



CHILD SUPPORT

Legal Information Guide

HER JUSTICE

Summer 2019

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What is Child Support?

Both parents must financially support their children until the children turn 21. Child Support is a legal tool to make sure that both parents do just that. The parent who pays for the child's expenses has the right to get Child Support payments from the other parent.

Emancipation

The only time a parent wouldn't need to support their child is if the child is emancipated.

Emancipation means that the child no longer relies on the parents financially. Here are some situations that might mean a child is emancipated before reaching the age of 21:

- the child is working full time and no longer living at home,
- the child has gotten married,
- the child has joined the Armed Forces.

Sometimes the other parent might argue that a child is emancipated to get out of paying child support. However, as long as the child relies on you financially, the other parent must pay you child support. This is always true, even if your child has gone to college, doesn't live at home, etc.

Am I Eligible for Child Support?

If you're the custodial parent, you can get child support from the non-custodial parent. This means that if you are financially supporting your child while the child's other parent is not, the other parent must pay child support.

This is always true, even if:

- you and the child's other parent were never married,
- you have enough money to support the child by yourself, or
- you live with the other parent, but they won't help pay for the child's bills.

Can I Get Child Support from a Stepparent?

- Stepparents only have to support their stepchildren if the stepchildren will rely on welfare otherwise.
- A stepparent doesn't have to pay support if the biological parent divorces the stepparent or dies.

Can I Get Child Support if I'm on Cash Public Assistance?

1. If you receive Public Assistance in cash, the Human Resources Administration (HRA) will receive the Child Support instead of you. You have to cooperate with the HRA as they try to get Child Support, even if you don't want it yourself. If you don't cooperate, they can cut off the non-shelter portion of your public assistance.

Please note the following:

- There is an exception to this rule if you have experienced Domestic Violence from the other parent. If this is the case, let HRA know.
 - the HRA can't cut off any of your child's public assistance
2. The HRA will take most of your Child Support to pay for your public assistance. However, they will give you something called the "Pass Through" every month. The Pass Through is usually \$100 or less. The exact amount depends on how much Child Support the other parent pays, and how much cash assistance you receive.
 3. If your Child Support amount is more than the cash public assistance you receive, you can choose to get all of the Child Support instead of the cash public assistance. To do this, show proof that the Child Support is more than the cash public assistance to the Support Collection office in Family Court.

Note: The Department of Social Services (DSS) used to be the agency that helped with child support. Because of this, you might hear people refer to the DSS instead of HRA.

Before You Can File for Child Support:

Proving Who the Other Parent Is:

To file for Child Support, you must prove that the person you're asking to pay you Child Support is the other parent of your child(ren).

- a. **If you are married** to the other parent, the court assumes that your spouse is the parent of your child(ren). In this case, you don't need to do anything to prove that your spouse is the other parent. All you have to do is bring your marriage certificate to court with you. You can skip ahead to the next section, "How Do I File For Child Support?"
- b. **If you are not married** to the other parent, the next step depends on your specific situation. See the chart below for more information.

Is the other parent your child's biological father?

YES

Did you sign an **Acknowledgment of Paternity** when your child was born? This document states who a child's legal parents are. Both parents need to have signed it. You don't need a copy as long as you remember both parents signing it, but it's better if you do have a copy.

If you did not sign an Acknowledgment of Paternity, you must first prove who the biological father is to get Child Support from that person. To do this, **you must file a Paternity Petition in Family Court**. You will not be able to file for Child Support until you prove that the other parent is the biological father. Make sure you bring your child's birth certificate when you go to file a Paternity Petition.

NO

You must provide some proof in court during your case that the person you're filing against is the other parent of the child(ren).

To do this, you'll have to show by clear and convincing evidence that you and the other parent intended to conceive and raise the child(ren) together.

Some common examples of this situation include female same sex couples, or other couples who used a sperm donor to get pregnant.

How Do I File for Child Support?

Note: If you file for Child Support, there's a chance that the other parent will try to get back at you by filing for Visitation, or even by filing for Custody. This type of behavior is called **retaliation**. Retaliation is particularly common in cases of Domestic Violence. If you're concerned about this happening, and/or if you're a survivor of Domestic Violence, you should consult with a Domestic Violence Advocate or attorney before you file for Child Support. For help with this, go to the Family Justice Center nearest you. For locations and phone numbers of the centers, visit this website: <https://www1.nyc.gov/site/ocdv/programs/family-justice-centers.page>.

Starting the Process

There is a Family Court in each borough of New York City. Go to your nearby Family Court to start your Child Support case. You don't need a lawyer in Family Court, but you're allowed to get one. For help finding a lawyer, visit www.lawhelpny.org.

You don't need to pay to start a case in Family Court. To start your case, go to the Support Collection Unit (SCU) office inside the Family Court building, and ask them to help you with a "Child Support Petition."

Make sure that you bring:

- Your child's Birth Certificate
- Your Marriage Certificate/ Acknowledgment of Paternity/ or other proof that the person is the other parent

Your Child Support Petition is your formal request for Child Support. Read the petition and sign it. After you're done, the clerk will give you:

- 2 copies of the Child Support Petition
- 2 copies of a Summons with a return date
- 2 copies of the Financial Disclosure Affidavit
- 1 Affidavit of Service

The final step is to give one set of these papers to the other parent. This is called Serving the Papers.

How Do I Serve the Papers?

Serving the papers means giving the court documents to the other parent. You must find someone to serve the papers for you. We'll call this person the Server. This person:

- Can't be you
- Must be at least 18 years old
- Can't be directly involved in the case, such as your child under 21

- Must live in the state where your spouse is served
- Can be the sheriff of the county in which the other parent lives

If the Support Collection Unit (SCU) is helping you with Child Support, you can get them to serve the other parent for you.

For serving papers outside New York State: The requirements for who's allowed to serve papers are different in each state. If you're having papers served to someone outside New York State, make sure the server is legally permitted to serve papers there. You may find out who can serve from an attorney, law office, or court located in that state. You can also check lawhelp.org for more information.

1. Once you've found a Server, give them the following documents:
 - 1 copy of the Child Support Petition
 - 1 copy of the Summons with a return date
 - 1 copy of the Financial Disclosure Affidavit
 - The Affidavit of Service
2. Server must give everything **except** the Affidavit of Service to the other parent. Papers must be served:
 - In person
 - At least 8 days before your return date in court
 - Not on a holiday or on Sunday, or on a different day of religious observance
3. Next, the Server must fill out the Affidavit of Service in front of a Notary Public. A Notary Public is a person licensed by the state government who confirms that you signed a document. You can find their locations online. The Server must then give you the original Affidavit of Service. Make a copy of the signed document for your records, and then give it to the Support Magistrate on your first court appearance. If the Sheriff served the other parent, then they will give the Affidavit of Service directly to the Support Magistrate for you.
4. Sometimes the other parent will hide from the Server to get out of going to court. **The server must try to serve the papers at least 3 times on different dates, and at different times.** If the Server is not able to serve the papers within 3 attempts, they should sign an "Affidavit of Attempted Service" in front of a Notary Public. An Affidavit of Attempted Service describes all the times and places where the Server tried to give the papers to the other parent.

Before the Return Date:

Before the hearing, you must fill out and sign the Financial Disclosure Affidavit in front of a Notary Public. The Financial Disclosure Affidavit is a document that reports your income and your expenses. You should include proof of your income, such as a W-2 form from the past year or a current paystub.

What If I Need an Interpreter in Court?

The courts will give you an interpreter if you need one. If English isn't your first language and you'd be more comfortable in a different language, you should tell the clerk right away.

Spanish language interpreters are in court almost every day. There are also interpreters for many other languages. If you want to know if an interpreter is available, call the court before you go in.

Will I Need to Pay for Anything in Court?

In Family Court, there are no fees. You will not be asked to pay for your case.

What Happens When I Go Back to Court on the Return Date?

On the return date, you and the other parent will appear in Family Court in front of a Support Magistrate. A Support Magistrate is not a Judge. They only see Child and Spousal Support cases, nothing else.

Make sure you bring the following documents to court:

1. Signed Affidavit of Service
2. Completed Financial Disclosure Affidavit
3. Any evidence of your income or the other parent's income. This could be a paystub, a W-2 statement, etc.

This return date will likely be one of many. During this time, the court will try to figure out the financial situation of the two parents and the needs of the child. It could take months for the process to be over.

You should ask the Support Magistrate to give you a "Temporary Order of Support." This Order tells the other parent to start paying you some amount of money right away. Don't worry if this amount seems too low; it is probably less than the final amount you will get with Child Support.

Eventually, the Support Magistrate will give you a "Final Order of Support." This is your Child Support. If this amount is higher than the Temporary Order of Support, the other parent must pay you the difference between the temporary order and the final order for the months they paid you the temporary amount. If the final order is less than the temporary order, the other parent will be given credit for the amount they overpaid.

The Final Order of Support will stay in effect until the last child covered by the Order turns 21 years old. You can also ask for the Child Support to be increased in the future. Go to page 10 of this guide to see how this process works.

What if the Other Parent Does Not Go to Court on the Return Date?

If you submit a signed Affidavit of Service showing that the other parent knows about your request for Child Support, you can ask the court to give you a Temporary Order of Support if the other parent doesn't show up.

What Happens With Child Support if I Don't Let the Other Parent Visit the Child?

If the court has allowed the other parent to visit the child, you must allow them to do so. If you go against the court's decision, you might lose your Child Support temporarily. If you're worried about the visits, you can go to court to try to change the visitation order.

Can I Get Child Support Without Going to Court?

You and the other parent can agree that they are to give you voluntary child support. However, we don't recommend this because it can't be enforced. If you want to do this, you and the other parent must make a written agreement that has very specific legal language about how much child support you will receive.

How Much Child Support Will I Get?

The Child Support Standards Act (CSSA) is the law that calculates how much child support the other parent must pay. Payment amounts are calculated by taking a certain percentage of the other parent's income. The percentage taken depends on how many children there are. For example:

- 17% for one child
- 25% for two children
- 29% for three children
- 31% for four children
- no less than 35% for five children or more

You can get more money for any of your child's medical expenses that are not covered by insurance. You can also get money if you need childcare because of your work.

What About Health Insurance?

1. If either parent has health insurance through an employer, then they must provide it for the child, unless the court decides the cost of doing so is too expensive.
2. If neither parent has health insurance through an employer, then one of the parents must secure health insurance for the child. We recommend using a New York State subsidized health insurance plan.

What if the Court Doesn't Know the Other Parent's Real Income?

1. If you can convince the court that the other parent is making more money than they say they're making, then the court may make the parent pay more child support.
2. If you have no idea what the other parent earns, and the other parent hasn't appeared in court, then the court will make a final order. This order will be based on the needs of the child instead of on the other parent's income.

For the court to calculate an order based on your child's needs, you will have to tell the court all of the expenses you pay for your child. You should make a list of all these expenses (food, rent, school supplies, activities, clothing, etc.) and what you pay each month for them. Bring receipts or documentation for as many of these expenses as you can.

What if the Child Support is Incorrect?

1. A Child Support order can be incorrect for two reasons. Either:
 - a. The court made a mistake with the facts of your case. (For example, the court gives you a Child Support amount for 1 child when you actually have 2 children.)
 - b. The court is wrong on the law. (This means that the court did something that doesn't follow the legal rules.)
2. If you think the Child Support is incorrect, you can file an objection with the court. **You have 30 days from the date you receive the decision to do this.** Here's how to file an objection:
 - Tell the clerk in Family Court that you want to object to your Child Support order. Fill out the objection form and get a copy of it.
 - Next, give the other parent the copy of your objection. You can do this through the mail. The other parent then gets a chance to respond.
 - The objection will then be given to a Judge to decide if the Support Magistrate made a mistake. During this time, the other parent will have to pay the original amount of Child Support. If there's been a mistake, the court will fix your Child Support amount.
 - Do not wait to file objections. If you miss the deadline, you will not be able to ask for more time.

How and When Can I Ask for More Child Support?

1. You can also ask for more Child Support with a "Petition of Upward Modification" in Family Court. There are three situations where you can do this:
 - a. The parent's income is at least 15% more than it was when you first received Child Support.
 - b. The amount of Child Support you need has drastically changed. For example, if you now have to pay for your child's health insurance. Another example is any new work-related childcare expenses that you might have.
 - c. It's been three years or longer since you last applied for Child Support.
2. It's the same process to get more Child Support as it was when you first asked for Child Support. You'll need to file for Upward Modification in Family Court, serve the papers to the other parent, and appear in court.

Note: The other parent can also lower Child Support through a "Petition of Downward Modification." They can only do this if their income has drastically changed. For example, if they have lost their job or been demoted. You'll be given a chance in court to respond to their request.

Enforcement

How Can I Make the Other Parent Pay Child Support?

If the other parent doesn't pay Child Support, you'll need to file for Enforcement. **This is a separate filing process.** To do this, you'll file a form that says that the other parent has violated the Support Order by not paying you what they were supposed to.

Filing for Enforcement:

Go to the Family Court in the county where you got the Child Support Order. If you no longer live in that county, you can go to the Family Court in the county where you live, or where the non-custodial parent lives.

- If you're going to the same court you went to when you applied for Child Support, then the form you file is called a "Violation Petition."
- If you go to a different court, then the form you file is called a "Petition to Enforce an Order."

The Form Asks if the "Failure to Comply was Willful." Should I check that box?

This question is asking if you believe the other parent knew about the Child Support Order and had enough money to pay it but didn't pay it. If you believe this is true, then you can check the box that says the violation was willful. If the court finds that the violation was willful, it's possible that the other parent could go to jail.

Do I Need a Lawyer?

You do not need an attorney to file your petition, but it might be helpful. If you can't afford to hire a lawyer, you may be able to get pro bono (free) representation from an organization. For help finding a lawyer, visit www.lawhelpny.org. The court can also recommend some organizations that might be able to help you.

What is the Court Deciding?

A Support Magistrate will hear your case, and you will probably have a few court appearances. There will be a "willfulness hearing." During this hearing, the court has to decide 2 things:

1. Did the other parent know about the order they were supposed to pay?
2. Were they able to pay the order?

If the court decides that the other parent **knew about the order** and **was able to pay it but didn't**, that'll mean that the other parent's failure to pay was willful. The court will assume the other parent is able to pay the order unless they show evidence that they can't.

What Happens if the Court Decides that the Violation was “Willful?”

The court will ask you if you want a money judgment, or if you want the other parent to be arrested or put on probation.

1. A **money judgment** can be enforced against the other parent’s property, paychecks, etc.

Getting a money judgment can be good if the other parent has:

- Bank accounts,
- Property, or
- Gets paid on the books.

If they get paid in cash and don’t have property or bank accounts, the court won’t be able to enforce a money judgment.

2. If you decide you want the other parent **arrested**, then the case will be sent to a Judge of the Family Court. The court may appoint the non-custodial parent a lawyer. You might be able to settle on an amount the other parent can pay you, and an agreement for how that will happen. If a settlement doesn’t happen, the Judge may sentence the other parent to jail for up to 6 months. The Judge will usually give the other parent a chance to catch up on child support payments before sending them to jail.

➔ Why does the court provide the other parent a lawyer, but not me?

If the non-custodial parent can’t afford to hire a lawyer, the court may appoint them one. This is because the court could sentence them to jail for not paying support, and a person is entitled to a lawyer if they are facing jail time.

3. You could also ask the court to put the other parent on **probation** if they’re saying that they can pay you what they owe you. A probation officer will check in with the other parent to make sure that they are actually paying you the money they owe.

What Happens if the Court Decides that the Violation was not “Willful”?

If a Support Magistrate finds that the non-custodial parent did not know of the order or could not pay it, the court can still take action.

1. The court may give the other parent time to apply to decrease the child support. For that to happen, the parent would have to show a substantial change in circumstances since the support order was issued.
2. The court can send the other parent to STEP, a program that helps parents with education, job training, and finding a job.
3. The court can still give you a money judgment for money that is owed to you.