



# **Selective Contempt: Data, Engagement and Building a More Effective Process**

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## Agenda

- Caselaw, Federal Final Rule in December 2016, OCSS Resources
- Old contempt process
- Data from Ramsey County, Minnesota
- Contempt Alternatives; New process and Motion to Enforce
- Questions



## “Turner v. Rogers”

- *Michael D. Turner, Pet., v. Rebecca L. Rogers, Resp., et al.*
- 564 U.S. 431, 131 S.Ct. 2507 (2011)
  - Within five years from the child support order;
  - Six civil contempt proceedings; and
  - About 18 months of imprisonment.



### **Sixth Amendment (Right to Counsel):**

- No right to counsel in all civil contempt cases

### **Fourteenth Amendment (Due Process):**

- Right to counsel not automatic, even if facing incarceration
- If, there are alternative procedural safeguards:
  - ✓ Adequate notice that “ability to pay” is the critical issue
  - ✓ Opportunity to provide relevant financial information
  - ✓ Fair opportunity to present and dispute relevant information
  - ✓ Court findings of ability to pay and comply with the support order



## **45 CFR Part 303.6(c)(4) – Federal Final Rule 2016**

- ✓ States to establish guidelines for the use of civil contempt;
- ✓ Screen the case for information regarding the noncustodial parent's ability to pay or otherwise comply with the order;
- ✓ Provide the court with such information regarding the noncustodial parent's ability to pay to assist the court in determining the noncustodial parent's ability to pay or comply with the purge conditions;
- ✓ Provide clear notice to the noncustodial parent that ability to pay constitutes the critical question in the civil contempt action.



# Federal Child Support Agencies

Department of Health and Human Services (HHS)

➤ <https://www.hhs.gov/regulations/index.html>

- Administration for Children and Families (ACF)

➤ <https://www.acf.hhs.gov/archive/css/resource/voluntary-unemployment-imputed-income-and-modification-laws-and-policies>

- Office of Child Support Services (OCSS)

➤ <https://www.acf.hhs.gov/css>



## Federal OCSS Resources


- Turner v. Rogers Guidance
  - AT-12-01, published June 18, 2012
    - <https://www.acf.hhs.gov/css/resource/turner-v-rogers-guidance>
- Alternatives to Incarceration
  - IM-12-01, published June 18, 2012
    - <https://www.acf.hhs.gov/css/resource/alternatives-to-incarceration>



## Federal OCSS Resources

- Child Support Final Rule Fact Sheets:
    - DCL-17-01
    - Final Rule Summary;
    - Guidelines;
    - Civil Contempt – Ensuring Noncustodial Parents Have the Ability to Pay;
    - Modification for Incarcerated Parents; and
    - Case Closure
- <https://www.acf.hhs.gov/css/resource/child-support-final-rule-fact-sheets>





# Former Contempt Process and the Data

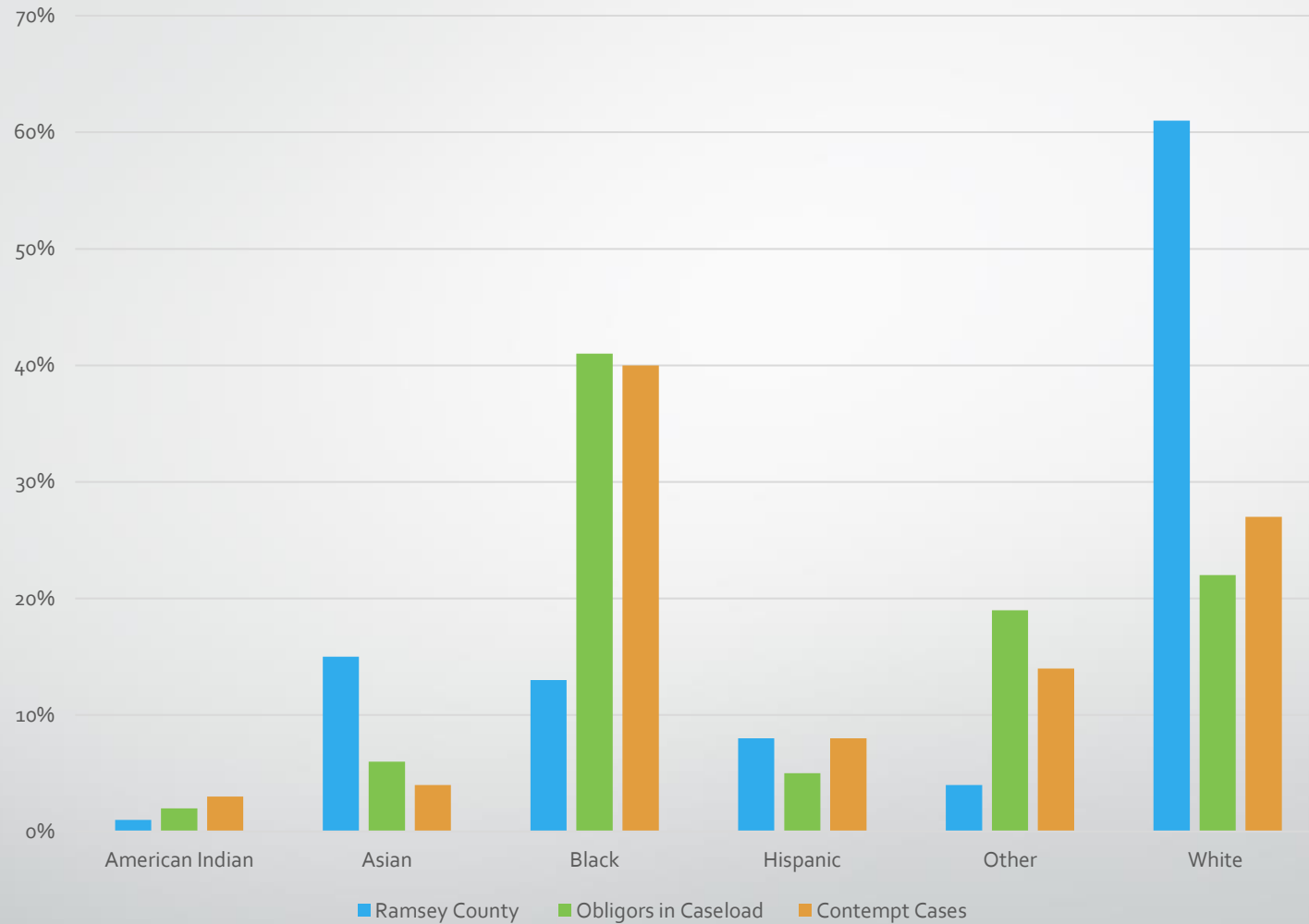
## Ramsey County's former Contempt Process

- Case reviewed by worker
- Sent immediately to contempt, via referral form, after review by Supervisor and then Attorney
- Order to Show Cause process initiated
  - Stipulation on contempt?
  - Agreement between parties to modify support amounts? Or modification motion?
  - Purge conditions/payment plan

## Ramsey County's former Contempt Process

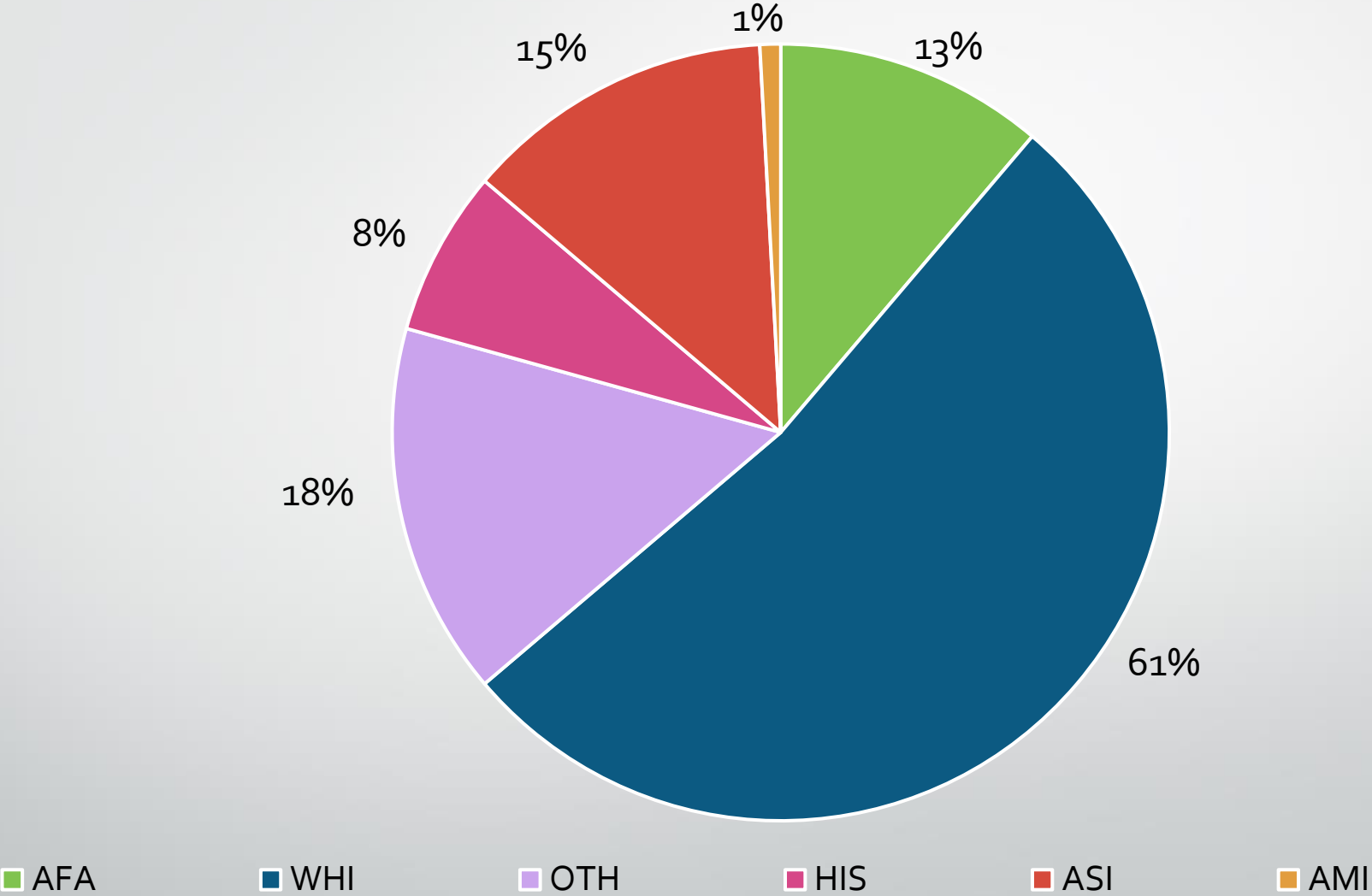
- Not many cases were reviewed for modification or stipulation *first*, until after the OSC was started and at court
- OSC was used to “discover” current circumstances, and force participation
- Was “ability to pay” fully reviewed before starting the contempt action?

# Demographic Comparisons

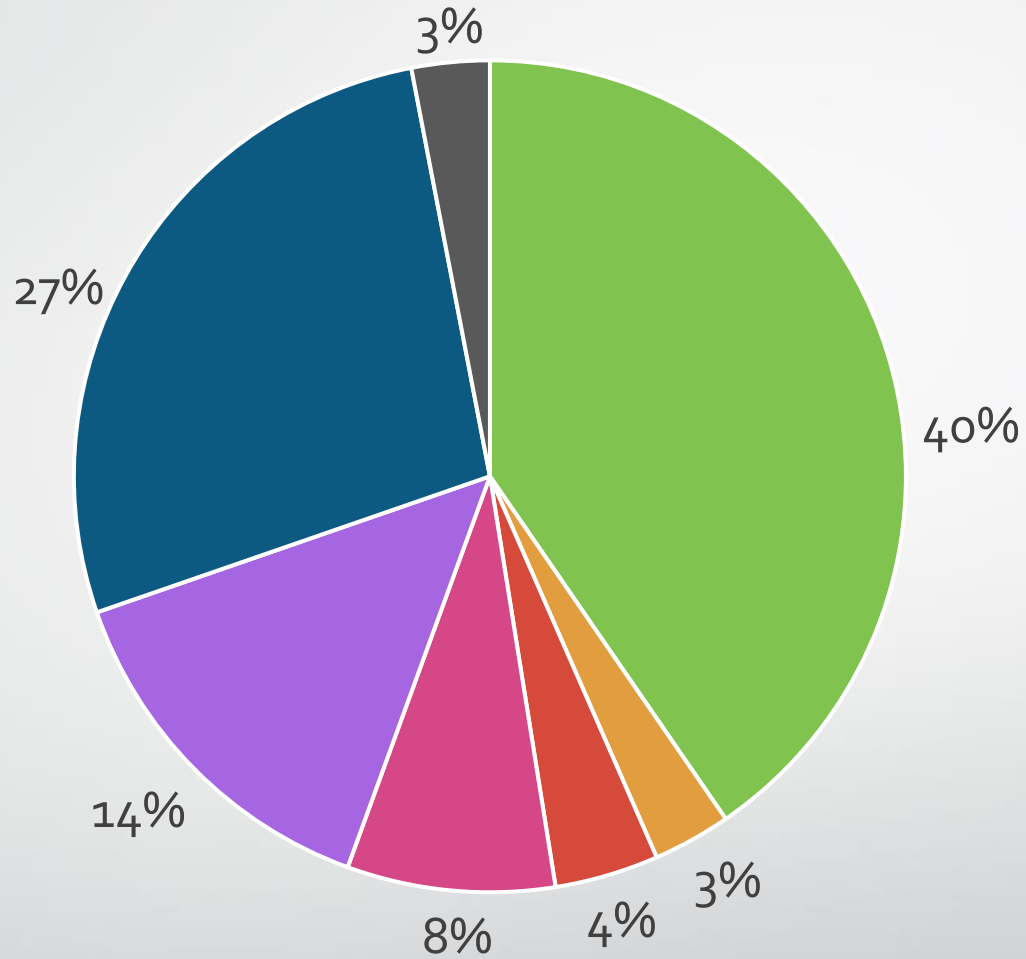


Data from PRISM case reports (Minnesota's case management system) 2016 to March 2020; US Census 2021

# Ramsey County's Population by Race



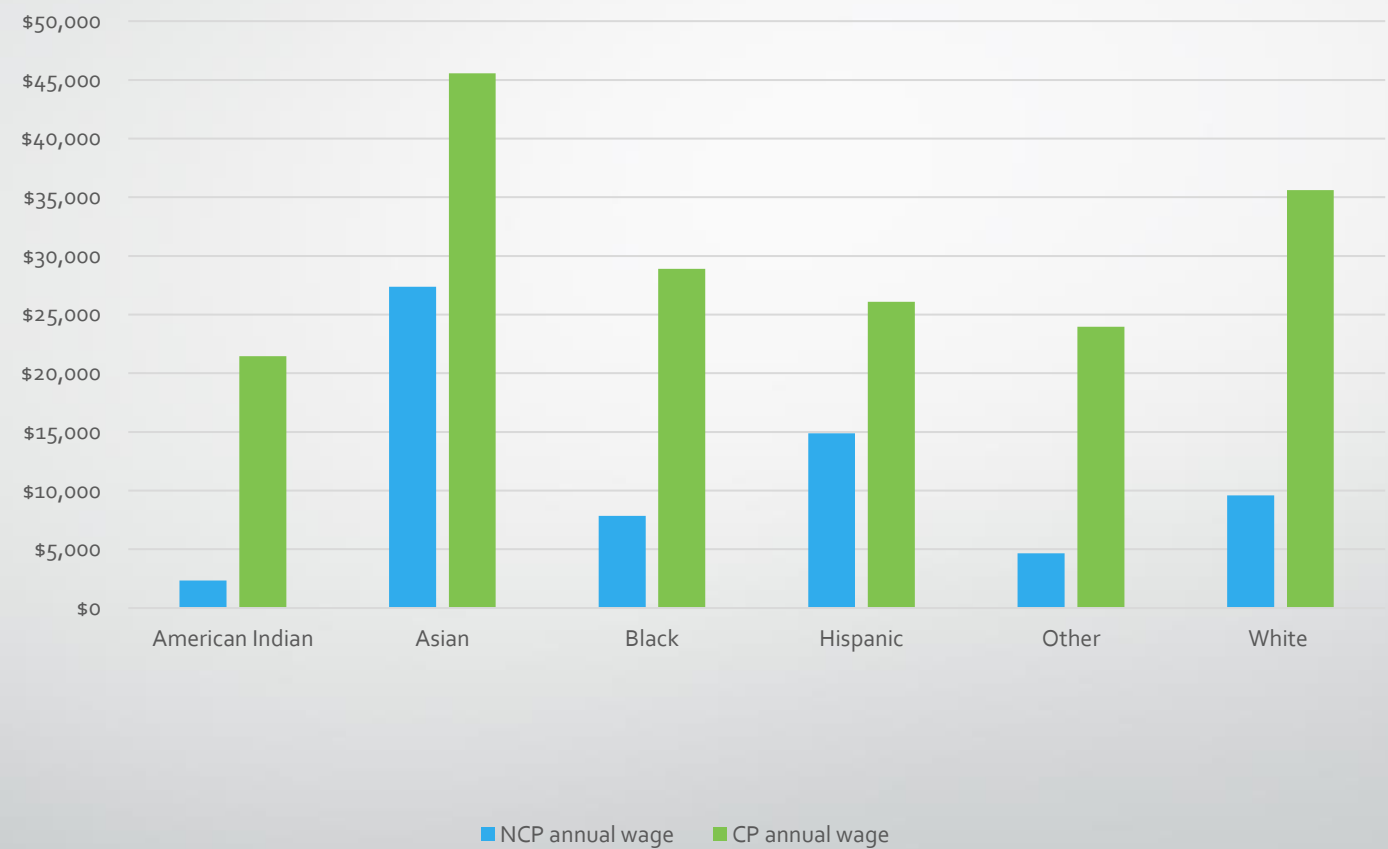
## Ramsey County Contempt Cases by Race



■ African American ■ Native American ■ Asian American ■ Hispanic ■ Other ■ White ■ Unknown

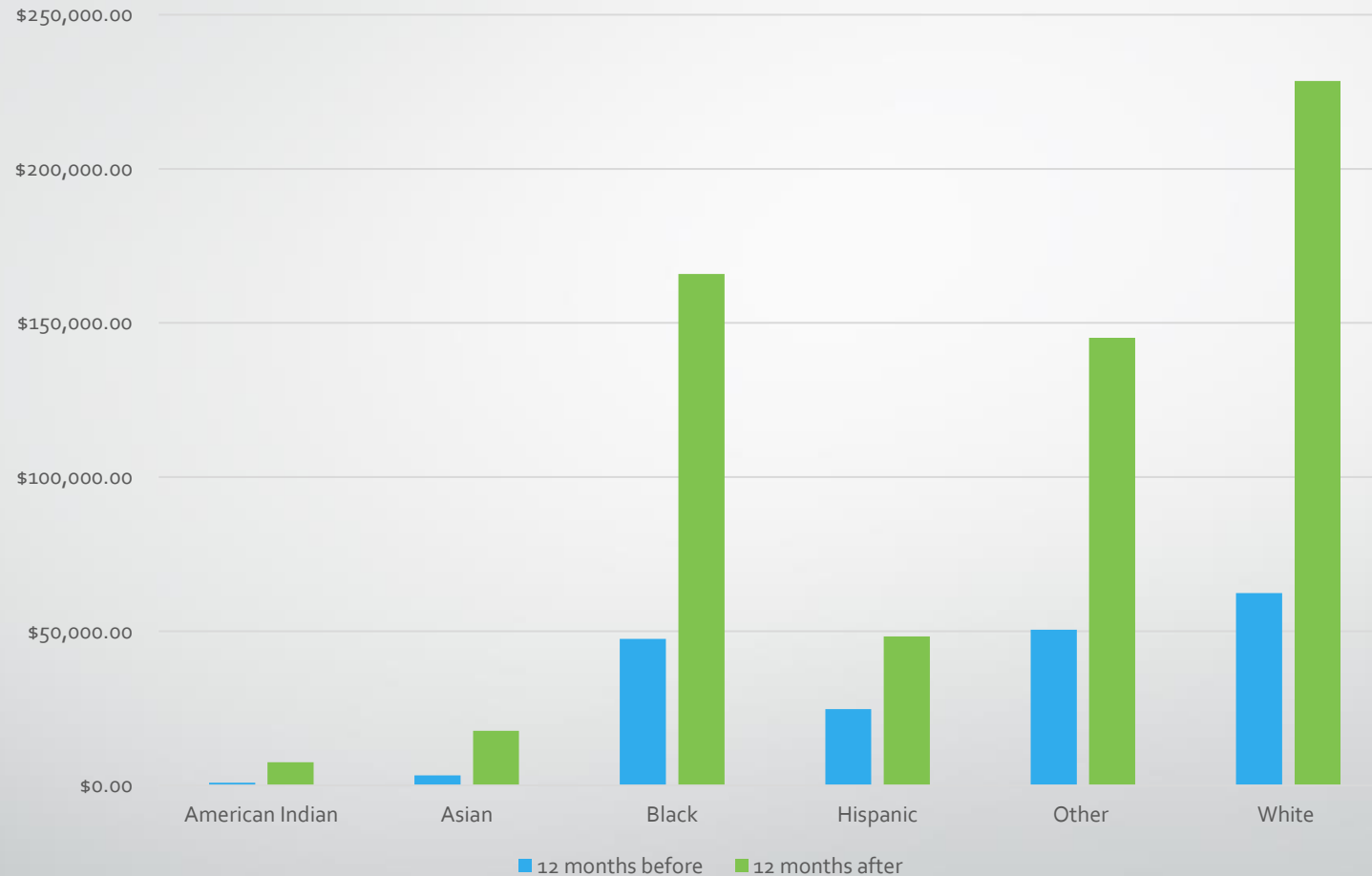
Data from PRISM case reports (Minnesota's case management system) 2022

# Income by Race and Role



Data from PRISM case reports (Minnesota's case management system) 2016 to March 2020

# Payment 12 Months Prior to and After Contempt Order



Data from PRISM case reports (Minnesota's case management system) 2016 to March 2020



## Other interesting facts

- Sample includes 395 cases
  - 23/6% NCPs are female
  - PA arrears owed \$1,186,683
  - NPA arrears owed \$6,327,100
  - Out of 395 contempt orders
  - 22 NCPs served jail time jailed
    - 11/50% of those serving jail time are Black men
    - Average number of days served is 50

## Other interesting facts

- \$212,242 total collections 12 months prior to contempt
- \$665,507 total collections 12 months after contempt
- Collections increased by 65%
- Out of 395 cases;
  - 196 NCPs paid \$0 in the 12 months prior to contempt
  - 85 NCPs paid \$0 in the 12 months after contempt
- Percentage of NCPs paying *something* increased by 103%

## What does this tell us?

- Contempt is effective in increasing payments
- But is it actually the threat of jail time...or is it caseload management and court oversight that is effective?
- Racial disproportions for contempt cases exist at the same level as the overall caseload; but more disproportionate in terms of jail time for Black men
- Income levels are low; CPs have more income



# Changes to Non-Paying Letters



# 1<sup>st</sup> Non-Payment Letter

I reviewed your case and noticed that you are behind on child support. I have 3 questions about your situation that will help me understand if we can do more to provide you with resources or services.

## How to Reply to This Letter

You can call me with your answers or send your response by mail, email, or fax.

## The 3 Questions

- 1 Why have you not been able to pay this support? For example, you might support another child or a family member. Knowing about specific barriers to payment can help us with your case.

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2. Are you employed?

☐ Yes. Are you working ☐ full-time or ☐ part-time? Who is your employer? \_\_\_\_\_

☐ No. Tell us if you have any barriers to getting or keeping a job. Some barriers include disability, job skills, or criminal justice history. \_\_\_\_\_

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3. Would you like a referral to organizations that offer services for housing, job training, and parenting?

☐ Yes

☐ No

## Have Questions for Me? Want to Talk about Your Case?

Call me at 651-266-#### with any questions. Or send me your number and I will call you: \_\_\_\_\_



# 2<sup>nd</sup> Non-Payment Letter

Hello, **NCP First and Last Name**,

I reviewed your case and saw that you owe \$**Arrears Balance** in past-due child support. I am writing to let you know what can happen when you owe past-due support.

I also want you to know your current options for addressing your past-due support.

## What Can Happen When You Have Past-due Child Support

- Your **driver's license** could be suspended. Recreational and occupational licenses can also be suspended. To lift the suspension, you would need to contact us to understand what will work in your specific situation
- Your state or federal **tax refunds** could be taken. The money would go toward paying your past-due support
- Your **bank account** could have a lien placed on it. The lien would prevent you from accessing money in the account. That money may then go toward paying your past-due support

## Your Current Options

1. **Call me to explain your situation.** By asking a few simple questions, I can see if you might qualify to have your child support order changed. I can also refer you to services for housing, job training, or parenting.
2. **Pay all or some** of what you owe. If you cannot pay all of it, payments of any size will benefit your case.

## Let's Talk about Your Case

Call me at 651-266-####. I help parents in this situation every day.



# 3<sup>rd</sup> Non-Payment Letter - DL

Hello, **NCP First and Last Name**,

We are planning to suspend your driver's license for not having paid court-ordered child support. You can still keep that from happening, but you need to act soon.

## **What You Can Do to Keep Your License from Being Suspended**

Setting up a payment plan is the most common way that people avoid having their license suspended.

To understand how to do that—and to learn about your other options—please call me. With a few simple questions, I can see if you might qualify to have your child support order changed. I can also refer you to services for housing, job training, or parenting, if you think they will be useful.

## **What Might Happen Next**

If we go forward with this process, you will receive a formal letter called a Notice of Intent to Suspend Driver's License. That letter will give you 30 days to request a hearing to argue against the suspension.

If you do not request a hearing, you will have 90 days from the date of the Notice to take other steps to avoid the suspension.

If those 90 days pass without any successful action on your part, your license will be suspended.

## **Let's Talk Soon about Your Case**

Call me at 651-266-####. I help parents in this situation every day. One quick call now could save you time and worry in the future.



# 3<sup>rd</sup> Non-Payment Letter - contempt

Hello, NCP First and Last Name,

To understand why you are not paying child support, we may have to bring your case to court. This is a serious step, and we want to be sure you understand what could happen if you do or do not go to court.

## What Might Happen Next

If we go forward with this process, you will receive legal documents that will require you to go to court. You must attend your court hearing on the date and time given in the documents.

At the hearing, the court will try to understand why you have not been paying. You will have to answer questions about your income and your ability to work.

The court will try to understand if you have willfully avoided payment. In other words, the court is trying to answer two questions: Can you truly not afford to pay your child support? Or do you have the money to pay but have chosen not to?

If the court decides that you are able to pay but have chosen not to, the court could order you to serve time in jail. The court could also order you to serve time in jail if you do not appear for *certain types* of court hearings.

## The Best Way You Can Respond Right Now

Please call me as soon as possible to discuss your case. With a few simple questions, I can find out if we can set up a payment agreement that will work for you. I can also see if you might qualify to have your child support order changed or refer you to services for housing, job training, or parenting, if those sound useful to you.

Calling me now could save you time and worry in the future.

## Let's Talk about Your Case as Soon as Possible

Call me at 651-266-####. I have worked with many parents in this situation and am ready to assist.

Amount of Last Payment

\$Last Payment Amount

Children on the Case

First and Last Name of each child





# **Contempt Alternatives**

Motions to Enforce and New Process

## Ramsey County's Objectives

- Enhance compliance with Federal Final Rule and increase meaningful Engagement with both parents
  - ✓ Adequate case investigation
  - ✓ Review the paying parent's ability to pay
  - ✓ Protect the paying parent's constitutional rights
  - ✓ Make sure the outcomes are just; and
  - ✓ Comply with due process.

# Ramsey County's Contempt Alternatives Model



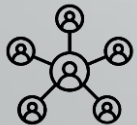
- Pilot Project, November 2018 through December 2022



- Team of staff members which included Child Support Officers (SEAs), supervisors, and attorneys



- Motion to Enforce process, includes a subpoena



- Collaboration between local IV-D agency, legal, courts, workforce resources, and process servers

# Ramsey County's current Contempt Process

- Case reviewed by worker
- Make-A-Plan meeting – discuss with group
  - Modification motion?
  - Stipulation?
  - Monitor for a few months?
- Motion to Enforce (+ workgroup)
  - Pre-pandemic – in person hearings, vs
  - Post-pandemic – Zoom hearings
- Appear and discuss options:
  - Current circumstances. Employment? Barriers?
  - Payments?
  - Modification motion?
  - Stipulation?
  - Monitor for a few months?

# Ramsey County's current Contempt Process

- Appear at MTE and discuss options:
  - Payments?
  - Modification motion?
  - Stipulation?
  - Monitor?
  - Set for Review Hearing(s)
- Not Appear – refer case for Order to Show Cause process
- OSC hearing:
  - Stipulation on contempt?
  - Agreement between parties to modify support amounts? Or modification motion?
  - Purge conditions/payment plan
  - Evidentiary hearing on contempt

# Ramsey County's Motion to Enforce – cover letter

Dear Obligor's Name,

You received a motion to enforce the child support order and a subpoena about your child support case.

## Why did you receive this?

- Your child support is not being paid as court ordered.

## What you must do:

- Appear for the REMOTE hearing scheduled on **Hearing Date** at **Hearing Time**. Do not go to the courthouse.
- See the subpoena for instructions on how to access the remote hearing. You may also receive a "Notice of Hearing" with instructions on how to access the remote hearing.
- Submit a copy of the documents listed in the subpoena, following the attached instructions.
- Provide proof of your inability to work, if appropriate.
- Explain why you have not paid the child support as ordered.

## Possible hearing outcomes:

- The Court may require you to look for a job.
- The Court may require you to make a lump sum payment.
- A review hearing may be scheduled.

## What happens if I don't come to court?

- The County may initiate a contempt action.

If you have questions, contact your child support officer at 651-266-Agent's Phone.

# Ramsey County's Motion to Enforce - motion

Ramsey County and  
Obligee's Name,  
Petitioners,  
and  
Obligor's Name,  
Respondent(s).

**NOTICE OF MOTION AND  
MOTION TO ENFORCE SUPPORT  
ORDER**

Court File No. [REDACTED]  
IV-D Case No. 0000000000-00

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TO: Obligee's Name and, Obligor's Name.

**PLEASE TAKE NOTICE** that during a REMOTE hearing scheduled on Hearing Date at Hearing Time, the undersigned will move the presiding Child Support Magistrate of Ramsey County District Court, Family Court Division, for an order:

1. Finding Obligor's Name has an ability to pay his child support obligation and has failed to do so as court ordered.
2. Requiring Obligor's Name, to remedy this situation by paying his support obligation.
3. Requiring Obligor's Name to make a lump sum payment towards the arrears.
4. Requiring Obligor's Name to provide the documentation required in the subpoena.
5. Requiring Obligor's Name to seek employment and schedule a three-month review hearing.
6. Requiring Obligor's Name to provide verification to the county of any physical or mental disability, if claiming an inability to work.



## Engagement

Engage both parents:



- Early after child support order



- Primarily telephone calls



- Letters to parties for locate and enforcement information



- Emails, if party approves





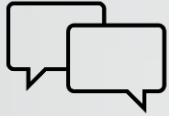
## Case Review

### Review Ability to Pay:

- Current circumstances of both parents
- Income, wage history, current employment
- What concerns has the obligated parent raised over the years?
- Does the order fit the current circumstances?
- Other child support cases?
- Why would contempt be an effective tool?



## Team Review



- Review engagement efforts



- Review use of resources and enforcement tools



- Review employment and payment history



- Review incarceration, public assistance, other life factors



## Make-a-Plan Meetings

What's the best option for this case:



- Review and Modification



- Motion to Enforce, including subpoena



- Civil Contempt



- Continue monitoring the case



## Pre-hearing

- Discovery:



Informal

- Utilize current resources
- Discussion with Child Support Officer



Formal - motion required



Formal – subpoena

- Production of documents – paying parent
- Personal service required on paying parent



## Legal Actions

- Motions:
  - ☐ Motion to Modify
    - Initiated by County, or
    - Remind paying parent of the right to bring a motion
  - ☐ Motion to require job search
  - ☐ Motion to Enforce “first” step before civil contempt motion
  - ☐ Civil contempt motion – clear evidence to proceed



## Motion to Enforce in the Expedited Process



- ☐ Subpoena production of documents from paying parent
- ☐ Motion for job search
- ☐ Motion to Enforce
  - ✓ Lump sum payment towards arrears;
  - ✓ Comply with subpoena;
  - ✓ Review paying parent's ability to pay and why failed to do so;
  - ✓ Require the paying parent to pay ordered child support; and
  - ✓ Order job search and set a review hearing.



## Motion to Enforce Hearing



- ☐ Both the attorney and SEA<sub>3</sub> (Child Support Officer) appear for the hearing.
- ☐ Meet with both parents to explain the process.
- ☐ Determine if the paying parent has provided the requested information and documents.
- ☐ Provide written resources to both parents.
- ☐ More engaging approach than civil contempt.
- ☐ However, prepared to argue the merits of the Motion to Enforce.



## Compliance with Motion to Enforce order

- ✓ Increased engagement;
- ✓ Access to more resources;
- ✓ Actual verification of job search efforts;
- ✓ Refer to Review and Modification, if appropriate;
- ✓ Increased payments;
- ✓ Avoid contempt action.





## Non-compliance with Motion to Enforce order

At the review hearing:

- ✓ Withdraw Motion to Enforce;
- ✓ Proceed with the civil contempt action and send to Court for approval;
- ✓ Serve the paying parent with the Contempt Motion and OTSC.



## Ramsey County's Outcomes

- Identified and targeted some of our most complicated cases.
- Most cases had an “Other” outcome which included payments, case closure, and case monitoring.
- Several cases were referred to Review and Modification.
- Some cases were referred to Motion to Enforce process and resulted in lump sum payments.
- A small number were referred for a civil contempt action.



## Collaboration with our county's Workforce Department

- ☐ Ramsey County's collaborative effort to consider all issues:
  - ✓ Career coaching
  - ✓ Parent Power Program
  - ✓ Education and training
  - ✓ Work experience
- ☐ Temporary reduction or suspension of child support;
- ☐ Reinstatement of driver's license;
- ☐ Forgiveness of public assistance arrears; and
- ☐ Avoid other enforcement actions.



## Contempt Alternatives Recap

- ☐ Engage with both parents early after the initial order and failure to pay;
- ☐ Collaborate with local community agencies and refer the parents to those resources;
- ☐ Identify the paying parent's ability to pay;
- ☐ Gather as much information as possible prior to any subsequent legal action;
- ☐ Utilize the civil contempt action as a last resort; and
- ☐ Be open to a different way of handling these cases.

# Contact Information

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**Questions?**

**Thank you!!**