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Prison is No Escape from Child Support

Child support is mandatory in the State of New Mexico and is statutorily regulated by the New Mexico Child Support Guidelines. The Guidelines calculate child support based on worksheets that take into account both parents' gross income, child custody and time-sharing, the cost of medical insurance coverage and work-related daycare for the child.

The rules may seem clear, but when a parent that is ordered to pay child support is incarcerated, this situation can get very complicated. Obviously, when a parent is incarcerated they are not earning an income, which many people think is an automatic basis for a modification of child support similar to that available when a parent loses their job. However, this is not true.

When a parent is incarcerated, the New Mexico Courts will examine several factors in order to determine whether or not child support keeps accruing during their time in jail or prison. These factors include: 1) consideration of whether or not the criminal act for which the parent is in jail was deliberate and had known consequences; 2) the length of the parent's incarceration (if the it is a relatively short period child support will generally continue to accrue and the New Mexico courts have held that four years is considered a relatively short period of time); 3) what, if any, marketable skills the parent has; and 4) what, if any, assets the parent has apart from his or her income.

How each of the factors above is applied will vary depending on the facts of every case. Thus, if a person is faced with a situation in which a parent is incarcerated they should consult an experience [New Mexico child support attorney](#) immediately in order to protect their rights under the child support guidelines and to determine whether or a motion to modify is appropriate.

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