

Creative Contempt Actions and Enforcing Against the Self-Employed Obligor

Indiana State Child Support Enforcement Conference
Merrillville, Indiana June 15, 2016

Prepared by:
Brent Cullers
Training Deputy Prosecutor
Marion County Prosecutor's Office
Child Support Division
251 E. Ohio Street, Suite 700
Indianapolis, IN 46204
(317) 327-1830

Table of Contents

I.	INTRODUCTION.....	1
A.	The Hard Cases	1
B.	Election of Remedies Doctrine	1
C.	Presentation Goals	1
II.	ENFORCEMENT OUTSIDE OF THE COURT ROOM.....	1
A.	Liens and Seizing Property	1
1.	Lien Defined	1
2.	Purposes.....	2
3.	Placement of Lien.....	2
4.	Administrative vs. Judicial Liens	3
5.	Lien Priority.....	3
6.	Vehicle Liens	3
7.	Real Property Liens	4
8.	Inheritance Lien	4
9.	Liens on Beneficial Interest in Trust	5
10.	Liens on Lawsuits	6
11.	Liens on Bank Accounts and Safety Deposit Boxes	7
12.	Liens on Drug Money Seizures	8
13.	Unclaimed Property Lien	9
B.	License Suspension	9
1.	Authority	9
2.	Advantages of License Suspension	10
3.	Disadvantages of License Suspension	10
4.	Choosing the Remedy - Administrative vs. Judicial	10
5.	Commercial Driving Licenses	11
6.	Which Obligor Are Best for Driver’s License Suspension ?.....	12
7.	Suspension of Professional Licenses	12
8.	.Hunting and Fishing Licenses.....	12
C.	Passport Suspensions	13
III.	COURTROOM ENFORCEMENT	14
A.	Civil Contempt	14
B.	Criminal Nonsupport.....	14
1.	State	14
2.	Federal	15
C.	Some Basic Rules On Courtroom Presentation -	15
D.	Other General Principles of Courtroom Presentation	15
1.	Keep it Simple	15
2.	Understand the Law	15
3.	Be Realistic.....	15

4.	Think Carefully about the Language That You Use	16
5.	Corroborate Rather than Repeat	16
6.	Illustrate	16
7.	Be Positive	16
8.	Be Sure that Each Court Session is Not an “Empty” Session	16
9.	Know Your Judge	16
E.	Creative Enforcement in a Judicial Setting	16
1.	Community Service Work	16
2.	Parents That Work Program	16
3.	Pocket Taps	16
4.	Joining Income Payors	17
F.	Getting the Information You Need and Want	19
G.	Finding Assets and Selling Them	19
1.	Procedure	19
2.	Cars & Trucks.....	20
H.	Making Collections / Enforcement Fun	20

I. INTRODUCTION

- A. The Hard Cases - Enforcing child support orders against the self-employed and other non-wage earners is often extremely difficult and time-consuming. This can be especially true for non-union seasonal or temporary workers whose income is frequently not discovered until after the employment has ceased. Such cases often require a combination of remedies, such as civil contempt and attachment of assets, and constant monitoring for compliance.
- B. Election of Remedies Doctrine - Under the election of remedies doctrine, some jurisdictions may preclude contempt proceedings if support arrearages are first reduced to judgment. This preclusion is based on the theory that an arrearage reduced to judgment becomes a money debt like any other, and thus invokes the long held proscription against “debtor’s prison.” Most states, however, have held that the election of remedies doctrine does not apply in child support cases.¹ This is especially true in light of amendments to the Social Security Act, which requires states to create a statutory judgment lien against the obligor’s real and personal property in the amount of the overdue support.² Multiple remedies may also be used for regular wage earners who may also have income or assets from other sources, such as trust and bank accounts, proceeds from a lawsuit, etc. Keep in mind that information about an obligor’s income and assets may be used to establish and modify orders as well as enforce them.
- C. Presentation Goals - My goal in this hour is to share with you some of the enforcement tools our office has employed when attempting to enforce support orders in your not-so-typical child support case. The Deputies in our office have developed, and even perfected, some interesting enforcement tools which we will be passing on to you today. It is our hope that you can take them back to your counties and use them in those tough-to-enforce cases. Don’t be afraid to try something new, and don’t even be afraid to fail.

II. ENFORCEMENT OUTSIDE OF THE COURT ROOM

- A. Liens and Seizing Property -
 - 1. Lien Defined - A lien is an encumbrance on property which precludes the owner from selling the property without first satisfying the lienholder. Pursuant to the federal Social Security Act, there exists a lien against the real and

¹ See *Bennet v. Gibson*, 510 So.2d 1234 (Fla. 1990); *Rosemann v. Salsbury Clements*, 987 A.2d 48 (Md. 2010). But see *Eppinger v. Adams*, 803 N.E.2d 1196 (Ind.App. 2004) (contempt, or at least incarceration, is unavailable in arrears-only cases).

² 42 U.S.C. § 666(a)(4)

personal property of the obligor up to the amount of child support owed and not paid.³ The lien exists by operation of law and no judicial proceeding is necessary to establish the lien's existence.⁴ A lien is usually evidenced by a document, but may take the form of computer flagging, as is the case with automated liens placed on motor vehicles. During the existence of the lien, the property itself remains unaffected. It is only when the lienholder seeks to execute the lien, i.e., sell the property, that the property's status is placed in question. As noted above, a lien may be placed against any real or personal property of the obligor.

2. Purposes - Even where execution is not at issue, the mere existence of a lien may compel an obligor into paying some or all of the past-due support. In most cases, this occurs when the obligor discovers or recalls that property he wishes to sell is encumbered.
 - a. Not infrequently, starting the process of executing the lien compels the obligor to pay up. In such cases, the cost of actually seizing and selling the property are avoided.
 - b. In cases where execution is necessary, the existence of a statutory lien dispenses with the need to establish a judicial lien prior to execution. In any event, obligors are entitled to notice and opportunity to be heard, i.e., a hearing prior to execution.
 - c. Note that it may be possible to place a lien against assets as escrow for future support payments as a security or bond.⁵
 - d. A lien may be placed against property located in another state through use of the Interstate Lien.
3. Placement of Lien - The exact mechanism for placing a lien depends on the type of property or where it is located. For example, a lien against the obligor's motor vehicle should be placed the Bureau of Motor Vehicles (or similar agency) in the state where the vehicle is titled. A lien against the obligor's house should be placed with the county clerk (or similar agency) in the county where the property's deed is kept on file. The obligor should be notified of the lien's existence.

³ 42 U.S.C. § 666(a)(4)

⁴ See, e.g., IC 31-16-16-1 *et seq.*

⁵ 42 U.S.C. § 666(A)(6); See IC 31-16-6-5

4. Administrative vs. Judicial Liens - All states provide for judicial liens. Some states also utilize administrative imposition and execution of liens in accord with the IV-D mandate.⁶ At least one administrative scheme has been deemed unconstitutional.⁷

5. Lien Priority - It often occurs that the same property is encumbered by multiple obligees. In such cases, the collective amount owed by the obligor may exceed the property's value. The laws governing secured transactions establish a priority scheme to determine where each obligee stands in the line to be paid upon property disposition. The law in this area is rather complicated, but the general rules are these:
 - a. A *secured* lien holder has priority over one who is unsecured.
 - b. As between two secured lienholders, the lienholder who first secured has priority.
 - c. A lienholder who has *perfected* his security interest by the filing of a financing statement or by other means has priority over a secured lienholder who has not perfected.
 - d. As between two lienholders who have perfected security interests, the lienholder who has first perfected has priority.⁸
 - e. Note that any lienholder can execute upon the lien, but payments to the various creditors are based on their respective priority position. It may be worthwhile to execute upon a lien, pay off a priority creditor, and reap the remainder.

6. Vehicle Liens - In many states, IV-D agencies have an automated system for placing liens on the obligor's motor vehicle(s). If not, lien placement must be made manually.
 - a. Notification of the lien to the motor vehicle bureau records the lien on the vehicle's title, and thus perfects the lien.

⁶ 42 U.S.C. § 666(a)(2)

⁷ *Holmberg v. Holmberg*, 588 N.W.2d 720 (Minn. 1999); *Seubert v. Seubert*, 13 P.3d 365 (Mont.2000)

⁸ Many states position child support obligees as secured unperfected creditors. See, e.g., Indiana Code 31-16-16-3. However, the obligee may perfect the security interest in the manner provided by law for the particular property at issue.

- b. To execute a motor vehicle lien, the obligee typically files a petition asking the court to issue a writ of assistance, directing a sheriff or other responsible party to seize the vehicle and sell it at public auction. The proceeds from the sale, less expenses in seizing and selling it, are applied to the support arrearage, with any excess given to the obligor or to subordinate lienholders.
7. Real Property Liens - Typically, a lien is placed on real property, such as a house or land, by recording the lien in the recorder's office or appropriate office where deeds are filed. Local practice varies, so it may be necessary to record the judgment lien with the dissolution or paternity court, and then file that judgment with the recorder.
- a. Execution of the Real Property Lien - Seizure and sale of the property requires a petition to foreclose. If the petition is granted, an order is given to the sheriff or other responsible party to levy the property for sale.
 - b. Satisfaction - If the obligor pays off the arrearage before the sale of the property, the obligor can keep the property. State law varies on how long the obligor has to "redeem" the property, whether the property in question is subject to personal exemption, or whether the debt may be satisfied by the sale of substitute property.
8. Inheritance Lien - An obligor's beneficial interest in a decedent's estate distribution may be attached to satisfy all or part of the obligor's arrearage. Regardless of whether the estate is probated, the decedent's executor or administrator should be served with the notice of lien specifying the alleged arrearage. The obligor may wish to voluntarily assign his take to satisfy his interest.
- a. If the obligor refuses to assign his interest, it may be necessary to petition the probate court to enforce the lien. Local practice varies among the probate courts. Some jurisdictions require that the arrearage first be reduced to judgment by the dissolution or paternity court, and the judgment then introduced into the probate cause. A majority of jurisdictions, however, dispense with the preliminary step and permit immediate intervention into the probate cause for purposes of attaching the obligor's interest.
 - a. The same is true where the decedent's estate is probated. Most jurisdictions permit immediate intervention in the probate courts, others require first reducing the arrearage to judgment in the dissolution or paternity court. Again, the obligor may wish to voluntarily assign his

beneficial interest to the child support arrearage.

- b. A constructive trust should not have been imposed on life insurance proceeds paid to a man's widow in favor of his two children from a prior marriage. The man was supposed to maintain life insurance for his two children in order to secure his support payments in the event of his death. However, the man let these policies lapse. Meanwhile, the man remarried and obtained a new insurance policy payable to his new wife upon his death. When the man died, the children from his prior marriage sought and obtained a constructive trust to allow them to receive the money otherwise payable to the man's second wife. In reversing the trial court, the appellate court said that the children from the man's former marriage had no vested interest in the new life insurance policy. *Berryman v. Adams*, 883 So. 2d 214 (Alabama App. 2003).
 - c. Trial court properly denied father's waiver of inheritance from his aunt's estate. "As a matter of public policy, [the] statutory right to renounce the succession must give way to the more important social interest that he be required to support his offspring from whatever assets which may be available to him. *Stagg v. Stagg*, 721 So.2d 1097 (La.App. 1998).
9. Liens on Beneficial Interest in Trust - If the obligor has a vested beneficial interest in a trust, the interest can be attached. The execution of the beneficial interest occurs when the obligor is able to receive his share. In most states, a trust's spendthrift provision will not defeat the attachment of the interest.⁹ However, the interest must be vested in the obligor, or the petition to attach the interest may be dismissed on grounds of ripeness, in that the obligor's interest is merely speculative. The trustee should be immediately served with notice of the lien, and the action to attach should commence immediately after the obligor's interest vests. In some cases, it will be necessary to join the trustee as a co-respondent in order to force the levy.
- a. A woman seeking to enforce a judgment for child support arrearages against her ex-husband may obtain an order garnishing the net income and principle of a spendthrift trust of which he is the lifetime beneficiary, even though he has not received any payments from the trust. *In re Marriage of Stevens*, 687 N.E.2d 165 (Ill.App. 1997), 24 FLR 1029.
 - b. A trial court may compel a delinquent child support obligor who is the

⁹ See, e.g., *Clay v. Hamilton*, 63 N. E. 2d 207 (Ind. App., 1945); See also *U.S. v. Grimm*, 865 F. Supp. 1303 (N.D.Ind., 1994).; *McClure Oil Corp. v Whiteford Truck Lines*, 627 N.E.2d 1323 (Ind.App., 1994)

beneficiary of several spendthrift trusts to direct his trustees to pay his arrearage from trust income and principal. The court ruled, however, that the trust income and principal cannot be reached to satisfy child support payments that have not yet accrued. *In re Marriage of Chapman*, 697 N.E.2d 365 (Ill.App. 1998), 24 FLR 1454.

10. Liens on Lawsuits - If the obligor may collect money award from a pending lawsuit, a lien can be placed on the obligor's interest. In most cases, notice to the attorney representing the obligor in the lawsuit will serve to perfect the lien. However, local practice or custom may require intervention into the lawsuit, or even perhaps joining the attorney as an escrow agent/co-respondent in the original dissolution or paternity action. Obligees are good sources of information about pending lawsuits. Further, respondents should be sent interrogatories or questioned under oath in contempt or other proceedings as to the existence of any pending lawsuits. Occasionally, pending lawsuits are publicized in legal periodicals or newspapers.
 - a. A creditor may enforce a Florida judgment in Indiana by domesticating the foreign judgment in Indiana and registering the judgment on the judgment docket, notwithstanding the fact that, unlike Indiana, judgments in Florida do not automatically establish liens against the debtor's real property. The obligor argued that since a judgment under Florida law did not establish a lien against his real property, the creditor had no lien to enforce against the debtor in Indiana. If this were so, the debtor argued, the Indiana judgment would have greater effect than the Florida judgment because the creditor did not have a valid lien on his real property in Florida. The court disagreed, noting that the Florida judgment was entitled to full faith and credit in Indiana. It was thus enforceable under Indiana's statutory provisions regarding enforcement of liens by proceedings supplemental [see IC 34-55-9-2]. *Krilich v. Soltesz/Brant Development Co.*, 771 N.E.2d 1169 (Ind.App. 2002).
 - b. Where client executed a doctor's lien, by which the client's medical creditor was to have a lien on settlement proceeds, and attorney ignored the lien and instead paid the settlement to his client, attorney was properly given a public reprimand for violating Ind. Professional Conduct Rule 1.15(b), which requires a lawyer to deliver promptly funds belonging to a third party. *In the Matter of Kirby*, 766 N.E.2d 351 (Ind. 2002).
 - c. Obligor's attorney is subject to reprimand and admonishment for breach of Ind. Professional Conduct Rule 1.15(b) in failing to honor 3rd party lien against obligor from the proceeds of a personal injury lawsuit. Here, obligor, attorney and physician agreed to pay the physician from the lawsuit's proceeds. The attorney failed to honor the agreement, however,

and instead paid the client the monies owed to the physician. *In re Norman*, 708 N.E.2d 867 (Ind. 1999). See also *Matter of Kinkead*, 661 N.E.2d 823 (Ind. 1996).

- d. A state law providing that a child support judgment constitutes an automatic lien against the net proceeds "in excess of \$2,000" (after litigation costs) of an obligor's recovery from a civil suit, inheritance or workers' compensation award does not apply to the full amount of the recovery, only that portion over \$2,000. The court reversed the lower court's ruling that where an obligor was entitled to receive an amount out of a personal injury settlement exceeding \$2,000, the entire amount was subject to a lien for his child support arrearages pursuant to the statute. Saying that the lien simply does not apply to the first \$2,000, the court noted that if the recovery is under \$2,000, no lien can attach at all. *Simpkins v. Saiani*, 811 A.2d 474 (N.J.App. 2002), 29 FLR 1127.
 - e. Under Florida law, the imposition of a lien against the prospective proceeds of a father's worker's compensation settlement, for purposes of satisfying his child support arrearage, was an appropriate mechanism to protect the proceeds from improper diversion. Issues regarding the enforcement of the child support arrearage lien would be decided by the trial court. The court could consider the full array of equitable remedies, including income deduction orders and injunctions, in determining how to enforce the lien. *Department of Revenue v. Springer*, 800 So.2d 700 (Fla.App. 2001).
11. Liens on Bank Accounts and Safety Deposit Boxes - Once it is known that an obligor has money in savings or checking accounts, certificates of deposit or assets in a safety deposit box, the accounts or assets may be seized and applied toward the support arrearage. In many cases, *ex parte* restraining orders will be helpful in preventing the obligor from withdrawing funds prior to execution of the account or access. In order to attach such assets, obtain a writ of assistance requiring the bank to submit the funds to the child support account.
- a. If the account is jointly owned, most states presume that each joint tenant owns an equal undivided share of the entire account. The obligee may have to assert facts to rebut this presumption if greater than a proportionate share of the account is sought.
 - b. Obligees are often a good source of information about the existence and location of bank assets. The federal Social Security Act has been amended to provide for financial institution data matching to assist in locating such

assets.¹⁰ Further, obligors should be sent interrogatories or questioned under oath in contempt or other proceedings as to the existence of any bank accounts or other assets.

- c. Certificates of deposits purchased by an obligor with a lump-sum payment he received from the government for past-due military retirement benefits were properly ordered to be applied to his child support arrearage. The obligor argued that the CDs represented veteran's benefits that were exempt from judicial process. State law, the court said, provides an exception for attachment of retirement funds for child support. *In re Marriage of Murphy and Wronke*, 792 N.E.2d 12 (Ill.App. 2003), 29 FLR 1393.
 - d. The state may not employ the statutory procedure for levying against a delinquent obligor's bank account if the obligor is current in his or her payments under a court-ordered plan to satisfy the arrearage. Opinion No 00-53, (Okla Atty Gen, 10-18-00) 27 FLR 1105.
12. Liens on Drug Money Seizures - Obtaining money from drug seizures requires cooperation between drug enforcement prosecutors and child support professionals. Drug enforcement prosecutors (and perhaps police) should routinely check to see whether the seizure was taken from a child support obligor. A liaison between the various agencies is helpful in this regard.
- a. Drug seizures can be attached by obtaining a writ of assistance requiring the holder of the money to direct it to the child support account. Of course, the seized money may be tied up during the pendency of the criminal litigation.
 - b. The mother did not have standing to claim (for unpaid child support) drug money forfeited by the father to the US government. The court explained that the father was in possession of the drugs which gave rise to the forfeiture in January, 1996, but that the child support order was not established until three months later. Thus, the government's claim to the money was superior. *U.S. v. Dempsey*, 55 F.Supp.2d 990 (E.D. Mont. 1999).
 - c. As a practical consideration, money used by the police agency as "bait" money cannot be attached, and the Title IV-D agency should communicate with the police agency as to the amount of "bait" money is included in the amount attached.

¹⁰ 42 U.S.C. § 666(a)(17)

13. Unclaimed Property Lien - When assets are left in bank accounts and the account holder cannot be located, the money is released to the state's attorney general's office or other agency as determined by law. The money is held there for a period of years waiting to be claimed. If money is left unclaimed, it is generally diverted to that state's general fund. During the interim, however, if a cross-check on the owner reveals that the money belongs to a child support obligor, it is possible to seek a writ of assistance directing the attorney general to release the money to the child support account.

B. License Suspension -

1. Authority -

- a. Federal - As part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Welfare Reform Act), Congress amended the Federal Social Security Act 42 U.S.C. 651 *et seq.*, to include a provision under which each state has (and uses in appropriate cases) authority to withhold or suspend driving, professional, and recreational licenses from noncompliant obligor. The federal law also allows states to enact statutes to withhold or suspend licenses of individuals who fail to comply with subpoenas or warrants relating to paternity or child support proceedings.¹² Indiana has not adopted this latter provision.

b. State -

- (1) IC 4-31-6-6, 4-31-6-10, IC 4-31-6-11; IC 4-33-8.5-2, IC 4-33-8.5-3; IC 9-24-2-3; IC 9-24-2-3.1; IC 9-30-16; IC 9-30-13-6, IC 9-30-13-7; IC 14-11-3-0.3 *et seq.*; IC 25-1-1.2-1 *et seq.*, esp IC 25-1-1.2-7, IC 25-1-1.2-8; IC 27-1-15.6-1 *et seq.*; IC 27-10-3-19, IC 27-10-3-20; IC 31-16-12-7, IC 31-16-12-8, IC 31-16-12-9, IC 31-16-12-10, IC 31-16-12-11; IC 31-16-12-13; IC 25-3-1; IC 31-25-4-1; IC 31-25-4-2; IC 31-25-4-32; IC 31-25-4-33; IC 31-25-3-34; IN Supreme Court Admission and Discipline Rule 23 §11.1(c).
- (2) Indiana's original license suspension statutes became effective October 1, 1995. They called for the suspension of driver's licenses, and professional licenses regulated under Title 25. Notably absent from the suspension statutes were provisions for insurance licensees, among other occupations. The statutes were subsequently amended

¹² 42 U.S.C. § 666(a)(16). "Overdue support" defined at 42 U.S.C. § 666(e).

to include insurance licensees and several other occupations omitted from the original law, and added a host of recreational licenses to the suspension scheme.

2. Advantages of License Suspension -

- a. Encourages repayment of child support arrearage- license suspension is remedial, not punitive;
- b. Provides specific deterrence - helps prevent a specific obligor from creating a significant arrearage due to noncompliance;
- c. Provides general deterrence - helps prevent obligor as a group from creating significant arrearages due to noncompliance; and
- d. License suspension has proven to be an effective remedial instrument in collecting arrearages and discouraging noncompliance.

3. Disadvantages of License Suspension -

- a. Sometimes seen as punitive, not remedial;
- b. May appear counter-productive (obligor cannot pay child support without the ability to practice occupation or travel freely); and
- c. Appears to some to be unfair or even unconstitutional.

4. Choosing the Remedy - Administrative vs. Judicial -

- a. Burden of Proof - The burden of proof differs depending on whether the action to suspend is brought administratively or judicially. Judicial suspensions require the IV-D agency to show that the delinquency is the result of an intentional violation of the support order, an element which is not required in administrative hearings. The requirement is identical to civil contempt actions, and should not pose a substantial hurdle for IV-D practitioners. Administrative suspensions require the IV-D agency to show that all previous enforcement efforts have been unsuccessful, an element not required in judicial proceedings. While “all previous efforts” is not defined statutorily, in common practice this has come to mean “ordinary efforts” to collect child support, such as income withholding, credit bureau reporting, tax interception, the placement of liens and civil contempt, but does not include criminal prosecution.

- (1) Administrative - The IV-D agency must show that the that the

obligor is delinquent (as defined in IC 31-25-4-2, i.e., at least (1) \$2,000.00 or (2) three months past due on payment of court-ordered child support) and that *all previous enforcement actions have been unsuccessful*.

- (2) Judicial - The IV-D agency must show that the obligor is delinquent (as defined in IC 31-25-42, i.e., at least (1) \$2,000.00 or (2) three months past due on payment of court-ordered child support) and that the delinquency is the result of an intentional violation of the support order.

b. Time Considerations; Likelihood of Success -

- (1) Judicial actions tend to be scheduled and resolved more quickly than administrative proceedings. For one thing, administrative proceedings allow obligor's an initial 20-day period in which to request an administrative hearing. An additional period is then allotted for the Child Support Bureau to schedule the hearing. Furthermore, in the case of professional license suspensions, professional boards who receive notice of administrative suspensions first place practitioners on probationary status and await further notice from the IV-D agency that the obligor has failed to satisfy the arrearage or establish a payment plan to pay the arrearage. Such is not the case where a court has judicially suspended the license - the obligor's license is suspended five days after the trial court mails its notice of suspension to the licensing agency.
- (2) Although judicial actions may be resolved more quickly, administrative suspensions may be preferred where local judges are hesitant to issue suspension orders. Moreover, the burden of proof is less difficult in administrative hearings than in judicial; while *mens rea* is an element of the latter, it is not an element of the former. IV-D practitioners should consider the likelihood of ultimate success when choosing whether to pursue administrative or judicial suspensions

5. Commercial Driving Licenses -

- a. If the obligor possesses a commercial driver's license, the BMV shall not immediately suspend the license, but indicate on the driver's record that the person has a conditional license to operate a motor vehicle to and from the person's place of employment and in the course of the person's employment. IC 9-24-2-3.1(a).

- b. The conditional license is valid for thirty (30) days from the date of the notice sent by the bureau. If the person obtains an amended license within the thirty days, the person may continue to operate a motor vehicle on the conditional license beyond the thirty day period. IC 9-24-2-3.1(b).
- c. If the person does not obtain an amended license within the thirty (30) day period, the bureau shall suspend the person's license. IC 9-24-2-3.1(c).

6. Which Obligor Are Best for Driver's License Suspension ?

- a. Truck Drivers
- b. Uber, Lyft, Taxi Cab Drivers
- c. Couriers
- d. Bus Drivers

7. Suspension of Professional Licenses -

- a. Statutory Scheme - Various code provisions govern suspension of an obligor's professional license(s). See IC 31-25-4 et seq. and IC 31-16-12-8 et seq; IC 25-1-1.2 et al.
- b. Statutory Requisites For Judicial Suspension - To issue an order of suspension under the above statutes, the court must find that:
 - (1) The obligor is delinquent as defined in IC 31-25-4-2,, i.e., at least (1) \$2,000.00 or (2) three months past due on payment of court ordered child support; and
 - (2) The delinquency is the result of an intentional violation of the support order.
- c. Statutory Requisites for Administrative Suspension - IC 31-25-32. The Title IV-D agency must find:
 - (1) that the obligor is delinquent; and
 - (2) that all previous enforcement actions have been unsuccessful.

8. .Hunting and Fishing Licenses ¹³ - Although an interface with the Department of

¹³Much of the information can be found in Action Transmittal AT-CSB 247, dated December 12,

Natural Resources is currently not possible, the State has been able to do a limited match based on their file of lifetime licensees and the web based applications. The report heading will let you know which of the two reports the obligor was matched. In addition to the licenses the obligor has, the report also includes the address for the obligor per the Department of Natural Resources.

- a. The Following is some other information about the reports:
 - (1) Whether the obligor is a Resident or non resident (based on the NCP address)
 - (2) The year the license is issued and type of license.
- b. The Lifetime Licenses Report includes the address of the obligor per the Indiana Department of Natural Resources.
- c. Also included is the License code (defines the type of license):
 - (1) 50 - Trapping
 - (2) 51 - Basic Fishing
 - (3) 52 - Basic Hunting
 - (4) 53 - Comprehensive Fishing (includes trout stamp)
 - (5) 54 - Comprehensive Hunting (game bird, turkey, etc.)
 - (6) 55 - Comprehensive Fishing and Hunting
- d. Serial Number

C. Passport Suspensions -

1. Pursuant to the Social Security Act¹⁵, if the obligor owes an arrearage exceeding \$2,500.00, the state may certify this fact to the Secretary of the U.S. Department of Health and Human Services. The HHS, in turn, may certify the arrearage to the U.S. Secretary of State, who shall then “refuse to issue a passport to such individual, and may revoke, restrict, or limit a passport issued previously to such individual.”¹⁶

2003.

¹⁵ 42 U.S.C. § 652(k).

¹⁶ *Id.*

2. Many cases are arising now due to the civilian contractors going overseas to help rebuild the Middle East, so now is the perfect time to increase collections from this enforcement tool.

III. COURTROOM ENFORCEMENT

A. Civil Contempt -

1. Defined - Civil contempt is defined as the willful disregard or disobedience of a public authority (e.g., a court).¹⁷ A contempt proceeding is a civil remedy designed to coerce an individual to pay court ordered support. If the court finds that a noncustodial parent has willfully failed to pay support, the court may find the parent in contempt and order the parent held in jail until the contempt is “purged” by the paying of a purge bond in an amount ordered by the court. Once paid, the entire bond is applied toward the child support.
2. Purpose - The purpose of incarceration for contempt is to coerce payment of child support, not to punish. Thus, upon payment of the purge bond, the noncustodial parent secures his or her release from jail. Despite claims that a noncustodial parent cannot pay child support while in jail, most of those incarcerated find sufficient resources and assistance to secure their release. Moreover, it must be remembered that the noncustodial parent’s failure to pay support while free created the possibility of incarceration in the first place. Furthermore, the fear of incarceration may provide sufficient incentive for all noncustodial parents to stay compliant with their court ordered child support.

B. Criminal Nonsupport - Many states provide a criminal sanction for willful failure to pay child support.¹⁸ Some prosecutors use the criminal sanction for mere punishment; others as the most coercive measure to illicit funds. For the latter, probation with the requirement for compliance is the preferred last resort shy of imprisonment. Either way, most prosecutors reserve the criminal sanction for the most egregious case after all previous efforts to procure compliance have failed.

1. State - See IC 35-46-1-5.
 - a. Indiana Code 35-46-1-5(a) was amended to provide for a Level 6 felony if a person who knowingly or intentionally fails to provide support to the person's dependent child. The offense is a Level 5 felony if the person has a previous conviction. Under IC 35-46-1-5(b), It is a defense that the child had abandoned the home of the child's family without the consent of the child's parent or on the order of a court, but it is not a defense that the child had abandoned the home of the child's family if the cause of the child's leaving was the fault of the child's parent.

¹⁷ *Black's Law Dictionary*, 6th Edition, West Publishing Co, 1990.

¹⁸ *See* Indiana Code 35-46-1-5.

b. Defense – Under IC 35-46-1-5(d), it is a defense that the accused person was unable to provide support.

2. Federal - The federal Child Support Recovery Act, first enacted in 1992, also makes nonsupport a crime where the arrearage is at least \$5,000.00, non-payment is longer than one year, and the child and noncustodial parent reside in different states.¹⁹ Federal criminal nonsupport cases are referred by the local prosecutor to the United States Attorney's Office. From there, the USAO reviews the available information and decides whether to pursue the matter. If the case warrants prosecution, the USAO will conduct an investigation, locate the absent parent, and file the action in federal court. The process may take several months or longer to complete.

C. Some Basic Rules On Courtroom Presentation -

1. Be deferential toward the judge.
2. Be brief. In a particularly high volume setting, learn to prioritize.
3. Don't waffle or whine, be direct as to what you want.
4. Never underestimate your opponent (even if the obligor is pro se).
5. Arrive at every court appearance early.
6. Be formal and professional at all times.
7. Prepare.

D. Other General Principles of Courtroom Presentation -

1. Keep it Simple – try not to allow the obligor or his/her attorney dictate how the case will be tried. The obligor has a child support order and he or she failed to meet his or her obligation. The obligor or his or her counsel will inevitably attempt to cloud issues with obstacles such as equitable credits, direct payments, extended visitation, parenting time contempt, and informal side agreements between the parties.
2. Understand the Law – Obligor's attorneys will invariably attempt confuse tribunals, particularly in tricky areas like UIFSA or statute of limitations. You need to be prepared ahead of time.
3. Be Realistic – The Court isn't going to order every obligor to jail or community service work. Therefore, you will need to carefully allocate your recommendations. Don't ask for sanctions on every case and be realistic on the amount of bond you request.

¹⁹ 18 U.S.C. § 228

4. Think Carefully about the Language That You Use - Don't engage in hyperbole. Refrain from using stereotypical phrases such as "deadbeat", "deadbroke". Let the actions of the obligor speak louder than your words.
5. Corroborate Rather than Repeat - Employment verifications, use of other witnesses, or impeaching the obligor's prior testimony are all techniques that may be used to corroborate your central theme of the obligor's willful failure to provide child support.
6. Illustrate - A good payment history summary is important for the trier of fact to review. The format of your summary must be readable, understandable, and accurate.
7. Be Positive - A high volume docket of carping on obligor may be counterproductive and emotionally draining to the trier of fact sitting for an afternoon or morning of cases.
8. Be Sure that Each Court Session is Not an "Empty" Session - At the very least, you need to obtain information such as the obligor's current address, current employer information, name of any attorneys representing the obligor in a personal injury or worker's compensation lawsuit, whether the obligor is alleging disability and the nature of the disability. If the obligor is not employed, you need to collect information on his/her employment search, if the obligor has any property, has any bank accounts. Obviously, it is not always easy to get accurate information from the obligor. Therefore, it is always helpful to get the names of as many potential witnesses or entities so that you may conduct some form of third party discovery.
9. Know Your Judge - Knowing your judge to better your odds of getting what you want.

E. Creative Enforcement in a Judicial Setting -

1. Community Service Work
 - a. Type of Community Service Work
 - (1) Through public works
 - (2) Be weary of liability issues
 - b. Assigning Hours and Purge Bonds
2. Parents That Work Program - Help obligors help themselves
3. Pocket Taps -
 - a. Pursuant to IC 31-16-16-2 there exists a judgment lien against all real and

personal property of the delinquent child support obligor to the extent of their child support arrearage

- b. Like a till tap, a court ordered writ of execution can direct a sheriff or other agent to seize the contents of the obligor's pockets. This method is useful against an obligor who is known to carry large amounts of money on his person.
 - c. In court, an oral motion to the court requesting a pocket tap may result in lump sum collections
 - d. Good Candidates for a pocket tap -
 - (1) Independent Contractors– they may just be coming from a job
 - (2) Those with extensive criminal histories in narcotics distribution
 - (3) First Timers– not likely to work on the same person twice or if you have already done it once that session
4. Joining Income Payors - IC 31-16-15-23 provides that employers are liable in the event they fail or refuse to withhold child support from the employer's income and remit it to the clerk.
- a. Which are the worst?
 - (1) Relatives and friends of the obligor
 - (2) The employer is actually the obligor himself
 - (3) Small businesses
 - (4) Contractors
 - b. Methods of Enforcement Against a Recalcitrant Employer
 - (1) Phone Call - Sometimes this alone will do it, especially if done by someone with the title of Deputy Prosecutor.
 - (2) Demand Letter - A form letter that can be generated off ISETS by your paralegal or assistant. It's essentially a warning that they are not in compliance with the income withholding order, and that they must comply or they will face further legal action.
 - (3) Subpoena Duces Tecum - Send to the payroll person or principal agent of the company. The subpoena should request all documentation of the obligor's period of employment with the company. It may be either a sheriff's subpoena (delivered at the Clerk's Office and delivered via sheriff) or attorney subpoena

pursuant to Trial Rule 45.

- (4) Joinder Motion - We know obligor is working there, possibly even providing documents. You may file either under Trial Rule 19 or Trial Rule 20 (permissive joinder). Motion should include that the employer has been sent the notice to implement I/W, that they have failed to do so, and that their failure now makes it necessary to join them to justly adjudicate the matter of the support contempt. Copies of the obligor's arrearage, the original income withholding order, and the nastygram should be appended as exhibits. Service should be made on the registered agent, by certified mail.
 - (a) Show Cause Motion Against the Income Payor - Once joinder is granted, you may file a verified motion for rule to show cause, naming the employer as co-Respondent and requesting that they be ordered into Court to answer for their failure to forward income. The case should be set on a docket that is not too crowded, since it will potentially take longer than an average hearing. Conducting discovery is crucial in the weeks ahead of the hearing.
 - (b) The Hearing - The income payor is responsible from the date of our income withholding notice until the date they are ordered to terminate income withholding, or the obligor quits or is fired, for the amount of the support plus any arrearage order. Complications include multiple child support orders by the obligor, obligor has an IRS lien, the obligor doesn't make enough money, insufficient funds checks, and sloppy bookkeeping.
 - (c) Requests For Admissions— Use a specific figure for amounts withheld but not forwarded. You may also say that the income payor is still in possession of funds withheld from the obligor's check. If the income payor fails to respond, they still have admitted to holding money that rightfully should have flowed to the INSCCU.
 - (d) Summary Judgment - After 30 days if the employer hasn't returned the Requests for Admissions responses. Get a good factual and procedural history, present the following as exhibits: the original demand letter, the income withholding order, certified payment history, demonstrative summary and the Requests for Admissions. Also, it would help to use the obligor's testimony to bolster your case. You may also seek interest or a fine against the employer. Prepare those calculations in advance.
 - (e) Proceedings Supplemental - Once you get the summary judgment, the problem becomes one of getting payment on the

judgment. Proceedings Supplemental assist you ascertain what assets the employer has to satisfy the judgment. You need to file a Verified Petition for Proceedings Supplemental, in which you establish that the custodial parent is a holder of a judgment, entered on X date for X amount, and that you have no cause to believe that execution on the judgment debtor will yield payment of the judgment. You must further allege that you have cause to believe that the judgment debtor has assets, to satisfy the judgment, and those they either appear before the Court to answer as to the assets or sign interrogatories under oath. Under the Proceeding Supplemental rules, there are provisions on exempt property. These rules would apply small-time judgment debtors and relate to bank accounts.

F. Getting the Information You Need and Want -

1. Discovery tools—Requests for Production, Requests for Admission, Interrogatories, Depositions
2. Investigation and use of detectives.
3. Go on site, bring someone with you as a witness
4. Custodial Parent
5. Reading a Credit Report, Tax Document, or Bank Account to find Relevant Info
6. Use an obligor's testimony during a hearing to obtain information such as the names of attorneys representing them on personal injury claims, workmen's compensation claims, or handling estates under which an obligor may benefit, names and contact information for employers, banking information, addresses of property owned by the obligor, etc.
7. Effective Cross Examination

G. Finding Assets and Selling Them -

1. Procedure - You may need the assistance of an investigator to find assets. To begin the process of seizure and sale, get two certified copies of the judgment from the Court. Then file a Writ of Attachment, with an underlying affidavit, in the Court where you hold the judgment. Basically, you need to set out that you hold the judgment, the amount thereof, which commands the sheriff to seize the property in question. Draft a letter to the civil sheriff, requesting seizure and describing the property to be seized. Once you have the approved Writs of Assistance/Attachment, take the approved copy of the writ, with your certified copies of the judgment and the sheriff's letter, to the civil clerk. Complete the praecipe of execution, specifying that you wish execution to enter against the co-Respondent. The removable part of the praecipe is clipped together with the judgment copies, letter and writ, and the clerk takes the whole thing to the Sheriff.

2. Cars & Trucks– Once the vehicle has been seized, in Marion County, it goes to an auto auction. There are monthly auctions during which seized vehicles are sold. As a caution, there will be towing, sheriff's and auction fees taken out off the top. You need to make sure that the vehicle will net enough to make a substantial dent in the arrearage. Once the judgment debt has been satisfied, file a notice of satisfaction of judgment lien with the Court and forward a copy to the Bureau of Motor Vehicles to guarantee there is no cloud of title on the vehicle.
- H. Making Collections / Enforcement Fun -
1. Friendly competition between co-workers (it is friendly right?)
 2. Purge lump/sum log to monitor your successes
 3. Coming up with new ideas to enforce child support orders—Sting operations, booting vehicles, use of social media.