

Child Support Basics



This guide answers questions that a non-custodial parent might have about child support. All of the information is helpful for custodial and non-custodial parents. **This information has been adapted for Albany County Family Court.**

Definitions of key terms

Custodial (kus-TOH-dee-al) **Parent:** The parent living with the child most of the time.

Non-Custodial Parent: The parent not living with the child.

Why did I get papers saying I must go to court?

Someone or an agency filed a **petition** (pe-TI-shun) in court asking for you to pay child support. A petition is a request in writing to the court, asking to make an order.

Who can file a child support petition?

A child support petition can be filed by:

- The person caring for the child. Usually this means the person who has primary custody of the child. If parents share equal physical custody, only the parent who makes less money can file for child support.
- The County Department of Social Services, if the child is, or was, receiving Public Assistance (welfare)
- The child (although this usually applies only to older children)

When does child support end?

In New York State, a child can receive child support until the age of 21. Sometimes the child support can be ended earlier. Some examples of when it can end earlier are if the child joins the military or gets married.

What will happen when I go to court?

At your court appearance, a **support magistrate** (MAJ-is-trayt) will hear, or listen to, the case and make an **order for child support**. The order for child support is a piece of paper that tells you how much support you have to pay, how often you have to pay it, and where to send it. A support magistrate is similar to a judge and has the power to make decisions about child support and paternity (pa-TERN-i-tee) cases. A paternity case is about who the father of a child is.

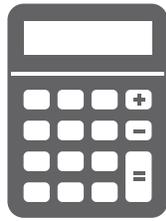
Can I get a lawyer for my child support case?

Family Court does not give parents free lawyers in child support cases. If the non-custodial parent is a respondent in a violation petition and is in danger of going to jail for not paying, he or she can apply for a lawyer to be assigned by the court. All parties may hire a lawyer if they want to. In some cases, the support magistrate may assign a lawyer called an attorney for the child, to make sure that the best interests of the child are being protected.

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How is the amount of child support decided?

The amount is based on a law called the **Child Support Standards Act**. First, the court determines the **gross income** of the two parents together. Gross income is the amount of money you earn before taxes are taken out. (The court sometimes uses different rules if the income is over \$148,000). Some special expenses will reduce your income level for child support. Ordinary expenses, such as the electric bill, credit card bills, and rent, will not reduce your income level for child support. Once the court determines your total income, it uses the formula below to decide the amount needed to support the child:



1 child	17% of your income
2 children	25% of your income
3 children	29% of your income
4 children	31% of your income
5 children or more	35% of your income

You will be required to pay at least \$25 per month, even if you receive public assistance.

You may be ordered to pay extra for child care and health care costs. You may also be ordered to include the child on your health insurance.

Do I pay support while the case is ongoing?

The court can order **retroactive** (re-tro-ACK-tiv) support. This means you have to pay support from the date the petition was filed. You can ask for credit for any payments made on a temporary support order.

If you do not pay child support, you will owe **arrears** (a-REERS). Arrears are unpaid child support. If you owe arrears, the court can add a recurring set amount to your payment until you have paid all the child support you owe.

What should I bring to court?

- A carefully completed Financial Disclosure Affidavit.
- Copies of documentation that proves your salary, such as pay stubs.
- Copies of any income tax filings, Federal or State.
- Documentation of health care expenses for you and/or for family coverage, and the amount of that coverage.
- Documentation that shows your Social Security or disability benefits, worker's compensation, unemployment benefits, veteran's benefits, pension or retirement funds investments, fellowships, or annuities.
- Information about any Medicaid, Home Relief, or Food Stamps you receive, such as a Budget Letter.
- Proof of expenses, such as FICA. These expenses will be subtracted from your income before the court determines your support payments.
- If you have been ordered to pay support for another child, bring a copy of the order and proof of the payments you have made. Some ways to prove that you have paid are receipts for money orders, canceled checks, or pay stubs showing that the support has been removed.

What if I work “off the books”?

If you work “off the books” or do not receive regular paychecks, the court may base your income on one of the following:

- What you earned before
- What the court thinks you could earn
- What the standard of living is in your household

The amount the court decides on is called an **imputed income**. The court then uses this imputed income to decide how much child support you have to pay.

What if I miss my court date?



If you cannot make a court appearance, you must file a written request to the support magistrate, explaining why you cannot appear. If you miss a court date, a support magistrate can issue a **default judgment**. A default judgment is an order that is made when someone does not show up for court. In child support cases, the default judgment is an **order for child support** against the non-custodial parent. The order is based on the information the custodial parent gave to the court.

If you want to cancel the order, you may file a motion to vacate a default judgment. This is a written request asking the court to cancel the order. Be sure to write the caption information from the judgment on your motion papers. You must also give the court a good reason for not showing up.

What if I do not agree with the support order?

You have the right to tell the court that you do not agree with the order. This is called an **objection**. If you receive a copy of the order in court the day it was made, you have 30 days to file an objection in writing. However, if the order was mailed, you have 35 days (from the day it was mailed) to file an objection in writing. You can file the objection with the clerk of the Family Court where the decision was made. A judge will decide the case. You may not have to come back to court for another hearing.

But you must continue to pay the child support until the court changes the order. The decision will be mailed to you. For more information, see the LIFT guide "How to File an Objection or Rebuttal to a Child Support Order."

What if I am not the father?

If you were married to the mother when the child was born, the law assumes that you are the father. If you were married to the mother and believe that you are **NOT** the father, tell the support magistrate right away. This is called **contesting paternity**. The court must determine paternity (find out who is the father) before it can order child support. To determine paternity, the court may order a DNA test. If the test shows you are the father, the court will issue an **Order of Filiation** (fil-ee-AY-shun). This is a legal document from the court saying who the father of a child is.

Will the court give me a lawyer in a paternity case?

If someone brings a paternity case against you, and you cannot afford a lawyer, you can ask the support magistrate to appoint (give you) a lawyer for free. You can also hire your own lawyer. If you start a paternity case, the court may not give you a lawyer, even if you cannot afford one.

How do I make support payments?

You can pay the custodial parent directly or through the **Support Collection Unit** (SCU) (information listed on the next page). If the custodial parent receives public assistance, SCU will automatically collect the support. There is no fee for SCU services, and they will keep track of all payments.

Always write the case number on your payment to SCU to make sure you get credit. Do not use cash – especially if you make payments directly to the other parent! Always make your payments by money order or check or so that you have receipts.

What if SCU makes a mistake?

Go to the SCU office and ask to speak with a customer service representative. The office is located in the Albany County Family Court building at 30 Clinton Avenue.

You can also call the statewide Office of Child Support Enforcement at 1-888-208-4485.

How long is a support order in effect?

Once child support has been ordered, it stays in effect until someone asks the court to change it, or your children turn 21 years old, or your children are emancipated. Children are **emancipated** if they are living separately from the custodial parent and supporting themselves, married, or in the military. If you pay through SCU, they automatically reconsider the case every three years. When they evaluate the case, SCU may add a cost-of-living (COLA) increase. SCU can do this without going back to court. If they do this, they will send you a letter.

What happens if I do not pay?

Once there is a court order to pay child support, you must pay. If you do not pay, you will have arrears. They WILL NOT go away, even after your child turns 21. Declaring bankruptcy will NOT get rid of arrears either.

SCU (Support Collection Unit) has different ways to collect the money from you.

- SCU can have your employer take the child support directly from your paycheck. (By law, your employer must do this. But your employer cannot fire you because of it.) This is called **garnishing your wages**.
- SCU can take your state or federal tax refund before you get it. SCU can also take money directly from your bank account.
- If you owe more than a few months of support, SCU can suspend your driver's license or professional licenses until you have paid the arrears.
- If you owe large amounts of money, and SCU or the custodial parent asks the court to find that you are **willfully violating the support order**, you could be put in jail for up to six months. Willfully violating means not following the order when you have the ability to pay but fail to do so.

What can I do if I lose my job or cannot pay?



If you lose your job or cannot pay for another reason – such as your income was lowered or you are going to prison – the court will not automatically change the amount of child support you are supposed to pay. If you cannot pay, immediately go to the Family Court where the order was made and file a **petition for downward modification**. This is a written request asking the court to lower the amount of child support you pay. To get the court to lower the amount, you must prove that a substantial change of circumstances has happened since the support magistrate made the final order.

- A substantial change of circumstance can be that you are incarcerated as long as the incarceration is not because of not paying child support or a crime against the custodial parent or child.
- You can also ask for a modification if 3 years have passed since the last order was made.
- Also, if either you or the custodial parent's income changed (either up or down) by 15% or more since the last order was made, you may request a modification.

When you go to court, you must bring proof that your income changed. You should ask the court to reduce your support going back to the date when you filed the petition. However, until the court makes a different order, you must continue to pay the original amount.

The court may look at what you made before and decide that you could make more than you do now. If this happens, the court might not change the order.

If my child is on public assistance and I pay support, who gets the money?

If the custodial parent receives public assistance, SCU will automatically collect the support. If you do not owe arrears, \$100 of your monthly payment will go directly to the custodial parent. If you owe arrears, support will go toward the arrears first. The county will still collect support payments from you even if you give money directly to the custodial parent. The county may also reduce the child's welfare budget to recover this "extra" money received by the family.

Why would a custodial parent take a child off of public assistance?

If your income is high enough, your child may receive more money by getting support from you instead of from public assistance. For example, if you are the father of all the children in the home of the mother, and she can show that you will support them, taking them off public assistance should not be a problem. If the mother has children by other fathers on her public assistance budget, taking your children off is more difficult. The state wants all children in a household to have the same income, so the mother might not be able to take only your children off of public assistance.

Can I take my child off public assistance?

Only the custodial parent who started the public assistance case can take a child off of public assistance. The non-custodial parent cannot close the public assistance case.

What if I already support my child?

Be sure to keep receipts for all support payments so you can show that you have paid them. Paying bills or buying gifts does not replace paying child support. You must make regular payments. You must also pay for any arrears that have added up.

What if there is no child support case, but I want to support my children?

Non-custodial parents cannot start child support cases. If you want to support your children, but do not know where they are, you can put the money in a separate bank account until you are able to find them.

If I have been paying support, can I also get visitation?

Not necessarily. Child support and visitation are not connected. If you have not been able to see your children, you must file a **petition for visitation** with the court. Whether or not you are seeing your children, you are still responsible for paying child support. For more information on getting visitation with your children, see the LIFT guide "Custody and Visitation."

Where can I go for help?

If SCU is working on your case, go to the Support Collection Unit office and ask to speak to a customer service representative. SCU can be found in the Albany County Family Court building at 30 Clinton Avenue.

You can also call the Office of Child Support Enforcement at 1-888-208-4485.

This document should not take the place of a consultation with a lawyer. LIFT encourages all individuals involved with the Criminal and Family Court systems to consult with a lawyer.

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