

Family law for people in prison in BC



Child support

This booklet provides information about child support and how to change child support orders in British Columbia.

Child Support

Under the law, you have an obligation to financially support your children, even if you do not see or take care of them.

The money you pay to help provide for your children's daily needs is called "child support." Child support is the right of the child.

It does not matter if you have never lived with your child's other parent or your child, you are still expected to contribute to your child's support.

You have to pay child support if your child is under 19. You may have to continue to pay child support even if your child is over 19 if your child:

- is going to school; or
- cannot support themselves because of an illness, disability or some other valid reason.

You cannot make an agreement with the child's other parent that you do not have to pay child support, even if the other parent agrees or you are not able to see your child. If you would like to change a child support order, you must apply to the court (see the "Varying an order" section in this booklet).

Paternity

If you are being asked to pay child support, but you do not believe that you are the child's father, you can ask for a paternity test. If the mother of the child does not agree to a paternity test, you will need to make an application to the court for a paternity test. The cost of a paternity test is usually between \$200 and \$600.

How much child support should I be paying?

There are two parts of child support:

- basic child support, and
- contribution to special and extraordinary expenses.

The amount of basic child support that you must pay is based on the *Federal Child Support Guidelines*. The Guidelines contain rules and tables used to set the amount of child support. The amount of basic child support you will pay is based on your “guideline income” (how much you earn, or what you could be earning), and on how many children there are. There are different child support tables for each province, which are based on the standard of living and costs to raise a child in that province.

In addition to basic child support, you might have to contribute to special and extraordinary expenses for your children. These include costs such as child care expenses, medical and dental costs, some extracurricular activities and post-secondary education expenses. These expenses are shared between you and the child’s other parent. The amount is usually based on comparing both of your incomes.

Being in prison means that you will probably not be earning enough money to have to pay child support. If you earn less than \$12,000 a year in BC, you will not have to pay any child support. But, if there is already an order or agreement requiring you to pay child support, you will need to have the order or agreement changed.

Child Support Order or Agreement

There may already be a child support order in place that requires you to pay a certain amount of money each month in child support. A child support order is made in court by a judge. The child support order continues even if you are in prison unless you ask the court to change the order.

You may also have made an agreement with your child's other parent to pay child support. Again, the child support agreement continues even if you are in prison unless you and the other parent agree to change the agreement.

Family Maintenance Enforcement Program

Your child's other parent may have registered the child support order or agreement with the Family Maintenance Enforcement Program (FMEP). FMEP is a BC government program that helps the person receiving child support (the "recipient") collect support money that has not been paid.

If you have a child support order or agreement that has been registered with FMEP and you are not able to pay child support while in prison, the arrears (past payments that you have missed) will still grow. As well, interest will be charged on the amount of money that you owe, and you may be given a penalty.

FMEP can pursue court proceedings against you and take a number of actions against you to try to collect outstanding child support payments, including:

- garnishing your wages;

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- redirecting federal and provincial payments owed to you – like GST, EI or income tax refunds – to the recipient;
 - instructing ICBC to refuse to issue or renew your driver’s license if you are more than \$3,000 in arrears;
 - requesting the federal government to refuse to issue a new passport or suspend your current passport if you are more than \$3,000 in arrears;
 - reporting your unpaid child support to a credit bureau if you are more than \$2,000 in arrears;
 - registering a lien against your personal property or land; and
 - getting an order for your arrest.

Additionally, if you miss or are late on two payments within the same calendar year, the FMEP will automatically charge you a Default Fee. The Default Fee is equal to one month’s support, up to a maximum of \$400. The FMEP also charges interest on the current balance of unpaid maintenance.

If your support order or agreement is registered with FMEP and you cannot make your payments, you need to have the order or agreement varied (changed) in court so that the arrears will stop growing.

If you receive a letter from FMEP about your arrears, it is important that you respond by telling them about your situation and asking FMEP not to take any enforcement action against you. FMEP will likely not take any steps to stop your arrears from growing until they know that you have applied to vary the order.

Varying an order

If you have a child support court order and you are no longer able to make payments, you will need to apply to the court to have the order changed. You can also ask the court to change the amount of child support going back in time (a “retroactive variation”).

You have to file your application to change the order and serve it on the recipient. If FMEP is involved in your file, you also have to serve them with your court application.

The court may change the amount of child support you have to pay if:

- your circumstances have changed so much that a court would make a different order now;
- you or your child’s other parent did not provide all the required financial information when the first order was made; or
- there is important new information that wasn’t available when the first order was made.

You need to have a copy of the court order you want to change. The order will let you know in which court you have to file the application to vary (in Provincial Court or Supreme Court, and in which location).

You will also have to provide the court with information about your financial situation for each of the years (going back in time) that you want the amount of child support you were required to pay to be changed. You will need to fill out and file a Financial Statement, a form that is used in both the Supreme Court and in the Provincial

Court. You will have to attach income tax returns and notices of assessment, and any other proof of your income.

If the court grants you a variation of the order, the new amount of child support will be based on the tables in the Child Support

Guidelines. As a prisoner, it is unlikely you will be making enough money to pay support according to these guidelines. You do not have to pay child support if you earn less than \$12,000 a year.

If you are applying to vary an order from prison, you should try to get a lawyer to help you as not all the steps you need to take will be easy to manage from prison. You may also have difficulty appearing for court hearings as it is not easy to get the court or the prison to allow you to attend court by telephone.

Cancelling or reducing your arrears

You can also ask the court to cancel or reduce the arrears that have grown since you stopped making support payments. This is usually done at the same time as when you apply to the court to vary your child support order.

You need to be able to show the court that it would be “grossly unfair” for you to have to pay the arrears. You address such things as:

- any efforts you have made to pay the child support you were required to pay;
- why you waited until your arrears had grown before you tried to vary the child support order;
- why you can’t pay your arrears now; and

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- any other circumstances that the court should take into account, such as your incarceration, the unintended loss of your employment, changes in the children's residence, or new financial obligations in relation to your family.

You will need to provide to the court a Financial Statement that summarizes all of your income and expenses, and your assets and debts, if you plan to show the court that you cannot pay your arrears.

It is very difficult to have arrears reduced or cancelled. It is much easier to have an order varied, even retroactively (into the past), than to have support reduced or cancelled.

Once you have a new child support order, you need to make sure that FMEP has a copy so that they can adjust the amount you owe in arrears and the amount of child support you will have to pay going forward.

Resources

There are several community resources available if you cannot afford a lawyer. You may need someone in the community to help you to access these resources.

Provincial court forms:

<https://family.legalaid.bc.ca/forms/provincial>

You (or a support person in the community) can also get free printed provincial court forms from the Family Court registry in the town or city where you (or they) live.

Supreme Court forms:

<https://family.legalaid.bc.ca/forms/supreme>

Justice Access Centre

You (or a support person in the community) can visit the Justice Access Centre to do such things as:

- learn about the court system and court procedures;
- get legal information;
- locate and fill out the court forms relevant to your case;
- find out about free legal advice;
- find alternatives to going to court; and
- get referred to a mediator (either a family justice counsellor at the centre or a private mediator) or to other dispute resolution professionals.

Justice Access Centre (Vancouver)

290 – 800 Hornby Street, Vancouver BC

Phone: 604-660-2084

or call Service BC at 1-800-663-7867 (call no charge) and ask to be transferred to 604-660-2084

Justice Access Centre (Victoria)

225-850 Burdett Avenue, Victoria BC Phone: 250-356-7012

or call Service BC at 1-800-663-7867 (call no charge) and ask to be transferred to 250-356-7012

Justice Access Centre (Nanaimo)

302 – 65 Front Street, Nanaimo BC

Phone: 250-741-5447 or 1-800-578-8511

Family LawLINE

If you have a family law issue, you may be eligible for free legal advice over the telephone from a family lawyer. Family LawLINE lawyers give brief advice about family law issues such as:

- parenting time or contact/access;
- guardianship/custody;
- child support;
- spousal support;
- property division;
- family agreements; and
- court procedures.

You may be able to get this help whether or not you qualify for a legal aid lawyer.

You can call Legal Aid’s Call Centre to get in touch with the Family LawLINE service. An intake worker will ask you questions about your financial situation and your legal issue. If you qualify, you’ll be transferred to the Family LawLINE service. Interpreters are provided if you need services in a language other than English.

Legal Aid Call Centre

604-408-2172 (Greater Vancouver) or

1-866-577-2525 (call no charge, outside Greater Vancouver)

Family LawLINE hours: Mondays, Tuesdays, Thursdays and Fridays from 9:00am to 3:00pm; and Wednesdays from 9:00 am to 2:30 pm

Family duty counsel (family lawyers)

If you have a family law issue, you may qualify for help from family duty counsel at the Provincial Court or the Supreme Court, even if you don't qualify for a legal aid lawyer.

In Provincial Court

Family duty counsel can help you with family law matters, including child protection issues (if the Ministry of Children and Family Development is involved with your family).

Duty counsel can give you advice and speak on your behalf in court on simple matters, but if your matter goes to trial, they won't represent you.

Duty counsel are available by appointment or on a walk-in basis in various locations. You can call Legal Aid at 604-408-2172 or 1-866-577-2525 to find out when the service is available.

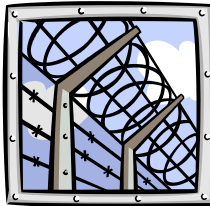
In Supreme Court

You may be eligible for up to 3 hours of free legal advice from Supreme Court family duty counsel.

Duty counsel lawyers can provide advice about child support and court procedures, among other things.

You can call Legal Aid to find out when the service is available.

This publication contains general information only. Each situation is unique. Law and policy can also change. If you have a legal problem, contact Prisoners' Legal Services at 1-866-577-5245 (if you are in a federal prison in BC) or 604-636-0464 (if you are in a BC jail), or a lawyer.



Produced by Prisoners' Legal Services with funding from the Law Foundation of British Columbia.

A project of the West Coast
Prison Justice Society

July 2023

