



STATE OF MICHIGAN  
DEPARTMENT OF HUMAN SERVICES  
LANSING



JENNIFER M. GRANHOLM  
GOVERNOR

**MICHIGAN IV-D ACTION TRANSMITTAL 2008-005**

**TO:** All All Prosecuting Attorney (PA) Staff  
All Friend of the Court (FOC) Staff  
All Office of Child Support (OCS) Staff

**FROM:** Marilyn F. Stephen, Director  
Office of Child Support

**DATE:** March 18, 2008

**SUBJECT:** Processing Orders for Criminal Non-Payment of Support

**PURPOSE:**

This Action Transmittal (AT) provides information to IV-D staff concerning orders for criminal non-payment of support.

**BACKGROUND:**

IV-D program partners identified the need for a statewide policy regarding orders for criminal non-payment of support. Procedures on how to handle payments for these orders vary among counties. In an effort to be consistent and to properly account for payment of these orders on the Michigan Child Support Enforcement System (MiCSES), the State Court Administrative Office (SCAO) updated the Felony Nonsupport Referral and Processing Policy in SCAO Administrative Memorandum (ADM) 2008-03,<sup>1</sup> and OCS has prepared this AT in conjunction with the SCAO ADM.

**RESTITUTION:**

Crime victims have a constitutional<sup>2</sup> and statutory<sup>3</sup> right to full restitution. SCAO ADM 2008-03 recommends the court order restitution as compliance with the child support order. This may include the payment of outstanding arrearages, future surcharges, and future support (if applicable). SCAO also recommends that if the payer is obligated to

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<sup>1</sup> SCAO ADM 2008-03 replaces SCAO ADM 2003-011 and is found at:  
<http://courts.michigan.gov/scao/resources/other/scaoadm/2008/2008-03.pdf>.

<sup>2</sup> Ref: State Constitution Article 1, Section 24 at:  
<http://www.legislature.mi.gov/mileg.aspx?page=getObject&objectName=mcl-Article-1-24>.

<sup>3</sup> Ref: Michigan Compiled Law (MCL) 780.766 at:  
<http://www.legislature.mi.gov/mileg.aspx?page=getObject&objectName=mcl-780-766>.

pay under more than one child support order, that the payer submit the payment to the FOC with instructions on how to allocate and distribute the payment in MiCSES.

### **PROCESSING PAYMENTS THROUGH MiCSES:**

Federal and state law require a single statewide automated data processing and information retrieval system to receive and disburse support payments.<sup>4</sup> In order for the defendant to receive proper credit under the civil support order, payments must be recorded in MiCSES before they are sent to the custodial party (CP).<sup>5</sup>

An FOC should not zero-out arrears in MiCSES simply because a criminal court orders the defendant's compliance with the civil judgment as restitution.<sup>6</sup> Unless a court specifically orders arrears to be wiped from the system, the arrears must remain intact, enforceable and collectible.

### **SPECIAL INSTRUCTION PAYMENTS:**

Any payments for support-related debts resulting from criminal prosecution for non-payment of support must still be processed in MiCSES. If 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 handling the associated civil (or domestic relations) case and must include special instructions on how the payment should allocate in MiCSES.

MCR 3.208(C)(2) and (3) requires that special instruction payments include the following written information:

- The payer name and payee name(s);
- The court case number(s);
- The date of the order; and
- The amount designated for each case.

OCS has developed a Special Instruction Payment Coupon (DHS-510) (Ref: Attachment 1) that payers may include with their payments to ensure credit to the appropriate court case.<sup>7</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.

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<sup>4</sup> Ref: Section 454A of the Social Security Act and MCL 400.236.

<sup>5</sup> Currently MiCSES is unable to accept special instruction payments from the Michigan State Disbursement Unit (MiSDU), and Michigan Court Rule (MCR) 3.208(C) only permits special instruction payments to be sent to the local FOC office. Therefore, all special instruction payments must be sent to the FOC for proper processing.

<sup>6</sup> The FOC has statutory duties that require enforcement actions independent from criminal prosecution.

<sup>7</sup> Since MiSDU is currently unable to process special instruction payments, a payer who has multiple child support orders must contact OCS, the PA, or the Attorney General's office to obtain a special instruction payment coupon, or follow all the requirements of MCR 3.208(C)(3).

When a payer has multiple court cases, payments received without special instructions will allocate according to the receipt source following the allocation rules<sup>8</sup> and the allocation/distribution hierarchies.<sup>9</sup> As a result, the allocation of payments to the non-custodial parent's (NCP's) other court cases/orders may occur. This may also result in a criminal court determination that the defendant is in contempt of the terms of probation on the criminal order to pay full amounts on the civil order.

Whether there is one docket/order or multiple dockets/orders, if all orders are included in the criminal order, FOC staff may forward the payment to the MiSDU for processing. However, due to distribution hierarchy rules, non-support amounts (e.g., fees) will not be paid until all support amounts are paid. If the criminal court has required non-support payments, those fees and/or costs must be paid and receipted as special instruction payments by the local FOC. This will ensure that the NCP will receive proper credit when additional support arrears exist.

Payments received through non-special instruction payments (e.g., income withholding notice [IWN]) will allocate and distribute based on the receipt source type (e.g., IWN), leaving fees and costs to be paid only when all support arrears have been satisfied.

**LEGAL REFERENCES:**

Federal

Section 454A of the Social Security Act

State

MCL 400.236

MCL 552.509

MCL 780.766

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

**POLICY REFERENCES:**

SCAO ADM 2008-03:

*Felony Nonsupport Referral and Processing Policy*

*MiCSES Customer Information Guide:*

Suspense Management Reference

AT 2005-036, *Surcharge for the Michigan Child Support Enforcement System (MiCSES) 3.5 Release, Ordered on Arrears MiCSES 3.5 Updates, Allocation & Distribution Changes*

**AT MAINTENANCE:**

Retain AT until further notice.

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<sup>8</sup> Ref: MiCSES Allocation Rules, at:

[http://mi-support.cses.state.mi.us/training/materials/handouts/pdf/Allocation\\_Rules.pdf](http://mi-support.cses.state.mi.us/training/materials/handouts/pdf/Allocation_Rules.pdf).

<sup>9</sup> Ref: MiCSES Allocation/Distribution Hierarchies, at:

[http://mi-support.cses.state.mi.us/policy/stateat/pdf/2005/AT2005-036\\_Att1.pdf](http://mi-support.cses.state.mi.us/policy/stateat/pdf/2005/AT2005-036_Att1.pdf).

**EFFECTIVE DATE:** Upon receipt.

**REVIEW PARTICIPANTS:** Financial Work Improvement Team (FIN-WIT)  
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**ATTACHMENT:** Attachment 1: Special Instruction Payment  
Coupon (DHS-510)

**MFS/RE**