

	<b>INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL</b>	
	<b>Chapter 13: Review and Adjustment/ Modification of the Child Support Order</b>	<b>Effective Date: 07/28/2021</b>
	<b>Section 2: Review and Adjustment Procedures</b>	<b>Version: 2 Revision Date: 02/28/2022</b>

**BACKGROUND**

N/A

**POLICY**

1. The Title IV-D Prosecutor’s Office shall conduct a review of the child support order and, if warranted, file a Petition to Modify Support at the request of either the custodial or non-custodial party (NCP), as long as the request meets the federal requirements set forth under Chapter 13: Review and Adjustment/ Modification of the Child Support Order, Section 1: Time Frames for Review and Adjustment.<sup>1</sup>
2. The Title IV-D Prosecutor’s Office is strongly recommended to initiate a review whenever the Title IV-D Prosecutor’s Office learns that a substantial and continuing change of circumstances has occurred (e.g., a party has become disabled, is incarcerated, reduction of income, etc.).
3. If a review indicates that an adjustment of the child support order is necessary to bring the child support obligation into conformity with the Indiana Child Support Guidelines or Indiana statutes, the Title IV-D Prosecutor’s Office shall file a petition to modify the order, without regard to who requested the review (custodial party (CP) or NCP) or whether the child support obligation is likely to increase or decrease as a result of the modification.<sup>2</sup>
4. If a review of the child support order reveals that the health care needs of the children are not addressed through public or private health care coverage, the Title IV-D Prosecutor’s Office shall file a petition to modify the order to require either parent to provide:
  - a. Health care coverage when available at a reasonable cost; and/or
  - b. Cash medical support.<sup>3</sup>
5. The Title IV-D Prosecutor’s Office is not required to provide review and adjustment when the youngest child is within four (4) months of the emancipation age. However, this exception shall not apply to a case in which the Title IV-D Prosecutor’s Office has reason to believe the child support obligation will continue past the age of emancipation due to the child’s disability, or if there are other children covered by the support order.

<sup>1</sup> 45 C.F.R. § 303.8(a)

<sup>2</sup> IC 31-25-4-17(a)(7)(B); 45 C.F.R. § 303.8(a); 45 C.F.R. § 303.8(b)(3)(ii)(A)

<sup>3</sup> IC 31-16-8-2; IC 31-16-6-4; 45 C.F.R. §303.31(b)(3)(i); 45 C.F.R. §303.31(b)(4); 45 C.F.R. §303.8(d)

6. In intergovernmental cases, if Indiana's order is determined to be the controlling order and either party resides in Indiana, the Title IV-D Prosecutor's Office shall apply Indiana law, the Indiana Child Support Guidelines, and this policy to the review and adjustment process. See Chapter 16: Intergovernmental Case Management for more information on modifications of child support in intergovernmental cases.

## REFERENCES

- [IC 31-16-6-4](#): Medical support
- [IC 31-16-8-1](#): Modification or revocation of child support order or maintenance order
- [IC 31-16-8-2](#): Medical Support
- [IC 31-25-4-13.1](#): Agreements with local government officials; contracting; attorney-client relationship; informing applicant; service level stipulation
- [IC 31-25-4-17](#): Support related duties of bureau
- [Indiana Child Support Guidelines](#)
- [Clark v. Clark, 902 N.E. 2d 813 \(Ind. 2009\)](#)
- [Whited v. Whited, 859 N.E. 2d 657 \(Ind. 2007\)](#)
- [42 U.S.C. § 666](#): Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement
- [45 C.F.R. §303.31](#): Securing and enforcing medical support obligations.
- [45 C.F.R. § 303.8](#): Review and adjustment of child support orders.

## PROCEDURE

### 1. Notification of Review and Information Gathering

The Title IV-D Prosecutor's Office shall notify both parties that a review of the child support obligation is being conducted. The notice shall contain the following information:

- a. The purpose of the review.
- b. The timeframe of the review.
- c. The possible outcomes of the review.
- d. The party's procedures for contesting the outcome of the review.
- e. A request for financial and other information necessary to conduct the review.

The Title IV-D Prosecutor's Office is strongly recommended to notify both parents at the same time and include a statement that if complete and accurate information is not provided by the party within a reasonable and specified amount of time (e.g. 30 days), the Title IV-D agency will use whatever financial information is reasonably available to conduct the review.

### 2. Failure to Submit Adequate Information

If one or both parties fail to respond within the number of days specified in the Title IV-D Prosecutor's Office's notice of review and request for information, or a party submits insufficient or inaccurate information, the Title IV-D Prosecutor's Office shall take one of the following actions:

- a. If the requesting party is the one who failed to satisfy the request for information, and the review is not otherwise required by federal timelines for a TANF case, the Title IV-D Prosecutor's Office shall notify both parties that the review has

been terminated due to the requesting party's failure to provide adequate information.

- b. In all other cases, the Title IV-D Prosecutor's Office shall continue with the review using the best available information for the non-responsive party.

### 3. Conducting the Review

Upon receipt of sufficient information, the Title IV-D Prosecutor's Office shall complete the Child Support Obligation Worksheet to determine the support obligation.

### 4. Determining whether Adjustment is Warranted

An adjustment to the child support obligation is warranted if:

- a. At least one (1) year has passed since the date of the most recent child support order *and* there is at least a 20% difference (increase or decrease) between the current order and the amount indicated by the Child Support Worksheet; or
- b. There has been a showing of changed circumstances so substantial and continuing as to make the prior terms of the order unreasonable.

### 5. Notification of the Results of the Review

- a. If the review determines that an adjustment to the child support order is not warranted, the Title IV-D Prosecutor's Office shall send both parties a communication advising them that:
  - i. The review is complete.
  - ii. No modification of the support obligation is warranted.
  - iii. No further action will be taken by the Title IV-D Prosecutor's Office.
  - iv. If one or both parties disagree with the Title IV-D Prosecutor's Office's decision, they have the right to seek a modification of support in the Court that issued the support order.

It is recommended that a copy of the completed Child Support Obligation Worksheet be included with the communication. Parties may be referred to the Indiana Judicial Branch Self-Service Legal Center for pro se materials.

- b. If the review determines that an adjustment to the child support obligation is warranted, the Title IV-D Prosecutor's Office shall send both parties a communication advising them that:
  - i. The review is complete.
  - ii. A modification of the support obligation is warranted.
  - iii. A petition to modify support shall be filed promptly by the Title IV-D Prosecutor's Office.

It is recommended that a copy of the Child Support Obligation Worksheet be included with the communication.

### 6. Adjusting the Child Support Obligation

- a. If the review determined that an adjustment of child support was warranted, the Title IV-D Prosecutor's Office shall promptly file a petition to modify support. The Child Support Obligation Worksheet may be included with the petition.<sup>4</sup>
- b. A petition to modify support in a Title IV-D case shall be brought by the Title IV-D Prosecutor's Office on behalf of the State of Indiana and does not require the signature of the CP or NCP.<sup>5</sup>
- c. If the Court allows, and upon review of any potential family violence indicators, the Title IV-D Prosecutor's Office may notify the parties that they can enter into an Agreed Order to modify support without having to attend a court hearing. If the parties wish to do so, the Title IV-D Prosecutor's Office is strongly encouraged to facilitate the preparation and signing of the Agreed Order and shall promptly file the signed Agreed Order with the Court.

## 7. Retroactive Modification of Support

In general, a modification of child support shall not take effect prior to the date of the filing of the Petition to Modify.<sup>6</sup> However case law has held that retroactive modification of child support is permitted when:

- a. Parties have agreed to and carried out an alternative method of payment which substantially complies with the spirit of the decree; or
- b. The obligated parent takes the child into his or her home, assumes custody, provides necessities, and exercises parental control for a period of time that a permanent change of custody is exercised.<sup>7</sup>

## 8. Orders that Pre-date or Do Not Conform to the Indiana Child Support Guidelines

If a Title IV-D case has a child support order that does not conform to the Indiana Child Support Guidelines or Indiana statutes, the Title IV-D Prosecutor's Office shall file a petition to modify the order. Examples of non-conforming child support orders include:

- a. "No support" orders in which no numeric value of support is ordered. If neither party is being ordered to pay child support to the other, the order must read that the child support obligation is \$0.00.
- b. "Direct pay" orders in which one party is ordered to pay child support directly to the other party, instead of to the Clerk of Courts or the Indiana State Central Collection Unit (INSCCU).
- c. "Settlement" orders, in which the amount of child support is established by the parties' agreement, without reference to or application of the Indiana Child Support Guidelines, or orders which include an agreement for a lump sum payment in exchange for the CPs release of a present, or future, paternity or child support claim.
- d. "In kind" orders in which the NCP is ordered to provide food, clothing, medical care, rent, etc., in lieu of a fixed amount of child support to be paid on a fixed frequency.

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<sup>4</sup> IC 31-25-4-17(a)(7)

<sup>5</sup> IC 31-25-4-13.1

<sup>6</sup> Ind. Child Support Guideline 4 Commentary

<sup>7</sup> *Whited v. Whited*, 859 N.E. 2d 657 (Ind. 2007)

## FORMS AND TOOLS

[Indiana Judicial Branch Self-Service Legal Center](#)

## FREQUENTLY ASKED QUESTIONS

N/A

## RELATED INFORMATION

Chapter 4: Temporary Assistance for Needy Families (TANF) Cases

Chapter 10: Child Support Establishment: Section 2: Elements of a Child Support Order

Chapter 10: Child Support Establishment: Section 3: Indiana Child Support Rules and Guidelines

Chapter 16: Intergovernmental Case Processing

Chapter 20: Other Child Support Related Topics, Section 1: Family Violence in Title IV-D Cases

## REVISION HISTORY

Version	Date	Description of Revision
Version 1	11/19/2013	Final Approved Version
Version 1.1	07/01/2019	Revised to add reference to change in emancipation if a child is a full time student at age 19
Version 1.2	02/26/2020	Revised to add reference to our procedure for identifying and modifying orders that do not address medical support
Version 2	07/28/2021	Updated hyperlinks. Reviewed for accuracy. Combined prior Sections 3 and 4, and renumbered.
Version 2	02/28/2022	Added citations in footnotes; minor revision to policy section to comply with state plan page 2.12-10