

	INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL	
	Chapter 19: Deceased Participants	Effective Date: 7/31/18
	Section 3: Child	Version: 1 Revision Date: 7/31/18

BACKGROUND

The death or stillbirth of the child does not bar a Petition to Establish Paternity if the petition is not otherwise barred.¹ Prior to July 1, 2015, Indiana Code § 31-25-4-17(3) authorized the Title IV-D program to assist mothers of children born out of wedlock in establishing paternity and obtaining a support order, including an order for health insurance coverage.

The Indiana Court of Appeals held in *In re the Paternity of D.M.* that the Title IV-D Prosecutor was not permitted to file a Petition to Establish Paternity when the child was stillborn as there would be no child support owed.² The holding of this case had no effect on whether the Title IV-D Prosecutor could file a Petition to Establish Paternity when the child was born alive but died before the Petition was filed. In that instance, child support could still be owed.

Indiana Code § 31-25-4-17(3) was amended, effective July 1, 2015, authorizing the Title IV-D program to assist in establishing paternity for children born out of wedlock. The purpose of this amendment was to uncouple the establishment of paternity from the establishment of child support (the authorization to establish child support is found in Indiana Code § 31-25-4-17(2)). However, the authority of the Title IV-D Prosecutor to file a Petition to Establish Paternity for a stillborn child has not yet been tested under the amended statute.

POLICY

Upon being informed of the death of a child in a Title IV-D case, the Title IV-D Prosecutor verifies that the child’s date of death has been entered into the statewide child support system.

The Title IV-D Prosecutor is strongly recommended to initiate a review whenever the Title IV-D Prosecutor learns that a substantial and continuing change of circumstances has occurred in a Title IV-D case.³

REFERENCES

- [IC 31-14-5-8](#): Action not barred by child’s death or stillbirth or mother’s death
- [IC 31-16-6-7.5](#): Funeral expenses
- [IC 33-32-3-1](#): Duties

¹ IC 31-14-5-8(1)

² *In re the Paternity of D.M.*, 9 N.E.3rd 202, 207

³ See Chapter 13: Review and Adjustment/Modification of the Child Support Order, Section 3: Review and Adjustment Procedures

- [In re the Paternity of D.M., 9 N.E.3rd 202, 207 \(Ind. Ct. App. 2014\)](#)

PROCEDURE

Child support does not automatically terminate at the death of a child. The child may have final expenses, including medical and funeral costs, which a court may order to be paid under the paternity or divorce cause number.⁴

The child support order may be modified, or terminated, and an arrearage established either by Agreed Entry or by court order. Either the Title IV-D Prosecutor, custodial party, or non-custodial parent may file a petition to modify or terminate the child support order and establish an arrearage with the court.

If there are other living child(ren) that are included in this support order, a hold should not be placed on the case in the statewide child support system so that child support payments may still distribute for the benefit of the other child(ren).

If this is the only child on the case, the Title IV-D Prosecutor is strongly encouraged to calculate the arrears owed to the custodial party. If there is a risk of the custodial party being overpaid prior to the adjudication of the arrears, a hold should be placed on the case in the statewide child support system so that any payments received will not be distributed. Once the balances are verified following the adjudication of the arrears, any hold placed on the case is released so that payments may be properly distributed.

Upon receipt of the court's order or approval of the Agreed Entry, the Title IV-D Prosecutor verifies the subaccount balances in the statewide child support system have been updated according to the order. It is the responsibility of the Clerk of Courts to enter the order and adjust any balances in non-IV-D cases.⁵

FORMS AND TOOLS

N/A

FREQUENTLY ASKED QUESTIONS

1. Q. What should the Title IV-D Prosecutor do when the child dies and an order to establish child support has not yet been issued?
 - A. The Title IV-D Prosecutor will still verify the date of death has been entered in the statewide child support system.

The Title IV-D Prosecutor may proceed with establishing child support at the discretion of the applicant. Child support may still be ordered, effective the date of filing the Petition for Support or date of the child's birth, as appropriate, and

⁴ IC 31-16-6-7.5

⁵ IC 33-32-3-1

terminated as of the date of the child's death. The Title IV-D Prosecutor may enforce this child support arrearage the same as any other child support arrearage.

If the applicant for Title IV-D services does not wish to proceed with establishing a child support order, the Title IV-D Prosecutor may provide the applicant for Title IV-D services with a case closure request or "opt-off form" for the party to request the case be closed.⁶

2. Q. What is the timeframe to place a case level hold and/or file a petition with the court to terminate the child support order and establish the arrears when a child dies?
 - A. There is no statutory required timeframe. The hold should be placed as soon as it is discovered that the custodial party may soon become overpaid. The Title IV-D Prosecutor is to be sensitive to the circumstances and facts of the case when determining the appropriate time to file a petition with the court when a party to a case dies.

RELATED INFORMATION

Chapter 9: Paternity Establishment

Chapter 13: Review and Adjustment/Modification of the Child Support Order

⁶ See Chapter 17: Case Closure