Incarcerated Obligor Web Page for use by local child support agencies.		In re Marriage of Smith, 90 Cal. App. 4th 74 (Cal. App. 5 Dist. 2001); State of Oregon v. Vargas, 70 Cal.App.4th 1123 (Cal.App.5.Dist. 1999); CAL. CODE REGS. TIT. 22, §115530(a)(1) (2011) (“If the obligor is incarcerated, the local child support agency shall seek to adjust the current order to zero...”); CAL. FAM. CODE § 4007.5 (2011).
CO	Yes	Modifications are based on actual income, and not imputed income, and an order of \$50 per month is standard.		In re Marriage of Hamilton, 857 P.2d 542 (Colo. App. 1993).

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CT	Yes	<p>Through one way data-matching, the child support agency receives up-to-date information on incarcerated parents in the custody of Dept. of Correction (DOC) to identify incarcerated parents with child support orders who have sentences greater than three years. The child support agency corresponds directly with the inmates and advises parents of the modification process and provides the necessary paperwork for inmates to seek review of a child support order. The vast majority of those orders are reduced to a zero or minimum order. Most of these modification hearings are conducted via videoconference. DOC staff also have current information and materials about review and adjustment services and modifications to provide to inmates during intake processing. The child support office sends staff members to resource fairs held at correctional facilities across the state to speak with inmates who are close to release. In 2011, Connecticut passed a law authorizing two-way data-matching, which will enable DOC to identify inmates with child support orders and proactively offer these incarcerated parents enhanced support and services.</p>		<p>CONN. GEN. STAT. ANN. §46b-215e, as amended by P.A. 06-149 (2006).</p>
DE	No			<p>Division of Child Support Enforcement, ex rel. Harper v. Barrows, 570 A.2d 1180 (Del. 1990).</p>
DC	Yes	<p>By statute, criminal court judges are required to inform defendants that they may request modification at the time of sentencing and must have petitions available for the defendant to file. By statute, upon receipt of notice and documentation establishing that a parent is incarcerated, the child support agency is required to review the circumstances of both parents and determine if a modification of the support order is appropriate under the guideline, and the agency may request the court to suspend or modify the support order.</p>		<p>Lewis v. Lewis, 637 A.2d 70 (D.C., 1994); D.C. CODE §23-112a (2011); D.C. CODE §16-916.01(r)(5) (2011); D.C. CODE §16-0138 (2011).</p>

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FL	Yes	The Florida Child Support Office has a PRI grant. The Child Support Prisoner Reentry Collaboration is housed at the Baker Correction Institution (male prisoners) and Lowell Correctional Institution (female prisoners) which serves inmates age 18 and older, convicted in and/or returning to Jacksonville (Duval County) with open child support cases. Pre-release activities include educational outreach addressing the importance of establishing paternity and child support as well as the importance of both parents being actively involved in their children’s lives.	If a request to modify is made, the order is held in abeyance until release.	Department of Revenue v. Jackson, 846 So.2d 486 (Fla., 2003).
GA	No			Staffon v. Staffon, 587 S.E.2d 630 (Ga. 2003); GA. CODE ANN.§ 19-6-15(f)(4)(D) (2011).
GU	Yes			
HI	Yes	Child support attorneys make presentations at several different facilities, including on the ability to request a modification.		
ID	Yes	Initial orders are entered with a contingent amount that does not begin accruing until sixty days after the noncustodial parent is released from incarceration.	The state will pursue a modification to decrease if the noncustodial parent pays legal costs, and may impute minimum wage.	Mackowiak v. Harris, 204 P.3d 504 (Idaho 2009); State Child Support Services v. Smith, 40 P.3d 133 (Idaho App. 2001); Carr v. Carr, 779 P.2d 429 (Idaho App. 1989); Nab v. Nab, 757 P.2d 1231(Idaho, 1988).
IL	Yes	“Project Child” is a partnership with the corrections facilities that assists inmates for downward modification if they have an order of at least \$100 and two years remaining on their sentence.		In re Marriage of Hari, 804 N.E.2d 144 (Ill. App. 4 Dist. 2004); In re Marriage of Burbridge, 738 N.E.2d 979 (Ill. App. 3 Dist. 2000); People ex rel. Meyer v. Nein, 568 N.E.2d 436 (Ill. App. 4 Dist. 1991).

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IN	Yes	The Sagamore Institute for Policy Research had a Special Improvement Project grant in 2007 to improve child support enforcement among current and formerly incarcerated individuals who have accumulated large arrearages during incarceration. The grant was also used to implement Lambert (which overturned voluntary unemployment standard).		Lambert v. Lambert, 861 N.E.2d 1176 (Ind. 2007).
IA	Yes	All inmates are shown a modification video when entering prison, and have the opportunity to review it at a later date. The child support/reentry coordinator provides modification packets, which includes a financial form for abbreviated review. The child support program also makes presentations on child support to inmates preparing for release. Iowa has a PRI grant which provides pre-release services, successful transition planning, and aftercare services for offenders released from state institutions to the Second Judicial District. The Child Support Recovery Unit integrates child support case management services and parenting education classes into the rural service delivery case management model.		In re Marriage of Barker, 600 N.W.2d 321 (Iowa 1999).
KS	No	Kansas has PRI grant in which a part-time Child Support Enforcement Specialist liaison is housed in the Reception and Diagnostic Unit at the Lansing Correctional Facility. Apart from the PRI grant, other prison facilities in Kansas provide information about child support obligations.		Matter of Marriage of Thurmond, 265 Kan. 715, 962 P.2d 1064 (Kan. 1998).

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KY	No		<p>There are no state laws or regulations in Kentucky that specifically address setting or modifying child support when an individual is incarcerated. However, it is Kentucky Child Support Enforcement’s (CSE) policy not to file an action to reduce/ suspend a parent’s obligation while they are incarcerated. If the parent wishes to seek a reduction or suspension in their obligation, they must file their own motion with the court. The child support program reports that they would expect the CSE attorney representing the agency to argue against any reduction/ suspension at the court hearing.</p>	<p>Com. ex rel. Marshall v. Marshall, 15 S.W.3d 396 (Ky. App., 2000); Redmon v. Redmon, 823 S.W. 2d 463, (Ky. App. 1992).</p>
LA	No		<p>While there may not be an absolute ban, the courts do not appear to favor modifications.</p>	<p>State v. Battson, 828 So. 2d 132 (La. App. 2002); Savage v. Savage, 821 So. 2d 603 (La. App. 2002); Toups v. Toups, 708 So.2d 849 (La. App. 1st Cir., 1998); State v. Nelson, 587 So.2d 176 (La. App. 1991).</p>

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ME	Yes	The state has a two-page “Frequently Asked Questions” handout for incarcerated parents and provides educational materials and presentations to inmates. The program also uses telephone hearings.		Hebert v. Hebert, 475 A.2d 422 (Me., 1984); Pendexter v. Pendexter, 363 A.2d 743 (Me.1976); ME. REV. STAT. ANN. TIT. 19-A, § 2001(5) (D) (2011) (“A party who is incarcerated in a correctional or penal institution is deemed available only for employment that is available through such institution.”).
MD	Yes	In 2006, Maryland’s Child Support Enforcement Administration received a two-year grant called “Project Fresh Start.” In Prince George’s County, state prisons and local jails partnered to review and adjust orders of incarcerated noncustodial parents. Of the pre-release case participants, 95% had their orders modified to \$-0-, while an additional 4% had orders that had been previously modified.		Willis v. Jones, 667 A.2d 331, 339 (Md. 1995).
MA	Yes	The state child support agency has a package of pro-se materials for long-term (more than one year) incarcerated noncustodial parents who want to request modification of their child support orders. State child support offices have data-matching with corrections and visit inmates monthly to assist in filing for downward modifications.		
MI	Yes	By statute, the Friend of the Court must review the support order within 14 days of learning that a parent will be incarcerated for more than a year.		Pierce v. Pierce, 412 N.W.2d 291 (Mich. App. 1987); Mich. Comp. Laws § 552.517(1) (f) (iv) (B) (2011); 2008 MCSF 1.04E (7).

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MN	Yes	Minnesota has a PRI grant to improve service delivery and support for returning offenders. Minnesota has implemented a strategic statewide plan, a collaborative effort of 20 key state and local agencies under the direction of the commissioner of corrections. This project builds a multidisciplinary collaboration to actively engage offenders and improve outcomes for families, child support agencies, and the department of corrections. The project includes specialized case management services and information sharing. The state child support agency has contracted with corrections to permanently locate a child support specialist at of the state prisons to help modify and establish orders.		Franzen v. Borders, 521 N.W. 2d 626 (Minn. Ct. App. 1994); State ex rel. Carlton County v. Greenwood, 398 N.W.2d 636 (Minn. App. 1987).
MS	Yes			Avery v. Avery, 864 So.2d 1054 (Miss. App. 2004).
MO	Yes	Child support workers make presentations in several state prisons.		Moran v. Mason, 236 S.W.3d 137 (Mo. Ct. App. S.D. 2007); Oberg v. Oberg, 869 S.W.2d 235 (Mo. Ct App. 1993).
MT	No			Mooney v. Brennan, 848 P.2d 1020 (Mont. 1993).
NE	No		Incarcerated parents can seek to modify in a private action in certain circumstances, but not through the child support program.	State ex rel. Longnecker v. Longnecker, 660 N.W.2d 544 (Neb. App., 2003); State v. Porter, 259 610 N.W.2d 23 (Neb., 2000); Oberg v. Oberg, 869 S.W. 2d 235 (Mo. Ct. App. 1993).

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NV	Yes	<p>The program enforcement policy manual states that the enforcing authority may recommend orders below the \$100 minimum for incarcerated parents.</p> <p>New Beginnings Program for Incarcerated Noncustodial Parents has operated since 2003 and offers child support resources to incarcerated individuals. Staff visits prisons monthly to talk with inmates about how to navigate the child support system. Program staff also spends time with inmates that don't owe child support, in order to stress the importance of prevention.</p>		
NH	Yes			<p>Rossino v. Rossino, 153 N.H. 367 (N.H. 2006); Noddin v. Noddin, 123 N.H. 73 (N.H. 1983).</p>
NJ	Yes	<p>State has an extensive collaboration between the New Jersey Department of Health and Human Services and New Jersey Department of Corrections to provide child support assistance to inmates in two state prisons. This includes showing inmates a child support video and offering parenting education classes. Social workers with the corrections office provide case management on child support issues, including providing pro-se information packets on modifying orders. Child support assistance continues during the re-entry process to address arrears accumulation and modification issues.</p>		<p>Halliwell v. Halliwell, 741 A.2d 638 (N.J.Super.A.D., 1999).</p>
NM	Yes			<p>Thomasson v. Johnson, 903 P.2d 254 (N.M. Ct. App. 1995).</p>

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NY	Yes	New York City has a project that provides on-site workshops and consultations for inmates confined at the Riker’s Island correctional institution. Inmates are informed about the modification process, the consequences of arrears accumulation and potential eligibility for debt reduction pursuant to New York City’s debt reduction process (applicable to permanently assigned TANF arrears.) Additionally, child support material is included in the reception packets for all new state inmates, and there is a video and brochure available.		Matter of Knights, 522 N.E.2d 1045 (N.Y. 1988); N.Y. FAM. CT. ACT § 451 (2011); N.Y. DOM. REL. § 236, Part B (7) and Part B (9) (b) (2) (i) (2011) (“Incarceration shall not be a bar to finding a substantial change in circumstances” as long as the incarceration is not for non-payment of support, or an offense against the custodial parent or child).
NC	Yes			Orange County ex rel. Byrd v. Byrd, 501 S.E.2d 109 (N.C. Ct. App. 1998); N.C. Gen. Stat. § 50-13.10(d)(4) (2011).
ND	No	The child support office will conduct an “early review” if requested by an offender serving more than one year (but note that income will still be imputed).	Courts impute minimum wage. New guidelines phase out the imputed income based on the number of years incarcerated.	Surerus v. Matuska, 548 N.W.2d 384 (N.D. 1996). N.D. Admin Code § 75-02-04.1-07 (2011).
OH	Yes	Ohio has a PRI grant to remove barriers that reentering parents face with respect to the payment of current child support. Parents receive assistance in navigating the child support and court systems.		Cole v. Cole, 590 N.E.2d 862 (Ohio Ct. App. 1990); Richardson v. Ballard, 681 N.E. 2d 507 (Ohio Ct. App. 1996).

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OK	No	<p>Oklahoma Child Support Services has a PRI grant in collaboration with two other grantees (Department of Corrections and Community Service Council of Greater Tulsa) in Tulsa to support incarcerated noncustodial parents reentering the community so they may find employment, take care of their child support obligations and lead productive lives. PRI staff meet with eligible noncustodial parents (prior to or after reentry) to assess their strengths and needs and determine their obstacles to paying child support and barriers to employment, and to develop an individualized plan for the noncustodial parent to follow. Caseworkers, child support attorneys, administrative court personnel and local office caseworker staff will provide noncustodial parents with assistance in navigating the child support system.</p> <p>Additionally, Oklahoma is preparing materials for incarcerated noncustodial parents.</p> <p>For newly established orders, a new law defers the start date of the child support obligation until 45 days after the noncustodial parent has been released and reserves the judgment</p>	<p>Although there is no absolute ban on modifications, income will be imputed.</p>	<p>State ex rel. Jones v. Baggett, 990 P.2d 235 (Okla. 1999); Okla. Admin. Code § 340:25-5-178(k) (2011).</p>
OR	Yes.	<p>The law has a presumption that incarceration leads (in most cases) to a zero support order during the period of incarceration and up to 60-days after release. Oregon provides a brochure to inmates that can be returned to request a modification. The simple tear-off, pre-addressed form in the brochure makes it simple for an inmate to initiate the request. Local-level child support professionals also visit nearby correctional facilities periodically and/or meet with noncustodial parents who are not technically incarcerated but are in day reporting/work release situations.</p>		<p>Matter of Marriage of Willis, 840 P.2d 697 (Or. 1992); OR. REV. STAT. § 416.425(12) (2011); OR. ADMIN. R. 137-055-3300 (2011).</p>

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PA	Yes	<p>Pennsylvania has an “Incarcerated Outreach Packet,” which includes a petition to modify, that is available for state prisoners throughout the state. Pennsylvania also has two federal partnerships. In Allegheny County, the Family Division works with Federal Probation to suspend support orders. In Philadelphia County, the OCSE Regional Office and the Pennsylvania Bureau of Child Support Enforcement (BCSE) participate in the Resource and Job Fairs at the Philadelphia Federal Detention Center. At these fairs, BCSE distributes child support information to incarcerated parents, including the Pennsylvania Child Support Handbook, a handout entitled “Support Order Modification-Why Should I Ask to Modify My Support Order?,” and the Petition for Modification of an Existing Support Order.</p>		<p>Nash v. Herbster, 932 A.2d 183 (Pa. Super., 2007); Yerkes v. Yerkes, 782 A.2d 1068 (Pa. Sup. Ct., 2003); Newman v. Newman, 597 A.2d 684 (Pa. Sup. Ct., 1991); Pa.R.C.P.1910.19 (2011) (“Recommendation 75”).</p>
PR	Yes	<p>Puerto Rico has an Memorandum of Understanding between the child support agency and Federal Bureau of Prisons (BOP) to provide child support information to new inmates during the intake process (and to those already incarcerated), provide guidance to BOP caseworkers on the importance of addressing child support issues during the period of incarceration and the re-entry process, and establish a process to exchange documentation between inmates and the agency to initiate and process order modifications. Once a request is received by the agency, the appropriate documentation is mailed back to the inmate to seek a modification.</p>		

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RI	Yes	Rhode Island’s Office of Child Support Services (OCSS) has a relationship with the Federal Wyatt Detention Center. Once incarcerated noncustodial parents are identified, OCCS sends a Motion for Relief with a return envelope and a cover letter instructing the non-custodial parent to sign the motion and mail it back to the child support office. Additionally, if the court finds that the inmate will be incarcerated during the minority of the child, the child support agency may close the case.		
SC	No		While there may not be an absolute ban, modifications are disfavored.	
SD	No	Telephone hearings are available for inmates who seek a reduction, although income will still be imputed.	South Dakota imputes income to the incarcerated parent (whether establishing an order or modifying) at the State minimum wage. There is no provision to reduce the child support payment below the guideline calculation.	Gisi v. Gisi, 731 N.W.2d 223 (S.D., 2007); S.D. CODIFIED LAWS § 25-7-6.10(6) (2011); S.D. CODIFIED LAWS § 25-7-6.4 (2011) (“rebuttable presumption of employment at minimum wage... including while incarcerated, and the parent’s child support obligation shall be computed at a rate not less than full-time employment at the state minimum wage...”).
TN	No	Tennessee has a PRI grant to provide employment-focused services to soon to-be-released and newly released prisoners in pre- and post-release settings in Davidson County. The child support program has a liaison co-located with the DOL and DOJ projects to screen for child support issues among participants in those projects, as well as other ex-prisoners who seek reentry services.	The child support guidelines state that incarceration shall not provide grounds for reduction of any child support obligation. Therefore, incarceration shall result in a finding of voluntary underemployment or unemployment, and child support shall be awarded based upon a finding of voluntary underemployment or unemployment.	State ex rel. Laxton v. Biggerstaff, 2010 WL 759842 (Tenn. Ct. App. 2010); TENN. COMP.R. & REGS. § 1240-2-4-.04(3)(a)(2)(ii)(I) (2008).

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TX	Yes	Noncustodial parents may seek to reduce their child support amount while they are incarcerated. The Child Support’s Family Initiatives Division has developed an Incarcerated Noncustodial Parent Modification Pilot Program to encourage modifying these orders. OAG-CSD has produced and distributed a handbook and a video specifically for incarcerated parents. The handbook has a simple tear-out form that can be used to request a modification. As part of the project, law librarians are trained on how to use the materials.	OAG policy is to seek an initial order while incarcerated based on previous income due to intentional unemployment under the Texas Family Code. The modification of a support order when the noncustodial parent is incarcerated can vary considerably statewide; some judges treat incarceration as voluntary unemployment.	In re Marriage of Lassmann, 2010 Tex. App. LEXIS 6982 (Tex. App. Corpus Christi Aug. 25, 2010); In Interest of M.M., 980 S.W.2d 699 (Tex. App.-San Antonio 1998); Hollifield v. Hollifield, 925 S.W. 2d 153 (Tex. App. 1996); TEX. FAM. CODE ANN. § 154.066 (2011); TEX. FAM. CODE ANN. § 156.401(d) (2011).
UT	Yes			Proctor v. Proctor, 773 P.2d 1389 (Utah App., 1989); UTAH ADMIN. CODE § 78-45-7.5 (2011).
VT	Yes			
VA	No			VA. CODE §20-108.2(B) (2011).
VI	Yes	The Bureau of Prisons in Puerto Rico provides information on how to contact the Virgin Islands child support agency for modification purposes (since all federal prisoners arrested in the Virgin Islands are processed in Puerto Rico).		

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WA	Yes	<p>The Washington child support program provides outreach to incarcerated noncustodial parents. The program has a simple form for inmates to request a modification and has created an instructional DVD that explains modification to inmates when they go through an initial intake center into the prison system. Local level child support professionals visit nearby correctional facilities periodically (and meet with noncustodial parents who are not technically incarcerated but are in day-reporting or work release situations). Additionally, child support workers have live case management data system access on a portable laptop at the facilities so that the child support worker can look at the case records and take needed actions specific for that particular client on the spot.</p>		<p>In re the Marriage of Blickenstaff & Blickenstaff, 859 P.2d 646 (Wash. Ct. App. 1993).</p>
WV	Yes	<p>The child support office has an Memorandum of Understanding with corrections that permits data sharing, and requires corrections to provide modification information. The child support office will conduct a review for modification if the inmate provides a written request.</p>	<p>While incarcerated parents may seek a review, there is variance throughout the state and judicial discretion, as well as administrative processes. The child support program reports that WV BCSE may refuse review if incarceration will last less than 6 months.</p>	<p>Adkins v. Adkins, 221 W.Va. 602, 656 S.E.2d 47 (W.Va., 2007).</p>
WI	Yes	<p>In Milwaukee County, the noncustodial parent and custodial parent are sent notification of the option to request order suspension during incarceration.</p>		<p>Rottscheit vs. Dumbler, 664 N.W. 2d 525 (Wis. 2003).</p>
WY	Yes			<p>Glenn v. Glenn, 848 P.2d 819 (Wyo. 1993).</p>