

	<b>INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL</b>	
	<b>Chapter 10: Child Support Order Establishment</b>	<b>Effective Date: 11/20/2020</b>
	<b>Section 2: Elements of a Child Support Order</b>	<b>Version: 2 Revision Date: 11/20/2020</b>

**BACKGROUND**

In an action for the dissolution of marriage, legal separation, child support, or establishment of paternity, the Court may order either parent or both parents to pay any amount reasonable for support of a child.<sup>1</sup>

**POLICY**

In Title IV-D cases, the Title IV-D Prosecutor’s Office shall petition the Court to establish an order for child support when an order does not already exist.<sup>2</sup>

The Title IV-D Prosecutor’s Office shall not participate in proceedings to establish a spousal support order.<sup>3</sup> Spousal support may be included in a child support order when the spousal support is for the custodial parent (CP) of the child(ren) for whom support is ordered.<sup>4</sup>

The Title IV-D Prosecutor’s Office shall not participate in proceedings to establish orders for post-secondary educational expenses.<sup>5</sup>

In Indiana, the Indiana Child Support Rules and Guidelines (Guidelines) provide the direction for calculating child support obligations to provide consistency in judgments between courts and jurisdictions.<sup>6</sup> The Child Support Obligation Worksheet (CSOW) is prepared pursuant to the Guidelines and in all cases filed with the Court when child support is established.<sup>7</sup> There is a rebuttable presumption that the amount of child support ordered based upon the Guidelines is the correct amount.<sup>8</sup>

<sup>1</sup> IC 31-16-6-1(a)

<sup>2</sup> IC 31-25-4-13.1; IC 31-25-4-17; 42 U.S.C. § 654(4)(A)

<sup>3</sup> 42 U.S.C. § 654(4)(B)(ii)

<sup>4</sup> Chapter 20: Other Child Support Related Topics, Section 4: Spousal Support Only Cases

<sup>5</sup> Chapter 20: Other Child Support Related Topics, Section 3: Post-Secondary Educational Expenses

<sup>6</sup> IC 31-9-2-18; See Chapter 10: Child Support Order Establishment, Section 3: Indiana Child Support Rules and Guidelines

<sup>7</sup> Ind. Child Support Guideline 3(B)(1)

<sup>8</sup> Ind. Child Support Rule 2

The Court may deviate from the CSOW and is required to specify the reason for the deviation.<sup>9</sup> The Court may determine that a child support order of \$0.00 is appropriate for one (1) or both parents. Any child support order that is expressed in a numeric value, which includes an order of \$0.00, is to be entered into the statewide child support system as a child support order.

The child support order shall include a provision for immediate income withholding unless a stay has been granted by the court.<sup>10</sup> Withheld income shall be forwarded to the Indiana State Central Collection Unit (INSCCU).<sup>11</sup>

A child support order must require either one (1) or both parents to provide medical support for the child(ren) through health insurance coverage if the health insurance coverage is available to the parent at a reasonable cost.<sup>12</sup>

A child support order shall specify which parent of a child may claim the child as a dependent for purposes of federal and State taxes.<sup>13</sup> If a Court determines that a parent who is ordered to pay child support may also claim the child as a dependent for purposes of federal and State taxes, the Court shall include in the order that the child support paying parent may only claim the child as a dependent for purposes of federal and State taxes if that parent has paid at least ninety-five percent (95%) of the child support for the calendar year for which the parent is ordered to claim the child as a dependent by January 31 of the following year.<sup>14</sup>

## REFERENCES

- [IC 31-9-2-18](#): Child support guidelines
- [IC 31-14-3](#): Rules of Procedure in Paternity Actions
- [IC 31-14-11-5](#): Date for support obligation to begin
- [IC 31-15-2](#): Actions for Dissolution of Marriage
- [IC 31-15-3](#): Actions for Legal Separation
- [IC 31-16-2](#): Actions for Child Support
- [IC 31-16-6-1](#): Child support orders; relevant factors; income withholding; account at financial institution
- [IC 31-16-6-1.5](#): Claiming child for tax purposes; considerations; conditions
- [IC 31-16-6-4](#): Medical support
- [IC 31-16-15-0.5](#): Income withholding orders; stay
- [IC 31-16-15-7.5](#): Income payor duties
- [IC 31-25-4-13.1](#): Agreements with local government officials; contracting; attorney-client relationship; informing applicant; service level stipulation
- [IC 31-25-4-17](#): Support related duties of bureau

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<sup>9</sup> IC 31-40-1-5(c)(3)

<sup>10</sup> IC 31-16-6-1(b); IC 31-16-15-0.5; Chapter 12: Enforcement, Section 2.01: Income Withholding Orders

<sup>11</sup> IC 31-16-15-7.5

<sup>12</sup> IC 31-16-6-4(a); Ind. Child Support Guideline 7; Chapter 15: Medical Support, Section 2: Establishing Medical Support Order

<sup>13</sup> IC 31-16-6-1.5(a)

<sup>14</sup> IC 31-16-6-1.5(d)

- [IC 31-40-1-5](#): Obligation of parent or guardian for costs of placement; remittance of support payments; enforcement
- [Ind. Child Support Rules and Guidelines](#)
- [42 U.S.C. § 654](#): State plan for child and spousal support
- [Bill v. Bill](#), 290 N.E.2d 749 (Ind. Ct. App. 1972)

## PROCEDURE

A petition to establish child support under Title IV-D shall be filed on behalf of the State of Indiana and not on behalf of either party.<sup>15</sup>

When preparing and filing a petition to establish child support, the Title IV-D Prosecutor's Office is strongly encouraged to follow local rules and customs as well as the statutory requirements governing the type of action (e.g., dissolution, paternity, etc.) under which the petition is filed.<sup>16</sup> The CSOW shall be signed by both parties, not their counsel, under penalties for perjury.<sup>17</sup>

In paternity cases child support must be ordered effective at least as of the date of filing of the petition but may be ordered effective as of the date of the child's birth.<sup>18</sup> In all other cases, child support may be ordered effective as of the date of filing of the petition or any time after that date.<sup>19</sup>

When child support is ordered effective as of a date prior to the date the order is issued, the Title IV-D Prosecutor is strongly encouraged to request the Court to establish an arrears amount and periodic repayment amount. To determine the arrearage amount, the amount of support ordered is multiplied by the number of weeks between the effective date of support and the date payments are ordered to begin. This periodic repayment amount is to be paid in addition to the ongoing support obligation.<sup>20</sup>

## FORMS AND TOOLS

N/A

## FREQUENTLY ASKED QUESTIONS

1. Q. When a divorce or legal separation case is open and pending, may a party enroll in Title IV-D services to establish a child support order?

<sup>15</sup> IC 31-25-4-13.1

<sup>16</sup> IC 31-14-3; IC 31-15-2; IC 31-15-3; IC 31-16-2

<sup>17</sup> Ind. Child Support Guideline 3(B)(1)

<sup>18</sup> IC 31-14-11-5

<sup>19</sup> *Bill v. Bill*, 290 N.E.2d 749 (Ind. Ct. App. 1972)

<sup>20</sup> Chapter 12: Enforcement

- A. Yes. When a divorce or legal separation is pending, the Title IV-D Prosecutor's Office shall file a petition to establish a child support order if a party enrolls in Title IV-D services.<sup>21</sup>
2. Q. When parties are married and separated, but there is no divorce or legal separation case pending, may a party enroll in Title IV-D services to establish a child support order?
- A. Yes. When parties are married and separated, but no petition for dissolution or legal separation has been filed, the Title IV-D Prosecutor's Office shall file a petition to establish a child support order if a parties enrolls in Title IV-D services.<sup>22</sup>
3. Q. May the Title IV-D Prosecutor's Office file a petition to establish a child support order when the parents have equal physical custody pursuant to the divorce decree? Must a parent first obtain a court order to be the primary CP before pursuing child support?
- A. Yes, the Title IV-D Prosecutor may file a petition to establish or modify a child support order at the request of any party in a Title IV-D case. Primary physical custody is not prerequisite to seeking or obtaining a child support order. The Court will consider, using the CSOW, the financial resources of each parent and the standard of living the child would have enjoyed in a home with both parents. The CSOW does not consider physical custody of a child, but the number of overnights each parent has with the child and who pays the controlled expenses in its calculation of who pays child support to whom and the amount.

#### RELATED INFORMATION

1. Chapter 3: Case Initiation, Section 1: Enrollees and Case Types
2. Chapter 12: Enforcement, Section 2.1: Income Withholding Orders
3. Chapter 15: Medical Support, Section 2: Establishing Medical Support Order
4. Chapter 20: Other Child Support Related Topics, Section 3: Post-Secondary Educational Expenses
5. Chapter 20: Other Child Support Related Topics, Section 4: Spousal Support Only Cases

#### REVISION HISTORY

Version	Date	Description of Revision
Version 1	10/17/2016	Final Approved Version.
Version 2	11/20/2020	Updated hyperlinks. Reviewed for accuracy. Combined prior Sections 2 and 3.

<sup>21</sup> IC 31-25-4-17(a)(7)

<sup>22</sup> *Id.*