



Michigan Supreme Court

State Court Administrative Office

Friend of the Court Bureau

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MEMORANDUM

DATE: March 12, 2019

TO: Friends of the Court
cc: Chief Circuit Judges
Presiding Family Division Judges
Circuit Court Administrators
Family Division Administrators

FROM: Steven D. Capps

RE: SCAO Administrative Memorandum 2019-03
Adjusting Current Support Due to Incapacitation
Rescinds 2018-01

The State Court Administrative Office (SCAO), and specifically SCAO's Friend of the Court Bureau, develops guidelines for the conduct, operations, and procedures of all the friend of the court (FOC) offices. Each FOC must take all necessary steps to adopt office procedures to implement the recommendations of the bureau. [MCL 552.503(7).]

This memorandum replaces SCAO Administrative Memorandum 2018-01. SCAO reissued this policy because the original memorandum contained optional actions that a friend of the court office could take while the Program Leadership Group planned action to seek legislation to modify support of incarcerated parties as a matter of law to address new Title IV-D federal regulations. Initiating a review upon learning of incarceration (that will last longer than 180 days) is another option allowed by federal regulation and will allow Michigan to meet the deadline for satisfying the regulation while still seeking a more comprehensive solution.¹

This memorandum explains several requirements and recommends actions that courts and FOC staff should take regarding child support orders when parents may be incapacitated and unable to

¹ This updated policy also incorporates agreed-upon timelines by a workgroup consisting of SCAO, FOCs, Prosecuting Attorneys, and OCS.

satisfy their child support obligations. Each FOC must also identify at least one Information Navigator and maintain that information through MiSupport's Partner Contact page.

If court or friend of the court staff have any questions, or would like additional information or clarification regarding this memorandum, please contact William J. Bartels at bartelsb@courts.mi.gov or Paul Gehm at gehmp@courts.mi.gov.

Background:

As used in this memorandum, incapacitation means the inability to pay the ordered support obligation caused by a parent being temporarily or permanently unable to earn an income for a period that will likely last 180 days or longer and due to disability, mental incompetency, serious injury, debilitating illness, or incarceration.

A parent's incapacitation often limits the parent's ability to act in his or her own self-interests, as well as the parent's ability to meet financial obligations. When incapacitating events that disrupt a parent's ability to pay will last through a child's minority after getting the obligation modified, the friend of the court (FOC) office should consider closing its case as well as the title IV-D case.² When an incapacitating event interrupts a parent's ability to pay for a shorter duration, the office should initiate an immediate review of the child support obligations due to a change in financial circumstances.³

A. Initiating Reviews

When circumstances indicate that a parent's financial circumstances have changed to an extent that the support order may need modification, [MCL 552.517](#) requires the FOC office to conduct a review of the support order, and if the change is sufficient, seek to modify it.⁴ Because of the statutory restriction to retroactively modifying a final judgment or order, the office should not wait to initiate modification proceedings involving an incapacitated parent.

Within 14 days of learning that a parent's financial circumstances have changed due to incapacitation, the FOC office must initiate a review of the support order.⁵ The FOC office *may* initiate a review when the incapacitation could last less than 180 days or when the length of incapacitation is difficult to determine.⁶

² Reasons for IV-D case closure include: the obligor has a medically-verified total and permanent disability, is institutionalized in a psychiatric facility and expected to last for the duration of child(ren)'s minority, or will be incarcerated without the chance of parole during the child(ren)'s minority. These reasons are sufficient only if there is no other income and/or assets available for levy or attachment for support. See 45 CFR 303.11(b)(8).

³ [MCL 552.517\(1\)\(f\)](#) requires a friend of the court office to initiate a review when there are reasonable grounds to believe the amount of child support should be modified due to changed financial circumstances of a support recipient or payer. Changed financial circumstances include *but are not limited to*: application for or receipt of public assistance, unemployment compensation, or worker's compensation, or incarceration or release from incarceration after a criminal conviction and sentencing to a term of more than one year.

⁴ A support order may not require modification if it contains an abatement provision as discussed in section D.

⁵ This policy applies the same statutory time frame used to start reviews for incarcerated payers to all incapacitated payers.

⁶ Situations other than those listed in MCL 552.517(f) may sufficiently change a parent's financial circumstances to justify modification (e.g., a loss of employment caused by long-term hospitalization or incarceration for several months).

The office may consider the impact that incapacitation could have on a parent's future ability to return to work.⁷

1. Identifying Cases

- a. An FOC office must not rely solely on parents to request or to self-identify changes in circumstances before starting a support review because the circumstances that cause incapacitation can restrict a parent's ability to freely communicate or handle his or her affairs.
- b. While an FOC office may be prohibited from disclosing case information to someone other than the parent, or the parent's attorney, guardian, or conservator, offices should allow a nonparty to provide information or to ask general questions.
- c. FOC offices must proactively seek to identify cases that may require modification due to incapacitation. Offices must regularly use the data warehouse and other sources to identify cases that may need a modification, and at least every 30 days, run and work reports designed to identify specific incapacitating events.⁸ To search for information about an individual, offices may use the Member Income and Location Report (MILR) and the Income and Location Report (ILR). FOC offices should also work with other local agencies (like the jail, prosecuting attorney's office, probation and parole offices, etc.) and other friend of the court offices to identify parents who may be incapacitated.
- d. If an office learns a payer on another FOC office's case may be incapacitated, that information must be forwarded to that FOC office's Information Navigator or other appropriate contact.
- e. Offices must update MiCSES to reflect information about a parent who may be incapacitated. The office should update the appropriate fields and indicators in MiCSES (e.g., DEMO), and make IV-D member notes.

2. Change of Circumstance Considerations

The office should consider the following factors when deciding whether financial circumstances have sufficiently changed to initiate a statutory review.

⁷ For example, a seriously injured person may be unable to return to the same employment, or may need months of rehabilitation before returning to work. Similarly, a parent who is released after being incarcerated for several months may have difficulty finding employment and is less likely to earn as much as before being incarcerated.

⁸ *The Review and Modification – Incarcerated NCPs Report (RV-200)* includes information about payers whose cases most likely need review and modification and are incarcerated over 180 days. If a payer will be incarcerated for more than 180 days, the report will show that there is a required review. See IV-D policy, [Section 3.45](#) on Review and Modification.

The [SVES](#) report contains information that identifies parents (CPs and NCPs) who are incarcerated beyond those who appear on the RV-200, as well as information from the Social Security Administration that could identify other incapacitated individuals.

a. Length of Incapacitation

This policy's definition of incapacitation specifies that the condition is expected to last 180 days or longer. The time is measured between the date the FOC office learns that the parent may be incapacitated, and the date the individual will be able to return to work or will receive income in another form.

b. Incapacitation Due to Medical or Psychological Limitations

A statement from a qualified professional regarding the parent's prognosis and inability to earn is sufficient to begin a review.⁹ The office may accept information from other sources that indicate an incapacitating condition. Based on the severity of the reported condition, the office may infer whether the condition will significantly restrict the parent's ability for 180 days or more.

c. Incapacitation Due to Incarceration

In determining the 180 day period described above, a parent held in one of the following situations meets the time requirement:

- i. A payer has 180 days or more remaining before likely being released.
- ii. A payer is awaiting trial and being held either without bond or is unable to post sufficient bond, and is likely to remain incarcerated for at least 180 days.

3. Qualification for Review

- a. If an incapacitated payer's support order is set at zero, the office is not required to conduct a review.
- b. If the support order requires any payment and a payer is incapacitated, the office should initiate a review unless it can document sufficient assets or a source of income that could be used to comply with the order.¹⁰ If the office is unsure whether the income or asset is sufficient to comply with the order, the office may initiate a review to set support based on actual income.
- c. In addition to reviewing an order when a parent becomes incapacitated, the office should conduct a review when funds may become available from a prospective source like social security, insurance settlements, proceeds from lawsuits, etc. (See section B.2.b regarding temporary orders.)

⁹ The question regarding the level of disability, injury, or illness does not need to be fully demonstrated before starting the review. Questions regarding a parent's actual level of ability may be left for the court to consider when deciding whether to grant relief.

¹⁰ If an incarcerated parent has assets or income while in prison, then those assets or that income may properly be applied against the outstanding child support obligation. [*Pierce v Pierce*](#), 162 Mich App 367 (1987). 2017 MCSF 2.01 describes forms of income that may be used when calculating child support. For example, it includes non-wage income such as distributed profits or payments from profit-sharing, trust fund, interest, dividends, tribal per capita distributions, some forms of capital gains, and business income.

- d. The FOC office may not consider the parent's crime when deciding whether to conduct a review.¹¹

B. Review Procedure

The FOC office should begin the statutory review process by sending the notice of review requesting information from the parties within 14 days of its decision to initiate a review.¹² In addition to meeting statutory review requirements, the office must consider the following issues during support reviews involving an incapacitated parent.

1. Avoiding Bar to Retroactive Modification

[MCL 552.603](#) prohibits retroactive modification or adjustment of a final support order before the date the nonmoving party was given notice of the petition to modify.¹³

Appellate courts have found that changing the amount owed after it accrues is a retroactive modification, and therefore is barred for any period before the respondent receives notice of the petition.¹⁴

- a. The FOC office may not retroactively adjust or seek modification in a manner that violates [MCL 552.603\(2\)](#).
- b. During the statutory review process, the petition is the notice that indicates the calculated result and a proposed effective date that is filed with the court and is served on the parties.¹⁵ Because the statute specifies when the office may send that notice, it may take from three weeks to several months before it is sent. To assure that relief may be legally granted on the earliest possible date in cases covered by this policy, SCAO recommends that FOC offices file a petition to modify support and send it to the parties with the initial notice announcing the review and requesting information.¹⁶

¹¹ If there is evidence the parent committed the crime with the intent to reduce income, the office should bring that fact to the court's attention. Because only the court can determine intent, it is improper for the office to draw that conclusion and refuse to conduct a review. The court should consider questions relating to the crime when deciding whether to grant relief.

¹² Under state law, the review should be completed within 180 days.

¹³ [MCL 552.603](#). The restriction does not apply to modification of an ex parte interim support order or a temporary support order entered under Supreme Court rule, nor does it restrict a court from entering an order based on an agreement of the parties to modify support to an earlier date.

¹⁴ One case involved a petition filed after a parent started receiving social security benefits. [Fisher v Fisher](#), 276 Mich App 424 (2007). Another case overturned the practice of retroactively adjusting support charges for periods a parent was incarcerated (direct abatement/incarceration credit formerly permitted under [Pierce v Pierce](#), 162 Mich App 367 [1987]). [McLaughlin v McLaughlin](#), 255 Mich App 475 (2003).

¹⁵ [MCL 552.517\(6\)](#).

¹⁶ "As in this case, the federal government sometimes takes years to make a decision, and this can lead to a retroactive award of benefits. Under such circumstances . . . petition the trial court for modification of a support order based on the apparent inability to work caused by the disability and alert the court to the pending application for benefits. The trial court could defer its [final] ruling on the petition until the federal government decides whether to award the benefits. This would give the trial court the power to retroactively modify the support order to take into account all the changes in circumstance, while at the

- i. If a petition was filed, the earliest effective date that may be used on the support recommendation is the date the petition is sent to the parties.
- ii. If a petition was not filed, the earliest effective date that may be used is the date that the support recommendation is sent to the parties and filed with the court.

2. Recommendations and Orders to Prospectively Deal with Uncertain Values

A parent's income may never return to what it was before the parent became incapacitated. When an incapacitated parent's income is reduced, the time that a reduction will last can be uncertain. It may take several years before a parent receives benefits or settles a lawsuit. Sometimes funds are paid retroactively to compensate the incapacitated parent for months when the parent was unable to work. In many situations, the exact length of the incapacitating condition will be unknown when the FOC office is making its recommendation.¹⁷ Several practices may assist in prospectively dealing with changes.

a. Contingency Provisions

When making a support recommendation when there is uncertainty about when incapacitation may end or whether income may change, SCAO recommends that the proposed order include a provision that prospectively covers that contingency. For example, the order could direct that when incapacitation ends or there is a change of income, the office will initiate another review, reinstate support charges in a specified amount, or both.¹⁸ (See subsection c, below.)

b. Temporary Order

When a future outcome is unknown and a petition for modification is pending, a trial court may defer its final ruling on the petition and use a temporary order to preserve its ability to retroactively modify the support order and consider all the changes in circumstance.¹⁹ Offices may secure temporary orders in situations of incapacitation to preserve flexibility to set the proper support amount for the entire period. When the incapacitation or financial uncertainty ends, the office must take steps to secure a final order.

same time providing the custodial parent with notice that such a modification is a possibility.” *Jenerou v. Jenerou*, 200 Mich App 265, 268 (1993).

¹⁷ For example, when a payer is arrested on a felony charge and is held with a high bail in county jail, it is hard to know whether the payer will be released by posting bail in one or two months, convicted and sentenced to many years in prison, or acquitted.

For example, it would be difficult to predict the time it will take a person to recover when the parent is involved in an accident and suffers a serious head injury and broken bones. That parent may be unable to work for several months, or be permanently disabled.

¹⁸ Because even a moderate disruption of income can have long-term consequences, conducting a support review may be the fairest course of action and will result in right-sized obligations based on the parent's actual ability to pay.

¹⁹ A temporary order must state its effective date and whether its provisions are retroactively modifiable. It remains in effect until modified or until entry of a final order or judgment. MCR 3.207(C).

c. Reinstatement Provisions

To avoid delays reinstating support after the period of incapacitation has concluded, the court may order a specific amount for the payer to pay when incapacitation ends, that an office will begin a support review to determine the appropriate amount, or both.

The reinstatement provision can be effective on a specific date, following a specific time frame, or conditioned upon a stated event. For example, in a case with an incarcerated payer, the review provision might state, “The friend of the court office shall immediately initiate a support review upon notification of the payer’s release from incarceration. Modification shall be effective as early as the first of the month following the payer’s release from incarceration.”

d. Abatement Provisions

Courts may reduce the effect of the minimum wait time to complete a review and the prohibition on retroactive modification by including abatement language regarding incapacitation in future support orders. See Section D.

C. Special Considerations

1. Potential Income

An incapacitated individual often lacks the actual ability or a reasonable likelihood of earning an income, and therefore should not have any potential income imputed for the purposes of child support calculations.²⁰ As the parent regains the ability to work, it may take time to find work. The court should exercise caution and fully evaluate the factors listed in the formula manual when imputing income following a parent’s incapacitation.

2. Incapacitated by Incarceration²¹

a. Income Information from Incarcerated Parents

Instead of requiring a parent to complete a long case questionnaire, FOC offices may use the Prisoner Information Addendum form, [FOC 118](#), to identify an incarcerated parent’s income or assets.

b. Exhausting Available Resources

Before recommending a zero support order based on zero income, FOC staff should use information-gathering tools to find and verify sources of non-wage income and assets that a parent could use to pay child support.²² These tools

²⁰ When imputing potential income, 2017 MCSF 2.01(G)(2)(g) excludes periods when a parent was unable to work or to seek work (e.g., hospitalization, incarceration, debilitating illness, etc.).

²¹ The Office of Child Support has issued a policy on review and modification, which includes policy on initiating reviews for a payer who will be incarcerated for 180 or more days. See IV-D policy, [Section 3.45](#), on Review and Modification

²² If an incarcerated parent owns assets or receives income while in prison, then those assets or that income may properly be applied against the outstanding child support obligation. A parent imprisoned for a crime other than nonsupport is not liable for support, unless it is affirmatively shown that parent has

include, but are not limited to, information requested from the parents, tax returns, databases and systems such as MiCSES and Data Warehouse, and property search tools.

c. Actual Income

- i. When calculating support, only use an incarcerated parent's actual income.²³ Some prison facilities offer work programs whereby prisoners receive a small amount of money. These amounts are typically minimal, and are only sufficient for basic commissary items, phone access, and other minor expenses. These monies generally should not be considered as income in a child support calculation, unless an exceptional circumstance warrants it. If those payments are counted as income during a support evaluation, the prisoner's basic prison expenses should also be considered if documentation is provided.
- ii. Some incapacitated parents may own businesses, have other forms of income, or maintain employment through a work release program. Those parents may be able to continue to satisfy a support obligation throughout a period of incarceration.²⁴ If income is identified, the office must calculate support using a parent's actual income, rather than inferring a zero income.
- iii. The court cannot consider the commission of a crime as a voluntary reduction of income without evidence that the parent committed the crime with the intent to reduce income.²⁵

d. Offense Type

The Michigan Child Support Formula does not permit consideration of the type of offense when calculating a parent's support obligation.²⁶

Case law states that the court can continue a support obligation at the discretion of the court when a parent is convicted of criminal nonsupport or there is evidence that the parent became incarcerated in order to avoid a support obligation.²⁷

income or assets to make such payments. *Pierce, supra*. 2017 MCSF 2.01 identifies forms of non-wage income that must be considered as a parent's income when calculating child support, including but not limited to, business profits, payments from profit-sharing or trust funds, interest, dividends, tribal per capita distributions, some forms of capital gains, and some self-employment income.

²³ One court concluded that for the period of being jailed (90 days) for a crime other than nonsupport and the period immediately following a parent's release (75 days), that a parent did not have an ability to earn an income. *Piccard v Piccard*, unpublished opinion of the Court of Appeals, issued 11/17/2015 (Docket No. 316582).

²⁴ It is permissible to order support based upon the asset of a pending tort action while the parent is incarcerated. [*Heilman v Heilman*](#), 95 Mich App 728 (1980).

²⁵ Absent evidence that the parent committed the crime with the intent to reduce income, it is improper to conclude that commission of a crime is a voluntary act to thwart paying support. [*Stallworth v Stallworth*](#), 275 Mich App 282 (2007).

²⁶ A deviation reason permits consideration of court-ordered restitution, costs, and fees that a parent must pay.

²⁷ *Pierce, supra.*, *Stallworth, supra*. But, neither case involved the specific facts of a conviction for

Pierce, supra., discharged a payer's arrears stating that a payer is not liable for support when the payer is incarcerated unless it is shown that the payer has assets to pay the support. However, *McLaughlin, supra.*, provided that any discharge of arrears before a petition to modify was filed constituted an impermissible retroactive modification of support which indicates that *Pierce* did not abrogate all other laws concerning modification of an incarcerated person's support.

Currently, case law provides that the only crime that may be exempted from discharging a support obligation is criminal nonpayment of support. There is no other published case addressing whether other crimes against a child or parent may allow the court to refuse to discharge a support obligation.²⁸ Therefore, merely dismissing a petition to modify support based on any crime other than nonpayment of support would be an extension of current law. There is no published case addressing whether the nature of the crime or its victim could produce an unjust or inappropriate result sufficient to allow the court to deviate from a zero or low support recommendation.

Therefore, the friend of the court should recommend support and the court should order support based only on the parent's actual income or assets. If the court determines the crime or its victim justify extending current law and denies the petition or if it finds proper grounds exist for deviating from the guideline, the court should make the appropriate findings on the record or in the order.

e. Reinstating Support

- i. Offices must verify that the parent has been released from incarceration before initiating an action to reinstate support. The "earliest release date" (sometimes referred to as the "ERD" or "release date") represents the minimum sentence an inmate is required to serve rather than the actual release date. However, "Current Status" in MDOC's offender tracking system or other inmate tracking systems will indicate whether the parent remains incarcerated past the ERD or the parent was released.
- ii. Often prisoners concluding a state prison sentence will serve the last six months at a reentry facility. Preparing for reentry may include obtaining certification in a trade, taking educational courses, and gaining other skills to aid reentering society. This period should not be considered release for the

nonsupport or a parent committing a crime to avoid support.

²⁸ *Denhof v Challa*, 311 Mich. App. 499 (2015) noted that there was no exception under *Pierce* to continue support based on the fact that a crime was committed against a child. However, the case was not an appeal regarding a support determination; rather it was an appeal of an order granting summary judgment in favor of the friend of the court director in a civil suit. In *McLaughlin*, the payer appealed a decision that support should continue because the crime for which he was convicted was criminal sexual conduct against his child. *McLaughlin* did not reach the issue of whether the court could continue a support obligation when the crime was against a child or family member because the support had already charged and the Court of Appeals determined that abating it would constitute an unlawful retroactive modification of support. The unpublished *Piccard, supra.*, case stated that the *Pierce* decision did not carve out an exception for crimes against the child, but noted that the argument was based on public policy rather than application of the formula.

purposes of reinstating child support, as the parent remains unable to obtain employment. Information about these new skills may be used in determining a parent's future ability to pay.

- iii. Upon notification of a parent's changed circumstance (when the parent is no longer incapacitated or has an income), the office may administratively reinstate support charges, if provided by the order. Otherwise, the office should conduct a review if the parent's income or ability to earn may have changed since the last order.
- iv. A criminal record usually affects a parent's ability to find work and restricts opportunities to work. Once the parent is available to work and has an opportunity to find employment, the court may impute potential income to a parent as permitted in the formula manual and consider the effect that the conviction has on this parent's ability to find employment and earn an income.²⁹
- v. In some circumstances, such as following long periods of incarceration, a felony record, or little legitimate work experience or education prior to incarceration, it may be appropriate to recommend reinstating child support or initiating a support review several months after a parent's release to allow time for the parent to search for work.
- vi. Court personnel must realistically weigh the likelihood of local employers hiring known felons, as well as wage rates and hours per week for the types of employment the parent is reasonably likely to obtain. It may be helpful to coordinate with the probation/parole officer regarding verification of the parent's education level, job search activities, and any skills or qualifications completed during incarceration or reentry programming.

3. Disability

a. Documentation

A statement from a licensed professional regarding a parent's inability to work and prognosis should be sufficient to begin a review. The office may also rely on a determination of disability by the Social Security Administration. Answers regarding the actual level of disability may be left for the court to consider when deciding whether to grant relief.

b. Uncertain Outcome

Some parents have to wait many months or years to begin receiving benefit payments or to receive lawsuit proceeds, and during that time those parents often have little or no income. If the office or court does not know how long it will be

²⁹ "It is well recognized that a felony conviction can act as a barrier to obtaining employment. . . . Based on the fact that defendant was a convicted felon, . . . the trial court's decision not to impute an income to defendant in the amount of his [pre-conviction] salary did not fall outside the range of reasonable and principled outcomes." *Piccard, supra*.

before benefits are actually paid, a temporary support order can be used, as described in section B.2.b.

c. **Considerations and Exceptions**

If the payer receives Social Security Disability (SSD) or other disability benefits, support should be calculated following the formula manual. Supplemental Security Income (SSI) benefits are not included as income.

Both the SSD and SSI disability programs permit beneficiaries to have a limited amount of other income. Income from other sources may be considered when calculating support. It is permissible to set a small support amount based on a disabled SSI beneficiary's actual ability and likelihood of earning an income.³⁰

D. Language for Uniform Support Orders (USO)

Incapacitation often prevents the payer, either partially or completely, from paying support during the pendency of a support review. In some cases, the accrual of arrearages over several months causes an insurmountable financial burden before the order can be modified. A court may implement several practices when entering a support order that can improve the handling of cases involving an incapacitated parent.

1. Making a Uniform Support Order a Temporary Order

To preserve the ability to modify support back to the date the respondent was served with notice of the modification, especially in circumstances when a final decision depends on a future outcome, the court may choose to enter a temporary order. MCR 3.207(C) requires that a temporary order state its effective date and whether its provisions are retroactively modifiable. On the first page of the USO (FOC10), both the "Temporary" box at the top and the "Standard provisions have been modified" box mid-page should be checked, and the effective date completed. On the last page, the "Other" provision should be checked and language inserted that says, "This order is retroactively modifiable back to [date]."

2. Zero Support Orders

When a parent has no income, application of the Michigan Child Support Formula (MCSF) produces a \$0 base support obligation, includes the payment of ordinary and additional medical expenses, and sometimes includes childcare expense payments. When a parent is incapacitated and unable to pay even a minimal obligation, the court must deviate from the MCSF to generate an order that does not require payment of any medical or childcare expenses. While the 2017 MCSF manual lists incarceration as one of the reasons for deviation, it does not list any reasons that might apply to parents without the present ability to pay support due to disability, mental incompetency, serious injury, or debilitating illness. If the MCSF's application creates an unjust or

³⁰ In one case, the fact that a support payer was deemed disabled in qualifying to receive SSI benefits was not dispositive of a complete inability to pay child support. Being "disabled" for the purpose of receiving SSI benefits does not mean that a disabled individual is unable to earn any income; rather, it means that person is unable to earn the federal government's "minimum income level." *Bettors v Bettors*, unpublished opinion of the Court of Appeals, issued 2/11/2000 (Docket No. 211529).

inappropriate result in such a case other than incarceration, SCAO recommends recording the reason for deviation as, “A parent is incapacitated with minimal or no income or assets.”

3. Support Order Abatement Language

Courts may reduce the effect of the minimum wait time to complete a review and avoid the prohibition to retroactive modification by including abatement language regarding incapacitation in support orders.

The abatement provision could state, “if the friend of the court becomes aware of a payer’s condition that meets the incapacitating events in SCAO’s 2019 Memorandum on Adjusting Current Support Due to Incapacitation, or as stated in a subsequent memo or the child support formula, support shall be temporarily reduced to zero effective as of the date the friend of the court provides notice of the abatement to the parties and to the court. Either party may object by filing a written objection with the court within 21 days of the notice date. If a timely objection is received, the friend of the court shall either set the objection for hearing or conduct a support review with an effective date no earlier than the date of the notice.”

Abatement provisions must not retroactively modify the obligation and should provide a notice and opportunity for hearing. If the order contains the language set forth in the previous paragraph or similar language, send notice to the parties within 14 days as required for initiating a review.

E. Information Sharing

1. Information Navigator

Each FOC office must designate at least one staff member to serve as an Information Navigator. Each navigator’s contact information must be identified and maintained on the office’s MiSupport’s Partner Contact information page. A navigator serves as the office’s point of contact for handling information forwarded by other offices related to the parties and children that could affect the receiving office’s cases.

The information shared by other offices will include changes of circumstance that affect support, whether directly related to incapacitation or other situations. The information shared may identify an incapacitation or a change related to incapacitation (release, return to work, settlement or approval benefits, etc.). Other issues that affect payment of support include, but are not limited to, the death of a party or child or when a child no longer resides with the support recipient.

The navigator will either take or refer the information to other staff to take appropriate actions. Upon receiving information that a parent is incapacitated, the navigator would refer the case for abatement if the current support order contains an abatement provision (as discussed in section D), or a review required in section B.

2. Nonconfidential Information

MCR 3.218 provides for access and disclosure of friend of the court records. If a governmental agency³¹ provides services to a parent or a parent has an application for services pending with the agency, MCR 3.218(B) allows an FOC office to disclose nonconfidential FOC records to that agency.

3. Confidential and IV-D Records

Some FOC records are also IV-D records. MCR 3.218(C) permits disclosure of confidential and nonconfidential records to other agencies “as necessary for the friend of the court to implement the state’s plan under Title IV, Part D of the Social Security Act, 42 USC 651 *et seq.*, or as required by the court, state law, or regulation that is consistent with this state’s IV-D plan.”

Offices are encouraged to work cooperatively with government agencies that provide benefits or services to incapacitated parents³² and that will assist the FOC office in obtaining compliance with the court’s child support order.³³ Before providing information, offices must take reasonable steps to assure that the agency will safeguard and not disclose the information to anyone other than the parent receiving services. Before regularly sharing information, the office should enter into a memorandum of understanding with the agency that covers the confidentiality and limited use of the information provided by the office.

³¹ MCR 3.218(A)(5) defines “governmental agency” as “any entity exercising constitutional, legislative, executive, or judicial authority, when providing benefits or services.”

³² E.g., governmental agencies like prisoner reentry programs, MiWorks, probation officers, specialty courts, and City of Lansing’s In-Reach program, etc.

³³ Job or skills training, employment services, financial counselling, etc.