

	<b>INDIANA DEPARTMENT OF CHILD SERVICES TITLE IV-D POLICY MANUAL</b>	
	<b>Chapter 4: Temporary Assistance for Needy Families (TANF) Cases</b>	<b>Effective Date: 07/30/2020</b>
	<b>Section 4: Non-Parent Custodial Parties</b>	<b>Version: 1.1 Revision Date: 07/29/2020</b>

**BACKGROUND**

This policy aims to clarify that:

1. If a person is referred to the Title IV-D Prosecutor’s Office for Title IV-D services through the IV-A/IV-D interface; and
2. The person does not have legal guardianship of the child, but the Division of Family Resources (DFR) found the person to be a relative caregiver of the child for the purpose of making a Temporary Assistance for Needy Families (TANF) grant; then
3. The Title IV-D Prosecutor’s Office shall consider the person to be the custodial party (CP) and proceed with case.

**POLICY**

1. Persons Eligible to Receive TANF

TANF shall be awarded only to an eligible dependent child and the following eligible person with whom the child resides:

- a. Parent of the dependent child;
- b. Spouse of the dependent child’s physically or mentally incapacitated parent; or
- c. The dependent child’s other caretaker relative who requested assistance.<sup>1</sup>

A caretaker relative is defined as the specified relative exercising care and control of the child.<sup>2</sup> The parent, caretaker relative, and child are ineligible for TANF if the physical custody of the child was obtained for the purpose of qualifying for TANF.<sup>3</sup>

2. Persons Eligible to Receive Child Support Payments

The Title IV-D state plan is required to provide that any payments made to a family be made to either “the resident parent, legal guardian, or caretaker relative having custody of, or responsibility for, the child or children.”<sup>4</sup>

<sup>1</sup> IC 12-14-1-1(a); 470 IAC 10.3-5-1(a); 45 C.F.R. § 233.10(b)(ii)

<sup>2</sup> 45 C.F.R. § 233.80(b)(v)(B); 470 IAC 10.3-1-1(g)

<sup>3</sup> IC 12-14-1-1(b); 470 IAC 10.3-3-4

<sup>4</sup> 42 U.S.C. § 654(11); 45 C.F.R. § 302.38

Further, the court may order child support payments be made to any third party who has not been awarded legal custody upon agreement of the parties and approved by the court or who has been appointed by the court to receive payments.<sup>5</sup> These third parties may include:

- a. A trustee;
- b. The guardian of the child's estate;
- c. *Any third person*;
- d. The Department of Child Services;
- e. Any appropriate social service agency;
- f. The Child Support Bureau (CSB); or
- g. The township trustee.<sup>6</sup>

Thus, it follows that if:

1. A person is eligible to receive TANF if that person is found to be a caretaker relative exercising care and control of a child and who did not obtain physical custody for the purposes of qualifying for TANF;
2. CSB is required to make payments to a caretaker relative having custody of or responsibility for the child; and
3. The court may order child support payments to any third person;

then a caretaker relative is eligible for Title IV-D services and should not be denied the services of the Title IV-D Prosecutor's Office in establishing paternity, establishing a child support order, modifying a child support order, or enforcing a child support order as required for the person's TANF eligibility.

## REFERENCES

- [IC 12-14-1-1](#): Eligibility
- [IC 31-16-2-3](#): Caption; standing
- [IC 31-16-6-1](#): Child support orders; relevant factors; income withholding; account at financial institution
- [IC 31-16-10-1](#): Payments of child support to third persons
- [470 IAC 10.3-1-1](#): Definitions
- [470 IAC 10.3-3-4](#): Physical custody of children for the purpose of establishing TANF assistance eligibility
- [470 IAC 10.3-5-1](#): Payment of assistance
- [42 U.S.C. § 654](#): State plan for child and spousal support
- [45 C.F.R. § 233.10](#): General provisions regarding coverage and eligibility
- [45 C.F.R. § 233.80](#): Disability
- [45 C.F.R. § 302.38](#): Payments to the family
- *Bales v. Bales*, 801 N.E.2d 196 (Ind. Ct. App. 2004)
- *Dunson v. Dunson*, 769 N.E.2d 1120 (Ind. 2002)

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<sup>5</sup> IC 31-16-10-1

<sup>6</sup> IC 31-16-10-1, emphasis added

## PROCEDURE

The duty of parents to support their children is a common law duty which exists apart from any court order or statute.<sup>7</sup> This duty to support a child does not cease simply when the parent's child goes to live with a third party.<sup>8</sup> Because a child is living with a non-parent without legal custody or guardianship, that child is no less deserving of the financial support of his or her parent(s).

In fact, a petition for child support may be filed by any person entitled to receive support for a child.<sup>9</sup> The court may order one or both parents to pay support to a person other than the person awarded legal custody.<sup>10</sup>

Upon receiving notice of the referral through the IV-A/IV-D interface, the Title IV-D Prosecutor's Office should review the case to determine whether paternity needs to be established; a child support order needs to be established, modified, or enforced; and/or whether a medical support order needs to be established or enforced. During this review, the Title IV-D Prosecutor's Office may determine additional information is needed and is strongly encouraged to contact the CP for this information.

If judicial custom requires a non-parent CP to provide proof of legal guardianship or custody of the child, the Title IV-D Prosecutor's Office must communicate this requirement to the CP and give the CP sufficient time to provide the necessary documentation. The Title IV-D Prosecutor's Office must be mindful of whether the CP is making a good faith effort to cooperate before sanctioning the CP for non-cooperation.<sup>11</sup>

When a family is no longer receiving TANF, the Title IV-D case continues.<sup>12</sup> When the CP, who did not have legal custody or legal guardianship at the time of the TANF referral, and child are no longer on TANF, the Title IV-D Prosecutor's Office is to proceed in working the case. Only if judicial custom requires a non-parent CP to provide proof of legal guardianship or custody of the child may the Title IV-D Prosecutor's Office require the CP to provide such documentation. The Title IV-D Prosecutor's Office must communicate the necessity of this documentation to the CP and give the CP sufficient time to provide the necessary documentation before initiating case closure for non-cooperation.<sup>13</sup>

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<sup>7</sup> *Bales v. Bales*, 801 N.E.2d 196, 199 (Ind. Ct. App. 2004)

<sup>8</sup> *Dunson v. Dunson*, 769 N.E.2d 1120, 1124 (Ind. 2002); In this case, the 18 year old child filed a motion for child support asserting that his parents abandoned him. In response, the father filed a petition to emancipate the child and terminate the child support order. The *Dunson* court held, "If this 'automatic emancipation' (a child not initiating the action of removing himself from the care or control of the parents), is permitted, parents are permitted to 'divorce their children' and avoid paying child support simply by sending their children to live with a third party, or worse yet, just throwing the child out of the house." parenthetical added.

<sup>9</sup> IC 31-16-2-3

<sup>10</sup> IC 31-16-6-1; IC 31-16-10-1

<sup>11</sup> Chapter 4: Temporary Assistance for Needy Families (TANF) Cases, Section 3: Cooperation with the Title IV-D Prosecutor; Good Cause; Sanctions for Non-Cooperation for more information on determining cooperation

<sup>12</sup> 42 U.S.C. § 654(25)

<sup>13</sup> For more information on closing a case based on non-cooperation, see Chapter 17 Case Closure

**FORMS AND TOOLS**

N/A

**FREQUENTLY ASKED QUESTIONS**

N/A

**RELATED INFORMATION**

N/A

**REVISION HISTORY**

<b>Version</b>	<b>Date</b>	<b>Description of Revision</b>
Version 1	06/16/2015	Final approved version
Version 1.1	07/30/2020	Updated links and terminology