

**Michigan IV-D Child Support Manual**  
**Michigan Department of Health and Human Services**

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## 1. Overview

This manual section provides IV-D policy guidance on the enforcement of IV-D cases and child support orders through criminal prosecution. The primary focus is on criminal prosecution services that the Office of the Attorney General (AG) provides to the IV-D program.

The Office of Child Support (OCS), as administrator of Michigan’s State IV-D Plan and child support program,<sup>1</sup> has an interest in ensuring families served by the IV-D program realize positive outcomes in their IV-D cases. OCS is also responsible for ensuring the appropriate enforcement of IV-D cases and use of IV-D funds.<sup>2</sup>

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<sup>1</sup> Section 454(3) of the Social Security Act

<sup>2</sup> Section 454(4) of the Social Security Act

IV-D enforcement can occur through civil remedies, criminal prosecution, or both. Civil enforcement and criminal prosecution are separate, independent functions. While the civil support case informs a criminal case, OCS and Friend of the Court (FOC) staff do not have the authority to prosecute criminal cases. The AG or Prosecuting Attorney (PA) has the sole authority to prosecute criminal cases and the discretion to decide which cases will be prosecuted, regardless of whether doing so is IV-D funded.<sup>3</sup>

### 1.1 Interagency Agreement Between OCS and the AG

Federal regulation provides that the state may enter “cooperative arrangements...with appropriate...law enforcement officials such as...attorneys general and prosecutors” for the purpose of helping the IV-D agency carry out the program.<sup>4</sup>

The AG provides criminal prosecution as a IV-D service to the IV-D program through an Interagency Agreement between OCS and the AG. The Interagency Agreement sets forth a framework under which OCS will use IV-D funds to reimburse the AG for this service.

Pursuant to federal regulation,<sup>5</sup> the OCS-AG Interagency Agreement:

- Defines the responsibilities of the AG and OCS;
- Provides for collaboration between IV-D partners;
- Specifies that OCS is responsible for establishing policy, procedures, and IV-D criteria for case identification and IV-D reimbursement; and
- Provides for record keeping, security/confidentiality, system access, and reporting protocols.

### 1.2 Prosecuting Attorney (PA)

The IV-D record keeping requirements in this policy apply to PA offices. Policy regarding the support cases a PA refers to the AG for criminal prosecution applies to the AG. This policy is not applicable to local arrangements between county PA offices and FOC offices for criminal prosecution of support cases.<sup>6</sup>

### 1.3 Criminal Prosecution for Non-Support As a IV-D Remedy of Last Resort

Criminal prosecution can be a powerful tool to enforce child support. However, it should only be used as a last resort in the most egregious circumstances – only when necessary and when all other measures have been unsuccessful in ensuring children receive the support they deserve. It should be for support

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<sup>3</sup> Michigan Compiled Law (MCL) 764.1(1)-(3), Michigan Court Rules (MCR) 6.101(C), and MCL 761.1(r).

<sup>4</sup> 45 Code of Federal Regulations (CFR) 302.34

<sup>5</sup> 45 CFR 303.107

<sup>6</sup> OCS may work with local IV-D offices to issue protocols involving those arrangements at a later date.

payers who have an ability to pay<sup>7</sup> but are not willing to pay. In the spirit of the Michigan Child Support Program's Strategic Plan operating principle of encouraging and supporting voluntary compliance, the goal of enforcement should be to encourage and achieve compliance through the least forceful or adversarial means. IV-D staff should exhaust civil actions to the fullest extent possible or practicable before criminal prosecution.

Criminal prosecution can result in a productive outcome. It can prompt a support payer to become compliant with the court's order after a history of non-compliance and/or unsuccessful attempts at civil enforcement. However, criminal prosecution can also be counterproductive. Criminal prosecution could have the unintended consequence of a recipient not receiving any support. A conviction and sentence resulting in incarceration could prevent a support payer from earning income that might otherwise be available for paying support. Incarceration for 180 days or more could result in current support being abated while the support payer is incarcerated.<sup>8</sup> In addition to the abatement of support payments, incarceration may negatively affect parents' engagement and relationship with their child(ren) and have negative social or emotional impacts on their child(ren). Further, a criminal record can pose barriers for support payers' ability to obtain employment or other resources (housing, transportation, etc.) necessary for supporting their child(ren). Criminal prosecution could interfere with support payers' ability to maintain their existing source of income – particularly when an arrest with extradition occurs.

## 2. Legal Authority

### 2.1 Child Support Crimes

Michigan law makes it a crime to fail to support a spouse or child. There are two nonpayment-of-support felonies and one misdemeanor under the Michigan Penal Code as discussed below.

#### 2.1.1 Child Desertion and Abandonment

One of the felony crimes involves abandoning a spouse or a child under 17 years of age and refusing to provide support.<sup>9</sup> It is a felony punishable by imprisonment in a state correctional facility for one to three years, or by imprisonment in a county jail for three months to one year.

#### 2.1.2 Non-Payment of Support

The more commonly charged felony crime involves failure to pay child

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<sup>7</sup> Ref: Subsection 7.5, "Ability to Pay," in this manual section.

<sup>8</sup> Ref: MCL 552.517f and [Section 3.44, "Abatement," of the Michigan IV-D Child Support Manual.](#)

<sup>9</sup> MCL 750.161

support in the amount or at the time ordered by a court.<sup>10</sup> It is a felony punishable by imprisonment up to four years or by a fine of not more than \$2,000, or both.

### 2.1.3 Disorderly Person

A third statute makes it a misdemeanor for a person of sufficient ability to refuse or neglect to support his/her family.<sup>11</sup> It is punishable by imprisonment up to 90 days or a fine of not more than \$500, or both.

## 3. Case Identification

The OCS-AG Interagency Agreement addresses two ways in which a IV-D case may be identified for investigation and potential criminal prosecution. Regardless of how a IV-D case is identified, it must meet the IV-D criteria for the AG to be reimbursed for criminal non-support as a IV-D service.

### 3.1 Support Recipient's Initiative

Support recipients can contact the AG directly to request investigation of their case for criminal prosecution. The support recipient can submit a complaint to the AG through a form on the [Department of Attorney General website](#).

Alternatively, a support recipient may contact the PA, and the PA may refer the case to the AG.

If a support recipient contacts FOC staff seeking criminal prosecution, FOC staff can direct the support recipient to contact the AG or PA.

### 3.2 AG's Initiative

The AG will identify cases for investigation at their own initiative and discretion.

The AG has access to the *AG Criminal Non-Support* report in Business Objects<sup>12</sup> for this purpose. The *AG Criminal Non-Support* report is based on the IV-D criteria described in this manual section. Some of the criteria such as case status, arrearages, and payment status will objectively exclude a case from the report. For cases that require more evaluation, the report provides indicators and/or additional information about the case to assist the AG's investigation and prioritization.

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<sup>10</sup> MCL 750.165

<sup>11</sup> MCL 750.167 and MCL 750.168

<sup>12</sup> FOC staff also have access to this report in Business Objects.

The AG has prosecutorial discretion for prioritizing the cases and deciding which cases to investigate. For example, the AG can prioritize cases based on staff workload/jurisdiction, arrears amount owed, etc.

#### 4. IV-D Criteria and the *AG Criminal Non-Support Report*

All of the following minimal IV-D criteria must be met for the AG to be funded through IV-D reimbursement for criminal non-support prosecution as a IV-D service. The *AG Criminal Non-Support* report in Business Objects either excludes a case that does not meet a particular IV-D criterion or provides additional information that helps the AG evaluate the criterion. The discussion of each criterion below explains whether it is included on the report.

##### 4.1 Case and Docket Status

The docket must be open and associated with an open IV-D case. Closed IV-D cases, IV-D cases pending closure, non-IV-D cases, and closed dockets are not eligible for IV-D reimbursement of criminal non-support prosecution.<sup>13</sup>

The AG will not ask IV-D staff to reopen a closed IV-D case or FOC case for the purpose of criminal prosecution. However, this does not preclude the support recipient from requesting the case be reopened.

The *AG Criminal Non-Support* report excludes non-IV-D cases and IV-D cases that are closed or pending closure. It also excludes closed dockets.

##### 4.2 Good Cause<sup>14</sup>

The case must not have a good cause claim that prohibits enforcement and/or the support recipient's participation. A support recipient may claim good cause to be exempt from IV-D cooperation requirements. Some good cause claims prevent the initiation or continuation of support enforcement, and this prohibition is applicable to all IV-D actions – civil and criminal.

If a good cause determination is pending or has been made to end action, all enforcement activities must stop. In some situations, a good cause exemption may be granted, but enforcement may proceed without the support recipient's/custodial party's participation. The "Good Cause, Continue Action" status in the Michigan Child Support Enforcement System (MiCSES) allows enforcement to proceed without the support recipient's participation. It prevents actions requiring the support recipient's participation and prevents MiCSES from sending certain forms that require an action or response from the support recipient.

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<sup>13</sup> Ref: [Section 3.50, "Case Closure," of the Michigan IV-D Child Support Manual.](#)

<sup>14</sup> Ref: [Section 2.15, "Cooperation/Noncooperation/Good Cause," of the Michigan IV-D Child Support Manual.](#)

The *AG Criminal Non-Support* report excludes cases with the status of “Good Cause, Pending,” “Good Cause, End Action,” or “Good Cause, Continue Action.”

The report excludes cases with a “Good Cause, Continue Action” status to prevent the AG from contacting the support recipient or requesting actions/responses from him/her as the victim of the crime. [Article I, Section 24 of the Michigan Constitution](#) provides for crime victims’ rights, and the William Van Regenmorter Crime Victim’s Rights Act<sup>15</sup> provides for victim participation and protections. However, OCS must ensure that IV-D staff adhere to the protections of the existing “Good Cause, Continue Action” determination. The support recipient on a case with a “Good Cause, Continue Action” status may contact the AG and ask the AG to investigate his/her case for potential criminal prosecution.

#### 4.3 Arrears Threshold

The arrears threshold for criminal prosecution must be \$5,000 or 24 times the current monthly support obligation (MSO), whichever is **greater**. If the case does not have a current MSO, then the \$5,000 arrears threshold applies.

The threshold is intended to provide a minimum amount and to be equitable and balanced. It is meant to provide families with relatively low MSO amounts access to criminal non-support prosecution (when applicable) sooner than if the arrears threshold were significantly higher.<sup>16</sup> Similarly, the current support multiplier is meant to prevent prosecution of relatively higher MSO cases too soon because arrears can accrue more quickly than on lower MSO cases.

##### **Example 1:**

The support payer has a case with a relatively low MSO of \$150. The applicable arrears threshold is \$5,000 because it is greater than 24 times the MSO (\$3,600).

##### **Example 2:**

The support payer has a case with a relatively high MSO of \$1,000. The applicable arrears threshold is 24 times the MSO (\$24,000) because it is greater than \$5,000. If the \$5,000 threshold were applicable, the time to reach a \$5,000 arrears balance with a \$1,000 MSO would be only five months.

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<sup>15</sup> MCL 780.751, et seq.

<sup>16</sup> Prior to June 2020, the arrears threshold was \$10,000 without an MSO multiplier.

The *AG Criminal Non-Support* report excludes support cases that do not meet the arrears threshold.

#### 4.4 Payment Status

The support payer did not make any payments or has paid less than 51 percent of the current support obligation that became due in the previous six months.

The *AG Criminal Non-Support* report includes cases that meet this condition. If a case does not have any support charges in the last six months (arrears-only), then it is included on the report if it meets the arrears threshold. The report also identifies the most recent non-tax-offset payment amount and date. If a case meets the payment status criterion, the report lists the total charges in the last six months and the percentage of those charges paid.

Even if the support payer has paid less than 51 percent, the AG should more thoroughly investigate the support payer's circumstances and consult with the FOC. Criminal prosecution may not be appropriate because the nature of the payments may indicate that civil enforcement has not been exhausted, that the payer is engaging with the IV-D program, and/or that a review and modification may be appropriate. For example, the payer may have regularly made a payment in each of the last six months, but those payments were less than 51 percent of the support that was due. Or, the payer may have begun making full payments in the last couple of months after a period of no payments or partial payments. Criminal prosecution could interfere with the support payer's recent efforts to pay and/or his/her ability to get back into compliance.

#### 4.5 Civil Enforcement Exhausted

Criminal prosecution is the enforcement remedy of last resort. Before considering it, FOC staff must have:

- Attempted to enforce the case through all the available civil remedies to the fullest extent possible and practical (i.e., FOC staff have tried everything they can to bring the payer into compliance);
- Reviewed the case and determined prior civil enforcement attempts were unsuccessful at bringing the support payer into compliance; and
- Determined that any additional civil enforcement attempts would be futile or impractical.

This factor is subjective, and MiCSES is limited in the manner and extent to which it tracks enforcement activities. Accordingly, the AG must manually review a case's enforcement history and consult with the FOC. The FOC will confirm whether civil enforcement has been exhausted or whether the FOC intends to take any further civil enforcement action.

Civil enforcement and criminal prosecution can run concurrently as separate functions. The AG has the ultimate discretion to determine whether to proceed with criminal prosecution; however:

- IV-D staff should not prematurely end a civil enforcement action in deference to criminal investigation or prosecution unless continuing the activity would be futile or impractical; and
- The AG should defer criminal prosecution until all civil enforcement actions have been completed unless doing so would be futile or impractical.

**Example 3:**

A case has a history of numerous civil contempt actions resulting in the support payer's failure to appear in court. The support payer also has an outstanding civil bench warrant for failure to appear. Initiating an additional civil contempt proceeding would likely be futile and would not lead to compliance. It would be fitting for the AG to proceed with criminal prosecution after consulting with the FOC, but IV-D staff should not seek revocation of the warrant.

**Example 4:**

During an investigation, the AG discovers a support payer's income or assets that were previously unknown to the FOC. Generally, the AG should defer to the FOC and/or OCS's civil enforcement against these assets. However, doing so may be futile or impractical for the FOC and/or OCS because the support payer has a history of avoiding the attachment of income or assets. Further, the time and resources required for the FOC or OCS to enforce civilly against the assets may be impractical compared to the length of time the support recipient has not received support or the magnitude of the arrearage.

The *AG Criminal Non-Support* report lists any open civil enforcement activities for the docket. The report also indicates whether an upcoming civil hearing has been scheduled through MiCSES.

#### 4.6 Support Payer Engagement

The support payer has failed to contact, engage with, or respond to the FOC to get into a compliant status despite the FOC's attempts to communicate with the payer. There has been no recent court proceeding or FOC office interaction with the support payer that is likely to lead to payment or compliance.

This factor evaluates the support payer's level of engagement with the child support program. A support payer who is engaged with the program is more likely to comply with the child support order. Because of the subjectivity of this factor and the fact that the support payer's engagement is not fully tracked in MiCSES, the AG must consult with the FOC to seek information about the support payer's engagement.

Evidence that the support payer is not engaged may include:

- Failing to respond to forms, letters or correspondence sent by the FOC;
- Failing to take action or provide information requested by the FOC;
- Failing to appear at hearings, meetings or interviews;
- An outstanding civil bench warrant or a history of bench warrants resulting from failing to appear at a civil contempt hearing(s); or
- Case notes documenting the FOC's unsuccessful attempts to contact the support payer.

The *AG Criminal Non-Support* report indicates whether the support payer has an active civil bench warrant and when it was entered, as well as a count of past civil warrants in the life of the case.

#### 4.7 Payment Plan or Debt Compromise Agreement<sup>17</sup>

The support payer is not under a payment plan or debt compromise agreement, or, if the support payer is under a plan or agreement, (s)he has not complied.

If the support payer has a payment plan or debt compromise agreement in place, this means civil enforcement has not been exhausted. Criminal prosecution could be disruptive if the support payer is complying or is likely to comply with the payment plan.

The *AG Criminal Non-Support* report indicates whether the support payer is enrolled in an administrative arrears management program or a payment plan.<sup>18</sup>

#### 4.8 FOC Supervision

The support payer must not be under FOC supervision. Or, if the payer is under supervision of the FOC, criminal prosecution may be appropriate if (s)he is not complying with the conditions established by the court.

Upon the court finding the payer in contempt after a civil contempt proceeding, the court may enter an enforcement order that places the payer under FOC

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<sup>17</sup> Ref: [Section 6.42, "Payment Plans,"](#) and [Section 6.51, "Arrears Management,"](#) of the *Michigan IV-D Child Support Manual*.

<sup>18</sup> IV-D staff may find this information in MiCSES on the *Arrears Management Reporting (ARMR)* screen or by clicking the *Payment Plan* button on the *Support Order Entry (SORD)* screen.

supervision for a fixed term with reasonable conditions.<sup>19</sup> These conditions may include the payer participating in a parenting program, drug or alcohol counseling, a work program, other counseling, seeking employment, continued compliance with the support order, or entering into and complying with an arrearage payment plan.

If the support payer is under supervision of the FOC as ordered by the court, civil enforcement has not been exhausted. FOC supervision as an enforcement remedy may practically be exhausted if the support payer has not complied with the terms of supervision. Criminal prosecution could be disruptive if the support payer is complying or is likely to comply with the conditions established by the FOC or the court.

The *AG Criminal Non-Support* report does not identify whether the support payer is under FOC supervision because FOC supervision is not indicated in a specific MiCSES field. FOC supervision may be included in enforcement orders entered by the court. The AG will consult with the FOC to confirm whether the support payer is under FOC supervision.

## 5. Additional Considerations

The following conditions are not required IV-D criteria for IV-D funding of criminal prosecution. However, they may indicate whether civil enforcement has been exhausted and/or they may relate to the support payer's engagement with the IV-D program, which are required IV-D criteria.

### 5.1 Activities in Progress

The support payer may be participating in activities or subject to civil enforcement orders that may lead to compliance but are not readily apparent in MiCSES.

The AG will consult with the FOC and consider these activities to determine whether criminal prosecution would be disruptive to the support payer's progress toward compliance. The support payer may be making minimal payments because of these activities but may still meet the criteria for criminal prosecution. These activities may be evidence of the support payer's engagement with the FOC and court.

#### 5.1.1 Grant and Pilot Programs

A support payer may be participating in a grant or pilot program intended to help the payer comply with the support order. Criminal prosecution

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<sup>19</sup> Ref: MCL 552.633(h).

could be disruptive to the support payer's participation in the program and his/her opportunity to become able to pay support.

The *AG Criminal Non-Support* report excludes cases where the support payer is actively participating in a program documented on the MiCSES *Grant and Pilot Program Management (GAPM)* screen.

#### 5.1.2 Wellness, Work and Parenting Programs

A support payer may be participating in parenting classes, counseling, a work/employment program, drug treatment, mental health treatment, physical rehabilitation, etc. that could help the payer become compliant. Criminal prosecution could be disruptive to the support payer's participation in the program and his/her opportunity to become able to pay support.

The *AG Criminal Non-Support* report does not include indicators for these types of programs because MiCSES does not have specific fields to track them. However, if any of these programs are tracked in MiCSES as a grant or pilot program, the case is excluded from the report.

#### 5.1.3 Alternative Contempt Track

Some counties have a local administrative order for support payers to participate in an alternative track to civil contempt. Civil enforcement has not been exhausted if the support payer is participating in and complying with conditions such as probation.

Because this activity is not tracked in MiCSES, the *AG Criminal Non-Support* report does not include an indicator for it.

#### 5.1.4 Foster Care Reunification

A support payer and his/her family may be part of a foster care reunification plan. Criminal prosecution could be disruptive to the family's plan for reunification.

Because this activity is not tracked in MiCSES, the *AG Criminal Non-Support* report does not include an indicator for it.

### 5.2 Knowledge of the Obligation

The support payer must have knowledge of the support obligation. The AG will, as part of the investigation, determine whether the support payer has knowledge of the support obligation. While knowledge of the obligation is not an element of the crime or a requirement for prosecution, it is an important aspect

of the court having personal jurisdiction over the support payer in the criminal matter.

The *AG Criminal Non-Support* report includes information regarding whether the support obligation resulted from the court's entry of a default order and whether the parties participated in finalizing the order.<sup>20</sup> This may or may not indicate that the support payer had knowledge of the support obligation.

### 5.3 Residency Status

The AG may authorize criminal prosecution without regard to whether a support payer is a resident of Michigan. The AG will determine whether to seek extradition of payers who are nonresidents.

The *AG Criminal Non-Support* report indicates whether the support payer lives out of state, and it includes the name of the state.

### 5.4 Domestic/Family Violence

While AG staff have discretion for prioritizing the cases they choose to charge, the AG should not prioritize cases solely on the existence of domestic/family violence.

When the AG has identified a case for potential criminal prosecution, the AG should notify the support recipient of the potential criminal case as soon as feasible before criminal charges are filed. Entry of a criminal arrest warrant could incite the perpetrator to additional violence against the victim(s).

The *AG Criminal Non-Support* report identifies whether domestic/family violence exists for the parties of the support case.

### 5.5 Financial Hardship

The AG should consider whether the support payer has experienced or is experiencing hardship; whether the hardship is permanent, long-term, or temporary; and whether the hardship may have contributed to the support payer's support delinquency.

Examples include financial hardships due to public health pandemics,<sup>21</sup> public emergency declarations, hospitalization or long-term medical conditions, or disabilities, homelessness, etc. The support payer receiving or having a

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<sup>20</sup> Ref: Subsection 5.1, "Parental Participation," of [Section 4.20, "Support Recommendations and Order Entry," of the Michigan IV-D Child Support Manual](#). The information on the report comes from the *Participation* field on the *Order Detail* tab of the MiCSES *Order Preparation and Entry* (OPRE) screen.

<sup>21</sup> In 2020, one of the IV-D criteria for criminal investigation/prosecution was that IV-D staff were unaware of the support payer having a financial hardship because of the COVID-19 pandemic.

pending Social Security Disability Insurance (SSDI) benefit or Supplemental Security Income (SSI) may indicate the presence of a financial hardship.

The *AG Criminal Non-Support* report does not include information related to financial hardship. SSDI and SSI information is available through the Locate Tile of the MiCSES *Contempt Ability to Pay Screening (CAPS)* screen. It is also available in the Business Objects reports QN-112 SVES – *Title II – SSA Retirement, Survivors, Disability and Health Insurance Benefits Information* and QN-113 SVES *Title XVI – Supplemental Security Income Benefits Information*.

## 6. Investigation

Once the AG identifies a case for possible criminal prosecution, the AG will investigate the case and consult with the FOC office to determine whether to file charges. The AG will also consider the factors below in making this determination.

### 6.1 Other Existing Criminal Non-Support Cases

The AG will review whether the support payer is involved with any other criminal non-support cases that are already underway or adjudicated for the identified support case.<sup>22</sup>

In particular, the support payer may be the subject of a criminal case through a PA office for the same support case and crime. The AG should consult with the PA office in that matter to avoid conflicting actions or actions that could disturb the progress of the existing criminal action. For example, the support payer may already be on probation through the PA case and making support payments in compliance with the probation terms. Additional criminal action could interfere or conflict with the support payer's ability to comply.

### 6.2 Multiple Support Cases

The AG will review whether the support payer has multiple support cases that meet the IV-D criteria. The support payer may have multiple support cases with different custodial parties and children in the same county or in different counties.

The AG does not file a combined criminal case for all the support payer's dockets and their corresponding support recipients (victims) because restitution and bonds for restitution are not/cannot be split between victims. Instead, the AG files a separate criminal case for each individual docket/support recipient (victim). Further, because support payments resulting from a criminal case must be directed to the docket for which the criminal case was filed, the support

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<sup>22</sup> Ref: Subsection 8, "Record Keeping," of this manual section.

payer's other dockets do not get the benefit of the payment resulting from the criminal case.

Therefore, OCS recommends that, when the AG chooses to pursue a criminal case for one of a support payer's dockets, the AG should consider filing separate criminal cases for each of the support payer's other dockets. The other dockets must also meet the IV-D criteria, and the AG should synchronize criminal case actions for the other dockets.

To minimize burdens on the parties and prevent competing or conflicting enforcement between jurisdictions, OCS recommends either the AG or PA handle all criminal cases against the same support payer to the extent possible.

A support payer may have multiple support cases in the same county with the same support recipient and child(ren) in common. For example, there may be a paternity (DP) case and a divorce-minor children (DM) case. It may be beneficial for the FOC to pursue administrative consolidation<sup>23</sup> of these cases and/or verify that MiCSES records properly reflect the court's orders and their corresponding arrearages prior to the AG proceeding with criminal action.

### 6.3 Investigate the Support Payer's Income and Assets

The AG will investigate the support payer's income, assets, obligations, credit history, and other factors. The AG will provide any newly discovered income or asset information to the FOC as part of the consultation with the FOC described below. The AG's discovery of new income or asset information may present an opportunity for additional civil enforcement such as attachment of the income or asset.

## 7. AG Consultation With the FOC

The OCS-AG Interagency Agreement requires the AG to consult with the FOC when the support recipient asks the AG to investigate a case for criminal non-support. The AG must also consult with the FOC when the AG has identified a case for investigation on its own initiative. The AG will consult with the FOC before filing a criminal complaint with the court.

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<sup>23</sup> Ref: [MCR 3.204](#) and [State Court Administrative Office \(SCAO\) Administrative Memorandum \(ADM\) 2008-001, Amendments of Michigan Court Rules MCR 3.204 \(Proceedings Affecting Minors\); and MCR 3.212 \(Postjudgment Transfer of Domestic Relations Cases\)](#).

## 7.1 Purpose of Consultation

The purpose of the consultation between the AG and FOC is to:

- Discover, discuss, confirm, and clarify the facts of the case – particularly, the IV-D criteria that are not readily apparent in MiCSES;<sup>24</sup>
- Discuss the support payer’s history of civil enforcement and engagement with the FOC and court;
- Confirm that civil enforcement has been exhausted;
- Provide newly discovered information to the FOC; and
- Discuss whether additional civil enforcement action(s) would be futile or impractical.

FOC staff may provide information that suggests to the AG that criminal prosecution is not warranted. For example, there may be information indicating why the support payer cannot maintain employment or that the support payer is participating in an activity that could lead to compliance.

The consultation is an opportunity for AG and FOC staff to discuss the best course of action for a case and consider the potential outcomes for the family. Ultimately, the AG has the prosecutorial authority and discretion to decide whether to proceed with criminal prosecution.

## 7.2 Points of Contact

The [Partner Contact Information](#) page on mi-support identifies a designated criminal non-support contact for each county FOC office. The designated contact person serves as an initial FOC contact and liaison for the AG. The FOC contact may direct the AG to other FOC personnel for consultation or questions on the criminal case.

The Partner Contact Information page also provides a list of AG staff in the Department of Attorney General’s Child Support Division, as well as PA contacts.

## 7.3 Promptness of Consultation

FOC staff will promptly respond to the AG’s request for consultation, coordinate a time for the consultation, and participate in it. The Interagency Agreement does not provide a standard of promptness. OCS recommends the AG give the FOC a reasonable amount of time to respond – minimally, seven business days. If the FOC does not respond to or consult with the AG in a reasonable amount of time, the AG has discretion to continue its action.

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<sup>24</sup> Ref: Subsections 5 and 6 in this manual section regarding criteria for which it is imperative that the AG consult with the FOC.

#### 7.4 New Civil Action Upon Discovery of New Information

Upon the AG's discovery of new information during the investigation, the AG will inform the FOC of the new information during the consultation. The FOC has discretion to initiate a new civil contempt proceeding or other civil enforcement action. The FOC will inform the AG whether it will take additional civil enforcement action or whether doing so would be futile or impractical.

The Interagency Agreement states that civil enforcement action(s) is separate from criminal prosecution and does not bar the AG from proceeding with the prosecution when the FOC has determined civil enforcement would be futile or impractical. However, if the FOC chooses to take additional action, civil enforcement has not been exhausted.

#### 7.5 Ability to Pay

Unlike civil contempt where a support payer's ability to pay is a critical and determining factor of contempt,<sup>25</sup> Michigan case law has established criminal non-support as a strict liability offense where only an impossibility to pay rather than an inability to pay is a valid defense.<sup>26</sup> Because a support payer cannot use the inability to pay as an available defense in a criminal case, it becomes more difficult for the payer to avoid conviction. Consequently, there is a higher probability that the support payer will be convicted, and the family could potentially experience negative outcomes.

However, in the spirit of the Michigan Child Support Program's Strategic Plan and operating principles, a parent's ability to pay will be evaluated before using IV-D funds for civil contempt action and for criminal prosecution. Consequently, the AG and FOC will discuss the support payer's ability to pay. The Interagency Agreement states that the AG will discontinue action on the case if the investigation clearly demonstrates the support payer's inability to pay.<sup>27</sup>

[Michigan IV-D Child Support Manual Section 6.39, "Civil Contempt \(Show Cause\),"](#) provides guidance about the ability to pay in civil contempt actions. While this guidance does not apply to criminal investigations, it may help inform the AG's investigation and the consultation between the AG and FOC.

FOC staff will inform the AG whether the court has made an ability to pay determination as part of a past civil contempt hearing and when that civil contempt hearing occurred. The discovery of new income or asset information since the last civil contempt hearing could indicate a change in the support

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<sup>25</sup> Ref: *Turner v. Rogers*, 564 U.S. 431 (2011).

<sup>26</sup> Ref: *People v. Likine*, 492 Mich. 367 (2012).

<sup>27</sup> The AG may opt to continue action using funds other than IV-D funds.

payer's circumstances and potentially result in the court making a different determination in a new hearing.

## 7.6 Civil Contempt Hearing

If the FOC chooses to initiate a new civil contempt hearing after consultation with the AG, FOC staff must inform the AG about the results of that hearing and the support payer's compliance with the court's order after the hearing.

If the court hearing the civil matter finds the support payer does not have the ability to pay, the AG should discontinue the criminal action – the court's determination clearly demonstrates the support payer's inability to pay. If the AG chooses to continue the criminal action, it will not be IV-D funded.

If the support payer appears at the hearing and the court finds the payer does have the ability to pay, the court may order the support payer to take certain actions to become compliant. Civil enforcement has not been exhausted if the support payer complies with the court's order. If the support payer fails to comply with the court's order, the AG may proceed with filing a criminal complaint at its discretion.

If the support payer fails to appear at the hearing and the court finds the payer does have an ability to pay, the AG may proceed with filing a criminal complaint at its discretion.

## 8. Record Keeping

Record keeping requirements promote communication and awareness between partners. IV-D staff need to be aware of criminal non-support activities to avoid duplicate or conflicting actions.

For example, FOC staff who are unaware of criminal prosecution activities might engage with the parties in a manner that interferes with or disrupts the criminal case. Further, FOC staff may not recognize a need to communicate with AG or PA staff when necessary or appropriate. A lack of communication and awareness between AG and PA staff could result in both offices prosecuting the same support payer for criminal non-support on the same support case.

### 8.1 Federal Requirements

Federal regulations require child support case records to be supplemented with information pertaining to the case, "as well as all relevant facts, dates, actions taken, contacts made, and results in a case."<sup>28</sup> Federal regulations also require the child support system to, at a minimum, maintain information pertaining to

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<sup>28</sup> Ref: 45 CFR 303.2(c).

support delinquency and enforcement activities.<sup>29</sup>

Criminal cases and their corresponding court records, AG files, and PA files are maintained separately from the child support case and are not included in or accessible through MiCSES. However, criminal non-support investigation and prosecution are enforcement activities conducted in relation to the affected IV-D case. Therefore, the child support case record must be supplemented with basic information about the criminal non-support case and activities.

## 8.2 Interagency Agreement Requirement

The Interagency Agreement between OCS and the AG office states that AG staff will “update MiCSES and maintain and record information, events, and transactions necessary to describe all actions taken in a case.”

## 8.3 Staff Responsible for Record Keeping

When criminal non-support activities begin, AG or PA staff will record information about them in MiCSES. These activities may include identifying, investigating, and/or prosecuting the case. Throughout the life of the case, AG and PA staff will update this information, as well as the activity statuses and other relevant details. If FOC staff become aware of criminal non-support activities but AG or PA staff have not yet entered the information, FOC staff may ask AG or PA staff to enter it, or FOC staff may choose to enter it.

## 8.4 Information to Document in MiCSES

### 8.4.1 *Member Demographics* (DEMO) Screen

AG or PA staff will enter and maintain information related to criminal non-support activity in the *Criminal Non-Support* section of the DEMO screen’s *Enforcement* tab.<sup>30</sup> This section of the DEMO screen is intended to reflect the current or most recent criminal non-support case activity. MiCSES will retain a history of changes to this information in the DEMO screen’s *History* pop-up window.

AG or PA staff will maintain this information throughout the duration of the criminal non-support activities. Upon identifying a IV-D case or receiving a complaint/request for criminal non-support action, the AG or PA will record the status of the request.

- If the AG or PA chooses to not investigate, AG or PA staff will mark the request status as denied;

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<sup>29</sup> Ref: 45 CFR 307.10(b)(4)(i) and 45 CFR 307.11(b)(1).

<sup>30</sup> Ref: [MiCSES DEMO screen documentation on mi-support](#) for more information.

- If an investigation occurs but the AG or PA chooses to not file charges, AG or PA staff will mark the request status as dismissed; and
- If charges are filed, the AG or PA will maintain the status of the criminal non-support case.

AG or PA staff will enter the following information and any other relevant information about the criminal matter as free-form text comments:<sup>31</sup>

- The civil case number of the support order associated with the criminal matter;
- The criminal case number;
- The county/court in which the criminal case was filed; and
- Whether the criminal case has been sealed by the court.

If additional criminal investigations or cases are brought concurrently for a support payer having multiple civil support cases, AG or PA staff will note the civil case numbers, criminal case numbers, and any relevant information in the comments.

AG or PA staff will enter the information under the Member ID of the case member against whom the criminal non-support action is being considered or taken (i.e., the support payer). AG or PA staff will enter the information in this manner because:

- The DEMO screen is member-based;
- Criminal charges are filed for a single child support docket (court case). Criminal charges are not combined in a single criminal case for multiple support cases/dockets; and
- The information may be relevant to other support cases where the case member is a payer of support or a recipient of support.

#### 8.4.2 *Notes Processor (NOTE) Screen*

AG, PA, and FOC staff will supplement the information entered on the DEMO screen with any additional information relevant to activities in the criminal case. They will enter this information on the NOTE screen. Particularly, staff should document the date, time, and summary of contacts, consultation, and other communications between partners.

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<sup>31</sup> Ref: [MCR Chapter 6, "Criminal Procedure"](#) and the [Michigan Judicial Institute's Handbook of Legal Terms](#); MCL 761.1 et seq.; and MCL 750.5 et seq. for definitions and terminology used in criminal cases. For more information about sentencing, refer to SCAO's [Comparison Between Deferred Judgments, Delayed Sentences, and Traditional Sentences](#).

### 8.4.3 Viewing Criminal Case Information

IV-D staff can view the information documented about the criminal case on the DEMO and NOTE screens. Information entered on the DEMO and NOTE screens is also viewable through the *Member Details* pop-up window and the CAPS screen.

## 9. Actions After the Criminal Complaint Is Filed

### 9.1 Entry of Criminal Arrest Warrant

As an additional record keeping requirement, AG and PA staff will document the entry of a criminal arrest warrant on the DEMO screen.<sup>32</sup> However, MiCSES does not transmit information for criminal warrants to the Law Enforcement Information Network (LEIN) like it does for civil bench warrants.<sup>33</sup>

### 9.2 Continuation of Civil Enforcement

The FOC enforces support orders and may commence or continue civil enforcement actions concurrently with criminal enforcement actions. Michigan law preserves the right to civil enforcement and preserves support arrearages.<sup>34</sup> Further, the criminal case may result in the court ordering restitution to be paid to the support recipient in compliance with the support order.

Accordingly, FOC staff will not prematurely close a case or end civil enforcement and locate activities when the AG or PA files a criminal complaint. FOC staff will not remove arrears balances solely because a criminal complaint has been filed. FOC staff will continue to attempt civil enforcement and locate activities during the criminal proceedings and after the criminal case has been adjudicated.

The AG and FOC consultation may have determined that civil enforcement had been exhausted, or it was futile or impractical at the time of investigation and consultation. Past civil enforcement may not have been successful up to the point of the criminal complaint being filed, but continued attempts may become successful.

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<sup>32</sup> Ref: Subsection 8, "Record Keeping," in this manual section.

<sup>33</sup> Ref: [Section 6.45, "Bench Warrants/LEIN," of the Michigan IV-D Child Support Manual](#) for more information about civil bench warrants and MiCSES' interface with LEIN.

<sup>34</sup> MCL 750.3 and MCL 750.4

For example, FOC staff may have submitted the support payer in the past for tax refund offset, passport denial, or financial institution data matching, or to credit reporting agencies without those actions resulting in support payment. FOC staff should continue submitting the support payer for those civil remedies because they could still lead to payment of support or the identification of assets.

If continued locate activities reveal new income or asset information for the support payer, the FOC should take the appropriate civil enforcement against the income or asset and inform the AG.

### 9.3 Arrearage Waiver/Forgiveness/Discharge

Once the AG has filed a criminal complaint, FOC staff should notify the AG of any actions a support recipient or support payer takes to reduce or abate support arrearages. These actions are described below.

Note: IV-D staff other than the AG do not have authority to negotiate a settlement of a pending criminal case. Arrears waivers, forgiveness, and discharges in the civil case are not the same as negotiating a settlement in the criminal case; however, they may affect the criminal proceedings.

#### 9.3.1 Support Recipient Requests Arrears Waiver/Discharge Before Criminal Case Adjudication

The support recipient may contact the FOC and ask that arrears be waived after the investigation or after a criminal complaint has been filed.

Before granting the waiver, FOC staff should:

- Tell the support recipient to contact the AG;
- Attempt to ascertain whether the support recipient is under coercion or duress (consulting with the AG as needed); and
- Notify the AG of the support recipient's request and the FOC's intention to grant or not grant the request.

FOC staff must not discharge arrears owed to the support recipient if the support recipient is acting under coercion or duress when providing consent for the discharge.<sup>35</sup> However, if the support recipient is not under coercion or duress, the FOC:

- May grant the support recipient's request; and
- Should inform the AG of the request being granted and completed.

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<sup>35</sup> Ref: Section 6.51 of the *Michigan IV-D Child Support Manual*.

### 9.3.2 Support Payer Requests Administrative Arrears Discharge or Payment Plan Before Criminal Case Adjudication

#### A. Administrative Arrears Discharge

After the AG has filed a complaint, the support payer may contact the FOC and request an administrative discharge of state-owed arrears.<sup>36</sup>

If the support payer has a criminal case pending adjudication and contacts the FOC to request an administrative arrears discharge, FOC staff should inform the AG of the request. FOC staff should also report whether the payer qualifies for an administrative arrears discharge, and whether the FOC intends to grant the discharge.

#### B. Statutory/Judicial Payment Plan and Discharge

After the AG has filed a criminal complaint, the support payer may file motions with the court in the civil matter for a payment plan and arrears discharge.<sup>37</sup>

Upon learning that the support payer has filed a motion for a payment plan, FOC staff should inform the AG.

### 9.4 Disposition of a Civil Bench Warrant

A support payer may have an outstanding civil bench warrant under the Support and Parenting Time Enforcement Act.<sup>38</sup> The support payer may have a concurrent, outstanding criminal warrant under the criminal complaint.

Upon the support payer's arrest on a criminal warrant, Michigan law<sup>39</sup> states that the court handling the criminal case must notify any court that has issued a civil bench warrant (in the same support dispute) so the court may recall the civil warrant. FOC staff must cancel the civil bench warrant in MiCSES upon receiving notice from the court handling the civil matter that the civil warrant has been recalled.<sup>40</sup>

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<sup>36</sup> Ref: Section 6.51 of the *Michigan IV-D Child Support Manual*.

<sup>37</sup> Ref: Section 6.42 of the *Michigan IV-D Child Support Manual*.

<sup>38</sup> MCL 552.631

<sup>39</sup> MCL 552.631(3) and MCL 750.165(3)

<sup>40</sup> Ref: Section 6.45 of the *Michigan IV-D Child Support Manual*.

## 10. Post-Adjudication of a Criminal Case

### 10.1 Restitution

Crime victims have a constitutional<sup>41</sup> and statutory<sup>42</sup> right to full restitution. The court in the criminal case may order restitution as compliance with the child support order under the existing civil judgment without specifying the amount.<sup>43</sup> Compliance with the support order without a specific amount may include the payment of outstanding arrearages, future surcharges, and future support, if applicable. Payment of any future surcharges, as well as current and future support, if applicable, may be made part of the criminal case's probation or parole requirements.

FOC staff will not eliminate arrears in MiCSES or close the docket solely because the court's order in the criminal case requires the defendant's compliance with the civil judgment as restitution.<sup>44</sup> Unless a court specifically orders arrears to be removed, the arrears in the civil case must remain intact, enforceable, and collectible.

### 10.2 Processing Support Payments Through MiCSES

Federal and state laws require a single statewide automated data processing and retrieval system to receive and disburse support payments.<sup>45</sup> In order for the support payer to receive proper credit under the civil support order, payments must be recorded in MiCSES before they are sent to the support recipient.

Any payments for support-related debts resulting from criminal prosecution for non-payment of support must still be processed in MiCSES.

#### 10.2.1 Special Instruction Payments

If support payers are obligated to pay under more than one support order tracked in MiCSES, they must make the payment with special instructions to the FOC that is handling the associated civil (or domestic relations) case.<sup>46</sup> The payment must include instructions regarding which

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<sup>41</sup> Ref: [State Constitution of Michigan, Article 1, Section 24.](#)

<sup>42</sup> Ref: MCL 780.766.

<sup>43</sup> This eliminates duplicate collection efforts by the circuit court in the criminal matter and by the FOC in the civil matter.

<sup>44</sup> The FOC has statutory duties that require civil enforcement actions independent from criminal prosecution.

<sup>45</sup> Ref: Section 454A of the Social Security Act and MCL 400.236.

<sup>46</sup> Ref: [IV-D Memorandum 2003-005, Receipt of Support Payments in Local Offices.](#)

case(s) the payment should be allocated to in MiCSES.<sup>47</sup>

Michigan Court Rules require special instruction payments to include the following written information:

- The support payer's name and payee's name(s);
- The court case number(s);
- The date of the order; and
- The amount designated for each case.<sup>48</sup>

The *Special Instruction Payment Coupon* (DHS-510) requests the above information. Support payers may complete this form and include it with their payments to ensure credit to the appropriate court case.<sup>49</sup> The special instruction payment coupon itself is not required with the payment, but the information provided on the coupon is necessary for FOC staff to properly allocate the payment.

Without the special instructions, MiCSES will allocate the payment among all the support payer's child support cases. If the support payer only remitted payment amounts consistent with the restitution order, this allocation would force the support payer into violation of the criminal court's order to pay the arrears in the criminal case.

If the support payer has only one child support order, the support payer may send payments to the MiSDU without special instructions.

### 10.2.2 Bonds and Probation

Upon adjudication of the criminal case, the court may require a support payer to post a bond or obey probation conditions. Depending on the sentence, the support payer may have to post a bond with the FOC or report periodically to the FOC. If the support payer fails to obey the probation order, the FOC must report the default to the probation department.

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<sup>47</sup> Currently MiCSES is unable to accept special instruction payments from the Michigan State Disbursement Unit (MiSDU), and MCR 3.208(C) permits special instruction payments to be sent only to the local FOC office. Therefore, all special instruction payments must be sent to the FOC for proper processing.

<sup>48</sup> Ref: MCR 3.208(C)(2) and (3).

<sup>49</sup> A support payer who has multiple child support orders may obtain a special instruction payment coupon from the [Michigan Department of Health and Human Services \(MDHHS\) public website](#), the FOC, OCS, PA, or the AG's office.

## 11. Confidentiality/Security

The OCS-AG Interagency Agreement requires the AG to:

- Protect the confidentiality of all information received or used, including information furnished by the PA, FOC, MDHHS/OCS, or another IV-D partner to support the cases that are receiving the AG's service or maintained in MiCSES; and
- Comply with all IV-D confidentiality and security policy requirements, including those in [Section 1.10, "Confidentiality/Security," of the Michigan IV-D Child Support Manual](#) and this manual section.

In addition, the Interagency Agreement includes specific provisions regarding the AG's access to and use of Financial Institution Data Match (FIDM) information, federal tax information (FTI), and protected health information under the Health Insurance Portability and Accountability Act.

### 11.1 Disclosure of IV-D Information to the AG

Federal regulations generally permit disclosure of IV-D information to the AG for the purpose of criminal investigation and prosecution of IV-D cases as a IV-D support service under a cooperative agreement.<sup>50</sup> They also permit access to and use of data in the child support enforcement system for this purpose.<sup>51</sup> The federal regulations apply to IV-D information that is contained in the electronic child support enforcement system and other records in the FOC office associated with a IV-D case.

IV-D staff may disclose IV-D information to law enforcement personnel for an investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of the IV-D program.<sup>52</sup> Unless otherwise authorized by law, IV-D information may not be disclosed to or used by the AG for purposes other than criminal prosecution of non-payment of support. For example, the AG may not search for or use IV-D information for prosecution of a murder case.

The AG may access IV-D records in the IV-D system to obtain information about the IV-D case, the associated support order, the parties, payment history, civil enforcement history, etc. This gives the AG the ability to review the IV-D case to determine the facts of the case for the purpose of criminal prosecution.

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<sup>50</sup> 45 CFR 303.21

<sup>51</sup> 45 CFR 307.13

<sup>52</sup> Ref: Subsection 10.5, "Disclosures to Law Enforcement Personnel," in Section 1.10 of the *Michigan IV-D Child Support Manual*.

In addition to IV-D regulations, Michigan Court Rules also govern the disclosure of FOC records.<sup>53</sup> Unless otherwise prohibited by law, FOC record disclosure to the AG is permitted when the AG is:

- An agency providing IV-D services; or
- Law enforcement personnel conducting a criminal investigation related directly to an FOC matter.

### 11.2 AG Access and Use of FIDM Information

The Interagency Agreement states that a designated FIDM coordinator in the AG's office will have access to FIDM information. Federal law and regulations prohibit disclosure of a person's financial records obtained from a financial institution except for the purpose of and extent necessary in enforcing that person's IV-D child support obligation.<sup>54</sup>

The AG must not use or disclose FIDM data for any purpose except for criminal prosecution as a IV-D service.<sup>55</sup>

### 11.3 Disclosure of Criminal Case Information to Parties

The criminal non-support information recorded in MiCSES is intended for internal IV-D staff awareness only.

IV-D staff regularly communicate with parties about their civil IV-D case(s) and support order(s); for example, they answer questions about civil enforcement actions being taken. However, if the AG is investigating the support case for criminal prosecution or has filed a criminal case, IV-D staff should refrain from discussing anything about the criminal investigation or prosecution with the parties. Disclosing criminal case information and activities could potentially compromise the investigation and criminal proceedings. Disclosure could also endanger the parties and law enforcement officers. Additionally, the court in the criminal matter may have sealed the records in the criminal case.<sup>56</sup>

As a best practice, IV-D staff should direct a party asking about criminal non-support activity to contact the AG or PA office. Also, IV-D staff may direct support payers to contact the court for inquiries about addressing felony warrants or determining who their court-appointed attorney is, if one has been appointed.

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<sup>53</sup> MCR 3.218

<sup>54</sup> Title 42, Section 669a(b) of the Social Security Act and 45 CFR 303.21(d)(3)

<sup>55</sup> Ref: Subsection 10.9, "Disclosures to Other State Agency Programs," in Section 1.10 of the *Michigan IV-D Child Support Manual* for details on the disclosure of FIDM data and other types of information.

<sup>56</sup> Ref: Subsection 8.4.1 in this manual section regarding the AG noting whether the court has sealed the criminal case.

## 12. Compliance With the Interagency Agreement and Policy

FOC staff are not required to monitor or enforce the AG's compliance with any requirements or IV-D policy related to the Interagency Agreement and the AG's provision of criminal prosecution of support cases as a IV-D service. FOC staff may direct any issues or concerns to their OCS Contract Manager.

### SUPPORTING REFERENCES:

#### Federal

45 CFR 302.34  
45 CFR 303.2(c)  
45 CFR 303.21  
45 CFR 303.21(d)(3)  
45 CFR 303.107  
45 CFR 307.10(b)(4)(i)  
45 CFR 307.11(b)(1)  
45 CFR 307.13  
Social Security Act, Section 454(3)  
Social Security Act, Section 454(4)  
Social Security Act, Section 454(A)  
Title 42, Section 669a(b) of the Social Security Act

#### State

Michigan Constitution, Article I, Section 24

MCL 400.236  
MCL 552.501 et seq.  
MCL 552.601 et seq.  
MCL 552.517f  
MCL 552.631  
MCL 552.631(3)  
MCL 552.633(h)  
MCL 750.3  
MCL 750.4  
MCL 750.5 et seq.  
MCL 750.161  
MCL 750.165  
MCL 750.165(3)  
MCL 750.167  
MCL 750.168  
MCL 750.213  
MCL 761.1 et seq.  
MCL 761.1(r)  
MCL 761.5 et seq.  
MCL 764.1(1)-(3)  
MCL 780.751, et seq.

MCL 780.766

MCR 3.208(C)(2) and (3)

MCR 3.218

MCR 3.218(A)

MCR 6.101(C)

**REVISION HISTORY:**

[IV-D Memorandum 2024-019](#)