REPORT TO THE

UTAH LEGISLATURE

Number 2005-13

A Performance Audit of the Office of Recovery Services

December 2005

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Chapter I: Introduction

The main responsibility of the Office of Recovery Services (ORS) is to establish and enforce child support obligations on behalf of private individuals or taxpayers (if the children received public assistance support). In 2005, ORS collected $159 million of which over $134 million was distributed to private individuals. However, much of the child support owed is not collected. As of October 2005, ORS reported $325 million of back child support (arrears) was owed. The amount of arrears owing would be even greater except that ORS either closes cases with debt owing or forgives debt on uncollectible cases.

The audit requestor's main concerns involved the writing off of debt by ORS that was owed to the state. Our audit scope also included evaluating the efficiency of ORS operations and reviewing ways that child support collections could be increased. Our main findings are discussed in the report chapters II through V and include:

- The Legislature should consider giving ORS limited authority to administratively suspend state-issued licenses of individuals who have the ability to pay required child support, but refuse to do so.
- ORS should consider using some currently allowed enforcement methods more aggressively to increase collections.
- ORS should improve the performance information it has for their Attorneys General contract so they can evaluate ways to better utilize the attorneys.
- ORS debt management practices generally seem reasonable, but they raise some procedural and policy issues.

Chapter II: Legislature Should Consider Increasing ORS' Administrative Authority

Administrative Driver's License Suspension Program Could Increase Collections. A credible threat of driver's license suspension could increase collections from those individuals who can afford to pay child support yet do not. Currently, license suspension is possible through judicial action; however, the Attorneys General rarely pursue this course of action. We found that 36 of the 50 states give their child support enforcement agents administrative authority to suspend driver's licenses in some situations. According to officials we contacted in

surrounding states, the ability to suspend or threaten to suspend driver's licenses is an effective collection tool. For example, Colorado collected $7.6 million in 2004 and has collected $8.6 million as of September 2005 through the use of driver's license suspensions or the threat of suspension.

Programs to Administratively Suspend Other Licenses Could Increase Collections. ORS could also increase collections by establishing a credible threat to suspend nonpaying NCPs' recreational licenses, such as hunting and fishing licenses, or professional licenses. Currently, recreational and professional license suspensions are allowed through judicial action, but we found no cases where suspension occurred. Administrative license suspension authority would serve as an additional tool for ORS agents to collect from nonpaying NCPs who have the ability to pay their child support. Other states reported that their recreational and professional license suspension programs are effective.

Effective Controls Would Be Needed to Guide Administrative Suspension Program. If the Legislature grants ORS administrative suspension authority, it should consider establishing criteria for its use. ORS would then need to develop procedures to effectively implement the program within the limits established by the Legislature. Controls are important to insure that license suspension is acted upon for good cause and that the due process rights of NCPs are protected.

1. We recommend that the Legislature consider changing the ***Utah Code*** to allow ORS to administratively enforce child support collection by the suspension of driver's, recreational, and professional licenses.

2. We recommend that the Legislature consider specifying the conditions and limitations under which ORS may initiate administrative suspension actions.

3. We recommend that if ORS is granted authority to administratively suspend licenses they focus the program on those individuals with the ability to pay as they develop policies and procedures.

Chapter III: ORS Should Be More Aggressive in Enforcement

ORS Bank Account Seizures Could Be Improved. One administrative enforcement tool that ORS utilizes to encourage payments from nonpaying NCPs is bank account seizure. Currently, the minimum balance required in Utah before seizure is much higher than all of the surrounding states. By reducing the balance required in a checking account before seizure, ORS could improve collection rates. Currently, a

checking account must have at least a $2,000 balance for an ORS agent to begin lien/levy proceedings on funds above the $2,000 limit. However, most surrounding states only require a $500 checking account balance or lower before seizing the bank account.

Access to Greater Tax Information Could Aid in Enforcement and Collection. ORS should reconsider their decision not to receive federal 1099 tax information. Although ORS has other data sources that are more valuable in most cases, 1099 information can be particularly useful when an NCP is self-employed and does not receive a W-2 tax form. Also, we think ORS could protect the confidentially of the information at a relatively low cost by limiting how their staff access the data.

ORS Should Make Enforcement Efforts More Public. Although we have not studied the issue in depth, we think publicity could be used more effectively in Utah. Other states make their enforcement actions and results more public than Utah. Publicizing enforcement actions could have an important deterrent effect on some NCPs who have the ability to pay child support, but might try to avoid it if they do not believe ORS will take enforcement actions.

1. We recommend that ORS consider lowering the amount required before agents seize a checking account.
2. We recommend that ORS reconsider its option to receive federal 1099 tax information.
3. We recommend that ORS consider making their enforcement methods and successes more public to help encourage NCPs to pay their child support.

Chapter IV: ORS Processes Involving Use of AGs Should Be Reevaluated

ORS Should Evaluate Effectiveness of Civil Enforcement Referrals. The Attorney General's (AG's) office is under contract with ORS to provide legal services on cases referred to it by ORS. However, ORS has little information about the civil enforcement actions taken or the outcomes of those actions. At a cost of $3.1 million, attorney services represent an expensive resource that should be more effectively managed. If civil enforcement actions do not get an NCP to continue paying on a case, ORS may want to consider changing how the AGs are used.

ORS Should Evaluate Use of Attorneys in Modification Procedures. ORS should consider ways to simplify their child support order

modification process, particularly through the increased use of stipulation agreements. Though our review of the modification process was limited, we found three other states that appear to have implemented procedures that reduce their reliance on attorneys to complete judicial modifications. However, we could not obtain reliable data from ORS to make definite conclusions about order modifications.

1. We recommend ORS track or require the AGs to track the amount of child support collected as a result of civil enforcement proceedings as well as the actions taken on the case.
2. We recommend ORS evaluate and determine the best utilization of the civil enforcement AGs.
3. We recommend ORS evaluate their modification process and consider using other states' methods as a model to increase efficiencies.
4. We recommend ORS improve their modification data and develop modification performance measures.

Chapter V: ORS Debt Management Practices Raise Procedural and Policy Issues

Closing Cases as Unenforceable is Appropriate but Some Concerns Exist. The audit requestor was concerned with ORS' debt elimination practices, particularly public owed debt written off prior to case closure. ORS has developed case closure criteria for determining whether a child support debt is considered unenforceable. We agree that debt needs to be written off when it is uncollectible. However, we found that ORS agents don't always follow ORS' closure criteria on unenforceable cases. Several cases we reviewed should have remained open. Also, ORS should not manually write-off debt prior to closing a case.

Other ORS Debt Management Practices Appear Reasonable, but Raise Policy Issues. The audit requestor expressed concern with other ORS practices where public debt was not pursued. While the concerns raised in the audit request are valid, ORS also has reasonable rationale for its policies and arrears management practices. If the Legislature disagrees with these practices, it should provide additional policy guidance.

1. We recommend ORS discontinue eliminating public owed arrears debt through manual write off on cases closed as unenforceable.
2. We recommend that the Legislature consider whether it wants to provide additional policy guidance to ORS regarding several debt management practices.

Chapter I
Introduction

Several options exist which could improve the effectiveness of child support collections. First, increased administrative enforcement authority would allow the Office of Recovery Services (ORS) to augment child support collections. Specifically, the threat of license suspensions, such as driver's, recreational, and professional licenses, could be used on those nonpaying noncustodial parents (NCPs) who have the ability to pay child support.

Second, ORS should more aggressively pursue debt using existing or statutorily allowed enforcement methods. Specifically, ORS could do the following: modify their policy to allow for more bank account seizures, opt to receive federal 1099 tax information, and publicize their enforcement efforts.

Third, ORS should reevaluate their use of the Attorneys General (AGs) in the Division of Child and Family Support. In order to reevaluate processes, better information is needed on civil enforcement effectiveness and the modification workload and processes. Better information would allow ORS to better utilize the attorneys.

Finally, the audit requestor asked that we review several ORS practices to determine the appropriateness of some decisions, in particular the writing off of arrears (back child support) owed to taxpayers. During our review, we found that ORS generally has valid reasons for their practices of writing off arrears and closing uncollectible cases.

ORS' Primary Focus Is on Collection and Disbursement of Child Support Funds

ORS' focus is on collection regardless if the case is on public assistance.

The Office of Recovery Services was created in 1975 and is located within the Department of Human Services. Initially, the agency's main emphasis was on collecting and disbursing child support for public assistance (welfare) cases, while remaining a child support collection resource for all applicants. Now, the focus of child support agencies nationally is on services to all people, regardless of whether the custodial parent is on public assistance.

In 2005, the Office of Child Support Enforcement (OCSE) released the *National Child Support Enforcement Strategic Plan* for 2005-2009. OCSE is the federal oversight body for child support collections. The OCSE has encouraged different agency mind sets than those existing in the past. Among the recommended strategies, the OCSE encourages states to take the following steps:

- prevent the build-up of unpaid support through early intervention (early modification, frequent contact, willingness to compromise uncollectible debt, etc.)

- develop more effective collection tools, including increased use of administrative processes

The focus of OCSE is serving children better by getting child support paid up front through a variety of means. If child support is collected, the likelihood of the custodial parent needing public assistance decreases.

In 2005, ORS managed 76,939 child support and children in care cases.

ORS administers three programs. The Child Support Services (CSS) program, which is much larger than the other two programs, establishes and enforces child support obligations. The Children in Care (CIC) program collects payments from parents whose children are in state care, such as foster care or youth corrections. The Medical Collections program collects medical payments from responsible third parties to avoid state Medicaid costs.

This audit focuses on CSS and especially on two of its key duties: enforcing established child support obligations and modifying child support obligation amounts when necessary. However, in some instances, we report combined statistical data for the CSS and CIC programs because ORS reports the data that way. As of October 2005, ORS managed 76,939 child support and children in care cases of which 65,588 cases had support orders established, while many of the other cases were still in the order establishment or intake phase.

ORS Collects Current Support and Past Due Public and Private Debt

In federal fiscal year (FFY) 2005, ORS collected and distributed over $158 million in child support and children in care monies. ***Utah Code*** 62A-11-401 defines child support which may include the child support award amount, alimony when owed in connection with a child support

obligation, and uninsured monthly medical expenses. The total collections have increased each year for the last seven years, as depicted in Figure 1. The figure also breaks collections into three categories, based on whether the custodial parents involved in the case are on current public assistance, were formerly on public assistance, or have never been on assistance.

Figure 1. Child Support Collections Have Increased Annually. The largest growth in collections has come from those who have never been on public assistance.

FFY	Current Assistance	Former Assistance	Never Assistance	Total Collections
1999	$10,121,137	$61,410,289	$45,613,792	$117,145,218
2000	10,262,297	66,555,150	51,493,259	128,310,706
2001	10,078,060	69,864,783	58,034,291	137,977,134
2002	10,210,516	68,953,106	63,667,379	142,831,001
2003	10,542,752	68,249,591	68,325,064	147,117,407
2004	10,254,124	67,972,880	72,790,825	151,017,829
2005	9,530,193	69,919,067	79,466,365	158,915,625

Note: Includes both CSS and CIC collection amounts.

The largest growth in collections comes from those cases in which the custodial parent has never been on public assistance. The growth in this category can be largely attributed to an increasing number of non-public assistance cases being managed by ORS. Former assistance collections have had much more sporadic and modest increases, while current assistance case collections have decreased the last two years.

Most child support collected by ORS is distributed to private parties.

Most of the child support collected by ORS is distributed to custodial parents to help support the children in their care. However, some of the amount collected in the current assistance and former assistance categories belong to taxpayers in reimbursement for public assistance payments or for the costs of children in state care. In 2005, about $19 million was distributed to reimburse state or federal governments for Temporary Assistance for Needy Families (TANF) payments, and $5.4 million was distributed to the Department of Human Services on behalf of children in

the state's care. However, the bulk of child support collections are distributed to private parties.

ORS' expenditures are largely driven by staff salaries.

ORS' child support expenditures for 2005 are shown in Figure 2. Costs at ORS are driven primarily by the staff performing a child support case management function. ORS reports that of their 550 employees, 495 are involved either directly or indirectly with the child support program. There are also high computer costs, due to the ORSIS computer system that manages child support case files. In addition, as part of the enforcement and child support modification processes, ORS uses attorneys from the Office of the Attorney General.

Figure 2. ORS' Child Support Services and Children in Care Expenditures for Fiscal Year 2005. Salaries and benefits make up 66.5 percent of the expenditures.

Expense Category	Expenditure Amount
Staff Salary and Benefits	$ 26,765,471
Data Processing	5,262,525
Current Expense and Travel	5,109,205
Attorneys General Contract	3,096,692
Total CSS and CIC Expenditures	**$ 40,233,893**

Unpaid Child Support Amounts Are Significant

Unpaid child support is a problem in Utah as it is nationwide. As of October 2005, ORS reports about $325 million in arrears for the child support and children in care programs. This is money that should have gone to Utah's children. Nevertheless, the reality is some of this arrears debt will never be collected. In fact, the amount of arrears owing would be even greater except that ORS either closes cases with debt owing or forgives debt on open cases.

Figure 3 below depicts the number of child support cases with arrears owing as of July 16, 2005. As shown, many cases have little or no arrears owing, but some cases owe large amounts of arrears in the greater than $10,000 category.

Figure 3. Most Child Support Cases Owing Arrears Only Account for a Small Amount of Back Child Support Owed. As of July 16, 2005, 76 percent of cases had arrears balances under $5,000. However, only 5 percent of cases had over $20,000 in arrears.

Amount In Arrears	Number of Cases	Percent of Total Cases	Arrears Total
No Arrears	23,251	32.5%	
$ .01 – 499.99	11,865	16.6	$ 2,182,961
500 – 4,999.99	19,397	27.1	41,969,790
5,000 – 9,999.99	7,379	10.3	52,959,916
10,000 – 19,999.99	5,861	8.2	82,403,232
>20,000	3,793	5.3	134,742,543
Totals	**71,546**		**$ 314,258,442**

Note: Includes only CSS cases. CIC cases excluded.

As seen above, over two-thirds, or $217 million, of the total arrears lie with cases that have more than $10,000 owing in back child support. Many of these larger arrears balances may never be collected.

OCSE recommends prompt steps to encourage NCPs to resume payment.

The problem of nonpaying NCPs, as well as the growing arrears balances nationwide, has led OCSE to encourage states to develop strategies to prevent the buildup of arrears and keep NCPs paying the current support order. One recommended strategy is to take prompt steps, as soon as a payment is missed, to work with parents to resume payments. In general, the administrative enforcement techniques discussed in this report provide more prompt action than judicial enforcement techniques. Another recommended strategy, to simplify the order modification process, is discussed briefly in Chapter IV.

Audit Scope and Objectives

Initially, the audit requestor's main concerns included the writing off of debt by ORS that was owed to the state. This concern is addressed in Chapter V. Also, we were asked to look at efficiencies of ORS operations, which we address in Chapters II, III and IV.

The audit request included the following objectives:

1. Determine the efficiency of operations. Primarily identify costs associated with collections as compared to total child support collected. The following areas regarding efficiency of operations were reviewed:

    - Enforcement practices that are used in other states, but currently not allowed here in Utah (Chapter II).

    - Enforcement practices that ORS has authority to do, but does not aggressively pursue as much as other states (Chapter III).

    - Attorney utilization by ORS for judicial civil enforcement and also child support order modifications (Chapter IV).

2. Review collection practices to determine if there is a deliberate pattern of elimination of massive amounts of legitimate debt owed to the State of Utah either by direct write-off or failure to establish or pursue such debt (Chapter V).

Chapter II
Legislature Should Consider Increasing ORS' Administrative Authority

The ability to suspend state-issued licenses through an administrative process would allow the Office of Recovery Services (ORS) to augment child support collections. Administrative enforcement allows for a more immediate, less costly response to nonpayment and helps prevent child support arrears from accruing. Presently, ORS can pursue driver's, recreational, and professional license suspension through a judicial process, but the process is not effective. Other states use the threat of license suspension through administrative enforcement to effectively increase collections from noncustodial parents (NCPs) who can afford to make payments.

License suspension should be aimed at NCPs who have the financial ability to pay, but will not.

License suspension should not be used to punish those who are unable to make child support payments because they lack resources. However, the threat of license suspension can be an effective tool to coerce payment from individuals who have the ability to support their children but refuse to pay.

If the Legislature grants ORS the authority to administratively suspend licenses, the agency would need to establish policies and procedures to carefully control the suspension process. Optimally, actual suspension would be used rarely and only as a last resort. Taking away a driver's license or professional license is not desirable because it does not help an NCP earn money to pay their child support obligations. At the same time, the state should not allow individuals to use their state-issued licenses to earn income if they refuse to help support their children.

ORS Agents Need Additional Tools on Some Cases

A number of ORS agents told us their caseloads include NCPs who the agents believe could pay child support, but are not making payments. In each case, ORS agents have been frustrated by their inability to collect using existing enforcement tools. ORS relies heavily on state and federal automated databases to locate NCPs and their assets and income.

74.1% of ORS collections resulted from wage withholding in FY 2004.

ORS' most effective enforcement tool is wage withholding. In fiscal year 2004, 74.1 percent of ORS' collections resulted from wage withholding, after excluding collections coming in from other states. However, ORS agents claim that it is difficult to collect from those nonpaying NCPs whose jobs are not subject to automatic wage withholding. Further, agents say these NCPs may hide assets under someone else's name. It is these situations where ORS agents believe that if they are granted the ability to suspend licenses, then a credible threat of suspension would prompt these individuals to make payments.

Judicial Enforcement Is Generally Unavailable

Since ORS agents indicated that the threat of license suspension might be effective with some NCPs, we asked the agents why they did not initiate judicial license suspension action. Agents explained that they are extremely restricted in how many cases they may refer to civil attorneys. In addition agents told us that if a case has arrears but no current support order, they cannot refer it for judicial enforcement. Thus, even though the NCP might owe a large amount of arrears and can afford to pay, there is little possibility of a license suspension or other judicial enforcement action.

In general, few cases are subject to judicial enforcement. Figure 3 in Chapter I showed that over 31,000 NCPs owe over $500 in arrears and of these almost 10,000 NCPs owe over $10,000 in arrears. In comparison, ORS reports referring only 1,636 cases for judicial enforcement in fiscal year 2004 and ORS' civil attorneys report only a single license suspension for that year. Judicial enforcement is discussed more thoroughly in Chapter IV. This chapter discusses how administrative suspension authority could be used to encourage individuals to make required child support payments.

Administrative Driver's License Suspension Program Could Increase Collections

The credible threat of driver's license suspension could increase child support collections.

An administrative program that would create a credible threat of driver's license suspension, could increase child support collections. ***Utah Code*** 62A-11-107 currently allows ORS to pursue through court action the suspension of licenses as a method of enforcing child support payments. ***Utah Code*** 78-32-17(4) permits a court to suspend a license if

an NCP has "made no payment for 60 days" and "has failed to make a good faith effort under the circumstances to make payment."

Although license suspension is possible, the Attorneys General (AGs) rarely pursue this course of action. In our review of AG records and also through interviews with AG staff, we could find only two instances of driver's license suspensions during the 2003 and 2004 fiscal years. In contrast, we found that most surrounding states have more efficient administrative processes to potentially suspend driver's licenses if the NCP fails to pay child support.

Driver's license suspension can increase difficult-to-collect child support payments.

A credible threat to suspend driver's licenses can influence NCPs who can afford to pay, but are difficult to collect from. According to a report from the federal Government Accountability Office (GAO), "the driver's license suspension process can result in collecting some particularly difficult-to-collect child support payments—those that are overdue and from noncustodial parents who are self-employed or who work informally for cash." An effective process can coerce those individuals to pay without actually suspending the license.

Most States Have the Authority To Administratively Suspend Licenses

We found that most surrounding states give their child support enforcement agents administrative authority to suspend driver's licenses if the NCP fails to pay child support. In many cases the mere threat to suspend is enough to gain cooperation from the NCP. However, agencies must sometimes actually suspend licenses so that the threat is seen as credible. The following figure depicts the number of suspensions over the last two years and also the type of enforcement for surrounding states.

Figure 4. In 2003 and 2004, Most Surrounding States Suspended More Driver's Licenses Than Utah. Surrounding states suspend more driver's licenses than Utah if they have the administrative enforcement ability to do so.

State	Number of License Suspensions in 2 Years	Type of Enforcement
Utah	Two	Judicial
Arizona	None	Judicial
Colorado	At least 2,561	Administrative
Idaho*	About 3,000	Administrative
Montana	About 1,600	Administrative
Nevada	Do not track	Administrative
New Mexico	At Least 3,366	Administrative
Wyoming**	Occasionally Use	Judicial

** Idaho's number of license suspensions is for one year of data for FY 2004 with a suspension of 1,500 licenses.*
*** Wyoming has the statutory authority to suspend licenses administratively, but does not do so due to an agreement with their legislature.*

36 of the 50 states suspend driver's licenses administratively.

Figure 4 demonstrates that those surrounding states with administrative authority to suspend licenses do so while those with judicial authority rarely do so. Further, we found that 36 of the 50 states suspend driver's licenses administratively as a means of child support enforcement.

License Suspension Programs Increase Collections. It is widely recognized that states with well-established license suspension programs can significantly increase child support collections. For example, a Government Accountability Office (GAO) report states, "we analyzed data [for calendar year 2000] on the use of the driver's license suspension process in 4 states [Colorado, Maryland, Pennsylvania, and Washington] and found that it led to collecting payments in 29 percent of the cases for which it was used and resulted in $48 million in collections." Texas collected more that $12 million during the first six months of their license restriction program. Other states report similar success.

According to officials we contacted in surrounding states, the ability to suspend or threaten to suspend driver's licenses has been an effective collection tool. For example, Colorado collected $7.6 million in 2004,

and has collected $8.6 million as of September 2005. Figure 5 shows surrounding states' child support collections through their driver's license suspension programs, as well as the percentage of total collections generated by this method.

Figure 5. Surrounding States' Collection Amounts in 2004. Utah could potentially increase collection amounts by allowing administrative driver's license suspension.

Surrounding States	Approximate Amount Collected	Percentage of Total Collections
Colorado	$ 7.6 million	3.5%
Idaho	1.0 million	0.9
Montana	1.2 million	3.0
New Mexico	2.0 million	3.0

Driver's license suspension ability could potentially increase Utah's collections by 2 percent or $2.8 million.

If Utah were to receive similar collection returns, ORS would stand to substantially increase collections by employing this method. For example, a two percent increase of Utah's 2004 collections would result in $2.8 million in added collections.

Many ORS Cases Would Be Candidates for the Threat of License Suspension. If Utah's ORS had an administrative license suspension program, many NCPs would initially be candidates for suspension depending on what criteria was used. For example, we compared ORS' database with driver's license records and determined that 19,283 NCPs who owe more than $500 in arrears also have valid Utah driver's licenses. The amount of money in arrears from this group is over $120 million.

NCPs with ability to pay support, but do not cooperate with ORS, should be candidates for suspension.

While many licenses might initially be candidates for suspension, after review few licenses would actually be targeted. Many of the individuals may be making payments and working to reduce their arrears. Other individuals may not have the resources to pay towards their arrears. Only those individuals who have the ability to pay but will not cooperate with ORS should be threatened with suspension. However, if it were known that ORS can suspend licenses and sometimes does so, then many NCPs may stop missing payments. Currently, ORS sends a routine letter to a nonpaying NCP listing many different enforcement actions that can be taken against the NCP. One of the actions listed is that NCPs can have

their license suspended judicially, but as it is never done, it is not a credible threat.

Uninsured Drivers Are Not a Problem with Suspension. We were concerned with the possibility of uninsured drivers on the road due to a driver's license suspension. However, according to both the director of Insure-Rite and the State Insurance Commissioner, a license suspension would not automatically take away a person's insurance. They continued by saying most insurance companies would not know that the driver's license had been suspended unless the driver was in an accident or was pulled over. For the most part, the insurance company would only become aware of the suspension if an NCP applied for insurance after being suspended. In addition, due to the many suspension programs that operate successfully in other states, it is our view that any insurance concerns can be overcome.

License suspension does not automatically terminate an insurance policy.

Also, we contacted a large, locally-based insurance company who said that if one of their insured drivers had a suspended license and got in an accident, that accident would be covered. However, following the accident they would send a 30 day notice to the driver to get the license reinstated or else they terminate the policy.

Programs to Administratively Suspend Other Licenses Could Increase Collections

ORS also could increase collections by establishing a credible threat that recreational licenses, such as hunting and fishing licenses, or professional licenses might be suspended. At present, ***Utah Code*** 62A-11-107 allows recreational and professional licenses to be suspended judicially as a method of child support enforcement. However, in the last five years, we found no instances of these licenses being suspended for failure to pay child support. Further, we found that the same surrounding states that enforce child support payments via suspension of driver's licenses also suspend and threaten to suspend recreational and professional licenses and in many cases successfully collect child support.

Credible Threat to Suspend Recreational Licenses Could Increase Child Support Collections

5 of 7 surrounding states suspend recreational licenses administratively.

Recreational license suspension programs are similar to driver's license programs. Just as with driver's licenses, five of seven surrounding states allow for the threat of administrative suspension of recreational licenses. Because fewer people have recreational licenses than driver's licenses, and because it is more difficult to compare databases, there are fewer candidates for possible suspension by ORS.

Other States Report That Programs Are Effective. We contacted other states' child support enforcement agencies, and they suggested that, in some cases, the ability to suspend and threaten to suspend recreational licenses has been a more effective tool for collection than suspending driver's licenses. In their view, this is because people tend to value their recreational licenses even more than their driver's licenses. For example, a New Mexico child support staff told us that in one case, temporarily suspending a once in a lifetime trophy elk permit immediately resulted in a very large payment.

In some cases, suspending recreational licenses is more effective than suspending driver's licenses.

The North Dakota enforcement program reports that in 2003 they implemented a hunting license suspension program. Initially 248 hunters who each owed more than $5,000 were sent suspension notices; of those, 142 were later suspended. More importantly, the program led to 46 payment plans covering over $500,000 in overdue child support. The next year, North Dakota sent notices to 30 previously suspended hunters that their applications for lottery licenses were excluded from the 2004 drawing. The program is new because the North Dakota Legislature gave the child support enforcement program authority to suspend recreational licenses in 2003; before then, suspension was only available through court action.

Credible Threat Could Increase Utah Collections. Although Utah law allows the suspension of recreational licenses for failure to pay child support, we could not identify any instances of that occurring. Therefore, we do not believe possible suspension is regarded as a credible threat by NCPs who can afford to pay child support, but do not.

We compared ORS' database of NCPs owing over $500 in arrears against the Division of Wildlife Resources' (DWR) database of those individuals who bought recreational licenses. While the DWR database includes a field for the individual's social security number (SSN), the field is often left blank or contains an invalid number; perhaps only about half of the licenses include a valid SSN. Nevertheless, the comparison of SSNs in the two databases yielded 3,967 cases in common, or 11 percent of

NCPs with arrears over $500. The amount of money in arrears from these NCPs totals $30.1 million.

We also searched for the number of NCPs owing over $500 in arrears who had special hunting licenses costing at least $263. We found eight individuals. Of these NCPs, six were paying down their arrears, but two were only making sporadic payments and continuing to accumulate arrears.

We feel that the percentage of matches could be higher if DWR required a SSN on hunting and fishing license applications. Federal law requires that SSNs be included on license applications to help enforce child support orders. Currently, DWR asks for the SSN on the license application but does not require the applicant to give it.

Recreational license purchasing centers will soon be connected to DWR's automated database.

In regards to implementation of a recreational license suspension program, the DWR director stated that all recreational license purchasing centers will soon be connected to their automated database. In our view this would simplify the process to deny those applicants whose names come up flagged as non-payers of child support.

Professional License Suspension Program Could Target NCPs Who Have the Ability to Pay but Don't

ORS could be more effective in pursuing some delinquent accounts by establishing a credible threat that professional licenses may be suspended for nonpayment. As previously mentioned, ***Utah Code*** 62A-11-107 allows professional licenses to be suspended judicially as a method of child support enforcement. Programs that threaten professional license suspension to collect child support are successful in other states, but not in Utah.

No professional licenses have been suspended in the last five years for nonpayment of child support.

The Department of Occupational and Professional Licensing's (DOPL's) web site has links for approximately 60 categories of licenses one can obtain, such as contractor, certified public accountant, and physician, among others. Every application requires a social security number, and states, "It [the social security number] is used as an individual identifier for our licensing database and for purposes of the child support enforcement . . ." Nevertheless, according to DOPL personnel, no professional licenses have been suspended in the last five years for delinquent child support payments.

In 2004 New Mexico suspended 223 professional licenses and collected $216,000.

Other States Report Programs Are Effective. The same states that administratively suspend recreational licenses also suspend professional licenses administratively. In 2004, New Mexico suspended 223 professional licenses and collected $216,000 in child support payments. States we contacted said suspending professional licenses can be more time consuming, but they have found it effective for collecting delinquent child support.

Credible Threat Could Increase Utah Collections. Relatively few Utah NCPs with arrears owing also have a professional license. However, license holders are likely to be earning income with their professional licenses.

Arrears from NCPs with professional or real estate licenses total over $8 million.

We compared ORS' database of NCPs owing over $500 in arrears against the DOPL database of individuals with professional licenses or real estate licenses. The results yielded 879 cases in common, or 2.4 percent of NCPs with arrears. The amount of money in arrears from these NCPs totals over $8 million.

Of the 879 cases, we selected a sample to determine if these NCPs would be good candidates for professional license suspension. We initially selected 50 NCPs with real estate licenses owing over $10,000 in arrears and 79 NCPs with professional licenses owing more than $16,000 in arrears.

Our first test was to determine if there was tax information on these NCPs. 2003 tax information was the most current and readily available data. We looked at 129 cases and determined that 28 showed evidence of annual income greater than $20,000 in 2002 or 2003. Another 15 showed either substantial mortgage interest or large salaries prior to 2002. We then compared these 43 cases with the ORSIS database and found that 30 of the NCPs were regularly paying child support payments, even though they had large arrears balances.

Of the other 13 NCPs, 11 cases occasionally paid towards their current support in a two year time period, but not towards their arrears balance. The other two cases have not paid anything in two years. The following are examples of the 13 NCPs showing evidence of assets, yet do not regularly pay their current child support.

- A successful real estate agent, who has over $20,000 in arrears, also earned in excess of $120,000 in 2003. Though there have been occasional payments, the NCP has never achieved steady payment.

- A licensed contractor has arrears of almost $30,000. His 2002 wages amounted to over $66,000. He is self-employed. In the ORS case narratives, the NCP states on several occasions that he will make a payment, but has only made one payment in a year.

- Another licensed contractor has arrears of over $17,000. His 2003 wages were over $53,000. Also, the ORS agent on this case says this NCP would be a good candidate for license suspension.

- A licenced contractor who owns his own business has arrears of over $30,000. Agents believe he should be able to make payments. He has entered into payment plans, but has paid only twice in two years. This NCP's case narratives also show a court order to pay $2,000 of child support in 2005 or report to jail by a certain date. He did not comply fully with the order to pay nor did he go to jail.

Some NCPs do not make child support payments even though they have the ability to pay.

In summary, some NCPs do not make required child support payments even though they have the ability to pay. If ORS had the ability to administratively suspend state-issued licenses, as is done in most other states, child support collections could be increased.

Effective Controls Would Be Needed to Guide Administrative Suspension Program

The Legislature should consider granting ORS the authority to develop an administrative license suspension program because it could increase collections from NCPs who can afford to pay but do not. If the Legislature grants ORS administrative suspension authority, it should establish criteria for its use. Within the limits established by the Legislature, ORS would need to develop procedures to effectively implement the program.

Controls are important to ensure NCP's due process rights.

In order for a license suspension program to be successful, the program must be guided by fair and effective policies and procedures. Controls are important to insure that license suspension is only threatened for good cause and that the due process rights of NCPs are protected. Some of the areas where controls should be implemented include:

- Criteria for license suspension eligibility
- Procedures for license suspension warnings
- Process for NCPs to appeal threatened suspension
- Criteria and procedures for suspending licenses
- Procedures for reinstating suspended licenses

Some of the controls could by established in statute while detailed procedures would be ORS' responsibility.

Controls Could Be Statutory or Developed by ORS

If the Legislature does allow administrative license suspension, there are many ways it could proceed. It is beyond our scope to provide details about how specific controls should be established. Generally, the Legislature would have to decide what to specify in statute and what to delegate to ORS.

Criteria for License Suspension Eligibility. The Legislature could limit the situations eligible for administrative license suspension. Currently, licenses may be suspended through court action only if an NCP has "made no payment for 60 days" and "has failed to make a good faith effort under the circumstances to make payment" (***Utah Code*** 78-32-17(4)). If the Legislature allows administrative suspension, it could choose to provide more restrictive criteria.

The Legislature could choose how restrictive to make the criteria provided.

We found that other state statutes vary in the criteria for administrative license suspension. For example, under Colorado law a person is subject to driver's license suspension "to the extent that any child support debt . . . is owed." In practice, the administrative agency requires $500 in arrears or 60 days child support before considering suspension. In contrast, Idaho requires at least $2,000 in arrears or the equivalent of three months worth of child support owed before suspension is possible. Montana law requires at least the equivalent of six months missed payments in arrears before a notice of intent to suspend a license can be issued.

Procedures for License Suspension Warnings. Most other states' statutes we reviewed specify procedures for notifying NCPs that their licenses may be suspended. For example, Wisconsin law provides for two notices. If a person is determined to be eligible, a "Notice of Intent to Suspend" is sent. If the person does not respond, a "Final Notice of Certification, License Suspension Revocation or Denial" is sent. Both

Most states' statutes specify procedures for notifying NCPs of possible license suspension.

notices provide the same three options: pay the debt, arrange a payment plan, or request a hearing. If there is no response to the second notice, then the agency notifies the licensing agency to suspend the license.

Colorado has administratively established a two notice process. Any NCP who qualifies for inclusion in the "Enforcement Pool" is sent a "Notice of Noncompliance." If no payment is received or they do not contact the agent within 60 days a second notice is sent called a "Notice of Initial Failure." The NCP has approximately thirty days to pay a month's child support before the license is suspended. If there is still no payment or contact then an agent proceeds with license suspension.

Process for NCPs to Appeal Threatened Suspension. Other states' laws also define due process protection for individuals who hold licenses subject to suspension. For example, Colorado law allows an NCP to request an administrative review within 30 days. However, the grounds for review are limited to a mistake in identity or a disagreement about the amount owed.

Some states seem to allow other considerations. For example, Montana law allows the NCP to petition for an order to stay the suspension of a license on the basis that it would create a significant hardship to the person or others. Under Idaho law a license will not be suspended if the person shows "good cause why the request for license suspension should be denied or stayed."

NCPs who show they cannot afford to comply with their child support orders may be candidates for a modification of the order. Although it is not the purpose of a license suspension program, orders that are too high or too low should be adjusted whenever they are discovered.

Other States generally suspend licenses only if an NCP refuses to cooperate with the child support agency.

Criteria and Procedures for Suspending Licenses. In general, other states actually suspend licenses only if an NCP refuses to cooperate with the child support agency. Thus, a license will not be suspended if the NCP contacts the child support agency and works out a plan concerning their support obligation. If NCPs have been making an effort, agents can give them more time to become consistent.

However, if the NCP does not cooperate after receiving warning letters about possible license suspension, then other states' statutes generally direct state agencies to suspend the license. In some cases the

Montana licensing agency is directed to demand that the licensee surrender the license to them. Further, an individual that continues to use a suspended license is guilty of a misdemeanor.

Some states may restrict a license rather than suspending it. For example, a driver's license could be restricted to allow an NCP to drive only to and from work or for emergencies.

If the NCP is cooperating with ORS their license should be reinstated.

Procedures for Reinstating Suspended Licenses. Another very important area to address with license suspension is the prompt reinstatement of licenses when appropriate. If the NCP is cooperating with ORS and doing their best to meet child support obligations, then their licenses should be reinstated. Other states reported that the prompt return of licenses has not been a problem after establishing their suspension program.

Another interesting method used is the issuance of a temporary driver's license. This probationary license allows the individual to drive for a set time until they have either begun paying steadily or have failed to comply resulting in a full license suspension. In Colorado, for example, they issue a "red license," printed entirely in red ink so as to be easily identified. The temporary license is valid for 90 days to allow the NCP to start making child support payments. Once Colorado suspends a license, an NCP has to make three consecutive monthly payments to get a "Notice of Compliance," they can use to get their license reissued.

ORS Would Need to Establish Detailed Procedures

The specific policies and procedures that ORS would need to develop depend on how much detail was provided in statute. If little detail was provided by statute, ORS would need to develop all the controls discussed above. Even if the statute provided detailed guidance, ORS would need to establish implementation procedures and train staff on their use.

ORS agents feel administrative suspension ability would be a valuable tool.

In conclusion, unlike most states, Utah does not effectively use the threat of license suspension to coerce payments from the NCP who can afford to make required child support payments, but do not. We found various ways that other states which suspend licenses manage administrative enforcement. Even if few licenses are actually suspended, establishing a credible threat of suspension could significantly improve compliance with child support orders. Agents we spoke with at ORS

stated that the possibility of administratively suspending or threatening to suspend licenses would be a valuable tool.

Recommendations

1. We recommend that the Legislature consider changing the ***Utah Code*** 62A-11-107 to allow ORS to administratively enforce child support collection by the suspension of driver's, recreational, and professional licenses.

2. We recommend that the Legislature consider specifying the conditions and limitations under which ORS may initiate administrative suspension actions.

3. We recommend that if ORS is granted authority to administratively suspend licenses they focus the program on those individuals with the ability to pay as they develop policies and procedures to:

    - Identify individuals potentially eligible for suspension
    - Contact individuals to warn them of possible suspension
    - Protect due process rights of NCPs
    - Set criteria and procedures for suspending licenses
    - Reinstate suspended licenses

Chapter III
ORS Should Be More Aggressive in Enforcement

ORS should use existing enforcement techniques more aggressively regardless of the Legislature's possible decision to increase ORS' administrative authority. While ORS does employ many automated procedures and tools to carry out administrative enforcement, we feel that there is more that could be done. Some ORS administrative enforcement methods have lenient standards compared to other states. In other instances, ORS does not use available information and techniques to help collect child support.

ORS uses a variety of automated methods but more could be done.

We feel ORS is not aggressive enough in going after potential collections in certain areas. At present, the agency uses a variety of automated enforcement methods; but more could be done. This chapter discussed three specific items:

- ORS should consider modifying their current policy to allow for more checking account seizures of nonpaying, noncustodial parents (NCPs).
- ORS should reconsider their option to not receive federal 1099 tax information to help locate nonpaying, self-employed NCPs and identify ability to pay their required child support.
- ORS should consider publicizing their enforcement efforts more in order to help influence NCPs to meet their child support obligations.

ORS Bank Account Seizure Practices Could be Improved

One area of administrative enforcement that ORS utilizes is bank account seizure. However, Utah's minimum balance requirement is much higher than that of any surrounding states. By reducing the amount required in a checking account before seizure, ORS could improve collection rates. Currently, a checking account must have at least a $2,000 balance for an ORS agent to begin lien/levy proceedings on funds

above the $2,000 limit. If there is a savings account, ORS can pursue those funds regardless of the balance. The previous policy stated that lien/levies were only to be sent when the obligor had "sizeable funds in a checking account."

Utah established the $2,000 limit after an ORS agent mistakenly seized the checking account of a noncustodial parent, who apparently had made a child support payment. ORS stated they were required to help resolve this issue with the bank. In reaction to this situation, the previous standard that had no specific balance requirement was changed.

The current limit reduces the ability of ORS agents to seize checking accounts. In fiscal year 2004, ORS collected about $424,000 from approximately 1,800 financial liens, for a reduction of $91,000 from fiscal year 2003 collections. Fiscal year 2003 had about $515,000 from 2,127 liens.

ORS placed fewer liens on bank accounts in 2004 than in 2003.

Since the policy was established in April of 2003, ORS placed fewer liens on bank accounts in 2004 than in 2003, resulting in decreased collections. If the current lien rate continues throughout 2005, ORS will also have placed fewer liens on bank accounts in 2005 than they did in 2003. According to ORS, this drop in account seizures is attributable to the increased limit, or minimum account balance requirement, before an agent can seize an account.

Most states require a $500 or lower checking account balance.

Most states only require a limit of $500 on a checking account balance or lower before they seize funds. This means that other states' agents can seize any checking account funds above this limit. Figure 6 demonstrates that seven surrounding states' requirements for bank account seizure are lower than Utah's. The result is that other states can potentially seize more funds than Utah.

Figure 6. Surrounding States' Checking Account Seizure Limits as of 2005. Utah requires the highest checking account balance before they seize funds of any of the surrounding states. Each state only seizes funds above the minimum account balance requirement.

Surrounding States	Minimum Account Balance Requirements
Utah	$ 2,000
Arizona	500
Colorado*	No Minimum
Idaho	1,000
Montana	No Minimum
Nevada	500
New Mexico	500
Wyoming	No Minimum

** Colorado is currently reforming to require $25.*

According to these other states, three require no balance, three require a minimum balance of $500, and Idaho requires a $1,000 balance before they seize checking account funds. Utah requires by far the highest balance of $2,000, which is twice as much as the nearest requirement set by Idaho.

Utah's collections using bank account seizures is one of the lowest of surrounding states.

Figure 7 shows surrounding states' collections from bank account seizures. It demonstrates Utah's position as one of the lowest in collections from bank account seizures.

Figure 7. Surrounding State's Bank Account Seizure Collections. Utah was one of the lowest in bank account seizure collections in fiscal year 2004.

Surrounding States	Amount Collected
Utah	$ 423,737
Arizona	2,604,896
Colorado	1,682,200
Montana	358,500
Nevada	502,824
New Mexico	1,000,000
Wyoming	821,000*

** Wyoming data estimated from information for seven months of the year. This data was taken from federal OCSE data over a one year period of time.*

New Mexico, which has a very similar caseload to Utah, as well as a much lower balance requirement, has one of the highest collections using this method. By reducing the bank account seizure amount required in a checking account, Utah's ORS could increase collections.

Access to Greater Tax Information Could Aid In Enforcement and Collection

Utah's ORS does not fully access available resources that could be used in child support enforcement. One of these resources, which ORS has opted not to receive, is Internal Revenue Service (IRS) 1099 information that includes self-employment income information. ORS stated they received 1099 information until 2001, but found it was not as valuable or current as the information that is now available to agents from other sources. In addition ORS is concerned that it is costly to protect the confidentiality of the 1099 information as required by the IRS.

Many of ORS operations are automatic using various database interfaces with federal information resources. For example the National Directory of New Hires (NDNH) and Financial Institution Data Match (FIDM) are valuable resources to locate NCPs and enforce child support obligations. It is our view that 1099 information could be used as an additional tool to help locate a noncustodial parent and help indicate

whether the NCP has the ability to pay their child support obligation. Specifically, 1099 information could be a useful tool for collecting from those NCPs who do not receive a W-2 tax form. By opting out of the ability to access 1099 information, ORS limits the available tools to more efficiently perform their jobs.

ORS could protect 1099 information by limiting how staff access the data.

In addition, we think ORS could protect the confidentially of the information at a relatively low cost by limiting how their staff access the data. For example, at the Tax Commission, one specialist has responsibility for accessing and protecting sensitive federal tax information. This individual provides other state tax commission agents information only when appropriate.

When looking at state tax information of NCPs with arrears and professional licenses, at least 16 of the 44 cases with assets were receiving 1099 income. The following are examples of nonpaying NCPs where access to 1099 information by ORS agents may be used in locating an NCP or determining the ability to pay the child support obligation.

- A man with both a real estate license and a license to practice law is over $78,000 in arrears. His wages in 2002 and 2001 were both just under $40,000, both reported on 1099 information. His case was opened in 2000.

- A real estate agent quit his job and became self-employed, and then began receiving 1099 information. His reported adjusted gross income (AGI) was $45,126 in 2002 and $28,832 in 2003. Since becoming self-employed he only makes seldom and sporadic child support payments. He now has approximately $30,000 in arrears.

1099 information could be used to identify an NCP's income and ability to pay.

If 1099 tax information were available to ORS agents in these cases, then perhaps more could have been done to identify the NCP's income and ability to pay and be used to encourage payment.

In contacting several surrounding states, we found that four of the five do receive 1099 information, as shown in Figure 8 below.

Figure 8. Most States Access 1099 Tax Information. Utah is one of two surrounding states that has chosen not to obtain 1099 information.

Surrounding States	1099 Tax Form Access
Utah	No
Arizona	Yes
Colorado	No
Idaho	Yes
Nevada	Yes
New Mexico	Yes

32% of NCPs with arrears in Utah had no wage record.

It is our view that 1099 tax information often may be the best source of finding out self-employed income as well as other earned and unearned income an NCP might have. Further, in April 2003 an OCSE report stated that 32 percent of noncustodial parents in Utah who owed back child support had no wage record. Some of these individuals could be self-employed and receiving a 1099 tax form.

ORS Should Make Enforcement Efforts More Public

ORS should consider publicizing their enforcement efforts to help influence NCPs to meet their child support obligations. Other states make their enforcement actions and results more public than Utah. These publicity methods could help increase collections from both the NCP at which the action is directed, and also from other NCPs who see the evidence of enforcement. Knowledge that enforcement actions are being successfully used could act as encouragement for others to begin payment.

There are a variety of ways that ORS could try to use publicity to increase collections from NCPs who refuse to pay required child support. This section provides two examples of methods used by other states. These methods, as well as others should be considered by ORS. Although we have not studied the issue in depth, we think publicity could be used more effectively in Utah. In our opinion, publicizing enforcement actions could have an important deterrent effect on some

NCPs who have the ability to pay child support, but might try to avoid it if they do not believe ORS will take enforcement actions.

ORS could increase public efforts by using a "most wanted" list.

One example of a more public, aggressive enforcement mechanism used by other states is the "most wanted" list. Many states have a most wanted poster that includes about ten individuals who have the ability to pay child support, but do not. This list or poster often includes a picture of the NCP, the amount owed, and their last known address. The states using this method have various criteria for an NCP to be put on the list, usually including a certain amount of arrears, an arrest warrant or civil/criminal charge, and no known location for the parent. If ORS develops a most wanted list, they need to insure that only nonpaying NCPs who can afford to pay are included.

Other states report some success with this method. Texas has found 30 NCPs on their list since 2003. In 2003, Massachusetts reported that their posters have led to 85 arrests and nearly $3 million in support payments. Virginia reports that three ads in August and September led to 21 arrests and about $42,000 in collections. Other states report similar numbers. Besides the direct impact reported by these states, there may be a larger, unmeasured impact on other NCPs who decide to pay their child support to make sure they are not future candidates for a most wanted list.

ORS should consider publicizing stories of collection success.

A second example ORS should consider is publicizing their enforcement actions so that people regard ORS as a credible enforcement agency. Other states use press releases and announcements on their web sites to help let NCPs know threatened actions may be used. For example, the following announcement appears on the Massachusetts child support enforcement web site:

> License suspension program tops $52 million! As of the end of September 2005, we have collected over $52.3 million for the children. While many noncustodial parents responded to our invitation to enter into payment agreements, 21,115 had their driver's licenses suspended, and 717 had their professional licenses suspended.

As discussed in the previous chapter, the goal of a license suspension program is to get NCPs, who have the resources, to pay without having to suspend their license. However, for that to occur, NCPs must believe ORS is credible when they threaten to suspend a license. Publicity about the program can help enhance ORS' credibility.

In order to appropriately publicize their efforts and successes, ORS needs to track their efforts, as well as those of the AGs. This is more fully addressed in Chapter IV.

Recommendations

1. We recommend that ORS consider lowering the amount required before agents seize a checking account.

2. We recommend that ORS reconsider their option to receive federal 1099 tax information.

3. We recommend that ORS consider making their enforcement methods and successes more public to help encourage NCPs to pay their child support. Methods that should be considered include:

    a. Publicize a "most wanted" list of individuals who have the ability to pay child support, but do not.
    b. Publicize collection success stories on specific cases or on amounts collected using specific enforcement techniques.

Chapter IV
ORS Processes Involving Use of AGs Should Be Reevaluated

The Office of Recovery Services (ORS) should examine ways to use their contracted attorneys general (AGs) more efficiently and effectively. While we did not do an in-depth review of how ORS uses AGs, we think cost savings may be available in both the child support order enforcement and order modification areas.

First, the need for attorneys to pursue civil enforcement may be reduced, especially if ORS is able to increase the effectiveness of their administrative enforcement actions as discussed in the prior two chapters. Although ORS refers cases for civil enforcement actions, the agency does not track data on the outcomes of the case referrals. We think ORS should evaluate the use of AGs for civil enforcement. However, to accurately do so, ORS needs to develop performance measures for the activities and accomplishments of the AGs on the cases referred to them by ORS.

ORS should consider finding ways to simplify the modification process.

Second, ORS should search for ways to simplify their order modification process. Modifications are adjustments to the monetary amount of child support to be paid due to changes in the financial circumstances of the parents. Reportedly, AGs must devote a lot of effort to modifications because few parties voluntarily agree with the prescribed child support amounts through stipulation agreements. To accurately evaluate the use of AGs in order modifications, again ORS needs better information regarding the activities and accomplishments of the AGs on the cases referred to them by ORS.

In 2005, ORS paid the Attorney General about $3.1 million.

In 2005, ORS paid the Attorney General about $3.1 million for two types of attorneys as depicted in Figure 9 below. Attorneys from the Child and Family Support Division take civil actions on behalf of ORS. Attorneys from the Criminal Non-Support section of the Children's Justice Division take criminal prosecution action on cases referred by ORS.

Figure 9. Estimated AG Child Support Costs to ORS in 2004. Child and Family Support AG costs comprise ORS' greatest attorney cost. Services they primarily provide include: (1) civil enforcement and (2) assistance with establishing or modifying orders.

Attorney General Organization Unit	Total Expenditures*
Child and Family Support Division	$ 2,630,000
Criminal Non-Support Section	471,000
Total	**$ 3,100,000**

* *Estimates are based on attorney cost data provided by ORS.*

This chapter focuses on the attorney services provided by the Child and Family Support Division. The principal responsibility of these attorneys is to take one of two types of civil actions on cases referred to them by ORS: (1) actions to enforce established orders, and (2) actions to set or modify the amounts of child support orders.

ORS Should Evaluate Effectiveness of Civil Enforcement Referrals

We believe ORS should review their use of attorneys for civil enforcement. The AG's office is under contract with ORS to provide legal services on cases referred to them by ORS. However, ORS has little information about the civil enforcement actions taken or the outcomes of those actions. For example, ORS does not know how much money was collected due to the AG's civil enforcement efforts. In contrast, ORS has better information about the results of cases referred for criminal prosecution, although this information is less complex to track than it would be for civil enforcement.

ORS Needs Better Information About Civil Enforcement Activities and Outcomes

Neither ORS nor the AGs have a good way to report the success of civil enforcement efforts. The information that is readily available does not permit a comparison of enforcement actions with outcomes. In a limited review, we found four of 12 cases made payments following civil enforcement efforts. ORS needs better information on the effectiveness of

the civil enforcement actions both to guide their use of the AGs and assess the agency's own criteria for referring cases to the attorneys.

Good Performance Data Is Not Available. We were unable to obtain reliable information about civil enforcement actions or results. The civil attorneys completed weekly activity reports during fiscal year 2004, but have now discontinued them because they understood no one was using the information. According to the weekly reports that we compiled, the civil attorneys participated in 709 enforcement hearings, obtained 71 jail sentences and 1 driver's license suspension in fiscal year 2004. However, the AG division chief cautioned us that the reports were not complete.

In addition, there is no information about the effect of civil enforcement actions on child support payments. According to the AG's office, it is difficult to differentiate between the effect of an ORS agent's work and that of the attorney's, so attributing payment to one source of enforcement is problematic. Nevertheless, it is our view that this data could be measured by analyzing the combined efforts of the AGs and ORS staff who work on the civil enforcement of a case. By looking at the aggregate collection efforts as well as costs, ORS could measure the effect of enforcement efforts.

ORS does not track whether civil enforcement actions change child support payments.

Another issue we found is that ORS does not track the effectiveness of civil enforcement actions. ORS provided us data showing 1,636 cases were referred to the AG's office for civil enforcement actions in fiscal year 2004. However, ORS has not evaluated whether there were any changes in child support payments made as a result of those referrals.

We tried to look at the effectiveness of civil judicial enforcement actions by conducting a limited case file review. Twelve cases with recent civil enforcement actions were selected from a list provided by ORS' Salt Lake office. One of the outcomes we looked for was whether an NCP on a case started paying and continued paying child support following civil enforcement action. After a few months following the judgement, we found three of the 12 cases were consistently paying at least the current support order and one case was sporadically making some payments. Of the other eight cases, one had been closed as unenforceable, one had been closed at the request of the CP, and six remained open without payments.

Better Data Is Needed to Manage the Civil Enforcement Process. If civil enforcement actions do not get an NCP to continue paying on a

case, ORS may want to consider changing how the AGs are used. ORS should also consider evaluating which types of civil enforcement actions most often lead to payments. For example, ORS might evaluate whether a letter specifically threatening possible sanctions is adequate to encourage payments or if it is important to get the NCP into a hearing before a judge.

ORS may also be able to assess their referral process by tracking civil enforcement outcomes. For example, the agency should ensure that only cases where there is an ability to pay are sent for civil enforcement. Of the 12 cases we reviewed, one was later closed as unenforceable indicating there may not have been an ability to pay. Six other cases remain open without payment indicating that either there is no ability to pay or that the civil enforcement techniques used were not effective.

ORS should assess which cases they refer for civil action.

In addition, ORS should assess whether they refers cases when they are ripe for effective civil enforcement action when existing administrative enforcement methods have not worked. Current referral criteria require that cases have a lengthy history of non payment before referral to the AG. In contrast, the federal Office of Child Support Enforcement (OCSE) recommends timely intervention before NCPs learn they can get away with not paying. Better tracking and evaluation of civil enforcement actions can help ORS manage their use of civil enforcement AGs.

ORS Has Better Information About Criminal Enforcement Effectiveness

Over $1.7 million in child support collections in 2004 was attributable to CNS.

ORS has better information about the enforcement results of the Criminal Non-Support (CNS) AGs, who prosecute the more egregious nonpaying noncustodial parents (NCPs). According to data tracked by the CNS section, over $1.7 million in child support collections in 2004 was attributable to criminal enforcement actions. Figure 10 shows the reported collections resulting from CNS actions over the last four years.

Figure 10. CNS Collections Have Steadily Increased Over the Last Four Years. Criminal prosecution appears to be an effective way to increase payment.

Calendar Year	Total Collections
2001	$ 952,215
2002	1,196,515
2003	1,272,940
2004	1,732,701

In 2004, CNS expenditures were approximately $471,000. This means that for every dollar spent on CNS in 2004, about $3.70 was collected. This type of data is not available on civil enforcement.

ORS understands more detailed records from the AGs would be useful.

ORS understands that more detailed records of the Child and Family Support AG's civil enforcement activities would be useful. ORS stated they are in the process of developing and implementing a new workload module for the AGs to better evaluate services provided to ORS. At a cost of $3.1 million, attorney services represent an expensive resource that should be more effectively managed.

ORS Should Evaluate Use of Attorneys In Modification Procedures

We think ORS should consider ways to simplify their child support order modification process, particularly through the increased use of stipulation agreements. In a stipulation agreement, the parties agree to a modification of the child support order without going to a hearing requiring the involvement of attorneys. Though our review of the modification process was limited, we found three other states that appear to have implemented procedures that reduce their reliance on attorneys to complete judicial modifications. However, we could not obtain reliable data to make definite conclusions about order modifications.

Modifications appear to constitute a significant portion of the AGs workload.

It is important to have a cost effective way to modify child support orders when needed. One of the federal OCSE's strategic initiatives is "intervene early to modify orders, correcting mismatches between ordered payments and ability to pay." OCSE has also encouraged states to find ways to "simplify order modification." An efficient order modification

process is essential because with over 60,000 orders at ORS, many are eligible for review each year. We could not obtain reliable data on the civil attorneys' activities and accomplishments on order modifications, but the AGs report that modifications constitute a significant portion of their workload.

Utah's Judicial Modification Process Can Be Improved Through Increased Use of Stipulation Agreements

Utah's ORS could benefit from having more modifications resolved through stipulation agreements. Child support order amounts are eligible for review and modification every three years, or sooner if there is a significant change in the parents' financial situation. Because Utah law establishes order amounts, it seems that ORS should often be able to get parties to agree to the required order amounts.

ORS has a federally-mandated 180 days to complete a modification.

The order modification process is controlled by federal and state law. Once the request for modification has been made by either parent, ORS has a federally-mandated 180 days to complete the modification. If the order qualifies for modification, ORS gathers the required income information from each party and determines whether and how much the order amount should be changed. In most cases, the actual amount of the new order is determined by statutory child support guidelines. ***Utah Code*** 78-45-7.2 requires that the statutory guideline amount be applied as a "rebuttable presumption" meaning that state officials must use them unless specific special circumstances are identified that justify deviating from the table of amounts.

If the parties agree to the new amount, they enter into a stipulation agreement. If they do not agree with the recommended amount on a judicial order, the case goes to the AGs and then to a judge, who approves, denies or changes the new amount. The involvement of the AGs and the judge adds considerable cost to the state. ORS management reports that their staff try to obtain stipulation agreements whenever possible. However, contending parties often dispute each others income, making it difficult to get agreements.

According to ORS, very few cases are resolved through stipulation.

ORS was unable to provide data verifying the actual number of stipulations; however, ORS' modification staff claim that very few cases actually get resolved through stipulation at their level. The result is that many of these cases will then go to the AGs, where ORS agents may not know how many are settled prior to a trial where the modification amount

is decided by the judge. However, ORS' modification staff claim that in most cases the judge agrees with the amount which the modification staff originally recommended by following the state guidelines for setting the child support amount. If this is the case, ORS should look for methods to have more parties reach agreement through stipulation.

Effective Variations of Modification Exist

Modification processes can differ from state to state. However, in all states, a judicial order can only be approved by a judge. Based on our observation, ORS may be able to employ different states' processes to assist in simplifying judicial modifications. For example, Montana, Colorado and Alaska all appear to employ methods with a greater administrative role in modifying orders, even for cases that have been judicially ordered.

According to Montana, over 90% of their modifications do not require a hearing.

Montana - The procedure for judicial modifications is statutorily established. The parties are sent a notice that their case is up for modification. The agents then review the case and determine an appropriate new amount. They send this proposed amount to the district court. Once the court gets the modification paperwork, it has three options: sign off on the amount, remand the amount for further modification, or hold a hearing. According to Montana's regional manager, the courts are very supportive of these efforts, and it is rare that they do not sign off on the new amount. This manager also said that they do not use attorneys in the modification process and that over 90 percent of the modifications performed do not require a hearing.

Colorado - Every effort is made to achieve a stipulation agreement preventing the case from going to a hearing. Colorado's policy specialist estimated that 50 to 60 percent of cases stipulate, or reach a pre-hearing agreement on the new amount, and of those remaining, most are decided without a hearing. If the parties cannot agree on the amount, a motion to modify is filed. Within 15 days, the parties must file a response, stating why they feel the new amount is wrong, or the motion to modify is granted. Attorneys are required only in the case of a hearing, so there is often no attorney involvement.

Modifications in Alaska take an average of 72 days.

Alaska - In 1997 OCSE provided a grant to develop a way to adjust child support orders more efficiently. One method Alaska put into practice was an automated comparison of child support orders and

income data, called ELMO. Once a modification candidate is identified by ELMO, the benefitting party is notified to see if they would like to pursue modification. Cases modified using ELMO take an average of 72 days, less than half of the federally mandated 180 days. Alaska feels they have successfully met their goal of streamlining the review and adjustment process.

These other states' processes could be used to improve ORS' modification process, but further study by ORS is needed. For example, ORS could examine Colorado's and Montana's processes that appear to resolve a much higher percentage of cases than Utah without requiring the involvement of attorneys. Further, ORS could examine Alaska's modification procedures where the average time to complete a modification is 72 days. In Utah, ORS staff estimate that the very quickest a modification is completed is three to four months, or 90 to 120 days.

ORS and the AGs Need Improved Modification Workload Tracking

As in the civil enforcement area, ORS needs better data on the activities and accomplishments of the AGs on modification cases referred to them. Better information on the modification process could help ORS identify improvements in the modification process. Moreover, a better understanding of what the civil attorneys do on modifications of cases is important to help ORS manage their use of the AG contract.

ORS should track modification performance data.

Neither ORS nor the AGs track the number of modifications worked, nor how long it takes to do a modification. For example, ORS staff told us that parties rarely sign stipulation agreements; however, we could not validate this statement because ORS lacks reliable data on the number of stipulations. ORS should develop better performance data to help identify possible improvements to the efficiency of the modification process.

In conclusion, ORS pays over $3 million each year to the Attorney General for legal assistance, but has little performance information. We do not question the value of the attorney services, but it is an expensive resource that ORS needs to effectively manage. We did not complete in-depth audit work in this area, but we think ORS should improve the performance information they have about the AG contract and evaluate ways to use attorneys as cost effectively as possible.

Recommendations

1. We recommend ORS track or require the AGs to track the amount of child support collected as a result of civil enforcement proceedings as well as the actions taken on the case.

2. We recommend ORS evaluate and determine the best utilization of the civil enforcement AGs.

3. We recommend ORS evaluate their modification process and consider using other states' methods as a model to increase efficiencies. In particular, ORS should strive to increase the use of stipulation agreements in order to reduce the required involvement of civil attorneys.

4. We recommend ORS improve their modification data. ORS should develop modification performance measures and track the number of cases referred for modification, the time it takes to complete a modification, and the outcome of referred cases for modification.

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Chapter V
ORS Debt Management Practices Raise Procedural and Policy Issues

The audit requestor was concerned that the failure to pursue debt owed taxpayers was contrary to ORS' statutory duty "to collect money due the department which could act to offset expenditures by the state" (***Utah Code*** 62A-11-104(3)). Our audit request asked us to verify or explain the apparent elimination of large amounts of legitimate debt owed to taxpayers, either by direct write-off or failure to establish and pursue such debt. This debt owed to taxpayers is also called IV-A debt, or public assistance debt. This debt is to be paid by the noncustodial parent (NCP) to the state for public assistance received by the custodial parent (CP).

While we confirmed that ORS eliminates a significant amount of public owed debt, there appears to be reasonable policy or practical grounds for doing so. For example, the elimination of uncollectible debt is a prudent business practice because it saves on administrative costs associated with collection efforts when there is little prospect for success. In other cases, ORS has decided not to pursue debt for policy reasons that, while they seem reasonable, are subject to review by the Legislature.

ORS procedures should be guided by the will of the Legislature.

This chapter provides information about a number of ORS' debt management practices where the Legislature could provide additional policy guidance, if desired, especially on elimination of public owed debt. Unlike child support debt owed on a private case, which is generally eliminated only at the discretion of the custodial parent, the failure to pursue public debt owed to taxpayers is controlled by ORS practices. Thus, it is essential that ORS procedures are guided by policies that reflect the will of the Legislature.

ORS Does Not Track the Amount of Debt Which Is Eliminated

ORS focuses on debt they are trying to collect, but does not routinely track the amount of debt that is eliminated through case closure or direct write-off. Because ORS does not monitor the amount of debt eliminated, we used the best available data. Figure 11 shows our estimate of how much debt has been eliminated from unpaid arrears owed by NCPs. The figure depicts the change in the arrears balance not accounted for after

considering the new arrears accrued during the year and the arrears paid during the year.

Figure 11. Estimated Amount of Debt Eliminated in Federal Fiscal Years 2001 Through 2005. A significant amount of debt is eliminated each year. The columns represent whether or not public assistance support money was used by the custodial parent.

Federal Fiscal Year	Current Assistance Cases	Former Assistance Cases	Never Assistance Cases	Total for All Cases
2001	$14,487,747	$26,800,752	$3,223,854	$44,482,353
2002	9,518,469	21,164,630	5,316,838	35,999,937
2003	6,937,205	25,204,419	7,971,534	40,113,158
2004	12,939,140	27,428,865	5,921,060	46,289,065
2005	10,079,398	3,303,229	2,983,089	16,365,716

Source: based on data contained in reports submitted to the federal Office of Child Support Enforcement each year (form OCSE-157)

As Figure 11 shows, in 2005 over $16 million in private and public debt was eliminated from ORS' arrears owed, yet was not collected. In 2004, the total amount of arrears eliminated totaled over $46 million in both public and private owed debt.

ORS internal audits in 2004 revealed agents do not always follow policy when closing cases.

We think the large decrease in debt eliminated for 2005 reflects a tightening of case closure practices by ORS. Agency management reports that an internal audit conducted during 2004 revealed that agents were not always following ORS policy when closing cases. After identifying this problem during their own internal audit, training measures were taken to correct this problem. Our review of case inventory is consistent with ORS' explanation because a trend of decreasing caseload was reversed. The largest difference was in the number of former assistance cases. After decreasing by 1,829 cases in 2004, the number of former assistance cases grew by 2,419 in 2005.

While Figure 11 provides information about the total amount of debt eliminated, it does not show how much of the total eliminated arrears amounts constitute the total public debt owed taxpayers that will no longer be pursued. To try to get a better idea of how much unpaid public debt is

dropped from ORS' arrears owed accounts, we analyzed data on cases closed in 2004 provided by ORS. Figure 12 summarizes the data, including the reason the case was closed and whether the debt was public or private.

Figure 12. ORS Eliminated About $18 Million in Debt Owed Taxpayers Through Case Closure In Fiscal Year 2004. Debt eliminated in cases remaining open is not included.

ORS Case Closure Reason	Amount of Public Debt Eliminated	Amount of Private Debt Eliminated	Total
Unenforceable	$13,000,796	$ 7,585,769	$20,586,565
Other Reasons	5,152,130	13,315,713	18,467,844
Total	**$18,152,926**	**$20,901,483**	**$39,054,409**

Figure 12 shows that in 2004 closed cases included about $18 million of public debt, mainly because the cases were deemed unenforceable. The figure does not include debt that was written off from cases that remained open. However, in comparing the 2004 totals from Figures 11 and 12, there is a difference of about $7 million. This difference may represent the amount of arrears eliminated on open cases. Much of that amount may have been public debt that was written off.

The remainder of this chapter addresses specific concerns raised in the audit request. First, we discuss the large amount of public debt written off as unenforceable. We found it is appropriate to close cases when there is little prospect of collecting, but we found ORS workers violated the agency's own case closure criteria too often. Second, we discuss a variety of other ORS practices whereby public debt is not pursued. We found that there appear to be justifiable policy reasons for ORS' practices, but the Legislature could provide additional guidance if desired.

Closing Cases as Unenforceable Is Appropriate but Some Concerns Exist

ORS is within federal guidelines to close public arrears-only cases deemed "unenforceable." However, we found the audit requestor's concern had merit in that ORS was writing off debt to conform to federal criteria. Subsequently, ORS adopted an administrative rule addressing the concern, but the Legislature could provide policy guidance on when public debt should be considered unenforceable, if desired. In fiscal year 2004, ORS eliminated $13 million of public debt as unenforceable.

In our review, we applied ORS' unenforceable case closure criteria to test and verify appropriate use of this criteria on selected cases. The criteria seem reasonable, but we found that ORS agents do not always follow the requirements. In addition, with the administrative rule in place, ORS should not manually write off the public arrears debt to zero before closing the case as unenforceable because it affects the agency's ability to collect if the case is later reopened.

Federal Regulations Authorize ORS To Close Cases as Unenforceable

The Code of Federal Regulations (CFR) allows states to close cases for a variety of reasons if they establish a system for case closure. ORS closes cases as unenforceable based on the federal case closure criteria that "there is no longer a current support order and arrears are under $500 or unenforceable under State law" (CFR 303.11b (1)).

In 2004 ORS specified criteria for unenforceable cases.

The audit requestor was concerned that ORS was forcing cases into conformity with the federal criteria by writing off the arrears to below the federally-set limit of $500 prior to closure. This was a legitimate concern because, during fiscal year 2004 there was no state law defining certain arrears as unenforceable. In August 2004, ORS adopted Administrative Rule 527-38 specifying criteria that a case must satisfy to be categorized as unenforceable. The case must meet all of the following criteria:

- The case is nonpaying for at least 12 months
- There has been no federal or state tax offset money (tax refund)
- ORS has collected less than $1,000 in the last two years other than from the tax offset money
- There are no financial institution accounts or executable assets of the NCP that can be levied upon

- No executable assets belonging to the NCP have been identified
- A credit bureau report has been accessed within the past 6 months indicating no income or asset information

Before the rule was adopted, ORS had an internal policy and the practice of eliminating public arrears debt based on similar criteria as the rule. However, since there was no state code in place, ORS staff manually wrote off the debt to meet the federal $500 limit.

Adjustment Codes for Unenforceable Debt Are Not Reliable

Figure 13 shows the adjustment codes used by ORS agents to eliminate $13 million of debt in cases closed as unenforceable in fiscal year 2004. The figure shows that about one-third of the unenforceable debt was forgiven by manually writing off debt using the AWOD code, but we found the coding is not reliable.

ORS agents use the AWOD code to write off publicly owed debt on arrears-only cases.

ORS agents are instructed to use a specific computer code, AWOD, when they write off publicly owed debt on arrears-only cases. Because so much debt was eliminated using other codes, we reviewed 14 cases in depth where other codes were used to eliminate debt on cases closed as unenforceable. We found that in 5 of the 14 cases, adjustments were miscoded by ORS agents. These cases should have used the AWOD code in writing off these arrears.

Figure 13. ORS Adjustment Codes Used to Eliminate Public Debt Owed Taxpayers in Cases Closed as Unenforceable in Fiscal Year 2004. A significant amount of public owed debt is eliminated each year.

ORS Adjustment Code	Amount of Adjustment
AOTH (Adjustment for Other Reason)	$ 4,852,106
AWOD (Adjustment to Write Off Debt)	4,123,480
ANEW (Adjustment for New Information)	2,528,761
Other Codes	1,496,449
TOTAL	**$13,000,796**

Despite our concern with the coding, we focused our additional audit test work on the AWOD code because that is the primary code ORS agents are supposed to use when closing an unenforceable case with public owed arrears. Further, we also focused on the AWOD code, because the debt written off with that code is permanently forgiven even if the case is subsequently reopened.

Audit Tests Demonstrate ORS Closure Criteria Not Always Followed

We reviewed 50 cases which ORS agents closed as unenforceable and wrote off the public owed arrears prior to closure by using the AWOD code. We conducted several tests on these cases and our purposes in doing so were as follows:

- Validate the accuracy of ORS' computer system (ORSIS) in automatically finding tax intercept (refund) money on cases

- Determine if the cases closed as unenforceable met ORS' closure criteria of not receiving payment within the last 12 months prior to closure and receiving less than $1,000 in payment other than from tax intercept money two years prior to closure

- Determine if the two-year time frame before case closure on unenforceable cases is too stringent and should be extended by determining if tax intercept money would have been received a year following closure.

Cases reviewed did not receive a tax refund for 2 years prior to closure.

Our first test was to validate the accuracy of ORS' computer system (ORSIS) in finding either state or federal tax intercept (refund) money on nonpaying cases. In reviewing state tax information on these cases, we found that all 50 cases met this one closure criteria and did not receive a tax refund for two years prior to closure. Tax refunds can be used by states to pay toward nonpaying NCP cases.

11 of 50 cases did not meet all of ORS' unenforceable case closure criteria.

In our second test, we looked at the ORS payment histories on the 50 cases. We found that nine of the cases had received payments within 12 months prior to closing the case as unenforceable. While these payments were small, they still violate one of the closure criteria. We also found that seven of these cases had paid at least $1,000 in the two years prior to closure. This violates another closure criteria. Five of the seven cases violated both criteria. In total, 11 of the 50 cases were closed by agents as unenforceable despite not meeting ORS case closure criteria.

One case would have received additional funds had it remained open.

Another test we conducted was to determine if the reviewed cases would have received a tax intercept or refund payment if left open an additional year, instead of being closed after two years. Of the 50 cases, one case would have received an additional payment from a tax refund if it had been left open for another year prior to closure. In this instance, we found that the NCP had another case open, and the entire refund went to the open case. If the closed case would have been open, the refund would have been split between the NCP's two cases.

In summation, our review and analysis indicate that there are errors on ORS' part in closing cases as unenforceable in that not all of their closure criteria were met. ORS agents should exercise caution on the closure of cases that are considered unenforceable.

Writing Off of Arrears Debt Prior To Closure Is Unnecessary

Currently, ORS eliminates public owed arrears on cases before closing them as unenforceable. An OCSE official told us that the practice of writing off the debt before closing the case is unnecessary. According to ORS, writing off the debt before closing the case may have been a misinterpretation of the federal law on their part.

ORS should not write off arrears prior to closure.

Our concern is that if a case is closed and arrears are eliminated prior to closure, these arrears would not be reinstated upon reopening the case. However, if a case closes with arrears owing and no write-off of the arrears

takes place, the arrears debt is reinstated if the case reopens. Nevertheless, ORS claims it is unlikely that a case that was closed as unenforceable will be reopened. We were unable to verify how frequently unenforceable cases are reopened, due to limitations with ORS' computer program. However, we recommend that ORS discontinue writing off arrears prior to closure.

Other ORS Debt Management Practices Appear Reasonable, but Raise Policy Issues

The requestor's concerns are valid but ORS also has reasonable rationale for their policies.

In addition to writing off debt on unenforceable cases, the audit requestor expressed concern with other ORS practices where public debt was not pursued. While the concerns raised in the audit request are valid, ORS also has reasonable rationale for their policies and arrears management practices. If the Legislature disagrees with these practices, it should provide additional policy guidance. The issues addressed in this section include the following:

- Medicaid birthing expenses
- assessment of arrears prior to order establishment
- arrears eliminated following termination of parental rights
- arrears eliminated for ex-prisoners
- child support orders for incarcerated persons
- arrears owed to emancipated children
- assessment of interest on arrears balances

Birthing Expense Arrears Write-Off Practice Appears Justified

The audit request questioned ORS' practice of writing off the birthing expenses of children born to unwed mothers while on public assistance. In late 2000, ORS eliminated from their policies the requirement of accruing birthing expense arrears. Then in early 2001, ORS wrote off $10.7 million in birthing expenses they had previously assessed. The ORS policy was based on the recommendations of a federal study. We also discussed the issue with an OCSE official who told us that states may collect birthing expenses but they are not required to do so.

ORS policy urged by federal government.

ORS' policy change was urged by the Medical Child Support Working Group that was established by federal law to "develop recommendations for effective enforcement of medical support orders by State child support enforcement agencies." The working group recommended that child

support enforcement agencies should not pursue pregnancy and birth-related costs in Medicaid cases.

Federal study says states are not usually able to collect for Medicaid birthing expenses.

According to the working group, the theory behind forgiving the birthing expenses is that collecting them "runs counter to two other important public policy goals: (1) encouraging mothers to seek prenatal care, and (2) encouraging fathers to establish paternity." The working group's report also states that, "If fathers acquire unrealistically high child support debt when they acknowledge paternity, they will neither admit paternity nor join these programs." Finally, the report mentions that "since the fathers of children receiving Medicaid are likely to be low income, the State usually cannot collect the assessed amounts anyway."

ORS Does Not Pursue Arrears Owed up to Four Years Prior to Order Establishment

The audit requestor was concerned that ORS does not pursue arrears for up to four years prior to order establishment on paternity establishment cases. ***Utah Code,*** 78-12-25(1) does not require ORS to pursue arrears for the four years prior to establishing the order, but says ORS "may" pursue these arrears and gives authority to do so. ORS has taken the position on paternity establishment cases of pursuing arrears from the point that ORS sends out a Notice of Agency Action which is the initial phase of order establishment.

A large arrears balance before the case is open may discourage the NCP from paying current support.

Although we did not fully research this area, one reason ORS gave for their current policy is that their goal is to have the NCP pay the current support first. A potentially large arrears balance before the case is open may discourage the NCP from paying the current support obligation. Whether ORS should continue this practice is a matter of public policy review by the Legislature.

ORS Does Not Pursue Public Owed Arrears Debt Following Termination of Parental Rights

The audit requestor also questioned why ORS does not pursue public arrears debt that is preserved following termination of parental rights. ORS officials state they have weighed the benefits of collecting those monies against the effort it would take to attempt collection. ORS argues that agents would have to be pulled from enforcing current orders to working on arrears-only cases. ORS also states that collection from a

parent who has had parental rights terminated is unlikely, especially with public assistance cases.

Utah statute regarding termination of parental rights needs clarification.

Whether ORS should continue their current practice is a matter of public policy decision by the Legislature. The statute should be clarified on this issue. ORS' legal counsel agrees that the statute governing this area is vague and could use some clarification. ***Utah Code*** 78-3a-413, states:

> (1) An order for the termination of the parent-child relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other, except the right of the child to inherit from the parent.

The statute is unclear as to the handling of child support arrears. As a result, ORS decided against collection of these arrears.

ORS Forgives Certain Ex-Prisoners Arrears

Another concern raised in the audit request was that ORS may exceed their authority by eliminating the arrears balance that accrued during the time of confinement for an ex-prisoner who makes scheduled payments after being released. However, we found that ORS does have this authority, as set forth in Administrative Rule 527-258-2. This rule gives ORS the authority to forgive the arrears that accrued while the NCP was in prison if:

- The NCP pays full monthly current support payments.
- The NCP pays full monthly assessed payment toward the past-due support debt for 12 consecutive months.

The administrative rule clarifies that "arrears that accrued before or after the incarceration period are not subject to discharge."

Incarceration may affect NCPs future ability to pay.

ORS believes a prisoner will have difficulty paying a current order while incarcerated; therefore, arrears are going to continue to build. In addition, in many circumstances incarceration affects the ex-prisoner's future ability to pay. The NCP's future ability to work, especially earning an adequate wage, may be limited after prison. We did not research how much has been written off under this policy.

ORS' Practice of Setting Minimal Child Support

Rates for Incarcerated People Needs Review

The audit requestor was concerned that ORS was inappropriately setting minimal child support orders for incarcerated persons. The concern was that ORS is setting order amounts at only $20 per month rather than imputing an income and using the statutory guidelines to determine the order amount. The requestor felt that incarceration should be considered as voluntarily unemployed, and that ORS should impute an income that might be earned. We found other states vary on how orders are set for incarcerated persons. Some take the position that since imprisonment is the result of an intentional criminal act, imprisonment is a voluntary act. Others focus on the inability of NCPs to earn income while incarcerated. Public policy clarification by the Legislature may be needed on this issue.

ORS policy allows them to set minimal child support amounts for those with very low incomes.

ORS policy allows them to set minimal child support amounts for individuals with very low incomes. For incomes less that $650 per month, the amount of the child support obligation is determined on a case-by-case basis, but shall not be less than $20 per month. We determined that 1,991 cases have child support orders of $20, but we do not know how many of the NCPs are incarcerated. ORS' justification for setting minimal child support amounts is similar to the reasons stated on eliminating arrears of ex-prisoners. ORS' stance is to encourage the NCP to pay current child support upon getting released from prison. Their concern is that arrears owed by the NCP after leaving prison may discourage the NCP from paying child support.

Bills were introduced the last two sessions to address issues with incarcerated NCPs and both failed.

The Legislature may want to clarify state policy for child support orders of incarcerated NCPs. Each of the last two years, bills have been introduced to address the issue. In 2004, House Bill 310 would have required the imputation of income for incarcerated NCPs. It passed the House, but was not acted on in the Senate. In 2005, House Bill 248 would have provided statutory support for establishing $20 support order amounts for incarcerated persons. It failed in the House, but the practice continues as a matter of ORS policy. If the Legislature desires a different state policy, it needs to provide that direction to ORS.

ORS' Policy Agrees with Utah Code Regarding the Pursuit of Arrears on Sum-Certain Judgements

ORS has the statutory authority to collect up to four years of arrears after the child turns 18 years of age (emancipates). If the result of a child

support order is a sum-certain judgment issued by the court, there is an eight year statute of limitations on enforcement. According to ***Utah Code*** 78-22-1 (6)(b), ORS should pursue the longer period of duration between either "eight years from the date of entry of the sum-certain judgement" or four years following emancipation.

The audit requestor was concerned about an allegation that ORS does not pursue arrears on cases after an emancipated child turns 22 years of age even if there is a sum-certain judgement in place which may extend past the 22 years of age. We were also directed to two ORS agents who reported that some ORS agents do not pursue arrears for the longer duration of time. However, the agents did not identify any specific cases that were closed improperly for us to review.

ORS policy reflects the *Utah Code* of pursuing arrears for the longer duration of time.

We reviewed ORS' policy and it does reflect the ***Utah Code*** of pursuing arrears for the longer duration of time between these two situations. Further, if agents are closing cases when a child turns 22 years of age even if there is a sum-certain judgement still in effect, it is in violation of ORS' policy. ORS' management also stated that they do not approve of such practices if they are occurring.

Utah Does Not Charge Interest on Arrears

The audit requestor was concerned that ORS does not establish or pursue debt owed to the State of Utah. One such example is that ORS does not charge interest on arrears balances. Although we did not assess what the potential amount of interest debt would be, we did contact other states for comparison.

We found that some states do charge interest; however, many of those states claim they use the interest only as a bargaining tool to get NCPs to pay their arrears. Some state agencies told us that interest rarely gets paid. Those states that charge interest commented that they do so because their statutes require the collection of interest, child support should be treated like any other debt, and interest encourages prompt payments.

Many states find it is not cost-effective to charge interest on child support arrears.

We also found that many states do not charge interest on their arrears balances although their statutes may allow them to charge interest. One reason interest is not collected, according to other states, is that it is not cost-effective to do so.

We asked OCSE if states are required, or allowed, to charge and accrue interest in arrears. They responded that states do not have to collect and charge interest, but they may. According to an OCSE representative, very few states actually do charge interest because it is very complicated, hard to administer, and difficult to collect. The OCSE representative said interest is generally used as a negotiation tool.

In conclusion, by agency policy ORS either does not assess or does not pursue collection of some potential debt owed taxpayers. While there appear to be justifiable reasons for the ORS debt management policies discussed in this chapter, the Legislature could provide additional policy direction.

Recommendations

1. We recommend ORS discontinue eliminating public owed arrears debt through manual write off on cases closed as unenforceable.

2. We recommend that the Legislature consider whether it wants to provide additional policy guidance to ORS in any of the following areas:

    a. the criteria for determining unenforceable cases
    b. whether birthing expenses in Medicaid cases should be assessed
    c. whether ORS should pursue arrears up to four years prior to the actual order establishment
    d. whether ***Utah Code*** 78-3a-413 as to the responsibilities of past obligations of parents whose parental rights have been terminated
    e. whether arrears accrued by former prisoners when incarcerated may be forgiven
    f. whether ORS should set minimal child support orders of $20 for prisoners
    g. whether interest on arrears should be assessed

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Agency Response

December 8, 2005

Mr. John M. Schaff, CIA
Legislative Auditor General
West Capitol Complex
Salt Lake City, Utah 84114-0151

Dear Mr. Schaff:

Thank you for the opportunity to respond to your legislative audit, Report No. 2005-13, "A Performance Audit of the Office of Recovery Services," dated December 2, 2005. As newly appointed Director for the Office of Recovery Services, I am writing the Agency response.

We would like to begin by commenting that the Office of Recovery Services' experience with the audit staff over the past nine months has been quite positive and instructive. For our part, we have made every effort to cooperate in gathering data, policies, statutes, and rules as requested by the auditors. We have found the auditors' report to be fair and objective, careful and thoughtful -- particularly given the complexities of our work. It is a considerable challenge to measure our caseload, especially given its dynamic nature. We acknowledge the difficulty in producing models to capture such difficult concepts as arrears calculations, debt management and debt elimination in a child support agency. While these models are complex and controversial, we applaud the auditors' attempts to capture the ephemeral. Further, having an independent set of eyes review our processes has been very helpful, and much can be gained from these well-considered recommendations.

The report addresses four key areas and makes recommendations to the Legislature as well as to ORS. The majority of the recommendations seem reasonable and achievable. Some will require the passage of legislation in order to provide ORS with authority to implement. Other recommendations can be implemented without legislation. Finally, some recommendations may not *require* legislation, but it would seem prudent to receive legislative as well as Departmental support before implementation.

I will address each of the recommendations in the audit report by chapter.

Chapter II - Legislature Should Consider Increasing ORS' Administrative Authority
Recommendations –1 through 3

Response: We concur with these recommendations. ORS would welcome any additional administrative enforcement tools that the Legislature considers appropriate to authorize. In this regard, there are important policy considerations for the Legislature, and we would appreciate participating in a public discussion of the advisability of these techniques. We recognize, as did the auditors, the effectiveness of administrative enforcement techniques currently in use, and we welcome further administrative enforcement tools.

Chapter III ORS Should be More Aggressive in Enforcement

Recommendations –1 through 3

Response:

1. ORS will review current procedures regarding checking account seizure, and will compare our practices with those of the surrounding states to consider bringing Utah's policy more in line with those states' procedures.

2. It should be noted that ORS did receive 1099 information for over 20 years prior to the decision to discontinue receiving it. The basis for this decision was both the administrative cost of maintaining the resource and the tight security and disclosure restrictions placed by the Internal Revenue Service on this information. These obstacles would be worth overcoming if the 1099 information received were current and could be used in litigation.

   As a small example of the restrictions placed on 1099 information, please consider the required certification from the IV-D Director found in OCSE's DCL 99-58 June 9, 1999: "I certify that Project 1099 return information received from the Federal Parent Locator Service/Federal Case Registry is needed for the purpose of, and will be used only to the extent necessary for the purpose of establishing paternity or to establish, set the amount of, or modify a child support obligation; and to enforce a child support obligation pursuant to Part D, Title IV of the Social Security Act. *None of the information so obtained will be disclosed to third parties or in litigation relating to the establishment or enforcement of child support obligations. The information sought is not reasonably available from any other source.*" [Emphasis added.]

   These limitations mean that ORS is not allowed to use the data for hearings or verification purposes. In most instances, we already know that the Non-Custodial Parent (NCP) is self-employed and what type of work s/he does. Additional, and more current, information beyond what 1099 provides can be obtained from other available sources such as credit bureau, Division of Occupational and Professional Licensing, requests for state tax records, subpoenas of federal tax records or discovery.

   Nonetheless, ORS will research any changes and improvements that may have occurred in the 1099 locate program and re-evaluate the decision to receive 1099 information.

3. Publicizing a "most wanted" list of nonpaying NCPs who can afford to pay but do not might be an effective tool, but there may be unwelcome and unintended consequences. Since the list would be small in comparison to those who qualify to be on it, we can expect that complaints will follow from both Custodial Parents (CPs) and NCPs. However, we agree that publicizing our collection efforts and successes through other means may enhance credibility, and we will consider additional steps in this regard.

Chapter IV ORS Processes Involving Use of AGs Should Be Re-evaluated
Recommendations –1 through 4

Response:

1. We recognize the need for an effective means of measuring or tracking the Attorney General's (AGs) work product. For the past two years, we have been developing a program module that will improve this ability to assess the AGs. The module is projected to be complete by spring 2006.

2. We concur with this recommendation. The new AG tracking module will allow us to better evaluate the effectiveness of civil enforcement remedies.

3. We concur that it would be wise to review other states' efforts to simplify the modification process. We will undertake a review to evaluate what can be implemented in Utah. In addition, we will evaluate possible changes to ORSIS to allow for tracking of stipulated modifications.

4. We concur. Approximately a year ago, ORSIS was modified to meet federal certification requirements. This improved ORS' ability to gather and analyze data related to federal time frames. As the new reports become available, we anticipate being able to meet most of this recommendation.

Chapter V ORS Debt Management Practices Raise Procedural and Policy Issues

Response:
Notes on methods and measurement. We note here that the report's discussion of debt elimination, while considered and rational, does not quite capture the phenomena under review. ORS staff and audit staff alike struggled to assess what portion of debt elimination is due to discretionary arrears management procedures.

It would seem that a static caseload size would lend itself to an equation where an existing balance is increased by new debt and decreased by the payments received to yield an expected final balance. Extension of this logic would indicate that differences between the expected balance and the actual balance could be explained by debt elimination, given the relative stability of the ORS caseload size.

We agree that the model used by the auditors is based on a standard accounting equation for reconciling balances; however, this model does not provide sufficient information to draw the conclusion that the balance discrepancy is due to discretionary debt elimination. Recognizing the difficulty of portraying the reasons for the discrepancy in the expected and actual balances, we respectfully submit the following explanation of the model's limitations for consideration.

Chapter V operates from the premise that our caseload is relatively static. Overall caseload size has been fairly stable from year to year. For example, the total caseload from FY2003 to FY2004 decreased by 2%, while in the following year it increased by 4%. These low percentage changes in the summary caseload totals do not reflect the actual movement of cases within the caseload during the year.

Debt balance is just as dynamic as caseload. A snapshot from one year may include the same number of cases--essentially--as the next, but the *debts* represented are not the same. Comparing

two point-in-time arrears balances does not account for what has happened in between those two points in time or why the changes have occurred. An example demonstrating this involves two cases:

- Case A is a case from California with an arrears balance of $45,000. The case is opened in 2004 with this arrears balance but is closed at the request of California prior to 2005, zeroing out the arrears. Applying the auditors' model and comparing the two point-in-time balances, it would appear that the $45,000 has been written off. In fact, the obligation is ended per the request of California, but not written off as part of a discretionary debt-elimination procedure.

- Case B is opened just after Case A closes. Case B has a total arrears balance of $6,000, substantially less than Case A. Applying the auditors' model, one would conclude arrears are being written off in the amount of $39,000. In reality, Case B replaces Case A and the caseload total remains the same. However, the total arrears debt decreases dramatically, without the application of any discretionary debt-elimination procedure.

Cases are opened, closed, and reinstated for any number of reasons. Likewise, adjustments are made to case debts for reasons other than discretionary debt elimination. Approximately 30,000 cases are closed each year. Those cases are 'replaced' by approximately 30,000 cases opened and reinstated each year, causing the appearance of a relatively stable total caseload. Each debt adjustment associated with closing or opening a case has the potential to affect the overall arrears balance in the same dramatic fashion illustrated by the above example.

Further examples of adjustments that lower the amount of debt reported on the Federal 157 report but unrelated to discretionary debt-elimination procedures are as follows:

- An initiating state on an incoming interstate case requests that ORS close the case.
- An initiating state notifies ORS of a federal tax intercept and requests that the arrears be adjusted on the ORS balance accordingly.
- An initiating state completes an arrears reconciliation and requests that ORS adjust the balance to match the other state's corrected figures.
- A CP notifies ORS about a direct payment received from the NCP and requests the case balance be adjusted accordingly.
- An NCP successfully disputes the arrears balance either through judicial or administrative procedures, resulting in an adjustment.
- A CP requests case closure after making alternative payment arrangements with the NCP.

Response to Recommendations – 1 and 2

1. We believe that this recommendation requires additional consideration. While it is possible for our office to close a debt without a manual write-off, as recommended in the report, if we discontinue the practice of a manual adjustment prior to the case closure, we will have no method of tracking what has been written off in the future.

2. We accept the recommendation. ORS would welcome legislation that would further clarify any of these issues. We will continue to monitor federal case law, national trends and other states' practices regarding the identified issues.

Again, thank you for the opportunity to respond to this legislative audit.

Sincerely,

Mark L. Brasher
Director, ORS