

To: New Jersey Law Revision Commission
From: Vito J. Petitti, Counsel
Re: Retroactive Child Support Orders
Date: September 8, 2015

Memorandum

Staff has been working in the area of retroactive child support orders with the goal of recommending revisions to relevant New Jersey statute consistent with the ruling in *Cameron* so as to avoid penalizing obligor parents who have never actually violated a child support order.¹ In June 2015, the Commission released a Tentative Report, which proposed revisions to N.J.S. 2A:17-56.21, as follows:²

2A:17-56.21. Overdue support; release of information to consumer or credit reporting agency by state IV-D agency

- a. The State IV-D agency shall have the authority to make available the name of any delinquent obligor and the amount of overdue support owed by the obligor to credit reporting agencies, subject to the conditions set forth in this section and privacy safeguards established by the commissioner. This information shall be provided only to an entity that has demonstrated to the satisfaction of the State IV-D agency that the entity is a credit reporting agency.
- b. In all Title IV-D cases where the obligor is in arrears and is in violation of the terms of a child support order, the information shall be made available to credit reporting agencies. Where there is no violation of a child support order, the State IV-D agency shall not disclose any such arrearage to credit reporting agencies.
- c. The State IV-D agency may establish a fee for all requests which will be uniformly applied in all Title IV-D cases. Any fee charged shall be limited to the actual cost of providing the information.
- d. Information with respect to a delinquent obligor shall be reported to credit reporting agencies only after the obligor has been afforded all procedural due process required under State law including notice and a reasonable opportunity to contest the accuracy of the information.
- e. The State IV-D agency shall comply with all applicable procedural due process requirements before releasing information and may request information on an obligor from a credit reporting agency only after noticing the obligor of the State IV-D agency's intent to request the information.

¹ *Cameron v. Cameron*, 440 N.J. Super. 158 (2014).

² N.J. STAT. ANN. § 2A:17-56.21 (West 2015).

Several interested constituencies, including Legal Services of New Jersey (LSNJ), have provided feedback regarding the Tentative Report. In a letter dated August 18, 2015, Mary M. McManus-Smith, Chief Counsel – Family Law, LSNJ, expressed the organization’s support for the Commission’s efforts, but suggested a slightly expanded scope for the project as explained here:

The proposed language intended to distinguish between child support arrears that result from delinquency and those that result from retroactive implementation of support orders found in *N.J.S.A. 2A:17-56.21*, should be applied to the other sanctions for failing to pay support that are authorized by the statutory scheme. LSNJ recommends, specifically that the same reasoning should be utilized to amend the sections of the statute that result in the denial, revocation, or suspension of professional, trade, motor vehicle, sports, and recreational licenses when child support arrears equaling six months of support payments or more have accrued.

LSNJ made clear that it is not proposing changes to any of the statutory provisions allowing for “specific and sometimes extraordinary” collection methods, such as wage garnishments and interception of tax refunds, etc. The organization’s two recommended additional statutory amendments are as follows:³

2A:17-56.41. Revocation or suspension of license for non-payment of child support; notice; hearing

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a. ~~If the child~~ Where the child support obligor is in violation of the terms of a child support order such that the delinquent support arrearage equals or exceeds the amount the of child support payable for six months or court-ordered health care coverage for the child is not provided for six months, or the obligor fails to respond to a subpoena relating to a paternity or child support action, or a child support-related warrant exists, and the obligor is found to possess a license in the State and all appropriate enforcement methods to collect the child support arrearage have been exhausted, the Probation Division shall send a written notice to the obligor, by certified and regular mail, return receipt requested, at the obligor's last-known address or place of business or employment, advising the obligor that the obligor's license may be revoked or suspended unless, within 30 days of the postmark date of the notice, the obligor pays the full amount of the child support arrearage, or provides proof that health care coverage for the child has been obtained, or responds to a subpoena, or makes a written request for a court hearing to the Probation Division. The obligor's driver's license shall be suspended by operation of law upon the issuance of a child support-related

³ N.J. STAT. ANN. §§ 2A:17-56.41, -56.44 (West 2015).

warrant. If a child support- related warrant for the obligor exists, the professional, occupational, recreational or sporting license revocation or suspension shall be terminated if the obligor pays the full amount of the child support arrearage, provides proof that health care coverage for the child has been obtained as required by the court order, or surrenders to the county sheriff or the Probation Division.

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2A:17-56.44 Notification of licensing authority; surrender of license; reinstatement upon satisfaction of child support arrearages

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d. Each licensing authority shall require license applicants to certify on the license application form, under penalty of perjury, that the applicant does not have a child support obligation, the applicant does have such an obligation but the obligor has not violated the child support order resulting in an arrearage amount that ~~does not~~ equals or exceeds the amount of child support payable for six months and any court-ordered health care coverage has been provided for the past six months, the applicant has not failed to respond to a subpoena relating to a paternity or child support proceeding, or the applicant is not the subject of a child-support related warrant. A license shall not be granted to an obligor who applies for a license if there is an arrearage equal to or exceeding the amount of child support payable for six months due to violation of the child support order, the applicant has not provided court-ordered health care coverage during the past six months or the applicant has failed to respond to a subpoena relating to a paternity or child support proceeding or is the subject of a child support-related warrant. The application form shall state that making a false statement may subject the applicant to contempt of court. It shall also state that if the applicant's certification is found to be false, the licensing authority shall take disciplinary action including, but not limited to, immediate revocation or suspension of the license.

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LSNJ's proposed additional language is consistent with Staff's proposed revisions, which are calculated to distinguish child support obligors who are in violation from those who are not.

In N.J.S. 2A:17-56.21, the subject of the Commission's Tentative Report, information about all child support obligors in arrears "shall be" made available to credit reporting agencies.⁴ The proposed revisions would insulate those who are not in violation of a child support order from the reporting requirement.

⁴ N.J. STAT. ANN. § 2A:17-56.21.

Similarly, LSNJ's proposed language would allow obligors in arrears *but not in violation* of a child support order to avoid revocation or suspension of a State-issued license under N.J.S. 2A:17-56.41, or the non-issuance of such a license under N.J.S. 2A:17-56.44.⁵

Staff requests the Commission's guidance as to whether to expand the scope of the project to potentially include additional relevant sections of New Jersey statute, such as those recommended by LSNJ, which can be revised so as to distinguish child support order violators from non-violators.

⁵ N.J. STAT. ANN. §§ 2A:17-56.41, -56.44.