

National Council of Child Support Directors  
2018 Annual Meeting & Conference  
*Child Support: A Safe Harbor for the Future*  
May 13 – 16, 2018 • Norfolk, Virginia



# Learning the Ropes: Child Support 101 for NCSL Legislators

May 15, 2018 • 8:15 am – 10:15 am

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# Part I

# Orientation to the Child Support Program: The Federal Perspective

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# Our Mission

Enhance the well-being of children by assuring that assistance in obtaining support—financial and medical—is available to children through:

Locating Parents	Establishing Paternity	Establishing Support Obligations	Monitoring and Enforcing Obligations	Disbursing and Distributing Collections
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# Federal Office of Child Support Enforcement (OCSE)

- OCSE administers the federal child support program.
- The federal child support program is authorized by Title IV-D of the Social Security Act
- OCSE is a program in the Administration for Children and Families (ACF), which is an operating agency in the Department of Health and Human Services (HHS)
- OCSE has staff at a central office in Washington, DC and in 10 regional offices throughout the United States

# OCSE Divisions

- Office of the Commissioner
- Office of Audit
- Division of Business and Resource Management
- Division of Performance and Statistical Analysis
- Division of Federal Systems
- Division of Customer Communications
- Division of Program Innovation
- Division of State and Tribal Systems
- Division of Policy and Training
- Division of Regional Operations

# HHS Regional Offices

## Region I

- Connecticut
- Maine
  - Penobscot Nation
- Massachusetts
- New Hampshire
- Rhode Island
- Vermont

## Region II

- New Jersey
- New York
  - Saint Regis Mohawk
  - SU: Shinnecock Indian Nation
- Puerto Rico
- Virgin Islands

## Region III

- West Virginia
- District of Columbia
- Delaware
- Maryland
- Pennsylvania
- Virginia

## Region IV

- Tennessee
- North Carolina
  - Eastern Band of Cherokee Indians
- Alabama
- Florida
- Georgia
- Kentucky
- Mississippi
- South Carolina

## Region V

- Illinois
- Indiana
- Michigan
  - Keweenaw Bay Indian Community
- Minnesota
  - White Earth Nation
  - Red Lake Band of Chippewa Indians
  - Leech Lake Band of Ojibwe
  - Mille Lacs Band of Ojibwe
- Ohio
- Wisconsin
  - Lac du Flambeau Band of Lake Superior Chippewa
  - Menominee Indian Tribe of WI
  - Forest County Potawatomi Community
  - Oneida Tribe of Indians
  - Lac Courte Oreilles
  - Stockbridge-Munsee Community
  - Ho-Chunk Tribe
  - Red Cliff Band of Lake Superior Chippewas
  - SU: Sokaogon Chippewa Community

# HHS Regional Offices

## Region VI

- Arkansas
- Louisiana
- New Mexico
  - Mescalero Apache Tribe
  - Pueblo of Zuni
- Oklahoma
  - Chickasaw Nation
  - Cherokee Nation
  - Osage Nation
  - Modoc Tribe of Oklahoma
  - Muscogee (Creek) Nation
  - Ponca Tribe of Oklahoma
  - Kaw Nation
  - Comanche Nation
  - Kickapoo Tribe of Oklahoma
  - Delaware Tribe of Indians
  - SU: Apache Tribe of Oklahoma
- Texas
  - Alabama-Coushatta Tribe of Texas

## Region VII

- Iowa
  - Sac & Fox Tribe of the Mississippi in Iowa (Meskwaki Nation)
- Kansas
  - Kickapoo Tribe in Kansas
  - Prairie Band Potawatomi Nation
- Missouri
- Nebraska
  - Winnebago Tribe

## Region VIII

- Colorado
- Montana
  - Chippewa Cree
  - Blackfeet Nation
  - Confederated Salish & Kootenai Tribes
  - Fort Belknap Indian Community
- North Dakota
  - Three Affiliated Tribes
  - Standing Rock Sioux Tribe
- South Dakota
  - Sisseton-Wahpeton Oyate
- Utah
- Wyoming
  - Northern Arapaho Tribe
  - Eastern Shoshone Tribe

# HHS Regional Offices

## Region IX

- Arizona
  - Navajo Nation
- California
  - Yurok Tribe
- Hawaii
- Nevada
- Guam

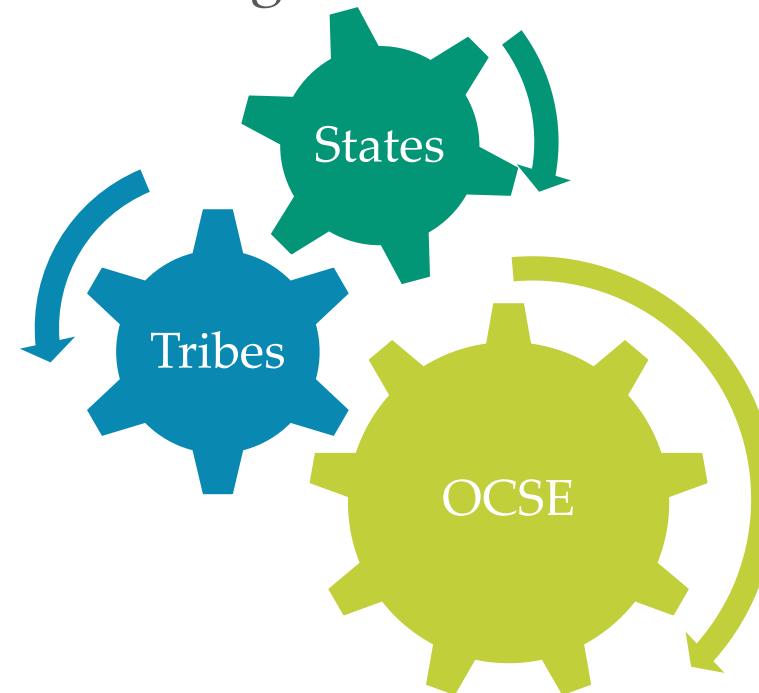
## Region X

- Alaska
  - Central Council Tlingit and Haida Indian Tribes
  - Aleutian Pribilof Islands
- Idaho
  - Nez Perce
  - Coeur D'Alene
  - Shoshone-Bannock Tribes
- Oregon
  - Confederated Tribes of Umatilla
  - Klamath Tribes
- Washington
  - Puyallup Tribe of Indians
  - Lummi Nation
  - Port Gamble S'Klallam Tribe
  - Quinault Indian Nation
  - Nooksack Indian Tribe
  - Tulalip Tribes
  - Confederated Tribes of the Colville Reservation
  - Suquamish Tribe



# What is the Child Support Program?

*Federal, state and tribal child support agencies work together to collect and distribute child support payments and to provide health care coverage*



# State Child Support Programs

- There is a federally funded child support program in each of the fifty states
- There is a federally funded child support program in the District of Columbia, Puerto Rico, Guam, and the Virgin Islands
- Each of these states and territories have an approved IV-D plan which allows the federal government to help fund their child support program

# Tribal Programs

59 Comprehensive  
IV-D Tribal  
Programs

3 Start-up IV-D  
Tribal Programs

Final Rule on Tribal  
Child Support  
Enforcement  
Programs, 69 FR  
16638, March 30,  
2004 (See AT-04-01)


Final Rule on  
Computerized  
Tribal IV-D  
Systems and Office  
Automation, 75 FR  
8508, February 25,  
2010 (See AT-10-01)



# State and Tribal Functions

	Establish paternity	
Locate noncustodial parents	Review & adjust orders	Establish orders
Collect support	Cooperate in intergovernmental enforcement	Monitor & distribute collections

# Federal Functions

- 
- Provides policy guidance
  - Provides training and technical assistance
  - Monitors compliance with federal and state law
  - Provides funding at 66% Federal Financial Participation (FFP) for states
  - Provides startup programs 100% funding. Comprehensive programs receive 90% FFP for the first three years as a fully operational (comprehensive) tribal program and 80% thereafter

# Federal Functions




- Operates the FPLS (Federal Parent Locator Service) – important tools for locate & enforcement



- Operates federal enforcement remedies such as federal tax refund offset and passport denial



- Collaborates with other agencies and organizations for child and family welfare



- Administers Access and Visitation program



- Oversees demonstration grants



- Oversees special improvement projects grants



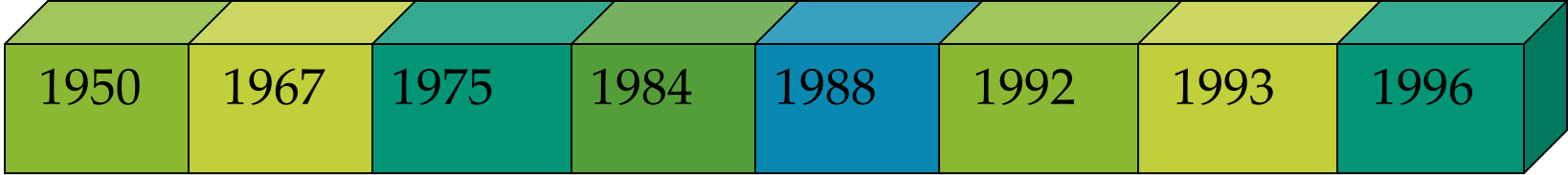
# Legislative History

1950 - First child support enforcement legislation

1975 - Created Title IV-D of the Social Security Act

1988 - The Family Support Act - Support guidelines and establishment of paternity

1993 - OBRA (Omnibus Budget Reconciliation Act ), simplified paternity establishment, established medical support



1967 - Amendment allows IRS access to states

1984 - Child Support Enforcement Amendments, resources expanded to all cases

1992 - Child Support Recovery Act, Penalties for Interstate Cases

1996 - Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA)



# Caseload & Outcomes Data

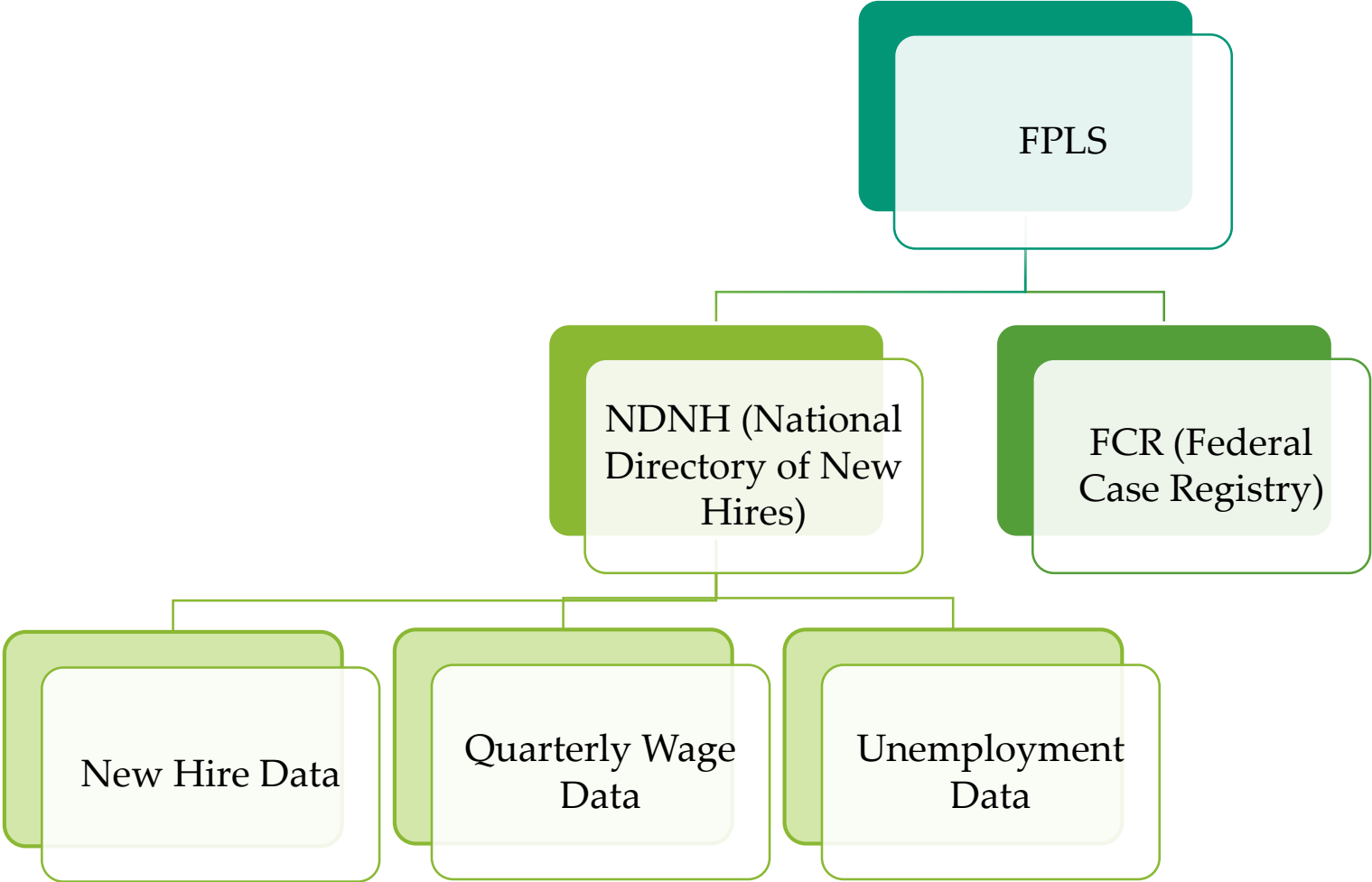
Based on FY 2016 Annual Report

Caseload	•14.5 million total cases	↓
Distributed Collections	•Support collected \$33 billion	↑
Cost-effective ratio	•\$5.33 collected per \$1 spent	↑
Paternities established	•1.5 million	↓
Children	•15.6 million	↓
Arrearages	•\$116.4 billion due	↑





# Federal Parent Locator Services





# Federally Mandated Support Collection Tools

## Income withholding

- 75% of total support collections nationwide
- Standardized IWO forms all states issue to employers

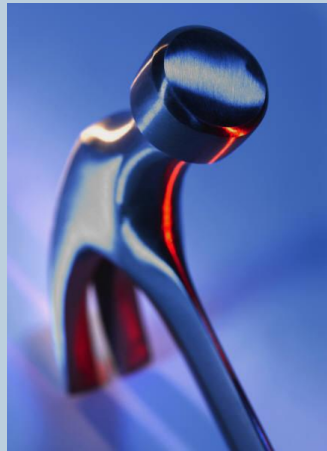
## Credit reporting of arrearages

## In-state Financial Data Match (FIDM)

## Withhold Federal and State Income Tax Refund

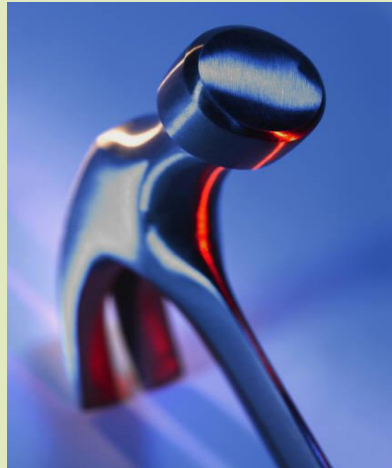


# Federally Administered Support Collection Tools



- Federal tax refund offset
- Passport denial
- Administrative offset
- Insurance match
- MSFIDM (Multi-State FIDM)

# State Administered Support Collection Tools



- State tax refund offset
- Liens/garnishments/levies
- Property seizure
- Restriction or revocation of professional, driver or recreational licenses; vehicle registration
- US Attorney referral for criminal prosecution

# Medical Support

Goal: Promote children's health by establishing and enforcing medical support orders

Historically focused on private coverage through noncustodial parent's employer

- National Medical Support Notice

80% of uninsured children in custodial families are eligible for Medicaid or CHIP (Children's Health Insurance Program)

Increase children's health care coverage through:

- Coverage available to parents or stepparents
- Medicaid
- CHIP
- state health insurance exchanges
- Cash medical support

# Collection and Distribution (State Disbursement Unit – SDU)

States are required to  
have an SDU

All payments made  
through income  
withholding must be  
processed through the  
SDU

SDUs distribute all  
payments within 48  
hours of receipt



# Types of IV-D Cases

## Non-Intergovernmental

Either state or tribal cases

## Intergovernmental

Cases worked on by more than one jurisdiction

- State/state
- State/tribe
- State/foreign country

# Intergovernmental Cases

Interstate cases, state/tribe, state/foreign country

Caseworkers do not need to travel across state lines to establish, enforce, modify or collect orders.

Caseworkers can communicate with the other State via CSENet (Child Support Enforcement network).

OMB (Office of Management and Budget) -approved, mandated forms

Query Interstate Cases for Kids (QUICK)-real-time look up of intergovernmental cases for participating States.



# UIFSA

## Uniform Interstate Family Support Act (UIFSA)

State law –  
effective in all  
states and  
territories with  
IV-D programs

States must  
implement  
UIFSA provisions  
verbatim

Basic steps to  
process interstate  
cases are now  
essentially the  
same for all child  
support  
enforcement  
agencies

Goal – establish  
ONE support  
order which is  
valid/enforceable  
in all states and  
territories

# International Cases

Federal arrangements under §459A of the Social Security Act

- Establish paternity
- Establish and enforce support
- Collect and distribute support payments
- Identify central authority
- No cost

4 foreign reciprocating countries

12 reciprocating Canadian provinces and territories

35+ Hague Child Support Convention countries

# Types of Policy Documents

- **Action Transmittal (AT)**

An AT is a memo used to inform child support agencies of a policy, form, process, or legislation that requires action or implementation.

- **Policy Interpretation Question (PIQ)**

An official OCSE response to an inquiry submitted by a child support agency concerning application of policy.

# Types of Policy Documents

- Dear Colleague Letter (DCL)

A DCL is a type of letter used to communicate general information specifically to state directors or both state and tribal directors.

- Information Memorandum (IM)

An IM is a memo used to communicate general information to child support agencies that doesn't require specific action.

# Handy Tools: Website/SharePoint Sites You Need to Know

- [The Office of Child Support Enforcement](#)
- [Title IV-D of the Social Security Act](#)
- [Code of Federal Regulations](#)
- [OCSE Policy](#)
- [OCSE Regional Office](#)
- [Federally Approved Forms](#)

We hope you find this information helpful. If you have any questions, please contact the Division of Policy and Training at [ocse.dpt@acf.hhs.gov](mailto:ocse.dpt@acf.hhs.gov).





# Part II:

# Child Support Enforcement

# The State Perspective

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# Part II

## Overview of a State Child Support Program





# Children in Poverty

## Nationally:

- Over 16.3 million children in the U.S. – 23% of all children – live in poverty<sup>1</sup>



## Virginia:

- About 279,000 children - 15% - live at or below poverty level<sup>2</sup>
- In 2012, Virginia had the 9<sup>th</sup> lowest rate of poverty in the nation<sup>3</sup>

<sup>1</sup>The Annie E. Casey Foundation, Kids Count Data Center, 2014 Kids Count Profile-United States; <sup>2</sup>*Id.*, 2014 Kids Count Profile-Virginia; <sup>3</sup>Virginia Performs, Government & Citizens-Poverty, 2013

# Child Support: A Social Safety Net

How do child support payments help families?

## Nationally

Child support lifted nearly one million people out of poverty

## Nationally and in Virginia

- Child support provides more monthly income than any other social program (2013)
- Among poor families who receive child support, the average amount received accounts for more than half of their average income (2011)

# Child Support: A Social Safety Net

How many children in Virginia are served by the Division of Child Support Enforcement (DCSE)?

**Nearly 1 in 5!**



- 20% of Virginia's children receive child support
- 4% receive Women, Infants and Children (WIC) benefits
- 2% receive Temporary Assistance for Needy Families (TANF) benefits

# State IV-D Programs

State	Interest	Age of Majority	Guidelines
Kentucky	No	18	Income shares
Mississippi	No	21	Percentage
North Dakota	Yes, 7.5%	18	Percentage
Oregon	Yes, 9%	18, 21 if in school ½ time	Income shares
Utah	No	18	Income shares
Virginia	Yes, 6%	18, 19 if still in high school	Income shares
Washington	No	18	Income shares
Wyoming	Yes	18	Percentage

# Child Support Services

- Locate noncustodial parents (NCPs)
- Establish paternity
- Establish and modify child support orders
- Enforce child support orders
- Collect and disburse money to families and for reimbursement of state and federal funds  
(Temporary Assistance for Needy Families (TANF) and foster care)
- Assist other states and countries



# Locating Noncustodial Parents (NCPs)



# Establishment of the Parent-Child Relationship





# Maternal Parent

Maternal relationship established *prima facie* by proof of birth.





# Establishing Paternity

- DCSE administratively
  - Acknowledgment of Paternity
    - Under oath
    - Notice of rights, responsibilities and consequence
- Genetic test
- Court litigation
  - Parents' admission under oath
  - Recognize another state's order of paternity
  - Parents request or court orders genetic test



# Scientifically Reliable Genetic Tests



**98%**  
**probability**  
**of paternity**

# Establishing Support

Support orders and obligation amounts are established

- By a court
- Administratively by DCSE (if not already set by a court)
- DCSE's Administrative Support Orders (ASOs) have the same force and effect as court orders (but a court order supersedes an ASO)

# Calculating Support Obligations

- Statutory guideline schedule
  - Age 18, 19 if in school and live with parent, disabled
- Income shares method:
  - Considers income of both parents
  - Responsible for pro rata share of the total obligation
  - Ability to Pay



# Right-Sized Orders

- Ability to pay is critical to compliance
- Research shows that a parent is more likely to pay support if the obligation is 19% or less of his/her gross income
- Reliable payments: It is better to have a lower order with regular payments than a higher order with no or irregular payment



# Right-Sized Orders

- Trend toward not imputing income
- Child support is based on economics, not punishment
- Obligation should be based on a parent's actual ability to pay - critical in light of *Turner v. Rogers*
- Imputed income often results in high arrearages which are unlikely to be paid and may force parents into underground economy



# Imputing Income

- In an effort to obtain right-sized orders with more likelihood of payment and in light of the *Turner* decision, DCSE has revised its approach to imputing income to focus on ability to pay
- DCSE may impute income when either parent:
  - Fails to provide financial information
  - Is voluntarily unemployed (quits a job without good cause or is fired for cause)



# Modifying Support

## Administrative Reviews

- Modifying Administrative Orders
  - DCSE modifies an ASO by issuing a new ASO
  - New ASO is effective from date notice of review was served on non-requesting party
  - The existence of an ASO does not preclude either party from initiating court proceedings



Va. Code §§ 63.2-1916 and 63.2-1921(A)



# Modifying Support

## Administrative Reviews

DCSE initiates adjustments of administrative orders and court orders when the results of the review indicate a change of *at least 10%* in the existing order *but not less than \$25 per month*



# Modifying Support

## Administrative Reviews

- Modifying Court Orders
  - DCSE can review support amount ordered by any court
  - DCSE files a motion to enter a proposed modified order if review shows a change of at least 10% but not less than \$25 per month in the existing obligation
  - Court may enter new order without a hearing unless either parent requests one
  - DCSE can review a court order that deviated from the guidelines but must schedule a hearing if a statutorily defined change in circumstances has occurred

# Enforcing Child Support Orders: non-court and court methods



# Fear or Assistance



# The Search

**Duck and Dodge**

**Hide and Seek**



**Do you see me**

**now?**



**Undercover**

# Non-court (administrative) enforcement

- Income withholding orders: withheld from paycheck each pay day
- Orders to withhold and delivers: sent to financial institutions to attach funds in accounts
- Driver's license suspension
- Occupational, Professional and Recreational License Suspension
- Federal and State Offset Programs
- Passport Denial
- Liens
- National Medical Support Notice
- Consumer Credit Agency Reporting
- IRS Full Collection
- Seizure and Sale of Property

# Judicial Enforcement

- Show Cause Motions for failure to pay support
- Bonds
- Foreclosure





# Court Action

Asking for a judicial finding of civil contempt and requesting jail time for failure to pay support is a last resort





DISTINCTIONS	CIVIL	CRIMINAL
Purpose	Compensate parent and/or state; coerce payment	Punish/punitive; preserve dignity of the court
Standard of Proof	Preponderance of evidence	Beyond reasonable doubt
Proof of Intent	Not necessary	Necessary
Jury Trial	Not entitled	Entitled
Court Appointed Counsel	Discretionary	Mandatory, unless waive or retain counsel
Purge Clause	Mandatory, consideration of ability to pay	Does not have
Serves Full Sentence	Release when pay purge amount/upon meaningful attempt to pay	Purge payment does not affect; Serve sentence of definite period
Double Jeopardy	Does not apply	Applies
Good Behavior Credit	Not entitled	May reduce time to serve



# Part III

## The Final Rule:

# The Federal Perspective

LaShawn Scroggins, OCSE Training Branch Chief  
Tricia John, OCSE Policy Specialist



# Final Rule Objectives

**Topic 1:** Procedures to Promote Program Flexibility, Efficiency, and Modernization

**Topic 2:** Updates to Account for Advances in Technology

**Topic 3:** Technical Corrections

# Limited Services

- Services to individuals not receiving title IV-A assistance
  - Gives states and parents flexibility to use limited services instead of the “all-or-nothing” approach in the past rule.
  - Allows a state to provide applicants the option to request paternity-only limited services.

# Guidelines for Setting Child Support Orders

- Guidelines must provide that the child support order is based on the noncustodial parent's earnings, income, and other evidence of ability to pay that:
  - takes into consideration all earnings and income of the noncustodial parent;
  - takes into consideration the basic subsistence needs of the noncustodial parent who has a limited ability to pay by incorporating low-income adjustment, such as a self-support reserve or some other method;
  - if imputation of income is authorized, considers the specific circumstances of the noncustodial parent.

# Guidelines (continued)

- Specific circumstances includes such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.
- States have discretion to also consider custodial parent's income and specific circumstances.
- Guidelines must address how the parent will provide for the child's healthcare needs through private or public health coverage and/or through cash medical support.
- Must prohibit the treatment of incarceration as "voluntary unemployment."

# Guidelines (continued)

- Guidelines must be reviewed at least once every 4 years. States must publish on the internet and make accessible to the public all aspects of the child support guidelines reviewing body, the membership of the reviewing body, the effective date of the guidelines, and the date of the next quadrennial review.
- Review of guidelines must provide meaningful opportunity for public input, including input from low-income parents. Must obtain the views and advice of state child support agencies.
- Review of the guidelines must consider economic data of raising children, labor market data by occupation and skill level for state and local job markets, impact of guideline policy on families who have income below 200% of Federal poverty level, and factors influencing employment rates and compliance with current orders.
- Guidelines review must also analyze case data including rates of default and imputed orders and orders using low-income adjustments.

# Establishment of Support Obligations

- States must:
  - take reasonable steps to develop a sufficient factual basis for the support obligation, through investigations, case conferencing, interviews with both parties, appear and disclose procedures, parent questionnaires, testimony, and electronic data sources.
  - gather information regarding the earning and income of the noncustodial parent, including factors listed under § 302.56(c)(iii).
  - base the support obligation or recommended support obligation amount on the earnings and income of the noncustodial parent whenever available. If evidence of earnings and income is not available or insufficient to use to measure the parent's ability to pay, then the amount should be based on available information about the specific circumstances of the noncustodial parent listed under § 302.56(c)(iii).
  - document the factual basis for the support obligation or the recommended support obligation in the case record.





# Enforcement of Support Obligations – Civil Contempt

- A state must establish guidelines for the use of civil contempt citations in IV-D cases. Guidelines must include requirements that the IV-D agency:
  - screen the case for information regarding the noncustodial parent's ability to pay or otherwise comply with the order;
  - provide the court with such information regarding the noncustodial parent's ability to pay or otherwise comply with the order, which may assist the court in making a factual determination regarding the noncustodial parent's ability to pay the purge amount or comply with the purge conditions; and
  - provide clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the contempt action.

# Review and Adjustment of Child Support Orders

- Requires a state to notify both parents of the right to request review and adjustment within 15 business days of learning that a noncustodial parent will be incarcerated > 180 days.
- Authorizes a state to review and adjust a child support order:
  - after being notified that a noncustodial parent will be incarcerated for more than 180 days;
  - **without waiting for a specific request** to initiate review and adjustment; and
  - after providing notice to both parents.
- In the final rule, OCSE added a requirement that the state's reasonable quantitative standard not exclude incarceration as a basis for review and adjustment of a child support order.

# Payments to the Family

- Requires State Disbursement Units (SDU) to disburse child support payments directly to the:
  - resident parent;
  - legal guardian; or
  - caretaker relative having custody of or responsibility for the child or children.
  
- Final rule adds:
  - conservator representing the custodial parent and child directly with a legal and fiduciary duty; or
  - alternate caretaker designated in a record by the custodial parent. An alternate caretaker is a nonrelative caretaker who is designated in a record by the custodial parent to take care of the children for a temporary time period.



# Medical Support

Clarifies that health care coverage includes both public health care coverage and private insurance.

# Federal Benefits Excluded from Garnishment

- § 307.11: Functional requirements for computerized support enforcement systems
  - Requires a state to identify cases where the noncustodial parent receives SSI payments or concurrent SSI payments and Social Security Disability Insurance (SSDI) benefits under title II of the Act to prevent garnishment of these funds.
  - Requires a state to refund monies within 5 days after the IV-D agency determines the account has been incorrectly garnished.

# Case Closure Criteria

- Clarifies that case closure regulations are optional, with the exception of sections (c) and (d).
- Emphasizes that closing a case will not affect underlying order.
- Requires supporting documentation be maintained in the case record.



# Questions

# Part III

## The Final Rule:

### The State Perspective



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Office of the Attorney General



# Final Rule:

## *Flexibility, Efficiency, and Modernization*

- The federal Office of Child Support Enforcement's final rule was published on December 20, 2016
- The final rule revises existing federal regulations governing the child support enforcement program
- Goals:
  - Increase state and employer flexibility to better serve families
  - Improve program effectiveness, efficiency, and innovation
  - Improve customer service
  - Remove barriers identified by employers, states, and families that impede efficient and timely child support payments



# Final Rule: Purpose

- Set accurate obligations based on a parent's actual ability to pay
- Increase consistent, on-time payments
- Move non-paying cases to paying status
- Increase number of parents supporting their children
- Improve collection rates
- Reduce accumulation of unpaid and uncollectible arrears
- Incorporate technological advances and evidence-based standards that support good customer service and cost-effective management practices



# Final Rule: Child Support Guidelines

**Guidelines must now provide that obligations are based on NCP's earnings, income, and other evidence of ability to pay**

- i. Consider all earnings and income of NCP
- ii. Consider NCP's basic subsistence needs and incorporate low-income adjustment into guidelines



# Final Rule: Child Support Guidelines

- iii. If imputation is authorized, must consider NCP's specific circumstances including:

Age	Assets
Availability of employers willing to hire parent	Criminal record & other employment barriers
Educational attainment	Employment & earnings history
Health	Job skills
Literacy	Local job market
Prevailing earnings level in community	Record of seeking work
Residence	Other relevant background factors

# Final Rule: Child Support Guidelines

- Now allows for parents to provide for health care through **private or public** coverage and/or cash medical support
- Replaced health care coverage with private or public coverage
- Takes Medicaid and FAMIS into account



# Final Rule: Child Support Guidelines

Provides that **incarceration may not be treated as voluntary unemployment** in establishing or modifying obligations



# Final Rule: Establishment of Support Obligations

In establishing and modifying obligations, state must at a minimum:

1. Take reasonable steps to develop a sufficient factual basis for obligation through such means as:
  - Investigations
  - Case conferencing
  - Interviews with both parties
  - Appear and disclose procedures
  - Parent questionnaires
  - Testimony
  - Electronic data sources



# Final Rule: Establishment of Support Obligations

2. Gather information on NCP's earnings and income
3. Base obligation on NCP's earnings and income whenever available
  - If evidence of earnings and income is unavailable or insufficient to use as a measure of NCP's ability to pay, obligation should be based on available information about NCP's specific circumstances
4. Document factual basis for obligation in case record



# Final Rule: Review and Adjustment

- States may elect to initiate review of orders in cases where agency learns NCP will be incarcerated for more than 180 calendar days without need for specific request from parties
- Upon notice to both parties, state may review and, if appropriate, adjust the order



# Final Rule: Review and Adjustment

Incarceration may be considered in determining whether a modification is warranted (and must not be excluded as a consideration)



# Final Rule: Civil Contempt

States must establish guidelines for using civil contempt that include procedures to:

- Screen case for information regarding NCP's ability to pay or otherwise comply with order



- Provide court with this information, which may assist court in making a factual determination regarding NCP's ability to pay purge or comply with purge conditions
- Provide clear notice to NCP that ability to pay constitutes the critical question in civil contempt action

# Final Rule: Civil Contempt

Establish NCP's ability to pay or otherwise comply with order by showing

- either that respondent has income, cash or assets sufficient to pay
- or that there are steps respondent can take that would allow him/her to pay some or all of the amount owing



Definition adopted from the North Carolina case of *Jones v. Jones*, 62 N.C. App. 748 (1983), with “or assets” added

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