

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: REDIRECTION OF SUPPORT WHEN THERE IS A CHANGE IN THE PERSON WITH WHOM THE MINOR CHILD RESIDES

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.

This legislative rule outlines the steps Bureau staff must follow to redirect child support to the person who has physical custody of a child for whom there is a court order of support.

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: _____

Rule Title:

REDIRECTION OF SUPPORT WHEN THERE IS A CHANGE IN THE PERSON WITH WHOM THE
MINOR CHILD RESIDES

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

Karen J. Bowe

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: ~~SERVICES AVAILABLE FROM THE BUREAU FOR CHILD~~
SUPPORT ENFORCEMENT

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

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- 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

CHARLESTON, WV 25301-3703

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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 97-9
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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 outlines the steps to be taken by the bureau when an individual who is not the support obligee obtains physical custody of a child who is the subject of a support order. This process allows the support to be redirected to the individual who has physical custody of the child.

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

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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.

Title 97

Legislative Rules

The Bureau for Child Support Enforcement

Series 9

**Redirection of Support When there is a Change in the Person with whom the
Minor Child Resides**

§ 97-9-1. General.

1.1. Scope. - This legislative rule sets out the steps to be taken by the bureau when an individual who is not the support obligee obtains physical custody of a child who is the subject of a support order.

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

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

1.4. Effective Date. -

§ 97-9-2. Definitions.

2.1. 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.

2.2. Cash public assistance. - Monetary benefits provided to eligible individuals under Title IV-A of the Social Security Act. Eligibility for these benefits involves meeting income, asset and household composition requirements.

2.3. Obligee. - 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.

2.4. 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.

2.5. 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.

2.6. 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.

§ 97-9-3. Determining if a change in the person with whom the minor child resides has occurred.

3.1. The person with whom the minor child resides is considered to have changed if the child moves for the foreseeable future to live with an individual who is not the support obligee under the current order of support.

3.2. A visitation period, even one that may be lengthy in nature, is not a change in the child's custodian.

3.3. The procedures and policy expressed in this Legislative Rule do not apply to situations where the child has been unlawfully taken from his or her lawful custodian.

§ 97-9-4. Limitations on the actions of the bureau.

4.1. The bureau and its attorneys represent the interests of the State and do not represent the child or any individual party to any case.

4.2. While the bureau may file petitions with the court to address the changes in the minor child's living arrangements as they relate to the financial obligations of the parties, the bureau has no authority to litigate or address child custody, child visitation, shared parenting, legal guardianship, or any other type of custodial arrangement.

§ 97-9-5. When the minor child resides with the support obligor due to the death of the support obligee.

5.1. If a minor child who is the subject of an order of support is in the physical custody of the support obligor due to the death of the support obligee, the support obligor shall supply to the bureau the following information:

5.1.a. An application for bureau services, unless the obligor is already receiving cash public assistance or is otherwise required to receive services from the bureau;

5.1.b. An affidavit of physical custody stating that the child will be in his or her physical custody for the foreseeable future;

5.1.c. Documentary proof of the death of the support obligee in conformity with W. Va. Code § 48-18-114; and

5.1.d. A copy of any petition to modify the support obligor has filed with the court, if any.

5.2. The bureau shall mail written notice of the proposed redirection of current support to the deceased support obligee at his or her last known address and to the administrator or executor of the deceased support obligee's estate, if one is known to the bureau. The notice shall include copies of any supporting documentation supplied by the support obligor, a copy of the affidavit of physical custody, and shall advise the allegedly deceased support obligee or his or her administrator or executor that he or she has ten (10) days to object to the redirection of the support obligation.

5.3. At the conclusion of the ten day period if no objection is received, the bureau shall redirect current support for the minor child or children in the physical custody of the support obligor to the support obligor.

5.4. Any arrearage owed to the deceased support obligee prior to his or her death remains the property of the estate of the deceased support obligee. Payments withheld from the income of the support obligor which would apply to the arrearage of the deceased support obligee shall be disbursed to the administrator or the executor of the deceased support obligee's estate, unless the provisions of W. Va. Code § 48-14-108 apply.

5.5. If an arrearage is due to the deceased support obligee and no estate is filed on behalf of the deceased support obligee, the bureau shall seek the appointment of the sheriff of the county where the deceased support obligee resided at the time of his or her death as the administrator of the support obligee's estate, unless the provisions of W. Va. Code § 48-14-108 apply.

§ 97-9-6. When the minor child resides with the support obligor for any reason other than the death of the support obligee.

6.1. If a minor child who is the subject of an order of support is in the physical custody of the support obligor due to any reason other than the death of the support obligee, and the support obligor represents to the bureau that the child will be residing with him or her for the foreseeable future, the support obligor shall supply to the bureau the following information:

6.1.a. An application for bureau services, unless the obligor is already receiving cash public assistance or is otherwise required to receive services from the bureau;

6.1.b. An affidavit of physical custody stating that the child will be in his or her physical custody for the foreseeable future; and

6.1.c. A copy of a petition to modify that the support obligor has filed with the court, if any.

6.2. The bureau shall mail written notice of the proposed redirection of current support to the support obligee. The notice shall include copies of any supporting documentation supplied by the support obligor, a copy of the affidavit of physical custody and shall advise the support obligee that he or she has ten (10) days to object to the redirection of the current support obligation.

6.3. At the conclusion of the ten day period, if no objection is received, the bureau shall redirect current support for the minor child or children in the physical custody of the support obligor to the support obligor and shall file an appropriate petition with the court to address the parties' support obligations.

6.4. If an objection is received from the support obligee, the bureau attorney assigned to the case shall review the objection and make a determination as to which party has the physical custody of the child. If the bureau attorney determines that the support obligor has the physical custody of the minor child and will continue to have the child for the foreseeable future, the bureau shall redirect the current support payments to the support obligor. The bureau attorney may, if the attorney deems it appropriate, file a petition with the court to address the parties support obligations.

6.5. Any arrearage owed to the support obligee prior to the first day of the month following the filing by the obligor of the affidavit of physical custody and the documentation shall remain due and owing to the support obligee. Payments withheld from the income of the support obligor which would apply to the arrearage of the support obligee shall be disbursed to the support obligee.

§ 97-9-7. When the minor child resides with a person who is not the support obligor or the support obligee.

7.1. When the minor child who is the subject of a support order resides with a person who is neither the support obligor nor the support obligee, the new physical custodian of the child may apply to the bureau for redirection of the child's support payments.

7.2. If the new physical custodian of the child is not receiving cash public assistance or is otherwise mandatory to receive bureau services, the new physical custodian shall supply the following information to the bureau:

7.2.a. An application to receive full services from the bureau;

7.2.b. An affidavit of physical custody, stating that the child will be in his or her physical custody for the foreseeable future; and

7.2.c. Documentary evidence that the child resides with him or her, pursuant to W. Va. Code § 48-14-114.

7.3. The bureau shall mail written notice of the proposed redirection of current support to the support obligee, support obligor, and the new physical custodian. The notice shall include copies of any supporting documentation supplied by the new physical custodian, a copy of the affidavit of physical custody, and shall advise the individuals that they have ten (10) days to object to the redirection of the current support obligation.

7.4. At the conclusion of the ten day period, if no objection is received, the bureau shall redirect current support for the minor child or children in the physical custody of the new physical custodian and shall file an appropriate petition with the court to address the parties support obligations.

7.5. If an objection is received from the support obligee or the support obligor, the bureau attorney assigned to the case shall review the objection, and make a determination as to which party has the physical custody of the child. If the bureau attorney determines that the individual claiming to have the physical custody of the minor child actually has the physical custody of the minor child and will continue to have the child for the foreseeable future, the bureau shall redirect the current support payments to the physical custodian. The bureau attorney may, if the attorney deems it appropriate, file a petition with the court to address the parties support obligations, as the previous support obligee is now potentially a support obligor.

7.6. Any arrearage owed to the support obligee prior to the first day of the support period following the filing by the physical custodian of the affidavit of physical custody and the documentation shall remain due and owing to the support obligee. Payments withheld from the income of the support obligor which would apply to the arrearage of the support obligee shall be disbursed to the support obligee.