



*Bridging Bright
Futures for Families*

**ERICSA
2024**

Grand Rapids

**ERICSA 61ST ANNUAL
TRAINING CONFERENCE & EXPOSITION
APRIL 7-11, 2024**

What to do when there is a loss of a parent or child & Support orders for children in placement



Robert Bishop

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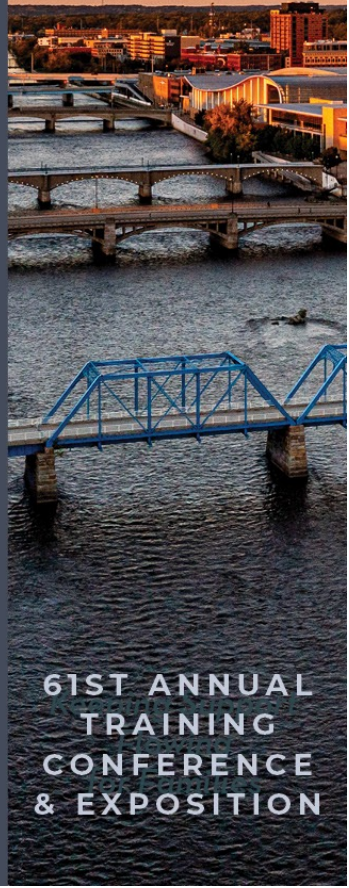


Trish Skophammer

Director, Child Support Services, Ramsey County Attorneys' Office



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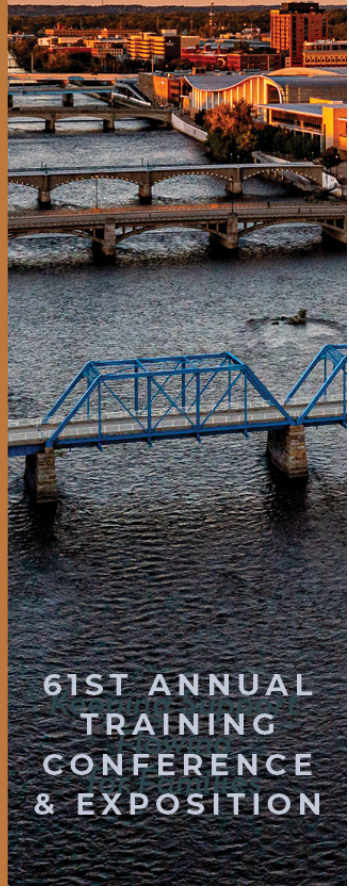


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This will be a panel discussion from representatives of different jurisdictions regarding what happens when the death of a parent or child occurs. We will also discuss how orders are established, modified, or redirected when children are in placement.



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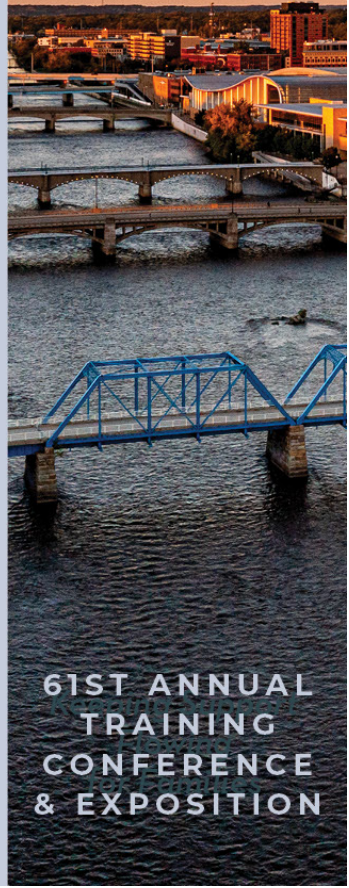
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So many questions!

- Can a petition for paternity or support proceed in court?
- Under what circumstances?
- What are the administrative rules for closure of an interstate matter?
- If an order already exists, what are the judicial remedies?
- What happens to arrears that accrued before the death?
- Do you change the payee, leaving the court order in effect for the next guardian?
- Do you file a new complaint and enter an individual order?
- Do you enter an order based on both parties' income?



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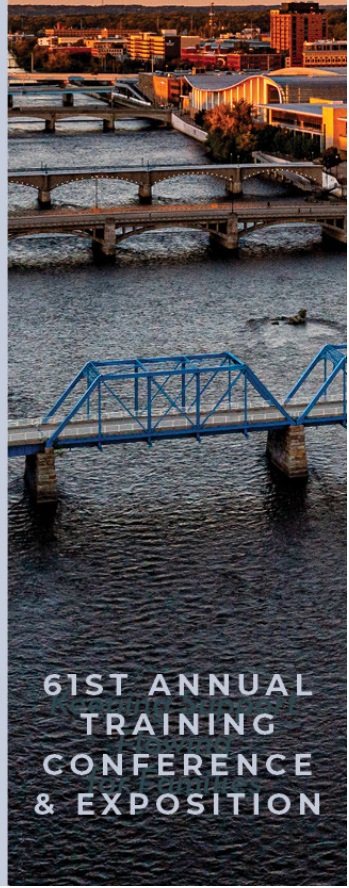
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A death in the family and the impact on the child support case

- Michigan
 - Death of payer: petition for child support would be dismissed.
 - Death of payee: petition for child support would be dismissed.
 - Petition for Guardianship *may* be permitted to proceed.



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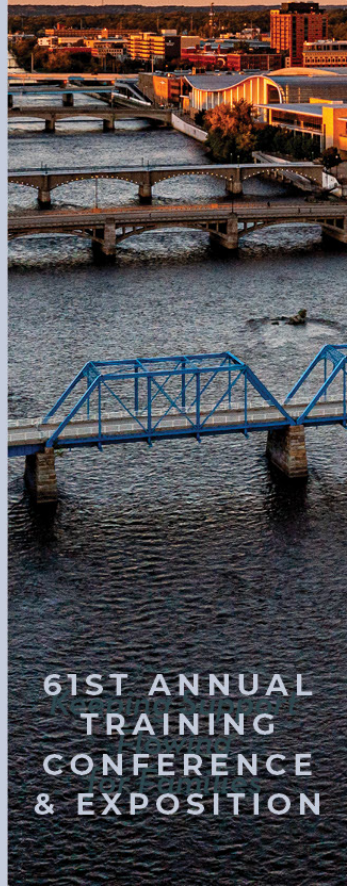
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A death in the family and the impact on the child support case

- Michigan
 - Interstate case closure
 - Death of Payer
 - Federal regulation 303.11(b)(4) allows a IV-D case to close when an NCP or alleged father is deceased and no further action can be taken, including a levy against the estate.
 - Death of Minor Child
 - If there is not a Court Action Referral (CAR), the case will be closed.
 - Death of Payee
 - The case will close as long as there are no arrears due and owing to the state.



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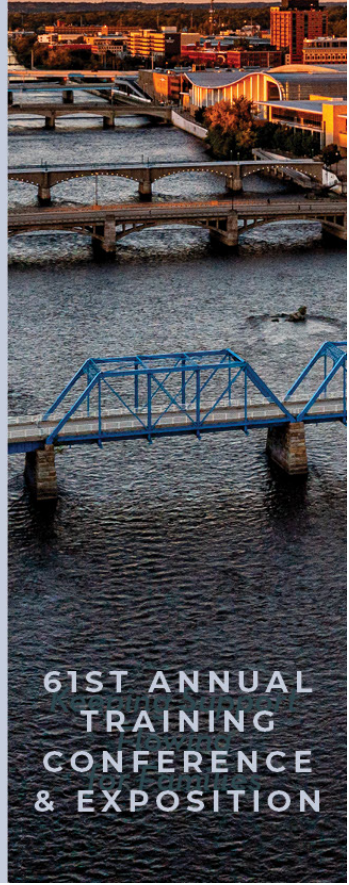
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A death in the family and the impact on the child support case

- Michigan
 - If a support order exists, what are the judicial remedies if a parent and/or child dies?
 - Death of payer: Support ends.
 - Death of minor child: Support ends.
 - Death of payee: Support ends unless legal responsibility with a third party has been established.



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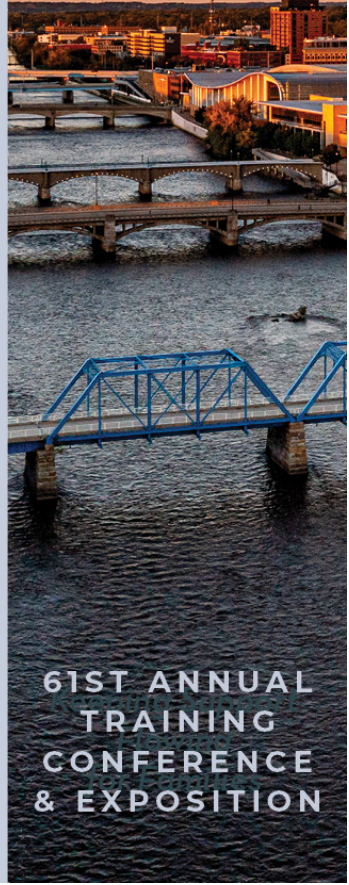
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A death in the family and the impact on the child support case

- Michigan
 - What happens to child support arrears upon the death of a payer?
 - MCL 552.625a (1)



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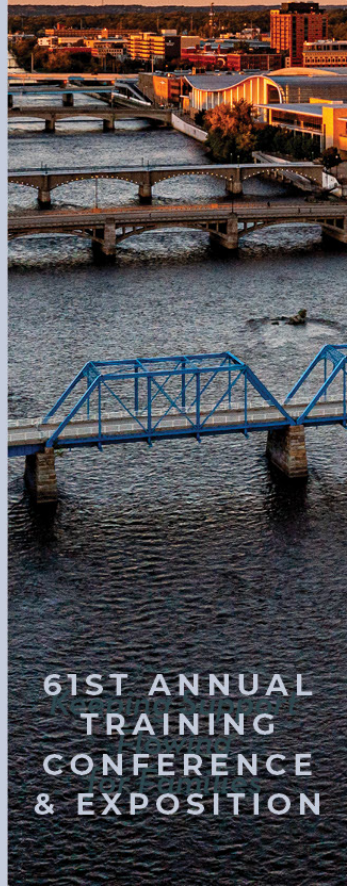
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A death in the family and the impact on the child support case

- Minnesota
 - Duration of child support Minn. Stat. §518.A subd. 5
 - If there is only one child, the order “dies” with the child.
 - Arrears balance remains but forgiveness of public assistance arrears is encouraged. (See Minn. Stat. §518.A.62 and OCSS IM-22-03.)
 - If there is more than one child
 - If it’s a *per child* order, the obligation is reduced by the amount assigned to the deceased child.
 - If the order is not *per child*, the obligations remains the same.
 - County or obligor can bring a motion to modify.



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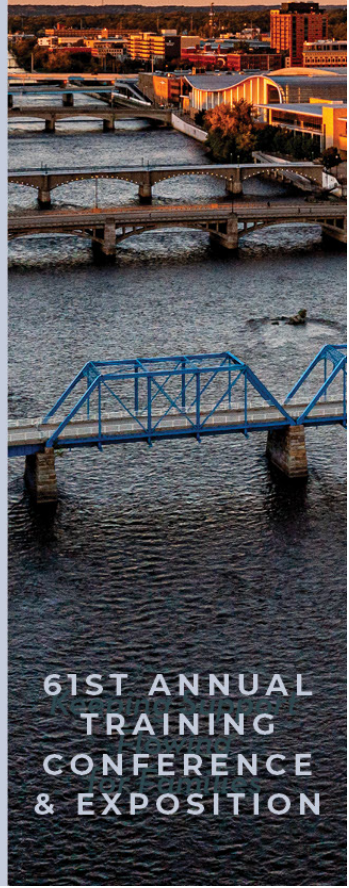
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A death in the family and the impact on the child support case

- Minnesota
 - If there is no order yet and the child dies:
 - Minn. Stat. §256.87 permits action to obtain past support/reimbursement for the two years period prior to service of the action.
 - Discuss with obligee for non-public assistance past support.
 - Ramsey County would generally not pursue public assistance past support.



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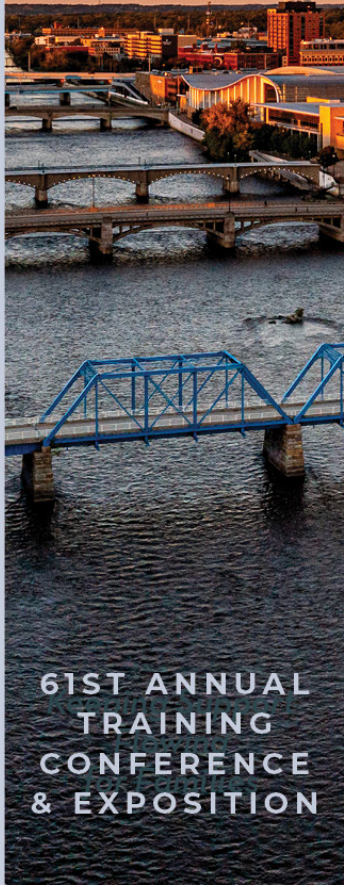
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A death in the family and the impact on the child support case

- Minnesota
 - If the obligee dies, result is automatic custody to the surviving legal parent, so the support order “dies” with the obligee.
 - *Rodgers v. Knauff (In Re N.A.K.)*, 649 N.W.2d 166 (Minn. 2002).
 - A divorce decree is predicated on both parents being alive. If the custodial parent dies, the decree ends. Custodial rights revert to the surviving parent as though the decree never existed.
 - *In re Minor Child E.S.J.L., No. A06-784, 2007 WL 152281 (Minn. Ct. App. 2007)*.
 - Custody order between unmarried parents is terminated due to the death of father.



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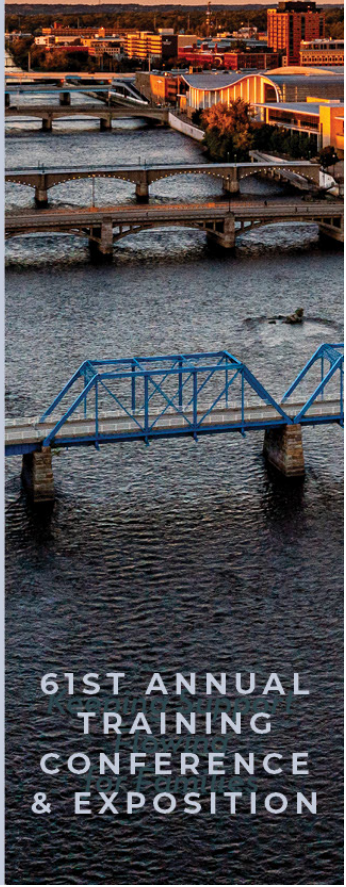
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A death in the family and the impact on the child support case

- Minnesota
 - What if there is a new caretaker/guardian, is redirection appropriate?
 - No, a new legal action is required. The caretaker/guardian must have legal custody and apply for services, or receive public assistance on behalf of the child.
 - In some cases, the child may have already been living with a caretaker with a redirection in place. If so, the redirection stops because the order “died” with the obligee.



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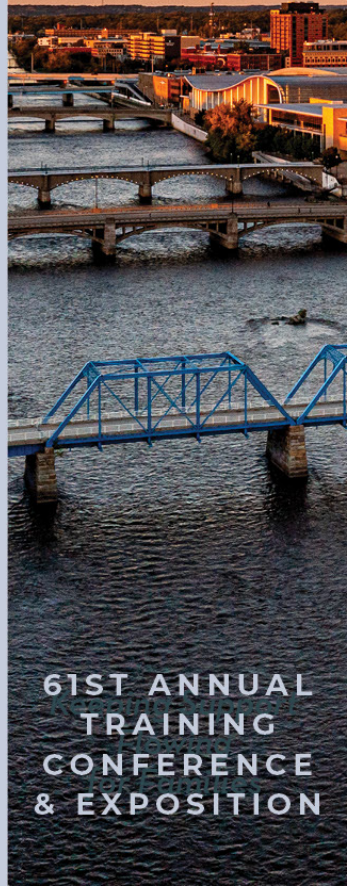
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A death in the family and the impact on the child support case

- Minnesota
 - Arrears when obligee dies:
 - Public assistance arrears are still owed, but consider arrears forgiveness, especially if the obligor is now the custodian of the child.
 - Non-public assistance arrears owed to the obligee are property of the obligee's estate. Can IV-D collect on behalf of a personal representative of the estate?



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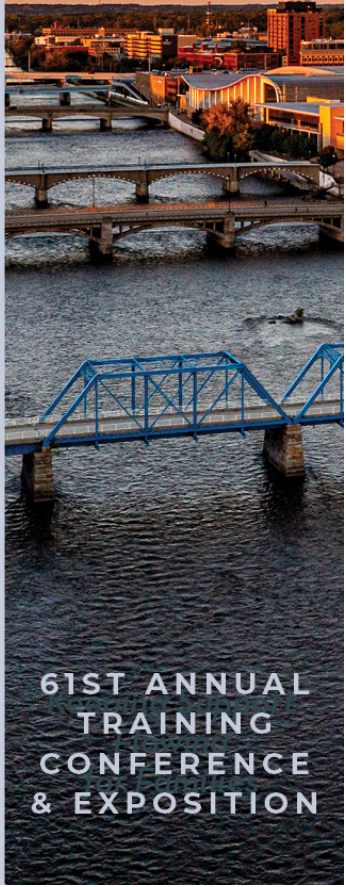
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A death in the family and the impact on the child support case

- Minnesota
 - If the non-custodial parent or alleged father dies, the case closes if no further action, including a levy against the estate, can be taken.
 - Attempts to locate assets include asking obligee, financial institution data match, property records, pending tax intercepts.
 - *Voss v. Duerscherl*, 425 N.W.2d 828, 831 (Minn. 1988):
 - *Court held that the action does not survive against family of alleged father. Action can only be taken against a personal representative. See also Minn. Stat. §573.01.*



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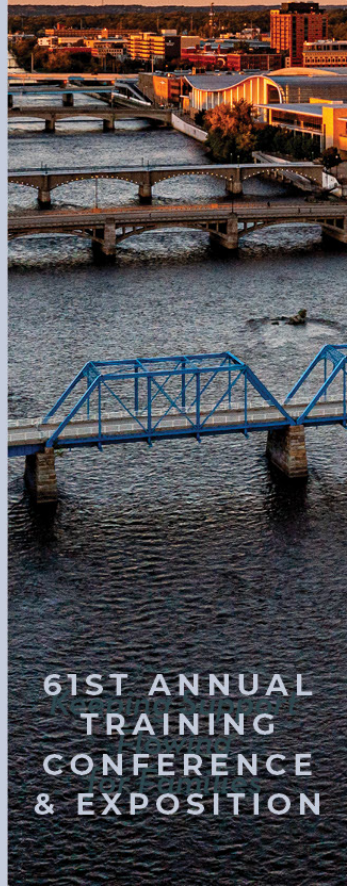
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A death in the family and the impact on the child support case

- Minnesota
 - But we sometimes get requests from the custodial parent for help. What can we do?
 - Personal representative or public authority may commence an action. (See Minn. Stat. §257.57 subd. 2.)
 - Genetic testing may assist with obtaining social security or other survivor benefits, need a sample and next of kin consent. (See Minn. Stat. §257.62.)



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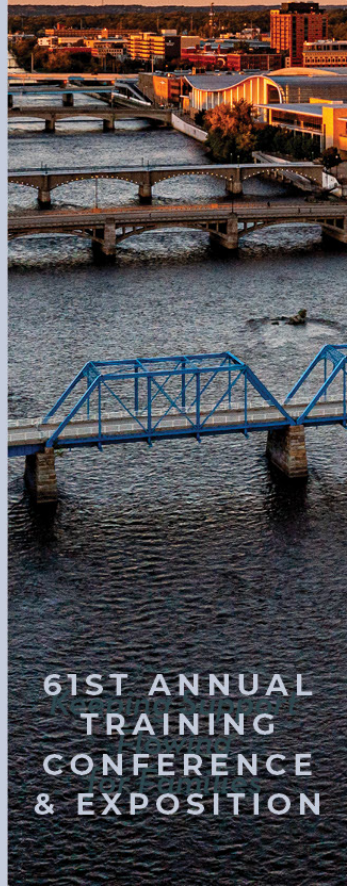
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A death in the family and the impact on the child support case

- Indiana
 - *Lizak v. Schultz*, 496 N.E. 2D 40 (IN S.Ct., 1986).
 - Appellant father sought review of the decision by the Third District of the Court of Appeals (Indiana), which held that a dissolution court retained jurisdiction to reduce child support arrearage to a judgment after the death of a custodial parent and that the administrator of the estate had standing to bring the action.
 - Who is your participant?



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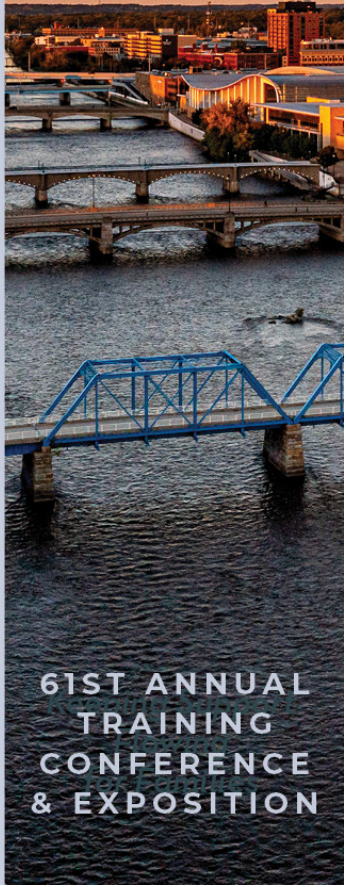
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A death in the family and the impact on the child support case

- Indiana
 - Deceased child prior to order
 - *In re: DM J.W. v. C.M. (In re D.M.), 9 N.E.3d 202 (2014)*
 - ...the express purpose of Title IV-D, and by extension, the Indiana Child Support Program, is to enforce support obligations...
 - ...There is no question that child support is not an issue in this action, and therefore no services to assist in obtaining or enforcing support rights are required. ..
 - Because J.W. would owe no support to D.M. even if his paternity was established, the State has no authority under Indiana's Child Support Program to bring this paternity action...



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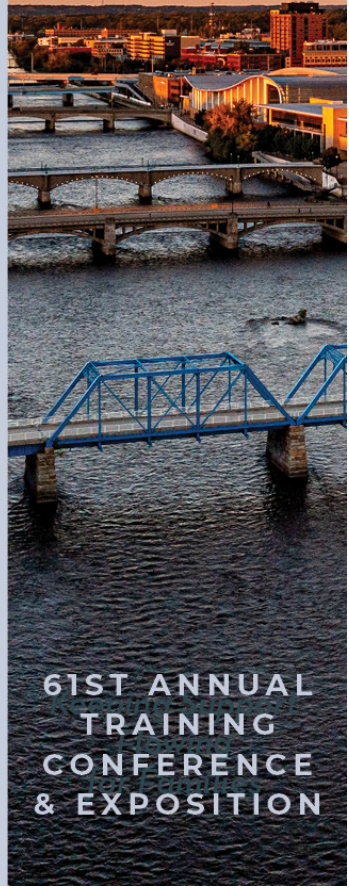
A death in the family and the impact on the child support case

- Indiana
 - Deceased child with support already ordered
 - If this was the only child, determine arrears and collect as needed.
 - If children still remain, conduct a review of the amount of support.

Source: Indiana Child Support Policy Manual



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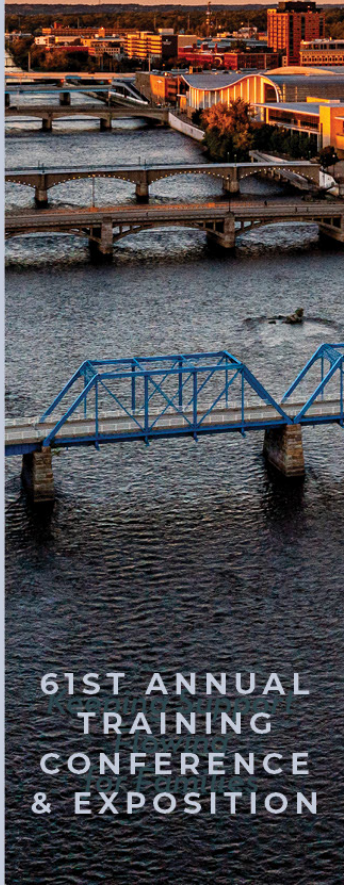
A death in the family and the impact on the child support case

- Indiana
 - Upon verification of the custodial parent's death, the Title IV-D Prosecutor's Office is strongly encouraged to file a petition with the Court which:
 - Informs the Court of the CP's death;
 - Requests termination of the child support order payable to the now deceased CP;
 - Requests the arrears owed to the State be adjudicated;
 - Requests the Court calculate the arrears owed to the deceased CP at the time of death; and
 - Requests determination of how any funds on hold are to be distributed and/or disbursed.

Source: Indiana Child Support Policy Manual



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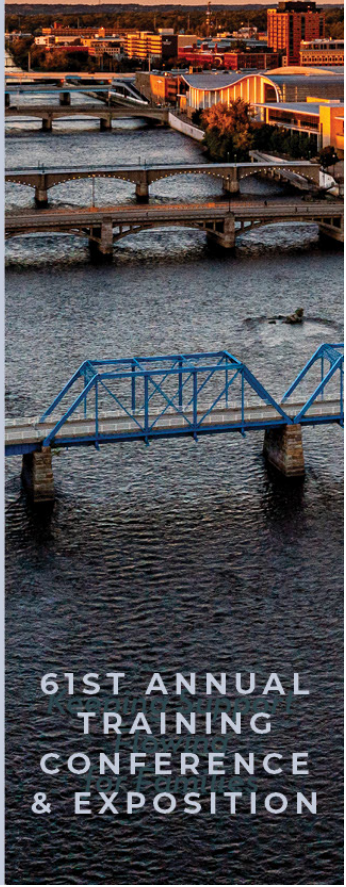
A death in the family and the impact on the child support case

- Indiana
 - Upon the death of the non-custodial parent:
 - Support is not automatically terminated.
 - Any arrears may potentially be a debt of the NCP's estate; therefore, you need to see if there are assets from which to collect.
 - Interplay between Probate and Family law
 - Five months after death to file Paternity.
 - The County shall NOT open a probate estate.

Source: Indiana Child Support Policy Manual



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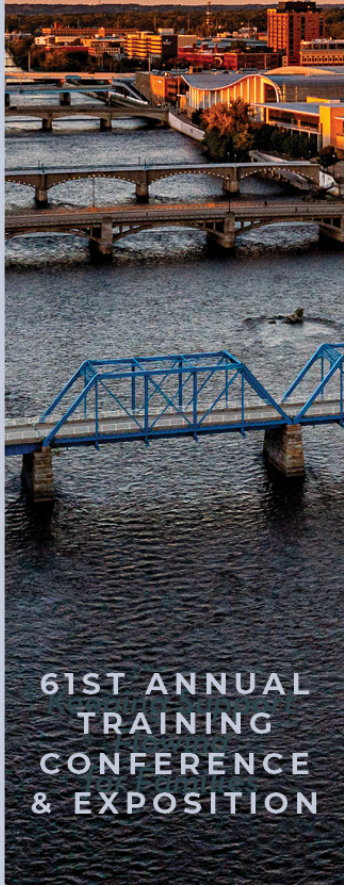
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Support orders for Children in Placement

- Michigan
 - Do you change the payee and leave the current order in effect for the new guardian when a complaint has been filed?
 - When a guardian is appointed, they are directed to complete Form 1201D. Support is then redirected to the guardian.
 - When a guardian has been appointed, do you file a new complaint and order against each parent?
 - Maybe!



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Support orders for Children in Placement

- Michigan
 - Do you enter an order against each parent if you have their income?

MiChildSupport Calculator Search by ID # County # Docket-County ONEILRY

Calculations	Status	Docket	County	Description
1793760 ▼	Results Printed	---	Oakland (063)	Add A Description ✎

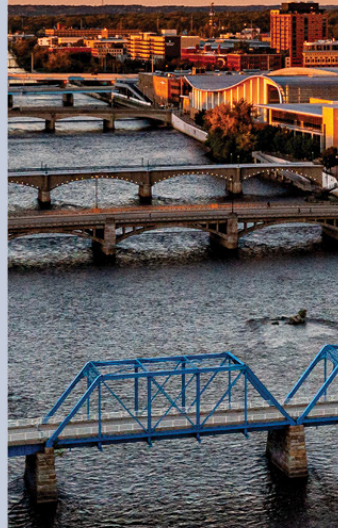
Looks like you may have **skipped** a few fields [Deviate from Current Calculation](#)

☐ Include Summary

Diagram illustrating support payments:

```
graph TD; H[HUGH] -- "Total $2,254.00" --> D[DONALD]; De[DELLA] -- "Total $2,159.00" --> D; D -- "Total $0.00" --> A[ ];
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*Click on one of the party's payment arrow to view their support table below

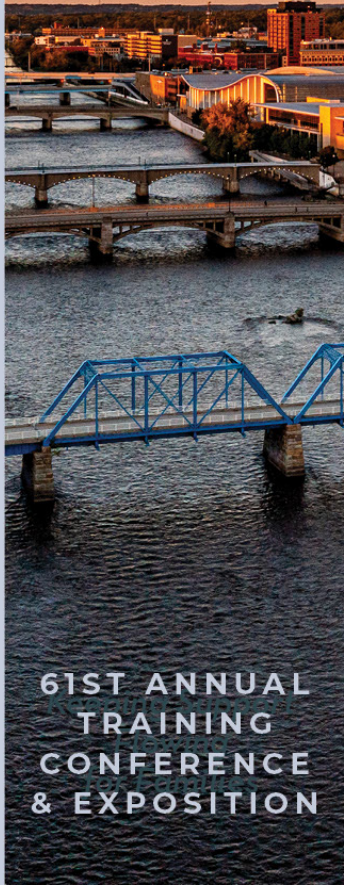


Support orders for Children in Placement

- Minnesota
 - Dear Colleague Letter (DCL-22-06) regarding referral to child support:
 - Refer only when it will not disrupt the reunification process.
 - Many parents of children in placement are living in poverty.
 - Family is often trying to maintain familial and economic security.
 - Child's best interest.
 - Not cost effective.
 - Default position is to not refer.
 - Minn. Stat. §260B.331 and §360C.331- require consideration of child and family's best interest.



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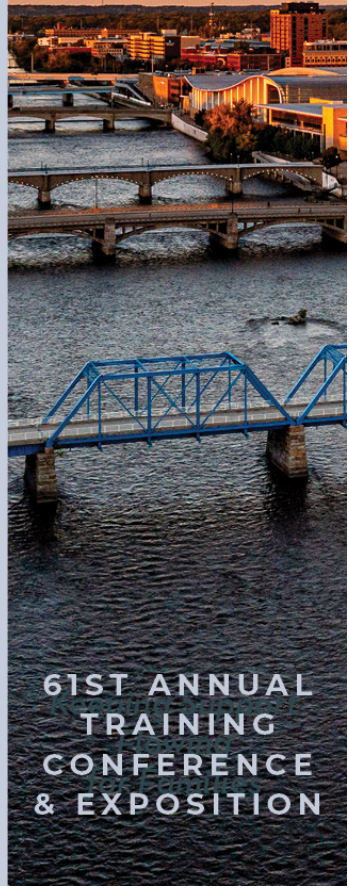
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Support orders for Children in Placement

- Minnesota
 - Working on policy. Interim policy in place that aligns with Federal Guidance.
 - Includes establishment of an order and redirection of an order.
 - Draft recommendation is for possible referrals if income is above \$100,000 annually and the plan is not reunification.
 - In cases where we do proceed, each parent would be assessed separately, per Minn. Stat. §518A.35 subd. 1 (c) and (d), and not combined in income shares calculation.
 - Different if child is with a caretaker/guardian who is not a foster parent.



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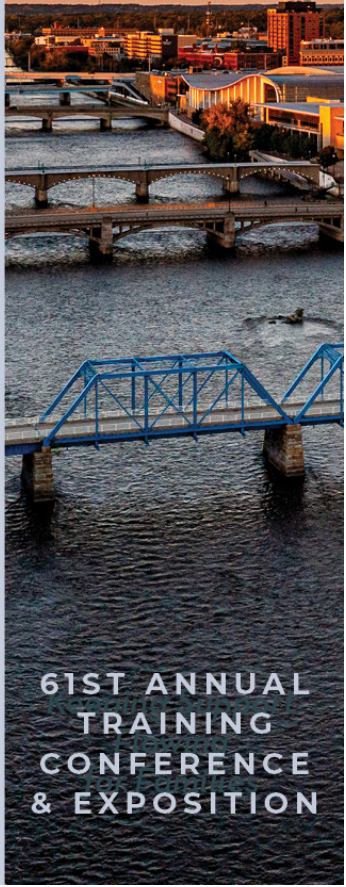
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Support orders for Children in Placement

- Indiana



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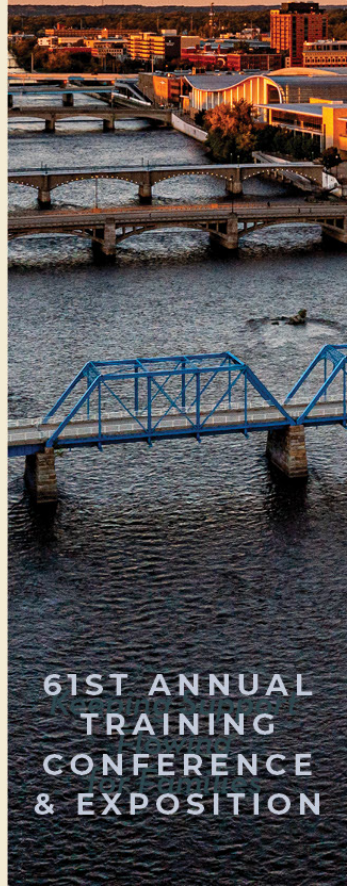
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Questions and Discussion



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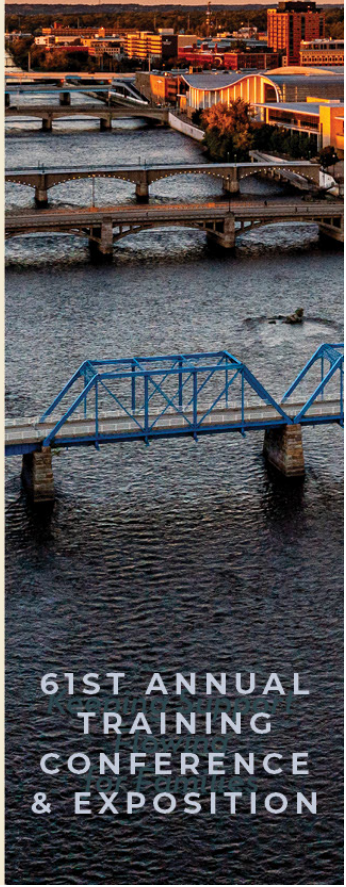
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