

## SECTION K: AGREEMENT FOR CHILD SUPPORT SERVICES

Detach this document and keep it for your records.

This document includes the terms and conditions of the services which will be provided in your child support case by the South Dakota Department of Social Services, Division of Child Support (DCS). This document describes DCS's services, the responsibilities of the persons receiving the services, the fees, the accounting procedures, and the use and disclosure of information for cases. It is important that you read the entire document.

### SERVICES

1. DCS will determine the methods and strategies used to collect support and fulfill its duties.
2. Current support must be due and owing for at least one minor child and the applicant is the child's parent or legal guardian. If only past due support is owed, DCS is unable to accept an application for services.
3. DCS cannot provide child support services directly to you if you are a child seeking support from your parents. Your legal guardian or custodian, however, may seek assistance from us on your behalf.
4. DCS will make reasonable efforts, consistent with its priorities and procedures, to:
  - a. Locate the parent.
  - b. Establish paternity if paternity for a minor child has not previously been established by one of the following: child born during the marriage (or within ten months after dissolution of marriage) of the mother and father; paternity affidavit signed by the mother and father; genetic testing; court order establishing paternity; or adoption order. Application must be received at least 90 days prior to child being emancipated.

If DCS establishes paternity and the child was born in SD, an order adjudicating paternity will be filed with the Office of Vital Records. Vital Records will add the father's name to the child's birth record. The child's birth certificate will be amended to reflect both parents' names. If the child was born in another state, one of the parents will need to contact the Vital Record agency in the other state to obtain the necessary paperwork to add the father's name to the birth record. The other state may assess a fee for adding the father's name to the birth record.

- c. Establish a child support order for a minor child(ren). In the process, DCS will request the noncustodial parent maintain a health insurance policy for the child(ren) if the children do not have adequate health insurance. Application must be received at least 90 days prior to child being emancipated.

If the child was born in SD and order adjudicating paternity is entered, the order will be filed with the Office of Vital Records. Vital Records will add the father's name to the child's birth record. The child's birth certificate will be amended to reflect both parents' names. If the child was born in another state, one of the parents will need to contact the Vital Record agency in the other state to obtain the necessary paperwork to add the father's name to the birth record. The other state may assess a fee for adding the father's name to the birth record.

- d. Enforce an existing child support order. If there is not a minor child for whom current support is due and owing, DCS will be unable to provide child support enforcement services.
    - e. Enforce health insurance coverage if (1) you do not have satisfactory health insurance coverage, (2) the support order includes provisions for health insurance coverage to be maintained by the noncustodial parent, and (3) health insurance is available through the noncustodial parent's employer. If there is no court order for support or the current support order has no provision for health insurance, the DCS may require modification of the order to include health insurance coverage. DCS will not collect deductibles, co-insurance amounts, or past due medical costs from the noncustodial parent unless a judgment for those amounts has been obtained.
    - f. Collect and distribute child support payments as required by law.
    - g. Collect court ordered spousal support if current child support is being collected, under the same court order.
    - h. Review cases for potential adjustment in the support amount, either upward or downward, using South Dakota's child support guidelines. A review of the support amount may be requested by either parent.
5. DCS will use reasonable efforts to collect child support. The DCS cannot predict how long this will take or guarantee success. DCS will evaluate the case circumstances and proceed with the appropriate enforcement action determined necessary to attempt collection of the child support.

6. DCS monitors delinquent child support payments at the end of the month. If the support order requires the noncustodial parent to pay on a specific day of the month, it will be very difficult to monitor. Under income withholding, the payments are made when the employer does payroll. Payments range from weekly to monthly. Often the payment must go through the Clerk of Courts, other states, tribal courts, or foreign countries before the actual payment is received in the Child Support Payment Center. Some child support agencies recover costs incurred for the child support services. If your case is referred to another state, tribal child support agency, or foreign country, the responding agency may assess fees or may withhold fees from the support collected, including IRS tax offset moneys.
7. If a divorce decree orders the noncustodial parent to pay alimony and child support, the DCS will enforce the alimony and child support. However, DCS cannot enforce only alimony.
8. If the noncustodial parent lives in a state other than South Dakota or another jurisdiction, DCS may have to refer your case to the other agency to establish paternity and/or a child support order or enforce the child support order. Because of the differences in state laws and procedures, cases referred to other agencies present additional issues and often take more time. DCS will release any information contained in the case file to another state or jurisdiction when interstate enforcement action requires the information.
9. DCS does not have jurisdiction over Native Americans residing on Indian reservations or trust land. Therefore, if the noncustodial parent is Native American and resides on Indian land, the DCS may not be able to establish paternity or a support obligation. If there is a court order for support, the DCS may only be able to provide limited enforcement services. If the tribe has a federally approved child support program, DCS may be able to refer your case to their child support program to establish paternity and/or child support order or enforce the child support order.
10. In performing services, DCS is assisted by attorneys. These attorneys represent the state. They are not your personal attorneys.

**This means no attorney-client relationship exists between you and the DCS attorney. It also means in the event of a conflict between your interests and those of the state, the DCS attorney will have to resolve the conflict in favor of the state's interest.**

DCS cannot provide all services that you may receive from a private attorney. For example, DCS cannot provide services to you regarding custody, parenting time, or any other issue not directly related to child support.

If you require legal advice, desire specific legal action, or desire routine involvement in deciding the methods to be used in your case, you may want to consider using a private attorney who may be able to provide you with more individualized service.

11. The child support case will be closed under the following conditions:
  - a. DCS will immediately close your case upon your written or verbal request.
  - b. DCS will provide a Notice of Intent to Terminate Services:
    - i. If your child has reached the age of majority, there is no longer a current support order, and arrears are under \$500 or unenforceable under state law.
    - ii. If your child has reached the age of majority, there is no longer a current support order, and all arrears are assigned to the State.
    - iii. If your child has reached the age of majority, the noncustodial parent is entering or has entered long-term care arrangements and the noncustodial parent has no income or assets above the subsistence level and no further action can be taken.
    - iv. If the noncustodial parent is living with the minor child as the primary caregiver or in an intact two parent household.
    - v. If DCS is unable to contact you despite attempts to do so by at least two different methods.
    - vi. If DCS cannot obtain jurisdiction over the noncustodial parent.
    - vii. If the noncustodial parent or alleged father of the child is deceased and no further action can be taken.
    - viii. If paternity cannot be established because the child is 18 years of age; or genetic testing or a court or an administrative process has excluded the alleged father.
    - ix. If paternity cannot be established because the identity of the biological father is unknown and cannot be identified after diligent efforts.
    - x. If DCS has been unable to locate the noncustodial parent for 2 years if the noncustodial parent's social security number is known or for 6 months if the noncustodial parent's social security is not known.
    - xi. If the noncustodial parent has been institutionalized in a psychiatric facility or is incarcerated or has a medically verified total and permanent disability and cannot reasonably be anticipated to pay support.
    - xii. If the noncustodial parent's sole income is from Supplemental Security Income (SSI) payments or concurrent SSI payments and Social Security Disability Insurance (SSDI) payments.
    - xiii. If the noncustodial parent is a citizen of and lives in a foreign country, does not work for the United States government or for a company with offices in the United States, has no reachable domestic income or assets, and DCS does not have reciprocity with the foreign country.
    - xiv. If DCS has documented evidence that you have not cooperated, and your cooperation is essential for the next enforcement step.  
Failure to cooperate may include:
      - (1) Failure to appear at a DCS office or at another location designated by DCS to provide information, testimony, or evidence for the purpose of legal proceedings,

- (2) Failure to appear for genetic testing,
- (3) Failure to complete any future forms which are required for DCS to proceed with your child support case,
- (4) Repeated contacts with the noncustodial parent's employer regarding child support payments being withheld,
- (5) Failure to forward any child support payments received directly by you to DCS,
- (6) Failure to repay the DCS any child support collections you receive that you are not entitled to keep, or
- (7) Failure to notify DCS if you change residential and/or mailing address.

DCS will not terminate services for any of these reasons if within 60 days, circumstances change pertaining to the reason for the closure and you provide documentation to DCS. If circumstances change after 60 days, but prior to emancipation of the child(ren) involved, you may reapply for services.

#### **TAX REFUND OFFSET**

1. DCS may submit your case for federal tax refund offset. With this method of collecting child support arrears, the noncustodial parent's tax refund is intercepted and applied to arrears.
2. Conditions for submittal for tax refund offset are as follows:
  - a. The support obligation must have been established under a court or administrative order.
  - b. The amount of past due support must not be less than \$500.00
  - c. The noncustodial parent's name and social security number has been verified.
3. There is no guarantee monies will be collected, nor the noncustodial parent will be entitled to receive a federal income tax refund that can be intercepted by the DCS.
4. If a collection is made, DCS has the authority to hold the refund if it involves a joint tax return for up to six months before sending the collection to the custodial parent.
5. If Temporary Assistance for Needy Families (TANF) was received by the custodial parent in the past and any state has submitted a debt for federal tax refund offset, the State's debt may be satisfied first.
6. Other federal agencies submitting debts may also be satisfied first.
7. The custodial parent is personally liable for repayment of any monies received that were an overpayment, including any amounts returned to the noncustodial parent due to the filing of an amended return by the noncustodial parent's spouse. The amended return may be filed as much as six years later.

#### **ACCOUNTING PROCEDURES**

1. DCS will endorse checks, money orders, and drafts received for payment of support. This is necessary to allow the DCS to process payments.
2. When money is collected for child support, DCS will determine where the money should be applied according to federal and state disbursement requirements. If alimony is due and owing, payments received will be proportionately applied to the current child support, medical support, and alimony.

Example: Payments are usually applied to current child and medical support first. However, money sent from a federal tax refund offset is applied to the arrears which were certified (reported) to the IRS.

3. When the noncustodial parent, an employer, the Secretary of the Treasury, etc., sends a support payment to DCS, DCS will send the appropriate amount to the custodial parent. This is an "advance" of funds pending the actual processing of the support payment. If the office is unable to process the support payment for any reason, the custodial parent must repay DCS.

Example A: If the noncustodial parent's support check is written on insufficient funds and efforts to get the noncustodial parent to make the check good fail, the custodial parent must repay the amount of the advance to DCS.

Example B: If the IRS takes back the amount of the federal tax refund offset, the custodial parent must repay the amount of the advance to DCS.

**To facilitate this repayment process, the custodial parent may authorize DCS to withhold a reasonable amount from future support payments as repayment. This authorization may be given as part of the application process, but it is not a requirement to receive services from DCS. If you do not give authorization as part of the application process and repayment becomes necessary, DCS will attempt to set up a repayment plan with you or seek repayment through the courts if necessary.**

## ELECTRONIC DISBURSEMENT OF CHILD SUPPORT PAYMENTS

DCS is the central payment processing center for the State of South Dakota for child support payments. To meet federal requirements to disburse as reliably, efficiently, and cost-effective as possible, the DCS will transmit payments to the custodial parent electronically.

Custodial parents have two options for receiving child support payments: 1) Have child support payments directly deposited into a designated bank account; OR 2) Receive payments through an electronic payment card. An exemption from enrolling in Direct Deposit or receiving an electronic payment card may be granted if certain conditions are met.

**NOTE:** Enrollment in Direct Deposit or the electronic payment card at this time is not required if a child support order has not been entered. Once a child support order has been entered, DCS will send the appropriate documents to the custodial parent to enroll in Direct Deposit or the electronic payment card.

## ADMINISTRATIVE COMPLAINT PROCEDURES

A recipient of DCS services is entitled to an administrative review of a complaint where there is evidence an error occurred or an action should be taken on their case. To obtain a review, a recipient may contact the assigned DCS Child Support Specialist with the complaint to informally resolve the same.

A recipient may also submit a written complaint to DCS specifying the nature of the complaint and the action requested to be taken by DCS. Upon receipt of the written complaint, DCS will conduct a review of the complaint and, if appropriate, take necessary corrective action. DCS will advise the recipient either orally or in writing of any action taken to resolve the complaint.

A recipient is also entitled to request a fair hearing as allowed by law.

## PROTECTING YOUR PRIVACY

DCS protects the safety and privacy of its customers to the extent permitted by law. In handling a case, it may be necessary to provide information from a case file to other agencies or persons who work cooperatively with us (attorneys, court personnel, other child support enforcement agencies, genetic testing laboratories), but this is only done for the purpose of and to the extent necessary to provide child support enforcement services to you. Confidentiality and privacy of personal information are protected under state and federal laws and regulations. Agreements between DCS and other agencies govern our sharing of information and require adherence to the confidentiality and privacy laws.

**PROTECTION ORDERS:** DCS is prohibited from releasing information on the whereabouts of one party to another party when a protection order has been entered by the court. If you have a protection order in place, please provide a copy with this application. If you obtain a protection order in the future, you must notify the DCS at that time.

**SOCIAL SECURITY NUMBER:** When the DCS provides services to you, the DCS must use your Social Security Number of your child(ren). Therefore, you should understand that by signing this Agreement, you are authorizing the use of Social Security Numbers as an identifier for all child support purposes.

**YOUR RIGHT TO WITHDRAW FROM THIS AGREEMENT:** You may terminate DCS services and close your case at any time. If you wish to terminate, notify the DCS in writing. If you are receiving Child Care services through the Department of Social Services, your childcare benefits may be terminated. If you are receiving any other form of government subsidy or assistance, you are encouraged to contact that agency to determine if your subsidy will be affected by closing your child support case.