

INTRODUCTION TO CHILD SUPPORT ENFORCEMENT IN VIRGINIA

2024 Virginia Beach Bar

Association

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Table of Contents

I. Federal Mandates impacting Virginia DCSE: 2

 A. Introduction: 2

 B. Federal Statutory and Regulatory Authority: 2

 C. For Virginia statutes regarding DCSE authority and procedures, see generally §63.2-1900 et seq. 6

II. Virginia DCSE’s Organizational Structure 6

 A. Virginia DCSE: 6

 B. DCSE Legal Services 7

III. DCSE Services: 7

 A. Obtaining and Terminating DCSE Services Chart 7

 B. For a description of Full IV-D Child Support Services, see I. B.2 above. In addition, DCSE may provide services related to spousal support: 8

IV. Administrative Process: 9

 A. Paternity Establishment: 9

 B. Administrative Child Support Order (ASO): 9

 C. Administrative Enforcement Actions 11

V. DCSE Administrative Appeal & Review Process 17

 A. Reviews, Appeals, and Hearings Overview 17

 B. Case Review 18

 C. Administrative Review 18

 D. Administrative Hearing 18

VI. Practice Pointers 23

 A. IV-D versus non-IV-D Services: 23

 B. Payment/Disbursement: 24

 C. Federal Parent Locator Service (FPLS) 25

VII. Financial Record Terminology: 26

 A. Allocation - Proration 26

 B. Distribution 27

 C. Federal Tax Refund Offset Program 27

I. Federal Mandates impacting Virginia DCSE:

A. Introduction:

1. Part IV-D of the Social Security Act - In 1975, Social Security Amendments of 1974 (Public Law 93-647) created the child support program in part IV-D of the Act. The program was designed for cost recovery of state and federal outlays on public assistance and for cost avoidance to help families leave welfare and to help families avoid turning to public assistance. This statute, as amended, authorizes Federal matching funds to be used for enforcing support obligations by locating nonresident parents, establishing paternity, establishing child support awards, and collecting child support payments.
2. IV-D State Agencies - this established the basis of the formation of child support enforcement agencies, known as IV-D agencies, across the country. It required every State to establish a IV-D agency to collect child support payments due to recipients of Aid for Dependent Children (AFDC) who were required to sign over to the state claims to child support as a condition of eligibility. States were required to offer similar services to non-AFDC cases if requested.

B. Federal Statutory and Regulatory Authority:

1. See 42 USC §§ 651 et seq. and 45 CFR Part 301 through Part 310.
2. Basic Mandated Services to be performed by State IV-D Agencies:
 - a) Locate Services;
 - b) Establishment of paternity, child support and health care coverage;
 - c) Modification; and
 - d) Collection, enforcement and distribution of support monies.
3. Highlights of Federal Mandates:
 - a) 1981 Omnibus Reconciliation Act of 1981 (Public Law 97-35)
 - (1) IRS is authorized to withhold tax refunds for delinquent child support;

(2) Obligations assigned to the state are no longer dischargeable in bankruptcy proceedings. With the Bankruptcy Reform Act of 1994, child support became statutorily protected from being discharged in bankruptcy; and

(3) States are required to withhold a portion of unemployment for delinquent support.

b) 1988 Family Support Act (Public Law 100-485)

(1) Every State is required to implement various procedures for immediate and mandatory wage-withholding for all support orders being enforced by the State's Child Support Enforcement Agencies.

(2) By 1994, states are required to implement presumptive, rather than advisory, guidelines.

(3) Authorizes the appointment of an Assistant Secretary for Family Support within DHHS (Department of Health and Human Services) to administer the Child Support Enforcement Program (OCSE) which is now known as the Office of Child Support Services.
www.acf.hhs.gov/programs/cse/index.html

c) Child Support Recovery Act of 1992 (Public Law 102-521) & Deadbeat Parents Punishment Act of 1998 (Public Law 105-187) - a child support violator can be prosecuted under Federal law if the following facts exist: 1) the violator willfully failed to pay; 2) a known child support obligation; 3) which has a) remained unpaid for longer than a year or is greater than \$5,000 (misdemeanor), or has b) remained unpaid for longer than two years or is greater than \$10,000 (felony) 4) for a child who resides in another state, or 1) the violator traveled in interstate or foreign commerce; 2) with the intent to evade a support obligation; 3) if such obligation has remained unpaid for a period of one year or longer-or is greater than \$5,000 (felony). See 18 U.S.C. §228.

d) Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193)

(1) Replaces AFDC program with temporary family assistance block grant program;

(2) Streamlines the paternity determination process;

(3) States must adopt UIFSA by 1/1/98;

(4) All IV-D orders must include health care coverage, and notice to new employer is sufficient to enroll the child in the absent parent's health plan (unless contested);

(5) States must require employers to report all new hires within 20 days to child support enforcement authorities. The goal of this requirement is to reduce the delay in establishing immediate wage withholdings;

(6) States must review and adjust support orders every 3 years (or shorter cycle) or based upon a substantial change in circumstances (1) upon the request of either parent, or (2) if the child is receiving public benefits;

(7) Each military department must facilitate leave for paternity and support hearings; and

(8) Enforcement remedies:

(a) Seize lump sums from workers' and unemployment compensation, lotteries, judgments, settlements;

(b) Attach assets in financial institutions and retirement funds;

(c) Seek to void or settle fraudulent transfers;

(d) Force the sale of property;

(e) Have the authority to suspend driver's, professional, occupational, and recreational licenses;

(f) Impose liens, which must arise by operation of law;

(g) Credit bureaus must furnish reports to IV-D agencies, and states must report arrearage to credit bureaus; and

(h) Effective 10/1/97, cases with a \$5000 arrearage are subject to passport revocation. (Effective October 1, 2006, cases with arrearages of \$2,500 are subject to passport revocation).

e) P.L. 109-8, Abuse Prevention and Consumer Protection Act of

2005

(a) Allow child support to continue to be enforced even if a debtor has filed bankruptcy.

(b) Child support claims are given priority.

(c) Proceedings related to child support for income withholding, license suspension, credit bureau reporting, tax refund intercepts, and enforcement of medical obligations are exempt from automatic stay provisions.

(d) Bankruptcy trustees are required to notify the claim holder and the child support agency of the debtor's last known address.

f) P.L. 109-171, Deficit Reduction Act of 2005 (DRA)

(a) all child support orders include a provision that either or both parents must provide medical support, and that states may enforce medical support obligations against the custodial parent.

(b) Additionally, states must also provide services to collect co-pays, deductibles, and un-reimbursed medical expenses collected on behalf of a child.

(c) IV-D agencies must impose an annual fee of \$25 on cases where the custodial parent has never received TANF and at least \$500 has been collected.

g) The Flexibility, Efficiency, and Modernization in Child Support Enforcement Programs Final Rule was published on December 20, 2016 Federal Register

(a) The rule includes language for states to consider the noncustodial parent's specific circumstances in imputing income when evidence of income is limited.

(b) The final rule establishes criteria that child support agencies must use to determine which cases to refer to court for a civil contempt action and how they prepare cases for a civil contempt proceeding.

(c) The rule provides that a state may not exclude incarceration from consideration as a “substantial change in circumstances.”

(d) In addition, after learning that a parent who owes support will be incarcerated for more than 180 calendar days, the state must either send a notice to both parents of their right to request a review and adjustment or automatically initiate a review and adjustment with notice to the parents.

C. For Virginia statutes regarding DCSE authority and procedures, see generally §63.2-1900 et seq.

II. Virginia DCSE’s Organizational Structure

A. Virginia DCSE:

1. Division of the Department of Social Services: DCSE is housed within the Virginia Department of Social Services. Alana Tucker is Virginia’s IV-D Director.
2. Virginia DCSE is divided into three geographical regions: Central, Eastern & Western. An assistant director oversees each region. There are district offices throughout the Commonwealth providing child support services within their geographical area.
 - a) Eastern Region Assistant Director is Sharon Stacy
 - b) District Managers for the Region as of 4/6/2024 are:
 - (1) Tina Young – Virginia Beach & Norfolk
 - (2) Gerald Berry – Suffolk and Surrounding areas, Chesapeake, Portsmouth and the Eastern Shore
 - (3) Ashley Jester – Hampton, Newport News, Williamsburg and surrounding areas.
3. Customer Service - In 2006, DCSE implemented a centralized Customer Service Call Center, located in Martinsville, to provide enhanced services to child support customers, which includes an interactive voice response telephone system (800) 468-8894. In addition to the call center, DCSE has an interactive website – MyChildSupport (portal) <https://mychildsupport.dss.virginia.gov/> (strongly recommended for clients to communicate with DCSE, make payments and obtain

records.)

B. DCSE Legal Services

1. The Office of the Attorney General (OAG) provides attorneys to represent the Division. Scott Weber, Senior Assistant Attorney General, oversees the child support section of the OAG Ph#: (804) 786-2452 .
2. The child support section is divided into three regions. A Regional Assistant Attorney General oversees each region. Scott Darnell oversees the Eastern Region. Within each region, Assistant Attorney Generals are assigned to each District Office to provide legal advice and represent the Division in court. In addition, the OAG has appointed several private attorneys (outside counsel) throughout the Commonwealth to represent the Division in court.

Virginia Beach/Portsmouth	Minna Sandwich	minna.sandwich@dss.virginia.gov 757-985-3218
Virginia Beach/Newport News	Mitch Broudy	mitchell.broudy@dss.virginia.gov 757-985-3207
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Hampton	Ann Manzlak	ann.johns@dss.virginia.gov (804)659-9543
Williamsburg & Surrounding Areas	Carla Hook	carla.hook@dss.virginia.gov (757) 985-3220

3. Assistant Attorney Generals and private outside counsel represent the interest of DCSE and not the custodial parent. LE Op. 964 (1988).

III. DCSE Services:

A. Obtaining and Terminating DCSE Services Chart

Type of Case	How to Obtain Services	How to Terminate Services
TANF Va. Code § 63.2-1909	Referred from the local Department of Social Services (Automatic-by operation of law)	Upon the termination of TANF benefits, the custodial parent may file written notice to the Division to terminate the collection of current support; however, the Division shall continue to collect monies for TANF arrears and

		interest until the balances are paid in full.
Foster Care Va. Code § 63.2-1910	Referred from the local Department of Social Services unless the foster care social worker files a good cause notice not to proceed with child support. (Automatic – by operation of law)	Terminates upon the child support and arrearage being paid in full and the child leaving foster care.
DJJ Va. Code § 16.1-290-D	Referred from DJJ	Ended June 30, 2021. No longer can contempt actions be filed in these cases.
Child Care Subsidy 22VAC40-661-70	As a condition of eligibility, all applicants and recipients must cooperate with the Division of Child Support Enforcement unless the subsidy program determines that good cause exists for their failure to do so.	Custodial parents may file a written notice to close the financial portion of their case.
Non-Public Assistance Va. Code § 63.2-1904 & 22VAC40-880-50	File application with the Division. The Courts do not have the authority to direct DCSE to open a case.	Party who opens case provides written notice to the Division.

B. Basic Mandated Services to be performed by State IV-D Agencies:

1. Locate Services;
2. Establishment of paternity, child support and health care coverage;
3. Modification; and
4. Collection, enforcement and distribution of support monies.

C. DCSE may provide services related to spousal support:

1. DCSE does not establish spousal support orders or initiate court action to establish spousal support orders;
2. DCSE may enforce IV-D spousal support obligations when a current child support order or child support arrearage that accrued pursuant to the order is being enforced;
3. DCSE does not collect or enforce spousal support only.
4. IV-D spousal support enforcement services end when neither current child support nor arrearage is due in the case. The NCP will be directed that future payments be made to the payee directly, and release any enforcement action(s) for the collection of spousal support.

IV. Administrative Process:

A. Paternity Establishment:

1. Sworn Acknowledgment of Paternity - the Department shall provide to both the mother and the putative father a written and oral description of the rights and responsibilities of acknowledging paternity and the consequences that arise from a signed acknowledgment, including the right to rescind the acknowledgment within the earlier of (i) sixty days from the date of signing or (ii) the date of entry of an order in an administrative or judicial proceeding relating to the child in which the signatory is a party. Virginia Code § 63.2-1913.
2. Genetic Testing - The Department may order genetic testing and shall pay the costs of such tests, subject to recoupment from the father, if paternity is established. The present cost for the testing completed by Virginia DCSE is \$38.00 per person (\$114 for two parents and one child). If testing is completed by another state's DCSE, the cost will vary. Virginia Code § 63.2-1913.
3. When the putative father neither signs an affidavit of paternity nor voluntarily submits to genetic testing within ninety days from locating him, then the matter is referred to court for judicial action.

B. Administrative Child Support Order (ASO):

1. Essentials of an ASO

- a) The ASO is similar to a child support order from the court for it addresses the following:
 - (1) Monthly amount owed for current support;
 - (2) Amount of arrearage owed;
 - (3) Frequency of support payments;
 - (4) Date the first payment is due;
 - (5) a statement that if child support arrearages, including interest and fees, exists when the youngest child subject to the order emancipates, payments will continue to be collected in the total amount due (current support plus amount applied toward arrearages) at the time of emancipation until all arrearages are paid;
 - (6) A provision for health insurance;

(7) A provision for unreimbursed medical and dental expenses; and

(8) A provision for an administrative income withholding order.

b) Effective Date of an ASO

(1) An initial ASO is effective on the date it is served or the date service is waived; the first payment is due on the first of the month following the date of service and on the first of each month thereafter.

(2) A modified ASO is effective the date the Notice of Proposed Review was served on the non-requesting party. Payment is due the date the NCP receives the order (service date) and on the first of each month thereafter.

c) TANF Arrearage – In some circumstances, the DCSE will assess a child support arrearage based on the TANF paid out to the Custodial Parent for the benefit of the child prior to the entry of the ASO. Virginia Code § 63.2-1908.

d) Legal effect of the ASO – ASOs have the same force and effect as a court order. However, any order issued by a court supersedes an administrative order. Virginia Code § 63.2-1915. The existence of an administrative order does not preclude either a noncustodial parent or custodial parent from commencing appropriate proceedings in a juvenile and domestic relations district court or a circuit court. Virginia Code § 63.2-1916.

2. Modification of an ASO and the General Administrative Review Process - 22VAC40-880-250

a) Review Process: For TANF cases, DCSE will automatically review a case every thirty-six months. The parties may request in writing a review once every three years from either the entry of the last order or the last administrative review, whichever event occurred last; however, upon a showing of special circumstances, DCSE will entertain a modification earlier. Special circumstances include the following:

(1) A child needs to be added to an order as a result of a birth or a physical change in custody;

(2) A child is no longer eligible to receive continued current support (and other children are active on the order) due to a physical change in custody or emancipation;

(3) A health care coverage obligation needs to be added to the order;

(4) The health care coverage insurance premium increases or decreases by at least 25 percent;

(5) The existing child support order does not include the unreimbursed medical/dental provision;

(6) The CP's work-related child care expense increases or decreases by at least 25 percent;

(7) Either parent's income increases or decreases by at least 25 percent.

b) If none of the special circumstances are met nor the three years have elapsed, the parties shall receive a review denial notice from DCSE.

c) The department shall adjust an administrative obligation when the results of the review indicate a change of at least 10% in the monthly obligation but not less than \$25. DCSE provides a notice of the results of the review. The parties have fifteen days from the notice date to file a written objection with the caseworker.

d) Effective Date of the modified ASO: Virginia Code § 63.2-1916 requires the effective date of the ASO to be the date of the notice of review is served on the non-requesting party.

3. Modification of Court Orders – Although DCSE lacks the authority to enter an ASO when a support order is in existence, VA Code § 63.2-1921 allows for quasi administrative/judicial review of the child support order. The same review process for the ASO is utilized. A motion for entry of the proposed support order is submitted to the court along with the order. If neither party objects to the entry of the proposed order within thirty days of receipt of the notice, the proposed order may become final. Like the ASO, the effective date is date the non-requesting party was served with the notice of the proposed review.

C. Administrative Enforcement Actions

1. Immediate Income Withholding Order / Va. Code Ann. §§ 63.2-1924 & 63.2-1926. Wage Withholding applies to military, federal, civilian employers, unemployment benefits, worker's compensation, pension/retirement benefits, Social Security Disability, independent contractors and some veteran's benefits. Employer is liberally construed and can actually apply to situations where the employer pays the independent contractor on a periodic basis. See Va. Code § 63.2-1900.

2. Utilization: Generally, every ASO requires the use of a wage withholding. In addition, upon the noncustodial parent becoming one month overdue on court ordered child support, DCSE is authorized to implement a wage withholding. The noncustodial parent may appeal the wage withholding within ten days of service. The appeal is limited to a showing of a mistake of fact: that is, misidentification of payor or error in the amount of arrears or current support.

a) The statute requires DCSE to collect current support and payments toward the arrears. The monthly arrearage repayment is calculated by taking either 25% of the monthly current support owed or \$65.00 which ever is greater.

b) Consumer protection limits apply. Va. Code § 34-29 limits employer to sending 60% of the employees disposable income if they have no dependents that are residing with them and limits the employer to 50% if they have dependents residing with them. If the child support arrears is over twelve weeks old, then the limits increase to 65% for employees with no dependents residing with them and 60% with employees who have dependents residing with them.

c) An Issue Relating to Employer - The employer is responsible for providing the noncustodial parent with a copy of the wage withholding. The employer may charge up to \$5.00 for processing each wage withholding. If the employers fail to withhold the income, they may be held responsible for 100% of monies they should have withheld. Va. Code § 63.2-1930. In addition, if the employers withhold the funds but fail to forward the funds to DCSE, they are subject to criminal action, Embezzlement, Va. Code § 18.2-111.2.

d) Miscellaneous – the administrative wage withholding terminates when the child support obligation ceases and no support arrearages are owed, or if the case closes with DCSE. Va. Code §§ 20-60.3 and 63.2-1916 provide that upon child support ceasing, DCSE shall continue to collect arrearage in the same amount as the total amount due (current support plus amount applied toward arrearages) at the time of emancipation until all arrearages are paid.

3. Liens – VA Code §§ 63.2-1927, 63.2-1928 & 63.2-1939

a) Utilization: A lien arises by operation of law for overdue support and the department may file a lien on the real or personal property of the noncustodial parent when the division has

(1) Issued an administrative support order;

(2) Received a Virginia court order; or

(3) Received a support order from a jurisdiction outside of Virginia.

b) Effect of the Lien:

(1) When the lien is docketed in the county or city where the noncustodial parent resides, it shall be a lien against all property of the debtor in that location where docketed with priority of a secured creditor including:

(a) Real Estate – Va. Code § 63.2-1934 allows for foreclosure through an action brought in circuit court. The statute only requires placing a notice of foreclosure in the local newspaper for two weeks. These liens have been recently effective with the recent surge of refinances;

(b) Personal Property, including a lien against anticipated personal injury or wrongful death settlement or award proceeds; DCSE’s lien takes priority over all other liens except as stated in Va. Code § 63.2-1927.

4. Orders to Withhold & Deliver – Administrative Garnishment on Bank Accounts etc... Va. Code §§ 63.2-1929 & 63.2-1931.

a) Order to Withhold is a separate order from the Order to Deliver. The Order to Withhold freezes the account. The account/property is frozen until the entity receives an Order to Deliver or a DCSE notice rescinding the order.

(1) It is served on both the account holder and the NCP. It may be used for anticipated personal injury or wrongful death settlement proceeds. The NCP has a right of appeal based upon a mistake of fact or that the property is exempt from the debt under the law if exercised within ten days of being served with the order. The entity served with the order to withhold must file an answer under oath within ten days of service responding to the order to withhold.

(2) If a financial institution replies that the NCP has funds in a joint account, within twenty-one days from the date it received the answer DCSE must serve the joint account holders and the institution with notice. The joint account holders have ten days from service to appeal the matter. If the apportionment of the joint account cannot be resolved,

DCSE files a petition in general district court/circuit court. Where the joint holders are married, it is presumed that the account is owned by them equally and the parties must prove by clear and convincing evidence otherwise. The financial institution may release the funds after twenty-one days of serving its answer if it has not received DCSE's notice to the joint account holders. In addition, the institution may release the funds after ninety days from receiving the notice to joint account holders if it has not received an order to deliver or a court petition pertaining to the apportionment.

b) Orders to Deliver: the statute provides that the Commonwealth hold the entities harmless when they deliver money or property to DCSE; on the other hand, the entities are liable for 100% of the value of the debt which is the basis of the lien for failure to surrender the property to DCSE. Va. Code § 63.2-1930.

5. Credit Bureau Reporting – Va. Code § 63.2-1940 requires DCSE to provide support payment arrearage information to the consumer credit reporting agencies. DCSE is further required to provide noncustodial parents notice of the proposed release of information and the procedures available to contest the accuracy of the arrearage. When the arrears total at least \$500 or the noncustodial parent is over three months behind in his support, DCSE automatically reports the arrearage information to the major credit bureaus: Equifax, Trans Union and Experian.

6. Suspension of Drivers License – Va. Code §46.2-320 - authorizes DCSE to suspend the noncustodial parent's driver's license:

a) Criteria for Driver License Suspension:

(1) An arrearage of more than \$5,000 or

(2) 90 days delinquent in support payments.

(3) NCP has failed to comply with a subpoena, summons, or warrant relating to paternity or child support proceedings.

b) Process: Within ten days of service of the notice to suspend driver's license, the NCP may file an appeal at DCSE's District Office. DCSE will then file a petition to suspend the drivers license in court. The burden of proof is on the NCP to show that his failure to pay was not willful.

c) Reinstatement of Driver's License: To avoid license suspension or have the license reinstated, NCP may negotiate with DCSE.

Virginia Code was amended in 2019 to address the reinstatement of driving privileges.

(1) Criteria for License Reinstatement 1st Time:

- (a) Paid the delinquency in full; or
- (b) Reached an agreement with DCSE to satisfy the delinquency within a period not to exceed 10 years and at least one payment, representing at least five percent of the total delinquency or \$600, whichever is less, has been made pursuant to the agreement. Failure to comply with the agreement will result in license re-suspension without further notice.
- (c) Comply with summons, warrant or subpoena relating to a child support or paternity proceeding
- (d) Successfully complete or participate in an ICMP program.

(2) If the NCP fails to abide by the agreement and subsequently seeks reinstatement of driver's license then the NCP must meet the following criteria:

- (a) the person has paid the delinquency in full; or
- (b) has entered into a subsequent agreement with DCSE to satisfy the delinquency within a period not to exceed 7 years and has made at least one payment of \$ 1,200 or five percent of the total delinquency, whichever is less, pursuant to the agreement.

(3) If the NCP fails to abide by the second or subsequent agreement and seeks reinstatement of driver's license then the NCP must meet the following criteria:

- (a) Has entered a new agreement with DCSE if the person has made at least one payment of \$ 1,800 or five percent of the total delinquency, whichever is less, and agrees to a repayment schedule of not more than 7 years.

d) Restricted Driver's License: In addition, the NCP may file a petition for restricted driver license. Upon a showing of good cause, the court may grant a restricted driver license to and from

work, school, visitation and medical appointments so long as the only hold on the NCP's license is from DCSE.

e) Suspension of occupational licenses under Va. Code § 63.2-1937;

(1) This enforcement action is initiated through a court process and not through an administrative process.

(2) It has similar prerequisites as a driver license suspension: arrearages of more than \$5,000 or more than a 90 day delinquency period, or failure to comply with a subpoena, etc. The NCP has various defenses to the suspension of a professional license including the following:

(a) There is an alternate remedy that would result in collection.

(b) It would cause irreparable harm to himself or his employees;

(c) It would not result in payment of arrears; or

(d) The NCP made a good faith effort to reach an agreement with DCSE.

f) State Tax Refund/Lottery Intercept allows for DCSE to intercept refund monies and lottery winnings of the NCP if the NCP has an arrears balance of \$25 or more. The NCP is served with an advance notice and provided thirty days to note the appeal to receive an administrative hearing regarding the amount of arrearages or the validity of the claim. The appeal from the hearing officer is to the circuit court in which the NCP resides, and the matter is decided based on the record as opposed to a trial *de novo* (See Va. Code §58.1-527).

g) Federal Tax Intercept (26 USC § 6402; Va. Code § 63.2-1955; & 45 CFR § 303.72) operates similar to the state tax refund program with some minor exceptions. If TANF arrears are \$150 – or - more and three months delinquent or non-TANF arrears are \$500 or more, DCSE may intercept federal tax returns. If there is a joint return, DCSE will hold the funds for 180 days to allow the joint tax payor to file an innocent spouse claim with the IRS.

h) Passport Denial

(1) Criteria for Passport Denial - NCP owes child support arrearage in an amount exceeding \$2,500. The amount cannot include spousal support arrears. (42 USCS§652 (k)).

(2) Process

(a) DCSE submits NCP's name with arrearage to the Federal Office of Child Support Enforcement (OCSE);

(b) OCSE sends a pre-offset notice to the NCP. The pre-offset notice informs the NCP that if the NCP owes an arrearage in an amount exceeding \$2,500, the Secretary of State will refuse to issue a passport, and may revoke, restrict, or limit a passport which was previously issued;

(3) Practice Pointer: NCP will be denied a new or the re-issuance of a passport. It is unlikely that the State Department will suspend or revoke a passport.

(4) Exceptions to Passport Denial. 22VAC40-880-405.

(a) Life or death situations involving an immediate family member (verification of the death or medical emergency is mandatory);

(b) Employment contingent upon international travel with written proof from the employer of current employment or an offer and acceptance of employment and an agreement with DCSE that includes an income withholding order, a lump sum payment, and a plan to make regular payments to satisfy the arrearage within a finite period of time, or.

(c) The erroneous submittal of an individual, i.e., the denial of an individual that has never owed child support, not an individual that owed child support at the time of submittal and has since made payment.

V. DCSE Administrative Appeal & Review Process

A. Reviews, Appeals, and Hearings Overview

1. State and federal law require that the NCP be given the right to contest and appeal certain administrative actions taken by DCSE to establish and enforce a support obligation.

2. CPs also have the right to appeal any action to establish or adjust a child support obligation.
3. Either party can request that his/her case be reviewed any time. He or she may also be entitled to an informal administrative review, to appeal, or to a formal hearing with a hearing officer and judicial review.

B. Case Review

1. Consists of the analysis of information and actions taken on a case - the review must relate to an action that has been or could be taken based on sufficient case information, and is to ensure that the information or action taken on the case was correct.
2. Either party may request a review of his/her case at any time. The request may be made verbally or in writing.
3. Generally, the caseworker has 10 days to contact the requesting party by phone or in writing.
4. The caseworker will evaluate the actions on the case to ensure that appropriate procedures have been followed and advise the party requesting the case review of the results of the review and any actions taken.

C. Administrative Review

1. Consists of an informal conference
2. The Administrative Review is held when the NCP contests any federal offset program notice, a report made because of a request from a consumer reporting agency, passport denial, or Comptroller Vendor Debt set off.

D. Administrative Hearing

1. An Administrative Hearing is a formal hearing that gives an appellant an opportunity to contest actions taken by DCSE.
2. Either parent may appeal any provision of an Administrative Support Order.
3. The NCP may appeal the Notice of Proposed Action for a Mandatory Withholding of Earnings, Advance Notice of Lien (Virginia court orders only), State Income Tax Intercept, Order to Withhold and Passport Denials. Matters regarding Federal Income Tax Offset, Consumer Reporting Referral and Comptroller Vendor Debt Set Off can only be appealed after an administrative review decision has been issued by DCSE.

4. In order for the NCP to appeal an enforcement action, the NCP must prove that either: (1) the action was based on a mistake of fact because there was either an error in the identity of the noncustodial parent or an error in the amount of current support or past due support owed, or (2) the funds are exempt from garnishment by law.

5. Procedural Requirements:

a) A request for an administrative appeal hearing must be made in writing.

b) A request for an appeal of an Administrative Support Order must be received within 10 calendar days of service of the order.

c) Appeal of a State or Federal Income Tax Intercept must be received within 30 calendar days of the NCP receiving the off-set notice.

d) The written request for an administrative appeal must be mailed to the Virginia Department of Social Services Appeals and Fair Hearings Unit, 5600 Cox Road Glen Allen, VA 23060

6. Pre-Administrative Hearing Issues:

a) The DCSE Section Hearings Manager will assign the appeal to a hearing officer.

b) If the hearing officer determines that the appeal is valid, the hearing officer will schedule the hearing within 45 days from the postmark date, unless there are delays due to scheduling conflicts or a request for a continuance.

c) The CP, NCP, and their counsel, if any, will be notified in writing of the date, time, and location of the hearing. The appellant is responsible for providing the hearing officer with a current, correct mailing address.

d) The district office will be notified of the hearing date, time and location. The hearing will be held at the district office where the CP resides, unless the hearing officer approves other arrangements.

e) The appellant may request a telephonic hearing by contacting the hearing officer either in writing or by telephone. A prehearing conference may be held at the district office to address preliminary matters prior to the hearing date. An appellant who requires special assistance or an accommodation must notify the hearing officer as soon as possible.

f) The district office representative must submit the case documents to the hearing officer no later than three workdays before the hearing.

g) Continuances: The hearing may be rescheduled once, for good cause as determined by the hearing officer, if the request is made in advance. The appellant may initially make the request for a continuance by telephone or in writing. The hearing officer has discretion to reschedule a hearing in the case of an emergency.

7. Administrative Hearing Protocol:

a) The hearing officer has complete authority over the hearing, including the authority to limit the number of witnesses and to require that the evidence be relevant to the issue being appealed.

b) Formal rules of evidence do not apply at the hearing. Only evidence that is determined by the hearing officer to be relevant to the issue being appealed will be admissible.

c) Either party may record the hearing. The hearing officer will record the hearing if the issue on appeal involves state or federal tax intercepts.

8. The Administrative Hearing

a) The hearing will generally follow this order:

(1) The hearing officer will make a preliminary statement explaining the hearing procedure before the hearing begins.

(2) Introductory statement and introduction of attendees by hearing officer;

(3) Presentation of the district office's case; Questions by appellant;

(4) Presentation of the appellant's case;

(5) Questions by the district office;

(6) District office's closing statement (may be waived); and

(7) Appellant's closing statement (may be waived).

b) Hearing Rights are as follows:

(1) Examine all documents and records used by the district office in determining the support obligation with the

exception of information protected by the Government Data Collection and Dissemination Practices Act.

- (2) Present the case or have it presented by legal counsel or another person;
- (3) Bring witnesses to the hearing;
- (4) Advance arguments without undue interference at the hearing;
- (5) Question or refute all pertinent facts and circumstances in the case;
- (6) Submit evidence to establish pertinent facts and circumstances; and
- (7) The hearing officer may hold the record open to receive additional evidence or clarify facts at the request of either party.

9. Hearing Officer's Decision

- a) A written decision will be sent to all parties by certified mail, return receipt requested, within 45 calendar days of the date of the appeal request, unless a continuance was granted. A copy of the decision will be sent to the district office.
- b) If the hearing took place in person, rather than by telephone, the hearing officer may request a waiver of service by certified mail and may personally serve the decision on the parties. If service of the decision is made personally at the time of the hearing, the district office will send a copy of the decision, by certified mail, to the custodial parent if the custodial parent is not present at the hearing.

10. Appeal of the Hearing Officer's Decision:

- a) An appeal may be taken by filing a written notice of appeal with the clerk of the court having proper jurisdiction to review the decision of the hearing officer.
- b) A nonresident obligee for whom the Department is acting is not required to appear at the hearing. Evidence relative to the support obligation may be taken from a nonresident obligee by deposition and presented by the Department at the hearing.
- c) Such appeal shall be taken within ten days of receipt of the

hearing officer's decision. Except for state and federal intercepts, all hearing officer decision appeals are heard in the Juvenile & Domestic Relations District Court appeal de novo (See Virginia Code § 63.2-1943). The hearing officer appeal decisions for federal and state intercepts are heard in circuit court on the record.

d) Statutory/Regulatory Authority: Virginia Code §§ 63.2-1942 & 63.2-1943; 22VAC40-880-420, 430, 440.

e) Admin. Appeal Chart

APPEAL TYPE	TIME PERIOD TO NOTE APPEAL	APPEAL CRITERIA	PROCESS
ADMINISTRATIVE SUPPORT ORDER (ASO)	10 calendar days from date of service of ASO	Hearing officer has no jurisdiction over paternity	NCP may file an appeal to J&DR Court within 10 days of receiving the decision of the hearing's officer. The JDR appeal is heard de novo.
INCOME WITHHOLDING ORDER (IWO)	10 calendar days from date of service of notice of intent	Appeals are based on mistake of fact. 63.2- 1924 (B)	NCP may file an appeal to J&DR Court within 10 days of receiving the decision of the hearing's officer. The JDR appeal is heard de novo.
ADVANCE NOTICE OF LIEN	10 calendar days from date of service of ASO	Appeals are based on mistake of fact. There is no formal administrative appeal process.	The NCP may appeal the Adv. Not. of Lien that is based on an arrears that accrued under a Virginia Court Order. The NCP cannot appeal liens filed on ASOs or on an out-of-state order. NCP may file an appeal to J&DR Court within 10 days of receiving the decision of the hearing's officer. The JDR appeal is heard de novo.
INTENT TO REPORT CREDIT AGENCY	10 calendar days after receiving notice of the result of the Admin. Review.	Past due support shown on this notice is not correct or not owed. §63.2-1940	NCP may file an appeal to J&DR Court within 10 days of receiving the decision of the hearing's officer.
VENDOR PAYMENT INTERCEPT	10 calendar days after the Vendor Payment Intercept Notification is mailed	a. past due support is not owed; b. the amount of the debt claimed is incorrect, or c. the payment is ineligible for interception.	NCP files an appeal in the circuit court within 30 calendar days of receiving the hearing officer's decision. The agency's finding of facts shall be sustained if supported by the evidence. Va. Code §§ 63.2-1943& 58.1-527
PASSPORT DENIAL	30 days from the date of the Pre-offset Notice to request an administrative appeal	a. arrears don't meet the threshold amount at the time of certification or, b. mistaken identity of the party.	NCP files an appeal to circuit court within 30 calendar days from the date of the hearing officer's decision pursuant to the procedures under the Setoff debt Collection Act, Va. Code §58.1-520 et seq.

FEDERAL TAX INTERCEPT	30 calendar days from the date of mailing of the administrative review determination	a. past due support is not owed; or b. the amount of the debt claimed is incorrect.	NCP files an appeal in the circuit court within 30 calendar days of receiving the hearing officer's decision. The agency's finding of facts shall be sustained if supported by the evidence. Va. Code §§ 63.2-1943& 58.1-527
STATE TAX INTERCEPT	30 calendar days from the date of the State Income Tax Intercept/Lottery Winnings Notification Letter	a. past due support is not owed; or b. the amount of the debt claimed is incorrect.	NCP files an appeal in the circuit court within 30 calendar days of receiving the hearing officer's decision. The agency's finding of facts shall be sustained if supported by the evidence. Va. Code §§ 63.2-1943& 58.1-527
ORDER TO WITHHOLD (OWD)	10 calendar days after service of the Order to Withhold §63.2-1929	a. You are not the person named in the order; b. past due support is not owed or an incorrect amount; or c. property withheld is exempt under law.	NCP may file an appeal to J&DR Court within 10 days of receiving the decision of the hearing's officer. The JDR appeal is heard de novo.

VI. Practice Pointers

A. IV-D versus non-IV-D Services:

1. Court issued Income Withholding Orders - the Division may be tangentially involved in cases where neither party has applied for DCSE services. Generally these non-IV-D cases are created as a result of court-ordered income withholdings; because all income withholdings (both IV-D and non-IV-D) are paid through the Commonwealth of Virginia (See Va. Code Ann. § 20-79.3(10)). The Division maintains an accounting record of these payments but does not assign a caseworker or actively manage these cases at the district office level. The Division is limited to processing payments on such cases and has no authority to modify withholding orders or take enforcement actions. With non-IV-D cases, it is essential to keep the Division, the clerk's office that issued the income withholding, and the noncustodial parent's employer informed of any support modifications which affect the income withholding. DCSE cannot modify a court ordered wage withholding. DCSE is required to prorate the monies among all the cases no matter whether IV-D or non-IV-D. DCSE can provide a record of payments to the non-IV-D parties. A non-IV-D case can be easily converted to a IV-D case upon a party filing an application of services with DCSE.

2. As of July 1, 2018, the courts are now authorized to issue wage withholdings for spousal support cases when no child support is ordered. VA Code § 20-79.1. Prior to July 1, 2018, the statute only authorized wage withholding for spousal support if the obligor also owed child support.

B. Payment/Disbursement:

1. Payment Options

- a) Mail Payments: The checks or money orders should be made to the Treasurer of Virginia and mailed to DCSE, P.O. Box 28990 Richmond, VA 23228-899. The NCPs are required to insert their names and social security numbers on the checks or money orders.
- b) MyChildSupport on-line portal. NCP's can set up accounts and make payments on-line through the secure website.
<http://www.dss.virginia.gov/family/dcse.html>
- c) Virginia MyChildSupport voice response system- 1-877-670-2941.
- d) TouchPay Kiosks in all district offices and some courthouses.
- e) MoneyGram- most CVS and Wal-mart locations. Receive code 14683. The obligor must provide his/her DCSE # which should contain 10 digits. The DCSE # shall include zeroes in front of the DCSE# to provide the 10 digits (Example 0007546699).
- f) PayPal/Venmo are available through your smart phone browser through the TouchPay Site at:
<https://www.touchpayonline.com/making-payments/> PayPal and Venmo are listed under the payment options section.

2. Disbursement:

- a) Proration Rules – Funds collected by DCSE must be prorated among the noncustodial parent's cases both IV-D and non-IVD cases with monies first paying current support on each case, and any remaining funds then paying arrears (Va. Code §20-79.1).
- b) Parents receiving Support Payments- Custodians may receive support payments three ways:
 - (1) EPPI Card- Similar to an ATM or debit card. When a payment is received and processed, it is then applied to the Way2Go card.
 - (2) A paper check mailed to the custodian.

(3) Direct Deposit - Instead of having the child support mailed to the custodial parents, custodial parents can arrange for payments to be directly deposited into their account. The form may be downloaded from the DSS website - <https://www.dss.virginia.gov/files/division/dcse/forms/032-11-0200-20-Ang.pdf>

C. Federal Parent Locator Service (FPLS)

1. New Hire Requirements – Va. Code § 63.2-1946 and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, 42 U.S.C. 653A, requires all employers to report newly hired and re-hired employees to a state directory within 20 days of their hire date.

2. Purpose:

- a) Federal and State laws contain strict guidelines for the use of new hire reporting information.
- b) Virginia's child support computer system matches new hire information against open child support cases to locate non-custodial parents to establish paternity and child support orders, and enforce existing orders.
- c) IV D agencies across the country utilize these matches in similar manner as Virginia.
- d) New hire information can also be used by states to help detect and prevent fraudulent payments to recipients of unemployment insurance, workers compensation, and welfare benefits.

3. Employers: The law applies to all employers and/or labor organizations in the State of Virginia. Employers must report all employees who reside or work in the State of Virginia to whom the employer anticipates paying earnings.

- a) Temporary agencies are responsible for reporting their workers who sign a W-4 form and report to an assignment. Workers need to be reported only once; they do not need to be reported each time they report to a new client. If the worker has a break in service from your agency and a new W-4 form is required, then a new hire report is also needed.
- b) Labor unions and hiring halls must report their own employees; that is, individuals who work directly for the labor union or hiring

hall. If the labor union or hiring hall simply refers individuals for employment, it does not need to file new hire reports for these actions. If a labor organization actually pays the individuals whom it refers (as opposed to having them paid by the person or entity to whom they have been referred), the labor organization would be considered the "employer" and subject to the new hire reporting.

4. Employees:

a) Employee Test: an individual who is an employee for purposes of federal income tax withholding from wages is also an employee for new hire reporting purposes. Employers do not have to report subcontractors.

b) Rehires: Employers must report rehires, or employees who return to work after being laid off, furloughed, separated, granted a leave without pay, or terminated from employment. Employers must also report any employee who remains on the payroll during a break in service or gap in pay, and then returns to work. This includes teachers, substitutes, seasonal workers, but not reservist called to active duty.

5. Obtaining information from the FPLS:

a) DCSE Confidentiality Rules- The Division is authorized to provide the parties with copies of court orders, administrative orders, enforcement actions, fiscal records, and financial information used to calculate the child support obligation. In addition, the Division may provide personal information contained in the case record that pertains to the individual requesting the information. The Division cannot provide client information to an attorney unless the attorney provides a written authorization from his or her client.

b) Special Application – a special application can be filed with State Parent Locator Service requesting locate information of a parent. The request must meet specific criteria before any information can be released.

VII. Financial Record Terminology:

A. Allocation - Proration

1. Allocation (proration) is a process of dividing an NCP's payment among all cases for which s(he) is ordered to pay support.
2. The system automatically allocates a support payment from an NCP

among the NCP's cases, IV-D and non-IV-D, based on a hierarchy of current support and arrears. APECS executes this hierarchy through a table of support types, accounts, and subaccounts. Support types include but are not limited to the following; a) Child Support, b) Medical Support, and c) Spousal Support.

B. Distribution

1. Distribution is the allocation of child support collected to the various types of debt within a child support case.
2. i.e., monthly child support obligation, child support arrearage, child support interest, spousal support, spousal support arrears, spousal support interest, medical arrears and medical interest etc.

C. Federal Tax Refund Offset Program

1. Federal Tax Refund Offset Program collects past due child support amounts from noncustodial parents through the interception of their Federal income tax refund, or an administrative payment, such as Federal retirement benefits.
2. Since its purpose is to collect past due child support, this is the one instance where the payment is credited first to the arrearage balance and then to current support owed for the month. Additionally, this is one instance where TANF debt is paid before non-TANF debt.