NOT FOR PUBLICATION WITHOUT APPROVAL OF COMMITTEE ON OPINIONS

ANDREANA KAVADAS, ALISHA GRABOWSKI, LaQUAY DANSBY, and PAULO AREDE,

Plaintiffs,

v.

RAYMOND P. MARTINEZ, in his official capacity as Chief Administrator of the New Jersey Motor Vehicle Commission, and The New Jersey Motor Vehicle Commission,

CHRISTOPHER S. PORRINO, in his official capacity as Attorney General of the State of New Jersey, and the State of New Jersey,

NATASHA JOHNSON, in her official capacity as Director of the Department of Human Services, Division of Family Development, Office of Child Support Services, and Department of Human Services, Division of Family Development, Office of Child Support Services,

HON. GLENN GRANT, JAD, in his official capacity as Acting Director of the Administrative Office of the Courts and the Probation Division, and the Administrative Office of the Courts and the Probation Division,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION –
MERCER COUNTY

DOCKET NO. MER-L-1004-15

CIVIL ACTION

OPINION

Decided: December 7, 2018

David Perry Davis, Esq., for Plaintiffs Andreana Kavadas, Alisha Grabowski, LaQuay Dansby, and Paulo Arede.

Gurbir S. Grewal, Attorney General of New Jersey, Gregory Sullivan, Deputy Attorney General, for Defendants

Jacobson, A.J.S.C.

TABLE OF CONTENTS

INTRODUCTION 4

I. PROCEDURAL HISTORY 6

II. STATEMENT OF FACTS 11

A. Statutory Background 11

B. Statutory Enforcement Methods 16

1. Bench Warrants and License Suspensions 19

C. Administrative Processes for Enforcing Child Support 27

1. Issuance and Modification of Child Support Orders 27

2. Enforcement of Child Support Orders through Enforcement of Litigant's Rights Hearings 32

3. The Issuance of Bench Warrants 42

a. FTA Warrants 43

b. FTP Warrants 46

4. Driver's License Suspension Process 54

D. Statistical Background 56

E. Child Support Enforcement History for Named Plaintiffs 62

1. Andreana Kavadas 63

2. Alisha Grabowski 69

3. LaQuay Dansby 72

4. Paulo Arede 78

F. Norman Epting Commentary 86

III. LEGAL ANALYSIS 91

A. Named Plaintiff Alisha Grabowski Does Not Have Standing. . 93

B. Plaintiffs' Statutory Interpretation Arguments, While Reasonable, Cannot Overcome the Long-time Consistent Interpretation of the License Suspension Provisions by Defendants, Who Were Charged by the Legislature With Implementing the Statute 98

1. Section 41(a) 99

2. Section 44 109

C. Substantive Due Process 113

1. The Court Will Apply Rational Basis Scrutiny 116

2. Plaintiffs have failed to demonstrate that the automatic license suspension process lacks any rational basis 119

a. Section 41 122

b. Section 43 130

D. Procedural Due Process 137

1. The Private Interest 142

2. Notice 151

3. Opportunity To Be Heard 163

E. Right to Appointed Counsel 175

CONCLUSION 185

INTRODUCTION

This matter comes before the court by way of a Verified Complaint and Order to Show Cause filed by four non-custodial parents seeking class certification who ask the court to invalidate aspects of New Jersey's child support enforcement program, implemented primarily by the New Jersey Administrative Office of the Courts and its Probation Division in cooperation with the New Jersey Department of Human Services, Division of Family Development, Office of Child Support Services pursuant to the New Jersey Child Support Program Improvement Act and its predecessor statutes, codified at N.J.S.A. 2A:17-56.7 to -56.66. The thrust of the challenge is directed at the suspension of driver's licenses due to failure to make child support payments in compliance with child support orders. Driver's licenses are suspended automatically under N.J.S.A. 2A:17-56.41(a) when a bench warrant is issued to a non-custodial parent for failure to pay child support or for failure to appear at a child support enforcement hearing.

Plaintiffs assert that current enforcement procedures do not afford them, and other similarly-situated individuals, necessary protections under the due process guarantees of the United States and New Jersey Constitutions. They claim that these procedures are constitutionally infirm because they provide inadequate notice and opportunities to be heard before driver's licenses are

suspended, are arbitrary in nature, and do not provide attorneys to represent indigent child support obligors before or after the suspensions take effect. Plaintiffs also assert that the current procedures violate certain statutory guarantees afforded to obligors. In addition, Plaintiffs contend that driver's license suspensions have a disparate impact on poor obligors, often harming the most vulnerable indigent obligors by limiting their job opportunities and ability to visit their children, as well as saddling them with monetary fees and penalties connected to license restoration when those funds would be better directed to their non-custodial children. In response, Defendants argue that the relevant statutes and enforcement procedures are appropriately coercive, as required by federal law to foster compliance with child support obligations, and comply with Plaintiffs' constitutional and statutory rights. After preliminary proceedings including a period of discovery, both sides moved for summary judgment.

I. PROCEDURAL HISTORY

Four Plaintiffs filed a Verified Complaint and Order to Show Cause seeking declaratory and injunctive relief and class action status under R. 4:32-1(a) and 4:32-1(b) on May 1, 2015, to challenge New Jersey's child support enforcement process insofar as it authorizes automatic driver's license suspensions for non-payment of child support. Plaintiffs are non-custodial parents who, at the time the Complaint was filed, had accumulated significant arrears regarding their child support obligations. All of the Plaintiffs except for Alisha Grabowski had lost their New Jersey driver's licenses multiple times due to suspensions imposed when child support-related warrants were issued against them -- suspensions that they assert were imposed without necessary due process protections or in violation of statutory notice and hearing requirements.

The Complaint was not separated into multiple counts, but broadly alleged State and Federal constitutional causes of action under the New Jersey Civil Rights Act, N.J.S.A. 10:6-2, and 42 U.S.C. § 1983, and violation of N.J.S.A. 2A:17-56.44, "insofar as defendants have failed to provide the required delay between the entry of a license suspension order and its implementation." Plaintiffs sought declaratory and injunctive relief, including a declaration that the automatic suspensions of driver's licenses

for nonpayment of child support for Plaintiffs and all those similarly situated non-custodial parents violated their substantive and procedural due process rights under the New Jersey and United States Constitutions. Plaintiffs also requested that the New Jersey Motor Vehicle Commission ("MVC") be enjoined from suspending driver's licenses without first complying with N.J.S.A. 2A:17-56.44, and also be enjoined from suspending licenses without complying with due process. The Complaint sought to have MVC rescind the suspensions of all members of the Plaintiff class that were imposed as a result of illegal or unconstitutional procedures. In addition, Plaintiffs asked the court to enjoin the State from prosecuting any member of the Plaintiff class for driving with a suspended license when the suspension had been imposed through procedures that violated Plaintiffs' rights. Plaintiffs also sought an injunction directing the Department of Human Services, Division of Family Development, Office of Child Support Services, to operate the child support program constitutionally under the State Plan, as required by Federal law. Finally, Plaintiffs sought class certification pursuant to R. 4:32-1, and counsel fees and costs under both N.J.S.A. 10:6-2(f) and 42 U.S.C. § 1988. Notably, no court official was named as a Defendant in the original Complaint even though the New Jersey Administrative Office of the Courts ("AOC") through its Probation Division is primarily responsible for child support enforcement in New Jersey.

Despite the breadth of the relief sought, Plaintiffs filed their initial pleadings with an Order to Show Cause seeking emergent relief, asserting that if the remedies sought in in the Complaint were not immediately granted, "substantial and irreparable harm" would result. The relief requested on an emergent basis was almost identical to the complete relief Plaintiffs sought in the Verified Complaint. It thus appeared to the court that Plaintiffs were seeking an immediate ruling on all of the substantive issues in the case without discovery. With some misgivings about the procedural approach espoused by Plaintiffs, the court nonetheless set the matter down for review as an application for a preliminary injunction. Prior to the hearing on the application, Plaintiffs filed an Amended Complaint on May 22, 2015, to rectify some technical pleading deficiencies.

Briefing on the application for a preliminary injunction exceeded 180 pages and included a reply brief filed by Plaintiffs that was 60 pages long. The main arguments raised were whether Plaintiffs could meet the requirements for issuance of a preliminary injunction and for class action status, and whether Plaintiffs had demonstrated that the existing suspension process -- in effect since 1998 -- likely violated due process and entitled them to the injunctions they sought on a preliminary basis while the lawsuit remained pending. Following oral argument on July 22, 2015, the court denied Plaintiffs' application for preliminary

relief, finding that Plaintiffs had not shown by clear and convincing evidence that they met the requirements for a temporary remedy prior to discovery and consideration of their substantive claims on a full record. The court granted without prejudice Defendants' motion to strike the class action designation sought in the Complaint, determining that it would be more efficient, less cumbersome, and more appropriate for the litigation to proceed as a test case. The court also was concerned that some of the claims asserted were based on the particular facts and circumstances of individual Plaintiffs and did not easily lend themselves to adjudication through a class action.

In an oral decision rendered at the end of argument, the court specifically noted that the trial court in Pasqua v. Council, 186 N.J. 127 (2006), had denied both emergent relief and class action status in the case that ultimately established that attorneys be appointed to assist indigent non-custodial parents facing incarceration at child support enforcement hearings. Plaintiffs in that case were represented by the same attorney who filed this litigation challenging the motor vehicle license suspension process for failure to pay child support. The court also denied Defendants' motion to dismiss the complaint. In the wake of those rulings, Defendants filed an Answer and sixteen affirmative defenses on August 7, 2015.

After denying preliminary relief, the court ordered that discovery proceed and also required the parties to participate in mediation. Efforts to resolve the case failed, but discovery was completed. On April 18, 2016, the court granted a motion authorizing Plaintiffs to file a Second Amended Complaint naming as Defendants the AOC and court officials involved in the child support enforcement process. Later, individual Probation officers were dismissed by stipulation, but the AOC remained as a Defendant. Both sides eventually moved for summary judgment, contending that there were no material issues of fact and that the court could decide the claims based on the record presented to the court. Once again the papers submitted to the court were voluminous, including over 250 pages of briefs and multiple volumes of appendices. The court conducted oral argument on August 23, 2016, with the parties submitting supplementary materials thereafter. The issues raised by Plaintiffs require the court to closely examine a complex child support enforcement system and the process by which driver's licenses are suspended for failure to pay child support, and then to evaluate that process against constitutional and statutory standards.

II. STATEMENT OF FACTS

A. Statutory Background

In 1996, major welfare reform legislation, known as the Personal Responsibility and Work Opportunity Reconciliation Act ("PRWORA"), took effect. 42 U.S.C. § 651, et seq. The PRWORA sought to encourage states to toughen their child support enforcement procedures by providing federal block grants under the Temporary Assistance to Needy Families ("TANF") Program if certain requirements were met. As part of this effort, states were required to adopt "procedures under which the State has . . . authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings." 42 U.S.C. § 666(a)(16).

In response to this federal requirement, the New Jersey Legislature enacted the New Jersey Child Support Program Improvement Act in 1998, which amended and added to the existing New Jersey child support statutory scheme that dated back to 1985. N.J.S.A. 2A:17-56.7 to -56.66 ("the Act"). The New Jersey Legislature also amended several provisions of the Child Support Collection Reform Act, which had been adopted several years before. The Act recognized that the timely payment of child support

promotes the best interests of all families with children. N.J.S.A. 2A:17-56.7b(b). It also sought to strengthen the effective enforcement and collection of child support obligations pursuant to PRWORA in order to maximize the federal funding available to New Jersey. N.J.S.A. 2A:17-56.7b(e).

To best fulfill this mission, the Act authorized the Supreme Court to promulgate "rules and procedures as may be necessary for the implementation of this act by the courts and probation departments." N.J.S.A. 2A:17-56.9b(b). See R. 5:7-4A to -11. The Act also delegated responsibility to the New Jersey judiciary, its Probation Division, and several executive branch agencies to implement and oversee the state child support program. See, e.g., N.J.S.A. 2A:17-56.24 (directing the Probation Division in each county to monitor the implementation of the support enforcement program by collecting statistics and submitting reports); N.J.S.A. 2A:17-56.25 ("The Department of Human Services shall promulgate rules and regulations ... in order to effectuate the purposes of this act."); N.J.S.A. 2A:17-56.36 ("The Commissioner of Human Services shall ... in conjunction with the Supreme Court, the Division of Motor Vehicles [today the MVC], the AOC and the Department of the Treasury, adopt and promulgate such rules and regulations as may be necessary for the implementation of this act"); N.J.S.A. 2A:17-56.51 (authorizing the Supreme Court of New Jersey, the State IV-D child support program agency (in New Jersey,

the Department of Human Services, Division of Family Development), and the licensing authorities (for driver's licenses, the MVC) to adopt regulations to implement provisions of the Act).

While vesting authority in the courts and executive agencies to implement the Act, the Legislature repeatedly guaranteed obligors that the child support collection system would ensure that they receive due process of law. See, e.g., N.J.S.A. 2A:17-56.9 ("All procedural due process requirements ... shall apply to the income withholding."); N.J.S.A. 2A:17-56.13 (specifying the notice and service methods sufficient to meet procedural due process requirements); N.J.S.A. 2A:17-56.47 ("All actions taken to suspend or revoke a license ... shall be carried out in full compliance with due process laws and the Rules Governing the Courts of the State of New Jersey."); N.J.S.A. 2A:17-56.53 (Statutory authorization to take actions relating to the enforcement of support orders is subject to "appropriate procedural due process requirements including, as appropriate, notice, the opportunity to contest and notice of the right to appeal to the court."); and N.J.S.A. 2A:17-56.54 (further specifying the notice and service methods sufficient to meet procedural due process requirements for the purposes of enforcing a support provision in an order or judgment).

The Assembly also emphasized due process in the Assembly Judiciary Committee Statement that favorably reported the bill

that would become the Act. The Committee noted that governmental action taken under the proposed Act was "subject to safeguards on privacy and information security ... and appropriate procedural due process requirements including, as appropriate, notice, the opportunity to contest and notice of the right to appeal to the court." Assembly Judiciary Committee Statement to Assembly Bill No. 1645 (L.1998, c.1, § 1 (March 5, 1998). The Legislature's commitment to provide child support obligors with procedural safeguards when attempting to collect support is thus a recurring theme throughout the Act. The Act also emphasizes that service of process, including notice of possible license suspensions and the deadlines for obligors to act, must comport with the procedures established by court rule. See, e.g., R. 4:4-3 and R. 4:4-4. These procedures are required for *all* actions taken to suspend or revoke a license under the Act. See N.J.S.A. 2A:17-56.47.

The Act further provides that, at least once every three years, the parties subject to a child support order must be given notice of their right to request a review of support, at which time the parties can raise any changes in financial situation or related circumstances in regard to the child support amount due. N.J.S.A. 2A: 17-56.9a. Proof of a change in circumstances is not required prior to review of a support order under this three-year process, but is required if an adjustment is sought at other intervals. Although the right to this triennial review is

conditioned on there being no automated cost-of-living adjustment ("COLA") program for child support payments, New Jersey court rules provide that the current COLA program does not impair the right of either parent to apply for a three-year review without showing changed circumstances. Ibid.; R. 5:6B.

In order to give teeth to enforcement efforts by Probation and by custodial parents themselves, the Act states that every order for child support "shall be fully enforceable and entitled as a judgment to full faith and credit and shall be a judgment by operation of law on and after the date it is due." N.J.S.A. 2A:17-56.23a. Further, in order to make it easier to contact obligors and serve them with process, the Act provides that:

> [e]ach judgment or order shall require that the obligor and obligee notify the Probation Division of any change of payor or change of address within 10 days of the change. Failure to provide this information shall be considered a violation of this order. The order shall also inform the obligor that the address provided to the Probation Division shall be the address of record for subsequent support enforcement actions and that service of legal documents at that address shall be effective for the purpose of meeting due process requirements.
>
> [N.J.S.A. 2A:17-56.13]

The Act also specifically requires every judgment or order for child support to provide that payments be made through the Probation Division of the county in which the obligor resides, unless the court, for good cause, otherwise orders. Ibid. Taken

together, these provisions fully empower the Probation Division to enforce support orders.

B. Statutory Enforcement Methods

Far from creating an entirely new statutory scheme overseeing the collection and enforcement of child support, the 1998 legislation grafted new provisions onto the existing New Jersey child support statutes. For example, the Probation Division of the New Jersey Courts for each county has been involved in the implementation of the State's child support enforcement program since 1985, but gained new powers and developed new procedures as a result of the 1998 legislation and the policies governing its implementation. See N.J.S.A. 2A:17-56.24. Some of these additions were prompted by the PRWORA, 42 U.S.C. § 666(a), and provided for stricter enforcement mechanisms and heightened monitoring of the effectiveness of collection efforts.

The principal enforcement method utilized to collect child support is income withholding, which is addressed in no fewer than seven subsections. See N.J.S.A. 2A:17-56.8 to -56.14. All child support orders must include a written notice to the obligor stating that the support obligation may be enforced by income withholding upon any current or future income due from a current or future employer. N.J.S.A. 2A:17-56.8. This notice must also state that income from unemployment compensation benefits, from trust funds, and from any other source may be withheld to meet support

obligations. Ibid. Further, the Act defines "income," for the purposes of enforcing a support order, as:

> commissions, salaries, earnings, wages, rent monies, unemployment compensation, workers' compensation, any legal or equitable interest or entitlement owed that was acquired by a cause of action, suit, claim or counterclaim, insurance benefits, claims, accounts, assets of estates, inheritances, trusts, federal or State income tax refunds, homestead rebates, State lottery prizes, casino and racetrack winnings, annuities, retirement benefits, veteran's benefits, union benefits, or any other earnings or other periodic entitlements to money from any source and any other property subject to withholding for child support pursuant to State law.
>
> [N.J.S.A. 2A:17-56.52]

When a support order has been entered and becomes payable through the Probation Division, and either the obligor falls two weeks behind in payments or the obligor or obligee requests income withholding, the Act authorizes the Probation Division to mail a notice of immediate withholding to an obligor's employer, if known. N.J.S.A. 2A:17-56.9. The employer is then required to pay the withheld amount to the Probation Division at the same time as payments are made to the obligor. N.J.S.A. 2A:17-56.11. Further, the Act forbids an employer from discharging or taking disciplinary actions against an obligor as a result of income withholding efforts and directs an employer to provide liberalized rules for enrolling supported children in an obligor's health benefits plan. N.J.S.A. 2A:17-56.11a and -56.12. The Act also requires financial institutions doing business in New Jersey to provide information

to enforcement authorities regarding the accounts of all non-custodial parents who have three months or more of child support arrearages. N.J.S.A. 2A:17-56.57. Furthermore, the Act explicitly identifies several other alternative enforcement methods. See 2A:17-56.16 (instructs the AOC to make rules and regulations for applying tax setoffs against child support obligors); 2A:17-56.21 (gives the Division of Family Development the authority to give credit reporting agencies the names of delinquent obligors and the amounts of overdue support owed); 2A:17-56.37 (authorizes courts to withhold monies from civil lawsuit awards and settlements to be paid towards child support arrearages).

Consequently, the provisions of the Act give the Probation Division access to almost all known income of a recalcitrant obligor so that payments may be obtained for their non-custodial children without action by the obligor. Assuming an obligor does not contest the income withholding, the Probation Division does not have to make any other enforcement efforts unless the available income is insufficient to cover the obligations.

The Legislature also recognized that custodial parents might be receiving welfare or other public assistance. In its Legislative findings and declaration, the Legislature noted that, "[b]ased on the 1992 Kids Count Report for New Jersey evidencing the increased number of children on welfare and living in poverty,

it is necessary to make child support collections a major priority and expedite these collections through more efficient means." N.J.S.A. 2A:17-56.28. The Act also requires the Division of Family Development to determine whether custodial parents receiving benefits under Temporary Assistance for Needy Families ("TANF") or under the State Medicaid program have established support orders for their children and requires that agency to report its findings to the entities administering TANF and Medicaid. N.J.S.A. 2A:17-56.55. The Act also authorizes the Division of Family Development to petition the court directly when an obligor owes past-due child support to a child receiving such benefits. N.J.S.A. 2A:17-56.56. The court may then issue an order requiring the obligor to pay the support in accordance with a court-approved plan or to participate in court-ordered work activities, and may also adjust the amount of the support order in accordance with support guidelines. Ibid. The great importance placed on child support payments is emphasized in these statutory provisions, which reveal a reluctance on the part of the Legislature to spend public funds to support children if there is any reasonable expectation that the parents can do it themselves.

1. Bench Warrants and License Suspensions

The Legislature has prioritized effective enforcement of child support obligations to promote the best interest of families with children. N.J.S.A. 2A:17-56.7b. Unfortunately, significant

numbers of obligors fail to pay the total amount due and fall into arrears. In fact, New Jersey's estimated compliance rate frequently hovers between 65% and 68%. See United States Office of Child Support Enforcement, Preliminary Report FY 2014, attached as Pl. Ex. Y; United States Office of Child Support Enforcement, Preliminary Report FY 2017. The Probation Division is charged with monitoring child support obligations and taking action to compel payments from recalcitrant obligors. This task is particularly difficult when income withholding is not available. The Act, therefore, provides Probation and the family court with other forceful mechanisms to obtain child support. Chief among these mechanisms is the power to issue bench warrants for the arrest of noncompliant obligors to bring them to court to address their non-payment, and the threat of license suspensions, including the suspension of driver's licenses and professional licenses.

Notably, the Act says very little about the process for issuing bench warrants. For example, the Act does not establish prerequisites for issuing a warrant. The warrant process thus appears to follow the pattern for enforcing civil money judgments generally under R. 1:10-3. See also R. 5:4-1, which authorizes the issuance of a warrant to compel an appearance at court. N.J.S.A. 2A:17-56.8 provides that licenses may be suspended if a

warrant for arrest has been issued by a court due to an obligor's failure to provide child support as ordered.

As for license suspensions, even before PRWORA encouraged states to toughen their child support enforcement efforts, the New Jersey Legislature had incorporated suspensions of driver's licenses and professional licenses into New Jersey's enforcement scheme as a way to compel payment of child support. The Legislature cloaked these mechanisms, however, with significant notice and hearing requirements. Prior to 1998, for example, N.J.S.A. 2A:17-56.41(a) authorized Probation to seek suspension of licenses only after first exhausting all other appropriate enforcement methods to collect the obligors' arrearages. Then, if the arrearages exceeded the amount payable for six months, or if a child support-related warrant existed, Probation would have to send a written notice to the obligor, by certified and regular mail, of its intent to suspend the obligor's license if the obligor did not pay the full amount of support arrearage, surrender to the court or the county sheriff, or make a written request for a court hearing to the Probation Division within 30 days of the postmark date on the notice. Ibid. Finally, if the obligor failed to respond within thirty days, the Probation Division would have to file a certification of noncompliance with the court, which could only then -- after notice and an opportunity for a hearing -- issue an order imposing a license suspension. N.J.S.A. 2A:17-56.41(b).

The statute also provided that the court could issue the suspension order based on non-responsiveness by the obligor only if proper service had been demonstrated, which would include proof of diligent efforts to locate the obligor before any adverse action could be taken. Upon execution of the order, Probation would notify the obligor and the licensing authority of the suspension. Ibid. Notably, "license" was defined to mean any license issued by the State, including licenses to operate motor vehicles. See N.J.S.A. 2A:17-56.52.

N.J.S.A. 2A:17-56.41(c), also in existence before 1998, directs courts not to suspend a license if a motion to modify child support was made before the notice of intent to suspend was sent to the obligor. If delinquent obligors request hearings within 30 days of receiving notice that their licenses may be suspended, the Probation Division must file a petition for a judicial hearing to occur within forty-five days of the obligor's request. The Act provides no further details about the substance of this hearing or any procedures following it. If the obligor pays the full amount of the arrearage or surrenders to the county sheriff or the Probation Division during this forty-five day period, the license suspension process is terminated.

N.J.S.A. 2A:17-56.44 also was enacted prior to 1998. It provides specific procedures to be followed after a license suspension has been ordered, but before the suspension becomes

effective. Upon receipt of a suspension order, the licensing authority must immediately notify the obligor that the suspension will take effect twenty days after the postmark of the notice, direct the obligor to refrain from engaging in the activity associated with the license, and inform the obligor that the license will not be reinstated until the court or the Probation Division certifies that the conditions resulting in the suspension have been satisfied (e.g., appearance in court, payment of arrearage, etc.), and the obligor or the Probation Division files a certified court order restoring the license. N.J.S.A. 2A:17-56.44(a) and (c).

If the licensee believes that the license suspension was erroneous, the licensee must notify the licensing authority and the Probation Division by registered mail within twenty days and request a hearing to dispute the suspension. N.J.S.A. 2A:17-56.44(b). If Probation wants to proceed with the suspension, it must afford the licensee a judicial hearing within thirty days. At this hearing, the obligor can contest Probation's finding. Notably, the request for a hearing stops the license suspension until a determination is made that the obligor is delinquent. If such a finding is made, Probation notifies the licensing authority of the ruling and the license will be suspended without further hearing. If the Probation Division or the court concludes that

the licensee is not a delinquent obligor, Probation must notify the licensing authority that the license should not be suspended.

Also pre-dating 1998 was N.J.S.A. 2A:17-56.43, which provides that individuals unable to satisfy their support obligations may seek to avoid license suspensions by demonstrating the existence of equitable factors such as involuntary unemployment or disability. If a hardship is demonstrated, payment plans may be established. The Act thus offers obligors an alternate process to address compelling personal circumstances. N.J.S.A. 2A:17-56.43 authorizes the court to suspend a driver's license if it finds that all other enforcement efforts have been exhausted and at least six months of arrearages have accumulated, or that the obligor has not responded to a subpoena or appeared at a child support hearing after being properly served with notice. Notably, however, following notice of enforcement efforts, obligors may request hearings to explain the reasons for their inability to make the required payments. If obligors demonstrate at the hearing "that the license revocation or suspension will result in a significant hardship to the obligor, to the obligor's legal dependents under 18 years of age living in the obligor's household, to the obligor's employees, or to persons, businesses, or entities to whom the obligor provides goods or services," the court may allow the obligor to pay 25% of arrears within three days and establish a payment plan to satisfy the balance. Ibid. Agreeing to these

requirements allows the obligor to avoid the license suspension. The Legislature also authorized extensions of payment plans to address ongoing hardships. If the obligor fails to comply with the payment plan and no extension is granted, the court may order the immediate suspension of all licenses without any further hearing upon presentation to the court of a certification of noncompliance by the custodial parent or the Probation Division. Ibid. This alternate process, however, also guarantees obligors notice of the proposed license suspension and an opportunity to offer evidence at a hearing of the hardships that would befall them if their licenses were suspended.

In 1998, however, the Legislature significantly altered the existing enforcement remedies by linking suspensions of driver's licenses with the issuance of warrants for the arrest of recalcitrant obligors. It accomplished this goal by adding to the existing N.J.S.A. 2A:17-56.41(a) one sentence providing that, "[t]he obligor's driver's license shall be suspended by operation of law upon the issuance of a child support-related warrant." Since then, this automatic suspension process has been the mechanism chosen by Probation to suspend often as many as twenty thousand or more driver's licenses annually without providing the consistent due process guarantees available under the pre-existing system. While the prior mechanisms remained in place after 1998, and are available today, the record in this case shows that they

are rarely used and that over 99% of driver's license suspensions are effectuated through the automated process, while only about 100 suspensions per year are imposed after a hearing. See Pl. Ex. G.

Although it appears that the procedures mandated by N.J.S.A. 2A:17-56.44 were applied prior to 1998, Probation has since taken the position that the due process guarantees contained in that section do not apply to driver's licenses suspended automatically under N.J.S.A. 2A:17-56.41(a) when a child support warrant is issued because warrants are different from court orders. Probation asserts that automatic suspensions thus are not subject to N.J.S.A. 2A:17-56.44, which directs the licensing authority to follow certain procedures "upon receipt of an order" requiring a license suspension. This rationale exempts the vast majority of the approximately 20,000 motor vehicle suspensions imposed as part of child support enforcement efforts annually by MVC from the notice and hearing provisions of N.J.S.A. 2A:17-56.44. It appears that this statutory section would thus likely be applied almost exclusively to the suspension of professional and other non-MVC State-issued licenses.

Finally, the Act provides that a delinquent obligor must pay all fees associated with a license suspension or a subsequent reinstatement and that these fees shall not be refunded if the license was suspended in accordance with the statutory procedures.

N.J.S.A. 2A:17-56.45. The Act also provides that the AOC must submit an annual report to the Governor and the Legislature regarding the number and type of licenses suspended or revoked and the total amount of child support collected by means of the Act's support enforcement procedures. N.J.S.A. 2A:17-56.50.

C. Administrative Processes for Enforcing Child Support

In response to these statutory provisions, the AOC has developed a complex administrative system for enforcing child support orders that includes suspensions of driver's licenses. In addition, both the Probation Division and the Division of Family Development monitor child support payments.

1. Issuance and Modification of Child Support Orders

The driver's license suspension process provides a civil coercive remedy designed to bring obligors into compliance with the terms of a child support order issued by a judge of the Family Division of the Superior Court. Judges establish those terms, and may modify them upon application of the parties, based upon the financial status of the obligor at the time the order is issued. Indeed, the amount must be one that is financially feasible for the obligor to pay. Rule 5:6A requires that the terms of any support order be based on criteria found in the Child Support Guidelines set forth in the Rules of Court adopted by the New Jersey Supreme Court. The Guidelines require the family court to engage in a thorough inquiry of the obligor's financial status in

order to determine the amount of child support the obligor can reasonably pay. See Rules Governing The Courts of the State of New Jersey, September 1, 2018, Appendix IX. Accordingly, Appendix IX-F provides a suggested schedule of payments that are entirely contingent upon the obligor's weekly imputed income. For example, the schedule suggests that obligors making less than $180 per week need only pay between $5 and $50 per week in child support for a single child. Ibid. The motivating philosophy behind the Guidelines recognizes that, "it is very important that the children of this State not be forced to live in poverty because of family disruption and that they be afforded the same opportunities available to children in intact families with similar financial means as their own parents." Id. at Appendix IX-A at 1.

In the event that changed circumstances make payment of the amount of child support too onerous, an obligor can request a modification hearing to reduce the amount that must be paid. The obligor has the right to file a motion for a modification hearing at any time. N.J.S.A. 2A:34-23. To receive a hearing on the application, the obligor must provide "a proof or showing of a substantial change in circumstances . . . prior to the initiation of a review or for the adjustment of the order." N.J.S.A. 2A:17-56.9a. However, when a change in circumstances is due to the loss of employment, a modification motion cannot be made until an obligor has been unemployed or has "not been able to return to or

attain employment at prior income levels" for a period of at least ninety days. N.J.S.A. 2A:34-23. Modification motions require a $50 fee if they arise in the context of a matrimonial divorce case, or a $25 fee if they arise in non-matrimonial matters. Repl. To Def. Statement of Mat. Facts ¶ 11. This fee may be waived, however, upon application for a judicial finding of indigence. Ibid.

As noted above, however, obligors have an additional opportunity for a review of their child support orders every three years, as N.J.S.A. 2A:17-56.9a mandates that obligors be sent notice of their right to triennial reviews without requiring a preliminary showing of changed circumstances as long as there is no automated cost-of-living adjustment program for child support payments. While Plaintiffs dispute the Probation Division's adherence to the notification requirements of this statute, Defendants have provided copies of triennial review notices to several of the named Plaintiffs who had not filed for a modification in a three-year period.

Although all child support orders now receive cost of living adjustments automatically every two years pursuant to Rule 5:6B, obligors retain the right to triennial reviews. Rule 5:6B specifically provides that a cost of living adjustment "shall not impair the right of either parent to apply to the State IV-D agency or its designee for a three-year review of a Title IV-D child support order, without the need to show changed circumstances."

Under Rule 5:5B, every child support order "entered, modified, or enforced on or after September 1, 1998," must be adjusted based on the average change in the Consumer Price Index in New Jersey metropolitan areas. The Rule further requires the court to provide the parties notice of the proposed adjustment and the opportunity to contest it within thirty days of the mailing of the notice. The obligor has two grounds to contest the adjustment: (1) "the obligor's income has not increased at a rate at least equal to the rate of inflation as measured by the Consumer Price Index," or (2) there is an alternative cost of living adjustment mechanism provided in the child support order. Ibid.

At a modification hearing, the court should consider "any changes in the financial situation or related circumstances of both parties and whether the order of child support is in full compliance with the child support guidelines." N.J.S.A. 2A:17-56.9a. Like the initial child support order, any modified order should reflect the considerations contained in the Guidelines and be financially feasible for the obligor to meet.

Whenever the terms of a child support order are established or modified, the obligor is provided general notice of the consequences for failing to meet his or her obligations through a "Uniform Summary Support Order" ("USSO" or Form CS526). The USSO form is a five-page form that provides a detailed summary of the child support, spousal support, and any arrears payments that are

due to the custodial parent. Pl. Ex. R at 13-17. The form also details how often payments are due and when payments begin. The USSO sets forth the incomes of the parties and other pertinent data upon which the support payments are based. The form must be signed by both parties -- the obligee and obligor. Ibid. Paragraph 13 of the notices attached to the USSO states, "The driver's license held or applied for by the obligor may be denied, suspended, or revoked if . . . a child support arrearage accumulates that is equal to or exceeds the amount set by statute." Id. at 16. Further, the notice provides that:

> The driver's license held or applied for by the obligor shall be denied, suspended, or revoked if the court issues a warrant for the obligor's arrest for failure to pay child support as ordered, or for failure to appear at a hearing to establish paternity or child support, or for failure to appear at a child support hearing to enforce a child support order and said warrant remains outstanding.
>
> [Ibid.]

Also attached to the order is a two-page form entitled "Instructions for Compliance with Support Order" (Form CS002). The form sets forth instructions for making payments and notes that the failure to make timely payments could lead to enforcement actions against the obligor. Id. at 18. The Uniform Support Notices also specifically require both obligors and obligees to notify the Probation Division of any changes in address within ten

days of the change. Id. at 16. The importance of this requirement is underscored by the warning that a failure to provide updated addresses would violate the Order and that, "the last address you give to Probation will be used to send you notices. If you fail to appear [for an ELR hearing], a default order may be entered against you or a warrant may be entered for your arrest (R. 5:7-4(e))." Ibid.

2. Enforcement of Child Support Orders through Enforcement of Litigant's Rights Hearings

Once a child support order is issued, the Probation Division enters and records its terms electronically on a statewide system called New Jersey Kids Deserve Support ("NJKiDS"). Risch Certif. ¶ 6-7. This database is regularly updated whenever the obligor makes a payment, allowing Probation to monitor the obligor's compliance. Def. Statement of Undisp. Mat. Facts ¶ 5. When obligors miss payments, the New Jersey Court Rules direct the Probation Division to send a Notice of Delinquency (CS040) to such obligors, giving them advance warning that they may be brought to court for an Enforcement of Litigant's Rights ("ELR") hearing regarding their failure to pay support. R. 5:7-5(a); Risch Certif. ¶ 13. In practice, NJKiDS automatically sends Notices of Delinquency forty-five days after obligors become delinquent for more than fourteen days. Def. Opp. Brief at 7. This Notice confirms the failure to pay and directs the obligor to comply with

the Child Support Order. Pl. Ex. R at 1. It further notes that continued delinquency may result in an enforcement hearing. Notably, it also communicates that continued delinquency may lead to the suspension of the obligor's driver's license. Ibid. In this way, the Notice of Delinquency reinforces the warning in the USSO that the nonpayment of child support ordered by the court may result in a suspension of an obligor's driver's license.

Further, upon the accumulation of a support arrearage equal to or in excess of the amount of support payable for fourteen days, the Probation Division or an obligee may file a verified statement regarding the violation of the support order and may then apply to the court for relief. R. 5:7-5(a). While Probation officers are required to be attentive to nonpayment of child support, they are not required to immediately commence official enforcement proceedings with the court. As noted above, Notices of Delinquency are not automatically sent until forty-five days after an obligor is delinquent for more than fourteen days. Furthermore, Probation officers are specifically directed to encourage compliance by obligors through a multitude of administrative actions that span a spectrum of coerciveness. The Child Support Hearing Officer Program Operations Manual ("CSHO Manual"), approved by the New Jersey Judicial Council on March 26, 2009, and prepared under the supervision of the Conference of Family Presiding Judges and the Chief Probation Officers along with the Family Practice Division

of the AOC, contains one of the most comprehensive summaries of the procedures to be followed by all Judiciary staff during the child support enforcement process, including Probation officers. The CSHO Manual essentially directs Probation officers to try the least coercive means to prompt compliance first, such as reaching out to obligors by telephone or written correspondence, arranging for income withholding with an obligor's employer, if known, or seeking tax refunds or lottery winnings through intercepts that direct such funds to satisfy child support obligations. See CSHO Manual § 1710.1.

Once administrative remedies have been exhausted, however, the primary means by which the Probation Division enforces child support orders against delinquent obligors is through an ELR hearing, also known as a R. 1:10-3 hearing. CSHO Manual § 1710.2. The Probation Division is authorized by R. 5:7-5(a) to bring actions to enforce child support orders on behalf of obligees when obligors become delinquent in making payments. This hearing is typically scheduled before a Child Support Hearing Officer ("CSHO"), who is authorized to preside over such hearings pursuant to R. 5:25-3. Obligees may also individually request an enforcement hearing directly through the Family Division. CSHO Manual § 1711.1. If an obligor becomes current on payments before a scheduled ELR hearing, it is cancelled. Def. Opp. Brief at 8.

When an ELR hearing is scheduled, the obligor is mailed a "Notice of Motion to Enforce Litigants Rights" (Form CS594), which states that, "you must appear at this hearing ... your failure to appear may result in the issuance of a warrant for your arrest and/or the entry of a default order." Pl. Ex. R at 3. This form does not explicitly state that failure to appear at the hearing will result in a license suspension. Ibid. It does, however, warn that, after a hearing, a court may order relief as allowed by R. 5:7-5, which includes driver's license suspensions. The Child Support Enforcement Unit and the Family Division staff are directed to send notice of an ELR hearing and the motion papers to obligors by *both regular and certified mail* in accordance with R. 5:5-4, R. 5:4-4(c), and R. 5:25-3(e). CSHO Manual § 1711.3. These rules provide that the notice must be served and filed at least twenty-four days before the hearing date, with service satisfying rigorous requirements of sufficiency of process and diligent inquiry. See R. 5:4-4(c); R. 5:25-3(e). If an obligor cannot be located at the current addresses on file, Probation must show that it made diligent efforts to locate the obligor by, for example, making inquiries to the U.S. Postal Service, the MVC, the Department of Corrections, and other agencies. Ibid. In addition, the rules provide that an obligor who is not properly served with notice of the ELR hearing and who subsequently suffers a default order may move to have the order vacated during any enforcement proceeding

and must show proof that the home address on the notice was not his or her correct address at the time the notice was mailed. R. 5:4-4(c)(3). This is the first time in the enforcement process that obligors are warned that their having already failed to pay child support may result in their being arrested for their non-payment.

Notably, an ELR hearing is not required for every delinquency. As noted earlier, the Probation Division staff "should exercise every effort to exhaust administrative enforcement remedies before" requesting an ELR hearing. CSHO Manual § 1710.1. If an obligor remains delinquent despite the efforts of his or her Probation officer to obtain compliance, the Probation Division may then request a hearing before a CSHO. At the ELR hearing, the Probation Division seeks an order that imposes certain coercive remedies to achieve compliance. After hearing a case, the CSHO may only recommend remedies to be included in an order, such as making a lump sum payment, establishing a payment plan to satisfy arrears, or issuing a bench warrant for the arrest of the obligor if two successive payments are missed going forward. R. 5:25-3(c). Before becoming effective, all CSHO recommendations must be reviewed and approved by a family division judge who signs a new USSO and issues an order following the hearing with whatever conditions the judge finds to be appropriate. R. 5:25-3(d).

Moreover, if a party objects to the recommendation of a CSHO, an immediate appeal may be taken to a family division judge. Ibid.

The Honorable Glenn A. Grant, J.A.D., Acting Administrative Director of the New Jersey Courts, has issued Directives outlining the procedures to be used in the child support enforcement process, and the legal authority supporting these procedures. These Directives have the force of law. Schochet v. Schochet, 435 N.J. Super. 542, 545 n.3 (App. Div. 2014). They are also binding on all staff of the New Jersey Courts, including Probation Officers, Child Support Hearing Officers, and Judges. Directive #02-14, issued on April 14, 2014, provides that any recommendation following an ELR hearing must take into consideration whether the obligor was noncompliant and whether he or she has the ability to pay. Id. at 4. Directive #15-08, issued on November 17, 2008, explains that obligors' attendance at ELR hearings is mandatory and that they must be afforded the opportunity to present any defenses to contest the ability to pay. Id. at 4. If the CSHO determines that the obligor is unable to pay, the CSHO must indicate on the USSO the finding of inability to pay and may dismiss or deny the enforcement motion, or suspend the order. CSHO Manual § 1713.5. Furthermore, the court may reject the enforcement recommendation of a CSHO and temporarily suspend some or all support provisions of the existing order, including judicial enforcement mechanisms such as bench warrants and license

suspensions, if the court finds that the obligor does not have the ability to pay. R. 5:7-10. A request for modification of a child support obligation to reduce or increase the amount of support is not reviewed at an ELR hearing, although the CSHO may always recommend that the obligor pursue a modification request in a future proceeding or may arrange for a separate hearing to address relevant changes in circumstances. Directive # 15-08 at 12; CSHO Manual § 1713. The process for hearing modification requests is described in the CSHO Manual at §§ 1600 to 1609. If both parties appear at an ELR hearing, however, the court may grant a modification of support upon the parties' consent or after considering arguments from both sides.

If noncompliance is substantiated and an obligor is found to have the ability to pay, there are a number of enforcement remedies that are available, as set forth in R. 5:3-7:

> (1) fixing the amount of arrearages and entering a judgment upon which interest accrues; (2) requiring payment of arrearages on a periodic basis; (3) suspension of an occupational license or driver's license consistent with law; (4) economic sanctions; (5) participation by the party in violation of the order in an approved community service program; (6) incarceration, with or without work release; (7) issuance of a warrant to be executed upon the further violation of the judgment or order; and (8) any other appropriate equitable remedy.

Economic sanctions include income withholding, a federal tax offset, liens on pending lawsuits, and Credit Bureau Reporting. Directive #15-08 at 11; CSHO Manual §§ 1715.1; 1731.3; and 1731.5. Also, unemployed obligors may be required to seek employment by, for example, providing the court with proof of a certain number of job applications per week. Directive #15-08 at 11; CSHO Manual § 1715.6. Notably, while CSHOs are critical to the enforcement process, only judges have the ability to issue bench warrants and to order an obligor's incarceration for failure to pay child support.

The great variety of enforcement remedies available allows for the crafting of remedies suited to the particular circumstances of each case. While incarceration is the most onerous of the remedies available for nonpayment of child support, the suspension of driver's licenses also imposes significant limitations on obligors. Pursuant to N.J.S.A. 2A:17-56.41(a) and R. 5:7-5, this remedy, when requested at a hearing by Probation and ordered by a court, may be imposed only when the obligor's arrears "equal or exceed the amount payable for six months." In addition, prior to suspension, the Probation Division must exhaust all other enforcement methods and find that there are no equitable reasons for the obligor's present noncompliance. R. 5:7-5(e)(1); CSHO Manual § 1731.2. Probation officers are instructed to "understand that all attempts to enforce support provisions through income

withholding, withholding of civil lawsuit awards, and the execution of assets, when available, must be exhausted before license suspension is attempted." Probation Child Support Enforcement Operation Manual § 1606, p.2 (approved by the Judicial Council March 23, 2005). Finally, suspensions cannot be imposed to punish obligors who are actively seeking relief from the child support order. The Probation Division is instructed not to seek a license suspension if the obligor has filed a modification motion "prior to the date that the notice of the license suspension or revocation was sent by the Probation Division." R. 5:7-5(e)(1).

The one statutory exception to these procedural protections is contained within the sentence added in 1998 to N.J.S.A. 2A:17-56.41(a), which provides that driver's licenses shall automatically be suspended "by operation of law" upon the issuance of a child support-related warrant. Notably, a warrant could issue well before six months' worth of arrearages has accumulated if an obligor fails to appear at an ELR hearing or violates a bench warrant status provision in a support order by failing to make support payments for a specified number of weeks.

As noted above, obligors have the opportunity to oppose the imposition of any remedy by showing that they are unable to meet the terms of a support order. But even if such arguments fail, obligors may still contest the imposition of driver's license suspensions based on claims of hardship. AS noted above, upon a

showing of hardship, a CSHO may recommend that an obligor pay 25% of his total arrearage within three days of the hearing and establish a one-year payment plan to cover the rest of the obligation. CSHO Manual § 1731.2; see N.J.S.A. 2A:17-56.43. The record in this matter, however, suggests that this alternative is not frequently used. None of the plaintiffs pursued this option or appear to have been offered this option.

Incarceration is the other remedy of last resort that is accompanied by unique procedural protections. Notably, incarceration can only be ordered by a judge and, pursuant to the New Jersey Supreme Court's ruling in Pasqua v. Council, 186 N.J. at 149, an indigent obligor has the right to appointed counsel at any ELR hearing at which incarceration may be ordered. If no attorneys are available to represent the indigent obligor, then incarceration may not be imposed by a Family Division judge. If an obligor is arrested pursuant to a warrant, the hearing must be held within 72 hours of the arrest. Pl. Ex. A at 9. The loss of freedom due to incarceration thus requires safeguards that are not provided to obligors facing the temporary loss of a driver's license when a child support-related warrant is issued.

At the conclusion of an ELR hearing, the court issues an Order for Relief to Litigant – Enforcement of Litigants Rights (CN 11213), which memorializes the terms of the CSHO's recommendations accepted by the court and, where applicable, establishes a new

payment schedule. Pl. Ex. A at 34-38. Such orders frequently authorize the issuance of warrants if two or more payments are missed. The court also issues a new USSO, which again notifies the obligor that his or her driver's license may be suspended upon the failure to make child support payments. Risch Certif. ¶ 10. This amended payment schedule is also subject to modification by a Family Division judge due to changes in circumstances upon application of the obligor in the same way that the initial child support order can be modified.

3. The Issuance of Bench Warrants

There are two types of bench warrants that may be issued in connection with the enforcement of child support obligations: failure to appear ("FTA") warrants and failure to pay ("FTP") warrants. The two warrants serve the same purpose: to bring an obligor to court to attend an expedited ELR hearing. Only a judge can approve issuance of a bench warrant, although a CSHO or Probation officer can recommend to a judge that one be issued. A warrant for an expedited ELR hearing is usually issued when there is a continued failure to make support payments following an initial ELR hearing (FTP), or a failure to appear at an initial ELR hearing (FTA). Directive #15-08 at 5. The Probation Division's recommendation as to whether a warrant should issue must take into consideration a number of factors, including past enforcement history, changes in the obligor's circumstances, the

amount owed in child support payments, and the obligor's ability to pay. Id. at 8-9

Importantly, an obligor's driver's license will be suspended automatically -- that is, before a new ELR hearing -- upon the issuance of either an FTA or FTP warrant. To justify this policy, the AOC has relied on N.J.S.A. 2A:17-56.41(a), which states that an obligor's driver's license "shall be suspended by operation of law upon the issuance of a bench warrant." Notably, Plaintiffs conceded at oral argument that there are no due process problems with the issuance of FTA warrants and subsequent suspensions of driver's licenses because certified mail notice of the ELR hearings is provided to obligors and they are afforded a pre-deprivation hearing. Consequently, Plaintiffs' challenge in this litigation focuses upon the procedures followed to issue FTP warrants. It is instructive, however, to separately examine the procedures leading to each type of warrant.

a. FTA Warrants

If an obligor fails to attend an ELR hearing before either a CSHO or a judge, the Probation Division will petition the court to issue an FTA warrant. The purpose of the FTA warrant is to bring the recalcitrant obligor to court for what is termed an "Expedited ELR Hearing," which addresses the obligor's ability to pay the child support contained in the judgment establishing the support obligation. Directive #15-08 at 9. This hearing is "expedited"

because execution of the FTA warrant typically involves the arrest of the obligor, who is detained in jail until brought before a judge within seventy-two hours of arrest. The issuance of an FTA warrant depends on whether the obligor received sufficient advance notice of the hearing and did not attend it. R. 5:25-3(c)(11). The Probation Division must demonstrate to the court's satisfaction that the obligor either actually received notice, or that the Probation Division made a diligent effort to locate the party. See CSHO Manual § 1711.3; R. 5:5-4; R. 5:4-4(c); R. 5:25-3(e). Notice of the date, time, and location of the ELR hearing is provided by a Notice of Motion to Enforce Litigant's Rights. See Pl. Ex. R at 3. The notice further explains that the obligor's attendance is mandatory, stating that "failure to appear may result in the issuance of a warrant for your arrest." Ibid. This form does not, however, explicitly state that failure to appear at the hearing will result in suspension of the driver's license of the obligor.

Upon a sufficient showing of notice and failure of the obligor to appear, the court is authorized to issue a bench warrant to compel the obligor's attendance at an Expedited ELR hearing. Pl. Ex. A at 5. In practice, many ELR hearings are relisted due to service issues. Upon confirmation of sufficient service and nonappearance by the obligor, however, a warrant is issued and the obligor's driver's license is suspended, as mandated by N.J.S.A.

2C:17-56.41(a). The suspension remains in effect until the obligor is apprehended or otherwise submits to the court's warrant and attends an expedited ELR hearing.

As the record in this matter demonstrates, the frequently transient living arrangements of many obligors claiming indigency can make contact with them difficult. In light of this fact, the Court Rules provide that obligors have the burden "to notify the appropriate Probation Division of any change of . . . address . . . within 10 days and that failure to provide such information shall be considered a violation of the order." R. 5:7-4(f)(8). There are several means for obligors to update their contact information. For example, obligors may report a change of address by sending a written notice directly to the Probation Division. Pl. Ex. R at 9. Obligors are also able to update their address information by calling the New Jersey Family Support Services Center or by submitting new information online through www.njchildsupport.org. Your Guide to the New Jersey Judiciary Child Support Enforcement Program 7-8 (Probation Services Division, Administrative Offices of the Courts, Revised May 2017). As noted earlier, the USSO forms provided to obligors contain a section explaining the obligors' responsibility and warning of the serious consequences of not updating their addresses. Pl. Ex. R at 16.

In short, the triggering incident for an FTA warrant is the obligor's failure to appear at an ELR hearing to address arrears

that have accumulated. An obligor whose license is suspended pursuant to an FTA warrant generally has had notice of a duty to appear that satisfies due process standards, sufficient time to respond to the notice, and the ability to be heard prior to the issuance of a warrant and the simultaneous suspension of the driver's license of the obligor. In fact, it is the very failure to show up to be heard that is the only reason an FTA warrant is ever issued. Notably, however, the Notice does not explicitly state that the driver's license of obligors will be automatically suspended if they are issued a warrant for failing to appear.

b. FTP Warrants

The FTP bench warrant serves the same fundamental purpose as FTA bench warrants: bringing the obligor to an expedited ELR hearing before a Family Division judge. But, unlike an FTA warrant, an FTP warrant is issued in response to an obligor's continued failure to comply with a child support order rather than a single failure to appear at an ELR hearing. An FTP Warrant is thus often issued after the obligor has already appeared at one or more hearings, but continues to miss payments afterwards. "The purpose of such a warrant is to bring the obligor before the court on an expedited basis in the event of future alleged non-compliance." Directive #15-08 at 4. Like an FTA warrant, an executed FTP warrant will usually lead to an Expedited ELR Hearing, which is heard before a judge within seventy-two hours of the

arrest of the obligor. Id. at 9. In some vicinages, including Mercer County, Probation may negotiate a lump sum payment with an arrested obligor that can be presented to a judge for approval so that an order can be issued releasing an obligor without a hearing and without overnight incarceration. Id. at 9-10. This "release amount" may also be specified on the FTP warrant itself. Ibid. An obligor who wishes to contest the issue of noncompliance may also secure immediate release by posting a lump sum payment to be held in abeyance pending the obligor's later appearance at an ELR hearing. Id. at 10.

An FTP warrant is often not issued until a CSHO first recommends and the court then issues an order placing an obligor on "bench warrant status" incorporated into an Order for Relief to Litigants. See Directive #15-08 at 5-6; CSHO Manual § 1715.5. When obligors are placed on bench warrant status, they are warned in the Order that missing a specific number of payments may result in the issuance of a bench warrant and a concurrent driver's license suspension. CSHO Manual § 1715.5. Once an obligor on bench warrant status misses the designated number of payments, the Probation Division is authorized to immediately seek issuance of an FTP warrant from the court without any further hearing or notice. Ibid. An FTP warrant may also issue if an obligor does not make a lump sum payment toward arrears by a certain date

pursuant to a judicial order. Directive #15-08 at 6-7; Def. Opp. Brief at 11.

The record in this case showed that the Probation Division sometimes used Form CS594, "Notice of Intent of Bench Warrant," to notify obligors that they must contact the Probation Division within ten business days of receipt of the notice to make the required payment, make "other arrangements," or file a motion with the court to provide reasons why Probation's petition for a warrant should not be submitted for authorization to a Family Division judge. Pl. Ex. R at 2. In other words, obligors may proactively request that a new ELR hearing be scheduled so that they may explain their failure to abide by the child support order and to seek relief from its enforcement. The notice clearly states that, "[f]ailure to comply with this notice will result in the issuance of a bench warrant. Also, according to N.J.S.A. 2A:17-56.41(a), your driver's license will be suspended by operation of law upon the issuance of a child support related warrant." Ibid. Notably, however, counsel for Defendants conceded at oral argument that this form is not a required element of the enforcement process and is not routinely used in every vicinage or in every case where issuance of a warrant is contemplated. The court takes notice, however, that subsequent to the record closing in this matter, the AOC authorized revisions of the Probation Child Support Operations Manual changing the child support warrant process to add more

procedural protections. The AOC directed Probation Officers and Judges to clearly note specific findings regarding obligors' indigence and ability to pay on CS702 Child Support Ability to Comply Orders, and required a Notice of Intent of Bench Warrant to be issued the first time a warrant is requested and again after a period of one year has elapsed since the last warrant was issued. See Section 1606 of the Probation Child Support Enforcement Operations Manual, License Suspension Procedures; and, Section 1605 – Warrant Procedures, amended June 28, 2017. As a matter of practice, if a good faith payment that is lower than what is owed is made, that payment may suffice to prevent the issuance of a warrant.

Although an obligor may be placed on bench warrant status after the first ELR hearing, the Probation Division usually will not exercise its authority to seek an FTP warrant upon obligors' first failure to meet their obligations under the Order for Relief to Litigants. Instead, the Probation Division is instructed to seek this relief only in extreme cases of noncompliance. Before petitioning for an FTP warrant, a Probation officer should consider the following:

- Prior compliance with the provisions of the court order over a significant period of time.
- Age of the order containing the self-executing warrant provision . . . and whether the obligor has been regularly paying since issuance of that order.

- Whether a motion with a return date has been filed with the court for modification of the support obligation, determination of arrears, direct payment credit, emancipation, or termination of support.
- Amount of the order and unpaid support.
- Enforcement history of the case.
- Any other relevant information about the case, e.g., a verified change of circumstances.

[Directive #15-08 at 8-9.]

As is evident from the terms of this Directive, the discretion afforded to Probation officers is intended to ensure that FTP Warrants are directed at only those delinquent obligors who persistently and intentionally evade the court's enforcement authority. However, the decision-making process contains subjective and discretionary elements by giving the Probation Division the ability to request warrants "when it believes that bringing an obligor before the court on an expedited basis will be necessary." Id. at 6. While this flexibility may benefit many obligors, it also creates a lack of uniformity, as revealed by the record in this matter. The exact confluence of factors that prompts a Probation officer to seek an FTP warrant is unique for each delinquent obligor, making it difficult to know precisely what actions will trigger a warrant in any given case until the warrant actually issues. This discretion is in sharp contrast to FTA warrants, which are issued based on one objective, easily-

ascertainable factor: whether an obligor with notice did or did not appear at an ELR hearing.

Curiously, Plaintiffs included another form in the record, "Notice of Proposed License Suspension for Child Support Purposes" (Form CS130), which provides even more detailed notice that a driver's license suspension may be likely. Pl. Ex. O. Counsel for Plaintiffs confirmed at oral argument that the form was provided to him by the State. The form contains several typographical errors that appear unusual when compared to other forms promulgated by the AOC, and it is unclear to what extent this form is currently used statewide, or if it is even used at all. The form states that the obligor's driver's license will be suspended in exactly thirty days unless the obligor pays his arrears or applies for a hearing before the court. Ibid. Appended to this notice is a form on which the application for a hearing can be made. Ibid. Since the form references occupational as well as driver's licenses and provides the option to pay 25% of the child support arrearage within three days if the obligor can show that a hardship will result from a suspension, it appears to have been designed to conform to N.J.S.A. 2A:17-56.43. However, the record in this matter suggests that this form is used infrequently at best. None of the plaintiffs reported having received this form.

At the post-warrant expedited ELR hearing, the warrant is generally executed, the license suspension is typically vacated subject to payment of the restoration fee, and the obligor is afforded the opportunity to assert any relevant defenses justifying non-compliance. Directive #15-08 at 4. The obligor will likely be asked to complete the "Probation Child Support Enforcement Obligor Questionnaire" (CN 10819) during an interview with a Probation officer prior to the hearing. Id. at 10. The interview and questionnaire address the obligor's financial status because ability to pay the obligation and willful non-payment are the key issues at the hearing. Risch Certif. ¶ 26. This exploration of an obligor's ability to pay is mandatory for all cases in which coercive incarceration is a possible remedy for non-payment of support, which is usually the case for expedited ELR hearings. See Def. Statement of Undisp. Mat. Facts ¶ 39, n.1 (citing Pasqua and R. 1:10-3). As in a regularly scheduled ELR hearing, upon a sufficient showing of an inability to pay due to a change in circumstances, the court may temporarily suspend some or all support provisions of the existing order, including judicial enforcement mechanisms such as bench warrants and license suspensions, or -- if the court determines that it is appropriate -- modify the child support obligation. R. 5:7-10; Directive #02-14, Pl. Ex. A at 32. If the Probation officer finds that the FTP warrant was wrongly issued, the Probation officer shall notify the

licensee and the licensing authority. R. 5:7-5(e)(6). Furthermore, the court may order restoration of the license without payment of the fee if the FTP warrant was wrongly issued, or if it finds that equitable considerations justify relieving an obligor of the burden of that payment. R. 4:50-1.

If an obligor is found to have the ability to pay at an expedited ELR hearing, the court will then determine the appropriate enforcement measures. Def. Statement of Undisp. Mat. Facts ¶ 39. The court may order wage garnishment, incarceration, or a driver's license suspension, among other measures. See R. 1:10-3 and R. 5:3-7(b). The results of this hearing are recorded in an Order in Aid of Litigant's Rights that sets new terms for the future payment of child support obligations and arrearages, and for the issuance of another FTP warrant. Risch Certif. ¶ 27. Like Orders following initial ELR hearings, these new Orders often include bench warrant provisions that state the number of future missed payments of child support that may result in the issuance of a subsequent warrant, which most typically is two missed payments. Notably, an obligor will usually remain on "bench warrant status" until the full arrearage is paid, as each new expedited ELR hearing typically results in a "new" Order containing a bench warrant provision. The record in this case suggests that many obligors asserting an inability to pay support orders remain in bench warrant status for long periods of time, often for many

years, causing them to be subject to multiple automatic suspensions of driver's licenses when future payments are missed. If forms CS594 or CS130 are not used, each of these future warrants and license suspensions will occur with no notice other than a general warning that failure to pay support obligations may result in these consequences.

4. Driver's License Suspension Process

Once a bench warrant is issued, the Probation Division notifies the Sheriff's Department in each county, which in turn logs the information into the National Crime Information Center data base. Risch Cert. ¶ 24. This process typically occurs within three days. Ibid. The AOC also electronically transmits the names of warrant recipients to the MVC, which then suspends the license, effective as of the date that Probation issued the warrant. Spisak Cert. ¶¶ 4-5.

MVC sends the licensee a Confirmation of Suspension letter when the driver's license has been suspended. Id. at ¶ 8. The letter confirming a driver's license suspension notes the date upon which the license was suspended and specifies that the New Jersey driving privilege was "suspended on the above date when the following superior court issued a child support-related warrant against you." Pl. Ex. J at 98. It also explains that the suspension is for an indefinite period. Ibid. The letter warns that if the recipient of the notice drives during a period of

license suspension, "you could face up to five years in jail." Ibid. The court notes that N.J.S.A. 39:3-40(a) provides that driving with a suspended license subjects violators to a $500 fine and possible revocation of a motor vehicle registration as penalties for a first offense. Increased penalties for subsequent offenses include imprisonment for a term of 190 days. N.J.S.A. 39:3-40(e), -40(f)(3), and -40(j). If a person is injured in an accident caused by a driver with a suspended license, N.J.S.A. 2C:40-22 makes that offense a crime of the third degree, with a penalty of up to five years imprisonment. See N.J.S.A. 2C:43-6. The MVC suspension letter further notes that there is a license restoration fee of $100. Pl. Ex. J at 98.

Under this process, an obligor does not receive actual notice of a driver's license suspension from the MVC until *after* the suspension has taken effect. Obligors may, however, check their bench warrant status daily at njchildsupport.org, which maintains updated information regarding whether a warrant has issued against an obligor and thus whether an obligor's driver's license has been suspended. Risch Certif. ¶ 25. The court notes that using this website to check warrant status is a fairly time-consuming process that requires users to enter a user name and password, and to navigate through several different links and screens.

D. Statistical Background

Plaintiffs have submitted statistics regarding driver's license suspensions and their impact on economically challenged obligors. Notably, however, there is confusion in the record over the number of suspensions that occur per year. According to statistics obtained by Plaintiffs from the New Jersey Division of Family Development ("DFD") for the period from 2010 through 2014, approximately 20,000 driver's licenses are suspended each year for violations of child support orders. Pl. Ex. G at 1. Specifically, in 2014, 20,498 licenses were suspended for failure to comply with child support obligations. Of those suspensions, the vast majority -- 20,381 (99.43%)-- were effectuated automatically upon issuance of a bench warrant, while only 108 were suspended after a hearing, and nine were suspended as a result of both a bench warrant and a hearing. Ibid. However, an email from DFD to Plaintiffs' counsel in response to an OPRA request, dated March 19, 2015, puts the number of driver's licenses suspended due to a bench warrant in 2014 at 14,223. Pl. Ex. E at 3. This discrepancy in the total number of driver's licenses suspended to enforce child support payments in 2014 from the same agency and sent from the same email address is troubling, and highlights the difficulty in understanding the precise scope and effect of this enforcement method. Furthermore, no information has been provided to the court

regarding how many automatic suspensions were due to FTA warrants and how many were due to FTP warrants.

The total number of child support-related license suspensions increased to 23,179 in 2017 according to the Suspension of Licenses Due to Child Support Arrears Annual Report to the Governor and Legislature 2017 prepared by the AOC and dated January 30, 2018 ("2017 AOC Report"). The court takes judicial notice of this report. Somewhat confoundingly, however, Plaintiffs claim that statistics provided to their counsel by MVC along with an explanatory email by Joseph Bruno, Custodian of Records for the MVC, suggest that the number of suspensions is much higher. See Pl. Ex. F. For example, MVC reported that 45,634 driver's license suspensions for child support payment delinquencies were posted in 2014, compared to the 20,498 suspensions recorded by the DFD. Ibid. The MVC numbers suggest that the vast majority of individuals who receive suspensions eventually qualify to have their licenses reinstated. For example, 37,455 out of 45,634 license suspensions in 2014 were reinstated. Ibid. Furthermore, MVC statistics show that only 202 out of 45,631 license suspensions in 2014 (0.44%) were the result of clerical errors. Ibid. Faced with these discrepancies, the court will use the approximate 20,000 number of license suspensions for failure to pay child support also utilized by Plaintiffs as a reasonable annual estimate,

relying generally on the 2017 AOC Report to the Legislature as being the most recent and reliable figure.

There is a similar discrepancy in the amount of money that has been collected to satisfy child support arrears as a result of automatic driver's license suspensions pursuant to bench warrants. In an inter-office memorandum dated May 4, 2015, DFD estimated that $4,333,543.39 was collected as a result of all child support license suspensions in 2014. Pl. Ex. I. The memorandum also included the amount collected each year from 2010-2013, which averaged over $5.5 million per year. Ibid. But Plaintiffs also provided official reports published by the AOC to the Legislature from 2006-2008 and 2014. While the AOC reported the same amount of money collected in 2014 as did DFD, the amounts collected from 2006-2008 were over seven times greater than the amount recorded in the annual DFD memoranda, averaging over $37 million per year. Pl. Ex. H. Curiously, however, the number of license suspensions related to child support were reported to be roughly the same in 2006-2008 as in 2014; only the amount of money collected drastically changed. Most recently, the 2017 AOC Report reveals that $2,032,769.25 was collected as a result of the bench warrant/license suspension process in that year. No explanation has been provided for these discrepancies in the summary judgment record submitted to the court. Nor were any State officials deposed as part of discovery proceedings in this case, the State

preferring to proceed by asserting that the issues raised by Plaintiffs were matters of law and that the statistics provided by Plaintiffs were therefore irrelevant to the court's review and consideration.

Plaintiffs also provided statistics about New Jersey's overall child support collection rate, which shows the percentage of child support obligations actually collected in a given year. The United States Office of Child Support Enforcement's ("CSE") 2014 Preliminary Report shows that New Jersey had the 16th highest collection rate, at 65.41%. Pl. Ex. Y. The cost effectiveness ratio for New Jersey, which measures the ratio of collections to total administrative expenditures, was $4.25, which ranked 39th out of the 50 states. Ibid. In other words, New Jersey in 2014 collected $4.25 in child support for every dollar spent administering the collection and enforcement program. Although Plaintiffs cited the 2014 report, this court takes notice of the CSE's 2017 Preliminary Report, which appears to contain the most recent available data. This report shows that New Jersey's collection rate in 2017 was 67.55%, which ranked 13th in the nation. New Jersey again ranked 39th in cost effectiveness ratio among the 50 states.

Plaintiffs have also asserted that FTP warrants have a uniquely burdensome impact on the indigent. At oral argument, counsel for Plaintiffs repeatedly asserted that 73% of obligors

who are subject to automatic suspensions are in "dire poverty." This assertion appears to be based on a report published in 2004 by the Federal Office of Child Support Enforcement, which stated that non-custodial parents who either have no reported quarterly earnings, or who report annual earnings of less than $10,000, owed 73% of the child support arrears due to the government in New Jersey. U.S. Department of Health & Human Services, Admin. For Children and Families, Office of Child Support Enforcement, "Understanding Child Support Debt: A Guide to Exploring Child Support Debt in Your State" 6 (2004), available at http://www.acf.hhs.gov/sites/default/files/ocse/dcl 04 28a.pdf.

Plaintiffs have also provided excerpts from a study, prepared jointly by Rutgers University and New Jersey MVC, which compared the economic impacts of driver's license suspensions across income groups. See Edward J. Bloustein School of Planning and Public Policy & N.J. Motor Vehicle Comm'n, Motor Vehicles Affordability and Fairness Task Force Final Report (February 2006) ("2006 MVC Final Report"), attached in part as Pl. Ex. C. This report noted that, "child support suspension rates for drivers residing in lower income areas [were] ten times higher than the Statewide average." Id. at 29. This report also found that when compared to high-income individuals (yearly income over $100,000), low-income individuals (yearly income under $30,000) were nearly four times more likely to lose a job following a license suspension. Id. at

38 (not attached as an exhibit). The report relied on data from 2004. Moreover, many of the statistics in the report addressed *all* driver's license suspensions, not simply those issued pursuant to the enforcement of child support orders. Despite the age of these statistics, however, they have been used recently to highlight the disparate effects driver's license suspensions have on the poor, often pushing them deeper into poverty. See Report of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees (2018) at 22; "Letter to Colleagues", from the U.S. Department of Justice, Civil Rights Division, March 14, 2016 at 6, attached as Ex. 2 to Pl. Repl. Brief.

Furthermore, statistics provided by Plaintiffs show racial disparities in the rate of child support-related driver's license suspensions. Pursuant to an OPRA request, DFD sent Plaintiff's counsel a chart showing that between 2010 and 2014, 69% of driver's licenses suspended due to child support delinquencies belonged to non-white licensees, despite the fact that 73.4% of New Jersey residents are white. See Pl. Ex. N at 7-8. These numbers included both automatic suspensions due to the issuance of warrants and suspensions ordered by a court. Ibid.

As noted above, Defendants declined to provide much of a response to the statistical data submitted by Plaintiffs, other than to complain about the age of the data and to dispute the relevance of it to the constitutional and statutory arguments

raised by the parties. Defendants have not submitted any reports or statistics regarding the prevalence, effects, or trends resulting from the linked imposition of bench warrants and driver's license suspensions to enforce child support orders. Nor have they even attempted to explain the significant discrepancies in the data provided by the various governmental agencies that are Defendants here. Defendants instead take the "consistent position" that arguments based on such data "are irrelevant to the central issue of this case." Def. Resp. to Pl. Repl. Brief, July 17, 2015 at 2.

E. Child Support Enforcement History for Named Plaintiffs

Plaintiffs Andreana Kavadas, Alisha Grabowski (formerly Alisha Wagner), LaQuay Dansby, and Paulo Arede are all non-custodial parents who had at least one active child support obligation case when the initial complaint in this matter was filed. All of them have apparently received multiple USSO orders containing Uniform Support Notices that informed them that failure to appear for child support hearings and/or failure to pay child support obligations could result in incarceration or suspension of their driver's licenses. The Uniform Notices also made clear that it was the responsibility of the parties to an order to notify Probation of address changes within ten days of the change, and warned parties that failing to appear for a hearing could result in the entry of a default order and a warrant for the party's

arrest. In the years prior to the filing of this action, the Probation Division filed and served multiple Notices of Motions to Enforce Litigants' Rights and issued bench warrants against these Plaintiffs, either for failure to appear at child support hearings or for failure to make child support payments.

Plaintiffs have provided extensive details about each of the named Plaintiffs as part of the record submitted to the court. This information has come from certifications filed by each Plaintiff, from their answers to interrogatories, from depositions of Plaintiffs taken by the State, and through the child support enforcement histories of each Plaintiff, as reflected in court orders, notices, and other written correspondences regarding each Plaintiff's child support obligations. The orders and notices have been amassed by Plaintiffs' counsel, but the submissions do not reflect the entirety of each case history, but just the documents Plaintiffs' counsel decided to include in the record. Nevertheless, the documents give at least a partial portrait of Plaintiffs' individual experiences with the child support enforcement system, and -- for all Plaintiffs except Alisha Grabowski -- address the application of the driver's license suspension process to their particular circumstances.

1. Andreana Kavadas

Ms. Kavadas is the mother of two non-custodial children, one teenaged son named Phoenix and a younger daughter named Lilly.

Most of the child support orders and activity in the record involve the child support obligation for Phoenix, who was born in 1998. Ms. Kavadas was not married to the father of Phoenix, so all of the orders entered in her case arose under the "non-dissolution" or "FD" docket. She also has two children who reside with her, both of whom were under four years old when this litigation was filed. For more than ten years, starting in 2005 and continuing through the filing of this litigation in May 2015, she had an obligation to pay child support and/or arrears primarily for Phoenix, who apparently lived over time with various relatives of Phoenix's father. She has a lengthy history of non-payment of support obligations for Phoenix. Various orders in three different counties (Somerset, Cape May and Cumberland) and involving different relatives who had custody of Phoenix required her to pay child support in amounts varying between $36 and $64 per week, with additional weekly amounts for arrears added over time. She has been arrested several times, spending up to three weeks in jail following one arrest, and frequently being placed on two-week bench warrant status, which means that another warrant would issue if she missed two consecutive payments of her child support obligation. Thirteen warrants have been issued for her arrest, with the majority for failure to pay child support, although a few were issued for failure to appear at ELR hearings.

Ms. Kavadas claims that she has been indigent for many years, resulting in periods of homelessness when she either resided in shelters that did not allow her to receive mail or with friends and relatives. She blamed her failures to appear for some child support proceedings on her not receiving notices during her periods of homelessness, or on her lack of transportation to access the hearing sites. At times, however, she has been permitted to participate in child support proceedings by telephone. In addition to her transient lifestyle and extensive periods of unemployment, Ms. Kavadas qualified for food stamps in 2014 and Social Security benefits in 2015. At the time she was deposed, Ms. Kavadas was having child support notices directed to a mailing address in Texas, although she was residing in New Jersey. See Pl. Ex. T at 14:19-27:25; 55:10-17.

Although her driver's license has been suspended on multiple occasions, Ms. Kavadas claims that she finds the threat of arrest to be the strongest motivating factor toward compliance with child support orders. In fact, she asserts that the threat of suspending her driver's license provides no additional coercive effect to the threat of imprisonment. The very few payments she has made over time towards her obligation for Phoenix appeared to have been made following arrests and/or ELR hearings, when she claims that family members or friends provided small sums of money to her to apply to her obligation in order for her to be released from jail or to

have her bench warrant status and driver's license suspension lifted. Nonetheless, she contends that the repeated suspensions of her driver's license have had a harsh impact on her, preventing her from visiting Phoenix and making it difficult for her to maintain a relationship with him. She also has certified to the court that she was prevented from pursuing one job opportunity because it required applicants to have a valid driver's license, and hers was suspended for nonpayment of child support at the time she was interested in that position. Finally, Ms. Kavadas claims that she has such limited resources that the $100 reinstatement fee to restore her driving privileges has been a huge financial burden to her and that the money would be better directed toward satisfying her child support obligation than being paid to the MVC.

Ms. Kavadas estimated in the record that she owed about $12,000 in arrears for child support. Pl. Ex. J, at 112-23. At the time she submitted her certification and attachments from her child support history, her obligation for Phoenix was $40 per week. Ibid. Notably, however, Ms. Kavadas's memory of the enforcement of her child support orders is imperfect at best. She did not recall the dates of her various ELR hearings and arrests pursuant to bench warrants. See, e.g., Pl. Ex. T, at 57:3-7. Nor could she recall the number of Notices of Delinquency and Notices of Intent to Issue Bench Warrant she has received or whether she received them in a

timely manner. See, e.g., Pl. Ex. T at 53:9-55:6. She did testify, however, that she has received "at least" forty such documents over the years, Id. at 110:9-22, and seemed generally aware of the reason for her arrests and suspensions at the times they occurred. Id. at 53:9-13; 111:7-8 (noting that, "[i]f I don't make a payment, eventually I will get" a Notice of Delinquency or Intent of Bench Warrant). She further testified that there was frequently a time lag between her receiving notice that a warrant would likely issue and the time when one was actually executed and her driver's license suspended, and that the time periods between the Notice and issuance of a warrant varied. Id. at 130:9-131:7. She supplied the notices from MVC confirming the suspensions of her driver's license on the dates that warrants were issued. The time lag between the date of suspension and the date of the preparation of the notice ranged from one to five days. There was no evidence in the record confirming the date when the MVC suspension notices were received by Ms. Kavadas. See Pl. Ex. J. All of the notices informed her that driving while her license was suspended could result in a penalty of up to five years in jail. It appeared that many of the orders following ELR hearings discharged the bench warrants that had been issued against her and provided that her driver's license could be reinstated upon payment of the MVC restoration fee.

She also testified that she has, on occasion, called the Probation Division in response to receiving a Notice. Pl. Ex. T. at 125:2-23. When she has called, the officer generally tried to get her to agree to an amount of money that she could pay to avoid the issuance of a warrant. Id. at 125:20-23. These amounts were generally less than what was required in the order. Ibid.

Ms. Kavadas has been subject to numerous ELR hearings as a result of non-payment of her obligation for Phoenix. She testified that she has attempted to demonstrate an inability to pay her obligation during these hearings, but has always been required to make some lump sum payment despite her financial circumstances. See, e.g., Pl. Ex. T at 89:21-25. There appears to have been at least one appearance when she was represented by a public defender, although it is unclear whether she has been officially determined to be indigent for child support purposes. Id. at 119:7-18. When not subjected to ELR enforcement measures, Ms. Kavadas has generally not made any payments toward her obligation. Id. at 99:11-103:4 (noting that records indicate $50 paid from January 2015 to July 2015). She has at least once tried to modify her child support order, but that effort was unsuccessful as the ruling was that her support payment of $40 per week was minimal and that she had not shown sufficient efforts to obtain a job. Id. at 113:15-20; Pl. Ex. J at 74.

Based on the various orders, suspension notices, and bench warrants Ms. Kavadas has received, it appears that she has been on bench warrant status for most of the time since 2008. She has been issued at least thirteen FTP and FTA bench warrants during that time. The warrants and suspensions frequently result in a hearing at which some amount of money is ordered to be paid to have the warrant discharged and the suspension of her driver's license reinstated upon payment of the restoration fee. It appears from the record that child support enforcement efforts against Ms. Kavadas have been irregular in timing, although the Probation Division has made persistent efforts to compel her to make payments toward her obligation for Phoenix. Ultimately, at her request, all enforcement efforts were consolidated in Cumberland County, her county of residence at the time this litigation was filed.

2. Alisha Grabowski

Ms. Grabowski agreed to transfer custody of her two children, Sabrina and Garret, to her former husband, Sage Wagner, after she suffered an injury. The orders in her case thus were entered under the divorce or "FM" docket. When her husband applied for child support, Ms. Grabowksi was earning a good salary as a legal secretary. Consequently, a support order of $242 per week was established. Shortly thereafter, she became pregnant with her third child, and lost her employment during her pregnancy. From the limited record provided by her in this matter, it appears that

she had inconsistent employment starting with the birth of her third child. Likely as a result of this circumstance, Ms. Grabowski started accumulating arrears. Following an ELR hearing, she was ordered to make a lump sum payment of $5,000 in order to prevent her arrest for nonpayment of child support. She was able to borrow $5,000 from her grandmother to make that payment. Ms. Grabowski was also concerned about losing her driver's license since she needed to drive to see care providers during her pregnancy and to transport her ailing grandmother, who she was apparently caring for at the time. Her former husband then agreed to reduce her support obligation to $100 per week plus $50 towards arrears. Since the entry of that order, Ms. Grabowski has had a fourth child. She has had additional periods of unemployment and has been on two-week bench warrant status for long periods of time starting in 2008. She is the sole source of support for her third child, whose father does not pay any child support.

The record reflected arrears of $13,532.72 for Ms. Grabowski. Pl. Ex. K at 45-56. At the time the record was filed with the court, her child support obligation was $112 per week for support, and $50 per week toward arrears. Ibid. At her deposition, Ms. Grabowski testified to her challenging financial circumstances. Pl. Ex. U at 11:15-21:5. She discussed her receipt of Notices of Delinquency and Intent of Bench Warrants and an awareness that bench warrants could issue as a result of her failure to pay her

child support obligation. Id. at 54:11-56:17. Ms. Grabowski testified that she had never received a notice of three-year automatic review of her child support obligation, although she seemed aware that such a notice had been sent to her. Id. at 57:7-20. Ms. Grabowski also testified that she understood that her bench warrant status would end if she satisfied her arrearages. Id. at 61:24-62:2.

Ms. Grabowski also testified that she was aware of her ability to seek a modification of her child support obligation and had made such motions. Id. at 77:11-25; 78:18-79:5. At times the record reflects that she was represented by private counsel in regard to child support proceedings, although she more frequently represented herself while her husband had counsel. She also noted that she is aware that she is required to update changes in her mailing address with the Probation Division, although she has not consistently met that requirement. Id. at 74:16-75:2. She also testified that, in her ELR hearings, her ability to pay has been discussed, but that her obligation has never been reduced in the context of those hearings. Id. at 81:18-82:7.

Notably, Ms. Grabowski testified that she lived in Pennsylvania and has had only a Pennsylvania driver's license since 2001 when she was divorced. Id. at 62 to 63. Although Plaintiffs provided various forms issued in conjunction with her child support enforcement history, it appears that no bench warrants have been

issued against Ms. Grabowski and that no orders to suspend her driver's license have ever been entered. Indeed, the child support automatic driver's license suspension procedures utilized in New Jersey apply only to obligors maintaining New Jersey driver's licenses. N.J.S.A. 2A:17-56.41(a); Pl. Ex. K. In addition, she has twice successfully achieved a lowering of her child support obligations due to changes in employment status. Ibid. Due to the record in this case demonstrating her Pennsylvania residency and her not having a New Jersey driver's license, Defendants have moved to dismiss her as a Plaintiff for lack of standing.

3. LaQuay Dansby

Mr. Dansby was an officer in the United States Marine Corps. While in the military, however, he committed an act of domestic violence against his wife, leading to his conviction for assault and discharge from the Marines. Although Mr. Dansby has a bachelor's degree in international economics from Stockton University, he claims that his federal conviction and discharge from the Marines have made it difficult for him to find employment commensurate with his education and experience. As a result, he has largely been self-employed since his discharge, having founded several consulting companies, either on his own or with others.

His first child support obligation was imposed in February 2008 as part of a Final Domestic Violence Restraining Order obtained by his then wife. That order temporarily required him to

pay $100 a week for a son born in 1997. A subsequent hearing in June 2008 showed that he was already in arrears, and resulted in an order requiring him to continue to pay $100 a week, with an additional $30 to be paid toward his arrears. At his deposition, Mr. Dansby recalled that the judge who entered the order told him that his failure to pay child support would lead to incarceration and loss of his driver's license. Pl. Ex. V at T35. As his arrears grew over the years, he was arrested several times and spent weeks in jail. On occasion, a friend would provide money to him so that he could make a payment toward his child support obligation and be released from jail. Until 2011, his child support obligation was entered under the domestic violence or "DV" docket. In 2011 his wife filed for divorce, and from some date thereafter, enforcement of child support orders was sought through the FM docket. As a result of the divorce, the parties entered into a Property Settlement Agreement in which he promised to make additional payments for his son, including for orthodontic care. When he did not make those payments, the amounts he owed were added to his child support arrears by order of the court. Pl. Ex. L.

While he lived in several places over the years since his obligation was established, Mr. Dansby provided Probation with his mother's address in Egg Harbor as his residence. Although he claims that she would notify him if correspondence came from Mercer County Probation regarding his child support obligation, he also

asserts that he did not receive many of the notices Probation addressed to him in Egg Harbor that his attorney obtained from Defendants and included in the appendices provided to the court. At the time the record was filed in this case, Mr. Dansby had a child support obligation requiring him to pay $105 per week plus $30 towards arrears, and estimated his arrears at over $20,000. His driver's abstract shows that he has had his driver's license suspended many times, and that he has had five convictions for driving with a suspended license. The majority of the suspensions appear to be related to his nonpayment of child support, although others were related to nonpayment of insurance surcharges and other violations. Pl. Ex. L. He also asserted that on one or two occasions he only found out about his license suspension when he was stopped and cited for driving while his license was suspended. Pl. Ex. V at 58. Those tickets made it even more expensive for him to have his driving privileges restored. He noted that the repetitive suspensions of his driver's license had sometimes made him decide not to restore it, because such an expenditure would be a waste of money since his license was likely to be suspended again given his continuing failure to pay child support for his son. Id. at 55-56. He also claimed that avoiding arrest was the greatest motivating factor in trying to comply with his obligation, and that the suspensions of his driver's license provided no additional coercive effect. Finally, he said that his poor

financial condition had made it difficult to pay the MVC fines and restoration fees and that he would have preferred to direct those funds to the support of his son. Pl. Ex. L.

Mr. Dansby represented that it was only in 2014 that he started receiving Notices of Intent of Bench Warrants. Pl. Ex. At 42. He noted in his deposition that he understood from this Notice that issuance of a bench warrant was imminent and that he needed to contact Probation or the court if he wanted to try to prevent the warrant from being issued. While the Notice informed him that he had ten days in which to take action to avert issuance of a warrant for his arrest, he noted that on one occasion fewer than five days had elapsed before the warrant was entered. According to the record, that occurred in September of 2013 when the Notice of Intent of Bench Warrant was issued on September 20 and the warrant was entered on September 25, 2013. In addition, his child support enforcement history showed extreme variations in the dates when Notices of Intent of Bench Warrant were sent out and warrants actually issued, ranging from five days to well over 100 days. Pl. Ex. L. Despite the reference to ten days in the Notice, he asserted that the language used was generalized in nature and only suggested that a warrant *could* issue after ten days, but did not give a specific date on which the warrant would take effect. He would typically learn about the issuance of a warrant and the suspension of his driver's license only after the fact when MVC

would send out the suspension notice, effective on the day the warrant was entered into the system without his knowledge. In some instances, Mr. Dansby stated that he only learned of the suspension of his driver's license as a result of being stopped by the police and getting a summons for driving with a suspended license. Pl. Ex. V at 58-59.

Mr. Dansby's continuing failures to meet his obligation led to several arrests and periods of incarceration. In late 2012, following his divorce, Mr. Dansby made a pro se motion to reduce his child support and for other relief related to his son. The application to modify the amount of his child support was denied without prejudice because he had failed to provide *any* financial documentation, noting only that he was on public assistance and receiving disaster relief, presumably due to Superstorm Sandy. The court observed that he had not provided the documents required by court rule to support such an application, including recent tax returns and an updated case information statement that would reflect his current financial condition. Pl. Ex. L. The court likewise denied his ex-wife's motion to increase his obligation. The court thus continued the existing support order, but added amounts owed by Mr. Dansby under his Property Settlement Agreement to arrears, as requested by his ex-wife, including a counsel fee previously ordered but not paid, and payments toward orthodontic

bills for his son's care that he had promised to make, but never did.

On August 23, 2013, Mr. Dansby was incarcerated and, following a hearing, was required to pay $5,000 toward his obligation in order to be released. The order noted that Mr. Dansby had the ability to pay the amount specified to obtain his freedom and had willfully been withholding child support. Ibid. Not having paid that amount, a subsequent order dated September 6, 2013, released him from jail, discharged the bench warrant, and reinstated his driver's license pending payment of the MVC restoration fee. While that order rescinded the pending bench warrant for his arrest, it ordered him to make a payment of $250 within thirty days or another bench warrant would be issued without further notice.

More motion practice occurred between Mr. Dansby and his ex-wife. In an order dated December 6, 2013, the Honorable Catherine Fitzpatrick, P.J.F.P., reserved decision on the ex-wife's motion to compel payment of child support and other expenses pending an ability to pay hearing. In addition, Judge Fitzpatrick appointed David Perry Davis, Esq., as pro bono counsel for Mr. Dansby for the ability to pay hearing. Following a hearing, in an order issued on March 19, 2014, Judge Fitzpatrick required Mr. Dansby to provide proof that he was a recipient of general assistance from the Hudson County Board of Social Services, added amounts owed to his ex-wife under their Property Settlement Agreement to Mr.

Dansby's arrears, found that Mr. Dansby did not have the ability to pay those amounts at that time, but continued them as part of his arrears, and directed him to enroll in a program providing job search assistance. Pl. Ex. L. In a subsequent order of August 26, 2014, Judge Fitzpatrick ordered Mr. Dansby to provide proof of twenty job applications per week and his 2013 tax return to the court. Apparently, an issue at that time was whether Mr. Dansby was self-employed in a business that essentially rendered him underemployed in terms of the remuneration he was receiving from the business. An enforcement order issued in August 2015 noted that Mr. Dansby continued to be underemployed and needed to show proof that he was looking for more lucrative employment. Mr. Dansby apparently had been making child support payments during that period, but still had arrears in excess of $20,000. Mr. Dansby maintained that all of his court hearings focused on the amount of child support he owed and did not separately address the suspension of his driver's license, although form orders entered in his case would provide for relief related to his license.

4. Paulo Arede

Paulo Arede was born in Portugal and is now a citizen of the United States. He has one son from a prior marriage, for whom he apparently had a child support obligation enforced through Bergen County Probation after he separated from his first wife. That child is now emancipated, and the record produced by Plaintiff

Arede's counsel, which appears to be incomplete, focuses almost exclusively on Mr. Arede's support obligations for his son Michael, born in June 2003 to Mr. Arede and his second wife, Aurora Arede. Although the supporting documents are not part of the record provided to the court, Mr. Arede stated at his deposition that Aurora filed for divorce in May 2006. He represented that a *pendente lite* support payment was established for child and spousal support at that time, but that he was delinquent in making the payments established in that order from its inception. It appears that the amounts of support were based on Mr. Arede's self-employment as a truck driver who had owned and operated his own small trucking business. He testified at his deposition that his divorce lawyer had told him in 2006 that he could lose his driver's license if he failed to pay child support. The record also revealed that Mr. Arede shut down the trucking business after he started getting arrested for failure to pay child support. From 2006 until the record was filed by Plaintiff in this case, Mr. Arede had sporadic employment and never re-started his trucking business.

Notably, both Mr. Arede and his second wife had counsel during the matrimonial proceedings, which lasted until April 15, 2009, when the divorce became final. Thereafter, Mr. Arede represented himself in regard to most of the significant child support enforcement proceedings that ensued. All of the child support

orders regarding Michael contained in the record were entered under the divorce docket number FM-09-002326-06, venued in Hudson County.

The divorce was acrimonious. In Arede v. Arede, 2011 N.J. Super. Unpub. LEXIS 2495 (App. Div. 2011), Mr. Arede represented himself in an appeal from a family court order enforcing litigant's rights based on his failure to pay alimony and child support. The appellate court referred to the matrimonial case as having "a long and tortured procedural history," that included a twelve-day divorce trial. At the end of the trial, based on the financial evidence presented, the judge modified alimony retroactively to $385 weekly, provided that it be limited to a duration of three years, and directed that Mr. Arede be given a credit against his arrears based on the modification. The judge then modified child support, prospectively only, to $229 weekly. While the Probation Division listed Mr. Arede's arrears in January 2010 as over $111,000, he successfully obtained a minor adjustment from the court and an order for Probation to audit his account and provide an appropriate credit based on that modification. Mr. Arede did not appeal from either the Judgment of Divorce or the Amended Judgment of Divorce, but from a subsequent order enforcing litigant's rights based on the judge's previous support calculations. In its 2011 decision, the Appellate Division noted that, "Defendant's failure to pay alimony and child support

throughout the course of this litigation resulted in the entry of several enforcement orders, orders of contempt, bench warrants for his arrest, and his incarceration." The Appellate Division rejected his appeal, largely due to procedural deficiencies, including Mr. Arede's failure to submit trial transcripts. Consequently, his child support obligation continued at the level established in the Amended Judgment of Divorce.

Due to his failure to pay his support obligations from their inception, by November 2009 his arrears had ballooned to over $100,000. He apparently was arrested for non-payment, leading to several orders enforcing litigant's rights, including an order of November 3, 2009, following an ability to pay hearing that took place after he was arrested. The judge found that he was not indigent and had the ability to work. He was remanded back to jail following the hearing. Pl. Ex. M. He apparently was released from jail in December 2009 on a monitoring bracelet until the balance of a lump sum established in previous orders was paid. He was also advised that he could file a motion to modify his child support.

Many post-judgment divorce issues came to a head after motions were filed by both parents and addressed by the court in May 2010 through a lengthy order directing Probation to recalculate Mr. Arede's alimony arrears to apply the credit that had not been properly applied and ordered that the monitoring bracelet be

removed. The child support obligation for Michael remained at $229 per week and bench warrant status for failure to make payments was continued. His application for the appointment of counsel was denied, since he was found to have been earning more than the amount that would qualify him as indigent, although the amount was far less than what he had earned while operating his trucking business. The order also denied efforts by Mr. Arede to have the judge recuse herself from handling his case and to prevent Probation from filing enforcement motions against him. In describing the applications raised by Mr. Arede, the order reflects his bitterness toward the family court and Probation stemming from child support enforcement measures brought against him.

More warrants were issued against him, more incarcerations followed, and Mr. Arede made more attempts to have his child support payments reduced or terminated. In July 2010 he claimed that he could not work due to health problems, but the court found that his proofs to establish disability were lacking. More arrests and license suspensions continued as his arrears climbed to almost $80,000 in December of 2012. At that point he was found to be indigent and counsel was appointed for him from the Community Mental Health Project. He qualified for Social Security in June 2013 at a rate of $741.25 per month as a result of a mental health disability, retroactive to May 2012, and also qualified for welfare assistance. In August 2013, by consent, Aurora obtained sole legal

custody of Michael, all arrears of over $80,000 were waived, and supervised visitation was instituted.

Thereafter, however, he still retained a child support obligation and arrears began to accumulate again as he continued to miss payments. His new support obligation was based on the court's determination that he could earn $320 per week over and above his Social Security benefits. Mr. Arede applied to have his child support obligation for Michael terminated, and took another appeal to the Appellate Division when that application was denied in January 2014. Once again he represented himself in the appeal. Arede v. Arede, 2015 N.J. Super. Unpub. LEXIS 2718 (App. Div. 2015). The appellate court affirmed that ruling in a decision of November 25, 2015. The court noted that while Mr. Arede was receiving Social Security benefits, the notice awarding the benefits stated that his disability was temporary and that he could work while receiving the benefits. The Appellate Division also noted that after receiving Social Security, Mr. Arede had worked for a friend, earning $320 per week. The court concluded that the trial court had properly imputed income to Mr. Arede of $320 per week and then had appropriately applied the self-support reserve test in the Child Support Guidelines to set child support at $36 per week, which excluded consideration of his Social Security benefits. The Appellate Division further found that Mr. Arede had

presented no competent evidence that he was unable to earn the additional income imputed to him.

In discovery provided to the State after this case was filed in 2015, Mr. Arede stated that he owed $7,000 in child support. Pl. Ex. M at 107-124. Mr. Arede also attested to instability in his living arrangements, which he attributed to extreme anxiety and an inability to work. Pl. Ex. W at 17:23-26:25. He claimed that in the years prior to the filing of this litigation, he had at times been homeless. Id. at 27:2-12. He did not inform the court or Probation of that fact, however. Ibid. He did state that he had reported at least some of his address changes to Probation. Id. at 59:1-3.

Like the other named plaintiffs, Mr. Arede expressed a general awareness of child support enforcement procedures, but had an imprecise recollection of his own experiences. Id. at 59:19-61:3. He testified that he had "no idea" about his present child support obligation. Id. at 85:15-19. Nor did he remember the amount of his last child support payment. Id. at 75:6-8.

He seemed aware of the issuance of Notices of Delinquency and Intent of Bench Warrants, but claims that he did not receive them directly. Id. at 61:4-16. Mr. Arede testified that his lawyer received them instead. Ibid. But he also later testified that, despite having had his license suspended ten times, he had only received two Notices in advance of the suspensions. Id. at 89:15-

91:22. The record reflects that he was sent at least five Notices, however. Pl. Ex. M.

His representations regarding the enforcement hearings to which he was subjected is similarly difficult to follow. To the surprise of both attorneys, Mr. Arede claims to have been represented by multiple attorneys at various points throughout his child support and custody matters. Pl. Ex. W at 56:4-58:14. The scope of this representation is unclear. Id. at 63:4-22. Mr. Arede testified that he has had representation for some hearings, but not for others. Id. at 80:6-20. He testified that he has been found to be indigent on certain occasions, but not on others. Id. at 75:24-78:12. Although he testified that he had been incarcerated pursuant to child support enforcement proceedings, and the record confirms multiple incarcerations, he could not remember the dates. Id. at 71:24-72:2 (noting "[i]n my head everything is mixed up.").

He also appears to have been confused about the driver's license reinstatement process. The record produced concerning Mr. Arede shows that he has been subject to ten bench warrants, the majority of which were FTP warrants. Although he testified that his driver's license suspensions have never been reinstated without having to repay his arrears in full, Id. at 72:19-73:3, he also asserted that he only had to pay the $100 restoration fee to reinstate his license. Id. at 73:3-6. The record does show

numerous child support orders where his license suspension was discharged, with reinstatement conditioned on payment of the restoration fee. He submitted a certification to the court in which he claims that the threat of incarceration was the biggest motivating factor for him to try to comply with his child support obligation to the best of his ability, and that the loss of his driver's license provided no additional motivation. He also stated that he would have preferred to use the money required to restore his license towards his child support obligation rather than paying it to the MVC.

F. Norman Epting Commentary

Plaintiffs also supported their application for relief from the automatic suspension of driver's licenses for failure to make child support payments by providing a certification and deposition testimony of Norman Epting, a retired Child Support Hearing Officer (CSHO). Mr. Epting had served as a CSHO for over nineteen years and estimated that he had conducted approximately 40,000 ELR hearings over that period. While he admitted in his certification that at times the threat of a driver's license suspension could serve a useful purpose in terms of prompting compliance with support orders, he strongly objected to the automatic suspension of licenses as counterproductive to the goal of increasing child support collections. Since execution of a bench warrant authorizes the arrest of obligors for failure to pay support, he opined that

automatically suspending driver's licenses upon the issuance of warrants did not provide any additional motivation for payment when a person's liberty could be lost. In fact, he noted that in most cases the license suspension only added financial strain for many economically challenged individuals who might then have fines, surcharges, and restoration fees added to their support obligations in order to reactivate their driver's licenses. He added that the monetary sanctions would be especially heavy if the obligor was charged with driving a vehicle while his or her license was suspended. In his view, licenses should only be suspended after a hearing was conducted to review the circumstances of the obligor.

Mr. Epting elaborated on these positions at his deposition. Pl. Ex. S at 1-85. While noting that every case was different and had its own unique facts and circumstances, he found that non-payment was a chronic problem for a large number of obligors. He said that the overwhelming majority of people who appeared before him in hearings conducted in more than five different New Jersey counties were lower middle class or poor. While he would sometimes conclude that obligors were willfully recalcitrant and mean-spirited in terms of payments, and that they could be motivated to pay by an impending license suspension, he estimated that about 80% of the obligors who appeared before him had challenging life circumstances that prevented them from satisfying their court-

imposed obligations and were not willfully withholding support from their children. He found it particularly cruel to heap more monetary penalties on top of people who were already economically disadvantaged and struggling to make ends meet.

Mr. Epting stated that the main purpose of the ELR hearings he conducted was to find out what was happening in the lives of the obligors to determine why they were not complying with their support obligations. He remarked that he would educate obligors about the process, including informing them that they could lose their driver's licenses for non-payment of support. He said that many obligors appeared surprised about the possibility of license suspension, and concluded that the uniform notices provided with USSO orders were ineffective in terms of making many people realize the consequences of non-payment, especially if they were illiterate or dissuaded from reading densely printed pages of text attached to an order. He opined on the basis of his experience as a hearing officer that the "system is trading on the ignorance of people," Pl. Ex. S at 38:6-7, and he referred to the child support system as "a bench warrant factory." Id. at 69:14-17. Notably, he stated that he could not recall ever seeing a "Notice of Intent of Bench Warrant" in any child support file provided to him by Probation in his nineteen-year career. Id. at 55:14-22. That is the form provided in the record that states that a bench warrant for the arrest of the obligor will issue in ten days unless the

obligor contacts his or her Probation officer to discuss the reasons for non-payment and to "make other arrangements." The Notice also warns the obligor that failure to comply with the Notice will result in the issuance of a bench warrant and the suspension of the obligor's driver's license by operation of law pursuant to N.J.S.A. 2A:17-56.41(a).

Mr. Epting was unequivocal in his opinion that the suspension of a driver's license should not be done without a hearing due to the importance of having a license, which he viewed as essential in a state like New Jersey with large areas without access to public transportation. Since employment often depends on the ability to get to work, and often driving is the only means of transportation to get to a job location, he found the automatic license suspension process counterproductive to the goal of collecting child support. He was concerned that taking away the ability of an obligor to get to work would cause many obligors to lose whatever jobs they had and make it even more difficult for them to make support payments. Mr. Epting further opined that a hearing on the proposed suspension should be held to find out the consequences of a suspension to the obligor so that an appropriate enforcement remedy could be fashioned without affecting all recalcitrant obligors who are issued warrants in the same way. He concluded that the automatic suspension process results in clear overuse of this penalty and unnecessarily "villainizes" obligors

who are economically strapped. Pl. Ex. S at 83. In addition, he supported appointment of counsel for child support obligors facing serious consequences such as driver's license suspensions because almost all of them lacked counsel and did not know how to marshal the facts of their cases to make a viable defense. Id. at 70:14-25.

It is against this backdrop that the Plaintiffs brought their challenge to the automatic suspension of driver's licenses upon the issuance of warrants for failure to pay child support.

III. LEGAL ANALYSIS

A motion for summary judgment may be granted when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 528-29 (1995) (citing R. 4:46-2). A genuine issue as to any material fact exists only when "if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." R. 4:46-2(c). The judge shall not weigh the evidence and determine the truth of disputed facts, but rather shall only determine whether there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). Summary judgment should be granted when the evidence is "so one-sided that one party must prevail as a matter of law." Brill, 142 N.J. at 533 (citing Anderson, 477 U.S. 242). Here both parties have moved for summary judgment, essentially conceding that the issues presented can be decided based on the record before the court. See K.P. v. Albanese, 204 N.J. Super. 166, 179 (App. Div. 1985), certif. denied, 102 N.J. 355 (1985).

Before proceeding to analyze the legal issues raised by the parties, however, the court wants to emphasize -- as noted above -- that counsel for Plaintiffs represented to the court at oral argument that this lawsuit does not challenge the issuance of bench warrants and automatic license suspensions for obligors who fail to appear at child support enforcement hearings. In those instances, Plaintiffs' counsel conceded that Probation has provided constitutionally sufficient notice of the date and time of the hearing by certified and regular mail, warned recipients of the notice that they will be subject to the issuance of bench warrants for non-appearance, and offered the opportunity for a hearing to review non-payment. In terms of the automatic license suspensions for failures to pay child support, however, Plaintiffs claim that the procedures violate both statutory requirements imposed by the Act as well as their constitutional rights. They also claim that current practices unfairly punish indigent obligors who are not willfully noncompliant with child support orders, but rather are unable to pay their child support obligations due to their poor financial circumstances at the time of license suspension. They also argue that the suspension of driver's licenses of indigent obligors worsens their financial situations and makes it even more difficult for them to make child support payments.

Defendants assert that the enforcement system implemented by Probation provides sufficient procedural and substantive processes to meet constitutional requirements. Defendants also dispute the statutory interpretations urged by Plaintiffs, arguing that the longstanding enforcement policies and procedures reflected in court rules and directives and applied by Probation for twenty years are entitled to deference, accurately implement legislative intent, and must be upheld by the court. Finally, Defendants argue that Plaintiff Grabowski should be dismissed as a Plaintiff for lack of standing and that the court should not reconsider its earlier decision rejecting Plaintiffs' efforts to proceed with this litigation as a class action. The court will review each of the issues in turn.

A. Named Plaintiff Alisha Grabowski Does Not Have Standing.

The State seeks to dismiss Alisha Grabowski as a plaintiff in this litigation due to lack of standing because she was not a New Jersey resident when the complaint was filed, did not possess a New Jersey driver's license at that time, and -- as far as the court can tell from this record -- has never had her driver's license suspended for nonpayment of child support. She has thus not suffered the harm that Plaintiffs allege concerning automatic driver's license suspensions effectuated by the New Jersey Motor Vehicle Commission in cooperation with the Probation Division.

As a preliminary point, had the court agreed to certify the class, Ms. Grabowski would not have been able to join it, because it was defined by plaintiffs' counsel when the complaint was filed to include only New Jersey residents. Ms. Grabowski, as a Pennsylvania resident, would not have met this requirement. Nevertheless, her presence in this lawsuit is inappropriate on other grounds as well -- i.e., due to lack of standing.

While New Jersey courts have eschewed the more rigid "cases" and "controversies" requirement of Article III in the United States Constitution that is binding on federal courts, Crescent Park Tenants Ass'n v. Realty Equities Corp., 58 N.J. 98, 107-08 (1971), they have established a more pragmatic standard that looks to the impact of the litigation on the interests of the plaintiff. Specifically, New Jersey courts investigate whether "the litigant's concern with the subject matter evidence[s] a sufficient stake and real adverseness." Ibid. Such an inquiry is imbued with consideration of both individual justice and the public interest, "always bearing in mind that throughout our law we have been sweepingly rejecting procedural frustrations in favor of just and expeditious determinations on the ultimate merits." Ibid. (internal quotations omitted). Accordingly, our courts have consistently remarked upon the "generous" nature of the standard. See In re New Jersey State Contract, 422 N.J. Super. 275, 289 (App. Div. 2011). In addition, New Jersey courts are more likely to

find standing when denying it would "preclude [the] court from entertaining any of the substantive issues presented for determination." In re Adoption of Baby T, 160 N.J. 332, 340 (1999).

Despite this more relaxed approach to standing, New Jersey courts have still required that a plaintiff demonstrate a "substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision." CFG Health Systems., LLC v. County of Hudson, 413 N.J. Super. 306, 314 (App. Div. 2010) (citation omitted); see also In re Adoption of Baby T, 160 N.J. at 340. Courts have rejected a plaintiff's standing when they find the plaintiff's interest to be too "indirect and . . . remote." County of Bergen v. Port of New York Authority, 32 N.J. 303, 308 (1960). New Jersey Courts have similarly refused to issue purely "advisory opinions or function in the abstract" and have rejected a party's standing when the plaintiffs appear to be "mere intermeddlers . . . or strangers to the dispute." Crescent Park Tenants, 58 N.J at 107-08 (internal quotations omitted).

The record in this case demonstrates that the named Plaintiff Alisha Grabowski lacked standing as a litigant when the complaint was filed. Notably, because she did not possess a New Jersey driver's license at that time, the New Jersey suspension laws and process utilized by Probation in cooperation with the MVC did not affect her. Indeed, the record provided by the parties does not

demonstrate any New Jersey driver's license suspension for Ms. Grabowski. Therefore, she has not experienced the harm that Plaintiffs are seeking to remedy. Moreover, dismissing her as a plaintiff will not prevent the case from proceeding as the standing of the other plaintiffs has not been questioned.

Plaintiffs defend her remaining in the case by arguing that because they are in part seeking declaratory relief, they merely seek "to end uncertainty about legal rights and duties in controversies which have not yet reached the stage at which the parties may seek a coercive remedy." Pl. Brief at 39 (citing Union County Bd. of Chosen Freeholders v. Union County Park Comm'n, 41 N.J. 333, 337 (1964)). In addition, Plaintiffs note that, due to reciprocity statutes, "a suspension in one state results in the suspension of the license in the other," citing N.J.S.A. 39:5-30.1 as an example of New Jersey's reciprocity law. Pls' Repl. Brief at 47. The court is unpersuaded on both counts. First, the reciprocity statute that Plaintiffs cite does not establish New Jersey's jurisdiction to suspend an out-of-state license where the individual does not hold a New Jersey license. Instead, the statute states:

> Whenever the reciprocity driving privilege of any New Jersey resident is suspended or revoked by lawful authority in another State upon a conviction of a violation of the Motor Vehicle Act of such State and the report of such conviction is transmitted by the motor vehicle administrator of such State to the Director of the Division of Motor Vehicles of this State pursuant to

> any law providing for reciprocal exchange thereof, the director may suspend or revoke the driving privilege of such resident in this State, in the manner prescribed by section 39:5-30 of the Revised Statutes, for a period not less than that for which the reciprocity driving privilege was suspended or revoked in such other State nor more than the period for which the driving privilege would have been suspended or revoked had a conviction of a like offense occurred in this State.
>
> [N.J.S.A. 39:5-30.1.]

In other words, the statute provides that New Jersey can enforce the driver's license suspension statutes of other states against its residents when they violate the motor vehicle laws of other states. See In re Kovalsky, 195 N.J. Super. 91 (App. Div. 1984) (upholding the DMV's suspension of a license due to the fact that the New Jersey resident failed to appear at a trial in another state pursuant to a DUI charge and had forfeited his bond). That, of course, is not the situation here where Ms. Grabowski did not assert possession of a New Jersey driver's license and the suspensions at issue are based on the issuance of child support warrants and not on motor vehicle violations. Accordingly, the principle of reciprocity is simply inapplicable to automatic suspensions of New Jersey driver's license for failure to pay child support pursuant to N.J.S.A. 2A:17-56.41(a).

Moreover, while the Declaratory Judgment Act does permit plaintiffs to bring a lawsuit prior to the occurrence of harm, N.J.S.A. 2A:16-51 (creating a cause of action to "settle and afford

relief from uncertainty and insecurity with respect to rights, status and other legal relations"), that authorization does not obviate the basic standing requirement that the Plaintiff have some interest in the rights, status, or legal relationship at issue. For example, in Union County Bd. of Chosen Freeholders, 41 N.J. at 335-37, Plaintiff Board sought a determination as to its legal rights to specific funds under a State statute. Here, although Ms. Grabowski has been subject to child support obligations administered by the New Jersey court system, the record showed that she did not have a New Jersey driver's license and lived in Pennsylvania when the complaint was filed and her deposition taken. As a result, she was not then affected by the automatic license suspension statute. Since Plaintiffs' sole challenge is to the automatic driver's license suspension process, Ms. Grabowski's rights were not implicated by the cause of action they have filed. She therefore lacks standing to bring this cause of action and will be dismissed as a Plaintiff. As noted above, however, the court will proceed to decide the claims raised by the other plaintiffs, whose standing has not been questioned.

B. Plaintiffs' Statutory Interpretation Arguments, While Reasonable, Cannot Overcome the Long-time Consistent Interpretation of the License Suspension Provisions by Defendants, Who Were Charged by the Legislature With Implementing the Statute

Plaintiffs seek relief under the child support statutory scheme as an alternative to their constitutional arguments.

Whenever possible, courts should avoid deciding constitutional issues if claims can be decided on alternative grounds, including by statutory interpretation. See, e.g., Randolph Town Ctr., L.P. v. Cnty. Of Morris, 186 N.J. 78, 80 (2006); Bell v. Twp. Of Stafford, 110 N.J. 384, 389-90 (1988). Plaintiffs focus on the pre-1998 provisions of the statute that require notice and an opportunity to be heard before any license suspension could be imposed and seek to apply those requirements to the 1998 amendment that provided that, "[t]he obligor's driver's license shall be suspended by operation of law upon the issuance of a child support-related warrant." N.J.S.A. 2A:17-56.41(a). They point to several statutory provisions, each of which will be examined by the court.

1. Section 41(a)

Plaintiffs emphasize certain seemingly internal inconsistencies in the statutory language in N.J.S.A. 2A:17-56.41(a) ("Section 41(a)") to argue that Defendants are improperly applying the driver's license suspension process. That section provides that:

> If the child support arrearage equals or exceeds the amount of child support payable for six months or court-ordered health care coverage for the child is not provided for six months, or the obligor fails to respond to a subpoena relating to a paternity or child support action, or a child support-related warrant exists, and the obligor is found to possess a license in the State and all appropriate enforcement methods to collect the child support arrearage have been exhausted,

> the Probation Division shall send a written notice to the obligor, by certified and regular mail, return receipt requested, at the obligor's last-known address or place of business or employment, advising the obligor that the obligor's license may be revoked or suspended unless, within 30 days of the postmark date of the notice, the obligor pays the full amount of the child support arrearage, or provides proof that health care coverage for the child has been obtained, or responds to a subpoena, or makes a written request for a court hearing to the Probation Division.
>
> [N.J.S.A. 2A:17-56.41(a).]

Plaintiffs contend that this language refers to "licenses," meaning *all* licenses, including driver's licenses, as defined in N.J.S.A. 2A:17-56.52. And in fact, prior to 1998, it appears that Probation applied the statute in that manner to provide notice and a hearing whenever the State sought to impose any sort of license suspension, including a driver's license suspension, for failure to pay child support. With the insertion by amendment in that same section of a sentence pertaining only to driver's licenses, however, Defendants claim that the Legislature thereby created two separate procedures, one pertaining to driver's licenses that would be suspended automatically when a child support warrant issued, and the other applying to all other types of licenses, including occupational licenses, defined in N.J.S.A. 2A:17-17.52. One of the statutory interpretation issues before the court, therefore, is how to reconcile the two parts of Section 41(a) in

the context of the entire statutory scheme, including the definitional section.

The court approaches the statutory analysis with some trepidation given the seemingly contradictory provisions and the need to make sense of the statutory scheme. While not a model of legislative drafting, the Legislature in Section 41(a) was responding to the direction of Congress that states seeking federal funds for child support enforcement efforts include in their programs provisions authorizing the suspension of driver's licenses for obligors who fail to comply with subpoenas or warrants. 42 U.S.C. Section 666(a)(16). That legislative purpose must be kept in mind as the court considers the arguments of the parties. Complicating the analysis is that Plaintiffs have admitted that Section 41(a)'s automatic suspension provision can be applied as written to FTA warrants because affected obligors have already been notified to attend an ELR hearing and given an opportunity to be heard at that hearing -- exactly the relief sought through their statutory interpretation argument. When obligors fail to appear at enforcement hearings, however, warrants are issued for their arrest and their driver's licenses are suspended. So the thrust of Plaintiffs' argument is that Section 41(a) is being misapplied only when FTP warrants are issued and driver's licenses are automatically suspended without notice and an opportunity to be heard. While Plaintiffs failed to make this

distinction in their statutory interpretation argument, seeking to eviscerate the entirety of the automatic suspension provision, their concession regarding the constitutionality of FTA warrants/suspensions made at oral argument logically applies to their statutory argument as well.

Plaintiffs first argue that Section 41(a) contains a statutory conflict that must be resolved by invalidating the use of automatic driver's license suspensions by operation of law. They point to the language of Section 41(a) quoted earlier providing thirty days from the date of notice of potential license suspension for the obligor to take corrective action or request a hearing. Plaintiffs argue that to ignore those procedural protections when suspending driver's licenses is to ignore the important procedural protections enacted by the Legislature. Defendants respond, however, by asserting that once the Legislature provided for driver's license suspensions "by operation of law" whenever a child support warrant issued, the statute created a new way to suspend only driver's licenses, leaving the former method intact for all other types of government-issued licenses. This interpretation is supported not only by the special treatment given to driver's licenses only, but by revisions made to the last sentence of Section 41(a), which before 1998 had provided that the license suspension process would be terminated following notice if obligors satisfied the deficiencies in their

support payments or submitted to the county sheriff or the Probation Division. When the Legislature amended the provision, however, it changed that language to apply explicitly to suspensions of "professional, occupational, recreational or sporting license" suspensions, deliberately excluding driver's license suspensions imposed by operation of law without the opportunity to take corrective action. See New Jersey Child Support Program Improvement Act, L. 1998, c. 1, § 28. Compare New Jersey Child Support Reform Act, L.1996, c.7, § 3. The amendments, when viewed together, support the interpretation advanced by Defendants that the Legislature made a distinction in Section 41(a) between "driver's licenses," which can be suspended by operation of law upon the issuance of a warrant, and all other licenses, which can only be suspended after notice and a thirty-day grace period. Defendants claim that this interpretation reconciles the two parts of Section 41(a) and has been consistently endorsed by court rules and New Jersey Office of Child Support Services policies that effectuate what they characterize as a two-track system.

While the Legislature could have been clearer in distinguishing between the two tracks, perhaps by drafting a new and separate section for suspensions of driver's licenses only by operation of law, Defendants' interpretation is not unreasonable. Perhaps the weakest aspect of their position is that Section 41(a)

uses the term "license" when affording notice and an opportunity for corrective action or to request a hearing, and the statute defines that term in N.J.S.A. 2A:17-56.52 to apply to *any* license, which includes motor vehicle licenses. It also appears that prior to the insertion of suspensions by operation of law into N.J.S.A. 2A:17-56.41(a), the term license applied to all licenses, following the broad definition of the term that still remains in the statute. See also N.J.S.A. 2A:17-56.47, which provides that, "All actions taken to suspend or revoke a license in accordance with P.L. 1996, c. 7 (C.2A:17-56.40 et al.) shall be carried out in full compliance with due process laws…."

As noted above, however, the 1998 amendments to the Act -- including the language authorizing driver's license suspensions "by operation of law" -- were inserted by the Legislature in direct response to federal legislation designed to encourage states to toughen existing child support enforcement procedures. As the New Jersey statutes already authorized suspension of motor vehicle licenses for failure to pay child support, the Legislature appears to have responded to the federal law by seeking to strengthen enforcement measures. That it accomplished this goal by singling out driver's licenses to be subject to suspension upon the issuance of a child support-related warrant was a legislative choice that Defendants have implemented by deliberately not providing consistent advance notice and an opportunity to be heard to

affected obligors when a warrant issues. That no other state responded in this fashion to the federal initiative gives the court pause, and may prompt the Legislature to take another look at the linkage incorporated into the provision, but it does not require the court to endorse the interpretation advanced by Plaintiffs.

In addition to the above textual analysis, the court will not invalidate the interpretation advocated by Defendants because "Substantial deference should be attributed to the contemporaneous construction, long usage, and practical interpretation given to the Act by . . . the administrative agencies charged with enforcement of the statutory scheme." Last Chance Dev. P'ship v. Kean, 119 N.J. 425, 433 (1990). See also Matturri v. Bd. Of Trustees of Judicial Ret. System, 173 N.J. 368, 381-82 (2002). Defendants have been applying Section 41(a) consistently since the adoption of the amendments in 1998, without any indication from the Legislature that the interpretation is erroneous. Such circumstances support upholding the administrative interpretation of the statute. See Cedar Cove v. Stanzione, 122 N.J. 202, 212 (1991); Malone v. Fender, 80 N.J. 129, 137 (1979).

Moreover, since the 1998 addition to Section 41(a) specifically identifies driver's licenses for special treatment, the court must acknowledge this fact. Notably, "when there is a conflict between general and specific provisions of a statute, the specific provisions will control." Wilson v. Unsatisfied Claim &

Judgment Fund Bd., 109 N.J. 271, 278 (1988). Here, the Legislature provided a specific process to suspend driver's licenses that conflicts with the prior general provisions for suspending licenses of all kinds. Consequently, the court acknowledges that the Legislature very likely intended that the specific provision regarding driver's licenses be given precedence over the general provisions that pre-dated the 1998 amendment. To accept Plaintiffs' view would eviscerate the later adopted and more specific provision and undermine what appears to be the legislative intent behind the amendment. While it would have been preferable if the Legislature had carefully delineated the two approaches using clarifying language, separated them into different sections of the provision, and amended the definition section of the statute, the absence of complete clarity is not enough to call into question Defendants' interpretation. However, if the Legislature is informed that the record in this case shows that over 99% of driver's license suspensions are imposed by operation of law pursuant to the 1998 addition to Section 41(a) without consistently requiring advance notice or the opportunity to be heard that is afforded to obligors affected by all other license suspensions, the Legislature may want to revisit the linkage between warrants and driver's license suspensions to determine if the change has resulted in unintended consequences. Based on the above statutory analysis, however, the court rejects Plaintiffs'

proposed reading of Section 41(a) and will not disturb the implementation of the provision by Defendants on statutory grounds. Even if there is no re-examination by the Legislature, however, Defendants retain the authority to revisit the statutory interpretation themselves.

The court thus offers the following commentary for Defendants' consideration. Notably, the term "by operation of law," both generally and as applied to driver's license suspensions, does not necessarily exclude providing advance notice and an opportunity to be heard. The record in this case, for example, reveals that some county Probation Offices sent notices of impending warrants and driver's license suspensions to many obligors. So even the administrative implementation of Section 41(a) has at times included notice and the opportunity to avoid the suspension despite the legal arguments proffered by Defendants that no advance notice is required. The legal definition of "by operation of law" extends to circumstances that are the result of an automatic application of rules instead of a conscious decision-making process. See "Operation of Law," West's Encyclopedia of American Law (2nd ed. 2008) ("The manner in which an individual acquires certain rights or liabilities through no act or cooperation of his or her own, but merely by the application of the established legal rules"); "Operation of Law," Black's Law Dictionary 1124 (8th ed. 2004) ("The means by which a right or a

liability is created for a party regardless of the party's actual intent."). These definitions distinguish actions such as license suspensions "by operation of law" from other actions ordered by a judge after first considering the merits of a case and any arguments made against the action under consideration. Despite that significant difference, there is no temporal requirement in Section 41(a), or inherently contained in the "by operation of law" terminology that absolutely requires suspension of a driver's license without advance notice. For example, it would do no harm to the statutory scheme if Defendants provided that as soon as a warrant issues, a license suspension is automatically scheduled for twenty days from that date, with notice sent to licensees informing them of the options for responding. If no response is received, the suspension will take effect by operation of law with no judicial action required, thus fulfilling the statutory intent. Such an interpretation gives effect to the statutory language while still providing some procedural protections to obligors who wish to take advantage of them. Indeed, two notices contained in the record of this case —- form CS594 and CS130 -- warn obligors of the impending issuance of bench warrants and offer them the opportunity to take corrective action or suffer the consequences. Those two forms afford ten and thirty days to obligors to take corrective action to avoid issuance of warrants and simultaneous suspension of their driver's licenses. The court offers these

alternatives for consideration by Defendants. Such procedures, in the court's view, would do no violence to the statutory language and would promote a fairer process more in keeping with the overall legislative scheme and its repeated emphasis on providing due process to obligors. Moreover, as noted above, after the motions for summary judgment were filed in this case, the AOC revised the Probation Child Support Operations Manual, changing the warrant process to require a Notice of Intent of Bench Warrant to be issued the first time a warrant is requested and again after a period of one year has elapsed since the last warrant was issued. See Revision to the Probation Child Support Enforcement Operations Manual – Section 1606 – License Suspension Procedures (June 28, 2017).

2. Section 44

Plaintiffs also argue that the automatic license suspension process violates their statutory rights under N.J.S.A. 2A:17-56.44 ("Section 44"). Section 44 requires licensing authorities to provide twenty days' notice to a licensee whose license is being suspended pursuant to a court order. The provision states that:

> The Probation Division shall provide the licensing authority with a copy of the order requiring the suspension or revocation of a license. Upon receipt of an order requiring the suspension or revocation of a license, the licensing authority shall immediately notify the licensee of the effective date of the suspension or revocation, which shall be 20 days after the postmark of the notice, direct

> the licensee to refrain from engaging in the activity associated with the license, surrender any license as required by law, and inform the licensee that the license shall not be reinstated until the court or Probation Division certifies that the conditions which resulted in the suspension or revocation are satisfied.
>
> [N.J.S.A. 2A:17-56.44(a).]

At the heart of the parties' dispute is whether the word "order" in Section 44 applies to child support warrants. While Plaintiffs argue that a warrant is an order that falls within the meaning of this section, Defendants assert that there is a distinction between "warrants" and "orders" that removes the automatic suspension of driver's licenses when warrants issue from the requirements of Section 44.

Defendants' interpretation of Section 44 is entitled to deference. R & R Mktg., L.L.C. v. Brown-Forman Corp., 158 N.J. 170, 175 (1999) (quoting Smith v. Director, Div. of Taxation, 108 N.J. 19, 25 (1987)). Courts must "defer to the agency's interpretation . . . provided it is not plainly unreasonable." Matturri v. Bd. of Trs. Of the Judicial Ret. Sys., 173 N.J. at 382. Regulations adopted by administrative agencies are accorded substantial deference, provided they are consistent with the terms and objectives of the governing statute. Nelson v. Bd. of Educ., 148 N.J. 358, 364-65 (1997).

As implemented by Defendants, Probation electronically notifies MVC that a child support warrant has issued, causing the automatic suspension of the driver's licenses of affected obligors. No order is provided to MVC, simply the electronic notification that a warrant has issued. Probation and MVC take the position that the license suspension is effective immediately upon issuance of the warrant. MVC then enters the suspension into its electronic data base and sends notice of the suspension to the obligor, "as a courtesy," according to Defendants' brief at 13. That "courtesy" contains the admonition that the obligor could be subject to up to five years in prison if he or she drives with a suspended license. As noted above, obligors receive the notice at some point thereafter, typically within several days, but not prior to the actual license suspension. Notwithstanding Plaintiffs' efforts to establish that a warrant may be defined as a type of order, there are important distinctions between the two terms. Warrants are issued to arrest delinquent obligors for the purpose of bringing them to court when other child support enforcement mechanisms have failed. Technically, then, a warrant is not a court order, but a means to enforce a court order. The State may therefore rationally distinguish between license suspensions implemented by court order and a driver's license suspension that is imposed automatically upon the issuance of a warrant.

In light of the deferential standard of review cited above, the court will not disturb Defendants' interpretation of Section 44 that a warrant is distinctly different from a court order and thus technically falls outside the purview of Section 44. It is therefore reasonable to conclude that Section 44's notice requirement for suspensions pursuant to court orders applies *only* when court orders are issued suspending a license. Plaintiffs' creative appeal to Black's Law Dictionary and other sources to demonstrate a semantic overlap between "warrants" and "orders" is not enough to overcome the presumption afforded to the interpretation espoused by the entities charged by the Legislature with interpreting the statutory scheme.

The court notes, however, that while the automatic driver's license suspensions at issue in this case are imposed automatically upon the issuance of warrants, the suspension itself is not a warrant. Indeed, the interaction between Probation and MVC suggests a function much more akin to the court's *ordering* MVC to suspend a license upon the approval of a family court judge than to issuing a warrant for arrest. While the very different nature of a warrant and a license suspension raises concerns over the linkage of the two in light of the requirements in Section 44, the court simply points out that the effect on obligors in terms of license suspensions is the same as if an order had issued directing MVC to suspend their driver's licenses. Again, the court raises

this concern for consideration by Defendants in light of the record in this case that shows that procedural protections contained in the statute are not consistently being afforded to over 99% of all recalcitrant obligors whose driver's licenses are suspended.

C. Substantive Due Process

Plaintiffs argue that the automatic suspension of driver's licenses upon issuance of a child support-related warrant without a contemporaneous finding of an ability to pay child support violates their right to substantive due process. Legislation that restricts the liberties of citizens will survive substantive due process review if it is tailored to achieve a legitimate interest. The degree of scrutiny courts apply to the government action depends on the nature of the liberty or interest that is affected. The Supreme Court of the United States has identified certain rights, in addition to those protected by the Bill of Rights, that are "so rooted in the traditions and conscience of our people as to be ranked as fundamental." Snyder v. Massachusetts, 291 U.S. 97, 105 (1934). If a right is deemed to be fundamental, then strict scrutiny applies and the government cannot infringe upon that right "unless the infringement is narrowly tailored to serve a compelling state interest." Washington v. Glucksberg, 521 U.S. 702, 721 (1997). Conversely, if the right at issue does not satisfy the threshold requirement of being a "fundamental right,"

then state action infringing upon that right must only bear "a reasonable relation to a legitimate state interest." Id. at 722.

New Jersey courts have followed the lead of the United States Supreme Court in analyzing substantive due process challenges to government action. Indeed, "[d]ue process claims under the federal and New Jersey constitutions are analyzed by utilizing essentially the same balancing test." In re Am. Reliance Ins. Co., 251 N.J. Super. 541, 552 (App. Div. 1991), certif. denied, 127 N.J. 556 (1992). In addition to the explicit due process provisions of the Fourteenth Amendment, "protectable interest[s] stem from the substantive due process notions implicit in article 1, paragraph 1 of the New Jersey Constitution." Greenberg v. Kimmelman, 99 N.J. 552, 570 (1985). Article 1, Paragraph 1 of the New Jersey Constitution provides that "[a]ll persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, *of acquiring, possessing, and protecting property*, and of pursuing and obtaining safety and happiness." (emphasis added). Like the federal courts, New Jersey courts reserve strict scrutiny for cases in which government action infringes upon fundamental rights. In all other cases, New Jersey courts give great deference to the government in carrying out its objectives.

The New Jersey Supreme Court has "recognize[d] the presumption of validity that attaches to every statute,"

particularly "when a statute attempts to protect the public health, safety, or welfare." In re C.V.S. Pharm. Wayne, 116 N.J. 490, 497 (1989), cert. denied, 493 U.S. 1045 (1990). While the presumption may be rebutted, the burden to overcome the presumption is a heavy one and rests on the party challenging the statute. Singer v. Township of Princeton, 373 N.J. Super. 10, 19 (App. Div. 2004). Further, the New Jersey Supreme Court has "consistently sustained such legislation if it is not arbitrary, capricious, or unreasonable, and the means selected bear a rational relationship to the legislative objective." In re C.V.S. Pharm. Wayne, 116 N.J. at 497 (quoting Brown v. City of Newark, 113 N.J. 565, 572 (1989)). The intent or wisdom of the enactment is irrelevant as long as there is any reasonable, ascertainable connection between the statute and a legitimate objective. See Greenberg, 99 N.J. at 563 ("if a statute is supported by a *conceivable* rational basis, it will withstand a substantive due process attack.") (emphasis added); Singer, 373 N.J. Super. at 21. This deference continues even when a protectable right or property interest is infringed, so long as the right or interest is not "fundamental." Ibid. ("If a statute does not affect a fundamental right, and is supported by a conceivable rational basis, it will withstand a substantive due process challenge."). Indeed, as the New Jersey Supreme Court noted in Paul Kimball Hosp. v. Brick Twp. Hosp., 86 N.J. 429, 447 (1981), a statute "will not be declared void unless its repugnancy

to the Constitution is so manifest as to leave no room for reasonable doubt."

The standard in New Jersey for applying strict scrutiny review under both the Fourteenth Amendment and article I, paragraph 1 of the New Jersey Constitution is high, requiring a plaintiff to show and a court to find a fundamental liberty interest that is "objectively and deeply rooted in the traditions, history, and conscience of the people of this State." Lewis v. Harris, 188 N.J. 415, 435 (2006). Without such a finding, rational basis scrutiny is appropriate and government action should be upheld unless it is clearly unreasonable. The trend in New Jersey has been to affirm government action in the vast majority of cases alleging violations of substantive due process rights. See Rivkin v. Dover Township Rent Leveling Bd., 143 N.J. 352, 366 (1996), cert. denied, 519 U.S. 816 (1996) (noting that challenges to governmental enactments "rarely will rise to the level of a substantive due process violation.").

1. The Court Will Apply Rational Basis Scrutiny

Defendants argue, and Plaintiffs do not dispute, that the right to a driver's license has not been identified as a fundamental right by any court. Thus, in considering whether the statute authorizing automatic suspension of driver's licenses upon the issuance of a child support-related warrant violates Plaintiffs' substantive due process rights under the federal and

State Constitutions, the court will apply the rational basis test to determine whether the statute bears a reasonable relationship to a legitimate state interest.

Plaintiffs assert that the court should apply an intermediate, or middle-tier, level of scrutiny in light of the weight the New Jersey Supreme Court attaches to a citizen's interest in a driver's license. See State v. Moran, 202 N.J. 311, 325-327 (2010) ("[A] license to drive in this State is nearly a necessity, as it is the primary means that most people use to travel to work and carry out life's daily chores." (internal quotations omitted)). See also Bechler v. Parsekian, 36 N.J. 242, 257-258 (1961). But Plaintiffs cite no legal authority to support the proposition that this court should apply a higher level of scrutiny here. Indeed, the United States Supreme Court has only applied intermediate scrutiny when applying the Equal Protection Clause, most notably to gender. See, e.g., United States v. Virginia, 518 U.S. 515 (1996). Further, New Jersey courts have consistently avoided using intermediate scrutiny when analyzing alleged violations of substantive due process, holding fast to a two-tier approach depending on whether the right or interest at stake is considered "fundamental." See Singer, 373 N.J. Super. at 21. This court will not create a new tier of review because access to a driver's license may be more important or weighty than other non-fundamental rights. Although the court recognizes the

significant value of having a driver's license, there simply is no authority to support the claim that it is a "fundamental" right or that it requires more due process protection than any other non-fundamental right. Because only an infringement of fundamental rights triggers strict scrutiny under federal and New Jersey substantive due process precedents, rational basis review will be applied as the appropriate standard here.

Other courts that have considered substantive due process challenges to driver's license suspension laws for failure to pay child support have also applied rational basis review. See State v. Buchmann, 830 N.W.2d 895, 901 (Minn. 2013); Amunrud v. Bd. of Appeals, 143 P.3d 571, 578 (Wash. 2006), cert. denied, 549 U.S. 1282 (2007); State v. Beans, 965 P.2d 725, 727 (Alaska 1998); Thompson v. Ellenbecker, 935 F. Supp. 1037, 1040 (D.S.D. 1995). Notably, the New Jersey Supreme Court has long held that an interest in an *occupational* license is "in the nature of a property right, always subject to *reasonable regulation* in the public interest." In re Polk, 90 N.J. 550, 562 (1982) (quoting Jeselsohn Inc. v. Atlantic City, 70 N.J. 238, 242 (1976)) (internal quotation marks omitted) (emphasis added). A license to drive a motor vehicle can be no more indispensable or fundamental than an occupational license to one's ability to earn a living, as there may be reasonable commuting alternatives to driving one's own vehicle. Therefore, a property right in a driver's license is

similarly subject to reasonable regulation. The court will thus analyze Plaintiffs' substantive due process arguments using the rational basis standard of review.

2. Plaintiffs have failed to demonstrate that the automatic license suspension process lacks any rational basis

The court's review of a statute under the rational basis test is highly deferential to legislative decision-making. Specifically, the State need only "identif[y] a legitimate state interest that the legislature could rationally conclude was served by the statute." Nicholas v. Pennsylvania State Univ., 227 F.3d 133, 139 (3d Cir. 2000). See In re Am. Reliance Ins. Co., 251 N.J. Super. at 551-554; Singer, 373 N.J. Super. at 21-23. Although this review is "by no means toothless," Doe v. Pa. Bd. of Prob. & Parole, 513 F.3d 95, 112 n.9 (3d Cir. 2009) (quoted in Heffner v. Murphy, 745 F.3d 56, 79 (3d Cir. 2014), cert. denied, 135 S. Ct. 220 (2014), it is highly deferential to the legislature's action. As noted in Heffner, "[a] governmental interest that is asserted to defend against a substantive due process challenge need only be plausible to pass constitutional muster; we do not second-guess legislative choices." Heffner, 745 F.3d at 79. "Where . . . there are plausible reasons for Congress's action, [the court's] inquiry is at an end." United States R.R. Ret. Bd. v. Fritz, 449 U.S. 166, 179 (1980), reh'g denied, 450 U.S. 960 (1981). See also Greenberg, 99 N.J. at 570. Further, "[a] statute must be upheld

if it can be shown to operate constitutionally in some, even if not all or most, instances." In re Contest of November 8, 2011 General Election of Office of New Jersey General Assembly, 210 N.J. 29, 46 (2012). If there is any way to implement a statute in a way consistent with substantive due process, that statue cannot be struck down for due process infirmities in practice.

Turning to the present matter, Plaintiffs have raised separate substantive due process challenges to the two statutory provisions concerning driver's license suspensions: N.J.S.A. 2A:17-56.41(a) ("Section 41") and N.J.S.A. 2A:17-56.43 ("Section 43"). In contending that these provisions pass constitutional muster, Defendants have enunciated three separate purposes behind the suspension of driver's licenses authorized by these statutory provisions: coercing payments from delinquent obligors, deterring obligors from falling into delinquency in the first place, and augmenting the "effectiveness of bench warrants as tools to compel an obligor's appearance at an expedited hearing." Def. Opp. Brief at 22. Plaintiffs concede that these purposes are legitimate, but they seek to show that automatic suspensions lack any rational basis in regard to achieving those purposes. In fact, they argue that as implemented, the statutes operate in a manner counter-productive to the goal of collecting as much child support as possible. Plaintiffs rely on statistics in their effort to sever the causal chain between automatic suspensions and these purposes.

As a preliminary matter, the court notes that Plaintiffs face a high burden in raising a substantive due process challenge to the automatic suspensions of driver's licenses upon issuance of child support-related warrants -- a point which counsel for Plaintiffs conceded at oral argument. Indeed, counsel for Plaintiffs acknowledged that he has focused most of his arguments elsewhere in light of this burden. At issue before the court, then, is whether the rationales proffered by Defendants are plausible. In other words, the court must determine whether it seems at all reasonable to conclude that automatic license suspensions may deter child support delinquencies or may increase the effectiveness of bench warrant enforcement. Notably, the fact that there may be alternative or even better policies and procedures does not mean that current practices based on child support legislation are constitutionally infirm. See Singer, 373 N.J. Super. at 21-22. But see National Conference of State Legislatures, "License Restrictions for Failure to Pay Child Support", at 4 (2014), available at http://www.ncsl.org/research/human-services/license-restrictions-for-failure-to-pay-child-support.aspx. (Showing that New Jersey is the only state to utilize automatic suspensions of driver's licenses upon the issuance of child support-related warrants.).

Measured against this high standard, Plaintiffs have failed to persuade the court that the statutory provisions are arbitrary.

The child support enforcement process is difficult to administer. Over 20,000 licenses were suspended due to payment delinquencies in 2014 alone. Many more obligors fall behind in their payments each year. And it is the Probation Division's role to protect the interests of custodial parents by enforcing child support orders and judgments. Bench warrants are used to bring delinquent obligors into court to address their nonpayment of support. The automatic suspension of driver's licenses is a coercive measure used to deter obligors from falling behind in their payments and to bring them to court for enforcement purposes.

a. Section 41

N.J.S.A. 2A:17-56.41(a) provides the statutory basis for automatic license suspensions. In challenging this statutory provision on substantive due process grounds, Plaintiffs first point to data concerning the overall impact of driver's license suspensions to demonstrate that they have a more dire and unequal effect on economically marginal obligors than on others. They also assert that the mechanism is counterproductive to the primary enforcement goal of collecting as much overdue child support as possible. Plaintiffs cite statistics contained within the 2006 MVC Final Report. This report noted that, based on a survey conducted in 2004, "child support suspension rates for drivers residing in lower income areas [were] ten times higher than the Statewide average." Pl. Ex. C at 29. Notably, the study made no

distinction between driver's license suspensions resulting from the issuance of Failure to Appear and Failure to Pay warrants. See id. at 27-29.

The study also described significant adverse employment effects as a result of driver's license suspensions based on a survey conducted by Rutgers University in December 2004. Id. at 37-38. For example, 42% of survey respondents with a history of suspension lost their jobs when they had their driving privileges suspended and 45% of those that lost their jobs because of a suspensions could not find another job. Even when they were able to find another job, nearly 90% of respondents who had their licenses suspended reported a decrease in income. The survey further noted that adverse impacts were most strongly felt among low-income drivers. Ibid. From this data Plaintiffs argue that, broadly speaking, driver's license suspensions target low-income individuals and thus make it more difficult for them to make payments. Relying on these studies, Plaintiffs take issue with the New Jersey Judiciary Reports to the Legislature on the Suspension of Licenses Due to Child Support Arrears, from 2006, 2007-08, and 2014, which were published by the AOC. Pl. Ex. H. Those reports repeatedly affirm the effectiveness of driver's license suspensions as "a coercive tool" to collect payments. See Pl. Ex. H at 2-3 (concerning 2006); Id. at 5 (concerning 2007 and 2008); Id. at 9 (concerning 2014). Notably, the amount of

collected payments attributed to license suspensions by the AOC was over eight times greater in both 2007 and 2008 than in 2014, which suggests either changes in data analysis or inconsistencies in how the impact of license suspensions is measured and analyzed.

Plaintiffs then compare these far-reaching negative effects to what they argue is a relatively small positive effect. By Plaintiff's calculation, about $259 in child support payments were collected in response to each suspension of a driver's license in conjunction with an FTA or FTP warrant. Pl. Repl. Brief at 30. This calculation is based on information in an internal memorandum prepared by the Division of Family Development regarding the number of driver's license suspensions and total amounts collected as a result of the suspensions effectuated between 2010 and 2014, and provided to Plaintiff's counsel. Pl. Ex. I. Plaintiffs divided the total amount collected by the number of suspensions to determine the average amount of money collected per year. Plaintiffs then took the average of these five amounts to reach the $259 per suspension figure. In light of the alleged broad, negative effects of driver's license suspensions on low-income individuals, Plaintiffs argue that driver's license suspensions, all things considered, make child support enforcement more difficult. Pl. Repl. Brief at 30. Defendants criticized Plaintiffs' reliance on this data, much of which was generated by the State, but did not produce any contrary statistics. Although

Defendants claimed that the statistics were outdated, the Supreme Court Committee on Municipal Court Operations, Fines, and Fees relied on the same February 2006 report in its recently published 2018 study of municipal court practices in need of reform. This report was also cited in "Letters to Colleagues," from the United States Department of Justice, Civil Rights Division, March 14, 2016, at p. 6 (Pl. Repl. Brief Ex. 2). Despite its age, therefore, the February 2006 report has been judged authoritative in addressing the impacts of suspensions on low-income individuals.

Next, Plaintiffs assert that whatever money was collected as a result of automatic driver's license suspensions is due to the fact that they are attached to bench warrants. They assert that it is the issuance of bench warrants and threat of incarceration that cause obligors to make payments, not driver's license suspensions. As evidence of this point, Plaintiffs note that neither DFD nor the AOC was able to provide records in response to Plaintiffs' OPRA requests to provide "data . . . maintained as to the effectiveness of the driver license suspension as a coercive tool (in addition to warrant issuance)." Pl. Ex. E at 2-3. Plaintiffs argue that the failure to provide such data suggests that driver's license suspensions -- effectuated almost entirely through the issuance of warrants -- have no independent impact on child support enforcement efforts. In further support of their claims, Plaintiffs also assert that they felt no extra coercion as

a result of the potential for driver's license suspensions when effectuated as part of the issuance of bench warrants.

Plaintiffs also point to the deposition testimony and certification of Norman Epting, a retired CSHO. In both his deposition, see Pl. Ex. S at 41:3-41:15, and certification, id. at 142 ¶¶ 5-6, he asserts that he does not believe there is any added coercive effect to a driver's license suspension when it is added to a bench warrant. He also noted that the $100 restoration fee would be better used if spent towards the child support obligation. Id. at ¶ 6. This statement was based on his personal opinion from experience, and was echoed by Plaintiffs in their depositions. Mr. Epting also admitted, however, that "the option to suspend a license" can be an effective threat for coercing payment, at least when brought up in an ELR hearing. Id. at ¶ 4.

But the court is not surprised that there is no data that demonstrates the independent effect of automatic driver's license suspensions apart from the effect of bench warrants. In New Jersey, every automatic driver's license suspension is attached to the issuance of a bench warrant. It is therefore impossible to separate the effects of a bench warrant and an automatic driver's license suspension. The inability to quantify the effect of driver's license suspensions was itself admitted by Plaintiffs in their briefing, when they asserted that, "it is obviously impossible to know whether collections are due to the issuance of

the arrest warrant alone, or due to the license suspension that accompanies it." Pl. Brief at 33. Indeed, the only evidence presented by Plaintiffs to support their claim that automatic driver's license suspensions do not assist in the enforcement of child support orders is the testimony from Mr. Epting and Plaintiffs' own assertions.

Plaintiffs' claim that the money spent by indigent obligors on fees and penalties connected with license suspensions and restorations would be better spent on their non-custodial children -- while perhaps appealing from a policy point of view -- does little to bolster their substantive due process attack on Section 41. At the time a bench warrant is issued for failure to pay support obligations or failure to appear at a hearing, triggering an automatic license suspension, an obligor has likely already gone several months without paying support obligations. See N.J.S.A. 2A:17-56.41(a); Directive # 15-08 at 8-9; CSHO Manual § 1710.1. Based on this established pattern of nonpayment, it is rational to conclude that any fines and fees incurred as a result of a suspension would not be paid to the obligor's children without further coercive action by the State. Given the challenges posed to child support enforcement by chronically recalcitrant obligors, it is not unreasonable for the State to suspend driver's licenses to coerce obligors to appear in court to address their non-payment.

That obligors will have to pay the MVC money to restore their licenses that could otherwise be put toward child support is simply an administrative expense associated with the coercive remedy selected by the Legislature. While Plaintiffs question the wisdom of this practice and suggest that it is counterproductive to increasing child support payments, those arguments do not establish the arbitrariness of the legislative scheme. If evidence were to show conclusively that the automatic suspension policy has no effect on, or actually reduces, the amount of child support that is paid in the long term, or fails to reduce the number of delinquent obligors in the first place, the policy might conceivably fail to satisfy even the low bar of the rational basis test. However, such evidence has not been presented here by Plaintiffs and, as far as the court can tell, such evidence does not exist. At best, Plaintiffs have raised concerns that Section 41 as implemented may reflect unwise policy, but they have not shown that the legislation is fundamentally irrational or arbitrary.

As a final point, Plaintiffs assert that there can be no rational basis for an enforcement method that targets those who are fundamentally unable to pay and makes it harder for those individuals to do so by suspending their driver's licenses. Pl. Repl. Brief at 33-34. But the mass of data provided by Plaintiffs simply proves that a high number of low-income individuals receive

automatic driver's license suspensions, and is silent as to their indigence or inability to pay any level of child support. Moreover, the data does not rule out the distinct likelihood that there are obligors who pay support to avoid license suspensions, or who came to court and made payments to prevent the suspensions and did not suffer the dire consequences highlighted in the statistics. In fact, Mr. Epting admitted that the threat of driver's license suspensions has a positive coercive effect on some obligors who would otherwise have continued to evade making payments, although he suggested that the percentage of such recalcitrant obligors was small. In addition, Plaintiffs themselves noted that for each suspension recorded, an average of $259 in child support was paid. These facts are sufficient to find that automatic license suspensions satisfy substantive due process, although the data presented by Plaintiffs does provide evidence to question the wisdom of the legislative choice, especially given the disparate impact of the automatic suspensions on economically marginal obligors. While insufficient to succeed on a substantive due process claim, the AOC, DFD, and the Legislature may want to re-examine the automatic license suspension enforcement mechanism in light of the data provided by Plaintiffs, the fact that New Jersey is an outlier among the states in being the only one to rely on automatic suspensions of driver's licenses, and the reality that many other states -- including

Pennsylvania -- have much higher collection rates than New Jersey without incorporating automatic suspensions into their enforcement schemes. See CSE 2014 Preliminary Report, Pl. Ex. Y at 1-3.

b. Section 43

As noted above, Section 43 delineates a separate process for driver's license suspensions than the approach authorized in Section 41. Plaintiffs challenge two aspects of this provision as violating substantive due process, although the court notes that Plaintiffs apparently never sought hearings under N.J.S.A. 2A:17-56.43, nor ever were afforded the procedures mandated under this section. Defendants therefore questioned Plaintiffs' standing to challenge this statutory provision, as a driver's license suspension is only authorized by Section 43 following a hearing. Furthermore, N.J.S.A. 2A:17-56.43 requires a lump sum payment of 25% of the total arrearage in order to avoid a driver's license suspension, and none of the plaintiffs has shown that they would or could pay this amount if given the chance.

In response, Plaintiffs argue that they have a right to end uncertainty about legal rights and duties surrounding child support enforcement procedures available to them, since they are in arrears in their child support obligations. Pl. Repl. Brief at 37. They cite Union County Bd. Of Chosen Freeholders, 41 N.J. at 337, which concerned the right of plaintiffs to funds possessed by

defendants. The court quickly rejected the defendants' standing argument there, noting that:

> [t]he defendant contends in effect that the Board of Freeholders has no interest in the funds possessed by it and therefore has no standing to maintain the action. But the question of whether it has an interest is the meritorious issue which the Board is entitled to have judicially determined; the declaratory judgment proceeding it chose for such determination was an appropriate one.
>
> [Id. at 337.]

In the present matter, Plaintiffs are not claiming a direct interest in some tangible thing possessed by Defendants. Rather, they are asserting a right to evenhanded, non-arbitrary application of child support remedies. Notably, Plaintiffs are seeking a declaratory judgment that Section 43 violates substantive due process guarantees.

Such a claim arises under the Uniform Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62. This Act is intended to "afford relief from uncertainty and insecurity with respect to rights, status and other legal relations" and "shall be liberally construed and administered." N.J.S.A. 2A:16-51. The Act explicitly provides that persons whose rights are affected by a statute "may have determined any questions of construction or validity" and that "[f]urther relief based on a declaratory judgment may be granted whenever necessary or proper, by application to a court having

jurisdiction to grant the relief." N.J.S.A. 2A:16-53 and -60. Issues of fact "may be tried and determined in the same manner as issues of fact are determined" in the same court, and the declaratory judgment "shall have the force and effect of a final judgment." N.J.S.A. 2A:16-58 and -59. Courts have the "power to declare rights, status and other legal relations, whether or not further relief is or could be claimed." N.J.S.A. 2A:16-52.

The New Jersey Supreme Court has characterized some proceedings under the Act as "determin[ing] the constitutional force of the challenged provisions of the cited statute" and "restrain[ing] the threatened enforcement of such of them as may be found deficient." Abelson's, Inc. v. New Jersey State Board of Optometrists, 5 N.J. 412, 416 (1950). In Bell, 110 N.J. at 390, the Court held that the owner of three billboards had standing to challenge the constitutionality of a municipal ordinance prohibiting all billboards within Stafford Township even though the owner's dispute with the Township could have been decided on other grounds. The Court reasoned that, "[w]hile the [Declaratory Judgment] Act is not to be used to secure decisions that are only advisory in effect . . . it does afford expeditious relief from uncertainty with respect to rights when claims are in genuine conflict." Id. at 391.

Given these provisions and precedents, Plaintiffs have the right to seek a declaratory judgment regarding the proper

construction of Section 43 and its constitutionality, as well as equitable relief from license suspensions should Section 43 be deemed unconstitutional or incorrectly enforced. They are subject to all of the enforcement actions and remedies authorized in the child support statutes, and allege that Section 43 arbitrarily limits hardship relief available to recalcitrant obligors like themselves. Their status and the nature of their claims under the Declaratory Judgment Act demonstrate their standing to challenge Section 43 on substantive due process grounds.

Unlike Section 41, Section 43 explicitly provides for the court to issue a new child support payment plan instead of suspending the obligor's license. See N.J.S.A. 2A:17-56.43 (permitting a court to set a new payment plan "if the court finds that the license revocation or suspension will result in a significant hardship to the obligor, to the obligor's legal dependents under 18 years of age living in the obligor's household, to the obligor's employees, or to persons, businesses or entities to whom the obligor provides goods or services"). The statute also provides for the terms of this new payment plan. Ibid.

Plaintiffs challenge two aspects of the remedy set forth in the statute. First, Plaintiffs challenge the fact that the statute limits relief to only those obligors able to pay "25% of the past-due child support within three working days of the hearing." Ibid. Plaintiffs argue that this percentage is simply arbitrary and that

initial payment amounts should be established on a case-by-case basis. Second, Plaintiffs challenge the statute's requirement that "[i]n no case shall a payment plan extend beyond the date the dependent child reaches the age of 18." Ibid. Plaintiffs argue that this mandatory cut-off of child support payments is inappropriate because New Jersey statutes do not automatically emancipate children at the age of eighteen, but upon a showing of having moved "beyond the sphere of parental influence," which may occur later if, for example, the child is disabled. See Filippone v. Lee, 304 N.J. Super. 301, 308 (App. Div. 1997). Since the Plaintiffs first made this argument, however, the child support statutes have been amended to provide for termination of the obligation to pay child support "by operation of law" without order by the court when a child reaches nineteen, marries, dies, or enters military service, with some limited exceptions. N.J.S.A. 2A:17-56.67. Notably, N.J.S.A. 2A:17-56.69 provides that any arrears that are due and owing at the time of termination under N.J.S.A. 2A:17-56.67 "shall remain due and enforceable."

As a preliminary point, while N.J.S.A. 2A:17-56.43 provides an alternate remedy to avoid license suspensions, judges, hearing officers, and Probation staff are not limited to this one mechanism when considering enforcement options. After all, the statute merely provides that if the court finds that a suspension would pose too great a burden on an obligor, "the court *may allow* the

obligor to pay" based on an alternative child support plan. N.J.S.A. 2A:17-56.43 (emphasis added). Moreover, Section 43 notes that the court should not even consider a driver's license suspension until "all appropriate enforcement methods have been exhausted." Ibid. Thus, under a plain reading of the statute, Section 43 does not preclude the courts from crafting other equitable arrangements based upon the circumstances of the obligor. Notably, Plaintiffs have provided no examples of courts applying this portion of Section 43 at all, while their individual payment histories summarized above reveal the use of various enforcement mechanisms and acceptance of varying lump sum amounts to avoid incarceration and license suspension or to be released from incarceration. Section 43 did not stand as an impediment to having their hardship circumstances reviewed in certain court proceedings involving their obligations.

More fundamentally, however, Plaintiffs' challenges again amount to policy arguments that fall short of establishing a constitutional violation. Plaintiffs have, at best, provided alternatives that they claim are superior to the Legislature's choices in crafting remedies for obligors suffering hardships that prevent payment of child support. But their contentions are insufficient to meet the rational basis test. In other words, they have failed to demonstrate that the Legislature had no rational basis for establishing an enforcement mechanism requiring

a 25% initial payment or a terminal end date for child support payments when a payment plan along the lines contemplated in the Act is ordered.

Instead, there is certainly nothing novel or controversial about authorizing new payment plans for obligors who fall into delinquency and providing for a down payment of 25% of the arrearage to avoid a driver's license suspension. Again, while Plaintiffs question the wisdom of limiting this specific hardship remedy as crafted by the Legislature, the existence of other approaches that Plaintiffs find preferable or more flexible is of no constitutional moment. See Singer, 373 N.J. Super. at 15-16. Similarly, imposing a deadline for the final payment of child support obligations under this hardship remedy shows that the Legislature wanted the obligation to be paid during the years when the affected children likely need the most support. There is nothing arbitrary or irrational about such a goal or the means selected by the Legislature to achieve it.

Accordingly, the court rejects Plaintiffs' substantive due process challenges to N.J.S.A. 2A:17-56.43. Given the statistics provided by Plaintiffs about the hardships experienced by many indigent obligors, however, the Legislature might consider broadening the explicit statutory hardship remedy if it determines to revisit the child support enforcement statutory scheme.

Providing additional alternatives could even conceivably result in augmented collections for needy children.

D. Procedural Due Process

Plaintiffs have alleged that the automatic suspension process violates the procedural due process rights of obligors suffering financial hardships. They propose a number of protections they claim are constitutionally required to ensure they are not erroneously deprived of their significant property interest in driver's licenses. While Defendants challenge Plaintiffs' assertions that they are indigent, courts at various times found both Mr. Dansby and Mr. Arede to be indigent. In addition, Ms. Kavadas provided proof that she was on food stamps at times when she fell into arrears and could not afford to pay the license restoration fee. All plaintiffs claim they did not willfully fail to pay their support obligations, but were unable to satisfy their arrears due to economic hardships when their driver's licenses were suspended. Defendants challenge these assertions as self-serving, claiming that Plaintiffs have simply relied on their subjective beliefs that they did not have the ability to pay their child support obligations when warrants were issued for their arrests and their driver's licenses were simultaneously suspended. Through this litigation, however, Plaintiffs have mounted a systemic challenge to the process for suspending driver's licenses when FTP warrants issue. They seek broad relief, and not remedies

limited to their particular circumstances, which have been offered as illustrative. For the purpose of this litigation, therefore, the court will assume -- without finding as fact -- that Plaintiffs were suffering from various economic hardships during some of the periods when their driver's licenses were suspended. This assumption is made for the purposes of the constitutional and statutory challenges asserted in this case, and does not represent a factual finding regarding their ability to pay their obligations or arrears currently, or a factual finding as to their indigency at the present time.

The automatic suspension process at issue in this matter can be analyzed under both the Fourteenth Amendment of the United States Constitution and similar guarantees contained in the New Jersey Constitution. "Although the [New Jersey] State Constitution does not enumerate the right to due process, Article 1, Paragraph 1 protects values like those encompassed by the principle of due process." State v. Robinson, 229 N.J. 44, 48 (2017) (quoting Doe v. Poritz, 142 N.J. 1, 99 (1995)) (internal quotes omitted). The New Jersey Supreme Court has, in fact, "construed Article 1, Paragraph 1 to provide more due process protections than those afforded under the United States Constitution," expressing confidence that "any remedy we prescribe [under the State Constitution] will be sufficient under the Federal Constitution" as well. Jamgochian v. New Jersey State Parole Bd.,

196 N.J. 222, 239 (2008). See also Doe v. Poritz, 142 N.J. at 104-105. Federal case law, while helpful in sketching the broad outlines of procedural due process and elucidating specific factors to be considered in a proper due process analysis, may ultimately not go far enough in protecting citizens' rights and interests under the New Jersey Constitution. As noted by the New Jersey Supreme Court:

> [w]e look to both the federal courts and other state courts for assistance . . . but the ultimate responsibility for interpreting the New Jersey Constitution . . . is ours. In fulfilling that responsibility, we have generally been more willing to find State-created interests that invoke the protection of procedural due process than have our federal counterparts.
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> [Doe v. Poritz, 142 N.J. at 104 (quoting Greenberg v. Kimmelman, 99 N.J. 552, 568 (1985), and New Jersey Parole Bd. v. Byrne, 93 N.J. 192, 208 (1983).]

It is thus necessary to look primarily to New Jersey precedents interpreting the State Constitution in order to evaluate whether the automatic driver's licenses suspension process complies with procedural due process. See, e.g., Jamgochian, 196 N.J. at 239; Doe v. Poritz, 142 N.J. at 104.

Broadly speaking, in New Jersey the "minimal requirements" of procedural due process are "notice and an opportunity to be heard." J.I. v. N.J. State Parole Bd., 228 N.J. 204, 231 (2017). These fundamentals of due process are required "whenever an individual risks governmental exposure to a grievous loss," as Plaintiffs

appropriately characterize the loss of their driver's licenses. See State ex rel. D.G.W., 70 N.J. 488, 501 (1976) (quoting Morrissey v. Brewer, 408 U.S. 471, 484 (1972)). However, the precise nature of the notice and hearing required under the State Constitution differs depending on the situation. "We have recognized that '[t]he requirements of due process are, of necessity, flexible, calling for such procedural protections as the situation demands.'" Jamgochian, 228 N.J. at 240 (quoting State ex rel. D.G.W., 70 N.J. at 502). Indeed, fairness and flexibility are so valued in New Jersey that our Supreme Court has even extended procedural protections beyond those that may be required constitutionally in order to protect against arbitrary governmental action. See, e.g., Doe v. Poritz, 142 N.J. at 109. The starting point for applying both procedural due process and concepts of fundamental fairness is the same: first assessing whether a liberty or property interest has been interfered with by the State. After analyzing the private interest at stake, courts must consider "whether the procedures attendant upon that deprivation are constitutionally sufficient." State v. Robinson, 229 N.J. at 48 (quoting Doe v. Poritz, 142 N.J. at 99).

In approaching the procedural due process/fundamental fairness analysis, this court has been particularly concerned with inconsistencies regarding whether notice of an imminent suspension is provided in advance of the government action and inconsistencies

in the various forms and language that Probation *may* use prior to imposition of any actual suspension. Even more troubling is the fact that driver's licenses are routinely suspended prior to providing obligors with confirmation of that "grievous" governmental action, thus allowing affected obligors to unwittingly violate the law by driving on a suspended license and exposing them to significant penalties. The court is also concerned by the statistics showing that implementation of the child support statutory scheme, which provides at least three different mechanisms by which licenses can be suspended (two in N.J.S.A. 2A:17-56.41 and N.J.S.A. 2A:17-56.44 and one in N.J.S.A. 2A:17-56.43), has resulted in over 99% of all driver's license suspensions being accomplished by reliance on the automatic suspension option -- the *only* statutory option that does not explicitly require advance notice and an opportunity to be heard before a suspension is imposed. Of concern as well is that driver's license suspensions affect the poor to a much greater extent than other income groups. This reality was not only demonstrated by the statistics provided by Plaintiffs in this case and cited above, but has been recognized by the United States Supreme Court in Turner v. Rogers, 564 U.S. 431, 444-45 (2011). Whether these concerns require changes in the automatic license suspension process is explored below.

1. The Private Interest

State and federal courts show unanimity in recognizing that the suspension or revocation of driver's licenses entitles the license holders to due process. See, e.g., Dixon v. Love, 431 U.S. 105, 112 (1977); State v. Moran, 202 N.J. at 325-26; Amunrud, 158 P.3d at 574-75. As noted by the New Jersey Supreme Court, "[L]icense-revocation proceedings do realistically affect drivers in a serious way, often threatening their ability to earn a livelihood, and it is *settled* they must meet those incidents of fairness underlying due process." In re Arndt, 67 N.J. 432, 436 (1975) (quoting David v. Strelecki, 51 N.J. 563, 566 (1968), cert. denied, 393 U.S. 933 (1968)) (emphasis added). Consequently, the automatic suspension of Plaintiffs' driver's licenses constitutes interference with a property interest that requires a certain level of procedural due process. In addition, the New Jersey Supreme Court has also characterized the suspension of a driver's license as "a consequence of magnitude because a license to drive in this State 'is nearly a necessity,' as it is the primary means that most people use to travel to work and carry out life's daily chores." State v. Moran, 202 N.J. at 325 (quoting State v. Hamm, 121 N.J. 109, 124 (1990), cert. denied, 499 U.S. 947 (1981)). In fact, the Court in State v. Hamm emphasized the importance of driver's licenses by refusing to "trivialize the license revocation by an outworn distinction between rights and

privileges. Anyone who thinks it is a governmental privilege to drive a car in New Jersey has only to experience" life in much of this State, which requires providing transportation for almost all of "life's necessities." Ibid.

Statistics on the use of personal automobiles and the effects of license suspensions simply reinforce the importance of driving in everyday life. This court takes judicial notice of a study published by the United States Census Bureau in 2013 showing that 76.4% of American workers regularly drive to work alone. U.S. Census Bureau, 2013 American Community Survey, Table S0801. Losing the right to drive would thus interfere with the ability of most workers to access their employment.

In 2006, a study prepared jointly by MVC and Rutgers University described the many negative effects that license suspensions had on the lives of drivers and their families. See Edward J. Bloustein School of Planning and Public Policy & N.J. Motor Vehicle Comm'n, Motor Vehicles Affordability and Fairness Task Force Final Report (February 2006) ("2006 MVC Final Report"). As noted above, this report found that 42% of individuals who had their licenses suspended lost jobs as a result of the suspension, 45% of those who lost jobs could not find another job, and 88% of those that were able to find another job reported a decrease in income. 2006 MVC Final Report at 38. This report further found that driver's license suspensions often made it more difficult for

suspended drivers to meet personal and family responsibilities, as spouses, children, and other family members could no longer rely on them for daily transportation needs related to school, medical appointments, and other essential trips. Id. at 40-41. License suspensions for failing to pay child support were found to be particularly harmful because limited employment options following suspensions made it more difficult for obligors to meet outstanding support obligations, thus creating barriers to family reunification. Id. at 42. Even though most of the Report's findings addressed license suspensions in general and did not focus on child support-related suspensions, it is reasonable to assume that the affected dependents likely included many children who are the subject of child support orders, and the very individuals that the automatic license suspensions were intended to benefit.

The potentially far-reaching detrimental impacts of driver's license suspensions described in the 2006 MVC Final Report have been recognized recently by the New Jersey Supreme Court Committee on Municipal Court Operations, Fines, and Fees. There, the Committee highlighted the point made by Plaintiffs here that, "economically destabilized families and dependents of those defendants also suffer the aftermath" of the effects of license suspension. Report of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees at 22 (2018). As observed above, the Committee based its conclusions on statistics and findings

included in the 2006 MVC Final Report, citing to it numerous times. Unlike Defendants here, who assert that the 2006 report is outdated and of little worth, the Committee was obviously not deterred from relying on it due to its age. See also "Letter to Colleagues", from the U.S. Department of Justice, Civil Rights Division (March 14, 2016), which also relies on the 2006 MVC Final Report and concludes that automatic license suspensions to compel payment of court debts when obligors are unable to pay "may violate due process." Pl. Repl. Brief Ex. 2 at 6, citing Bearden v. Georgia, 461 U.S. 660, 671 (1983).

Even more concerning is that the negative effects of driver's license suspensions weigh more heavily on the poor. This court takes judicial notice of further data in the 2006 MVC Final Report that compared the economic impacts of driver's license suspensions across income groups. This report found that when compared to high-income individuals (yearly income over $100,000), low-income individuals (yearly income under $30,000) were nearly four times more likely to lose a job following a license suspension and three times more likely to be unable to pay increased insurance costs. 2006 MVC Final Report at 57. Notably, the statistics highlighted by Plaintiffs resonate with similar concerns that recently prompted the New Jersey Legislature to enact bail reform in the State. See N.J.S.A. 2A:162-15 to -26; Sponsor's Statement to S. 946 (L. 2014, c.31, § 1 (August 11, 2014)). See also Turner, 564

U.S. at 444-45 (noting that "70% of child support arrears nationwide are owed by parents with either no reported income or income of $10,000 per year or less").

The private interest in retaining a driver's license for economically marginal child support obligors is thus not restricted to them, but also implicates the interests of their children, both custodial and non-custodial alike. While the State justifies automatic suspensions as necessary to increase child support payments, there is at least some evidence in this record that child support payments may be more likely to be made when the obligor is able to avoid a license suspension. Critically, persons losing a driver's license as part of child support enforcement efforts may be deprived of the very means of earning money both during the period of deprivation and for the foreseeable future if they lose their jobs as a result of having no license. The injury can be quite literally incalculable. The record here, for example, shows that Ms. Kavadas could not qualify for a job she was interested in because it required a driver's license, hers had been suspended, and she represented that she did not have the money at that time to pay the restoration fee. Plaintiffs also claimed that they could not drive to court to answer a warrant since their licenses were suspended, nor could they drive to visit their non-custodial children. Plaintiffs thus have plainly enunciated an important interest that merits procedural protections.

While Defendants appear to acknowledge that Plaintiffs have demonstrated an interest that merits some procedural protections, they minimize the interest and the amount of process required to protect it by pointing to the fact that automatic license suspensions are "temporary." The duration of an impairment is a relevant concern when evaluating an interest affected by governmental action. When addressing loss of an occupational license in In re Polk, 90 N.J. at 564, the Court noted that, "[t]he permanency of the loss of a substantial private interest is clearly a factor militating in favor of greater protection." See also Mackey v. Montrym, 443 U.S. 1, 11-12 (1979) (Plaintiff's interest was considerably lessened because the statute set a ninety-day maximum on the suspension and permitted immediate post-suspension hearings to challenge the decision). The most immediate purpose of child support bench warrants as utilized by Probation is to bring the obligor before the court or before a CSHO to determine the circumstances behind the obligor's non-compliance. Directive #15-08 at 6. In almost every case, the driver's license of an obligor will be reinstated immediately after the Expedited ELR hearing is held, subject to the obligor's paying the MVC license restoration fee. See, e.g., Pl. Ex. N at 25 (Order for Relief to Litigant reinstating Plaintiff Paulo Arede's driver's license). The hearings may even lead to the retroactive vacating of the initial license suspension, thereby releasing obligors from having

to pay the restoration fee, although that may occur in only a small number of cases.

Although there is certainly a legal basis for Defendants' temporal argument, the practical realities involved in automatic license suspensions convince this court that Plaintiffs' characterization of the suspensions as "indefinite" is more appropriate and underscores significant due process concerns. First, there is no clear end date to any automatic suspension. If affected licensees do not receive notice of the suspensions and come to court to execute the warrant, the suspensions could last for months until obligors are arrested or learn of the warrant and voluntarily submit to the court's jurisdiction. Other obligors may forego driving until they have funds to pay toward their obligations and to satisfy the restoration fee, thus suffering the effects of the suspension for months or longer. That appears to have been the case for at least two of the Plaintiffs in this case. Throughout the suspension period, obligors in this situation are at risk of significant penalties if they drive without a valid license. Also of concern is that the State "will not be able to make a driver whole for *any* personal inconvenience and hardship suffered" during the suspension period. See Mackey, 443 U.S. at 11 (emphasis added). See also Dixon, 431 U.S. at 113 ("Unlike the social security recipients in Eldridge, who at least could obtain retroactive payments if their claims were subsequently sustained,

a licensee is not made entirely whole if his suspension or revocation is later vacated.").

Moreover, when New Jersey's MVC suspends a driver's license, the licensee may suffer both direct and indirect consequences. The direct consequences include the inability to legally operate a motor vehicle and the requirement to pay $100 for the restoration of the license. See N.J.S.A. 39:3-10a. While some obligors whose licenses were suspended by operation of law upon the issuance of a child support-related bench warrant *may* be able to mitigate these direct consequences by appearing at an Expedited ELR hearing or making a significant payment towards their arrears, such relief may not be available depending upon individual circumstances. Some of the Plaintiffs in this case, for example, had license suspensions lasting many months.

Notably, the indirect consequences of driver's license suspensions must be considered. Indeed, they may be much more severe than the direct consequences and may not be easily mitigated. New Jersey law provides for a $500 fine for a first offense of driving with a suspended license, which rises to $1,000 for subsequent offenses. N.J.S.A. 39:3-40. Worse, a first offense can result in a new license suspension of up to six months while future offenses can result in even longer suspensions, license revocations, or imprisonment. Ibid. Moreover, the MVC's suspension notice informs obligors that, after the effective date

of the suspension, they "could face up to five years in jail" if they drive while their licenses are suspended. See N.J.S.A. 2C:40-22. Unlike automatic driver's license suspensions under N.J.S.A. 2A:17-56.41(a) and unlike the $100 license restoration fee, these severe penalties cannot be waived or shortened by family court judges. Further, a conviction for driving with a suspended license will appear on a New Jersey driving record, which may cause a licensee's insurance rates to rise. Even if obligors immediately appear in court and pay off the entirety of their arrears, or pay the release amount determined by Probation, they will still be fully liable for any penalty they may have received if stopped for driving with a suspended license, regardless of whether that violation was committed knowingly or unwittingly. Consequently, an obligor may not be "made entirely whole if his suspension or revocation is later vacated." See Dixon, 431 U.S. at 113.

Given the exposure to severe penalties and other negative consequences that can result from driver's license suspensions, including an increased difficulty in obtaining or retaining employment and making child support payments for many obligors, this court finds that the automatic suspension of licenses upon issuance of an FTP warrant remains a consequence of magnitude no matter the length of the suspension or the ease with which it can be rectified for some affected obligors. Plaintiffs thus have demonstrated that their interest in retaining their driver's

licenses is a substantial property interest requiring significant procedural protections.

2. Notice

Once private interests have been identified as meriting due process protection, the court turns to the manner in which government interferes with those interests. The primary components of due process are notice and an opportunity to be heard, preferably through a pre-deprivation hearing. Mettinger v. Globe Slicing Mach. Co., 153 N.J. 371, 389 (1998). Such review also involves application of the balancing test set forth by the United States Supreme Court in the seminal case of Mathews v. Eldridge, 424 U.S. 319, 335 (1976). Under that test, following identification of an important private interest, courts must consider the risk of an erroneous deprivation of that interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards. Finally, courts must also weigh the government's interest, including the fiscal and administrative burdens that the additional or substitute procedural requirements would entail. New Jersey courts have consistently followed the test enunciated in Mathews as the definitive foundation of procedural due process analysis under the New Jersey Constitution. See, e.g., Jamgochian, 196 N.J. at 240; State v. Robinson, 229 N.J. at 48; In re Polk, 90 N.J. at 562; Rivera v. Bd. of Review, 127 N.J. 578, 589 (1992). The Supreme

Court of New Jersey has utilized it as well when applying fundamental fairness principles to require relief unavailable under due process to protect against arbitrary State action. Doe v. Poritz, 142 N.J. at 106-07.

A critical component of due process is notice of the potential deprivation and information about how to avoid it. The requirement of notice does not depend on an individual's actual ability to provide a defense; if prejudice might result from a lack of notice, the procedure is deemed inherently lacking in due process. See H.E.S. v. J.C.S., 175 N.J. 309, 325 (2003). "Due process requires that the person in question receive a notice that sufficiently defines the issue to permit him or her a fair opportunity to prepare and to defend against the accusation." In re Civil Commitment of E.D., 183 N.J. 536, 547 (2005). "The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314-15 (1950). Courts must analyze the reasonableness of any notice based on the practicalities of the individual case. Moreover, the "nature of the notice required by the due-process clause depends on the actual context in which notice is being given." Rivera, 127 N.J. at 588.

Plaintiffs argue that they are entitled to advance notice that their driver's licenses will be suspended and a date by which

they can request a hearing to contest the suspension or take action, such as making a payment toward arrears, to prevent the "grievous loss" of their driving privileges. Defendants counter that due process notice requirements are satisfied by the general warnings contained in USSOs that warrants will issue for failures to pay child support and that driver's licenses will be suspended upon issuance of child support-related warrants. As noted above, all USSOs contain several pre-printed pages of instructions, including warnings that the driver's license held by the obligor shall be suspended "if the court issues a warrant for the obligor's arrest for failure to pay child support as ordered, or for failure to appear at a hearing to establish . . . child support, or for failure to appear at a hearing to enforce a child support order and said warrant remains outstanding." Given the serious direct and indirect consequences associated with the suspension of driver's licenses noted above, however, this court simply is uncomfortable with accepting Defendants' argument that such general notice provisions satisfy due process.

The New Jersey Supreme Court was similarly uncomfortable with the State's reliance on general conditions of parole release issued to sex offenders upon their release from prison as satisfying due process when a curfew was imposed upon a parolee several years after his release. Although those conditions included a warning

that parolees could be subject to curfews confining them to their homes during certain hours as a special condition of parole, the Court found such notice woefully insufficient when a parole supervisor concluded several years after a parolee's release from prison that the curfew was necessary to reduce the recurrence of criminal behavior. Jamgochian, 196 N.J. at 243-45. The Court thus required advance notice of the intent to impose a curfew and an opportunity to respond to the charges that prompted imposition of it. Id. at 245-48.

Although Defendants argue that individual notice of a license suspension upon issuance of a child support-related warrant is not required by due process, they conceded that some Probation officers do provide such notices in advance of suspensions in the form of a Notice of Intent of Bench Warrant, identified in the record as Form CS594. This Notice states that Probation has determined that the obligor is in violation of a support order and that a bench warrant "may be issued for your arrest" if the obligor fails to respond to Probation in ten business days to "make other arrangements," presumably to make a payment toward arrears, or to file a motion to provide reasons to the court why a warrant should not issue or to seek a downward modification of the support amount. The Notice also warns the obligor that failure to contact Probation will not only result in the issuance of a bench warrant, but in the suspension of the obligor's driver's license "by operation of

law upon the issuance of a child support related warrant." While use of this Notice satisfies many of the court's concerns about advance notice to obligors of looming license suspensions, the record in this case showed that use of the form was inconsistent at best and not uniformly provided to all obligors facing driver's license suspensions. Indeed, counsel for Defendants conceded at oral argument that the use of Form CS594 is not a required element of the enforcement process and is not routinely used in every vicinage or in every case where warrants are issued. Notably, however, subsequent to the record closing in this matter, the AOC implemented revisions to the Probation Child Support Operations Manual, directing Probation officers and judges to make specific findings regarding obligors' indigence and ability to pay on CS702 Child Support Ability to Comply Orders, and requiring that a Notice of Intent of Bench Warrant be issued the first time a warrant is requested and again after a period of one year has elapsed since the last warrant was issued. See Sections 1605 and 1606 of the Probation Child Support Enforcement Operations Manual Procedures (revised June 2017).

Moreover, although the language of the Notice says that a warrant "will issue" unless action is taken within ten business days, which seems definite, in practice it appears to mean that a warrant will issue and the license be suspended at some point after the ten-day deadline expires, not that the suspension will issue

immediately upon expiration of the deadline. The record here shows that LaQuay Dansby's license was suspended one time in fewer than the ten-day period after the Notice was sent and another time only after more than 100 days had passed.

Whether this Notice is utilized or not, the record reveals that neither Probation nor the MVC ensures that notice of the effective date of the suspension is provided to obligors prior to the suspensions taking effect so that obligors can refrain from driving to avoid the serious penalties described above. This circumstance is extremely troubling to the court. The record demonstrates, in fact, that some obligors may only learn of their license suspensions after the suspensions take effect when they may already have unwittingly exposed themselves to violating the law. Others may only find out about the suspensions when they are arrested for driving with a suspended license. At that point, they have already exposed themselves to significant penalties and have been deprived of the opportunity to comply with the law to avoid a consequence of magnitude. For example, Plaintiff LaQuay Dansby has asserted that on one or two occasions he was cited for driving with a suspended license when he was unaware of the suspension and that these citations made it more difficult for him to have his driving privileges restored. Pl. Ex. V at 58. Moreover, the MVC provided Plaintiff Andreana Kavadas notices confirming the suspensions of her driver's license that were

generated between one and five days *after* the date the suspensions went into effect, with mail delivery occurring some time thereafter. See Pl. Ex. J.

Due process also requires the government to take all reasonable steps to ensure that notice reaches the intended recipient. Indeed, "[n]otice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interest of any party." Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 800 (1983). While Plaintiffs assert that advance notice of license suspensions should be provided by certified mail, and the court agrees that such mailing would be preferred given the direct and indirect consequences associated with such suspensions, certified mail is not constitutionally required. In fact, courts have held that systems for sending notice do not have to be perfect or "able to account for all possible contingencies," Rivera, 127 N.J. at 590, and that "service by mail is an efficient and inexpensive way to serve litigants" and "due process is satisfied when a defendant . . . is served by ordinary mail at his or her last known address." First Resolution Inv. Corp. v. Seker, 171 N.J. 502, 514 (2002). Actual notice is not required when the affected party's location cannot be determined through reasonable efforts. See Mullane, 339 U.S. at 316-18 (noting that "in cases of persons missing or unknown, employment of an indirect and even

a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights."). See also City of Newark, of County of Essex v. (497) Block 1854, Lot 15, 9-11 South 7th St., Chiquita Realty, Inc., 244 N.J. Super. 402, 407 (App. Div. 1990) (noting that due process requires notice to "parties whose identities and whereabouts are ascertainable by reasonably diligent efforts.").

The deposition testimony of Plaintiffs and records they presented underscore the court's concerns. For example, Plaintiff Andreana Kavadas testified at deposition that the elapsed time between when she received a Notice of Delinquency or a Notice of Intent of Bench Warrant and when a warrant was actually issued varied each time her driver's license was suspended. Pl. Ex. T at 130:9-131:7. Plaintiff Paulo Arede testified that the Probation Division sent notices to his lawyer rather than to him directly. Pl. Ex. W at 61:4-16. The documents produced by Plaintiffs pertaining to Mr. Arede show five Notices of Intent of Bench Warrant sent to him, even though his driver's license was suspended ten times. Pl. Ex. M. Finally, Plaintiff LaQuay Dansby's child support enforcement history shows that the elapsed times between the mailing of a Notice of Intent of Bench Warrant and the issuance of a warrant ranged from three days to well over 100 days, despite the Notice's language that a warrant will issue in ten days. See, e.g., Pl. Ex. L at 2; Pl. Ex. R at 2. This seemingly haphazard

pattern of notice —- when coupled with the reality that often no notice was provided at all prior to suspension -- deprives obligors of the certainty necessary to understanding when their driver's licenses will be suspended and when they have to be concerned about subjecting themselves to the significant penalties described above if they drive with a suspended license.

The court acknowledges that setting a definitive date for the suspension may be difficult in the context of child support enforcement procedures. After all, the process is designed to be flexible, allowing the obligor every opportunity to comply with a child support order or otherwise seek a modification of that order by filing a motion. But this flexibility does not override the need to provide adequate notice of the date upon which the obligor's driver's license will be suspended.

Defendants suggest that obligors can check their bench warrant status online to minimize the risk of their unintentionally driving with a suspended license. As discussed earlier, however, logging in to the njchildsupport.org website and navigating to the correct page to check one's warrant status is a complicated process that would have to be performed at least once daily in order to guarantee that an obligor had notice of an imminent suspension. This burden is a significant one, especially for someone who may not be computer savvy or may not have easy access to a computer. As noted above, approximately 70% of all child support arrears are

owed by parents with either no reported income or income of $10,000 per year or less. Turner, 564 U.S. at 444-45. Expecting large numbers of recalcitrant obligors to check their license status is thus unreasonable. Furthermore, the electronic data base would only provide notice of a warrant and suspension that have already been issued and would not give obligors a reasonable period in which to appear or otherwise conform their behavior to avoid arrest for driving on a suspended license.

Moreover, Defendants have cited no precedents -- and the court is unaware of any -- that require the subjects of government action to seek out their status in lieu of receiving a government-generated notice. It is up to the State to provide effective notice. For Defendants to suggest that the availability of an electronic database to check warrant status satisfies due process upends constitutional guarantees. In addition, such efforts to transfer a governmental obligation as critical as fair notice to the targets of enforcement efforts is inconsistent with the State's responsibility to "turn square corners" with those it regulates. See, e.g., W.V. Pangborne & Co. v. New Jersey Dep't of Transp., 116 N.J. 543, 561-62 (1989), where the Court noted that, "government must act fairly and with compunction and integrity" while dealing "scrupulously with the public." See also New Concepts for Living, Inc. v. City of Hackensack, 376 N.J. Super. 394, 403 (App. Div. 2005).

Given the significant private interests at stake when driver's licenses are suspended, the court finds both the frequent lack of advance notice and the total failure to specify the effective date of the suspension when notice is provided to be insufficient under both procedural due process and fundamental fairness principles. Consequently, the court will grant relief to Plaintiffs and direct the Probation Division, DFD, and MVC to work together to develop an administrative process that ensures that proper notice is sent to obligors prior to the effective date of license suspensions, and that obligors receive advance notice of the dates when their driver's licenses will be suspended. The notice should allow for sufficient time for obligors to take action to prevent the suspensions from taking effect. Such notice will avoid erroneous deprivations associated with lack of notice, such as incurring penalties for driving while suspended when the obligor had no knowledge of the license suspension and thus could take no action to avoid it. Since various notices are in existence and are already being sent to some obligors by Probation and the MVC, the likely administrative cost to government of revising the notices and coordinating the date of suspensions with MVC should not be unduly burdensome. Moreover, since the court is not requiring notice by certified mail, although it would be preferred, the likely additional expense to the State of providing proper advance notice does not outweigh the need for the procedural

protections required by the court to assure a fair driver's license suspension process.

The State has argued that advance notice of the issuance of warrants could make enforcement more difficult by permitting recalcitrant obligors to evade enforcement efforts. Defendants provided no proof to support this assertion, and the court doubts that the notice it is requiring would prompt significant numbers of the largely poor obligors affected by the notice to flee the jurisdiction to avoid arrest and execution of the warrant. In addition, Probation already does provide notice to some obligors using Form CS594, further undercutting the State's position as to advance notice. But the reason for the notice articulated above is the need to advise obligors of the license suspensions and how to avoid them, given that they entail a consequence of magnitude. The legislative linkage of the suspension to the warrant is what mandates the notice here. Should DFD and Probation be concerned about providing advance notice of the issuance of warrants to recalcitrant obligors, they may seek legislative action removing the linkage that has given rise to the court's conclusion that advance notice is necessary to satisfy due process and fundamental fairness principles before driver's licenses can be suspended. Such a change could return license suspensions to the alternate mechanisms set forth in the statute, all of which include notice

and an opportunity for a hearing. See N.J.S.A. 2A:17-56.41, -43 and -44.

Because Plaintiffs have conceded the constitutionality of the FTA warrant process, the court will not delve into that issue or rule on the necessity of additional procedural protections surrounding license suspensions pursuant to FTA warrants. The court notes, however, that the "Notice of Motion to Enforce Litigants Rights" (Form CS048), which is sent to obligors to inform them of scheduled ELR hearings, does not currently include language clearly notifying obligors that their driver's licenses will be suspended by operation of law upon failure to attend an ELR hearing. The Notice does warn that a warrant will issue if the obligor fails to attend the hearing, however. Amending these Notices to clarify the loss of driver's licenses upon non-attendance will make clear exactly what is at stake if the recalcitrant obligor chooses not to attend the enforcement hearing. Consequently, the court recommends that Probation consider adding this language to the Notice.

3. Opportunity To Be Heard

In addition to appropriate notice, due process requires an opportunity to be heard. See Hyman v. Muller, 1 N.J. 124, 129 (1948); Doe v. Poritz, 142 N.J. at 106. As noted in Rivkin, 143 N.J. at 372, when depriving individuals of property interests, the State must afford them "a fair hearing on their claims at a

meaningful time." Since the suspension of a driver's license is a "consequence of magnitude" with the significant direct and indirect consequences summarized above, this court finds that the opportunity for a pre-deprivation hearing is required by due process or, at the very least, by principles of fundamental fairness. See Doe v. Poritz, 142 N.J. at 107-09. Moreover, as noted in Rivkin, 143 N.J. at 372, while post-deprivation hearings may suffice under certain circumstances, it is preferable to afford a pre-deprivation hearing whenever practicable. In regard to driver's license suspensions, the opportunity for a pre-deprivation opportunity to be heard would bring to court any recalcitrant obligor requesting a hearing, thereby fulfilling the purpose of the warrant and license suspension as set forth in Directive #15-08 without the court's having to issue a warrant. It also would allow obligors to explain their current circumstances, including any economic hardship or equitable factors that would make the license suspension unduly harsh and counterproductive to the purpose of enforcement, which is obtaining child support for needy children. If no hearing is requested and the obligor does not respond to the advance notice of license suspension, the obligor's license will be suspended by operation of law as is done currently without violating due process.

Closely examining the impact of State action is necessary when evaluating whether a pre-deprivation hearing is necessary. In Jamgochian, 196 N.J. at 244-47, the New Jersey Supreme Court found that a pre-deprivation opportunity to be heard would lessen the likelihood of mistaken governmental decision-making and would serve the interests of both the State and the parolee. The Court there noted that the parolee's rehabilitation would not be advanced if the reasons for imposing a curfew as a special condition of parole were proven to be erroneous. Similarly here, allowing obligors threatened with license suspensions to present individual circumstances regarding their economic hardships and the personally devastating impacts upon them of losing their driver's licenses would lessen the likelihood that suspensions will be imposed upon obligors with no current ability to pay the support owed. As noted in State v. Beans, 965 P.2d at 728, suspending the driver's license of an obligor would be "erroneous" if that obligor is not willfully delinquent and the State failed to provide sufficient process to determine this fact. There the Alaska Supreme Court observed that a statute authorizing driver's license suspensions for delinquent child support obligors would be unconstitutional as applied to obligors who were unable to pay because, "[a]t that point there would be no rational connection between the deprivation and the State's goal of collecting child support." Ibid. That is, if obligors miss their payments due to

an inability to pay rather than a conscious choice not to pay, suspending their licenses for failure to pay would constitute an erroneous deprivation that could have been prevented by providing an opportunity to demonstrate inability to pay. Using FTP warrants and license suspensions to cast a wide net over all delinquent obligors, including those who may be unable to pay, erroneously deprives many people of their licenses when noncompliance with a support order is not willful.

The rationale prompting the pre-deprivation opportunity to be heard in Jamgochian thus applies here to support requiring a pre-deprivation hearing before a driver's license is suspended upon issuance of an FTP warrant. 196 N.J. at 244-47. See also Turner, 564 U.S. at 444-48, where the United States Supreme Court noted that the key question in child support enforcement actions is the ability to pay, and emphasized the critical nature of this factor in avoiding erroneous deprivations. Although the Supreme Court there refused to interpret the United States Constitution to provide counsel for recalcitrant obligors facing contempt charges, the Court did mandate procedural safeguards in the form of notice and an opportunity to present evidence concerning the obligor's financial status when a state pursues contempt sanctions, including incarceration. This rationale supports providing an opportunity to be heard before driver's licenses are suspended, given that such suspensions have

been found in New Jersey to constitute a consequence of magnitude. See State v. Moran, 202 N.J. at 325; State v. Hamm, 121 N.J. at 124.

A pre-deprivation hearing would also enable obligors mistakenly targeted with license suspensions due to clerical or other procedural errors to avoid suspensions. Plaintiffs provided statistics showing that the driver's licenses of 202 obligors were mistakenly suspended in 2014. See Pl. Ex. F. While due process does not require infallible results, or mandate procedures that are "so comprehensive as to preclude any possibility of error," Walters v. Nat'l Ass'n of Radiation Survivors, 473 U.S. 305, 320-21 (1985), avoiding mistaken suspensions based on clerical or similar mistakes further supports requiring a pre-deprivation hearing, even if that benefit alone would not mandate such a procedure to satisfy due process. See Mackey, 443 U.S. at 13; Mathews, 424 U.S. at 344.

Notably, complex decisions in which "a wide variety of information may be deemed relevant" require more due process than simpler ones. Mathews, 424 U.S. at 343-44. Compare Dixon, 431 U.S. 105 (1977), where driver's license suspensions were based upon the accumulation of points for driving infractions and did not require a pre-deprivation hearing, with Simpson v. Brown Cty., 860 F.3d 1001, 1009 (2017), where a pre-deprivation hearing was required when the County Health Officer had broad discretion to

revoke septic licenses upon a determination that septic installers demonstrated "inability or unwillingness to comply with vague rules and requirements." To assess individualized circumstances affecting the suspension of a driver's license is the kind of multi-faceted, equitable and complex analysis that merits a pre-deprivation hearing. Indeed, when the deprivation process involves potentially complicated discretionary findings, as appears true in the context before the court, a hearing in which an individual can explain why the government should not effectuate the deprivation is the best way to ensure that the facts justifying the deprivation are as the government warrants them to be. See Jamgochian, 196 N.J. at 244-48.

Pre-deprivation hearings are favored when the deprivation is caused by official state action and there is plenty of time for hearings before action is taken. The New Jersey Supreme Court has noted that the determination of "a meaningful time" depends partly on "whether the deprivation was caused by random and unauthorized conduct or whether it resulted from an established state procedure." Rivkin, 143 N.J. at 374. When the deprivation results from a random act, "the state cannot predict precisely when the loss will occur" and thus a pre-deprivation hearing is not practicable. Id. at 373. When established procedures cause a deprivation, however, as is the case with license suspensions imposed with the issuance of FTP warrants, the State controls when

suspensions will occur and has the time and ability to provide a pre-deprivation hearing. See also Jamgochian, 196 N.J. at 444-48.

Defendants argue that the State gives delinquent obligors multiple opportunities to be heard before issuing FTP warrants and suspending their driver's licenses, thus negating any requirement for additional process prior to effectuating a driver's license suspension. Defendants assert that obligors are given at least three opportunities to present facts to a court or hearing officer regarding their ability to pay: at an initial child support hearing when a judge first issues a support order in the form of a USSO, at an ELR hearing held after notice of a delinquency, and at a modification hearing that must be requested by the obligor, and is generally available only if the obligor can show a substantial change in circumstances. Thus, Defendants argue, by the time an FTP warrant is issued and a driver's license is suspended, an obligor has already had an opportunity to be heard and has been judged both able to pay support and willfully delinquent. Furthermore, Defendants argue that obligors can appear at court immediately following a license suspension to address their non-payment and have the suspension lifted upon payment of the MVC restoration fee.

While these procedures merit consideration, they do not provide sufficient process to guard against the erroneous

deprivation of driver's licenses, in part because they do not ensure that obligors facing suspensions are actually able to pay support at the time a warrant issues, which could be months or years or even longer after the procedures relied upon by Defendants have occurred. Moreover, none of the proceedings cited by Defendants focus on the impact that indefinite suspensions of driver's licenses will have on the ability of obligors to pay support. In fact, Directive #15-08, which governs the warrant process that also results in driver's license suspensions, does not mention the suspensions at all. What is needed to satisfy due process is an opportunity to explain the unique hardships that obligors will face if their driver's licenses are suspended before the government deprivation occurs.

As noted above, obligors suffering from economic hardships are entitled to an individualized evaluation and consideration of their payment history and ability to pay at the time a suspension is considered, as well as examination of any hardships they are currently facing, given the severe consequences of driver's license suspensions. This individualized evaluation must take place close enough in time to the suspension to ensure that it accurately reflects an obligor's ability to pay and likelihood of suffering serious consequences if the suspension is effectuated. The processes described by Defendants simply do not guarantee that the findings necessary to suspend a license, especially the ability

to pay, are based on current circumstances and would avoid erroneous deprivations affecting obligors who lack the ability to pay support when the suspension issues. Since the FTP warrant/license suspension process relies for many obligors on out-of-date findings of their ability to pay, it creates procedures that can cause erroneous deprivations of significant property interests. See State v. Beans, 965 P.2d at 728.

Providing an opportunity to be heard prior to suspending driver's licenses will minimize the risk of erroneous deprivations for obligors without the ability to pay support and for obligors who are subject to mistaken suspensions due to clerical and similar errors. The due process rights of economically challenged obligors merit such pre-deprivation hearings even when weighed against any administrative inconvenience or cost that the State will incur. First, as noted above, if obligors request hearings to contest license suspensions, they are seeking to come to court —- the precise effect sought to be achieved by the issuance of the warrants and simultaneous imposition of the license suspensions. So it is hard to see how that consequence of due process would place an undue burden on the State. Moreover, the AOC already has in place a coterie of child support hearing officers who could be tasked with conducting the hearings. An administrative structure for pre-suspension opportunities to be heard is thus already in place, with a right of appeal to a family division judge if a

recalcitrant obligor disagrees with the recommendation of the hearing officer. In addition, if the advance notice of suspension required by the court is provided, obligors may be prompted to make payments without the necessity of a hearing to avoid the suspension and the need to attend a hearing. Finally, it remains uncertain how many obligors will request hearings. If an obligor receives advance notice of the suspension and does not make a payment or request a hearing, the suspension will take effect on the designated day by operation of law without any further process. The court thus does not anticipate that the additional due process protections it is requiring will unduly disrupt the current system or add significantly increased costs to child support enforcement. While MVC may sustain a decrease in the amount of money collected in restoration fees, that consequence is the price of due process and consistent with recent legislative and administrative efforts to minimize financial burdens on poor litigants. See Report of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees (2018); N.J.S.A. 2A:162-15 to -26; Sponsor's Statement to S. 946 (L. 2014, c.31, § 1 (August 11, 2014)).

Indeed, there is the possibility that the additional process will enable many obligors to avoid indeterminate license suspensions and the negative employment and personal consequences that would make satisfying their child support obligations more

onerous. If that possibility were to become a reality, it could even improve collection efficiency by enhancing the chances of obligors maintaining or gaining employment that requires an uninterrupted ability to drive. Finally, it is difficult to see how license suspensions without contemporaneous inquiries into obligors' ability to pay and without consideration of financial hardship or other equitable circumstances promote payment of child support, especially if even a short suspension could cause an obligor to lose a job or job opportunity or unwittingly incur penalties for driving while suspended that would further interfere with an obligor's ability to pay support.

As with notice, an opportunity for a hearing is only required because of the linkage between warrant issuance and license suspension. If Defendants are concerned about added costs associated with the process deemed necessary by this court, they can propose to the Legislature that the linkage be removed from the statute. That would bring New Jersey in line with other states and allow Defendants to keep their warrant practice intact. Notably, Plaintiffs were very clear in their papers and in oral argument that they were not challenging the warrant process other than the simultaneous suspension of driver's licenses when warrants issued.

In conclusion, the court will require Defendants to provide consistent advance notice of driver's license suspensions to

recalcitrant obligors specifying a date certain on which the recipient's driver's license will be suspended and offering them some time to take action to prevent a suspension or to request a hearing prior to imposition of the suspension. Since the current process under N.J.S.A. 2A:17-56.41(a) is consistent with procedural due process for FTA warrants, Plaintiffs' request to invalidate the statute is denied. The relief granted by the court pertains only to the administrative implementation of the statute by Probation and MVC when FTP warrants are issued.

Although Plaintiffs requested that any remedy identified by the court be applied retroactively to the date the complaint was filed, the court will order prospective relief only. It not only would be unduly difficult to identify and undo the thousands of suspensions that have occurred and return the restoration fees already paid since the complaint was filed, but the court has already considered and rejected Plaintiffs' application for preliminary injunctive relief. That application sought imposition of the requested changes prior to full consideration on the merits, which has only just occurred. In support of the decision to provide prospective relief only, the court relies on substantial New Jersey precedent generally disfavoring retroactive relief when a court's overturning the results of a long-established regulatory scheme would create significant administrative burdens and confusion. See Tomarchio v. Twp. Of Greenwich, 75 N.J. 62, 78

(1977); Borough of Neptune City v. Borough of Avon-by-the-Sea, 61 N.J. 296, 311 (1972). See also Robinson v. Cahill, 63 N.J. 196 and 473 (1973), cert. denied, 414 U.S. 976 (1973), in which the Court gave the Legislature more than two years to enact and implement legislation fixing the unconstitutional system for financing public schools and refused to provide relief for obligations incurred under the old system during that interim period. Moreover, child support enforcement is a complex administrative responsibility and Defendants will need time to make the changes ordered by the court. So the court will direct that new procedures be put into place within 120 days. This period of time should allow Defendants to develop a uniform notice, develop a procedure to give suspension date certainty, provide procedures and guidance for pre-deprivation hearings, and coordinate the changes with the MVC.

E. Right to Appointed Counsel

Plaintiffs also argue that indigent obligors have a right to appointed counsel at hearings that may result in a driver's license suspension. Defendants claim no such appointments are required because any loss of driving privileges for failure to pay child support is temporary and cannot be considered substantial. Moreover, Defendants argue that providing for assigned counsel before license suspensions would impose significant structural

burdens on the enforcement process that are not justified by the impacts suspensions are likely to have on indigent obligors.

The New Jersey Supreme Court has not ruled on this narrow question, but has separately held that individuals have a right to counsel at certain types of hearings at which they might suffer a driver's license suspension, and at child support enforcement hearings at which they might be incarcerated for failure to pay support obligations. See Pasqua, 186 N.J. at 141-49; Rodriguez v. Rosenblatt, 58 N.J. 281 (1971). In Rodriguez, the Court considered whether indigent defendants had a right to counsel at municipal court trials involving disorderly person offenses that could result in incarceration. The Court's analysis was grounded in the unfairness of expecting untrained defendants to competently represent their interests when facing adverse government action:

> The importance of counsel in an accusatorial system such as ours is well recognized. If the matter has any complexities the untrained defendant is in no position to defend himself and, even where there are no complexities, his legal representation may place him at a disadvantage.
>
> [Id. at 295.]

The Court concluded that, "as a matter of simple justice, no indigent defendant should be subjected to a conviction entailing imprisonment in fact or other consequence of magnitude without first having had due and fair opportunity to have counsel assigned without cost." Id. at 294-95. The Court in Rodriguez further

stated that a "substantial loss in driving privileges" is a consequence of magnitude. Id. at 295.

These same concerns were reiterated in Pasqua, 186 N.J. at 147-48. Indeed, the Pasqua Court explicitly noted that counsel is provided for "an indigent facing loss of motor vehicle privileges." Ibid. See also State v. Moran, 202 N.J. at 325, where the Court held that, "[t]he loss of driving privileges for a reckless-driving conviction [before a municipal court judge] constitutes a consequence of magnitude that triggers certain rights, such as the right to counsel." Accordingly, Rodriguez, Pasqua, and Moran required that counsel be appointed for indigent litigants when court proceedings could result in harmful consequences to those unrepresented individuals. If a consequence of magnitude such as a driver's license suspension may be imposed as a result of court action, therefore, those precedents require that an indigent defendant be assigned counsel. If no consequence of magnitude is involved, there is no right to counsel.

Notably, both Rodriguez and Moran guaranteed a right to counsel for criminal charges or motor vehicle violations heard in municipal court that could result in the imposition of license suspensions. It is not nearly so clear, however, that this right to counsel extends to civil matters heard in State courts. All municipal courts in New Jersey are required by law to appoint at least one public defender to represent indigent defendants in

municipal court proceedings. N.J.S.A. 2B:24-3. Similarly, the New Jersey Office of the Public Defender employs many attorneys who represent indigent defendants charged with criminal offenses in state courts. Both municipal courts and state criminal courts, therefore, have established infrastructure for easily appointing counsel to indigent persons facing consequences of magnitude.

There is no equivalent infrastructure for most proceedings in the state civil or family court systems. While the Legislature has enacted a statute directing judges to appoint the Office of the Public Defender to represent indigent parents in termination of parental rights cases, see N.J.S.A. 30:4C-15.4(a), it has not authorized State-supported counsel for child support enforcement actions. Without the services of the Office of the Public Defender, if counsel for indigent parties is required by court precedent, the Assignment Judge of each vicinage must assign pro bono counsel using a list of licensed attorneys known as the "Madden List." Madden v. Delran, 126 N.J. 591 (1992). See also In re Adoption of J.E.V., 226 N.J. 90, 113 (2016). Although this practice "is not an ideal solution" because it often assigns attorneys to cases not in their area of expertise, it does satisfy due process requirements. Ibid.

Child support enforcement in New Jersey is handled by the Family and Probations Divisions of the New Jersey Superior Court. Indigent child support obligors thus do not have access to public

defenders at support-related hearings. In this context, the Court in Pasqua, 186 N.J. at 141-49, held that indigent obligors nonetheless have the right under due process to appointed counsel in child support hearings in which the court could require incarceration as an enforcement remedy for failure to comply with a child support order. The Court explained the importance of counsel in such hearings, providing that:

> When an indigent litigant is forced to proceed at an ability-to-pay hearing without counsel, there is a high risk of an erroneous determination and wrongful incarceration. However seemingly simple support enforcement proceedings may be for a judge or lawyer, gathering documentary evidence, presenting testimony, marshalling legal arguments, and articulating a defense are probably awesome and perhaps insuperable undertakings to the uninitiated layperson.
>
> [Id. at 145.]

Moreover, the Court was unpersuaded by the State's argument that the jail sentence would only last until the obligor was able to comply with a support order:

> Defendants argue that plaintiffs possessed the keys to the jailhouse door. That makes sense only if one accepts the notion that plaintiffs had the wherewithal to pay their child support arrears. It is the purpose of the child support hearing to establish that very point. It is at that hearing that an indigent parent untrained in the law, and perhaps anxious and inarticulate, needs the guiding hand of counsel to help prove that his failure to make support payments was not due to willful disobedience of a court order but rather to his impecunious circumstances.

[Ibid.]

The Court's holding in Pasqua contrasts with the holding of the United States Supreme Court in Turner, 564 U.S. at 444-48, which denied the right to appointed counsel to indigent defendants facing incarceration in civil contempt proceedings for failing to pay child support. As noted above, however, and as illustrated in the child support enforcement context, the New Jersey Constitution provides more due process protections than the United States Constitution. Pasqua, 186 N.J. at 145-46. See also Jamgochian, 196 N.J. at 239; In re Adoption of J.E.V., 226 N.J. at 104-05.

The New Jersey Supreme Court has also held that fundamental fairness guarantees the right to counsel at proceedings in which substantial interests are at stake. In Pasqua, 186 N.J. at 146, the Court held that requiring counsel for indigent child support obligors facing incarceration "protects important constitutional values, including the fairness of our civil justice system." The Pasqua Court explicitly connected its due process and fundamental fairness holdings, stating that, "'due process' is nothing more than affording 'fundamental fairness' to a litigant in a particular situation." Id. at 142 (citing Lassiter v. Dep't of Social Services, 452 U.S. 18, 24 (1981), reh'g denied, 453 U.S. 927 (1981)). See also Garrow v. Elizabeth General Hospital & Dispensary, 79 N.J. 549 (1979) (citing fundamental fairness in holding that physicians have the right to counsel at hearings

regarding their applications for admission to hospital staff). Although fundamental fairness has been applied in New Jersey to grant procedural protections exceeding those mandated by the due process provisions of the State and Federal Constitutions, it is a doctrine that must be sparingly applied and reserved for cases involving egregious deprivations. See In re Directive of the N.J. Dep't of Envtl. Prot., 110 N.J. 69, 81 (1988), appeal dismissed, 488 U.S. 935 (1988); State v. Miller, 216 N.J. 40, 72 (2013), cert. denied, 571 U.S. 1220 (2014); Doe v. Poritz, 142 N.J. at 108.

This court finds that both due process and fundamental fairness require courts to provide counsel to indigent obligors at any hearing at which a hearing officer may recommend a driver's license suspension to a court, or at any hearing when the family court itself is considering a driver's license suspension. Essentially, the court is directing that the Pasqua model be followed when Probation is seeking to impose a driver's license suspension for failure to pay child support. Even though Plaintiffs have argued for a broad right to appointed counsel for indigent obligors in child support enforcement proceedings, the court is rejecting that position and is limiting the right to appointed counsel to only those situations when a driver's license suspension is under consideration. This requirement thus does not apply to hearings at which license suspensions are not being considered, such as ELR hearings at which delinquent obligors are

placed on two-week bench warrant status but retain their licenses, or modification hearings where parties are requesting decreases or increases in the child support amount.

When the above New Jersey precedents involving consequences of magnitude are considered together with the statistics provided by Plaintiffs in the record in this case, they support the conclusion that the due process right to counsel must be applied to delinquent obligors facing license suspensions. Moran and Rodriguez establish that a driver's license suspension is a consequence of magnitude that triggers the right to counsel in criminal and municipal court cases. While the Rodriguez Court referenced a "substantial" loss of driving privileges, this court's analysis of the private interests involved in maintaining a driver's license renders even an "indefinite" or "temporary" suspension capable of imposing significant impacts with far-reaching consequences, especially for indigent obligors. Thus, it is hard to justify providing appointed counsel for indigent defendants in some proceedings where driver's licenses may be suspended, but not for other proceedings. Further, Pasqua establishes that indigents have a right to counsel at child support enforcement hearings that may result in consequences of magnitude. Indeed, as noted above, the Pasqua Court explicitly stated that counsel should be provided for indigent individuals facing driver's license suspensions. While this statement is dictum,

trial courts are bound by dictum contained in the opinions of the New Jersey Supreme Court. See, e.g., State v. Rose, 206 N.J. 141, 183 (2013); State v. Dabas, 215 N.J. 114, 136-37 (2013); State v. Breitweiser, 373 N.J. Super. 271, 282-83 (App. Div. 2004), certif. denied, 182 N.J. 628 (2005).

Notably, however, it appears unlikely that this limited requirement for appointed counsel will impose significant additional burdens on Defendants. The AOC has made it clear that a primary aim of child support enforcement is bringing chronically delinquent obligors before the court on an expedited basis, not suspending driver's licenses as a punitive measure. FTP warrants are issued in furtherance of this aim. Directive #15-08 at 6. Automatic license suspensions linked to FTP warrants are an additional means by which obligors can be compelled to appear before the court. If Probation modifies its procedures to provide advance notice and an opportunity for a hearing prior to a license suspension, as required by this court, and an indigent obligor requests a hearing, there would be no need for an FTP warrant or a license suspension to compel an appearance. For instances where indigent obligors are brought to court for Expedited ELR hearings following execution of an FTA warrant or an FTP warrant where notice and an opportunity to be heard has been provided without response from the obligor, the Pasqua right to appointed counsel will likely apply, thus not adding any further burden to the child

support enforcement system. Thus, the court does not anticipate the need for many more pro bono counsel being appointed at the pre-suspension hearings required by this decision.

Moreover, courts remain free to deny counsel to indigent obligors at child support hearings, but they may not impose driver's license suspensions at any hearings in which indigent obligors have not been offered the right to appointed counsel. The court's holding here runs parallel to the holding in Pasqua, which forbid incarcerating indigent child support obligors if they were not assigned counsel at an ability to pay hearing where incarceration is being considered. Here, then, the court forbids suspending the driver's licenses of indigent child support obligors if they are not assigned counsel because a license suspension is also a consequence of magnitude. In the presumably rare cases in which courts consider ordering license suspensions as punitive or coercive measures, the same procedure for appointing pro bono counsel to indigent obligors as is required by Pasqua should be followed. Courts implementing this decision will have the same option to deny counsel and impose less severe enforcement measures instead of driver's license suspensions as they currently have regarding potential incarceration of indigent obligors.

CONCLUSION

The court finds that the procedural due process guarantees of the New Jersey Constitution and this State's doctrine of fundamental fairness require that delinquent child support obligors be provided with advance notice and an opportunity to be heard when Probation seeks to impose driver's license suspensions as a child support enforcement mechanism. Upon receiving such notice, obligors may take action to avoid the suspension, or request a hearing to demonstrate an inability to pay support at that time due to personal hardships. Probation must also advise affected obligors of a date certain on which the suspension will occur. Moreover, if a license suspension may be imposed as a remedy in an enforcement hearing, counsel must be appointed for indigent obligors facing that consequence of magnitude. The court also recognizes that while a balance must be struck between protecting obligors' due process rights and effectuating the purposes of the Act, namely, ensuring that the children of non-custodial parents receive the financial support they need and deserve, this balance must treat both groups fairly. The court has endeavored to craft a holding that provides important procedural protections to indigent obligors while not harming the interests of their non-custodial children or placing undue burdens on administration of the child support program in New Jersey.

Indeed, it is the court's hope that, if anything, the adjustments to the enforcement process outlined in this decision can be made expeditiously and will create opportunities for obligors that may ultimately enhance rather than decrease collections. Only time will tell, however.

Recognizing the complexity and sensitivity of the enforcement process, the court is affording Probation, DFD, and MVC 120 days to draft new procedures governing advance notice of driver's license suspensions and an opportunity to be heard, if requested by an obligor. The new procedures must also ensure that Probation advise obligors of a date certain on which the driver's license suspension will occur and provide appointed counsel for any indigent obligor facing suspension of a driver's license at an enforcement hearing.

The court also encourages the entities responsible for child support enforcement to consider seeking a statutory revision from the Legislature that would remove the provision directing automatic suspension of driver's licenses upon issuance of a child support-related warrant. While not required by this decision for the reasons set forth above, removing the linkage would allow the current warrant process to continue without major changes. Such an amendment would also end New Jersey's outlier status as the only state utilizing this linkage and would restore the procedural protections originally afforded to obligors facing driver's

license suspensions. Finally, the court sees no need to reconsider its prior ruling denying class action status to Plaintiffs in light of the relief afforded to them by the court.

The court will issue orders consistent with this decision, granting partial summary judgment to Plaintiffs on their procedural due process claim as well as limited relief on their right to counsel claim. The court will deny their motion for summary judgment as it relates to all other claims. As for the cross-motion for summary judgment filed by the State Defendants, that also will be granted in part and denied in part. The court will enter judgment for the Defendants on their motion to dismiss Alisha Grabowski as a Plaintiff for lack of standing, will maintain the denial of class action status to Plaintiffs as previously ordered, and will dismiss all of Plaintiffs' other claims except for the procedural due process and right to counsel claims where relief will be provided to Plaintiffs as set forth above and incorporated into the order issued to Plaintiffs resolving their motion for summary judgment. The court will schedule a case management conference to consider any remaining concerns of the parties and to establish a schedule governing Plaintiffs' anticipated application for counsel fees as a partially prevailing party since the complaint sought that relief in the event that Plaintiffs obtained a favorable ruling from the court.