

## CHILD SUPPORT: HOW MUCH IS ENOUGH?

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- 1. Q. *The children are living with me. How much child support should I be receiving from their father?***

A. There is no "right amount" for child support. If the two of you are able to reach agreement on a sum, that amount should be set out in a separation agreement. If you cannot agree, you may petition the court to determine the amount of child support that should be paid by the noncustodial parent to the parent with whom the child or children are living.
- 2. Q. *What court decides child support?***

A. In North Carolina, the district court hears child support cases. A child support case is usually heard in the county where the child is living. If the father lives in another state and our state lacks any contacts with him, you may need to have the case heard there instead of here.
- 3. Q. *Do I have to have a lawyer prepare the separation agreement or petition the court for me?***

A. A separation agreement should always be prepared by an attorney. This is a very important document, and both sides should be represented by attorneys to be sure the agreement is done properly and fairly. You should likewise have a lawyer when you go to court for child support. If you do not want an attorney or cannot afford one, the Child Support Enforcement Office can help you establish or enforce child support.
- 4. Q. *If my spouse fails to pay child support, what should I do?***

A. If your husband or wife is bound by court order or separation agreement to pay a certain amount of child support, you may ask the court to enforce the order (by contempt of court) or the agreement (by a lawsuit for breach of contract). A person found in contempt of court may be sentenced to jail for up to thirty (30) days, under North Carolina law for not obeying the prior child support order. Failure to obey a child support order can lead to other penalties as well, such as seizure of assets (a car or bank account, for example) or the assignment or garnishment of the other parent's wages.
- 5. Q. *How do I know how much child support I need?***

A. Many states have adopted child support guidelines. In North Carolina, these guidelines on child support are often used by the judge in setting child support and by the parties or attorneys in settling support cases.
- 6. Q. *What if I need more child support?***

- A. The Guidelines are flexible and allow for a child's special needs, extremely high or low income and other factors the court finds to be important. Make a list of all monthly expenses for your household and apportion the expenses between yourself and the child or children. Be sure to set aside a certain portion of the rent, utilities and food for each child. You should also consider whether to apportion such expenses as car payments, gasoline and medical bills for each child. You must support the child or children and you are the one who best knows the facts, needs and expenses. The judge can go outside the Guidelines, but it is up to you to prove the need for a variance from the Guidelines.
- 7. Q. *When my child is visiting my ex-husband, can he reduce the child support paid to me?***
- A. No. Unless the court order or separation agreement specifically provides for a reduction, the child support payment should remain the same.
- 8. Q. *If I cannot see my child for visitation, can I stop paying child support?***
- A. Under North Carolina law, denial of visitation is not legal justification for withholding child support. Neither is lack of child support a legal excuse for refusing the other parent visitation rights. The parents do not have the right to try to link together these separate obligations. Even if a parent is not paying any child support, he may still visit his children. And even if a parent is not allowing visitation, the children are still entitled to child support.
- 9. Q. *When does child support stop?***
- A. Child support, without an agreement or court order, usually ends at the child's eighteenth birthday, although it will continue beyond then if the child is still in high school, so long as the child is not over twenty years old. A separation agreement or court order by consent may set a higher age, such as upon graduation from college or at age twenty-one. Child support may end earlier than the above if the child is emancipated, such as by joining the military, moving away from home or getting married.
- 10. Q. *Can the other parent's paycheck be garnished for child support?***
- A. Yes. Under North Carolina law, garnishment of a paycheck for child support may be ordered for up to forty percent (40%) of the net available pay. Garnishment is a court proceeding that requires a lawyer or the help of the Child Support Enforcement Office. Garnishment is allowed only if a court order for child support is violated; it does not apply if there is only a separation agreement. Wage assignment is also used to take child support directly from a parent's pay if there has been a prior child support order.

**11. Q. *What if I need more child support in the future?***

A. If the child support is set out in a court order, you may petition the court to increase child support if you can show that there has been a substantial change of circumstances since the date the order was signed. Such a change usually consists of increased living expenses, inflation and an increase in the earnings of the other parent. Sometimes the parents can agree between themselves on a regular increase in child support. If they wish, they can enter into an agreement that adjusts child support annually on the basis of, say, the Consumer Price Index or the wage increases of the noncustodial parent. When the parents cannot agree, the court must resolve the matter and the custodial parent must prove that present child support is inadequate.

**12. Q. *Can child support also be reduced?***

A. Yes. The court has the power to modify child support upwards or downwards, so long as there has been a substantial change of circumstances since the entry of the original order. Thus, for example, a parent who just lost his job or has had a substantial pay cut could petition the court to reduce the child support payments that he is making.

**13. Q. *Can child support be paid through the court?***

A. Yes. If the court order says so, the child support may be made payable through the clerk of court. Payment to the clerk is the preferred method. This allows the parents to be sure that payments are properly recorded and avoids problems of payments made in cash directly to the custodial parent with no receipt given. If child support is paid through the clerk's office, the clerk will also help enforce the order through contempt proceedings if the payor is in arrears. This is done at no cost to the custodial parent. When payment is made through the clerk, it must be in the form of cash, certified check or money order so that the payment can be mailed out to the custodial parent right away, instead of waiting for a personal check to clear.

**14. Q. *Are there any other aspects of child support in addition to the money paid every month?***

A. Yes. Such matters as medical expenses, tax exemptions and college are also important parts of child support. You should try to reach an agreement on these with the other parent if possible. If you can't agree, then the court can decide the issues of medical expenses and tax exemptions; the expenses for a child's college education are beyond the court's powers.

**15. Q. *How does the court decide medical expenses?***

A. If one of the parents has medical insurance, that parent is usually required

to keep it in place for the minor child or children. The remaining costs -- uncovered health care expenses -- are divided by the judge between the parents in a way that is fair. Often this means that the parents divide these expenses equally or in proportion to their incomes.

**16. Q. *When child support is determined by the court, will both parties' incomes be considered?***

A. Yes. North Carolina law requires that the judge takes into account both parties' incomes in setting child support.

**17. Q. *How does a judge in North Carolina compute child support?***

A. As of July 1, 1990, North Carolina has been using a child support guideline or formula called the income shares model. This approach takes the income of both parents and apportions the child support responsibility between them according to the ratio of their incomes to each other. The calculations are done on set of preprinted child support worksheets. The income used are gross, pre-tax incomes. Thus if the father earns \$3,000 per month and the mother earns \$1,000, the father's child support obligation will be three-fourths (and the mother's will be one-fourth) of the total needs of the child.

**18. Q. *How does the court determine "total needs" of the child?***

A. The total needs of the child will be presumed to be the Basic Child Support Obligation set out on the child support schedules available at the clerk's office. It is impossible to set out these figures here, but they cover the expected needs of one or more children whose parents earn up to \$10,000 per month combined income. In general, the amount of the Basic Child Support Obligation is directly determined by the combined incomes of both parents. The higher the total income, the higher the obligation.

**19. Q. *What special items or expenses can be considered by the court in settling child support under these guidelines?***

A. In addition to the Basic Child Support Obligation, the judge should consider:

- payments or expenses for the support of other children
- medical insurance premiums
- day-care expenses necessary to enable a parent to get or keep a job
- shared or split custody arrangements
- any other extraordinary costs or expenses related to the raising of a child

**20. Q. *What is shared custody?***

- A. The definition of shared custody (for child support purposes) is any arrangement where the "noncustodial parent" gets 123 or more overnight visits per year with the child. If this occurs, new rules apply for determining child support and a new worksheet must be completed for shared custody, as opposed to sole custody.

**21. Q. *What is split custody?***

- A. Split custody is a custody arrangement involving each parent having physical custody of at least one child. In a split custody arrangement, an adjustment to child support is made because each parent will incur direct expenses for rearing one or more of the children. In this case also, a new child support worksheet must be used. These worksheets are also available at the courthouse.

**22. Q. *What if I need more child support than the guidelines show I should get?***

- A. You can ask for a variance in child support so long as you provide written advance notice to the other side before the hearing. A variance could be needed because of unusually high needs of a child, extremely high or low income of a parent, or several other reasons. It is very important to document the reasons for a variance so that they can be shown clearly to the court in testimony or written evidence.

**23. Q. *What if I have other questions?***

- A. Please feel free to ask our attorneys. They are here to help you.