

### §2103. Duty of department to enforce support obligations

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Applicant" means an individual, including a person receiving services under section 2108, state, political subdivision of a state or instrumentality of a state. [PL 1999, c. 704, §3 (AMD).]

B. "Support obligations" means the amount due an obligee for support under an order of support and includes any arrearages of support that have accrued. [PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

[PL 1999, c. 704, §3 (AMD).]

**2. Enforcement of support obligations.** The department may, for a fee, locate absent parents, defend child support orders, establish support obligations, seek motions to modify support obligations, enforce support obligations and determine paternity on behalf of applicants who are not recipients of public assistance, by actions under an appropriate statute, including, but not limited to, remedies established in subchapter 2, article 3, to establish and enforce the support obligations. The department and the applicant shall sign an agreement in duplicate describing the fee. The department may defer or waive that fee.

[PL 2005, c. 352, §7 (AMD).]

**3. Fees and costs.** The department shall charge a fee of \$2 per pay period to all obligors whose child support payments are made to the department to reduce the department's costs in providing support enforcement services. The department may collect fees owed by the obligor by using any remedies available for collection of child support. The nonfederal share of the fee collected pursuant to this subsection must be deposited as General Fund undedicated revenue. The department shall deposit amounts collected as General Fund undedicated revenue only after the amount owed to the family for the current period is paid. The department shall collect the fee from obligors whose child support is paid to the department under an income withholding order by notifying the payor of income to the obligor to increase withholding by \$2 per pay period. The department or any other person is not required to issue a new or amended withholding order to collect the fee, but shall notify the obligor in advance of the increase in withholding.

[PL 2011, c. 477, Pt. L, §1 (AMD).]

**3-A. Service fee.** In the case of an individual who has never received assistance under a state program and for whom the State has collected at least \$550 in child support, the State shall impose an annual \$35 fee for each child support enforcement case that is:

A. Retained by the State from child support collected on behalf of the individual after the collected support exceeds \$550; [PL 2019, c. 400, §1 (AMD).]

B. Paid by the individual applying for services; [PL 2007, c. 365, §1 (NEW).]

C. Recovered from the noncustodial parent; or [PL 2007, c. 365, §1 (NEW).]

D. Paid by the State out of its own funds. The annual fee may not be considered as an administrative cost of the State for operation of child support enforcement services and must be considered income to the program under which the individual has received child support enforcement services. [PL 2007, c. 365, §1 (NEW).]

The nonfederal share of the annual fee collected pursuant to this subsection must be deposited as General Fund undedicated revenue.

[PL 2019, c. 400, §1 (AMD).]

**4. Attorney's fees.** The Office of the Attorney General or attorneys acting under Title 5, section 191 may seek appropriate attorney's fees at the prevailing community rate for legal representation of individuals under this section. An award of attorney's fees may be collected by any means available

under the laws, including, but not limited to, remedies available under Title 14 and Title 36, section 185-A.

[PL 2019, c. 659, Pt. D, §4 (AMD).]

**5. State's role in support enforcement cases.** In a child support action brought by the department under this Title or Title 22, the department or prosecuting attorney represents solely the interest of the State in providing child support enforcement services under federal law. This section may not be construed to modify statutory mandate, authority or confidentiality required of any governmental agency, nor does representation by a prosecuting attorney create an attorney-client relationship between the attorney and any party, other than the State.

For the purpose of this subsection, "prosecuting attorney" means an assistant attorney general, an assistant district attorney, an attorney under contract or an attorney in the employ of the department.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

**6. Obligation established.** The current support obligations in cases brought in accordance with this section are established pursuant to chapter 63. An obligation for past support due is established by application of the most current child support scale to the responsible parent's income for the time period in which the applicant was entitled to support payments and may include reimbursement for past medical expenses. In the absence of sufficient reliable information to calculate a responsible parent's past income, it is presumed that the responsible parent had an earning capacity equal to the average weekly wage of a worker within this State as determined by the Department of Labor statistics for the applicable years. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the responsible parent earned a greater or lesser actual income. A present disability to pay child support, legal or otherwise, does not bar a determination of past debt due the applicant for any relevant period in which the disability did not exist.

If the responsible parent defaults or otherwise fails to appear, and no order of support has been established, the court or administrative hearing officer shall presume that the responsible parent has an earning capacity equal to the average weekly wage of a worker within this State as determined by the Department of Labor statistics for the applicable years. A different annual income may be used if there is sufficient reliable evidence to conclude reasonably that the responsible parent earned a greater or lesser actual income.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

## SECTION HISTORY

PL 1995, c. 694, §B2 (NEW). PL 1995, c. 694, §E2 (AFF). PL 1997, c. 530, §A34 (AMD). PL 1999, c. 704, §3 (AMD). PL 2005, c. 352, §7 (AMD). PL 2007, c. 365, §1 (AMD). PL 2011, c. 477, Pt. L, §§1, 2 (AMD). PL 2019, c. 400, §1 (AMD). PL 2019, c. 659, Pt. D, §4 (AMD).

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