



CHILD SUPPORT

This brochure has been made available in your community by the following CALDA member:

Name: _____

Phone Number: _____

Email: _____



This guide will help you to understand the process available under California law to petition the court for child support. We have tried to answer the most frequently asked questions about the process and address the available procedures in California.

The following information was derived from the Judicial Branch of California, California Courts On-Line Self-Help Center

© 2013 Judicial Council of California / Administrative Office of the Courts (all rights reserved)

Child Support

Child support is the amount of money that a court orders a parent or both parents to pay every month to help pay for the support of the child (or children) and the child's living expenses. Every county has a family law facilitator who will help you for free to:

- Prepare forms
- Explain court procedures for getting and changing child support orders
- Calculate child support using the guideline, if you have the necessary financial information
- Explain how the court makes child support decisions

Every county also has a local child support agency to help you get, change and collect child support at no charge.

How Child Support Starts:

Each parent is equally responsible for providing for the financial needs of his or her child, however, the court cannot enforce this obligation until it makes an order for support. When parents separate a parent must ask the court to make an order establishing parentage (paternity) and also ask the court to make an order for child support. Child support payments are usually made until children turn 18 (or 19 if they are still in high school full time, living at home and cannot support themselves). Either parent can ask the judge to make a child support order as part of one of these types of cases:

- Divorce, legal separation or annulment (for parents who are married or in a registered domestic partnership)
- A Petition to Establish Parental Relationship (for unmarried parents)
- A Domestic Violence Restraining Order (for married or unmarried parents)

- A Petition for Custody and Support of Minor Children (for parents who have signed a voluntary Declaration of Paternity OR are married or registered domestic partners and do not want to get legally separated or divorced)

Child support can also be ordered as part of a case filed by the local child support agency (LCSA) which is the local government agency located in each county that provides services to establish parentage and establish and enforce child support orders. Here is how:

- If one of the parents has been getting public assistance (such as TANF -Temporary Assistance for Needy Families) the LCSA automatically files a child support case against the noncustodial parent. The case also includes as a party the custodial parent that is receiving public assistance.
- Either parent can ask the LCSA to provide child support services which will then start a child support case.
- If a child is in foster care the LCSA may start a child support case against one or both parents.
- Either parent can ask the LCSA to take over enforcement of a child support order in a family law case (such as a divorce or parentage case).

Calculating Child Support:

California has a statewide formula (called a "guideline") for figuring out how much child support should be paid. If parents cannot agree on child support the judge will decide the child support amount based on the guideline calculation. The guideline calculation depends on:

- How much money the parents earn or can earn
- How much other income each parent receives
- How many children these parents have together
- How much time each parent spends with their children (time-share)
- The actual tax filing status of each parent
- Support of children from other relationships
- Health insurance expenses
- Mandatory union dues
- Mandatory retirement contributions
- The cost of sharing daycare and uninsured health-care costs
- Other factors

The child support order may also require the parents to share the costs for:

- Child care to allow the parent to work or to get training or schooling for work skills
- Children's reasonable health-care expenses
- Traveling for visitation from one parent to another
- Children's educational needs
- Other special needs

The guideline amount is presumed to be correct. The judge can only order something other than the guideline amount in very limited situations. (Read the California Family Code sections 4052 and 4057<http://www.courts.ca.gov/11529.htm> - Linking and Third for more detail on calculating child support and what the judge can do.)

To estimate how much child support the judge may order in your case, go to California Guideline Child Support Calculator at <https://www.cse.ca.gov/ChildSupport/cse/guidelineCalculator> <http://www.courts.ca.gov/11529.htm> - Linking and Third.

To understand how to fill in the information in the Child Support Calculator, download the User Guide<http://www.courts.ca.gov/11529.htm> - Linking and Third.

Figuring out "income" to calculate child support:

The court bases child support on a parent's "net disposable income." This means the parent's income after state and federal taxes and other required deductions. The court may order support based in part on bonuses, commissions, overtime and other supplemental or non-wage income if the court determines that this income occurs regularly. Certain income is NOT counted when determining a child support obligation. For example, the court cannot consider income from:

- CalWORKs
- General Assistance/General Relief
- SSI (Supplemental Security Income)

Figuring out "time-share" to calculate child support:

The court will calculate "time-share" (how much time each parent spends with the children) by comparing the amount of time that each parent has primary physical responsibility for the child. In general, this means that the court will count the number of hours or other portions of the day a parent spends with his or her child. Usually, child support payments will decrease as time-share increases.

Falling Behind in Child Support Payments:

If you fall behind in child support payments you must pay interest on the balance due, on top of the amount you owe. Interest charges are added by law and the judge cannot stop them. Interest is:

- 10% per year for child support that was due on or after January 1, 1983, or
- 7 percent per year for child support that was due before January 1, 1983

If you owe arrears (past-due child support) it is possible that your court order or wage assignment (garnishment), if there is one, will include an amount over the monthly child support. This amount goes to paying off your arrears and it is often called a "liquidation amount." However, even if you are paying off your arrears in installments, interest continues to be added to your balance.

Not paying child support can have very serious consequences. If the court finds that someone has the ability to pay support but is willfully not paying it the court can decide that the person ordered to pay support is "in contempt of court." Being in contempt of court can be very serious because it can result in jail time. This enforcement tool is generally used only when all others have failed.

Changing Child Support:

Depending on the situation, either parent might want to change the amount of child support that is paid. Changes in child support often make sense if either parent has had a significant change related to:

- His or her income
- The other parent's income
- The amount of time that each parent spends with the child

Once you ask the court to modify the amount of child support, the court will make its decision based on the current circumstances (mainly both parents' income and time-share with the child). This means that the child support amount could go either up or down.

IMPORTANT! *If you are the parent paying child support you will still owe the full amount of support in your current court order until you get the order changed even if your situation has changed. So, for example, if you lose your job today but you do not change your child support order until three months from now you will still owe child support from today until three months from now, even though you were not working. Also, if you owe that amount but are unable to pay it you will owe interest (at the rate of 10% per year) on any unpaid balance.*

Ending Child Support:

Usually, court-ordered child support ends when the child turns 18 years old if he or she graduates from high school. If your 18 year old child is still a full-time high school student and still lives with a parent, child support ends when your child graduates or turns 19, whichever occurs first. Child support also ends when the child:

- Marries or registers a domestic partnership
- Joins the military
- Is emancipated
- Dies.

Parents may agree to support a child longer. The court may also order that both parents continue to support a disabled adult child that cannot support himself or herself.

Medical Support:

Federal and California laws require that every child support order include an order for "medical support." This means that the court will order either or both parents to provide health insurance for the child as long as it is available at a "reasonable cost."

- Federal requirements are in 45 Code of Federal Regulations section 302.56(3)<http://www.courts.ca.gov/11529.htm> - Linking and Third;
- California requirements are in the California Family Code sections 3750 through 3752<http://www.courts.ca.gov/11529.htm> - Linking and Third.

You should also know that:

- Health insurance includes vision and dental coverage. See California Family Code sections 3750 through 3753<http://www.courts.ca.gov/11529.htm> - Linking and Third.
- The cost is presumed to be reasonable if the cost of adding the children to the policy does not exceed 5% of the gross income of the parent that is being asked to provide the health insurance.
- Medical services need to be accessible which means that routine medical care can be provided within 50 miles of the residence of the children.
- The payments for health insurance are in addition to the base child support amount.
- The court will divide up the cost of any future uninsured medical costs between the parents.
- If your child support order is being made for the first time or is being modified, have information or proof available for the court on the cost of medical insurance because you are entitled to a deduction from your income before support is calculated to take this cost into account.

If you do not think you can afford to pay your medical support order, you can file two forms to ask the court to change or end the order:

- *Request and Notice of Hearing Regarding Health Insurance Assignment* (Form FL-478)
AND
- *Income and Expense Declaration* (Form FL-150)

Child Support Agreements:

California courts are required to order the amount of child support determined by the child support guideline unless the case fits one of the few legal exceptions to that rule. One of the exceptions is that the parties agree to an amount different (higher or lower) from the child support guideline as long as it meets certain tests. In general, parents can agree on a "non-guideline" support amount if they:

- Know their child support rights fully
- Know the guideline child support amount
- Are not pressured or forced to agree to this child support amount

- Are not receiving public assistance
- Have not applied for public assistance
- Agree to an amount of support that will meet the needs of the children
- Think that the child support amount is in the best interest of the children
- Have a judge approve the amount of child support payments

Parents can also agree to a child support order based on the guideline. By agreeing and signing a written agreement (a stipulation) for the guideline amount parents do not have to go in front of a judge to decide child support. Your agreement will have to be submitted to the court clerk for the judge to sign so that it can be enforced as an order of the court.

IMPORTANT! *If one of the parents gets public assistance (such as TANF) the local child support agency must agree to AND sign the agreement between the parents. The local child support agency must also sign the agreement if the agency is involved in a case to enforce (collect) the support order.*

Writing up a child support agreement

Parents can agree to a child support amount but only the judge can decide if it is appropriate and if he or she will accept it and sign it as an order. To write up a child support agreement:

1. Figure out what guideline child support amount is

Before the judge can sign an agreement between the parents that sets a child support amount that is lower or higher than the guideline you must first know what the California guideline child support amount would be.

2. Agree on an amount and other issues

Part of being fully informed about your child support rights is knowing what the guideline amount of child support would be. So, if you agree to pay more or receive less than the guideline, you are doing it voluntarily and with all the information.

You also have to agree on who will keep or pay for health insurance for the children and how to split other expenses related to your child or children, such as:

- Child-care expenses
- Health-care costs not covered by insurance (co-pays, etc.)
- Special education or other needs of the children (tutoring, after school activities, etc)
- Travel expenses related to visitation (if any)
- Any other expense related to your children

Child-related expenses are usually shared 50-50 or proportionate to each parent's income where there is a large difference between the parents' incomes, but you can agree to any division that you feel is appropriate in your situation. You also have to decide how the child support payments will be made, directly between the parents, directly to the provider or by wage garnishment (wage assignment).

3. Write up your agreement

Use the *Stipulation to Establish or Modify Child Support and Order* (Form FL-350). The form walks you through all the issues you need to address in your agreement, so read it carefully. Make sure you use the right case number (if you already have a case open). If you do not have a case open you will have to open one so you can file this agreement as part of it. Notice that, in this agreement, you are agreeing to keep each other promptly informed of any changes in income, employment or address.

4. Sign your *Stipulation* (agreement)

Each parent must sign the *Stipulation* (Form FL-350). When you sign, you are agreeing that you understand it and that you are signing it voluntarily and are not being pressured or forced to agree. Make sure you attach the child support calculation that shows what the guideline child support amount is even if you agree to a different amount.

If the local child support agency (LCSA) is involved in your case, either because they were the ones to open the case or because one of the parents asked them to get involved they have to sign this *Stipulation*. If one of you is on public assistance (such as TANF) the LCSA has to agree to the amount of child support.

5. Turn in your *Stipulation* to the court for the judge to sign

Find out from the court clerk if you have to make copies ahead of time and turn them in with the original or just turn in the original and make copies afterward. The procedure for how to do this will be a little different from court to court so make sure you find out from the clerk of your local court what to do and when you should return to pick up your papers.

- Each parent will also have to fill out and turn in a *Child Support Case Registry Form* (Form FL-191). This form is confidential and will not be kept in the court's files. It is kept in a confidential file with the State of California. It registers the case in a national registry to help with child support enforcement. If any of the information you provide on this form changes you have to complete a new form and deliver it to the court clerk within 10 days of the change. If the LCSA is involved in your case they will electronically forward the information on the form and you won't have to complete Form FL-191.
- If you are agreeing to have the child support paid by wage garnishment, also turn in an *Income Withholding for Support* (Form FL-195). Use the *Instructions to Complete the Order/Notice to Withhold Income for Child Support* (Form FL-196) for help filling out Form FL-195. When you fill out this form keep in mind that "Obligor" refers to the parent that is paying the child support. "Obligee" is the parent who is receiving the child support.

6. File your *Stipulation* after the judge signs it

After the judge has signed the *Stipulation*, file the original with the court clerk (after making copies if you did not already make them). The clerk will keep the original and stamp your copies

"Filed" and return them to you. One copy will be for each parent and the third copy is for the LCSA if applicable.

Also file the *Income Withholding for Support* (Form FL-195) if you turned one in. When you fill out this form make sure you only put in the last four digits of the social security number of the parent who will be paying child support, to protect their privacy.

7. Send the *Order/Notice to Withhold Income for Child Support to the employer of the parent ordered to pay support (the obligor)*

If you agreed to have the obligor's (parent paying support) wages garnished send the filed *Income Withholding for Support* (Form FL-195) to his or her employer.

The Local Child Support Agency (LCSA) and the Department of Child Support Services (DCSS): The California Department of Child Support Services (DCSS) is the state agency that makes policy and oversees the child support services for the state. The local child support agency (LCSA), located in every county is a county agency that provides the public with day-to-day services establishing and enforcing child support orders made by the courts. This online Self-Help Center mostly uses "LCSA" but if you see "DCSS" or "Department of Child Support Services" on this website or on any forms you have received, keep in mind they are the same thing.

The LCSA is where you can get help to:

- Open a new child support case
- Establish parentage (who the parents of a child are)
- Find parents so they can pay child support
- Request medical support orders from the court
- Enforce child support orders
- Modify child support orders

The LCSA CANNOT help you with:

- Divorce
- Custody
- Visitation
- Restraining orders
- Establishing spousal or partner support orders
- Enforcing spousal or partner support orders that are not included with child support

The local child support agency always gets involved in cases where one of the parents is getting public assistance for the child or the child is in foster care. In cases involving public assistance the law says the LCSA will make the final decision on child support enforcement even if the custodial parent disagrees. You can get help from the LCSA even if you do not get public assistance.

IMPORTANT! *The local child support agency (LCSA) does not represent the parents or the children. The LCSA lawyers are not your lawyers. You are not a legal client and the information you give the LCSA is not confidential.*

LCSA lawyers can give certain information about your case to other agencies, the other parent or the other parent's employer or lawyer. The law says the LCSA will make the final decision on child support enforcement even if the custodial parent disagrees.

Parents have the right to get advice from a private lawyer or legal aid group at any time and they can ask the family law facilitator for information.

More Information About Child Support

The California Department of Child Support Services Child Support

Handbook<http://www.courts.ca.gov/11529.htm> - Linking and Third has information on many topics, including:

- How to find a parent
- How to establish parentage (paternity)
- How to get, change and enforce a child support order
- How to get and enforce a medical support order
- How to collect child support payments

* * *

THIS INFORMATION IS PROVIDED AS A PUBLIC SERVICE OF THE CALIFORNIA ASSOCIATION OF LEGAL DOCUMENT ASSISTANTS. IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE. IF YOU HAVE ANY LEGAL QUESTIONS YOU SHOULD SEEK THE ADVICE OF AN ATTORNEY.

FOR FURTHER INFORMATION REGARDING OUR ORGANIZATION PLEASE WRITE OR CONTACT US THROUGH OUR WEB SITE: www.calda.org

A Legal Document Assistant (LDA) is not a lawyer. LDAs provide professional self-help services at your specific direction. Although LDAs cannot select your forms or offer legal advice, they can offer self-help reference materials written or approved by attorneys, such as this brochure. LDAs can also assist you procedurally. Many LDAs have self-help manuals in their personal libraries available for purchase or reference. Informational books are also available to you in your local Law Library and book stores. Be sure to seek legal counsel from a licensed attorney if you have any legal questions or require legal advice not addressed by this brochure or other publications.