



Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

Author: Chenwei Zhang, Attorney
Reviewer: Ralph D. Clark, Division Chief

Volume 133 Issue 13
April 16, 2020

Child Support Default: Actions and Penalties

A child support default is any failure to pay an amount under a child support order equal to or greater than the amount payable for one month under the order. A child support enforcement agency (CSEA) that identifies a default must investigate it and send the obligor a default notice if warranted. An obligor has the opportunity to contest a default notice administratively and through a court hearing. A final and enforceable determination of default requires a court or CSEA to issue or revise a withholding or deduction notice or an alternative enforcement order to reflect any updated arrearage amount.

A person may be guilty of the crime of nonsupport of dependents if that person fails to provide support to another person whom, by court order, the person is or was legally obligated to support, and an amount for support was due and owing before the termination of the duty to pay support and remains unpaid. A person found guilty of disobedience of or resistance to a court order or failure to comply with an administrative support order also may be punished for contempt of court.

Other actions that may be taken against an obligor in default include: licensure suspension and nonrenewal, notification to a consumer reporting agency, interception of tax refunds, liens against the obligor’s personal or real property, intervention in an action for judgments or claims owed to an obligor, access restrictions against an obligor’s account with a financial institution, administrative offsets, claiming an obligor’s unclaimed funds, and establishment of a poster program displaying obligors in default.

Contents

Initiation of default proceedings	2
Investigation and notice	2
Mistake of fact hearings	2
Court or CSEA determination	2
Criminal prosecution for nonsupport of dependents.....	3
Contempt of court	4
Licensure consequences	5
Consumer reporting agencies.....	5
Income tax intercept.....	5

Administrative offsets.....	5
Liens	6
Creditor’s bill.....	6
Access restriction and withdrawal directive from funds held in financial institutions	6
Unclaimed funds.....	7
Poster program.....	7

Initiation of default proceedings

A child support “default” is any failure to pay an amount under a child support order equal to or greater than the amount payable for one month under the order.¹

Investigation and notice

Once a child support enforcement agency (CSEA) identifies a default, the CSEA must investigate it. Within 15 days after identification, the Office of Child Support (OCS) under the Department of Job and Family Services must send to the obligor (person required to pay the child support) a default notice containing the arrearage information and the administrative and court action that will take place if the obligor contests the information in the notice.² The contents of the default notice are final and enforceable by the court unless the obligor files a written request for an administrative hearing with the CSEA no later than 14 days after the notice is issued.³

Mistake of fact hearings

If the obligor requests an administrative hearing, the CSEA must determine whether any mistake of fact was made in the default notice. It must then send its determinations to the obligor. The CSEA’s decision is final and enforceable unless, within 14 days after the determination is issued, the obligor files a written motion with the court requesting a court hearing.⁴ If a court hearing is requested, the court must determine whether there is a mistake of fact in the default notice. The court’s determination is final and enforceable.⁵

Court or CSEA determination

If the court or CSEA determines that no default exists, it must terminate default proceedings.⁶ If, however, there is a final and enforceable determination of default, the court or CSEA must issue or revise a withholding or deduction notice or an alternative enforcement order to reflect the arrearage amount, if it has changed. Alternative enforcement orders include

¹ R.C. 3121.01(B) and 3123.01(B).

² R.C. 3123.02, 3123.03, and 3123.031.

³ R.C. 3123.032 and 3123.04.

⁴ R.C. 3123.04 and 3123.05.

⁵ R.C. 3123.05.

⁶ R.C. 3123.06(B).

posting cash bond, imposition of a seek work order, or collection of lump sum monetary payments of the obligor.⁷

A withholding or deduction notice must require the payment of arrearages caused by the default along with any payment for current support.⁸ The arrearage amount to be collected with each payment is rebuttably presumed to be at least 20% of the current support payment.⁹

If a court determines that an obligor is in default, the court must issue a new order requiring the obligor to pay support. If the court determines that the default was willful, the court may assess interest, at the rate determined under statute, from the date the court specifies as the date of default to the date of the new order.¹⁰

Criminal prosecution for nonsupport of dependents

A person may commit the crime of nonsupport of dependents by failing to provide support as established by a court order to another person whom, by court order, the person (1) is legally obligated to support or (2) was legally obligated to support and (a) an amount for support was due and owing before the termination of the duty to pay support and (b) the amount remains unpaid.¹¹

Inability to pay is an affirmative defense to a charge of criminal nonsupport, provided that support was paid that was within the accused's ability and means.¹² But, it is not a defense that the person required to be supported is being adequately supported by someone else.¹³

The crime of nonsupport of dependents is a first degree misdemeanor. The violation, however, becomes a fifth degree felony if: (1) the offender has previously been convicted of or pleaded guilty to the crime or (2) the offender failed to provide support for a total accumulated period of 26 out of 104 consecutive weeks, regardless of whether the 26 weeks were consecutive. If the offender has previously been convicted of or pleaded guilty to a felony violation of the crime, a violation is a fourth degree felony.¹⁴

⁷ R.C. 3121.03, 3121.12, and 3123.06(A).

⁸ R.C. 3123.06(C).

⁹ R.C. 3123.21.

¹⁰ R.C. 3123.17(A); R.C. 1343.03.

¹¹ R.C. 2919.21(B). A person may also commit the crime if the person abandons or fails to provide adequate support to the person's child under age 18, or mentally or physically handicapped child under age 21. This prohibition does not require failure to pay under a child support order for it to be violated. R.C. 2919.21(A).

¹² R.C. 2919.21(D).

¹³ R.C. 2919.29(F).

¹⁴ R.C. 2919.21(G).

Nonsupport of Dependents – Possible Criminal Penalties ¹⁵			
Level of Offense	Jail/Prison Term	Fine	Community Residential/ Nonresidential Sanction
First degree misdemeanor	≤180 days in jail	≤\$1,000	Yes
Fifth degree felony	6 to 12-month prison terms	≤\$2,500	Yes
Fourth degree felony	6 to 18-month prison terms	≤\$5,000	Yes

The penalty for a first degree misdemeanor is any sanction or combination of sanctions consisting of a jail term of not more than 180 days, a financial sanction (including, for example, a fine of not more than \$1,000), or a community residential or nonresidential sanction. The penalty for a fifth degree felony may include a prison term of 6, 7, 8, 9, 10, 11, or 12 months, a community control residential or nonresidential sanction, or a financial sanction, which may include a fine of not more than \$2,500. The penalty for a fourth degree felony is the same as for a fifth degree felony, except that it also may include prison terms of 13, 14, 15, 16, 17, or 18 months and the financial sanction may include a fine of not more than \$5,000.¹⁶

With some exceptions, the court imposing a sentence on a felony offender must first consider placing the offender on one or more community control sanctions under specified provisions of the Felony Sentencing Law, with an emphasis under the sanctions on intervention for nonsupport, obtaining or maintaining employment, or another related condition.¹⁷

Contempt of court

A person found guilty of disobedience of or resistance to a court order or failure to comply with an administrative support order may be punished for contempt of court. Any party who has a legal claim to support ordered for a child may initiate a contempt action for failure to pay the support. In all contempt proceedings the court must conduct a hearing. If found guilty, for a first offense the court may impose a fine of up to \$250, 30 days in jail, or both. For a second offense, the court may impose a fine of up to \$500, 60 days in jail, or both. For a third and any subsequent offense, the court may impose a fine of up to \$1,000, 90 days in jail, or both. In addition to any penalty or other remedy imposed for violating a court-issued support order, the court must assess against the obligor the court costs arising out of the proceeding and any reasonable attorney's fees of any adverse party.¹⁸

¹⁵ R.C. 2929.13 to 2929.18, 2929.22, and 2929.24 to 2929.28.

¹⁶ R.C. 2929.13 to 2929.18, 2929.22, and 2929.24 to 2929.28.

¹⁷ R.C. 2919.21(G)(1).

¹⁸ R.C. 2151.23(G), 2705.02, 2705.031, 2705.05, 3105.21(C), 3109.05(C), and 3111.13(F)(1).

Licensure consequences

If an obligor is subject to a final and enforceable determination of default, certain licenses must be suspended, or will not be issued or renewed, based on the notice of a CSEA. This includes the obligor's occupational, professional,¹⁹ motor vehicle license, endorsement, or permit, or recreational license (for hunting, trapping, or fishing). A CSEA is prohibited from sending the license suspension, denial, or nonrenewal notice unless the obligor has (1) been in default for at least 90 days and (2) failed to pay at least half of the monthly obligation during those 90 days. The licenses must be issued or renewed and any suspension ended if the obligor complies with the child support order.²⁰

Consumer reporting agencies

If a court or CSEA makes a final and enforceable determination that an obligor is in default under a child support order, the CSEA administering it must contact at least one consumer reporting agency in Ohio and provide the obligor's identifying information maintained by the CSEA. If a CSEA notifies an agency about an obligor's default and the obligor pays the entire arrearage that is the basis for the default, the obligor may give the agency written notice that the arrearage has been paid. The obligor also may request that the CSEA send to the agency confirmation of the payment. If such a request is made, the CSEA must send written confirmation to each agency contacted.²¹

Income tax intercept

OCS must work with the U.S. Secretary of the Treasury to collect past due child support from refunds of federal income taxes and the Ohio Tax Commissioner to collect overdue child support from refunds of state income taxes payable to obligors.²²

Administrative offsets

OCS may cooperate with the U.S. Secretary of the Treasury to collect past due child support amounts by using administrative offsets through the federal "Debt Collection Improvement Act of 1996" (DCIA).²³ DCIA makes various types of recurring and one-time payments available for Administrative Offset, including payments to private vendors who perform work for a government agency, federal retirement payments, and relocation and travel reimbursements owed to federal employees.²⁴

¹⁹ All matters relating to the practice of law are governed by the Supreme Court of Ohio pursuant to the Ohio Constitution. (Article IV, Section 2(B)(1)(g).) Under Section 18, Rule V of the Supreme Court Rules for the Government of the Bar, a judicial officer or attorney found in default under a child support order by a final and enforceable determination is subject to an interim suspension.

²⁰ R.C. 3123.42 to 3123.48, 3123.53 to 3123.59, and 3123.62.

²¹ R.C. 3123.92 and 3123.921.

²² R.C. 3123.81, 3123.82, and 3123.821.

²³ R.C. 3123.85; 31 United States Code 3716(a).

²⁴ "Overview of the Administrative Offset Program" at <https://www.acf.hhs.gov/css/resource/administrative-offset-program-information-for-families>.

Liens

If a court or CSEA makes a final and enforceable determination of default, the CSEA administering the order may assert a lien on any of the obligor's real or personal property that is located in Ohio. The amount of the arrearage due under the child support order and any amounts due for current support that become an arrearage after the date of the default determination are a lien against all of the obligor's personal property, including property acquired after the lien is filed, in Ohio. With respect to the obligor's real property, including after-acquired property, a lien will arise after it is filed with a county recorder in which the real property is located. The lien has priority over other liens, mortgages, security interests, or other types of encumbrances associated with the real and personal property subject to the lien that arise after the date the lien is filed.²⁵

Creditor's bill

If an obligor in default under a child support order has a claim against another person of more than \$1,000, the obligor must notify the CSEA of the nature of the claim and the person against whom the claim exists. Also, if an obligor in default under a child support order has a claim against another person or is a party in an action for any judgment, the CSEA or the CSEA's attorney, on behalf of the obligor, must immediately file with the court in which the action is pending a motion to intervene or a creditor's bill. The obligee may also file a motion to intervene in any action or a creditor's bill.²⁶

Access restriction and withdrawal directive from funds held in financial institutions

If an obligor who is subject to a final and enforceable determination of default is found to have funds on deposit at a financial institution, the financial institution must prohibit the withdrawal or transfer of funds from the account upon receiving an access restriction notice from the CSEA. The access restriction must remain on the account until the financial institution complies with a withdrawal directive from the CSEA to obtain the money owed, or until the access restriction is ordered to be removed. Before issuing a withdrawal directive, the CSEA may determine the amount of funds in the account that are available to satisfy the obligor's arrearages under the child support order and verify that no other person has ownership interest in the account. The funds are to be paid to OCS. The CSEA must notify any person (other than an obligor) who has an ownership interest in the account of the amount of funds that will be withdrawn and of the opportunity to request an administrative hearing to determine whether any amount contained in the account is the property of that person and should not be subject to the withdrawal directive.²⁷

²⁵ R.C. 3123.66, 3123.67, and 3123.70.

²⁶ R.C. 3123.19.

²⁷ R.C. 3123.24 to 3123.31 and 3123.37.

Unclaimed funds

If the Ohio Department of Commerce holds unclaimed funds of an obligor in default under a child support order, the funds must be paid pursuant to a claim OCS files based on the default.²⁸

Poster program

OCS must establish a program to publish and distribute a series of posters displaying child support obligors in default. Each CSEA may establish a similar poster program of their own.²⁹

²⁸ R.C. 3123.88.

²⁹ R.C. 3123.95 and 3123.96.