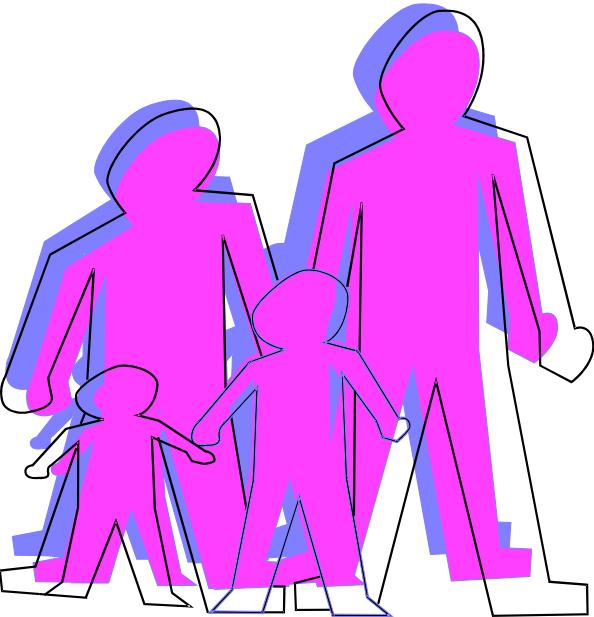


Child Support



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Introduction

In all legal matters concerning child support, custody, and visitation the main consideration will always be: What is in the best interest of the children? Courts universally recognized that even after a divorce or separation, both parents have a duty to provide for the support and well-being of their children. In deciding which parent will have custody, when visitation will be allowed, and how much child support should be paid, the court has two goals: to allow each parent to maintain a relationship with the children, and to require each parent to contribute to the care and upbringing of their children.

The parent who does not have physical custody of the children is called the non-custodial parent. He or she usually will be ordered to provide a set amount of money each month as child support, and usually will be allowed reasonable rights of visitation with the children. The parent who has custody is called the custodial parent. He or she provides the everyday care and maintenance.

Divorce is a difficult situation for many children. They suffer most when they are used as weapons in continuing battles between their parents over custody, support, and visitation. The principle that guides Nebraska judges in making their decisions is — "What is in the best interest of the children?— This principle should guide parents as well.

Child Support

How is the amount of child support determined?

A judge decides how much child support a non-custodial parent will pay based on the needs of the children and the ability of both parents to pay.

Effective October 1, 1987, the Nebraska Supreme Court approved new child support guidelines. Judges are encouraged to follow these guidelines in determining both temporary and permanent support orders. The guidelines are based on the principle that both parents have a duty to contribute to the support of their children in proportion to their respective net incomes.

To determine what this amount will be, the court looks at both parents' net income from all sources except public assistance grants and child support payments for children of a prior marriage. (The net income figure excludes such items as federal and state income taxes, Social Security deductions, health insurance, union dues, mandatory retirement, and child support of children of prior marriages or paternity cases.) The child support amount is then prorated to each parent.

The custodial parent does not actually "pay" child support in the same way as the non-custodial parent. The guidelines list a total amount of support to be provided. If both parents have income, the

amount of support to be paid by the non-custodial parent is reduced depending upon the custodial parent's income.

The amounts in the guidelines are presumed to be appropriate and usually will be ordered by the judge unless either parent can present evidence showing that the amount is not appropriate. This evidence might include extraordinary medical or child care expenses, the earning "potential" of one party, other dependents that one parent may have and other factors. Your lawyer can show you the guidelines and discuss how they would apply in your own situation.

If the parents have never married, does the father still pay child support?

Under Nebraska law, fathers must provide child support whether the child is born in or out of wedlock. Of course, the mother is also responsible for the child's support.

If a man denies that he is the father of a child, the child's mother may file a paternity lawsuit. (If she is receiving public assistance the state will require her to cooperate in determining who the child's father is; this usually results in the filing of a paternity lawsuit.) The trial to establish paternity is similar to other non-criminal trials, except that it is a closed trial. The mother is allowed to testify as to the identity of the child's father; however, her word alone will not convince the court that the man is actually the father. Either party can ask the court to order a blood test for the purpose of genetic testing. A lawyer can explain what additional proof may be required and what costs are involved.

The alleged father must be properly notified of the claim and of the court proceeding. If he wants to deny the mother's claim, he must appear in court and provide testimony and evidence in support of the denial. His failure to respond or appear can result in paternity and child support being ordered.

If the court finds the man is the child's father, the judge will enter an order that includes child support. In some cases, if the court finds that it is in the best interest of the child, the father may be given visitation rights or may even be awarded custody.



When do payments start and end?

After one parent files a petition of a divorce decree of legal separation, or after paternity has been legally established in the case of an unmarried couple, there is a basis for a court order of child support.



The court can order temporary child support and temporary custody until the decree establishes these matters on a more permanent basis.

A parent's obligation to pay child support ends when the child reaches the age of majority (19 in Nebraska). A court may terminate a child order before age 19 if the child marries, dies, enlists in the military, or is "emancipated" (a legal decision of a court that a child is no longer dependent upon either parent for support, regardless of age).

In many cases a parent is ordered to pay a certain amount of money for each child every month. Then, as each child reaches the age of 19, the parent stops making the payment amount for that child. However, if there are two or more children and the support order is for a single amount, which is not broken down on a per-child basis, the child support payments are not automatically reduced as each child reaches age 19. The full amount must be paid until the youngest child reaches age 19, unless the support order states otherwise.

The Nebraska Supreme Court has ruled that a parent may not be forced to provide support for a child past the age of 19 (except that such support may be ordered in some situations where the child has special, long-term needs.) However, if the parties agree as part of the divorce that support will continue past 19, the court will enforce that agreement.

As noted earlier, a parent cannot stop paying child support, without a court order, on the basis of an informal agreement between parents. If the parents agree between themselves on a change in custody or a change in the amount of child support, they must ask the court to order that change. If they do not, the court has the authority to order the payment of past-due child support in spite of the parents' agreement.

Where are child support payments sent?

Payment must be sent to the Clerk of the District Court in the county where the decree was entered. The court keeps a record of the payments and sends the money to the custodial parent. Payments received through the clerk's office are proof of complying with the support order. Persons who pay directly to the custodial parent do so at their own risk, as well as in violation of the court's order.

Under Nebraska law, a person who receives public assistance must assign all child support payments to the Department of Health and Human Services to help repay the cost of the assistance payments. If the custodial parent receives assistance payments, he or she also may receive a small portion, but not the full amount, of child support payments. For more information about the child support and public assistance, contact Health and Human Services.

Must support be paid in months when the non-custodial parent has the children?

Unless the decrees state otherwise, the non-custodial parent must make child support payments every month regardless of who has the children. The new child support guidelines suggest that when a parent has extended visitation (for four weeks or more), the court may reduce the child support by one-half for those months. However, such a provision must be included in the decree; if it is not, the non-custodial parent must make the full payment even during extended visitation.

If the decree contains no provision for a reduction in child support during extended visitation, the non-custodial parent may ask the court to modify the decree to temporarily suspend the child support during those times. Unless the court makes such an order, the non-custodial parent must continue to pay child support every month.

The non-custodial parent should keep in mind that child support payments allow the custodial parent to maintain a home for the children and provide for their needs on a year round basis. The home must be maintained even when the children are gone for period of time.



Can the amount of child support be increased or decreased?

If either parent can show that there has been a "material change" in his or her circumstances since the support order was entered, and that this change was not anticipated at the time of divorce decree, he or she may ask the court to increase or reduce the amount of child support. The court's decision will be based on the needs of the children and the financial circumstances of both parties.

A material change in circumstances could include a substantial increase or decrease in salary or family income. The court will consider such factors, but the parents are still obligated to support their children regardless of their changing circumstances.

A temporary reduction or suspension of child support may be granted in certain cases, for example if a disabling injury prevents the non-custodial parent from earning the usual wage. Talk with your lawyer if you think you might qualify for a change in child support.

Who pays for medical bills or health insurance?

This can be negotiated between the parents as a part of the support agreement. Under Nebraska law, if a parent has health insurance through his or her employer, the court will order that parent to obtain that coverage unless the parties have agreed in writing to a different arrangement.

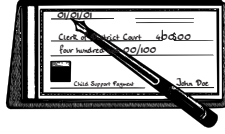
If medical expenses that were not anticipated arise after the decree — for example, braces or expenses for serious illness of

injury — the court may modify the decree upon the request of the custodial parent to provide additional child support.

Past Due Child Support

When is a support payment delinquent? Is interest charged?

Child support payments are due the first day of each month unless otherwise stated in the decree. A payment becomes delinquent or past due, the day after it is due. The amount that is past due is called the "arrearage." Interest does not begin to add up until 30 days after the payment is delinquent. The interest is added to the arrearage.



How can past due child support be collected?

A person entitled to receive child support payments, but who fails to receive them as scheduled, should consult with the county attorney, of Health and Human Services, or a private attorney. The county attorney can start enforcement proceedings upon the request of the custodial parent or the district court. There is no charge, or only a token charge, to the custodial parent for the county attorney's services. A private attorney can also enforce child support, but a private attorney's services are not free.

Legal proceedings to enforce child support cannot begin until a payment is at least 30 days delinquent. In some counties in Nebraska there is a tremendous backlog of past due child support cases, which may slow down the county attorney's ability to help custodial parents. A private attorney may be able to handle the matter more quickly.

There are also several methods available to collect past due child support. These include the following:

1. Garnishment of assets: An employer or financial institution can be ordered by the court to withhold a specified amount (the amount is determined by the law of the employee's earnings or financial accounts), and pay that amount to the court. The court then sends the money to the custodial parent. Only a single amount of money may be collected with each garnishment. If the parent needs to garnish the other parent's assets for additional past-due support, repeated legal collection efforts would be needed.
2. If wages or unemployment benefits need to be withheld continuously, a "wage withholding order" is more appropriate. In this situation the employer is ordered to regularly withhold a specific amount from the non-custodial parent's pay and pay it to the court. This can occur with or without a parent's consent; however, the employee must receive notice and have an opportunity to contest the action. If the non-custodial parent has moved

out of state, interstate wage withholding is also an option.

3. Another method of collecting past-due child support is with the cooperation of the Internal Revenue Service (IRS). The IRS has the authority to intercept tax refunds and forward them to the Clerk of District Court to be applied to the taxpayer's delinquent child support. To qualify for this intercept program, Nebraska law states that if the custodial parent is receiving public assistance, the child support payments must be three months behind and there must be at least \$150 due. In non-public assistance cases the non-custodial parent must be three months behind and at least \$500 behind before tax refunds can be intercepted. Nebraska state income tax return may also be intercepted.

4. Past-due child support acts as an automatic lien on the non-paying parent's real estate, which makes it impossible for the person to sell the property until the support is paid in full, unless the parent obtains a waiver from the custodial parent or the court.

5. It may also be possible to use a legal process called "execution" to have authorities take possession of and sell property belonging to the non-paying parent. Talk to a lawyer about how to execute on personal property.

6. Another alternative is to have the non-paying parent's name sent to credit reporting agencies. The Health and Human Services can provide this information to credit agencies based on reports from the clerks of the district courts. These agencies prepare credit reports for banks, financial companies and credit unions. Such a report can make it increasingly difficult for a non-paying parent to obtain credit.

7. In some instances, Contempt of court proceedings may be brought against a parent who fails to pay child support as ordered by the court. If a parent is held in contempt of court for violating the court's order to pay child support, he or she may be ordered to pay a fine, or serve a jail term, or both.

Can support be collected if the non-custodial parent moves out of state?

All states have passed the Uniform Reciprocal Enforcement of Support Act (URESA), which is a law to enforce court-ordered support among states. Since this Act was passed it has become more difficult for a parent to avoid child support payments by leaving the state. Under URESA, criminal and civil remedies are available to force the absent parent to make support payments regardless of where he or she lives Interstate wage withholding orders may also be used if the absent parent's employment is known. Contact your lawyer or the county attorney for information on how to use these remedies.

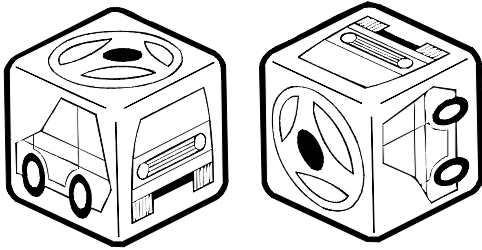
What happens if the non-custodial parent file bankruptcy?

Past-due child support cannot be discharged in a bankruptcy case. Likewise, declaring bankruptcy does not allow a parent to stop any future payment of court-ordered child support.

Where else can I go for help?

The Nebraska Department of Health and Human Services administers a Child Support Enforcement Program that is designed to help locate absent parents and obtain from them financial support for their children. Among the services, offered is a child support hotline, which can be reached, toll-free throughout Nebraska at (800) 831-4573. The hotline offers information and assistance to custodial parents and information to non-custodial parents regarding child support issues.

Child Support Unit 1-800-831-4573



This pamphlet, which is issued to inform, not to advise, has been prepared and published by the Nebraska State Bar Association. It is distributed by those who want to help you obtain your rights under the law.



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