

	<b>INDIANA DEPARTMENT OF CHILD SERVICES</b> <b>TITLE IV-D POLICY MANUAL</b>	
	<b>Chapter 12: Enforcement</b>	<b>Effective Date: 07/28/2021</b>
	<b>Section 7.2: Surety Bond to Secure Payment of Child Support</b>	<b>Version: 1.1</b> <b>Revision Date: 07/28/2021</b>

**BACKGROUND**

Surety bonds differ from purge and criminal bonds. Each may be used as enforcement tools to ensure the obligor’s compliance with a child support order but are used under different circumstances. Generally, a surety bond serves to ensure the payment of ongoing and/or future child support obligations, whereas purge and criminal bonds may be used to obtain payment towards a child support delinquency through contempt or other proceedings.

**DEFINITIONS**

1. **“Surety bond”** is a written agreement between the obligor and a surety or a commercial insurance company that is filed with the Court to assure that the obligor will comply with making consistent, future child support payments.<sup>1</sup> The Court may require the obligor to post a surety bond when he or she earns income from self-employment or commission, has irregular income, makes sporadic payments, or has an employment situation that makes issuance of an income withholding order (IWO) impractical or inappropriate.<sup>2</sup>
2. **“Purge bond”** is ordered by the Court when an obligor is past due on his or her child support payments. The obligor is typically ordered to pay a purge bond either to:
  - a. Avoid going to jail on a contempt finding;
  - b. Be released from jail following a contempt finding; or
  - c. Be released from jail after he or she is picked up on a warrant for failing to appear at a previous contempt hearing.<sup>3</sup>

The Court may set a purge amount that is less than or up to the total arrearage amount. Once the purge amount is paid, the entire amount of the purge bond is applied towards child support.

3. **“Criminal bond”** is required by the Court to guarantee the appearance of the obligor/defendant at his or her criminal hearing as ordered.<sup>4</sup> A criminal cash bond is held by the Clerk of Courts and may be returned to the obligor/defendant at the conclusion of his or her criminal case pending the results of the legal proceedings.<sup>5</sup> Also a criminal surety bond may be paid by a bondsman, as an agent of an insurance

<sup>1</sup> IC 31-14-1.5-1; IC 31-16-3.5-1; IC 31-16-6-5; 45 C.F.R. § 303.104

<sup>2</sup> OCSS-AT-85-06

<sup>3</sup> OCSS-AT-12-01

<sup>4</sup> IC 35-33-8-1

<sup>5</sup> IC 35-33-8-7(f)

company, to the Clerk of Courts to guarantee the appearance of the obligor/defendant as ordered.

## **POLICY**

When an initial order is issued in an action for dissolution, legal separation, establishment of child support, or establishment of paternity, a Court may provide for security, bond, or other guarantee the Court deems appropriate to secure the obligation to make child support payments.<sup>6</sup> The Court may likewise provide for such security, bond, or other guarantee as it deems appropriate as part of a modification order.<sup>7</sup> Surety bonds are ordered at the discretion of the Court, regardless of the existence of any child support delinquency in a case.

A surety bond ordered by the Court remains in place until the child support order terminates, another Court assumes jurisdiction over the child support order, the Court's order discharges the bond, or the Court orders the bond forfeited. If forfeited by the Court's order, the proceeds from the bond will be used to reimburse the non-violating party for costs in upholding the order and other expenses before being applied toward the support and maintenance of the child.<sup>8</sup>

## **REFERENCES**

- [IC 31-14-1.5-1](#): Bonds; requirements
- [IC 31-16-3.5-1](#): Bonds; requirements
- [IC 31-16-3.5-2](#): Bonds; form
- [IC 31-16-3.5-3](#): Forfeiture; use of proceeds
- [IC 31-16-3.5-4](#): Forfeiture; excess proceeds
- [IC 31-16-6-5](#): Security, bond, or other guarantees
- [IC 31-16-8-3](#): Security, bond, or guarantee
- [IC 35-33-8-1](#): "Bail bond" defined
- [IC 35-33-8-7](#): Failure to appear; pending civil action or unsatisfied judgment; same transaction or occurrence; forfeiture; order for payment; judgment; transfer of funds
- [45 C.F.R. § 303.104](#): Procedures for posting security, bond or guarantee to secure payment of overdue support
- [OCSS-AT-12-01](#): Turner v. Rogers Guidance
- [OCSS-AT-85-06](#): Final Rule: Implementation of Child Support Enforcement Amendments of 1984

## **PROCEDURE**

The Title IV-D Prosecutor's Office may determine that a surety bond is appropriate in situations where the obligor earns income from self-employment or commission, has irregular income, makes sporadic payments, or has an employment situation that makes issuance of an IWO impractical.<sup>9</sup> Further, in situations where a stay of an IWO based upon agreement of the parties has been ordered by the Court, the Title IV-D Prosecutor's Office may determine that a surety

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<sup>6</sup> IC 31-16-6-5

<sup>7</sup> IC 31-16-8-3

<sup>8</sup> IC 31-16-3.5-3; IC 31-16-3.5-4

<sup>9</sup> OCSS-AT-85-06

bond is an appropriate means for an alternative payment arrangement. The Title IV-D Prosecutor's Office may also consider the obligor's payment history and the amount of any arrearage. If the Title IV-D Prosecutor's Office concludes that a surety bond is appropriate, a petition with the Court to request that a surety bond be ordered is filed. The surety bond is ordered at the Court's discretion.

The bond must be in writing and be secured by at least one (1) resident freehold surety or a commercial insurance company.<sup>10</sup> The obligor is responsible for obtaining the services of a bonding company to assume the role of "surety" and underwrite the child support bond. The bond form shall include the provision that payment under the bond be prepared in response to the obligee, or a representative of the obligee, filing a motion with the Court seeking a declaration of forfeiture of the bond in the event the obligor does not uphold his or her agreement to make consistent child support payments.<sup>11</sup>

The Court may enter a final judgment ordering the obligor and surety to pay the bond.<sup>12</sup> A certified copy of the filing shall be provided to the surety at its address of record.<sup>13</sup> Within 30 days of receiving notification of the final judgment, the surety shall make payment to the Clerk of Court.<sup>14</sup> The proceeds from the bond will be used to reimburse the non-violating party for costs in upholding the order and other expenses before being applied toward the support and maintenance of the child.<sup>15</sup>

Each Title IV-D Prosecutor's Office may prepare and implement procedures based on the local rules and practices of its county.

## FORMS AND TOOLS

N/A

## FREQUENTLY ASKED QUESTIONS

1. Q. What are examples of "other guarantees" the Court may accept to secure the obligation of child support payments?
  - A. Indiana courts may require personal property be attached in order to secure payment of a child support obligation. For example, the Court may order the obligor to deposit funds from an inheritance, a lawsuit settlement, or lottery winnings into escrow with the Clerk of Court. If the obligor fails to make child support payments as ordered, funds from the escrow account would be used to satisfy the child support obligation. The Court may also require the obligor to pledge property (e.g., a house, motor vehicle) as a guarantee of payment. Non-payment would result in forfeiture of the property.

## RELATED INFORMATION

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<sup>10</sup> IC 31-16-3.5-1

<sup>11</sup> IC 31-16-3.5-2

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> IC 31-16-3.5-3; IC 31-16-3.5-4

1. Chapter 12: Enforcement, Section 7.1: Indirect Contempt

<b>REVISION HISTORY</b>
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<b>Version</b>	<b>Date</b>	<b>Description of Revision</b>
Version 1	01/14//2019	Final approved version
Version 1.1	07/28/2021	Updated hyperlinks; Reviewed for accuracy
	08/22/2023	Changed Office of Child Support Enforcement (OCSE) to Office of Child Support Services (OCSS)