



THE BASICS
Getting Child Support
in New York State

Either parent can be named the custodial parent by a Court. This booklet assumes that the mother is the custodial parent and will be seeking Court-ordered child support. However, fathers who have custody can also use this guide.

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 and 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 have to go on 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 have custody (the custodial parent), you can get child support from the father (the non-custodial parent). This is true even if you and your child’s father 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 father are living together, if he is refusing to help pay for the child’s bills.

If you were not married to the father, he must have signed an Acknowledgment of Paternity (a legal document in which he states that he is the father) at the hospital when the child was born, or later. If he did not sign this document, you first have to take him to court and prove that he is the father. You have to do this even if the man you say is the father signed the child’s birth certificate and even if he gave the child his last name.

If you are legally married to your husband when you give birth to a child and your husband is not the biological father, no man should sign the Acknowledgment of Paternity form in the hospital. This form should not be signed even if you have been separated from your husband for many years or do not know how to locate him. A court should determine who the legal father is.

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.

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 go for child support in the county where the father 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. SCU will interview you and ask you 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 father of your child.
- Help you find out where he is employed.
- Help you prove that the man you say is your child's father really is the father.
- Collect the child support payments from the father and give the money to you.
- Get any late payments. SCU will collect directly from the father's employer, if they have to.

There are advantages to using SCU that we discuss later on. The problem with using SCU is that, if the payments are paid through them, you will get the money a little later than if the payments are paid directly to you. If you have a checking account, you can ask SCU to deposit the payments directly into your account.

If you receive public assistance, SCU services are free of charge. If you do not receive public assistance, you pay SCU if they are successful in getting you child support. Their fee comes out of the child support payments. You will also pay an administrative fee if you decide to use SCU services when collecting child support.

NOTE: If you need to keep your address confidential so that an abusive father 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.

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 father to Court on the day you file your petition.

The petition is your request for Family Court to order the father to pay child support.

After you have filed your petition, the **Court will set a date** when you and the father 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, too.

HOW DOES THE FATHER KNOW THAT I AM ASKING FOR HIM TO PAY CHILD SUPPORT?

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

When the court papers are given to the father, this is called serving him with the papers.

WHAT IS THE CORRECT WAY TO SERVE THE FATHER WITH COURT PAPERS?

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 father. The papers the father needs to get are the summons, the petition and the financial disclosure affidavit. If the father refuses to accept the papers, the person may drop them at his feet—so long as the papers touch him 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 father of the child and explains what happened when the father received the court papers. It also states the date and location of service and it specifies which documents were served on the father.

An affidavit of service is a sworn statement of the person who delivered the papers that the father got the court papers.

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 father, this person can give you an affidavit (a sworn, notarized statement) telling how and when s/he tried to find and serve the father. The Support Magistrate will then decide if you can have the papers served on the father by mail or some other way.

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

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

If you have submitted an affidavit of service showing that he received notice of the case, you can get a final order of support without the father 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 father so they can bring him to court. The Support Magistrate can also send the father another summons and not arrest him, so that he 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 a father must pay. The CSSA uses a formula to calculate how much child support the father should pay by applying a percentage to the father's income. The percentage used by the CSSA depends on how many children you and the father have.

Currently, the CSSA applies to parental income up to a maximum of \$136,000 and the Court can apply it to income in excess of \$136,000 based on certain factors. Examples of these factors are: the financial ability of the father, 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 father's 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 father's financial disclosure affidavit, if he supplies one. The Support Magistrate might also ask you and the father to answer questions. And you and he 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 father 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 husband or wife 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 those deductions, 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 father earns twice as much as you, he must pay twice as much child support.

The father must pay additional amounts for child care, if you are working or going to school. He also must pay more for medical care not covered by insurance. Also, the Court may order him 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 father, in proportion to your respective incomes. If neither of you has health insurance, the court will order 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 father's child support income (his income after local taxes, FICA, etc.) and multiply it by the correct child support percentage (17% for one child, 25% for two children, and so forth).

If paying this amount will make the father's income be under the federal poverty level, then he will have to pay only \$25 per month.

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

If the father 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 with him*. If you later learn that the father 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 father 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:

https://newyorkchildsupport.com/dcse/child_support_standards.html.

This chart is updated in April of every year.

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 father doesn't pay what he has agreed to pay, you can go back to Court and ask the Judge to order him to pay what he agreed to pay.

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.

HOW CAN I GET FINANCIAL INFORMATION FROM THE FATHER?

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

The financial disclosure affidavit, gives detailed information about a person's income and expenses.

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

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.

If you think the father is lying about his income or finances, you should ask the Support Magistrate to give you a subpoena. You can use the subpoena to get information from the father's employer, bank, credit card companies and other places to help show the father'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 father's financial resources.

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

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

If you give enough evidence in court to show that the father is hiding his real income and probably has more than he says, then the Support Magistrate

may impute income to the father. This means give child support based on a higher income than what the father says he has.

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 hear people still refer to DSS. And 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 father of your child.

You must give them any information you have about where he is and where he works. And 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 father of your child.

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

If HRA gets child support payments from the father, 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 father 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 him because he is unemployed, they will give you the entire \$25.

If the father 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 father'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 father 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 father has to pay the required amount starting on the date you filed the petition, even if the order is issued many months later.

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

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 father of the child can also appeal the decision of the Support Magistrate, if he feels that he has to pay too much money for child support.

You must then serve a copy of the objection form on the father. He gets a chance to respond to your objection. He can give his reasons for agreeing or disagreeing with the Support Magistrate's decision. If he objects, you must be served with a copy of his 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 father. The father will have to pay the amount stated in the Support Magistrate's order while you are filing an objection.

CAN THE FATHER 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 father wants to reduce his child support payments because things have changed (for example, he lost his job), he has to file a petition with the court for a downward modification. This means he is asking the Support Magistrate to let him pay less money.

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

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

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

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 father to pay more money. There are three situations where you can do this:

- You find out the father'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 that 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 father with the summons and petition so he 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 father'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 father owes so the court's support order can be changed.

HOW CAN I MAKE THE FATHER PAY CHILD SUPPORT?

If the father does not pay child support after he is 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 (arrears) and the amount of on-going child support must be paid. **If the father does not pay the judgment, the Support Magistrate can:**

- Take away his business or professional licenses.
- Suspend his recreational licenses (like hunting and fishing).
- Make him pay in advance, before the payments are due.
- Put him in jail for up to 6 months.
- Place him 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 father:

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

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

If there is a court order giving the father visitation, you cannot interfere with his 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 father can prove in court that you are wrong in interfering with his visits, the Judge can allow him to stop paying child support as long as you continue to stop him from visiting with his child. He still must pay any amounts he owed before the order to stop paying.

The father cannot reduce or stop child support payments on his own because he believes you have interfered with visitation.

He has to go to court and prove that you did not have a good reason to keep him from seeing his child.

WHAT IS EMANCIPATION OF A CHILD?

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

Emancipation means a child is living separately and independently from a parent, or is self-supporting.

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).

Sometimes a father might argue that a child is emancipated so that he 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 father 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 father will have to pay child support for that child.

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