**NONSUPPORT COURT: WHO WE ARE, WHAT WE DO, TIPS AND POINTERS**

**What is Non-support Court:**

First and foremost, our court is a IV-D Court or Program. What is a IV-D Court?

On January 4, 1975, President Gerald Ford signed into law the Social Security Amendments of 1974, which created a state-federal child support enforcement program under a new part D of title IV of the Social Security Act. This is now generally referred to as the "IV-D program." The purpose of this new partnership between the states and the federal government was directly tied to the existing federal program of cash assistance, or "welfare," under the then Title IV-A, "Assistance to Families with Dependent Children" (AFDC, now Family Independence Temporary Assistance Program or FITAP). Specifically, the new IV-D program was designed to accomplish two welfare system-related goals through the enforcement of child support: (1) recover for state and federal governments the costs of public assistance paid out to families ("cost recovery"); and (2) help families on welfare leave the public assistance rolls and help families not yet on welfare avoid having to turn to public assistance ("cost avoidance").

The 1974 Act stated the mission of the IV-D program as: enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available “. . . to all children (whether or not eligible for aid under [the AFDC/FITAP program], for whom such assistance is requested.”

Because the intent of Congress was that the IV-D program reduce expenditures for public assistance, **all applicants for, and recipients of,** AFDC had to accept IV-D services and cooperate with the state IV-D agency absent a finding of "good cause" for non-cooperation as a condition of eligibility for public assistance. In order to limit the growth of the public assistance rolls, Congress made IV-D services available to families that were not receiving federal cash assistance. These non-public assistance families could voluntarily apply for IV-D services; they could, also, close their IV-D cases at any time.

The founding legislation assigned specific roles to the state and federal governments in the operation of the new program. In order to receive federal AFDC funding, each state was to designate an agency to administer the IV-D child support enforcement in the state. It could be an entirely new agency or an existing agency. The state IV-D program had to be statewide, although it could be administered on the county/parish level.

In Louisiana, the designated state agency to provide IV-D services is the Department of Children and Family Services. Our statutory framework for IV-D services and programs can be found under LA R.S. 46:236.1 et seq.

**Civil versus Criminal Nonsupport:**

Our court system is divided into two distinct dockets: Civil Nonsupport and Criminal Nonsupport. How cases are allotted to each docket depends on several factors: has paternity been previously established, is there a pre-existing judgment of child support, are government benefits and services being provided to a child, etc.

Civil Nonsupport: Paternity and Enforcement of Previously Established Civil Orders

If a parent is seeking child support through DCFS and paternity has not been established in a prior court proceeding, or no presumption of paternity exists, then the case will be allotted to the Civil Nonsupport docket to obtain a civil judgment of paternity.

LA R.S. 9:396 (B) (1) provides:

The district attorney, in assisting the Department of Children and Family Services in establishing paternity as authorized by R.S. 46:236.1.1 et seq., may file a motion with a court of proper jurisdiction and venue prior to and without the necessity of filing any other legal proceeding. Upon ex parte motion of the district attorney and sworn affidavit of the party alleging specific facts tending to prove paternity and other facts necessary to establish the jurisdiction and venue of the court, the court shall issue an ex parte order directing the mother, her husband or former husband, child, and alleged father to appear at a certain date and time to submit to the collection of blood or tissue samples, or both, and shall direct that inherited characteristics in the samples, including but not limited to blood and tissue type, be determined by appropriate testing procedures. The order shall be personally served upon the alleged father. If any party refuses to submit to such tests, the court, in a subsequent civil action in which paternity is a relevant fact, may resolve the question of paternity against such party or enforce its order if the rights of others and the interests of justice so require.

While the request for paternity testing can be made via ex parte motion in a state proceeding, our DA’s office has opted to seeking paternity testing through a Rule to Show Cause. Presumptive fathers can agree to the testing without the need for a hearing and execute an Order for testing the day of their court fixing. If a father does not consent or does not appear, a short hearing is held to establish that the mother and presumed father were in a sexual relationship nine months prior to the birth of the child and an Order will be prepared for testing. If the test results reveal no probability of paternity, the case is dismissed as to that alleged father with a new suit filed against any other alleged father.

LA R.S. 46:236.15 (A) further allows the State to request an alleged father submit to paternity testing via certified mail. If the alleged father fails or refuses to submit to the testing request, the State will then have to institute a court proceeding. I find use of this administrative process to request testing via mail to be exceedingly rare in our jurisdiction.

If the test results reveal the alleged father to be the father, the State will move to establish child support and medical support if the child is receiving Medicaid.

If a presumed father fails to appear for testing despite proper notice, the state will seek “to resolve the question of paternity against such party” as provided in LA. R.S. Art. 9:396 (B)(1).

If a parent is seeking to enforce a preexisting child support or spousal support award, the state will amend into the preexisting civil suit and modify the payee of support to the State of Louisiana. Note that under LA R.S. 46:236.1.2, the State can only enforce spousal support awards. The State will not seek to have an award of spousal support established.

LA R.S. 46:236.2 provides for the redirection of support payments for preexisting child support judgments and states in part:

(3) If a court has ordered support payments to be made to an obligee, the department shall, on providing notice to the obligee and the obligor, direct the obligor or other payor to make support payments payable to the department and to transmit the payments to the state disbursement unit. The department shall file a copy of the notice with the court by which the order was issued or last registered. The redirection of payment to the department **is effective when mailed to the parties and no further action is necessary for the department to enforce the support order.** The notice shall include all of the following:

(a) A statement that the child's family is receiving support enforcement services.

(b) The name of the child and the obligee for whom support has been ordered by the court.

(c) The docket number and court by which support was ordered or last registered.

(d) Instructions for the payment of ordered support to the department.

(4) The notice **shall be sent by regular mail** to the obligor and the obligee at the last known address of each as listed in the state case registry. The obligor shall be required to submit payment, in accordance with Subparagraph (3)(d) of this Subsection, ten days after the date of the notice.

(5) On receipt of a copy of the notice, the clerk of court shall file the notice in the appropriate case record. Upon receipt of the notice, the court upon its own motion shall issue an order, as promulgated in the Rules for Louisiana District Courts, recognizing that the department upon mailing of the notice became payee of the support order. The order shall be granted ex parte without contradictory hearing. The order shall be served upon the obligor, the obligee, and the department.

Prior to a 2018 amendment to the law, the State was required to file an ex parte motion with a court order to amend the payee of the preexisting child support award. The order would direct the payor to remit payment of support to the State. In our jurisdiction, a Rule for contempt, arrearages, and/or modification was usually filed by the State contemporaneously with the ex parte motion to amend into the preexisting order.

However in 2018 DCFS was able to push through legislation that completely cut out the court system entirely from the process of amending into a preexisting support award and redirecting payment. Via notice sent to the payor and payee through regular mail, the State would amend in to the preexisting order, amend the payee to the State, and order a payor parent to begin paying the State. All of this was done without any court order.

There was immense push back to this legislation from Judges and the Judges Association, DA’s offices, and Hearing Officers and the Hearing Officer’s Association due to the lack of due process. The following year, legislation was quickly passed to add paragraph (5) above, which requires the court to issue an order recognizing the State as the new payee.

Our Civil Court docket also enforces foreign child support orders from other states and foreign jurisdictions pursuant the Uniform Interstate Family Support Act (UIFSA). Our UIFSA statutes can be found in the Children’s Code, specifically LA Ch.C. Art 1301.1 et seq. Under a UIFSA proceedings, support has normally been set in another jurisdiction, which typically maintains continuing exclusive jurisdiction regarding modification of support. Our court will receive a referral for enforcement of the foreign judgment as the payor of support under said order is domiciled in our jurisdiction. These proceedings are usually reserved for contempt findings and to determine arrears. It is important to note that any proceeding to modify the award will generally have to be filed in the jurisdiction that has exclusive continuing jurisdiction unless certain criteria are met, which are outlined below.

LA Ch.C. Art. 1306.11 provides in part:

A. If Article 1306.13 does not apply, upon petition a tribunal of this state may modify a child support order issued in another state which is registered in this state if, after notice and hearing, the tribunal finds that:

(1) The following requirements are met:

(a) Neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state.

(b) A petitioner who is a nonresident of this state seeks modification; and

(c) The respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) This state is the residence of the child, or a party who is an individual is subject to the personal jurisdiction of the tribunal of this state, and all of the parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction.

B. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

LA Ch.C. Art. 1306.13 states that if both parents are living in this State and the child is no longer living in the state or jurisdiction that issued the support award, the support award can be modified in our state if it is properly registered.

Criminal Nonsupport: Children on Government Benefits and Applications for Support Where Paternity Need Not Be Established

Our Criminal Nonsupport, or Family Court (FC), docket is an old holdover from the prior criminal docket wherein parents were criminally prosecuted for neglect and nonpayment of support under Title 14 of our criminal code. This court no longer conducts criminal prosecutions, but still maintains a quasi-criminal designation. The purpose for this appears to mainly be a cost saving measure as the State does not have to pay civil court costs for any proceedings conducted in this court.

It is important to note that proceedings in Criminal Nonsupport are not docketed as civil proceedings. If a parent contests an issue such as paternity or seeks to revoke an authentic act of acknowledgement, this cannot be addressed on the Criminal Nonsupport docket. A separate civil proceeding must be instituted. When such a proceeding is filed, we typically stay any pending matters on the Criminal Nonsupport docket until the issue is resolved.

Cases that are assigned to Criminal Nonsupport are as follows: 1) all cases where it is mandatory for the State to provide either child support or medical support services; 2) cases involving a parent seeking child support where paternity has been established in some fashion (i.e. presumption of paternity from marriage, a formal act of acknowledgment has been signed by the parents, etc.)

LA R.S. 46:236.1.2 lists the calls of cases that must be provided services by the State and states as follows:

A. The department is hereby authorized to develop and implement a program of family support in FITAP cases, Title IV-E Foster Care cases, Medicaid only cases, and any other category of cases to which the state is required by federal law or regulation to provide services, designed to do the following:

(1) Enforce, collect, and distribute the support obligation owed by any person to his child or children and to his spouse or former spouse with whom the child is living if a support obligation has been established with respect to such spouse or former spouse.

(2) Locate absent parents.

(3) Establish paternity.

(4) Obtain and modify family and child support orders.

(5) Obtain and modify medical support orders.

Custodial parents who are receiving FITAP benefits, parents whose children are in foster care whose caretakers are receiving Kinship care benefits, and single parents whose children are receiving Medicaid must receive services from the state. All cases that meet this criteria will be filed under the Criminal Nonsupport docket as long as paternity has previously been established. If paternity has not been established and the parent is receiving services through a FITAP case, paternity will be set in the Civil Nonsupport with the remainder of the case thereafter being referred to Criminal Nonsupport. The State can file a petition on behalf of the custodial parent to establish paternity, child support, and cash medical on behalf of parties that fall under the above categories without the need of a parent directly applying for child support services. For individuals receiving FITAP or Kinship benefits, services include setting child support and medical support. For parents of children receiving Medicaid, a parent can refuse services to set child support but must receive services to set medical support. If the parent refuses services mandated by law, the Department can seek termination of the government benefits.

Once a case has been set on one of the two dockets, the substantive law applied in either court is the same.

Who Can Request Services:

Aside from cases where services are mandatory, anyone seeking to enforce a preexisting support award (including collection of spousal support) or anyone seeking to establish child support for a child in their care can apply for services through DCFS. DCFS charges an application fee for services, which is presently $25.00.

An important note is that services are available to more than just the custodial parent. A noncustodial parent can seek modification and other relief through the State, but they can also directly apply for services though the state, such as collection of their support obligation.

LA R.S. 46:236.1.2 (B) (1) provides as follows:

In addition, as required by federal law, the department shall provide the above services to any individual including absent or noncustodial parents not otherwise eligible for such services as provided for in Subsection A of this Section upon receiving an application from such individual and upon receiving any fee which may be assessed by the department for the services, regardless of whether the individual has ever received public assistance and regardless of whether there is a delinquency.

In the matter of *Boudreaux v Boudreaux*, 180 So.3d 1245 (La 2015), our Supreme Court found that a noncustodial parent can apply for services to set, collect, and enforce child support awards by virtue of LA R.S. Art 46:236.1.2 (B).

In *Boudreaux*, the father applied for services through the State to pay his preexisting child support obligation directly to the State as the new payee, with support then being tendered to the mother. The father paid a $25.00 application fee, plus the 5% administrative fee assessed in addition to his full child support obligation. *Id*. at 1247.

The father later filed a Motion to Reduce Support, which was set before a Hearing Officer who heard IV-D cases for the 32nd JDC. The mother filed an exception of no cause of action arguing that DCFS could not provide services to the father and that she never sought services as the “payee” for support. The Hearing Officer and presiding court both dismissed the mother’s exception and reduced the father’s support obligation. *Id.* at 1248.

On appeal, the appellate court found that the father did not meet the requirements to receive services through the state and vacated the trial court ruling. The father filed for a writ with the Supreme Court, who granted review to determine the requirements to qualify for services through a IV-D program. *Id.*

While noting that historically the custodial parent applies for services as the payee, there is nothing in our statutory scheme that prevents the payor parent from applying for services. The Court noted that various amendments to the enabling statutes had broadened the scope of who could apply for services and found that the statute is clearly inclusive to “any individual including absent or noncustodial parents.” *Id.* at 1252.

Another important note from this case is that the Supreme Court rejected the mother’s argument that the father’s application for services deprived her of a voice in her support proceeding. The Court found that, in proceedings that do not involve a party receiving FITAP benefits, the only right assigned is the direct collection of support payments. The Court found that DCFS is an indispensable party once services are being provided, but neither parent has their rights taken away. Additionally the Court noted that the attorney for DCFS represents neither party under La. R.S. 46:236.1.7(B), which states that no attorney client relationship exists between the attorney for DCFS and any party receiving services. “Based on the foregoing, there is no positive statutory language that strips either parent of their rights to participate in support matters.” *Id*. at 1257.

The biggest take away from this is that anyone receiving services from the state, other than parents receiving services due to FITAP, are free to file their own motions to modify, for contempt, to object to Hearing Officer Recommendations, etc. However any motion/rule that is filed by a party will be prosecuted by the filing party. The State will still participate as an indispensable party, but the ADA will not argue the motion/rule on behalf of a party who filed the motion.

Dual Paternity:

When a mother applies for services, the state will file against the individual the mother identifies as the father of the child on her application for services. This can include the legal father of the child, or the biological father of the child even if the child is filiated to another individual.

LA R.S. 46:236.1.2 (D) (1) recognizes our peculiar concept of dual paternity and states as follows:

The department, except when it is not in the best interest of the child, may without the necessity of written assignment, subrogation, tutorship proceedings, or divorce proceedings take direct civil action, including actions to establish filiation against an alleged biological parent notwithstanding the existence of a legal presumption that another person is the parent of the child solely for the purpose of fulfilling its responsibility under this Section, in any court of competent jurisdiction, to obtain an order, judgment, or agreement of support against the responsible person in any case in which the department is providing services under this Subpart. The amount of such support shall be set only by order of the court or by the consent of the parties, but in either case the department shall be designated as payee.

Dual paternity arose in the in 1974 in the matter of *Warren v. Richard*, 296 So.2d 813 (LA 1974), wherein our Supreme Court recognized the right of a child to recover damages in then wrongful death of her biological father despite being the legitimate child of another man. The court noted several then recent United States Supreme Court decisions that stated illegitimate children could not be denied rights of action reserved for children borne of a marriage under the Equal Protection Clause of the 14th Amendment.

The concept of dual paternity was extended to child support proceedings a decade later by our Supreme Court in the matter of *Smith v. Cole*, 553 So.2d 847. Applying the concepts of dual paternity established in *Warren v. Richard*, the court held that a biological father has an obligation to support a child regardless of whether that child was considered the legal child of another man. The Court stated that since a legal father’s, “…failure to disavow paternity would not preclude defendant [the biological father] from bringing an avowal action, it would be unjust to construe the presumption as to provide the defendant [the biological father] with a safe harbor from child support obligations.” *Id.* at 854. By recognizing a biological tie, a biological father is obligated to provide support for his biological child. *Id.*

Our Supreme Court has further held that a legal father can seek to have a deviation in the calculation of their support obligation if there is a known biological father, who is an indispensable party to the support proceeding.

In the matter of the *State of Louisiana v. Lowrie*, 167 So.3d 573 (La.,2015), two minor children were born of the marriage of Mr. and Mrs. Lowrie. After the parties were divorced, Mr. Lowrie sought to disavow the minor children as he believed they were the children of another man, Mr. Wetzel. Genetic testing revealed that both children were not in fact the children of Mr. Lowrie. However Mr. Lowrie’s request to disavow the older two of the children was not timely, and he remained the legal father of that child. Id. at 576

Almost two years later, the State initiated an action for child support and medical support against Mr. Lowrie for the oldest child. Mr. Lowrie filed a “Petition for Third Party Claim” alleging that the biological father, Mr. Wetzel, was a necessary and indispensable party. Mr. Wetzel filed exceptions to said motion alleging no cause of action, no right of action, and vagueness. At trial, Mr. Lowrie proffered evidence that included paternity test results showing Mr. Wetzel to be the biological father of the child at issue, interrogatories wherein the mother admitted Mr. Wetzel was the father of both of the children born during her marriage to Mr. Lowrie, and that the mother was presently living with Mr. Wetzel. The Court subsequently dismissed Mr. Lowrie’s Third Party Claim. Id. at 567-577.

Our Supreme Court eventually granted a writ application and liberally construed Mr. Lowrie’s request for relief as a peremptory exception of nonjoinder of a party and a defense on the merits of a request to set child support against him. Id. at 578-579.

In a six to one decision, the Court reversed and found that Mr. Lowrie was entitled to raise the defense he should be entitled to a deviation from the child support guidelines taking into account the income of the biological father, Mr. Wetzel, if paternity could be established with that individual. They additionally found that Mr. Wetzel should be joined as a party to the child support action as complete relief could not be granted without his presence. Id. 586-590.

The Court stated that, “...it is well settled that the legal father presumption should not be extended beyond it’s normal sphere.” While the presumption of paternity protects children from the “stigma” of illegitimacy, it is not intended to shield a biological parent from their obligation to support their children. If Mr. Wetzel could be proven to be the biological father of the child at issue, he would have an obligation to contribute to the child’s support. Id.

While the Court made it quite clear that both biological and legal fathers in dual paternity situations need to be a part of the child support calculation, they did not explain how that was to be done.

Once the State Becomes Involved:

Once a parent has either applied for services, or is receiving government benefits that make services mandatory, what happens?

First, a parent will be assigned a case worker with DCFS. Cases are assigned to case workers alphabetically based upon the applying parent’s last name. Once the caseworker determines what services are to be provided, i.e. establish paternity, enforce a preexisting order, establishing support, they will make a referral to the DA’s Office. The DA’s Office will then file the appropriate pleading which be set on the appropriate docket.

All initial filings to establish paternity and child support are handled directly by the ADA assigned to the respective docket. Presently in the 15th JDC, the Lafayette Civil docket is assigned to ADA Desiree Dangerfield. The Lafayette Criminal Nonsupport docket is assigned to ADA Shane McCormick. The Vermilion and Acadia Parish Civil and Criminal Nonsupport dockets are prosecuted by ADA Shane Mouton.

In all matters where paternity needs to be established, a short hearing will be held if the alleged father does not consent to paternity testing or when the father was served to appear but failed to do so. The hearings on these matters are typically held at the end of the docket and are very short in nature. Once a prima facie case has been submitted establishing the parties had a sexual relationship nine months prior to the birth of the child, an order for testing will be signed. Both parties will also be served with a new court date to review the results of the testing. Child support will be set at the review hearing if the test results show the alleged father to in fact be the biological father of the child.

For all other initial determinations of child support, the parties, and their attorneys if they have retained counsel, will meet with the ADA and review the parties’ financial documents to determine the parties’ gross incomes. The ADA will usually have access to employment records provided by DCFS from the Louisiana Workforce Commission that will show quarterly breakdowns of any income reported to the State as taxable income which will aid them in determining a party’s income if a party has not brought pay stubs or other relevant income information.

If a party is obligated to pay support for any other children through a State proceeding, the ADA will have information on those cases provided to them by DCFS. Any prior obligations of child support will be included in the calculation as a deduction from the paying parties’ gross income.

Child support will then be set in accordance with LA R.S. Art. 9:315 et seq.

In addition to child support, the State will also move to establish “medical support” in all initial fixings. A traditional medical support order was a court order requiring one of the parents to provide medical insurance for the minor child. If private insurance is not available to either parent, then one of the parents will be ordered to provide insurance once it becomes available at a reasonable cost, which was defined by statute as premiums that do not exceed 5% of a parent’s gross income.

However 2018 legislation expanded definition of medical support.

LA R.S. 46:236.1.2 (L) provides as follows:

(1)(a) The department, when providing support enforcement services, shall pursue an order to require one or both parties to provide medical support for the child pursuant to R.S. 9:315.4. If private health insurance is not available to either parent at a reasonable cost at the time the support order is rendered or modified, the court shall order the party responsible for providing medical support to provide private health insurance as soon as it becomes available at a reasonable cost and is accessible to the minor child.

(b) The court may order the noncustodial parent to pay cash medical support when either:

(i) The child has no healthcare coverage.

(ii) The child is covered by private health insurance but there is a need for additional funds to cover the child's healthcare costs.

(c) Notwithstanding any provision to the contrary, the court shall order the noncustodial parent to pay cash medical support when the child is covered by public health insurance.

(2) When the court orders the noncustodial parent to provide cash medical support, it shall be owed until such time as private health insurance is provided by the party responsible for providing medical support.

(3) Cash medical support shall be set at an amount not to exceed three percent of the noncustodial parent's gross income. An award for cash medical support shall be separate from the child support order and shall not be included in the child support calculations.

(4) Cash medical support payments shall be collected by the department and distributed in accordance with the Code of Federal Regulations and the Louisiana Administrative Code.

(5) If a court orders a parent to pay cash medical support, it shall be in lieu of, and not in addition to, requiring the parent to also pay reimbursement for extraordinary medical expenses as set forth in R.S. 9:315.5.

If a child is receiving Medicaid, the State is required to set “cash medical support”, which can be set up to 3% of the noncustodial parent’s gross income. In our jurisdiction, we normally set cash medical at 1% of the noncustodial parent’s gross income. Other jurisdictions have chosen set fees, such as $25.00 per month.

If the child is receiving Medicaid, the custodial parent cannot refuse services to set and collect cash medical support. The State will make a referral to close Medicaid if a custodial parent refuses services to set medical support.

If a child is covered by both private insurance and Medicaid, cash medical support will still be set. However payment of cash medical will be suspended as long as private insurance is maintained. If private insurance lapses, the State will administratively request the noncustodial parent to begin paying the monthly cash medical support award.

Cash medical support is intended to offset the costs of Medicaid coverage for the minor child at issue and the sum owed is payable directly to the state. Those funds are not sent to the custodial parent when the child is receiving Medicaid.

Once a child is placed on private insurance, the State will administratively suspend the payment and collection of cash medical. However the Judgment will still reflect cash medical being owed until the judgment is modified.

If cash medical support is ordered, those payments are to be in lieu of the noncustodial parent paying their proportionate share of medical expenses as per LA R.S. 9:315.5.

Both the child support award and cash medical support award are subject to a 5% administrative fee, which is to fund the “expedited process” for establishment and enforcement of support awards. The “expedited process” is what you all love and know as Hearing Officers. See LA R.S. 46:236.5.

All payments are to be made to the State through cashier checks or money orders payable to the Centralized Collection Unit, whose address is:

Centralized Collection Unit
Post Office Box 260222
Baton Rouge, LA 70826

The payment must include the noncustodial parent’s name, address, Social Security Number, and case, or LASES, number.

Payments may also be made online via a bank account or credit card, but additional fees are charged for payments made through the online services.

A very important note regarding the District Attorney’s office: In all non-FITAP cases, the DA’s does not represent either party. They are the attorney in fact for DCFS only.

LA R.S. 46:236.1.7 (B) states:

Any attorney initiating legal proceedings pursuant to this Subpart and Titles IV-D and IV-A of the Social Security Act shall represent the state of Louisiana, Department of Children and Family Services exclusively. An attorney-client relationship shall not exist between the attorney and any applicant or recipient of child support enforcement services for and on behalf of a child or children, without regard to the name in which legal proceedings are initiated. In those cases in which the Department of Children and Family Services is providing child support services, the attorney representing the department shall not represent any party in matters involving custody or visitation. The provisions of this Subsection shall apply to a staff attorney in the child support enforcement section of the Department of Children and Family Services, district attorney, or contract attorney providing support services pursuant to Title IV-D.

Another very important detail is that once services have commenced, the State becomes an indispensable party.

LA R.S. 46:236.1.9 (C) was amended effective January 1, 2022 expanding the type proceedings in which the State is an indispensable party. Formerly the State was an indispensable party in matters involving the collection of child support and arrears.

LA R.S. 46:236.1.9 (C) states:

1. In any proceeding concerning paternity, a support obligation, or arrearages owed the department shall be an indispensable party when providing support enforcement services on behalf of a child involved in the proceeding.
2. A party shall not commence an action, file a pleading, or submit a written stipulation to the court without complying with Paragraph (3) of this Subsection, if the purpose or effect of the action, pleading, or stipulation is to accomplish any of the following:

(a) Establish, disavow, or contest paternity.

(b) Establish, modify, or terminate a support obligation.

(c) Change the court-ordered manner of payment of support.

(d) Enforce support or arrears due or owing.

1. (a)(i) When taking an action described in Paragraph (2) of this Subsection, a party shall certify in the initial pleading whether support enforcement services are being provided on behalf of a child who is a subject of the action, pleading, or stipulation.

(ii) If support enforcement services are being provided, the party shall have a copy of the pleading or stipulation served on the department.

(b) Any party who knows, or with the exercise of due diligence should know, that a child is receiving support enforcement services during the pendency of an action pursuant to Paragraph (2) of this Subsection shall notify the court and the plaintiff shall provide the department with a copy of any hearing notice pertaining to a pending proceeding.

(c) If notice is not given in accordance with this Subsection, the department shall not be bound by any decision, judgment, or stipulation rendered in an action described in Paragraph (2) of this Subsection.

1. “Support enforcement services” shall have the same meaning as provided in R.S. 46:236.1.1.

Formerly the State was an indispensable party in matters involving the collection of child support and arrears. Now in any cases where the State is providing “support enforcement services”, the State is an idispensable party to any subsequent action regarding paternity, establishment or modification of support, modification of the manner of payment, or enforcement of an a support award or arrears.

Support enforcement services is broad and does not have to be the state enforcing a child support award. This includes all matters where the State is collecting cash medical support, or has a medical support order in place ordering the noncustodial parent to provide medical insurance. It has now become very important to question any new clients if they have ever participated in a State child support proceeding even if the State is not collecting child support.

Once support has been set, the State can seek modification of support under LA R.S. 9:311(C) as follows:

C. For purposes of this Section, in cases where the Department of Children and Family Services is providing support enforcement services:

(1) There shall be a rebuttable presumption that a material change in circumstances exists when a strict application of the child support guidelines, Part I-A of this Chapter, would result in at least a twenty-five percent change in the existing child support award. A material change in circumstances does not exist under this Paragraph if the amount of the award was the result of the court's deviating from the guidelines pursuant to R.S. 9:315.1 and there has not been a material change in the circumstances which warranted the deviation.

(2) A court has discretion and authority to modify a child support obligation even when there is not a twenty-five percent variation between the current obligation and the guidelines when a party has proven a material change in circumstances that is substantial and continuing. Likewise, a trial court has discretion to deny a modification even when the twenty-five percent variation is present, based on a finding that applying the guidelines would not be in the best interest of the child or would be inequitable to the parties.

(3)(a) The department shall request a judicial review under any of the following conditions:

(i) If the best interest of the child so requires, the department shall request a judicial review upon request of either party or on the department's own initiative. If appropriate, the court may modify the amount of the existing child support award every three years if the existing award differs from the amount which would otherwise be awarded under the application of the child support guidelines.

(ii) Upon the request of either party or on the department's own initiative after an obligor's incarceration ends when the child support award has been suspended under R.S. 9:311.1. For the purpose of this Section, “incarceration” shall have the same meaning as provided in R.S. 9:311.1.

(iii) Upon the request of either party or on the department's own initiative

upon the incarceration of any party.

(b) A material change in circumstances shall not be required for the purpose of this Paragraph.

D. A material change in circumstance need not be shown for either of the following purposes:

(1) To modify a child support award to include a court-ordered award for medical support.

(2) To suspend or modify a child support award in accordance with R.S. 9:311.1.

E. If the court does not find good cause sufficient to justify an order to modify child support or the motion is dismissed prior to a hearing, it may order the mover to pay all court costs and reasonable attorney fees of the other party if the court determines the motion was frivolous.

F. The provisions of Subsection E of this Section shall not apply when the mover is a public entity providing support enforcement services as defined by R.S. 46:236.1.1.

When a party to a nonsupport proceedings believes that a material change in circumstances has occurred, they can contact their case worker. If one of the above conditions has been met, DCFS will make a referral to the DA’s Office who will file a motion to modify. The periodic three year review can be filed by the State without a request being made by a party.

Nothing precludes either party from filing their own request to modify support.

Suspension of Child Support:

If a payor is incarcerated, the State can also move to suspend a payor’s child support obligation under LA R.S. Art. 9:311.1.

LA R.S. 9:311.1 provides:

A. In accordance with the provisions of this Section, every child support order shall be suspended when the obligor is incarcerated for, or is sentenced to, with or without hard labor, one hundred eighty consecutive days or more.

B. As used in this Section:

(1) “Child support order” shall have the same meaning provided in Children's Code Article 1301.2.

(2) “Incarceration” means placement of an obligor in a county, parish, state or federal prison or jail, in which the obligor is not permitted to earn wages from employment outside the facility. “Incarceration” does not include probation or parole.

(3) “Support enforcement services” shall have the same meaning provided in R.S. 46:236.1.1.

(4) “Suspension” means the modification of a child support order to zero dollars during the period of an obligor's incarceration.

C. The Department of Public Safety and Corrections or the sheriff of any parish, as appropriate, shall notify the Department of Children and Family Services of any person who has been in their custody and may be subject to a child support order if either:

(1) The person is incarcerated for, or is sentenced to, with or without hard labor, one hundred eighty consecutive days or longer.

(2) The person who was the subject of notification under Paragraph (1) of this Subsection is scheduled to be released from incarceration. The timeframe for such notification under this Paragraph shall be determined by an interagency agreement between the Department of Children and Family Services and the Department of Public Safety and Corrections.

D. When the Department of Children and Family Services is providing support enforcement services, the department shall, upon receipt of notice in accordance with Subsection C of this Section, provide notice to the custodial party by regular mail.

E. (1) No more than fifteen days after receiving notice as provided in Paragraph (C)(1) of this Section, the department shall file an affidavit with the court that has jurisdiction over the order of child support.

(2) The suspension of the child support order shall begin upon the date that the department files the affidavit.

F. Nothing in this Section shall prevent either party from seeking a suspension or a modification of the child support order under this Section or any other provision of law.

G. (1) A child support order suspended in accordance with this Section shall resume by operation of law on the first day of the second full month after the obligor's release from incarceration.

(2) An order that suspends a child support order because of the obligor's incarceration shall contain a provision that the previous order will be reinstated on the first day of the second full month after the obligor's release from incarceration.

(3)(a) (i) If the obligor is released from incarceration while the child is a minor, the Department of Children and Family Services or either party shall petition the court prior to the first day of the second full month after the obligor's release from incarceration for a modification hearing to establish the terms of the previously suspended child support order. Unless the terms of the order of support have been otherwise modified, the suspended order of support shall resume at the same terms that existed before the suspension.

(ii) At the modification hearing, the court may continue the award beyond the termination date provided by R.S. 9:315.22. If the court extends the child support award, the amount of support shall be established using the child support guidelines. Any continuation of a child support award extended pursuant to this Subsection shall not exceed the amount of time the child support order was suspended.

(b) If the obligor is released from incarceration after the child has reached the age of majority, the custodial party or the child may petition the court to establish an award of support for the period of suspension within twenty-four months of the obligor's release from incarceration. The amount of support shall be established using the child support guidelines. Any child support award established pursuant to this Subsection shall not exceed the amount of time the child support order was suspended.

H. Nothing in this Section shall affect any past due support that has accrued before the effective date of the reduction.

I. The provisions of this Section shall not apply if a court does not have continuing exclusive jurisdiction to modify the child support order in accordance with Children's Code Article 1302.5.

The State can move to suspend support for an individual incarcerated for a period of more than 180 days without the need of a hearing. All of this is accomplished via a letter sent regular mail and an affidavit being filed into the suit record. Also note that “suspension” is in fact a modification down to zero for the term of incarceration. Once the incarcerated party has been released from incarceration, a hearing will be set to modify their support and to extend the time they pay support, which can include paying support past the date of majority.

Once child support has been set, the State will then enforce the order. All payments are made directly to the state, who then disburses payment to the custodial parent. If the noncustodial parent stops making payments, the State will use various methods to collect payments and/or sanction the noncustodial parent. The State can use the court system by filing a Rule for Contempt, but they can also use various administrative tools that bypass the court system.

Administrative Tools Available to the State:

One of the most common administrative tools is seizing federal tax refunds of noncustodial parents.

LA R.S. 46:236.1.2 (H) provides:

In addition to any other legal remedies provided by law, the department shall take all steps necessary to implement and utilize procedures for collection of past due support from federal tax refunds by sending notice to the federal secretary of the treasury that a person owes past due support which has been assigned to the department as a condition of eligibility or in a case where the department is providing services as provided in Subsection B of this Section. The department shall comply with all rules and regulations imposed by the secretary of the treasury and by the federal secretary of health and human services, including payment of any fee assessed by the secretary of the treasury for the cost of applying the offset procedure. As used in this Part, “past due support” means the amount of a delinquency, determined under a court order under state law for support and maintenance of a child, or of a child and the parent with whom the child is living. A court in a civil proceeding has jurisdiction to render a judgment for past due support which has accrued under a civil court order for support and also has limited jurisdiction to render a judgment for past due support which has accrued under any criminal or juvenile court order for support pursuant to an assignment of support rights during any period in which there was no outstanding civil court order for support and, effective August 13, 1981, such a support obligation is not released by a discharge in bankruptcy under Title 11, United States Code.

In order to seize a noncustodial parent’s tax return, there has to be a judgment adjudicating arrears. The State will send notice of the judgment to the secretary of the treasury office and intercept the refund. This can include a portion of joint tax refunds filed by the noncustodial parent and their new spouse, as well as portions of the earned income credit a noncustodial parent may receive for other children living in their household. See *Sorenson v. Secretary of Treasury of U.S.*, 475 U.S. 851 (U.S.,1986).

It is important to note that the state’s authority to seize a tax return to satisfy arrears is not absolute. In the matter of *State v. Thibodeaux*, 833 So.2d 358 (La.App. 3 Cir.,2002), the State and Mr. Thibodeaux entered into a stipulation wherein M. Thibodeaux would pay an additional $25.00 per month in addition to his child support obligation due to retroactive arrears from the date of the filing of a rule to modify support. Mr. Thibodeaux complied with the terms of the stipulation, paying both his child support and the additional sums owed towards arrears. Mr. Thibodeaux was informed by the state that they would be seizing his upcoming tax return to pay off the remaining arrears. Mr. Thibodeaux petitioned the court to uphold the stipulation as to the repayment of arrears and injunctive relief preventing the seizure of his tax return. The trial court granted said relief and the State subsequently appealed. *Id.* at 359-360.

On appeal, the 3rd Circuit agreed with the trial court and upheld the prior stipulation. The Court noted that Mr. Thibodeaux complied with all terms of the stipulation and had timely paid his support as ordered. While the state has various tools to collect support and past due support, the Court found that those tools all contemplate a failure to comply with the terms of a judgment of support, which was not the case in the present matter as support was being paid. Having found that all interested parties had negotiated the repayment of arrears in good faith, the Court upheld the trial court ruling and maintained the injunctive relief. *Id.* at 360

Presently the majority of our Judgments rendered in Nonsupport court defer to the State to administratively collect arrears from the noncustodial parent to maintain their ability to use collection tools such as the seizure of tax returns. The State will contact the noncustodial parent directly and advise the parent how much they should pay each month towards arrears without reducing that to a Judgment.

Another common administrative tool used by the State is the suspension of licenses. While there is statutory authority for the Court to order the suspension of driver’s licenses, professional licenses, and hunting and fishing licenses under LA R.S. Art. 9:315.30 et seq., the State has their own authority to administratively suspend licenses completely bypassing the court system.

LA R.S. 9:315.41 provides as follows:

A. The department may send by certified mail, return receipt requested, a notice of child support delinquency to an obligor who is not in compliance with an order of support informing the obligor of the department's intention to submit his name to the licensing authority for suspension of his license. If an obligor holds multiple licenses, the department may issue a single notice of its intention to submit multiple suspensions. When the obligor has one or more motor vehicles, personal watercraft, motorboats, sailboats, all-terrain vehicles or trailers registered in his name, the notice shall inform the obligor of the department's intention to suspend the registration of all of them as well. A non-obligor spouse who uses any such vehicle may so inform the department by notarized affidavit, and thereby retain the use of that vehicle and its license.

B. A notice of child support delinquency shall include all of the following:

(1) A summary of the obligor's right to file a written objection to the suspension of his license, including the time within which such objection must be filed and the address where the objection must be filed.

(2) A brief description of the administrative hearing and location of such hearing if the obligor timely files a written objection.

(3) The municipal address and telephone number of the department that issued the notice of child support delinquency.

(4) The docket number and court which issued the order of support.

(5) A statement of the amount of past-due support.

(6) A brief summary of what the obligor must do to come into compliance or to forestall the suspension.

Noncompliance with an order of support is defined as being ninety days in arrears in making full payments of support or failure to maintain health insurance if ordered by the court. See LA R.S. Art 9:315.40. The State will typically not take action against the noncustodial parent until they are behind in support in an amount equal to or exceeding three months’ worth of arrears pursuant to their own internal policies. The State will give some leeway to noncustodial parents making a good faith effort to pay support through partial payments.

There is no requirement for the state to adjudicate arrears in order to administratively suspend a license. If DCFS’s records indicate that a noncustodial parent is behind in an amount equal to or exceeding three months’ worth of payments of child support, they can seek administrative action against the noncustodial parent.

Upon receipt of the notice of suspension, the noncustodial parent has twenty (20) days to object in writing to request an administrative hearing to determine if they are in compliance with the court order of support.

LA R.S. 9:315.42 provides:

A. Within twenty days after receipt of the notice of child support delinquency, the obligor may file a written objection with the department requesting an administrative hearing to determine whether the obligor is in compliance with an order of support.

B. If the obligor does not timely file a written objection or enter into a written agreement with the department to make periodic payments on a support arrearage and he is not in compliance with an order of support, the department shall certify the obligor's noncompliance to the licensing authority for license suspension.

If a timely written objection is made and the noncustodial parent does not enter into a written agreement with the State regarding repayment of back owed child support, a “hearing” will be set by the State pursuant to the Administrative Procedure Act under LA R.S. Art. 49:950 et seq. The Hearing may be conducted over the phone or via other electronic means. The only issue that will be address at that hearing is whether the noncustodial parent is paying support as per the court order. See LA R.S. Art. 9:315.43.

The State will thereafter certify to the licensing authority that one of the following conditions have occurred: 1) that the noncustodial parent failed to timely object to the notice of suspension; 2) that the noncustodial parent filed a timely objection but was found to be in noncompliance with the child support award after an administrative hearing; 3) the State has received a certified copy of a final judgment making past due child support executory that specifically provides for suspension of a license; 4) the State has received a certified copy of a final judgment finding the noncustodial parent guilty of criminal neglect of a family under LA R.S. Art. 14:74. See LA R.S. 9:315.44

Once a licensing authority receives the certification of noncompliance, the licensing authority has thirty days to suspend the license issued in the name of the noncustodial parent.

LA R.S. Art 9:315.45 provides in part:

A. Within thirty days after receipt of a certification of noncompliance from the department, the licensing authority shall suspend the license of all licensees named therein and notify each licensee that his license has been suspended because of noncompliance with an order of support.

B. The licensing authority shall specify a date of suspension, which date shall be within thirty days from the licensing authority's receipt of the order of suspension and shall promptly issue a notice of suspension informing the licensee of all of the following:

(1) His license has been suspended by administrative order for noncompliance with an order of support, including a copy of the certification of nonsupport. However, the office of motor vehicles is not required to include a copy of the certification of nonsupport in its notice of suspension.

(2) The effective date of the suspension.

(3) To apply for reinstatement, the obligor must obtain a compliance release from the department.

(4) Any other information prescribed by the licensing authority.

Prior to a license being reinstated, the noncustodial parent must show that they are in compliance with order for support. First and foremost, the noncustodial parent must be paying ongoing child support as per the present order of the court. Unless there is a court order providing for period payment of sums credited to the back owed support or written agreement between the noncustodial parent and the State for payments toward the back owed support, the noncustodial must pay all past due support to be considered to be in compliance with the court order of support. Once the noncustodial parent has paid all past due support or is making payments towards the past due support pursuant to a court order or written agreement with the State, the noncustodial parent can request the State issue a “compliance release certificate.” See LA R.S. Art. 9:315.46.

Once a licensing authority receives the compliance release certificate, the suspension of said license will be lifted. The noncustodial parent may have to pay a reinstatement fee if required by the licensing authority. See LA R.S. Art. 9:315.47.

If a noncustodial parent’s license has been suspended through the administrative process, the court has limited authority to lift a suspension.

In the matter of *State vs Frank Payne*, Mr. Payne’s driver’s license had previously been suspended by the State. At a contempt hearing before the trial court, Mr. Payne stated to the court that he would not be able to maintain employment if his license remained suspended. Based upon this assertion, the court lifted the suspension on his license over the objection of the State. *State v. Frank Payne*, 140 So.3d 328, 330 (La.App. 5 Cir.,2014).

On appeal, the Court noted that, “…a person aggrieved by the action of a state agency must exhaust all administrative remedies before being entitled to judicial review.” The Court continued by stating that the Legislature specifically gave the state the authority to suspend and reinstate a license for an individual that was noncompliant with a child support award. Mr. Payne had failed and was continuing to fail to pay his child support, failed to object to the notice of suspension, and failed to request an administrative hearing. Absent proof of a parent availing themselves of the process laid out in LA R.S. Art. 9:315.40 et seq., the court did not have the authority to lift the suspension of Mr. Payne’s license. Id. at 331.

Another administrative tool at the disposal of the State is the “freeze and seize.” Under LA R.S. 46:236.15, which is curiously titled “Limited administrative authority for certain paternity and child support actions”, the State can intercept and freeze assets of a either the custodial or noncustodial parent. This can include bank accounts.

LA R.S. 46:236.15 (D) provides as follows:

(1) In cases in which there is a child support arrearage or child support overpayment made to a custodial parent, and after notice of such arrearage or overpayment has been made by certified or regular mail, personal service, or domiciliary service, the agency shall have the administrative authority to:

(a) Intercept, encumber, freeze, or seize periodic or lump sum payments from a state or local agency or any entity licensed or permitted by any state agency or board under Chapters 1, 4, 5, or 7 of Title 27 of the Louisiana Revised Statutes of 1950, including but not limited to unemployment compensation benefits, workers' compensation, and other benefits, judgments, settlements, lottery winnings, progressive slot machine annuities beginning with the second annuity payment, cash gaming winnings, assets held in financial institutions, and public and private retirement funds. However, child support overpayments are excluded from recovery from unemployment compensation benefits. The provisions of R.S. 13:3881 providing general exemptions from seizure are applicable to the provisions of this Subparagraph. After the agency encumbers, intercepts, or freezes any assets set out in this Subsection, it shall notify the payor or custodial parent that he has thirty days to advise the agency that he wishes to appeal the seizing of the assets. Upon receipt of such notice, the agency shall either release the property or schedule a hearing in accordance with the Administrative Procedure Act. Such hearing may be conducted telephonically or by means of any other such electronic media. The sole issue at the administrative hearing shall be whether the payor is in compliance with an order of support or whether the custodial parent owes an overpayment of support. If the payor or custodial parent fails to file an appeal within thirty days, the agency may institute proceedings through administrative process to seize or sell the property in accordance with state law.

(b) Impose liens, force sale of property, and distribute proceeds in accordance with state law.

(2) Nothing in this Subsection shall grant administrative authority to the agency to place a lien, privilege, or legal mortgage on any licensed or titled motor vehicle.

The State can use this seizure mechanism to recoup past due support, but also overpayments of support. Pursuant to LA R.S. Art. 46:236.1.4, financial institutions are required to provide information including names, social security numbers, balance information, etc to the State. Caseworkers for the State can access this information from their online databases in real time in court.

Much like a suspension of a license, a parent can object to the seizure and request an administrative hearing. Failure to object will result in the asset being seized and or sold.

In our region, the State will typically only send notice via regular mail prior to seizing a bank account held in the name of a noncustodial parent.

The State may further bring a contempt action for a parent for failing to pay support. Pursuant to LA R.S. Art. 46:236.6, any Rule for Contempt filed by the State must inform the noncustodial parent that his ability to pay will “…be a critical issue in the contempt proceeding.

LA R.S. Art. 46:236.6 further provides the following:

(A)(4) The court may find a defendant in contempt if the court expressly finds that the defendant is in arrears, had knowledge of the child support order, and any of the following apply:

(a) The court is satisfied that the defendant had the capacity to pay out of currently available resources all or some portion of the amount due under the support order.

(b) The court is satisfied that by the exercise of diligence the defendant could have obtained the capacity to pay all or some portion of the amount due under the support order and that the defendant failed or refused to do so.

If a noncustodial parent is found to be in contempt of court, the contempt is deemed a construction contempt and the parent may be punished as follows under LA R.S. Art. 9:236.6 (B) as follows:

(1) For a finding of contempt of court, the court shall impose a sentence of imprisonment for not more than ninety days or a fine of not more than five hundred dollars, or both. At the discretion of the court, the sentence may be suspended upon payment of all of the following:

(a) The amount of the order for unpaid support.

(b) The total amount of unpaid support accruing since the date of the order.

(c) The amount of all attendant court costs.

Our DA’s office almost universally requests a ninety (90) day sentence for anyone found in contempt of court. The sentence is suspended based upon the noncustodial parent paying their ongoing support as ordered. An imposition hearing will typically be set three months later to determine if they have been paying support as ordered. If the noncustodial parent has not been paying as ordered, the State will request that the sentence be imposed.

As per LA R.S. Art. 9:236.6 (B)(3), the noncustodial parent may purge himself of the contempt and jail sentence by paying a set amount towards the arrears. Our DA’s office will typically set the purge amount at one half of the total arrears owed.

If the sentence is imposed, our court will additionally set a smaller sum, typically 20-25% of the total arrears, which will qualify the noncustodial parent to serve their sentence through work release, home detention, or any other programs offered by the Sheriff Department and/or Louisiana Home Detention if that sum is paid.

LA R.S. Art. 9:236.6 (B)(4) states that a noncustodial parent’s incarceration is a defense to a finding of contempt, but only for the time periods of their actual incarceration.

LA R.S. Art. 9:236.6 (E) states that termination of a support order that is collected through a IV-D Court does not halt the State’s ability to collect any past due support or arrearage owed under the terminated support order or to punish any person for a failure to comply with, or to pay any support as ordered in, a terminated court order.

Typically the State will not make a referral for contempt unless the noncustodial parent has not paid support for three months, or they are in arrears in support in an amount equal to three months’ worth of missed payments. The State will additionally seek to use one of their administrative tools, such as suspension of licensure, prior to making a referral to the DA’s office to file a contempt proceeding.

It is important that the issue of ability to pay is addressed by the court to maintain due process.

In order to ensure Due Process, the court must make an inquiry as to the defendant’s ability to pay. Further, there must be an express finding that the defendant has or had the ability to pay support. 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. Once a civil contemnor complies with the underlying order, he is purged of the contempt and is free. See *Turner v Rogers*, 564 U.S. 431, (U.S.S.C., 2011).

Additionally: In regards to the request for contempt for failure to pay child support, it must be shown that the payor willfully failed to make payments as required by the Judgment of the Court. The fact that a payor made no payments, in and of itself, is not proof of contempt. *Lutke v Lutke*, 750 So.2d 512, 518 (La.App. 2 Cir. 2/1/2000).

The Court must consider whether the payor had the ability to make any payments. The court must further consider the efforts made by the payor to obtain employment, efforts to make any payment of support, whether a party sought to reduce their obligation, etc. in making a determination of contempt. *Id*.