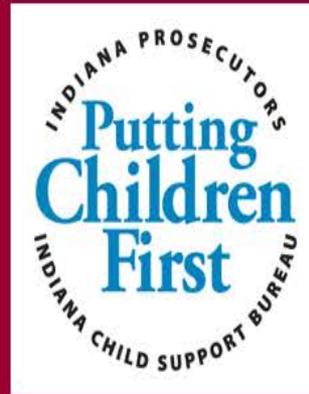


40 Years

Working Together for Children
1976 - 2016



June 14 – 17, 2016
Merrillville, Indiana

Indiana Child Support Conference

FELONY NON-SUPPORT

**Initial Case Preparation
Charging
and the
Plea Agreement**

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Initial Case Preparation

Case Investigation

Start at the beginning

- Case depends upon your investigation
- No police involvement

Use your civil testimony

- Lay a foundation in contempt proceeding
- Record your hearings
- No Fifth Amendment Rights
- Note “Stupid Respondent Statements”

Case Investigation

Check Employment

- Subpoena Records
- Check for changes in income
- Check Reasons for Leaving
- Check Unemployment Benefits

Check for Direct Support

- Direct Payments to Custodian
- Must be more than token amounts

Case Investigation

Check Credit Reports

- Possible Medical Defenses
- Spending Habits – Loans and Credit Checks
- Prioritization - Which Debts are current

Bank Account Records

- Debit Card Spending
- Income History

Case Investigation

Asset Purchases

- Real Estate
- Vehicles
- Store Credit Cards
- Store Savings Cards

Employment Opportunities

- Want Ads
- Temp Services
- Job Skillset
- Jobs Not Taken



Nonsupport Charging

Charging Decision

Old Statute

- **IC 35-46-1-5 - Nonsupport of a dependent child**
- Sec. 5. (a) A person who knowingly or intentionally fails to provide support to the person's dependent child commits nonsupport of a child, a Class D felony. However, the offense is a Class C felony if the total amount of unpaid support that is due and owing for one (1) or more children is at least fifteen thousand dollars (\$15,000).

Charging Decision

Who Cares about the Old Statute???

Answer

You Do...and Here is Why

Charging Decision

Your Time Period is prior to July 1, 2014.

- Nonsupport charged as a range of dates
- Early Date Range = Earlier Statute

Older Penalties Are Longer

- D Felony = 3 year maximum
- Level 6 = 2 ½ year maximum

Charging Dependent Child Abuse

A person who

ELE

knowingly or intentionally

- **IC 35-46-1-5 - Nonsupport of a dependent child**

- Sec. 5. (a) A person who knowingly or intentionally fails to provide support to the person's dependent child commits nonsupport of a child if the person is a level 1 or 2 convicted felon.

fails to provide support

to the person's dependent child

Charging Decision

Intentionally

- Conscious Objective
- Engage in Conduct

Knowingly

- Aware of a high probability
- Engaging in Conduct

Charging Decision

Definition of Support

- food, clothing, shelter, or medical care

Definition of Dependent

- an unemancipated person who is under eighteen (18) years of age
- a person of any age who has a mental or physical disability

Charging Decision

Important Note #1:

- No Dollar Amount is required under the Nonsupport Statute

Charging Decision

Important Note #2:

- Inability to pay is not an element. It is a defense to be proven by Defendant.

Charging Decision

Arrearage Amount
Threshold

Jurisdiction and Venue

**Choosing your
Case**

CP Request or Approval –
Yes or No

The Problem of Payments

Preparing Your Case



Preparing Your Case



Preparing Your Case

Determine Felony Date Range

Five Year Maximum

File Separate Counts for Payment Breaks

File Separate Counts for Periods Between Incarceration

Be aware of Token Payments

Be aware of Tax Intercepts

Case Law

Separate counts for each child may be filed without violating double jeopardy.

- **Porter v. State**, 935 N.E.2d 1228, Oct. 27, 2010.
- **Sickels v. State**, 960 N.E.2d 205, Jan. 6, 2012.
 - NOTE: Opinion Vacated and Transfer Granted for different reasons
- **Sanjari v. State**, 961 N.E.2d 1005, Feb. 16, 2012

Case Law

Cannot arbitrarily divide time period into separate periods in order to increase the number of counts

- **Boss v. State**, 702 N.E.2d 782, Dec. 11, 1998
- Prosecutor abused his discretion in dividing defendant's nonsupport of his three dependent children into three separate time periods and then charging defendant with three counts of nonsupport of a dependent child; nonsupport of dependent child was continuing offense, and defendant could be convicted and sentenced for only one crime.

Case Law

Enhancement to C Felony violates double jeopardy if based on arrearage that had already been used for prior conviction

- **Sanquenetti v. State**, 917 N.E.2d 1287, Dec. 17, 2009.
- **Porter v. State**, 935 N.E.2d 1228, Oct. 27, 2010.
 - Enhancement of the basic offenses to Class C felonies did violate double jeopardy by being based on a total child support arrearage that included the arrearage from the prior convictions.
 - However, multiple D Felony Counts can be consecutive

Filing the Charge

Documents to file

Information

Probable Cause

Bond Request

Appearance

PC Order

Warrant

Social Security Sheet

Filing the Charge

Format of Information – D/Level 6 Felony

- That between (*Starting Date*) and (*Ending Date*) in (Name of County) County, State of Indiana, (*NAME OF DEFENDANT*) did knowingly or intentionally fail to provide support for his dependent child, to-wit: (*Name of Child*) (DOB: [*Date of Birth*]). I.C. 35-46-1-5(a).

Note Re: PCMS – Not fond of the
Nonsupport Information Form

Filing the Charge

Format of Information – Class C Felony

- That between (*Starting Date*) and (*Ending Date*) in (*County Name*) County, State of Indiana, (*NAME OF DEFENDANT*) did knowingly fail to provide support for his dependent child, to-wit: (*Name of Child*) (DOB: [*Date of Birth*]) and the total amount of unpaid support that is due and owing is at least fifteen thousand dollars (\$15,000). I.C. 25-46-1-5(a).

Note Re: PCMS – Not fond of the Nonsupport Information Form

Filing the Charge

Format of Information – Count 1 (Level 5 Felony)

- That between (*Starting Date*) and (*Ending Date*) in (*County Name*) County, State of Indiana, (*NAME OF DEFENDANT*) did knowingly fail to provide support for his dependent child, to-wit: (*Name of Child*) (DOB: [*Date of Birth*]).

Filing the Charge

Format of Information – Count 2 (Level 5 Felony)

- Enhancement to Level 5 Felony Must be filed on separate Count and Page

Filing the Charge

NOTICE OF INTENT TO SEEK ENHANCED PENALTY FOR NONSUPPORT BASED UPON PRIOR CONVICTION

The undersigned, (Name of Prosecutor), Deputy Prosecuting Attorney, being duly sworn upon his oath, says that on the (Date of Prior Conviction), in the (Name of Prior Conviction Court) that the defendant, (Defendant's Name), was previously convicted of Nonsupport of a Dependent Child under Cause Number (Cause No of Prior Conviction), which raises the instant offense to a Level 5 Felony, all of which is contrary to the form of the statutes in such cases made and provided, to-wit: IC 35-46-1-5 and against the peace and dignity of the State of Indiana.

(Name of Prosecutor)

Deputy Prosecuting Attorney





Plea Agreements

Plea Agreements





Plea Agreements

Punishment

- Sends a message to defendants
- Does not create current incentive for defendant
- Does not assist the children or custodial parent
- Can adversely effect future ability to pay support



Plea Agreements

Probation

- “Give enough Rope”
- Create current Incentive to improve
- Goal is to provide benefit to victims of offense

Plea Agreements





Plea Agreements

Restitution

- Immediate benefit for victim
- Probably unattainable without some periodic payment provisions
- No long term benefit for the future

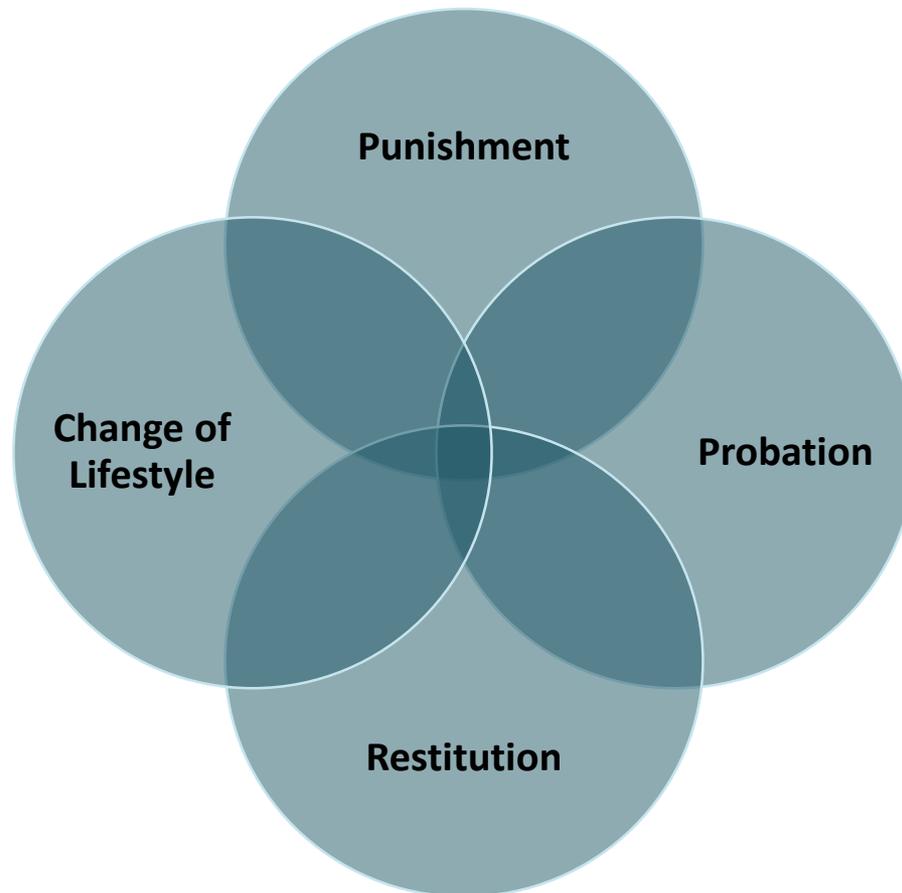


Plea Agreements

Change of Lifestyle/Priorities

- Requires Long Term Monitoring
- Requires Reward/Punishment Cycle
- Establishes more permanent solution

Plea Agreements



Pre-Trial Diversion

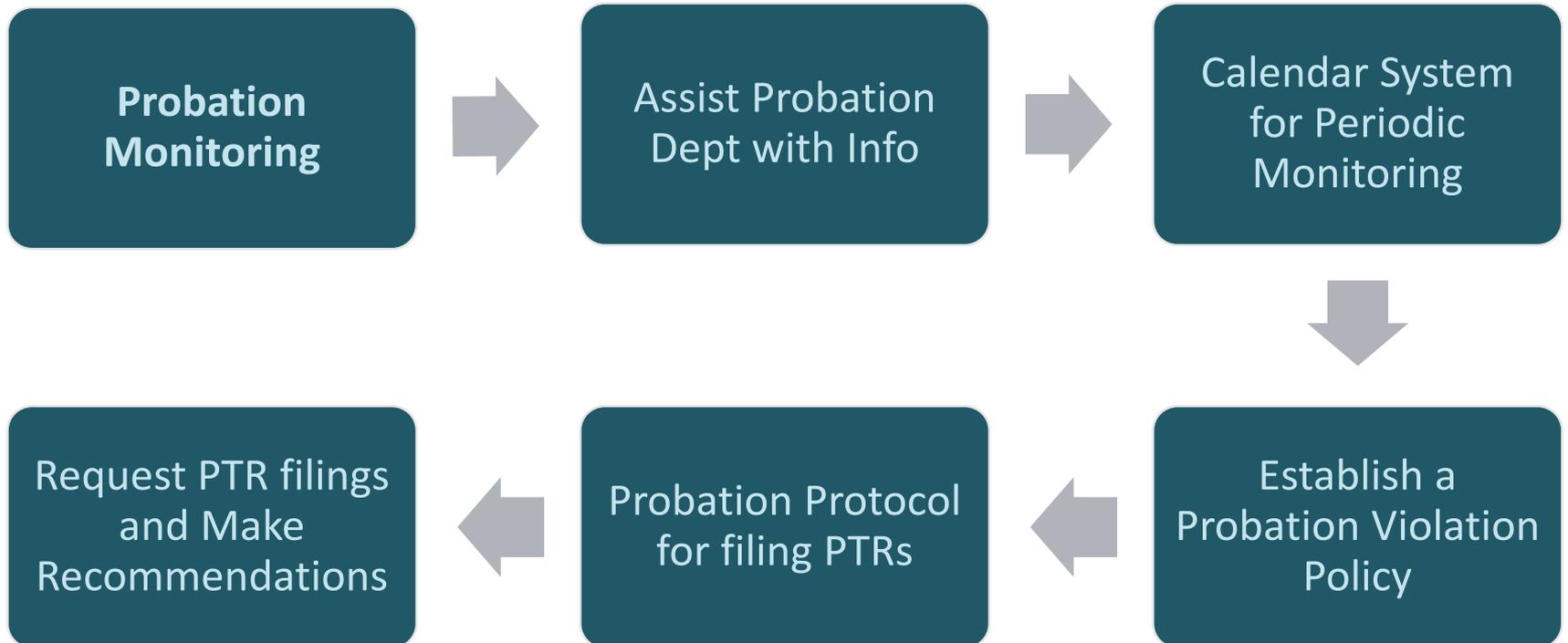
I.C. 33-39-1-8 Pre-Trial Diversion can be offered for both level 5 and 6 felonies.

Check with your Elected as to his policies.

Who makes decision and on what basis?

Who oversees PTD in your county?

Post Sentencing



Program Results

Consistent felony filing determination and dispositions result in the grapevine effect, resulting in meaningful deterrence

Felony Defendants develop the habit of compliance

Reoccurring defendants serve in DOC and not in the county jail

**KEEP IN TOUCH AND DISCUSS
YOUR CASES ANYTIME**

William F. Welch

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