F A M I L Y S U P P O R T
F O R U M

The Official Newsletter of the Illinois Family Support Enforcement Association

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IFSEA MEMBERS ATTEND NATIONAL CONFERENCE

By Debra Roan

Several members of IFSEA attended the National Child Support Enforcement Conference in Denver, Colorado August 6 through August 8, 2012. Attending were Deputy Attorney General Diane Potts, Christa Ballew from Maximus in Cook County, IFSEA President Bryan Tribble, HFS Child Support Specialist Ginnie Anderson, HFS Deputy Administrator Norris Stevenson, HFS/SDU contract monitor Christine Towles and HFS Assistant Deputy Administrators Mary Morrow and Debra Roan.

This year's theme for the conference was "Moving Mountains for the Modern Family". To mention a few, sessions included subject matter dealing with international child support issues, promoting responsible fatherhood, customer feedback, innovations in child support technology, ongoing and upcoming legal issues, medical support and health care reform. Attendees had the opportunity to hear from Kevin Patterson, Deputy Chief of staff to Colorado Governor John Hickenlooper and Colorado Supreme Court Justice Brian Boatright.

The key note speaker on day two was Commissioner Vicki Turetsky from the Federal Office of Child Support Enforcement. Commissioner Turetsky provided the vision for the nation's child support program as the families we serve struggle to recover from the economic conditions. Commissioner Turetsky challenged child support workers from around the world to begin serving the family as a whole placing more emphasis on fair child support orders and employment assistance for out of work non-custodial parents.

The Illinois attendees were not just onlookers in this conference. Our own Mary Morrow and Christa Ballew were conference co-chairs. We must also mention that both Mary and Christa are NCSEA board members who have worked hard over the past year to ensure the issues we face are addressed at both state and federal levels.

Mary Morrow, Christa Ballew, Christine Towles, Diane Potts and Debra Roan were members of the conference planning committee. In addition, Christine Towles was the session coordinator for "Changing Service Delivery Through Customer Feedback" and Debra Roan was the coordinator for "The Changing Face of the Family Structure".

Mary Morrow and Debra Roan were moderators for two sessions. Norris Stevenson was a presenter in the workshop "Managing the Multigenerational Workforce". Ginnie Anderson presented in the workshop "Confidentiality Laws and Rules: Barriers to Collaboration". Deputy Attorney General Diane Potts presented in the workshop "Paternity Disestablishment: My Two Dads". IFSEA President Bryan Tribble represented Illinois by participating in the crowd sourcing sessions to impact public policy. So, as you can see, the Illinois attendees remained very busy and were a part of the conference planning and success.

The attendees would urge all of you to become a part of the NCSEA membership. It is a great opportunity to network with other child support workers and your colleagues, receive updates on pending legislation, see upcoming, new innovations in processing our workloads and learn firsthand how other states are handling business.

- In This Issue -

By Bryan Tribble
4/20/2012
Dear IFSEA members:

As I sat down to compose this letter, so many thoughts and ideas were running through my mind: quotes, adages, inspirational thoughts running the gamut from the trite to the seemingly profound. Something unseen, however, kept me from putting my thoughts on paper. All of that changed last weekend at a wedding reception I attended. As the DJ spun tunes from the BeeGees to the Violent Femmes to the typical wedding line dance, I watched my 3 year old son run and twirl from one end of the dance floor to the other without a care in the world as to whom might be watching or laughing. While observing this from the relative safety of the "sidelines", pondering what was keeping all of us from enjoying the moment to the same degree he was, excerpts of the following were running through my mind:

We convince ourselves that life will be better after we get married, have a baby, then another.

Then we are frustrated that the kids aren't old enough and we'll be more content when they are.

After that we're frustrated that we have teenagers to deal with. We will certainly be happy when they are out of that stage.

We tell ourselves that our life will be complete when our spouse gets his or her act together, when we get a nicer car, are able to go on a nice vacation, when we retire.

The truth is, there's no better time to be happy than right now.

If not now ... *when*?

Your life will always be filled with challenges. It's best to admit this to yourself and decide to be happy anyway.

One of my favorite quotes comes from Alfred D Souza ...

"For a long time it had seemed to me that life was about to begin.
But there was always some obstacle in the way, something to be gotten through first, some unfinished business, time still to be served, a debt to be paid. Then life would begin. At last it dawned on me that these obstacles were my life."

This perspective has helped me to see that there is no way to happiness. Happiness is the way.

So, treasure every moment that you have. And treasure it more because you shared it with someone special, special enough to spend your time ... and remember that time waits for no one ...

So stop waiting until you finish school ... until you go back to school ... until you lose ten pounds ... until you gain ten pounds ... until you have kids ... until your kids leave the house ... until you start work ... until you retire ... until you get married ... until you get divorced ... until Friday night ... until Sunday morning ... until you get a new car or home ... until your car or home is paid off ... until spring, until summer ... until fall ... until winter ... until you are off welfare ... until the first or fifteenth ... until your song comes on ... until you've had a drink ... until you've sobered up ... until you die ... until you are born again to decide that there is no

better time than right now to be happy ...

Happiness is a journey ... not a destination!!

Thought for the day:

"Work like you don't need money,
Love like you've never been hurt,
And dance like no one's watching."

Author: Crystal Boyd

The pure joy my son experienced, with no sense of self-awareness or thought of embarrassment, led me to the epiphany I needed to move forward with this task. I had been holding myself back, as I did not want to be judged by putting my true thoughts and beliefs on paper. It is the purity with which a 3 year old dances that this stream of consciousness, CALL TO ACTION is being written.

Spring has sprung, and everything is being made anew. Our Association is no different. At our recent Board of Directors meeting, we had a lively discussion regarding the future of IFSEA and the direction in which we see our organization moving forward in the years to come. Many good ideas were shared, and all in attendance agreed that the key to the continuing growth and success of IFSEA is the concerted effort of our membership as a whole.

We must have the membership take an increased role and interest in IFSEA if our Association is to reach its full potential. Over the next several months, we will be creating several new committees. These committees initially will include: a membership committee dually designed to increase both overall membership and the level of involvement of current members; a legislative committee charged with keeping the membership abreast of the latest developments on the local, state, and national levels; and a continuing education committee responsible for planning, hosting, and delivering web-based training opportunities.
By becoming a member of IFSEA, you already have shown an interest in child support enforcement. We need you to take the next step and become an ***active*** member. I now call upon each of you to step forward and give freely of your skills, talents, and abilities for the betterment of YOUR Association. Our organization is only as good as the time and effort offered by the membership.

We need the ideas, work ethic, and organizational skills you possess. Don't look back with regret. Look forward to each day with the knowledge you have done everything you possibly could to make a difference in the world in which we live. Every new day is an opportunity to change the life of a family. The people we help today will be able to help the next generation, and so it builds on itself exponentially. This, my friends, is how we change the world. I truly believe this to be true, and belief is a funny thing. Whether you believe you can or cannot, you are probably right.
Please contact me via e-mail (bryan.tribble@illinois.gov) to let me know how you would like to become further involved in IFSEA.

Take care,

Bryan

Hello everyone,

I would like to cordially invite everyone to the 2012 Illinois Family Support Enforcement Association Annual Conference. This year's conference will be held on Sunday, October 21-23 at the Hilton Indian Lakes Resort in Bloomingdale, Illinois. This is a wonderful facility I am sure everyone will enjoy. For more information regarding this year's site, please see the following links:

http://www.indianlakesresort.com/

http://www.indianlakesresort.com/var/cdev_base/storage/original/application/a08e49d3c88d3cd91af01f110f9542ad.pdf

We are very proud to announce our Key Note Speaker for the 2012 IFSEA Conference: Vicki Turetsky, Commissioner, Office of Child Support Enforcement Administration for Children and Families, U.S. Department of Health and Human Services**.**

As Commissioner, Ms. Turetsky oversees the child support program operated by each state and by many tribes.

She brings more than 25 years of experience as a public administrator and advocate for low-income families. She is a nationally recognized expert in family policy, and has been instrumental in efforts to boost child support payments to families and to establish realistic child support policies that encourage fathers to work and play an active parenting role. Prior to her appointment, she served as the Director of Family Policy at the Center for Law and Social Policy, where she specialized in child support, responsible fatherhood, and prisoner re-entry policies. The author of numerous publications, she was a visiting lecturer at the Woodrow Wilson School of Public and International Affairs at Princeton University and has received several national awards.

She also has held positions at the U.S. Corporation for National and Community Service, MDRC, Union County Legal Services in New Jersey, and the Minnesota Attorney General's Office. As a division director at the Minnesota Department of Human Services, she received one of the state's first "reinventing government" awards. She received her B.A. from the University of Minnesota and her J.D. from the University of Chicago Law School.

Additional Conference highlights include-

-Plenary session devoted to the proposed support guidelines change in Illinois to an income shares model led by Professor David Betson, Associate Professor of Public Policy and Economics at University of Notre Dame.

-OCSE, IV-D, Legislative, and Case Law updates

-The beloved Judicial Panel

-Breakout Sessions regarding: Fatherhood Initiatives; Locate tools utilized by the Division of Child Support Services; The emergence of the use of Social Media in the area of customer service; Diversity; Strategic Planning; Dispute Resolution; QDRO's/QILDRO's; Maneuvering through the Appeals Process; and Motions Practice in the Domestic Relations Division/Judicial Enforcement of Administrative orders; and more to come…

We will be submitting this year's conference for 11 credit hours, pending MCLE approval.

Finally, we have a full slate of social events scheduled, including: a Sunday afternoon golf outing; a Sunday evening 1920's themed Murder Mystery and a barbeque set for Monday evening.

As you can see, this year's conference is taking shape and promises to be a wonderful opportunity to expand your knowledge and interact with child support professionals from across the State.
I hope to see you all in Bloomingdale in October!

Sincerely,
Bryan Tribble

Hilton
HOTELS & RESORTS

Located just 14 miles west of O'Hare airport, the Hilton Chicago Indian Lakes Resort is the perfect location to reconnect whether it's for business or pleasure. Situated on 260 acres in historic Bloomingdale, the Frank Lloyd Wright inspired resort is home to spacious accommodations, 27 holes championship golf, 2 enticing restaurants an award winning spa and over 50,000 sq ft of flexible event space!

All of the luxuries of a world-class Hilton resort are emphasized in the dramatic six story lobby, leaving a first impression surpassed only by the discovery of the resort's matchless amenities.

The Resort's professional staff will stop at nothing to ensure a memorable stay. From the moment you arrive, the whimsical architecture of the atrium lobby, exquisitely landscaped grounds and the unique dedication to comfort will show you what business travel should really be like.

250 West Schick Road
Bloomingdale, Illinois, 60108
Tel: 1-630-529-0200
Fax: 1-630-529-0675

Conference Special events –
Sunday Afternoon Golf Outing – Contact Drew Aschenbrenner for details at Drew.Aschenbrenner@ Illinois.gov

Sunday Evening Dinner – dress in 1920's attire for dinner and enjoy a fun 1920's Murder-Mystery Social game at Izzy & Moe's

Monday evening dinner BBQ on the patio – optional dinner for all members.

IFSEA

ILLNOIS FAMILY SUPPORT ENFORCEMENT ASSOCIATION ANNUAL CONFERENCE
OCTOBER 21 – 23, 2012
Hilton Chicago Indian Lakes Resort
Bloomingdale, IL

What is IFSEA?

IFSEA is a not-for-profit organization dedicated to the improvement of the administration of family support programs in Illinois. One of the goals of IFSEA is to provide ways and means whereby state and county officials, organizations, and individual practitioners involved in family support enforcement can exchange information, ideas and experience and obtain expert advice. The IFSEA conference gathers together child support professionals from throughout the State of Illinois to learn, explore, and discuss issues affecting the child support community. IFSEA welcomes the opportunity to hold this annual conference and offer its members the ability to meet and network with other child support professionals.

Contact Information:
First Vice-President
Angela Williams
5415 N. University, Ste. 106
Peoria, IL 61614
309-693-4938
Angela.Williams@Illinois.gov

CONFERENCE AT A GLANCE

SUNDAY, OCTOBER 21, 2012

4:00-7:00 Registration
6:00-7:00 Meet and Greet
7:00-9:00 Annual Banquet
9:00-11:00 1920's Social

MONDAY, OCTOBER 22, 2012

8:00-5:00 Exhibitors
8:30-10:30 Plenary Session I
10:30-10:45 Refreshment Break
10:45-12:15 Break-out Session I
- **A. Fatherhood Initiatives**
- **B. QDRO's**
- **C. Diversity**

12:15-12:30 Annual Meeting I
12:30-2:00 Lunch(Updates)
2:15-3:45 Break-out Session II
- **A. Locate**
- **B. Appellate Process**
- **C. Strategic Planning**

3:45-4:00 Refreshment Break
4:00-5:30 Break-out Session III
- **A. Social Media**
- **B. Civil Procedure**
- **C. Dispute Resolution**

6:00 Dinner/Social

TUESDAY, OCTOBER 23, 2012

8:00-10:00 Exhibitors
8:30-10:30 Plenary Session II
Judge's Panel
10:30-10:45 Refreshment Break
10:45-12:15 Plenary Session III
12:15-12:45 Annual Meeting II
Elections
1:00 IFSEA Board Meeting

Registration Form:
(Please submit separate registration for each person attending)

SIGN UP	*PRICE*	*TOTAL*
□ Registration Fee (Before 9/30/12)	$110.00	_____
□ Registration Fee (After 9/30/12)	$135.00	_____
□ Illinois CLE Fee Illinois ARDC#_____	$15.00	_____
□ I will be attending Sunday Banquet		
□ I will not be attending Sunday Banquet		
Additional Sunday Dinner tickets _____ needed	$32.00 ea	_____
Additional Meal Package (includes all meals) _____ needed	$75.00 ea	_____
	TOTAL	_____

Make checks payable to: IFSEA
335 E. Geneva, Carol Stream, IL 60188

Name (to appear on Membership Certificate)

_____

Title & Employer_____

Address _____

_____

Phone _____

Email Address_____

2012 IFSEA Golf Outing
Blackhawk Trace at Indian Lakes Resort
Bloomingdale, Illinois

Sunday, October 21, 2012
9:00 AM

$40 per person - 18 holes - Cart included
Register by October 1.
Call Drew Aschenbrenner
217/785-8634 or email
Drew Achenbrenner@illinois.gov

Nominations Sought for IFSEA Director Election

Five of the fifteen member-elected IFSEA Director positions will be subject to election at the Annual Members' Meeting to be held during the Annual Conference on Support Enforcement. One director is to be elected from Cook County plus two from each of the two downstate regions. Terms of office for Directors elected this year extend until October 2014.

The Annual Meeting will again be split into two parts during IFSEA's Conference program. The election of Directors (including any nominations from the floor) will take place Monday, October 22nd at the Conference. Results will be announced at the Annual Members' Meeting on Tuesday, October 23rd.

Pursuant to Art. VII of the By-Laws, nominations for election are to be submitted in writing to the Nominations & Resolutions Committee at least seven days prior to the election - i.e., by October 15, 2012. Nominations may also be made from the floor if supported by five members from the region to be represented by the elected Director. However, time is extremely limited at the meetings, so advance nominations are urged.

If you would like to be elected to the IFSEA Board of Directors, or you know someone you would like to see elected, please complete the Director Nomination form provided below and return it to: IFSEA, 335 E. Geneva Rd., Carol Stream, IL 60189 or fax to 630-221-2332. Incumbents seeking re-election also require nomination. Only regular members in good standing (membership dues paid for 2011-2012) may be elected or appointed to the Board of Directors.

Those holding elected positions on the current IFSEA Board of Directors and their terms of office are as follows:

10/2009-10/2012*	10/2010-10/2013	10/2011-10/2014
Irene Halkas-Curran (Lake Co. Asst. State's Atty) Region 2	Christa Ballew (Maximus) Region 1	Mary Miller (HFS, DCSE) Region 3
Lyn Kuttin (HFS, DCSE) Region 3	Scott Black (Asst. Atty. Gen'l) Region 3	Mary Morrow (HFS, DCSE) Region 1
Lori Medernach (HFS, DCSS) Region 2	Debbie Roan (HFS, DCSS) Region 3	Deborah Packard (HFS, DCSE) Region 2
Norris Stevenson (HFS,DCSS) Region 1	Christine Towles (HFS, DCSS) Region 2	Sherrie Runge (HFS, DCSE) Region 3
Bryan Tribble (HFS, DCSS) Region 3	Angela Williams (Asst. Atty. Gen'l) Region 2	Loretta Ursini (Cook SAO) Region 1

* Directors whose terms end this year. The one-year terms of "At-Large" Directors John Carnick (Lake SAO) and Jeffrey McKinley (Rock Island SAO) also expire at this year's election.

NOMINATION FOR ELECTION TO THE BOARD OF DIRECTORS
ILLINOIS FAMILY SUPPORT ENFORCEMENT ASSOCIATION
October 22, 2012 Meeting

I hereby nominate the following person for election to the IFSEA Board of Directors:

Nominee:

_____

Position/Employer:

_____

Office Address (County):

_____

Credentials/Comments:

_____

_____

_____

Person Making Nomination if other than Nominee:

_____

Office Address (County):

_____

To be eligible for election the nominee must be a regular member of the association, in good standing (with dues paid for the upcoming year) prior to the election.

Return before October 15, 2012, to:
IFSEA, Nominating & Resolutions Committee

335 E. Geneva Road, Carol Stream, IL 60188
Or Fax: 630-221-2332

2011 IFSEA Conference Scholarship Winners

L-R: Patti LeCrone, Vassellar (Val) Farmer

First I would like to say Thank You to you and the committee for selecting me as one of the Scholarship winners. The conference was Superfantabulous! I enjoyed every session I attended and only wish I could have cloned myself to attend the break-out sessions that were scheduled at the same time as the sessions I attended. I learned so much and received much clarification on situations and circumstances involving child support. I was able to attend the Civil Unions, NCP Services, Foster Care and the 7 Habits of Highly Effective People. Although 7 Habits of Highly Effective People was a reading requirement for my Human Services Degree, the info was very informative for individuals unfamiliar with Mr. Covey's book however it was a refresher for me.

All sessions were informative I will have to say the highlights of my experience were: 1) NCP Services which provided me with much needed information that I can share with my Internship professor, classmates and individuals I service as well as individuals I will make contact with while completing the community service portion of my internship. I was not aware of all of the services that NCP services provided. I believe the knowledge I obtain will allow me to better service NCPs in the Child Support Call Center; and 2) the Plenary Session II- Judges Panel. I learned a lot and had the opportunity to ask the judges questions for clarification on specific topics. Winning a gift was icing on my cake of blessings that I received by attending the conference. I am so happy and blessed that I was given the opportunity to attend the 2011 IFSEA Conference. I will definitely share all that I've learned with others. My granddaughter will also be grateful for the Easy-Bake oven I won, as that will be one of her Christmas gifts. Again the conference was awesome!

Thanks a million,

Vassellar (Val) Farmer
HFS – DCSS, Customer Service Call Center

First of all, thanks again for my scholarship award to the Conference this year. It had been quite a few years since I had attended, and I was not disappointed. Both of you did an outstanding job of coordinating this year's Conference and all went smoothly. The hotel accommodations were outstanding.

I truly enjoyed the seminars that I was able to attend, and heard from others on the ones that I was not able to attend. I feel I absorbed lots of beneficial information that I'll be able to use in my position.

One of my favorite things about attending the Conference, I must say, is the "down time", visiting and meeting people from all of the agencies that work together to better the child support system in our State. Placing faces with voices is always great, and meeting the people in person helps in my day to day job. I always leave with a very uplifting feeling about my job, knowing that there are so many individuals and agencies helping to make this system work smoothly.

Thanks again for a great Conference!

Patti LeCrone
Effingham Attorney General Office

Mary Mucci v Felipe Caraballo 11D450032

By Deborah Garrigus, Assistant State's Attorney, Cook County

On May 9th, 2012 this matter proceeded to hearing before the Honorable Daniel Miranda in Maywood, Illinois.

The parties are the parents of a 14year old girl, Joy, born on 2/18/1998. A parentage case was filed by Ms. Mucci on behalf of her minor daughter in early 2011. At that time, the NCP asked for DNA testing; the results were an inclusion. When the initial support order was entered, the NCP was not working; he had been injured at work and was collecting unemployment benefits. The court set the initial award of child support at 20% of his net income from the unemployment benefits. The Cook County State's Attorney also learned from the NCP that at the time the case came into court the NCP had also filed a workman's compensation case against him employer. The matter was continued for a little over a year for the status of employment and outcome of the worker's compensation case. On May 9th, 2012; the NCP was back at work for a different company earning $42 per hour as a plumber. His net income was $1319 per week. The CCSAO also learned that the NCP had settled the worker's compensation case and received $230,000 in April 2012.

The NCP was divorced with three younger children for whom he was paying $300 per week. The NCP was seeking a credit for the $300 per week; which the CCSAO was unwilling to credit as these were younger children. The matter proceeded to hearing on the issues of current support, retroactive support and medical. The CP was seeking support retroactive to the child's date of birth.

Called as an adverse witness pursuant to 2-1102 of the Code of Civil Procedure, the State was able to elicit that the NCP had received $230,000 from his worker's compensation case; that he had spent $110,000 of it to buy a three flat rental unit; and that he still had $90,000 of it left in his bank account. The NCP also testified he had seen the child off and on for the first five years of her life; had brought her gifts; but that he had lost contact with the child and her mother.

The CP testified that the NCP had brought the child some birthday and Christmas gifts for the first five years of her life; but that when she married she lost contact with the NCP as her husband was assisting her with the child. She subsequently was divorced in 2010 and sought to establish parentage and child support for Joy as her income had decreased.

The court indicated it was not inclined to grant retroactive support to date of birth but that it would consider some retroactive support. The State argued that since the NCP had received $230,000 from his worker's compensation case for injuries incurred in 2011 that the CP was entitled to 20% of that amount as retroactive support to at least then. The court considered the State's argument; asked the NPC how much of the award was from loss of income. The NCP responded that the entire $230,000 was lost income as other creditors had already been paid; the entire aware had been over $250,000. The court then ordered the NCP to pay $40,000 from that award to the CP within 30 days as retroactive support for the minor child.

The court did not credit the NCP with the $300 her was paying his ex-wife as that amount was for younger children. Current support for Ms. Mucci was set at $248 per week; the NCP was also ordered to pay medical.

The NCP subsequently hired an attorney who filed a motion asking the court to give the NCP more time to pay the $40,000. Even though he does have $90,000 left; he wants to use the bulk of it to remodel the three flat so he can rent out the three apartments. The matter is set for hearing on that issue on July 16th, 2012. The CCSAO has filed a response asking the court to deny that request.

ACTION TRANSMITTAL

AT-12-01

DATE: June 18, 2012

TO: State Agencies Administering Child Support Enforcement Plans under Title IV-D of the Social Security Act and Other Interested Individuals

SUBJECT: Turner v. Rogers Guidance

CONTENT:

I. Turner v. Rogers Overview

In June 2011, the United States Supreme Court decided the case of Turner v. Rogers.1 The question in Turner was whether the due process clause of the 14th Amendment of the U.S. Constitution requires states to provide legal counsel to an indigent person at a child support civil contempt hearing that could lead to incarceration in circumstances where the custodial parent or opposing party was not represented by legal counsel.2 The United States Supreme Court held that under those circumstances, the state does not necessarily need to provide counsel to an unrepresented noncustodial parent if the state has "in place alternative procedures that assure a fundamentally fair determination of the critical incarceration-related question, whether the supporting parent is able to comply with the court order." 3

The Supreme Court in Turner specifically left unresolved the question of what due process protections may be required where: (1) the other parent or the state is represented by an attorney; (2) the unpaid arrears are owed to the state under an assignment of child support rights; or, (3) the case is unusually complex. Accordingly, this guidance, directed to state child support agencies (and prosecuting attorneys funded with title IV-D funds), is based upon the due process considerations expressed in Turner. This AT is not designed to define for IV-D agencies what is constitutionally required when there is a IV-D attorney or representative participating in the civil contempt hearing that may lead to incarceration. However, using Turner as a guidepost, this AT urges state IV-D agencies to implement procedural safeguards when utilizing contempt procedures to enforce payment of child support and encourages IV-D agencies to individually screen cases prior to initiating or referring any case for civil contempt.

In 2003, Mr. Turner, the noncustodial parent, was ordered to pay $51.73 per week in child support. Over the course of several years, he was held in civil contempt for nonpayment on five occasions and was incarcerated on several occasions. In South Carolina, each month the family court clerk identifies child support cases in which the obligor has fallen more than five days behind and automatically initiates a civil contempt hearing.4 In 2008, under the facts giving rise to this lawsuit, Mr. Turner was held in civil contempt and served a 12-month jail term. At the hearing, Mr. Turner was not represented by counsel, nor was a IV-D attorney involved. In ordering that Mr. Turner be jailed, the lower court did not make any findings on the record regarding Mr. Turner's ability to pay the entire arrears amount, which the court set as the purge amount. Mr. Turner subsequently appealed alleging that his rights were violated because the due process clause of the 14th Amendment required the state to provide him with appointed counsel in a civil contempt hearing that could lead to incarceration.

In Turner, the United States Supreme Court held that a state does not need to automatically provide counsel to a defendant in a child support civil contempt proceeding, under the specific facts of the case, as long as the state provides adequate procedural safeguards. In Turner, neither the state nor the custodial parent were represented by legal counsel. The Turner Court indicated that adequate substitute procedural safeguards might include:

Providing notice to the noncustodial parent that "ability to pay" is a critical issue in the contempt proceeding;
Providing a form (or the equivalent) that can be used to elicit relevant financial information;
Providing an opportunity at the contempt hearing for the noncustodial parent to respond to statements and questions about his/her financial status (e.g., those triggered by his/her responses on the form declaring financial assets); and
Requiring an express finding by the court that the noncustodial parent has the ability to pay based upon the individual facts of the case.
The Turner Court concluded that, used together, these four procedures would have been sufficient to meet minimum due process requirements under the circumstances of the case where neither the custodial party nor the state was represented by counsel. The Court emphasized that these four procedures are not an exclusive list, and there may be other pathways to satisfying minimum due process requirements in similar proceedings. This remains an evolving and uncertain area of constitutional law, and states are encouraged to carefully review their own civil contempt procedures and consult with their attorneys to determine appropriate minimum due process protections warranted where incarceration is a possible outcome.

II. State Contempt Practices

Title IV-D agencies are bound to ensure that noncustodial parents receive due process protections.5 The federal government has an interest in ensuring that the constitutional principles articulated in Turner are carried out in the child support program, that child support case outcomes are just and comport with due process, and that enforcement proceedings are cost-effective and in the best interest of children. Accordingly, this guidance is directed to state and local IV-D agencies and prosecuting attorneys funded with IV-D matching funds.

Child support civil contempt practices, including the right to appointed counsel in certain proceedings, vary considerably from state to state.6 For example, some state child support agencies rarely, if ever, bring civil contempt actions, and many states provide for legal counsel in a civil contempt action when it can lead to incarceration. In light of Turner, states continue to have latitude in determining the precise manner in which the state implements due process safeguards in the conduct of contempt proceedings, including the respective roles of the IV-agency, prosecuting attorneys, and court. It should be noted, however, that when there is a IV-D attorney or state representative participating in the civil contempt proceeding, even the procedural safeguards identified in the Turner case may not be sufficient to satisfy due process requirements in all cases.

Using Turner as a guidepost may be useful, however, as states review their civil contempt procedures. OCSE strongly recommends that IV-D agencies consult their attorneys concerning their existing practices, including notices, in light of the Turner decision. States should consider whether the procedures employed in the state's contempt practice are fundamentally fair, and whether additional procedural safeguards should be implemented to reduce the risk of erroneous decision making with respect to the key question in the contempt proceeding, the noncustodial parent's ability to pay.

This guidance identifies minimum procedures that IV-D programs should consider in bringing child support civil contempt actions that can lead to incarceration. At the same time, this guidance is not intended to prohibit the appropriate use of contempt. The issue is not the use of contempt procedures per se, but contempt orders that do not reflect the true circumstances of the noncustodial parent, and if not satisfied, can lead to jail time. Some states routinely use show cause or contempt proceedings to elicit information from the noncustodial parent, and jail is not a typical outcome. Other states have redirected their enforcement resources away from civil contempt to practices that encourage voluntary compliance with child support orders, such as setting realistic orders through early intervention programs when the noncustodial parent falls behind.7 Civil contempt proceedings may also be used to direct certain actions by the obligor, such as obtaining or maintaining employment or participating in job search or other work

activities. Due process protections, where incarceration is not a possibility, may be quite different depending upon individual case circumstances.

III. Distinguishing Between Civil and Criminal Contempt

Contempt is commonly understood as conduct that intentionally defies a court order, and which may be punishable by a fine or incarceration. The Supreme Court recognized a distinction between civil contempt and criminal contempt, which have different purposes and require different constitutional protections. Criminal contempt is punitive in nature, designed to punish a party for disobeying a court order. Defendants in criminal contempt cases are entitled to the protections of the Sixth and Fourteenth Amendments, including the right to counsel.

A civil contempt proceeding, on the other hand, is remedial and is designed to bring about compliance with the court order – "'to coerc[e] the defendant to do' what a court had previously ordered him to do."8 Incarceration for civil contempt is conditional, and thus any sentence must include a purge clause under which the contemnor would be released upon compliance. As noted in Turner, under established Supreme Court principles, "[a] court may not impose punishment in a civil contempt proceeding when it is clearly established that the alleged contemnor is unable to comply with the terms of the order."9 Because once the civil contempt is purged the contemnor is free to go, it is often said that the contemnor "carr[ies] the keys of [his] prison in [his] own pockets."10

In the child support context, it is conceivable that either proceeding may be warranted, but ability to pay commonly "marks a dividing line between civil and criminal contempt."11 A finding of civil contempt for failure to pay support typically requires that an obligor has been subject to a support order, was able to comply with the order, and failed to do so. Although state statutes vary in setting forth the elements of civil contempt, many civil contempt statutes require that the underlying order was willfully, or intentionally, violated. The Turner Court also suggested that an express finding that the obligor has the actual and present ability to comply with the court's purge order may be required prior to sentencing the contemnor. In other words, the obligor "must hold the key to the jailhouse door," whether it is satisfying a purge payment, participating in an employment or substance abuse treatment program, or other required actions.

IV. Using Civil Contempt in Child Support Cases in Which Ability to Pay is at Issue

A. Screening Cases Before Referring or Initiating Civil Contempt Proceedings that Can Lead to Incarceration

Turner highlights the importance of carefully screening cases prior to initiating contempt proceedings. Child support agencies should re-examine state and local policies and practices regarding civil contempt to ensure that obligors are afforded sufficient due process protections and that initiation of civil contempt proceedings is appropriate. This includes an assessment of the screening mechanism used by child support agencies before referring a case for prosecution or initiating or filing a request for an order to show cause or other contempt action that can lead to incarceration. Whether or not the state provides appointed counsel in civil contempt proceedings, effective screening to identify appropriate contempt actions will save child support program costs, preserve scarce judicial resources, avoid unnecessary court hearings, and avoid the risk of constitutional violations.

All IV-D programs are urged to screen cases before referring, initiating, or litigating any civil contempt action for non-payment of support that could lead to incarceration, regardless of the role of the IV-D program in the court action. Generally, a "show cause" or other contempt action should only be initiated in these cases where there is evidence of the noncustodial parent's ability to comply with the underlying child support order and evidence that there is actual and present ability to pay the purge amount ordered.

Agency screening procedures should include the following elements:

(1) cases should be individually reviewed;

(2) the individual review should include an assessment as to whether there is sufficient evidence of the obligor's ability to pay the underlying child support order at the time a payment was due and the obligor's actual and present ability to comply with the requested remedy in a civil contempt proceeding, i.e., pay the purge order amount, or participate in an employment program, or other required activities.

1. Cases Should Be Individually Reviewed

IV-D agencies are encouraged to consider the obligor's individual circumstances. Therefore, a screening process, whether automated or manual, that identifies a case for contempt proceedings based solely upon the obligor's failure to pay (e.g. a threshold amount or period of arrears) may often result in the state's inability to show willfulness. State laws may vary as to whether it is the obligor's primary burden to "show cause" why he or she should not be held in contempt, or whether the state must first present a prima facie ("on its face) case sufficient to warrant a finding of contempt. While states may use automation to identify such obligors who are potentially eligible for a civil contempt case, wherever possible the IV-D agency should also make an inquiry into the actual and present circumstances of the individual obligor before initiating contempt.

2. The Individual Review Should Examine Actual and Present Ability to Comply

The child support agencies should only pursue a civil contempt action leading to incarceration when there is: 1) prima facie evidence, or a good-faith basis to believe, that the obligor willfully violated the underlying child support order, i.e. the obligor had the ability to pay the order, but did not do so; and 2) the obligor has an actual and present ability to comply with the purge order. The purge amount may be the full amount of child support arrears, or a lesser amount, or a schedule of payments the noncustodial parent is required to make in order to pay the full amount of arrears. The fact that there are overdue payments on an existing support order should not, standing alone, usually be considered sufficient to result in an order of incarceration. Screening for actual and present ability to pay is especially important when the underlying support order amount is based on imputed income.

To the extent possible, the screening should be based upon current data or information. For example, IV-D programs could use data from the National Directory of New Hires or the State Directory of New Hires to ascertain whether the individual has any record of employment and income and Financial Institution Data Match (FIDM) information to ascertain whether the individual has available funds in any accounts in a financial institution (other than SSI or other needs-based income). Additionally, custodial parents may provide information on income or assets or circumstantial evidence of the obligor's income and assets may be available from other sources.

If the screening process reveals that the obligor does not have an appropriate support order based upon the obligor's ability to pay, the IV-D agency should conduct a review and adjustment of the order or provide information to the obligor about requesting review and adjustment upon proper notice to the parties.

B. Notice Should Be Provided to the Obligor that "Ability to Pay" is a Critical Issue in the Contempt Proceeding

The four criteria identified in the Turner case, though not necessarily sufficient to satisfy due process requirements where the custodial parent is represented or the state IV-D agency is involved in the case, provide insight into minimal due process protections that should be observed. The four criteria, taken together, may be sufficient in most circumstances, but states may also have additional or other protections that guarantee due process. States may use the Turner decision as a guide in determining the appropriate

procedural safeguards necessary in IV-D civil contempt hearings. At a minimum, states should provide the noncustodial parent with specific notice about the hearing.

Notice that is sufficient to inform the obligor of the critical nature of the proceedings is the essential first criterion to assure due process. In Turner, the Supreme Court indicated that noncustodial parents charged with civil contempt must be given written notice that ability to pay will be a critical issue in the contempt proceeding. A IV-D agency should include this notice provision in its contempt process, for example, a statement that the court will consider evidence of inability to pay. Such a notice typically also includes an order to appear at a specific date, the amount of the claimed arrears, the dates during which the arrears accrued, and notice that a finding that the obligor willfully failed to pay support may lead to incarceration. The exact language should be clear, simple, and concise. Because this notice should be designed for obligors without legal representation, the notice should be written plainly and not use complicated legal language.

When providing the required notice, IV-D agencies may want to use this opportunity to provide information to, or elicit additional information from, the person charged with contempt. For example, they may enclose forms designed to obtain current financial information, and to inform the obligor that he should bring specific information to the civil contempt hearing or that he may have an opportunity to submit financial information in advance of the hearing. IV-D agencies may want to consider implementing a face-to-face meeting or conference with the obligor in advance of scheduling a contempt hearing. Additionally, IV-D agencies may wish to provide information about legal resources available to the noncustodial parent, such as self-help centers, legal services programs or pro bono attorneys, or legal representation projects that provide assistance to noncustodial parents in child support matters.

Some child support agencies may be required to use a contempt notice approved by the court, including a standardized Order to Show Cause notice applicable to all types of cases, not just child support cases or matters where ability to pay is at issue. In these situations, the IV-D agency could lend its expertise in developing new forms specifically for child support civil contempt cases or assist in developing an addendum with specific notice provisions applicable to child support contempt proceedings that can be attached to the notice. For example, following the Turner decision, a number of child support agencies have worked closely with their judiciary or with their state or local Access to Justice Commissions to develop new notice materials and other appropriate procedural safeguards for unrepresented litigants.12

Turner did not address the questions of whether notice of the proceedings should be provided to custodial parents or whether they should have an opportunity to participate in such proceedings. State practices vary on the level and type of notice provided to custodial parents (who are frequently not a party to the proceeding). Nevertheless, states may wish to inform custodial parents of the civil contempt proceeding. For example, the custodial parent may have information on the noncustodial parent's ability to pay. Some local IV-D offices have had success in routinely involving both parents in an informal conference early in the case and thereafter.

C. Judicial Procedures Should Provide an Opportunity to Be Heard on the Issue of Ability to Pay and Result in Express Court Findings

The remaining three procedural safeguards — eliciting financial information on ability to pay, providing the noncustodial parent an opportunity to be heard, and requiring express court findings about the noncustodial parent's ability to pay the purge amount — fall within the responsibility of the court in conducting a hearing in a child support civil contempt case. (States with administrative hearings may not have the capability to order incarceration, and do not routinely rely on civil contempt proceedings to enforce child support.) Additional or alternative procedures may be constitutionally required where one side is represented, where the case involves state debt, or where the case is unusually complex in order to ensure a fundamentally fair process.

To expedite these proceedings, it may be useful for the state agency to provide the obligor with a form, or the equivalent, that can be used to elicit relevant financial information. The purpose of this form is to assist the judicial officer in obtaining necessary information to make a determination about the noncustodial parent's actual and present ability to pay a purge amount, or possibly order other measures, such as participation in a work or substance abuse program, to avoid incarceration.

Providing a form is a relatively easy and efficient method of collecting information that can complement automated data available to the child support program. Although Turner did not state what might be required in the form, child support agencies are in a unique position to assist the judiciary in identifying the type of information that is most useful, readily obtained and relevant in the child support context. Courts are accustomed to eliciting information on financial status for purposes of determining whether a party is eligible for court fees to be waived or for appointed counsel, but this inquiry may not be as extensive, or appropriately tailored to assist the court in determining whether the obligor willfully failed to pay the underlying support order and the obligor's ability to pay the purge amount. A form may include, for example, questions about the noncustodial parent's expenses, employment information and specific questions about current income and assets. If the IV-D program uses forms in the civil contempt screening process, this information may be admissible at the contempt hearing. The form should be clear and easy for unrepresented obligors to understand and respond to.

In addition, basic due process requires that the alleged contemnor be provided an opportunity at the contempt hearing to respond to statements and questions about his or her financial status (e.g., those triggered by his/her responses on the form declaring financial assets). Having an opportunity to be heard is a foundation of due process. The civil contempt hearing should present an opportunity to fully develop a record. Research finds that noncustodial parents are more likely to comply with child support obligations when they perceive that the proceedings have been fair, they have been able to explain their circumstances and to be heard, and they have been treated respectfully.13 In light of Turner, at the conclusion of the hearing, the court should make an express finding that the noncustodial parent has the ability to pay the purge amount ordered. To best serve families, courts should consider requiring that this finding be written and tailored to the facts of the individual case before the court. A determination that the noncustodial parent has the actual and present ability to pay or otherwise comply with the purge order should be based upon the individual circumstances of the obligor. Thus, in calculating a purge amount, states are discouraged from setting standardized purge amounts — such as a fixed dollar amount, a fixed percentage of arrears, or a fixed number of monthly payments — unrelated to actual, individual ability to pay. A purge amount that the noncustodial parent is ordered to pay in order to avoid incarceration should take into consideration the actual earnings and income as well as the subsistence needs of the noncustodial parent. In addition, purge amounts should be based upon a written evidentiary finding that the noncustodial parent has the actual means to pay the amount from his or her current income or assets.

In some cases, the result of the contempt review may be a determination by the IV-D agency that the underlying order was inappropriately established or is no longer justifiable. If the noncustodial parent fails to respond to a support petition, some states have a practice of imputing income, which may not result in a support order based upon ability to pay and, ultimately, may not be effective in collecting child support. Research shows that support orders based on imputed income often go unpaid because they are set beyond the ability of parents to pay them. For example, research consistently shows that orders set above 15 to 20 percent of a noncustodial parent's income results in lower compliance than more accurate orders that are based upon actual ability to pay.14 There also is evidence that when orders are set too high, even partial compliance drops off.15 The result is high uncollectible arrears balances that can provide a disincentive for obligors to maintain employment in the regular economy. Inaccurate support orders also can help fuel resentment toward the child support system and a sense of injustice that can decrease willingness to comply with the law.16 The research supports the conclusion that accurate support orders that reflect a noncustodial parent's actual income are more likely to result in compliance with the order, make child support a more reliable source of income for children, and reduce uncollectible child support arrearages.17

V. Using Civil Contempt in Child Support Cases in Which Ability to Comply is at Issue

Some states or localities use the threat of contempt sanctions to direct noncustodial parents to participate in programs or activities that will improve their ability to reliably support their children, such as requiring participation in workforce programs, fatherhood programs, or substance abuse treatment programs. Research indicates that these kinds of programs and services can be successful in increasing child support payment and sustaining those increases for years.18 In this context, the use of contempt proceedings may be a procedural mechanism to order a noncustodial parent to participate in programs or take advantage of other services as an alternative to incarceration.

These are also considered to be civil contempt actions because the obligor has the ability to comply with the contempt order (e.g. the ability to participate in a "jobs not jail" program or services offered by a problem-solving court), and thus "holds the key to the jailhouse door." In this context, ability to comply with the order may depend upon access to services (e.g. transportation, scheduling) or screening for any relevant disabilities.

More information on programs and services as an alternative to incarceration in civil contempt proceedings is provided in separate policy guidance.19 These practices also include setting accurate orders based upon the noncustodial parent's actual ability to pay support, improving review and adjustment processes, developing debt management programs, and encouraging mediation and case conferencing to resolve child support issues. For example, establishing child support orders based on parents' ability to comply results in higher compliance and increased parental contact and communication with the child support agency. When parents are involved in setting orders and those orders are based on accurate information, they are more likely to avoid default orders and arrears, and thus less likely to be involved in civil contempt cases. Effective review and adjustment or modification of orders is also an important step in ensuring that noncustodial parents continue to comply with accurate orders based on actual ability to pay them.20 Alternative dispute resolution, debt management, employment programs, and self-help resources21 may also avoid the unnecessary build up of arrears and civil contempt actions.

Civil contempt that leads to incarceration is not, nor should it be, standard or routine child support practice. By implementing procedures to individually screen cases prior to initiating a civil contempt case and providing appropriate notice to alleged contemnors concerning the nature and purpose of the proceeding, child support programs will help ensure that inappropriate civil contempt cases will not be brought. By using Turner as a guidepost and urging the adoption of, at least, minimum safeguards in all such proceedings, this AT builds upon the innovations already incorporated into many child support programs over the past decade to limit the need for and use of civil contempt.

EFFECTIVE DATE: This action transmittal is effective immediately.

INQUIRIES: Please contact your ACF/OCSE Regional Program Manager if you have any questions.

Sincerely,

Vicki Turetsky
Commissioner
Office of Child Support Enforcement

INFORMATION MEMORANDUM

IM-12-01

DATE: June 18, 2012

TO: State Agencies Administering Child Support Enforcement Plans under Title IV-D of the Social Security Act and Other Interested Parties

SUBJECT: Alternatives to Incarceration

CONTENT:

I. Turner v. Rogers Suggests Changes to Civil Contempt Practice

In June 2011, the United States Supreme Court decided the case of Turner v. Rogers. In Turner, the Court held that the state did not necessarily need to provide counsel to an unrepresented noncustodial parent in a civil contempt proceeding where the custodial parent or opposing party is not represented by counsel and the state has "in place alternative procedures that assure a fundamentally fair determination of the critical incarceration-related question, whether the supporting parent is able to comply with the court order."1 While the decision left open a number of unresolved issues, the Court suggests that an express finding that the obligor has the actual and present ability to comply with the court's purge order may be required prior to sentencing the contemnor. In other words, the obligor "must hold the key to the jailhouse door," whether it is satisfying a purge payment, participating in an employment or substance abuse treatment program, or other required actions. OCSE recently released an Action Transmittal describing screening and other procedures IV-D programs should use in light of Turner.

States vary considerably in their use of civil contempt proceedings and the threat of incarceration to enforce child support. It is worth noting that about 70 percent of all child support payments are collected through income withholding and other automated enforcement procedures, rather than through civil contempt proceedings. In addition, many state child support programs have implemented proactive and early intervention practices to address the underlying reasons for unpaid arrears and avoid the need for civil contempt proceedings leading to jail time. These practices are discussed further in several OCSE fact sheets.2

The purpose of this IM is to describe promising and evidence-based practices to help states to increase reliable child support payments, improve access to justice for parents without attorneys, and reduce the need for jail time. Incarceration may indeed be appropriate in those cases where noncustodial parents have the means to support their children but willfully evade their parental responsibilities by hiding income and assets. However, several innovative strategies, described below, can reduce the need for routine civil contempt proceedings in cases involving low-income obligors and reduce costs to the public. Research suggests that such practices can actually improve compliance with child support orders, increasing both the amount of child support collected and the consistency of payment. These practices include setting accurate orders based upon the noncustodial parent's actual income, improving review and adjustment processes, developing debt management programs, and encouraging mediation and case conferencing to resolve issues that interfere with consistent child support payments.

II. Research

Research shows that most unpaid child support arrears are owed by noncustodial parents with reported incomes below $10,000 per year.3 There is no evidence that incarceration results more reliable child support payments that families can count on to make ends meet. Rather, incarceration can result in the accumulation of additional child support debt,4 and has the potential to reduce future earnings, erode a child's relationship with his or her parent, and negatively impact family and community stability.5 Recognizing these realities, many child support programs have developed innovative strategies to increase compliance and reduce the build-up of unpaid arrears by working proactively with both parents and addressing the underlying impediments to payment.

The Turner case provides the opportunity to assess whether the current use of civil contempt proceedings that result in one-time purge payments or incarceration is the most effective and cost-efficient use of public dollars to obtain steady, reliable support for children, given the financial and social costs of incarceration. Many states have already recognized that the routine use of incarceration to enforce child support is costly for state budgets, reduces the likelihood of noncustodial parents obtaining gainful employment in the future, encourages participation in the underground economy, and discourages noncustodial parents from cooperating with the child support agency.6

Research conducted by child support agencies and the Department of Health and Human Services shows that setting an accurate initial order improves the chances that child support payment will continue over time. Parents are more likely to stay current on their child support payments if the support obligation is in the range of 15 to 20 percent of earnings.7 Inappropriate orders based on imputed rather than actual income discourage compliance, lead to debt and arrearage that are unmanageable, and increase the possibility of contempt. As states have found, providing frequent review and adjustment presents another opportunity to avoid unnecessary incarceration. Other practices that assist parents in meeting their child support obligations include debt management, employment programs, alternative dispute resolution and case conferencing, and self-help judicial access resources. Each of these strategies can increase compliance, resulting in more payments of support to families.

III. Promising Practices

A. Establishing Support Orders Based Upon Ability to Pay8

Research: Many states have instituted new procedures to establish more realistic orders. Setting an income-based order means that parents pay their child support more regularly over time.9 Where child support orders are not based upon the noncustodial parent's actual ability to pay, children are less likely to receive support. High debt levels may interfere with parental involvement, increase family conflict, and reduce current support payments.10

Promising Practices: States have put in place many promising practices for setting realistic orders. These include, for example, using data sources to obtain accurate income information, limiting the use of imputed income, minimizing default orders, permitting self support reserves, developing appropriate guidelines for low-income parents, and providing enhanced case management through automated data analytics. Early intervention strategies can be used to engage parents in the child support process; early intervention initiatives, for example, include early conferences with both parents, introductory letters to explain the child support process, courtesy phone calls, and efforts to obtain agreed upon orders.11

In California, San Francisco County's Enhanced Parental Involvement Collaboration (EPIC) program used alternative outreach strategies (such as telephone calls) which resulted in more than 70 percent of these cases having noncustodial parent participation in the order establishment process.12 Similarly, San Diego County meets with both parents early in the process to increase participation and compliance. A Colorado project shows that it was feasible for workers to reach most noncustodial parents at early stages of case processing and that routine attempts to contact and communicate were extremely beneficial. Worker-initiated outreach was associated with a significant reduction in default orders and an increase in those established by stipulation (consent of both parents). And, workers were more likely to identify income using objective data sources and parent affidavits in cases where they had telephone and/or in-person contact with noncustodial parents.13

B. Review and Adjustment

Research: Another successful strategy to encourage compliance and reduce the need for contempt is to provide frequent review and adjustment, and opportunities for modification to keep orders accurate. Using automated income to review and modify child support orders reduces the need to impute income and leads to more accurate orders.14 Because income often changes significantly over time, it is important to have policies and practices to easily adjust orders to reflect changes in income.15 Assisting parents in obtaining modified orders when there has been a loss of income, or other change in circumstance, will lead to greater compliance and avoid the unnecessary build up of arrears.

Promising Practices: States have developed several innovations to improve the review, adjustment, and modification process including the following: using automated review and adjustment via electronic systems and technology; making online forms available for parents to request a modification; targeting newly unemployed noncustodial parents for a streamlined or expedited review; instituting procedures to receive a modification for a temporary period of time; and, developing outreach materials to encourage parents to seek modifications when they have experienced a significant change in circumstances.

Alaska's Electronic Modification system (ELMO) uses income information from sources linked electronically to the child support agency's automated child support system to review child support orders, and reviews all current child support order amounts annually. Each month it cycles through all orders established in prior years of the same month, conducts a pre-screening of basic case eligibility, searches for income information from automated sources, and it conducts a guidelines calculation. If that calculation results in at least a 15 percent difference in the existing order amount, ELMO targets that order for a manual review. ELMO reviews an average of 3,800 cases per month, and reviews all cases with orders issued in the same month.16 Puerto Rico's Department of Labor and Human Resource's Unit for Dislocated Workers and Employees sponsored a "Rapid Response Task Force" that went to employers who reported anticipated layoffs, plant closures, or other matters affecting employment status and provided information about the child support process, notifying non-custodial parents to communicate with child support staff so that income withholding orders can be cancelled, and to request a modification based upon a substantial change in circumstance. Project staff located in the child support agency provided proactive services, including order modification, for these under or unemployed non-custodial parents. In 2004, more than 3,150 employees facing imminent layoffs received child support services at over 100 on-site visits.17 North Dakota and Oregon both have projects that permit temporary modifications for newly unemployed parents.

C. Debt Compromise

Research: In FY 2010, child support arrears nationwide reached $110 billion. Research shows that most of these arrears are not collectable. One study estimated that only 40 percent of child support arrears owed in seven large states were likely to be collected in 10 years.18 A California study found even more challenging results – only 26 percent of California's arrears were found to be collectable.19 The primary reason child support arrears are so difficult to collect is because most of the arrears are owed by noncustodial parents who have little or no reported income. It is estimated that 70 percent of the child support arrears are owed by noncustodial parents with little or no reported income.20 Research also suggests that child support arrears might discourage noncustodial parents from working in the formal economy and paying child support.21

Because such a large proportion of arrears are largely uncollectable and may discourage payment, most state child support agencies have revisited their child support debt compromise policies and implemented promising practices. As of September 2011, the child support program in 24 states and the District of Columbia have implemented a debt compromise program. In 21 other states, the child support program can exercise the authority to compromise child support arrears on a case-by-case basis.

Debt compromise programs vary along many dimensions. Some only compromise interest; others compromise both principal and interest. Some target arrears-only cases; others do not restrict eligibility in this way. Some require that debtors owe a certain amount of arrears before being eligible; others do not. Some require a lump-sum payment upfront; others do not. Despite this variation, the ultimate goal of all of these programs is to reduce uncollectable debt and increase child support payments.22 This limits the need to use civil contempt as an enforcement mechanism.

Promising Practices: States child support agencies have developed innovative debt compromise programs which generally fall into one of three program types: settlement programs, incentive programs, or a hybrid approach. Each of these is discussed below.

The aim of settlement programs is to reduce uncollectable debt and collect some state-owed arrears. The primary eligibility criterion is that obligors owe uncollectable debt, which is measured in different ways by states. Settlement programs usually require a lump-sum payment upfront as part of a settlement. Thus, states are targeting obligors who are unable to pay the full amount of their debt, but they can pay some arrears upfront. Examples of states with settlement programs are California, Massachusetts and New Mexico.

California's Compromise of Arrears Program (COAP) is the largest debt compromise program in the country. It went statewide in 2004. During its first four years of statewide implementation, it collected over $12 million and settled over $89 million in arrears.23 The key eligibility criteria are: the noncustodial parent must owe the government at least $500 in arrears and he/she cannot pay off the entire arrears balance in three years, but he/she can pay off arrears owed to the family and the negotiated amount of state-owed arrears in three years. The child support program contacts the custodial parent if arrears are owed to the family and asks if the custodial parent is willing to compromise family-owed arrears. If the custodial parent does not agree to a compromise, the full amount of the family-owed arrears must be paid as part of the COAP agreement. The local child support program monitors the agreement. If the noncustodial parent

does not adhere to the terms of the agreement, the local child support program provides written notice to the noncustodial parent and files a rescission notice with the court.

Incentive programs aim at reducing uncollectable debt and increasing current support collections, with secondary goal of collecting state-owed arrears. These programs are restricted to noncustodial parents with current support orders and are often limited to low-income noncustodial parents. They require on-going current support payments in exchange for compromising state-owed debt. Lump-sum payments are not required. Examples of these programs are Maryland, Illinois, and Wisconsin.

Wisconsin conducted a pilot debt compromise program called Families Forward from 2005 to 2007 in Racine County, which was evaluated using experimental and non-experimental methods by the Institute for Research on Poverty.24 The goal of the pilot was to test whether a debt compromise program could increase child support payments to families. The design of the program was somewhat unique in that arrears where not forgiven in a lump sum after specific requirements were satisfied. Instead, Families Forward reduced state-owed debt by 50 cents for every dollar of current support paid. Participants were allowed to participate in the program for two years, regardless of their payment behavior as long as they did not go without paying current support for six consecutive months. This meant that more noncustodial parents were able to complete the program than in other programs that require compliance every month. In addition, interest was not assessed on arrears during program participation. Eligibility was limited to noncustodial parents who had owed at least $2,000 in arrears, had a recent history of nonpayment, and had a case in Racine County.

The evaluation of Families Forward found that the program was successful in reaching its goal of increasing child support payments. Participants paid on average $70 per month more than nonparticipants who had been selected using propensity score matching. In addition, the frequency of current support and arrears payments were higher among participants than nonparticipants.

A number of states have implemented a hybrid approach to debt compromise. The primary goal of these programs is to give child support programs flexibility to achieve either a settlement goal or an incentive goal. Examples of these programs are: Minnesota, Oregon, Colorado, and Vermont. Still other states have two programs, one that focuses on settling state-owed arrears and another that focuses on adjusting state-owed arrears in exchange for future child support payments (e.g. Connecticut and Massachusetts).

Minnesota has adopted a program called Strategies to Help Low-Income Families, which includes authority to address arrears accumulation. Counties develop internal guidelines for selecting cases and implementing arrears management strategies. In general, child support workers select cases with high arrears balances and factors that limit noncustodial parent ability to pay, such as prior incarceration. Agreements are developed that accept less than the full amount of permanently assigned public assistance arrears. Cases selected can be arrears-only or current support; they can involve lump sum payments or payment of current support. Debt compromise can also be undertaken without application or active participation of the noncustodial parent for such factors as periods of incarceration, birthing costs, or other fees that are no longer charged.

D. Employment Programs

Research: Approximately 25 percent of noncustodial parents have a limited ability to pay child support.25 Most of these fathers and their nonresident children live in poverty. Traditional child support enforcement tools, such as wage withholding, license revocation, and other administrative actions, are typically unsuccessful with this population, and can undermine employment retention. The underlying problem for some parents is that they face multiple employment barriers and cannot find or maintain a job.

To address these issues, states and communities have implemented work-oriented programs for unemployed noncustodial parents who are behind in their child support. As of September 2011, there were at least 28 states with at least 38 work-oriented programs for noncustodial parents in which a child support program was involved. These programs vary in many ways, but the ultimate goal is the same – increase the likelihood that noncustodial parents are working and paying child support. Successful workforce programs reduce the likelihood of civil contempt and are an appropriate alternative to incarceration.

Promising Practices: Child support agencies have pursued three program models – court-ordered programs, voluntary programs, and transitional jobs programs. The first two models have been evaluated using rigorous non-experimental methods and that research shows these programs can work – they can increase noncustodial parents' employment and child support payments. The third model is currently being tested by the U.S. Department of Labor.

Court-Ordered Programs. Many states operate "jobs not jail" programs, where unemployed noncustodial parents who are behind in their child support are court-ordered into a work-oriented program. The underlying premise of these programs is that ordering unemployed noncustodial parents into a work-oriented program is a better alternative to ordering jail time or a seek work order. Incarceration is more expensive than work-oriented programs and it reduces a person's ability to find work after they are released. "Seek work" orders do not help parents find work and they do not provide a mechanism for the court to monitor a parent's job search.

The key services offered by the court-ordered employment programs are employment services and case management. Although the primary employment service is job search assistance, most of these programs go beyond that if a client needs it. If necessary, they will develop job leads and help place individuals into jobs. They will also help with retention issues. Model case management typically consists of assessment, follow-up meetings with the client until employment is secured, monitoring after that to see that employment is retained, and keeping the court and child support program informed of progress.

Problem-solving courts are similar to "jobs not jail" programs in that they are court-ordered programs, but they tend to offer a continuum of services to address the needs of noncustodial parents who are behind in their child support rather than just employment programs.26 The court system is usually the lead agency in these programs and the court creates a specialized docket to manage the program. Although initial evidence of court-ordered employment programs yielded mixed results, more recent evidence suggests that these programs work – they increase employment and child support payments.27

Texas operates a court-ordered program, called NCP Choices, which has been evaluated using a non-experimental method called propensity score matching, which compares the outcomes of participants to non-participants who have similar characteristics. This evaluation showed that, relative to the non-participants with similar characteristics, the noncustodial parents who were ordered into NCP Choices paid their child support more often, paid more per month, and paid

more consistently over time. They were employed at higher rate, were less likely to file an unemployment claim, and custodial parents were less likely to receive TANF benefits in the several years after the program.28 More recently, Texas added a fatherhood curriculum, taught in a peer support format, and began operating the NCP Choices program at the time of order establishment. Both of these enhancements increased child support payments.29

Voluntary Programs. A different approach to offering employment programs for unemployed noncustodial parents is for child support programs to partner with a workforce agency or fatherhood program that offers employment services. Services are not court-ordered, and referrals are not usually from the family court, but rather are made directly by the child support agency as part of a partnership with the workforce or TANF agency or community colleges. If the family court does refer individuals to these programs, they are not court-ordered into the program. The services provided by these programs are similar to those provided by court-ordered programs. Both programs focus on workforce development services and case management. However, voluntary programs tend to provide more intensive employment services and are more likely to include a fatherhood component than court-ordered programs. While participation in the workforce program is voluntary, the child support enforcement component continues.

The role of the child support agency varies in these programs, from leading the program to a more supportive role. Child support agencies have taken a lead role in a voluntary program -- contracting with a workforce development firm, deciding who will be served and what services will be provided, managing the flow of participants, and ensuring the quality of services. Some child support agencies play a supportive role by verifying eligibility, providing one-on-one child support services, being part of a case management team, and conducting child support workshops.

New York operated a voluntary employment-oriented fatherhood program for several years as part of the New York Strengthening Families through Stronger Fathers Initiative. The authorizing legislation specifically said that the pilot programs had to target unemployed, low-income noncustodial parents in the child support program and they had to be voluntary and offer intensive employment services, other support services and parenting services. The New York Office of Temporary and Disability Assistance contracted with five agencies to conduct the pilot programs. These programs operated in four cities and served 3,700 people over a three year period.

An evaluation of the New York pilot employment programs showed that they were quite successful. They increased the participants' earnings by 22 percent and the participants' child support payments by 38 percent during the first year after enrollment.30 Other research examining the FATHER Project in Minnesota shows that noncustodial parents who participate in employment programs are more likely to find work and pay taxes than noncustodial parents who do not receive services.31

Transitional Jobs Programs. Recently, some programs have begun to offer transitional jobs to unemployed noncustodial parents. A transitional job is a temporary, paid work experience, which is paid for with public funds and intended to improve participants' employability in the unsubsidized labor market. This type of employment service is usually targeted to individuals who are considered hard-to-serve, such as long-term TANF recipients, ex-offenders, and disadvantaged noncustodial parents. Research shows that transitional jobs programs have successfully increased unsubsidized employment among TANF recipients and decreased recidivism among ex-offenders.32 The U.S. Department of Labor is currently undertaking a

national demonstration called the Enhanced Transitional Jobs Demonstration, which is providing transitional jobs to ex-offenders and noncustodial parents in seven sites.

E. Alternative Dispute Resolution and Case Conferencing

Research: "Alternative dispute resolution (ADR)" refers to a process by which both parents are involved in reaching a voluntary resolution of their case. Case conferencing is one form of ADR in which both parents meet with a trained child support staff member to reach an agreement on their child support case. Case conferencing is one innovative strategy used to encourage parents to agree upon a child support order.33 Mediation, which involves a neutral third-party, is another form of ADR, than can be useful to avoid incarceration and the unnecessary use of civil contempt.

Promising Practices: Many states have sought to reduce the adversarial nature of child support proceedings in order to positively engage both parents, reduce conflict between the parents which can be harmful to their children, increase compliance with support orders, and improve customer satisfaction. Pre-hearing conferences also provide an opportunity to address any domestic violence concerns that may be implicated through seeking incarceration. ADR can be used so that orders accurately reflect the parents' unique circumstances. Additional benefits of ADR include that parents understand the process, understand what they are supposed to do, and feel like they are heard and their questions are answered. For example, in the San Diego Early Intervention program, which includes case conferencing, the stipulation rate has risen dramatically, thanks in part to reaching out to the parents very early in the process, inviting parents to come into the child support office, and making more than one attempt to reach parents. States have found that where it can be done safely, mediation and case conferencing can be useful tools in resolving disputes without using civil contempt.

Texas was among the first to use case conferencing.34 Known as the Child Support Review Process (CSRP), parents are invited to meet with specially trained child support staff at the child support office. At the conference, parents are educated about their rights and responsibilities and attempt to work out an order. Parents are not required to agree on an order at the conference. Parents' active participation in case conferencing helps assure that the agreements accurately reflect the family's circumstances and financial situation. Case conferencing can be efficient and cost-effective. For example, in Texas, for FY 2010, almost 64,000 orders were obtained through CSRP and about 61,000 through the traditional court process. It took less than 20 days on average to resolve a case using case conferencing, compared to 100 days for cases in the court system. Texas also estimates that it cost slightly less than half as much to establish an order through CSRP as it does to establish an order through the courts. Additionally, cases handled through CSRP showed 17 percent higher compliance with child support payments than orders created in the court system. Preliminary data from Santa Cruz, California shows that the collection rate is higher in cases resolved via stipulation.35

Other states with case-conference models are Colorado, New Mexico, and Massachusetts. In addition, some tribal programs, such as the Navajo Nation, rely on conferencing models that reflect their tribal traditions.36 Moreover, the use of administrative procedures, rather than seeking judicial action, may reduce the need for civil contempt.

F. Access to Justice Innovations

Although actual representation by a lawyer is not constitutionally required in many circumstances, Turner highlighted the need for increased legal assistance and information, particularly for pro se (unrepresented) parents.37 Most custodial and noncustodial parents in the IV-D caseload are not represented by private attorneys and are attempting to navigate legal proceedings on a pro se basis. At the same time, providing information helps ensure that parents understand the child support process, know what to expect in a hearing, and provide accurate financial information. As states have experienced, this may lead to more accurate orders which will have greater compliance, and greater buy-in by parents, thus limiting the need for civil contempt proceedings.

There are a number of Access to Justice initiatives to assist pro se litigants. These include, for example, the use of court facilitators, self-help hotlines and centers, and online tools. Access to justice programs may be offered by child-support agencies, the courts, or the legal services community, including pro bono lawyers. A variety of pro se services are often offered together. For example, the Kentucky Child Support Enforcement, Jefferson County Attorney's Office and the Legal Aid Society developed online legal information in which parents are directed to off-site services, which includes online video tutorials on child support processes and access to ready-made forms and child support worksheet calculators.38 These initiatives, which often facilitate child support modifications, offer an appropriate alternative to incarceration and help reduce the need to use civil contempt.

Court Facilitators. Court facilitators may provide a range of services, such as offering legal information, advice, or providing parents the opportunity to negotiate to reach a resolution on their dispute. Each county in California has an Office of Family Law Facilitator, a cooperative arrangement between the Administrative Office of the Courts and the Department of Child Support Services. The attorney facilitators help demystify courtroom procedures and humanize the court system, and provide assistance in child support matters.39 In Washington, the Family Law Courthouse Facilitators, who are attorneys, provide basic services to pro se litigants, including referrals to legal and social services resources, assistance in calculating child support, assistance in completing court forms, explanation of legal terms, information on basic court procedures and logistics, and attendance at pro se hearings.40

Self-Help Hotlines and Centers. Self-help hotlines and centers provide brief legal assistance and information without providing actual legal representation. Self-help centers typically help unrepresented litigants fill out court forms.41 Frequently, attorneys are involved in providing legal information to parents. For example, in Texas, Legal Aid of Northwest Texas, in partnership with the Texas Office of the Attorney General, has a hotline staffed by attorneys who answer questions from parents about child support.42 Hotline attorneys aim to facilitate establishment of agreed-upon orders, reduce parental conflict and misunderstandings, ensure that orders are "right-sized," prevent default orders, and promote positive co-parenting. In Hennepin County, Minnesota, the self-help center offers a workshop for clients interested in filing a child support modification, and staff meet with clients after the class to answer questions about their situation.43

In Washington, DC, a collaboration between Bread for the City, Legal Aid Society of DC, and the DC Bar Pro Bono Program provides pro bono representation and legal information and advice to individuals with child support cases. Attorneys are placed in the courts, enabling them to provide same-day representation for parents, often resulting in the establishment or modification of appropriate orders. Parents are also able to use the court-run D.C. Family Court Self-Help Center to obtain legal information regarding child support cases.44

Online Tools. Many child support agencies have used online tools to provide information, such as materials explaining the child support process and/or how to modify a child support order. For example, Washington provides a "Quick Help Guide" that provides important child support information online.45 The Minnesota Department of Human Services, Child Support Enforcement Division has a project that targets simplification and streamlining of child support orders by changing policies, forms and procedures in order to expedite the review and modification process and applying technical supports to the pro se process. The project targets high-impact, low-cost improvements for families in less complicated circumstances (e.g., prison, public assistance and disability). The electronic pro se modification website successfully completed a 3-month pilot, and the grantees developed a modification informational brochure and guide book, now available online.46

In addition to information, many states have child support court forms available online. These online forms are court-approved legal documents that can be filled out, printed, and taken to the courthouse for filing. Court websites often contain links to these materials. More sophisticated automated online tools may assist the parent in actually filling out the court filing online, though a program much like Turbo Tax, guided by "A2J" interview software.47 New York already uses this software and South Carolina is developing it.48 The South Carolina modification process is being developed through the collaborative effort of the South Carolina Center for Fathers and Families, the South Carolina Department of Social Services Child Support Enforcement Division, South Carolina Court Administration, South Carolina Access to Justice Commission, South Carolina Bar Foundation, and South Carolina Legal Services.

Child support agencies can help assure a just child support processes by making sure that their processes, whether administrative or judicial, are simple and easy to follow. Additionally, by collaborating with their judiciary, state or local Access to Justice Commissions,49 and bar associations, child support agencies can play a critical role in developing materials and other appropriate procedural safeguards for unrepresented litigants.

G. Conclusion

Many child support programs have implemented innovative strategies to increase child support compliance and respond to the needs of the families in the child support system. These promising practices and access to justice initiatives provide effective strategies to improve child support outcomes and reduce the need for incarceration.

INQUIRIES: Please contact your ACF/OCSE Regional Program Manager if you have any questions.

Sincerely,

Vicki Turetsky
Commissioner
Office of Child Support Enforcement

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