

THE ROLE OF THE BUREAU FOR CHILD SUPPORT ENFORCEMENT

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I. INTRODUCTION

The federal Child Support Enforcement Amendment of 1984, Public Law 98-378, mandated that the states enact "proven child support enforcement techniques" as a condition of continued state eligibility to participate in the Aid to Family with Dependent Children (AFDC) program, which is now known as Temporary Assistance to Needy Families (TANF). Congress determined that the money returned to the TANF program from the existing federal-state child support enforcement program was woefully inadequate. The use of proven enforcement techniques would bolster the monetary return to the federal government when families receive TANF benefits and, by requiring states to provide equal services to families not receiving TANF benefits, would prevent families from later becoming public charges.

In response to this federal legislation, the State of West Virginia enacted the Family Obligation Enforcement Act, Chapter 48A of the Code of West Virginia. The Act created the quasi-judicial system of Family Law Masters to hear domestic relations cases. The Family Law Master served as a commissioner to hear all domestic relations matters and made written recommendations to the Circuit Court as to the disposition of such matters, with final orders being entered by the Circuit Court Judge. The Act also created the Child Support Enforcement Division, later renamed the Bureau for Child Support Enforcement (BCSE), to

administer the state plan for child support and spousal support under 42 U.S.C. §654(3).

The proven collection techniques required of states were income withholding, real and personal property liens, interception of state and federal income tax refunds, bonds to insure payment of support arrearages, establishment of paternity, reporting of child support arrearages to credit reporting agencies, and an expedited process to establish and enforce child support orders.

In 2001, the West Virginia Legislature recodified the State's domestic relations law, with Chapter 48 of the Code replacing Chapter 48A as the repository of the State's domestic relations provisions. In conjunction with the changes made to the domestic relations section of the Code, the Legislature replaced the Family Law Master system with the Family Court system, effective January 1, 2002. West Virginia Code Section 51-2A-2 grants the Family Court Judges jurisdiction to hear and enter final orders in (among others) divorce cases, child support cases, paternity cases, parenting plan cases, and domestic violence cases.

The purpose of this chapter is to discuss the functions of the BCSE and explain the means by which it accomplishes those functions. The child support field has its own distinctive language; and since child support is intertwined with the federal

government, acronyms abound. Child support language and acronyms are used throughout by necessity, and a glossary of these terms is provided at the end of this chapter.

II. ORGANIZATION OF THE BCSE

The BCSE, as the state entity receiving federal funds for the establishment and enforcement of child support orders, is known as the state's IV-D agency. This term is derived from Title IV, Part D of the Federal Social Security Act (42 U.S.C. §651, et seq.), which contains the provision of the state-federal child support program. The BCSE receives federal funding of a portion of its IV-D expenses, including salary and operational costs. The amount of funding received each year from the federal government is determined by the BCSE's performance in several areas of establishment and enforcement. The one activity which is subsidized entirely by state funds is "spousal support only" enforcement.

The IV-D federal funding percentage applies to the BCSE's child support activities for not only PA (Public Assistance) individuals but also NPA (Non-Public Assistance) individuals who apply for the BCSE's IV-D services.

The BCSE is headed by a commissioner, appointed by the DHHR secretary. It administers legal services statewide through attorneys known as BCSE Attorneys. In addition to the

traditional functions of a state administrator, the BCSE Commissioner has the responsibility to work with the federal agency, the Office of Child Support Enforcement (OCSE) of the Department of Health and Human Services, which supervises the federal-state IV-D program.

III. APPLICATION PROCESS AND FEES

TANF recipients are automatically referred to the BCSE for services, as are adult individuals who receive Medicaid benefits for both themselves and the child(ren) in his/her custody. Persons who do not receive assistance may also apply for services from the BCSE. Services provided by the BCSE include:

- (1) location of obligor and obligees;
- (2) establishment of paternity;
- (3) establishment of child support orders;
- (4) enforcement of child and spousal support orders;
- (5) interstate support establishment and enforcement;
- (6) medical support establishment and enforcement;
- (7) payment to and distribution of support through the BCSE;
- (8) investigation and modification, when warranted, of a child support order;
- (9) income withholding; and
- (10) federal and state tax refund intercepts.

Currently, no fee is charged to NPA applicants for these services.

NPA applications are made at the local BCSE office in the county where the applicant currently resides. If the applicant has moved since receiving a West Virginia divorce, this procedure removes the inconvenience of the applicant having to travel to the county in which the divorce was entered. The BCSE tailors the remedy as best it can to deal with the mobility of our society. There may be situations, however, where travel to hearings is mandated.

IV. THE BCSE AND THE PRIVATE BAR

The legislature, in creating the BCSE, did not intend for the agency to replace the private bar in domestic relations practice. The BCSE was created to eliminate the confusion of dealing separately with the county prosecutor, private counsel, or OCSE, each of which could handle only certain actions. The BCSE provides for the same child support establishment and enforcement services for TANF as well as non-public assistance applicants.

There are several services which only the BCSE can provide. These are:

- (1) location of obligors through the state and federal

parent locator service;

- (2) intercepting child support arrearages from state and federal tax refunds;
- (3) withholding of support from income in both intrastate and interstate cases;
- (4) license suspension;
- (5) withholding from Social Security and Workers' Compensation benefits;
- (6) referral of a case for possible passport suspension or denial.

Since the BCSE is a creature of statute, its authority, duties, powers, and responsibilities extend only to those which are specifically enumerated. The BCSE cannot represent parties in divorce cases, post-divorce enforcement of equitable distribution, adoption proceedings, or custody and visitation matters. West Virginia Code §48-18-110 clarifies that the BCSE Attorneys represent the "interest of the state or the bureau and not the interest of any other party."

Several BCSE statutory duties are at odds with well-understood ethical principles preventing multiple representation. The BCSE can enforce an obligee's support order against the obligor and yet petition for a reduction in the support obligor's order based upon a change of circumstances. The Ethics Committee

opinion and West Virginia statutes allow the BCSE to fulfill its mandatory duties despite the apparent conflict.

V. WHEN THE OBLIGEE RECEIVES TANF BENEFITS

An individual who applies for and receives TANF assistance is deemed by statute (W.Va. Code §9-3-4) to have assigned to the State all rights, title, and interest of any past, present, and future support monies which may be due the individual. The support monies include both child and spousal support owed for the persons receiving assistance.

In cases where support is owed for a child receiving assistance, the DHHR is empowered to collect and retain the support obligation. The amount the State can retain is limited by the amount of the court order or the amount of assistance paid to the family which has not been reimbursed, whichever is less.

If no support order exists, the BCSE will seek to establish a current support order and to recover support retroactively for benefits based upon the obligor's ability to pay according to the guidelines for child support awards.

IV. LOCATION OF OBLIGEEES AND OBLIGORS

West Virginia Code §48-18-111 requires the BCSE to establish a parent locator service (SPLS) to locate individuals for the

purposes of establishing paternity and for the purposes of establishing, modifying, and enforcing child support obligations.

The same section also authorizes the BCSE to enter into an agreement with the federal Department of Health and Human Services for the use of the federal parent locator service (FPLS). Only the BCSE; a family or circuit court judge; or a parent, legal guardian, attorney, or agent for a child may request information from the FPLS. Any information obtained from the FPLS may be used for establishing paternity or for establishing, modifying, and enforcing child support obligations. Information from the FPLS may also be provided to a family or circuit court judge, an attorney for the United States, or an attorney for any state in cases involving the unlawful taking or restraint of a child or in the making or enforcement of a child custody or visitation determination.

VII. ESTABLISHMENT OF CHILD SUPPORT ORDERS

Establishment of child support is an automatic service for TANF recipients and is available to non-TANF applicants as well. The child support action is initiated by the filing of a petition with the Family Court, pursuant to West Virginia Code §48-11-101 et seq. Prior to the final hearing in the matter, the BCSE will attempt to ascertain the gross incomes of both parents for

presentation to the Court, as well as ascertain other factors which may affect the amount of child support (such as the child's medical insurance premiums, other support obligations owed by the parents, daycare expenses for the child, etc.) The Family Court Judge will establish a support obligation based on the guidelines found in West Virginia Code Section 48-13-201 et seq. If the obligor has been properly served but does not enter an appearance, income may be attributed to him/her in the amount of the federal minimum wage for a forty-hour week.

The BCSE also petitions for orders of health and hospitalization insurance coverage (known as medical support) for children. West Virginia Code §48-12-102 requires the Court to address medical support in any temporary or final order which establishes a child support obligation or which modifies a child support obligation. Based on the statute, the BCSE is required to petition for medical support when seeking an initial monetary support order or when seeking a modification of a support order. When the medical support is ordered, the BCSE must take steps to ensure it is obtained. Medicaid is not considered health and hospitalization insurance.

VII. MODIFICATION OF CHILD SUPPORT ORDERS

A review of the existing order commences upon written request by either the obligee or obligor for investigation of

whether a modification is warranted. If the BCSE deems the modification justified by the facts, both the obligor and obligee are notified of the report and recommendation before the filing of a petition seeking a modification.

There are several situations in which the BCSE will pursue a modification: (1) when the time since the last review or order has been three (3) years and there appears to be a 10% difference between the existing support amount and a new formula calculation; or (2) a substantial change of circumstances has occurred, e.g. the obligor or obligee loses his/her job, a change of custody takes place, or there is a 15% difference between the existing support amount and the new formula calculation.

IX. ENFORCEMENT OF SUPPORT ORDERS IN GENERAL

The BCSE has available numerous remedies to enforce delinquent support orders. These include:

- (1) sale of real property pursuant to judgment liens (W.Va. Code §§38-3-1 et seq. and 48-14-308);
- (2) writs of execution (W.Va. Code §§ 38-4-1 et seq. and 48-14-201);
- (3) suggestion (W.Va. Code §§ 38-4-1 et seq. and 48-14-204);
- (4) suggestee execution (W. Va. Code §§ 38-5A-1 et seq. and 48-14-204);
- (5) attachment (W.Va. Code §§ 38-7-1 et seq.);

(6) contempt (W.Va. Code §48-14-501);
(7) liens (W.Va. Code §§ 48-14-201 and 48-14-301);
(8) license suspension (W.Va. Code §48-15-101 et seq.);
(9) federal and state tax intercepts (W.Va. Code §§ 48-18-117 and 48-18-118);

(10) report to OCSE of arrearages of \$5,000.00 or more for passport denial or revocation (§42 U.S.C. 652(k)).

By statute, each unpaid installment of a child support order stands as an enforceable decretal judgment against the obligor which cannot be compromised or retroactively modified. This statutory provision, again the result of a federal mandate, codified existing West Virginia case law. The statute neither refers to, nor applies to, spousal support, even though matured, unpaid spousal support installments, by case law, stand as decretal judgments. Since the interest of a child is not involved, agreements compromising or altering spousal support arrearages should be permitted between consenting adults.

The BCSE can utilize writs of execution, suggestion, or suggestee execution for support arrearages only. Enforcement through these methods is initiated by filing an affidavit when the obligor is behind in support payments. This affidavit can be filed in the county where the obligee or obligor lives or where the obligor's source of income is located. The Circuit Court Clerk is to issue the writ and mail a copy of the affidavit,

along with a notice of filing to the obligor. The notice advises the obligor that the affidavit can be contested for a mistake in the arrearage computation or certain other enumerated mistakes of fact at a meeting with the BCSE if the obligor advises the BCSE in writing of the contest within fourteen (14) days of the date of the notice. If the obligor contests the affidavit, the BCSE is to inform the Court and obtain a court order requiring the obligor to post an adequate security bond. If the outcome of the meeting with the BCSE does not satisfy the obligor, the case proceeds to the Family Court Judge for a hearing.

An obligee can obtain a writ of execution pursuant to West Virginia Code §48-14-204 as a self-help remedy. The forms for the affidavit and notice are available at the Circuit Court Clerk's office. The obligee can secure an appropriate writ without private counsel or the BCSE.

If the obligor is behind in support payments and income withholding or a suggestee execution is not appropriate, the BCSE can petition the Court for the obligor to post a bond or security to ensure the payment of the arrearage. A child support bond is similar to a bond in a criminal case which is to ensure the defendant's appearance at the proceedings. Such a bond may be issued by an insurance agent or a bail bondsman. A security is created by placing something of value with a third party, e.g. certificates of deposit, stocks, or motor vehicle titles. After

the bond or security is established, the BCSE will then petition the Court for a forfeiture of the bond or security if the obligor fails to repay the arrearage as ordered.

The suspension of an obligor's license is authorized by West Virginia Code §48-15-101 et seq. Before suspension can be initiated, the statute requires that an obligor owe arrearages in excess of six (6) months of child support, fail to pay medical support for six (6) months, or fail to comply with subpoenas or warrants relating to paternity or child support proceedings. Upon receipt of the notice of the action against license, the obligor has the choice of paying in full the amounts owed by him/her, requesting a meeting with the BCSE, or requesting a hearing with the Family Court Judge. Failure to act following receipt of the notice may result in the entry of an order suspending the obligor's license without further notice to the obligor.

X. INCOME WITHHOLDING

Universal withholding of support from income, which became law in January 1994, requires that immediate income withholding language be included in all support orders, regardless of whether there is an arrearage. Unless one of the exceptions is met, support is deducted directly from an obligor's paycheck, just as federal and state tax deductions. The two exceptions are: (1)

when the parties agree in writing on an alternative payment arrangement which is sanctioned by the court; and (2) when the court finds good cause as to why immediate income withholding should not be implemented. The BCSE enforces support orders via both intrastate and interstate income withholding.

All orders which do not contain an income withholding provision are considered by operation of law to contain such language. Since West Virginia support orders contain an income withholding provision, the BCSE can initiate income withholding against an obligor's income in any case which is receiving BCSE services and has a court order for child support.

The amounts to be withheld from the obligor's wages or other income are specified in West Virginia Code §48-14-108. In broad terms, the limitations are forty-five percent (45%) of disposable earnings for an obligor who is supporting a spouse or dependent child and fifty-five percent (55%) of disposable earnings for an obligor who is not supporting a spouse or dependent child. If the BCSE is collecting both current child support and arrearages, income withholding for arrearages may not exceed twenty-five percent (25%) of the current obligation. However, if the obligor owes arrearages in an amount that exceeds six (6) months of the current obligation, the BCSE may withhold up to an additional \$100.00 per month from the obligor's wages or other income. (See W.Va. Code §48-14-801.)

XI. FEDERAL AND STATE TAX REFUND INTERCEPTS

Recovery of child support arrearages through interception of an obligor's income tax refund(s) has proved an efficient, invaluable enforcement tool. The federal refund interception program began in 1982 to recover child support arrearages assigned to states by obligees receiving AFDC (now TANF) benefits. The child support enforcement amendments of 1984 opened the federal interception program to NPA obligees and required the states with income taxes to have the same program at the state level. The federal NPA interception program began with refunds payable after December 31, 1985. The West Virginia state tax interception program commenced with refund payable after December 31, 1985. The United States Supreme Court has ruled that federal refunds which are attributable to excess earned income credits are subject to interception for child support arrearages.

Only IV-D cases can be submitted for tax offset. All cases (PA and NPA) meeting the eligibility criteria are automatically submitted to the federal OCSE and the West Virginia Department of Tax and Revenue for offset. The arrearage amount requested for interception must have been verified by the BCSE, but it need not have been reduced to a judgment. Obligors may be submitted for

tax offset even if they are located in a different state than the obligee. Only the state where the obligee resides or which has an assignment for support can submit for the federal interception.

The obligor is notified of the potential interception by "pre-offset notices", sent by the BCSE. The notices advise the obligor of how and by what date the interception/offset can be challenged. Obligor also receive a notice when the refund has been intercepted. In the case of federal offsets, this notice comes from the federal government. For state tax refunds, the notice is sent by the Department of Tax and Revenue.

The obligor may request either an informal review with the local BCSE or a formal hearing before the DHHR Board of Review. With an interstate case, the obligor may choose to have the administrative review in either the submitting state or the state in which the order was entered. The BCSE will accommodate an obligor who cannot personally appear for the administrative hearing by arranging a telephone hearing, if appropriate.

Joint tax returns create particular problems. The BCSE can legally hold all refunds intercepted from joint returns for six (6) months after receiving the money before disbursing it to the obligee. This allows the obligor's spouse to recover his/her portion of the refund through an injured spouse claim, which must be sent by the taxpayer to the appropriate tax department.

XII. INTERSTATE PROCEDURES - UIFSA

For many years, interstate child support enforcement was subject to provisions of the Uniform Reciprocal Enforcement of Support Act (URESAs) or the Revised Uniform Reciprocal Enforcement of Support Act (RURESAs). States adopted different versions of URESAs, and multiple support orders in one case were not uncommon. In 1992, the National Conference of Commissioners on Uniform Support Laws approved and recommended the Uniform Interstate Family Support Act (UIFSA) for enactment in all states. Under UIFSA, only one support order can be in effect in a case at any one time. Federal law required that all states adopt UIFSA by January 1, 1998.

West Virginia's UIFSA law became effective January 1, 1998, and is now contained in W.Va. Code §48-16-101, et seq. The previous URESA law was repealed. Actions which may be brought under the UIFSA statute include establishment of paternity, establishment of child or spousal support, enforcement of a support order, and modification of a support order issued by a court of this state.

IV-D regulations allow enforcement and collection of spousal support and spousal support arrearages as long as the IV-D agency is collecting child support and child support arrearages. The law in West Virginia also allows non-IV-D spousal support (i.e. cases in which only spousal support is owed) to be collected.

However, all states do not permit the local IV-D agencies to pursue establishment or enforcement of spousal support alone.

UIFSA is designed to provide for only one support order at a time (called the "controlling order"). If multiple orders exist in a case, a determination of which state has continuing exclusive jurisdiction (CEJ) must be made. UIFSA provides rules to determine which order is the controlling order. Briefly, a state that has issued an order retains CEJ as long as the custodial parent, noncustodial parent, or child continues to live in that state. If the custodial parent, noncustodial parent, and child no longer reside in the state that issued the support order, the order remains enforceable. However, for modification purposes, the support order must be registered in the state with personal jurisdiction over the other party.

XIII. PATERNITY ESTABLISHMENT

As with the establishment of child support, establishment of paternity is an automatic service for TANF recipients and is available to non-TANF applicants as well. Paternity may be established either voluntarily by executing a written acknowledgment that the man is the father of the child or through judicial means. The BCSE can assist in both situations.

The execution by the mother and father of a declaration of paternity affidavit is controlled by West Virginia Code §16-5-

10(h). The same code section also provides for the rescission of a declaration of paternity affidavit under certain circumstances. The forms for the declaration of paternity affidavit may be obtained at most birthing hospitals or from the local BCSE office.

If the mother and father do not sign a declaration of paternity affidavit, the BCSE will proceed to establish paternity through the Family Court. West Virginia Code §48-24-101 creates a civil action to establish the paternity of a child and to obtain an order of support for the child. Because paternity proceedings are civil action, an alleged father does not have any right to court-appointed counsel.

A paternity action may be brought by any person who has the legal or physical custody of a child, the State of West Virginia, or a man who believes himself to be the father of a child for whom paternity has not been previously established. West Virginia Code §48-24-101(e)(7) allows the child to bring a paternity action after his/her eighteenth (18th) birthday but prior to his/her twentieth (20th) birthday.

If a man engages in sexual intercourse in the State of West Virginia which may have resulted in the conception of a child, the paternity action may be brought in this state, regardless of where the alleged father resides. This use of the long-arm procedure is authorized by West Virginia Code §48-24-101(h).

An alleged father does have the right to DNA paternity testing. The costs of the testing will initially be borne by the state, subject to possible recoupment if the alleged father is shown to be the actual biological father of the child.

Undisputed DNA test results which show a statistical probability of paternity of more than 98% legally establish the man as the father of the child.

With the establishment of paternity, the father has the duty to support his child, and the Court will generally establish a support obligation. The Court may also require the father to pay reimbursement support for the child. Reimbursement is generally limited to the thirty-six (36) months prior to service of the paternity petition upon the obligor. However, the Court may exceed the thirty-six (36) month limit if it finds that the obligor had actual knowledge of paternity or took certain actions which delayed the commencement of the paternity suit. The thirty-six (36) month limit does not apply to the award of medical expenses incurred, including birthing expenses. (See W.Va. Code §48-24-104)

Along with the duty of support, a man who is determined to be the father of a child also has the right to petition for visitation with or custody of the child. An appropriate petition must be filed with the Family Court. However, the BCSE has no authority to litigate matters of custody or visitation in any

case. In a UIFSA paternity proceeding, it is not appropriate for the Court to consider a father's custody or visitation rights. Generally, the Court establishing paternity under UIFSA is not the child's home state under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and, therefore, lacks jurisdiction to address custody or visitation issues.

XIV. SUPPORT PAYMENTS THROUGH THE BCSE

All support payments are required by statute to be paid to the BCSE for distribution. This benefits the obligor by establishing an official payment record, thereby reducing the risk of misplaced receipts. The BCSE payment record also reduces the instances of an obligee failing to report payments to the DHHR and fraudulently receiving TANF benefits.

All payments, whether made by an obligor or by his/her employer, are to be sent to the BCSE, PO Box 247, Charleston WV 25321. The checks or money orders are deposited, and the BCSE then makes a direct deposit to the obligee's bank account or has the payment loaded on to the obligee's debit card.

If an obligee receives TANF benefits, all or a portion of a child support payment may be retained by the State for reimbursement of the assistance benefits.

XV. CONCLUSION

This chapter provides a brief review of West Virginia's child support enforcement program, its basic legal foundation, and its procedures. Further information on the issues relating to child support and paternity may be found in West Virginia Code Chapter 48 and in Chapter 45 of the Code of Federal Regulations.

In addition, the attorneys, supervisors, and child support specialists in the local BCSE offices can provide helpful information regarding the BCSE's policy and procedures.

XVI. GLOSSARY OF TERMS AND ACRONYMS

AFDC	Aid to Families with Dependent Children; commonly known as "welfare". Also known as the IV-A program because it is found in Title IV, Part A, of the Federal Social Security Act (42 U.S.C. §601, et seq.). This program has been replaced by TANF.
Arrearage	The total of an obligor's unpaid support; also termed arrears.
BCSE	Bureau for Child Support Enforcement; the West Virginia child support agency; West Virginia's IV-D agency.
DHHR	The West Virginia Department of Health and Human Resources; the executive department of which the BCSE is a part.
FCJ	Family Court Judge. The judge who presides over domestic relations actions. See Article 2A, Chapter 51, of the West Virginia Code.

Initiating Jurisdiction The jurisdiction where a support action is commenced when the parties reside in different jurisdictions; the jurisdiction where the obligee lives.

IV-A See TANF.

IV-D Agency The BCSE in West Virginia; the state child support agency required by the federal Social Security Act, Title IV, Part D (42 U.S.C. §651, et seq.) to administer state IV-D services.

IV-D Services A range of support enforcement programs available mandatorily to all IV-A recipients and voluntarily upon application to all other citizens; services provided by the BCSE for which the BCSE receives federal reimbursement. See Non-IV-D services.

NPA Non-public assistance. A BCSE case is termed an NPA case if the person involved does not receive TANF; an NPA individual, upon application with the BCSE, receives IV-D services.

Obligee One to whom child support is owed (by the obligor).

Obligor One who owes child support (to the obligee).

OCSE The federal Office of Child Support Enforcement.

OSCAR Online Support collection and Reporting system; the BCSE's central computer system which contains all data regarding each child support case.

PA Public Assistance; TANF; commonly referred to as "welfare". A PA case involves an individual who receives TANF benefits.

Responding Jurisdiction The jurisdiction where the support action commenced by the initiating jurisdiction is heard; the jurisdiction where the obligor lives or has assets.

TANF Temporary Assistance to Needy Families; the cash assistance program for families with children.

UIFSA

Uniform Interstate Family Support Act; an interstate support law adopted in all states (and in several foreign countries). UIFSA has replaced the old URESA law in most states.