



Improving Child Support Enforcement Outcomes with Online Dispute Resolution

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Court appearances in family cases can be traumatic for many citizens—particularly those who have endured adverse childhood experiences, such as parental abuse or divorce. Ottawa County, Michigan, has been experimenting with online dispute resolution techniques, particularly in communications, to improve child support outcomes outside of courtrooms.

Online dispute resolution (ODR) is “a digital space where parties can convene to work out a resolution to their dispute or case” (Joint Technology Committee, 2017: 1). In 2016 court leaders in Ottawa County, Michigan, began their investigation of ODR for child-support-enforcement “show-cause” hearings, which other courts might call contempt proceedings. The Joint Technology Committee (2017) of the Conference of State Court Administrators, National Association for Court Management, and National

Center for State Courts believes that “[l]ow-conflict, low-complexity family court cases are particularly well-suited to ODR because of the clear benefit to children and the parents who care for them” (p. 13). This article describes Ottawa County’s ODR process, three key outcome measures since the December 2016 launch, two theories that might explain ODR’s effectiveness, and the court’s plans to expand ODR in family court cases in the future.

Snapshot of Child Support Enforcement in Michigan

In Michigan, the establishment and enforcement of child support orders is a judicial function with numerous parties: the custodial parent, who is entitled to receive financial support; the noncustodial parent, who is ordered to contribute to his or her children’s upbringing; the state Department of Health and Human Services’ Office of Child Support, which maintains MiCSES, Michigan’s statewide child support enforcement information system, as well as MiChildSupport, Michigan’s public-facing child support portal (online at <https://tinyurl.com/y25mo4bd>); plus employers, health-care



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insurers and providers, and the court itself. The caseload and financial stakes are staggering: In 2015 MiCSES contained almost 850,000 active child support orders and accounted for well over a billion dollars in child support payments. Despite Herculean efforts, Michigan’s ordered but unpaid child support (arrearages) total more than \$6 billion (Michigan Department of Health and Human Services, n.d.).

Michigan’s Friend of the Court (FOC), celebrating its 100th Anniversary in 2019, is a team of administrators, investigators, and administrative support staff within the family division of each circuit court, who actively manage child support cases. Ottawa County’s FOC team is responsible for every phase of child support cases, including

the establishment of paternity, initial orders, and enforcement of child support and parenting time orders.

ODR’s Impact on Ottawa County

Ottawa County is home to about a quarter million people and more than 12,000 active child support enforcement cases. In 2018 noncustodial parents in Ottawa County paid approximately \$40 million in child support. Following Ottawa County’s implementation of ODR, it exceeded the federal Office of Child Support Enforcement’s 80 percent benchmark for the collection of current child support,

meaning that the county became eligible to receive additional incentive payments from the federal government.

Noncustodial parents who fail to comply with child support orders are subject to contempt proceedings called show-cause hearings. The outcomes of show-cause hearings range from a satisfactory payment arrangement to a civil bench warrant for failure to appear to referral to the county prosecutor for felony nonsupport charges. Clearly, jailed parents are less likely to earn the income needed to come current with their child support obligations.

In the past, Ottawa County’s show-cause hearings were scheduled en masse every Friday. Friend of the Court investigators brought thousands of child-support show-cause matters before two family court judges every year, and more than a thousand bench warrants were issued (20th Judicial Circuit, 2018: 26).

In December 2016, Ottawa County launched a set of ODR tools to reduce the occurrence of show-cause hearings and improve compliance with child support orders. One of these ODR tools

is a proactive, SMS text notification to noncustodial parents “when their case fits the criteria for show cause” (20th Judicial Circuit, 2018: 28). FOC staff first reviews a MiCSES report showing cases with no payment for at least 45 days and eliminates cases for which the noncustodial parent is incarcerated, deceased, receiving Social Security disability payments, or deported to a country without a reciprocity agreement with the United States. The remaining cases are candidates for show-cause hearings, which, before 2016, would have been immediately scheduled.



Noncustodial parents who are at risk of a show-cause hearing are first given an opportunity [using SMS text notification] to engage in an information-gathering and problem-solving session with the FOC [Friends of the Court investigators]. The results are impressive...







Sending and receiving text messages is the most prevalent form of communication for Americans younger than 50. ~ Newport, 2014.



Now, however, Ottawa County's FOC transmits an SMS text message to noncustodial parents, warning them about the noncompliance and inviting them to meet with FOC investigators to discuss their ability to pay,¹ any changes in employment, and available resources for securing employment. Noncustodial parents who are at risk of a show-cause hearing are first given an opportunity to engage in an information-gathering and problem-solving session with the FOC. The results are impressive: The number of show-cause hearings has been reduced by almost a quarter. By the end of 2017, Ottawa County's Family Court Division scaled back its show-cause calendar from every Friday to two Fridays each month, freeing precious judicial resources for other family court cases.

If a noncustodial parent fails to heed the FOC's text message or achieve an acceptable plan with the FOC investigator, or the case is scheduled for a show-cause hearing. At this point, two additional ODR tools are improving the number of successful show-cause hearings:

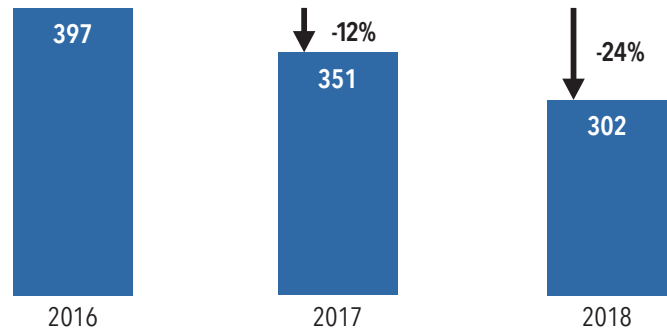
1. *an SMS text reminder of the upcoming show-cause hearing (reducing the number of failures to appear) and*
2. *a hearing check-in system improving the speed and effectiveness of prehearing settlement conferences with FOC investigators.*

Ottawa County has also slashed the number of child-support-related arrest warrants by a third. This significantly eases the burden on the Ottawa County Sheriff, both in workload for the three deputies embedded with the FOC team and in jail overcrowding.

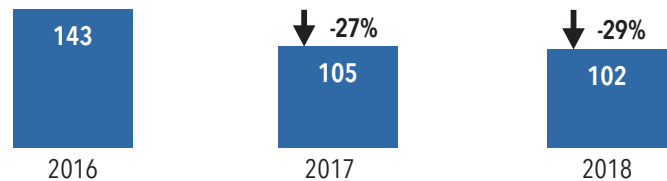
Most important, though, is that approximately 50 parents every month will not be subject to arrest and detention for failure to pay child support and will, instead, be in the community, able to earn income and parent their children.

Perhaps the most impressive outcome has been Ottawa County's 28 percent increase in child support collections. For court leaders and the FOC team, surpassing the federal government's 80 percent collections threshold is the realization of a long-term goal that had previously eluded them. It will unlock additional federal incentive payments to the county, and it also translates into a 28 percent increase in the financial resources available to Ottawa County's custodial parents and their children.

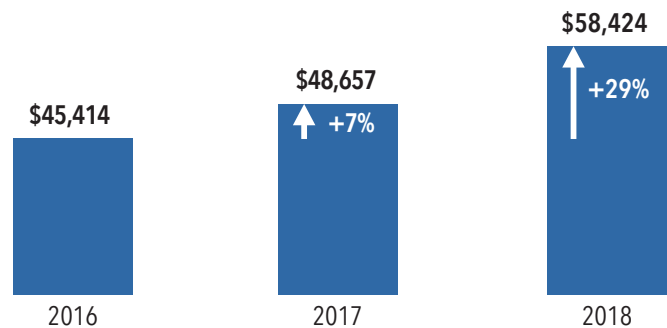
Average Monthly Hearings



Average Monthly Warrants



Average Monthly Child Support



¹ *Turner v. Rogers*, 564 U.S. 431 (2011), prohibits the incarceration of a party for failure to pay unless there are procedural safeguards for determining the party's ability to pay. Ottawa County's FOC team is helping the court comply with *Turner* by investigating noncustodial parents' ability to pay.

Why Does Child Support Enforcement ODR Work?

Ottawa County's court leaders and FOC staff hypothesize that the striking and sustained effectiveness of their initial ODR program is attributable, at least in part, to the communication preferences of the twenty- and thirty-somethings who are parents. In the past, the Ottawa County FOC staff's primary mode of communication with noncustodial parents has been documents sent through the United States Postal Service, but many, many pieces of mail are returned to the FOC office undelivered. As national studies repeatedly show (and as *Trends* readers have experienced both personally and professionally), the demographic groups known as Millennials and Generation Z prefer text messaging to every other form of communication.

An additional hypothesis is based upon recent research conducted in Muskegon County, Michigan, about the prevalence among noncustodial parents of adverse childhood experiences (ACES), such as parental abuse, incarceration, divorce, and substance abuse. Muskegon County assessed the number of noncustodial parents who reported four or more ACES and found they were overrepresented in child support enforcement cases, typically double the rate. For example, in zip code 49457, 14.72 percent of the general population had a child support enforcement case, but 28 percent of the population with four or more ACES had a child support enforcement case.

What national research about trauma teaches is that young adults with high ACES score are more likely to engage in risky behaviors and less likely to hold stable employment and housing, significant risk factors for nonpayment of child support. Research also shows that people with high ACES scores have physically different brain structures, which create difficulty processing and effectively communicating information, especially in settings they interpret as hostile (Substance Abuse and Mental Health Services Administration, 2013). Traditional child support enforcement strategies, such as formal show-cause hearings and threats of jail



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time for nonpayment, are likely triggers for high-ACES parties, making them even *less* able to engage the executive functions of their brains to set goals, follow through with appointments, and complete tasks.

Returning to Muskegon County's data, one can see a correlation that appears to support the hypothesis that high-ACES noncustodial parents will be among the most challenging FOC clients: As the density of high-ACES residents increases, the percentage of child support collections plummets. For example, zip code 49457 shows an ACES density of approximately 9 percent more than Muskegon County's least ACES-dense zip code, and a child support collection rate 8 percent lower.

Is it possible, then, that online dispute resolution's positive impacts on Ottawa County's engagement with noncustodial parents and collection of child support are attributable, at least in part, to ODR's ability to meet the needs of high-ACES parties? Many trauma-informed judicial practices focus on communication and address the needs of high-ACES parties to receive just-in-time notification of court events; to engage with authority figures in a low-stress environment so that they can more effectively tell their story and engage in the process; and to build trust that the system's goal is their success, rather than punishment. In Ottawa County, the relatively simple techniques of text messaging,

engagement with an FOC case worker outside of a formal courtroom setting, and provision of support services seem to be achieving improved outcomes.

What's Next for Family Court ODR?

Family court leaders know that disputes about child custody and parenting time are among the most contentious cases on their dockets. Perhaps unique to Michigan, FOC teams are responsible for establishing and enforcing parenting-time orders, and FOC leaders are concerned that parenting-time cases demand an inordinate quantity of their staff's time and cause the most stress and burnout. Ottawa County and several of its sister counties wish to explore ODR tools that show promise in improving parenting time, with two distinct strategies.

The first strategy is to apply ODR to parents' initial creation of their parenting-time agreements. Several Michigan FOCs believe that if they offer ODR tools to parents who seem to be working well together and express a desire to submit a stipulated parenting plan, then the ODR tools could serve the important functions of providing the parties with plain-English information and guidance, document assembly, and case tracking. For these counties, providing ODR to parents in low-conflict cases will streamline the legal process, improve the quality of stipulated-parenting-time agreements, and help the parties achieve their admirable goal of keeping their family out of court. This strategy might be likened to the current practice in community supervision of applying the lightest possible "touch" to low-risk probationers, providing them support but striving to minimize their contact with formal justice venues. It also enables court staff to focus their time and efforts on higher-risk clients.

In contrast, a second set of Michigan counties is interested in testing whether ODR can help mitigate the chronic conflict they witness in highly contentious parenting-time cases—the proverbial 20 percent of cases that demand 80 percent of court staff's time. For these counties, providing ODR in high-conflict cases might mitigate the parents' endless battles by offering a communication medium that:

- ✓ *is less fraught than a formal courtroom setting;*
- ✓ *shows promise in detecting inflammatory speech and coaching the parent toward more collaborative language;*
- ✓ *guides the parents away from irrelevant issues and back toward solutions that are in their children's best interests; and*
- ✓ *allows the parties to engage a skilled human mediator on-demand for assistance with specific issues.*

This article began with the Joint Technology Committee's recommendation that ODR is most appropriate for "[l]ow-conflict, low-complexity family court cases," and it ends with a plan to deploy ODR in the highest-conflict family court cases. We hope our court colleagues agree that this is not a quixotic quest but a well-founded belief that ODR tools are rapidly evolving and lend themselves to trauma-informed judicial practices. We will keep you informed of our progress, and we invite you to share your experiences, too.

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