

Child Support



Who has to pay child support?

In Virginia, the parent who does NOT have physical custody of the child must pay child support. That parent is often called the “responsible party.”

Who decides the child support amount?

The amount of child support can be decided by:

- the Division of Child Support Enforcement (DCSE), or
- the Courts.

How does DCSE make a child support order?

You can ask DCSE to make a child support order. It's **free**, and you do not need a lawyer. Just fill out and file an application for services.

If DCSE approves your application, it will make an Administrative Support Order (ASO). The ASO orders the responsible party to pay child support. DCSE can also make a Notice and Order to Withhold Income for child support. This means support can be automatically taken from the other parent's paycheck or other form of income, like Social Security disability benefits.

How does the other parent find out about the child support order?

For most cases, DCSE has a Deputy Sheriff serve (give) a copy of the Order to:

- The other parent (or party), or
- A member of their household (who must be 16 or older). The server must explain what the papers are.
- Or the server can attach them to the front door and a copy of the Order is mailed to the other parent by first class mail.

Can the other parent disagree with the ASO?

Yes. If the other parent does NOT agree, DCSE allows **10 days** to object and ask for an appeal hearing. The ASO paper will explain how to do this.



Can I ask a court to make a child support order?



You can file a petition with the Court Services Unit of the Juvenile and Domestic Relations Court (J&DR Court, for short) to make a child support order. It's **free**, and you do not need a lawyer.

File your petition in the city or county where you or the other parent (or party) lives. If you are also asking for custody, you should file in the same place you file for custody.

You will have a court hearing within a few weeks. The judge will ask about both parents' income, and make a Child Support Order. The judge may also issue a Notice and Order to Withhold Income from the paying parent's income or benefits.

Can the paying parent disagree with the court's child support order?

Yes. The paying parent (or responsible party) can *appeal* a support order. But there must be a very good reason for the court to change the order. And he or she should appeal right away.

How to Appeal

If a J&DR Court judge made your Child Support Order, you have **2 options**.

1. Appeal to the Circuit Court in the same city or county that made the support order.
Deadline: You have **10 days** from the date the J&DR Court made your order to file your appeal. You will have a totally new hearing (trial *de novo*) in Circuit Court.
Important! It is hard to present a legal case in Circuit Court. You should talk to a lawyer.

OR

2. Ask the J&DR Court that made the order to hear your case again. This is called a “rehearing.” You **MUST** ask within **30 days**. It is not easy to get a rehearing. You must have a very good reason, such as:
 - A serious mistake with the first case, like notice not served correctly, or
 - New evidence that was not available at the time of the first hearing.

If you decide to ask for a rehearing, you might lose your right to appeal in Circuit Court.

What does a child support order say?

A child support order says

- Which parent has to pay support
- How much support to pay and how to pay it, and
- How much of the child’s medical costs to pay

When does a child support order start?

Child support orders start on the date the Petition (request for support) is filed.

How does the court decide the child support amount?

The court follows child support “guidelines.” The guidelines determine the amount of total combined

child support, and the **amount the paying parent pays**, which is based on each parent’s incomes.

The guidelines are based on information that each parent provides, including:

- How many children need support
- Which parent the child lives with and for how many days each year
- Each parent’s direct expenses for child care, health insurance, extra medical costs, etc. (must provide proof of the expense)
- Each parent’s average monthly income before taxes and deductions, including income from work, investments, interest, spousal support, disability benefits, and other sources

Some income is not counted, such as:

- A second job taken to pay off back child support
- Welfare benefits
- Child support received
- SSI payments for a parent or child

Do the guidelines allow for deductions?

Yes. There are some items that can be deducted from the parties’ combined income for calculating guideline child support, including:

- Spousal support one parent pays the other
- Current child support for other children
- Any children (not stepchildren) under 18 from another relationship living with a parent
- Business expenses
- A part of self-employment taxes (for self-employed parents)

What if one parent *could* make more money?

If a parent has low or no income, but *could* earn money, the court can assume (impute) income for that parent. That means the court can decide how much money that parent could earn.

To see how much child support there could be in your case visit

www.alllaw.com/calculators/childsupport/virginia

How to Change, Stop, or Get Help with a Child Support Order

Can I change a child support order?

You cannot change a child support order without permission from the court.

If one or both parents' financial situation has changed significantly, you can ask the court to change the child support order.

How do I ask the court to change a child support order?

To ask for a different amount of **child support**, file a *Motion to Amend*. It's **free**. A copy of your *Motion* will be served (given) to the other parent. There will be a court hearing to decide if your financial situation changed significantly. If so, the court will use the guidelines to decide the new support amount. The court can order the new support amount to start the date the other parent was served the *Motion to Amend*.



What can I do if the other parent is not paying the amount of child support ordered?

You have **3** options:

1. **Ask for a court hearing.** File a *Motion for Show Cause Summons* with the J&DR Court clerk. The court will schedule a hearing and order the other parent to go to the hearing and explain why he or she is not paying. The other parent may be found in contempt for not paying, and fined and/or sent to jail.
2. **Ask the court to take support from the parent's income.** File a *Motion to Amend* to ask that child support be taken from the other parent's paycheck (income withholding order).

The judge can order this if:

- The other parent asks for it,
- Both parents agree,
- There is unpaid back child support, or
- The other parent has not been paying support on time.

If the court makes this order, the other parent's employer

- must follow the order,
- may not punish the employee because of the order, but
- may charge the employee \$5 each time money is taken from the paycheck.

Even if support is paid from wages, the other parent is still responsible to make sure the correct amount is paid and is on time.

3. **Ask DCSE to help you collect support.**

DCSE can:

- Have the other parent's employer take money from their paycheck,
- Put a lien on the other parent's property,
- Tell credit agencies about unpaid child support,
- Suspend drivers' and other licenses,
- Take the other parent's income tax refunds,
- Take your case to court, and
- Ask another state for help, if needed.

What if I do not want child support?

A child has a right to get support from both parents. But you do not *have to* take it.

Exception: If you get TANF, you have given DCSE the right to collect your support.

I can't visit my child. Do I have to pay child support?

Yes. Child support and child visitation are separate. You **MUST** pay support even if you are not allowed to visit or the other parent does not let you visit your child.

I don't get child support. Do I have to let the other parent visit the child?

Yes. Child support and child visitation are separate. You **MUST** let the other parent visit even if he or she does not pay support.

Important! If the other parent is not obeying a support or custody order, file a *Motion for Show Cause Summons* to ask the court to enforce your order.

How long do I have to pay child support?

Child support usually lasts until your child is 18. If your child is a full-time high school student and lives with a parent, support will continue until the child is 19 or graduates, whichever happens first.

Child support may end *before* 18 if your child:

- Is emancipated by the court,
- Gets married, or
- Joins the military.

Child support may continue *after* 18 if:

- Your child is disabled and cannot live independently, or
- You and the other parent make an agreement to continue support after 18.

Can a child with a disability get support after they turn 18?

Yes. The court may order:

- continuing support for a child who was getting support before age 18, or
- new support for a child with a disability who has turned 18.

To make a child support order for a child 18 or older:

- The child's disability must be severe and permanent,
- The child must have had the disability before age 18 (or 19 if the child was a full-time student),
- The child is not able to live independently and support him/herself, and
- The child lives with the parent that receives or is asking for support.

I don't want to pay child support. Can I end my parental rights?

No. Your child has the right to get support from both parents. A judge probably will not end your parental rights because you don't want to pay support.

What if I can't pay my child support?

You **MUST** pay child support. You cannot get out of paying, not even by filing for bankruptcy.

Government agencies that collect child support have more rights than other creditors. They can take your:

- Tax refunds,
- Wages, and
- Federal benefits, like Social Security.

You can go to jail if you do not pay child support. Each time the court issues a Show Cause Summons, you can be sent to jail for up to 1 year.

File a *Motion to Amend or Review* as soon as possible. File with the court or agency that ordered the child support.

You can ask for lower payments in the future. But you must show:

- you have been doing your best to pay the child support, or
- you had a good reason for not paying (such as getting disability, workers compensation or unemployment).

If the agency or court agrees to lower your payments, it will only affect payments due *after* you filed the Motion. You will still be responsible for support owed before you filed the *Motion*.

What if I don't file a Motion to Amend or Review?

If you do not file a Motion, your child support will still be due. It does not matter if:

- no one asks for the support, or
- the other parent agreed that you did not have to pay.

Your unpaid support automatically becomes a judgment against you. You will owe support, plus interest until you pay it off. The only way to stop it is to get a new child support order.

If you do not get a new order, you can owe thousands of dollars, and it can take many years to pay off.

What if I miss a child support payment?

If you miss a child support payment or pay late, the amount automatically becomes a **judgment** against you.

It's very important that you:

- Show proof you pay support on time, or
- Have a very good reason for not paying (such as getting SSI disability).

If you do not have proof or a very good reason, you will be ordered to pay a minimum of \$65 per month towards the back child support.

Can an adult child collect past due child support?

Usually not. Child support is due to the parent raising the child, not the child. The responsible party may make a gift to the adult child, but that does not take away the support debt owed to the other parent.

Free Legal Information



Online: www.vlas.org

Phone: 866-LegalAid (534-5243)