

## Colorado

### I. Background

Colorado's Division of Child Support Enforcement (CSE) is county administered and state supervised. It is housed within the Colorado Department of Human Services. Services are provided by 68 county offices. According to unaudited data, at the end of federal fiscal year 2006, the Colorado child support program had 142,128 open IV-D cases<sup>1</sup> and 702 full-time equivalent staff<sup>2</sup>. That year Colorado scored above the national average in two of the five federal performance measures (support order establishment, arrearage collections). It scored lower than the national average in three of the measures (paternity, current collections, and cost-effectiveness).

Colorado operates a quasi-administrative process, which was enacted in 1990. The main impetus for child support administrative procedures was timeliness. The court was overwhelmed by the child support caseload; cases were taking months to schedule. In order to gain efficiencies, the legislature approved a more administrative process. The agency does not recall the transition being controversial because parties' due process rights continued to be fully protected.

The authority for Colorado's quasi-administrative procedures is at Colo. Rev. Stat. §§ 26-13.5-101 to 115.

### II. Due Process Summary

The majority of IV-D establishment cases are handled administratively. Exceptions are cases where there is a presumed father and one or more other alleged fathers; where one of the parents is younger than 18 years of age; and where one of the parties has a family violence indicator. Such cases are handled judicially.

Upon receipt of a IV-D application or referral requiring support establishment, the caseworker reviews the case and prepares the appropriate Notice of Financial Responsibility. The Notice informs the noncustodial parent that he or she is required to attend a scheduled negotiation conference; failure to attend or reschedule the conference prior to its scheduled date will result in a default order. The Notice also states that any order of default will be filed with the clerk of the district court; and that, as soon as the order of default is filed, it shall have all the force, effect, and remedies of an order of the court. The packet of forms served on the alleged noncustodial parent includes an income and expense affidavit, which the person is asked to complete and bring to the negotiation conference. The Notice does not contain a proposed support amount. The Notice may be personally served on the noncustodial parent, or served by certified mail, restricted delivery. Colorado law also permits the process server to leave the Notice with a family

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\* Interview with Larry Desbien, Policy and Evaluation Section Chief, Colorado Division of Child Support Enforcement.

<sup>1</sup> Table 4, Statistical Program Status, OCSE FY 2006 Preliminary Data Report.

<sup>2</sup> State Box Score, OCSE FY 2006 Preliminary Data Report.

member at the party's home. The agency sends the custodial parent a copy of the Notice by first class mail.

Caseworkers who conduct negotiation conferences receive specialized training. After completion of the course, passage of a test, and designation by his or her County Director of Human Services, a worker is certified as an administrative process establishment caseworker.

Prior to the conference, the caseworker reviews financial information provided by the custodial parent and accesses income data available to the agency. When the parties appear at the negotiation conference, the certified caseworker explains the process and the parties' financial obligations. Parties can have an attorney present. Participation by the custodial parent is not required. However, through a federal grant on default orders, the agency has learned that it is helpful to have both parties present. In fact, the stipulation rate to a consent order has increased where the custodial parent participates. During the conference, the noncustodial parent can provide supplemental income information. The caseworker enters income information into a software program used by the agency, which automatically calculates the guideline amount. The caseworker has no authority to deviate from the guidelines.

If the noncustodial parent agrees to the guideline amount, the caseworker prepares an administrative Order of Financial Responsibility. It is signed by the noncustodial parent and filed with the court, along with proof of service of the Notice. The clerk of court stamps the date of receipt of the copy of the order and assigns it a case number. Colorado law does not require that the court confirm the order. The order has all the force, effect, and remedies of a court order. The parents, and any representing attorneys, receive copies of the order.

If there is no agreement and if paternity is not at issue, the agency enters a temporary administrative support order. The agency files the temporary order, Notice of Financial Responsibility, and proof of service with the clerk of district court, and requests the court to set a hearing. The temporary support order is enforceable until superseded by the court order. A complaint is not necessary to initiate the court hearing.

The court sets the date and location of the hearing. The agency sends a notice by first class mail to the obligor informing him or her of the hearing. Additional service is not required. In order to meet federal requirements of expedited process for child support enforcement, the court must hold the hearing and decide the issue of child support within 90 days after receipt of the notice. If the noncustodial parent is contesting paternity, the hearing must be within six months after receipt of the notice.

The judicial hearing is usually before a court magistrate. It is on the record, and parties may be represented by legal counsel. The Colorado county child support enforcement agency is represented by a IV-D attorney. Any appeal is to the district court judge. Once a judicial order is entered, any subsequent modification must be handled as noted in the Review and Adjustment/Modification discussion below.

If the noncustodial parent fails to appear for a scheduled negotiation conference, the agency will issue an Order of Default, in accordance with the Notice of Financial Responsibility. The Order of Default is a form that is completed by the establishment worker using Colorado's Document Generation System. It is signed by the County Director or their authorized designee in the county child support office. The County Director has total flexibility to determine who the authorized designees are.

In a paternity case the agency can issue a default order, establishing paternity and a support amount, if the alleged father fails to appear for a scheduled negotiation conference, fails to take a genetic test, or the test results indicate a 97% or greater probability of paternity and the alleged father fails to appear for the negotiation conference. The agency files a copy of the default order, along with proof of service, with the clerk of court. The clerk stamps the date of receipt of the copy of the default order and assigns the order a case number. It is up to the court to approve the default order. Once approved by the court, the order of default then has the full force of a court order.

The agency sends a copy of any order of financial responsibility or default order by first-class mail to the obligor or his attorney of record and to the custodial parent.

Except for the promulgation of rules and regulations, the quasi-administrative process in Colorado is not subject to the State Administrative Procedure Act.

There are no reported appellate court decisions on the constitutionality of the Colorado quasi-administrative process.

### **III. Establishment of Parentage**

The majority of paternity establishment cases can be handled administratively. Exceptions are cases where there is a presumed father and one or more other alleged fathers; where one of the parents is younger than 18 years of age; and where one of the parties has a family violence indicator. Such cases are handled judicially.

As soon as a case is opened in which paternity is at issue, the caseworker reviews the facts to determine if there is a legal presumption of parentage. If there is, the caseworker proceeds as in an establishment case. The caseworker serves the father with a Notice of Financial Responsibility. The Notice is served by personal service or certified mail, restricted delivery. The Notice provides a date for the father to come to the agency for a negotiation conference. It also includes an income and expense affidavit, which the father is asked to complete and bring to a negotiation conference. The custodial parent receives a copy of the Notice by first class mail.

If there is no legal presumption of parentage, the caseworker serves the alleged father with a different Notice of Financial Responsibility. This Notice, accompanied by a packet of forms, informs the alleged father of the allegation of parentage and of his rights and responsibilities. The Notice informs him of his right to a genetic testing, paid for by the agency. It provides a date for the alleged father to come to the agency for a

negotiation conference. The custodial parent receives a copy of the notice by first class mail.

At the conference, the caseworker explains the paternity and support process. He or she offers the alleged father genetic testing. If the alleged father requests testing, many offices can perform testing on site at that time. If there is no dispute to parentage, the caseworker has the father sign a document acknowledging he is the father. During the negotiation conference, the caseworker also discusses the alleged father's responsibility for financial support. Prior to the conference, the caseworker will have reviewed income information provided by the custodial parent, as well as information available to the agency through other sources. The father can supplement that income information. Based on the income information, the caseworker computes the guideline amount, using a software program. In some offices, as an incentive to the alleged father to reach agreement, the caseworker will waive retroactive support; Colorado law allows retroactive support to the date of birth of the child or date of separation. If the father agrees to the guideline amount, the caseworker also prepares an Order for Financial Responsibility. It is signed by the noncustodial parent and filed with the court.

If there is no agreement, the agency submits a request for a court hearing. If the alleged father admits paternity but challenges the support amount, or if the alleged father continues to deny paternity but the test results create a presumption of paternity (at least 97% probability of paternity), the agency enters a temporary administrative support order which is enforceable until superseded by the court order.

The judicial hearing on paternity and support issues is before a court magistrate. Any appeal is to the district court judge.

If the noncustodial parent fails to appear for a scheduled negotiation conference, the agency issues a default order in accordance with the Notice of Financial Responsibility, establishing paternity and financial responsibility. The agency files a copy of the order, proof of service, and the obligee's verified affidavit regarding paternity and the genetic test results, if any, with the clerk of court. The clerk stamps the date of receipt of the copy of the default order and assigns the order a case number. It is up to the court to approve the default order. Once approved by the court, the default order establishing paternity and financial responsibility has the full force of a court order.

The agency mails a copy of any order by first-class mail to the obligor or his attorney of record and to the custodial parent.

#### **IV. Support Establishment**

As soon as a case is opened in which there is a legal presumption of parentage and the only issue is support, the caseworker prepares a Notice of Financial Responsibility. See the Due Process discussion for a description of the Notice, an explanation of the negotiation conference, and a summary of possible outcomes.

If the noncustodial parent fails to appear for a scheduled negotiation conference, the agency issues a default order in accordance with the Notice of Financial Responsibility, establishing financial responsibility. In the absence of any income information, Colorado law allows the caseworker to impute income at minimum wage for a 40-hour week. The agency files a copy of the order and proof of service with the clerk of court. The clerk stamps the date of receipt of the copy of the default order and assigns the order a case number. The clerk stamps the date of receipt of the copy of the default order and assigns the order a case number. It is up to the court to approve the default order. Once approved by the court, the order of default then has the full force of a court order.

The agency mails a copy of any order by first-class mail to the obligor or his attorney of record and to the custodial parent.

In October 2004, Colorado's child support program received a federal grant (1) to minimize the use of default orders when a noncustodial parent failed to appear for a negotiation conference, and (2) to establish appropriate order amounts. In May of 2005, the agency began testing a variety of interventions or procedures aimed at reducing the number of default orders:

- Enhanced personal service techniques
- Simplified legal notices
- Reminder calls, direct calls, and letters to noncustodial parents
- Multiple notices about hearings and legal proceedings
- Making default orders provisional so that they could be changed if actual income information was presented within 10 days after the administrative process negotiation conference.

Through these procedures, the default order rate in the experimental group fell to 14%, compared to a statewide total of 33% in 2004. In addition, customer service increased dramatically. All of the obligors surveyed in the experimental group said they understood their child support order and over 90% understood that they could modify their order if their circumstances changed. Further, they understood how the automated enforcement remedies would work if they failed to comply with the support order.<sup>3</sup> Final results in 2007 were consistent with these preliminary results

## **V. Review and Adjustment/Modification**

Colorado law does not provide for Cost of Living Adjustments (COLAs) in administrative support orders.

In current TANF cases, the child support agency can initiate the administrative review and adjustment process. If the review indicates that (1) an adjustment to the order is appropriate, and (2) the initial order was entered administratively, then the agency serves the obligor by first class mail with a Notice of Financial Responsibility, requesting the modification of an existing administrative order. The custodial or noncustodial parent

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<sup>3</sup> *Colorado Child Support Enforcement Program Annual Report 2005.*

may also file a written request for modification by serving the agency by first class mail or in person. If the agency objects to the request for modification based upon the failure to demonstrate a showing of changed circumstances as required by statute, the agency must advise the requesting party of the party's right to request the court to set the matter for a court hearing. The court must hold a hearing and decide only the issue of modification within 90 days of such a request. If the agency does not object to the parent's request for modification, the agency will serve the obligor with a Notice of Financial Responsibility by first class mail and proceed as noted in the Establishment section.

If the original support order was issued judicially, there is a different process because the agency does not have authority to administratively modify a judicial order. In that circumstance, there is still an attempt to reach agreement between the parties during a review and adjustment conference. If there is agreement to the guideline amount, the agency files the stipulated modification order with the court. The court must approve the stipulation. The resulting modification remains a court order.

If there is no agreement and the original support order is a court order, the agency must file a Motion to Modify with the court. Effective July 2008, the agency will have authority to file the Motion, along with a proposed order based on Colorado support guidelines. The agency will use income information it has from the parties and available databases in order to calculate the guideline amount. In the absence of any income information, the agency may impute income. Pursuant to the new legislation, the court can accept the proposed order without any further hearing, or may hold a hearing and enter its own order. In either case, the modification remains a court order.

## **VI. Enforcement**

The Colorado child support agency has a full range of administrative enforcement remedies and can administratively enforce judicial orders. The one enforcement remedy requiring a court hearing is contempt.

An example of administrative enforcement is license suspension. The automated system selects cases that meet the eligibility criteria. Those qualifying obligors are served with a Notice, by first class mail, informing them that they have been selected for the specific automated remedy. The notice informs the obligors of their specific rights and responsibilities for the particular automated remedy. Any challenge can be heard telephonically. If appropriate, the caseworker has authority to suppress the license suspension. However, the agency strongly encourages caseworkers not to suppress the remedy but to let the payment criteria programmed into the Automated Child Support Enforcement System work.

## **VII. Statistics**

### Timeframes

Where there is verified noncustodial parent locate information, the administrative process takes approximately 40 – 45 days from the date of issuance of the Notice of Financial Responsibility to establishment of an order.<sup>4</sup> This compares to approximately 90 days or longer to establish an order through the judicial process.

### Use of Stipulated Agreements

Several years ago the Colorado agency realized that about one third of its administrative orders were default orders. Of these default orders, 69% had received zero payments within the first six months of the order's effectiveness. The agency decided it wanted to encourage greater participation by parties, especially the noncustodial parent. In 2004, the Colorado child support agency received federal funding to conduct a study on default orders. The study included a control group of two counties, and a pilot group of two counties that were testing a more proactive outreach to parents. Over a one year period in 2004, the control group established 57% of new orders through stipulated agreements, 41% through default orders (i.e., failure to appear at the negotiation conference), and 2% as a result of requests for court hearings. Over an 18 month period in 2005 – 2006, the pilot counties established 77% new orders through stipulated agreements, 16% through default orders, and 7% as a result of requested hearings. The conclusions of the study were that proactive outreach to parents can dramatically reduce the default order rate; the more that parents participate, the more likely that the support awards reflect a true ability to pay; and the more support orders reflect actual income, the more likely noncustodial parents are to consistently comply with the orders.

### Number of Staff Trained for Conferences

There are approximately 200 certified trained administrative process caseworkers, out of a total of approximately 639 county child support staff statewide.

## **VIII. Strengths/Limitations**

The agency representative thought that Colorado's quasi-administrative process, with its proactive outreach to parents through a negotiation process, was an appropriate balance of due process protections and expeditious, cost-effective IV-D services.

## **IX. Recommendations/Best Practices**

Do everything you can to ensure due process.

Conduct proactive outreach to the parties. Colorado has found in its Default Order Grant that noncustodial parents appreciate getting a letter and/or a phone call about their support obligation before being served a formal notice. Through its use of negotiation conferences, the agency thinks it will see a decrease in the default order rate and an increase in compliance.

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<sup>4</sup> Timeframe is based on cases where genetic testing and continuances are not necessary.

It is important to use current financial information. The agency tries to avoid imputing income or relying on historical wage information from years past. The more accurate income information one has, the more realistic the support order is and the more likely that there will be compliance.

**Selected Colorado Statutes**  
Colorado Revised Statutes Annotated

**26-13.5-103 Notice of Financial Responsibility issued – contents**

(1) The delegate child support enforcement unit shall issue a notice of financial responsibility to an obligor who owes a child support debt or who is responsible for the support of a child on whose behalf the custodian of that child is receiving support enforcement services from the delegate child support enforcement unit pursuant to article 13 of this title. The notice shall advise the obligor:

(a) That the obligor is required to appear at the time and location stated in the notice for a negotiation conference to determine the obligor's duty of support;

(a.5) That a request for genetic tests shall not prejudice the obligor in matters concerning allocation of parental responsibilities pursuant to section [14-10-124](#) (1.5), C.R.S., and that, if genetic tests are not obtained prior to the legal establishment of paternity and submitted into evidence prior to the entry of the final order establishing paternity, the genetic tests may not be allowed into evidence at a later date.

(b) That the delegate child support enforcement unit shall issue an order of default setting forth the amount of the obligor's duty of support, if the obligor:

(I) Fails to appear for the negotiation conference as scheduled in the notice; and

(II) Fails to reschedule a negotiation conference prior to the date and time stated in the notice; and

(III) Fails to send the delegate child support enforcement unit a written request for a court hearing prior to the time scheduled for the negotiation conference;

(b.5) That, if the notice is issued for the purpose of establishing the paternity of and financial responsibility for a child, the delegate child support enforcement unit shall issue an order of default establishing paternity and setting forth the amount of the obligor's duty of support, if:

(I) The obligor fails to appear for the initial negotiation conference as scheduled in the notice of financial responsibility and fails to reschedule a negotiation conference prior to the date and time stated in the notice of financial responsibility; or

(II) The obligor fails to take a genetic test or fails to appear for an appointment to take a genetic test without good cause; or

(III) The results of the genetic test indicate a ninety-seven percent or greater probability that the alleged father is the father of the child, and the obligor fails to appear for the negotiation conference as scheduled in the notice and fails to reschedule a negotiation conference prior to the date and time stated in the notice;

(c) (Deleted by amendment, L. 92, p. 213, § 17, effective August 1, 1992.)

(d) That the order of default shall be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued; that, as soon as the order of default is filed, it shall have all the force, effect, and remedies of an order of the court, including, but not limited to, wage assignments issued prior to July 1, 1996, or income assignments issued thereafter or contempt of court; and that execution may be issued on the order in the same manner and with the same effect as if it were an order of the court;

(e) That a judgment may be entered on the order of financial responsibility issued pursuant to this article, and that if a judgment is not entered on the order of financial responsibility and needs to be enforced, the judgment creditor shall file with the court a verified entry of judgment specifying the period of time that the judgment covers and the total amount of the judgment for that period and that, notwithstanding the provisions of this paragraph (e), no court order for judgment nor verified entry of judgment shall be required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or state department of revenue for purposes of intercepting a federal or state tax refund;

(f) The name of the custodian of the child on whose behalf support is being sought and the name, birth date, and social security number of such child;

(g) That the amount of the monthly support obligation shall be based upon the child support guidelines as set forth in section [14-10-115](#), C.R.S.;

(h) That, in calculating the amount of monthly support obligation pursuant to the child support guidelines as set forth in section [14-10-115](#), C.R.S., the delegate child support enforcement unit shall set the monthly support obligation based upon reliable information concerning the parents' income, which may include wage statements or other wage information obtained from the department of labor and employment, tax records, and verified statements and other information provided by the parents and that, in the absence of any such information, the delegate child support enforcement unit may set the monthly support obligation based on the current minimum wage for a forty-hour workweek;

(i) That the delegate child support enforcement unit may issue an administrative subpoena to obtain income information from the obligor;

(i.5) That the court or delegate child support enforcement unit may enter an order directing the obligor to pay for support of the child, in an amount as may be determined by the court or delegate child support enforcement unit to be reasonable under the circumstances, for a time period prior to the entry of an order establishing paternity or for a time period prior to the entry of the support order established pursuant to section [19-6-104](#), C.R.S.;

- (j) The amount of the child support debt accrued and accruing;
- (k) The amount of arrears or arrearages which have accrued under an administrative or a court order for support;
- (l) That the costs of collection, as defined in section [26-13.5-102](#) (3), may be assessed against and collected from the obligor;
- (m) If applicable, that foster care maintenance may be collected against the obligor;
- (n) The interest rate on any support payments which are not made on time;
- (o) That the obligor may assert the following objections in the negotiation conference and that, if such objections are not resolved, the delegate child support enforcement unit shall schedule a court hearing pursuant to section [26-13.5-105](#) (3):
  - (I) That he is not the parent of the dependent child;
  - (II) That the dependent child has been adopted by a person other than the obligor;
  - (III) That the dependent child is emancipated; or
  - (IV) That there is an existing court or administrative order of support as to the monthly support obligation;
- (p) That the duty to provide medical support shall be established under this article in accordance with section [14-10-115](#) (2), C.R.S.;
- (q) That an administrative order issued pursuant to this article may also be modified under this article;
- (r) That the obligor is responsible for notifying the delegate child support enforcement unit of any change of address or employment within ten days of such change;
- (s) That, if the obligor has any questions, the obligor should telephone or visit the delegate child support enforcement unit;
- (t) That the obligor has the right to consult an attorney and the right to be represented by an attorney at the negotiation conference; and
- (u) Such other information as set forth in rules and regulations promulgated pursuant to section [26-13.5-113](#).

**Source:** **L. 89:** Entire article added, p. 1239, § 1, effective April 1, 1990. **L. 90:** IP(1), IP(1)(b), (1)(b)(I), (1)(b)(II), and (1)(m) amended, p. 896, § 20, effective July 1. **L. 91:**

(1)(c) amended, p. 257, § 22, effective July 1. **L. 92:** (1)(b.5) added and (1)(c) and (1)(e) amended, pp. 184, 213, §§ 5, 17, effective August 1. **L. 94:** (1)(b.5) amended and (1)(i.5) added, p. 1544, § 21, effective May 31. **L. 96:** (1)(d) amended, p. 618, § 26, effective July 1. **L. 97:** (1)(b.5)(II) and (1)(b.5)(III) amended, p. 564, § 16, effective July 1. **L. 2005:** (1)(a.5) added, p. 380, § 10, effective January 1, 2006. **L. 2006:** (1)(h) amended, p. 517, § 6, effective August 7.

**Editor's note:** Subsection (1)(h) was contained in a 2006 act that was passed without a safety clause. For further explanation concerning the effective date, see page vii of this volume.

### **26-13.5-105 Negotiation conference - issuance of order of financial responsibility - filing of order with district court.**

(1) Every obligor who has been served with a notice of financial responsibility pursuant to section [26-13.5-104](#) shall appear at the time and location stated in the notice for a negotiation conference or shall reschedule a negotiation conference prior to the date and time stated in the notice. The negotiation conference shall be scheduled not more than thirty days after the date of the issuance of the notice of financial responsibility. A negotiation conference shall not be rescheduled more than once and shall not be rescheduled for a date more than ten days after the date and time stated in the notice without good cause as defined in rules and regulations promulgated pursuant to section [26-13.5-113](#). If a negotiation conference is continued, the obligor shall be notified of such continuance by first-class mail or by hand delivery. If a stipulation is agreed upon at the negotiation conference as to the obligor's duty of support, the delegate child support enforcement unit shall issue an administrative order of financial responsibility setting forth the following:

(a) The amount of the monthly support obligation and instructions on the manner in which it shall be paid;

(b) The amount of child support debt due and owing to the state department and instructions on the manner in which it shall be paid;

(c) The amount of arrearages due and owing and instructions on the manner in which it shall be paid;

(d) The name, birth date, and social security number of the parties and of the children for whom support is being sought and the parties' residential and mailing addresses.

(e) and (f) (Deleted by amendment, L. 99, p. 1091, § 12, effective July 1, 1999.)

(2) A copy of the administrative order of financial responsibility issued pursuant to subsection (1) of this section, along with proof of service, shall be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued or in the district court where an action relating to support is pending or an order exists but is silent on the issue of child support. The clerk shall stamp the date of receipt of the copy of the order and shall assign the order a case number. The order of financial responsibility

shall have all the force, effect, and remedies of an order of the court, including, but not limited to, wage assignments issued prior to July 1, 1996, or income assignments issued thereafter or contempt of court. Execution may be issued on the order in the same manner and with the same effect as if it were an order of the court. In order to enforce a judgment based on an order issued pursuant to this article, the judgment creditor shall file with the court a verified entry of judgment specifying the period of time that the judgment covers and the total amount of the judgment for that period. Notwithstanding the provisions of this subsection (2), no court order for judgment nor verified entry of judgment shall be required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or state department of revenue for purposes of intercepting a federal or state tax refund.

(3) (a) If no stipulation is agreed upon at the negotiation conference because the obligor contests the issue of paternity, the delegate child support enforcement unit shall issue an order for genetic testing and continue the negotiation conference to allow for the receipt of the genetic testing results. The delegate child support enforcement unit shall pay the costs of the genetic testing and may recover any testing costs from the presumed or alleged father if paternity is established.

(b) If no stipulation is agreed upon at the continued negotiation conference and the evidence relating to paternity does not meet the requirements set forth in section [13-25-126](#) (1) (g), C.R.S., the delegate child support enforcement unit may dismiss the action or take such other appropriate action as allowed by law.

(c) If no stipulation is agreed upon at the negotiation conference and paternity is not an issue, or, if paternity is an issue and the evidence relating to paternity meets the requirements set forth in section [13-25-126](#) (1) (g), C.R.S., the delegate child support enforcement unit shall issue temporary orders establishing current child support, arrears, foster care maintenance, medical support, and reasonable support for a time period prior to the entry of the order for support and shall file the notice of financial responsibility and proof of service with the clerk of the district court in the county in which the notice of financial responsibility was issued and shall request the court to set a hearing for the matter.

(d) Notwithstanding any rules of the Colorado rules of civil procedure, a complaint is not required in order to initiate a court action pursuant to this subsection (3). The court shall inform the delegate child support enforcement unit of the date and location of the hearing and the court or the delegate child support enforcement unit shall send a notice to the obligor informing the obligor of the date and location of the hearing. In order to meet federal requirements of expedited process for child support enforcement, the court shall hold a hearing and decide only the issue of child support within ninety days after receipt of notice, as defined in section [26-13.5-102](#) (13), or within six months after receipt of notice, as defined in section [26-13.5-102](#) (13), if the obligor is contesting the issue of paternity. If the obligor raises issues relating to the allocation of parental responsibilities, decision-making responsibility, or parenting time and the court has jurisdiction to hear such matters, the court shall set a separate hearing for those issues after entry of the order

of support. In any action, including an action for paternity, no additional service beyond that originally required pursuant to section [26-13.5-104](#) shall be required if no stipulation is reached at the negotiation conference and the court is requested to set a hearing in the matter.

(4) The determination of the monthly support obligation shall be based on the child support guidelines set forth in section [14-10-115](#), C.R.S. The delegate child support enforcement unit may issue an administrative subpoena requesting income information, including but not limited to wage statements, pay stubs, and tax records. In the absence of reliable information, which may include such information as wage statements or other wage information obtained from the department of labor and employment, tax records, and verified statements made by the obligee, the delegate child support enforcement unit shall set the amount included in the order of financial responsibility pursuant to section [14-10-115](#), C.R.S., based on the current minimum wage for a forty-hour workweek.

(5) If the court or delegate child support enforcement unit finds that the respondent has an obligation to support the child or children mentioned in the petition or notice, the court or delegate child support enforcement unit may enter an order directing the respondent to pay such sums for support as may be reasonable under the circumstances, taking into consideration the factors found in section [19-4-116](#) (6), C.R.S. The court or delegate child support enforcement unit may also enter an order directing the appropriate party to pay for support of the child, in an amount as may be determined by the court or delegate child support enforcement unit to be reasonable under the circumstances, for a time period which occurred prior to the entry of the support order established pursuant to section [19-6-104](#), C.R.S.

(6) If a parent is unemployed and not incapacitated, the delegate child support enforcement unit may order such parent to pay such support in accordance with a plan approved by the delegate child support enforcement unit or to participate in work activities, as described in section [14-10-115](#) (7) (b) (I.5), C.R.S., as deemed appropriate by that delegate child support enforcement unit, as a condition of the child support order.

**Source:** **L. 89:** Entire article added, p. 1242, § 1, effective April 1, 1990. **L. 90:** IP(1), (2), and (3) amended, p. 897, § 22, effective July 1. **L. 92:** Entire section amended, p. 213, § 18, effective August 1. **L. 93:** (3) amended, p. 582, § 22, effective July 1; (3) amended, p. 1565, § 20, effective September 1. **L. 94:** (5) added, p. 1544, § 22, effective May 31. **L. 96:** IP(1), (1)(e), (2), and (3) amended, p. 619, § 27, effective July 1. **L. 97:** (1)(d) and (3) amended and (6) added, p. 1307, § 44, effective July 1. **L. 98:** (3)(d) amended, p. 1415, § 83, effective February 1, 1999. **L. 99:** (1)(d), (1)(e), and (1)(f) amended, p. 1091, § 12, effective July 1. **L. 2005:** (3)(b) and (3)(c) amended, p. 773, § 53, effective June 1.

**Editor's note:** Amendments to subsection (3) by Senate Bill 93-25 and Senate Bill 93-154 were harmonized. **Cross references:** For the legislative declaration contained in the 1993 act, effective July 1, 1993, amending subsection (3), see section 1 of chapter 165, Session Laws of Colorado 1993. For the legislative declaration contained in the 1997 act amending this section, see section 1 of chapter 236, Session Laws of Colorado 1997.

## ANNOTATION

**Hearing procedure in subsection (3) does not apply** unless the parties fail to reach a stipulated agreement at a negotiation conference because the obligor contests paternity. Where no such conference was held and, therefore, the issue of paternity was not contested or otherwise properly placed in issue, court lacked jurisdiction to enter an order for support. *Adams Cty. Dept. of Soc. Serv. v. Huynh*, 883 P.2d 573 (Colo. App. 1994).

### **26-13.5-106 Default – issuance of order of default – filing of order with district court**

(1) (a) If an obligor fails to appear for a negotiation conference as scheduled in the notice of financial responsibility, and fails to reschedule a negotiation conference prior to the date and time stated in the notice of financial responsibility, the delegate child support enforcement unit shall issue an order of default in accordance with the notice of financial responsibility. If an obligor fails to appear for a rescheduled negotiation conference, the delegate child support enforcement unit shall issue an order of default in accordance with the notice of financial responsibility.

(b) In an action to establish paternity and financial responsibility, the delegate child support enforcement unit shall issue an order of default establishing paternity and financial responsibility in accordance with the notice of financial responsibility if:

(I) The obligor fails to appear for the initial negotiation conference as scheduled in the notice of financial responsibility and fails to reschedule a negotiation conference prior to the date and time stated in the notice of financial responsibility; or

(II) The obligor fails to take a genetic test or fails to appear for an appointment to take a genetic test without good cause; or

(III) The results of the genetic test indicate a ninety-seven percent or greater probability that the alleged father is the father of the child, and the obligor fails to appear for the negotiation conference as scheduled in the notice of financial responsibility and fails to reschedule a negotiation conference prior to the date and time stated in the notice of financial responsibility.

(b.5) The state board shall promulgate rules defining what constitutes good cause for failure to appear at a negotiation conference.

(c) Such order of default shall be approved by the court and shall include the following:

(I) The amount of the monthly support obligation and instructions on the manner in which it shall be paid;

(II) The amount of child support debt due and owing to the state department and instructions on the manner in which it shall be paid;

(III) The amount of arrearages due and owing and instructions on the manner in which it shall be paid;

(IV) The name of the custodian of the child and the name, birth date, and social security number of the child for whom support is being sought;

(V) The information required by section [14-14-111.5](#) (2) (f) (II), C.R.S.;

(VI) In a default order establishing paternity, a statement that the obligor has been determined to be the natural parent of the child;

(VII) Such other information set forth in rules and regulations promulgated pursuant to section [26-13.5-113](#).

(d) Such order for default may direct the obligor to pay for support of the child, in an amount as may be determined by the court or delegate child support enforcement unit to be reasonable under the circumstances, for a time period prior to the entry of the order establishing paternity.

(2) A copy of any order of default issued pursuant to subsection (1) of this section, along with proof of service, and, in the case of a default order establishing paternity and financial responsibility under paragraph (b) of subsection (1) of this section, the obligee's verified affidavit regarding paternity and the genetic test results, if any, shall be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued or in the district court where an action relating to child support is pending or an order exists but is silent on the issue of child support. The clerk shall stamp the date of receipt of the copy of the order of default and shall assign the order a case number. The order of default shall have all the force, effect, and remedies of an order of the court, including, but not limited to, wage assignments issued prior to July 1, 1996, or income assignments issued thereafter or contempt of court. Execution may be issued on the order in the same manner and with the same effect as if it were an order of the court. In order to enforce a judgment based on an order issued pursuant to this article, the judgment creditor shall file with the court a verified entry of judgment specifying the period of time that the judgment covers and the total amount of the judgment for that period. Notwithstanding the provisions of this subsection (2), no court order for judgment nor verified entry of judgment shall be required in order for the county and state child support enforcement units to certify past-due amounts of child support to the internal revenue service or state department of revenue for purposes of intercepting a federal or state tax refund.

**Source: L. 89:** Entire article added, p. 1243, § 1, effective April 1, 1990. **L. 90:** IP(1) and (2) amended, p. 898, § 23, effective July 1. **L. 92:** (1) and (2) amended, p. 185, § 7, effective August 1; entire section amended, p. 215, § 19, effective August 1. **L. 94:** (1) amended, p. 1545, § 23, effective May 31. **L. 96:** (1)(c)(V) and (2) amended, p. 620, § 28, effective July 1. **L. 97:** (1)(b)(II), (1)(b)(III), and (2) amended, p. 564, § 17, effective July 1.

**Editor's note:** Amendments to this section by House bill 92-1214 and House Bill 92-1232 were harmonized.

#### ANNOTATION

**Requirements of this section are jurisdictional.** Where record contained no administrative default order establishing paternity and financial responsibility as required by this section, court was without authority to order child support. *Adams Cty. Dept. of Soc. Serv. v. Huynh*, 883 P.2d 573 (Colo. App. 1994).

#### **26-13.5-110 Paternity – establishment – filing of order with court**

1) The delegate child support enforcement unit may issue an order establishing paternity of and financial responsibility for a child in the course of a support proceeding under this article when both parents sign sworn statements that the paternity of the child for whom support is sought has not been legally established and that the parents are the natural parents of the child and if neither parent is contesting the issue of paternity or may issue an order of default establishing paternity and financial responsibility in accordance with section [26-13.5-106](#). Prior to issuing an order under this section, the delegate child support enforcement unit shall advise both parents in writing as prescribed by rule and regulation promulgated pursuant to section [26-13.5-113](#) of their legal rights concerning the determination of paternity.

(2) A copy of the order establishing paternity and financial responsibility and the sworn statements of the parents and, in the case of a default order establishing paternity and financial responsibility, the obligee's verified affidavit regarding paternity and the genetic test results, if any, shall be filed with the clerk of the district court in the county in which the notice of financial responsibility was issued or as otherwise provided in accordance with the provisions of section [26-13.5-105](#) (2). The order establishing paternity and financial responsibility shall have all the force, effect, and remedies of an order of the district court, and the order may be executed upon and enforced in the same manner as set forth in section [26-13.5-105](#) (2).

(3) If the order establishing paternity is at variance with the child's birth certificate, the delegate child support enforcement unit shall order that a new birth certificate be issued under section [19-4-124](#), C.R.S.

(4) Service of process to establish paternity and financial responsibility may be made under this article by certified mail as specified in section [26-13.5-104](#) or by any of the other methods of service specified in said section.

**Source:** **L. 89:** Entire article added, p. 1245, § 1, effective April 1, 1990. **L. 90:** (2) amended, p. 899, § 25, effective July 1. **L. 92:** Entire section amended, p. 186, § 8, effective August 1. **L. 97:** (2) amended, p. 565, § 18, effective July 1.

## ANNOTATION

**Requirements of this section are jurisdictional.** Where record contained no verified affidavit from the obligee as required by this section, court was without authority to order child support. *Adams Cty. Dept. of Soc. Serv. v. Huynh*, 883 P.2d 573 (Colo. App. 1994).

### **26-13.5-112 Modification of an order**

(1) At any time after the entry of an order of financial responsibility or an order of default under this article, in order to add, alter, or delete any provisions to such an order, the delegate child support enforcement unit may issue a notice of financial responsibility to an obligor requesting the modification of an existing administrative order issued pursuant to this article. The delegate child support enforcement unit shall serve the obligor with a notice of financial responsibility by first class mail and shall proceed as set forth in this article. The obligor or the obligee may file a written request for modification of an administrative order issued under this article with the delegate child support enforcement unit by serving the delegate child support enforcement unit by first class mail or in person. If such unit objects to the request for modification based upon the failure to demonstrate a showing of changed circumstances required pursuant to section [14-10-122](#), C.R.S., the delegate child support enforcement unit shall advise the requesting party of the party's right to request the court to set the matter for a court hearing. The court shall hold a hearing and decide only the issue of modification within ninety days of such request. If the delegate child support enforcement unit does not object to the obligor's or obligee's request for modification, the unit shall serve the obligor with a notice of financial responsibility by first class mail and shall proceed as set forth in this article. Within thirty days of receipt of the request for modification, the delegate child support enforcement unit shall either advise the requesting party of the party's right to request a court hearing or shall issue a notice of financial responsibility. If the child for whom the order applies is no longer in the custody of a person receiving public assistance or receiving support enforcement services from the delegate child support enforcement unit pursuant to article 13 of this title, the delegate child support enforcement unit shall certify the matter for hearing to the district court in which the order was filed.

(2) A request for modification made pursuant to this section shall not stay the delegate child support enforcement unit from enforcing and collecting upon the existing order pending the modification proceeding.

(3) Only payments accruing subsequent to the request for modification may be modified. Modification shall be based upon the standard set forth in section [14-10-122](#), C.R.S.

**Source:** **L. 89:** Entire article added, p. 1246, § 1, effective April 1, 1990. **L. 90:** (1) amended, p. 899, § 26, effective July 1. **L. 91:** (1) amended, p. 258, § 24, effective July 1. **L. 94:** (1) amended, p. 1546, § 24, effective May 31.