



OCSE Final Rule: A Lone Star Perspective

Mara Friesen

Office of the Attorney General of Texas
Deputy Attorney General for Child Support (IV-D Director)

Anchorage, Alaska
September 26-28, 2017

Flexibility, Efficiency & Modernization in Child Support Enforcement Programs

“The Final Rule”

- set accurate child support obligations based on the noncustodial parents’ ability to pay;
- increase consistent, on-time payments to families;
- move nonpaying cases to paying status;
- increase the number of noncustodial parents supporting their children;
- improve child support collection rates;
- reduce the accumulation of unpaid and uncollectible child support arrearages; and
- incorporate technological advances and evidence-based standards that support good customer service and cost-effective management practices.



Texas CSD Strategic Plan



Goal 2: Establish, modify, and enforce financial and medical support for children.

- Strategy 6: Increase collections.
 - Close the gap between start date of order and first payment received.
 - Develop agile processes for modifications.
 - Right-size orders.
 - Increase early intervention and monitoring efforts.
 - Enhance case management strategies.
 - Develop new enforcement tools.
 - Increase customer payment options.

CHILD SUPPORT DIVISION



STRATEGIC PLAN FY2016-2020

Final Rule Highlights

Texas focused on 3 major concepts:

- Child Support Guidelines & “Right-sized” Orders
- Enforcement Assessment & Remedy Selection
- Case Closure



Texas Child Support Guidelines

- % of the obligor's net resources
- Flexibility through statutory variances
- Minimum wage presumption



Wage and Salary

Wage and salary presumptions:

- Actual evidence of income
- Minimum wage presumption
- Incarcerated obligor – \$0.00 (if incarcerated over 90 days)



Texas Statutes



TFC §154.063. PARTY TO FURNISH INFORMATION.

The court shall require a party to:

- (1) furnish information sufficient to accurately identify that party's net resources and ability to pay child support; and
- (2) produce copies of income tax returns for the past two years, a financial statement, and current pay stubs.

Texas Statutes



TFC §154.068. WAGE AND SALARY PRESUMPTION.

In the absence of evidence of a party's resources, as defined by Section [154.062](#)(b), the court shall presume that the party has income equal to the federal minimum wage for a 40-hour week to which the support guidelines may be applied.

Texas Statutes



TFC §154.125. APPLICATION OF GUIDELINES TO NET RESOURCES.

- 1 child 20% of Obligor's Net Resources
- 2 children 25% of Obligor's Net Resources
- 3 children 30% of Obligor's Net Resources
- 4 children 35% of Obligor's Net Resources
- 5 children 40% of Obligor's Net Resources
- 6+ children Not less than the amount for 5 children

Texas Statutes



TFC §154.129. ALTERNATIVE METHOD OF COMPUTING SUPPORT FOR CHILDREN IN MORE THAN ONE HOUSEHOLD.

		1	2	3	4	5	6	7
Number of other children for whom the obligor has a duty of support	0	20.00	25.00	30.00	35.00	40.00	40.00	40.00
	1	17.50	22.50	27.38	32.20	37.33	37.71	38.00
	2	16.00	20.63	25.20	30.33	35.43	36.00	36.44
	3	14.75	19.00	24.00	29.00	34.00	34.67	35.20
	4	13.60	18.33	23.14	28.00	32.89	33.60	34.18
	5	13.33	17.86	22.50	27.22	32.00	32.73	33.33
	6	13.14	17.50	22.00	26.60	31.27	32.00	32.62
	7	13.00	17.22	21.60	26.09	30.67	31.38	32.00

Texas Statutes



TFC §154.122. APPLICATION OF GUIDELINES REBUTTABLY PRESUMED IN BEST INTEREST OF CHILD

- (a) The amount of a periodic child support payment established by the child support guidelines in effect in this state at the time of the hearing is presumed to be reasonable, and an order of support conforming to the guidelines is presumed to be in the best interest of the child.
- (b) A court may determine that the application of the guidelines would be unjust or inappropriate under the circumstances.

TFC § 154.123. ADDITIONAL FACTORS FOR COURT TO CONSIDER

(a) The court may order periodic child support payments in an amount other than that established by the guidelines if the evidence rebuts the presumption that application of the guidelines is in the best interest of the child and justifies a variance from the guidelines.

(b) In determining whether application of the guidelines would be unjust or inappropriate under the circumstances, the court shall consider evidence of all relevant factors, including:

- (1) the age and needs of the child;
- [\(2\) the ability of the parents to contribute to the support of the child;](#)
- (3) any financial resources available for the support of the child;
- (4) the amount of time of possession of and access to a child;
- (5) the amount of the obligee's net resources, including the earning potential of the obligee if the actual income of the obligee is significantly less than what the obligee could earn because the obligee is intentionally unemployed or underemployed and including an increase or decrease in the income of the obligee or income that may be attributed to the property and assets of the obligee;
- (6) child care expenses incurred by either party in order to maintain gainful employment;
- (7) whether either party has the managing conservatorship or actual physical custody of another child;
- (8) the amount of alimony or spousal maintenance actually and currently being paid or received by a party;
- (9) the expenses for a son or daughter for education beyond secondary school;
- (10) whether the obligor or obligee has an automobile, housing, or other benefits furnished by his or her employer, another person, or a business entity;
- (11) the amount of other deductions from the wage or salary income and from other compensation for personal services of the parties;
- (12) provision for health care insurance and payment of uninsured medical expenses;
- [\(13\) special or extraordinary educational, health care, or other expenses of the parties or of the child;](#)
- (14) the cost of travel in order to exercise possession of and access to a child;
- (15) positive or negative cash flow from any real and personal property and assets, including a business and investments;
- (16) debts or debt service assumed by either party; and
- [\(17\) any other reason consistent with the best interest of the child, taking into consideration the circumstances of the parents.](#)

Texas Statutes

TFC § 154.124. AGREEMENT CONCERNING SUPPORT

(a) To promote the amicable settlement of disputes between the parties to a suit, the parties may enter into a written agreement containing provisions for support of the child and for modification of the agreement, including variations from the child support guidelines provided by Subchapter C.



TFC §154.130. FINDINGS IN CHILD SUPPORT ORDER

- a) Without regard to Rules 296 through 299, Texas Rules of Civil Procedure, in rendering an order of child support, the court shall make the findings required by Subsection (b) if:
1. a party files a written request with the court not later than 10 days after the date of the hearing;
 2. a party makes an oral request in open court during the hearing; or
 3. the amount of child support ordered by the court varies from the amount computed by applying the percentage guidelines under Section 154.125 or 154.129, as applicable.
- b) If findings are required by this section, the court shall state whether the application of the guidelines would be unjust or inappropriate and shall state the following in the child support order:
1. the net resources of the obligor per month are \$_____;
 2. the net resources of the obligee per month are \$_____;
 3. the percentage applied to the obligor's net resources for child support is _____%; and
 4. if applicable, the specific reasons that the amount of child support per month ordered by the court varies from the amount computed by applying the percentage guidelines under Section 154.125 or 154.129, as applicable."

Texas CSD's Order Findings Page

CHILD SUPPORT GUIDELINE FINDINGS

The Court FINDS, pursuant to Texas Family Code § 154.130:

- (1) the monthly net resources of the OBLIGOR per month are \$ _____;
- (2) the monthly net resources of the OBLIGEE per month are \$ _____;
- (3) the percentage applied to the OBLIGOR'S net resources for child support by the actual order rendered by the Court is _____ %;
- (4) the amount of child support if the percentage guidelines are applied to the first \$6,000 of the OBLIGOR'S net resources is \$ _____;

(5) if applicable, the specific reasons that the amount of child support per month ordered by the court varies from the amount stated in Subdivision (4) are:

☐ the Court ordered OBLIGOR to pay an additional \$ _____ per month current child support because OBLIGEE is ordered to provide health insurance;

☐ the Court subtracted benefits of \$ _____ per _____ paid to or for the child as a result of the OBLIGOR'S disability;

☐ *other*



Child Support Review Process (CSRP)



FAMILY CODE

TITLE 5. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

SUBTITLE D. ADMINISTRATIVE SERVICES

CHAPTER 233. CHILD SUPPORT REVIEW PROCESS TO ESTABLISH OR ENFORCE SUPPORT OBLIGATIONS

§ 233.001. PURPOSE.

(a) The purpose of the procedures specified in the child support review process authorized by this chapter is to [enable the Title IV-D agency to take expedited administrative actions](#) to establish, [modify](#), and enforce child support, medical support, and dental support obligations, to determine parentage, or to take any other action authorized or required under Part D, Title IV, of the federal Social Security Act (42 U.S.C. Section 651 et seq.), and Chapter [231](#).

(b) A child support review order issued under this chapter and confirmed by a court constitutes an order of the court and is enforceable by any means available for the enforcement of child support obligations under this code, including withholding income, filing a child support lien, and suspending a license under Chapter [232](#).

[§ 233.002. AGREEMENTS ENCOURAGED.](#) To the extent permitted by this chapter, the Title IV-D agency shall encourage agreement of the parties.

Modify! Modify! Modify!

THE ATTORNEY GENERAL OF TEXAS

Ken Paxton



Search

[HOME](#) [CONTACT US](#) [ESPAÑOL](#)

[ABOUT KEN PAXTON](#) [CHILD SUPPORT](#) [CONSUMER PROTECTION](#) [CRIME VICTIMS](#) [OPEN GOVERNMENT](#) [OPINIONS](#) [NEWS](#) [AROUND THE AGENCY](#)

[CHILD SUPPORT](#) / [PARENTS AND GUARDIANS](#) / [SURVIVING AN ECONOMIC DOWNTURN](#)

CHILD SUPPORT INTERACTIVE

Parents and Guardians

Resources for Single Parents

Surviving an Economic Downturn

[Surviving an Economic Downturn 1](#)

[Surviving an Economic Downturn-cp](#)

[Surviving an Economic Downturn 1 ncp](#)

[Surviving an Economic Downturn 2 cp](#)

Surviving an Economic Downturn

Information for Parents Who Pay or Need Child Support

Many families are feeling the pinch of the slumping economy.

- Noncustodial parents who have seen their earnings decrease because of lay-offs or a reduction in wages may be struggling to pay child support.
- Custodial parents who may have been making ends meet on their own may now need the extra help that child support can provide.
- A child support order that was established three or more years ago may need to be modified because a family's circumstances have changed substantially.

The Child Support Division of the Office of the Attorney General establishes, enforces, and modifies existing child support orders when needed.

Read our [step by step guide](#) to find out how your child support order may be modified through our office.

Texas Statutes



TFC §105.006. CONTENTS OF FINAL ORDER.

(a) A final order, other than in a proceeding under Chapter [161](#) or [162](#), must contain:

(e-2) An order in a suit that orders child support must contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"THE COURT MAY MODIFY THIS ORDER THAT PROVIDES FOR THE SUPPORT OF A CHILD, IF:

(1) THE CIRCUMSTANCES OF THE CHILD OR A PERSON AFFECTED BY THE ORDER HAVE MATERIALLY AND SUBSTANTIALLY CHANGED; OR

(2) IT HAS BEEN THREE YEARS SINCE THE ORDER WAS RENDERED OR LAST MODIFIED AND THE MONTHLY AMOUNT OF THE CHILD SUPPORT AWARD UNDER THE ORDER DIFFERS BY EITHER 20 PERCENT OR \$100 FROM THE AMOUNT THAT WOULD BE AWARDED IN ACCORDANCE WITH THE CHILD SUPPORT GUIDELINES."

Modify! Modify! Modify!



What's the Problem?



Question: Customers often request modifications. Is there a general rule that staff can apply when determining if an order qualifies for a modification? Is there a simple way to understand and explain to customers that their order may be eligible for a modification?

Answer: As a general rule, child support orders should reflect the noncustodial parent's actual income and overall reasonable availability of health insurance. Child support orders should be changed proactively to reflect current circumstances of the family (i.e. right-sized obligations). In many situations, this can be accomplished through a Child Support Review Process (CSRP) conference.

The first question should be, "Does the customer have an open child support case with the Office of the Attorney General?" If the answer is no, the customer should submit an application for services. If the answer is yes, the customer's order might be eligible for a modification.

Child support orders can be modified if **either of the following conditions** is true:

- It has been three or more years since the order was established or last modified **and** the monthly amount of the child support ordered differs by either 20 percent or \$100 from the amount that would be awarded according to child support guidelines.
- A material and substantial change in circumstance has occurred since the child support order was last set. Generally, this means that **at least one** of the following things has happened:
 - The income of the payor has either increased or decreased.
 - The payor has become legally responsible to support additional child(ren) since the last order.
 - The child(ren)'s medical insurance coverage has changed.
 - The child(ren)'s living arrangements have changed.

When reviewing a case for modification, retain supporting documentation via the virtual case file (VCF), and document and communicate to the parties the outcome of the review and the basis for the determination. Ensure parents understand that only a court order can modify the amount of child support in an order. Parents **cannot** decide between themselves to change the amount of child support.

Familiarize yourself with the resources available to educate our customers about the modification process by visiting the [Surviving an Economic Downturn](#) webpage located in the child support section of the OAG website. The webpage provides custodial and noncustodial parents with forms for requesting a review and includes a child support modification calculator that allows them to see if their child support order may qualify for a modification.

By following these simple steps, we will help make child support a consistent reality for families.

Modify! Modify! Modify!

NCP Name:
CP Name:
OAG Number:

CAUSE NUMBER 00-0000-0

IN THE INTEREST OF _____ § IN THE ____ST DISTRICT COURT
§
A MINOR CHILD § _____COUNTY, TEXAS

ORDER CONFIRMING CHILD SUPPORT ARREARAGE AND MODIFYING SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

On the _____ day of _____, 20____ the Court held a hearing in this cause.

The Attorney General appeared by an Assistant Attorney General.

_____, mother of the child, social security number XXX-XX-XXXX, number 12345678, hereinafter referred to as Oblige,

- ☐ appeared in person (and by attorney _____);
- ☐ agreed to the entry of these orders as evidenced by her signature;
- ☐ although duly notified, did not appear.

_____, father of the child, social security number XXX-XX-XXXX, number 12345678, hereinafter referred to as Obligor,

- ☐ appeared in person (and by attorney _____);
- ☐ agreed to the entry of these orders as evidenced by his signature;
- ☐ although duly notified, did not appear.

The Court finds that it has jurisdiction of the parties and the subject matter of this suit, and that the following orders are in the best interest of the child.

A record of the proceedings was:

- ☐ waived by the parties with the consent of the court.
- ☐ made by audio recording.



Enforcement

Enforcement remains mission critical for IV-D agencies.

Staff are given guidance in enforcement case assessment to be able to use the right enforcement tools through:

- Laws and Regulations (Fed/State)
- Policies
- Checklist
- Structured Training
- Peer Learning
- Mentoring



Remedies

Administrative and judicial remedies are assessed through the use of technology and human intervention to make sure that the right tool is utilized to efficiently review the case facts and enforce the support obligations.



Remedies



ADMINISTRATIVE

Income Withholding

Unemployment Insurance Benefit (UIB) withholding (50%)

Passport Denial

State Debt Set-Off/Workers Compensation (50%)

Financial Institute Data Matching (FIDM) Lien

Child Support Lien

Personal Injury Recovery/Insurance Settlements Recovery

Federal Offset

Administrative License Suspension

Lottery intercept

Denial of Renewal of Professional License

Denial of Renewal of Vehicle Registration

Credit Bureau Reporting

JUDICIAL

Motion to Modify *

Child Support Review Process (CSRP) Legal actions (1st Enforcement)

Motions to Confirm Arrears

Other judicial actions (which include a request for an arrearage judgment)

Judicial License Suspension

Motions to Enforce (Contempt) + NCP Choices (TWC)

Motion to Revoke Community Supervision

Motion for Entry of Qualified Domestic Relations Order (QDRO)

Employer Enforcement (Failure to Withhold or Failure to Remit)

*TX includes modifications in most legal actions to ensure “right-sized orders”

Contempt



May 2015

Advanced Enforcement - CSO401

CONCEPTS IN CHILD SUPPORT ENFORCEMENT

Constitutional Law and Child Support Enforcement



The study of constitutional law examines the sources of government power and its limitations in order to protect personal freedom. The Constitution of the United States is the main source of federal power and protection of individual rights. States are recognized as having their own inherent, sovereign powers, but their ability to infringe on the rights of the people is limited by the U. S. Constitution and their own state constitutions. The Bill of Rights, the first ten amendments to the U.S. Constitution, was created to protect individual human freedoms.

Under the 5th and 14th Amendments to the U.S. Constitution, a person cannot be denied life, liberty or property without **due process of law**. To satisfy the principle of due process a person must be informed of their rights, be given notice, have an opportunity to be heard, and be treated with fundamental fairness. Due process is a prerequisite for establishing and enforcing child support obligations.

Other constitutional guarantees include the right to a jury trial if incarceration can exceed 6 months and the right against self-incrimination.

Texas Law

Although family law varies somewhat from state to state,

Contempt



- **Right to Counsel – TFC 157.163**

The Court informs the obligor of the right to:

- be represented by an attorney, if incarceration is possible
- have an attorney appointed, if obligor is indigent.
- If the obligor claims indigency and requests the appointment of an attorney, the court will require the obligor to file an affidavit of indigency and/or will hear evidence regarding obligor's possible indigency.

Contempt

Affirmative Defenses – (TFC) 157.008

Voluntary relinquishment of possession of the child to the obligor is a defense to an enforcement action.

To prove inability to pay, the obligor must show he/she:

- lacked the ability to pay the amount ordered.
- lacked property that could be sold, mortgaged, or otherwise pledged.
- attempted unsuccessfully to borrow the needed funds.
- knew of no source from which the money could have been borrowed or legally obtained.



Contempt



Pleadings (Notice)

Obligor is personally served (10 days before the hearing date) with the pleading and a show cause order to appear at time and date certain.

CONTEMPT

“The Court should hold NCP in contempt and punish him by commitment to the county jail for not more than 180 days. If appropriate, the Court should place NCP on community supervision. Additionally, the Court should order NCP committed to the county jail until he pays all support arrearage, accrued interest, reasonable attorney fees, and court costs. Attached as EXHIBIT A and incorporated by reference is a true and correct copy of the support payment record of NCP showing the date and amount of each support payment by him since 6/25/20015. NCP committed a separate act of contempt by each indicated failure to pay support in full on or before its due date.”

Texas Arrears Payment Incentive Program (PIP)

TFC §231.124. CHILD SUPPORT ARREARAGES PAYMENT INCENTIVE PROGRAM

- (a) The Title IV-D agency may establish and administer a payment incentive program to promote payment by obligors who are delinquent in satisfying [child support arrearages assigned to the Title IV-D agency](#) under Section [231.104](#)(a).
- (b) A program established under this section must provide to a participating obligor a credit for every dollar amount paid by the obligor on interest and arrearages balances during each month of the obligor's voluntary enrollment in the program. In establishing a program under this section, the Title IV-D agency by rule must prescribe:
- (1) criteria for a child support obligor's initial eligibility to participate in the program;
 - (2) the conditions for a child support obligor's continued participation in the program;
 - (3) procedures for enrollment in the program; and
 - (4) the terms of the financial incentives to be offered under the program.
- (c) The Title IV-D agency shall provide eligible obligors with notice of the program and enrollment instructions



Texas Arrears Payment Incentive Program (PIP)

PIP - Allows eligible NCPs to pay down their arrears (State Owned) more quickly

How it works:

- NCP applies
- If eligible, NCP is enrolled

(Final TX order, At least \$500 in assigned arrears/unrecovered assistance, Current address)

- NCP pays full PP1 (if applicable)
- Any \$ paid toward PP2 gets matched with a dollar for dollar
- credit applied towards “state owed” assigned arrears



Texas Arrears Payment Incentive Program (PIP)

<1002> End of data reached.

Command: ☐ 01/01 022613 09:48
API P ARREARS PMT INCENTIVE PROGRAM CSUS4M

=====
Case ID: Type: N/_ Med Cd: _ Status: A/051605 Class: ENF/_/_ I/R: _
NCP: ID: 19150153 RTD: FA Office: 0409/_/_
CP: ID: 01727342 RTD: MO USERID: TLB/_/_
Cause #: Search by PIP indicator: _

PI P Credit Total Amt: 743.77 Last Credit Dt: 20121213

PI P	Begin Dt	User I D	Date Entered	End Dt	User I D	Date Entered	NP
===	=====	=====	=====	=====	=====	=====	==
Y	10012012	C49SEC_	01252013	-----	-----	-----	N
-	-----	-----	-----	-----	-----	-----	-
-	-----	-----	-----	-----	-----	-----	-
-	-----	-----	-----	-----	-----	-----	-
-	-----	-----	-----	-----	-----	-----	-
-	-----	-----	-----	-----	-----	-----	-
-	-----	-----	-----	-----	-----	-----	-

F4 = NOTE
4 A U

F7 = UP F8 = DOWN

02, 0



Texas Arrears Payment Incentive Program (PIP)

<1006> Previous page displayed.

Command: ----- AMOUNTS DUE / RECEIPTS 022613 10: CSUS

Case ID: N/_ Med Cd: _ Status: A/051605 Class: ENF/_/_ I/R:
 NCP: D: 19150153 RTD: FA Office: 0409/_/_
 CP: D: 01727342 RTD: MO USERID: TLB/_/_
 Cause #: Debt Type: CS Multiple Active Debt Types: Y

Judgment Amount: 12764.85 Last Adjustment Date: 012513 FPay: N
 Current Balance: 14739.47 Adjustment Type: T01

Date	PP1/ SP1 Amt Due	PP2/ LP2 Amt Due	Interest	Receipt Amt	Receipt Type	Amt Applied	Balance
112012				95.85	RG- EMP_	95.85	15144.34
112012				95.85	PIP CRD	95.85	15048.49
112612				95.85	RG- EMP_	95.85	14952.64
112612				95.85	PIP CRD	95.85	14856.79
113012			64.26				14921.05
120112		380.00					14921.05
120312				95.49	RG- EMP_	95.49	14825.56

F4=>NCFS F5=BKDN F6=>RCTD F7=UP F8=DOWN F9=DBTP

4AU



Case Closure Enhancements

Case closure enhancements provide more options to IV-D agencies but did not take away preexisting authorizations to manage the IV-D caseload.

States must determine when the enhanced closure options should be utilized taking into account:

- Customer service
- Resource allocations
- Required system enhancements
- Program goals and funding



Final Rule Flexibility

The Final Rule imparts to the State IV-D programs the flexibility necessary to efficiently and expertly manage their child support caseloads.



QUESTIONS?

