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Justice Department Announces Resources to Reform Practices

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DCL-16-05

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DEAR COLLEAGUE LETTER


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DATE: March 21, 2016

TO: ALL STATE AND TRIBAL IV-D DIRECTORS

RE: Justice Department Announces Resources to Reform Practices

Dear Colleague:

On March 14, 2016, the U.S. Department of Justice (DOJ) issued a Dear Colleague letter to state and local courts that announced a package of resources to assist state and local efforts to reform practices for assessment of ability to pay as part of enforcement efforts to collect fees and fines, as well as child support. See <https://www.justice.gov/opa/pr/justice-department-announces-resources-assist-state-and-local-reform-fine-and-fee-practices> . The resources are meant to support ongoing work of judges, courts, policymakers, program administrators, and advocates in ensuring justice for all people, regardless of financial circumstances.

One purpose of the DOJ letter is to address “some of the most common practices that run afoul of the United States Constitution and other federal laws and to assist court leadership in ensuring that courts at every level of the justice system operate fairly and lawfully.” These laws include title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, for court systems receiving federal funds. The letter also suggests alternative practices that courts can use.

Of particular interest to the child support community is DOJ’s discussion in the letter related to incarceration for nonpayment when ability to pay is at issue. Citing *Turner v. Rogers*, 131 S. Ct. 21 and other case law, the letter states that courts may not incarcerate a person for nonpayment of

finances without first conducting an indigency determination and establishing that the failure to pay was willful. In addition, courts must consider alternatives to incarceration for indigent defendants who are unable to pay.

The letter provides that courts also must provide meaningful notice and, in appropriate cases, counsel, when enforcing fines and fees, and must not use arrest warrants or license suspensions as a means of coercing the payment of court debt when individuals have not been afforded constitutionally adequate procedural protections. “Under the Fourteenth Amendment, defendants likewise may be entitled to counsel in civil contempt proceedings for failure to pay fines or fees. See *Turner*, 131 S. Ct. at 2518-19 (holding that, although there is no automatic right to counsel in civil contempt proceedings for nonpayment of child support, due process is violated when neither counsel nor adequate alternative procedural safeguards are provided to prevent incarceration for inability to pay).”

OCSE’s **Action Transmittal 12-01** provides clarity to courts regarding their legal duty to inquire about a parent’s ability to pay prior to incarceration for nonpayment, which specifically refers to the *Turner v. Rogers* ruling. “Civil contempt that leads to incarceration is not, nor should it be, standard or routine child support practice. By implementing procedures to individually screen cases prior to initiating a civil contempt case and providing appropriate notice to alleged contemnors concerning the nature and purpose of the proceeding, child support programs will help ensure that inappropriate civil contempt cases will not be brought. By using *Turner* as a guidepost and urging the adoption of, at least, minimum safeguards in all such proceedings, this [AT-12-01] builds upon the innovations already incorporated into many child support programs over the past decade to limit the need for and use of civil contempt.” In addition, OCSE **Information Memorandum 12-01** suggests that states incorporate alternatives to incarceration in their program.

I hope that this information is helpful to you and your judicial partners in ensuring due process and equal protection to litigants in your caseload.

Sincerely,

Vicki Turetsky
Commissioner
Office of Child Support Enforcement

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