

	INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL	
	Chapter 12: Enforcement	Effective Date: 12/21/17
	Section 7.01: Indirect Contempt	Version: 1 Revision Date: 12/21/17

BACKGROUND

Indirect contempt is the process by which a civil court may “attach and 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 attach and 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 non-custodial parent is found to be indigent and there is a possibility for incarceration, he or she may not be incarcerated without first having counsel appointed to represent him or her.⁵

Indirect contempt proceedings can be initiated by the prosecutor 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 non-custodial parent 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 non-custodial parent had the ability to comply with the court order. The court may impose various sanctions against the non-custodial parent if found in contempt. However, the order for contempt issued by the court must offer the non-custodial parent an opportunity to purge himself or herself of the contempt.⁶

On December 20, 2016, the Office of Child Support Enforcement (OCSE) issued the Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs (FEM) final rule. One of the amendments to existing regulations was to ensure that the spirit of the ruling in *Turner v. Rogers*, 564 U.S., 131 S. Ct. 2507 (2011) is carried out in states’ child support programs. The amended 45 C.F.R. 303.6(c)(4) requires that the Title IV-D Program: (1) screen the case before a contempt citation is filed, to determine if the non-custodial parent has the ability to pay or otherwise comply with the court order; (2) provide notice to the non-custodial parent explaining that the ability to pay is the critical question in the contempt action, and (3) provide information to the court regarding the non-custodial parent’s ability to pay.

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)

POLICY

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

1. Prior to initiating a contempt action, the Title IV-D Prosecutor shall screen the case for information regarding the noncustodial parent'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 must provide clear notice to the non-custodial parent that his or her ability to pay constitutes the critical question in the civil contempt action; and
3. The Title IV-D Prosecutor must provide the court with available information regarding the non-custodial parent's ability to pay or otherwise comply with the order.⁷

The above requirements do not prohibit the Title IV-D Prosecutor from initiating a contempt action after thoroughly screening the case and having determined that there is no information regarding the non-custodial parent'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)
- [Marks v. Tolliver](#), N.E.2d 703 (Ind. Ct. App. 2005)
- [Moore v. Moore](#), 11 N.E.3d 980 (Ind. Ct. App. 2014)
- [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

⁷ 45 C.F.R. § 303.6(c)(4)

The Title IV-D Prosecutor shall consider the non-custodial parent'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 may consider, including but not limited to:

- a. The non-custodial parent'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: non-custodial parent'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 custodial party or children.
- c. Other cases the non-custodial parent has in the statewide child support system.
- d. The non-custodial parent's payment history and arrearage calculation.
- e. The non-custodial parent's employment history and employment ability, such as education level, skills, experience, and current job market.
- f. Other individual circumstances of the non-custodial parent 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 non-custodial parent's current ability to pay.
- h. The incarceration status of the non-custodial parent (check jail, Department of Corrections, and federal interfaces).
- i. The non-custodial parent'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 non-custodial parent's lifestyle, dress, and purchase habits.
- k. The non-custodial parent's bank accounts, cash on hand, assets, and resources that can be converted to cash.
- l. The non-custodial parent's previous level of cooperation with enforcement efforts, including those designed to improve his or her ability to pay or employability.
- m. The non-custodial parent'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 may also use a financial affidavit or more formal discovery method to gather more information regarding the non-custodial parent's ability to pay. If the non-custodial parent is represented by an attorney, discovery should be sent to the attorney of record to complete and return.

2. Notice to the Non-custodial Parent

Once the Title IV-D Prosecutor has screened a case and made a decision to initiate a contempt action, the Title IV-D Prosecutor shall provide a notice to the non-custodial parent stating that the ability to pay is the critical question in the civil contempt action. Notice may be incorporated into the verified information for rule to show cause filed by the Title IV-D Prosecutor, or it may be sent as a separate notice so long as it is sent to

⁸ 45 C.F.R. § 303.6(c)(4)(i); 81 FR 93492-01

the non-custodial parent prior to the hearing. The notice may contain additional information at the Title IV-D Prosecutor's discretion.⁹

3. Notice to Custodial Party

When verified information for a rule to show cause is filed, the custodial party must also receive notice.¹⁰ Depending upon local rule or practice, the notice to appear indicates whether the custodial party is required to appear at the hearing. If the custodial party 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 custodial party's physical presence is not required.¹¹

4. Information to the Court

The Title IV-D Prosecutor shall provide the court information regarding the non-custodial parent's ability to pay.¹² This information may 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.¹³

FORMS AND TOOLS

N/A

FREQUENTLY ASKED QUESTIONS

1. Q. Does a delinquency letter satisfy the requirement of notice to the non-custodial parent?
 - A. A delinquency letter may be used as notice to the non-custodial parent under this section only if it contains notification that the ability to pay constitutes the critical question in a contempt proceeding and where it is sent to the non-custodial parent prior to the hearing.
2. Q. May the Title IV-D Prosecutor resolve a pending contempt action through an agreement?
 - A. Yes, the Title IV-D Prosecutor may enter into an agreement with the non-custodial parent to resolve the contempt action without going to court. The agreement may

⁹ 45 C.F.R. § 303.6(c)(4)(iii); 81 FR 93492-01

¹⁰ Ind. Trial Rule 5

¹¹ IC 31-18.5-3-16(a)

¹² 45 C.F.R. § 303.6(c)(4)(ii); 81 FR 93492-01

¹³ *Eppinger v. Adams*, 803 N.E.2d 1196 (Ind. Ct. App. 2004)

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 INSCCU, a requirement of income withholding, and a requirement to appear for a review hearing.

RELATED INFORMATION

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

REVISION HISTORY

Version	Date	Description of Revision
Version 1	December 21, 2017	Final Approved Version
	January 8, 2019	Changed Section number from 5.1 to 7.1