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|  | INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL | |
| | Chapter 12: Enforcement | Effective Date: 07/28/2021 |
| | Section 7.1: Indirect Contempt | Version: 1.1 Revision Date: 07/28/2021 |

BACKGROUND

Indirect contempt is the process by which a civil court may punish an individual for failure to comply with the Court’s orders.¹ In Indiana, a civil court may utilize the contempt power to coerce compliance with a child support order.²

A Court may punish an individual found to be in contempt of court by a fine, incarceration, or both.³ A person may not be incarcerated by the State without first being advised of his or her right to counsel.⁴ If the obligor is found to be indigent, and there is a possibility for incarceration, he or she may not be incarcerated without first having counsel appointed upon request by the obligor to represent him or her.⁵

Indirect contempt proceedings can be initiated by the Title IV-D Prosecutor’s Office by filing verified information for a rule to show cause with the Court. After issuing a rule to show cause, the Court must hold a hearing to give the obligor the opportunity to answer as to the truth of the allegations contained in the rule to show cause or to show that even if true, the facts do not constitute contempt of court. Further, indirect contempt must be supported by the Court’s finding that the obligor had the ability to comply with the court order. The Court may impose various sanctions against the obligor if found in contempt. However, the order for contempt issued by the Court must offer the obligor an opportunity to purge himself or herself of the contempt.⁶

POLICY

The decision of whether to proceed with a contempt action rests in the discretion of the Title IV-D Prosecutor’s Office, subject to the following requirements:

1. Prior to initiating a contempt action, the Title IV-D Prosecutor’s Office shall screen the case for information regarding the obligor’s ability to pay support or otherwise comply with the order. Factors to be considered in this screening are below in the Procedures section.
2. The Title IV-D Prosecutor’s Office must provide clear notice to the obligor that his or her ability to pay constitutes the critical question in the civil contempt action; and
3. The Title IV-D Prosecutor’s Office must provide the Court with available information regarding the obligor’s ability to pay or otherwise comply with the order.⁷

¹ IC 31-16-12-6.5(l); IC 34-47-3-6(c)

² *In re Paternity of CNS*, 901 N.E.2d 1006

³ IC 34-47-3-6(c)

⁴ *Branum v. State*, 822 N.E.2d 1102

⁵ *In re Marriage of Stariha*, 509 N.E.2d 1117 (Ind. Ct. App. 1987)

⁶ *Stanke v. Swickard*, 43 N.E.3d 245 (Ind. Ct. App. 2015)

⁷ 45 C.F.R. § 303.6(c)(4); *Turner v. Rogers*, 564 U.S. 431 (2011)

The above requirements do not prohibit the Title IV-D Prosecutor's Office from initiating a contempt action after thoroughly screening the case and having determined that there is no information regarding the obligor's ability to pay.

REFERENCES

- [IC 31-16-12-6](#): Contempt
- [IC 31-16-12-6.5](#): Failure to respond to order to show cause; escrow
- [IC 31-18.5-3-16](#): Special rules of evidence and procedure
- [IC 34-47-3-5](#): Service of rule upon defendant; procedure
- [IC 34-47-3-6](#): Proceedings and appeal
- [Indiana Trial Rule 4](#): Process
- [Indiana Trial Rule 5](#): Service and Filing of Pleading and Other Papers
- [Indiana Trial Rule 86](#): Electronic filing and electronic service
- [45 C.F.R. § 303.6](#): Enforcement of support obligations
- [81 FR 93492-01](#): Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs
- [Corbridge v. Corbridge](#), 102 N.E.2d 764 (Ind. Sup. Ct. 1952)
- [Eppinger v. Adams](#), 803 N.E.2d 1196 (Ind. Ct. App. 2004)
- [Green v. Maginn](#), 684 N.E.2d 553 (Ind. Ct. App. 1997)
- [In re Marriage of Striha](#), 509 N.E.2d 1117 (Ind. Ct. App. 1987)
- [In re Paternity of CNS](#), 901 N.E.2d 1002 (Ind. Ct. App. 2009)
- [Jenkins v. Jenkins](#), 687 N.E.2d 256 (Ind. Ct. App. 1997)
- [Marks v. Tolliver](#), 839 N.E.2d 703 (Ind. Ct. App. 2005)
- [Moore v. Moore](#), 11 N.E.3d 980 (Ind. Ct. App. 2014)
- [Richardson v. Lake County Department of Public Welfare](#), 439 N.E.2d 722, (Ind. Ct. App. 1982)
- [Slagle v. Slagle](#), 292 N.E.2d 624 (Ind. Ct. App. 1973)
- [Stanke v. Swickard](#), 43 N.E.3d 245 (Ind. Ct. App. 2015)
- [Thomas v. Woollen](#), 266 N.E.2d 20 (Ind. Sup. Ct 1971)

PROCEDURE

1. Screening Cases for Possible Contempt Action

The Title IV-D Prosecutor's Office shall consider the obligor's ability to pay when screening a case to determine if a contempt action is appropriate.⁸ Below are several factors that the Title IV-D Prosecutor's Office may consider, including but not limited to:

- a. The obligor's current income sources including, but not limited to: salary, wages, cash employment, retirement, workers' compensation, insurance settlements, sale of assets, Social Security disability and veterans' benefits;
- b. Records including, but not limited to: obligor's statements at previous hearings regarding income from every source, previous ability to pay, credit applications, apartment applications, Social Security Disability application, or statements to the obligee or children;
- c. Other cases the obligor has in the statewide child support system;

⁸ 45 C.F.R. § 303.6(c)(4)(i)

- d. The obligor's payment history and arrears balance;
- e. The obligor's employment history and employment ability, such as education level, skills, experience, and current job market;
- f. Other individual circumstances of the obligor such as police reports for relevant items, infraction tickets and bonds, or pawn shop records;
- g. Amount of the current support order to determine if it is appropriate based on the obligor's current ability to pay;
- h. The incarceration status of the obligor;
- i. The obligor's potential for referral to an early intervention program (e.g., "Parents that Work," General Educational Development /High School Equivalency Diploma/high school completion, job readiness services, or substance abuse counseling);
- j. The obligor's lifestyle, dress, and purchase habits which could indicate financial resources;
- k. The obligor's bank accounts, cash on hand, assets, and resources that can be converted to cash;
- l. The obligor's previous level of cooperation with enforcement efforts, including those designed to improve his or her ability to pay or employability; and
- m. The obligor's ability to obtain cash through non-traditional means such as selling plasma, picking up cans, mowing yards, shoveling snow, etc.

The Title IV-D Prosecutor's Office may also use a financial affidavit or more formal discovery method to gather more information regarding the obligor's ability to pay. If the obligor is represented by an attorney, discovery requests should be sent to the attorney of record to complete and return.

2. Notice to the Obligor

Once the Title IV-D Prosecutor's Office has screened a case and made a decision to initiate a contempt action, the Title IV-D Prosecutor's Office shall provide a notice to the obligor stating that the ability to pay is the critical question in the civil contempt action.⁹ Notice may be incorporated into the verified information for the rule to show cause filed by the Title IV-D Prosecutor's Office, or it may be sent as a separate notice so long as it is sent to the obligor prior to the hearing. The notice may contain additional information at the Title IV-D Prosecutor's Office discretion.¹⁰

3. Notice to Obligee

When verified information for a rule to show cause is filed, the obligee must also receive notice.¹¹ Depending upon local rule or practice, the notice to appear indicates whether the obligee is required to appear at the hearing. If the obligee is represented by an attorney, the attorney is served with a copy of the filing. If the case is a Uniform Interstate Family Support Act (UIFSA) case, the obligee's physical presence is not required.¹²

4. Information to the Court

⁹ IC 34-47-3-5(b)

¹⁰ 45 C.F.R. § 303.6(c)(4)(iii)

¹¹ Ind. Trial Rule 5

¹² IC 31-18.5-3-16(a)

The Title IV-D Prosecutor's Office shall provide the Court information regarding the obligor's ability to pay.¹³ This information should be included in the verified information for a rule to show cause filing or provided during the evidentiary hearing.

5. Arrears Only Cases

Indiana's Court of Appeals has ruled that once the current support obligation ends, incarceration is not an appropriate enforcement remedy.¹⁴ The Indiana Court of Appeals has also ruled that the remedy of contempt is not available after the current support obligation ends.¹⁵

FORMS AND TOOLS

N/A

FREQUENTLY ASKED QUESTIONS

1. Q. Does a delinquency letter satisfy the requirement of notice to the obligor?
 - A. A delinquency letter may be used as notice to the obligor under this Section only if it contains the notification that the ability to pay constitutes the critical question in a contempt proceeding, and it is sent to the obligor prior to the hearing.
2. Q. May the Title IV-D Prosecutor's Office resolve a pending contempt action through an agreement?
 - A. Yes, the Title IV-D Prosecutor's Office may enter into an agreement with the obligor to resolve the contempt action without going to Court. The agreement may contain, but is not limited to: an admission of contempt, a suspended jail sentence, an arrearage finding, a requirement of payment of support and arrearage, a requirement that all support be paid through the Indiana State Central Collection Unit (INSCCU), a requirement of income withholding, or a requirement to appear for a review hearing.

RELATED INFORMATION

[Turner v. State](#), 953 N.E.2d 1039 (Ind. 2011)

Chapter 12: Enforcement, Section 7.2: Surety Bond to Secure Payment of Child Support

REVISION HISTORY

| Version | Date | Description of Revision |
|---------|------|-------------------------|
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¹³ 45 C.F.R. § 303.6(c)(4)(ii); 81 FR 93492-01

¹⁴ *Eppinger v. Adams*, 803 N.E.2d 1196 (Ind. Ct. App. 2004)

¹⁵ *Jenkins v. Jenkins*, 687 N.E.2d 256, 258-259 (Ind. Ct. App. 1997); *Richardson v. Lake County Department of Public Welfare*, 439 N.E.2d 722, 724 (Ind. Ct. App. 1982)

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