

Members

Rep. Vanessa Summers, Chairperson
Rep. John Day
Rep. David Frizzell
Rep. David Yarde
Sen. Brent Steele
Sen. Brent Waltz
Sen. James Arnold
Sen. Greg Taylor
Gregory A. DeVries
Judge Marianne Vorhees
Robert Bishop, Esq
Bruce Pennamped, Esq



CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE

Legislative Services Agency
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LSA Staff:

Eliza Houston Stephenson, Attorney for the Committee
Bill Brumbach, Fiscal Analyst for the Committee

Authority: IC 33-24-11-1

MEETING MINUTES¹

Meeting Date: October 6, 2010
Meeting Time: 1:30 P.M.
Meeting Place: State House, 200 W. Washington St., Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Vanessa Summers, Chairperson; Rep. David Frizzell; Rep. David Yarde; Sen. Brent Waltz; Sen. James Arnold; Sen. Greg Taylor; Gregory A. DeVries; Judge Marianne Vorhees; Robert Bishop, Esq; Bruce Pennamped, Esq.

Members Absent: Rep. John Day; Sen. Brent Steele.

Representative Vanessa Summers, Chairperson, called the second meeting of the Child Custody and Support Advisory Committee (Committee) to order at 1:30 P.M.

Top Ten States in Each of the Child Support Performance Factors

Cynthia Longest, Deputy Director of the Child Support Bureau, Department of Child Services, provided a handout² to the Committee members concerning 2009 child support

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative> Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

² Exhibit 1

performance statistics. Ms. Longest discussed which states were the top ten in each of the child support performance factors. She noted that state names in bold on the handout have caseloads within ten percent of Indiana's caseload. Ms. Longest also provided Committee members with a handout³ that showed a child support incentive comparison. She stated that the amount of incentive money a state receives signifies how well a state is doing in the performance factors.

In response to a question from Representative Frizzell, she stated that she does not believe that the incentive money will shrink significantly in the next few years. She explained that the federal government looks at child support enforcement as a program that is working and deserves to be rewarded. Mr. Bishop, a Committee member, stated that California is the first state to initiate a statewide child support computer system and that the system may greatly improve California's performance and increase the incentive money that California receives.

In response to a question from Mr. Pennamped, a Committee member, Ms. Longest stated that Indiana provides information for the performance factors based only on IV-D cases. She said that some other states consider all of their caseload to be IV-D cases, but Indiana does not.

Putative Father Registry

Ms. Erin Kellman, Indiana State Registrar, Indiana State Department of Health, provided a handout⁴ of the instructions for the putative father registry registration form and a copy of the Indiana putative father registration form⁵. Ms. Kellman discussed the definition of "putative father," the thirty day registration requirement, and that the State Registrar ensures the information on the registration form is complete.

Representative Summers stated that she has had concerns about the putative father registry (registry) and that fathers may not know that they are fathers and should register with the registry. In response to a question from Representative Summers regarding whether the number of men who registered each year was low, Ms. Kellman said that the number may not be low because many fathers are listed on the child's birth certificate. In response from a question from Representative Summers, Ms. Kellman indicated that the registry is advertised through hospitals, posters at birthing centers and other locations, and, when the registry first started, newspapers. In response to a question from Representative Yarde, Ms. Kellman said that the thirty day registration requirement applies to servicemen as well. Ms. Kellman discussed the case in the national news regarding Ohio's putative father registry laws. Representative Summers indicated that she may want to change the thirty day registration requirement under Indiana law.

Non-custodial Parent Outreach Initiatives

Ms. Karla Mantia with the Indiana Prosecuting Attorneys Council (IPAC) provided a handout⁶ to the Committee members concerning non-custodial parent initiatives. Ms.

³ Exhibit 2

⁴ Exhibit 3

⁵ Exhibit 4

⁶ Exhibit 5

Mantia discussed the following: (1) A one-size fits all approach to collecting support is ineffective. (2) Non-custodial parents with large arrearage balances are less likely to provide financial support and parenting time with their children. (3) Actions that the federal Office of Child Support Enforcement promotes.

Senator Taylor requested information on Wisconsin's IV-D program and job programs.

Ms. Kathy Dvorak, Child Support (Title IV-D) Program Administrator, St. Joseph County Prosecutor's Office, provided a handout⁷ concerning St. Joseph County's programs for delinquent obligors. Ms. Dvorak explained that the child support division (division) tries to identify the barriers in paying child support for non-custodial parents. She explained that the division attempts to establish support orders by stipulation/agreement. She stated that the division holds an administrative hearing to determine what the barriers are for the non-custodial parent in paying child support. She indicated that the non-custodial parents are often grateful that the division is listening to them. She said that the division has partnered with a Notre Dame law clinic to offer mediation for child custody and support for families.

In response to questions from Committee members, Ms. Dvorak stated that the division had not performed a cost analysis of its programs for delinquent obligors but has done a performance analysis. She stated that gross support had increased two percent and that in August through October of 2009, approximately forty-nine percent were nonpayers and that in May through July of 2010, approximately thirty-six percent were nonpayers. In response to a question from Mr. DeVries, a Committee member, about whether the division had incurred extra costs in implementing the programs for delinquent obligors, Ms. Dvorak indicated that the division has not received any extra resources. She stated that while there may be more costs for the additional hearings in the offices of the division, the division spends less time pursuing and enforcing child support in court.

In response to questions from Committee members, Ms. Dvorak stated that the division subpoenas individuals for administrative hearings, but because the division is not a court, the division does not issue a body attachment. Mr. Bishop noted that he uses the settlement procedure in court rules to subpoena and issue a body attachment for settlement conferences. Ms. Mantia indicated that IPAC is working to expand programs similar to the one in St. Joseph County throughout the state.

Ms. Gina Jones, Child Support Administrator/Deputy Prosecutor, Lake County Prosecutor's Office, discussed the Support for Kids Improvement Program (SKIP). She stated that if a non-custodial parent shows a willingness but inability to pay child support, the court withholds contempt for thirty days and the non-custodial parent is referred to the SKIP program. She also discussed how the child support division in Lake County is starting an information sharing system with Illinois. Ms. Jones provided a handout⁸ about SKIP to Committee members.

Mr. William Welch, Deputy Prosecutor/Child Support Administrator, Monroe County Prosecutor's Office, provided a handout⁹ to Committee members concerning non-custodial parent services (NCPS) in Monroe County. He stated that the Monroe County Prosecutor's

⁷ Exhibit 6

⁸ Exhibit 7

⁹ Exhibit 8

Office has a liaison that contacts and works with non-custodial parents throughout the child support enforcement process. He also explained how the liaison works with non-custodial parents. He stated that the liaison will refer non-custodial parents to workforce development, drug and alcohol abuse programs, and other contacts to help address the non-custodial parent's issues in failing to pay child support.

In response to a question from Representative Summers, Mr. Welch stated that the prosecutor's office has had extra expenses in implementing NCPS. He indicated that the office uses incentive money and has received grants that help fund NCPS. In response to a question from Senator Taylor, Mr. Welch stated that the office has about 5,000 to 5,500 child support cases. He also said that the office is attempting to get more funding so the office's part-time liaison position can be a full-time position.

Mr. Andrew Schweller, Deputy Prosecutor, Allen County Prosecutor's Office, discussed the prison population project. He stated that the project involved the Allen County Prosecutor's Office writing to incarcerated non-custodial parents and offering to file for a modification of child support. In response to a question from Senator Taylor, Mr. Schweller discussed the holdings of two Indiana Supreme Court cases, Lambert v. Lambert, 861 N.E.2d 1176 (Ind. 2007) and Clarke v. Clarke, 902 N.E.2d 813 (Ind. 2009).

In response to a question from Representative Summers, Mr. Schweller stated that in Allen county very rarely does a person go to jail the first time for failure to pay child support. He stated that a person would usually go through two probation hearings and work release before being incarcerated for failure to pay child support. He said that usually around sixty individuals go to prison each year in Allen county for failing to pay child support. In response to questions from Committee members, Mr. Schweller indicated that he believed using mediators and facilitators is a good idea because sometimes the problem is communication.

Contesting Paternity

Mr. Schweller provided a handout¹⁰ to Committee members concerning federal and state requirements and process overview of voluntary paternity acknowledgment. He said that the state or a parent may ask for a genetic test. He also stated that the state often pays for the test but that one or both of the parties may have to pay if the test shows that the man is the father of the child. He said that a party is generally charged for a second test. Mr. Bishop indicated that county prosecutors' offices often have agreements with the companies that provide the genetic tests and can get the tests for less money. He said that currently his office pays fifty-five dollars for a genetic test.

In response to a question from Representative Summers, Mr. Schweller stated that the younger the child is, the more likely a genetic test and contesting paternity will be allowed by a court. Mr. Schweller noted that under Indiana law a party may rescind a paternity affidavit within sixty days. He said if a party does not rescind a paternity affidavit within that time, the party has to prove fraud, duress, or material mistake of fact in order to have the paternity affidavit rescinded. In response to a question from Senator Taylor asking if the state should be requiring paternity tests for all births, Mr. Schweller stated that there would be difficulty getting a genetic test for a man who was not present at the hospital at the time of the child's birth. In response to another question from Senator Taylor, Mr. Schweller stated that, if a mother is receiving assistance under Temporary Assistance for Needy Families, she is required to cooperate with the state in establishing

¹⁰ Exhibit 9

paternity of the child. He noted that there are cases where a mother does not know who the father is or does not want to tell who the father is. Mr. Schweller stated that the courts' definition of "mistake of material fact" is growing and discussed some cases on the subject.

Other Committee Business

Mr. Donald Beatty discussed his experience with the Wabash County prosecutor's office. He also stated that there are different standards of support for custodial and non-custodial parents and that non-custodial parents are not treated the same as custodial parents, which is a violation of the Fourteenth Amendment of the United States Constitution. Senator Taylor discussed why he believes custodial and non-custodial parents should be treated differently. Representative Summers asked two of the Committee members to consider whether legislation could be drafted to address Mr. Beatty's concerns.

Mr. Stuart Showalter with the Indiana Custodial Rights Advocates provided a handout¹¹ to Committee members concerning Virginia's Intensive Case Monitoring Program. Mr. Showalter discussed statistics regarding participants in the program and child support collected from participants in the program.

Representative Summers stated that the Committee would consider legislation and the final report at the last Committee meeting on October 20, 2010. She asked that any member who would like legislation drafted contact the Committee's staff attorney.

Representative Summers adjourned the meeting at approximately 3:30 P.M.

¹¹ Exhibit 10

2009 CHILD SUPPORT PERFORMANCE STATISTICS

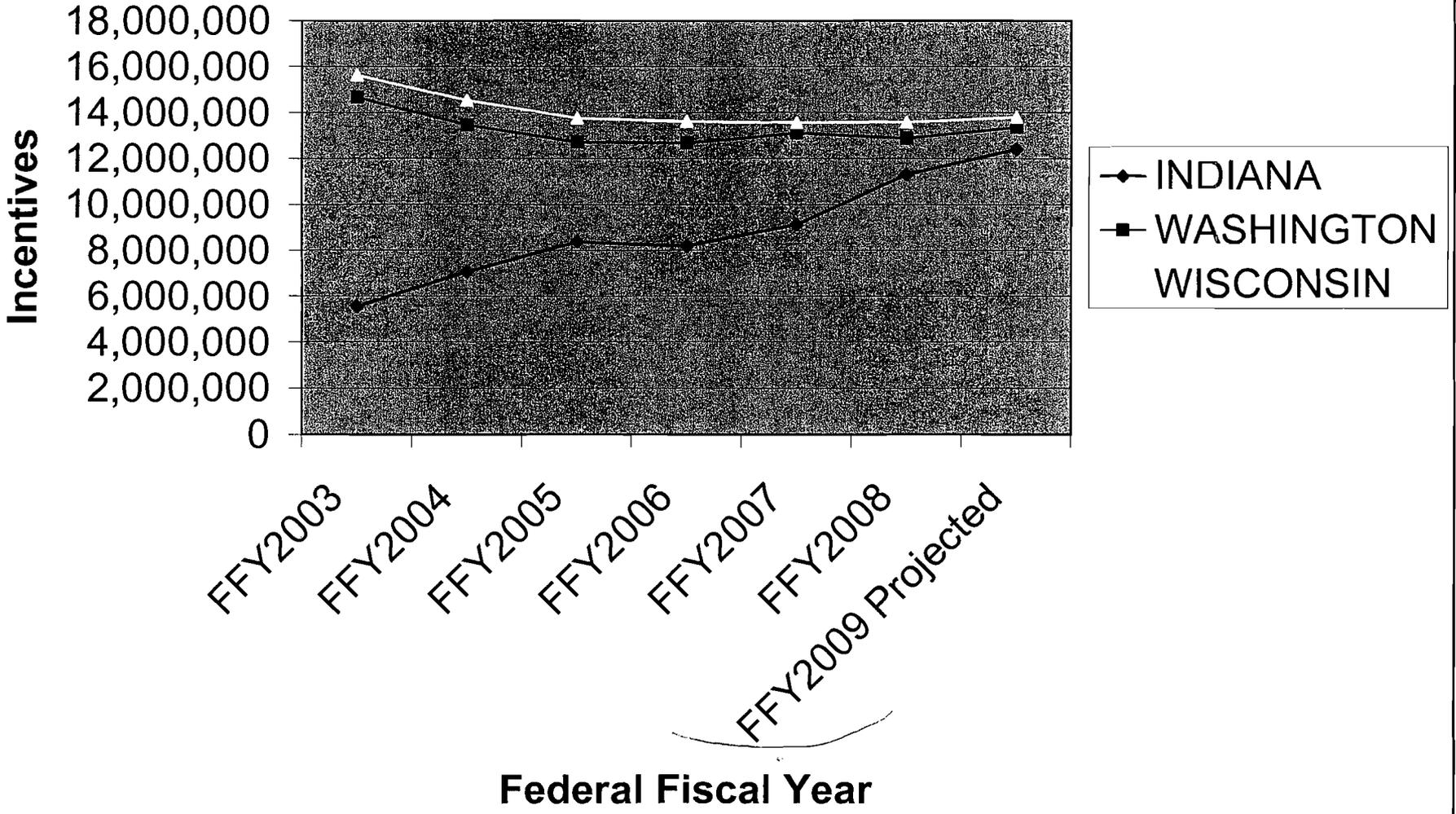
Paternity Establishment Percentage				Percent of Cases with a Child Support Order			Current Collections Performance			Arrearage Collections Performance (Percent of Cases Paying on Arrears)		
#	State	%	Option	#	State	%	#	State	%	#	State	%
1	Arizona	116.68%	IV-D	1	South Dakota ³	93.4%	1	Pennsylvania ³	81.3%	1	Pennsylvania ³	81.8%
2	Georgia ²	112.47%	IV-D	2	Alaska	91.8%	2	North Dakota ⁴	75.0%	2	Washington²	75.8%
3	Nebraska ³	108.77%	State	3	Wyoming ²	90.8%	3	Wisconsin	70.6%	3	South Dakota ³	74.0%
4	Oklahoma	108.42%	State	4	Washington²	89.6%	4	Minnesota	70.2%	4	North Dakota ⁴	72.2%
5	New Hampshire ²	108.32%	IV-D	5	Pennsylvania ³	89.3%	5	South Dakota ³	70.0%	5	Wyoming ²	71.7%
6	Montana	107.95%	IV-D	6	Vermont ²	89.2%	6	Nebraska ³	69.9%	6	Colorado ²	70.7%
7	Maine ²	106.48%	IV-D	7	North Dakota ⁴	88.7%	7	Iowa ²	69.9%	7	Iowa ²	69.9%
8	North Dakota ⁴	106.30%	IV-D	8	Maine ²	88.6%	8	Massachusetts	67.6%	8	New Hampshire ²	69.8%
9	West Virginia	106.03%	IV-D	9	Colorado ²	87.7%	9	Ohio	67.4%	9	Nebraska ³	69.7%
10	California	103.42%	State	10	Utah	87.6%	10	Vermont ²	67.1%	10	Georgia ²	69.2%
Top 10 Avg		108.48%		Top 10 Avg		89.7%	Top 10 Avg		70.9%	Top 10 Avg		72.5%
19	Indiana	99.02%	IV-D	39	Indiana	74.6%	36	Indiana	57.5%	24	Indiana	64.7%
National Average		97.75%	IV-D	National Average		79.4%	National Average		61.8%	National Average		63.3%
		94.53%	State									

Superscripts on States indicate how many times that State scored in the top 10 for 2009 in the above categories.

State names in bold have caseloads within 10% of Indiana's caseload.

Source: Office of Child Support Enforcement FY 2009 Preliminary Report
 (http://www.acf.hhs.gov/programs/cse/pubs/2010/reports/preliminary_report_fy2009/#boxscores)

Child Support Incentive Comparison



PUTATIVE FATHER REGISTRY
REGISTRATION FORM

INSTRUCTIONS

READ AND FOLLOW CAREFULLY:

- A. Under Indiana law, a "putative father" is a man who may be a child's father, but who is not married to the child's mother on or before the date that the child is born; or who has not established paternity of the child in a court proceeding before the filing of an adoption petition for the child.
- B. If you believe you may be a putative father, and if you wish to be notified of an adoption proceeding involving a child of whom you are, or may be, the father, you should complete the registration form and return it to the Indiana Putative Father Registry.
- C. It is your responsibility to be sure that the information contained on the form is accurate. Your failure to provide accurate information will result in your not receiving notice of an adoption and you will lose any parental rights you might have in relation to the child.
- D. The address you provide must be an address at which you can actually be contacted. A post office box is not acceptable. If you cannot be contacted at the address you provide, you will not receive notice of an adoption and you will lose any rights you may have had in relation to the child.
- E. **IMPORTANT!** If your address or any other information on the form changes, you must file an amended registration form immediately. Your failure to do so could cause you to lose the opportunity to receive notice of an adoption and to lose any parental rights you may have in relation to the child.
- F. If you do not have an address where you can receive notice of an adoption, you may designate another person as your agent. Service of notice of an adoption upon the agent under Rule 4.1 of the Indiana Rules of Trial Procedure constitutes service of notice upon the putative father. If notice of an adoption may not be served on the agent under Rule 4.1 of the Indiana Rules of Trial Procedure, no further notice of the adoption to the agent or to the putative father is necessary.
- G. **Time is of the essence!** In order for you to receive notice of an adoption, you must register prior to 30 days after the birth of the child or prior to the filing of a petition for adoption, whichever is later. You **MAY** register prior to the birth of the child.
- H. Submit the completed, signed, and notarized form either in person, by facsimile transmission, mail, private courier, or express delivery service to:
- Indiana Putative Father Registry
Indiana State Department of Health
2 North Meridian Street
Indianapolis, IN 46204
- I. If you have questions about your rights as a putative father, you should consult an attorney immediately.



INDIANA PUTATIVE FATHER REGISTRATION
State Form 46750 (R2/11-04)

*Child Custody and Support
Advisory Committee*

[*Exhibit 4*]

Oct. 6, 2010

Instructions: Return this completed form to the Indiana Putative Father Registry within 30 days after the birth of the child or prior to the filing of the petition for adoption.

This form must be signed and notarized to be valid for filing.

Information about you

Name: _____

Address: _____

City, State, and ZIP Code: _____

Social Security Number*: _____ Date of Birth: _____

Month Day Year

*This State Agency is requesting your Social Security Number in accordance with I.C. 31-3-1.5-11. Disclosure is mandatory, and this record cannot be processed without it.

Information about your designated agent (optional)

If you do not have an address where you can receive notice of an adoption, you may designate another person as your agent.

I designate the following person as my agent to receive notice of an adoption that is filed regarding the mother and child that I list on this form:

Name: _____

Address: _____

City, State, and ZIP Code: _____

Information about the child's mother (please provide the following information, if known)

Name (include all names that you believe she may use or has used): _____

Address: _____

City, State, and ZIP Code: _____

Social Security Number: _____ Date of Birth: _____

Month Day Year

Information about the child (please provide the following information, if known)

Name: _____

Date of Birth: _____ Place of Birth: _____

Month Day Year

Signature of Putative Father

Date

STATE OF INDIANA, COUNTY OF _____ SS:

Before me, a Notary Public in and for said County and State, personally appeared _____,

who, having been first duly sworn upon his/her oath, stated the foregoing representations are

true this _____ day of _____, 20 _____.

Signature

Printed Name

My Commission Expires: _____

My County of Residence: _____

Send this completed form to:

Indiana Putative Father Registry
Indiana State Department of Health
Vital Records Division, B-4
2 North Meridian Street
Indianapolis, Indiana 46204

Fax Number: 317.233.1289

Office of the Prosecuting Attorney



MICHAEL A. DVORAK
Prosecuting Attorney
60th Judicial Circuit
St. Joseph County, Indiana

Child Support Division
County-City Building
227 West Jefferson Blvd., 6th Floor
South Bend, Indiana 46601
(574) 235-9786 FAX (574) 235-9097

Kathleen B. Dvorak
Director

October 4, 2010

Programs for Delinquent Obligor

Our enforcement goal is to secure payment of child support for the families on the IV-D program in St. Joseph County. To that end, we see our job as including identifying the barriers facing delinquent non-custodial parents and developing processes to address non-payment. **Areas identified as barriers and implemented practices:**

1) Court orders not being understood

We have developed an office practice of establishing support orders by Stipulation/Agreement where possible. It is our philosophy that it is a less adversarial environment, where the parties feel that they have greater participation in the Orders, which are then submitted to the Court for approval. These occur without the parties having to go to a court hearing. There is more time for input, questions and explanations. It is our belief that obligors are more likely to make payments on an obligation if they feel that they are a contributing party in the process. We have done 222 in-office Stipulations for Support Orders this year.

2) Court orders for support not being reasonable under current financial circumstances

We have developed an expedited Modification process in our office where both parties are sent subpoenas to appear in our office when either party requests a review of the support order. The financial information they bring is used for a new worksheet based on the current financial situations of both parties. This has resulted in modifications which are being done more quickly and easily for the parties. In the last 10 months we have reviewed 712 cases for modifications in our office.

3) Incarceration

Based on the new 2010 Child Support Guidelines (and earlier case law) we have been proactively modifying the support orders of those obligors who are incarcerated. These orders are based on their actual income and most orders are reduced to \$0 during their period of incarceration as allowed under law. We also send a Deputy Prosecuting Attorney (DPA) and caseworker to the St. Joe County Jail every two weeks for an educational training on the law as it pertains to the

incarcerated population and also provide casework outreach to those who are on our program. We have been doing this, with very positive feedback, for 2 years.

4) Unemployment and underemployment

In 2007 St. Joseph County Prosecutor's office started a Pilot Project between our office, the IV-D Court, and WorkOne. The Child Support Improvement Program (CSIP) is the program we developed where the Court orders unemployed obligors to WorkOne to complete a program consisting of their offered services. Indiana University at South Bend, through a School of Public and Environmental Affairs graduate class, evaluated the CSIP program after a period of one year and found that 70% of those referred to the CSIP program had started making payments.

After reviewing the results of the pilot we started the program on a permanent basis and expanded the referral process to include, not just by court order, but also by DPA referral during our Administrative Review hearings. These Administrative Review Hearings are held in our office with the obligor and DPA prior to setting a case for a Rule to Show Cause Hearing (Contempt), so that we can identify any particular circumstances which would preclude a Contempt filing, e.g. co-habitation, emancipation of the child, Social Security claims (SSI and SSD), need for a modification, etc. We set 642 Administrative Hearings during 2009 and 800 in 2010 through September 30th.

Certainly in these economically uncertain times, it is necessary to partner with the agency which has the expertise to initiate training and job searching with our obligors who are unemployed. Although we have no individual statistics, our county collections on current support has improved 2% from last year, which we feel is significant considering the economic recession of this last fiscal year.

5) Parenting Time/Custody Issues

When there is conflict between the custodial and non-custodial parent regarding these issues, it heightens the power struggle between parents, and child support, unfortunately, can be used as a tool in this fight.

In St. Joseph County we are fortunate to have found a partner to assist in this important aspect of our families lives. The University of Notre Dame Law School Legal Aid Clinic, through a supervising attorney and law students participating in Mediation classes, did mediations for IV-D families during the last school year. These law students and supervising attorney came to IV-D court two days per week when we were conducting Establishment hearings (to establish paternity and child support) and did on-the-spot mediations, generally involving parenting time issues, and set appointments for those few needing a longer time frame to resolve their issues.

ELKHART COUNTY

Child support resources offered

Change in job status may make it difficult for some parents to meet obligations.

BY JUSTIN LEIGHTY
jleighty@etruth.com

GOSHEN — Some local courts are starting to see an uptick in the number of people either needing reductions in child support orders or needing more time to pay back support because they've been laid off.

While court staff members reported the numbers aren't large, the local economy could send those numbers up and the

prosecutor's office is offering resources to people who need to ask for reduced child support due to layoffs.

According to the Indiana Supreme Court and the court of appeals, the goal of the child support system is to protect the child's best interest. "The child support system is not meant to serve a punitive purpose," the appeals court wrote this week in a case.

"Rather, the system is an economic one, designed to measure the relative contribution each parent should make — and is capable of making — to share fairly

the economic burdens of child rearing," a three-judge panel wrote.

When a paying parent loses income and assets, they can ask for a reduction in how much they have to pay.

According to a written statement from the prosecutor's office, "The current tough economic times can be challenging, and some parents in Elkhart County may be experiencing significant changes in job status due to plant closures and layoffs in the RV and other industries. This change in job status may make it difficult for some par-

ents to pay child support orders that were set when they worked at higher-wage jobs. At the same time, children's needs remain constant."

For people who can't get a new job and can't meet child support obligations, the prosecutor's office is making "status request" forms available at their office, 301 S. Main St., Elkhart, or Online at www.elkhartcountyprosecutor.com/php/programs.services/child.support/download.forms.php.

People can also talk to their own attorney about seeking changes in child support.

Child Custody and Support
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Exhibit 7

Oct 6, 2010

PARTICIPANT

NAME:

SETS #:

SKIP

Support for Kids Improvement Program

Welcome to WorkOne! You have been given a valuable opportunity to participate in a WorkOne program that will assist you in improving your employment skills, while helping you become work-ready so that your job opportunities are expanded.

Although your involvement with SKIP is court ordered, we are hopeful you will discover the advantages you can gain through participation in the many WorkOne programs and services. We hope to help you improve your life and the life of your family.

Getting Started:

1. Follow All directives of the Child Support Division and the Lake County Court.
2. When signing in, indicate that you are from the SKIP Program.
3. Be responsible for getting this record validated (stamped), initialed, and dated.
4. Failure to maintain this document indicates non-compliance with your court order.
Do NOT lose this document.

Official Use ONLY Below This Line

Dismissal from SKIP recommended because:

AGENCY STAMP

Non-cooperation

Other

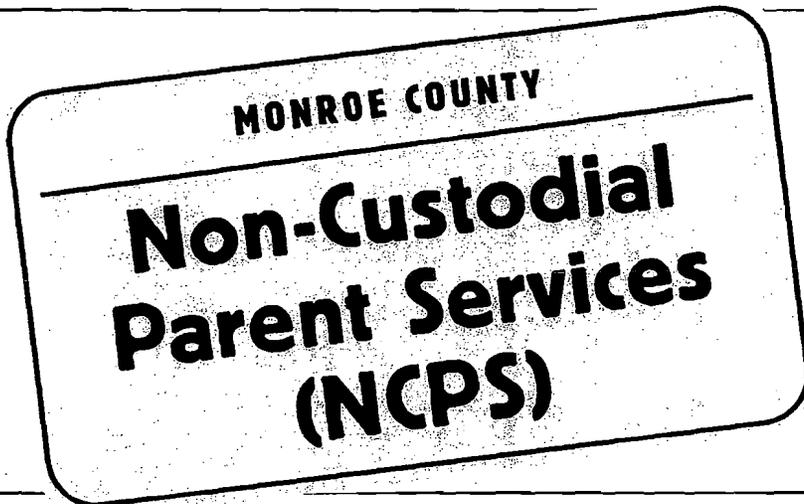
DATE	SIGNATURE	COMMENTS

Court Ordered Record of Participation

SKIP

REC	ORD	PROGRAM/DURATION	ADDITIONAL INFORMATION	DATE COMPLETED	WORKONE STAMP	INITIAL
	✓	Meet with Assessment Team to begin process *MUST HAVE PHOTO I.D.*				
	✓	QuickGuide Assessment (20 minutes)				
	✓	Completion of WorkOne Application (20 minutes)				
	✓	Determine Eligibility for Individual Programs *See Solutions Team Member*	Follow recommendation of Solutions Team Member			
		WORKSHOP RECOMMENDATIONS				
		Computer Basics	See Workshop Schedule			
		Successful Work Habits	See Workshop Schedule			
		Workplace Effectiveness	See Workshop Schedule			
		Effective Communication Skills	See Workshop Schedule			
		Practical Business Etiquette	See Workshop Schedule			
		Resume Preparation/ICC	See Workshop Schedule			
		Interview Preparation	See Workshop Schedule			
		Workkeys Assessment	Follow recommendation of Solutions Team Member			
	✓	Indiana Career Connect Job Searches	Monday-Friday 8:00 a.m. - 4:30 p.m.			
		Job Referrals Meet with Job Placement Specialist	Follow recommendation of Solutions Staff Member			
		Veteran Services	See Veteran Representative (individual appointment)			
		Job Club Upon completion of Work Readiness	Follow recommendation of Solutions Team Member			
		GED/ABE Classes	Follow recommendation of Solutions Team Member			
		Vocational Rehabilitation	Follow recommendation of Solutions Team Member			
		OST/OJT (As funding becomes available)	Information provided by Solutions Team Member			

WorkOne



Non-Custodial Parent Services (NCPS)

Child Support Division
One City Centre
120 W. 7th Street, Suite 210
Bloomington, IN 47404
(812) 349-2675
www.co.monroe.in.us/prosecutor

Hours: Mon. – Fri. 8 am to 4 pm
Closed On County Holidays

So You Have Been Ordered To Pay Child Support – What Next?

You are not alone. The Non-Custodial Parent Services (NCPS) program provides information to parents who have been recently ordered to pay child support. We can help you understand how the court system works, explain your legal rights, and provide referrals to other helpful government agencies or social service providers in our community. The NCPS program cannot enforce, modify, or collect child support payments or negotiate payment arrangements.

What Can The Non-Custodial Parent Services (NCPS) Program Do For Me?

The legal system can be complicated and confusing. The Non-Custodial Parent Services (NCPS) program can help explain the following types of issues:

- Modifying support payments if your income level changes.
- Filing for "emancipation."
- Navigating the court system and the child support rules.
- Explain social security and disability issues.
- Helping your employer implement an Income Withholding Order.
- Resolving issues regarding payment procedures.
- Job search and development resources.
- Referrals for help with mental health, substance abuse, and homelessness.

Who Does The NCPS Program Represent?

The NCPS program is based in the Child Support Division in the Office of the Monroe County Prosecuting Attorney. The prosecutor represents the people of the State of Indiana, and must ensure that the legal rights of all the parties involved are protected. Prosecutor's office caseworkers already help establish and enforce child support orders. Now the NCPS program also provides useful information and assistance to the non-custodial parent.

Why Do We Provide Services To Non-Custodial Parents?

The NCPS program works with non-custodial parents in an effort to increase the effectiveness of the child support system in Monroe County. Traditionally, child support enforcement has been an adversarial process where the focus is on prosecuting the case against the non-custodial parent. However, this approach does not necessarily advance the best interests of the children, and better results are often achieved by providing equal services to both adult parties that share responsibility for support of the children. The goal of the NCPS program is to create a relationship so that the non-custodial parent becomes an integral part of the child support process and has a commitment to the success of that process.

*Child Custody and Support
Advisory Committee*

**FOR MORE INFORMATION CALL THE NON-CUSTODIAL PARENT SERVICES PROGRAM AT:
(812) 349-7383, or email ncps@co.monroe.in.us**



Exhibit 8

Oct. 6, 2010

Voluntary Paternity Acknowledgement Federal and State Requirements and Process Overview

General Program Requirements

The Indiana Title IV-D Child Support Enforcement Program is a federal program administered by the Department of Child Services, Child Support Bureau (DCS/CSB). The program is enforced locally through cooperative agreements with Prosecuting Attorneys whose primary functions are to establish paternity and establish and enforce child support orders.

The implementation of a Title IV-D program is federally mandated for states receiving federal TANF grant funding. Both programs are part of the Social Security Act, Parts A and D. **(USC Title 42 chapter 7 subchapter IV Part A, section 602)** A State will be subject to a financial penalty to the TANF Grant funding under title IV-A of the Act if on the basis of the results of an audit, the State failed to substantially comply with one or more of the requirements of the IV-D program. **(45 CFR 305.61)**

The federal Office of Child Support Enforcement (OCSE) provides oversight for state IV-D programs and is responsible for ensuring states comply with federal requirements and meet federally-mandated standards. State program performance falling below standard may result in federal financial penalties to the TANF grant funding. **(USC Title 42 chapter 7 subchapter IV Part A, section 602)**

State IV-D performance and federal incentive funding are dependent on five (5) measures: 1) *paternity establishment*, 2) *support order establishment*, 3) *current support collections*, 4) *cases with payments toward arrears*, and 5) *cost effectiveness*. A state's paternity performance is weighted heavily when it comes to determining federal incentive funding. **(45 CFR 305.2)**

Paternity establishment is one of the core functions of the Title IV-D Program and is a measure of the number of children born out of wedlock compared to the number of children for whom paternity was either voluntarily acknowledged or established by court order. **(45 CFR 305.2)** The federal requirements place emphasis on this particular measure in the assessment of states' performance and determinations and award of federal incentive funding and monetary penalties. For *paternity establishment*, states that fall below 90% face federal financial penalties to TANF Grant funding. **(45 CFR 305.40)** [To illustrate, for FFY 2008, Indiana's *paternity establishment* rate was 97.8% and it received \$11,310,522 in federal performance-based incentive funding to fund program operations.]

States administering the Title IV-D child support program are required to comply with federal IV-D program statutes, regulations and policies. As part of these requirements, states are required to enact certain required state laws. **(USC Title 42 Chapter 7 subchapter IV Part D Program, Sec 652 & 45 CFR 302.70)**

Federal Requirements for Voluntary Paternity Acknowledgement Process

Sec 666 of the Act requires each state must have in effect laws requiring the use of the following procedures for voluntary paternity acknowledgment:

Simple civil process - procedures for a simple civil process for voluntary acknowledging paternity under which the State must provide that before a mother and putative father can sign an acknowledgement of paternity, the mother and putative father must be given notice, orally, or

through the use of video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights....and responsibilities that arise from, signing the acknowledgment.

Hospital –based program – procedures must include a hospital-based program for the voluntary acknowledgement of paternity immediately before or after the birth of a child.

Paternity establishment services - procedures must require the State agency responsible for maintaining birth records to offer voluntary paternity establishment services.

Use of paternity acknowledgment affidavit - procedures must require the State develop/use an affidavit for voluntary acknowledgment of paternity which includes minimum requirements and give full faith and credit to such an affidavit signed in any other State according to its procedures.

Inclusion in birth records - procedures under which the name of the father shall be included on the record of birth of the child of unmarried parents only if—

- (I) the father and mother have signed a voluntary acknowledgment of paternity; or
- (II) a court or an administrative agency of competent jurisdiction has issued an adjudication of paternity.

Legal finding of paternity - procedures under which a signed voluntary acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of—

- (I) **60 days**; or
- (II) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party.

Contest - procedures under which, after the 60-day period, a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of **fraud, duress, or material mistake of fact, with the burden of proof upon the challenger**, and under which the legal responsibilities of any signatory may not be suspended during the challenge, except for good cause shown.

Bar on acknowledgment ratification proceedings - procedures under which judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.

Federal Regulations also require each state must:

Ensure procedures for a simple civil process include: (1) all public and private birthing hospitals statewide participate in the hospital-based program; and (2) the procedures governing all voluntary programs—notice, materials, evaluation methods and training of personnel be the same;

Establish procedures under which the voluntary acknowledgment of paternity creates a rebuttable or, at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity;

Establish procedures under which a voluntary acknowledgment must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity;

Require affidavit be signed by both parents, and authenticated by a notary or witness(es);

Provide to all hospitals, birth record agencies, and other participating entities: (1) written materials about paternity establishment; (2) form necessary to voluntarily acknowledge paternity; and (3) copies of a written description of the alternatives to, the legal consequences of, and the rights (including any rights, if a parent is a minor, due to minority status) and responsibilities of acknowledging paternity;

Provide training, guidance, and written instructions regarding voluntary acknowledgment necessary to operate the voluntary establishment paternity program in hospitals & birth record agencies;

Assess each hospital, birth record other entity providing voluntary paternity establishment services on at least an annual basis; and

Ensure hospitals, birth record agencies, and other entities at a minimum:

1. Provide to both the mother and alleged father: (1) the opportunity to voluntarily acknowledge paternity; (2) written materials about paternity establishment; (2) the forms necessary to voluntarily acknowledge paternity; and (3) notice, orally or through video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights (including any rights, if a parent is a minor, due to minority status) and responsibilities or acknowledging paternity; and (4) the opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment;
2. Afford due process safeguards; and
3. File signed original affidavits with the State registry of birth records.

(45 CFR 302.70 & 303.5 (g))

Indiana Requirements

IC 16-37-2-2 provides ...a person in attendance at a live birth shall...advise the mother of a child born out of wedlock of the availability of paternity affidavits under section 2.1 of this chapter. This section further provides a paternity affidavit executed under this section shall be filed with the local health officer not more than five (5) days after the child's birth.

IC 16-37-2-2.1 provides ... a paternity affidavit may be executed through a hospital or a local health department and addresses the specific requirements for advisements to the parties, the form, required information, and time limits for execution and filing the affidavit.

IC 16-37-2-2.1(g) providesa paternity affidavit executed under this section:

- (1) establishes paternity;
- (2) gives rise to parental rights and responsibilities of the man who signs the affidavit, including:
 - (A) the right of the child's mother or the Title IV-D agency to obtain a child support order against the person, which may include an order requiring the provision of health insurance coverage; and
 - (B) reasonable parenting time rights unless another determination is made by a court in a proceeding under IC 31-14-14; and
- (3) may be filed with a court by the department of child services.

However, if a paternity affidavit is executed under this section, the child's mother has sole legal custody of the child unless another custody determination is made by a court in a proceeding under IC 31-14.

Challenging a Paternity Affidavit in Indiana

The execution of a paternity affidavit in Indiana conclusively establishes the man who is party to the affidavit as the legal father of the child.

IC 16-37-2-2.1 (m) provides except as provided in this section, if a man has executed a paternity affidavit in accordance with this section, the executed paternity affidavit conclusively establishes the man as the legal father of a child without any further proceedings by a court.

Indiana law allows a man who is a party to an affidavit to rescind an affidavit within sixty (60) days from execution. In order to rescind the affidavit, the man is required to file an action in court and request an order for a genetic test. The court will not "set aside" the affidavit unless the results of a genetic test exclude the man as the biological father.

IC 16-37-2-2.1 (h) provides ...notwithstanding any other law, a man who is a party to a paternity affidavit executed under this section may, **within sixty (60) days** of the date that a paternity affidavit is executed under this section, **file an action in a court with jurisdiction over paternity to request an order for a genetic test.**

IC 16-37-2-2.1 (k) providesthe court may not set aside the paternity affidavit unless a genetic test ordered under subsection (h) or (i) excludes the person who executed the paternity affidavit as the child's biological father.

After the sixty (60) day rescission period expires, the affidavit may not be rescinded unless a court has determined fraud, duress or material mistake of fact existed in the execution of the affidavit and a court ordered genetic test excludes the man as the biological father. Once these two requirements are met, the court may set aside the affidavit.

IC 16-37-2-2.1 (j) provides... a paternity affidavit that is properly executed under this section **may not be rescinded more than sixty (60) days** after the paternity affidavit is executed unless a court:

(1) has determined that fraud, duress, or material mistake of fact existed in the execution of the paternity affidavit; and

(2) at the request of a man described in subsection (h), has ordered a genetic test, and the test indicates that the man is excluded as the father of the child.

Unless good cause is shown, a court shall not suspend the legal responsibilities under subsection (g)(2)(A) of a party to the executed paternity affidavit during a challenge to the affidavit.

Indiana Caselaw Addressing Challenges to In Hospital Paternity Affidavits and the Presumption of Paternity

Fairrow v. Fairrow 559 N.E.2d 597 (Ind. 1990) - challenge to presumption of paternity for a child born in a marriage.

Joe and Mary Fairrow were divorced in February of 1975. During the marriage, a child was born. In the dissolution proceeding, the Court found the child to be a child of the marriage and ordered father to pay support. Father testified he had no reason to dispute the paternity of the child. Sometime later, the child started experiencing symptoms of Sickle Cell Anemia. Mother was previously tested and found to not have the sickle cell trait. On the advice of a doctor, father underwent testing. The results showed that father did not carry the trait. Based on the results, a doctor concluded that Joe could not be the father of the child. Father then filed a motion to terminate the support order. The trial court denied the motion and the Court of Appeals affirmed the trial court's ruling.

The mother in this case argued that father was not entitled to relief based on the amount of time that had expired. The Court cited Trial Rule 60 (B) (8) allows the court to relieve a party from a final order for any reason justifying relief from the operation of the judgment other than the reasons found in sub paragraphs (1-4). The Court went on to state that the motion must be filed within a reasonable amount of time and the movant must show the relief is necessary and just.

In finding that the relief was necessary and just and filed within a reasonable amount of time the court found made the following findings: the father filed his pleading after finding newly discovered evidence; he had no reason to doubt paternity until the newly discovered evidence was found; and he knew someone in the mother's family carried the trait and the seeking of the test was not done to avoid paying support, but based on a physician's advice.

The Court went on to analyze the facts of the case. The Court found that a child born during marriage is presumed to be legitimate however the presumption is not conclusive and may be rebutted by direct, clear and convincing evidence. (Fairrow at 600) In this case there was such evidence based on the testimony of medical personnel. The Court did state it strongly discouraged re-litigation of support issues through Trial Rule 60 (B) (8). It also warned that one who came into court to challenge a support order without independently obtained medical evidence should be rejected as outside the equitable power of the court.

In re the Paternity of E.M.L.G., R.L.J., J.A.J, and N.A.H., 863 N.E.2d 867 (Ind. App. 2007)- requirements for post sixty (60) day challenges to paternity affidavits

The case arose from four separate paternity actions where four fathers signed paternity affidavits in hospital when each child was born. The State brought actions to establish child support on each father based on the paternity affidavits. Each action was held more than sixty days after the signing of the paternity affidavit. At each hearing, the father requested a DNA test which the Court granted. The State filed motions to correct error in each case which were denied.

On appeal, the Court looked at IC 31-14-2-1 which provided for two ways to establish paternity; thru a legal action to establish paternity or an affidavit. In order to rescind or set aside the paternity affidavit the putative father may file an action to request a genetic test. In this case the Court found none of the fathers filed an action for a genetic test within the sixty day period and paternity had been established.

The court then looked to IC 16-37-2-2.1 which provides that a paternity affidavit cannot be rescinded more than 60 days after its execution unless a Court finds that fraud, duress or material mistake of fact occurred in the execution of the affidavit.

The Court pointed out that none of the fathers made any allegations of fraud duress or material mistake of fact. Instead, the trial court rescinded the affidavits on the grounds that the men were "allegedly not aware of the legal ramifications of the document when they signed the affidavits." (E.M.L.G at 869) The Court reasoned that the trial court improperly provided a method outside the IC 31-14-6-1 to disestablish paternity outside the 60 day period.

Since the affidavits were not set aside prior to the 60 day time limit and no evidence was presented regarding mistake of fact, fraud or duress, the Court reversed the trial court.

In re Paternity of M.M. 889 N.E. 2d 846 (Ind. App. 2008) post sixty (60) day challenge to paternity affidavit based on genetic test results.

Mother and Father executed a paternity affidavit within three days of the child's birth on May 13, 2005. On September 22, 2006, mother and father appeared at a hearing where father was ordered to pay child support. One month later, father and child had DNA testing. The results showed an exclusion. A second test confirmed the results of the first test.

On May 7, 2007 the father filed a motion to set aside the paternity affidavit and for DNA testing. He alleged the paternity affidavit was a product of fraud or material mistake of fact. At trial on the motion on June 21, 2007, father testified that mother had told him that "I was the only one." Mother did not appear at the hearing until its conclusion and offered no testimony. The Court denied the father's motion citing that father had acquiesced when the order of support was entered and that "case law favors establishment being supported over disestablishment.

The Appellant Court disagreed. The Court confirmed that public policy disfavors disestablishing paternity, however there was a co-existing "substantial public policy in correctly identifying parents and their offspring." The Court went further and found that "public policy disfavors a

support order against a man who is not the child's father." (Citing Fairrow v. Fairrow , 559 N.E.2d 597 (Ind. 1990))

The Court held that father had established fraud sufficient to warrant further testing. The Court cited the father's testimony and two genetic tests showed that he was not the only potential father. The evidence showed that either he was the victim of deception or misapprehension of the critical fact.

Note this case took the genetic tests father obtained prior to the filing of his motion into consideration which was previously held to be outside the court's equitable discretion unless it was inadvertently obtained. (See In re Paternity of M.M.B., 877 N.E.2d 1239 (Ind. Ct.App. 2007))

A.E. v J.E. 69A01-0901-CV-31 (Ind. Ct.App. 6/4/2009) (Unpublished) addressed post sixty (60) day challenge to paternity affidavit when parties falsely attested to affidavit.

The mother became pregnant prior to meeting Father and gave birth to child in 2000. In 2001 mother and father married. In 2002 the parties executed a paternity affidavit regarding the minor child. Father petitioned for dissolution of marriage and the parties stipulated that father was not the biological father of the child. The Court determined that father was the legal father of child. Father filed a motion to correct errors which was denied.

The court held that father was estopped from challenging the paternity affidavit due to the fact that both parties falsely attested to the paternity affidavit. The Court found that the child understood father to be her legal father and a relationship had been fostered between the parties for nearly eight years. The Court noted that if the true biological father was a party to an action, the analysis may be different.

J.M. v. M.A. 20A004-0911-CV-640 (Ind.App. June 9, 2010) post sixty (60) day challenge to affidavit signed by minor (dad)

Mother and father began a relationship in 1998, when mom was four months pregnant with child. At the time the relationship began, both parties were aware that the father was not the biological father of the child. On January 7, 1999, child was born and father signed affidavit of paternity acknowledging he was the father of the child. At the time father signed the affidavit he was six days short of being eighteen.

The State filed a Petition for Support on April 7, 2009, after the child's grandmother applied for state benefits. Father requested a continuance one day prior to the hearing and the Court denied the request. The Court defaulted the father after he failed to appear and adjudicated him the father and ordered him to pay \$47 a week.

The father filed a Motion to Set Aside the Determination and in support asserted he was a minor when he signed the affidavit, did not have the benefit of counsel when he signed the affidavit and he thought he was consenting to a guardianship when he signed the affidavit. A hearing was held and mother testified that father could not be the biological father. The trial court denied father's petition and found that the father never taken any steps to disestablish paternity until 2009, and

found that father's lack of appearance at the earlier hearing ratified the affidavit of paternity and he was going to be held to the affidavit which constituted a "poor man's adoption"

The Appellate Court reversed the trial court's findings based on several factors. There was undisputed evidence that the father in this case was a minor when he signed the affidavit and he did so without the benefit of counsel. The Court found that dad's belief that he was signing the affidavit to grant grandmother guardianship was credible and that grandmother was granted guardianship. Additionally, the fact that dad did not attend the earlier hearing was due to excusable neglect and therefore the affidavit was not ratified. The Court found due to the totality of the circumstances there was a material mistake of fact. The Court rescinded the paternity affidavit based on the material mistake of fact and mother's testimony that father could not be the biological father of the child.

Virginia's Intensive Case Monitoring Program

VIRGINIA DEPARTMENT
OF SOCIAL SERVICES
DIVISION OF CHILD
SUPPORT ENFORCEMENT

August 2010

➤ **521 participants have been enrolled in ICMP to date:**

- 188 Active Participants
- 161 Graduated
- 172 Dropped (*found noncompliant by the Judge*)

➤ **Total ICMP Collections - \$1,281,696**

➤ **Average Monthly Collections**

The figures below show the average monthly collections for all ICMP participants through August 2010. It compares Pre- and Post- payments made by Active, Graduated and Dropped participants.

	Pre-enrollment	Post-enrollment
Active	\$10,877	\$15,948
Graduated	\$12,734	\$39,747
Dropped	\$7,015	\$24,286

➤ **Average Monthly Payments**

The figures below show the average paid monthly per Active, Graduated and Dropped participant Pre- and Post- enrollment.

	Pre-enrollment	Post-enrollment
Active	\$124	\$181
Graduated	\$81	\$252
Dropped	\$43	\$148

➤ **Graduated Participants**

The following figures compare the average monthly obligation to the average monthly payments made Pre- and Post- enrollment for graduated participants with a current support order. The few graduated NCPs with either closed cases or arrears only cases are not included in this analysis.

	Obligation	Pre-enrollment	Post-enrollment
Graduates	\$218	\$81	\$252

➤ **Barriers**

The following figures show barriers identified as obstacles to paying child support.

- 19% Job Search Issues
- 18% Child Support Issues
- 15% Lack of Education or Training
- 15% Personal Issues
- 12% Lack of Support
- 11% Prisoner Reentry Issues
- 10% Attitude Problems

➤ **Compliance**

The following figures record the NCP's compliance with attendance for mandatory appointments with the Case Manager for the August 2010 period.

- 52% Attended 76 to 100% of meetings
- 13% Attended 51 to 75% of meetings
- 11% Attended 26 to 50% of meetings
- 5% Attended 1 to 25% of meetings
- 19% Attended 0% of meetings

➤ **Demographics**

➤ **Age**

- 12% Age 20-24
- 17% Age 25-29
- 23% Age 30-34
- 18% Age 35-39
- 15% Age 40-44
- 9% Age 45-49
- 4% Age 50-54
- 2% Age 55-59
- 0% Age 60-64

➤ **Race**

- 57% black
- 40% white
- 2% hispanic
- 1% other

➤ **Gender**

- 12% Female
- 88% Male

➤ **Employment**

- 34% employed
- 66% unemployed

➤ **Highest Level of Education**

- 35% did not graduate HS
- 20% GED
- 30% graduated HS
- 13% some college
- 2% graduated college

➤ **Marital Status**

- 25% married
- 6% divorced
- 69% single (never married)

➤ **Number of Children**

- 66% One
- 25% Two
- 6% Three
- 3% Four
- 0% Five or more

➤ **Number of Cases**

- 66% One
- 25% Two
- 6% Three
- 3% Four
- 0% Five or more

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