

## **ENFORCEMENT OF SUPPORT OBLIGATIONS**

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ENFORCEMENT OF SUPPORT OBLIGATIONS

When the absent parent has been located and a support obligation has been established, the final steps to obtain support are the enforcement and monitoring of the support obligation. Included in this chapter are some techniques to enforce the support obligation in cases of noncompliance."

CONTEMPT OF COURT**Policy**

CSRU staff shall make a legal referral to initiate contempt of court proceedings against a delinquent absent parent when all other attempts to enforce support either have failed or are inappropriate.

**Comment**

Contempt of court action is generally reserved for self-employed absent parents when other collection tools do not apply and the parent has failed to comply voluntarily.

An absent parent may be found in contempt of court for willfully withholding support which has been ordered in a temporary support order, a final decree of dissolution of marriage, an administratively established support order or a paternity order which establishes a support obligation.

If the parent is found in contempt, the court may commit the absent parent to the county jail for a period not to exceed 30 days for each offense. Or the court may withhold confinement as the result of a purge payment from the absent parent.

In a contempt case, the court must find willful failure to pay. However, the absent parent has the burden of proving why the parent should not be found in contempt. In most cases, willful failure is inferred from the facts that the absent parent had income and considerable time passed without any payment.

The test of ability to pay is not merely whether the payor is presently working or has current funds or cash on hand, but whether there is any property out of which payment can be made. (Property includes unemployment compensation.)

If the payor is not disabled, failure to seek gainful employment may constitute willful disobedience of the court order. Technically, the payor may be cited and found in contempt for each payment that is missed.

Denial of visitation rights does not afford the absent parent the right to withhold child support payments.

**Legal reference:** Iowa Code Section 598.23

ENFORCEMENT OF SUPPORT OBLIGATIONSCONTEMPT OF COURT (Cont.)**Procedure**

The court may proceed on its own motion to cite an absent parent for contempt, but usually an affidavit supporting the allegations of contempt is required as the basis for the issuance of an order to show cause.

The *Order to Show Cause in Regard to Contempt* shall be filed in the clerk of court's office, and a copy sent, along with *Sheriff's Instructions*, to the sheriff in the county where the absent parent resides. A copy shall be kept in the CSRU case file.

The specific forms to be used in each judicial district are as follows:

Judicial District #1, Form CS-5104-5  
#2, Form CS-5103-5  
#3, Forms CS-5132-0, CS-5133-0, CS-5134-0  
#4, Form CS-5103-5  
#5, Form CS-5103-5  
#6, Forms CS-5132-0, CS-5133-0, CS-5134-0  
#7, Form CS-5140-0  
#8, Forms CS-5132-0, CS-5133-0, CS-5134-0

GARNISHMENTS AND EXECUTIONS**Policy**

The garnishment of salaries or wages held in a bank account, the garnishment of an estate, or the attachment of personal property shall be initiated when other enforcement tools have failed or do not apply.

**Comment**

The use of garnishment as a collection tool is most appropriate to noncustodial parents who are self-employed and against whom other enforcement tools cannot be used.

Garnishment against a noncustodial parent who receives wages from an employer shall be the enforcement tool of last resort, since immediate and mandatory income withholding orders are more efficient tools against employed parents and parents receiving periodic income from a retirement or a trust fund.

An estate can be garnished when a noncustodial parent who owes delinquent support will inherit money from that estate.

**Legal reference:** Iowa Code Section 252B.3

ENFORCEMENT OF SUPPORT OBLIGATIONSGARNISHMENTS AND EXECUTIONS (Cont.)**Procedure**

The child support attorney, in cooperation with the SRO, shall complete a *Praecipe* and either an *Order for Issuance of Execution*, a *Request for Execution* or a *General Execution* form, as provided by the clerk of court. The completed documents shall be sent to the clerk of court in the county where the support order exists.

The support recovery officer shall complete the *Directions to Sheriff*, *Plaintiff's Order to Levy*, *Notice of Garnishment*, and a cover letter to the sheriff. The SRO shall mail these completed documents to the sheriff for the county in which the absent parent is working.

The SRO shall "tickle" or memo the case to check the status of the garnishment 30 days after initiation. An *Order to Condemn Funds* and *Return of Service* or *Acceptance of Service* shall be completed and given to the child support attorney at the end of the period the garnishment has run.

**Comment**

Once the execution has been served on the employer, the execution is valid for 70 days or until the delinquency is collected in full. If the delinquency is not collected in full within 70 days, a new execution must be requested.

Amounts That Can Be Garnished**Policy**

The federal Consumer Credit Protection Act limits the amount of a person's disposable earnings that can be garnished for the recovery of child support.

In the case of an absent parent who has another family to support, garnishment is limited to 50% of the parent's disposable income (55% if the payment due is more than 12 weeks overdue).

If the absent parent is single and has no second family, garnishment is limited to 60% of disposable income (65% if payment is more than 12 weeks overdue).

**Comment**

For practical reasons, a garnishment limit of 50% is safe for every case, although the higher limits can be used if we know that the absent parent has no other families to support.

ENFORCEMENT OF SUPPORT OBLIGATIONSGARNISHMENTS AND EXECUTIONS (Cont.)Amounts That Can Be Garnished (Cont.)

**Comment** (Cont.)

**Legal reference:** Title 15 USC section 1673b(b), 1982

DEBTOR'S EXAMINATION**Policy**

If an execution is returned unsatisfied, in whole or in part, CSRU is entitled to an order for the appearance and examination of the debtor. If any property, rights, or credits subject to execution are discovered, an execution may be issued and levied upon. The court may also order any property of the judgment debtor that is not exempt to be delivered or applied towards the satisfaction of the judgment.

**Comment**

**Legal reference:** Iowa Code Chapter 630

**Procedure**

To initiate this action, the child support attorney must file an affidavit with the court in which the judgment exists, stating the "judgment debtor" has property that the debtor unjustly refuses to apply towards the satisfaction of the child support judgment.

Exemption from Execution**Policy**

Exemption statutes protect three types of property from being executed upon:

- ◆ The homestead.
- ◆ Items of personal property, such as tools of trade, farm animals, an automobile used for transportation to and from work, and wearing apparel of the debtor and family.
- ◆ Funds such as worker's compensation, proceeds from insurance policies, wages for debts other than child support, or IPERS benefits.

ENFORCEMENT OF SUPPORT OBLIGATIONSDEBTOR'S EXAMINATION (Cont.)Exemption from Execution (Cont.)

**Comment** (Cont.)

**Legal reference:** Iowa Code Section 630.6

IMPOSITION OF LIENS**Policy**

The Child Support Recovery Unit shall require that a lien or attachment be imposed against the real and personal property of an absent parent who owes overdue support and who owns property in the state.

All support orders in Iowa automatically have the same force and effect as judgments upon the entry by the clerk of the court in the judgment docket and lien index. The requirement for the imposition of liens shall apply for all IV-D cases, including interstate cases.

**Comment**

**Legal reference:** Iowa Code Sections 598.22 and 624.24

**Procedure**

CSRU staff shall ensure that all orders for support, including interstate orders, are appropriately filed with the clerk of the district court in the county where the absent parent resides and also in any other Iowa county where the absent parent owns real property.

Liens Against Real Property**Policy**

Child support orders in Iowa automatically become a judgment against all of the real property of the absent parent in the Iowa county where the order is filed. The judgment creates a lien with an initial lifespan of ten years on this real estate.

ENFORCEMENT OF SUPPORT OBLIGATIONS

IMPOSITION OF LIENS (Cont.)

Liens Against Real Property (Cont.)

**Comment**

If the property is located in the same county as the order was issued in, the judgment is reflected in the lien docket book. However, if the absent parent owns property in a county other than that where the order was issued, steps should be taken to transcribe the order to the Iowa county or counties where the property is located.

Before an Iowa property can be bought or sold, all liens still in force against the property must be cleared. All settlements and release of liens are handled through the regional collections administrators.

**Legal reference:** Iowa Code Sections 598.22 and 624.24

Liens Against Personal Property

**Policy**

The CSRU shall use the levy of execution process to perfect a lien against the personal property of the absent parent who owes overdue support and owns personal property in the state. The levy of execution shall be initiated unless determined inappropriate under Guidelines for Application.

**Comment**

From the time the levy is executed against the personal property, there shall be a lien on the interest of the absent parent in the property for which the levy is executed.

**Legal reference:** Iowa Code Sections 626.1 and 626.33

**Procedure**

The procedures for the levy of an execution are described under GARNISHMENTS AND EXECUTIONS.



ENFORCEMENT OF SUPPORT OBLIGATIONS

IMPOSITION OF LIENS (Cont.)

Liens Against Personal Property (Cont.)

Guidelines for Application

**Policy**

The CSRU shall use the following criteria for determining that a case is inappropriate for the imposition of liens against personal property. The case is inappropriate when:

- a. Other enforcement remedies are available, including mandatory wage withholding, and the value of the personal property to be attached does not exceed \$1,000.00.
- b. Other enforcement remedies are limited, such as for a self-employed parent and the value of the personal property to be attached does not exceed \$500.00.
- c. The personal property is encumbered by a security interest and the value of the equity interest of the absent parent does not exceed the amount given in paragraph a. or b.
- d. There are doubts or questions as to the ownership and or control of the personal property by the absent parent.

**Comment**

If any of the above circumstances exist, the CSRU should determine that the imposition of a lien against personal property is inappropriate.

The judgment creditor initiating the levy of execution is liable for the costs of execution if the interest of the absent parent in the personal property levied upon is inadequate to cover these costs. Costs of execution can include attaching and storing of the property pending sale and advertising and conducting the sale.

For this reason, care should be exercised to ensure that the proceeds from a sheriff's sale will likely exceed the costs of the levy.

The imposition of a lien upon the personal property of an absent parent is an effective enforcement tool to be used in all appropriate cases.

**Legal reference:** Iowa Code Sections 624.24, 626.34 and 626.42

ENFORCEMENT OF SUPPORT OBLIGATIONSATTACHMENTS**Policy**

As plaintiff in a civil action, CSRU may cause the personal property of the defendant that is not exempt from execution to be attached.

**Comment**

Attachment is a process of taking a person's property by a writ, summons, or other judicial order and holding the property as security for the satisfaction of the child support judgment. The property is then usually sold through a sheriff's sale and proceeds applied to the child support judgment.

**Legal reference:** Iowa Code Chapter 639

CRIMINAL PROCESSES**Policy**

Criminal proceedings may be commenced by CSRU under nonsupport law, or under contributing to juvenile delinquency when an absent parent fails to provide support to dependents under the age of 18.

**Comment**

Criminal charges shall be used only when the debtor continually avoids civil enforcement and is defiant of authority. Even then, a contempt action may be a more appropriate means.

Enforcing a civil debt with prosecution may ultimately defeat the Unit's objective of collecting support payments. Even though the court may order support payments as a condition of parole or probation, it could also incarcerate or fine the absent parent, thereby inhibiting the absent parent's ability to earn income and pay support.

**Legal reference:** Iowa Code Sections 233 and 726

REQUESTS FOR COLLECTION BY THE INTERNAL REVENUE SERVICE**Policy**

The Child Support Recovery Unit may apply to the Secretary of the Treasury for permission to use Internal Revenue Services to enforce a child support order against an absent parent.

ENFORCEMENT OF SUPPORT OBLIGATIONSREQUESTS FOR COLLECTION BY THE INTERNAL REVENUE SERVICE (Cont.)**Comment**

This method is used for collection of delinquent child support payments for both ADC recipients and non-ADC recipients. IRS will certify an application to enforce collections only when all other reasonable efforts have been made to enforce support and failed.

**Legal reference:** 45 CFR 302.71

**Procedure**

The support recovery officer should be selective in the types of cases submitted for certification to IRS for collection. A cost-effective return on the fee charged the state prompts the use of the following selection criteria:

- ◆ A court order for support must be in effect.
- ◆ An assignment of support must be in effect for FIP cases.
- ◆ The delinquency amount should not be less than \$2,000. (Regulations provide the delinquency amount shall not be less than the amount owed for three months, and in no case less than \$75. However, cost effectiveness suggests the \$2,000 amount.)
- ◆ The support recovery officer must demonstrate that CSRU has attempted to enforce the support obligations through all available means.
- ◆ Use should be primarily limited to interstate cases where URESA has proved unsuccessful, or the responding state has not attempted to collect arrearage amounts.
- ◆ If possible, select cases where the absent parent has substantial income or known assets.

The completed application, along with certified copies of all court orders, a summary of collection actions taken to obtain payments, and an explanation as to why enforcement actions were not taken, why actions which were taken failed to collect the amount of delinquency, and why further action would be unproductive, shall be sent to Central Office for the director's signature. The application is then forwarded to the Regional Office of Child Support Enforcement.

For further information and instructions for filling out the application form, refer to the booklet put out by Office of Child Support Enforcement entitled "Application for Certification to IRS for Collection Services."

ENFORCEMENT OF SUPPORT OBLIGATIONS

APPLICATION TO USE THE COURTS OF THE UNITED STATES

**Policy**

The Child Support Recovery Unit may apply to the Secretary of Health and Human Services for permission to use a U.S. district court to enforce a child support order against an absent parent who is in another state.

**Comment**

The U.S. district courts will hear a child support case only when all other avenues and remedies have been expelled or exhausted.

**Legal reference:** 45 CFR 302.72

**Procedure**

The support recovery officer shall complete the application after the following steps have been completed:

- A. A request has been sent to the other IV-D agency to enforce the order for support.
- B. The other state has failed to secure compliance with the order within 60 days.
- C. A notice (letter) has been given to the other IV-D agency that a request will be sent to the Secretary of Health and Human Services for permission to use a U.S. district court if response is not received within 30 days of the notice.

Copies of the original request to the other IV-D agency, the notice sent, and any responses received shall be sent with the application to the Bureau of Collections for the director's signature. The director will forward the application to the Regional Office of Child Support Enforcement.

For further information and instructions for filling out the application form, refer to OSCE-AT-76-1, dated February 6, 1976, which is available through the regional collections administrator.

ENFORCEMENT OF SUPPORT OBLIGATIONSPOSTING SECURITY, BOND OR GUARANTEE FOR PAYMENT OF SUPPORT**Policy**

Require that absent parents post security or bond or give some other guarantee to secure payment of overdue support for all IV-D cases. Initiate the action for posting of security, bond, or other guarantee.

- ◆ Other enforcement remedies are readily available, including mandatory wage withholding.
- ◆ Other enforcement remedies are limited, such as a self-employed parent when the potential value of reasonable affordable securities does not exceed \$500.
- ◆ There are doubts or questions as to the ability of the absent parent to post the security if required.

**Comment**

Upon the entry of the initial order, or upon the failure of the person to make payments pursuant to a court order, the court may require the absent parent to provide security, bond, or other guarantee to secure the payment of the support obligation.

**Legal reference:** Iowa Code section 252C.11

**Procedure**

The CSRU attorney shall petition the court for an order requiring the posting of a security, bond or other guarantee.

The state must satisfy the procedural due process requirements of providing the absent parent with advanced notice of the petition for an order requiring the posting of the security. As the petition is to the court, personally serve the notice of the petition on the absent parent in the same manner as other official court actions are served.



TERRY E. BRANSTAD, GOVERNOR

DEPARTMENT OF HUMAN SERVICES

CHARLES M. PALMER, DIRECTOR

October 7, 1997

**GENERAL LETTER NO. 10-C(1)-8**

ISSUED BY: Bureau of Collections, Division of Policy Coordination

SUBJECT: Employees' Manual, Title 10, Chapter C(1), *Enforcement of Support Obligations*, Contents (page 1), revised; and pages 47 and 48, revised.

**Summary**

This chapter has been revised to remove materials now found in Employees' Manual, Title 11, Chapter C, *Credit Reporting*.

**Effective Date**

Immediately

**Material Superseded**

Remove the following pages from Employees' Manual, Title 10, Chapter C(1), and destroy them:

<u>Page</u>	<u>Date</u>
Contents (page 1)	March 26, 1991
47 through 52	June 5, 1990

**Additional Information**

Refer questions through your regional administrator.



STATE OF IOWA

THOMAS J. VILSACK, GOVERNOR
SALLY J. PEDERSON, LT. GOVERNOR

DEPARTMENT OF HUMAN SERVICES
KEVIN W. CONCANNON, DIRECTOR

March 18, 2005

GENERAL LETTER NO. 10-C(1)-9

SSUED BY: Bureau of Collections,
Division of Child Support, Case Management, and Refugee Services

SUBJECT: Employees' Manual, Title X, Chapter C(1), ENFORCEMENT OF SUPPORT
OBLIGATIONS; Table of Contents (page 1), revised; and pages 1 through 11,
revised.

Summary

This chapter is revised to remove sections that are obsolete or are now covered in other chapters
of the manual, as follows:

Table with 2 columns: For information on: and See Employees' Manual Chapter:
Rows include: Income tax refund offsets (11-J, FEDERAL OFFSETS AND PASSPORT SANCTIONS, and 11-K, STATE OFFSETS); Stipulation (10-A, ADMINISTRATIVE PATERNITY ESTABLISHMENT, and 10-I, ADMINISTRATIVE ESTABLISHMENT OF SUPPORT); Transcribing foreign judgments (9-K, INTERSTATE CASE PROCESSING)

Effective Date

Upon receipt.

Material Superseded

Remove the following pages from Employees' Manual, Title X, Chapter C(1), and destroy them:

Table with 2 columns: Page and Date
Rows include: Manual Letter X-C(1)-2 (June 26, 1990); Contents (1) (October 7, 1997); 1-7 (January 13, 1987); 7, 34 (March 26, 1991); 35-46 (January 13, 1987); 47-48 (October 7, 1997)

Additional Information

Refer questions about this general letter to your regional collections administrator.



# STATE OF IOWA

CHESTER J. CULVER, GOVERNOR  
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF HUMAN SERVICES  
KEVIN W. CONCANNON, DIRECTOR

February 22, 2008

## GENERAL LETTER NO. 10-C(1)-10

ISSUED BY: Bureau of Collections,  
Division of Child Support, Case Management, and Refugee Services

SUBJECT: Employees' Manual, Title X, Chapter C(1), *ENFORCEMENT OF SUPPORT OBLIGATIONS*, pages 5 and 6, revised.

### Summary

This chapter on enforcement of support obligations is revised to clarify information about liens on real estate. The revised material includes additional wording to clarify that:

- ◆ The lifespan of a lien on real estate is ten years.
- ◆ All liens still in force must be cleared before Iowa property can be bought or sold.
- ◆ All settlement and releases of liens are handled through the regional collections administrators.

### Effective Date

Upon receipt.

### Material Superseded

Remove the following pages from Employees' Manual, Title X, Chapter C(1), and destroy them:

<u>Page</u>	<u>Date</u>
5, 6	March 18, 2005

### Additional Information

Refer questions about this general letter to your regional collections administrator