

# WHAT YOU SHOULD KNOW ABOUT MICHIGAN'S CHILD SUPPORT PROGRAM

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### *Administration:*

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In Michigan, the Department of Human Services is the public agency responsible for administering the child support program through the Office of Child Support in cooperation with Prosecuting Attorney and Friend of the Court offices. It is responsible for administering federal child support program funds, coordinating the location of absent parents, establishing IV-D cases on the MICSES system then forwards the cases to the appropriate office, manages the MICSES system development and maintenance, and managing the process for income tax intercepts. The Prosecuting Attorney's Offices perform paternity and/or child support establishment of court orders. The Friend of the Court works with the circuit court to enforce orders issued by the court.

Michigan's Central Registry office receives all new interstate requests and forwards them to the appropriate office (either Prosecutor or Friend of the Court) and county after review.

Payments for support are made through MiSDU (Michigan State Disbursement Unit) in Lansing. Parties can opt-out of Friend of the Court services if they meet criteria set by the state and have an order signed by the judge.

#### **TANF/Medicaid/Food Assistance/Day Care Benefits Referrals**

The Prosecutor's offices receive referrals from the state when the custodian or custodial parent receives any form of benefits and one parent is absent from the household to establish paternity and/or a child support order. If there is an existing child support order when services begin through DHS (Department of Human Services) the referral is made to the Friend of the Court office to either assign the support and/or medical obligations to the state or to add a child to the existing order if possible, or review a case to restart support obligations when the parties no longer reside together.



### *What you should know about the Prosecuting Attorney's Office, Child Support Division*

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#### **Paternity Establishment**

In Michigan, Paternity establishment can be completed by two methods, Voluntary acknowledgment of paternity or by court order.

Voluntary acknowledgments that have been executed in Michigan are conclusive and establish the signatory as the legal father. Under the paternity act, if a voluntary acknowledgment exists, a person cannot file a case to re-litigate the issues of paternity. If a married person signs the voluntary acknowledgment, the Affidavit of Parentage is void on its face. The presumption of paternity must be overcome by court order prior to the execution of the Affidavit of Parentage.

Michigan now has a new disestablishment of paternity statute. We have not received any policy on this new statute as of yet so the Prosecutor's Offices are not handling these types of cases yet. The Paternity statute states that the Prosecuting Attorney may file a case on behalf of a custodial parent, who is receiving public assistance from the State of Michigan; therefore, unless the father has the minor child in his physical custody, we do not file cases on behalf of the alleged fathers.

Genetic testing under our contract rate is only available in cases where there is no legal father.

#### **Child Support Establishment**

Child support cases are filed under the Family Support Act or Under the Status of Minor's Act. The Status of Minor's Act is used for 3<sup>rd</sup> party custodians and foster care cases. The statute provides that "the duty of support may be enforced by the minor or the child who has reached 18 years of age, his or her guardian, any relative within the third degree, an authorized government agency, or if the minor or the child who has reached 18 years of age is being supported in whole or in part by public assistance under the social welfare act."

# WHAT YOU SHOULD KNOW ABOUT MICHIGAN'S CHILD SUPPORT PROGRAM

In all paternity and child support actions filed in Michigan the issues of custody and parenting time are addressed but each county addresses them differently. There is always a disclaimer placed in this paragraph that states the prosecutor's office does represent anyone in these areas.

Child support is calculated under the Michigan child support formula. It is a very complex formula that takes into consideration both parents income, then subtracts back out mandatory deductions, credit for other children living in the home or for which either party pays child support, and the number of overnights that each parent has the children per month, to get the net income. Child support is then based upon the net incomes of the family unit.

Under the Michigan child support formula, there is not minimum child support amount anymore. If a non-custodial parent has no income then his order would be a \$0.00 order. Due to the shared economic responsibility or current number of overnights that the non-custodial parent has the child(ren) versus the amount of overnights the custodial parent currently has the child(ren), the custodial parent is sometimes ordered to pay child support to the non-custodial parent. If the non-custodial parent is incarcerated for anything other than child support, his child support obligation would abate until such time as he is released. Most counties would enter an order addressing the child support. Our county would put an amount of child support in the order, with language to abate the child support and when he is released the order would start charging at the amount listed in the child support order.

Income from the Social Security Administration: Retirement, Survivor's, Disability Insurance Benefits are income in the State of Michigan and if the child is receiving benefits on behalf of the non-custodial parent, his child support amount is offset by the amount the child receives. If the child receives more from SSA than the child support amount then the Defendant is ordered to pay \$0.00, or if the amount is less than the child support amount the Defendant pays the difference. If the Defendant is receiving SSI benefits then his income becomes \$0.00 per month and we have a \$0.00 order. Michigan would enter the \$0.00 order.

In our county we are required to plead income amounts in our orders as we cannot default the non-custodial parent with a sum certain that the court could base equitable relief. Some counties file a motion for entry of the default but we have streamlined our process to put the information the complaint so we only have to file a paper default and motion the order before the court for entry.

In processing cases from another state, Michigan counties do not use financial affidavits in interstate cases beyond the general testimony therefore the general testimony needs to be complete with the Custodial parent's financial information on the form. Please attach pay stubs, day care verification from the day care provider, mandatory deductions from her income, and any other supporting documents. If the custodial parent's expenses exceed the amount of income then provide an explanation as to where she is getting the money to cover all the bills. If your state enters a temporary order, you may be dealing with two different offices until the final order has entered. The Friend of the Court would enforce the temporary order but the Prosecutor's Office would still be pursuing a final child support order.

All child support orders in Michigan are Judicial. Once the final order has entered, we then turn the case over to the Friend of the Court to enforce the court order.

## *What you should know about the Friend of the Court*



At least one Friend of the Court office serves each circuit court's family division. Offices can be found at: [http://www.michigan.gov/documents/friendofthecourtcontacts\\_116075\\_7.pdf](http://www.michigan.gov/documents/friendofthecourtcontacts_116075_7.pdf)

The family division of the circuit court decides divorce, paternity, custody, and support matters. The FOC (Friend of the Court) is part of the circuit court and is supervised by the chief judge. The FOC helps the court administer on those types of cases and has the following duties:

# WHAT YOU SHOULD KNOW ABOUT MICHIGAN'S CHILD SUPPORT PROGRAM

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When parents cannot agree, or when directed by the judge, to conduct investigations and make reports and recommendations to the court regarding:

- custody,
- parenting time (which may include transportation),
- amount of child support (including medical support, and sometimes spousal support).
- To offer mediation, when both parents agree to participate, as an optional way of settling disagreements about custody or parenting time.
- To work in cooperation with Michigan State Disbursement Unit (MiSDU) to collect, record, and send out support payments as ordered by the court.
- To provide enforcement services on custody, parenting time, and support orders.



In Michigan, a support order in the form of a Uniform Support Order (USO) is any court order that requires a party to pay:

- Child support.
- Spousal support.
- Payment of medical, dental and other health care.
- Payment of confinement expenses (these are the mother's costs related to the birth).
- Payment of child care expenses.
- Payment of educational expenses.

Support orders are stated in a monthly amount which is due on the first day of the month. When an order takes effect on a day other than the first day of a month, or ends on a day other than the last day of the month, the support amount is usually prorated for the partial month. Support is past due if it is not paid by the last day of the month in which it became due.

Some overdue support cases have surcharges added. This surcharge is fully enforceable as support. Automatic surcharges were eliminated in 2010. However, previously assessed surcharges are not forgiven and are still enforceable. Beginning January 1, 2011 the court may order a surcharge as a sanction for failure to pay support.

### **Enforcement Remedies**

A case is set for a Show Cause (contempt) hearing by the Friend of the Court for either a charging or non-charging (arrears only) case depending on the county policy. This remedy is typically used after all other means have been exhausted to encourage a payer to remit their support. This is an order to appear and typically if no resolution can be found prior to going to court, the circuit judge will hear the case and issue an order from the bench. If the payer fails to appear a bench warrant is issued for arrest if no employer is found. The judge can order a payer to be remanded to custody from the court hearing directly, or may issue a deferred sentence to allow the payer a specific time period to find work, remit payments, or show efforts at finding work.

### **Other Enforcement Remedies**

Several other enforcement remedies exist. If the payer's arrearage is sufficiently large, the arrearage may be reported to a consumer reporting agency or the payer's driver's, occupational, sporting, or recreational licenses may be suspended. In addition, the Friend of the Court has the ability to obtain a court order to place a lien on the payer's real and personal property and have that property converted to a support payment. In some instances, the court may order a payer's personal property seized and sold to satisfy all or some of the support arrears owed.



### **Health Care**

One or both parents may be responsible for providing health care coverage for the children. If a parent is required to provide coverage, has coverage available through employment, and fails to provide coverage, the Friend of the Court will send a medical support notice to the parent's employer. The employer then is required to enroll the children in the employee's health plan and deduct premiums for the coverage.

Not all health care expenses will be paid by a health care plan. Support orders require each parent to pay a percentage of remaining health care expenses. The Friend of the Court will assist in collecting the payments required by the court's order if the costs exceed the limits set in the support order and the parent incurring the cost has done the following:

- Requested payment from the other parent within 28 days of receiving an insurance payment or a determination that the expense is not covered.
- Payment was not made within 28 days of the request to the other party.

# WHAT YOU SHOULD KNOW ABOUT MICHIGAN'S CHILD SUPPORT PROGRAM

- The Friend of the Court's assistance is requested within one year of incurring the expense, within six months of denial of coverage of the expense, or within six months after the other parent fails to pay the expense as agreed.
- If the Friend of the Court receives a request for help which meets the requirements, the Friend of the Court must send a copy of the request to the other party, along with notice that, if no objection is filed within 21 days, the amount of the health care expense will become a support arrearage subject to any enforcement process. If an objection is filed, the Friend of the Court must schedule a court hearing to resolve the dispute.

## **AG's Child Support Division**

Legislation passed in 2004 that created a new Child Support Division in the Attorney General's Office to assist in the collection of past due support. Among other things, the Legislation provides:

- That liens on property for past due support include inheritances, awards, and settlements.
- Allows levies against worker's compensation in certain circumstances.
- Requires notification via the Child Support Lien Network (CSLN) when arrearages reach certain amounts.
- Allows insurance companies to cooperate with enforcement agencies and the CSLN in identifying people entitled to settlements or awards.
- Requires decedents' personal representatives to notify the Friend of the Court of the identity of decedents' surviving spouses, heirs, and devisees.



Failure to pay child support is now a criminal offense according to federal and Michigan law. The Friend of the Court does not issue felony charges. Charges according to Michigan law are filed and prosecuted by county prosecutors or the Attorney General.

## **Modification of a Support Order**

The Friend of the Court will review child support orders once every 36 months. This review is automatic in public assistance cases and upon written request in all other cases. A party who needs an immediate change in support amount should file a court motion requesting the change.

## **Threshold for Modification**

A "minimum threshold" establishes when a child support order should be changed. If the difference between the current support amount and the proposed support amount is 10% or \$50.00 (monthly), whichever is less, the Friend of the Court will petition the court for a change. If the difference between the current amount and the proposed amount is less than the minimum threshold, the Friend of the Court is not required to petition for a change.

## **Support Modification Actions Started by Parties**

A party may file a motion to change the support order. The office of the Friend of the Court will provide forms and instructions to any party who wishes to file this type of motion without the assistance of an attorney. A party may also contact an attorney to file a motion requesting a change in the amount of support. If both parents agree to change the support order to the amount shown by the child support formula, they may sign an agreement. Once that agreement is put in the form of an order, signed by the judge, and filed with the court clerk, it becomes the new support order. If a financial situation changes, the payer or payee should immediately file a motion to change the support amount. The court may adjust the support amount back to the date that the motion was served on the other party.

## **Retroactive Modification of Support Not Generally Allowed: Exception**

Once child support is ordered, a later increase or decrease in the support amount generally cannot apply to any time period before the motion for a change was filed. Michigan law recognizes one exception to that rule: a court may modify support retroactively if a party who has been ordered to do so has intentionally failed to report an income change to the Friend of the Court or has misrepresented that party's income.

There are several pamphlets and manuals available on-line through the State Court Administrator's office to provide information including enforcement, the courts, calculation of support orders and administrative remedies. The web address is for obtaining pamphlets is:

<http://courts.mi.gov/Administration/SCAO/OfficesPrograms/FOC/Pages/Resources.aspx>