

**218-RICR-30-00-1**

**TITLE 218 - DEPARTMENT OF HUMAN SERVICES**

**CHAPTER 30 - OFFICE OF CHILD SUPPORT SERVICES**

**SUBCHAPTER 00 - N/A**

**PART 1 – Child Support Program Rules and Regulations**

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### **CHAPTER 30 - OFFICE OF CHILD SUPPORT SERVICES**

#### **SUBCHAPTER 00 - N/A**

##### **PART 1 - Child Support Program Rules and Regulations**

### **1.1 Child Support Program Overview**

#### **1.1.1 Program Administration**

##### **A. Authority**

1. The Child Support Enforcement program is administered by the Federal government and the State of Rhode Island. Federal stewardship of the Title IV-D Program is vested in the Office of Child Support Enforcement (OCSE), an agency within the U.S. Department of Health and Human Services (HHS) Administration for Children and Families.
2. In Rhode Island, the child support program is managed by the Department of Human Services, Office of Child Support Services (OCSS). The revenue collection functions of the Department of Administration, Division of Taxation were transferred to the Department of Human Services on July 1, 2005. Any reference to the Department of Administration, Division of Taxation, the Rhode Island Child Support Services agency, and Bureau of Family Support in reference to child support services in this and other DHS manuals shall be construed to refer to the Department of Human Services, Office of Child Support Services except as may be required by context.
3. The following child support enforcement services are provided:
  - a. Intake for both public assistance and non-public assistance cases;
  - b. Location of the non-custodial parent;
  - c. Establishment of paternity;
  - d. Establishment of an order for child and medical support;
  - e. Enforcement of the order;
  - f. Review and modification of the order; and

g. Collection and disbursement.

B. Purpose

1. Authority for states to administer a Child Support Enforcement Program is vested in the Social Security Act, 42 U.S.C. § 458.
2. Because of its enactment under this part, the program is commonly referred to as the IV-D program. The Social Security Act, 42 U.S.C. § 451, identifies the purpose of the IV-D program as follows:
  - a. For the purpose of enforcing the support obligations owed by non-custodial parents to their children and the spouse (or former spouse) with whom such children are living, locating non-custodial parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A) for whom such assistance is requested.
3. Thus, the goal of the IV-D program is to insure that parents assume their obligation to financially and emotionally support their children.

C. Spousal Support Issues

1. For IV-D purposes:
  - a. "Spousal support" means a legally enforceable obligation assessed against an individual for the support of a spouse, or former spouse, who is living with a child or children for whom the individual also owes support;
  - b. "Overdue support" means a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child, which is owed to or on behalf of the child, or the non-custodial parent's spouse (or former spouse) with whom the child is living, but only if a support obligation has been established with respect to the spouse and the support obligation established with respect to the child is being enforced under the State's IV-D plan;
  - c. "Past-due support" means the amount of support determined under a court order or an order of an administrative process established under State law for support and maintenance of a child, or of a child and the parent with whom the child is living, which has not been paid. For purposes of referral for Federal income tax refund offset



of support due an individual who has applied for non-assistance services "past-due support" includes support owed to or on behalf of a minor child and may include spousal support if such support is included in the child support order.

2. Orders for spousal support may be enforced when the obligor is under a child support order enforced under the State IV-D plan, and the minor child for whom support is sought is living with the individual who is owed spousal support. The Office of Child Support Services may not establish orders for spousal support, only enforce such orders.

D. Petition or Complaint for a Minor

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor child.

**1.1.2 Definitions**

- A. "Arrearages" means unpaid child support payments for past periods owed by a parent who is court ordered to pay.

1. "Conditionally-assigned arrearages" means:

- a. arrearages that do not exceed the cumulative amount of unreimbursed assistance paid to the family as of the date the family leaves the assistance rolls.
- b. arrearages that were temporarily assigned to the State and became conditionally assigned to the State when the temporary assignment expired.

- (1) If a conditionally-assigned arrearage is collected through a Federal income tax refund offset, the collection is retained by the State to reimburse the State and the Federal government up to the cumulative amount of unreimbursed assistance paid to the family.

- (2) Collections of conditionally-assigned arrearages by any other enforcement mechanism are paid to the family.

2. "Permanently-assigned arrearages" means arrearages which do not exceed the cumulative amount of unreimbursed assistance paid to the family as of the date the family leaves the assistance rolls:

- a. which are or were assigned under an assignment of support rights in effect on September 30, 1998, and

- b. which accrued under an assignment entered into on or after October 1, 1998, while a family is receiving assistance.
  3. “Temporarily-assigned arrearages” means arrearages which accrued prior to the family receiving assistance and which were assigned to the State after September 30, 1998. These arrearages are not permanently assigned. The temporary assignment will expire when the family leaves the assistance program.
  4. “Never-assigned arrearages” means arrearages that accrue after the family's most recent period of assistance ends.
  5. “Unassigned arrearages” includes:
    - a. “Pre-assistance arrearages” means all previously-assigned arrearages that exceed the cumulative amount of unreimbursed assistance when the family leaves the assistance program and which accrued prior to the receipt of assistance.
    - b. “During assistance arrearages” means all previously-assigned arrearages that exceed the cumulative amount of unreimbursed assistance when the family leaves the assistance program and which accrued during the receipt of assistance.
  6. “Unreimbursed assistance” means the cumulative amount of assistance paid to a family for all months, which has not been repaid by assigned support collections. The total amount of unreimbursed assistance a State may recover through the IV-D program is limited by the total amount of the assigned support obligation.
- B. “Assistance from the State” means assistance received from a State program funded under Title IV-A of the Social Security Act or under the State plan approved under Title IV-A (as in effect on August 21, 1996).
  1. “Assistance paid to the family” means money payments paid in cash, checks, or warrants immediately redeemable at par to eligible families under a State Plan approved under Title IV-A.
  2. “Current assistance case” means any IV-D case that is currently receiving TANF (RIW) assistance.
  3. “Former assistance case” means any IV-D case that formerly received RIW or TANF (RIW) assistance.
  4. “Never-assistance case” means any IV-D case that has never received RIW or TANF (RIW) assistance.

- C. “Federal Medical Assistance Percentage” or “FMAP” means the Federal medical assistance percentage (as defined in section 1905(b) of the Act, as such section was in effect on September 30, 1995) in the case of any other State.
- D. “Federal share” means that portion of the amount collected resulting from the application of the Federal medical assistance percentage in effect for the federal fiscal year in which the amount is distributed.
- E. “State share” means one hundred percent (100%) of the amount collected which does not exceed the cumulative unreimbursed assistance, minus the Federal share.
- F. “Title IV-A Agency” means the State agency that administers Title IV of the Social Security Act. In Rhode Island, this agency is the Department of Human Services.

### **1.1.3 Confidentiality**

- A. The OCSS staff will have access to information regarding both the custodial parent and non-custodial parent. This information must be held and used according to the regulations outlined in this section.
- B. Through the many databases accessed by both the State Parent Locator Service (SPLS) and the Federal Parent Locator Service (FPLS), OCSS employees have available a considerable amount of personal information concerning non-custodial parents. This information must only be accessed for those non-custodial parents whose child(ren)/families are participating in the IV-D program by virtue of either an assignment or application. In no instance, may information gained by OCSS agency be disclosed for purposes other than the administration of the IV-D program, e.g., for location, establishing paternity and support, or enforcement of an existing order.
- C. The Social Security Act is explicit in restricting the disclosure of information to only authorized individuals defined as:
  - 1. Any agent or attorney of any state having an approved IV-D plan, who has the duty or authority under the plan to seek to recover any amounts owed as child and spousal support;
  - 2. The court, or an agent of the court, which has authority to issue an order against a non-custodial parent for the support and maintenance of a child; and
  - 3. The resident parent, legal guardian, attorney, or agent of a non-assistance child without regard to the existence of a court order against a non-custodial parent who has a duty to support and maintain any such child.

- D. In proceedings to establish paternity, OCSS must exercise discretion. All matters relating to paternity establishment should proceed in the strictest of confidence after a prudent assessment of all case information available.
- E. The OCSS staff may discuss a paternity case only with the custodial parent or the putative father. If a call is received from a third party (someone other than the mother or putative father) the staff is limited to discussing only the general policy and procedures regarding paternity establishment.

## **1.2 Types of Child Support Cases**

### **1.2.1 Rhode Island Works (RIW) Child Support Cases**

- A. Title IV, Part A of the Social Security Act provides funding to states to pay cash assistance benefits to needy families with children. This program, known as Temporary Assistance to Needy Families, is commonly referred to as TANF. Rhode Island's TANF program is called the Rhode Island Works, or RIW. For every child for whom RIW (Title IV-A) benefits are paid because of a parent's absence from the home, the State must establish a child support case and pursue collection of support, unless a claim of good cause for non-cooperation is substantiated (see § 1.3.6 of this Part). These cases include those in which the parents were never married, or were married but are now separated or divorced, and cases where the child(ren) is/are living with a non-parent caretaker relative who is receiving RIW in the child's behalf.
- B. Assignment of Rights
  1. Both Federal and Rhode Island laws require the custodial RIW parent to assign to the State any rights to support from any other person in behalf of the custodial parent or in behalf of any other member of the RIW family unit. In Rhode Island, this assignment of support operates by virtue of State law, and also by virtue of a signed RIW application which includes assignment of rights provisions, whenever RIW public assistance benefits are furnished.
  2. As a condition of eligibility for assistance under Federal Title IV-A of the Act, a member of the family must assign to the State any rights a family member may have (on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance) to support from any other person, not exceeding the total amount of assistance paid to the family which accrue (or have accrued) before the family leaves the program.

- a. Prior to October 1, 1998, the applicant assigns to the State all rights to support which will accrue prior to the family leaving RIW assistance.
- b. On or after October 1, 1998, the applicant assigns to the State all rights to support which will accrue while the family is receiving assistance, until the family leaves assistance, up to the amount of unreimbursed assistance.
- c. The cumulative amount of assigned arrearages in former assistance cases may not exceed the cumulative amount of unreimbursed assistance paid to the family under all assignments.
- d. A State may not require, as a condition of providing assistance to any family, that a member of the family assign to the State any rights to support which will accrue after the date the family leaves the RIW Program.

### **1.2.2 Non-Public Assistance (NA) Child Support Cases**

- A. The Office of Child Support Services provides child support enforcement services to individuals who are not receiving RIW, Medicaid, or IV-E Foster Care. These services may be continued upon the termination of a RIW case or provided upon the request of a custodial parent or non-custodial parent.
- B. Non-Public Assistance (NA) Cases Without Prior RIW
  1. Title IV, Part D of the Social Security Act provides funding to states to operate a child support enforcement program. Section 454 of the Act provides that the State must provide that the support collection or paternity determination services established under the plan shall be made available to any individual not receiving RIW who files an application for the services with the IV-D agency. These cases are frequently referred to as Non-public assistance (NA) and represent families from the general public who choose to access the IV-D agency for services in lieu of retaining private counsel. In Rhode Island, these NA families are charged a twenty-dollar (\$20.00) application fee. In no case may the fee exceed twenty-five dollars (\$25).
  2. Federal and State law does not require the custodial non-assistance parent to assign to the State any rights to support from any other person on behalf of the custodial parent.
- C. Non-Public Assistance (NA) Cases with Prior AFDC/RIW

1. When a RIW or Medicaid only case is closed, child support services are continued unless the custodial parent requests, in writing, that they be terminated. These cases differ from NA cases without prior RIW because services are provided automatically without an application fee.
2. When a family ceases receiving assistance under the state's IV-A plan, the assignment of support rights terminates except with respect to the amount of any unpaid support obligation that has accrued under such assignment.
  - a. Priority first shall be given to collection of current support and shall be paid to the family.
  - b. Second, any arrearage due the family shall be paid first if the case is a NA case and any arrearage due the state shall be paid if the family is on RIW.
  - c. Third, any medical arrearages due shall be paid.

### **1.2.3 Foster Care Child Support Cases**

Title IV, Part E of the Social Security Act provides funding to states to operate foster care and transitional independent living programs for children who would otherwise qualify for RIW benefits. In addition, when children are removed from their home and placed in foster care the Act requires that all steps be taken to secure an assignment to the state of any rights to support on behalf of each child receiving foster care maintenance payments under IV-E. As with RIW, the assignment of rights to support in a IV-E foster care case is automatic by operation of state law in Rhode Island. The IV-E foster care program in Rhode Island is administered by the Department of Children, Youth and Families (DCYF). The Office of Child Support Services is responsible, therefore, for the establishment and enforcement of support orders from either or both parents of IV-E foster care children if referred by DCYF.

### **1.2.4 Medicaid Child Support Cases**

- A. Title XIX of the Social Security Act provides funding to states to operate Medicaid programs for indigent families with children and other specified individuals. This Act requires that all steps be taken to secure an assignment to the state of any rights to medical support on behalf of each child receiving Medicaid services and payments under Title XIX. As with RIW and IV-E foster care, the assignment of rights to support in a Medicaid case is automatic by operation of state law in Rhode Island. The Office of Child Support Services is responsible, therefore, for the establishment and enforcement of orders for medical coverage from non-custodial parents of Medicaid children.

- B. If the Court determines that the cost of the insurance coverage is not reasonable, that is, the cost of coverage is more than 5% of the parent's gross income, the court may order the parent to pay a weekly cash medical order equal to 5% of the gross income. If the child is on Medicaid, the State will retain the cash medical order and apply it towards Medicaid reimbursement. If the child is not receiving Medicaid, the cash medical will be distributed to the custodial parent as reimbursement for private health coverage provided.

### **1.2.5 Intergovernmental Child Support Cases**

- A. The cases described in this section may also occur in intergovernmental case situations. In general, an intergovernmental case is one in which one of the parties resides in Rhode Island and the other resides out of State or in a foreign country; or another State or foreign country has a legal interest in the establishment and enforcement of support. Additionally, there are two categories of intergovernmental cases:
1. Responding - where the non-custodial parent resides, is employed or has resources in Rhode Island and the child(ren) live out of state; or
  2. Initiating - where the child(ren) reside in Rhode Island and the non-custodial parent resides, is employed or has resources in another state.

## **1.3 Custodial Parent Responsibilities**

### **1.3.1 Direct Support**

- A. Direct support payment means an assigned support payment from a non-custodial parent received directly by a RIW recipient. These payments may go to the RIW recipient directly from the non-custodial parent or, in some cases, may have been sent by either an out-of-State court or agency or a R.I. court.
- B. RIW recipients are required to turn over direct support payments to the:

Department of Human Services

Office of Child Support Services

Business Office Recovery Unit

77 Dorrance Street

Providence, R.I. 02903

### 1.3.2 Conditions of Eligibility

- A. As a condition of eligibility for RIW, CCAP, and Medicaid, a recipient is required to cooperate (unless good cause for refusing to cooperate is determined) with the Office of Child Support Services to establish, modify, and enforce a child support order(s) for each eligible child.
- B. To cooperate with the child support agency, an applicant or recipient shall make a good faith effort regarding the non-custodial parent(s) of each child for whom assistance is requested, as outlined below. An applicant or recipient who has not provided the information specified shall be provided an opportunity to make a good faith effort by providing all the information s/he can reasonably obtain. Such information shall include:
1. Each non-custodial parent's full name and social security number; or
  2. Each non-custodial parent's full name and at least two (2) of the following items:
    - a. The non-custodial parent's date of birth;
    - b. The non-custodial parent's address;
    - c. The non-custodial parent's telephone number;
    - d. The name and address of non-custodial parent's employer(s);
    - e. The name and address of at least one of the parents of the non-custodial parent; and
    - f. The manufacturer, model and license plate number (including state of issue) of the non-custodial parent.
- C. Verifiable Information
- The information requested above must be verifiable. Information is considered verifiable, if, using reasonable efforts, the Office of Child Support Services can confirm that it is current and accurate. Reasonable efforts shall be determined by OCSS and shall include but not be limited to the following: a review of databases available to OCSS to follow-up on information; follow-up contacts with the applicant or recipient as appropriate, telephone calls to phone numbers, or letters sent to addresses provided by the applicant or recipient, or requests to other agencies for records identified by the applicant or recipient.
- D. Husbands Name Unknown



If the child birth certificate provides husband's name as unknown, and parent is married at the time of the birth, the applicant must provide husband's full name. If an applicant believes that providing the name of her husband will result in physical or emotional harm to her or to her child, the applicant is referred to the Family Violence Options Program for a determination of whether good cause not to cooperate exists. If the information is not provided and does not meet the requirement under good faith efforts, the applicant and/or recipient is subject to provisions established in § 1.3.2 of this Part regarding non-cooperation.

E. Good Faith Effort Required

An applicant or recipient who has not provided the information specified in § 1.3.2 of this Part shall be deemed to be cooperating if s/he can reasonably obtain any other information or documentation that may assist in identifying or locating the non-custodial parent, establishing parentage, or establishing, modifying or enforcing a child support order, such as:

1. In cases in which paternity has not been established, a sworn statement that sexual intercourse between the non-custodial parent and that applicant or recipient occurred during the probable period of conception.
2. A statement or statements as to the identity of location of the non-custodial parent from individuals other than the applicant or recipient who have personal knowledge of such information.
3. Records or information as to the whereabouts of records from law enforcement, social service, or other agencies, courts, or offices regarding the identity of location of the non-custodial parent.
4. Utility bills, parking tickets, credit card receipts, or other personal records or effects that contain information regarding the identity or location of the non-custodial parent.
5. Telephone numbers or addresses of individuals who, if contacted, may be able to provide information as to the identity and location of the non-custodial parent.
6. Signed releases for OCSS to obtain evidence to corroborate that the information provided is accurate and that all information about the non-custodial parent available to or reasonably obtainable to the applicant or recipient has been provided.
7. A sworn statement documenting with specificity efforts undertaken and obstacles encountered by the applicant or recipient in pursuit of

information regarding the non-custodial parent, with any documentation supporting the sworn statement attached; and

8. If an applicant or recipient is uncertain as to which of two (2) or more individuals might be the non-custodial parent of a single child, the applicant or recipient shall provide the information required about at least one person at the time of application or redetermination of eligibility for public assistance or upon request of OCSS.
- F. If the applicant or recipient has provided information about an individual who is found not to be a non-custodial parent by court order or genetic testing, the applicant or recipient shall provide information about any additional possible non-custodial parents for that child.
- G. It is important to emphasize that a sworn statement or affidavit from the applicant/recipient attesting to the lack of verifiable information about the non-custodial parent will NOT alone meet the requirement of cooperation.
- H. Continued Cooperation
- Regardless of whether an applicant or recipient has provided all of the information in this section, s/he is required to continue to make a good faith effort to cooperate with the Office of Child Support Services (OCSS) to establish paternity and establish, modify, and enforce child support and medical orders.
- I. Additional cooperation may include, but is not limited to:
1. Appearing for appointment to provide additional information possessed by or reasonably obtainable by the applicant or recipient;
  2. Authorizing OCSS to obtain pertinent information from third parties;
  3. Accepting personal services of process from licensed constables and authorized agents relative to their child support cases;
  4. Appearing as witness in a judicial or other proceeding; and
  5. Appearing for parentage tests.
- J. If an applicant or recipient fails to appear in court or fails to cooperate in any of the above, and such failure precludes OCSS from proceeding in an action to establish paternity, or to establish, modify, or enforce a child support or medical order, OCSS shall notify DHS, by e-mail, or in writing that the applicant or recipient has not cooperated and the grounds therefore. The applicant or recipient shall be sent a copy of this notice. If, however, the applicant or recipient contacts OCSS on or before the court date and specifies emergency

circumstances that prevent the applicant or recipient from appearing in court or attending a scheduled appointment, OCSS shall not issue a determination of non-cooperation, but shall proceed in court in the absence of the applicant or recipient, if possible, or reschedule the court date. OCSS may require the applicant or recipient to provide documentation about such emergency circumstances.

- K. If subsequent to the issuance of a determination of non-cooperation, the applicant or recipient begins cooperating, OCSS shall promptly notify DHS and provide notice to the applicant or recipient.

### **1.3.3 Non-Cooperation with Child Support**

- A. If the Office of Child Support Services determines that the applicant or recipient failed to provide the information s/he has or can reasonably obtain (or to otherwise cooperate), then OCSS shall determine that the applicant or recipient has failed to make a good faith effort to cooperate. OCSS shall notify RIW/MA/CCAP by e-mail and in writing of the failure to cooperate and the grounds therefore, and provide a copy of to the applicant or recipient. If subsequent to the issuance of the notice of noncooperation, the applicant or recipient begins cooperating, OCSS shall promptly issue a notice of cooperation in writing, and by e-mail to RIW/MA/CCAP and provide a copy to the applicant or recipient.
- B. RIW/MA/CCAP shall upon receipt of a determination of noncooperation from OCSS, impose a sanction for noncooperation in accordance with DHS policy, unless the applicant or recipient establishes good cause. If DHS imposes a sanction for noncooperation, DHS shall provide the applicant or recipient with an opportunity to challenge the imposition of the sanction in accordance with DHS policy.

### **1.3.4 Good Cause**

- A. An applicant or recipient of RIW/MA/CCAP may claim good cause for refusing to cooperate with the Office of Child Support Services. In claiming good cause, the applicant or recipient states that by cooperating with the Office of Child Support Services in the child support enforcement effort s/he would not be acting in the best interest of the child. That is, cooperation with OCSS would result in physical or emotional harm to the child or the applicant or recipient.
- B. Physical harm and emotional harm, as defined, must be of a serious nature. It must be demonstrated to the DHS agency representative that there exists an emotional impairment that substantially affects the individual's functioning for a finding of good cause for emotional harm to be made.

- C. If a determination is based in whole or in part upon the anticipation of emotional harm to the child, parent, or other caretaker relative, consideration is given to the following:
1. the present emotional state of the individual subject to emotional harm;
  2. the emotional health history of the individual;
  3. intensity and probable duration of the emotional upset; and
  4. degree of cooperation to be required; and the extent of involvement of the child in paternity establishment or support enforcement activity to be undertaken.
- D. The DHS agency representative can find good cause on the basis of anticipated physical harm without corroborative evidence if the agency considers the claim credible without corroborative evidence and if such corroborative evidence is not available.
- E. Every applicant or recipient is given an opportunity to claim good cause for refusing to cooperate. Good cause applies only to cooperation. An applicant or recipient may claim good cause for non-cooperation at any time with DHS. The eligibility requirement regarding the assignment of support rights is not affected by a good cause determination.
- F. If good cause is claimed, the applicant or recipient is advised that (s)he must state the basis of the claim and present corroborative evidence within twenty (20) days of the claim; or, (s)he must provide sufficient information to enable the investigation of the circumstance; or, provide sworn statements from individuals to support the claim as specified on the AP-35.
- G. If an applicant or recipient informs OCSS of facts that may give rise to a claim of good cause, OCSS shall refer the applicant or recipient to DHS to claim good cause.
- H. The determination as to whether good cause does or does not exist should be made within thirty (30) days of the good cause claim unless the record documents that the agency needs additional time because the information required to verify the claim cannot be obtained within the time standard. The final determination will be reported to Child Support Services
- I. OCSS shall provide written notice to each applicant or recipient informing her/him of the right to claim good cause with DHS, the basis for a good cause claim, and how to claim good cause with DHS pursuant to DHS policy.

### **1.3.5 Domestic Violence and Child Support**

- A. There are two scenarios where a custodial parent may allege there is an issue of domestic violence that prevents him/her, or limits his/her ability to pursue establishment and enforcement of a child support order. In the first scenario, the custodial parent applies for benefits from the Rhode Island Works and alleges an issue of domestic violence. The caseworker determines there is good cause not to proceed. The case is not referred to the Office of Child Support Services. However, in a limited number of cases the custodial parent receiving benefits wishes to proceed with establishment of an order but needs to have his/her confidential address protected.
- B. In the second scenario, a non-welfare custodial parent applies for child support services and indicates that there is a domestic violence issue, and that the non-custodial parent does not know where s/he resides but that s/he wishes to establish or enforce a child support order in safety. The OCSS would follow procedures to obtain an *ex-parte* order to seal the Court file before any pleadings are filed and in substituting the address of the agency for the address of the custodial parent to protect the confidential address.
- C. According to RI law (R.I. Gen. Laws § 40-5.1-46) a history of domestic violence means:
  - 1. Physical acts that resulted in or threatened to result in physical injury to the individual;
  - 2. Sexual abuse;
  - 3. Sexual activity involving a dependent child;
  - 4. Being forced as the caretaker relative of a dependent child to engage in non-consensual sexual acts or activities;
  - 5. Threats of, or attempts at, physical or sexual abuse;
  - 6. Mental abuse; or
  - 7. Neglect or deprivation of medical care.

## **1.4 Non-Assistance Case Processing**

### **1.4.1 Mandatory Fees**

- A. Services are free for custodial parents whose RIW cases were closed after October, 1985. For all others, including custodial parents whose RIW cases were closed before October, 1985, the application fee is twenty dollars (\$20).

- B. Effective 10/1/06, pursuant to the Deficit Reduction Act, in all never assistance cases, where the state has collected five hundred dollars (\$500.00) in child support annually, the state will remit the federal share of the twenty-five dollar (\$25.00) fee annually to the federal office of child support enforcement as program income.

#### **1.4.2 Services Provided**

- A. The Office of Child Support Services provides the same child support services to families not receiving public assistance as it does to families receiving public assistance.
- B. Non-assistance (NA) cases are established automatically when a public assistance case is closed or upon receiving an application from a custodial parent who has requested services.
- C. Services will also be provided to fathers who request assistance in establishing paternity, establishing an order and in filing a Motion to modify a child support order.
- D. The Office of Child Support Services must provide applications for IV-D services to individuals on the same day a request is made in person or within five (5) working days of a written or phone request.
- E. Applications are considered filed on the day the necessary forms (along with the application fee) are received by the Office of Child Support Services. Applications will be returned if information is incomplete or the appropriate documentation is not provided. A case file will be opened and established within twenty (20) calendar days of the date the complete application was received. Based on an assessment of the case, the following action(s) may include:
  - 1. Obtaining necessary and relevant information from the custodial parent and other relevant sources;
  - 2. Initiating verification of information, if appropriate;
  - 3. Requesting additional location information, or referring the case for further location attempts if location information is inadequate; and/or
  - 4. Scheduling an applicant interview if needed.

#### **1.4.3 Application Procedures**

- A. Custodial parents may request an application by calling or writing the Office of Child Support Services office or by downloading an application from the website at [www.cse.ri.gov](http://www.cse.ri.gov).

- B. The agency will determine whether the case is one in which paternity must be established, establishment, enforcement or intergovernmental and forward to the appropriate agent.
- C. The Office of Child Support Services agent will:
  - 1. Establish a case record following office procedures;
  - 2. Determine what actions must be taken;
  - 3. Schedule an appointment with the applicant if needed; and/or
  - 4. Return the application indicating the reason the application was incomplete and the documents required.

#### **1.4.4 Interview**

- A. During an interview the agent may:
  - 1. Provide the custodial parent with information regarding child support services, his/her rights and responsibilities, the State's fees, cost recovery and distribution policies;
  - 2. Discuss the types of services available
  - 3. Provide assistance in completing the application if needed;
  - 4. Obtain and clarify any information needed;
  - 5. Advise the custodial parent that it is his/her responsibility to provide any legal documentation required such as a birth certificate or divorce decree;
  - 6. Obtain a completed income and expense sheet (OCSS-1);
  - 7. Obtain the custodial parent's signature on any forms necessary to initiate action; and
  - 8. Explain the Debit Card and Personal Identification Number (PIN) process associated with the Child Support Account.

#### **1.4.5 Custodial Parent Responsibilities**

- A. The non-assistance (NA) custodial parent must cooperate with the Office of Child Support Services in the child support enforcement effort. Cooperation means helping in:
  - 1. Locating the non-custodial parent;

2. Establishing paternity and orders for support and;
3. Collecting the support.

B. Actions include:

1. Keeping the Office of Child Support Services informed of his/her current address;
2. Appearing at the Office of Child Support Services when required;
3. Appearing as a witness at judicial or other hearings;
4. Providing information and documentation requested;
5. Attesting to the lack of information, under penalty of perjury;
6. Maintaining PIN account information; and
7. Returning funds received in error as agreed to in the application process.

#### **1.4.6 Non-Assistance to Public Assistance Case Processing**

If an existing IV-D non-assistance (NA) custodial parent begins receiving Rhode Island Works (RIW), the electronic code for case type will automatically change from non-assistance (NA) to RIW upon initial approval of IV-A benefits. The administration of the case will continue under the rules outlined in § 1.3 of this Part, Rhode Island Works (RIW) Case Processing.

#### **1.4.7 Public Assistance to Non-Assistance**

When a custodial parent's RIW case is closed, the Office of Child Support Services continues IV-D services by opening a non-assistance (NA) case. A letter is sent to the custodial parent informing her/him that child support services will continue unless a request is made in writing that these services are no longer wanted.

### **1.5 Foster Care Case Processing**

#### **1.5.1 Foster Care Agency Responsibilities**

Where appropriate the Foster Care agency will take all steps including cooperative efforts to secure an assignment to the State of any rights to child support and medical support on behalf of each child receiving foster care maintenance payments.



### **1.5.2 Office of Child Support Services (OCSS) Agency Responsibilities**

- A. The OCSS will provide the same child support services for children receiving IV-D Foster Care benefits as in any other child support enforcement case, provided the Department of Children, Youth & Families (DCYF) provides a complete and accurate referral.
- B. Upon receipt of a complete referral from the DCYF with all required documents, application and affidavits, the OCSS agency establishes a child support case. The OCSS agency will, based on an assessment of the case, determine necessary action, solicit necessary and relevant information from the custodial parent and other relevant sources and initiate verification of information when appropriate.
- C. When there is inadequate location information with which to proceed, the OCSS will request additional information or pursue further location attempts where appropriate.
- D. The OCSS agency will:
  - 1. Locate the parent;
  - 2. Establish paternity if necessary;
  - 3. Establish orders for support and medical support;
  - 4. Suspend orders when the child is no longer in DCYF care; and
  - 5. Enforce orders when requested by DCYF

### **1.5.3 Assignment and Referral**

The assignment of support rights secured on behalf of a child receiving foster care maintenance payments shall constitute an obligation owed to the State by the individuals responsible for providing support. This obligation is collectible under all applicable State and local processes. The amount of the obligation will be an amount determined by the State in accordance with a formula established by the State.

## **1.6 Medicaid Case Processing**

### **1.6.1 Medicaid Agency Responsibilities**

- A. The Medicaid agency is responsible for forwarding all cases where the custodial parent is receiving Rite Care, Medicaid or Rite Share to the OCSS for case

processing. The OCSS is not responsible for any cases until an appropriate and complete referral is provided.

- B. The Medicaid agency must notify the OCSS when the following occurs:
  - 1. a non-custodial parent changes insurance;
  - 2. a non-custodial parent drops insurance; and/or
  - 3. a custodial parent stops receiving Medicaid.

### **1.6.2 Assignment and Referral**

- A. Each applicant for or recipient of Medicaid or any individual receiving Medicaid for and on behalf of any other person for whom (s)he may be legally responsible will assign his/her rights to any medical support or any other medical care without the necessity of signing any document.
- B. This assignment includes any and all rights and interests that (s)he may have to payment for any medical support and to payment for any medical care from any third party.
- C. The custodial parent is not assigning any rights to child support. That is a separate assignment, which arises when the custodial parent receives RIW benefits.

### **1.6.3 Custodial Parent Responsibilities**

- A. As a condition of eligibility for Medicaid, a recipient is required to cooperate (unless good cause for refusing to cooperate is determined) with the State in:
  - 1. identifying and locating the non-custodial parent,
  - 2. establishing paternity for children born out of wedlock,
  - 3. establishing medical support obligations, and
  - 4. enforcing such orders.

## **1.7 Cooperative Agreements**

Per federal requirements, the Office of Child Support Services enters into cooperative agreements with the Rhode Island Family Court, the Department of Children, Youth and Families (DCYF), the Department of Corrections, and the Department of Labor and Training (DLT), among other entities and as required.

These are written agreements, which specifically outline each party's responsibilities and the financial arrangements agreed upon.

## **1.8 Emancipation**

- A. Pursuant to Rhode Island law, a child is emancipated upon his or her eighteenth (18th) birthday. The court may, if in its discretion it deems it necessary or advisable, order child support and education costs for children attending high school at the time of their eighteenth birthday and for ninety (90) days after graduation, but in no case beyond their nineteenth birthday. If the child has a mental or physical disability, which occurred before emancipation, the order may continue until the child's 21st birthday. However, a non-custodial parent is obligated to continue paying current child support until s/he has obtained an order terminating that obligation. Therefore, the OCSS will continue to enforce an order until such time as the order has been terminated and arrears have been suspended.
- B. Internally the eligibility system will stop the order at the youngest child's 18th birthday. This does not affect the legality of the order.

## **1.9 Case Assessment and Prioritization**

The Office of Child Support Services has implemented a case assessment and prioritization system to manage its caseload. This system includes all cases and ensures that no service required to be provided under the State plan has been systematically excluded.

## **1.10 Case Closures**

### **1.10.1 Federal Regulation (Public Welfare, 45 C.F.R. § 303.11)**

- A. In order to be eligible for closure, a case must meet at least one of the closing criteria described. Once the case becomes eligible for closure, the state's electronic computer system automatically schedules the case to close sixty (60) days in the future and generates the closure letter to send to the custodial parent. An agent can also schedule a case for closure by entering a closure date sixty (60) days in the future. The eligibility system will automatically send the closure letter and close the case in sixty (60) days via the monthly case closure process. A case will not be closed if:
  - 1. The custodial parent supplies information in response to the notice which could lead to the establishment of paternity, an order for support, or enforcement of an order; or

2. Contact is reestablished with a custodial parent whose whereabouts were unknown.
- B. A custodial parent may request, at a later date, that her/his case be reopened if there is a change in circumstances that could lead to the establishment or enforcement of an order.

### **1.10.2 Closing Criteria Requiring Sixty (60) Day Notice**

- A. A sixty (60) day closing notice will be sent to the custodial parent when a case is closed for one of the following reasons:
1. There is no longer a current support order and arrearages are under five hundred dollars (\$500) or unenforceable under state law;
  2. The non-custodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken. The agent shall obtain a certified copy of the death certificate and file a Motion to Dismiss;
  3. Paternity cannot be established because:
    - a. The child is at least twenty-two (22) years old; or
    - b. A genetic test or a court or administrative process has excluded the putative father.
  4. OCSS shall file a Motion to Dismiss based upon the exclusion;
  5. The Office of Child Support Services has determined that it would not be in the best interest of the child to establish paternity in a case involving incest or forcible rape, or in any case where legal proceedings for adoptions are pending;
  6. The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the IV-D agency with the recipient of services;
  7. The non-custodial parent's location is unknown, and regular attempts have been made using multiple sources to locate the non-custodial parent over a three (3) year period, when there is sufficient information to initiate an automated locate effort, or over a one (1) year period when there is not sufficient information to initiate an automated locate effort;
  8. The non-custodial parent cannot pay support for the duration of the child's minority because (s)he has been institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified

permanent and total disability with no evidence of support potential. The Office of Child Support Services must also determine that no income or assets are available to the non-custodial parent that could be levied or attached for support;

9. The non-custodial parent is a citizen of, and lives in a foreign country, does not work for the Federal government or a company with headquarters or offices in the United States, and has no reachable domestic income or assets, and the state has been unable to establish reciprocity with the country.
10. In a Non-Assistance case:
  - a. The Office of Child Support Services is unable to contact the custodial parent within a sixty (60) calendar day period despite an attempt of at least one letter sent by first class mail to the last known address, or
  - b. The custodial parent fails to cooperate and an action by the custodial parent is essential for the next step in providing services.
11. OCSS documents failure by the initiating state to take an action which is essential for the next step in providing services.
12. The OCSS will close cases, codify arrears, and notify the custodial parent if her address is known, in cases which meet the following criteria:
  - a. There is no current support order,
  - b. The child is past the age of emancipation,
  - c. The location of the non-custodial parent is unknown despite repeated automated locate efforts for a period of 1 year,
  - d. The arrears are unenforceable which means repeated automated administrative enforcement efforts have taken place to secure an asset or payment and such efforts have been unsuccessful,
  - e. Or the custodial parent cannot be located to cooperate with the case in establishing arrears.

### **1.10.3 Closings Without Prior Notice**

- A. A 60-day closing notice does not have to be sent, if a case is closed for one of the following reasons:

1. The case was opened as a non-assistance location only; or
2. The non-assistance custodial parent requests closure of a case and there is no assignment to the State of medical support or arrearages which accrued under a support order; or
3. There has been a finding of good cause, and it has been determined that support enforcement may not proceed without risk or harm to the child or caretaker relative.

**B. Case Retention**

The Office of Child Support Services will retain closed case records for a minimum of six (6) years after closure before purging the file.

## **1.11 Non-Custodial Parent Location**

### **1.11.1 Location Standards**

- A. A non-custodial parent will be considered "located" when information regarding his/her physical whereabouts, or place(s) of employment, or other sources of income or assets have been verified, and the information is sufficient to allow the Office of Child Support Services to take the next appropriate action.
- B. Within no more than seventy-five (75) calendar days of determining that location is necessary, the Office of Child Support Services will access all appropriate location sources, including transmitting appropriate cases to the Federal Parent Locator Service (FPLS) and ensuring that location information is sufficient to take the next appropriate action in a case.
- C. Appropriate location sources include but are not limited to:
  1. Credit Bureau;
  2. The Federal Parent Locator Service (FPLS);
  3. Intergovernmental location networks;
  4. Relatives and friends of the non-custodial parent;
  5. Current or past employers;
  6. The local telephone company;
  7. The U.S. Postal Service;

8. Unions and fraternal organizations;
9. Police, parole, and probation records, if appropriate;
10. State agencies and departments as authorized by State law, including those departments which maintain records of:
  - a. Public assistance;
  - b. Wages, employment, and unemployment insurance;
  - c. Income taxation;
  - d. Driver's licenses, vehicle registration; and
  - e. Criminal records.

### **1.11.2 Notice Requirements**

- A. In cases where previous attempts to locate the non-custodial parent have failed, but for which adequate identifying and other information exists, the Office of Child Support Services will:
  1. Exhaust all appropriate location resources within seventy-five (75) days of receiving new information;
  2. Submit to the FPLS, at least annually, cases in which location is needed and for which a non-custodial parent's social security number is known or every effort has been made to obtain it;
  3. Document all location efforts including telephone contacts with the custodial parent and the non-custodial parent in the state's electronic eligibility system;
  4. Record current, verified information; and
  5. Repeat location attempts in cases in which previous attempts to locate non-custodial parents or sources of income and/or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location, either quarterly or immediately upon receipt of new information which may aid in location, whichever occurs sooner.

## **1.12 Access to Information**

### **1.12.1 Non-Custodial Parent Social Security Number**

- A. The Office of Child Support Services is authorized by R.I. Gen. Laws § 15-22-1 to have access to and to request information from various individuals and entities only for the purpose of and to the extent necessary for the administration of the child support enforcement program. The Child Support Services agent decides which individuals or entities to query to assist in the location of the obligor based on information available in the case. These requests for information can be made by any method, including but not limited to:
1. Paper;
  2. Facsimile (Fax);
  3. Telephone; or
  4. Magnetic tape or other electronic means.
- B. Unless otherwise limited by federal statute, individuals or entities from whom the Child Support Services agent may secure such information include, but are not limited to:
1. State or municipal agencies;
  2. Utility companies (including telephone);
  3. Tax assessor's offices;
  4. Housing authorities;
  5. Employers;
  6. Professional or trade associations;
  7. Labor unions;
  8. Professional or trade licensing boards;
  9. Bank and other financial institutions;
  10. Credit bureaus or agencies; or
  11. Any other individual or entity which the Office of Child Support Services has reason to believe may have information that relates to or may assist in the location of the obligor.
- C. Requested information that must be provided includes, but is not limited to, the obligor's:



1. State income tax returns (including address, filing status, and number of dependents reported on any return filed by the obligor and any other information which shall be determined and approved by the Tax Administrator and such federal tax data as permitted by federal law).
- D. Unless otherwise limited by statute, the Office of Child Support Services shall be entitled to:
1. All criminal offender record information of the obligor which is necessary to locate the obligor or establish the obligor's ability to pay including, but not limited to, National Criminal Information Center (NCIC) records and Bureau of Criminal Identification (BCI) records maintained by the Department of the Attorney General; and
  2. Quarterly contribution reports of the Department of Labor and Training.
- E. Unless otherwise limited by federal statute, requested information that must be provided includes, but is not limited to, the obligor's:
1. Title to property;
  2. Credit status; or
  3. Professional affiliation.
- F. Holders maintaining personal data are authorized to disclose to the Office of Child Support Services all personal data requested and such disclosure shall not violate provisions of R.I. Gen. Laws § 38-2-2.
1. No entity or individual who complies with such requests for information shall be liable in any civil or criminal proceeding brought by an obligor or a custodial parent on account of such compliance.
  2. Failure by any individual or entity to provide information, without reasonable cause, within twenty (20) days of the receipt of the request from the Office of Child Support Services, is punishable by a one hundred dollar (\$100) fine for each failure.
  3. This fine may be assessed either by the Rhode Island Family Court or the Office of Child Support Services.
- G. Any employee of the Office of Child Support Services that uses or discloses such information in any manner other than specified in R.I. Gen. Laws § 15-22-1 shall be guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for not more than six (6) months or both.

### **1.12.2 Credit Bureau Inquiries**

The Office of Child Support Services submits a monthly tape to the credit bureau for locating non-custodial parents. The credit bureau may provide information regarding the non-custodial parent residence and/or employment.

### **1.12.3 Division of Motor Vehicles**

- A. The Division of Motor Vehicles can provide a non-custodial parent's social security number, last reported address, and vehicle registration information. This information can be obtained either by using the non-custodial parent's social security number, or name and approximate date of birth.
- B. Address information obtained from the DMV driver's license records is that which is provided by the non-custodial parent, and may not be current. Therefore, the agent will verify the information with a second source, such as a letter for location (Post Office), before taking the next action.

### **1.12.4 Department of Labor and Training**

- A. Office of Child Support Services and the Department of Labor and Training (DLT) conduct a tape exchange once a month to match non-custodial parents' social security numbers with DLT employment and wage information. An employer, under R.I. Gen. Laws § 15-24-5, who hires or rehires an employee on or after October 1, 1997, must report the hiring or rehiring to the National Directory of New Hires (NDNH) no later than fourteen (14) days after hire or rehire, or twice a month, if reporting electronically or magnetically. Once the Office of Child Support Services submits a non-custodial parent's social security number on the tape, the Office of Child Support Services agent may look at the DLT files via the state's electronic eligibility system's WAGE function.
- B. Information obtained from the DLT is that which is reported to the Division of Taxation by employers throughout the State.
- C. Employers must report wage information by two (2) monthly transmissions, not less than twelve (12) days or more than fifteen (15) days apart.

### **1.12.5 Requests for Information from Employers**

- A. The Child Support Services agent may request from any employer or any other source of income that s/he has reason to believe employs an obligor, or otherwise provides the obligor with regular periodic income, to provide information concerning the dates and amounts of income paid, the last known address, social security number, and available health care benefits. The Office of Child Support Services shall not inquire of an employer or other source of income concerning the same obligor more than once every three (3) months.

- B. Employers or other sources of income to the obligor must respond to these requests truthfully and in writing. No employer or other source of income that complies with such requests shall be liable in any civil action or proceeding brought by the obligor on account of such compliance. Failure to comply with such a request, without good cause, within twenty (20) days of receipt of the request shall be punishable by a fine of twenty dollars (\$20) for each violation. If it is demonstrated that the employer conspired with the employee to avoid reporting, a five hundred dollar (\$500) civil penalty may be assessed by the Department.
- C. Unauthorized disclosure of information caused by the Department by any employee or agent of the state, is punishable by a fine of one hundred dollars (\$100) per offense and is subject to administrative discipline of the employee.

#### **1.12.6 U.S. Postal Service**

The agent will send a Letter for Location (Post Office) to verify a non-custodial parent's current or forwarding address.

#### **1.12.7 Police or Criminal Records**

The Child Support System electronically exchanges information with the Adult Correctional Institution (ACI), and the Bureau of Criminal Investigation (BCI).

#### **1.12.8 Office of Vital Records**

The Child Support System electronically exchanges information regarding birth certificates with the R.I. Office of Vital Records.

#### **1.12.9 U.S. Armed Forces**

- A. The Child Support system electronically exchanges with the Department of Defense to locate members of the armed forces.
- B. There is a legal procedure that must be followed to serve members of the armed forces and to secure a child support order.

#### **1.12.10 Federal Parent Locator Service**

- A. The Federal Parent Locator Service is provided by the Office of Child Support Services (OCSS) for the purpose of locating non-custodial parents. The Federal Parent Locator Service provides information from the following:
  - 1. Social Security Administration (SSA);
  - 2. Internal Revenue Service (IRS);

3. Veteran's Administration (VA);
4. Department of Defense (DOD);
5. National Personnel Records Center (NPRC);
6. Selective Service System (SSS);
7. National New Hire Data base; and
8. Federal Registry.

B. Restrictions

Only the central State Parent Locator Service (SPLS) office, or other designated Office of Child Support Services, can accept requests to query the Federal Parent Locator Service. Requests may be received only from:

1. State or local agencies seeking to collect child and spousal support obligations under the State plan, or medical support obligations if an agreement is in effect;
2. A court that has authority to issue an order against a non-custodial parent for the support and maintenance of a child, or any agency of such court;
3. The resident parent, legal guardian, attorney, or agency of a child who is not receiving aid; or
4. Authorized persons as defined in Parental Kidnapping, if an agreement is in effect to use the FPLS in connection with parental kidnapping or child custody cases.

C. Requirements

1. All requests from the FPLS will include:
  - a. The non-custodial parent's name;
  - b. The non-custodial parent's social security number, if known (before submitting a request without a social security number, make every reasonable effort to obtain it);
  - c. Information regarding whether the non-custodial parent is, or has been, a member of the armed services (if known);
  - d. Information regarding whether the non-custodial parent is, or has ever, received any Federal compensation or benefits; and

- e. Any other information prescribed by OCSS.
- 2. All requests to the Federal Parent Locator Service must be accompanied by a statement signed by the Director, which states that:
  - a. The request is being made solely to locate an individual for the purpose of establishing paternity, child support and medical support orders, and enforcing those orders, or parental kidnapping;
  - b. Any information obtained through Federal Parent Locator Service shall be treated as confidential as outlined in § 1.1 of this Part.

**D. Submitting Requests**

The state's electronic eligibility system will automatically submit Federal Parent Locate Services (FPLS) requests every six months on cases for which the non-custodial parent's social security number is known and location has not been verified. To determine whether a case has been submitted to the FPLS the agent will review the case on the system. This will show the date the last query was submitted.

- E. An agent may submit an FPLS request on an individual case before the end of six months.

**1.12.11 State Parent Locator Service**

- A. The Office of Child Support Services central registry acts as Rhode Island's State Parent Locator Service. The central registry will:
  - 1. Submit location requests to other states' Parent Location Services; and
  - 2. Provide location services for other states.

**1.12.12 Directories**

The Child Support agent will make use of various directories such as the Verizon telephone directory.

**1.12.13 Friends and Relatives**

Friends and relatives of the non-custodial parent may be contacted, however, the agent must be sure and not disclose information regarding the specifics of the child support case.

**1.12.14 Division of Taxation**

The OCSS agency conducts an electronic match with the Division of Taxation to intercept State tax refunds which will provide a non-custodial parent's most recent filing address.

## **1.13 Paternity Establishment**

### **1.13.1 Legal Basis**

- A. The father of a child which is, or may be, born out of lawful wedlock is liable to the same extent as a father of a child born of a marriage for the reasonable expense of the mother's pregnancy and confinement, the education, necessary support and maintenance, medical and funeral expenses of the child, and reasonable counsel fees for the prosecution of paternity proceedings.
- B. Pursuant to 42 U.S.C. § 654, a state plan for child and spousal support must provide that such state will undertake to establish the paternity of a child with respect to whom an assignment is effective, unless the state determines it is against the best interests of the child to do so. The Office of Child Support Services may bring such an action based on the automatic assignment or application for IV-D services. Any agreement of settlement with the putative father is binding only when approved by the court.

### **1.13.2 Paternity Time Frames**

- A. For all cases referred, or when a non-assistance (NA) application is filed and for which paternity has not yet been established, the Office of Child Support Services must proceed expeditiously to locate the alleged father when necessary, to file for paternity establishment, and obtain a support order or to dismiss all actions against the alleged father.
- B. The processing of these cases must be done within the applicable time frames established by federal regulations. Generally, these time frames begin with either the referral of the case to Office of Child Support Services or upon the location of the alleged father.

### **1.13.3 Paternity Processing**

- A. Before proceeding with paternity case processing, the agency will review the case to determine:
  - 1. Whether the necessary documentation is present, such as a birth certificate, marriage license, and/or divorce decree;
  - 2. Sufficient information and documentation to support whether the child was born of a marriage or out of wedlock;

3. The husband's full name if the child was born of a marriage or within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;
4. Whether location is needed; or
5. Whether the case is a special situation that needs to be referred directly to the Office of Child Support Services Legal Unit after location.

#### **1.13.4 Paternity Allegations**

- A. A mother applying for non-assistance (NA) services for a child born out of wedlock completes a NA Child Support Application.
- B. These documents require her to name (allege) the father of the child for whom she is requesting benefits or services. The Child Support Services agent will investigate the custodial parent's allegation, and obtain the most accurate information with which to proceed. In investigating the allegation, the agent may find:
  1. A single allegation of paternity, whereby the applicant or recipient alleges the possibility of only one man as being the child's father;
  2. A multi-allegation of paternity, whereby the applicant or recipient alleges that she had sexual intercourse with more than one man around the time of conception. A multi-allegation may involve a combination of putative fathers and/or a presumed father.
  3. A change in allegation, whereby the applicant or recipient alleges that a child's natural father is someone other than the man who was named previously;
  4. An unknown putative father, whereby the applicant or recipient cannot make an allegation because (s)he does not know the identity of the father. A sworn statement must be provided indicating the father is unknown. These cases will not be referred to OCSS. Technically if the applicant cannot name the father, OCSS cannot accept the case.
- C. In cases where the custodial parent alleges that she had sexual intercourse with more than one man around the time of conception, only one case at a time will be referred to OCSS. OCSS will establish paternity in that case. If there is a dismissal OCSS will so notify and the second alleged father will be referred for paternity establishment.

- D. In cases where a legal presumption of paternity exists, the full name of the presumed father must be determined and referred for processing.

### **1.13.5 Presumptions of Legal Paternity**

- A. The agency will evaluate the information provided and obtained from the mother, or a previously established case record, and determine whether paternity needs to be established, and/or whether there is a presumed father. In cases where a multi-allegation or change in allegation includes a presumed father and a putative father, the agent work the case against the presumed father first before pursuing paternity against a putative father. A man is presumed to be a child's legal father if:
1. He and the child's natural mother are, or have been, married to each other and the child is born during the marriage, or within three hundred (300) days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a decree of separation is entered by a court;
  2. Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is, or could be, declared invalid, and
    - a. If the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within three hundred (300) days after its termination by death, annulment, declaration of invalidity, or divorce, or
    - b. If the attempted marriage is invalid without a court order, and the child is born within three hundred (300) days after the termination of cohabitation;
  3. After the child's birth, he and the child's natural mother have married, or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage could be declared invalid, and
    - a. He has acknowledged his paternity of the child in writing and filed with the clerk of the Family Court, or
    - b. With his consent, he is named as the child's father on the child's birth certificate, or,
    - c. He is obligated to support the child under a written voluntary promise, or by court order;



4. He acknowledges his paternity of the child in a writing filed with the clerk of the Family Court, who shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the clerk of the Family Court. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father, or after the presumption has been rebutted;
5. A genetic test result of 97% or higher creates a conclusive presumption of paternity when submitted as evidence in a paternity action;
6. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two (2) or more presumptions arise which conflict with each other, the presumption for which there is more convincing evidence will prevail.

#### **1.13.6 Verifying Location**

- A. To initiate paternity establishment, a verified Rhode Island address at which the putative father can be served must be provided.
- B. When the non-custodial parent's verified address is out of state, a long arm paternity action if appropriate (if the child was conceived in Rhode Island) will be filed.

#### **1.13.7 Putative Father Receiving Benefits**

Even if the putative father is receiving SSI, GPA, RIW or is incarcerated it will not prevent the agency from pursuing paternity establishment.

#### **1.13.8 Complaint for Paternity and Support**

- A. The applicant/recipient will sign a Complaint for Paternity and Support, which contains the custodial parent's sworn allegation of paternity.
- B. All information will be verified with the custodial parent and the custodial parent's signature will be obtained during the initial interview. If the custodial parent does not sign the complaint at initial interview, she will be served by the Constable for signature.
- C. Once the custodial parent is served for signature, the agent will E-File the Complaint for Paternity and Support and obtain a Court date. The hearing date will be assigned by the Court.

#### **1.13.9 Locating the Putative Father**

The non-custodial parent's social security number is the single most important piece of information needed for location. With it the Child Support agent can query various location resources, and also be assured that the non-custodial parent will be included in tape matches used for location, establishment, and enforcement.

#### **1.13.10 Serving the Putative Father**

The putative father is served by Constable with a copy of the Complaint for Paternity and Support, the Summons and Subpoena, which are included in the Paternity Initial Referral. In this way, he is informed of the allegation and the manner in which to respond. The putative father is given twenty (20) calendar days from the date of successful service to respond, in writing, to the Family Court and the Office of Child Support Services. The putative father must also appear on the scheduled court date.

#### **1.13.11 Putative Father's Response**

- A. The Putative Father is given twenty (20) days by law to respond to the Complaint for Paternity and Support. The putative father may respond by:
  - 1. Admitting paternity;
  - 2. Denying paternity; or
  - 3. Failing to respond.

#### **1.13.12 Post Hearing Activities**

- A. Putative Father Admits Paternity

After the hearing, a court order will be prepared either dismissing the matter or adjudicating the putative father as the legal father of the child. If adjudicated, the order will be sent to the Office of Vital records to amend the birth certificate of the child, adding the fathers name and information.

- B. Putative Father Denies Paternity

When a putative father denies paternity, an Administrative Order for genetic testing will be issued, which will be mailed to the putative father or mailed to his attorney.

#### **1.13.13 Genetic Tests**

- A. In a proceeding under R.I. Gen. Laws § 15-8-11, before trial, the court, upon application made by or on behalf of any party to said action, or on its own motion,

shall order that the mother, child, alleged father, and any other party to the action submit to blood or tissue typing tests. The Office of Child Support Services may also administratively order the parties to attend DNA testing upon receipt of a denial. A court order is not required. These tests may include, but are not limited to, DNA tests of red cell antigens, red cell isoenzyme, human leukocyte antigens, serum proteins, and genetic testing, to determine whether the alleged father is likely to be, or is not, the father of the child.

- B. If at the trial, in a proceeding under R.I. Gen. Laws § 15-8-11, it is shown that a party refused to submit to court ordered DNA tests, such refusal shall be considered by the court, along with all other evidence presented on the issue of paternity. A DNA test shall be made by a person the court determines is qualified as an examiner of DNA types.
- C. The court shall fix or approve the compensation of any expert at a reasonable amount, and may direct the compensation to be paid by the state, or by any other party to the case, or by both, in the proportions and at the times the court prescribes, and that, after payment by a party, all or part or none of such payment shall be taxed as costs in the action. Before conducting DNA the court may order any part of or all of the compensation paid in advance.
- D. The result of the DNA test, and if a determination of exclusion of paternity cannot be made, a calculation of the probability of paternity made by a person the court determines is qualified as an examiner of blood or tissue types based on the result of a blood or tissue typing test, shall be admissible in evidence in the trial of the case.
- E. A written report of the test results, including a calculation of the probability of paternity or a determination of exclusion of paternity, prepared by the duly qualified expert conducting the test, or by a duly qualified expert under whose supervision or direction the test and analysis have been performed, certified by an affidavit duly subscribed and sworn to by him or her before a notary public, may be introduced into evidence without the need for foundation testimony or other proof of authenticity or accuracy and without the necessity of calling the expert as a witness, unless an objection challenging the test procedures or results has been filed within ten (10) days before any hearing at which such results may be introduced into evidence and a cash bond posted with registry of the family court in amount sufficient to cover the costs of the duly qualified expert to appear and testify.
- F. If the results of the DNA tests duly admitted into evidence establish a ninety-seven percent (97%) or greater probability of inclusion that a party is the biological father of the child, then such threshold probability shall constitute a prima facie case of establishment of paternity and the burden of proof shall shift to the party to rebut such proof by clear and convincing evidence.

- G. The Office of Child Support Services may also utilize its own contracted qualified expert DNA facility. When the Office of Child Support Services is involved in the case and paternity tests are required, the Office of Child Support Services will schedule the tests and pay the initial costs. If the defendant is adjudicated the father, the State will seek reimbursement.
- H. Pursuant to R.I. Gen. Laws § 15-8-11, if the results establish a 97% or greater probability of paternity, it shall constitute a conclusive presumption.
- I. Scheduling DNA Test
1. DNA testing will be scheduled for both parties and the child at the Office of Child Support Services, 77 Dorrance Street, Providence. The parties will be scheduled at different times.
  2. If one or both parties does not appear, the DNA test may be rescheduled. After the appointment has been rescheduled twice and the custodial parent fails to keep the appointment, a non-cooperation code will be placed on the case, which may affect benefits received.
- J. Request for Admissions
1. DNA test results are returned to the Office of Child Support Services. When the test shows a high probability of paternity, the Office of Child Support Services may:
    - a. Provide those results for the assigned Court date; or
    - b. Send the results to the putative father (by certified mail), or his attorney (by regular mail) along with a Request for Admissions.
  2. The non-custodial parent has ten (10) days to respond in writing to the Request for Admissions. If the non-custodial parent objects to the Request for Admissions, a Motion to Compel Answers may be filed, setting the matter for hearing. The court then orders the putative father to respond to the request by either admitting or denying paternity.
  3. If the putative father admits or fails to respond within ten (10) days, the Request for Admissions is deemed true and accurate and a Motion for Summary Judgment (contested) is filed.
  4. If the putative father denies a specific Request for Admissions and admit the remainder, the agency may file an amended version of the Motion for Summary Judgment.

5. A Motion for Bond is filed in conjunction with the Motion for Summary Judgment. The purpose of the Motion for Bond is to ensure that if the court does not grant the State's Motion for Summary Judgment, support payments will be held in escrow until an order is entered. If the non-custodial parent is later excluded, the support payments will be returned to the non-custodial parent.
6. The non-custodial parent's presence is required at the hearing, either on the scheduled hearing date or at the Motion for Summary Judgment hearing date, even if an attorney is representing him:
  - a. If the non-custodial parent appears and does not object to the Motion for Summary Judgment, he is adjudicated to be the father of the minor child, his name is added to the child's birth certificate, and a support order is entered. The escrow payments, if previously ordered, are released and an order for medical coverage is obtained;
  - b. If the non-custodial parent fails to appear, and is not being represented by an attorney the court may grant the Motion for Summary Judgment, finding the putative father to be the father of the minor child;
  - c. If the putative father appears and objects to the Motion for Summary Judgment, the court may:
    - (1) Grant the Motion for Summary Judgment and order the aforementioned relief;
    - (2) Deny the Motion for Summary Judgment and order a second genetic or DNA testing, and/or grant the State's Motion for Bond;
    - (3) Deny the State's Motion for Summary Judgment and order the discovery process to continue in preparation for trial.

#### **1.13.14 Discovery**

- A. Discovery is the tool used for information gathering in preparation for a paternity trial. The rules of discovery are found in 20 U.S.C. Title V. Disclosure and Discovery, Rule 26 through Rule 37 and the Family Court Rules of Domestic Relations Procedure. Among the discovery documents utilized in a contested paternity case are the following:
  1. Depositions (Rules 26 - 32). Any party may, upon order of the court, take the testimony of any person including a party, upon oral examination or

written interrogatories, for the purpose of discovery or for use as evidence in the action or for both purposes. Limitations and the scope of the examination are governed by Rules 26 - 32.

2. Interrogatories (Rule 33). Interrogatories, or written questions, may be served upon an adverse party without permission of the court, if sent after 20 days of service of the defendant. The answers must be made fully in writing under oath, and be signed by the person making said answers, within 40 days after service. The scope and limitation of the interrogatories are governed by Rule 33.
  3. Request for Production of Documents (Rule 34). Any party may serve on the other party a request in writing to produce, and permit the party making the request to inspect and copy documents or tangible things which are in the possession, custody, or control of the party upon whom the request is served, or permit entry upon land or other property in the possession or control of the party upon whom the request is made. The procedures, scope and limitation of the Request for Production are contained in Rule 34.
  4. Request for Admissions (Rule 36). A party may serve upon any other party a written request for the admission of the genuineness of any relevant documents or of the truth of any relevant matters of fact set forth in the request.
  5. Each of the matters of which an admission is requested shall be deemed admitted unless, within 10 days after service, the party either:
    - a. Denies, specifically, the matters requested; or
    - b. Sets forth in detail the reasons why he cannot truthfully admit or deny those matters; or
    - c. Objects and requests a hearing on said objection.
  6. Rule 36 sets forth the effect of admissions as well as the procedure;
  7. Motion to Compel Answers on Request for Sanctions (Rule 37). If the adverse party refuses to answer discovery, the party must file a Motion to Compel said answers and request a hearing. Rule 37 sets forth the procedures and consequences for failure to respond.
- B. These techniques are used by both the custodial parent's and putative father's attorneys. Sanctions are ordered for the prevailing party when the opposing party fails to respond.

### **1.13.15 DNA Test Reveals Putative Father Excluded**

- A. When the DNA test excludes the putative father, the agency will proceed with a Motion to dismiss provided the putative father has been properly identified.
- B. When the custodial parent cannot identify the putative father during DNA testing or during a subsequent appointment viewing the lab photo, a Motion to Dismiss will be filed.

### **1.13.16 Putative Father Fails to Respond**

- A. No Response

When a putative father fails to respond to the Complaint for Paternity and Support (the 20-day summons), and fails to appear on the scheduled hearing date, a Paternity: Default judgment may be entered.

- B. Establish Paternity without Cooperation

1. The agency may proceed with attempts to establish paternity when the applicant or recipient fails to cooperate without good cause.
2. Whether paternity can be established depends on the Office of Child Support Services being able to obtain sufficient information regarding the putative father without the cooperation of the mother, and whether the putative father admits paternity.
3. The agency may also proceed with attempts to establish paternity in situations where it is determined that good cause exists for the applicant or recipient refusing to cooperate with Office of Child Support Services. In these cases, the agency must make a determination that this activity can proceed without risk of harm to the child or caretaker relative if the enforcement activity does not involve their participation. This determination must be in writing, will contain the agency's findings and basis for determination, and will be entered into the RIW case record. If the IV-A agency excuses non-cooperation, but determines that the IV-D agency may proceed to establish paternity, it will notify the applicant or recipient to enable such individual to withdraw his or her application for assistance or have the RIW case closed. Prior to making this determination, Office of Child Support Services will be afforded an opportunity to review and comment on the findings and basis for the proposed determination.

### **1.13.17 Special Paternity Issues**

- A. Not all paternity cases will involve the child's mother as the custodial parent. There will be cases where the child is living with a relative (*Loco Parentis* cases)

or with the putative father. In these cases paternity can still be established, however, procedures will differ from the cases previously discussed.

B. *Loco Parentis* Cases

In *Loco Parentis* cases, the applicant or recipient will make an assignment regarding both the putative father and the child's mother. However, (s)he cannot make the formal allegation of paternity. The Complaint for Paternity and Support can only be signed by a child's mother. Therefore, the mother must be located before pursuing paternity against the putative father. The procedures followed will depend on the information obtained, and how cooperative the child's mother and the putative father are. The case record must indicate whether the child was born of a marriage or out of wedlock.

C. Putative Father Seeks Paternity Establishment

The Office of Child Support Services will establish paternity upon the request of a putative father. A putative father does not have to have custody of the child nor receive assistance for such services to be provided. However, the case must be a case where the custodial parent is receiving services.

D. Custodial Father Seeks Establishment

1. The Office of Child Support Services will seek to establish paternity when a putative father is the custodial parent and applies for RIW, MA, or NA services.
2. If the Mother and Father appear for the appointment, the agency will:
  - a. Determine if there is an existing case, i.e., if the mother was previously on RIW and named the custodial parent as the putative father; provide the Rights and Responsibilities statement to them, either explain the statement or have them watch the Power of Two video before completing and signing the Voluntary Affidavit of Paternity.
  - b. Obtain the putative father's and mother's signature on the affidavit.
  - c. Notify the RIW agency of the completed action via electronic mail. Provide a copy of the completed and executed Voluntary Affidavit of Paternity to the putative father and also forward a copy to the eligibility technician in the appropriate public assistance office. This will enable the putative custodial father to obtain RIW immediately.
  - d. File the Voluntary Affidavit of Paternity with the Office of Vital Records.



- e. If the putative father appears for the appointment alone, a Petition for Voluntary Acknowledgement will be generated and his signature obtained the location of the mother will be ascertained and the petition will be e-filed and served with a Summons to Appear in court.
3. At the hearing:
- a. The putative father will acknowledge paternity on the record. If the natural mother is present and does not object, the court will adjudicate him to be the father of the child and order that his name be added to the birth certificate. An order will be prepared and mailed or hand delivered at court to both parties.
  - b. The Office of Vital Records will be ordered to add the father's name to the child's birth certificate. The court may order the Office of Vital Records to change the child's surname to that of the father as well.
  - c. If at the hearing, the natural mother and presumed father fail to appear after being duly served, the court may pass the matter.
  - d. If on the hearing date, the Office of Child Support Services Attorney indicates that after due and diligent efforts, service could not be perfected either on the natural mother or presumed father, the court shall order alternative service of notice, i.e., notice by publication, if applicable. A continuance date will be requested affording sufficient time for notice of the acknowledgment to be given to the natural mother. On the continuance date, the Office of Child Support Services Attorney will present to the court what efforts have been made to serve the respondent, and present copies of the notice by publication. The petitioner will acknowledge paternity on the record. The court will then adjudicate the petitioner the father of the child and order that the birth certificate be amended accordingly. A copy of the order will be mailed to the natural mother.
  - e. At the hearing on the Petition for Voluntary Acknowledgment, if the natural mother objects, DNA testing may be ordered. The case may then proceed as previously outlined in a contested posture.
  - f. Subsequent to the hearing, a copy of the order will be prepared and provided to the RIW agency.
  - g. If the petitioner fails to appear, the proceedings will be terminated and notice will be given to the IV-A eligibility technician of petitioner's failure to cooperate.

E. Non-Custodial Father Seeks Establishment

When a non-custodial putative father requests voluntary paternity establishment, the same procedure as outlined above will be followed. However, if the natural mother is receiving RIW or seeks support as a NA custodial parent, the non-custodial custodial parent will be asked to enter his appearance as a self-represented litigant, and an order for support and medical coverage will be entered.

- F. If the non-custodial parent is seeking to establish paternity by DNA testing, he may ask the agent to serve him as a Defendant or he may file an action as a Plaintiff with the Family Court Clerk. If the custodial parent has named him as the biological father, the agent may serve him as a Defendant. If not, he may file as a Plaintiff with the court.

**1.13.18 Voluntary Acknowledgment**

A. Court Practice

1. In any action commenced before the RI Family Court, utilizing the forms created by Family Court for this purpose, the father may acknowledge his paternity of the child with the clerk of the Family Court. Each acknowledgment must be signed by the person filing it, and it must contain:
  - a. The name, social security number, date of birth and address of the person filing the acknowledgment;
  - b. The name and last-known address of the mother of the child;
  - c. The date of birth of the child, or, if the child is unborn, the month and year in which the child is expected to be born; and
  - d. The name and address of the presumed father, if any.
2. The judge shall hold an informal hearing on the acknowledgment and shall enter an order establishing the paternity of the child and an order of support for the child, provided there are no objections from the natural mother or presumed father filed with the family court prior to the date of the informal hearing, and provided further that a copy of the acknowledgment and a notice of the informal hearing are duly served upon the mother and any presumed father according to the Family Court Rules of Domestic Relations Procedure.

3. The voluntary acknowledgment of paternity shall be recognized by the RI Family Court as a basis for establishing a child support order for the child without requiring any further proceedings to establish paternity.

B. Hospital Program

1. Under R.I. Gen. Laws § 40-6-21.1, all public and private birthing hospitals in this State are required to participate in a hospital based paternity acknowledgment program. The title "birthing hospital" means a hospital that has a licensed obstetric care unit or is licensed to provide obstetric services, or a licensed birthing center associated with a hospital. A birthing center is a facility outside a hospital that provides maternity services. This hospital based program must provide to both the mother and the alleged father, if he is present in the hospital:
  - a. Written and oral materials about paternity establishment, including written descriptions of the rights and responsibilities of acknowledging paternity;
  - b. A Voluntary Affidavit of Paternity signed by both parties;
  - c. The opportunity to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment; and
  - d. The opportunity to view the Power of Two video, which explains in detail the rights and responsibilities of acknowledging paternity.
2. This hospital based program must also ensure that due process safeguards are met. The birthing hospital will be responsible for electronically forwarding completed acknowledgements or copies to the R.I. Department of Health, Office of Vital Records. Both parents must sign the Voluntary Affidavit of Paternity and the signatures notarized or witnessed.
3. Voluntary acknowledgments made through a voluntary acknowledgement program are a basis for seeking a support order without requiring any further proceedings to establish paternity. This process may also be done at the Office of Child Support Services and at the Office of Vital Records.
4. The OCSS will provide supplies and manuals to the birthing hospital and the Office of Vital Records on an ongoing basis.
5. The requirement for participation in the programs by hospitals is in addition to the birth registration requirements under R.I. Gen. Laws Chapter 23-3.

## **1.14 Limitation on Recovery**

### **A. Recovery from the Father**

The father's liabilities for past education, and necessary support and maintenance, are limited to a period of six (6) years next preceding the commencement of an action hereunder.

### **B. Recovery from Father's Estate**

The obligation of the estate of the father for liabilities under the R.I. Gen. Laws §§ 15-8-1 through 15-8-26, are limited to those amounts accrued prior to his death. However, in order to hold the estate of the father liable under R.I. Gen. Laws §§ 15-8-1 and 15-8-26, an action hereunder must have been commenced during the lifetime of the father.

### **C. Statute of Limitations**

An action to determine the existence of the father and child relationship as to a child who has no presumed father under the R.I. Gen. Laws § 15-8-6, is not barred until four (4) years after the child reaches the age of majority.

## **1.15 Jurisdiction and Remedies**

A. The Family Court has jurisdiction of an action commenced under R.I. Gen. Laws § 15-8-11, and all remedies for the enforcement of orders for the expense of pregnancy and confinement of the mother, and for education, necessary support and maintenance, or funeral expenses for legitimate children shall apply. The court has continuing jurisdiction to modify or revoke an order and to increase or decrease amounts fixed by order for future education and necessary support and maintenance. All remedies under the Uniform Intergovernmental Family Support Act, and amendments thereto, are available for enforcement of duties of support and maintenance under R.I. Gen. Laws Chapter 15-23.1.

B. A person who has had sexual intercourse in this State thereby submits to the jurisdiction of the courts of this State as to any action brought under R.I. Gen. Laws Chapter 15-8 with respect to a child who may have been conceived by that act of intercourse.

C. Jurisdiction shall be acquired by service made in accordance with R.I. Gen. Laws § 9-5-33, as amended.

### **1.15.1 Jurisdiction of R.I. Courts**

A. Every foreign corporation, every individual not a resident of this state or his executor or administrator, and every partnership or association, composed of any

person or persons, not such residents, that shall have the necessary minimum contacts with the state of Rhode Island, shall be subject to the jurisdiction of the state of Rhode Island, and the courts of this state shall hold such foreign corporations and such nonresident individuals or their executors or administrators, and such partnerships or associations amenable to suit in Rhode Island in every case not contrary to the provisions of the constitution or laws of the United States.

- B. Service of process may be made on any such foreign corporation, nonresident individual or his executor or administrator, and such partnership or association within or without the state in the manner provided by any applicable procedural rule or in the manner prescribed by order of the court in which such action is brought.
- C. Nothing herein shall limit or affect the right to serve process upon such nonresident individual or his executor or administrator, or such partnership or association, or a foreign corporation within this state or without this state in any manner now or hereafter permitted by law.

#### **1.15.2 Clear and Convincing Evidence**

- A. In any action to establish paternity under R.I. Gen. Laws Chapter 15-8, other than an action brought pursuant to R.I. Gen. Laws §§ 15-8-2 or 15-8-3, the standard that must be met by the plaintiff shall be that of clear and convincing evidence.
- B. If the results of the DNA tests duly admitted into evidence establish a ninety-seven percent (97%) or greater probability of inclusion that a party is the biological father of the child, then such threshold probability shall constitute a prima facie case of establishment of paternity and the burden of proof shall shift to the party to rebut such proof by clear and convincing evidence.
- C. Trial by Court  
  
A trial shall be heard by the court.
- D. Venue  
  
The action may be brought in the county in which the child or the alleged father resides or is found, or if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.
- E. Time of Trial  
  
If a paternity action is initiated before a child's birth, the trial must not, without the consent of the putative father, be held until after the birth or miscarriage.

### **1.15.3 Evidence Relating to Paternity**

- A. Evidence used in a paternity hearing may include:
  - 1. Evidence of sexual intercourse between the mother and putative father at any possible time of conception. The standard that must be met by the plaintiff must be that of clear and convincing evidence.
  - 2. An expert's opinion concerning the statistical probability of the putative father's paternity based upon the duration of the mother's pregnancy.
  - 3. Medical or anthropological evidence relating to the putative father's paternity of the child based on tests performed by experts.
  - 4. All other evidence relevant to the issue of paternity of the child.

### **1.15.4 Civil Action**

- A. A paternity action is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify.
- B. Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts.
- C. If the refusal is upon the ground that this, his testimony or evidence, might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offenses shown in whole or in part by testimony or evidence that he is required to produce, except for perjury committed in his testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of court.
- D. The Office of Child Support Services is authorized to issue subpoenas as appropriate to individuals or entities to secure financial and other information relating to the obligor for the purpose of and to the extent necessary for the administration of the child support enforcement program. An individual or entity that fails to reply to an administrative subpoena shall be liable for a civil penalty of one hundred dollars (\$100) for the violation and shall be required to provide the information and/or comply with the request.
- E. Testimony of a physician concerning the medical circumstances of the pregnancy and birth is not privileged. Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the

probable time of conception of the child is inadmissible, unless offered by the mother.

- F. Testimony offered by a putative father with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother, at or about the probable time of conception of the child, is admissible as evidence only if he has undergone and made available to the court DNA tests, the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

### **1.15.5 Hearings and Records - Confidentiality**

Notwithstanding any other law concerning public hearings and records, any hearing or trial shall be held in closed court without admittance of any person other than those necessary to the action of the proceeding. All papers and records, other than the final judgement pertaining to the action or proceeding, whether part of the permanent record of the court or elsewhere, are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for good cause shown.

### **1.15.6 Judgements**

- A. The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.
  - 1. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued in accordance with R.I. Gen. Laws § 15-8-23.
  - 2. The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.
- B. Default Judgements
  - 1. A non-custodial parent's delay or failure to respond to court action initiated by the Office of Child Support Services may not, in certain circumstances, delay the paternity establishment process. Under R.I. Gen. Laws § 15-8-18.1 and the Family Court Rules of Domestic Relations Procedure, RI Family Court shall enter the defendant's default and a judgment by default in a paternity action upon the following conditions:

- a. Failure to respond to the complaint for paternity and support within twenty (20) days upon proof presented that the defendant has been duly served with the complaint;
  - b. Failure to appear at a scheduled hearing or trial after being duly notified of said hearing or trial, upon proof presented that the defendant has been duly served with notice of the scheduled hearing or trial;
  - c. Failure to appear or refusal to attend DNA testing upon proof presented that the defendant has been duly notified of the date, time and place of the testing;
2. The court may set aside an entry of default and, if judgment by default has been entered, may likewise set it aside in accordance with the Family Court Rules of Domestic Relations Procedure.

C. Enforcement of Judgements

1. If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under the R.I. Gen. Laws Chapter 15-8, or under prior law, the obligation of the father may be enforcement in the same or other proceedings by the mother, the child, the public authority that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by other persons, including a private agency, to the extent he has furnished or is furnishing these expenses.
2. Willful failure to obey the judgement or order of the court is a civil contempt of the court. All remedies for the enforcement of judgements apply.

D. Bond to Secure Payment of Judgement

The court at any time may require the alleged or adjudicated father to give bond or other security for the payment of any judgement which exists, or may exist in the future.

E. False Declaration of Identity

The making of a false complaint as to the identity of the father, or the aiding or abetting therein, shall be punishable as for perjury.

F. Appeals

An appeal in all cases may be taken by the defendant, the mother or her personal representative, or the public welfare official from any final order or



judgement of the Family Court, upon an action commenced, directly to the Supreme Court within 30 days after the entry of said order of judgement. No appeal, however, shall operate as a stay of execution unless the defendant shall give security for the payment of any judgement and security to pay the costs of such appeal.

G. Costs

If the court makes an order declaring paternity and for the support, maintenance, and education of the child, court costs including the costs of legal services of the attorney representing the petitioner, expert witness fees, and all other costs shall be taxed against the defendant.

### **1.16 Action to Declare Mother and Child Relation**

- A. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship.
- B. Insofar as practicable, the provision of the R.I. Gen. Laws Chapter 15-8 applicable to the father and child relationship shall apply.

### **1.17 Voluntary Acknowledgement Program**

- A. The Office of Child Support Services, in conjunction with the Department of Health, Office of Vital Records has a voluntary acknowledgment program in the birthing hospitals in RI. Medical Records staff has been trained to answer questions and complete the "Voluntary Affidavit of Paternity Form". A videotape entitled "The Power of Two" is shown to the parents as well as pamphlets distributed with answers to commonly asked questions by the mother and father. A statement of rights and responsibilities is also provided to the parents. The affidavit will be completed only if the parents are certain of the paternity of the child and do not wish to have DNA testing. By signing the affidavit the father is acknowledging he is the father of that child and responsible to financially support that child until the child is emancipated. The father has sixty days to rescind the acknowledgement by filing a Motion to Rescind in RI Family Court. Upon the expiration of the sixty-day period, it is presumed that he is the father of the child. The father's name will be added to the child's birth certificate along with other identifying information. At that time the child's last name can be chosen.
- B. If the parents do not complete the "Voluntary Affidavit of Paternity" at the hospital, they can make an appointment at the Office of Vital Records or at the Office of Child Support Services to view the videotape, read the pamphlets, review the Rights and Responsibilities Statement and sign the "Voluntary Affidavit of Paternity". The child's last name cannot be changed unless the Court orders Vital

Records to amend the birth certificate. In the alternative, the parties may file a Petition to Voluntarily Acknowledge with the RI Family Court.

## **1.18 Support Order Establishment**

### **1.18.1 Payment of Support to Custodial Agency**

- A. Whenever the Department of Children, Youth and Families shall pay for the support and maintenance of any child pursuant to the R.I. Gen. Laws §§ 42-72-13 and 42-72-14, or whenever such other department, agency, society, institution or person having the charge, care or custody of such child shall pay for the support and maintenance of such child, the court shall order either or both parents owing a duty of support to a child to pay an amount based upon a formula and guidelines adopted by an administrative order of the Rhode Island Family Court.
- B. In fixing the amount of support that the parents shall be ordered to pay, the court shall take into account all relevant factors, including, but not limited to:
  - 1. All earnings, income and resources of the custodial parent including real and personal property;
  - 2. The financial resources of the child;
  - 3. The standard of living the child would have enjoyed had the marriage not been dissolved;
  - 4. The physical and emotional condition of the child and his or her educational needs;
  - 5. The financial resources and needs of the non-custodial parent; and
  - 6. Any other factors which bear upon the needs of the child, and the ability of the parent to provide financial support for those needs.
- C. If it deems necessary or advisable, the court may order child support and education costs for children attending high school at the time of their eighteenth (18th) birthday and for ninety (90) days after graduation, but in no case beyond their nineteenth (19th) birthday. In addition, the court may order the support of a child with a severe physical or mental impairment to continue until the twenty-first (21st) birthday of the child (see § 1.8 of this Part).
- D. The court may review and alter its decree relative to the amount and payment of support. If the court finds that a substantial change in circumstances has occurred, the decree may be made retroactive to the date that the notice of a petition to modify was given to the adverse party.

- E. The Department for Children Youth and Families will determine which cases are appropriate for referral to the OCSS. The Policy for such determination has been published and is available in the Department for Children Youth and Families Policy Manual.

### **1.18.2 Name Children Receiving Public Assistance**

The party commencing an action seeking a divorce from the bond of marriage or divorce from bed and board or an order pursuant to the R.I. Gen. Laws § 15-5-9, shall at the time the proceeding is begun append to the petition a statement containing the names of all children of the marriage and their ages and stating whether any such children are at that time recipients of or applicants for public assistance.

## **1.19 Child Support**

- A. In a proceeding for divorce, divorce from bed and board, a miscellaneous petition without the filing of divorce proceedings, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount based upon a formula and guidelines adopted by an administrative order of the Family Court.
- B. In a proceeding to establish paternity or support, the court may, after opportunity for hearing, in its discretion, issue a temporary order for child support payable to the registry of the court and to be held pending entry of judgment. In the event of a final adjudication requiring no payment or payments in an amount less than those payments which have been made, the defendant shall be entitled to a full refund of all or a portion of the amounts so paid.
- C. If, after calculating support based upon court established formula, the court, in its discretion, finds such order would be inequitable to the child or either parent, the court shall make such findings of fact and may order either or both parents owing a duty of support to pay an amount reasonable or necessary for the child's support after considering all relevant factors including, but not limited to:
  - 1. The financial resources of the child;
  - 2. The financial resources of the custodial parent;
  - 3. The standard of living the child would have enjoyed, had the marriage not been dissolved;
  - 4. The physical and emotional condition of the child and his educational needs; and
  - 5. The financial resources and needs of the non-custodial parent.

- D. The court may, if in its discretion it deems necessary or advisable, order child support and education costs for children attending high school at the time of their eighteenth (18<sup>th</sup>) birthday and for ninety (90) days after graduation, but in no case beyond their nineteenth (19<sup>th</sup>) birthday, in accordance with R.I. Gen. Laws § 15-9-1.
- E. Notwithstanding the foregoing, the court, in its discretion, may order child support, in the case of a child with a severe physical or mental impairment still living with or under the care of a parent, beyond the child's emancipation as defined above. The court shall consider the following factors when making its determination:
1. the nature and extent of the disability;
  2. the cost of the extraordinary medical expenses;
  3. the ability of the child to earn income;
  4. the financial resources of the child;
  5. the financial resources of the parents;
  6. the inability of the primary caregiver of the child to sustain gainful employment on a full-time basis due to the care necessitated by the child.
  7. The onset of the disability must have occurred prior to the emancipation event. If a child support order for a child with a severe physical or mental impairment has been terminated, suspended or expired, the court shall consider the factors in this paragraph and has the discretion to order child support for this child prospectively based upon established child support guidelines. The court may periodically review the case to determine if circumstances warrant the continuation of child support.
- F. The court may, if in its discretion it deems it necessary or advisable, appoint an attorney or a guardian ad litem to represent the interest of a minor or dependent child with respect to his support, custody, and visitation. The court shall enter an order for costs, fees, and disbursements in favor of the child's attorney. The order shall be made against either or both parents. After a decree for support has been entered, the court may, from time to time upon the petition of either party, review and alter its decree relative to the amount of such support and the payment thereof, and may make any decree relative thereto which it might have made in the original suit.
- G. Said decree may be made retroactive in the court's discretion to the date that the court finds that a substantial change in circumstances has occurred, provided, however, that the court shall set forth in its decision the specific findings of fact

which show a substantial change in circumstances, upon which findings of fact the court has decided to make the decree retroactive.

- H. In a proceeding to enforce a child support order, or a spousal support order for a custodial parent having custody of a minor child, the court or its master may assign to the custodial parent such tangible personal property of the obligor as will be sufficient to satisfy the child or spousal support arrearage owed. The court or its magistrate, after hearing, shall establish the amount of the child or spousal support arrearage and the nature and value of the tangible personal property. To effect such assignment, the court or its magistrate may order the obligor to execute and deliver such documents of title as may be necessary to complete the transfer of title to such property, and may order the obligor to deliver possession of such property to the custodial parent. Whenever the obligor fails to comply with the order assigning such property, the order of assignment shall be regarded as a judgment vesting title to such property in the obligor as fully and completely as if the obligor had executed and delivered such documents of title.

#### **1.19.1 Reconsideration of Support Orders**

- A. Every order heretofore or hereafter entered by the Rhode Island Family Court providing for support of a child who at the time of entry of the order was not a recipient of or applicant for public assistance shall, in the event the child becomes the recipient of public assistance, be reconsidered "*de novo*" upon the petition of a parent or guardian of the child or the Department of Human Services.
- B. Upon the filing of such petition, the court shall hold a hearing for the purpose of determining the amount of support to which the child is entitled from the appropriate parent. In fixing the amount of support the court shall take into account the factors set forth in R.I. Gen. Laws § 15-5-16.

#### **1.19.2 Set Support for Public Assistance Children**

- A. If the statement appended to the petition indicates that any child of the marriage is a recipient of or applicant for public assistance, a hearing shall be held as promptly as possible to determine the amount of support to which each such child is entitled from the appropriate parent. The Office of Child Support Services shall be given notice of the hearing and shall appear there for the purpose of assisting the court in fixing the amount of support. In the absence of the consent of the parties and agreement of the Office of Child Support Services, the court shall not enter an order providing support without conducting a hearing. In fixing the amount of support that the parent shall be ordered to pay, the court shall apply the child support guidelines and take into account the following factors:

1. All earnings, income and resources of the parent including real and personal property;
  2. The earnings potential of the parent;
  3. The reasonable necessities of the parent;
  4. The needs of the child for whom support is sought;
  5. The existence and needs of other dependents of the parent;
  6. Any other factors which bear upon the needs of the child and the ability of the parent to provide financial support of those needs.
- B. For purposes of the guideline calculation, the income attributable to the RIW recipient is -0-.

### **1.19.3 Child Support Guidelines**

- A. The amount of the child support obligation is determined by using the child support guidelines formula and guidelines adopted by an administrative order of the Rhode Island Family Court. The guidelines are used to determine the required monthly support obligation.
- B. The child support guidelines formula takes into account all earnings, income and resources of both parties, including real and personal property, the earnings potential of the parties, the mandatory deductions such as preexisting child support orders, additional dependent children, the cost of medical premiums paid or cash medical ordered, optional deductions such as those specified on the guideline worksheet, and other reasonable criteria which the State may choose to incorporate.
- C. At a minimum, the formula must ensure that the child for whom support is sought benefits from the income and resources of both parties and that the child enjoys the standard of living he/she would have enjoyed if the family was intact.

### **1.19.4 Medical Support**

- A. Any new or modified order for child support issued by the Rhode Island Family Court shall contain a provision requiring either or both parents owing a duty of support to the child to obtain or maintain health insurance coverage for the child when such coverage is available through their employment at no cost or at a reasonable cost. If the child is receiving medical assistance in the form of RIte Care, RIte Share or fee for service benefits from the State of Rhode Island or other type of medical assistance, the Office of Child Support Services must pursue the non-custodial parent for private medical coverage for the child if it is

provided as part of his or her employment at no cost or at reasonable cost. Reasonable cost means that the coverage for the minor child is less than, or equal to five (5) percent of his or her gross income per month. If health insurance is not currently available at a reasonable cost, either or both of the parents will be ordered to enroll the child(ren) covered by the order when it does become available at a reasonable cost. The court may also order that the non-custodial parent pay five (5) percent of his or her income, in addition to the child support monthly order. This would be taken directly from the employee's income to the Rhode Island Family Court. A custodial parent providing private medical coverage through his or her employer would receive the weekly cash contribution toward medical if the court so ordered.

- B. Health insurance includes fee for service, health maintenance organization, preferred provider organization and other types of coverage under which medical services could be provided to the dependent child(ren) by either or both parents.
- C. Applicants for IV-D services will be provided with the same establishment and enforcement techniques that are available to cases with assigned support rights. The Office of Child Support Services will inform any IV-D applicant of the availability of medical support enforcement services. Upon an appropriate referral by the Medicaid agency, the Office of Child Support Services must also provide to any Medical Assistance Only (MAO) recipient the same range of services provided to RIW cases unless the MAO recipient informs the Office of Child Support Services in writing that she/he does not wish any services beyond those the Office of Child Support Services is required to provide for medical support. The Office of Child Support Services must provide these services to MAO recipients who have been referred by the Medicaid agency and have assigned their rights to medical support without an application or a fee.
- D. Any information the Office of Child Support Services obtains about health insurance coverage will be provided to the custodial parent. In cases where the child(ren) are receiving Medical Assistance, any information about health insurance coverage will also be provided to the Medical Assistance agency. This would include the policy name and number, and the child(ren)'s name(s) and social security number(s).

#### **1.19.5 Employer Medical Notices**

- A. The National Medical Notice, is issued to an employer by regular mail or electronic notice. The medical notice shall instruct the employer which health care plans the children shall be enrolled and include all identifying information of the child support case. The employer must respond within twenty (20) business days after the date of the medical notice indicating:

1. That the employer does not maintain or contribute to plans providing dependent or family care coverage;
  2. That health care is not available because the employee is no longer employed; or
  3. That the state or federal withholding limitations and/or prioritization prevent the withholding from employee's income of the amount required to obtain coverage.
- B. If family health care is available, the employer is required to transfer the appropriate part of the medical notice to the plan administrator of each appropriate group health care plan for which the children may be eligible. The plan administrator must provide health care coverage of the child(ren) under the group health plan described in the medical notice within forty (40) business days of the date of notice. Upon notification from the plan administrator that the children are enrolled, the employer must either:
1. Withhold from the employee's income any contributions required and transfer the contribution to the plan's administrator; or
  2. Complete the appropriate employee response portion of the notice and advise the Office of Child Support Services that enrollment cannot be completed because of prioritization or limitations on additional withholding income.
- C. Coverage of a dependent child shall continue until the child is no longer a dependent. The employer must continue to withhold employee contributions and may not discontinue or eliminate health care coverage for the children unless the employer is provided satisfactory evidence that:
1. The court or administrative child support order is no longer in effect; or
  2. The children are or will be enrolled in comparable health care coverage, which will take effect no longer than the effective date of dis-enrollment from the plan; or
  3. The employer eliminates family health care coverage for all of its employees.
- D. In any case in which employment terminates, the employer must promptly notify the Office of Child Support Services of the termination within ten (10) days.

#### **1.19.6 Establishing the Order**



- A. The Office of Child Support Services will pursue a support order either by first serving the Complaint for Paternity and Support, or filing a Complaint or Motion for Support. The Office of Child Support Services agent will:
  - 1. Generate a Complaint for Paternity and Support or Support alone, when there is no domestic relations case found in the Family Court Domestic Index, or there is no reciprocal case pending and involving the same parties (Rhode Island Divorce Filings);
  - 2. Generate a Motion for Support if not automated, when
    - a. There is an existing domestic support order and the custodial parent receives RIW;
    - b. When there is an existing domestic case pending and no support order has been entered; and
    - c. When there is an existing reciprocal case pending and the custodial parent reopens his/her RIW case.

#### **1.19.7 Complaint for Support**

- A. When it has been determined that a support motion is needed, the child support agent will generate the appropriate motion and Efile the motion to obtain a hearing date from the family court. Upon receipt of a court date, the mail notice will be generated in the first instance, followed by service by constable with witness subpoena and summons.
- B. If a summons and subpoena are generated, the Constable has three weeks in which to obtain successful service.
- C. If the parties do not appear at court after receiving the support packet by mail, the constable will serve the packet.

#### **1.19.8 The Non-Custodial Parent is Successfully Served**

- A. Per Court Rule, OCSS is permitted to serve the parties by regular mail in the first instance. If the parties appear voluntarily in response to the mail notice, and enter their appearance as a self-represented litigant, the case may proceed on the scheduled hearing date and time. If the parties do not appear, or one party does not appear, the pleadings will then be served by constable for a new date.
- B. When successful service is obtained:
  - 1. The original witness subpoena and summons are EFiled with the Rhode Island Family Court;

2. The case is then sent to the Rhode Island Family Court for the Child Support Attorney with all appropriate forms.

### **1.19.9 Non-Custodial Parent Cannot be Served**

When the non-custodial parent cannot be served, the agency will attempt to locate the non-custodial parent at a verified address and start the process again.

## **1.20 Wage Withholding**

- A. Immediate withholding is required for all cases whether or not the cases are IV-D cases, with new or modified orders on the effective date of the order unless one of the parties demonstrates, and the court or other administrative process finds good cause not to require the withholding, or a written agreement is reached between both parties which provides for an alternative arrangement.
- B. Electronic Income Withholding (EIWO) allows an employer to register on the federal portal in order to receive income withholding orders electronically rather than by mail. If an employer registers for one state that constitutes an acquiescence to participate for all states.

### **1.20.1 Direct Deposit Payments**

A custodial parent who is in receipt of child support payments must choose to receive these payments via direct deposit into his or her checking or savings account, or automatic deposited to an electronic payment card (electronic transfer of funds to an ATM card) called a "Kids Card". With Direct Deposit, the payment will be electronically deposited directly into a custodial parent's designated checking or savings account. Electronic methods eliminate the need for a paper check to be issued through the mail and result in the custodial parent having quicker access to his or her child support payment. With an electronic debit card custodial parents can access their child support payments by using a plastic ATM card and their personal identification number (PIN) at a point of sale (POS) terminal.

## **1.21 Enforcement Standards**

- A. The Office of Child Support Services will electronically monitor all IV-D cases for compliance with child support obligations. Parents must comply with all child support orders and medical support orders. The Office of Child Support Services will take all appropriate enforcement actions to enforce the requirements of the orders. Noncompliance may result in, but not limited to:
  1. Administrative Income Withholding;

2. Administrative lien and levy on bank accounts;
  3. Administrative offset;
  4. Contempt proceedings;
  5. Federal and State income tax refund intercepts;
  6. Credit Bureau Reporting;
  7. Referral to the R.I. Attorney General's Office (see felony penalties below);
  8. New Hire Reporting;
  9. Insurance intercept; and / or
  10. Passport denial.
- B. For those obligors who are more than ninety (90) days in arrears, enforcement may include:
1. Revocation;
  2. Suspension or the prevention of the re-issuance or renewal of the obligor's license to operate a motor vehicle or register a motor vehicle; and / or
  3. Suspension or the prevention of the re-issuance or renewal of the obligor's certification, registration, permit, approval, or other similar document to engage in a profession, occupation, business, or industry.
- C. For obligors whose arrears are in excess of five hundred dollars (\$500), enforcement may include:
1. Setoff of certain lottery winnings and proceeds of insurance settlements to pay support arrears; and
  2. Prevention of the issuance, re-issuance, or renewal of the obligor's license to operate a motor vehicle and/or the registration or renewal of registration of the obligor's motor vehicle.
- D. In addition to the enforcement actions described above, the Office of Child Support Services may refer delinquent child support payers to the R.I. Attorney General's office for prosecution when it is determined that circumstances are appropriate.
- E. In any case involving non-support of a child pending before Rhode Island Family Court or any other tribunal or agency of competent jurisdiction, any person

committing perjury or false swearing shall be guilty of a felony and shall be imprisoned for a term not to exceed twenty (20) years.

- F. The case may also be referred to the US Attorney's Office, if the non-custodial parent resides in another state and the arrears is over \$10,000.00. Other elements of the felony include proof of ability to earn and willful failure to pay.
- G. Initiating Enforcement
  - 1. The eligibility system is programmed to initiate enforcement action at certain thresholds in an automated fashion. The custodial parent need not call and request enforcement action be taken.
  - 2. Enforcement actions are automated and are taken simultaneously.

### **1.21.1 Administrative Income Withholding**

- A. Pursuant to federal regulations and state law, the State must ensure that in the case of each non-custodial parent to whom a support order is or has been issued or modified in the state, and is being enforced under the State Plan, so much of his or her wages must be withheld to comply with the order. In addition to the amount to be withheld to pay the current month's obligations, the amount to be withheld must include a 10% tack on amount to be applied toward liquidation of overdue support.
- B. Implementation

The state must take steps to implement the withholding and to send the advance notice required on the earliest of:

  - 1. The date on which the parent fails to make payments in full, within fourteen (14) days of the due date;
  - 2. The date the non-custodial parent requests that withholding begin;
  - 3. The date on which the custodial parent requests that withholding begin in accordance with the standards and procedures the State may establish (A custodial parent could request withholding if a non-custodial parent is not meeting the terms of the written agreement for an alternative arrangement.); or
  - 4. The date on which the Office of Child Support Services becomes aware that third party payments to a non-custodial parent for the costs of health services were not used for reimbursement to either the other parent, or guardian of the child or the provider of the services or the Department of Human Services.

## C. Direct Wage Withholding

1. On behalf of any custodial parent for whom the department is already providing services, or on application of a resident of this state who is an custodial parent or obligor of a support order issued by this state, or of an agency to whom the custodial parent has assigned support rights, the department may issue a wage withholding order to an employer in another state. Pursuant to UIFSA the employer must honor the wage withholding order issued by Rhode Island.

### 2. Remedies Additional

The income withholding remedy herein provided is in addition to, and not in substitution for, any other remedy otherwise available to enforcement support orders issued in this state or in another jurisdiction. Relief under R.I. Gen. Laws Chapter 15-16, shall not be denied, delayed or otherwise affected because of the availability of other remedies, nor shall relief under any other statute be delayed or denied because of the availability of this remedy.

### 3. Income Withholding Agency

In accordance with R.I. Gen. Laws Chapter 15-16, the Department of Human Services is hereby designated as the state income withholding agency and shall have all powers, duties and responsibilities to establish and administer income withholding, and is further authorized and directed to promulgate rules and regulations it deems necessary to implement the provisions and purposes of this law, provided, however, that any rule or regulation affecting the duties and responsibilities of the Family Court shall be made with the concurrence of the chief judge of the Family Court.

### 4. Withholding as an Enforcement Remedy

The income withholding remedy herein provided is in addition to, and not in substitution for, any other remedy otherwise available to enforcing a support order or a medical child support order issued in this state or in another jurisdiction. Relief under R.I. Gen. Laws Chapter 15-16 shall not be denied, delayed or otherwise affected because of the availability of other remedies, nor shall relief under any other statute be delayed or denied because of the availability of this remedy.

### 5. Withholding Amounts

- a. The Office of Child Support Services will ensure that in each court ordered case an amount must be withheld from the non-custodial

parent's wages as is necessary to comply with the order. Payments must include the current support payment and a payment that is equal to ten percent (10%) of the current support amount as payment on any past-due support.

- b. Upon petition by a non-custodial parent, the court in its discretion, may reduce the amount required to be withheld in liquidation of support arrearage to a nominal or token amount, if the court finds that such additional withholding would work an undue hardship on the non-custodial parent.
- c. In the event there are two (2) or more income withholding orders against the same income of an obligor, the department will allocate and distribute the amount remitted by the withholding agent between or among the separate income withholding orders giving priority to current support obligations as follows:
  - (1) Each custodial parent shall be allocated an amount in the proportion that each custodial parent's current support order under income withholding bears relative to the total of all amounts for current support under income withholding orders for that obligor;
  - (2) Any remaining withheld income shall be allocated to each custodial parent in an amount proportional to which each custodial parent's arrearage order under income withholding bears relative to the total of all amounts ordered to be paid on arrearages under income withholding orders.
- d. Regardless of the amount of the order or orders, and amounts payable on arrears, the total amount withheld under income withholding provisions cannot exceed the maximum amount permitted under § 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)). The Act limits the withholding to fifty percent (50%) of disposable income if the earner is supporting another dependent and sixty percent (60%) for an earner with no dependents. The percentages increase to fifty-five percent (55%) and sixty-five percent (65%) if the amount in arrears has been delinquent for twelve (12) or more weeks.

## 6. Employment Changes

- a. The obligor parent is responsible for promptly notifying a new employer of his/her child support and/or medical support order(s). The obligor must also promptly notify the Office of Child Support

Services of his/her change in employment so that the Office of Child Support Services can transfer the assignment, garnishment, or order for child support and/or health insurance to the subsequent employer.

- b. Pursuant to R.I. Gen. Laws § 15-20-3, failure of an obligor parent to make either of these notifications shall be a misdemeanor and shall be punishable by imprisonment for a term not exceeding one (1) year, or by a fine of not more than one thousand dollars (\$1000), or both to OCSS.
- c. Through interface with the Department of Labor and Training and as a result of information from New Hire reporting, the eligibility system is updated electronically and a new wage withholding is generated to the new or to the DLT for unemployment benefits, worker's compensation or TDI benefits.

7. Employer Fails to Submit Payment

If the employer fails to submit a payment, OCSS will initiate an investigation which may result in serving the employer return receipt requested. Continued failure to submit payment may result in contempt action.

8. Termination of an Income Withholding

- a. An income withholding order will remain in full force and effect until modified or revoked by the Family Court. Such order may be modified or revoked by the court upon application and for good cause shown, or when the child support order has been suspended and all arrearages are paid in full.
- b. When appropriate, the Office of Child Support Services will promptly request Family Court to terminate a withholding order and refund to the obligor any amount which may have been improperly withheld subject to the recoupment policy.

9. Contesting the Income Withholding

- a. A non-custodial parent may contest the proposed withholding but only on the basis of a mistake of fact. Mistakes of fact are limited to:
  - (1) An error in the amount of current support;
  - (2) Mistaken identity;

- (3) An error in the amount of income to be withheld in payment of current support; and/or
- (4) The amount to be withheld exceeds the maximum amount permitted under § 303(b) of the Consumer Credit Protection Act (15 U.S.C. § 1673(b)) .

b. A non-custodial parent may contest an income withholding by filing or mailing a written statement to the Office of Child Support Services within ten (10) days of receipt. The non-custodial parent's request must specify the mistake(s) of fact claimed.

### **1.21.2 Contempt Processing**

- A. In a contempt action, the non-custodial parent is brought to court to show why the court order has not been obeyed. A contempt action is filed only after all other administrative enforcement measures are undertaken and are unsuccessful, and will only be filed when four (4) months' worth of arrears are due and owed. The court may:
1. Find the non-custodial parent in willful contempt and sentence him/her to prison until all or a part of the arrearage is paid;
  2. Set an arrearage amount and enter an arrears order;
  3. Order an income withholding;
  4. Place a lien against the non-custodial parent's personal or real property;
  5. Require the non-custodial parent to post a security or bond; or
  6. Order any other action necessary to enforce the order.
- B. Contempt actions may be filed when the arrears due and owing are equivalent to 4 months' worth of arrears.

### **1.21.3 Felony Penalties**

- A. Every person who is obligated to pay child support pursuant to an order or decree established by or registered with RI Family Court pursuant to R.I. Gen. Laws Chapter 15-11, who has:
1. incurred arrearage of past due child support in the amount of ten thousand dollars (\$10,000), and who shall willfully thereafter, having the means to do so, fail to pay one or more installments of child support in an amount previously set by the court, according to the terms previously set by the



court, shall be guilty of a felony for each instance of failure to make such subsequent payments and upon conviction be punished by imprisonment for a period not to exceed five (5) years; or

2. who have willfully for a period of three (3) years, failed to pay any installments of child support in an amount previously set by the court, according to the terms previously set by the court, and who shall thereafter, having the means to do so, fail to pay one or more installments of child support in an amount previously set by the court, according to the terms previously set by the court, shall be guilty of a felony for each instance of failure to make such subsequent payments and upon conviction be punished by imprisonment for a period not to exceed five (5) years.

B. In any pursuit of a felony conviction, the Office of Child Support Services will develop case prosecution in conjunction with the Department of the Attorney General.

#### **1.21.4 Administrative Liens**

A. Pursuant to R.I. Gen. Laws § 15-21-2, any child support order which is enforceable by the Office of Child Support Services in accordance with Title IV-D of the Social Security Act and which is unpaid in whole or in part shall, as of the date on which it was due, be a lien in favor of the custodial parent or assignee in an amount sufficient to satisfy unpaid child support whether the order is for ongoing support or is an arrears order.

B. A lien produced by another jurisdiction, in accordance with the provisions of R.I. Gen. Laws § 15-21-11, shall be accorded full faith and credit without the requirement of a hearing.

C. Notice of Intent to Lien

If the property subject to the lien is real property or personal property, the title to which is maintained as a public record, the agency may record a copy of the notice of intent to lien with the office of the recorder of deeds, the registry of motor vehicles, or other place where the title to the property is recorded. Any person taking title to such property subsequent to such recording does so subject to the interest of the agency as it may be determined. Said notice of intent shall be recorded no more than ten (10) days prior to the mailing of the notice of intent to the obligor.

D. Notice of Intent to Lien to Obligor

1. The Office of Child Support Services shall send a written notice of intent to lien to the obligor if his address is known to the Office of Child Support Services.
2. This notice, sent by first class mail, will specify:
  - a. The amount unpaid as of the date of the notice or other specific date;
  - b. The obligor's right to request a hearing by filing a written request with the Office of Child Support Services within thirty (30) days of the date of the notice. If a hearing is requested in a timely manner, all lien enforcement action will cease until a hearing decision is rendered;
  - c. Identification of the property, real or personal, which is subject to the lien.
3. If the property subject to the lien is a matter of public record, the Office of Child Support Services may record a copy of the notice of intent to lien in the appropriate public record. This notice of intent to lien must be recorded no more than ten (10) days prior to the mailing of the notice to the obligor.

E. Notice of Intent to Lien to Non-Obligor

1. If a lien is to be placed on property jointly held with a non-obligor, the non-obligor must be sent notice of the Office of Child Support Service's intent to lien. This notice will also inform the non-obligor of the right to an administrative hearing with the Office of Child Support Services to contest the scope of the property interests of the lien and/or the right to a judicial review in the RI Family Court.
2. Service of this notice may be made by first class mail or as specified in the Family Court Rules of Domestic Relations Procedure.

F. Perfecting of Administrative Liens

1. Real Property
  - a. To perfect (record) the lien, a notice of intent to lien is sent to the recorder of deeds for the city or town where the property is located. This notice of intent to lien must be sent no more than ten (10) days prior to the notice of intent to lien that is sent to the obligor.
  - b. If the obligor against whom the notice of intent to lien was filed:

- (1) Fails to request a hearing within the allotted time allowed;
  - (2) Fails to appear for a requested hearing; or
  - (3) Neglects or refuses to pay the sum due after the expiration of thirty (30) days after a hearing is conducted in which it has been determined that arrears exist;
- c. The notice of intent as filed shall be deemed and operate as a lien which is perfected by the Office of Child Support Services by the filing of a notice of lien. The notice of lien shall specify the property to be attached and the amount of arrearage due and shall be filed with the office of the recorder of deeds of the city or town where the notice of intent was originally filed.
- d. The lien shall have priority over all subsequent liens or other encumbrances, subject to the provisions of R.I. Gen. Laws § 6A-9-312 and with the exception of any lien for taxes. A child support lien shall encumber after-acquired personal property or proceeds.
- e. The lien shall expire upon either the termination of a current child support obligation and the payment in full of unpaid child support or release of lien by the Office of Child Support Services.
- f. A full or partial release of the lien shall be filed within ten (10) days of the obligor's compliance with the demands of the lien. This shall be done without fee to the Office of Child Support Services.

## 2. Personal Property

- a. To perfect a lien on personal property, a notice of intent to lien is sent to the Secretary of State's office, the Registrar of Motor Vehicles, or any other office or agency within the State responsible for the filing or recording of liens. There will be no fee charged to the Office of Child Support Services for either the filing or the release of such liens.
- b. This notice of intent to lien must be sent no more than ten (10) days prior to the notice of intent to lien that is sent to the obligor.
- c. If the obligor against whom the intent to lien was filed:
- (1) Fails to request a hearing within the allotted time allowed; or
  - (2) Fails to appear for a requested hearing; or

- (3) Neglects or refuses to pay the sum due after the expiration of thirty (30) days after a hearing is conducted in which it has been determined that arrears exist;
- d. The notice of intent as filed shall be deemed and operate as a lien which is perfected by the Office of Child Support Services by the filing of a notice of lien. The notice of lien shall specify the property to be attached and the amount of arrearage due and shall be filed in the office or agency where the notice of intent was originally filed.
- e. The lien shall have priority over all subsequent liens or other encumbrances, subject to the provisions of R.I. Gen. Laws § 6A-9-312 and with the exception of any lien for taxes. A child support lien shall encumber after-acquired personal property or proceeds.
- f. The lien shall expire upon either the termination of a current child support obligation and the payment in full of unpaid child support or release of lien by the Office of Child Support Services.
- g. A full or partial release of the lien shall be filed within ten (10) days of the obligor's compliance with the demands of the lien. This shall be done without fee to the Office of Child Support Services.

G. Levy of Personal Property

1. When an administrative lien has been perfected (recorded), the Office of Child Support Services may collect unpaid child support by placing a levy on the property against which a lien has been placed. This means that the Office of Child Support Services may seize and sell any property that is subject to levy in order to satisfy unpaid child support.
2. A levy placed on a life insurance or endowment contract is a demand for payment toward the total amount of the lien. Such organization shall pay any available proceeds from the insurance or endowment contract to the Office of Child Support Services within ninety (90) days after service of notice of the levy.
3. Whenever any property upon which levy has been made is not sufficient to satisfy the claim for which levy is made, the Office of Child Support Services may thereafter, as often as necessary, proceed to levy, with notice, upon any other personal property of the obligor liable to levy, until the amount due from him, together with expenses, is fully paid. However, any support obligation shall be fully satisfied prior to payments for expenses.

4. Upon demand, a person who fails or refuses to surrender personal property subject to levy shall be liable in his own person and estate to the state in a sum equal to the value of the property not surrendered but not exceeding the amount of the lien, along with costs and interest, at the rate authorized for civil judgments, from the date of the levy. In addition, any person required to surrender property which has been levied who fails or refuses to do so without reasonable cause shall be liable for a penalty equal to twenty-five percent (25%) of the amount recoverable. This interest or penalty shall not be credited against the child support liability but will instead be paid into the general fund. Any non-obligor party aggrieved by a decision of the Office of Child Support Services, may, within ten (10) days of the receipt of the notice of demand, request an administrative hearing with the Office of Child Support Services.

#### H. Lien Foreclosure - Real Property

1. If the obligor shall default in the payment of any child support obligation, or if the Office of Child Support Services has perfected a lien on real property as outlined above, then the Office of Child Support Services may sell the real property of any defaulting obligor at public auction after proper notification has been made. Proper notification consists of the following:
  - a. Written notice by certified mail, return receipt requested, to the obligor's last known address. This must be sent at least twenty (20) days prior to the publication of any public notice.
  - b. Public notice published at least once a week for three (3) consecutive weeks in a newspaper published daily in the city or town where the property is located. If there is no public, daily newspaper published in the city or town where the property is located, the public notice will be published according to the mandates of R.I. Gen. Laws § 15-21-7.
  - c. Written notice by certified mail, return receipt requested, to any person or entity having an interest of record in the real property. This must be sent no later than thirty (30) days prior to the date originally scheduled for the sale of the property.
  - d. Written notice to other such parties as are designated in R.I. Gen. Laws § 15-21-7 and in accordance with the notification requirements specified therein.
2. Any foreclosure sale held as outlined above, and the title conveyed to any purchaser or purchasers pursuant to such sale, shall be subject to any lien

or encumbrance entitled to a priority over the lien of the Office of Child Support Services.

#### I. Court-Ordered Liens

1. When RI Family Court orders a lien placed on real or personal property, a certified copy of any judgement or order containing specific language relative to a restraining order or lien on real estate may be recorded with the recorder of deeds in the city or town where the property is located.
2. The certificate of the custodial parent, or his or her attorney duly signed and notarized, or a certified copy of a judgement or order of the Family Court which contains a provision that all arrearages have been paid in full shall, when recorded, be a discharge in full of said lien.
3. If any child support provided in a judgement or order has been directed to be paid to the clerk of the court, or to any other office designated by the court, pursuant to any other provision of law, and such directive is set forth in the copy of the docketed judgement or order, or in the docket or certified copy of an amended or supplemental order, such certificate shall not affect the lien unless also approved in writing by such clerk or other designated officer.
4. A lien under this section shall not be dischargeable in bankruptcy.

#### J. Filing of Court-Ordered Lien

1. The Child Support Administrative Office will be notified when the court has ordered a lien placed against a non-custodial parent's property.
2. Agents should:
  - a. Contact the city or town hall where the property is located to obtain the lot and plat number.
  - b. Record this information in the appropriate fields in the Lien on Real Estate panel of the ORDR function.
  - c. Obtain a certified copy of the order placing the lien.
  - d. Send the certified copy of the order along with a cover letter to the city or town hall by certified mail, return receipt requested.
  - e. When proof of receipt of the registered letter is received from the post office, the date the letter was signed for should be recorded in the electronic case record.

### **1.21.5 Passport Denial**

A. Effective October 1, 2006, passport denial will be triggered when an obligor's cumulative arrears are equal to or greater than \$2,500. This means he/she will not be allowed to obtain or renew a passport until these arrears are paid in full, or an alternative payment plan has been agreed to, and the non-custodial parent demonstrates that there is a hardship exemption.

B. Hardship Exemption

The non-custodial parent must provide documentation of military service which requires travel to or from the United States, documentation that there was a death in the family that requires the non-custodial parent's presence in another country or this country, a family illness as demonstrated through medical documentation.

C. Payment Plan

The non-custodial parent must present to the OCSS a lump sum payment and provide the office with a payment plan to reduce the arrears to \$0.

D. The Office of Child Support Services must inform OCSE to notify the Department of State to reinstate due to incorrect arrears reported, a hardship exemption, a lump sum payment, and an alternative payment plan.

### **1.21.6 Multi-State Bank Match**

Using the same offset file, the Financial Management Services reports matches of our delinquent obligors to account holders of all banks or other financial institutions who do business in more than one state and have opted to report these accounts to the Office of Child Support Enforcement rather than to the individual states.

### **1.21.7 Medical Enforcement**

A. Often there is an existing order to obtain or maintain medical coverage and no accompanying insurance information available on the eligibility system. If after available techniques to match insurance information are unsuccessful, the Office of Child Support Services may take steps to enforce an order for medical coverage via a motion to modify medical coverage. The system generally does this in an automated fashion when the order to obtain/maintain exists and there is an absence of available medical insurance information. However, if it comes to the attention of the agent, a Motion to modify medical coverage may be filed. The motion requests that the court either order the party to obtain medical coverage if it is available at no cost or at reasonable cost through his/her employer or if not

reasonable, to order a cash medical order equivalent to 5% of the parties gross monthly income. This requires a recalculation of the child support order.

- B. The Office of Child Support Services, on its own information or on account of a claim by an custodial parent, determines that an obligor parent has failed to comply with a judgment or order for health insurance coverage issued pursuant to R.I. Gen. Laws § 15-5-16.2, and such insurance is available to the obligor through his employer, the Office of Child Support Services shall send to the obligor's employer the National Medical Notice ordering the employer to enroll the minor child(ren) in a health insurance plan. Upon receipt of the National Medical Notice from the Office of Child Support Services, the employer or provider of health care insurance shall, subject to the provisions of its contract and consistent with the provisions of the support order, enroll the child(ren) whether or not the employee has signed an enrollment application. If the employer's benefit plan provides options as to health care coverage, the hospital plan administrator shall notify the OCSS of the options available. The OCSS shall contact the custodial parent with the options and choose an option. In the event an option is not chosen, the least expensive option available is chosen.

#### **1.21.8 Posting Security, Bond, or Guarantee**

- A. The Office of Child Support Services uses procedures which require non-custodial parents to post security, bond, or give some other guarantee to secure payment of overdue support. The Office of Child Support Services will provide advance notice to the non-custodial parent regarding:
1. The delinquency of the support payment;
  2. The requirement of posting security, bond or guarantee;
  3. His/her rights and methods available for contesting the impending action.
- B. The Office of Child Support Services will develop guidelines that are generally available to the public to determine whether the case is inappropriate for application of this procedure.

#### **1.21.9 Secure Payment of Overdue Support**

- A. In a proceeding to enforce past due support, as defined herein, the court after hearing and a finding of overdue support, may require an obligor parent to give security, post a bond, or give some other guarantee to secure payment of overdue support; the security, bond, or guarantee to be in such amount, for such term and upon such conditions as the court or magistrate shall deem necessary or advisable. The court may order that the security, bond, or other guarantee be deposited into the registry of the Family Court. The obligor parent shall be served



with the notice of any proceeding under this section and the notice shall state the procedures to contest the action.

- B. For purposes of this section, "past due support" means the amount of court or administratively ordered child support or maintenance, medical child support or a spousal support for a custodial parent having custody of a minor child, which is overdue or otherwise in arrears, regardless of whether there is an outstanding judgment for that amount, and whether the order for the support, medical child support or maintenance has been established by a court or by an administrative process authorized under the laws of any State for:
1. Support and maintenance of a minor child, which is owed to or on behalf of the child;
  2. Support and maintenance of the obligor parent's spouse or former spouse with whom the child is living; or
  3. Medical Child Support.

#### **1.21.10 Federal and State Tax Refund Offsets**

- A. Federal and State income tax refunds which are due non-custodial parents may be intercepted, and the refunded amount applied to court ordered past-due child support or maintenance (spousal support) obligations, owed for a child or a parent with whom the child is living. Any Federal tax refund that is intercepted must be used to satisfy past-due amounts, and may not be used to satisfy current obligations.
- B. Administrative Offset
1. Certain Federal income resources can be offset. These include Federal salaries, Federal retirement benefits, Federal vendor payments and Federal stipends such as travel reimbursement.
  2. Although Federal regulations allow administrative offsets for arrears as small as \$25, Rhode Island opted to keep the thresholds for Administrative Offset the same as for Federal Tax Offset.

#### **1.21.11 Child Support Income Tax Refund Offset**

- A. R.I. Gen. Laws Chapter 44-30.1

Per R. I. Gen. Laws Chapter 44-30.1, for the purpose of these regulations, "claimant agencies" shall mean Department of Human Services, Office of Child Support Services, or the Rhode Island Higher Education Assistance Authority (RIHEAA) or RIHEAA acting as agent for student loan guarantee agencies in

other states and the Division of Taxation. The claimant agencies shall cooperate in identifying debtors who owe money to the State, through its various claimant agencies, and who qualify for a refund from the Division of Taxation. It is also the intent of this chapter that procedures be established for setting off against such refund the sum of any debt owed to the state. Furthermore, it is the legislative intent that this chapter be liberally construed as to effectuate these purposes, as far as legally and practically possible.

B. Authorization

The Department of Human Services is authorized and directed to promulgate rules and regulations to implement the Federal and State programs for offset and collection of past-due child support and medical child support from income tax refunds, as authorized by Internal Revenue Code, 26 U.S.C. §§ 6305(b) and 6402(c) of the Internal Revenue Code and implementing regulations, and as authorized by the R.I. Gen. Laws Chapter 44-30.1. Such rules and regulations shall provide the child support obligor with an opportunity for an administrative hearing to contest the offset.

C. Policy and Procedure

The Office of Child Support Services policies and procedures are the same for both Federal tax refund intercepts, administrative and State tax refund intercepts with the exception that administrative and State tax refund intercepts must first be applied to current support before being applied to past-due amounts. Also, for State tax refund intercepts, the Office of Child Support Services submits the certification file(s) to the RI Division of Taxation.

D. Complaints Regarding Joint Returns

When the Office of Child Support Services agent receives a complaint regarding joint returns prior to offset, (s)he will inform the non-custodial parent that the IRS and Division of Taxation will notify his/her spouse at the time of offset regarding the steps to take to secure the spouse's proper share of the refund. Complaints regarding joint returns received at or after offset will be handled by referring the spouse to the IRS or the Division of Taxation.

E. Collections of Debts by Setoff

Within such a time frame established by the Division of Taxation, the claimant agency shall supply the information necessary relative to each debtor owing the State money, and further, shall certify the amount of debt or debts owed to the State by each debtor. Upon receiving notice from the claimant agency that a named debtor owes past-due support, or has obligations owed, the Division of Taxation shall determine whether any amount, as a refund of taxes paid, is

payable to such debtor (regardless of whether such debtor filed an income tax return as a married or unmarried individual). If the Division of Taxation determines that any such refund is payable, the Division of Taxation shall set off the past-due support or the obligation owed against the debtor's refund and shall reduce the debtor's refund by the amount so determined. The Division of Taxation shall transfer the amount of past-due support or obligation owed setoff against the debtor's refund to the claimant agency or in the case of out-of-state agencies, to RIHEAA as its agent. The pendency of judicial proceedings to contest the setoff shall not stay nor delay the setoff and transfer of refunds to the claimant agency. If the amount of the debtor's refund exceeds the amount of the past-due support or obligation owed, the Division of Taxation shall refund the excess amount to the debtor. If in any instance the same debtor has both past due support and obligations owed and when the Division of Taxation has received notice from both claimant agencies involved, the claim by the Office of Child Support Services shall receive priority.

F. Setoff and Notification of Debtor

1. The Division of Taxation shall prescribe the time or times at which the claimant agency must submit notices of past-due support, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices.
2. The Division of Taxation shall, from time to time, determine the minimum amount of claim to which the setoff procedure may be applied.
3. Prior to submitting information relating to a debtor for purposes of setoff of the debtor's income tax refund, the claimant agency shall provide written notice to each such debtor. The notice shall set forth the name of the debtor, the amount of past-due support or other obligation owed, the intention to setoff the amount owed or other obligation owed, the intention to setoff the amount owed against the refund, the debtor's right to an administrative hearing to contest the setoff upon written request made within thirty (30) days of the mailing of the notice to the debtor, the debtor's right to judicial review of the administrative hearing decision, the general nature of the potential defenses available to the debtor, and, in general terms, the rights of non-obligated spouses with respect to income tax refunds in the event a joint return is filed.
4. At the time of the transfer of funds to the claimant agency as provided in R.I. Gen. Laws § 44-30.1-4, the Division of Taxation shall notify the debtor whose refund is sought to be setoff that the transfer has been made. Such notice shall set forth the name of the debtor, the amount of past-due support being claimed, the transfer of funds to the claimant agency, and the amount of the refund in excess of the amount claimed, if any. In the

case of a joint refund, the notice shall also state the name of a taxpayer-spouse named in the return, if any, against whom no past-due support or obligation owed is claimed, the opportunity to request that the refund be divided between the spouses by filing an amended income tax return in conformance with R.I. Gen. Laws § 44-30-11, showing each spouse's share of the tax and the contribution to the overpayment of tax resulting in the refund.

5. Upon final determination of the amount of the claim to be setoff by default for failure to apply for a hearing, or by decision of the hearing officer pursuant to R.I. Gen. Laws § 44-30.1-5, after being held in an escrow account for 120 days, the Division of Taxation shall transfer such funds to the claimant agency and the claimant agency shall deposit such funds and credit such amount to the debtor's obligation. The pendency of judicial proceedings pursuant to R.I. Gen. Laws § 42-35-15 to review the administrative decision shall not stay nor delay the setoff, transfer, and disbursement of the tax refund in question.

#### G. Confidentiality Exemption-Nondisclosure

The Division of Taxation may provide to the claimant agency the information necessary to accomplish and effectuate the intent of R.I. Gen. Laws Chapter 44-30.1. The information obtained by the claimant agency from the Division of Taxation in accordance with the provision of this article shall retain its confidentiality and shall only be used by the claimant agency in pursuit of its past-due support or obligation owed collection duties and practices, and any employee or prior employee of any claimant agency who unlawfully discloses any such information for any other purpose, except as specifically authorized by law, shall be subject to the same penalties specified by R.I. Gen. Laws § 44-30-95(c).

#### H. Severability of Provisions

If any provision of R.I. Gen. Laws Chapter 44-30.1, or the application thereof, shall for any reason be judged invalid, such a judgment shall not affect, impair or invalidate the remainder of the law, but shall be confined in its effect to the provision or application directly involved in the controversy giving rise to the judgment.

#### I. Criteria for Submittal

1. Federal and State income tax refunds that are due to non-custodial parents may be intercepted, and the refunded amount applied (in RIW cases) to court ordered past-due child support or maintenance (spousal support) obligations, owed for a child or a parent with whom the child is living. In non-assistance (NA) cases, the intercepted amount is applied to court

ordered past-due child support only. Any Federal tax refund that is intercepted must be used to satisfy past-due amounts, and may not be used to satisfy current obligations.

2. The Office of Child Support Services policies and procedures are the same for both Federal tax refund intercepts and State tax refund intercepts with the exception that administrative and State tax refund intercepts must first be applied to current support before being applied to past-due amounts. Also, for State tax refund intercepts, the Office of Child Support Services submits the certification file(s) to the RI Division of Taxation electronically.

J. RIW and Foster Care Cases

1. RIW and Foster Care cases must meet the following requirements to be eligible for offset:
  - a. The support obligation will have been established under a court or administrative order and will have been assigned;
  - b. The amount of past-due support will not be less than one hundred fifty dollars (\$150.00);
  - c. The amount owed will have been delinquent for three (3) months or longer;
  - d. The delinquency is for support and maintenance of a child, or of a child and the parent with whom the child is living;
  - e. Office of Child Support Services has verified the accuracy of the arrears, has a copy of the order and any modifications and has a copy of the payment record or an affidavit signed by the custodial parent attesting to the amount of support owed;
  - f. Office of Child Support Services has verified the accuracy of the non-custodial parent's name and social security number;
  - g. In intergovernmental cases, the request may only be made by the Office of Child Support Services when it is the initiating state.

K. Non-Assistance (NA) and MAO Cases

1. Non-assistance (NA) and Medical Assistance only cases will meet the following requirements to be eligible for offset:
  - a. The support obligation will have been established under a court or administrative order, and will not have been assigned;

- b. The amount of past-due support will not be less than five hundred dollars (\$500.00);
  - c. At the State's option, amounts certified in NA cases may be limited to past-due support which accrued since the Office of Child Support Services began to enforce the support order;
  - d. The support must be owed to or on behalf of a minor child. Past-due support due adult handicapped children may be collected through tax offset if there is a support order in effect for the child and the child, while a minor, was determined to be disabled under the Social Security Act, 42 U.S.C. Chapters II and XVI;
  - e. Spousal support may be submitted if it is included with an order for child support;
  - f. Office of Child Support Services has verified the accuracy of the arrears, has a copy of the order and any modifications, and has a copy of the payment record or an affidavit signed by the custodial parent attesting to the amount of support owed;
  - g. Office of Child Support Services has checked its records to see if there are assigned arrears;
  - h. Office of Child Support Services has verified the accuracy of the non-custodial parent's name and social security number;
  - i. Office of Child Support Services will have the custodial parent's last known address.
2. The Office of Child Support Services may certify an intergovernmental case only if Rhode Island is the initiating state.

L. Pre-Offset Notices

1. On or about the second weekend of every month, the Office of Child Support Services will send a one-time offset notice to any obligor at the time it is determined that s/he meets the certification requirements for Federal and State tax refund offsets. The system will generate the Pre-Offset Notice automatically unless the system indicates otherwise.
2. The Pre-Offset Notice is sent to the non-custodial parent at the address recorded. It advises him/her of the State's intent to intercept, and includes the following information:

- a. The amount certified, which represents the arrearage amount taken from the case;
  - b. The date by which the obligor may submit payment to avoid being included for offset;
  - c. The obligor's right to contest the proposed action;
  - d. Procedures and time frames for contacting the Office of Child Support Services to contest the action;
  - e. The obligor's right to an administrative hearing by the submitting state or the state where the order was entered (if different);
  - f. The local address and phone number to contact if (s)he desires to contest the action or ask questions; and
  - g. The fact that the non-custodial parent's arrearage amount may be submitted to the credit bureau.
3. When a Pre-Offset Notice is returned as undeliverable, it will be logged in and retained. However, this will not prevent the non-custodial parent's name from being included for offset.
  4. The Office of Child Support Services will:
    - a. Send notices to non-assistance custodial parents with RIW, Medical Assistance only, or Foster Care arrears advising him/her that amounts collected through Federal tax refund offset will be applied first to satisfy any past-due support that has been assigned to the State;
    - b. Send notices to any other State involved in enforcing the order; and
    - c. Notify OCSS, weekly of any case deletions or significant decreases in the amount of past-due support submitted.

M. Non-Custodial Parent Responds to Pre-Offset

The non-custodial parent may respond to the Pre-Offset Notice by:

1. Asserting that the money is not owed;
2. Asserting that the wrong amount was certified;
3. Paying off the arrearage;

4. Requesting a hearing on the proposed interception.

N. Non-Custodial Parent Satisfies Arrearage

The Pre-Offset Notice advises the non-custodial parent that (s)he can avoid being intercepted by submitting a payment that satisfies or reduces the arrearage balance to below the amount needed for certification. The Agent must advise the non-custodial parent that the payment will be applied first to any unpaid current support and then to the amount certified for intercept. Once distribution takes place the adjusted balance will appear in the CERT BAL (Certification Balance) field on the OFST panel. The balance will be updated on the weekly submission and update file sent to OCSS.

O. Non-Custodial Parent Contests Offset

1. All written hearing requests for the one-time notice from non-custodial parents will be forwarded to the Executive Office of Health and Human Services Appeals Office to schedule a hearing.
2. Prior to sending the notice, the appropriate agent will review the case to determine whether the case was correctly certified. A case can be deleted for just cause, such as non-assistance and all children are over the age of eighteen (18), or the order was ended with no arrears owed.
  - a. When it is decided that a case should be deleted, the agent will:
    - (1) Take the appropriate action in the child support computer system, and
    - (2) Send the non-custodial parent a *notice* advising of Intercept Removal;
  - b. If a non-custodial parent requests a hearing after the expiration of the period for contesting the proposed action, he/she must complete the Late Request for Administrative Hearing form;
  - c. When it is decided that a hearing should proceed, an Administrative Hearing will be scheduled by the Executive Office of Health and Human Services. The system will be flagged to stay offset until the hearing decision is rendered and recorded.

P. Administrative Hearing

1. Scheduled



- a. The Executive Office of Health and Human Services Hearing Officer will schedule and conduct the hearings.
- b. Once the hearing date and time are scheduled, the agent will:
  - (1) Prepare for the hearing by completing an arrearage calculation going back to the original date of the order, or the last date that the arrearage was set;
  - (2) Attend the hearing as the representative of the Office of Child Support Services.
- c. Any rescheduling will be handled by the designated Hearing Officer.

2. The Administrative Hearing

The administrative hearing shall be conducted in accordance with the Executive Office of Health and Human Services (EOHHS), Rules and Regulations.

3. Hearing Decision Results in Adjustment

When the decision is to amend or delete the certification amount, a copy of the decision will be sent to the Office of Child Support Services Accounting Office.

Q. Post Intercept Notices

1. When the non-custodial parent's refund is intercepted, the IRS and/or the Division of Taxation will notify him/her that the offset has been made. In joint returns, the IRS and/or Division of Taxation will notify any individual who filed jointly with the non-custodial parent of the steps to take in order to secure his/her proper share of the refund.
2. The joint obligor may complete a waiver form alleging that he/she has not filed an injured spouse form and disclaims any rights to the refund. The refund can then be distributed appropriately. The State reserves the right to refer the matter to the Attorney General's Office if the waiver form was later found to be fraudulently completed.

R. Distribution

1. Collections received by the Office of Child Support Services as a result of refund offsets are applied only to the amount of past-due support. The collections are distributed as outlined in § 1.24.4 of this Part.

2. If the amount collected through offset exceeds the amount(s) in the certified past-due support balance, the excess amount will be treated as outlined in § 1.24.4 of this Part.
3. When an offset is being made to satisfy non-assistance (NA) past-due support and the amount collected is the result of a joint return, the state may delay distribution until notified that the non-obligated spouse's proper share of the refund has been paid, or for a period not to exceed six (6) months from notification of offset, whichever is earlier.

S. Fees

1. A refund offset fee to reimburse the IRS for the full cost of the offset procedure is deducted from the offset amount and credited to the IRS appropriations which bore all or part of the costs involved in making the collection. However, the full amount of offset will be credited against the non-custodial parent's payment record. The fee which the Secretary of the Treasury may impose with respect to non-assistance (NA) cases submitted cannot exceed twenty-five dollars (\$25) per submittal.
2. Each state involved in a referral of past-due support for offset will comply with instruction issued by OCSE. Per federal regulations the IRS may only reverse offsets for fraudulent returns within six (6) months from the offset, unless in a TANF case the funds are still within the State registry.

**1.21.12 Unemployment Insurance (UI) Intercepts**

A. Verifying Unemployment Benefits

Unemployment Insurance (UI) benefits are verified electronically through an interface with the Department of Labor and Training. UI benefits received by a non-custodial parent are considered income and are subject to the same income withholding laws, policies and procedures as any other income (s)he may receive (§ 1.21.1 of this Part).

B. Cooperative Agreement with Department of Labor and Training

The OCSS has a cooperative agreement with the Department of Labor and Training. Upon discovery, through the New Hire Reporting process, that a non-custodial parent is receiving unemployment benefits, an income withholding order is automatically generated and sent electronically to the Department of Labor and Training notifying them to withhold the child support from the unemployment benefits and remit payment electronically to the State Disbursement Unit.

**1.21.13 Credit Bureau Reporting**

A. Advance Notice

1. The Office of Child Support Services makes information regarding the amount of overdue support owed by a non-custodial parent available to consumer reporting agencies. A non-custodial parent will be given advance notice before his/her name is submitted. The advance notice advises the non-custodial parent of:
  - a. The proposed release of the information to the consumer report agency;
  - b. The procedures for contesting the accuracy of the information.
2. The Office of Child Support Services will comply with all of the procedural due process requirements of State law before releasing the information.
3. The Office of Child Support Services shall provide written notice to the non-custodial parent ten (10) days prior to the proposed release of information to consumer reporting agencies.
4. The notice shall state the procedures to contest the accuracy of the information. The Department shall periodically inform the consumer reporting agencies if the overdue support has been paid in full or of the amended amount of due support.

B. Credit Bureau Defined

1. A credit bureau is an entity which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information for the purpose of furnishing consumer reports to third parties. A primary source of information in a consumer report is the consumer's financial application, which contains allegedly verifiable residential, employment, financial and asset data.
2. Other sources of information include business establishments, financial institutions, and public records.

C. Credit Rating

Credit bureaus are hereby required to take into consideration a non-custodial parent's child support obligations and his delinquencies in this regard, and these delinquencies shall be verified by either the court or by the Office of Child Support Services.

D. Report a Non-Custodial Parent Name

1. Each month an advance notice is system-generated to non-custodial parents:
  - a. With a SSN and verified address recorded;
  - b. Who are under a court order for support; and
  - c. Who have not been notified previously.
2. Non-custodial parents who have more than one court ordered case will receive an advance notice for each case.
3. A monthly tape is submitted to the credit bureau with the names of non-custodial parents who received an advance notice and did not contest the action. The tape provides the credit bureau with:
  - a. The non-custodial parent's name, SSN, and address;
  - b. The amount of periodic support due each month;
  - c. The balance due; and
  - d. The date and amount of the last payment.

#### **1.21.14 License Suspension**

- A. The Office of Child Support Services is authorized to take steps leading to the certification of an obligor for noncompliance with an order of support to an appropriate board, state agency, or department. Such board, state agency, or department shall take the following actions against an obligor:
  1. Revoke/Suspend a license to operate a motor vehicle;
  2. Refuse to renew or reissue a motor vehicle registration or license to operate a motor vehicle;
  3. Revoke/Suspend the license, certification, registration, permit, approval, or other similar document authorizing the obligor to engage in a profession, occupation, business, or industry;
  4. Refuse to renew or reissue the license, certification, registration, permit, approval, or other similar document authorizing the obligor to engage in a profession, occupation, business, or industry.
- B. These actions may be requested only when the following conditions are met:

1. An obligor owes more than ninety (90) days worth of his/her total child support obligation(s)(ex. current support order, arrears order, cash medical order, etc.) in one or more of his/her child support cases; or
2. An obligor has failed to obtain or maintain health insurance for his/her child(ren) pursuant to a court order; and
3. The Office of Child Support Services has fully complied with the procedural and notification provisions.

C. Professional License Suspension

1. Upon receipt of the certification of noncompliance with a support order from the Office of Child Support Services, the licensing agency or board will revoke/suspend the obligor's license and/or refuse to issue or reissue a license until the obligor provides a release from the Office of Child Support Services that states the obligor is in compliance with the order for support.
2. If the obligor has been certified as noncompliant to any licensing agency or board, the Office of Child Support Services will provide obligor with written confirmation of compliance with a support order and a release from the noncompliance penalty of license suspension/revocation within five (5) business days after the obligor has been found to be in compliance with the support order. This release will be mailed to the obligor by first class mail to his/her address of record as indicated on the child support automated system.

D. Motor Vehicle License / Registration Suspension

1. The Office of Child Support Services will periodically each year provide the Rhode Island Division of Motor Vehicles an electronic report of those individuals, together with other identifying information, who have a child support arrearage in excess of \$500 as of the date of the report as shown on the Office of Child Support Services computer system.
2. This listing to the Division of Motor Vehicles will be periodically updated so that individuals whose arrearage falls below the prescribed level for reporting may be removed from the list by the Division of Motor Vehicles.
3. No individual whose name appears on this list shall be permitted to:
  - a. Register or renew a registration of any motor vehicle, and/or
  - b. Obtain an original license or renewal of a license to operate a motor vehicle until all such child support arrearage have been paid in full or a satisfactory arrangement for payment has been made with the

RI Family Court and such payment or arrangement to pay has been certified to the Division of Motor Vehicles by the Office of Child Support Services.

E. Notice of Intent to Certify

1. The Office of Child Support Services may serve notice of intent to certify upon a support obligor who is not in compliance as defined in this section. The notice informs the obligor of the agency's intent to submit the obligor's name to any appropriate board, state agency, or department as a licensee who is not in compliance with a court order of support. This notice will be mailed to the obligor by first class mail to his/her address of record as indicated on the child support automated system. The notice must contain:
  - a. The address and telephone number of the Office of Child Support Services;
  - b. A statement of the need for the obligor to obtain a release from that office that states that the obligor is in compliance with his or her support order; and
  - c. A copy or facsimile of the obligor's court order for support.
2. The notice must inform the obligor that he/she can avoid this action by:
  - a. Paying all past-due and current child support and/or any past-due arrearage payments;
  - b. If he/she is unable to pay all past-due support, the obligor may request an appointment at the Office of Child Support Services to enter into a Written Payment Agreement (if no previous Written Payment Agreement has been entered);
  - c. The obligor may request a Family Court compliance hearing to contest the issue of compliance;
  - d. A request for an appointment or compliance hearing must be made in writing and must be received by the Office of Child Support Services within thirty (30) calendar days of the date of the notice;
  - e. If the obligor requests an appointment or compliance hearing within thirty (30) calendar days of the date of the notice, the Office of Child Support Services shall stay action to certify the obligor to any board for noncompliance with a court order of support pending the outcome of the appointment or compliance hearing decision;

- f. If the obligor does not request an appointment or compliance hearing within thirty (30) calendar days of the date of the notice and is not in compliance with a court order of support, the Office of Child Support Services shall certify the obligor to the appropriate board, state agency, or department for noncompliance with an order for support;
- g. If the Office of Child Support Services certifies the obligor to a board for noncompliance with a court order of support, the board, state agency, or department shall revoke/suspend the obligor's license and refuse to issue or reissue a license until the obligor provides the board with a release from the Office of Child Support Services that states that the obligor is in compliance with her/his support order. A revocation/suspension by an agency or a refusal by an agency to reissue, renew, or otherwise extend the license or certificate of authority shall be deemed a final determination;
- h. If the obligor files a motion to modify support with the Family Court, and duly serves the Office of Child Support Services with notice of the motion to modify within thirty (30) calendar days of the date of the notice, the Office of Child Support Services shall stay action to certify the obligor to any board for noncompliance with a court order of support; and/or
- i. The obligor must meet his/her health insurance obligation.

#### F. Family Court Compliance Hearing

1. An obligor may request a hearing before a Magistrate of the RI Family Court upon receipt of the notice of intent to certify the obligor for noncompliance. The request for hearing must be made in writing and received by the Office of Child Support Services within thirty (30) calendar days of the date of the notice.
2. The Office of Child Support Services in conjunction with Family Court shall notify the obligor in writing of the date, time, and place of the hearing. Service of the hearing notice must be made by first class mail or by service as specified in the Family Court Rules of Domestic Relations Procedure.
3. The issues that may be determined at hearing are limited to:
  - a. Whether the obligor is required to pay child support under a court or administrative order; and
  - b. Whether the obligor is in compliance with a court order of support.

4. Nothing herein shall prohibit the obligor from filing other appropriate motions for relief, including but not limited to a motion to modify a support order, with the Family Court.
5. If an obligor requests a timely hearing to contest the issue of compliance, the Office of Child Support Services may not certify the name of the obligor to a board for noncompliance until the Office of Child Support Services receives a decision or order of the Family Court that finds the obligor is not in compliance with a court order of support.

G. Certification of Noncompliance

1. The Office of Child Support Services may certify in writing to any appropriate board that a child support obligor is not in compliance with a court order of support if:
  - a. If the obligor does not make a timely request for an appointment or compliance hearing upon receipt of the notice of intent to certify and is not in compliance with a court order of support thirty-one (31) days after service of the notice; or
  - b. RI Family Court issues a decision or order after hearing that the obligor is not in compliance with a court order of support, and the obligor has not appealed the decision within any applicable appeal period provided by law for appeals of a decision or order of a Magistrate of the Family Court; or
  - c. After a decision or order of the RI Family Court has been appealed, a decision or order from the RI Supreme Court which determines or affirms that the obligor is not in compliance with a court order for support,
2. The Office of Child Support Service's certification shall include a copy of the decision or order of the court, where applicable. The Office of Child Support Services shall send by first class mail a copy of any certification of noncompliance filed with a board to the obligor at the obligor's address of record as indicated in the child support automated system.
3. Upon receipt of the certification of noncompliance from the Office of Child Support Services, a board shall revoke/ suspend the obligor's license and refuse to issue or reissue a license until the obligor provides the board with a release from the Office of Child Support Services which states that the obligor is in compliance with his or her support order.



4. When such an obligor subsequently complies with the order of support, the Office of Child Support Services shall, within five (5) business days after compliance, provide the obligor with written confirmation and a release that the obligor is in compliance with the order. A revocation/suspension by a board or a refusal by a board to reissue, renew, or otherwise extend the license or certificate of authority shall be deemed a final determination.
5. A board shall notify an obligor certified by the Office of Child Support Services without undue delay that the obligor's application for the issuance or renewal of a license may not be granted or that the obligor's license has been revoked/suspended because the obligor's name has been certified by the Office of Child Support Services as a support obligor who is not in compliance with a court order of support.
6. Within five (5) business days of receiving written confirmation that an obligor is in compliance with the court order of support, the board shall reinstate, reissue, renew, or otherwise extend the obligor's license or certificate of authority.

#### H. Reporting Requirements of Licensing Boards

1. On or before November 1, 1995 and during each renewal period thereafter, all boards subject to R.I. Gen. Laws § 15-11.1-2 must provide the Office of Child Support Services with specified information about applicants for licensure and all current licensees who are residents of this state. The information to be provided must include all the following information to the extent that the board maintains such information:
  - a. Name;
  - b. Address of record;
  - c. Federal employer identification number or social security number;
  - d. Type of license;
  - e. Effective date of license or renewal;
  - f. Expiration date of license; and
  - g. Active or inactive status.
2. The Office of Child Support Services requires this information in order to implement the requirements of R.I. Gen. Laws Chapter 15-11.1 known as the R.I. Full Enforcement of Support Obligations Act.

### **1.21.15 Interception of Insurance Payments**

- A. Every domestic insurer or insurance company authorized to issue policies of liability insurance and any worker's compensation insurer, shall, within thirty (30) days prior of making any payment equal to or in excess of five hundred dollars (\$500.00) to any claimant who is a resident of this state, for personal injury or workers' compensation benefits under a contract of insurance, review information provided by the Office of Child Support Services pursuant to R.I. Gen. Laws § 27-57-1 indicating whether or not the claimant owes past-due child support.
- B. The Office of Child Support Services shall electronically furnish these insurers and insurance companies with a report of names of individuals with last known addresses who as of the date of the report, have an unpaid child support arrearage in excess of five hundred dollars (\$500).
- C. If the insurer determines from the information provided by the Office of Child Support Services pursuant to R.I. Gen. Laws § 27-56-4 that the claimant or payee owes past-due child support, the insurer shall, except to the extent that payments are subject to liens or interests (i.e., health care providers, attorney fees, holders of security interests, or the assignment of rights under R.I. Gen. Laws § 40-6-9), withhold from payment the amount of past-due child support and pay such amount to RI Family Court which shall credit the obligor's child support obligation account for the amount so paid. The insurer shall pay the balance to the claimant or other person entitled thereto, provided, however, that the insurer/insurance company shall provide written notice to the claimant and his attorney if any and to the Office of Child Support Services of the payment to RI Family Court. RI Family Court shall deposit the payment in escrow in the Registry of the Family Court for a period of forty-five (45) days or, if an application for judicial review has been filed, until the further order of the court, and the date and amount thereof. The notice shall reflect the date, name, social security number, case number, and amount of the payment.
- D. Any claimant aggrieved by any action taken under these procedures may within thirty (30) days of the date of the notice to the claimant seek judicial review in the RI Family Court which may, at its discretion, issue a temporary order prohibiting the disbursement of funds pending final adjudication.
- E. The Office of Child Support Services shall send notice to the obligor that the agency has intercepted an insurance settlement at the time it credits the obligor's account.
- F. In addition, the Office of Child Support Services shall follow the procedures outlined for placing an administrative lien at the point at which an insurance claim has been filed.

### **1.21.16 Offset of State Lottery Prizes**

- A. Any person entitled to receive a cash prize or winning ticket in excess of six hundred dollars (\$600) from the Rhode Island Lottery Commission and who has been identified by the Office of Child Support Services as having an unpaid child support arrearage shall have an amount set off against the amount due to such person after federal and state tax withholding an amount up to the balance of such child support arrearage(s). The lottery commission shall make the payment directly to the RI Family Court which will deposit the amount set off in escrow into the Registry of the Family Court for a period of forty-five (45) days, or if an application for review relating to the setoff has been filed, until final disposition of such application until further order of the court. The lottery shall pay to such person the remaining balance of the prize or winning ticket amount, if any, after the amount set off above by child support.
- B. The Office of Child Support Services will periodically each year provide the Rhode Island State Lottery Commission an electronic report of those individuals, together with other identifying information, who have a child support arrearage in excess of \$500 as of the date of the report as shown on the Office of Child Support Services computer system.
- C. Any claimant aggrieved by any action taken under these procedures may within thirty (30) days of the date of the withholding of the payment by the lottery director seek judicial review in the RI Family Court which may, at its discretion, issue a temporary order prohibiting the disbursement of funds pending final adjudication.

### **1.22 Intergovernmental Child Support Cases**

#### **A. Defined**

An intergovernmental child support case is, in general, one in which the non-custodial parent and custodial parent do not live in the same state or foreign country.

#### **B. Categories**

There are two broad categories of intergovernmental cases for OCSS:

##### **1. Initiating State**

- a. When RI acts as the initiating state, it is generally because the custodial parent resides in Rhode Island and the non-custodial parent resides outside Rhode Island. However, the OCSS may also initiate a petition on behalf of a non-custodial parent when a

modification is requested and the custodial parent resides in another state.

- b. The petition is prepared in RI and is forwarded to another state or foreign country for processing.

## 2. Responding State

When RI acts as the responding state because the custodial parent resides in another state or foreign country and the non-custodial parent resides in Rhode Island. Another state or foreign country prepares the petition and forwards it to RI to process. The non-custodial parent may reside in, or have assets in, RI.

## C. Uniform Intergovernmental Family Support Act (UIFSA)

Both Initiating State and Responding State cases are commonly referred to as UIFSA (Uniform Intergovernmental Family Support Act) cases. Federal law requires all states and foreign countries who have signed on to The Hague Treaty, to provide child support services to all families that have applied for such services, including location, paternity establishment, establishment of support obligations, regardless of where the non-custodial parent resides. Federal law also requires states to meet specific timeframes in the provision of these services, even when one parent is in a different state from where children are living. This federal legislation sets out procedures for enforcing child support orders across state lines and establishes the concept of "Continuing Exclusive Jurisdiction." UIFSA also simplifies income withholding across state lines by requiring employers to honor wage assignments issued by another state's court, tribunal or foreign country.

### 1.22.1 Authority

- A. In proceeding to establish, enforce, or modify a support order or to determine parentage, under R. I. Gen. Laws § 15-23.1-201, known as "basis for jurisdiction over a nonresident", a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian if:
  1. The individual is properly served within this state;
  2. The individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document, waiving any contest to personal jurisdiction;
  3. The individual resided with the child in this state;

4. The individual resided in this state and provided prenatal expenses or support for the child;
  5. The child resides in this state as a result of the acts or directives of an individual;
  6. The individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;
  7. The individual acknowledged paternity by completing an affidavit of paternity signed by both parents; or
  8. There is any other basis consistent with the state, and the United States for the exercise of personal jurisdiction.
- B. In public assistance cases, Rhode Island has the same right to initiate a proceeding as an individual RIW caretaker relative for the purpose of establishing paternity, establishing a child support and medical order, and enforcing those orders administratively or judicially. The defense that the parties are immune to a suit because of their relationship as a married couple or parent and child is not available to the non-custodial parent.

#### **1.22.2 The OCSS Intergovernmental Unit/Central Registry**

- A. The Central Registry is located at the Office of Child Support Services. The Central Registry manages Rhode Island's intergovernmental case load; both initiating activities and responding to requests from other states.
- B. Within 10 working days of the receipt of a case from an initiating state or foreign country, the OCSS Central Registry will:
1. Review the request to ensure that all necessary documentation is included and complete. When documentation is inadequate and cannot be remedied by the Intergovernmental Unit without the assistance of the initiating state or foreign country, the Intergovernmental Unit will forward the case for any action which can be taken, pending action by the initiating state;
  2. Forward the case to the State Parent Locator Service for location services, or to the appropriate agency for processing;
  3. Send acknowledgment of the request to the initiating state or foreign country, and request any missing documentation;
  4. Inform the IV-D agency in the initiating state or foreign country where the case was sent for action.

- C. If the documentation received with a case is inadequate and cannot be remedied without the assistance of the initiating State, the central registry shall forward the case to an agent for any action that can be taken pending necessary action by the initiating State. The central registry shall keep a log of these pending cases so that when the needed documentation is received it may be distributed to the appropriate agent.
- D. The central registry must respond to inquiries from other States or foreign countries within five (5) working days of receipt of the request for a case status.

### **1.22.3 RIW Intergovernmental Cases**

- A. Newly opened RIW cases will be assigned to the appropriate Intergovernmental child support agent through the IV-A/IV-D interface when an out of state address for the non-custodial parent is entered.
- B. If the Intergovernmental agent should receive a RIW case transferred from an instate unit, (before an instate agent transfers a RIW case to the Intergovernmental Unit, there should be verification that the non-custodial parent no longer resides in Rhode Island and that there is no basis for exercising jurisdiction over the nonresident parent, or that the exercise of personal jurisdiction over a non -resident is impractical) the agent should examine the case to determine whether a new case should be created for intergovernmental support activity. If the existing case does not have a docket number assigned to it or anything "financial", (payments, obligation balance etc.), it will not be necessary to create a new case for the intergovernmental activity. The existing suffix should be used for the intergovernmental case.

### **1.22.4 Non-Assistance, MAO and FC Intergovernmental Cases**

Non-assistance, Medical Assistance Only, and Foster Care cases will be referred to the Intergovernmental Unit via the referral or application process, or transfers from another OCSS unit. The Intergovernmental agent will enter new cases and transfer cases.

### **1.22.5 Petition for Registration**

- A. When the custodial parent and non-custodial parent both reside in the State of Rhode Island, and there is a foreign court order (an order entered in a jurisdiction outside R.I.) for which arrears are owed, the Child Support Services agent will register the foreign court order with the Family Court. Once the order is registered, it can be enforced the same as any other Rhode Island order. To register the order the agent will:

1. Produce Registration of Foreign Support packet and order of confirmation for modification and enforcement;
  2. Refer for service; and
  3. Upon service, refer all paperwork to Family Court.
- B. If, after twenty (20) days the non-custodial parent fails to petition to vacate the registration, the order is "confirmed". The Judge/Magistrate signs the Order of Confirmation, and copies are sent to the non-custodial parent and the Office of Child Support Services.

#### **1.22.6 Petition for Support**

- A. The petition or complaint shall be verified and shall state the name and, so far as known to the custodial parent, the address of the non-custodial parent and the persons from who support is sought, and all other pertinent information. The custodial parent may include in, or attach to, the UIFSA petition information that may help in locating or identifying the non-custodial parent including:
1. A photograph of the non-custodial parent;
  2. A description of any distinguishing marks on his/her person;
  3. Other names and aliases by which he/she has been or is known;
  4. The name of his/her employer;
  5. His/her fingerprints;
  6. His/her social security number.

#### **1.22.7 Duty of Initiating Court**

- A. Upon the filing of a petition authorized by UIFSA, the Office of Child Support Services shall forward three (3) copies of the petition and its accompanying documents:
1. To the responding tribunal or appropriate support enforcement state, or
  2. If the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

#### **1.22.8 Costs and Fees**

- A. The petitioner shall not be required to pay a filing fee or other costs, but OCSS may request the responding court to collect fees and costs from the non-custodial parent. Those costs may include reasonable attorney's fees, and necessary travel.
- B. A responding court shall not require payment of a filing fee or other costs from the custodial parent, but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the non-custodial parent, be paid in whole or in part by the non-custodial parent, or by the OCSS.
- C. These costs or fees do not have priority over amounts due to the custodial parent.

### **1.22.9 OCSS Responsibilities**

- A. As the initiating state agency, the OCSS will:
  - 1. Attempt to establish paternity using the State's long arm statute, whenever appropriate;
  - 2. Refer a case, within 20 calendar days of finding a non-custodial parent in another state, to the responding State's Intergovernmental central registry for action, including:
    - a. UIFSA petitions to establish paternity, establish child support and medical orders, modification of orders if appropriate, enforcement of orders, registrations and administrative lien requests;
    - b. Requests for location if location efforts have been exhausted;
    - c. Document verification;
    - d. Administrative reviews in administrative offsets;
    - e. Income withholding;
    - f. State income tax refund offset in IV-D cases;
  - 3. Provide the responding state with sufficient, accurate information to act on the case by submitting with each case any necessary documentation with the Child Support Enforcement Transmittal package;
  - 4. Provide the responding state with any additional information requested. When information cannot be provided immediately, the intergovernmental



agent will notify the responding state that it will be provided within thirty calendar days of the request. The agent will submit an updated form or a computer-generated replica in the same format and containing the same information, and any necessary additional documentation;

5. Notify the responding state within 10 working days of receiving new information, by submitting an updated form and any related documentation including court orders;
6. Contact the responding state IV-D agency for a status update when there has been no contact for 90 calendar days.

#### **1.22.10 Initiating Paternity Establishment**

In cases where a putative father lives out of state, the OCSS agency will first determine if there is jurisdictional basis to establish paternity the same as if the non-custodial parent lives in Rhode Island and if it is practical to do so. This is called the "long arm process". If there is no basis to exercise long arm jurisdiction, or it would be impractical or cumbersome to do so, the OCSS will initiate a petition to establish paternity.

#### **1.22.11 Long Arm Cases**

- A. OCSS may consider filing a long arm action in lieu of a UIFSA petition but it is not required that we do so first. Under Rhode Island law, a person who has had sexual intercourse in this state submits to the jurisdiction of the court of this state as to any action with respect to a child who may have been conceived by that act of intercourse. In addition, the Uniform Intergovernmental Family Support Act provides broad provisions for asserting jurisdiction over a non-custodial parent for the establishment of paternity and support.
- B. The long arm statute is one that allows a state to gain jurisdiction over an individual residing in another state for purposes of determining parentage. In paternity establishment, it allows Rhode Island to exercise jurisdiction over a non-resident alleged father when the custodial parent claims that conception occurred in Rhode Island. The OCSS agent will refer the case to the OCSS Legal Unit if any problems arise.
- C. The Child Support attorney is available to provide assistance to the caseworker when attempting to determine whether long arm jurisdiction can be asserted over an individual.
- D. When it has been determined that it is practical and reasonable to do so, and that sufficient grounds exist to exercise long-arm jurisdiction, the procedures for filing a long-arm action are:

1. The child support agent obtains the necessary information to file a long arm paternity complaint from the mother;
  2. The putative father is served with the complaint generally by certified mail;
  3. The Office of Child Support Services must advise the putative father of the hearing date;
  4. If the putative father was properly served but fails to appear for the hearing, the court proceeds to rule on the issues properly before the court;
  5. If the non-custodial parent defaults on the order at a later date, the judgment (usually by default) can be enforced by the RI Family Court or it can be registered for enforcement in the non-custodial parent's state of residence.
- E. When OCSS has filed a long-arm suit but has been unable to obtain service on the putative father, the Office of Child Support Services can request assistance with service of process from the child support agency where the putative father resides.
- F. If service cannot be accomplished, a petition to establish paternity and support can be forwarded to the putative father's state of residence.
- G. In RIW cases, when paternity is an issue, the child support services agent must complete a paternity affidavit. If conception took place outside Rhode Island, a UIFSA petition asking for paternity to be established and a support order entered should be sent to the responding State.

#### **1.22.12 Initiating Paternity**

- A. When long arm process is not practical, the OCSS agent will pursue paternity establishment via the regular UIFSA process. The UIFSA Petition will include the Paternity Affidavit to be signed by the custodial parent.
- B. Federal regulations provide that the initiating state is responsible for paying the costs for DNA testing. All other costs (such as expert witness fees, depositions, or costs of a paternity trial) must be borne by the responding state. When the personal testimony of the custodial parent or custodial parent is required in a paternity trial, a telephonic hearing may be scheduled upon request in order to secure the testimony of the custodial parent.
- C. The responding state should coordinate the testing schedule with the initiating state. Genetic testing laboratories send the genetic test report to the agency that is making payment. The original test report must be sent to the agency that is taking the case to court, since the report is submitted as paternity evidence.

- D. When paternity is established by the responding state, the Office of Child Support Services must attempt to obtain a judgment for the genetic testing costs to reimburse the initiating state. The court order should address the repayment of those costs to the initiating state.

#### **1.22.13 Initiating Support Order Establishment**

- A. The OCSS agency will initiate a UIFSA action to obtain an order for support when:
1. The non-custodial parent is located out of state;
  2. Paternity is not an issue in the case;
  3. There is no order for support.
- B. The tribunal may issue a child support order if:
1. The non-custodial parent has signed a verified statement acknowledging parentage;
  2. The non-custodial parent has been determined by or pursuant to law to be the parent; or
  3. There is other clear and convincing evidence that the non-custodial parent is the parent.

#### **1.22.14 Initiating Intergovernmental Enforcement**

- A. The OCSS agency will determine what type of action to take and/or request in an intergovernmental case depending upon certain circumstances. Under UIFSA and other applicable enforcement laws, the case may be enforced by the Office of Child Support Services or forwarded to another state for enforcement. If it is determined that such measures or remedies under state law are inadequate, or that additional measures are available and practicable, or that there is no basis to exercise jurisdiction over a non-resident or the exercise of jurisdiction is impracticable, OCSS may request enforcement in another jurisdiction. The agent may request Intergovernmental Wage withholding if direct wage withholding is impractical.
- B. A UIFSA action to establish an arrears order is needed when the non-custodial parent is located out of state, there is no arrears order, or for Registration for Enforcement.

#### **1.22.15 Initiating Intergovernmental Income Withholding**

- A. When OCSS identifies cases where direct wage withholding is not practical, and intergovernmental income withholding is appropriate, the agent will initiate action to request the responding State to issue an income withholding order. This request is made on the Child Support Enforcement Transmittal Form.
- B. The packet sent to the responding State or foreign country includes:
  - 1. A verified place of employment for the non-custodial parent;
  - 2. An original and four copies of the support order. The original must be certified with the court seal;
  - 3. An affidavit of arrears showing the accumulation of arrears on month by month basis. An original and four copies are required. The original and the two copies that will be sent to the responding State should all be notarized and stamped with the notary seal. Welfare cases are signed by the agent as the OCSS representative and on non-welfare cases the custodial parent must sign.
- C. In a UIFSA proceeding, the OCSS will prepare the appropriate intergovernmental forms and forward the petition and other documents to the Central registry of the responding state.

#### **1.22.16 Registration of a Foreign Order**

- A. There are two types of registration: Registration for Enforcement and Registration for Modification.
  - 1. Registration for Enforcement
    - a. A support order or income-withholding order of another state or foreign country may be registered for enforcement in Rhode Island by sending the following documents and information:
      - (1) A letter of transmittal from the tribunal requesting registration and enforcement;
      - (2) Two (2) copies, including one certified copy, of all orders to be registered, including any modification of an order;
      - (3) A sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;
      - (4) The name of the non-custodial parent and, if known;

- (5) The non-custodial parent's address, social security number, name and address of the non-custodial parent's employer, and any other source of income of the non-custodial parent;
  - (6) A description and the location of property of the non-custodial parent in this state not exempt from execution; and
  - (7) The name and address of the custodial parent.
- b. Upon receipt, the order shall be registered. The non-custodial parent shall be served with a Petition to Register for enforcement and an order of confirmation. The party then has twenty days to contest the registration. There are very few defenses that can be raised such as: the order has been obtained through fraud, the order has been vacated or suspended, there has been full payment of the arrears, statute of limitations has expired or other limited defenses as the law provides. If the party does not have a valid defense or fails to contest, the order is confirmed.
- c. A registered order is enforceable in RI in the same manner and is subject to the same enforcement as a RI order.

## 2. Registration for Modification

- a. An order may be registered for Modification in Rhode Island if the following requirements are met:
- (1) The child, the individual custodial parent, and the non-custodial parent does not reside in the state that issued the order;
  - (2) The petitioner who is a nonresident of this state seeks modification; and
  - (3) The respondent is subject to the personal jurisdiction of the state; or
  - (4) All of the parties have filed a written consent in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order.
- 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 this state and the order may be enforced and satisfied in the same manner.

C. Choice of Law in Registration

The law of the issuing state governs the nature, extent, amount, and duration of payments. In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies.

D. Reconciliation of Multiple Orders

Under the Uniform Reciprocal Enforcement Act multiple orders were entered on a case involving the same parties. As the parties moved from state to state new orders were entered, while the orders continued to run and accrue arrears. Under UIFSA, only one child support order is the controlling order. Although the non-custodial parents would receive credit for all payments made under any order, only one order is in effect. Rules had to be developed to determine which order was controlling. The following is a simplified version of the rules used to establish which, of many orders, is the controlling order:

1. If only one court has issued a child support order, that order controls.
2. If two or more child support orders have been issued the following applies:
  - a. If a party lives in one of the states that issued the order that order controls,
  - b. If each party lives in a state that issued orders, the current home state of the child controls.
  - c. If there are multiple orders but no one resides in any of the states that issued orders, this state can issue an order as long as there is jurisdiction Within thirty (30) days after issuance of an order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support so that those orders can be suspended.

**1.22.17 Rhode Island as the Responding State**

A. The OCSS agency will respond to requests from other states to locate non-custodial parents, establish paternity, and establish a child support and medical order and to enforce those orders judicially and administratively.

B. Legal Basis

Rhode Island will serve as a responding state to accept the UIFSA Petition forwarded by the initiating state to locate the non-custodial parent, establish paternity, establish a child support and medical order and to enforce those

orders. The statutes governing Rhode Island as the responding state in an intergovernmental action are found in the R.I. Gen. Laws § 15-23.1-303.

C. Duties of Court and DHS

1. Rhode Island acting as a responding state may do one or more of the following:
  - a. Issue or enforce an order, modify an order, or determine parentage;
  - b. Order a non-custodial parent to comply with a support order specifying the amount and manner of compliance;
  - c. Order income withholding;
  - d. Determine the amount of arrearages and specify a method of payment;
  - e. Enforce orders by civil or criminal contempt or both;
  - f. Set aside property;
  - g. Place liens;
  - h. Order the non-custodial parent to inform of his whereabouts;
  - i. Issue a body attachment;
  - j. Order to seek employment;
  - k. Award reasonable attorney's fees;
  - l. Any other relief available.
2. The OCSS will send a certified copy of all support orders entered by the RI Family Court to the initiating agency and shall transmit all support collected to that agency.

D. Hearing and Continuance

If the custodial parent is not present at the hearing and the non-custodial parent denies owing the duty of support alleged in the petition or complaint or offers evidence constituting a defense, the Family Court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by telephonic hearing.

E. Inappropriate Tribunal

If a petition is received by the Office of Child Support Services and it is inappropriate for the case to be processed and heard in Rhode Island, OCSS shall forward the pleadings to the appropriate agency for processing and notify the petitioner of the forwarding agency.

F. Limited Immunity of Petitioner

Under UIFSA, participation of a petitioner in a proceeding before a responding tribunal, does not confer jurisdiction for other proceedings. A petitioner may not be served while present in the state. This does not apply if the petitioner commits acts while in the state that would subject him/her to civil litigation.

G. Evidence of Marriage

Laws attaching a privilege against the disclosure of communications between a married couple are inapplicable to proceedings under the R.I. Gen. Laws Chapter 15-15. A married couple are competent witnesses to testify to any relevant matter, including marriage and parentage.

H. Rules of Evidence

1. The physical presence of the petitioner in this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage. The following are admissible in a hearing:

- a. A verified petition, affidavit, and substantiating documents are admissible in evidence if given under oath by a party or witness residing in another state.
- b. A copy of the record of child support payments certified is evidence and is admissible to show whether payments were made.
- c. Copies of bills for paternity testing, and for prenatal and postnatal health care of the mother are admissible.
- d. Documentary evidence transmitted by telephone, telecopy, or other means. If requested, Telephonic hearings shall be arranged by OCSS to take testimony. A party called to testify may refuse to answer but the Court may draw an adverse inference.

2. There is no privilege against disclosure between spouses.

I. Paternity



If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both parties are present at the hearing or the proof required indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

J. Non Parentage as a Defense

A party whose parentage has been previously determined may not plead non parentage as defense. Any contest regarding parentage must be brought in the state where the parentage was adjudicated.

K. Intrastate Application

This act applies if both the custodial parent and obligor are domiciliaries and/or residents of this state.

L. Appeals

1. If the Office of Child Support Services is of the opinion that an order is erroneous, and presents a question of law warranting an appeal in the public interest, it may:
  - a. Perfect an appeal to the State Supreme Court if the support order was issued by a court of this State; or
  - b. Cause the appeal to be taken in the other state if the support order was issued in the other state.
2. In either case, expenses of the appeal may be paid on its order from funds appropriated for its office.

M. Foreign Support Orders-Additional Remedies

If the duty of support is based on a foreign support order, the custodial parent has the additional remedies as provided in the R.I. Gen. Laws § 15-14.1-5.

N. Representation of Custodial parent by DHS

1. Whether acting on its own behalf or on behalf of the custodial parent, non-custodial parent, or initiating state, the Department of Human Services OCSS attorneys do not represent the interests of any individual person, and its attorneys represent only the department. An attorney custodial parent relationship is not created between department attorneys and any person or entity.

2. Nothing precludes any party from retaining the services of a private attorney to legally represent their interests.

O. Communication Between States

The Office of Child Support Services may communicate with another state agency in writing, by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. OCSS must also reciprocate and provide information upon request.

P. Assistance with Discovery

The Office of Child Support Services may request another state agency for help in obtaining discovery; and the Rhode Island Family Court may compel a person over whom it has jurisdiction to respond to a discovery order issued by another state.

Q. Nondisclosure of Information

Upon a finding, which may be made by *ex-parte*, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order provides, the RI Family Court may order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a court file.

R. Employer's Receipt of Income Withholding

An income-withholding order issued in another state may be sent directly to employer in this state without first filing a petition.

S. Case Processing Time Frames

1. Within seventy-five (75) calendar days of receiving an Intergovernmental Child Support Enforcement Transmittal form and documentation, the intergovernmental agent will:
  - a. Provide location services when requested or needed;
  - b. Notify the initiating agency of the necessary additions or corrections if unable to proceed with the case because of inadequate documentation;
  - c. Process the case to the extent possible if the documentation received with a case is inadequate and cannot be remedied by the

Intergovernmental Unit without the assistance of the initiating state, pending necessary action by the initiating state.

2. Within ten (10) working days of discovering that a non-custodial parent resides in a different state, the OCSS agency must return the form and documentation, including the new location, to the initiating state, or if directed by the initiating state, forward the form and documentation to the central registry in the state where the non-custodial parent has been located.

## **1.23 Modification of Child Support Orders**

### **1.23.1 Introduction**

- A. Under federal regulations and State statutes, the Office of Child Support Services is required to provide for the review and modification/adjustment of child support orders being enforced under Title IV-D of the Social Security Act.
- B. These reviews will be conducted as a result of an appropriate request from any party subject to a child support order in the State.
- C. Although requests for reviews will be evaluated by the Office of Child Support Services staff, only the RI Family Court is authorized make a decision to actually modify or adjust an order. The Office of Child Support Service's decision whether or not to refer a request for a review of a R.I. order to the RI Family Court will be made in accordance with the criteria specified in § 1.23.2 of this Part.
- D. The same criteria will be applied in reviewing requests for reviews in intergovernmental cases.

### **1.23.2 Criteria for Modification-Requested Reviews**

- A. Criteria and Response from OCSS

Under federal regulations and State statutes, the Office of Child Support Services is required to respond to requests for reviews of support orders being enforced under Title IV-D of the Social Security Act from either parent subject to a child support order in the State. Requests by either parent for a review must be accompanied by information that demonstrates a change in circumstances that meets the criteria listed below.

- B. Denial of Request for Review

Referral of requests for reviews to the RI Family Court for hearing may be denied by the Office of Child Support Services because the request fails to meet any of

the criteria listed below. (see § 1.23.5 of this Part for Office of Child Support Services responsibilities on intergovernmental cases).

C. How to Apply for a Review

1. A request for a review must be made in writing. The request must contain information that will enable the Office of Child Support Services to determine if it meets any of the criteria listed below. It should be mailed to:

Office of Child Support Services

77 Dorrance St.

Providence, RI 02903

2. The Office of Child Support Services must make a decision whether or not the order should be reviewed within fifteen (15) days of receipt of all information needed to make a decision.

D. Criteria for Referring Requests for Review to RI Family Court

The Office of Child Support Service's response to a request for a review will consist of evaluating the request to determine if there is sufficient evidence/documentation to meet any of the following criteria that would warrant a hearing in RI Family Court:

1. The existing support order would deviate fifteen percent (15%) or more as a result of applying new income information to the State's Child Support Guidelines or it has been thirty-six months since the order was entered or it was last reviewed.
2. That health insurance is available at reasonable cost to the non-custodial parent and the existing support order makes no provision for the health care needs of the children covered by the order or does not otherwise provide for health care coverage.
3. To add an additional child of the parties to the order who is not covered by the existing support order.
4. There has been a custody change or a change in the responsibility for care of a child covered by the order.
5. Since the entry of the order, the party is now incurring the expenses of an additional minor dependent not subject to the existing child support order.

### **1.23.3 Requested Reviews**

#### **A. Custodial Parents**

1. If the Office of Child Support Service's evaluation of the custodial parent's request for a review of the order determines that a hearing before RI Family Court is warranted, a court date will be assigned and the Office of Child Support Services will provide for the service of process to both parties to the order. Once served, the custodial parent will be required to appear and give testimony at the court hearing. Attorneys for the Office of Child Support Services will only represent the State of RI and will not legally represent either party at the court hearing.
2. If the Office of Child Support Services determines that circumstances do not warrant a hearing in R.I., the Family Court and the requesting custodial parent are notified. This notification will also inform the custodial parent that s/he may submit additional information not previously provided if s/he would like Office of Child Support Services to reevaluate the request. Also, included in this notice will be information about the self-represented process whereby the custodial parent may file a motion for modification with the court without the involvement of the Office of Child Support Services provided that the custodial parent has not presently assigned his or her right to support to the state in accordance with any and all provisions as it relates to eligibility to collect RIW benefits.

#### **B. Non-Custodial Parents**

1. The request for relief form is found on the website at [www.cse.ri.gov](http://www.cse.ri.gov).
2. The Office of Child Support Services will evaluate a written request from a non-custodial parent to see if it meets any of the modification/adjustment criteria listed in § 1.23.2 of this Part and notify the non-custodial parent. If the request has been accepted, OCSS will file a Motion for Relief on behalf of the non-custodial parent and serve the custodial parent for the hearing date. If the request has been rejected, a notice will be sent to the non-custodial parent stating the reason for the rejection. It will also inform the non-custodial parent of his/her right to file a self-represented motion with the court. The forms are available on the website or at Family Court.
3. All decisions on whether or not to modify an order rest with the court.

### **1.23.4 Mandatory Reviews**

- A. Under federal regulations and State statutes, a review of an order is required without the need of a request from either parent in the following type cases;

except as provided below, all RIW, Medical Assistance Only, and IV-E Foster Care cases where it has been either thirty-six (36) months since the order was entered or thirty-six (36) months since the order was last reviewed.

- B. RIW and IV-E Foster Care cases will automatically be referred to R. I. Family Court for adjustment hearings when they meet the above criteria. No other criteria need be met before referral to court is made. (see § 1.23.5 of this Part for procedures on intergovernmental cases.)
- C. Medical Assistance Only cases will be referred to RI Family Court only if there is either no court order providing for the health care needs of a child or a cash medical support order where it has been either thirty-six (36) months since the order was entered or thirty-six (36) months since the order was last reviewed of a child who is included in the Medical Assistance Only case. (see § 1.23.5 of this Part for procedures on intergovernmental cases.)
- D. Cases with characteristics for mandatory review that need not be reviewed are those where:
  - 1. A Case closure criterion exists. (see §§ 1.10.2 and 1.10.3 of this Part.)
  - 2. The youngest child covered by the order is at least seventeen (17) years six (6) months old, and there is no outstanding past due support.
  - 3. There has been a good cause granted in the case for not pursuing child support. (see § 1.3.6 of this Part.)
- E. All other cases will be reviewed every three (3) years upon the request of either party or upon the request of the state, and if appropriate, the order will be adjusted in accordance with the child support guidelines if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines. The adjustment of the order shall be made without the requirement for proof or showing a change in circumstances.
- F. In the case of a request for a review before the three (3) year period, the amount of support may, in the court's discretion, shall be modified if the court finds that a substantial change in circumstances has occurred. The court, in its discretion, may modify a child support order retroactively only to the date that notice of a petition to modify was given to the adverse party if the court finds that a substantial change in circumstances has occurred.

### **1.23.5 Review and Modification - Intergovernmental Cases**

- A. R.I. as the Responding State

1. If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order. After a child support order in another state has been registered and confirmed in this state, the responding tribunal of this state may modify that order if the above does not apply and, after notice and hearing it finds that the following requirements are met:
  - a. The child, the individual custodial parent, and the obligor do not reside 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
  - d. 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 a written consent in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order.
2. Modification of a registered child support order is subject to the same requirements, procedures and defenses that apply to modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.
3. Within thirty (30) days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order and in each tribunal in which the party knows the earlier order has been registered.
4. On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.
5. Any requested review of an order on a RIW case with a UR case status where it has been three years since the order was entered or three years since the last review, will automatically be referred to RI Family Court for an adjustment hearing. No other criteria for review need be met.

6. Notification requirements and the time frames for completion of reviews are the same as they are for instate cases. The Office of Child Support Services is responsible for sending any required notices regarding the review to the parent in R.I. and to the parent in the initiating State through that State's local enforcement agency.

B. R.I. as the Initiating State

1. When acting as the initiating State (UI case status), Office of Child Support Services must respond to a request for review of the order by evaluating the request to determine whether it should be forwarded to the responding State (the State where the order was entered). The decision whether to forward the request to the responding State is based on the same criteria used in determining whether instate requests for reviews should be referred to R.I. Family Court.
2. Any active RIW, or IV-E Foster Care case where it has been three (3) years since the order was entered or three (3) years since the order was last reviewed, will automatically be referred to the responding State for review. There will be no need to evaluate whether the case should be referred or not. Of course, the decision whether to adjust the order or decide that no adjustment is warranted will rest with the responding State.
3. For MAO cases where it has been three (3) years since the order was entered or three (3) years since the order was last reviewed, the case will only be referred to the other jurisdiction if the existing order does not provide for the health care needs of a child who is included in the Medical Assistance Only household or has a cash medical support order that has been entered or has not been reviewed in the past three years.
4. In each of these three (3) types of cases, RIW, MAO, and IV-E Foster Care, the Office of Child Support Services will have met its responsibilities under the federal regulations pertaining to the periodic review and adjustment of support orders by making the referral to the other State.

**1.23.6 Retroactive Modification of Child Support**

- A. Notwithstanding the provisions of R.I. Gen. Laws § 15-5-16.2, the court in its discretion may modify a child support order retroactively only to the date that notice of a petition to modify was given to the adverse party, if it finds that a substantial change in circumstances has occurred. The court shall set forth in its decision the specific findings of fact which show a substantial change in circumstances, and upon which findings of fact the court has decided to make its order of modification retroactive. The court in its discretion may for good cause



shown suspend payment of child support arrearages until there is a finding by the court of financial ability to make payment on arrearages.

### **1.23.7 Emancipation**

- A. Pursuant to Rhode Island law, a child is emancipated upon his or her eighteenth birthday. However, the court may, if in its discretion it deems it necessary or advisable, order child support and education costs for children attending high school at the time of their eighteenth birthday and for ninety (90) days after graduation, but in no case beyond their nineteenth birthday. The court may order child support to continue in the case of a child with a severe physical or mental impairment until the child reaches the age of twenty-one (21). Furthermore, a non-custodial parent is obligated to continue paying current child support until s/he has obtained a modification terminating that obligation. Therefore, the Child Support Services agent will continue to enforce an order until such time as notification is received, from the Family Court, that the order has been terminated.

### **1.23.8 Modification**

- A. An order may be modified prior to the three (3) year review period if the court finds that a substantial change in circumstances has occurred in accordance with R.I. Gen. Laws § 15-5-16.2.
- B. An order may be modified in one of two ways:
  - 1. Filing a Motion to Modify when only a modification is being sought. The non-custodial parent is making payments as ordered;
  - 2. Filing a Motion to Adjudge in Contempt and to Modify, when both a modification and enforcement of the order are needed.
- C. In non-assistance (NA) cases, the Child Support agent will get prior approval of the Office of Child Support Services attorney before filing for a modification.
- D. Motion to Modify

An income and expense sheet will be served upon the custodial and non-custodial parent along with the Motion to Modify. Both parties are required to complete the form called the Statement of Income and Assets (OCSS-1) and file it with the Court.

- E. Motion for Relief
  - 1. If a non-custodial parent has been placed under a child support or medical order, and becomes unemployed or otherwise is receiving no other

income or benefits, or he becomes underemployed, the Office of Child Support Services can assist in filing an action to modify called a Motion For Relief. The non-custodial parent may complete a Request to file a Motion for Relief. Legal counsel for the Office of Child Support Services does not legally represent either party.

2. The State of Rhode Island is the moving party. The non-custodial parent is entitled to relief only as of the date of notice of the motion. The Court is prohibited, by law, from giving the non-custodial parent retroactive relief back to the date of unemployment. The Motion therefore should be filed immediately upon termination from employment or when the unemployment benefits stop. A hearing date will be assigned. Once before the Court, the non-custodial parent must present the reasons he/she is seeking a modification or suspension of his/her order. The Court will calculate a new order based upon the Child Support Guidelines.

F. Motion to Adjudge in Contempt and to Modify

The Office of Child Support Services may decide when it is appropriate to file a Motion to Adjudge in Contempt and to Modify. The custodial parent does not make that decision but certainly may file the motion at any time as a self-represented litigant. The agent will obtain an arrearage affidavit if appropriate and will follow procedures as outlined under § 1.21.2 of this Part, Contempt Processing.

G. Modification of Order Upon Termination of Rights

1. A termination of parental rights does not necessarily terminate a parent's obligation to pay child support. However, if a child is adopted, a parent's obligation to pay child support is terminated as of the date of adoption.
2. In order to modify a pre-existing child support order upon termination of parental rights, the following must occur:
  - a. The non-custodial parent must file a motion with the Rhode Island Family Court seeking to modify or terminate his or her child support obligation
  - b. The child has individual interest that must be represented in a child support hearing before the order can be modified. The Office of Child Support Services may request a Guardian Ad Litem to represent the child in a case that the parent is not the recipient of either RIW benefits or Medical Assistance

- c. In accordance with Rhode Island general law, the Office of Child Support Services will take the position that a child support petition for a child should be terminated upon the date of the child's adoption
  - d. The Office of Child Support Services will seek a hearing in these circumstances and will not agree to a suspension of the child support order solely because the non-custodial parent's rights have been terminated. The focus of the hearing will be the income and assets of the non-custodial parent and his or her ability to pay child support.
3. In the above circumstances, it is the position of the Office of Child Support Services that it would be contrary to policy to waive any child support arrears that were due prior to the adoption of the child.

## **1.24 Child Support Financial Management**

### **1.24.1 Legal Basis**

- A. Whenever an individual assigns his/her support rights to the State, that assignment constitutes an obligation owed to Rhode Island by the individual responsible for providing such support.
- B. Such an obligation is collectible under all applicable State and local processes. Likewise, whenever the Department of Children, Youth and Families (DCYF) or such other department, agency, society, institution or person having the charge, care or custody of a child must pay for the support and maintenance of a child, the parents of the child are liable for the support and maintenance of the child and are liable for the reimbursement to the DCYF or other department, agency, society, institution or person having the charge, care, or custody of a child for the support and maintenance of the child. It is within the discretion of DCYF, in accordance with their policy and regulations, to determine which cases to refer.

### **1.24.2 Collections by the State**

- A. The State Disbursement Unit is operated by the Office of Child Support Services and utilizes the automated procedures, electronic processes, including electronic funds transfer (EFT) provisions and computer driven technology for the collection and disbursement of support payments, including procedures for receipt from parents, employers and other states, and for disbursement to custodial parents and other custodial parents for:
  - 1. accurate identification of payments;

2. to ensure prompt disbursement of the custodial parent's share of any payment; and
  3. to furnish any parent, upon request, timely information on the current status of support payments.
- B. The Office of Child Support Services shall distribute all amounts payable within two (2) business days after receipt from the employer or other source of periodic income. In cases in which support is assigned to the state and where there is an existing child support order made payable to the custodial parent, after notice to the obligor and custodial parent, the state disbursement unit shall direct the obligor through a wage withholding order to change the payee to the appropriate in-state or intergovernmental government entity without the necessity for a court order or hearing.
- C. Arrearage
- An arrearage is a debt that results because of an unpaid support obligation. An arrearage accrues at the rate of the unpaid periodic child support amount.
- D. Unreimbursed Assistance
- The Department of Human Services shall not seek reimbursement for RIW remitted either from the custodial or non-custodial parent, except in cases of fraud.
- E. Interest on Arrearages
- All alimony and support obligations established under R.I. Gen. Laws Chapter 15-5 that are in arrears shall be subject to the imposition of interest at the rate of 1% per month on the unpaid balance.
- F. Fees
1. A fee represents an amount due as payment for services rendered.
  2. IV-D fees include but are not limited to DNA testing fees, non-assistance (NA) fees, and services for location only.

### **1.24.3 Verification of Child Support Payments**

- A. When calculating a child support debt, the Child Support Services agent will document any information used to determine the debt amount. In addition, s/he will explain how, why, and when the information was obtained and exactly what it verifies.

- B. The following resources can be used in calculating the amount of child support owed:
  - 1. The amount of assistance paid on behalf of the payee and each child;
  - 2. The amount of court ordered support due. This will be calculated by using the original court order and any subsequent modifications;
  - 3. The non-custodial parent's payment receipts, the custodial parent's Affidavit of Arrearage, and/or the court payment records.

#### **1.24.4 Distribution**

- A. Distribution refers to the act of collecting child support payments and disbursing those payments to the proper individual or agency.
- B. Prior to October 1, 1998, for purposes of distribution in IV-D cases, amounts collected, other than collections made through Federal or State income tax offset, are treated first as payment on the required child support obligation for the month in which the support was collected, next applied to any applicable "A" (RIW) arrearage, and then "N" (Non-RIW) arrearage.
- C. Amounts collected through Federal and State income tax refund offset must be applied to arrears owed to the State ("A"), then applied to arrears owed to the custodial parent ("N"), unless otherwise specified in a support order(s).
- D. On or after October 1, 1998, distribution is subject to new criteria based on the custodial parent's RIW or former RIW status, assignment requirements, and priority ordering of arrearages as outlined in the following subsections.
- E. The Office of Child Support Services will re-process child support collections under the(se) new rules, and to the extent that additional monies are owed to families, such payments will be authorized. If families are adversely affected by the new rules, no amount will be owed for any collection made prior to July, 1999.
- F. Date of Collection

This section is divided into policy and procedures to be followed based on support collected before October 1, 1998 and on or after October 1, 1998.

- 1. Support collected before October 1, 1998:
  - a. Intergovernmental Cases

For collection and distribution purposes, an intergovernmental case is one in which one of the parties resides in Rhode Island and the other resides out of state. The following rules shall be used for determining the date a child support payment is made by a non-custodial parent in intergovernmental cases:

- (1) The date of collection for distribution purposes in IV-D intergovernmental cases shall be the date on which the payment is received by the IV-D agency in Rhode Island or the legal entity of any State or political subdivision actually making the collection, whichever is earliest. For intergovernmental cases, the responding IV-D agency must include sufficient information to identify the case and indicate when the payment was received at the initial point of receipt by the IV-D agency or legal entity of the State or political subdivision actually making the collection, whichever is earlier. In the absence of sufficient information, the Office of Child Support Services must promptly obtain this data.
- (2) When the custodial parent turns in support payments which were received directly from the non-custodial parent, the Office of Child Support Services will use the date on the check or money order as the date of collection unless the custodial parent can provide proof that the payment was made at another time. If the support payments were forwarded to the custodial parent from another jurisdiction, the Office of Child Support Services must contact the other jurisdiction to ascertain the date the collection was made in that jurisdiction.

b. In-State Cases

An in-state case is one in which both parties reside in Rhode Island. The following rules shall be used for determining the date a child support payment is made by a non-custodial parent in in-state cases:

- (1) With respect to in-state payments made through wage or other income withholding that are received by the IV-D agency, the date of collection for distribution purposes shall be the date the wages or other income are withheld (pursuant to a court or administrative order for income withholding) to meet the support obligation. If the employer fails to report the date of withholding, the IV-D agency must reconstruct that date by contacting the employer, or

comparing actual amounts collected with the pay schedule specified in the court or administrative order;

- (2) With respect to in-state payments (except for tax offset, income withholding collections, and payments made in person at the RI Family Court or any DHS office), the date of collection for distribution purposes shall be the date the payment is mailed as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. For payments made in person at the RI Family Court or any DHS office, the date of collection is the date the payment is tendered;
- (3) The policy on support payments made directly to the custodial parent from either the non-custodial parent or another jurisdiction is the same for in-state cases as it is for intergovernmental cases. (See above policy for intergovernmental cases.)
- (4) If none of the above is applicable, the date of collection shall be the date the payment was actually received by the Department of Human Services or its agent, RI Family Court.

2. Support Collected On or After October 1, 1998:

For support collected on or after October 1, 1998, the date of collection is, for amounts collected and distributed under title IV-D of the Act, the date of receipt by the State disbursement unit, except when current support is withheld by an employer in the month when due and is received by the State disbursement unit in a month other than the month due. When this occurs, the date of withholding is deemed to be the date of collection.

G. Payment Received

1. Prior to October 1, 1998

Any amount collected in a month is considered payment on the required support obligation for the month in which the support was collected and will be sent to the family within fifteen (15) calendar days of the date of initial receipt by the State.

2. On or after October 1, 1998

Any amount collected is distributed according to the order of distribution based on the family's RIW, non-RIW, or former RIW status as outlined in § 1.24.4 of this Part and any payment distributed to the family shall be sent

to the family within two (2) business days of the determination that the amount is due and owing.

#### H. Distribution for Current RIW Recipients

1. All child support amounts collected, except for amounts collected through Federal income tax refund offset, must be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months.
2. The State shall retain all collections of child support up to the amount of unreimbursed assistance while a family receives cash assistance under the RIW Program.
3. Any collections on or after October 1, 1998 shall be distributed in the following order, to satisfy:
  - a. Current support and, as appropriate, current spousal support;
  - b. RIW arrears, temporary arrears, and spousal arrears;
  - c. MA reimbursement;
  - d. Non-assistance arrears if there are active SSI children;
  - e. Non-MA reimbursement.
4. Hard-copy reports of cases receiving Excess of Grant payments and Excess of Unreimbursed Assistance payments are generated monthly electronically and placed in the document repository.
5. If the IV-A agency determines amounts are sufficient to make families ineligible for an assistance payment, agency representative closes the case. The eligibility system automatically codes the case as "Non-assistance" and issues a Continuation of Services letter explaining that the Child Support Services agency will continue to provide IV-D services.
6. In any case in which direct support payments are received by a RIW recipient with respect to whom an assignment is in effect, such payments shall be endorsed over to the Office of Child Support Services or Family Court, as appropriate, and not retained by the family.

#### I. Payment of Pass Through to RIW Families



1. All child support collections made on behalf of current RIW custodial parents shall be retained by the state up to the cumulative amount of unreimbursed assistance.
2. For any month in which a non-custodial parent makes a child support payment in the month when due and the support is collected by the Office of Child Support Services for a child or children receiving RIW cash assistance, the first fifty dollars (\$50) of the child support payment, or the actual amount of the child support payment if the payment is less than fifty dollars (\$50), shall be paid to the family in which the child resides. If more than one non-custodial parent makes a child support payment to children living in the same family, there shall be only one (1) payment not to exceed fifty dollars (\$50) paid to the family from the child support collected. This payment is known as the "pass through" payment and shall be sent to the family within two (2) business days of the determination of the amount that is due and owing and no later than within two (2) business days of the end of the month in which the support was collected.
3. Pass through payments are excluded from income in calculating the family's RIW cash assistance amount. However, the fifty dollars (\$50) pass through is counted as income in the Food Assistance Program.

J. Payment in Excess of Grant

1. Any amount collected during the month which represents payment on the required support obligation for that month, and is in excess of the fifty dollars (\$50) pass through, shall be retained by the State to reimburse, in whole or in part, the assistance payment for the month in which the support was collected.
2. If the monthly amount owed and collected is greater than the assistance payment for the month, DHS authorizes payment to the family an amount equal to the difference between the assistance payment for the month and the court ordered amount for that month. This payment will be made in the month following the month in which the amount of the collection was used to re-determine eligibility for a RIW payment. If the court-ordered amount is less than the RIW payment, no amount shall be paid to the family. In cases in which there is no court order, the family shall not be paid any amount under this section.
3. Any month in which the amount collected exceeds the current support due, the State will retain such amount as reimbursement of past assistance payments up to the cumulative amount of unreimbursed assistance.

4. Any payment made under this section must be sent to the family within two (2) business days of the determination that the amount is due and owing.

K. Future Payments

If an amount collected represents payment on the required support obligation for future months, the amount will be applied to future months only after amounts which have been collected fully satisfy the support obligation assigned for the current month and all past months.

L. Federal or State Tax Offset-Active RIW Cases

1. Prior to October 1, 1998, amounts collected through Federal or State tax offset are applied first to RIW arrears. Any balance remaining is applied to the past-due support owed to the family in the amount certified to the federal and state governments.
2. Any collection received as a result of Federal or State income tax refund offset, which is due to a RIW family, must be sent within thirty (30) calendar days of the date of initial receipt by the IV-D agency.
3. For amounts collected under Federal income tax offset on or after October 1, 1998, the amount collected in active RIW cases will be distributed as outlined below. Any collection received from tax offset, which is due to a RIW family, must be sent within two (2) business days of receipt.
4. The State shall retain all collections of child support while a family receives cash assistance under the RIW Program. Any collections from Federal income tax offset on or after October 1, 1998 shall be distributed in the following order, to satisfy:
  - a. RIW arrears;
  - b. Temporary arrears;
  - c. Spousal arrears;
  - d. Reimbursement; and
  - e. Non-assistance arrears if there are active SSI children.
5. Amounts collected through state income tax offset will be applied and distributed in accordance with § 1.24.4(G) of this Part.

M. Payment in Excess of Required Support

1. Prior to October 1, 1998

Any amount collected in a month which exceeds the required monthly support amount is treated as payment on the required support obligation for previous months (past-due support). The State will retain such amounts to satisfy arrears that have accrued while the family was on assistance when:

- a. There is no specific arrears order on the case; or
- b. There is no arrearage priority set on the case to distribute to non-RIW arrears first.

2. After October 1, 1998, any amount collected in excess of the required current monthly support obligation for active RIW cases and for former RIW cases, as outlined in § 1.24.4(G) of this Part.

N. Former AFDC/RIW Cases

1. Prior to October 1, 1998

- a. When a family ceases to receive RIW, amounts collected that represent payment on the current support obligation will be sent to the family within fifteen (15) calendar days of the date of initial receipt in the State.
- b. However, support collected in a month after any month in which the support collected made the family ineligible for an assistance payment, but prior to or in the month in which the family receives its last assistance payment, shall be used to reimburse the State for any assistance paid in such months with any excess being paid to the family. This provision will not apply when a hearing is requested pursuant to 45 C.F.R. § 205.10. In these cases, when the hearing results in a determination that the family was ineligible for an assistance payment, the Office of Child Support Services will:
  - (1) Determine the total amount of support paid in the last month assistance was paid;
  - (2) Determine the total amount of assistance paid in the month; and
  - (3) Pay the excess amount to the family.
- c. If the family is determined to be eligible for assistance, distribution will continue as outlined in § 1.24.4(G) of this Part.

2. On or after October 1, 1998

Other than collections through Federal income tax refund offset, the State will:

- a. Distribute the amount collected to satisfy the current monthly support obligation and pay that amount to the family;
- b. Distribute any amount above the current monthly support obligation to satisfy never-assigned arrearages and pay that amount to the family;
- c. Distribute any amount in excess of the amounts distributed in a. and b. to satisfy unassigned pre-assistance arrearages and conditionally-assigned arrearages and pay that amount to the family.
- d. Distribute any amount above amounts distributed in §§ 1.24.4(N)(2)(a) through (c) to satisfy permanently-assigned arrearages.
- e. Reduce the cumulative amount of un-reimbursed assistance by the total amount distributed under § 1.24.4(N)(2)(d) of this Part, distribute collections exceeding the cumulative amount of un-reimbursed assistance to satisfy unassigned during-assistance arrearages and pay those amounts to the family.

O. Federal or State Tax Offset-Former RIW Cases

1. Prior to October 1, 1998

- a. Amounts collected through Federal or State tax offset are applied first to RIW arrears. Any balance remaining is applied to the past-due support in the amount certified to the federal and state governments.
- b. Any collection received as a result of Federal or State income tax refund offset that is due to a family must be sent within thirty (30) calendar days of the date of initial receipt by the IV-D agency.

2. On or After October 1, 1998

Any collection received from tax offset that is due to a custodial parent must be sent within two (2) business days of receipt. The amount collected in former RIW cases are distributed as outlined below, to satisfy:

- a. RIW arrears and conditional arrears;
  - b. Reimbursement, not including past liability;
  - c. Non-assistance arrears and unassigned during assistance arrears;
  - d. Past liability; and
  - e. Spousal arrears.
3. Amounts collected through state income tax offset will be applied and distributed in accordance with § 1.24.4(G) of this Part.

P. Never-Assistance Cases

1. Prior to October 1, 1998
  - a. All support collected is first applied to the required support obligation for the month in which the support is collected and is sent to the family within fifteen (15) calendar days of the date the collection is received by the Family Court.
  - b. Any amount collected in excess of the required current support amount is applied to past-due support. Payments are sent to the family within fifteen (15) calendar days of the date the collection is received by the State.
2. On or after October 1, 1998

All support collections must be paid to the family within two (2) business days.

Q. Foster Care Distribution

1. For distribution purposes, amounts collected in Foster Care maintenance cases shall be treated first as payment on the required support obligation for the month in which the support was collected and if any amounts are collected which are in excess of such amount, these excess amounts shall be treated as amounts which represent payment on the required support obligation for previous months.
2. Effective June 9, 1988, the date of collection shall be the date on which the payment is received by the Office of Child Support Services or the legal entity of any State or political subdivision actually making the collection, whichever is earliest. In any case in which collections are received by an entity other than the agency responsible for final

distribution under this section, the entity must transmit the collection within ten (10) days of receipt.

3. Payment Received

Any amount collected in a month which represents payment on the required support obligation for that month will be retained by the State to reimburse itself for foster care maintenance payments.

4. Payment in Excess of Required Support

- a. If the amount collected is in excess of the monthly amount of the foster care maintenance payment but is not more than the monthly support obligation, the State will pay the excess to the state agency responsible for supervising the child's placement and care.
- b. If the amount collected exceeds the amount required to be distributed as described above, but is not greater than the total unreimbursed foster care maintenance payments provided or unreimbursed assistance payments the State will retain the excess to reimburse itself for these payments. If past foster care payments are greater than the total support obligation owed, the maximum amount the State may retain as reimbursement for such payments is the amount of such obligation.
- c. If amounts are collected which represent the required support obligation for periods prior to the first month in which the family received public assistance or foster care maintenance payments, such amounts may be retained by the State to reimburse the difference between such support obligation and such payments.
- d. Any balance remaining is paid to the State agency responsible for supervising the child's placement and care and is used to serve the best interest of the child.

5. Future Payments

If an amount collected as support represents payment on the required support obligation for future months, the amount will be applied to those future months. However, no amounts can be applied to future months unless amounts have been collected which fully satisfy the support obligation for the current month and all past months.

6. Foster Care Maintenance Payments Cease

When a State ceases making foster care maintenance payments the assignment of support rights terminates except for the amount of any unpaid support that accrued under the assignment. The Office of Child Support Services will attempt to collect such unpaid support.

7. Intergovernmental Cases

When a non-custodial parent is making payments to one state IV-D agency for a family residing in another state, amounts collected by the responding agency must be forwarded to the initiating State within fifteen (15) calendar days of the initial point of receipt in the responding State. Amounts will be distributed as outlined within this section.

**1.24.5 SSI Child Having Special Needs**

- A. Title XVI of the Social Security Act provides funding to states to pay benefits to indigent, aged, blind, and/or disabled individuals. This program, known as Supplemental Security Income, is commonly referred to as SSI. There may be instances in which an SSI child is a member of a family where all other members are eligible for and in receipt of RIW benefits.
- B. The SSI child is not included in the RIW grant and his/her resources are not included in determining RIW eligibility.
- C. The SSI child is not included in any assignment of support rights and therefore, support received on behalf of an SSI child cannot be retained by the State and must be disbursed to the family. Distribution of support must occur within five (5) days of receipt by the Office of Child Support Services according to the requirements outlined below:
  - 1. If the SSI child is the only person covered by the support order, one hundred percent (100%) of the support collected shall be paid to the custodial parent.
  - 2. If the SSI child is not the only person covered by the child support order, a per capita proportion of the amount collected shall be paid to the custodial parent, unless otherwise specified in the court order.
- D. Child support distributed to a custodial parent on behalf of an SSI child is not considered income for purposes of determining RIW eligibility or payment level for members of the RIW household. However, child support distributed to a custodial parent on behalf of an SSI child is considered unearned income in the Food Assistance Program.
- E. The Office of Child Support Services will provide to the custodial parent of an SSI child a monthly statement that discloses the amount of child support collected

and distributed during the month on behalf of the child. The statement includes notification of the custodial parent's right to a hearing with regard to disputes involving the collection and distribution of the child support.

#### **1.24.6 Recovering Erroneously Disbursed Support**

##### **A. Mispostings / Overpayments**

1. Erroneously disbursed support payments are those payments collected by Office of Child Support Services and distributed in error to a custodial parent for a variety of reasons. It may occur because the posting was made to the wrong child support account or the payment may have been received and posted at an incorrect date or amount. When signing an application for child support services, or accepting benefits through the RIWorks program, the custodial parent has agreed that child support distributed in error will be repaid from future child support at the rate of 25% per future child support payment until the overpayment is paid in full. There is no need to have the custodial parent sign a separate agreement permitting OCSS to recoup.
2. Whenever the Office of Child Support Services discovers that an erroneous amount of support has been disbursed to a custodial parent that results in an overpayment, the Office of Child Support Services shall recoup the overpayment at the rate of 25% per payment.

##### **B. A notice will be sent to the custodial parent to advise that:**

1. 25% of each future child support payment will be retained until the overpayment is recouped; and
2. That full repayment may be made within thirty (30) days of the date of the notice in lieu of the weekly 25% recoupments.

##### **C. Any notice to the custodial parent about recovery of erroneously disbursed support will also inform him/her of:**

1. The right to an informal review with Office of Child Support Services to discuss the overpayment. This meeting will allow the custodial parent to discuss any disagreement about the correctness of the overpayment without the need to file for a formal, administrative hearing.
2. The right to an administrative hearing. This may be requested regardless of whether the custodial parent has had an informal meeting with Office of Child Support Services as described in the preceding paragraph.

#### **1.24.7 Insufficient Funds (Bounced Check)**



- A. If an employer or non-custodial parent makes a child support payment via a check, which is then posted to the child support case, disbursed to the custodial parent via KIDS card or via direct deposit to his/her checking account, and it is later found to have insufficient funds, those funds must be recouped from the non-custodial parent or employer. OCSS will send a notice requesting that the employer or non-custodial parent remedy the situation by sending a money order or certified check for that payment and any future payments to be made. The notice shall advise the non-custodial parent that the amount of past due support shall be increased by the amount of the payment made with insufficient funds and all enforcement actions shall apply. The notice shall outline the procedures for filing a request for an administrative hearing to contest the action.
- B. The State reserves the right to file a Motion to Adjudge the appropriate party in contempt and to refer the matter to the Attorney General's Office for possible criminal prosecution.
- C. If the child support payment was disbursed to the Kids Card or via direct deposit to the custodial parent's checking account within five (5) days of discovery, the OCSS reserves the right to reverse the payment.

#### **1.24.8 Recovering Tax Offsets**

- A. Whenever either the Federal Internal Revenue Service (IRS) or the State Division of Taxation requires the Office of Child Support Services to return all or a part of a tax refund intercepted by the IRS or the State Division of Taxation which had been sent to Office of Child Support Services by either of these tax collection agencies, and subsequently disbursed by Office of Child Support Services to a custodial parent in accordance with Federal or State tax refund offset requirements, the Office of Child Support Services shall:
  - 1. Provide notice to the custodial parent that IRS or the State Division of Taxation has demanded a return of all or a part of the tax refund that was intercepted.
  - 2. Indicate in the notice the amount of the refund being requested to be returned, and the date of the disbursement to the custodial parent.
  - 3. If the refund has been deposited to the Kids Card or via direct deposit to the custodial parent's checking account, and the reversal occurs within 5 days, the OCSS will reverse the payment.
  - 4. Notify the custodial parent that the amount shall be recouped at the rate of 25% of each future child support payment if the total amount of the tax refund intercept that is being requested by either IRS or the State Division of Taxation, within thirty (30) days of the date of the notice.

- B. Tax refund intercepts that are sent to custodial parents erroneously because of mispostings to accounts will be recovered under the procedures outlined in § 1.24.6 of this Part.

## **1.25 Hearing and Post Hearing Activities**

After the hearing, the Office of Child Support Services staff will enter the order on the state's electronic system, generate a copy for mailing for each party, respective attorneys, intergovernmental agency if appropriate, and for filing with the Court.

### **1.25.1 Body Attachments**

- A. Issued

The Family Court Judge/Magistrate may issue a warrant for a body attachment when a non-custodial parent/putative father or custodial parent fails to appear in court. The warrant instructs the Sheriff or Constable to apprehend the individual for the purpose of bringing him/her to court.

- B. Executed

1. When a body attachment is executed (defendant is apprehended by the sheriff), the individual is either taken:
  - a. Directly to court, if it is in session; or
  - b. To the ACI until the next session of court;
2. The Family Court will execute the body attachment and may address the underlying motion pending before the court on that date or schedule the matter for a hearing.

- C. Withdrawn

When the individual appears on his/her own, the Judge/Magistrate will withdraw the order.

### **1.25.2 Constable Service**

- A. The Office of Child Support Services enters into service contracts with Constables who are independent contractors for the purpose of process service.
- B. All constables must:

1. Be licensed by the Chief Judge of the Rhode Island District Court and by the Chief Judge of the Family Court as required by law;
2. Have a bond for District Court and Family Court with sufficient sureties in the sum of five thousand dollars (\$5,000) for the faithful performance of the duties of his/her office;
3. Comply with any and all administrative requirements set by either the District Court or Family Court; and
4. Comply with any and all rules and procedures established by OCSS.

### **1.25.3 Notice and Hearing Procedures**

#### **A. Notice**

1. The Office of Child Support Services shall provide a monthly notice either (computer generated) or an electronic notice to RIW recipients and non-assistance (NA) recipients for whom a child support obligation has been established, and for whom a child support collection has been made.
2. The monthly notice shall specify at a minimum the amount of support paid, the date such payment was made, the date such payment was received by the Office of Child Support Services or the RI Family Court, the date and amount of pass through and/or child support paid to the RIW custodial parent, and an explanation of the recipient's rights to a hearing, which must be requested within thirty (30) days of the date of the notice. When a pass through payment is not sent to a recipient in a particular month, the monthly notice will include an explanation as to why it was not made. A hearing request form is enclosed with the monthly notice.

#### **B. Hearing Request**

The following constitute the Office of Child Support Services hearing procedures:

1. The recipient of the monthly notice will mail the request form to the Office of Child Support Services Business office, 77 Dorrance Street, Providence, RI 02903. The form will be date stamped and logged in a central location by the Business Office. The Business Agent shall research the records to determine all pass through payments made for the months the recipient was on RIW, if applicable. The agent shall refer the hearing request form packet to the EOHHS Legal Unit for scheduling of a hearing, indicating in their log the date the matter was so referred;
2. EOHHS staff will date stamp the packet, log the case in a central log, and schedule the matter for hearing. A notice shall be mailed to the custodial

parent advising her/him of the hearing date. Notice of scheduled hearings shall be given to OCSS;

3. The business officer or other Office of Child Support Services representative will be present and will be available to answer the custodial parent's relevant questions relating to the information provided to the custodial parent in the monthly notice. The custodial parent will then have an opportunity to present when s/he believed s/he should have received a child support payment and/or pass through in a given month. The business officer or other Office of Child Support Services representative will then be given an opportunity to respond by presenting testimony and/or evidence with respect to the child support and/or pass-through payments and periods contested by the custodial parent;
4. The hearing officer may, in his or her discretion, grant a continuance to any party for good cause, including, but not limited to, a party's reasonable request to obtain, review, and present additional relevant evidence. The custodial parent will be advised s/he will receive a written decision by mail within thirty (30) days following the close of the hearing;
5. A decision letter will be prepared by the EOHHS hearing officer. The original will be sent to the custodial parent, with copies to her or his representative, master file, hearing file, and business office;
6. Any person who has exhausted all available administrative remedies, and who is aggrieved by a final order of the agency, is entitled to judicial review pursuant to R.I. Gen. Laws § 42-35-15. If a custodial parent appeals the decision of the hearing officer to the Superior Court, the hearing officer will be responsible to obtain a transcript of the hearing, assemble the evidence (exhibits), and forward the material to the Chief Legal Counsel, Office of Child Support Services.

#### C. Kenyon Notice and Hearing Procedures

The Department of Human Services, as a result of Federal Court Civil Action, No. 89-0553P, *Kenyon et al v. Sullivan*, has been ordered to provide special notices to recipients. The Court required that all members of the Kenyon class (all individuals who received AFDC and for whom the state was collecting child support from 1984 forward) be notified by mail and publication of their right to an accounting and hearing. Accordingly, the DHS Rhode Island Child Support Services Agency has implemented the normal procedures for requesting an appeal with the OHHS legal office.

## **1.26 Legal Representation**

- A. In any legal proceeding, legal counsel for the child support agency shall represent the Office of Child Support Services or, when acting on behalf of the Department of Children, Youth and Families, Department of Human Services, or other state agency, shall represent the interests of those entities. The attorneys do not represent the interest of any individual person (R.I. Gen. Laws Chapter 15-30).
- B. There is no attorney-client relationship between legal counsel and either party. The Department shall provide specified services to both the custodial and non-custodial parents. Either party may retain representation by a private counsel. Each party applying for services shall be given a notice regarding legal representation.
- C. For those existing cases where a prior attorney-custodial parent relationship was established, appropriate notice as described above and a waiver regarding legal representation shall be mailed. No further services will be rendered until the waiver is returned. Legal counsel shall either withdraw as counsel, or, upon receipt of a signed waiver, continue to provide services only. However, in no event will legal representation continue.