

March 9, 2010

## **Failure to Pay Child Support in New Mexico Is Serious Business**

Child support is mandated by the New Mexico Child Support Guidelines. Like most states, New Mexico has severe penalties for parents who refuse to pay child support.

New Mexico Child Support Enforcement Division ("CSED") has the authority under State law to enforce child support obligations. Failure to pay child support can result in the suspension of driver's licenses, seizure of bank accounts, liens against property, and holdings of contempt which could result in jail time. However, the consequences for failure to pay child support can be far more severe under federal law.

Remarkably, under federal law, there are criminal penalties for failure to pay child support. The so-called Federal Deadbeat Parent Punishment Act ("Deadbeat Dad Act") imposes federal penalties for willfully failing to pay child support that can include payment of restitution and a prison sentence of up to 2 years.

The Court of Appeals for the Eight Circuit recently upheld a father's conviction under the Deadbeat Dad Act in the case of *U.S. v. Davis*. In January, 2000, the defendant father in Davis was ordered to pay \$723.00 per month as child support for his two daughters. Between 2000 and 2008, the father made sporadic child support payments and the Iowa Child Support Recovery Unit was able to collect some payments from the father's employers through child support wage withholding. However, as of July, 2008, the father still owed more than \$52,000.00 in unpaid child support.

Based on the substantial amount of unpaid child support, a federal grand jury indicted the father for violations of the Deadbeat Dad Act. After a jury trial, the father was found guilty of willfully failing to pay child support and sentenced to 24 months in prison, one year of supervised probation. He was also ordered to pay \$53,637.83 as restitution for his unpaid child support.

The father subsequently appealed his sentence arguing that the State could not prove that his failure to pay child support was "willful" as required by the Deadbeat Dad Act because it could not prove that he had the ability to pay the entire amount of support ordered by the Iowa Court. The 8th Circuit Court of Appeals rejected father's argument and upheld his conviction stating that if father could not afford to pay his child support obligation, his remedy was to petition the Court for a modification of that obligation. He did not have the right to simply refuse to pay his lawful child support obligation.

Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958

<http://www.albuquerquedivorcelawyerblog.com/>

Thus, there can be serious consequences for failing to pay child support. If you have been ordered to pay child support and cannot afford to make payments, it is imperative that you address that issue with the Courts. In New Mexico child support cases, you must file a **Petition to Modify Child Support**. The Court will modify support, if at all, only back to the date of filing the **Petition to Modify Child Support**. Delay in filing the **Motion** can have serious financial repercussions since support will continue to accrue at the court ordered rate until the **Petition to Modify Child Support** is filed.

**Main Office:  
400 Gold Ave. SW  
Suite 500  
Albuquerque, NM 87102  
(505) 242-5958**

<http://www.albuquerquedivorcelawyerblog.com/>