

Your Passport: A Privilege For Those Who Pay Child Support

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Deadbeats who owe court ordered child support have another incentive to pay their arrears. Effective October 1, 2006, Federal law prohibits the issuance or renewal of a U.S. passport to anyone with child support arrears of \$2,500.00 or more and allows the government to revoke or limit previously issued passports to such individuals.

Many states already have their own penalties for deadbeats who owe child support. These penalties include loss of professional licenses, wage garnishment, court ordered judgments and liens. See NY FCA § 454 et al; NY CPLR §5242. But Federal law now provides yet another incentive.

22 CFR 51.70(a)(8) states that “[a] passport, except for direct return to the United States, shall not be issued in any case in which the Secretary of State determines or is informed by competent authority that the applicant has been certified by the Secretary of Health and Human Services . . . to be in arrears of child support in an amount exceeding \$2,500.00.” 42 USC §652(k)(2) further states that the Secretary of State “may revoke, restrict, or limit a passport issued previously to such individual.”

The Department of State Passport Services has interpreted this to mean that anyone who has child support arrears in excess of \$2,500.00 is ineligible to receive a U.S. passport. Furthermore, Passport Services will not issue a passport to such persons until the Department of Health and Human Services (HHS) certifies that arrears have been paid or that acceptable payment arrangements have been made.

The purposes of the provision are to ensure that individuals stay current on child support obligations and to aid in enforcing payment of those who fall into arrears within the U.S. where additional administrative and judicial remedies are available. The October 2006 Federal law modifies a previously enacted 1998 statute by reducing the required amount of arrearages owed from \$5,000.00 to \$2,500.00.

This provision has had a profound effect on obtaining past due child support from parents in arrears. From the inception of the provision in 1998 to 2006, approximately \$22 million in child support was collected. In 2006, an approximate \$24 million in child support was collected through the passport denial provision. This amount is expected to double in 2007 and 2008, when the new passport and travel requirements go into effect.

The concern over this provision’s infringement on the right to travel was addressed in the Ninth Circuit case of *Eunique v. Powell*, 281 F.3d 940 (9th Cir. 2002). The court held that there is an important governmental interest in making sure that those who do not pay their child support obligations remain within the country where they can be reached by process. The court reasoned that the failure to pay child support has both an economic

and moral effect on the country, so there is a sufficient connection between nonpayment of child support and the government's interference with an individual's right to travel.

How it Works

42 USC §654 requires that each state establish and maintain a statewide child support enforcement agency for the purpose of obtaining, collecting and enforcing child support orders. In New York State, child support services are provided by the New York State Division of Child Support Enforcement (CSE) and Support Collection Units (SCU) in county and in New York City offices. Any court order of arrears or child support order referred to a Support Collection Unit is monitored and enforced by CSE.

Upon notice to an individual in arrears, the enforcement agency may take several administrative actions to recover child support. This administrative action includes mandatory notification to HHS once an individual is in arrears of \$2,500.00 or more. An electronic list is compiled of these individuals by HHS and forwarded to the U.S. Secretary of State for action. This action includes the mandated denial of any application for a new or renewal passport and the discretionary action of revoking, restricting or limiting a previously issued passport.

Currently, passport applications ask applicants to "self-identify" as being in arrears on their child support payments. However, the Department of State Passport Services (Passport Services) will also screen each application against HHS' electronic list of individuals in arrears. If an applicant is listed on this electronic list, the individual will be sent a passport denial Pre-Offset Notice by Passport Services. Passport Services will then hold the application for 90 days pending the removal of the individual's name from HHS' electronic list. If the name is removed before the end of the 90-day hold period, then Passport Services will process the application. If not, the application will be denied.

Passport Services strongly recommends that any individual believing that they are in arrears of their child support should contact their state's child support enforcement agency before applying for a passport. Contact information for each state child support enforcement office can be found at <http://www.acf.hhs.gov/programs/cse/extinf.html>.

Once arrears have been paid or acceptable payment arrangements have been made, the state agency will certify to HHS that arrears have been satisfied. HHS will then remove the individual's name from their electronic list and will notify Passport Services of the removal. The estimated time between payment to the state agency and Passport Services notification by HHS is two to three weeks.

It is suggested that if you owe arrears over \$2,500.00 you should wait three weeks after making payment arrangements with the state agency before submitting a passport application. Passport Services has no information regarding any individual's amount of arrears or how to make payment arrangements. They also have no control over HHS's electronic list. Therefore, all questions or concerns should be directed to the proper state agency, rather than Passport Services.

Potential Problems

There are issues with the breadth of this program's impact. First, for the provision to be applicable to an individual, a state agency has to have control over that individual's obligation to pay child support. In most states, including New York, that requires an order of child support be on file with, and have collection go through, a local or state child support collections unit. Only when a court decides that there are arrears due or that future child support payments must be made through a collections agency can the state have any control over arrears and make a report to HHS. Therefore, this provision will only affect individuals who have had previous court intervention in their child support matter and who are utilizing support collections services.

Secondly, there is very little data on how frequently the Department of State invokes its discretionary powers under the law to revoke, restrict or limit a previously issued passport. U.S. passports are valid for ten years. State Department policy suggests that an individual would have to actually apply for a passport renewal or other consular service before the Department of State would invoke their discretionary power to revoke. If the Department of State does not utilize this discretionary power, an individual could obtain or renew their passport and then let their child support obligations fall into arrears for up to ten years before they need to renew again.

Another problem is the discrepancy in the payment requirements from state to state in order to remove an individual's name from the HHS list. Some states require actual payment (cash or otherwise) of arrears. Others require only that payment arrangements be made, such as through income execution or other gradual payment plans. Furthermore, some states require full payment of all arrears to release the name from the list. Other states require only that the arrearages fall below \$2,500.00. Therefore, a person owing \$10,000.00 in arrears could pay only \$8,000.00 of the arrears and then have their name removed.

These discrepancies may allow individuals to manipulate the policy by making payment arrangements they have no intention of fulfilling or paying only as much of their arrearages as is needed to get their passport issued. This may prove problematic if the Department of State is not pursuing revocation of passports for those individuals who have previously issued passports.

Practical Effect

A similar federal provision for passport denial has been around for several years, with a higher threshold amount of \$5,000.00. However, 22 CFR 51.70(a)(8), with its lowered threshold of \$2,500.00 is of even greater significance given today's concern for national security. In addition to the requirement of a valid passport for any travel overseas, as of January 23, 2007, all persons traveling by air between the United States and Canada, Mexico, Bermuda, and the Caribbean region are required to present a passport or other valid travel document to enter or re-enter the United States.

Expected to begin in the summer of 2008 is the requirement that all U.S. citizens entering the United States by sea or land present either a U.S. passport or other Department of Homeland Security approved form of identification. While this passport requirement will not apply to U.S. citizens traveling to, or returning directly from, a U.S. territory, virtually any travel out of the country, even a weekend getaway to Canada, will soon require a valid U.S. passport.

Conclusion

Deadbeats have another incentive to pay their child support because now the federal government has stepped in and is working with states to ensure payment of child support. It is expected that any problems will be resolved in favor of the payee and a person's freedom to travel will be restricted if child support is owed.