

# CENTRAL VIRGINIA LEGAL AID SOCIETY, INC.



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## Child Support

### Who has to pay child support?

Under Virginia law, a parent who doesn't have physical possession of a child has a duty to pay child support. This person usually is called the "responsible party." Unless a person has a good reason for not paying child support, such as getting SSI disability benefits, the lowest child support payment in Virginia is \$65.00 per month.

### How is child support set?

Child support can be set one of two ways. Child support can be set is through the Division of Child Support Enforcement (DCSE). Child support also can be set through court.

### 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. This may be done three different ways.

- Given to the responsible party in person, usually by a Deputy Sheriff.
- 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.

- 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 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 the parties' income and issue a Child Support Order. The Judge also may issue a Notice and Order to Withhold Income.

### **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. There are a small number of deductions (subtractions) from income. If a party has no income, or a very low income, income can be imputed to that party. This means it is assumed the party 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. 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.

### **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.

### **Can child support be changed?**

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.

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

In most cases, you don't really have that choice. Both parents have a duty to support a child. The child has a legal right to support from both parents. Child support legally is the property of child, and is not the parent's property. Unless it would place you in danger, you have a legal duty to get child support for your child.

### **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. These include 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.

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 also 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 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.