



THE BASICS

Getting Child Support in
New York State

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The Cross-Borough Collaboration ("CBC") originated as a joint project of the Brooklyn Bar Association Volunteer Lawyers Project and Her Justice. Originally launched in 2002, the goal of the CBC was and continues to be the dissemination of clear and concise informational booklets for the general public on various common legal issues. Also known as "The Basics" series, these booklets have been updated periodically by Her Justice and continue to be distributed to our clients on an ongoing basis. We would like to extend our thanks to the Brooklyn Bar Association Volunteer Lawyers Project for their initial involvement in this important project.

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Administration for Children's Services, Parents' & Children's Rights Unit and Division of Legal Services

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New York State Department of Social Services

New York State Office of Court Administration

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THE BASICS
Getting Child Support in
New York State

BEFORE YOU LOOK FURTHER PLEASE READ THIS:

Throughout this booklet, you will see references to “spouse” and “parent.” In this guide, we will be using gender neutral terms to describe parents because the terminology being used is quickly changing as the courts work to address and expand upon them to include the many types of families that exist in our modern world, and take into account the rights of the LGBTQ community. While there are some areas where the rights of LGBTQ individuals are addressed specifically, there are others in which the courts and the laws have yet to catch up with the times.

“Paternity” proceedings were traditionally (and statistically still are) a matter brought by the “mother”

against the “father” to establish legal status for a second parent and gain child support for the mother to care for her child. As a result, the terminology used is mainly in reference to a heterosexual mother and father. In New York, the mother is automatically given parental status because there is usually no question as to her relation to the child. If the mother is married, the law assumes her husband is the father of the child and grants legal status as the father to him. When the child is born out of wedlock the process becomes a bit more complicated. When a paternity proceeding is brought, the person named as the father can decide not to contest it, in which case he would be given legal status as the father. If he contests that he is

the father, the court may issue a DNA test to determine if he is or isn't the biological father. There are also rules in place, called "equitable estoppel", which would prohibit someone from contesting that they are the father under some circumstances (such as if someone expressly stated they were the parent, etc.).

Recently, New York courts have stated that "paternity" proceedings can grant a woman parental rights, despite its historical connotation of only applying to males.¹ Therefore, it may be possible for women to petition the court for parentage ("paternity"). It is likely that the law in this area will change even more dramatically in the next few years.

With regard to child support, you may seek child support from the other parent of your child. However, depending on your situation, if the other parent is not biologically related to your child, you may not be able to obtain an order of support. Similarly, if you are a non-biological parent seeking support, the court may not view you as eligible to seek support. If you have questions about your rights with regard to a child in your household who is not biologically related to you, seek the advice of an attorney by calling a local Bar Association or a legal services organization in the borough where you live.

¹ New York Code states that any law that uses gendered language, unless otherwise stated, refers to both genders. (General Construction Law § 22: "Whenever words of the masculine or feminine gender appear in any law, rule or regulation, unless the sense of the sentence indicates otherwise, they shall be deemed to refer to both male or female persons.") This issue was clarified by the Rockland County Family Court on May 25, 2017 in, *Matter of A.F. v. K.H.* 57 N.Y.S.3d 352, 357 (2017).



EITHER PARENT CAN BE NAMED THE CUSTODIAL PARENT BY A COURT.

WHO IS REQUIRED TO PAY CHILD SUPPORT?

Both parents must financially support their children until the children are 21 years old. This includes parents who adopt children, as well as stepparents. If a child “becomes emancipated” before reaching 21 years, the parents no longer have to support that child. (Emancipation is explained later in this booklet.)

Stepparents have to support their stepchildren only if the stepchildren are in danger of becoming public charges and will need public assistance (welfare) without their support. However, a stepparent doesn’t have to pay support if the biological parent of the children divorces the stepparent or dies.

WHEN CAN I GET A COURT ORDER FOR CHILD SUPPORT?

If you are the custodial parent (meaning that you have custody), you can get child support from the non-custodial parent (the parent that does not have custody). This is true even if you and the child’s other parent were never married.

You can get child support even if you have enough money to support the child on your own. You can also get child support even if you and the other parent are living together, if the other parent is refusing to help pay for the child’s bills.

If you were not married to the other parent, the other parent must have signed an Acknowledgment of Paternity (a legal document stating paternity) at the hospital when the child was born, or later. If the other parent did not sign this document, you first have to go to court and prove paternity. You have to do this even if the person you say is the other parent signed the child’s birth certificate and even if the child has that person’s last name.

If you are legally married to your partner when you give birth to a child and your partner is not a biological parent, no one should sign the Acknowledgment of Paternity form in the hospital. This form should not be signed even if you have been separated from your partner for many years or do not know how to locate them. A court should determine the legal parent. If both parents have joint legal custody of the child, the parent who has physical custody of

the child can get child support. If both parents have joint physical custody, the parent who has the child most of the time can get child support. If the child spends the same amount of time with both parents, a court will determine which parent is entitled to receive the child support.

NOTE: *If you need to keep your address confidential so that an abusive parent of your child cannot find you, do not give SCU your home or work address. Instead, give SCU the address of a person you trust who lives or works in another county. Ask this person to forward your checks to you and have this person promise not to give out your address to SCU or anyone else.*

HOW DO I APPLY FOR CHILD SUPPORT IF I AM THE CUSTODIAL PARENT?

Usually, you ask for child support in Family Court in the county where you and the child live. You can also ask for child support in the county where the other parent lives.

You do not need a lawyer to get child support. It can be a fairly simple process in Family Court. You may also be able to use the services of the Support Collection Unit to help you get child support.

WHAT DOES THE SUPPORT COLLECTION UNIT (SCU) DO?

This is a government agency that does many helpful things to get you child support.

When you arrive in the Family Court building, go to SCU. They will interview you and ask if you want them to help you. If you are receiving public assistance in the form of cash, you must use the services of SCU.

Some of the things SCU does are:

- *File the child support case for you.*
- *Help you find the other parent of your child.*
- *Help you find out where the other parent of your child is employed.*
- *Help you prove that the person you say is your child's parent really is a parent*
- *Collect the child support payments from the other parent and give the money to you.*
- *Get any late payments. SCU will collect directly from the parent's employer if necessary.*



THE PETITION IS YOUR REQUEST FOR FAMILY COURT TO ORDER THE OTHER PARENT TO PAY CHILD SUPPORT.

WHAT HAPPENS WHEN I FILE A CHILD SUPPORT PETITION IN FAMILY COURT?

The clerk of the Court will help you fill out a petition. You do not need to bring the child's other parent to Court on the day you file your petition.

After you have filed your petition, the **Court will set a date** when you and the other parent of the child both have to go to Court. This date is often called the **return date**, the **adjourn date**, or the **hearing date**. When you return, a Support Magistrate will hear the case. A Support Magistrate takes the place of a Judge in most child support cases.

At the time you first file your petition, you will be given two copies of the summons and two copies of the petition. Make sure that the clerk gives you a **financial disclosure affidavit** and an **affidavit of service**.

HOW DOES THE OTHER PARENT KNOW THAT I AM ASKING FOR CHILD SUPPORT?

It is up to you to make sure that the other parent gets a copy of the summons, the petition and the financial disclosure affidavit. But you can't give these court papers to them personally. You must get someone else to do that. You can also ask the court to serve the other parent with the papers. If after the court serves them, they do not appear in court, then you will be given another court date to get someone to serve them personally.



WHEN THE COURT PAPERS ARE GIVEN TO THE OTHER PARENT, THIS IS CALLED SERVING HIM WITH THE PAPERS.

WHAT IS THE CORRECT WAY TO SERVE THE COURT PAPERS TO THE OTHER PARENT?

Who: Anyone who is over the age of 18 who is not involved in the court case can serve the papers.

What: This person must hand the court papers personally to the other parent. The papers the other parent needs to get are the summons, the petition and the financial disclosure affidavit. If the other parent refuses to accept the papers, the person may drop them at the parent's feet—so long as the papers touch them, it is good service.

When: This cannot happen on a Sunday or a holiday. It must happen no later than 8 days before you have to appear in court.

The person you get to serve the court papers must sign the affidavit of service in front of a notary public. This paper describes the parent of the child and explains what happened when the parent received the court papers. It also states the date and location of service and it specifies which documents were served on the parent.

Keep the original and notarized affidavit of service. On the day you have to appear in court, you will be required to give them the completed affidavit of service. It's also good to keep a copy for your records.

If the person who is serving the court papers for you is having problems finding the other parent, this person can give you an affidavit (a sworn, notarized statement) telling how and when they tried to find and serve them. The Support Magistrate will then decide if you can have the papers served on the other parent by mail or some other way.

Sometimes, SCU will serve the other parent of your child with the court papers, so that you do not have to do it.



AN AFFIDAVIT OF SERVICE IS A SWORN STATEMENT OF THE PERSON WHO DELIVERED THE PAPERS, STATING THAT THE OTHER PARENT GOT THE COURT PAPERS.

WHAT IF THE OTHER PARENT DOES NOT GO TO COURT ON THE HEARING DATE?

If you have submitted an affidavit of service showing that the parent received notice of the case, you can get a final order of support without the parent being present.

Or, if you ask, the Support Magistrate will make a temporary order of support. At that time, the Support Magistrate can make a warrant to arrest the other parent so they can bring the parent to court. The Support Magistrate can also send another summons so that the other parent can come to court voluntarily.

HOW DO THEY DECIDE HOW MUCH CHILD SUPPORT I GET?

The Child Support Standards Act (CSSA) is the law in New York State that tells the amount of child support the other parent must pay. The CSSA uses a formula to calculate how much child support the other parent should pay by applying a percentage to the parent's income. The percentage used by the CSSA depends on how many children you and the other parent have.

Currently, the CSSA applies to parental income up to a maximum of \$141,000. The court can apply it to income higher than \$141,000 based on certain factors. Examples of these factors are: the financial ability of the other parent, the lifestyle the child would have enjoyed if the parents stayed living together, and any special needs the child may have. The maximum can be adjusted periodically by the New York State legislature.

The amount you get depends on what the other parents' income is, what your income is, how many children you have together, and what your children's basic needs are.

The Support Magistrate will look at the information in your financial disclosure affidavit and the other parents' financial disclosure affidavit, if one is provided. The Support Magistrate might also ask you and the other parent to answer questions. And the two of you might be asked to give the Support Magistrate other evidence of your income and expenses, such as a paystub or a W-2 statement.

Both parents' incomes are used to figure out how much child support the non-custodial parent has to pay because both parents have to support their children.

THIS IS HOW THEY DECIDE:

Deduct (subtract) these things from each parent's income:

- spousal maintenance paid to a former spouse by court order
- child support paid to other children by court order
- public assistance and supplemental security income (SSI)
- city taxes
- social security and Medicare taxes (FICA)

Combine (add) the incomes of both parents after making the deductions listed above, and multiply the total you get by the correct percentage:

- 17% for one child
- 25% for two children
- 29% for three children
- 31% for four children
- not less than 35% for five children or more

Divide the figure you get between both parents according to both your incomes (on a "pro rata" basis). This means that if the other parent earns twice as much as you, they must pay twice as much child support.

The other parent must pay additional amounts for child care if you are working or going to school. The other parent also must pay more for medical care not covered by insurance. Also, the court may order the other parent to pay more for your child's educational expenses.

The parent who has health insurance must also (if reasonable) continue providing health insurance for your children. The cost of providing health insurance will be shared between yourself and the other parent, in proportion to your respective incomes. If neither of you has health insurance, the court orders the custodial parent (the parent with the greatest amount of custody) to apply for the state's child health insurance plan.

Sometimes Support Magistrates use a short cut. They look at the other parent's child support income (income after local taxes, FICA, etc.) and multiply it by the correct child support percentage (17% for one child, 25% for two children, etc. as listed above).

If paying this amount will make the other parent's income lower than the federal poverty level, the other parent will have to pay only \$25 per month.

\$25 per month is the minimum amount allowed under the CSSA.

If the other parent is unemployed (and not receiving unemployment benefits) or is receiving public assistance, you are still entitled to child support, but only \$25 per month, **no matter how many children you have together**. If you later learn that the other parent is working (or receiving unemployment benefits), you can go back to Family Court to seek an upward modification of your support order. (This process is described later in this booklet.)

CAN I GET CHILD SUPPORT WITHOUT GOING TO COURT?

You and the other parent of your child can make a written agreement about how much child support you will receive. If you do this, though,

- The amount that you agree on can't be less than \$25 per month.
- The agreement must say that both of you know the CSSA rules.
- The agreement must also say that both of you know how much the basic child support amount would be in your case.
- If the amount you agree on is different from what you would have under the CSSA, the agreement must explain why you agreed to the different amount.
- If you don't have an attorney, you must have a copy of the CSSA chart that says how much the CSSA amount of support would be in your case. This can be found at:

www.newyorkchildsupport.com/dcse/child_support_standards.html.

This chart is updated in April of every year.



You can scan this QR code to access the webpage on Child support Standards

If your written agreement does not meet all of these requirements, a Court can refuse to use it.

If you want to make sure the Court will enforce your agreement, you should file a petition in Family Court and get your agreement marked "so ordered" by a Judge. Then if the other parent doesn't pay what was agreed to, you can go back to Court and ask the Judge to order the other parent to pay the agreed upon amount.

HEALTH INSURANCE — MEDICAL SUPPORT

Child Support also includes providing health insurance coverage for all unemancipated children under the age of 21. If one of the parents has private health insurance coverage through an employer, then that parent must cover the children under the Plan. If neither parent has health insurance coverage, then one parent must enroll the children in a NYS subsidized plan, such as Child Health Plus.

HEALTH INSURANCE — MEDICAL SUPPORT

If you don't know what the other parent's income is, you should ask the Support Magistrate to make the other parent give the court a financial disclosure affidavit. You will have to complete one too.

When you finish it, you must sign it in front of a notary public.

If you think the other parent is lying about their income or finances, you should ask the Support Magistrate to give you a subpoena. You can use the subpoena to get information from the other parent's employer, bank, credit card companies and other places to find out the other parent's real financial situation. You can also subpoena other people to come to court to testify if your case goes to trial. At trial, you can get people to testify about your expenses and others to testify about the other parent's financial resources.



THE FINANCIAL DISCLOSURE AFFIDAVIT, GIVES DETAILED INFORMATION ABOUT A PERSON'S INCOME AND EXPENSES.



A SUBPOENA IS A LEGAL DOCUMENT THAT SAYS THE PERSON WHO GETS IT HAS TO SUPPLY THE PAPERS OR THE INFORMATION LISTED IN THE SUBPOENA.

WHAT IF THE SUPPORT MAGISTRATE STILL DOES NOT REALLY KNOW THE OTHER PARENT'S INCOME?

If the Support Magistrate believes the other parent is lying about their finances, then the Support Magistrate can issue an order on default. This order can make the other parent pay child support based on the needs of the child, instead of based on the other parent's income.

If you give enough evidence in court to show that the other parent is hiding their real income and has more than they claimed, then the Support Magistrate may impute income to the other parent. This means that the other parent must pay child support based on a higher income than what they said they have.

CAN I GET CHILD SUPPORT IF I GET PUBLIC ASSISTANCE?

When you start receiving public assistance in the form of cash, you give up your right to collect child support to the Human Resources Administration (HRA) in New York City. The Department of Social Services (DSS) used to be the agency that collected child support, so you may still hear people refer to DSS. In the rest of the state, the agency that collects child support is the Office of Temporary and Disability Assistance (OTDA).

You have to cooperate with HRA as they try to get child support from the other parent of your child. You must give them any information you have about where the other parent is and where they work. You must appear in court, if necessary.

If you do not cooperate with HRA, they can cut off the non-shelter portion of your public assistance grant, but HRA cannot cut off any portion of your child's grant.

HOWEVER, if you can show, with orders of protection, police reports, hospital records, etc., that because of a history of domestic violence you or your child are in danger, HRA may agree with you that it is best if they do not try to get child support from the other parent of your child.

WHAT HAPPENS WHEN HRA GETS AN ORDER REQUIRING MY CHILD'S OTHER PARENT TO PAY CHILD SUPPORT?

If HRA gets child support payments from the other parent, they will use most of it to pay back the amount of public assistance that you are receiving for your child.

But, each month, the first \$100 that they get from the other parent they will give to you (called a "pass-through"), in addition to your regular public assistance grant. If you have more than one child getting child support, HRA will give you up to \$200 as a pass-through. The remaining child support, if any, will go to the government to reimburse it for the public assistance paid to you.

If they get only \$25 from the other parent because the other parent is unemployed, they will give you the entire \$25.

If the other parent can pay more in child support than you can get from public assistance, HRA will take you off of public assistance and you will get all of the other parent's support payments.

WHAT IS THE DIFFERENCE BETWEEN A TEMPORARY AND A FINAL ORDER OF SUPPORT?

An order of support may be temporary or final. It can take several court dates for the Support Magistrate to understand the financial situations for both of you. It can take months to finally decide the needs of the child.

So the Support Magistrate may give a temporary order of support the first time you go to court. **The temporary order tells the other parent to start paying you some amount right away.** This amount might be less than you will get after a final order is given.

After gathering all information possible about income, expenses and what your child needs, the Support Magistrate will issue a final order of support. The final order of support usually stays in effect until the last child covered by the order becomes 21 years old.

The final order of support says the other parent has to pay the required amount starting on the date you filed the petition, even if the order is issued many months later.

If the other parent has not paid any child support, or has paid a lower amount while the case has been going on, the other parent will owe you the difference. It is considered a late payment (arrear).

WHAT IF YOU THINK THE FINAL ORDER FOR CHILD SUPPORT IS TOO LOW?

You can ask the court clerk for a form to fill out if you don't agree with the final order. It says you can file an objection to the Support Magistrate's decision. **You have 30 days from the date you receive the final order to file your objection and ask for the order to be changed.** The other parent of the child can also appeal the decision of the Support Magistrate, if the other parent feels that they have to pay too much money for child support.

You must then serve a copy of the objection form on the other parent. They get a chance to respond to your objection. The other parent can give reasons for agreeing or disagreeing with the Support Magistrate's decision. If the other parent objects, you must be served with a copy of the objection form and you will be given a chance to respond.

A Judge of the Family Court will review the Support Magistrate's order and your written objections and will make a decision based only on the evidence presented in court by you and the other parent. The other parent will have to pay the amount stated in the Support Magistrate's order while you are filing an objection.

CAN THE OTHER PARENT GET THE COURT TO LOWER THE AMOUNT OF SUPPORT HE HAS TO PAY?

Under no circumstances can the Court or SCU erase or reduce child support that is past due (arrears).

If the other parent wants to reduce child support payments because things have changed (for example, the other parent no longer has a job), the other parent must file a petition with the court for a downward modification. This means the other parent is asking the Support Magistrate to lower the payment amount.

The other parent's petition has to be filed in court the same way that you filed your petition for support. And the other parent has to serve you with a copy of the summons and petition so that you can go back to court to respond to the request.

Until the other parent does, any amount the other parent owes will be considered arrears (past due). Even if the Support Magistrate says the other parent can pay less each month in child support in the future, the other parent will still have to pay you any arrears that existed before the downward modification order. If the other parent gets a downward modification, it could lower the amount of support owed back to the date the petition was filed.

CAN I EVER GET A HIGHER AMOUNT OF CHILD SUPPORT FROM THE OTHER PARENT?

To get more child support, you have to go back to court to file a petition for upward modification. This means you are asking for the other parent to pay more money. There are three situations where you can do this:

- You find out the other parent's income is at least 15% more than it was when the last support order was made and you can prove it;
- It has been three years or longer since the last support order was made;
- There has been a substantial change in circumstances so your child needs more child support (for example, large medical bills for a sick child).

You have to serve the other parent with the summons and petition so the other parent will have a chance to respond.

If your payments are coming through SCU, they will review your support order every three years. They want to make sure you get any increases allowed by law, like cost of living increases, or an increase if the other parent's income has gone up. SCU will review your order if you ask them to or automatically if you are receiving public assistance. SCU does not have to go to court to get an increase. They will tell the court the new monthly amount the other parent owes so the court's support order can be changed.

HOW CAN I MAKE THE OTHER PARENT PAY CHILD SUPPORT?

If the other parent does not pay child support after being ordered to pay by the Support Magistrate, you can file a violation petition and ask the Support Magistrate to give you a money judgment. The money judgment will say the late child support (arrear) and the amount of on-going child support must be paid. **If the other parent does not pay the judgment, the Support Magistrate can:**

- Take away the other parent's business or professional licenses.
- Suspend the other parent's recreational licenses (like hunting and fishing).
- Make the other parent pay in advance, before the payments are due.
- Put the other parent in jail for up to 6 months.
- Place the other parent on probation.

If you are receiving your child support payments through SCU, they can help collect past due support at no charge to you. They can do any of these things to the other parent:

- Have the other parent's employer take money directly from the salary before paying (called income execution) and send it directly to SCU, who will then forward it to you.
- Have the government send them the other parent's state or federal income tax refund, or a portion of unemployment benefits.
- Have the Department of Motor Vehicles suspend the other parent's driver's license.
- Take money from the other parent's bank accounts and retirement accounts.
- Put liens on the other parent's property (like cars and home) so the other parent can't sell that property without paying you child support.
- Report late support payments to credit agencies.

WHAT HAPPENS WITH CHILD SUPPORT IF I DON'T LET THE OTHER PARENT VISIT THE CHILD?

If there is a court order giving the other parent visitation, you cannot interfere with the other parent's right to visit with the child unless you have a good reason. If you are worried about the visits, you should go to court to get the visitation order changed.

If the other parent can prove in court that you are wrong in interfering with the visits, the Judge can allow the other parent to stop paying child support as long as you continue to stop the visits. The other parent still must pay any amounts owed before the order to stop paying.

The other parent has to go to court and prove that you did not have a good reason to prevent the visits.

WHAT IS EMANCIPATION OF A CHILD?

A parent has to support a child until the child is 21 years old or becomes **emancipated**.

Some things that show that a child is emancipated are:

- Child has completed 4 years of college education.
- Child has gotten married.
- Child is living away from the homes of both parents (except for living at school, camp or college, because these are temporary).
- Child has died.
- Child has gone into the U.S. military.
- Child is 18 years old and working full-time (except for summer or vacation jobs).
- Child willingly and for no good reason has ended the relationship with both parents (except if the child leaves home because of abuse by a parent or a similar reason).



EMANCIPATION MEANS A CHILD IS LIVING SEPARATELY AND INDEPENDENTLY FROM A PARENT, OR IS SELF-SUPPORTING.

Sometimes the other parent might argue that a child is emancipated so that the other parent does not have to pay child support. If you can prove that the child is financially dependent on you, even if one of the situations listed above is true, the other parent will have to pay child support. Also, even if a child who was once emancipated has again become dependent on you before becoming 21, the other parent will have to pay child support for that child.

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