



Illinois Update on Using Civil Contempt to Collect Child Support

In response to the United States Supreme Court's decision in *Turner v. Rogers*, 131 S. Ct. 2507 (2011), the Illinois Title IV-D child support program and its legal representatives adopted new policies and procedures on the use of civil contempt to collect child support. The result: an overall *increase* in child support collected through administrative enforcement tools as the alternative to contempt.

I. THE IMPACT OF *TURNER* IN ILLINOIS

Before *Turner*, the Illinois child support program used civil contempt as a routine enforcement tool to collect support, generally without individualized case review. The *Turner* decision finding constitutional rights violations had a direct and immediate impact because Illinois, like South Carolina in *Turner*, does not appoint counsel for indigent defendants in civil contempt proceedings.

The Illinois child support program examined its contempt practices and found that a total of 5,960 cases seeking civil contempt were filed in 2010. The data showed that Illinois collected \$520,873 from these judicial referrals, about \$87 per case. In comparison, for cases utilizing administrative enforcement procedures other than income withholding, the State collected approximately \$105 million in 2010.

In response to this data and in order to ensure that indigent parents are not wrongly incarcerated for child support debt, Illinois made a number of significant changes following *Turner* including:

- New referral procedures to ensure that civil contempt is pursued only where the facts demonstrate an ability to pay child support
- Easy to understand information for parents about the civil contempt process
- An informal opportunity for parents to explain the reason behind non-payment before the State's legal representative decides to pursue civil contempt
- A new financial affidavit tailored to the civil contempt proceeding and critical ability to pay issue
- Personal service of orders to show cause
- Specific findings by the court after an evidentiary hearing on past ability to pay child support and present ability to pay the ordered purge amount to ensure accurate and defensible orders
- Sufficient time to purge contempt before being remanded to jail
- Frequent reviews following incarceration

As the alternative to civil contempt prosecutions, the Illinois child support program began increasing the use of administrative collection tools, such as driver's license suspensions. Illinois enacted new legislation that gave the agency broad discretion to issue family financial responsibility driving permits for parents with suspended licenses who needed to drive in order to work¹ and to collect support from gambling winnings at casinos and racetracks². For cases where administrative remedies were unsuccessful and judicial action required, legal referrals were for adjudication of arrears—not civil contempt—unless there was evidence of an ability to pay support.

II. UPDATE

In 2013, the Illinois child support program referred 742 cases to its legal representatives for civil contempt resulting in a total of \$172,597 collected, about \$233 per case, which is substantially more than the \$87 per case average in 2010. The decrease in contempt cases from 5,960 to 742 allowed other IV-D matters including parentage and support order establishment and support modification to be filed and resolved in court sooner, to the benefit of families throughout Illinois.

The most significant result of the *Turner* changes was the substantial increase in collections from administrative enforcement tools. Importantly, Illinois collected a total of \$119.8 million through its administrative enforcement tools in 2013—almost \$15 million more than in 2010.

The Illinois child support program shifted its focus in 2011 from civil contempt to other collection tools that do not implicate a parent's liberty and are less expensive to administer. The result has been increased collections and greater overall efficiency. While civil contempt still is used in cases where administrative enforcement tools are unsuccessful and the obligor has income yet willfully refuses to pay support, Illinois has found using contempt deliberately, not routinely, to be the best practice in collecting child support for families.

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¹ See 305 ILCS 5/10-17.6(b) (eff. Jan. 1, 2011).

² See 230 ILCS 5/27.2 (eff. July 1, 2013); 230 ILCS 10/13.05 (eff. July 1, 2013).