

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
CHILD SUPPORT DIVISION**

**CHAPTER 1240-2-6
REVIEW AND ADJUSTMENT OF CHILD SUPPORT ORDERS**

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1240-2-6-.01 PURPOSE AND SCOPE OF RULES.

- (1) These rules establish procedures for the review and adjustment of child support orders being enforced by the Tennessee Department of Human Services under Title IV-D of the Social Security Act, 42 U.S.C. §§ 651-669, and pursuant to the requirement of 42 U.S.C. § 666(a)(10) and T.C.A. § 36-5-103, as amended.
- (2) These rules do not apply to child support cases not being enforced by the Department.
- (3) These rules are applicable to child support orders being enforced by the Department by judicial order, or administrative order issued by the Department.

Authority: T.C.A. §§ 4-5-202; 36-5-103(f); 71-1-105(1), (12), and (16); 71-1-132; Acts 2004, Ch. 728; 42 U.S.C. § 666(a)(10); 45 C.F.R. § 303.8. **Administrative History:** Original rule filed October 21, 2004; effective January 4, 2005.

1240-2-6-.02 DEFINITIONS.

- (1) Alternate residential parent—The “alternate residential parent” (ARP) is the parent who is not designated as the primary residential parent. (See paragraph (8)). This parent is also referred to as the “non-custodial parent.”
- (2) Caretaker—The person or entity that provides care and supervision of a child on a full-time basis. This person may be a relative of the child who voluntarily or, pursuant to tribunal order or other legal arrangement, is providing care and supervision of the child; or this may be a private or public agency providing custodial care and supervision for the child by voluntary placement by the child’s caretaker, parent or relative or by other designated caretaker or by court order or other legal arrangement.
- (3) Custodial parent—For purposes of this Chapter, the parent having primary custody of the child. For purposes of this Chapter, the term has the same meaning as “primary residential parent.”
- (4) Department—The Tennessee Department of Human Services.
- (5) Non-custodial parent—For purposes of this Chapter, the parent that does not have primary custody of the child. The term has the same meaning as “alternate residential parent.”
- (6) Obligee—The person to whom the child support is paid.
- (7) Obligor—The person required to pay support.
- (8) Primary residential parent—The “primary residential parent” (PRP) refers to the parent designated as such by T.C.A. § 36-6-402, and has the same meaning as the “custodial parent.”

(Rule 1240-2-6-.02, continued)

- (9) Review and adjustment—The process, required by federal and state law applicable only to Title IV-D child support cases being enforced by the Tennessee Department of Human Services, in which existing orders for child support are evaluated by the Department to determine if they should be increased or decreased or should remain unchanged based upon criteria set forth in state and federal law and this Chapter.
- (10) Significant variance—The standard for modification of a support order required to increase or decrease the amount of a child support order as established in the Department’s child support guidelines.
- (11) Substantial change of circumstances—A significant variance as defined in the Department’s child support guidelines.
- (12) Title IV-D—The provision of the federal Social Security Act containing requirements for the operation of the federal/state child support program that provides for the establishment, modification and enforcement of child support. The Tennessee Department of Human Services is the Title IV-D enforcement agency for Tennessee.

Authority: T.C.A. §§ 4-5-202; 36-5-103(f); 71-1-105(1), (12), and (16); 71-1-132; Acts 2004, Ch. 549; Acts 2004, Ch. 728; 42 U.S.C. § 666(a)(10); 45 C.F.R. § 303.8. **Administrative History:** Original rule filed October 21, 2004; effective January 4, 2005.

1240-2-6-.03 REVIEW, ADJUSTMENT CYCLES; EVIDENCE STANDARDS.

- (1) Every three (3) years, in any support order subject to enforcement under Title IV-D of the Social Security Act, the Department shall initiate a review upon request by the custodial or non-custodial parent, or any other caretaker of the child, or, if there is an assignment of support pursuant to T.C.A. § 71-3-101, et seq., the Department shall automatically initiate a review, and, in either case, if appropriate under the child support guidelines, the Department shall seek an adjustment of the support order in accordance with child support guidelines established pursuant to T.C.A. § 36-5-101(e) without a requirement for proof of or showing of any other change in circumstances. Evidence of a “significant variance,” as defined by the Department’s child support guidelines, between the current support order and the amount that would be ordered under the Department’s child support guidelines, must be demonstrated to permit an adjustment of the order. The provisions of Chapter 1240-2-4, Child Support Guidelines, must be referenced for further requirements and exceptions relative to application of the significant variance rule.
- (2) Between three-year cycles, in any support order subject to enforcement under Title IV-D of the Social Security Act, upon request of the custodial or non-custodial parent, or any other caretaker of the child, or, upon the request of the Department, if there is an assignment of support pursuant to T.C.A. § 71-3-101, et seq., the Department shall review, and, if the available evidence demonstrates to the Department that there has been a substantial change in circumstances, the Department shall seek an adjustment to the support order in accordance with the guidelines established pursuant to T.C.A. § 36-5-101(e). For purposes of this subparagraph, a “substantial change in circumstances” shall be a “significant variance,” as defined by the Department’s child support guidelines at Chapter 1240-2-4, between the amount of the current order and the amount that would be ordered under the Department’s child support guidelines.
- (3) The review and adjustment in paragraphs (1) and (2) may be conducted by the court, or by the Department by issuance of an administrative order by the Department or its contractors.

Authority: T.C.A. §§ 4-5-202, 36-5-101(e), 36-5-103(f), 71-1-105(1), (12), (15) and (16), 71-1-132; Acts 2004, Ch. 728; 42 U.S.C. §§ 664, 666(a)(10) and 667; and 45 C.F.R. §§ 302.56 and 303.8. **Administrative History:** Original rule filed October 21, 2004; effective January 4, 2005. Amendment filed September 10, 2007; effective November 24, 2007.

1240-2-6-.04 NOTICES OF REVIEW, REVIEW ALTERNATIVES AND APPEALS.

(Rule 1240-2-6-.04, continued)

(1) Form of Notices-Exceptions.

Except as otherwise provided in paragraphs (3) and (4), all notices under this Chapter shall be sent by regular U.S. mail to the non-custodial parent and to the custodial parent or other caretaker of the child at the address provided by them as reflected in the Department's official child support records.

(2) Notice to Custodial and Non-Custodial Parent and Caretaker of a Requested Review.

- (a) When a review is requested by the parties or initiated by the Department, the Department shall give written notice to the non-custodial parent, the custodial parent and/or the caretaker of the child that a review of the order of support has been initiated.
- (b) The notice shall include information regarding the opportunity available to the non-custodial parent, the custodial parent and/or the caretaker of the child to present to the Department evidence about income of the parties, expenses for the children, any credits which the party may wish to be considered, or other matters which may have an effect on the appropriate amount of child support due under the child support guidelines.
- (c) When the review is complete, the Department shall give written notice of the review findings to the non-custodial parent, the custodial parent and/or the caretaker of the child.

(3) Notice of Intent to Administratively Adjust the Child Support Order.

If the Department elects to seek the adjustment of the support order by issuance of an administrative order, notice of the proposed administrative adjustment to the order of support may be sent by regular U.S. mail, certified mail, return receipt requested, electronic mail, or facsimile transmission to the last known address of the non-custodial parent, the custodial parent and/or the caretaker of the child thirty (30) calendar days prior to the issuance of the administrative order adjusting the order of support; provided, however, if the initial notice is determined to be undeliverable, then before administratively adjusting an order of support, the Department shall ensure that service of the notice of its intent to administratively adjust the support order is confirmed by certified mail or by personal service.

(4) Election by Custodial Parent, Non-Custodial Parent, and/or Caretaker to Utilize Judicial Review of Proposed Adjustment.

- (a) The non-custodial parent, the custodial parent and/or the caretaker of the child shall have the right to contest the proposed administrative adjustment to the order of support within thirty (30) days of the mailing date of the notice of the proposed administrative adjustment to the order of support, or within thirty (30) days of the date of service by certified mail or personal service if the initial notice is determined to be undeliverable, by filing a motion for a hearing on the proposed adjustment with the court having jurisdiction to modify the order of support and by providing written notice of the hearing to the Department by copy of such motion.
- (b) The review by the court shall be completed within timeframes established by federal law or regulation, which is one hundred eighty (180) days as of the effective date of this Chapter, or as may be otherwise amended by federal law or regulations.
- (c) If the non-custodial parent, the custodial parent and/or the caretaker of the child contests the proposed administrative adjustment pursuant to the procedure in this paragraph, no further administrative appeal to the Department shall be available, and appeal of the determination of the court regarding the support order shall be made pursuant to the Tennessee Rules of Appellate Procedure.

(5) Administrative Adjustment If Judicial Review Is Not Elected.

(Rule 1240-2-6-.04, continued)

- (a) If, upon receipt of the notice provided by the Department pursuant to paragraph (3) above, neither the non-custodial parent, the custodial parent, nor the caretaker of the child contests the proposed administrative adjustment to the order of support according to the requirements of subparagraph (4)(a) above, the Department shall issue the administrative order adjusting the order of support.
- (b) A copy of an administrative order adjusting the child support order shall be sent to the clerk of the court that has jurisdiction over the child support order which has been administratively adjusted, and the administrative order shall be filed in the court record.
- (c) A copy of the administrative order shall be sent to the non-custodial parent, the custodial parent and/or the caretaker of the child by the Department by general mail to the last known address shown in the Department's records with notice to the non-custodial parent, the custodial parent and/or the caretaker of the child of the right to appeal the administrative order adjusting the child support order.
- (d) If an order of support is adjusted by administrative order of the Department pursuant to this paragraph, the non-custodial parent, the custodial parent and/or the caretaker of the child shall have the right to administratively appeal the adjustment by requesting the appeal to the Department as provided in T.C.A. §§ 36-5-1001, et seq. and T.C.A. §§ 4-5-301, et seq.
- (e) The non-custodial parent, the custodial parent and/or the caretaker of the child may request a stay of the administrative order pursuant to the provisions of the Uniform Administrative Procedures Act compiled in T.C.A. §§ 4-5-303, et seq.
- (f) The appeal from any decision resulting from the administrative appeal shall be to the court having jurisdiction of the support order, and shall be subject to the limited scope of review as provided pursuant to T.C.A. § 36-5-1003.
- (6) Notice of the right to request a review, and, if appropriate, adjustment of the child support order shall be sent to the non-custodial parent, the custodial parent and/or the caretaker of the child by the Department at least every three (3) years for a child subject to an order being enforced pursuant to Title IV-D of the Social Security Act. The notice may be included in the order.
- (7) The review and adjustment may be delayed if the best interests of the child so require. Such interests would include the threat of physical or emotional harm to the child if the review and adjustment were to occur or the threat of severe physical or emotional harm to the child's custodial parent or caretaker.

Authority: T.C.A. §§ 4-5-202; 36-5-103(f); 36-5-807; 71-1-105(1), (12), and (16); 71-1-132; Acts 2004, Ch. 728; 42 U.S.C. § 666(a)(10); 45 C.F.R. § 303.8. **Administrative History:** Original rule filed October 21, 2004; effective January 4, 2005.