

## **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 is usually called the "responsible party." Only a natural or adoptive parent must pay child support. The party paying support is known as the **respondent** and the party receiving the support is the **petitioner**.

## **How do I get a child support order?**

Child support can be set through the Division of Child Support Enforcement (DCSE) or through court. The amount of child support is determined using the Child Support Guidelines, which is a worksheet that determines child support based on the income of both parties.

### **1. Child support through the DCSE.**

You may file a petition for child support with the DCSE. You may do this by yourself 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.

The responsible party then 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.

### **2. Child support through court.**

You may also file a petition for child support with the Court Services Unit of the Juvenile and Domestic Relations (J&DR) court. The petition must be filed in the city or county where the responsible party lives or where the child lives (if different). The petition will usually be heard within several weeks. The judge will hear evidence as to the parties' income and issue a Child Support Order.

## **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 SEPARATE issues. A party still must pay child support, even if the opposing party is denying visitation. A party still must allow child visitation, even if the opposing party is not paying child support. In either case, you or your attorney should go to court and enforce the order that is being disobeyed by filing a Motion for Show Cause Summons.

## **The other parent is not making the proper child support payments. How can the order be enforced?**

There are a number of ways to enforce a child support order.

- If you are not receiving the proper amount of child support, you can go to the DCSE, but it is a good idea to seek help from an attorney.

- File a Motion for a Rule to Show Cause with the Clerk of the Court at the court that issued the order if there is a court order. There will be a hearing, and you must convince the court that the other party owed you child support and has failed to pay. The court can then sentence the other party to jail time, but will give the other party the chance to avoid jail time by paying child support. If it's an administrative order – then you need to contact DCSE.

It's extremely important for a parent who is receiving child support to keep an accurate accounting of the money that is owed to them – the court will not help you to figure that out. The benefit of using DCSE is that they keep an accurate accounting of the money due including interest on past due amounts (arrears).

## **What if I can't or no longer want to pay my child support?**

You must pay child support debts. These debts won't go away and you can't bankrupt them. Once it has been ordered and not paid on time, child support becomes a judgment by operation of law. This means that you can't go back and undo, set aside, or change the amount of child support that was not paid on time. If you are behind on child support payments, they may be taken out of your paycheck automatically. A wage withholding can

happen at any time – the respondent doesn't have to be 30 days behind. Further consequences will follow if you continue to be late on these payments.

Government agencies that collect child support have more rights than other creditors to take your income and property. They can potentially seize your tax refunds and federal benefits such as Social Security. The DMV can suspend or refuse to renew your driver's license if you are late on child support. You can be jailed if you intentionally fail to pay child support.

### **How do I get my child support changed?**

Child support can only be changed by court order when there has been a material change in circumstances since the last hearing, such as unavoidable unemployment, big changes in the needs of the child, either of the parents gets a better paying job, child care expenses increase or decrease, or a change in health insurance payments just to name a few.

### **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 or your attorney should file a Motion to Amend or Review as soon as possible. You do this with the agency or court that ordered child support.

To get your child support changed, you will have to 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. **At the end of the day** – the paying party must prove that there has been a material change in circumstances since the last court order. That material change can't be because of a voluntary act on the part of the paying party – for example – quitting a job, being fired for misconduct, taking a less paying job, becoming incarcerated, etc.

**This brochure is intended for information purposes only and is NOT a suitable substitute for legal advice from a certified attorney.**

If you have a specific question, please consult Legal Aid Works<sup>SM</sup> at:

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## **Legal Aid Works<sup>SM</sup>**

Fredericksburg Office

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### **Child Support**

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