

	<b>INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL</b>	
	<b>Chapter 19: Deceased Participants</b>	<b>Effective Date: 12/14/2021</b>
	<b>Section 2: Custodial Party</b>	<b>Version: 3 Revision Date: 12/14/2021</b>

**BACKGROUND**

N/A

**POLICY**

Upon verifying the death of a custodial party (CP) in a Title IV-D case, the Title IV-D Prosecutor’s Office ensures that the CP’s date of death has been entered into the statewide child support system.

If a Petition to Establish Paternity is to be filed, the statute of limitations requires that it be filed no later than five (5) months after the death of the alleged father.<sup>1</sup> The death of the mother does not bar a Petition to Establish Paternity if the petition is not otherwise barred.<sup>2</sup>

Upon verification of the CP’s death, the Title IV-D Prosecutor’s Office is strongly encouraged to file a petition with the Court informing the Court of the CP’s death, requesting termination of current child support payable to the now deceased CP, and requesting a determination of the arrears.

Until the person with whom the child is residing enrolls in Title IV-D services or is referred through the IV-A/IV-D interface, any case for child support payable to that person for this child is a non-IV-D (NIVD) case.

The Title IV-D Prosecutor’s Office should not be involved in opening an estate as that is not one of the services that the Title IV-D office provides.<sup>3</sup>

**REFERENCES**

- [IC 29-1-7-1](#): Venue; transfer of proceedings
- [IC 31-14-5-5](#): Action to be filed during lifetime or within five months of death of alleged father
- [IC 31-14-5-8](#): Action not barred by child’s death or stillbirth or mother’s death
- [IC 31-25-4-17](#): Support related duties of bureau
- [CSB-AT-421](#): IV-D Services Opt Out
- [42 U.S.C. § 654](#): State plan for child and spousal support

<sup>1</sup> IC 31-14-5-5(2)

<sup>2</sup> IC 31-14-5-8(2)

<sup>3</sup> IC 31-25-4-17; 42 U.S.C. § 654

## **PROCEDURE**

Upon verification of the CP's death, it is strongly encouraged that a CP participant level hold be placed in the statewide child support system until the Court determines the amount of any arrears and orders the distribution and/or disbursement of funds. If child support is being paid by income withholding order (IWO), the Title IV-D Prosecutor's Office may send an IWO termination for this case so that money does not continue to accrue in undistributed.

Upon verification of the CP's death, the Title IV-D Prosecutor's Office is strongly encouraged to file a petition with the Court which:

1. Informs the Court of the CP's death;
2. Requests termination of the child support order payable to the now deceased CP;
3. Requests the arrears owed to the State be adjudicated;
4. Requests the Court calculate the arrears owed to the deceased CP at the time of death; and
5. Requests determination of how any funds on hold are to be distributed and/or disbursed.

The Title IV-D Prosecutor's Office is strongly encouraged to do a due diligence search in the county where the CP resided at the time of death to determine if an estate has been opened for the CP.<sup>4</sup> If an estate has been opened, the Title IV-D Prosecutor's Office is strongly encouraged to also serve the personal representative of the estate with a copy of the petition described in the paragraph above.

Prior to filing the petition with the Court, the Title IV-D Prosecutor's Office shall calculate any arrearage owed to the State for unpaid past public assistance.

After receiving the Court's order, the Title IV-D Prosecutor's Office verifies that all subaccount balances in the statewide child support system reflect the order.

Once the balances are verified, any CP participant or case level holds are released so that payments may be properly distributed.

The Title IV-D Prosecutor's Office may initiate case closure after the CP's death using the case closure code CPRT.<sup>5</sup> Instead of keeping in the file a copy of the CP's request to close the Title IV-D case as is normally required when closing a case CPRT, the Title IV-D Prosecutor's Office keeps a copy of the documentation of the CP's death.

## **FORMS AND TOOLS**

N/A

## **FREQUENTLY ASKED QUESTIONS**

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<sup>4</sup> IC 29-1-7-1

<sup>5</sup> Chapter 17: Case Closure, Section 29: Custodial Party Requests Closure (CPRT)

1. Q. A couple, such as the child's grandparents, are the court ordered guardians of the child. Only one of the guardians is named as the CP in the statewide child support system. This CP guardian has died. How should the Title IV-D Prosecutor's Office proceed on the case?

A. There are two (2) court ordered guardians who are the custodial parties of the child. Unless the Title IV-D Prosecutor's Office is aware that the living guardian no longer has custody of the child, there is no reason for the Title IV-D Prosecutor's Office to return the case to Court.

When the custodial party guardian who is listed as the CP in the statewide child support system dies, the date of death for this party is entered into the statewide child support system. The custodial party guardian who is not in the statewide child support system is added to the case and made the Active CP; this will leave the first (deceased) CP on the case with a status of Inactive.

2. Q. What action does the Title IV-D Prosecutor's Office take if the CP dies prior to establishment of paternity or a child support order?

A. If paternity has not been established, and a petition to establish paternity has not been filed, the Title IV-D Prosecutor's Office may proceed with a petition to establish paternity provided it is filed no later than five (5) months after the death of the alleged father.

If the CP's death occurs after a petition to establish paternity has been filed with the Court but before the hearing has been conducted, the Title IV-D Prosecutor's Office may proceed with the hearing.

If the CP's death precedes the filing of a petition to establish child support where paternity is already established, the Title IV-D Prosecutor's Office is not required to take any further action.

If the CP's death occurs after a petition to establish child support has been filed with the Court but before the hearing has been conducted, the Title IV-D Prosecutor's Office may proceed with the hearing.

3. Q. What is the time frame to place a CP participant level hold and file a petition with the Court to terminate the child support order, establish the arrears, and determine how funds on hold are to be distributed and/or disbursed when the CP dies?

A. There is no statutory required time frame. The hold should be placed as soon as the CP's date of death is verified to avoid money being improperly distributed and/or disbursed. The Title IV-D Prosecutor's Office 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.

4. Q. How can CPRT be used to close the Title IV-D case when CP is deceased and there are arrears owed to both the CP and State?

- A. Once the Court determines the arrears, if there are State owed arrears, CPRT cannot be used to close the case. However, the Title IV-D Prosecutor's Office may split the case by creating a second case. The newly created second case will be for the arrearage owed to the State. The original case will be for the current support and arrearage owed to the CP and will be closed using this case closure reason. The Title IV-D Prosecutor's Office is only responsible for enforcing the case with the arrearage owed to the State.<sup>6</sup> Then, the original case, with the CP owed arrears only, may be closed CPRT. See Chapter 17: Case Closure, Section 29: Custodial Party Requests Closure (CPRT) for a full explanation of using CPRT to close a case.

<b>RELATED INFORMATION</b>
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1. Chapter 17: Case Closure, Section 29: Custodial Party Requests Closure (CPRT)

<b>REVISION HISTORY</b>
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<b>Version</b>	<b>Date</b>	<b>Description of Revision</b>
Version 1	07/31/2018	Final approved version
Version 2	09/22/2020	Updated to include case closure information
Version 3	12/14/2021	Added language about searching for estate and clarified that hold is placed on participant level

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<sup>6</sup> CSB-AT-421