

**GOVERNMENT OVERSIGHT COMMITTEE
IOWA LEGISLATURE
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Child Support Collection Issues

TO: Government Oversight Committee

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Statement of Issue(s):

_____ 1. Current law (Iowa Code §§252B.20 and 252H.2(8)) as currently interpreted by CSRU, does not provide a quick or easy way to **terminate child support obligations** UNLESS both the payor and the payee agree and cooperate with the process, even in cases where it is clear the obligation being enforced is not appropriate. This issue usually arises when the child changes residences and the person ordered to pay child support is now caring for the child. This can happen pursuant to a Juvenile Court Order; pursuant to the payee abandoning the child; the payee going to prison, dying or becoming incapacitated; or leaving the child with the payor voluntarily. It can also happen when **genetic testing** is conducted which establishes the legal father is not the biological father. To complicate matters and confuse parents even more, CSRU may even start an order against the parent who is currently receiving support without stopping the original order. Both parents can be ordered to pay support for the same child.

2. Even when the custodial arrangement changes (and this is documented by court order or other objective facts) and the child is now with the payor, **it is difficult to stop or quash the income withholding order**. The payor MUST go to court and get the COURT to order that the withholding stop. An administrative process does not exist to stop an order, even though one exists to initiate withholding. This is particularly troubling when the payor has had genetic testing done which establishes that the payor is not the biological father of the child. It is clear he should not be supporting the child but he has to take affirmative action to disestablish paternity or he will continue to pay. He is not granted any relief from the income withholding order until he files something in court.

3. There is no clear mechanism or remedy to recoup **overpaid child support or child support debt that accrued in error**. For example, when custody changes, several months or years may pass before the Order is terminated by court order. Support continues to accrue, or be billed, to the parent who is now caring for the child. The law treats this support as an enforceable judgment which must be paid. The parent may not even be aware the support is accruing because support is not being collected. Therefore, the parent takes no action to stop the order and CSRU will take no action, even if requested to do so. However, once a judgment

is “entered” each periodic due date, they cannot be released without the *consent* of the other parent. Even when former payors realize there is a debt they are allegedly obligated to pay they are not informed how much of the debt is owed to the payee and how much is assigned to the State for reimbursement of public assistance paid before they assumed custody. This makes it difficult to negotiate a release or satisfaction of the accrued support from the payee or even know if it is worthwhile to attempt this.

4. There is a **lack of understanding on the part of parents that informing DHS/CSRU where the child is living, does not actually stop the order and that the child support debt will keep accruing.** Parents struggle with the fact that when a parent stops receiving public assistance for the child and the assignment therefore ends, the child support obligation itself does not end.

5. **The process to modify a support obligation under Iowa Code Chapter 252H is too long in some circumstances** - such as when the payor experiences a drastic and permanent change in income, e.g. the payor becomes disabled or the factory where he/she is working goes out of business. There is a 3 month waiting period before the payor can even file a request for Review and Adjustment or Administrative Modification. The process then takes another 3-6 months (or more) and the support cannot be “retroactively” modified. Therefore, the proper support amount may not be ordered for several months. The higher support amount continues to be enforced. The 3 month waiting period mirrors the provisions in Iowa Code §598.21C(4) which allows retroactive modification only from 3 months after the date the notice of the pending petition for modification is served on the opposing party. This results in unjust orders of support not being modified soon enough.

Summary: Many of those involved in the child support system, feel that the system is unfair at certain levels. It seems very easy for the State to obtain and enforce an order but an up hill battle to terminate or stop an order even when the facts are clear and undisputed.

Suggestions for Potential Legislation/Other Remedies

1(a) Require CSRU to terminate child support orders under Iowa Code Chapter 252H.

The term “*Modification*” is defined in Iowa Code §252H.2(8) as a change, correction or **termination of an existing order.** Therefore, no amendment to the law seems to be required. The administrative rules, however, do not specifically allow for termination. IAC 441-99.62(a). Likewise, the DHS Policy Manual defines **adjustment** as “a change in the amount of child support or an addition of or change to provisions for medical support.” (Employee Manual Title 10, Chapter Q) The Review and Adjustment process requires the parent requesting the change to provide financial documentation and the other parent is notified of the request. Either parent may ask for a court hearing if they do not agree with the decision to modify the child support amount.

It is unclear why this process could not be invoked when a parent requests termination of the child support order and provides documentation of the fact that the child is now living with the parent paying support or provides genetic test results verifying that he is not the biological father. Small alterations to the forms that already exist would be sufficient to allow termination of child support orders under certain circumstances.

1(b) Expand the availability of the suspension process under Iowa Code §252B.20. If

a payor, who now has custody of his or her children can provide adequate documentation of the custody situation; or if the payor can establish that the legal father is not the biological father, allow them to use the suspension process even if the other parent/caretaker will not cooperate. Adequate documentation could include a court order (Domestic Abuse Protective Order; Juvenile Court Order), a FIP eligibility determination for that child, school records, valid paternity test results, etc. **Suggested statutory language:** Change the language in Iowa Code §252B.20(1) to delete the language “jointly request the assistance of the unit in suspending the obligation” to *either or both parents may request...*

Add a subparagraph to Iowa Code §252B.20(1): A parent has signed a notarized affidavit attesting to the fact that the child is currently residing with the parent who is ordered to pay support, and that the other parent’s whereabouts are unknown or that the other parent is unreasonably withholding consent, and has submitted the affidavit to the Unit accompanied by appropriate documentation regarding the custodial circumstances of the child.

Add a subparagraph to Iowa Code §252B.20(1): A parent has signed a notarized affidavit attesting to the fact that genetic testing has been conducted which establishes the legal father is not the biological father of the child(ren) for whom he is paying support, and has submitted the affidavit to the Unit accompanied by the original genetic test results or a certified copy of same.

2. Expand the grounds to quash income withholding orders. Current law provides narrow grounds to contest a withholding order: mistake of fact which only includes an error in the amount withheld or the amount of the withholding or the identity of the obligor. Iowa Code §252D.31. Some Iowa case law suggests that motions to quash can be used to contest “virtually any challenge to the wage withholding.” See *State ex.rel. Keasling v. Keasling*, 442 N.W.2d 118,122 (Iowa 1999) Motions are often filed for other reasons such as those discussed above and they are routinely contested by CSRU. As a result, such motions are not always successful even if it is undisputed that custody has changed or paternity should be disestablished. When a custodial parent’s income is withheld, this hurts the child he/she is supporting and increases the difficulty of securing legal counsel to formally stop the child support order. The grounds should be expanded to include documented change in custody or proof of “non-paternity”.

Under Iowa Code §252D.18 CSRU can modify or terminate withholding *ex parte*, under certain circumstances. These should include a change in custody or proof of “non-paternity”.

3. Provide a mechanism to inform payors how much they owe to the payee. Payors should not have to file an action in court to find out the specifics of a debt they are expected to pay. No other creditor is allowed to keep this information confidential. Providing this information will not put payees at risk and will improve CSRU’s relationship with payors.

4. Require CSRU to stop an order if they start one against the other parent for the same child(ren). CSRU should have easy access to the information needed to make this determination and it would not be overly burdensome to meet this requirement.

5(a) Make the 3 month waiting period pursuant to Iowa Code §§ 252H and 598.21C discretionary so that in appropriate circumstances it will not be a barrier to equitable modification of child support orders.

5(b) Create a Family Court or Child Support Referee System. This would allow parents to have their case heard more quickly, rather than wait for the District Court to adjudicate the issues. Many of these issues can be decided by a fairly straight forward application of the child support guidelines and could be heard on a faster track. Because there are now pro se forms available to modify some child support orders, it is likely that requests to modify will increase in number. A mechanism should be in place to handle these cases quickly and efficiently.