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Child Support

Who has to pay child support?

Under Virginia law, a parent who doesn't have physical custody of a child has a duty to pay child support. This person usually is called the "responsible party."

How is child support set?

Child support can be set one of two ways: through the Division of Child Support Enforcement (DCSE) or through the courts.

How is child support set through DCSE?

One way child support can be set is through the Division of Child Support Enforcement (DCSE). You may file a petition for child support with DCSE. You may do this by yourself, without an attorney, and without a filing fee. After getting a petition, DCSE can issue an Administrative Support Order (ASO). This is served (legally delivered) on the responsible party.

Service may be done three different ways:

- Given to the responsible party in person, usually by a Deputy Sheriff, or,
- Given to a member of the responsible party's household, usually by a Deputy Sheriff.
- The household member must be 16 or older. The person serving the papers must explain what they are, or,
- Posted on the responsible party's front door and then mailed to the responsible party by first class mail.

The responsible party has 10 days to object and ask for a hearing. If there is no objection, the ASO is as good as a court's Child Support Order. It may be enforced by DCSE issuing a Notice

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and Order to Withhold Income. DCSE may issue this Order to the responsible party's employer or anyone else paying the responsible party, such as Social Security Administration.

How is child support set through court?

Another way child support can be set is through the Juvenile and Domestic Relations (J&DR) Court. (Sometimes the Circuit Court also will set child support.) You may file a petition for child support with the Court Services Unit of the J&DR Court. You may do this by yourself, without an attorney, and without a filing fee. The petition must be filed in the city or county where the responsible party lives. The petition usually will be heard within several weeks. The Judge will hear evidence as to both sides' income and issue a Child Support Order. The Judge also may issue a Notice and Order to Withhold Income.

Can child support be ordered for a child who is over age 18 but is disabled?

Yes. There are two ways this might happen:

- 1) If support for the disabled child was being paid before age 18, the court may order that it continue to be paid after age 18. Or,
- 2) Even if there was no child support order in effect before age 18, the court may order child support to begin after the disabled child reaches age 18.

There are several conditions that must apply in order to get child support for a disabled child who is older than 18:

- 1) it must be a severe and permanent mental or physical disability;
- 2) the disability must have existed before the child reached 18 (or before age 19 if the child was a full-time student);
- 3) the disabled child is not able to live independently and be self-supporting; and
- 4) the disabled child is living in the home of the parent seeking or receiving child support.

Can I appeal an order requiring me to pay child support if I disagree with it?

Yes, you can appeal, but you will need a very good reason for challenging the order if you want to win your appeal. The process for appealing depends on whether the order was made by DCSE or by the J&DR Court (see below). It is important to act quickly if you want to appeal, because there are strict deadlines.

Appealing an Administrative Support Order from DCSE: You may appeal within ten days from the date the ASO was served on you. Your appeal must be written. It must be received, not just mailed, within the ten days. Mail your appeal to: Virginia Department of Social Services, Appeals and Fair Hearings Unit, DCSE Section, 801 E. Main Street, Richmond, VA 23219.

Your case will be scheduled before a hearing officer, who will make a decision after hearing testimony and reviewing documents from you and from a representative of the DCSE office that

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made the initial order. If either party disagrees with the hearing officer's decision, they may file a further appeal at the J&DR Court within ten days after receipt of the hearing officer's decision. The J&DR Court will then hear the appeal as if it is a totally new proceeding. This is called a trial *de novo*, and it means that you can still present testimony and other evidence at this stage.

Appealing a child support order from a judge at J&DR Court: A final order from the J&DR Court can be appealed to the Circuit Court in the same jurisdiction. The appeal must be filed with the clerk of court within ten days of the date on which the order was entered in J&DR Court. This also results in a new trial (*de novo*) in Circuit Court.

An option to appealing a J&DR Court order is to ask for a rehearing in the same J&DR Court. That request must be made within 30 days of the J&DR Court order. You must have a very good reason to receive a rehearing, and they are not often allowed. You have to show more than just disagreeing with the previous order. Some examples: serious defects in the first case (such as not being properly served with notice of the hearing); or having new evidence now that was not available, or could not have been found out, in time for the first hearing. It's important to know that if you choose to request a rehearing rather than appeal to Circuit Court, you may lose your right to appeal to Circuit Court. Also, it is more difficult to represent yourself in Circuit Court than in J&DR Court, so you should seriously consider getting a lawyer at that stage.

How is the amount of child support set?

Child support is set using the Child Support Guidelines. This one page worksheet asks for the income of both parties. The worksheet asks:

- The number of children for whom support is requested.
- Which parent the child lives with and for how many days a year.
- If there are any direct expenses for the child, i.e., child care, health insurance expense, extraordinary medical expenses, etc. (the custodial parent will need to provide proof of these expenses.)
- The parents' average monthly gross (before taxes and deductions) income. This includes money from all sources, i.e., jobs, investments, interest, spousal support, disability, etc. Income which does not qualify for gross income includes:
 - A second job taken solely to pay off child support arrears
 - Any sort of welfare payments or benefits.
 - Any child support received.
 - SSI payments from the Social Security Administration for the parent or a child.

If one of the parties has no income, or a very low income, income can be imputed to that party. This means it is assumed this person could get that much income, even if it is not really there. The income of the parties is combined. Based on this combined income, and the number of children, the Guidelines set forth a total combined child support of both parties. There also are a small number of deductions from the total combined child support. These deductions include:

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- Spousal support paid per month by one parent to the other.
- Actual amount of current child support paid for other children.
- Credit for the parent's other children in his or her physical custody who are under the age of 18, not including stepchildren.
- Verified business expenses and a portion of the self-employment tax for self-employed parents.

The total combined child support then is divided between the parties in the same proportion as the incomes of the parties. For example, if the responsible party has twice as much income as the party with the child, and the total combined child support is \$300.00 per month, the responsible party's share is \$200.00 per month.

For help calculating child support guidelines, you may visit the Division of Child Support Enforcement's website calculator at: http://www.dss.state.va.us/family/dcse_calc.cgi or use the enclosed worksheet to obtain a general idea of how much support could be awarded in your case.

The court order will also tell the noncustodial parent who to pay the money to and what percentage of medical expenses for the child he or she will have to pay to the custodial parent.

Can child support be changed?

The effective, or starting, date of the child support order is the date the petition was **filed**. Once child support has been set, it can't be changed unless there has been a material change in circumstances since the last Child Support Order. Parents may not ignore or change parts of the child support order without court action.

To change the amount of support, either parent may file a Motion to Amend in the same court in which the order was originally entered. There is no fee for filing a Motion to Amend. The court will hold a hearing to decide if there has been a material change of circumstances. If the court finds a change has occurred, it will calculate the child support guidelines to see if the amount of child support changes. The earliest effective date that the court can change the amount of child support is the date that the Motion to Amend was **served on the other party**.

The noncustodial parent is not paying the ordered amount, what can I do?

You may have three options:

- You may go to the clerk of J&DR Court to file a Motion to Show Cause. The court will set a date and time for a hearing. The court will notify the other parent to appear and explain why he/she should not be held in contempt for failing to pay support.
- You may file a Motion to Amend to request that the judge order income withholding. Income withholding takes money from the noncustodial parent's paycheck to pay his or her child support. This may be ordered if:

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- The noncustodial parent requests it;
- The parents agree to it;
- There are child support arrears; or
- Because of the noncustodial parent's past payment history.

An employer must honor an income withholding order and may not punish the noncustodial parent because of it. The employer may charge \$5 per withholding to handle the administrative costs of complying with the order.

Even with an income withholding order, the noncustodial parent is responsible for ensuring that the correct amount of child support is being paid on time to the custodial parent.

- Or you may fill out an application with the Division of Child Support Enforcement and request their assistance in obtaining child support. DCSE has the authority to:
 - have income withheld by the noncustodial parent's employer,
 - file property liens,
 - report child support debts to credit agencies,
 - suspend drivers' and other licenses,
 - intercept income tax refunds,
 - prepare your case for court action, and
 - petition another state for assistance when needed.

What if I don't want child support for my child?

If you receive TANF benefits, you have automatically assigned your rights to DCSE to collect support from one or both parents. Otherwise, you are not required to obtain child support for your child; however, the child has a legal right to support from both parents.

Do I have to pay child support if I can't visit the child?

Do I have to allow child visitation if I'm not getting support?

Child support and child visitation are completely independent issues. A party still has a duty to pay child support, even if the opposing party is denying child visitation. A party still has a duty to allow child visitation, even if the opposing party is not paying child support. In either case, you should go to court and enforce the order that is being disobeyed. You do this by filing a Motion for Show Cause Summons.

How long do I have to pay child support?

Child support is normally payable until a child reaches the age of 18. If a child is still a full-time student in high school and resides with the custodial parent, support will continue until the child is 19 years old or graduates from high school, whichever occurs first. However, there are special

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circumstances where child support may end before the child turns 18 or continues past the age of 18, such as:

- Support may be ordered for a child over age 18 who is mentally or physically disabled, or,
- The duty of a parent to support a child can end if the child marries, enlists in the military, or can otherwise provide for himself or herself and is declared emancipated by a court, or,
- Parties can agree in a separation agreement for support to continue longer.

Can I terminate (end) my parental rights if I don't want to pay child support?

Because a child has a legal right to support from both parents, a Judge is not likely to terminate parental rights for this reason.

What if I can't pay my child support?

You must pay child support debts. These debts won't go away and you can't bankrupt them. Government agencies that collect child support have more legal rights than other creditors to take your income and property. This includes seizure of your tax refunds, special wage garnishment rules, and seizure of federal benefits such as Social Security. Unlike most other debts, you can be jailed if you intentionally fail to pay child support. For each Show Cause Summons issued by the court, you can be jailed up to 12 months.

Once it has been ordered and not been paid on time, unpaid child support becomes a judgment by operation of law. You can't go back and undo, set aside, or change the amount of child support that was ordered and was not paid on time. If you have proof of payment, you should show that to the court or agency that last ordered child support. Unless you have a good reason for not paying the back child support (such as receipt of SSI disability benefits), the minimum back child support payment in Virginia is \$65.00 per month.

What should I do if I can't pay my child support?

Once child support has been ordered and you are unable to pay it, you need to file a Motion to Amend or Review as soon as possible. You do this with the agency or court that last ordered child support. You can ask that future child support be lowered and set according to the Child Support Guidelines. However, the agency or court may not do this unless you show you made good faith efforts to pay the child support, or had a good reason for not paying the child support, such as receiving or seeking disability benefits, workers' compensation, or unemployment compensation. Moreover, this only affects child support that becomes due after you file the

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Motion to Amend or Review. This does not affect child support that became due before you file the Motion to Amend or Review.

What happens if I do not file a Motion to Amend or Review?

If you do not file this Motion to Amend or Review, child support continues to be due, and continues to become a judgment by operation of law. This is true even if nobody is asking for child support or if somebody has agreed orally that child support does not have to be paid. Unless you get child support changed with a new written order, the old order stays in effect. This can mean that after several years, you may owe a lot of child support. For example, if child support of \$500 per month is not paid, you will owe \$30,000 (plus interest) in five years. If you pay this at \$65 per month, it will take you 38½ years.

Can an adult child collect past due child support from their parent?

Generally not. The right to collect support arrearages belongs to the parent to whom support was awarded (which is almost always the custodial parent), not to the adult children. The Virginia Supreme Court has ruled that payments made to adult children did not reduce the arrearage owed to the other parent. Similarly, the Virginia Court of Appeals ruled in another case that payments directly to adult children were a gift and not a payment on the arrearages owed to the other parent.

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Free Legal information by Web and Phone: www.vlas.org and
1-866-LegalAid (534-5243)

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