

CHILD SUPPORT

Introduction

- The impact of divorce on children can be severe, both emotionally and economically. Children who grow up in single parent families have a much greater risk of living in poverty than children who live with both parents. Even when parents have a steady income, it is more expensive to maintain two separate households than it is to maintain one.
- Vermont has declared as public policy that children of separated parents shall be supported in the same manner as they would have had the parents been living in the same household. The purpose of this public policy is to protect the children of separated parents. Child support must take into consideration the true costs of raising children and consider the standard of living the children had when the parents were living together.
- To make sure that children of separated parents receive continued support from both parents once a divorce has started, a child support hearing is scheduled, whether the parents want one or not. To avoid having to come to court, parents are encouraged to make agreements on child support in advance and file all the required paperwork. Ask the court clerk about what needs to be filed and how you can make agreements that will be approved by the court.
- The court will schedule a hearing with the Case Manager soon after the case is filed. The Case Manager will explain the court process to you, and can assist you in reaching agreement on parental rights and responsibilities as well as child support and Guideline calculations. (See "Child Support Guidelines", below.)
- The case manager can help you draw up agreements and prepare an Order for the Judge and/or Magistrate to sign. If you cannot reach agreement, the matter will then be scheduled before the Magistrate for a Child Support hearing or before the Judge in matters of parental rights and responsibilities.
- The Magistrate is a judicial officer who conducts hearing on child support issues. If the parties cannot agree on establishing or modifying (changing) child support, a hearing will be scheduled before the Magistrate. The Magistrate decides the amount of child support paid.
- The Family Court Judge presides over cases filed in divorce and parentage actions.
- Child support amounts cannot be changed without a written order from the Magistrate. Support amounts can only be modified in cases where there is a change in the circumstances of one of the parties.
- A child support order issued by the court is effective until it is modified by the court. Parents do NOT have the right to change the order themselves. (See pamphlet #32, Modifying Child Support Orders)

Child Support Guidelines

- In order to put the public policy into practice, Vermont, like every state, has established child support guidelines. The underlying principle of the guidelines is to make sure that children receive the same proportion of parental income after separation and divorce as they would receive if their parents were living together. Studies show that parents tend to spend the same proportion of their combined income on their children, regardless of whether the parents are rich or poor. Because of these studies, the Vermont guidelines have been designed to consider the combined income of both parents.
- Another purpose of the guidelines is to ensure that parents with the same income levels are required to pay similar amounts of support for their children. In the years before the guidelines were developed, parents with similar incomes, who were divorced in different courts or by different judges, often found large differences in the amount of child support they were ordered to pay. This is because the judges had no method to determine how much child support was reasonable. These wide differences in support orders led to a feeling of unfairness.

How to Calculate the Child Support under the Guidelines

- The parents and the court must know each parent's gross income from all sources in order to calculate the support under the guidelines. To help make the income information easily available, the law requires that both parents complete, exchange and file with the court, a form called the Affidavit of Income and Assets, which was included in your court paperwork. If you do not have such form, ask the court clerk for Form 813. It is important that you fill out the form accurately. If you have questions, ask the court staff for assistance or you may consult an attorney.
- To confirm the information on the affidavit, each parent also has the right to see the other parent's four most recent pay stubs, or if a parent is self-employed, the business records of income and expenses. Each parent must also exchange income tax returns for the past two years, and file a form with the court stating that the exchange has in fact taken place.
- Once the gross incomes of both parents have been determined, the parents and the Child Support Magistrate and/or Case Manager can look to the tables that accompany the guidelines to find the after tax incomes for both parents. The guidelines also give a deduction to the parent who pays for health insurance for the children, and to a parent who has a prior child support obligation that is being paid, or a parent who has other minor children living in his or her household.
- The guidelines also take into consideration the cost of childcare required for a parent to work or go to school, and the cost of extraordinary educational and medical expenses for the children.
- It takes time and practice to calculate the proper amount of support to be paid under the guidelines. The Agency of Human Services has prepared a booklet that explains the steps you need to follow. The first step is to have an agreement or court order regarding the parental rights and responsibilities for your children. (See pamphlet #4 on Parental Rights and Responsibilities). The calculations differ depending on how

much time the children spend with each parent (sole or shared parenting) or whether there is at least one child living with each parent (split parenting). The booklet and the guideline tables are available at the court clerk's office, as well as online at www.vermontjudiciary.org or Office of Child Support at: www.ocs.state.vt.us

Voluntary Unemployment

- If a parent decides to quit a job or take a new job with a smaller salary, child support may be calculated based on the income earned from the earlier job unless the parent can show that reducing the income was reasonable.

Non-payment of Support:

- The Office of Child Support (OCS) is authorized to undertake a number of enforcement activities designed to ensure that regular child support payments are made as ordered by the court. These steps include court action as well as “administrative remedies”—actions that OCS can take on its own without obtaining a court order.
- Actions can range from simply contacting the non-custodial parent or issuing a wage withholding order to reporting the obligated parent to a credit bureau, intercepting tax refunds, placing liens on property, and requesting the suspension or non-renewal of any type of license: driving, professional or hunting or fishing. (See pamphlet #34, Enforcement of Child Support Order).

The Guidelines Determine the amount of Child Support unless the Magistrate decides that the Guidelines are unfair to the Children or to a Parent

- Although the amount of child support calculated under the guidelines is assumed to be what is necessary to support the children, this amount can be changed. Before the Magistrate can change the child support as calculated under the guidelines, the Magistrate has to decide that the guidelines are unfair to either of the parents or to the child. In deciding whether to change the child support amount, the Magistrate has to consider these factors:
 1. The financial resources of the child.
 2. The financial resources of the custodial parent.
 3. The standard of living the child would have enjoyed if the parents had continued to live together.
 4. The physical and emotional condition of the child.
 5. The educational needs of the child.
 6. The financial resources and needs of the noncustodial parent.
 7. Inflation.
 8. The costs of meeting the educational needs of either parent, if the costs are incurred for the purpose of increasing the earning capacity of the parent.
 9. Extraordinary travel expenses incurred in exercising the right to periods of visitation or parent-child contact.
 10. Any other factor the Magistrate finds relevant.
- Parents can also agree to change the support to be paid if they believe that the guidelines would be unfair. If parents agree to change the support from the guidelines, they have to write down why the change is appropriate, taking into account the above factors. The Magistrate's role is to protect the children. If an agreement changes the amount of support under the guidelines, and the reasons for

the change do not make sense to the Magistrate, the parents' agreement will not be approved.

- A parent who believes that the guideline amount would be unfair, may request the Magistrate to hold a "Deviation hearing". The parent who requests the hearing must convince the Magistrate that the factors listed above make the guideline payment unfair.

Method of Payment

- Under Vermont law, child support orders must require an employer to withhold the child support payment from the paying parent's wages or other source of regular income. When wage withholding is ordered, the employer is instructed to withhold the support from each paycheck and send it to the Office of Child Support Registry, which keeps a record of the payment and then sends it to the receiving parent. There is an administrative fee for this service, which may be waived if the parent signs up for Office of Child Support services (see the section under "Office of Child Support", below.)
- The purpose of withholding is not to punish the parent making the payment, but to set up a simple system for guaranteeing that payments are made regularly and on time. Withholding also makes life easier for the paying parent since it saves time and protects that parent from deciding not to pay if money is tight. Under the Vermont withholding law, child support - just like taxes - is deducted automatically from a person's paycheck.
- In some cases, where both parents agree in writing that they do not want withholding, the Magistrate may approve what is called a direct payment order. Under direct payment, the paying parent has sole responsibility to ensure that the child support gets sent in full and on time according to the terms of the court order. Under such arrangement there is no third party (i.e. the Office of Child Support Registry) to keep track of each payment. Parents must keep their own written records of the payments.
- If parents cannot agree on direct payment, but one parent feels strongly that withholding shouldn't occur, the Magistrate will consider whether there is a history of financial responsibility by that parent towards the family. If the Magistrate finds that support has always been paid regularly by that parent in the past, the court may approve a direct payment order.
- If you have a direct payment order, however, payments must always be made on time. If a parent with a direct payment order is ever late 7 days or more with a single payment, the court, upon request petition by the other parent, will hold an expedited hearing and may revoke the right to make direct payment and order that all future payments be withheld from the paying parent's paycheck.

Medical Support/Health Insurance

- In addition to establishing a child support amount, the Magistrate will also make orders for the children's medical and health support. If either parent has health insurance available through their employer at reasonable cost, the magistrate will order that parent to cover the children. Parents who cover their children with health insurance may have the insurance costs for the children deducted from their income when support is calculated under the guidelines.

- Health expenses of the children, including medical, dental, orthodontic, optical, prescription, etc., which are not covered by insurance, will also be shared by the parents. The first \$200 of uninsured health expenses for the children is already taken into consideration by the amount of support under the guidelines, and thus should be paid by the parent who receives support. Expenses over \$200 per year are considered extraordinary and should be divided between the parents based on their income or by agreement of the parties.

The Office of Child Support

- In Vermont the Office of Child Support (OCS) provides a wide range of child support services to parents. OCS collects and distributes child support payments, locates non custodial parents and their assets; determines the financial ability of parents to pay support; and enforces child support obligations.
- Parents who are on public assistance (Aid to Needy Families with Children currently called RUFA, "Reach Up Family Assistance) will receive these services automatically when their case is referred by the Department of PATH (Prevention, Assistance, Transition, & Health Access).
- Parents who are not on public assistance can receive these same services without charge simply by completing and filing with the Office of Child Support a written application form. You can get this application form by asking the court staff, or writing to:

Office of Child Support
103 S. Main Street
Waterbury, VT. 05676

Or by calling a toll-free telephone number at 1-800-786-3214. You may also get information and forms from the OCS website, located at: www.ocs.state.vt.us

- While child support services are available to the public without charge, the Office of Child Support cannot provide help on issues concerning parent/child contact, parental rights and responsibilities, property division, or other non-support related aspects of a divorce.
- Even on child support issues, the Office of Child Support will not represent you and is not a substitute for a lawyer. While an OCS representative can appear in conference with the case manager or a hearing before the magistrate, the OCS person's role is to act on behalf of the State of Vermont and Vermont's interest in seeing that your children are supported in a manner consistent with Vermont law and the facts of your case. Also, if there is past due support (arrear) owed to the Department of Social Welfare the state or the other party, the Office of Child Support has a responsibility to collect on this debt owed the State.

**You can obtain helpful information, as well as court forms at:
www.VermontJudiciary.org.**