

Child Support

When a couple divorces, the process is rarely easy. The rising tensions, difficult scenarios, and changes in lifestyle are often highly emotional and will likely have lasting effects on the lives of everyone involved. And although it is possible to make a resolution without having to depend upon the intervention of the court, more often than not, the dissolution of a marriage brings out issues and disagreements requiring a court's determination.

Among the most frequent and widely contested debates during a divorce are those regarding child support: its calculation, enforcement and modifications. Child support laws legally obligate a parent to support their child whether or not they have custody of them and apply equally to children born in or out of wedlock. Importantly, child support is greatly influenced by the determination that the court makes regarding child custody. Once custody has been determined, child support is typically established.

Whether you are seeking or paying child support, there may be a number of complex issues involved with the amount the court determines. Matters are not only legally complex, they are emotionally trying as well. As a result, whether you are a mother or a father seeking custody of your child or children, or if you are attempting to resolve any legal matter involving child custody, it is crucial that you become informed and know your legal rights regarding child support.



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My Rights Under Child Support Laws

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Calculating Child Support

New York child support laws hold parents responsible for the financial support of their children until a child reaches 21 years of age and is calculated pursuant to the Child Support Standards Act ("CSSA"). Under such law, support payments are based on combined parental net income. Each parent is required to submit a Statement of Net Worth to the court, which is a form listing all of a person's financial information in detail, including income, expenses, assets, property, and debt.

Once the court determines each parent's income, it will add the amounts together and multiply that number by a fixed percentage, depending on how many children the parents have together.

Aside from using the guideline for child support, New York family courts will also look at the following factors:

- Each parent's financial resources
- The mental, emotional and physical well-being of the child
- Whether or not the child has special needs of any kind
- What standard of living the child had during the marriage
- What each parent's tax consequences will be
- What non-financial contributions each parent can make in raising and caring for the child
- What the education needs are of each parent
- Whether or not one parent's gross income is significantly less than the other
- If there are children of the non-custodial parent who are not involved in the case who require support
- Whether or not the child is on public assistance

In addition to ordering the payment of child support, the court can order the non-custodial parent to pay his/her pro rata share of the child's future reasonable health care expenses not covered by insurance and the reasonable child care expenses when the custodial parent is working or attending school. The court also has discretion to order the non-custodial parent to pay the costs of present or future private, special or enriched education for the children.

Preparing a Statement of Net Worth, calculating child support payments, understanding the fixed percentage rates, and grasping the idea of when a judge can or cannot apply its own discretion is a difficult task, to say the least. To ensure full protection and a keen understanding, contact a skilled and experienced child support attorney to safeguard your rights and options.

Enforcing Child Support

In some instances, the court orders specific child support payments and the parent fails to provide such support. This creates serious financial problems and must be resolved.

Although state laws govern the majority of child support issues, over the years federal legislators have passed laws which attempt to bring uniformity and enforceability into the system. Some federal laws, for instance, have made it easier to collect child support payments by authorizing the withholding of wages from, or the interception of tax returns for, parents who are delinquent on their support payments. It is even a federal offense to willfully fail to pay at least \$5,000 in child support.

Failure to pay child support in New York State can impact your credit history, result in garnishment of wages, loss of your driver's license and/or passport, and possibly even jail time. In extreme cases, the state may act to seize certain assets or property. Individuals who fail to pay child support run the risk of encountering substantial legal and financial difficulty later, even if they manage to avoid problems initially.

Modifying Child Support

While settlement agreements are acceptable to the courts that involve lump sum payments, child support is an ordered maintenance of support that can be revisited when changes in income or circumstance occur. Due to a change in circumstances, either party may request in Family Court a modification upward or downward to an order for child support.

Although the amount of child support required will depend on the income of each parent, just because a custodial parent remarries or improves his or her financial situation does not mean the child support obligations of the non-custodial parent will change or cease. There needs to be a material, unforeseen change in your circumstances to entitle you to a modification of your child support agreement or order. If illness or the loss of employment creates the need to increase the child support received or decrease the amount paid, a modification of child support may be appropriate.

However, child support, by definition, is for the benefit of a child, and the obligation to pay child support cannot be discharged through bankruptcy or unemployment, or be voluntarily waived by the custodial parent.

If you or a loved one is entitled to child support or if you are required to pay but wish to petition for a modification, contact an experienced child support attorney who will help you understand and utilize the options afforded to you.

