

# **Legal Assistance of Western New York, Inc. ®**

Child Support in New York

We provide free legal aid to people with civil legal problems in western New York.

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## **Child Support in New York**

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#### **What is child support?**

- Child support is money paid by a parent to pay for a child's needs. Child support covers general expenses as well as child care, health care, and other expenses. The parent may be ordered to pay for the child's health insurance if it is affordable.

#### **Who gets child support?**

- The parent or person who lives with the child more than half of the time can get child support from the other parent.
- If the child lives with each parent equally, there could still be a child support order.
- Even if the parent who does not live with the child is a teenager, he/she will have to pay child support.

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

- A parent or custodian may file a petition for child support in Family Court. Also, a parent may request child support in a divorce case in Supreme Court. While a divorce case is open, any child support petition in Family Court will be transferred to Supreme Court, unless it is a Social Services petition because the child receives public assistance.
- Although both parents are entitled to an attorney for a child support petition in Family Court, they are not entitled to have one assigned if they cannot afford one.
- At one or more court appearances, the parents will have the opportunity to reach a child support agreement. The Family Court will inform the parties of what the "guidelines amount" of support is based upon their incomes. If the parents agree to a different amount, they need to provide a reason. The court can issue temporary and final orders.
- If there is no agreement, the court will have a trial.
- If the parent does not appear in court, the court may issue a warrant for his/her arrest or the

court may issue a default order.

- If a parent lives far from the court, he/she can ask the court to attend the court appearances by telephone.

### **How does the court decide how much child support should be paid?**

- The court applies a formula according to the guidelines. You are entitled to be given a copy of the guidelines income chart.
- First, the court determines the income of each parent. Income includes wages, Social Security benefits, veteran's benefits, and unemployment insurance benefits. Income does not include Supplemental Security Income. The court will subtract from a person's income any child support paid for other children and some types of taxes. The court adds the income of both parents together.
- Second, the court multiplies the combined income by a percentage:
  - 17% for one child
  - 25% for two children
  - 29% for three children
  - 31% for four children
  - 35% for five or more children
- Third, the court divides that amount based upon each parent's income so that the non-custodial parent pays his/her share to the custodial parent.
- Fourth, the court decides whether this formula is fair. The court considers several factors to determine fairness.
- Fifth, the court lowers the child support to \$50 or \$25 per month if the child support formula amount will lower the non-custodial parent's income too much.

### **What happens if a parent does not pay child support?**

- If a parent misses payments, the other parent can file a support violation petition in Family Court. If the child receives public assistance, food stamps, or Medicaid, the Department of Social Services may file the petition.
- For a violation petition, both parents have the right to an attorney, but only the parent who has to pay support can have an attorney assigned if he/she cannot afford one.
- The court will decide whether nonpayment was willful or non-willful.
  - A willful violation means that the parent did not pay support and he/she had the ability to pay or should have had the ability to pay. There will be a money judgment in the amount of the support owed and the parent might be incarcerated for up to six months.
  - A non-willful violation means that the parent did not pay support and he/she did not have the ability to pay. There will be a money judgment in the amount of support owed.

## How do I pay my child support?

- A parent can pay child support directly to the other parent. But if you do pay directly, it's very important that you have a written receipt (or cancelled check) stating the date and how much you paid.
- A parent can pay child support to the Child Support Enforcement Unit. It keeps records of payments and sends payments to the custodial parent. Parents can agree to payments through the Child Support Enforcement Unit when the court orders child support. Outside of court, either parent can apply for services from the Child Support Enforcement Unit. To apply, please visit [www.newyorkchilddsupport.com](http://www.newyorkchilddsupport.com).
- To find your local child support office, visit [www.childdsupport.ny.gov/DCSE/LocalOffices\\_input.action](http://www.childdsupport.ny.gov/DCSE/LocalOffices_input.action)

## How do I change my child support?

- Either parent may file a child support modification petition in Family Court. Both parents are entitled to an attorney, but neither will be assigned an attorney if he/she cannot afford one.
- The court can change the child support if:
  - there has been a substantial change of circumstances since the last order or
  - the last order was issued over three years ago or
  - income has changed 15% or more.

## When does child support end?

- Child support automatically ends when the child turns 21 years.
- A court can end child support before the child turns 21 years if the child becomes emancipated. See the article Emancipation in New York.

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

Last Review Date: January 2018

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Printed: April 23, 2019

<http://www.lawny.org/node/6/child-support-new-york>

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