

**TITLE IV-D PRACTICE TIPS
and
CASE LAW UPDATE**

Featuring:

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and

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Overview of the Title IV-D Program

The Indiana Department of Child Services contracts with the ninety-two (92) Prosecutor's Offices in Indiana to provide Title IV-D Services in their counties. This refers to Title IV-D of the Social Security Act 42 USC § 666, et al.

We are involved in two types of cases:

1. Mandatory referrals from public assistance (IV-A) cases and foster care (IV-E) cases
2. The custodial parent, non-custodial parent or 3rd party custodian can apply for IV-D services and pay a one-time fee of \$25.00

In paternity actions, we represent the best interests of the child.

IC § 31-14-4-2: (a) Upon the request of:

- (1) the child;
- (2) the mother or expectant mother;
- (3) a man alleging to be the father or expectant father;
- (4) the department; or
- (5) the county office of family and children;

the Prosecuting Attorney shall file a paternity action and represent the child in that action.

In enforcement actions, we represent the State of Indiana.

IC § 31-25-4-13.1: (e) A prosecuting attorney... enters into an attorney-client relationship with the state to represent the interests of the state...and not the interests of any other person. An attorney-client relationship is not created with any other person.

(f) At the time that an application for child support services is made, the applicant must be informed that:

- (1) an attorney who provides services for the child support bureau is the attorney for the State and is not providing legal representation to the applicant; and
- (2) communications made by the applicant to the attorney and the advice given by the attorney to the applicant are not confidential communications protected by the privilege under IC § 34-46-3-1.

Title IV-D Program Mission

To increase the reliability of child support paid by parents when they live apart from their children by:

- Locating parents
- Establishing legal fatherhood (paternity)
- Establishing and enforcing fair support orders
- Increasing health care coverage for children
- Removing barriers to payment by referring parents to employment services, supporting healthy co-parenting relationships, supporting responsible fatherhood and helping to prevent and reduce family violence

We are funded by the County issuing a Title IV-D Budget. That budget is reimbursed by federal pass through funds at an effective rate of 71%. What this means is the county itself only actually pays for 29% of our budget. Because we receive federal funds, we are graded by the federal government in the following performance measures:

Paternity Establishment	105.88%	- Between the State and Federal Average
Support Order Establishment	97.04%	- Greater than State and Federal Average
Current Support Collections	63.17%	- Greater than State and Federal Average
Cases Paying on Arrears	74.01%	- Greater than State and Federal Average

We are not measured on the entry of health insurance orders, however we must ensure that at least one parent is ordered and is providing health insurance or if not, that there is an order for “cash medical support” to cover uninsured expenses. In Indiana, the “6% rule” qualifies for the “cash medical” portion of the requirement.

The Child Support Program is seen by State and Federal Legislators as a key anti-poverty program. In 2011 the National Program collected over \$27.3 billion and distributed 94% directly to families. Child support received by families is 39% of the income of those headed by single mothers and reduces the poverty rate by 25%. Federally, for every dollar spent on enforcement \$5.12 is collected in child support. In 2012, we collected over \$29 million in current child support and arrears.

The face of families is changing. At the recent Federal Policy Forum in January 2013, the following statistics were provided: In 1960, 5.3% of all children were born out of wedlock, in 2010, 40.8% were born out of wedlock. Only 25% of all children will be born and raised in a traditional marriage setting. Additionally, 2.7 million grandparents are responsible for the basic needs of their grandchildren, and 580,000 of them have an income below the poverty level. 10% of all children in the U.S. lived with a grandparent in 2010.

Title IV-D Program Services and Practices

1. Establish Paternity for Children Born Out of Wedlock

a. Paternity Affidavits Executed in Accordance with IC § 16-37-2-2.1 legally establish paternity pursuant to IC § 31-14-7-3

i. Affidavits may only be rescinded within 60 days of their execution or

ii. Court finding “fraud, mistake or duress”

b. Paternity Establishment IC § 31-14-2-1

i. Admission

ii. Genetic Testing IC § 31-14-6-1

1. Lab Corp – our cost = \$37.00 per person or \$111.00 per trio

2. Private attorney cost = \$175.00 per person or \$525.00 per trio

3. You cannot open a IV-D case just to obtain the discounted genetic test rate

4. We will remain in the case until the conclusion of the paternity establishment and entry of a child support order

5. We will file genetic test stipulations and file proposed orders in our office if the parties are in agreement

iii. Marital Presumption IC § 31-14-7-1

1. This may be rebutted by genetic testing

2. May also be done by relevant factors see: Richard v. Richard, 812 N.E. 2d 222 (In. Ct. Apps. 2004) citing Minton v. Weaver, 697 N.E. 2d 1259, 1260 (Ind. Ct. App. 1998)

c. UIFSA – IC § 31-18-7-1

- i. Can only establish paternity, enter a support order and health insurance order**
- ii. Indiana Court can not address custody, parenting time or name change pursuant to IC § 31-18-7-2**
- iii. If both parties move to Indiana or stipulate, the Court may assume “continuing exclusive jurisdiction” (CEJ) to hear all issues**

2. Establish Child Support Orders

a. Child Support Guidelines

b. Actual Income vs. Imputed Income

- i. If applicable must use actual income**
- ii. If attributing potential income to a party, he/she must have the ability to earn the same**

c. Parenting Time Credit

- i. Will be included in the calculation**
- ii. Non-custodial parent is entitled to a credit for exercising more than fifty-two (52) overnights per year**

3. Enforce Child Support Orders for Both Current Support and Arrears

a. Administrative Enforcement

i. Income Withholding Orders IC § 31-16-15-0.5 & IC § 31-16-15-2.5

- 1. Statutory arrears payments IC §31-16-15-2.5 (f)**
- 2. The obligor will receive a Notice of Intent to Withhold by IWO if the Court has never ordered IWO**
- 3. Income = anything of value owed to obligor**
- 4. Federally approved form attached to materials**

ii. Non-Payment Letters

iii. Collection Calls

iv. License Suspension IC § 31-25-4-32, § 31-16-12-7 through

§ 31-16-12-10

- 1. Driver's License**
- 2. Professional Licenses**
 - a. Law License**
 - b. Teaching**
 - c. Horse Racing**
 - d. Gambling**
 - e. Insurance**
 - f. Any other professional license that is regulated**
- 3. Department of Natural Resources**
 - a. Fishing, Hunting, Trapping**
 - b. Lake Michigan Commercial Fishing**
 - c. Bait Dealer**
 - d. Mussel License**
 - e. Fur Buyer**
 - f. Nursery Dealer**
 - g. Ginseng Dealer**
- 4. Alcohol and Tobacco Commission**
- v. Passport Suspension 42 USC § 652**
- vi. Federal and State Tax Offset 42 USC § 664**
- vii. Financial Institution Data Match IC § 31-25-4-31**
 - 1. May follow the FIDM statute**
 - 2. May also be done pursuant to a lump sum IWO**
 - 3. Cox v. Anderson, 801 N.E. 2d 775, 2004**
- viii. Statutory Lien IC § 31-16-16-2**
 - 1. Every missed payment constitutes a statutory lien**
- ix. Vehicle Liens IC § 31-25-4-30**
- x. Child Support Lien Network**

1. Matches child support arrears cases with insurance industry databases
2. Lump sum IWO's are sent for cases with arrears
- x. Credit Bureau Reporting IC § 31-25-4-22
- xii. Administrative Hearings
 1. One on one meeting with Deputy Prosecutor
 2. Advised of rights to have attorney present
 3. Discuss case, barriers to paying, job referrals
- xiii. Child Support Improvement Program (CSIP)
 1. Program through Work One
 2. Job readiness
- xiv. Goodwill 2nd Chance
 1. Specifically for felons
 2. Work experience
 3. Job readiness
 4. Child support presentations
- b. Judicial Enforcement IC § 31-16-12-1
 - i. Contempt IC § 31-16-12-6
 - ii. Rule To Show Cause
 1. Right to Counsel: Marks v. Tolliver, 839 NE 2d 703 (2005)
 - iii. Sentencing
 1. Jail
 2. Community service: Petit v. Petit, 626 NE 2d 444 (1993)
 3. Job searches
 4. Suspended sentences
 5. Child Support Improvement Program (CSIP)
 6. Purge bonds – may be any amount up to the total arrearage
 - iv. No Contempt Post-Emancipation in Indiana

v. Proceeding Supplemental

vi. Judgment Liens

- 1. Court may put lien on SSD proceeds**
- 2. Inheritance**
- 3. Settlement or jury award funds**
- 4. Any other income owed to the obligor**

4. Modify Child Support Orders IC 31-25-4-17 (a)(6)

- a. Mandatory simplified procedure for review and adjustment pursuant to IC § 31-25-4-17 (a)(6)**
- b. In-office modification stipulation process**
- c. Six per day, five days per week, specific thirty minute appointments with a Deputy Prosecuting Attorney**
- d. Notified of right to have an attorney or ask for time to hire one**
- e. If an agreement can't be reached, set for court**
- f. Reduces number of court hearings**

5. Emancipation IC § 31-16-6-6

- a. Emancipation now at age nineteen (19) years instead of twenty-one (21) years old**
 - i. Terminate IWO for current support and collect arrears only if this was the only or youngest child on the case**
 - ii. File modification if this child is oldest of multiple children on the case**
 - iii. Anyone may file or parties may request modification from the State**
- b. Exception: Disabled Child**
 - i. Party seeking child support to continue has the burden to prove**
 - ii. Child support can be ordered indefinitely and we can code ISETS to collect it**
- c. College Expenses**

- i. Title IV-D office does not file or enforce post-secondary expenses
- ii. Parent or child must file
- iii. Not payable through ISETS should be payable through the clerk's judgment desk

6. Obtain Medical Insurance Coverage for Children

- a. So long as it is reasonably available
- b. Federal regulation defines reasonable as 5% or less of a party's gross income
- c. Also cash medical, but Indiana's 6% rule qualifies

7. Registration of Foreign Support Orders – UIFSA

- a. Register foreign support orders for enforcement pursuant to IC § 31-18-6-1
- b. Can only enforce the order, cannot modify it without taking "continuing exclusive jurisdiction"
- c. Continuing Exclusive Jurisdiction
 - i. Both parties have moved to Indiana
 - ii. Both parties stipulate to grant Indiana CEJ
 - iii. The party who doesn't live in Indiana requests modification in Indiana

8. Felony Non-Support Charging

- a. Last resort
- b. Typically filed only after all civil enforcement tools have failed
- c. If obligor resides out of state and civil enforcement is not possible
- d. C Felony if over \$15,000.00

9. Title IV-D Court

- a. Uniform decisions on Title IV-D Cases
- b. Circuit and Superior Court post-dissolution cases
 - i. Assigned to Title IV-D Court post-decree

- 1. Title IV-D Magistrate hears the cases and issues recommendations**
 - 2. Original judge approves orders**
 - ii. Only for child support related matters**
 - iii. Reassigned back to court of origin for non-Title IV-D issues like custody and parenting time**
- c. Expedited hearings on Title IV-D issues**

INCOME WITHHOLDING FOR SUPPORT

- ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)
AMENDED IWO
ONE-TIME ORDER/NOTICE FOR LUMP SUM PAYMENT
TERMINATION of IWO

Date: _____

Child Support Enforcement (IV-D) Agency Court Attorney Private Individual/Entity (Check One)
NOTE: This IWO must be regular on its face. Under certain circumstances you must reject this IWO and return it to the sender (see IWO instructions http://www.acf.hhs.gov/programs/cse/newhire/employer/publication/publication.htm-forms.) If you receive this document from someone other than a State or Tribal CSE agency or a Court, a copy of the underlying order must be attached.

State/Tribe/Territory INDIANA Remittance Identifier/
City/County/Dist./Tribe Case Number:
Private Individual/Entity Cause Number:

RE:
Employer/Income Withholder's Name Employee/Obligor's Name (Last, First, Middle)
Employer/Income Withholder's Address Employee/Obligor's Social Security Number
Employer/Income Withholder's FEIN Custodial Party/Obligee's Name (Last, First, Middle)
Child(ren)'s Name(s) (Last, First, Middle) Child(ren)'s Birth Date(s)

ORDER INFORMATION: This document is based on the support or withholding order from Indiana. You are required by law to deduct these amounts from the employee/obligor's income until further notice.

\$ _____ Per _____ current child support
\$ _____ Per _____ past-due child support - Arrears greater than 12 wks? Yes No
\$ _____ Per _____ current cash medical support
\$ _____ Per _____ past-due cash medical support
\$ _____ Per _____ current spousal support
\$ _____ Per _____ past-due spousal support
\$ _____ Per _____ other (specify) _____

For a Total Amount to Withhold of \$ _____ per _____.

AMOUNTS TO WITHHOLD: You do not have to vary your pay cycle to be in compliance with the Order Information. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

\$ _____ per weekly pay period. \$ _____ per semimonthly pay period (twice a month).
\$ _____ per biweekly pay period (every two weeks) \$ _____ per monthly pay period.
\$ _____ Lump Sum Payment: Do not stop any existing IWO unless you receive a termination order.

REMITTANCE INFORMATION: If the employee/obligor's principal place of employment is Indiana, you must begin withholding no later than the first pay period that occurs 14 days after the date this order is received. Send payment the same day as the pay date/date of withholding. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to % of disposable income for all orders. If the employee/obligor's principal place of employment is not Indiana, obtain withholding limitations, time requirements, and any allowable employer fees at http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm for the employee/obligor's principal place of employment.

For electronic payment and processing information log on to the Child Support Bureau Website at www.childsupport.in.gov, click on Payment Processing under Employer Services and follow the links, or call:(317) 232-0327 or (800) 292-0403. IC 31-16-15-16 requires employers with more than 50 employees and more than one obligor/employee to process child support payments electronically.

Include the **Remittance Identifier with the payment**, and if necessary this FIPS code: ____.

Remit payment to "Indiana State Central Collection Unit" (INSCCU), at P.O. Box 6219, Indianapolis, IN 46206-6219.

If paying by check, include Remittance Identifier/Case Number, employee/obligor's Social Security Number, and Cause Number on the check.

The remittance form is available at www.childsupport.in.gov.

Return to Sender [Completed by Employer/Income Withholder]. Payment must be directed to an SDU in accordance to 42 USC § 666(b)(5) and (b)(6) or Tribal Payee (see Payments to SDU below). If payment is not directed to an SDU/Tribal Payee or this IWO is not regular on its face, you *must* check this box and return the IWO to the sender.

Signature of Judge/Issuing Official: _____

Print Name of Judge/Issuing Official:

Title of Judge/Issuing Official:

Date of Signature:

If the employee/obligor works in a State or for a Tribe that is different from the State or Tribe that issued this order, a copy of this IWO must be provided to the employee/obligor.

If checked, the employer/income withholder must provide a copy of this form to the employee/obligor.

ADDITIONAL INFORMATION FOR EMPLOYERS/INCOME WITHHOLDERS

State-specific contact and withholding information can be found on the Federal Employer Services website located at:

http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contact_map.htm

Indiana-specific information and FAQs can be found under the Employer Services section of the Child Support Bureau website at:

<http://www.in.gov/dcs/support.htm>.

Priority: Withholding for support has priority over any other legal process under State law against the same income (USC 42 §666(b)(7)). If a Federal tax levy is in effect, please notify the sender.

Combining Payments: When remitting payments to an SDU or Tribal CSE agency, you may combine withheld amounts from more than one employee/obligor's income in a single payment. You must, however, separately identify each employee/obligor's portion of the payment.

Payments to SDU: You must send child support payments payable by income withholding to the appropriate SDU or to a Tribal CSE agency. If this IWO instructs you to send a payment to an entity other than an SDU (e.g., payable to the custodial party, court, or attorney), you must check the box above and return this notice to the sender. Exception: If this IWO was sent by a Court, Attorney or Private Individual/Entity and the initial order was entered before January 1, 1994 or the order was issued by a Tribal CSE agency, you must follow the "Remit payment to" instructions on this form.

Reporting the Pay Date: You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor's wages. You must comply with the law of the State (or Tribal law if applicable) of the employee/obligor's principal place of employment regarding time periods within which you must implement the withholding and forward the support payments.

Multiple IWOs: If there is more than one IWO against this employee/obligor and you are unable to fully honor all IWOs due to federal, State, or Tribal withholding limits, you must honor all IWOs to the greatest extent possible, giving priority to current support before payment of any past-due support. Follow the State or Tribal law/procedure of the employee/obligor's principal place of employment to determine the appropriate allocation method.

Lump Sum Payments: You may be required to notify a State or Tribal CSE agency of upcoming lump sum payments to this employee/obligor such as bonuses, commissions, or severance pay. Contact the sender to determine if you are required to report and/or withhold lump sum payments.

Liability: If you have any doubts about the validity of this IWO, contact the sender. If you fail to withhold income from the employee/obligor's income as the IWO directs, you are liable for both the accumulated amount you should have withheld and penalties set by State or Tribal law/procedure. In Indiana those penalties can be found in IC 31-16-15-23.

Anti-discrimination: You are subject to a fine determined under State or Tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against any employee/obligor because of this IWO. In Indiana those disciplinary actions can be found in IC 31-16-15-25.

Employer's Name: _____ Employer FEIN: _____
Employee/Obligor's Name: _____
Remittance Identifier/Case Number: _____ Cause Number: _____

Withholding limits: You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) (15 U.S.C. 1673(b)); or 2) the amounts allowed by the State or Tribe of the employee/obligor's principal place of employment (see *REMITTANCE INFORMATION*). Disposable income is the net income left after making mandatory deduction such as: State, Federal, local taxes; Social Security taxes; statutory pension contributions; and Medicare taxes. The Federal limit is 50% of the disposable income if the obligor is supporting another family and 60% of the disposable income if the obligor is not supporting another family. However, those limits increase 5% - to 55% and 65% - if the arrears are greater than 12 weeks. If permitted by the State or Tribe, you may deduct a fee for administrative costs. The combined support amount and fee may not exceed the limit indicated in this section.

For Tribal orders, you may not withhold more than the amounts allowed under the law of the issuing Tribe. For Tribal employers/income withholders who receive a State IWO, you may not withhold more than the lesser of the limit set by the law of the jurisdiction in which the employer/income withholder is located or the maximum amount permitted under section 303(d) of the CCPA (15 U.S.C. 1673(b)).

Depending upon applicable State or Tribal law, you may need to also consider the amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

Arrears greater than 12 weeks? If the *Order Information* does not indicate that the arrears are greater than 12 weeks, then the Employer should calculate the CCPA limit using the lower percentage.

Additional Information: You may retain a two dollar (\$2.00) fee from the income payee's income each time income withheld is forwarded according to Indiana law. The sum total of the amount to be withheld plus this fee shall not exceed the maximum amount permitted under the CCPA.

NOTIFICATION OF EMPLOYMENT TERMINATION OR INCOME STATUS: If this employee/obligor never worked for you or you are no longer withholding income for this employee/obligor, an employer must promptly notify the CSE agency and/or sender by returning this form to the address listed in the Contact Information below:

This person has never worked for this employer nor received periodic income.

This person no longer works for this employer nor receives periodic income.

Please provide the following information for the employee/obligor:

Termination date: _____ Last known phone number: _____

Last known address: _____

Final payment date to SDU/ Tribal Payee: _____ Final payment amount: _____

New employer's name: _____

New employer's address: _____

CONTACT INFORMATION:

To Employer/Income Withholder: If you have any questions, contact _____ (Issuer name) by phone at _____, by fax at _____, by email or website at: _____.

Send termination/income status notice and other correspondence to: _____ (Issuer address).

To Employee/Obligor: If the employee/obligor has questions, contact _____ (Issuer name) by phone at _____, by fax at _____, by email or website at: _____.

For any payment processing questions, please contact the Employer Maintenance Unit (EMU) at (317) 232-0327 or (800) 292-0403 or EMU@dcs.in.gov.

IMPORTANT: The person completing this form is advised that the information may be shared with the employee/obligor.