

CHILD SUPPORT ENFORCEMENT PROGRAM

22 VAC 40-880-200. Determining the amount of the child support obligation.

A. The administrative child support order shall include information and provisions as set forth in ~~§63.1-252.1~~ §63.2-1916 of the Code of Virginia.

B. Verification of financial information and use of financial statements.

1. The department shall use financial statements obtained from the legally responsible parents to determine the amount of the child support obligation and shall verify financial information used to determine child support obligations.

2. The legally responsible parents shall complete financial statements upon demand by the department. Such responsible parties shall certify under penalty of perjury the correctness of the statement.

3. If the custodial parent is a recipient of public assistance, the department shall use the information obtained through the TANF or AFDC/FC eligibility process to meet the financial statement and financial information verification requirements.

4. The department shall define the type of financial information which shall be required based on ~~§63.1-274.5~~ §63.2-1919 of the Code of Virginia which is incorporated by reference. The department has the authority to request verification of financial information for the purpose of establishing or modifying a child support obligation. The department will not provide credit for self-employment tax paid if the most recent federal tax return and the Schedule H attachment are not provided by the party upon request.

5. When both parents are noncustodial, each parent must provide financial information. In this situation, the person with whom the child resides shall not be required to complete a financial statement.

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C. The department shall determine the amount to be paid monthly toward past due support when the obligation is administratively ordered and when a court ordered obligation for support does not specify the amount to be paid toward the past due support. The monthly payment for past due support will be \$65 or 25% of the current obligation, whichever is greater, and shall not exceed the amount allowed under the federal Consumer Credit Protection Act.

22 VAC 40-880-250. Periodic reviews of the child support obligation.

~~A. The amount of the child support obligation is based on the financial situation of both parents. The department, another state's child support agency or either parent may initiate a review of the amount of the child support obligation.~~

~~B. The department shall initiate a review of each child support obligation and adjust the order as required by federal regulations.~~

~~C. A. Either parent may request a review of the child support obligation once every three years. Additional requests may be made earlier by providing documentation of a special circumstance that has occurred that potentially affects the child support obligation. Such changes shall be limited to the following:~~

- ~~1. An additional child needs to be covered by the order;~~
- ~~2. A child needs to be removed when another child remains covered by the order;~~
- ~~3. A provision for health care coverage needs to be added; or~~
- ~~4. A provision ordering the parents to share the costs of all unreimbursed medical/dental expenses exceeding \$250 per child per year covered by the order needs to be added; or~~

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~~4.5.~~ A change of at least 25% can be documented by the requesting party in the following circumstances:

- a. Income of either party;
- b. Amount of medical insurance; or
- c. Cost of dependent care; ~~or~~
- d. ~~Extraordinary medical expenses.~~

~~D.~~ B. The department shall adjust an administrative obligation when the results of the review indicate a change of at least 10% in the monthly obligation but not less than \$25.

~~E.~~ ~~The department shall modify the obligation for future child support payments only.~~

~~F.~~ ~~The department may initiate a review of a court ordered obligation pursuant to §§20-108.2 and 63.1-252.2 of the Code of Virginia.~~

22 VAC 40-880-270. Withholding of income.

A. The department shall issue an income withholding order against all income except income exempted under federal and state law.

~~B.~~ ~~The amount of money withheld from disposable earnings may not exceed the amount allowed under the federal Consumer Credit Protection Act. That amount is 50, 55, 60 or 65%, depending on the number of weeks of delinquency, and if the NCP is responsible for other dependents (§ 34-29 of the Code of Virginia).~~

~~C.~~ B. The department ~~must legally~~ shall serve the income withholding order on the employer. ~~Upon service of the order on the employer by certified mail, or by electronic~~

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~~means, including facsimile transmission, a copy of the order shall be provided to the employee by the employer.~~

~~D. The department shall modify the income withholding order only if there is a change in the amount of the current support or past due support.~~

~~E.~~ C. The department shall release the income withholding order only if one of the following occurs:

1. The current support order terminates, and any past due support is paid in full;
2. Only past due support is owed and it is paid in full;
3. The whereabouts of the child or child and ~~caretaker~~ custodial parent become unknown;
4. Bankruptcy laws require release; or
5. A nonpublic assistance ~~applicant/recipient~~ custodial parent or former public assistance custodial parent no longer wants the services of the department and no debt is owed to the Commonwealth.

22VAC40-880-350. Distraint, seizure, and sale.

A. The department may use distraint, including booting of vehicle, seizure and sale against the real or personal property of a noncustodial parent when:

1. There are arrears of at least \$1,000 for a case with a current support obligation and at least \$500 for an arrears-only case;
2. Conventional enforcement remedies have failed or are not appropriate; and
3. A lien has been filed pursuant to ~~§63.1-254~~ §63.2-1927 of the Code of Virginia.

B. Assets targeted for distraint, including booting of vehicle, seizure and sale are:

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1. Solely owned by the noncustodial parent.
2. Co-owned by the noncustodial parent and current spouse.
3. Owned by a business in which the noncustodial parent is the sole proprietor. Assets owned by business partnerships or corporations which are co-owned with someone other than a noncustodial parent's current spouse do not qualify for booting of vehicle, or seizure and sale.

C. The Director of the Division of Child Support Enforcement or his designee shall give final approval for the use of distraint, seizure and sale. This includes immobilizing a vehicle using vehicle boots.

D. When initiating booting, or seizure and sale of vehicle, the department shall check with the Department of Motor Vehicles for vehicles registered in the noncustodial parent's name, the address on the vehicle registration, and the name of any lien holder on the vehicle.

E. Once a lien has been filed pursuant to ~~§63.4-254~~ §63.2-1927 of the Code of Virginia, the department shall send a notice of intent to the noncustodial parent before initiating distraint, including booting of vehicle, seizure and sale action. If there is reason to believe that the noncustodial parent will leave town or hide the asset, the asset can be seized without sending the notice and with proper documentation.

F. ~~The department shall negotiate a settlement~~ If the noncustodial parent contacts the department in response to the intent notice, the department shall request payment of arrears in full. The department shall negotiate a settlement if the noncustodial parent cannot pay the arrears in full. ~~At~~ The least acceptable settlement is 5.0% of the

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arrearage owed or \$500, whichever is greater, with additional monthly payments towards the arrears that will satisfy the arrearage within 10 years. The department may initiate distraint, including booting of vehicle, seizure and sale without further notice to the noncustodial parent if the noncustodial parent defaults on the payments as agreed.

G. The department shall send a fieri facias request to each county or city where a lien is filed and a levy is being executed if the noncustodial parent does not contact the department in response to the intent notice.

H. The department shall set a target date for seizure or booting and have the sheriff levy the property or boot the vehicle.

I. Once property has been seized or booted by the sheriff, the department must (i) reach a payment agreement with the noncustodial parent of 5.0% of the arrearage owed or \$500, whichever is greater, with additional monthly payments towards the arrears that will satisfy the arrearage within 10 years and release the vehicle to the owner; (ii) proceed with the sale of the vehicle pursuant to ~~§63.1-261~~ §63.2-1933 of the Code of Virginia; or (iii) at the end of 90 days from the issuance of the writ of fieri facias, release the vehicle to the owner.

J. The department shall send a cancellation notice to the sheriff if a decision is made to terminate the seizure action before the asset is actually seized.

K. If the department sells an asset and it is a motor vehicle, the department shall notify the Department of Motor Vehicles to issue clear title to the new owner of the vehicle.

22VAC40-880-620. Disbursement of payments.

A. ~~An absent parent~~ A noncustodial parent may have multiple child support obligations.

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1. Each case shall receive full payment of the current obligation when possible.
 2. If the ~~absent parent's~~ noncustodial parent's disposable earnings do not cover the full payment for each current support order, the department shall prorate the amount withheld among all orders.
- B. Current support obligations shall be satisfied before satisfying past due support.
- C. The method by which child support and medical support payments are disbursed is governed by 45 CFR 302.51 and 302.52 which are incorporated by reference.
- D. No refund shall be made of any overpayment of support under \$1 except upon written request by the payor.

I certify that this regulation is full, true, and correctly dated.

Danny L. Brown, Chairman
State Board of Social Services
December 6, 2006