

**Incarcerated Parents Legislative Proposal  
Final Draft**

**Proposed Changes:**

750 ILCS 5/510(d-5) An obligor who is incarcerated for a period of more than 180 consecutive days shall be rebuttably presumed unable to pay any amount of child support.

(1) The term “incarceration”, for the purposes of this section, means confinement of an individual on a full-time basis in a place of detention that prohibits the individual from gainful employment, including home detention or a municipal, county, state or federal prison or jail. The term does not include an individual on parole, work release, or any other detention alternative program that allows the individual to be gainfully employed.

(2) The term “effective date”, for purposes of this section, means the date upon which actual notice, with proof of same, was provided to the opposing party or parties that a Notice of Incarceration was filed with the circuit court clerk. Notice shall be in writing, with a sworn certificate of mailing, and filed with the circuit court clerk.

(3) An obligor’s child support obligation shall be reduced to \$0.00 (zero dollars) if:

(i) A party or child support agency files with the circuit court clerk a Notice of Incarceration and provides notice to the Obligee, Obligor, and child support agency, when the agency is providing Title IV-D child support services, pursuant to the Illinois Code of Civil Procedure; and

(ii) The Obligee fails to file a written objection with the circuit court clerk, with notice provided to all other parties, within 45 days of the effective date of the Notice of Incarceration.

(4) A Notice of Incarceration must provide the following information:

(i) The name of the Obligee and address where notice is being sent; and

(ii) The name and address of the facility where the Obligor is incarcerated; and

(iii) The Obligor’s inmate number; and

(iv) The beginning and projected end dates of incarceration, if known. If unknown, the notice shall indicate the reason a date cannot be provided; and

(v) That failure to file a written objection, with proper notice, within 45 days of the effective date shall result in the child support obligation being reduced to \$0.00 (zero dollars) as of the effective date of the Notice of Incarceration.

(vi) That a child support order reduced to \$0.00 (zero dollars) pursuant to this section shall resume by operation of law, at the amount previously ordered on the first day of the month following the expiration of ninety (90) days after the actual date the Obligor is released from incarceration. This section does not preclude a person owing a support obligation from seeking a modification of the child support obligation based upon a substantial change or for other reasons allowable by statute.

(5) A Notice of Incarceration shall be invalid if it fails to include all the requirements listed in paragraph 4.

(6) A Notice of Incarceration shall be filed in the jurisdiction where any pending child support, divorce, or paternity action between the parties exists.

(7)(a) If the Obligee files a timely objection with proper notice, the court shall set the matter for hearing as soon as practicable and send notice of the hearing date to the Obligee, the Obligor, and the state agency if the state agency is providing Title IV-D child support services. The presumption that the Obligor is unable to pay any amount of support may be rebutted at the hearing by showing:

(i) the Obligor has substantial income or assets that can be used to satisfy the child support obligation while the Obligor is incarcerated; or

(ii) the Obligor is not, or will not be, incarcerated for more than 180 consecutive days; or

(iii) any additional financial facts that, in the court's discretion, show the Obligor should be required to pay child support while incarcerated.

(b) If at hearing the presumption is rebutted, the court shall make written findings as to the factual basis or bases for the rebuttal.

(8) If the Obligee fails to file a timely objection, or if a hearing is held and the Court determines that the presumption is not rebutted, the court shall enter an order modifying the support obligation to \$0.00 (zero dollars) as of the effective date of the Notice of Incarceration.

(9)(a) A child support order reduced to \$0.00 (zero dollars) pursuant to this section shall resume by operation of law, at the amount previously ordered on the first day of the month following the expiration of ninety (90) days after the actual date the Obligor is released from incarceration. This section does not preclude a person owing support from seeking a modification of the child support obligation based upon a substantial change or for other reasons allowable by statute.

(b) An order that modifies a support obligation to \$0.00 (zero dollars) because of the Obligor's incarceration shall provide that the previous order will be reinstated on the first day of the month following the expiration of ninety (90) days after the actual date the Obligor is released from incarceration. The order shall utilize the Obligor's projected parole date to calculate the first day of the month following the expiration of ninety (90) days, and shall include the specific calendar date upon which the first day of the month following the expiration of ninety (90) days falls. The order shall further provide that if the Obligor is released prior to or subsequent to their projected ~~release~~ parole date, support shall be reinstated on the first day of the month following the expiration of ninety (90) days after the Obligor's actual release date. The order shall further provide that this section does not preclude a person owing support from seeking a modification of the child support obligation based upon a substantial change or for other reasons allowable by statute.