

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Support Enforcement Activities Undertaken by the Bureau for Child Support Enforcement

Type of Rule: ☒ Legislative ☐ Interpretive ☐ Procedural

Agency: The Bureau for Child Support Enforcement

Address: 350 Capitol Street, Room 147
Charleston, WV 25301-3703

Phone Number: 304-356-4730 Email: kim.s.rider@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The contents of the proposed legislative rule do not change the type of services provided by the Bureau. The proposed rule also does not change the method of delivery of services. The proposed rule simply places the pertinent contents of the Bureau's existing policy manual into legislative rule format in order to bring the Bureau into compliance with State law. There will be no effect on either the costs of the services or the revenue of the Bureau.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "--")	Next Increase/Decrease (use "--")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0.00	0.00	0.00
Personal Services	0.00	0.00	0.00
Current Expenses	0.00	0.00	0.00
Repairs & Alterations	0.00	0.00	0.00
Assets	0.00	0.00	0.00
Other	0.00	0.00	0.00
2. Estimated Total Revenues	0.00	0.00	0.00

Rule Title: Support Enforcement Activities Undertaken by the Bureau for Child Support Enforcement

Rule Title:

Support Enforcement Activities Undertaken by the Bureau for Child Support Enforcement

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

None anticipated, as this is merely placing the current Policy Manual into Legislative Rule format in order to bring the Bureau into compliance.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

Date: 7/29/2013

Signature of Agency Head or Authorized Representative

Lauren B. Burt

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: JULY 7, 2013

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) THE BUREAU FOR CHILD SUPPORT ENFORCEMENT
350 CAPITOL STREET, ROOM 147
CHARLESTON, WV 25301-3703

(304) 558-3780
(304) 558-4092 (FAX)

LEGISLATIVE RULE TITLE: ~~ESTABLISHING AND ENFORCING PATERNITY AND~~
SUPPORT OBLIGATIONS FOR CHILDREN IN THE LEGAL
CUSTODY OF THE DEPARTMENT

1. Authorizing statute(s) citation W.VA. CODE §48-18-105 (19)

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

JUNE 25, 2013

b. What other notice, including advertising, did you give of the hearing?

NONE

c. Date of Public Hearing(s) *or* Public Comment Period ended:

COMMENT PERIOD ENDED JULY 25, 2013

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

KIM RIDER, ASSISTANT TO GENERAL COUNSEL

BUREAU FOR CHILD SUPPORT ENFORCEMENT

350 CAPITOL STREET, ROOM 147

CHARLESTON, WV 25301-3703

(304) 356-4730

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KIM.S.RIDER@WV.GOV

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

HEIDI L. TALMAGE, GENERAL COUNSEL

BUREAU FOR CHILD SUPPORT ENFORCEMENT

350 CAPITOL STREET, ROOM 147

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3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NOT APPLICABLE

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR CHILD SUPPORT ENFORCEMENT

Earl Ray Tomblin
Governor

Rocco S. Fucillo
Cabinet Secretary

MEMORANDUM

TO: The Office of the Secretary of State
Administrative Law Division

FROM: Heidi L. Talmage, Esquire
General Counsel

DATE:

SUBJECT: Brief Summary of Proposed Legislative Rule 97-6

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Pursuant to West Virginia Code § 48-8-105 (19), the Bureau for Child Support Enforcement is authorized to file rules to address issues related to the establishment of paternity, the establishment, modification, and enforcement of support obligations, and other issues required to maintain compliance with Federal IV-D requirements. This proposed Legislative Rule explains the actions that may be taken when a support obligation is owed while the case is receiving services through the Bureau for Child Support Enforcement, the assessment of interest on unpaid support arrearages, and establishes a program to grant amnesty for certain accrued interest.

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR CHILD SUPPORT ENFORCEMENT

Earl Ray Tomblin
Governor

Karen L. Browning
Cabinet Secretary

MEMORANDUM

TO: The Office of the Secretary of State
Administrative Law Division

FROM: Heidi L. Talmage, General Counsel

DATE:

SUBJECT: Brief Statement of Circumstances Requiring Rule
=====

The West Virginia Supreme Court of Appeals, in *Boyd v. Caplinger*, stated that the Bureau's Child Support Manual was not a Legislative Rule because the manual had not gone through the proper legislative process. The Court directed the Bureau to utilize the proper process for incorporating the manual as a Rule.

97 CSR 6

FILED

2013 JUL 23 PM 12:17

OFFICE OF THE
SECRETARY OF STATE

Title 97

Legislative Rules

The Bureau for Child Support Enforcement

Series 6

Support Enforcement Activities Undertaken by the Bureau for Child Support Enforcement

§ 97-6-1. General.

1.1. Scope. - This legislative rule establishes the actions that may be taken when a support obligation is owed while the case is receiving services through the Bureau for Child Support Enforcement, the assessment of interest on unpaid support arrearages, and establishes a program to grant amnesty for certain accrued interest.

1.2. Authority. - W. Va. § 48-18-105 (19).

1.3. Filing Date. - *June 25, 2013*

1.4. Effective Date. -

§ 97-6-2. Definitions.

2.1. Arrearage. - The total of any matured, unpaid installment of support required to be paid by an order entered or modified by a court of competent jurisdiction. Said amount shall stand, by operation of law, as a decretal judgment against the obligor owing such support. The term "arrearage" also includes any interest authorized by law which has accrued on unpaid support.

2.2. Bureau. - The Bureau for Child Support Enforcement. The Bureau for Child Support Enforcement is established by W. Va. Code § 48-18-101 and is designated as the single state agency to fulfill the obligations of the State of West Virginia under Title IV-D of the Social Security Act. Pursuant to W. Va. Code § 48-18-122, the bureau operates the central state case registry.

2.3. Department. – The Department of Health and Human Resources. The Department of Health and Human Resources is established pursuant to W. Va. Code § 5F-1-2 and contains within it the Bureau for Child Support Enforcement.

2.4. Fair Hearing. - An administrative hearing convened by a member of the department's board of review. The procedures to be followed in a departmental Fair Hearing are found in Chapter 730 of the Common Chapters Manual of the Department of Health and Human Resources.

2.5. Full service case. - A case that has been opened by the Bureau for Child Support Enforcement where the applicant for services has indicated that he or she wishes to receive all services that are provided by the bureau that are applicable to his or her case; a case where the applicant receives certain public benefits requiring him or her to receive all services that are provided by the bureau that are applicable to his or her case; or a case where no designation of the level of services has been made by the applicant for services.

2.6. Income withholding. - Pursuant to W. Va. Code § 48-14-105 and § 48-14-401, a method by which the bureau withholds monies from an obligor's income to be remitted to the bureau for the payment of the obligor's support obligations. An income withholding may be used to collect both current support and arrearages, if any are owed.

2.7. Injured spouse. - The spouse who does not owe the underlying support obligation that is being paid through the interception of a joint tax refund.

2.8. Medical support. – A specific type of support that obligates the parent or parents of a minor child to provide financial support for the provision of medical care for their minor child, or obligates a spouse or former spouse to provide financial support for the provision of medical care for a spouse or former spouse. The financial support may be in the form of a sum certain to be paid to the custodian of the child, spouse, or former spouse, an order to be financially responsible for specific medical expenses, an order to enroll a child, spouse or former spouse in an insurance plan, an order for premium payments, deductibles, or other methods of assigning responsibility that are within the discretion of the court.

2.9. Oblige. - An individual or the estate of a decedent to whom a duty of support is owed or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered; or a state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or an individual seeking a judgment determining parentage of the individual's child.

2.10. Obligor. - An individual or the estate of a decedent who owes or is alleged to owe a duty of support, or who is alleged, but has not been adjudicated to be a parent of a child, or who is liable under an order of support.

2.11. Order of support. – A judgment, decree or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, or the support and maintenance of a spouse or former spouse, which provides for monetary support, health care, arrearage or reimbursements.

2.12. Support. - The payment of money, including interest, for a child or spouse, ordered by a court of competent jurisdiction or an administrative agency authorized to establish support obligations, whether the payment is ordered in an emergency, temporary, permanent or modified order, the amount of unpaid support shall bear simple interest from the date it accrued, at a rate of five percent per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time; or a payment, including interest, to third parties on behalf of a child or spouse, including, but not limited to, payments to medical, dental or educational providers, payments to insurers for health and hospitalization insurance, payments of residential rent or mortgage payments, payments on an automobile or payments for day care; or the payment of money, including interest, to a mother for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.

2.13. Uniform Interstate Family Support Act. - Pursuant to W. Va. Code § 48-16-101 et seq., a procedure established to assist support obligees and obligors who reside in different states or territories to establish and enforce support obligations.

§ 97-6-3. Obligations and rights of the obligee.

3.1. In addition to any actions taken by the bureau, the support obligee retains the right and the obligation to take any other actions he or she may see fit to take to establish, collect, protect and preserve any support that is due and owing.

3.1.a. The bureau and its employees represent the interests of the State. The bureau does not represent the interests of any individual litigant or child. The term "the State" means the State of West Virginia or any other state, country, tribe or territory involved in the case.

3.1.b. Any party to a child support or spousal support case is free to seek counsel from an attorney of his or her own choosing and to be represented by an attorney of his or her own choosing in any legal or departmental proceeding.

3.1.c. The employees of the bureau shall respect the right of a party to obtain counsel and shall not communicate directly with a party with respect to legal issues if the individual has retained counsel.

§ 97-6-4. Collection of support through the use of income withholding.

4.1. Pursuant to W. Va. Code § 48-14-105 and § 48-14-403, every support order entered in this state or modified in this state shall include a provision authorizing the immediate withholding of sums from the income of the obligor for the payment of the obligor's support obligation, unless one of three circumstances is found by the court to exist:

4.1.a. There is good cause not to require immediate withholding;

4.1.a.1. The term "good cause" may include the court's determination of whether it is in the best interest of the child to require such withholding;

4.1.a.2. The term "good cause" may also include consideration of the obligor's payment record; or

4.1.b. The parties have filed with the court a written agreement concerning the method by which the obligor shall provide the support payments, and the court finds that the method is appropriate and adequate under the circumstances; or

4.1.c. The parties have declined to receive services from the bureau, the parties are not mandatory for services from the bureau, or the parties have applied for reduced services from the bureau that do not include income withholding.

4.2. In any case where immediate income withholding is not ordered because the court found that one of the three factors listed in subsection 4.1. exists, the order shall provide for income withholding to commence without further authorization by the court if any of the following circumstances occur:

4.2.a. When an arrearage exists which equals the amount of support due for one calendar month, if support is expressed in a monthly or semi-monthly amount, or in the amount due for a four-week period, if support is expressed as a weekly or bi-weekly amount; or

4.2.b. When the support obligor applies for the services of the bureau and requests income withholding.

4.3. Pursuant to W. Va. Code § 48-14-401(b), any order which provides for the payment of support for a minor child or for the payment of spousal support which is silent on the issue of income withholding for the purpose of the collection of the support shall be deemed to authorize income withholding.

4.4. Within two business days of the location of a source of income for a support obligor, the bureau shall issue a notice of income withholding if the following circumstances exist:

4.4.a. The case is required by law to receive full services from the bureau, a signed application for full services is on file, or a signed application for a category of reduced services that includes income withholding is on file with the bureau; and

4.4.b. An order of support exists.

4.5. In circumstances where immediate income withholding was not ordered and no qualifying arrearage exists, if the obligee requests the issuance of a notice of income withholding, the bureau attorney assigned to the case shall petition the court for permission to use this remedy. No notice of income withholding shall be issued under these circumstances until the court has ruled on the merits of the petition.

§ 97-6-5. Amounts to be collected through income withholding.

5.1. All income withholding notices shall include the current support amount and the amount to be withheld as a payment on the arrearage, if an arrearage exists.

5.2. The amount to be withheld by the employer is dependent on the amount of income owed to the obligor, the nature of the income, the age of the arrears that are owed, if any, and whether the obligor has other legal dependents. W. Va. Code § 48-14-408 limits the amount that a source of income may deduct from an obligor's disposable earnings. It is the responsibility of each employer or source of income to observe the limitations contained in state law.

5.2.a. The term "disposable earnings" applies to salaries, commissions, pension benefits, temporary total workers compensation benefits, and wages remaining after the deduction of any amounts required by law to be withheld;

5.2.b. Income that would not be considered as disposable earnings includes, but is not limited to, lump sum payments from workers compensation claims, lottery winnings, proceeds from a lawsuit, and severance pay. Non-disposable income shall be withheld at a rate of one hundred percent (100%), up to the amount owed by the obligor for current support and arrearages, if any exist.

5.2.c. Income withholding for any sum classified as a bonus by the employer or source of income shall not exceed fifty percent (50%) of the gross amount of the bonus.

5.3. If the collection is being sought for an arrearage-only case, because no current support obligation exists, the amount of the request for withholding from disposable income shall be the amount of the last monthly support obligation plus an additional twenty-five percent (25%). W. Va. Code § 48-14-408 limits the amount that a source of income may deduct from an obligor's disposable earnings. It is the responsibility of each employer or source of income to observe the limitations contained in state law.

5.4. In any case where a court of competent jurisdiction or an administrative agency of

competent jurisdiction has ordered a specific amount for withholding, the bureau shall issue the withholding for that amount, whether that amount ordered is higher or lower than the amount that the bureau would otherwise set. W. Va. Code § 48-14-408 limits the amount that a source of income may deduct from an obligor's disposable earnings. It is the responsibility of each employer or source of income to observe the limitations contained in state law.

5.4.a. If a court orders an obligor to pay an amount which is in excess of the amount that can be legally withheld from his or her source of income, it is the responsibility of the obligor to make the balance of the payment separately by mailing the additional payment amount to the bureau.

5.5. If an obligor owes an arrearage that is equal to or greater than the amount of support payable for six (6) months, or the amount of support payable in twenty-seven (27) weeks if the support amount is expressed in a weekly or biweekly sum, the bureau may add an additional one hundred dollars (\$100.00) per month to be withheld from the obligor's disposable earnings. W. Va. Code § 48-14-408 limits the amount that a source of income may deduct from an obligor's disposable earnings. It is the responsibility of each employer or source of income to observe the limitations contained in state law.

5.6. If an obligor owes an arrearage that is equal to or greater than the amount of support payable for twelve (12) months, or the amount of support payable in fifty-four (54) weeks if the support amount is expressed in a weekly or biweekly sum, and if the obligor's gross income is equal to or greater than sixty-five thousand dollars (\$65,000.00) per year, the bureau may add an additional two hundred dollars (\$200.00) per month to be withheld from the obligor's disposable earnings. W. Va. Code § 48-14-408 limits the amount that a source of income may deduct from an obligor's disposable earnings. It is the responsibility of each employer or source of income to observe the limitations contained in state law.

§ 97-6-6. Requests for reduction in the amount of withholding for arrears.

6.1. Upon written request from a support obligor, the bureau attorney assigned to a case may reduce the amount to be withheld from the obligor's income for the payment of an arrearage under certain circumstances. The bureau has no authority to grant a reduction in the withholding made for current support payments.

6.1.a. The bureau attorney shall not reduce the amount to be withheld from the obligor's income for the payment of an arrearage if the weekly or monthly amount to be paid on the arrearage was specifically ordered by a court of competent jurisdiction.

6.1.b. If the obligor has previously been found in contempt of court for his or her failure to pay support or has been previously convicted of criminal non-support, the attorney may decline to reduce the amount collected.

6.1.c. The bureau attorney may decline to reduce the amount collected if the obligor has had income for the six weeks preceding his or her request for a reduction in the amount withheld for arrearages, and the following occurred:

6.1.c.1. The bureau was unaware of the source of income and no withholding occurred; and

6.1.c.2. The obligor failed to notify the bureau of his receipt of income; and

6.1.c.3. The obligor failed to make any voluntary payment of support from his or her income during the period of time that no income withholding was in place.

6.2. Before making a decision on a request from an obligor to reduce the amount to be withheld for the payment of an arrearage, the bureau attorney shall notify the other party to the case in writing to provide an opportunity for the other party to present any information that he or she deems to be relevant to the situation.

6.3. After making a decision on a request from an obligor to reduce the amount to be withheld for the payment of arrearages, the bureau attorney shall notify both parties to the case in writing of his or her decision.

§ 97-6-7. Contest of the issuance of a notice of an income withholding.

7.1. An obligor may contest the issuance of a notice of income withholding being placed against his or her source of income.

7.1.a. The grounds upon which the issuance of a notice of income withholding may be contested relate to whether a mistake of fact occurred.

7.1.a.1. The alleged mistake could relate to either of the following facts:

7.1.a.1.A. The identity of the support obligor; or

7.1.a.1.B. The amount of support owed, either current or arrears.

7.2. If an obligor contests in writing the issuance of a notice of income withholding based upon a mistake of fact, the bureau shall contact the obligor to schedule a meeting to resolve the issue. The meeting may occur in person or by telephone, at the choice of the obligor.

7.3. If the matter remains unresolved at the conclusion of the meeting, the bureau attorney assigned to the case shall schedule a hearing with the court to resolve the issue.

7.4. While the matter is being litigated, the income withholding shall remain in effect. The obligee shall be responsible for repayment of all funds collected in error if the court

determines that the funds were improperly withheld.

§ 97-6-8. Modification and termination of a notice of income withholding.

8.1. The bureau shall promptly modify or terminate a notice of income withholding under any of the following circumstances:

8.1.a. If all current support and all arrearages are paid in full and no further current support is owed, the bureau shall terminate the notice of income withholding; or

8.1.b. If all arrearages are paid in full but current support is still owed, the bureau shall modify the notice of income withholding to collect only the current support amount; or

8.1.c. If the child is legally emancipated so that no current support is due and owing, or the child has been removed from the case, but arrearages are still owed, the bureau shall modify the notice of income withholding to collect only payments on the arrearage; or

8.1.d. If the amount of current support is modified by a court of competent jurisdiction or an administrative agency of competent jurisdiction, the notice of income withholding shall be modified to reflect the changes made by the court or agency; or

8.1.e. If the amount of arrearages to be collected reaches one of the thresholds to trigger the collection of an additional sum for payment on arrearages as set forth in subsections 5.5 and 5.6 of this rule, the bureau shall modify the notice of income withholding to reflect this additional sum; or

8.1.f. If a typographical error was made in a previous notice of income withholding, the bureau shall promptly issue a corrected version of the notice; or

8.1.g. If an obligor receives income from multiple sources, the bureau shall promptly modify the notice of income withholding to one or more sources of income, if necessary to prevent overpayment by the obligor.

§ 97-6-9. Rules relating to specific sources of income.

9.1. When the source of income is a lump sum resulting from an obligor's workers' compensation claim, the obligor may have been represented by an attorney in his or her attempts to receive these benefits.

9.1.a. When a third-party administrator issues one check to the bureau for the entirety of the workers' compensation lump sum benefits regardless of whether the obligor's attorney has filed a claim for attorneys' fees, the obligor's attorney may request payment of his or her attorneys' fees from the lump sum payment received by the bureau, if the funds remain in the possession of the bureau.

9.1.b. The attorney shall provide to the bureau the following information:

9.1.b.1. The dollar amount of fees and costs due from the obligor;

9.1.b.2. A signed copy of the written contract with the obligor; and

9.1.b.3. A copy of the obligor's award letter.

9.1.c. Upon receipt of the above-listed items from the obligor's attorney, the bureau shall mail a proposed agreement to the attorney, along with an income withholding notice. In the proposed agreement the attorney consents to honor the bureau's income withholding against future payments, while the bureau permits the attorney to withhold his or her attorney's fees from future payments.

9.1.d. Upon receipt of the signed agreement, the bureau shall release its income withholding against the third-party administrator, permitting the third-party administrator to pay the benefits directly to the attorney for the obligor. The attorney will then be responsible as a source of income for remitting the appropriate payments to the bureau pursuant to the income withholding notice.

9.2. When the source of income is a regional jail inmate's trustee account, any withholdings made by the regional jail from the inmate's account shall be in full compliance with WV 94CSR8 dealing with Work Programs for Regional Jail Inmates.

9.3. Spousal support may not be collected through the use of a notice of income withholding from an obligor's unemployment compensation claim.

§ 97-6-10. Reporting support arrearages to credit bureaus.

10.1. Upon request by an authorized credit bureau, the bureau shall provide information to the credit bureau for obligors who owe an arrearage of at least one thousand dollars (\$1,000.00), which has been due and unpaid for at least two (2) months.

10.2. The bureau shall update each account reported on a monthly basis.

10.3. Prior to making the original report to the credit bureau, the bureau shall send a notice of intent to report to each obligor.

10.4. If an obligor advises the bureau in writing that he or she wishes to contest the information that is being reported to the credit bureau, the bureau's submission of the report to the credit bureau for that individual shall be suspended until the issue is resolved by the issuance of an order of a court of competent jurisdiction or the issuance of a decision resulting from a departmental Fair Hearing. Said request for hearing or informal conference shall be made in writing and shall comply in all respects with Chapter 730 of the Common Chapters Manual for the Department of Health and Human Resources.

§ 97-6-11. Collection of support through the use of a state income tax offset.

11.1. State income tax refunds may be intercepted or offset for the payment of child support and certain eligible spousal support.

11.2. If the obligor's scheduled refund is equal to or less than the eligible support arrearages, the entire amount of the refund shall be offset and paid to the bureau.

11.3. If the obligor's scheduled refund is greater than the amount of the eligible support arrearage, the amount of the eligible support arrearage shall be offset and paid to the bureau, and the balance of the refund shall be sent to the obligor by the State Tax Department.

11.4. The submission amount for state income tax offset is an arrearage that meets the following criteria:

11.4.a. The arrearage must be equal to or greater than one hundred dollars (\$100.00), owed on one case;

11.4.b. The arrearage must have resulted from child support established by a court order or by an order issued through an administrative agency of another state with the authority to establish a child support obligation;

11.4.c. The arrearage may include spousal support if the parent and child are residing together, and the child support obligation and the spousal support obligation are included in the same court order; and

11.4.d. The arrearage may include interest that has accrued on otherwise eligible arrearages.

11.4.e. The arrearage may include past-due medical support for a child if the medical support was expressed as a monthly support amount.

11.4.f. The applicant for services must have requested full services on his or her case, or the case must be one where a party is required by state or federal law to accept full services from the bureau.

11.5. Fees, court costs, and genetic testing costs, are not eligible to be submitted for offset. However, in circumstances where the offset funds received are in excess of all current support and arrears due and owing, if the obligor consents in writing, the balance of the offset funds shall be applied to these debts.

11.5.a. If the obligor does not consent in writing to this use of the offset funds, the bureau shall make a refund of the excess payment within thirty (30) days of the date that the balance of the funds were applied to the case.

11.6. Prior to submission of any arrearage to the state tax department for collection, the bureau shall verify the addresses of all parties to the case and the obligor's social security number.

11.7. Prior to submission of any arrearage to the state tax department for collection, the bureau shall send written notice to the obligor by first-class mail, postage prepaid, at his or her last known address, to advise the obligor of the pending submission.

11.7.a. The notice shall advise the obligor of the pending submission, the method that may be used to contest the submission, and the method to be used to protect the share of a joint refund which may be payable to another person.

11.8. The notice shall be sent prior to the first submission of the case for collection to the state tax department. A new notice of submission shall not be required each year unless the arrearages are reduced to zero. After the arrearage is reduced to zero, if a new eligible arrearage accrues, the bureau shall be required to send a new notification to the obligor before resubmission of the case to the state tax department for collection.

11.9. If the support obligor filed a joint state tax return, some of the funds from the refund may belong to the support obligor's spouse.

11.9.a. When the bureau is notified that the funds intercepted from a state tax return have come from a joint return, the bureau shall hold the funds without distribution for a period of time, not to exceed six months, to permit the injured spouse to make a claim for the return of his or her share of the refund.

11.9.b. The injured spouse shall file his or her claim with the state tax department. Upon notification by the state tax department of the resolution of the injured spouse's claim, including the amount to be refunded to him or her, the bureau shall make the payment to the injured spouse, and distribute the balance of the offset funds to the obligor's case or cases.

11.9.c. At the conclusion of six months from the date of the bureau's receipt of the offset funds, if no injured spouse claim is received from the obligor's spouse, the bureau shall distribute the entire offset to the obligor's case or cases.

11.9.d. Prior to the expiration of the six month period, if the bureau receives written or verbal confirmation from the obligor or the obligor's spouse that no injured spouse claim will be filed, the offset funds may be released for distribution to the appropriate support obligee.

11.10. An obligor whose name is submitted for a state tax offset has the right to challenge the submission. He or she may challenge this submission at any point in the process. The method to challenge the submission shall be included in the notice sent to an obligor prior to the case being submitted for offset.

11.11. The obligor who wishes to challenge a state tax offset may request an informal conference with the bureau, may request a departmental Fair Hearing, or may request that both occur. Said request for hearing or informal conference shall be made in writing and shall comply in all respects with Chapter 730 of the Common Chapters Manual for the Department of Health and Human Resources.

§ 97-6-12. Collection of Support through the use of a federal income tax offset.

12.1. Federal income tax refunds may be intercepted or offset for the payment of child support and for the payment of eligible spousal support.

12.2. The submission amount for federal income tax offset is an arrearage that meets the following criteria:

12.2.a. The arrearage must be equal to or greater than one hundred fifty (\$150.00) dollars, if the arrearage is assigned to the state for the repayment of benefits; or

12.2.b. The arrearage must be equal to or greater than five hundred dollars (\$500.00), if the arrearage is owed to the support obligee.

12.2.c. The arrearage must have resulted from child support established by a court order or by an order issued through an administrative agency of another state with the authority to establish a child support obligation; and

12.2.d. The arrearage may include past-due spousal support if the parent and child are residing together, and the child support obligation and the spousal support obligation are included in the same court order; and

12.2.e. The arrearage may include interest that has accrued on otherwise eligible arrearages.

12.2.f. The arrearage may include past-due medical support for a child if the medical support was expressed as a monthly support amount.

12.2.g. In order to reach the threshold amount for submission, the bureau may combine eligible arrearages of like assignment types from multiple cases.

12.3. Prior to submission of any arrearage to the Internal Revenue Service for collection, the bureau shall verify the addresses of all parties to the case and the obligor's social security number.

12.4. Prior to submission of any arrearage to the Internal Revenue Service for collection, the bureau shall send written notice to the obligor by first-class mail, postage prepaid, at his or her last known address, to advise the obligor of the pending submission.

12.4.a. The notice shall advise the obligor of the pending submission, the method that may be used to contest the submission, and the method to be used to protect the share of a joint refund which may be payable to another person.

12.4.b. The notice shall be sent prior to the first submission of the case for collection to the Internal Revenue Service. A new notice of submission shall not be required each year unless the arrearage is reduced to zero. After the arrearage is reduced to zero, if a new eligible arrearage accrues, the bureau shall send a new notification to the obligor before resubmission of the case to the Internal Revenue Service for collection.

12.5. If the support obligor filed a joint federal tax return, some of the funds from the refund may belong to the support obligor's spouse.

12.5.a. When the bureau is notified that the funds intercepted from a federal tax refund have come from a joint return, the bureau shall hold the funds without distribution for a period of time, not to exceed six months, to permit the injured spouse to make a claim for the return of his or her share of the refund.

12.5.b. The injured spouse shall file his or her claim with the Internal Revenue Service. Upon notification by the Internal Revenue Service of the resolution of the injured spouse's claim, the bureau shall distribute the balance of the offset funds to the obligor's case or cases. In Internal Revenue Service cases, the bureau does not refund the injured spouse's portion of the refund directly to the injured spouse; the Internal Revenue Service makes the refund to the injured spouse. The Internal Revenue Service shall recoup the funds to be paid to the injured spouse from the sums previously sent to the bureau.

12.5.c. At the conclusion of six months from the date of the receipt of the offset funds, if no injured spouse claim has been received from the obligor's spouse, the bureau shall distribute the entire offset to the obligor's case or cases.

12.5.d. Prior to the expiration of the six month period, if the bureau receives written or verbal confirmation from the obligor or the obligor's spouse that no injured spouse claim will be filed, the offset funds may be released for distribution to the appropriate support obligee.

12.5.e. Under federal regulations, an injured spouse claim may be filed after the expiration of the six month period. If the claim is filed after the offset funds have been distributed to the obligee, the Internal Revenue Service will recoup the money to be refunded to the injured spouse from the bureau.

12.5.e.1. After the Internal Revenue Service recoups the money from the bureau, the bureau shall make the appropriate adjustment to the financial records of the obligor and attempt to collect the amount of the recoupment from him or her, using all appropriate collection methods granted to the bureau.

12.6. Fees, court costs, and genetic testing costs, are not eligible to be submitted for offset. However, in circumstances where the offset funds received are in excess of all current support and arrears due and owing, if the obligor consents in writing, the balance of the offset funds shall be applied to these debts.

12.6.a. If the obligor does not consent in writing to this use of the offset funds, the bureau shall make a refund of the excess payment within thirty (30) days of the date that the balance of the funds were applied to the case.

12.7. In circumstances where the person whose refund was offset was not the support obligor or the obligor's eligible arrearage has been paid in full prior to the receipt of the funds by the bureau, the offset funds may be refunded to the individual prior to the bureau's receipt of the funds from the Internal Revenue Service if the following circumstances exist:

12.7.a. The case was submitted in error; and

12.7.b. The bureau receives documentation that a true financial emergency exists with the person whose funds have been offset; and

12.7.c. The bureau receives a written request for the return of the funds, along with a copy of the obligor's Internal Revenue Service offset notice.

12.7.d. If the offset funds came from a joint return, the bureau shall verify with the obligor's spouse that no injured spouse claim will be filed.

12.7.e. In cases where the appropriate circumstances are found to exist, the bureau attorney assigned to the case shall determine whether an advance refund of the withheld funds shall occur.

12.8. If a support obligee documents the existence of an emergency financial situation, offset funds being held from a joint return may be released to the obligee before the expiration of the six-month period if the following additional circumstances exist:

12.8.a. A review of the case history reveals no former claims by the obligor's spouse for return of injured spouse funds; or

12.8.b. The injured spouse has agreed in writing to waive the filing of an injured spouse claim for this tax year; and

12.8.c. The early distribution of funds is approved by the bureau attorney assigned to the case.

§ 97-6-13. Appeals of the bureau's use of the federal income tax intercept process.

13.1. An obligor whose name is submitted for a federal tax offset has the right to challenge the submission within thirty (30) days of the date that the obligor receives the pre-offset notice by requesting a bureau Informal Review and a departmental Fair Hearing. The procedures to be followed in a departmental Fair Hearing are found in Chapter 730 of the Common Chapters Manual of the Department of Health and Human Resources. The pre-offset notice shall contain the specific address that the obligor shall use to notify the bureau of his or her challenge.

13.2. When an obligor notifies the bureau in writing of his or her wish to challenge a federal tax offset, the bureau employee assigned to the case shall immediately suspend any federal tax submission and shall also immediately schedule the matter for an Informal Review. The obligor shall be notified in writing of the date, time and place of the Informal Review and shall be permitted to participate by telephone or in person.

13.3. The Informal Review shall be conducted by either the Regional Manager assigned to the region or the child support supervisor assigned to the county. The bureau employee assigned to the case shall be present for the Informal Review. If necessary, the bureau attorney assigned to the case may also be present for the Informal Review.

13.4. At the conclusion of the Informal Review, if the obligor is satisfied with the result of the review, the bureau shall take the appropriate steps to continue with the collection of the arrearage. If the obligor is not satisfied and wishes to proceed to hearing, the bureau employee assigned to the case shall immediately schedule the case for a departmental Fair Hearing. The procedures to be followed in a departmental Fair Hearing are found in Chapter 730 of the Common Chapters Manual of the Department of Health and Human Resources.

13.5. If the case involves individuals from other states or if the arrearage is based upon a support order from another jurisdiction, the obligor may choose to have the hearing in the state which submitted the case for Federal tax intercept or the state which has the order that established the support obligation. If West Virginia is selected by the obligor as the venue for the hearing, all proceedings shall occur through the departmental Fair Hearing process. The procedures to be followed in a departmental Fair Hearing are found in Chapter 730 of the Common Chapters Manual of the Department of Health and Human Resources. Further, the hearing process shall comply in all respects with 45 C.F.R. § 303.72 (g).

§ 97-6-14. United States passport denial, revocation and limitation.

14.1. Obligors with a child support arrearage equal to or greater than two thousand five hundred dollars (\$2,500.00) may be submitted to the United States Department of State for denial of the obligor's privilege of obtaining a United States passport.

14.1.a. The eligible arrearage may include an arrearage from one case, or, if the obligor owes a child support obligation in more than one case, the arrearages from multiple cases may be combined to reach the threshold amount. The amount submitted may also include interest that has accrued on the eligible arrearage.

14.1.b. Spousal support, child or spousal medical bills, fees, court costs, and judgments representing unpaid child or spousal medical bills shall not be included in the arrearage balance. However, unpaid child medical support may be included in the arrearage if the medical support order was expressed as a recurring monthly or weekly sum.

14.2. Prior to submission of an arrearage to the United States Department of State, the bureau shall mail by first class mail a notice advising the obligor that his or her case may be submitted to the Department of State.

14.3. The obligor who wishes to challenge the submission of a case to the Department of State may request an informal conference with the bureau, may request a departmental Fair Hearing, or may request that both occur. Said request for hearing or Informal Review shall be made in writing and shall comply in all respects with Chapter 730 of the Common Chapters Manual for the Department of Health and Human Resources.

14.4. If an obligor who already has a valid passport is submitted to the United States Department of State for non-payment of an eligible arrearage, the already-issued passport may be seized or revoked. While this does not occur frequently, it may occur if an obligor comes into contact with a Department of State official.

14.5. Once an obligor's eligible arrearage is submitted to the United States Department of State, the submission remains on file until certain events occur:

14.5.a. The arrears are paid in full; or

14.5.b. The obligor enters into a notarized, written agreement with the bureau in order to obtain the removal of the case from the United States Department of State records. The agreement shall include the following terms:

14.5.b.1. The obligor shall agree to pay at least seventy-five percent (75%) of the eligible arrearage or pay a sum that would reduce the eligible arrearage to less than two thousand five hundred dollars (\$2,500.00), whichever is greater; and

14.5.b.2. The obligor shall agree to pay any remaining arrearage in full within one year of the date of the agreement and he or she shall further agree to maintain the payment of his or her current monthly or weekly child support obligation in a timely manner.

14.5.b.3. The agreement shall specifically detail the method and manner that the payments shall be made;

14.5.b.4. Any lump sum payment made to reduce an arrearage below the threshold limit shall be made by cashier's check, certified check or cash, if immediate withdrawal of the arrearage from the Department of State records is sought. If a lump sum payment is not made by cashier's check, certified check or cash, the payment shall be accepted by the bureau and deposited but the case shall not be removed from the Department of State records until the funds are actually received by the bureau; or

14.5.c. The bureau determines that a verified emergency exists that demands that the obligor's ability to travel outside the country be immediately restored.

14.5.c.1. The term "verified emergency" shall be limited to the occurrence of a serious illness, a life-threatening medical procedure, or imminent death of the obligor's spouse, parent, child, grandparent, aunt, uncle, sibling, step-parent, step-child, step-sibling; and

14.5.c.2. The bureau employee assigned to the case shall verify the truthfulness of the allegation by use of newspaper death notices, letters from treating physicians or the Red Cross, death certificates or other documentation. The bureau shall also verify that the obligor has made arrangements to travel outside the country; or

14.5.d. The bureau confirms that the person whose passport was affected is not the obligor in question, or the obligor was submitted erroneously.

14.5.d.1. In these circumstances the bureau shall take action immediately, upon verification of the facts, to withdraw the submission of the arrearage information from the Department of State.

14.5.e. The bureau confirms that the obligor is required to have a valid passport as a condition of obtaining new employment or continued employment and the bureau believes that there is a high likelihood that the obligor will be able to discharge his or her support obligations through this employment.

14.5.e.1. The bureau employee assigned to the case must obtain written verification from the employer of the terms of the obligor's employment, and that the passport is a necessity; and

14.5.e.2. The employer must also agree to honor an income withholding issued by the bureau for the collection of the eligible support obligation; and

14.5.e.3. The obligor shall sign a written agreement that shall include a plan to discharge the eligible arrearage in full within a specific period of time.

§ 97-6-15. Federal administrative offset program.

15.1. When an obligor's eligible arrearage is submitted for federal income tax offset, the eligible arrearage is also submitted for federal administrative offset.

15.2. The federal government determines what types of federal payments are subject to the administrative offset process.

§ 97-6-16. Suspension, restriction, denial and non-renewal of drivers' licenses and professional licenses.

16.1. W. Va. Code § 48-15-201 permits the bureau to request that a court of competent jurisdiction suspend, restrict, deny or prohibit renewal of certain licenses issued to an obligor if all appropriate enforcement methods have been exhausted or are not available and if the following additional criteria are met:

16.1.a. The obligor's child support arrearage, including child medical support, exceeds the amount that would be due in a six-month period; or

16.1.b. The obligor has failed to comply with a subpoena or warrant relating to paternity or child support proceedings.

16.2. Before commencement of any action to suspend, restrict, deny or prohibit renewal of an obligor's license, the bureau shall provide written notice to the obligor that conforms to the terms of W. Va. Code § 48-15-205 and § 48-15-206.

16.3. After the obligor receives the written notice that the commencement of an action against his or her license may occur, if the obligor makes a request to do so, the bureau shall attempt to develop and enter into a payment plan with the obligor if the agreement meets the following criteria:

16.3.a. The agreement sets forth a specific plan for the satisfaction of all eligible child support arrearages within a reasonable amount of time, as determined by the bureau attorney assigned to the case; and

16.3.b. The agreement includes a specific plan for the satisfaction of all on-going weekly or monthly child support payments in a timely manner.

16.4. If such an agreement is reached, the bureau shall terminate its attempt to suspend, restrict, deny or prohibit the renewal of the obligor's license.

16.5. If no agreement is reached within twenty (20) business days of the date that the obligor initially contacted the bureau regarding the potential license suspension, pursuant to W. Va. Code § 48-15-209, the matter shall proceed to hearing in the court of competent

jurisdiction.

§ 97-6-17. The filing of liens and writs of execution to enforce the payment of support obligations.

17.1. The bureau may file a lien against the personal property or the real property of the obligor if the obligor is in arrears in the payment of any of the following:

17.1.a. His or her child or spousal support obligation; or

17.1.b. His or her child or spousal medical support obligation; or

17.1.c. Interest due on any type of child or spousal support obligation.

17.2. The bureau shall use the methods established in state law to perfect the liens including, but not limited to, the filing of writs of execution, the obtaining of decretal judgments, the preparation and filing of affidavits of accrued support and abstracts of judgment.

17.3. The bureau may file a lien in any county in the state where the obligor is believed to own property, or where the obligor may own property in the future.

17.4. Liens shall be filed in the name of the support obligee and the State of West Virginia.

17.5. Liens securing the interests of the State of West Virginia shall only be released upon the signature of the Cabinet Secretary of the Department of Health and Human Resources or his or her authorized designee.

17.6. It is within the discretion of the Cabinet Secretary or his or her designee to issue a partial release of a lien securing the interest of the State of West Virginia in circumstances where an obligor makes a significant payment toward the secured arrearage.

17.7. When a lien is perfected in the name of a support obligee other than the State of West Virginia, the obligee shall sign the release of lien when the support obligation secured by the lien is paid in full. An obligee may also issue a partial release of the lien if the obligee chooses to do so.

17.7.a. If the obligee fails to execute the release of lien in a timely manner, the bureau may file an action with the court of competent jurisdiction to force the execution of the release or for the court to appoint a special commissioner to execute the release of lien on behalf of the obligee.

17.8. The bureau may cause enforcement of a lien filed against an obligor's real property

by forcing the sale of the property only with advance approval of the bureau's general counsel and only in compliance with W. Va. Code § 38-3-9.

§ 97-6-18. Obtaining property of the obligor through the use of a suggestion.

18.1. A suggestion is a legal document demanding that property owned by an obligor but in the possession of a third-party be seized to satisfy the obligor's debt.

18.2. This process is used to secure property of the obligor that may not be obtained through the use of a notice of income withholding.

18.3. Pursuant to W. Va. Code § 38-8-1, the normal exemption of personal property valued at one thousand dollars (\$1,000.00) does not apply to suggestions based upon a judgment lien for child support or spousal support.

18.4. The bureau may file a suggestion to obtain personal property to be credited against an obligor's past-due child support, spousal support, child or spousal medical support, interest due on any past-due child or spousal support, or for the payment of any fees or court costs due and owing.

18.5. A suggestion may be filed under the following circumstances:

18.5.a. At any time after ten days from the entry of a decretal judgment for accrued, unpaid support; or

18.5.b. At any time after a payment of court-ordered support is delinquent, in whole or in part, for fourteen days.

§ 97-6-19. Enforcement of support obligations through the filing of a rule to show cause.

19.1. The bureau may seek to enforce the failure to comply with support obligations or other terms of a court order through the use of a rule to show cause. The bureau may seek an order from the court to address the following issues:

19.1.a. Non-payment of court-ordered child support, spousal support or medical support amounts; or

19.1.b. Failure to provide medical insurance for the minor child, spouse or former spouse as ordered, or failure to provide proof of insurance; or

19.1.c. Failure to seek work on a regular and timely basis; or

19.1.d. Failure to appear for hearing or testing as ordered by the court; or

19.1.e. Failure to provide information as ordered by the court.

19.2. Because the bureau represents only the state, the bureau may file a rule to show cause against either party to a case.

19.3. In the discretion of the bureau attorney assigned to the case, the bureau may file a rule to show cause alleging civil contempt or criminal contempt against a party believed to have intentionally failed to comply with a provision of a court order.

19.4. The bureau has no authority to enforce custody, parenting time, visitation, equitable distribution, or any other provisions contained in a court order that do not pertain to paternity and support obligations.

§ 97-6-20. Financial Institution Data Match.

20.1. Pursuant to W. Va. Code § 48-18-124, financial institutions in this state or in other states, territories or countries may provide information to the bureau regarding the ownership of any accounts held by support obligors, including the amount in the account, the type of ownership of the account, the address of the owner or owners of the account.

20.2. An obligor shall be submitted for the match process if his or her case or cases have a combined arrearage of at least one thousand dollars (\$1,000.00).

§ 97-6-21. Posting of a bond to ensure payment of a support obligation or appearance at a hearing.

21.1. If an obligor owes a support arrearage, has failed to appear for scheduled hearings, or has failed to provide information or documentation that the court deems necessary, the bureau may petition the court to require that the obligor post a bond with the Circuit Clerk to be forfeited if the obligor fails to meet standards set by the court. The standards may include payment of support in a timely manner, obtaining insurance coverage for a child, providing proof of insurance coverage or other documentation required by the court, or requiring attendance at a particular hearing.

21.2. If the court issues an order requiring the posting of a bond, the bureau employee assigned to the case shall monitor the case to determine if the bond is posted.

21.3. If a bond is posted and a situation occurs that may result in forfeiture of the bond, the bureau shall advise the court of the facts in a timely manner by filing the appropriate pleadings and shall proceed to follow the direction of the court.

§ 97-6-22. Criminal prosecutions for non-payment of support.

22.1. Both state and federal laws make failure to provide financial support to a child a

crime if certain specific facts exist. If a case meets the statutory requirements for possible prosecution under either state or federal law, the bureau attorney assigned to the case may refer the case to state or federal prosecutors.

22.2. W. Va. Code § 48-18-131 permits the bureau to release information to state or federal prosecutors and law enforcement officials as necessary for the purpose of establishing, modifying, enforcing or collecting a support obligation. The bureau shall not release information to state or federal prosecutors and law enforcement officials for any other purpose, except as set forth in 45 C.F.R. § 303.15.

22.3. The bureau attorney assigned to the case shall approve all information released to state and federal law enforcement officials and prosecutors related to criminal non-support allegations.

§ 97-6-23. Suits against a source of income.

23.1. When an individual or a company is an employer or source of income for an obligor, the bureau may commence an action against the individual or company if any of the following actions occur:

23.1.a. The individual or company is an employer or source of income for an obligor and the individual or company fails to properly report the obligor as an employee or as a contractor when the individual or company has an obligation imposed by law to do so; or

23.1.b. The individual or company is the employer of the obligor or is a source of income for the obligor and the individual or company fails to withhold or fails to remit any sum from the employee's income after receipt of a notice of income withholding; or

23.1.c. The individual or company pays the employee in cash or in other goods or services to avoid the payment of a support obligation.

23.2. If judgment is obtained against the employer or source of income, that judgment is a civil judgment and is not in the nature of a support obligation. Collection remedies, such as income withholding and income tax offsets, which are reserved for the collection of support obligations may not be used to collect a judgment against a source of income or an employer.

§ 97-6-24. Suits to set aside fraudulent transfers of real or personal property.

24.1. When an individual transfers real or personal property or money in order to conceal assets which could be seized to satisfy a support obligation, the bureau may bring an action to set aside the transfer of the property.

24.2. Such an action may seek to have the transferred item returned to the ownership of the obligor, sold by the sheriff with the proceeds committed to the bureau for application

to the obligor's support obligation, to otherwise dispose of in accordance with the law, or to have judgment granted against the obligor.

§ 97-6-25. Suits to enforce a foreign judgment.

25.1. An order entered in another jurisdiction is entitled to full faith and credit in West Virginia. However, registration of the foreign judgment may be necessary in this state prior to commencing collection actions based upon that order.

25.2. In the discretion of the bureau attorney assigned to the case, enforcement of an out-of-state order may be processed through the Uniform Interstate Family Support Act (UIFSA) or through the authentication and registration of the order in the courts of West Virginia pursuant to W. Va. Code § 55-14-1 et seq.

§ 97-6-26. Miscellaneous legal actions.

26.1. The bureau may intervene in any type of legal action involving any party to the child support case if it appears that, as a result of the action, a support obligor may obtain income or property that could be available for the payment of support obligations.

26.2. The bureau may request that the court attach property belonging to the obligor, may request that property of the obligor be sold or leased, or request that the court take other reasonable actions designed to pay the debt owed by the obligor.

§ 97-6-27. Bankruptcy as it affects support enforcement methods.

27.1. When an obligor files a petition for bankruptcy in federal court, the bureau will assess all on-going enforcement activities to determine whether the activities may continue. Bankruptcy does not discharge support obligations; it merely changes the timing and methods by which support obligations may be collected. A bankruptcy may discharge any genetic testing fees or court costs owed by the obligor.

27.1.a. The ability to take enforcement activities after a petition for bankruptcy is filed is dependent upon the type of bankruptcy petition filed and the type of enforcement activity.

27.1.b. Income withholding, license suspension, income tax offsets, passport denial, credit bureau reporting and enforcement of medical support may continue to occur after the filing of a bankruptcy petition.

27.1.c. The filing of writs of execution, liens, suggestions, contempt actions, motions for judgment, as well as the sending of billing statements and letters requesting payment of support obligations shall cease when the bureau is notified of the filing of a bankruptcy petition by a support obligor.

27.2. When the obligor files a Chapter 13 bankruptcy petition, the bureau shall cooperate with the bankruptcy trustee to confirm the amount of debt owed by the filing of a proof of claim. The bureau shall also provide information to the trustee as to whether any support that has become due and owing since the time of the filing of the petition has been paid in a timely manner.

27.3. When the bankruptcy court confirms a Chapter 13 plan for an obligor, the bureau shall immediately review the plan to determine the method approved by the court for the collection of current support and any existing arrearage.

27.4. When an obligor's source of income or employer files a petition for bankruptcy the bureau may file a proof of claim to collect unpaid child or spousal support if the following circumstances have occurred:

27.4.a. Funds deducted from the obligor's income pursuant to a notice of income withholding were not remitted to the bureau; or

27.4.b. Funds that should have been deducted from the obligor's income pursuant to a notice of income withholding were not deducted.

§ 97-6-28. Amnesty Programs.

28.1. General requirements for participation in amnesty programs.

28.1.a. In order for an obligor to be eligible to participate in an amnesty program, the following circumstances must exist:

28.1.a.1. The order on which the enforcement action is taken must have been entered by a court in West Virginia;

28.1.a.2. Neither party can be compelled to participate in an amnesty program; both the obligee and obligor must be willing to participate;

28.1.a.3. There must be interest owed to the obligee, to the State, or to both;

28.1.a.4. The parties must enter into a written agreement as to the amount of interest to be forgiven. No portion of the principal debt may be forgiven, but any or all of the interest accrued may be forgiven;

28.1.a.5. The forgiveness of the interest shall be conditioned upon the payment in full of all current support which will become due and owing during the life of the agreement and for payment in full of the arrearage due at the time of the entry into the agreement;

28.1.a.6. The amount to be paid and the intervals for payment to accomplish the purposes set forth in subsection 28.1.a.5. shall be specified in the written agreement;

28.1.a.7. In order to satisfy the account, the agreement may include periodic lump sum payments, monthly or weekly payments, or any combination of the two;

28.1.a.8. All terms of the agreement shall be completed within a period of time to be specified in the agreement, and the specified period of time cannot, by law, extend longer than sixty months.

28.2. If any of the interest that is owed has been assigned to the State of West Virginia, the bureau attorney assigned to the case shall agree to provisionally waive any interest owed to the State in the following circumstances:

28.2.a. If a portion of the interest is owed to the obligee and a portion owed to the State, if the obligee has agreed to waive his or her interest or any portion of his or her interest, the State shall waive its portion of the interest;

28.2.b. If all of the interest that has accrued on the case is owed to the State, the State shall waive all of the accrued interest if the obligor enters into an appropriate amnesty agreement for the payment of current support and the full principal arrearage.

28.2.c. If any debt, either principal or interest, is owed to the State, the proposed agreement shall be reviewed by the bureau attorney assigned to the case, before any petition is filed with the court for review.

28.3. Before such an agreement is binding upon the parties and the bureau, the agreement shall be approved by a court of competent jurisdiction.

28.4. The entry into such an agreement by the parties and its subsequent approval by the court does not bar the bureau from taking other enforcement actions to collect the current support or any arrearage.

28.5. Approval by the court of the written agreement suspends the collection of the agreed-upon amount of interest during the pendency of the agreement. Upon entry of the order of approval, the bureau shall remove the agreed-upon amount of interest from the ledger of the case until the agreement is completed and the arrearage is paid in full during the specified time period.

28.6. If the arrearage is not paid in full, the bureau shall advise the court and the parties that the agreement has been breached and shall ask that the court enter an order finding that the interest again be deemed to be collectable and that the removed interest be returned to the ledger of the case.

28.6.a. Upon receipt of such an order, the bureau shall take the steps specified in the order and shall reinstate the remaining arrearage and commence appropriate collection activities.

28.9. If the arrearage is paid in full during the term of the agreement, the bureau shall advise the court and the parties that the agreement has been fulfilled and shall ask that the court enter an order authorizing the permanent forgiveness of the agreed-upon amount of interest.

28.10. In some circumstances, the amount of a monthly payment agreed to by an obligor may exceed the legal limits that apply to income withholdings or other methods of collection. If such a circumstance occurs, the parties to the agreement shall be advised that the obligor must mail additional payments in order to meet the terms of the agreement. The bureau shall provide payment coupons to the obligor for that purpose.

28.11. Attorneys for the bureau shall file petitions to establish or enforce amnesty agreements if requested to do so by one or more of the parties upon presentation of an appropriate written agreement. During the course of the agreement, the bureau attorney shall file and prepare any other pleadings or orders deemed by the attorney to be appropriate.

§ 97-6-29. Grace period and the accrual of interest on unpaid support payments.

29.1. Support payments are due and owing in the amounts set forth in an order of a court of competent jurisdiction or in an order of an out-of-state administrative agency of competent jurisdiction. Support payments are generally expressed as a monthly payment amount but may be expressed as a weekly, semi-monthly or bi-weekly sum.

29.2. If the full amount of a support payment is not received in the calendar month in which it is due, the obligor is given an additional calendar month in which to pay the unpaid sum before interest is added to the account. This additional calendar month is known as the grace period. If the support is paid in full during the month it is due or during the grace period, no interest is assessed for the late payment of that support installment.

29.3. W. Va. Code § 48-1-302 establishes the amount of interest to be assessed on any amounts that remain due and owing at the conclusion of the grace period, regardless of whether the principal is owed to the state or to the obligee.

29.3.a. For any unpaid support that was assigned to the State prior to July 1, 2002, no interest shall accrue on the portion of the debt assigned to the State through June 30, 2002. Interest at the legal rate in effect at the time that each payment became due and owing shall accrue from July 1, 2002 until the debt is paid in full.

29.4. Effective July 1, 1998, in order to account for variations in payment amounts that occur due to employers' pay cycles, no interest is charged on any case where the balance upon which interest would otherwise be assessed is less than forty percent (40%) of the regular monthly support obligation.

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730 SUBPART C – FAIR HEARINGS FOR BUREAU FOR CHILD SUPPORT ENFORCEMENT

730.10 General

Scope - This procedural rule is intended to set forth the procedures for fair hearings concerning the Bureau for Child Support Enforcement held within the Department of Health and Human Resources by the Board of Review. Pursuant to §29A-1-3 of the West Virginia Code, these hearings are exempt from the Administrative Procedures Act.

730.11 Definitions

- A. Claimant - A person challenging a decision or action of the Department.
- B. Department - The West Virginia Department of Health and Human Resources.
- C. Hearing Officer - Member of the Department's Board of Review authorized to conduct hearings and render decisions on behalf of the Board.
- D. Hearing Request - Any written or oral statement by the claimant, or his or her attorney/representative, requesting an opportunity to appeal to the Board of Review any proposed adverse action or adverse action taken by the Department. The written or oral statement may be made to the Board of Review or the office or bureau within the Department that is taking the adverse action.
- E. Public Assistance - The term public assistance as used within this rule shall have the same meaning as the term "welfare assistance" as defined by West Virginia Code §9-1-2(f) which definition states the term "welfare assistance" means the three (3) classes of assistance administered by the state division of human services, namely: Federal-state assistance, federal assistance, and state assistance.

The terms "federal-state assistance," "federal assistance," and "state assistance" are defined by West Virginia Code §9-1-2(c), (d) and (e) respectively.

F. Recipient – One who receives public assistance through the Department.

730.12 Computing Time

In computing any period of time prescribed within this rule, the day of the act, event, default, or omission from which the applicable period begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, a legal holiday or a designated day off in which event the prescribed period of time runs until the end of the next day that is not a Saturday, Sunday, legal holiday or designated day off.

730.13 Hearings Covered by These Rules

A. Hearings concerning matters before the Bureau for Child Support Enforcement shall be heard by the Board of Review. Specific reasons for which a hearing may be granted are listed below.

B. Reasons for Hearing

1. An application for child support services has been acted upon erroneously, or not acted upon with reasonable promptness;
2. Claimant believes that child support payments, including payments owed to the claimant due to Department error, are not being issued with reasonable promptness;
3. Claimant believes that child support collections have not been distributed or disbursed correctly or questions the accuracy of the arrears owed to the Department at the termination of WV WORKS assistance;
4. Claimant disagrees with the Department's decision to close the child support case;
5. Claimant believes that the Department has failed to take action against an employer for failure to promptly forward payments withheld from the absent parent's wages.

C. Exceptions for Certain Child Support Actions

Decisions to act or not to act which fall within the professional legal judgment of a child support attorney for the Department are not subject to administrative review through the fair hearing process. Prior to assertion of the legal judgment exception by a child support attorney, that attorney must notify the applicant/recipient or his or her legal representative and the General Counsel for the Bureau for Child Support Enforcement in writing of the factual basis for the assertion. The defense of legal judgment should be asserted only after a careful review of the file. The necessity of such defense is most likely to occur when an issue or matter is currently pending in a court of law or when the child support attorney has elected and commenced a means for enforcement of support that will involve a court of law.

730.14 Pre-Hearing Rights

- A. Right to a Hearing – Any claimant must be advised, in writing, of his or her right to a fair hearing any time an adverse action occurs in his or her case. The claimant must be advised, by the Department, of any legal services that may be available to him or her.
- B. Pre-hearing Conference – Any claimant requesting a hearing shall be advised, in writing, on the "Request for Hearing" form or on the notice of adverse action of his or her right to have a pre-hearing conference with an employee of the Department who was involved in the decision making process on the applicant's or recipient's case.

A pre-hearing conference is required in all hearings under this subpart. However, at no time shall the claimant be discouraged from pursuing his or her right to a fair hearing.

- C. Release of Information to the Claimant – Except where prohibited by law or regulation as outlined in the BCSE policy manual, for the purpose of the fair hearing process, the claimant shall have access to his or her case record, including all documents that pertain to the change in the claimant's case that is the subject of the fair hearing. With written authorization from the claimant, the applicant's or recipient's attorney or representative may review the record. The review of the record shall take place during normal business hours at the Departmental location where the record is housed. Additionally, claimant, or his or her attorney/representative, may request and receive, free of fees or costs, a copy of documents from the case record and a copy of any policy, manual section or other document that may be used in a hearing involving the claimant.

730.15 Time Limits for Requesting and Scheduling a Hearing or Pre-Hearing Conference

- A. Time Limit for Requesting a Hearing after Action Taken on Claimant's Case - The Claimant shall have ninety (90) days from the effective date of any negative action to request a hearing.
- B. Notice of Right to a Pre-Hearing Conference – An individual shall be notified in writing, at the time of notification of adverse action, of his or her right to a pre-hearing conference.
- C. Notice of Right to a Fair Hearing -
1. An individual shall be notified in writing, at the time of notification of negative action, of his or her right to a fair hearing.
 2. Once a fair hearing request is received by the office or bureau that issued the adverse action, that office or bureau shall notify the appropriate Hearing Officer of the hearing request and the office or bureau will send Form IG-BR-29 along with the original hearing request or a copy of letter confirming verbal request and a copy of the notification letter that corresponds to the request.
 3. The Hearing Officer shall send written notice to the claimant giving the date, time and place for the hearing. The hearing shall take place after the pre-hearing conference. The Notice of Hearing shall contain also the name, address and telephone number of a person to contact in the event the claimant cannot attend the scheduled hearing. An outline of claimant's rights concerning the hearing process and an outline of the hearing procedures shall be attached to the notice.

4. The Notice of Hearing shall be sent to all parties at least thirteen (13) days prior to the hearing.

730.16 Notice of Hearing, Service of Documents, and Location of Hearing

A. Notice of hearing and any document or order shall be served on all parties of record. When a party is represented by an attorney, service shall be made on the attorney as the proper recipient of all such notices, documents, and orders.

B. The hearing shall be held at the Department's office in or adjacent to the county in which the claimant resides. A hearing may be held videoconference where available or by telephone conference if requested by the claimant. If the hearing will be held by telephone conference or videoconference, all parties shall submit, to the Hearing Officer and the opposing side at least five (5) days prior to the hearing, any evidence to be used at the hearing.

1. If claimant requests a telephone hearing, then the Department's representative(s) and witnesses may participate by telephone as well.

2. A telephone hearing shall be conducted as follows: 1) Claimant provides Hearing Officer with a telephone number at which he or she may be reached at the date and time scheduled by the Hearing Officer for the hearing. 2) At the date and time appointed for the hearing, the Hearing Officer will initiate a conference call, contacting the Department's representative and the claimant. The Department's representative shall have with him or her all witnesses necessary for the Department's case. The claimant shall have with him or her all witnesses necessary to prove his or her case. 3) The Hearing Officer shall conduct the hearing as any other hearing in front of the Board of Review, including, but not limited to, placing under oath all individuals who will provide testimony during the hearing. Or all parties shall call into a central number set up for that purpose.

A videoconference hearing shall be conducted as follows: 1) Hearing Officer contacts claimant to determine the closest Department of Health and Human Resources office with videoconference capabilities. 2) Hearing Officer reserves videoconferencing equipment at all necessary locations. Hearing Officer may be at the same location as the claimant or may be at a separate location. Department's Representative may be at the same location as either the claimant or the Hearing Officer or may be at a third location. 3) The Hearing

Officer shall conduct the hearing as any other hearing in front of the Board of Review, including, but not limited to, placing under oath all individuals who will provide testimony during the hearing.

730.17 Continuation of a Hearing

A request for continuance shall only be granted for good cause. In all cases involving a request for good cause, the Hearing Officer shall determine good cause.

730.18 Denial or Dismissal of a Hearing

- A. Withdrawal – The Hearing Officer may dismiss a request for hearing if the claimant withdraws the request in writing.

If a claimant makes a verbal request of withdrawal to his or her worker, then the worker receiving that request shall confirm the withdrawal request in writing with the claimant. The worker shall send a copy of the withdrawal confirmation to the Hearing Officer and shall place a copy in the claimant's file. The Hearing Officer shall dismiss the hearing. A withdrawal shall not prevent the claimant from reinstating a hearing request, without penalty, within the applicable time limits for hearings (see Section 730.16 above).

- B. Abandonment – The Hearing Officer may dismiss a request for hearing if the claimant fails to appear at a scheduled hearing without good cause. The Hearing Officer shall determine good cause. The Hearing Officer shall send to claimant an Abandonment Letter offering to reschedule the hearing if the claimant establishes good cause for missing the original hearing in writing within ten (10) days of receipt of the Abandonment Letter. Good cause includes, but is not limited to:

- Death in the family
- Personal illness or injury
- Sudden or unexpected emergency

730.19 Hearing

- A. Attendance at Hearing - The hearing may be attended by the claimant and/or the applicant's or recipient's representative(s), any attorney representing the claimant, any employee(s) of the Department who took the action that was allegedly adverse to the claimant, and/or his or her designee, and an attorney for the Department.

Due to the confidential nature of the cases, these hearings are not open to the public. The Hearing Officer shall have the authority to determine who may attend the hearing, and under this authority shall recognize the claimant's wishes concerning persons in attendance at his or her request.

- B. Communication with Board of Review - No person may confer or correspond with the Board of Review or any Hearing Officer therein regarding the merits of a hearing unless all parties to the hearing are present.
- C. Witnesses - Either party may have witnesses testify to the issues in controversy. Witnesses may be sequestered upon request by either party or at the discretion of the Hearing Officer.

At the request of the claimant, any employee or consultant of the Department who may have relevant evidence or information regarding the applicant's or recipient's appeal must appear at the hearing prepared to give testimony in the applicant's or recipient's case. The claimant must make this request at least seven (7) days prior to the hearing.

- D. Official Record - All hearings shall be recorded electronically on tapes or other electronic recording media. The Board of Review shall prepare the official record, which shall include reported testimony and exhibits in each contested case as well as all papers, motions and requests, and rulings filed in the case. It shall not be necessary to transcribe the recorded testimony unless required for purposes of judicial review.
- E. Impartiality - All hearings shall be conducted in an impartial manner.
- F. Presentation of the Case - The Department will present its case and then the claimant will present his or her case. The burden of proof is first on the Department to prove, by a preponderance of the evidence, that its adverse action was correct, then shifts to the applicant or recipient to prove, again by a preponderance of the evidence, that the Department's action was incorrect.
- G. Cross Examination - Either party shall have the right to cross-examine witnesses who testify and shall have the right to submit rebuttal evidence.
- H. Admissibility of Evidence - The Hearing Officer shall rule on the admissibility of any evidence presented by either party at a hearing.

In ruling on the admissibility of evidence, the Hearing Officer shall consider:

1. Oral statements of a person made to another (contained in writing or as told by a witness) only when the person making the statement is present at the hearing and available for cross-examination;
 2. All reports resulting from medical examinations without a requirement that a physician be present; and
 3. Evidence presented in written form only when the individual preparing the report is present at the hearing for cross-examination.
- I. Rules of Evidence – Unless otherwise provided in these rules, the rules of evidence as applied in civil cases in the circuit courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The parties shall be bound by the rules of privilege recognized by law. Objections to evidentiary offers shall be noted in the record. Any party to any such hearing may vouch the record as to any excluded testimony or other evidence.
- J. Decision – The Hearing Officer's decision must be based on the facts as they existed at the time of the Department's action or proposed action at issue. The Hearing Officer shall weigh the evidence and testimony presented and render a decision based solely on proper evidence given at the hearing. In rendering a decision, the Hearing Officer shall consider all applicable policies of the Department, state and federal statutes, rules or regulations, and court orders. The decision shall include reference to all pertinent law or policy.
- K. The decision must be carried out within ten (10) working days, and the appropriate bureau is to complete Form IG-BR-45 and return to the Hearing Officer to notify him or her of action taken and the amount of any retroactive payments made.

730.20 Time Limits for Final Disposition of a Hearing Request

Final Administrative action shall be taken within ninety (90) days of the request for a hearing.

730.21 Appeal of a Hearing Decision

- A. Circuit Court of Kanawha County, West Virginia – Upon a final decision of a Hearing Officer, the claimant may file, pursuant to West Virginia Code §53-3-2, a Petition for Writ of Certiorari in the Circuit Court of Kanawha County, West Virginia within four (4) months of the date of the final decision. The claimant shall be advised of this right, as well as any applicable time frames within which the petition must be filed, upon receipt of the final decision.
- B. United States Department of Health and Human Services – In all cases except Food Stamp cases, if the claimant believes that the Department or the fair hearing process has discriminated against him or her based on race, color, national origin, age, sex or handicap, the claimant may file a complaint with the Secretary of the United States Department of Health and Human Services in Washington, DC.



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TITLE 45 -- PUBLIC WELFARE
SUBTITLE B -- REGULATIONS RELATING TO PUBLIC WELFARE
CHAPTER III -- OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT
PROGRAM), ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND
HUMAN SERVICES
PART 303 -- STANDARDS FOR PROGRAM OPERATIONS

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45 CFR 303.15

§ 303.15 Agreements to use the Federal Parent Locator Service (PLS) in parental kidnapping and child custody or visitation cases.

(a) Definitions. The following definitions apply to this section:

(1) Authorized person means the following:

(i) Any agent or attorney of any State having an agreement under this section, who has the duty or authority under the laws of the State to enforce a child custody or visitation determination;

(ii) Any court having jurisdiction to make or enforce a child custody or visitation determination, or any agent of the court; or

(iii) Any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

(2) Custody or visitation determination means a judgment, decree, or other order of a court providing for custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modifications.

(b) A State shall enter into an agreement with the Office that meets the requirements of section 463 of the Act and this section of the regulations so that the State IV-D agency may request information from the Federal PLS for the purpose of:

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(1) Enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) Making or enforcing a child custody or visitation determination.

(c) An agreement under section 463 of the Act must contain the following provisions:

(1) The Director will provide the State IV-D agency with the most recent home address and place of employment of a parent or child if the information is requested for the purposes specified in paragraph (b) of this section.

(2) The State shall make requests for information under the agreement only for the purposes specified in paragraph (b) of this section.

(3) The State shall make requests to the Federal PLS through the State PLS established under § 302.35 of this chapter.

(4) The State shall submit requests in the standard format and exchange media normally available to or used by the State PLS.

(5) The State shall identify requests in a manner prescribed by the Office in instructions so that requests can be distinguished from other types of requests submitted to the Federal PLS.

(6) The State shall impose, collect and account for fees to offset the costs to the State and the Office incurred in processing requests.

(7) The State shall periodically transmit the fees collected to cover the costs to the Federal PLS of processing requests. Fees shall be transmitted in the amount and in the manner prescribed by the Office in instructions.

(8) The State shall adopt policies and procedures to ensure that information shall be used and disclosed solely for the purposes specified in paragraph (b) of this section. Under this requirement, the State shall:

(i) Restrict access to the information to authorized persons whose duties or responsibilities require access in connection with child custody and parental kidnapping cases;

(ii) Store the information during nonduty hours, or when not in use, in a locked container within a secure area that is safe from access by unauthorized persons;

(iii) Process the information under the immediate supervision and control of authorized personnel, in a manner which will protect the confidentiality of the information, and in such a way that unauthorized persons cannot retrieve the information by computer, remote terminal, or other means;

(iv) Brief all employees who will have access to the data on security procedures and instructions;

(v) Send the information directly to the requestor and make no other use of the information;

(vi) After the information is sent to the requestor, destroy any confidential records and information related to the request.

(d)(1) An agreement under section 463 of the Act must be signed by the Governor of the State or the Governor's designee.

(2) The agreement must also be signed by the Attorney General of the State who must certify that the signing State official has the authority under State law to commit the State to the agreement.

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HISTORY: [46 *FR* 34557, Nov. 3, 1981; 64 *FR* 6237, 6250, Feb. 9, 1999, as confirmed and amended at 68 *FR* 25293, 25303, 25304, May 12, 2003]

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NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: Nomenclature changes to part 303 appear at 64 *FR* 6237, 6249, Feb. 9, 1999.]

CASE NOTES Applicable to entire Part:Part Note



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45 CFR 303.72

§ 303.72 Requests for collection of past-due support by Federal tax refund offset.

(a) Past-due support qualifying for offset. Past-due support as defined in § 301.1 of this chapter qualifies for offset if:

(1) There has been an assignment of the support rights under section 408(a)(3) of the Act or section 471(a)(17) of the Act to the State making the request for offset or the IV-D agency is providing services under § 302.33 of this chapter.

(2) For support that has been assigned to the State under section 408(a)(3) of the Act or section 471(a)(17) of the Act, the amount of the support is not less than \$ 150. The State may combine assigned support amounts from the same obligor in multiple cases to reach \$ 150. Amounts under this paragraph may not be combined with amounts under paragraph (a)(3) of this section to reach the minimum amounts required under this paragraph or under paragraph (a)(3) of this section.

(3) For support owed in cases where the title IV-D agency is providing title IV-D services under § 302.33 of this chapter:

(i) The support is owed to or on behalf of a child, or a child and the parent with whom the child is living if the same support order includes support for the child and the parent.

(ii) The amount of support is not less than \$ 500. The State may combine support amounts from the same obligor in multiple cases where the IV-D agency is providing IV-D services under § 302.33 of this chapter to reach \$ 500.

Amounts under this paragraph may not be combined with amounts under paragraph (a)(2) of this section to reach the minimum amounts required under this paragraph or under paragraph (a)(2) of this section.

(iii) At State option, the amount has accrued since the State IV-D agency began to enforce the support order; and

(iv) The State has checked its records to determine if a title IV-A or foster care maintenance assigned arrearage exists with respect to the non-IV-A individual or family.

(4) The IV-D agency has in its records:

(i) A copy of the order and any modifications upon which the amount referred is based which specify the date of issuance and amount of support;

(ii) A copy of the payment record, or, if there is no payment record, an affidavit signed by the custodial parent attesting to the amount of support owed; and

(iii) In non-IV-A cases, the custodial parent's current address.

(5) Before submittal, the State IV-D agency has verified the accuracy of the name and social security number of the noncustodial parent and the accuracy of the past-due support amount. If the State IV-D agency has verified this information previously, it need not reverify it.

(6) A notification of liability for past-due support has been received by the Secretary of the U.S. Treasury as prescribed by paragraph (c)(2) of this section.

(b) Notification to OCSE of liability for past-due support. (1) A State IV-D agency shall submit a notification (or notifications) of liability for past-due support to the Office according to the timeframes and in the manner specified by the Office in instructions.

(2) To the extent specified by the Office in instructions, the notification of liability for past-due support shall contain with respect to each delinquency:

(i) The name of the taxpayer who owes the past-due support;

(ii) The social security number of that taxpayer;

(iii) The amount of past-due support owed;

(iv) The State codes as contained in the Federal Information Processing Standards (FIPS) publication of the National Bureau of Standards and also promulgated by the General Services Administration in Worldwide Geographical Location Codes; and

(v) Whether the past-due support is due an individual who applied for services under § 302.33 of this chapter.

(3) The notification of liability for past-due support may contain with respect to each delinquency the taxpayer's IV-D identifier.

(c) Review of requests by the Office. (1) The Deputy Director will review each request to determine whether it meets the requirements of this section.

(2) If a request meets all requirements, the Deputy Director will transmit the request to the Secretary of the U.S. Treasury and will notify the State IV-D agency of the transmittal.

(3) If a request does not meet all requirements, the Deputy Director will attempt to correct the request in

consultation with the State IV-D agency.

(4) If a request cannot be corrected through consultation, the Deputy Director will return it to the State IV-D agency with an explanation of why the request could not be transmitted to the Secretary of the U.S. Treasury.

(d) Notification of changes in case status. (1) The State referring past-due support for offset must, in interstate situations, notify any other State involved in enforcing the support order when it submits an interstate case for offset and when it receives the offset amount from the Secretary of the U.S. Treasury.

(2) The State IV-D agency shall, within timeframes established by the Office in instructions, notify the Deputy Director of any deletion of, or any change in, the arrears balance, if the change is significant according to the guidelines developed by the State. The notification shall contain the information specified in paragraph (b) of this section.

(e) Notices of offset -- (1) Advance. The State IV-D agency, or the Office, if the State requests and the Office agrees, shall send a written advance notice to inform a noncustodial parent that the amount of his or her past-due support will be referred to the Secretary of the U. S. Treasury for collection by Federal tax refund offset. The notice must inform noncustodial parents:

(i) Of their right to contest the State's determination that past-due support is owed or the amount of past-due support;

(ii) Of their right to an administrative review by the submitting State or at the noncustodial parent's request the State with the order upon which the referral for offset is based;

(iii) Of the procedures and timeframe for contacting the IV-D agency in the submitting State to request administrative review; and

(iv) That, in the case of a joint return, the Secretary of the U. S. Treasury will notify the noncustodial parent's spouse at the time of offset regarding the steps to take to protect the share of the refund which may be payable to that spouse. If the IV-D agency sends the notice, it must meet the conditions specified by the Office in instructions.

(2) At offset, The Secretary of the U. S. Treasury will notify the noncustodial parent that the offset has been made. The Secretary of the U. S. Treasury will also notify any individual who filed a joint return with the noncustodial parent of the steps to take in order to secure a proper share of the refund.

(f) Procedures for contesting in intrastate cases. (1) Upon receipt of a complaint from a noncustodial parent in response to the advance notice required in paragraph (e)(1) of this section or concerning a tax refund which has already been offset, the IV-D agency must send a notice to the noncustodial parent and, in non-IV-A cases the custodial parent, of the time and place of the administrative review of the complaint and conduct the review to determine the validity of the complaint.

(2) If the complaint concerns a joint tax refund that has not yet been offset, the IV-D agency must inform the noncustodial parent that the Secretary of the U. S. Treasury will notify the noncustodial parent's spouse at the time of offset regarding the steps to take to secure his or her proper share of the refund. If the complaint concerns a joint tax refund which has already been offset, the IV-D agency must refer the noncustodial parent to the Secretary of the U. S. Treasury.

(3) If the administrative review results in a deletion of, or change in, the arrears balance, the IV-D agency must notify OCSE within timeframes established by the Office and include the information specified in paragraph (b) of this section.

(4) If, as a result of the administrative review, an amount which has already been offset is found to have exceeded

the amount of past-due support owed, the IV-D agency must take steps to refund the excess amount to the noncustodial parent promptly.

(g) Procedures for contesting in interstate cases. (1) If the noncustodial parent requests an administrative review in the submitting State, the IV-D agency must meet the requirements in paragraph (f) of this section.

(2) If the complaint cannot be resolved by the submitting State and the noncustodial parent requests an administrative review in the State with the order upon which the referral for offset is based, the submitting State must notify the State with the order of the request for an administrative review and provide that State with all necessary information, including the information listed under paragraph (a)(4) of this section, within 10 days of the noncustodial parent's request for an administrative review.

(3) The State with the order must send a notice to the noncustodial parent and, in non-IV-A cases the custodial parent, of the time and place of the administrative review, conduct the review and make a decision within 45 days of receipt of the notice and information from the submitting State.

(4) If the administrative review results in a deletion of, or change in, the arrears balance, the State with the order upon which the referral for offset is based must notify the submitting State within timeframes established by the Office and include the information specified in paragraph (b) of this section. The submitting State must then notify the Office within timeframes established by the Office and include the information specified in paragraph (b) of this section.

(5) Upon resolution of a complaint after an offset has been made, the State with the order must notify the submitting State of its decision promptly.

(6) When an administrative review is conducted in the State with the order, the submitting State is bound by the decision made by the State with the order.

(7) Based on the decision of the State with the order, the IV-D agency in the submitting State must take steps to refund any excess amount to the noncustodial parent promptly.

(8) In computing the arrearage collection performance level under § 305.2(a)(4) of this chapter, if the case is referred to the State with the order for an administrative review, the collections made as a result of Federal tax refund offset will be treated as having been collected in full by both the submitting State and the State with the order.

(h) Distribution of collections. (1) Collections received by the IV-D agency as a result of Federal tax refund offset to satisfy title IV-A or non-IV-A past-due support shall be distributed as required in accordance with section 457 and, effective October 1, 2009, or up to a year earlier at State option, in accordance with the option selected under section 454(34) of the Act.

(2) Collections received by the IV-D agency in foster care maintenance cases shall be distributed as past-due support under § 302.52(b) (3) and (4) of this chapter.

(3)(i) Except as provided in paragraph (h)(3)(ii), the IV-D agency must inform individuals receiving services under § 302.33 of this chapter in advance that amounts offset will be applied to satisfy any past-due support which has been assigned to the State and submitted for Federal tax refund offset.

(ii) Effective October 1, 2009, or up to a year earlier at State option, the IV-D agency need no longer meet the requirement for notice under paragraph (h)(3)(i) if the State has opted, under section 454(34) of the Act, to apply amounts submitted to Federal tax refund offset first to satisfy any current support due and past-due support owed to the family.

(4) If the amount collected is in excess of the amounts required to be distributed under section 457 of the Act, the

IV-D agency must repay the excess to the noncustodial parent whose refund was offset or to the parties filing a joint return within a reasonable period in accordance with State law.

(5) In cases where the Secretary of the U.S. Treasury, through OCSE, notifies the State that an offset is being made to satisfy non-IV-A past-due support from a refund based on a joint return, the State may delay distribution until notified that the unobligated spouse's proper share of the refund has been paid or for a period not to exceed six months from notification of offset, whichever is earlier.

(6) Collections from offset may be applied only to cases that were being enforced by the IV-D agency at the time the advance notice described in paragraph (e)(1) of this section was sent.

(i) Payment of fee. (1) A refund offset fee, in such amount as the Secretary of the U.S. Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the U.S. Department of Treasury for the full cost of the offset procedure, shall be deducted from the offset amount and credited to the U.S. Department of Treasury appropriations which bore all or part of the costs involved in making the collection. The full amount of the offset must be credited against the obligor's payment record. The fee which the Secretary of the U.S. Treasury may impose with respect to non-IV-A submittals shall not exceed \$ 25 per submittal.

(2) The State IV-D agency may charge an individual who is receiving services under § 302.33(a)(1) (i) or (iii) of this chapter a fee not to exceed \$ 25 for submitting past-due support for Federal tax refund offset. The State must inform the individual in advance of the amount of any fee charged.

(3) Any State which requests the Office to send the advance written notice under paragraph (e)(1) of this section will be charged a fee, in an amount established by the Office in instructions, for printing and mailing of pre-offset notices. This fee shall be credited to the Health and Human Services appropriations which bore all or part of the costs involved in making the collection.

(j) Each State involved in a referral of past-due support for offset must comply with instructions issued by the Office.

(Approved by the Office of Management and Budget under control number 0960-0385)

HISTORY: [50 FR 19651, May 9, 1985; 50 FR 31719, Aug. 6, 1985, as amended at 51 FR 37731, Oct. 24, 1986; 53 FR 47710, Nov. 25, 1988; 54 FR 32312, Aug. 4, 1989; 56 FR 8005, Feb. 26, 1991; 58 FR 41437, Aug. 4, 1993; 64 FR 6237, 6249, 6251, Feb. 9, 1999, as confirmed and amended at 68 FR 25293, 25303, 25304, May 12, 2003, as corrected at 68 FR 53052, Sept. 9, 2003; 68 FR 37978, 37980, June 26, 2003; 69 FR 62413, 62415, Oct. 26, 2004; 73 FR 74898, 74920, Dec. 9, 2008]

AUTHORITY: AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

42 U.S.C. 651 through 658, 659a, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

NOTES: [EFFECTIVE DATE NOTE: 73 FR 74898, 74920, Dec. 9, 2008, amended this section, effective Feb. 9, 2009.]

NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: Nomenclature changes to Chapter III appear at 66 FR 39450, 39452, July 31, 2001.]

NOTES APPLICABLE TO ENTIRE PART:

[PUBLISHER'S NOTE: Nomenclature changes to part 303 appear at 64 FR 6237, 6249, Feb. 9, 1999.]

LexisNexis (R) Notes:

CASE NOTES

CASE NOTES Applicable to entire Part:Part Note

Kandlbinder v. Reagen, 713 F. Supp. 337, 1989 U.S. Dist. LEXIS 5965 (WD Mo May 8, 1989).

Overview: Tax Refund Intercept Program did not deprive father of his due process rights because the notice mailed to him was reasonably calculated to apprise him of the pending tax refund interception and to afford him an opportunity to present his objections.

- For non-AFDC cases in which child support arrears are at least \$ 500, 45 C.F.R. § 303.72(a)(3)(ii), the Missouri Division of Child Support Enforcement submits names, Social Security numbers, and amount owed of individuals who meet this criteria to the Federal Office of Child Support Enforcement. 45 C.F.R. § 303.72(b)(2). Then the pre-intercept notice is sent during the month of October, 45 C.F.R. § 303.72(e), and the Internal Revenue Service is notified and attaches the taxpayer's refund. Go To Headnote

Anderson v. White, 888 F.2d 985, 1989 U.S. App. LEXIS 16678 (3rd Cir Nov. 6, 1989).

Overview: Order dismissing delinquent fathers' suit challenging state's operation of its tax refund intercept program on due process grounds was modified and vacated in part due to the failure to provide one father with a timely hearing or a written decision.

- Under the tax refund intercept program, federal income tax refunds due persons who owe past-due child support can be intercepted by the Internal Revenue Service and ultimately sent instead to the state in which the children live. The state can then apply the refund money against welfare benefits previously paid to the delinquent's children or distribute it to the person who has lawful custody of the children. 26 U.S.C.S. § 6402(c); 42 U.S.C.S. § 664; 26 C.F.R. § 301.6402-5 (1988); 45 C.F.R. §§ 302.60, 303.72 (1988). Go To Headnote

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Knisley v. Bowman, 636 F. Supp. 1540, 1987 U.S. Dist. LEXIS 14516 (WD Mich Apr. 14, 1987).

Overview: The court certified a limited class of taxpayers but, because there was no continuing violation of due process rights of the prospective plaintiff class, summary judgment in favor of Michigan Department of Treasury was appropriate.

- A past-due support obligation qualifies for the federal offset program if it satisfies the provisions of 45 C.F.R. § 303.72(a). Go To Headnote

Jahn v. Regan, 610 F. Supp. 1269, 1985 U.S. Dist. LEXIS 19653 (ED Mich May 21, 1985).

Overview: Procedures in consent judgment, which required the Internal Revenue Service to give spouses notice and a hearing before transferring joint tax refunds to state agencies to pay support obligations of one spouse, satisfied procedural due process.

- To procure a tax refund for one owing the state child support payments, the responsible state agency is required to certify to the Department of Social Services: (i) that the amount of the arrearage reported is accurate; (ii) that the arrearage is owed to the state; (iii) that the arrearage is at least three months old; and (iv) that reasonable efforts have been made to collect the arrearage amount. This requirement is pursuant to 42 U.S.C.S. § 644(b) and 45 C.F.R. § 303.72(b). Go To Headnote

Jahn v. Regan, 584 F. Supp. 399, 1984 U.S. Dist. LEXIS 17487 (ED Mich Apr. 18, 1984).

Overview: The taxpayers' lawsuit against federal and state officials, seeking recovery of a federal income tax overpayment transferred to the state owing to husband taxpayer's past due child support, were permitted to continue.

- 45 C.F.R. § 303.72(b) (1982) states that past-due child support qualifies for offset of a tax refund if (1) there has been an assignment of the support obligation under 45 C.F.R. 232.11 to the state making the request for offset and that state has made reasonable efforts to collect the amount of the obligation; (2) the amount of the past-due support is not less than \$ 150; (3) the support has been delinquent for three months or longer; and (4) a notification of liability for past-due support has been received by the Secretary of the Treasury. Go To Headnote

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Overview: Order dismissing delinquent fathers' suit challenging state's operation of its tax refund intercept program on due process grounds was modified and vacated in part due to the failure to provide one father with a timely hearing or a written decision.

- If the local agency determines that a modification or deletion is warranted after administrative review, it

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submits the appropriate information to the state bureau, which in turn forwards it to the federal office. 45 C.F.R. § 303.72(d)(2), (f)(3), (g)(4). The federal office then contacts the Internal Revenue Service, and the intercept order is changed. If the individual's tax return has not yet been processed, an intercept will be avoided. If, on the other hand, an inappropriate intercept has already occurred, the refund due to the individual is restored. 45 C.F.R. § 303.72(h)(4). Go To Headnote

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Rogers v. Bucks County Domestic Relations Section, 773 F. Supp. 768, 1991 U.S. Dist. LEXIS 9542 (ED Pa July 12, 1991).

Overview: Claims for unpaid interest pursuant to the state's interception of federal income tax refund payments and delayed payment to satisfy delinquent child support payments were dismissed, as claimants failed to establish a cognizable property interest.

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- The federal statutes creating the Tax Refund Intercept Program (TRIP), 42 U.S.C.S. § 664 and 26 U.S.C.S. § 6402, contain no explicit schedule for general distribution of intercepted funds, nor do they contain any requirement for the payment of interest. The federal regulations are similarly silent on any requirement to pay interest. 45 C.F.R. § 303.72. There is no express provision to the effect that the funds are to be held in trust or that a fiduciary relationship, benefiting the support recipient, is created by a state's participation in TRIP. There is, however, specific provision made for a state to delay, for up to six months in the case of a jointly-filed tax return, the payment of a refund to a support recipient, so that a state may be ensured that the unobligated spouse has received his or her proper share of a joint refund. 42 U.S.C.S. § 664 (a)(B), 45 C.F.R. § 303.72(h)(5). Go To Headnote

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