

**TITLE 465 DEPARTMENT OF CHILD SERVICES****Proposed Rule**  
LSA Document #16-54

## DIGEST

Makes numerous changes to [465 IAC 1-1](#) to delete obsolete references, to define the "department" as the "Indiana department of child services", and to replace "division of family and children" with the "department" or "central collection unit" as appropriate throughout the rule. Amends [465 IAC 1-1-1](#) to include parent locator services as a part of child support services, to include a definition of the term "fees", to clarify "nonpublic assistance recipient", and to make other technical changes. Amends [465 IAC 1-1-2](#) regarding child support services fees paid by persons who have not received federal public assistance. Amends [465 IAC 1-1-11](#) regarding recoupment of overpayments of child support. Repeals [465 IAC 1-1-4](#), [465 IAC 1-1-7](#), [465 IAC 1-1-9](#), and [465 IAC 1-1-10](#). Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[465 IAC 1-1-1](#); [465 IAC 1-1-2](#); [465 IAC 1-1-3](#); [465 IAC 1-1-4](#); [465 IAC 1-1-5](#); [465 IAC 1-1-6](#); [465 IAC 1-1-7](#); [465 IAC 1-1-8](#); [465 IAC 1-1-9](#); [465 IAC 1-1-10](#); [465 IAC 1-1-11](#); [465 IAC 1-1-12](#); [465 IAC 1-1-13](#)

SECTION 1. [465 IAC 1-1-1](#) IS AMENDED TO READ AS FOLLOWS:

**[465 IAC 1-1-1](#) Definitions**

**Authority:** [IC 31-25-2-18](#); [IC 31-25-4-27](#)

**Affected:** [IC 31-14-10](#); [IC 31-14-11](#); [IC 31-25-1](#); [IC 31-25-3-1](#); [IC 31-25-3-2](#); [IC 31-25-4](#)

Sec. 1. The following definitions shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(1) "Child support services" ~~includes~~ **means** the legal activities necessary to establish or enforce a child support order, including:

**(A) location of parents for the purpose of carrying out the functions of the Title IV-D agency, and parent location efforts are carried out by:**

**(i) the Indiana state parent locator service as provided in [IC 31-25-3-2](#), administered by the department's child support bureau established under [IC 31-25-3-1](#);**

**(ii) the parent locator service administered by another state; and**

**(iii) the federal parent locator service;**

~~(A)~~ **(B) enforcement of a prior support order secured in a divorce or paternity proceedings;**

~~(B)~~ **(C) establishment and enforcement of a support order in a case where the parents are separated but not divorced;**

~~(C)~~ **(D) establishment of paternity and securing a support order ~~and~~ under [IC 31-14-10](#) or [IC 31-14-11](#);**

~~(D)~~ **(E) modification of an existing support order in accordance with the Indiana child support rules and guidelines; and**

**(F) other services that might be allowed or encouraged under the federal Title IV-D program.**

Child support services do not include involvement in child custody and/or visitation disputes **or the establishment or enforcement of postsecondary education expenses.**

(2) "Costs" includes administrative costs of the prosecuting attorney and the division of family and children filing fees, witness fees, jury fees, change of venue fees, deposition fees, genetic testing fees, ~~department,~~ and other items generally allowed as costs in Indiana trial courts.

(3) "Current support" for purposes of payment distribution, means all support collected in a given month from an obligor who is paying support pursuant to a court order, up to the amount of the monthly court ordered support obligation ~~which~~ **that** is in effect during the month in which the payment is received.

**(4) "Department" means the Indiana department of child services established under [IC 31-25-1](#).**

**(5) "Fees" includes, but is not limited to, the following:**

**(A) Application fees for nonpublic assistance participants.**

**(B) Tax refund offset fees for nonpublic assistance participants.**

**(C) Annual collection fees charged pursuant to 42 U.S.C. 654(6).**

**(D) Genetic testing fees.**

**(E) Court filing fees.**

~~(4)~~ **(6) "Nonpublic assistance participant" in the child support program means a person who is not **currently****

receiving assistance under Title IV-A, IV-E, or XIX of the federal Social Security Act. ~~(federal public assistance programs), and who has executed a written application for child support services and paid the required state fee. This includes:~~

**(A) a person who never received assistance under Title IV-A, IV-E, or XIX of the federal Social Security Act and who has executed a written application for child support services and paid the required application fee; or**

**(B) a former recipient of assistance under Title IV-A, IV-E, or XIX of the federal Social Security Act who continues to receive child support services after the termination of the public assistance benefits and is not required to execute a written application for child support services or pay a fee.**

~~(5) "Parent locator service" includes efforts to locate absent parents for the sole purpose of establishing and enforcing child support obligations. Parent location efforts are carried out by:~~

~~(A) the Indiana state parent locator service, administered by the division of family and children, child support bureau;~~

~~(B) the parent locator service administered by another state; and~~

~~(C) The federal parent locator service.~~

~~(6) (7) "Support arrearage", for purposes of payment distribution, means all support collected in a given month from an absent parent obligor who is paying support pursuant to a court order, but is in excess of the absent parent's obligor's current court ordered support obligation for that month and represents payment of a court ordered support obligation that had accrued in prior months.~~

*(Department of Child Services; Title 2, Ch 7, Reg 2-700; filed Nov 2, 1977, 2:14 p.m.: Rules and Regs. 1978, p. 732; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1283; readopted filed Nov 27, 2007, 6:52 a.m.:*

*[20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-1](#)) to the Department of Child Services ([465 IAC 1-1-1](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.*

SECTION 2. [465 IAC 1-1-2](#) IS AMENDED TO READ AS FOLLOWS:

#### **[465 IAC 1-1-2](#) Eligibility and fees for child support services; collection processing service**

**Authority:** [IC 31-25-2-18](#); [IC 31-25-4-27](#)

**Affected:** [IC 31-25-4-19](#)

Sec. 2. Any person who, in the month of application, is ~~not a recipient of a federal public assistance program~~ a **nonpublic assistance participant** shall be eligible for parent locator and child support services **as requested**, upon the filing of an application with a county child support office. ~~A nonrefundable twenty-five dollar (\$25) An~~ application fee **not to exceed twenty-five dollars (\$25)** shall ~~accompany~~ **be assessed for** each application for services. **The application fee may be paid either by the applicant for services or from state funds.**

*(Department of Child Services; Title 2, Ch 7, Reg 2-701; filed Jan 6, 1977, 2:05 p.m.: Rules and Regs. 1978, p. 718; filed Nov 2, 1977, 2:14 p.m.: Rules and Regs. 1978, p. 734; filed Jul 16, 1982, 1:58 p.m.: 5 IR 1827; filed Mar 29, 1985, 10:05 a.m.: 8 IR 992; filed Aug 13, 1991, 9:15 a.m.: 15 IR 7; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1284; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-2](#)) to the Department of Child Services ([465 IAC 1-1-2](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.*

SECTION 3. [465 IAC 1-1-3](#) IS AMENDED TO READ AS FOLLOWS:

#### **[465 IAC 1-1-3](#) Recovery of costs and fees in nonpublic assistance child support cases**

**Authority:** [IC 31-25-2-18](#); [IC 31-25-4-27](#)

**Affected:** [IC 31-25-4-19](#)

Sec. 3. (a) When child support payments are collected for a nonpublic assistance participant, **the state may recover fees as well as** the actual costs, in excess of ~~the application~~ **any** fee incurred by the state or its agents in the determination of paternity or collection of child support on behalf of the person. ~~may be recovered by the state.~~

(b) ~~The division of family and children shall~~ **department may** first attempt to recover these costs **or fees** from **the** obligor who has been ordered to make support payments to the nonpublic assistance participant. If the

~~division of family and children~~ **department** is unable to recover all or parts of these costs **or fees** from the obligor, the ~~division~~ **department** may recover the unpaid costs **or fees** from the nonpublic assistance participant in the child support program.

(c) The ~~division of family and children~~ **department** will recover these unpaid costs **or fees** from the nonpublic assistance participant in the following manner:

- (1) The ~~division of family and children~~ **department** may first recover unpaid costs **or fees** out of any lump sum support arrearage payment recovered on the recipient's behalf as a result of the court order.
- (2) If this lump sum payment is insufficient to pay all of the unpaid costs, the ~~division of family and children~~ **department** may recover the remaining unpaid costs **or fees** out of the support payments it collects on behalf of the nonpublic assistance participant. In so doing, the ~~division of family and children~~ **department** may deduct amounts out of the support collection received on behalf of the nonpublic assistance participant.

*(Department of Child Services; Title 2, Ch 7, Reg 2-702; filed Jan 6, 1977, 2:05 p.m.: Rules and Regs. 1978, p. 719; filed Nov 2, 1977, 2:14 p.m.: Rules and Regs. 1978, p. 734; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1284; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-3](#)) to the Department of Child Services ([465 IAC 1-1-3](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.*

SECTION 4. [465 IAC 1-1-5](#) IS AMENDED TO READ AS FOLLOWS:

#### **[465 IAC 1-1-5](#) Funding and withholding of funds to the clerk of the circuit court**

**Authority:** [IC 31-25-2-18](#); [IC 31-25-4-27](#)

**Affected:** [IC 31-25-4-5](#); [IC 31-25-4-24](#)

Sec. 5. (a) The ~~division of family and children~~ **department** shall reimburse the clerk of the circuit court for the clerk's activities performed under the cooperative agreement between the ~~division of family and children~~ **department** and the clerk of the circuit court. The extent of this reimbursement shall be governed by the terms of the budget submitted by the clerk and approved by the ~~division of family and children~~ **department**. In no case shall the reimbursement exceed the percentages allowed by federal law and regulations.

(b) In the event the clerk does not perform the activities required by the cooperative agreement, the ~~division of family and children~~ **department** shall have the authority to withhold reimbursement funds due to the clerk of the circuit court. The ~~division of family and children~~ **department** shall not withhold such funds until the ~~division of family and children~~ **department** has forwarded written notice to the clerk sixty (60) days prior to the date upon which reimbursement will be withheld. Such notice shall contain the date reimbursement will be withheld and the reasons therefor.

*(Department of Child Services; Title 2, Ch 7, Reg 2-707; filed Jan 6, 1977, 2:05 p.m.: Rules and Regs. 1978, p. 721; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1285; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-6](#)) to the Department of Child Services ([465 IAC 1-1-5](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.*

SECTION 5. [465 IAC 1-1-6](#) IS AMENDED TO READ AS FOLLOWS:

#### **[465 IAC 1-1-6](#) Cancellation of cooperative agreement with the prosecuting attorney; notice; withholding of reimbursement; failure to take legal action**

**Authority:** [IC 31-25-2-18](#); [IC 31-25-4-27](#)

**Affected:** [IC 31-25-4-13.1](#); [IC 31-25-4-20](#); [IC 31-25-4-25](#)

Sec. 6. (a) Either party to the cooperative agreement entered into between the ~~division of family and children~~ **department** and the prosecuting attorney may cancel that agreement prior to its expiration date by giving the other party to the agreement advance notice of the intention to cancel the agreement. Such notice shall be in writing and shall be forwarded to the other party to the agreement sixty (60) days prior to the date the agreement will be canceled. Such notice shall contain the date of the intended cancellation and the reason therefor.

(b) In the event the ~~division of family and children~~ **department** gives the prosecuting attorney prior notice of its intention to cancel the cooperative agreement, the ~~division of family and children~~ **department** shall have the right to withhold reimbursement funds due and owing to such prosecuting attorney on and after the date of intended cancellation.

(c) No prosecuting attorney shall be subject to cancellation of the **cooperative** agreement for breach of the provisions in the ~~cooperative~~ agreement, which require him or her to take legal action to establish and enforce support obligations, unless the failure to take legal action in a particular case is clear abuse of discretion.

*(Department of Child Services; Title 2, Ch 7, Reg 2-708; filed Jan 6, 1977, 2:05 p.m.: Rules and Regs. 1978, p. 721; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1285; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-7](#)) to the Department of Child Services ([465 IAC 1-1-6](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.*

SECTION 6. [465 IAC 1-1-8](#) IS AMENDED TO READ AS FOLLOWS:

**[465 IAC 1-1-8](#) Requirements for converting support payments received directly by the recipient; condition for continuing eligibility for assistance**

**Authority:** [IC 31-25-2-18](#); [IC 31-25-4-27](#)

**Affected:** [IC 31-25-4](#)

Sec. 8. (a) As a condition of continuing eligibility for assistance, any temporary assistance to needy families (TANF) recipient who, after executing an assignment of support rights, ~~to the Indiana division of family and children~~ receives a direct court ordered child support payment from or on behalf of the obligor must:

- (1) convert that payment to the form prescribed by this section; and
- (2) promptly forward that converted payment to the Indiana ~~division of family and children~~ **state central collection unit** at the office of the child support bureau. ~~or the clerk of the circuit court.~~

(b) Any support payment received from an individual must be converted to a money order, cashier's check, or certified check payable to the Indiana ~~division of family and children or the clerk of the circuit court~~ **state central collection unit** and contain or be accompanied by the following information:

- (1) The recipient's name.
- (2) The recipient's Title IV-D case number.
- (3) The obligor from whom or on whose behalf the support payment was made.

(c) Any support payment received from the clerk of the court or any payment in the form of a military allotment must be endorsed by the recipient and contain or be accompanied by the following information:

- (1) The recipient's name.
- (2) The recipient's Title IV-D case number.
- (3) The obligor from whom or on whose behalf the support payment was made.

*(Department of Child Services; Title 2, Ch 7, Reg 2-722; filed Nov 2, 1977, 2:14 p.m.: Rules and Regs. 1978, p. 738; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1286; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-12](#)) to the Department of Child Services ([465 IAC 1-1-8](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.*

SECTION 7. [465 IAC 1-1-11](#) IS AMENDED TO READ AS FOLLOWS:

**[465 IAC 1-1-11](#) Recoupment of an overpayment of child support collections**

**Authority:** [IC 31-25-2-18](#); [IC 31-25-4-27](#)

**Affected:** [IC 31-25-4](#)

Sec. 11. (a) When the ~~bureau~~ **department** determines that, in processing collections **for payment** to program participants from federal or state tax or administrative offset procedures or from payments posted at the ~~bureau's central office,~~ **Indiana state central collection unit**, moneys have been distributed to which a participant is not

legally entitled, such overpayments may be recouped **from the participant** by the ~~bureau~~ **department**.

(b) ~~In active temporary assistance to needy families (TANF) cases,~~ The recoupment of moneys shall be made:

- (1) from **subsequent child** support payments, other than current support; ~~to which the TANF recipient would otherwise have been entitled;~~
- (2) through the submission of the overpaid participant for state tax offset;
- (3) through subsequent federal tax offset collections from the obligor; or
- (4) through a repayment agreement entered into between the participant and the ~~bureau~~ **department**.

(c) If the overpayment is made to a nonpublic assistance participant, including a former public assistance recipient, the recoupment shall be made through a repayment agreement entered into between the participant and the bureau, the submission of the overpaid participant for state tax offset or through subsequent federal tax offset collections from the obligor. **Except as provided in subsection (d), if the department intends to recoup an overpayment from subsequent child support payments as stated in subsection (b)(1), the department must first obtain the consent of the nonpublic assistance participant.**

(d) If the overpaid participant does not enter into a repayment agreement with the bureau **consent cannot be obtained** within thirty (30) days of notice of the overpayment, the recoupment will be made by withholding in subsequent months the amount of child support collection payable to the participant until the overpayment has been repaid or recouped in full.

~~(d) If the overpayment in a nonpublic assistance case results from the IRS recalling all or part of an intercepted tax refund from child support bureau funds, the nonpublic assistance participant is obligated to reimburse the child support bureau for the recalled amount that the participant received, and the recalled amount constitutes a debt owed by the nonpublic assistance participant to the child support bureau.~~

~~(e) If a noncustodial party receives moneys from the bureau that are subsequently determined to be moneys to which that person was not entitled, the recoupment shall be made through the submission of the overpaid person for state tax offset collection or through a repayment agreement between the person and the bureau.~~

*(Department of Child Services; Title 2, Ch 7, Reg 2-732; filed Nov 2, 1977, 2:14 p.m.: Rules and Regs. 1978, p. 740; filed Apr 7, 1988, 8:30 a.m.: 11 IR 2856; filed Mar 8, 1989, 9:40 a.m.: 12 IR 1506; errata, 12 IR 1636; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1287; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-15](#)) to the Department of Child Services ([465 IAC 1-1-11](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.*

SECTION 8. [465 IAC 1-1-12](#) IS AMENDED TO READ AS FOLLOWS:

**[465 IAC 1-1-12](#) Withdrawal from nonpublic assistance child support services; notice and payment of charges**

**Authority:** [IC 31-25-2-18](#); [IC 31-25-4-27](#)

**Affected:** [IC 31-25-4-19](#)

Sec. 12. A nonpublic assistance participant in the child support program who receives ~~parent locator and/or~~ child support services may withdraw from the program by notifying the local county child support enforcement office, in writing, of the intention to withdraw from participation in the program. Upon the effective date of withdrawal, as determined by the ~~Indiana division of family and children,~~ **department**, the individual will no longer be entitled to any child support services.

*(Department of Child Services; Title 2, Ch 7, Reg 2-760; filed Nov 2, 1977, 2:14 p.m.: Rules and Regs. 1978, p. 744; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1288; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-20](#)) to the Department of Child Services ([465 IAC 1-1-12](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.*

SECTION 9. [465 IAC 1-1-13](#) IS AMENDED TO READ AS FOLLOWS:

**[465 IAC 1-1-13](#) State income tax refund intercept**

**Authority:** [IC 31-25-2-18](#); [IC 31-25-4-27](#)

**Affected:** [IC 6-8.1-9.5](#)

Sec. 13. Whenever the ~~division of family and children,~~ **department**, pursuant to [IC 6-8.1-9.5](#), intercepts a state income tax refund for child support owed, and the amount offset is found to be in error or to exceed the amount of overdue support, the ~~division~~ **department** shall promptly refund the appropriate excess amount to the ~~absent~~ **parent obligor**.

*(Department of Child Services; [465 IAC 1-1-13](#); filed May 8, 1986, 1:45 p.m.: 9 IR 2200; readopted filed Nov 14, 2001, 4:43 p.m.: 25 IR 1288; readopted filed Nov 27, 2007, 6:52 a.m.: [20071226-IR-465070551RFA](#); readopted filed Nov 26, 2013, 4:02 p.m.: [20131225-IR-465130459RFA](#)) NOTE: Transferred from the Division of Family Resources ([470 IAC 2-5-22](#)) to the Department of Child Services ([465 IAC 1-1-13](#)) by P.L.234-2005, SECTION 195, effective July 1, 2005.*

SECTION 10. THE FOLLOWING ARE REPEALED: [465 IAC 1-1-4](#); [465 IAC 1-1-7](#); [465 IAC 1-1-9](#); [465 IAC 1-1-10](#).

[Notice of Public Hearing](#)

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