

# Life Beyond the Statutes

Volume 6 and other legal sources for IV-D Attorneys

## Objectives

- Identifying legal sources for IV-D attorneys other than the Colorado Revised Statutes
- Helping attorneys to understand the legal authority and basis for why our clients (the CSS Units) do what they do
- Explaining the rule making process: how is Volume 6 changed or updated

## Hierarchy of laws (each level of enacted law includes case law interpreting enacted law)



## The United States Constitution

- Article VI, clause 2: The Supremacy Clause
  - “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding..”

## Title IV-D of the Social Security Act, 42 U.S.C., Chapter 7, Subchapter IV, Part D

- Subchapter IV Grants to States For Aid and Services to Needy Families with Children and for Child Welfare Services
  - Part D Child Support and Establishment of Paternity
    - §654 State Plan for child and spousal support (requirements that the state plan must contain).
    - §654b Collection and disbursement of payments (FSR, timing of disbursements)
    - §656 Support obligation as Obligation to State; amount; discharge in bankruptcy
      - (b) Nondischargeability A debt (as defined in section 101 of title 11) owed under State law to a State (as defined in such section) or municipality (as defined in such section) that is in the nature of support and that is enforceable under this part is not released by a discharge in bankruptcy under title 11
    - §666 (10) Review and Adjustment
    - §667 State guidelines for child support awards

## Paternity

- §666 Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement
  - (a) Types of procedures required In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:
    - (5) PROCEDURES CONCERNING PATERNITY ESTABLISHMENT.-
      - (A) ESTABLISHMENT PROCESS AVAILABLE FROM BIRTH UNTIL AGE 18.-
      - (B) PROCEDURES CONCERNING GENETIC TESTING
      - (C) VOLUNTARY PATERNITY ACKNOWLEDGMENT
      - (D) STATUS OF SIGNED PATERNITY ACKNOWLEDGMENT
      - (F) ADMISSIBILITY OF GENETIC TESTING RESULTS

## For example: AOP

- Federal Statute: 42 U.S.C. §666 (a), each state must have in effect laws requiring the use of the following procedures:
  - (5)(D)(ii): **Legal finding of paternity.**—Procedures under which a signed voluntary acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of—
    - (I) 60 days; or
    - (II) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party.
- Colorado statute: C.R.S. §19-4-105 (2)(b):
  - (b) A duly executed voluntary acknowledgment of paternity shall be considered a legal finding of paternity on the earlier of:
    - (I) Sixty days after execution of such acknowledgment; or
    - (II) On the date of any administrative or judicial proceeding pursuant to this article or any administrative or judicial proceeding concerning the support of a child to which the signatory is a party.

## Break Time



## Enforcement remedies under Title IV-D

- §664 Collection of past due support from Federal tax refunds
- §666 Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement
  - (a) Types of procedures required In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:
    - (2) Expedited administrative and judicial procedures
    - (3) (a) State tax refund offset
    - (4) Liens
    - (7) Credit Reporting
    - (8) Income withholding
    - (9) Missed payments are judgments by operation of law
    - (16) license suspension
    - (17) FIDM
- Passport denial 42 U.S.C. §652 (k) and §654 (31)

## Federal law regarding child support orders

- The Full Faith and Credit for Child Support Orders Act (FFCSOA)
  - 28 U.S.C. §1738B
  - Effective October 20, 1994
  - (a) GENERAL RULE.-The appropriate authorities of each State-
    - (1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and
    - (2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).
  - (d) CONTINUING JURISDICTION (CEJ)
  - (e) AUTHORITY TO MODIFY ORDERS
  - (f) RECOGNITION OF CHILD SUPPORT ORDERS (controlling order determination)
  - (h) CHOICE OF LAW

## Code of Federal Regulations

- 45 CFR 301, et seq.
- Section 301
  - State plan approval and grant procedures
  - Each state is required to submit a state plan to show compliance with federal child support regulations
  - Federal Office of Child Support Enforcement approves submitted state plan pages
- Section 302
  - State plan requirements
    - Intended to ensure equitable standards for administration mandatory throughout the state

## Code of Federal Regulations

- Section 303
  - Application
  - Locate
  - Establishment
  - Enforcement
  - Intergovernmental
  - Review & Adjustment
  - Medical Support
  - Income Assignment

## Code of Federal Regulation

- Section 304
  - Federal Financial Participation
- Section 305
  - Performance Measures
- Section 307
  - Computer Systems
- Section 308
  - State Self Assessment
- Section 309
  - Tribal Programs

## Federal Rulemaking

- Governed by Administrative Procedure Act
- Steps
  - Advance Notice of Proposed Rulemaking
  - Proposed Rule
  - Public Comment
  - Final Rules

## State Laws

- Colorado Constitution
  - May provide greater rights than the U.S. Constitution
- Colorado Revised Statutes
  - Traditionally, family law is state based
    - For example, common law marriage
  - The Child Support Program, however, is federally mandated and to a great extent, federally driven as far as how our child support program works and how child support itself is calculated and enforced

## Break Time



## How child support services programs work in Colorado

- State supervised, county administered
- Volume 6
  - Colorado Regulations issued by the State Office of Child Support Services
  - Govern all county CSS offices in Colorado
- Written policy and procedures
  - IV-D administrator letters
  - Manuals and procedures
  - Available on CSS website: [childsupport.state.co.us](http://childsupport.state.co.us)

## Volume 6

- Code of Colorado Regulations
  - 9 CCR 2504-1
- Maintained on Secretary of State website
  - Includes prior versions of Volume 6 and rulemaking history
- Covers program areas required by federal rule and state plan
  - Application
  - Locate
  - Establishment
  - Enforcement
  - Intergovernmental
  - Review & Adjustment
  - Medical Support
  - Income Assignment

## Volume 6

- Also includes program administration
  - Duties of state and county departments
  - Reimbursement of expenditures
  - Enforcing and current county
  - Confidentiality
  - Records
  - Federal tax information
  - Good cause
  - Allocation/Distribution/Disbursement
  - Incentives
  - Performance Measures

## For example: APA

- Federal law: 42 U.S.C. §666 (a) **TYPES OF PROCEDURES REQUIRED**
  - In order to satisfy [section 654\(20\)\(A\) of this title](#), each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part: (2) Expedited administrative and judicial procedures (including the procedures specified in subsection (c) of this section) for establishing paternity and for establishing, modifying, and enforcing support obligations
- Federal regulation: 45 C.F.R. §302.70 (2)
- Colorado law: C.R.S. §26-13.5-101 et seq.
- Colorado regulation: 9 C.C.R. 2504-1, §6.704 et seq.
- Colorado policy: APA manual

## Volume 6 Rulemaking

- Governed by State Administrative Procedure Act
- Notice of Proposed Rulemaking published in Colorado Register
  - Notifies of date, time, location of state board hearing
- Public comment period
- Final rule adopted
- Final rule published in Colorado Register
- Rule becomes effective

## Questions?

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