

# ENFORCING A SUPPORT ORDER

## License Suspension Overview

CS 530.1

### SUPERSEDES

CS 530.1, Administrative License Suspension--Overview, January 5, 2006

### REFERENCES

MCA §§ 87-2-201; 40-5-701 et seq.; ARM 37.62.1301, et seq.

### Introduction

When an obligor owes a support debt equal to or greater than six months' support (child or spousal), or a person fails to comply with a CSED subpoena, the CSED may initiate administrative license suspension proceedings to enforce the debt or the subpoena. This section provides general policy on the appropriate use of license suspension as an enforcement tool, and gives definitions for terms used regarding license suspension.

### Policy Enforcing a Debt

#### General Discretion

License suspension is available as an enforcement tool at any time after the establishment of a support obligation, and should be included in the checklist of methods the CSED can apply to collect support in a case. There is no requirement to exhaust other enforcement methods before proceeding with administrative license suspension. However, the caseworker must apply discretion in selecting cases for license suspension action. Briefly, there must be a reasonable expectation the action will produce a beneficial effect, considering both existing collections and collection potential in the case. PROCEDURES in section CS 530.2 (step 3) gives several more specific considerations for identifying cases appropriate for license suspension.

#### Lack of Income and Assets

One of the considerations listed in section CS 530.2 relates to the obligor's involuntary financial position. **The intent of administrative license suspension is not to suspend licenses but to enforce payment of support.** Therefore, in cases where the obligor has minimal assets and no potential to earn income, the license suspension process will likely be inappropriate. In considering potential to earn income, the caseworker should take into consideration previous work history, past prison records, physical or mental incapacity, and any other personal history that would make it difficult for the obligor to earn income beyond subsistence.

### Policy Enforcing a Subpoena

License suspension is also available for enforcing compliance with a CSED subpoena. However, this application should be reserved for cases where compliance is essential to successful advancement of the case, and suspension action is likely to persuade the person to comply. License suspension may be used as an alternative to, or in conjunction with, other indirect techniques available to the CSED for enforcing subpoenas, such as administrative contempt and court-compelled genetic testing. The CSED gained the authority to suspend licenses for noncompliance in 1997, and anticipates (as of this writing) the activity will not be broadly applied, but limited to special cases where there is a particular benefit.

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#### DEFINITIONS

In addition to the definitions in MCA § 40-5-701, the following definitions apply:

**ALTERNATIVE PAYMENT PLAN** is the payment plan offered by the CSED when the obligor claims financial inability to pay the current support obligation plus the amount toward the support debt that would be offered in a Financial Hardship Payment Plan. The total payment amount may be any amount agreed by the caseworker, including an amount less than the current support obligation. The Alternative Payment Plan provides for renegotiation when the obligor's ability to pay changes, or when the support obligation is modified; it may include special conditions in addition to payment; it states the legal support obligation is not changed when the payment amount is for less than current support; and it does not contain a voluntary withholding authorization.

**LICENSE SUSPENSION FINANCIAL HARDSHIP PAYMENT PLAN** is the payment plan offered by the CSED when the obligor claims financial inability to pay the current support obligation plus a payment of 1/24 of the total support debt amount. When determining an Income Withholding Financial Hardship payment plan amount, the caseworker performs a calculation on HWK 4 screen on system, to compute the amount to be paid toward retirement of the support debt. In no case should the payment on the support debt be less than \$50.00 per month except when 1/24th of the total support debt is already less than \$50.00.

**HEARING** means one of the following, depending on the stage in the license suspension action:

- 1) Notice of Intent to Suspend License (NOITSL) hearing—timely requested in response to the NOITSL, to show cause why suspension of the license would not be appropriate; hardship defenses may be asserted
- 2) Stay hearing--requested by the licensee after a license is suspended, to move for a stay based on a hardship
- 3) 10-day hearing—requested timely in response of receiving the NOITSL. The CSED will suspend the license for failure to comply with terms of a payment plan or with conditions imposed by the hearing officer.

**LICENSE** means a license, certificate, registration, permit, or any other authorization issued by an agency of the State of Montana granting a person a right or privilege to engage in a business, occupation, profession, recreational activity, or any other privilege that is subject to suspension, revocation, forfeiture, termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

**LICENSEE** means the person who is the subject of the license suspension action. Where the action is based on a delinquency, the licensee will always be the obligor; where the action is taken for noncompliance with a CSED subpoena, the licensee may be the obligor or any other person subject to a CSED subpoena (as defined in this section) in the case. Examples of non-obligor licensees are obligees, alleged fathers, witnesses at hearing, and persons holding requested records.

**LICENSING AUTHORITY** means any department, division, board, agency, or instrumentality of this state that issues a license. This does not include city-issued business licenses because cities are not instrumentalities of the state. In cases of county-issued licenses, the CSED legal staff should be consulted.

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**LIFTING OF STAY** means an order by a CSED hearing officer that the existing stay of suspension of the license is no longer appropriate because (1) the licensee has failed to abide by the conditions of the stay, or (2) the basis for the stay no longer applies. When a stay is lifted the license is again automatically suspended.

**MOLSA** is a Motion and Order for License Suspension Action. A MOLSA is generated by the caseworker to request that an action be taken by the OALJ as part of the license suspension process. There are several types of MOLSA, each for a different requested license suspension action.

**PAYMENT PLAN** can be: a Standard, a License Suspension Financial Hardship, an Alternative, or a custom language payment plan. A custom language payment plan must meet applicable definitions in this section and MCA 40-5-701, **and** include the following provisions: acknowledgment of the support debt amount, conditions for default, and automatic adjustments in payment distribution. It must also include, the pursuit of payment by the CSED by other means; and waiver of the obligor's right to (1) service of a NOITSL, (2) hearing on the NOITSL, and (3) the affirmative defense of the statute of limitations.

**PERSON** generally means an individual natural person, not a corporation, partnership or other legal entity. However, some licenses may be issued for use of a particular vehicle or property, for example, the size, weight and load special permits issued by the Department of Transportation. In that case, if the applicant for the permit or owner of the vehicle is an individual natural person it may be possible to suspend that license or permit. See ARM Title 37, Chapter 62, Subchapter 13, Suspension of Licenses.

**Wildlife Conservation License** means a license issued by Fish, Wildlife and Parks under certain sections of MCA Title 87, chapter 2.

**RESOLVED/RESOLUTION** means, when used in reference to the NOITSL, that the CSED has taken official action in the case following service of the NOITSL, and the action is complete until the facts in the case change. Specifically, the NOITSL is resolved when one of the following occurs: (1) the licensee timely enters into an approved payment plan, pays the support debt in full, or complies with the subpoena, (2) the CSED issues an order suspending the license (for default, or following an NOITSL hearing), (3) the CSED issues an order dismissing the NOITSL, or (4) the CSED issues an order staying the license suspension based on a hardship.

**RESULTANT HARDSHIP** is the hardship a licensee may claim at any time, based on the impact of license suspension on the licensee, the licensee's household, employees, legal dependents, or on other persons, businesses or other entities the licensee serves. This is the hardship specifically provided for in MCA 40-5-710. The burden is on the licensee to prove that the claimed hardship is not merely an inconvenience to the licensee, but is a tangible circumstance that would endanger or otherwise result in irreparable harm to the licensee's household, employees, legal dependents or other persons, businesses or entities served by the licensee. For example, an individual may be licensed to run a Community Home for disabled adults and it may be the only available placement in a rural county. Not much money is made as a result of the license and to suspend the license could result in the need for the state to remove the disabled adults from the home and to find other placements in other communities or counties, which may not be practical or available. See MCA 40-5-710.

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**STANDARD PAYMENT PLAN** is the payment plan offered by the CSED where the total payment amount is equal to the current support obligation plus at least 1/24 of the support debt. The Standard Payment Plan contains a voluntary withholding authorization, and provides for renegotiation when the obligor's support obligation is modified.

**STAY OF SUSPENSION** means an order by a CSED hearing officer that an existing suspension of the license is not appropriate because (1) a resultant hardship or financial hardship applies, (2) the licensee has entered into an approved payment plan agreement or an approved plan for compliance with a CSED subpoena, or (3) (for an immediate, temporary stay) a hardship claim or a payment or compliance plan is pending and there is a reasonable chance of irreparable harm before the matter can be determined. A stay may be lifted (see definition) at any time by order of the CSED.

(Technically, the CSED also stays suspension of the license pending the outcome of a requested hearing on the Notice of Intent to Suspend License (NOITSL), or upon resolution of the NOITSL through an approved payment plan. However, since the CSED has not yet ordered a suspension at either of these points in the process, no formal stay order is needed or issued.)

**SUBPOENA** means a writ or order issued by the CSED that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control. Examples of CSED subpoenas enforceable by license suspension are genetic testing subpoenas, orders to produce financial information, investigative subpoenas, notice and orders for hearing, and subpoenas and subpoenas duces tecum related to hearings. Orders to withhold, orders to enroll, and orders to seek employment are **not** considered subpoenas for purposes of license suspension.

**TERMINATION OF SUSPENSION** means an order by a CSED hearing officer that the suspension of the license is no longer appropriate because the licensee has paid the support debt in full or complied in full, the CSED has closed the case, or for some other reason the licensee is no longer subject to CSED license suspension. (NOTE: When suspension is stayed rather than terminated, the licensee continues to be subject to CSED license suspension.) Termination of a suspension--if applicable--is required even when the suspension is already stayed.