



# Civil Contempt - Ensuring Noncustodial Parents Have the Ability to Pay

## Overview

As the federal agency responsible for funding and oversight of state child support programs, OCSE has an interest in ensuring that:

- constitutional principles articulated in the U.S. Supreme Court Decision in *Turner v. Rogers*, 564 U.S. \_\_\_\_, 131 S.Ct. 2507 (2011) are carried out in the child support program,
- child support case outcomes are just and comply with due process, and
- enforcement proceedings are cost-effective and in the best interest of the child.

The *Turner* case provides OCSE and state child support agencies with an opportunity to evaluate the appropriate use of civil contempt and to improve program effectiveness, including adequate case investigation. As the U.S. Supreme Court stated in *Turner v. Rogers*, a noncustodial parent's ability to pay constitutes the "critical question" in a civil contempt case, whether the state provides legal counsel or alternative procedures designed to protect the indigent obligor's constitutional rights.

The [final rule](#) revises 45 CFR 303.6(c)(4), by establishing criteria that child support agencies must use to determine which cases to refer and how they prepare cases for a civil contempt proceeding. The main goal is to increase consistent child support payments for children by ensuring that low-income parents are not incarcerated unconstitutionally because they are poor and unable to comply with orders that do not reflect their ability to pay. In addition, the final rule is intended to reduce the routine use of costly and often ineffective contempt proceedings and increase case investigation and more cost-effective collection efforts.

## What is new

Section §303.6(c)(4) of the final rule requires the state child support agency to establish procedures for the use of civil contempt petitions. Before filing a civil contempt action that could result in the noncustodial parent being sent to jail, states must ensure that the child support agency has screened the case to determine whether the facts support a finding that the noncustodial parent has the "actual and present" ability to pay or to comply with the support order.

The child support agency must also provide the court with information regarding the noncustodial parent's ability to pay or otherwise comply with the order to help the court make a factual determination regarding the parent's ability to pay the purge amount or comply with the purge conditions.

Finally, prior to going to court, the state must give clear notice to the noncustodial parent that his or her ability to pay constitutes the critical question in the civil contempt action.

## How this affects states

The new rule provides state child support agencies with a guide for conducting constitutionally acceptable proceedings. The final rule will reduce the risk of erroneous deprivation of the noncustodial parent's liberty, without imposing significant fiscal or administrative burden on the state. States that have reduced their over-reliance on contempt proceedings have found that they increased collections and reduced costs at the same time. There is no evidence that the routine use of contempt proceedings improves collection rates or consistent support payments to families.

States have considerable flexibility in implementing these provisions. The provisions are based upon successful case practice in a number of states that conduct case-specific investigations and data analyses. Child support agencies will need to take steps to determine how to implement these changes in their states, which may include educating and collaborating with the judiciary.

### How this affects families

Research shows that routine use of civil contempt is costly and counterproductive to the goals of the child support program.<sup>1</sup> All too often it results in the incarceration of noncustodial parents who are unable to pay to meet their purge requirements.<sup>2</sup> Modernizing practices in this area will encourage parents to comply with child support orders, maintain legitimate employment, and minimize the accumulation of unpaid child support debt. These guideline provisions help ensure that child support case outcomes are just and comply with due process, and that enforcement proceedings are cost-effective and in the best interest of the child.

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1. See Elizabeth G. Patterson, *Civil Contempt & the Indigent Child Support Obligor: The Silent Return of Debtor's Prison*, 18 Cornell Journal of Law & Public Policy 95, 126 (2008) (*Civil Contempt*), available at: <http://www.lawschool.cornell.edu/research/jlpp/upload/patterson.pdf>.
  2. See Rebecca May & Marguerite Roulet, Ctr. for Family Policy & Practice, *A Look at Arrests of Low-Income Fathers for Child Support Nonpayment: Enforcement, Court and Program Practices*, 40 (2005), available at: <http://www.cffpp.org/publications/LookAtArrests.pdf>.