
ADMINISTRATIVE ORDER

2000-02

STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT

**SUBJECT: INITIATION, REDIRECTION AND ENFORCEMENT OF CHILD
SUPPORT MATTERS WITHIN THE THIRD JUDICIAL CIRCUIT**

PREAMBLE and AUTHORITY:

Federal law requires states to take appropriate steps to insure child support is assigned to the state for each case where a child is receiving foster care maintenance payments under Title IV-E of the Social Security Act (hereinafter referred to by Title number and letter only) [42 USC 671(a)(17)]. Additionally, creation of the family division of the circuit court in Michigan has created an opportunity to join staff functions of the Juvenile department and the Friend of the Court to create better service for court users, possibly at a lower cost. To meet goals of redirecting support for Title IV-E cases and to allow staff to function most efficiently within funding structures, and in keeping with the philosophy of one judge for one family, new collection cases involving juveniles will be initiated by Friend of the Court staff. This Order establishes the Friend of the Court as the primary agency for collection and disbursement of all monies related to support and reimbursement when a child is placed outside the home.

This Administrative Order is issued in accordance with the Michigan Rules of Court [MCR 8.112 (B)] and under the authority granted the court in the Status and Emancipation of Minors Act (MCL 722.1), the Family Support Act (MCL 552.451), the Support and Parenting Time Enforcement Act (MCL 552.601), the Probate Code [specifically MCL 712A.18(2)], the Friend of the Court Act (MCL 552.501) and related authority, and comports with the legislative intent of the Family Court merger.

FUNDING BACKGROUND:

Title IV-D requires the state to provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations with respect to each child provided benefits through the Family Independence Program (hereinafter FIP), Title IV-E foster care benefits, Medicaid benefits, or food stamps [42 USC 654(4)(A)(i)]. The services must also be provided to any child for whom an individual applies for services [42 USC 654(4)(A)(ii)]. For cases where the child is receiving FIP benefits, the custodial parent assigns the right to receive support to the state as a condition for receiving the FIP benefits.

Title IV-E foster care benefits are available if the child has been removed from the home, if the state agency or designee is responsible for the child's placement and care, if the child would have been eligible for the former Title IV-A assistance program in the home from which he or she was removed, and if the placement is eligible to receive Title IV-E

benefits [42 USC 672(a)]. Title IV-E foster care benefits are paid to cover the costs of providing foster care.

Title IV-D program provides payment of 66% of the IV-D caseload percentage of all administrative costs under that program. In addition, the program provides an incentive payment for activities performed based on performance criteria.

Title IV-E provides no payment for administrative costs of collecting support or reimbursement. However, Michigan statute permits counties to retain the first 25% of reimbursement money collected from parents to cover the county's administrative costs of collecting the money¹. [MCL 712A.18(2)]. Currently, that money provides the funding necessary for a collection agency to be assigned the task of collection on juvenile cases. This order will allow the task of collections to be undertaken by the Friend of the Court system thereby saving the county and the taxpayers resources that traditionally have been paid to a private agency. The Friend of the Court has an existing collections system that can absorb these cases without undue hardship to any involved parties.

The juvenile code creates several potential situations where a child lives separately from one or both parents [MCL 712A.2]. Those situations are where a child is placed in foster care because of neglect, abuse, or delinquency; where a child is placed in detention because of delinquency; and where an abusive parent is ordered to vacate the child's home. Where a child is placed into foster care as a result of abuse or neglect, Family Independence Agency is responsible for the child's placement and care. If the child is eligible for the former Title IV-A assistance program (AFDC), the case qualifies for Title IV-E funding. Therefore, any support order entered automatically qualifies for Title IV-D services. If the child is not eligible for the former Title IV-A assistance program, the child's placement into foster care qualifies the child for Medicaid. This, too, qualifies any support order for Title IV-D services.

Where a child is placed into foster care as a result of delinquency, the child will qualify for Title IV-E funding through one of two mechanisms. Title IV-E foster care benefits are available if the child has been removed from the home, the state agency is responsible for the child's placement and care, the child would have been eligible for the former Title IV-A assistance program in the home from which he or she was removed, and the placement is eligible to receive Title IV-E funding. If Title IV-E benefits are not available, the child's support case will be qualified for IV-D services by asking either parent, a guardian or an attorney representing the child to apply for IV-D services on behalf of the child. The same methodology will be applied to a child placed into institutional detention.

IT IS HEREBY THE ORDER OF THE THIRD CIRCUIT COURT THAT:

Support orders for Title IV-E and Title IV-D cases where the child is placed in state or county wardship, custody or foster care will provide that support be "redirected" to the appropriate agency or person to meet the requirements of Title IV-D and Title IV-E. If an order exists at the Friend of the Court for one parent to pay support at the time the child

¹ The remaining reimbursement money is apportioned among county, state, and federal entities in accordance with the ratio of their participation in the cost of the child's care. As noted, Title IV-E benefits are paid to cover the cost of foster care for qualifying children. In addition, the county receives 50% of its foster care costs for other children placed into foster care [MCL 400.117c(4)]. The county is responsible for the costs of children placed into detention and not otherwise funded by other entities [MCL 712A.25].

is removed, the Juvenile Reimbursement Unit will identify the case, file a petition to modify the existing case and recommend that the court enter an order requiring both parents to pay support. The resulting order, if any, will abate support if the child is returned to the custody of one or both parents. Only the custodial parent's support obligation would be abated.² If a Juvenile Division case currently exists but has no current Friend of the Court involvement, a new Friend of the Court case will be initiated. The existing Juvenile Division order will be retroactively modified (allowable under the Probate Code) to set cost of care at zero and a Friend of the Court support order will be entered pursuant to the Child Support Formula.

The Probate Code requires a reimbursement order to be entered any time a child is placed outside of the child's own home and under state or court supervision. The order must be reasonable, taking into account both the income and the resources of the child, parent, guardian, or custodian [MCL 712A.18(2)]. Reimbursement will be entered at zero when a support order exists or will be entered in an amount as determined in the same proceeding. Collections will be handled by the Friend of the Court. Reliance is placed on the Family Support Act and other domestic relations acts as authority for the Friend of the Court to collect attorney and guardian ad litem fees and on the Michigan Rules of Court [MCR 8.112(B)]. Specifically, the rule allows the court to issue an administrative order governing internal court management. Collections on orders for a minor or a minor's parent(s) to pay restitution will continue to be handled at the Family Court – Juvenile Division.

Three types of cases exist: Child abuse/neglect, delinquency and abusive parent ordered out of the home. Each type of case will be qualified as a IV-D case. The following is the manner in which it will be processed in order to establish a support order.

Child Abuse and Neglect

In child abuse and/or neglect cases, a protective services worker is the first point of contact. That worker prepares a report of general information within 5 days of the child's removal from the home. However, the Juvenile Division is involved in the case within 24-48 hours of the removal. A hearing must be held within 24 hours (48 if the removal is on a Sunday). At the time of the hearing, the Juvenile Reimbursement Unit will gather financial information from both parents and make a recommendation for a support amount if appropriate. The orders, however, will not be entered until the case reaches final disposition.

Simultaneously, to expedite entry of support orders, the protective services worker provides a copy of the 5-day report to the Office of Child Support support specialist. Regardless of the child's eligibility for Title IV-E benefits, the foster care worker will open a Medicaid case for the child to ensure IV-D eligibility for the case.

The support specialist communicates with the Juvenile Reimbursement Unit to determine whether there is an existing support order. If an order exists, the Juvenile

² The Michigan child support formula provides guidance on the method for calculating support when both parents are required to pay support for their child to a third party. In addition, the Status and Emancipation of Minors Act makes both parents jointly and severally liable to support their minor children. The act allows this duty of support to be enforced by an authorized government agency, or, if the child is supported by public assistance, the family independence agency [MCL 722.3]. The combination of these statutes and the formula suggests that support can be ordered any time the child is living separately from one or both parents.

Reimbursement Unit will act to have the support redirected to the state and modified to make the former custodial parent responsible for support. If no order exists, the support specialist will send necessary information to the Juvenile Reimbursement Unit where a Friend of the Court Special Assistant Prosecuting Attorney will work to have support established. In appropriate cases, that transmittal will include a request that paternity be established. Acknowledgments of paternity can be done on the record as part of the disposition of the case. If genetic testing is required, an order for genetic testing will be entered and referred to the Friend of the Court office.

Delinquency

In delinquency cases where the child is expected to be removed from the home (non-community based), the child's case is first reviewed by the Juvenile Reimbursement Unit at the preliminary hearing. Often the court is involved with the child several months before the child is removed if the offenses are minor enough to allow the child to continue living in the home. Support orders will not be entered in cases where the child remains at home, regardless of whether the family is intact. If the custodial parent requires an order for support to be entered, a referral will be made for the case to be initiated at the Friend of the Court.

If the child is not IV-E eligible, the assigned juvenile court officer or FIA worker must seek to have a signed IV-D application filed on the child's behalf once the child is removed. Necessary case information, including information regarding whether a support order exists, then must be obtained by the court worker and transmitted to the OCS support specialist. If an order exists, the Juvenile Reimbursement Unit will act to have the support redirected to the state and modified to make the former custodial parent responsible for support. If no order exists, the support specialist will send necessary information to the Juvenile Reimbursement Unit where a Friend of the Court Special Assistant Prosecuting Attorney will work to have support established. In appropriate cases, that transmittal will include a request that paternity be established.

Abusive Parent Ordered Out of Home

Recent revisions to the juvenile code [MCL 712A.13a (4)] allow the court to order an abusive parent to leave the child's home. This is not a statutory provision that has been put into common application in this county to date. However, it is anticipated that it will become more commonly applied in the future. In such cases, the Juvenile Reimbursement Unit will interview both parents, where possible, at the preliminary hearing and recommend that the court order the parent to pay support. The Juvenile Code provision that gives the court authority to order an abusive parent out of the home allows for support to be ordered but does not require that the state's child support formula be used [MCL 712A.13a (4)]. As a result, although the support order may meet the definition of a support order found in the United States Code [42 USC 653(p)], it fails to meet the requirements of the section requiring that the order be established pursuant to a rebuttable presumption that the state's child support formula should be applied [42 USC 667(b)]. However, once ordered to leave the child's home, the parent is liable for support under the Family Support Act or the Status and Emancipation of Minors Act. The Friend of the Court Special Assistant Prosecuting Attorney will assist in having a support order entered. The removed parent will have an opportunity for a hearing. To have the case classified as Title IV-D, a support order will be entered under one of the domestic relations support acts. The case will be classified as IV-D by determining whether the

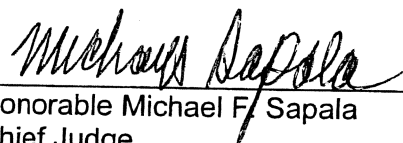
child qualifies for Temporary Assistance for Needy Families, Medicaid, or whether a IV-D application must be signed.

If public assistance is involved, the case is properly referred to the Special Assistant Prosecuting Attorney assigned to the Juvenile Reimbursement Unit for establishment of an order under the family support act or the paternity act [see MCL 552.454(1) and MCL 722.714(4)]. If public assistance is not involved, the support specialist must first establish the case as a IV-D case by application for Medicaid benefits or signing of an application for IV-D services.

FUTURE ISSUES ARISING UNDER MATTERS CONTROLLED BY THIS ORDER:

In keeping with the spirit and intent of PA 388 of 1996, the Family Division of the Third Judicial Circuit Court has established model "teams" of Juvenile and Family Division Judges and Referees who will serve each family. The Juvenile Judge or Referee will hear all juvenile matters arising out of the action. The Family Division Judge or Referee of the same team will hear the support case.

In both new cases and existing cases that are transferred to the Friend of the Court for enforcement, the Friend of the Court Child Support Formula Manual will be used to determine the appropriate level of support to be paid by the parent.



Honorable Michael F. Sapala
Chief Judge
Third Judicial Circuit Court

Dated: February 24, 2000

Glossary of Frequently Used Terms:

ADC or AFDC -- Abbreviation for Aid to Families with Dependant Children. A program of public assistance to families, administered in Michigan by the Family Independence Agency. Replaced by in Michigan by the Financial Independence Program (FIP), also called Temporary Assistance to Needy Families (TANF) by the federal government.

Child Support Formula -- Factors considered by the Friend of the Court and the Prosecuting Attorney when making a recommendation, and by the circuit court when making a determination for an appropriate amount of child support.

Circuit Court -- The trial court in Michigan which hears many types of cases. Domestic relations actions are tried in the family division of this court.

Family Division of Circuit Court -- The division of the circuit court responsible for hearing cases about families and their children. The family division hears domestic relations matters, as well as juvenile matters formerly heard by the probate court.

Family Independence Agency -- The agency providing public assistance to families. Includes the Office of Child Support. Formerly known as the Michigan Department of Social Services.

FIP -- Financial Independence Program. Michigan's name for the public assistance program that replaced Aid to Families with Dependant Children (AFDC or ADC). The federal government equivalent is now called Temporary Assistance to Needy Families.

Friend of the Court -- An office of the family division; investigates and makes recommendations to the court in domestic relations actions involving minor children; enforces orders of the court; collects, records and disburses support payments. A person; the director of the office.

Juvenile Division or Juvenile Department -- A division of the Circuit Court-Family Division where matters involving minor children are heard.

Juvenile Reimbursement Unit -- A staff of court employees located within the Juvenile Division of Circuit Court. Responsible for assisting the public and Juvenile Division jurists in initiating new support orders.

Probate Court -- The court which handles wills, estates, and commitment of mentally ill persons.

Support Order -- An order issued by the family division ordering the payment of money for children or spouse in a domestic relations action.

TANF -- Temporary Assistance for Needy Families. Replaced Aid to Families with Dependant Children (AFDC or ADC). In Michigan, known as Financial Independence Program (FIP).