

draft

137-055-3300

Incarcerated Obligor

(1) For purposes of establishing or modifying a support order, the following definitions apply:

(a) "Correctional facility" means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order, and includes but is not limited to a youth correction facility **as provided in ORS 162.135**.

(A) "Correctional facility" applies to a state hospital only as to persons detained therein charged with or convicted of a crime, or detained therein after ~~acquittal of a crime by reason of mental defect~~; **having been found guilty except for insanity of a crime under ORS 161.290 to 161.370**.

(B) "Correctional facility" includes alternative forms of confinement, such as house arrest or confinement, where an obligor is not permitted to seek or hold regular employment.

(b) "Incarcerated obligor" means a person who:

(A) Is or may become subject to an order establishing or modifying child support; and

(B) Is, or is expected to be, confined in a correctional facility for at least six consecutive months from the date of initiation of action to establish a support order, or from the date of a request to modify an existing order pursuant to this rule.

(2) The provisions of this rule do not apply to an obligor who is incarcerated because of nonpayment of support.

~~(23)~~ For purposes of computing a monthly support obligation for an incarcerated obligor, all provisions of the Oregon child support guidelines, as set forth in OAR 137-050-0700 through 137-050-0765, will apply except as otherwise specified in this rule.

~~(34)~~ The incarcerated obligor's income and assets are presumed available to the obligor, unless such income or assets are specifically restricted, assigned, or otherwise inaccessible pursuant to state or federal laws or rules regarding the income and assets of incarcerated obligors.

~~(45)~~ If the incarcerated obligor has gross income less than \$200 per month, the administrator shall presume that the obligor has zero ability to pay support.

~~(56)~~ If the provisions of section ~~(45)~~ of this rule apply, the administrator will not initiate an action to establish a support obligation if the obligor is an incarcerated obligor, as defined in subsection (1)(b) of this rule, until 61 days after the obligor's release from incarceration.

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~~(67)~~ The administrator will, **upon notice and verification of incarceration**, not initiate an action to modify a **the** support obligation ~~because of incarceration unless the obligor is **of** an incarcerated obligor, as defined in subsection (1)(b) of this rule, and a party to the current order has requested a modification.~~

~~(78)~~ An order entered pursuant to ORS 416.425 and this rule, that modifies a support order because of the incarceration of the obligor, is effective only during the period of the obligor's incarceration and for 60 days after the obligor's release from incarceration. The previous support order is reinstated by operation of law on the 61st day after the obligor's release from incarceration.

(a) An order that modifies a support order because of the obligor's incarceration must contain a notice that the previous order will be reinstated on the 61st day after the obligor's release from incarceration;

(b) Nothing in this rule precludes an obligor from requesting a modification based on a periodic review, pursuant to OAR 137-055-3420, or a change of circumstances, pursuant to OAR 137-055-3430.

~~(8)~~ ~~The provisions of this rule do not apply to an obligor who is incarcerated because of nonpayment of support.~~

Stat. Auth.: ORS 180.345 and 416.455

Stats. Implemented: ORS 416.425

Effective: April 1, 2014