



Legal Aid
Society of
Hawai`i

Child Support: General Information

This brochure provides general information about how to get a child support order. It is only meant as a general overview. This pamphlet is by no means exhaustive of your rights and responsibilities when trying to get a child support order. It does not replace legal advice or counsel. Whenever possible legal counsel should be retained.

For more information on your matter, call Legal Aid Society of Hawai`i's hotline visit us on the Web: <http://www.legalaidhawaii.org>.

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Child Support

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**Legal Aid
Society
of Hawaii**

Child Support

*Securing, Modifying, Enforcing,
Paying, Using the CSEA.*

I. What is Child Support?

Child support is a monthly amount of money awarded to a custodial parent paid by the non-custodial (NC) parent. If you use the Child Support Enforcement Agency (CSEA), the payments will go to CSEA first and they will send you a check within 15 days.

A. How much do I get?

The amount of the payments is decided by a Court ordered formula. The minimum amount due is \$50/mo/child. The judge may award an amount different from the formula when there are “exceptional circumstances,” but that finding is purely discretionary.

Exceptional circumstances include:

- If the amount is more than 70% of funds available to the payor,
- If payor has outstanding medical bills for catastrophic illness (like cancer)
- Heavy debt is not an exceptional circumstance.

To learn how to calculate your child support amount, attend our clinic (see text box, p.4)

II. How do I get Child Support?

A. Married callers: You can get an order one of two ways,

- Divorce decree: A support order will be issued as part of the divorce proceedings
- Support order without divorce: As long as you are separated from your spouse you can secure a support order.
 - Call the CSEA, tell them you want a support order.
 - You will go through an administrative process as opposed to a court process

Child Support and Custody/Visitation

“I won’t let her see the kids until she pays the child support.”

•**Child support and custody/visitation are separate issues**, they cannot be used in retaliation against the other.

•**Withholding child support** will cause you to incur arrearage and penalties. If your spouse is not allowing visitation as set forth in a decree, you can take them to court to for contempt of court.

•**Withholding visitation or custody** as set forth in a decree is illegal, no matter how much money your spouse owes. Use legal methods to enforce your child support order - either through the CSEA or on your own.

B. Unmarried callers:

•Establish paternity: Apply for CSEA’s services: either in person or have them mail you an application. Call CSEA:

Statewide phone number: 1-888-317-9081

Oahu: If caller wants to establish paternity, quickest way to get a response is to fax a letter requesting paternity be established to CSEA office. FAX: 692-7060

Or caller can visit office or mail request to 601 Kamokila Blvd, Suite 251, Kapolei 96707

Outer Islands: Either call, visit the CSEA office in person, mail a letter requesting paternity be established or email CSEA at csea-adm@pixi.com

MAUI: 35 Lunalilo Street, Suite 201, Wailuku 96793

email: mauifsu@aloha.net

BIG ISLAND: 88 Kanoelehua Avenue, Suite 202, Hilo 96720

KAUAI: 4180 Rice Street, Suite 104, Lihue

96766

•Be aware: When you establish paternity you are giving the father legal rights and responsibilities where he has none. The father will acquire the right to visitation and custody.

•Child custody and visitation can also be decided at the paternity proceedings if you and the other parent can agree. If not, it will be reserved and only a judgement on paternity and child support will be entered. (See text box, “Child Support and Custody”, p.1)

•PLEASE NOTE: If your child was born on or after July 1, 1999, you can get paternity established through a Voluntary Establishment of Paternity form. There can be some disadvantages to establishing paternity in this way. Call Legal Aid’s hotline for more information.

C. If you don’t know where the NC parent is: CSEA is legally obligated to help you find the noncustodial parent.

•Ask CSEA to help you locate the NC parent. Once CSEA has your case, it must start looking for the NC parent.

AFDC and Child Support

If you are on AFDC, DHS will try to collect child support from the NCP to pay itself back for your monthly benefits.

•If paternity has not been established on your children, DHS will initiate a paternity order. You must cooperate with DHS unless you can show “good cause” why paternity should not be established. Good cause can be that the father is violent and abusive to you or your child. Tell your DHS worker if you don’t want to establish paternity. [ADVOCATE: See Paternity script for more info.]

•Once paternity has been established, DHS will take the child support:

•Any money left over after current support is paid goes to the State to pay the State back for your AFDC payments.

•Any money collected after the State recoups its past AFDC payments goes to you for past due support. This is called the “pass-on” and this money is considered when calculating the amount of your current AFDC grant.

CSEA must send you a quarterly notice indicating payments received and payments made to you. If you dispute this record you are entitled to a fair hearing. Request one in writing with DHS.

- Give CSEA as much information as possible about the NCP.
 - Social Security Number
 - Names and addresses of friends and relatives;
 - Information about their employer or job
- Within 75 days of opening your case, CSEA must look through all appropriate federal, state and local records to try and locate the NC parent.

(Friends and relatives, Unions and employers, Utility companies, Postal Service, Police, Parole and probation records, Dept. of Taxation, Dept. of Motor Vehicles, Public benefits agencies, The Federal Parent Locator Services...)
- If the NC parent is in another state: CSEA must refer the case to the other state within 20 days of finding out that the NCP is in the other state
[ADVOCATE: See “Interstate Compact” section]

2. CSEA cannot give up.

- CSEA must go through all appropriate sources every three months or immediately upon receipt of additional information.
- Give CSEA any new information you have about the NC parent immediately. Put all information to CSEA in writing, date it and put your child support case number on the letter.
- If CSEA does not do what it is supposed to, complain. *(See text box, “CSEA won’t help you or has failed to meet its deadlines”, p.5)*

II. How Do I Modify The Amount of Child Support?

-Make sure caller has a child support order. If not, see section “How do I get child support?”]

A. Be sure that you are entitled to an increase or decrease.

Be aware that when a modification is requested your amount can either increase or decrease, regardless of what you have requested. You need to know if your spouse’s income has also changed.

B. Two Ways: Request Modification from CSEA, and/or File a Motion in Family Court

1. Send CSEA a written request. Send a letter to CSEA asking for a modification of your child support order. Keep a copy. Fax or mail.

- If you don’t hear from CSEA within 30 days, send a second letter and a copy of both letters to the CSEA administrator in charge of the CSEA (Michael Meany, Director).
- CSEA must modify the child support award if there was a material change in circumstances since the

order was issued. A “material change in circumstances” includes: the promulgation of new guidelines or a substantial change in the income of either parent, loss of job

- CSEA must review your case for modification within 180 days (6 months) unless:
 - Your case was reviewed for modification within last 12 months; or
 - Your child support order was modified within the last 24 months; or
 - CSEA was not able to find the noncustodial parent in the last 3 months and there is no new information about his/her whereabouts.

- You can appeal the CSEA’s decision. File a written request for a hearing within 30 days of getting notice of modification, and the matter will be scheduled for a hearing before a hearing officer. If you or the noncustodial parent is unsatisfied with the decision from the hearing, you can appeal to the Family Court. You have 30 days from receipt of the decision to appeal in family court. You will need an attorney, Legal Aid will not be able to represent you.

- If CSEA does not do what it is supposed to, complain. (See text box, p.5.)

2. File a Motion with the Family Court

- It’s faster (1-2 mos) to file a motion in family court to modify your child support order than going through the CSEA (3-6 mos), but it is also more difficult. You will essentially be doing the work that the CSEA would do for you.

- Pick up “Post-decree modification” forms from the Family Court. Fill them out, make copies and take them to family court. You will need to serve a copy on the other parent.

- You can do both at once! If you do decide to go through the family court, you can request a modification from CSEA at the same time. Then, if for some reason you don’t complete the family court case, the CSEA will already be working on your modification.

III. How Do I Enforce My Child Support Order?

A. Contact CSEA:

Once you have applied for CSEA’s services, CSEA must take steps to enforce your support order.

- CSEA is legally obligated to continually keep track of the child support payments. If the noncustodial parent falls one or more months behind, the CSEA can/must do the following:

Determine if NC parent is currently employed and forward OIA to new employer.

Lien: The CSEA must put a lien on all real property owned by the noncustodial parent in Hawaii. When the property is sold, the past due child support will be paid from the proceeds of the sale. Liens can also be placed on property, such as cars and boats.

Requiring Bond: a noncustodial parent can be ordered by a court to deposit money or assets post a bond to secure payment of child support. This is one of the best ways to collect support from a noncustodial parent who is self-employed or avoids paying support.

Tax Refund Intercept: CSEA must refer the case to both the State Dept. of Taxation (minimum support owed at least = \$25) and the IRS (minimum support owed at least = \$150). The agencies must then withhold any tax refund going to the noncustodial parent and use the money for support owed in arrears.

Credit Reporting: CSEA must report to consumer reporting agencies all noncustodial parent who are at least \$1000 delinquent in their support payments.

Bring a court action within 60 days: CSEA's obligation is "to take any appropriate enforcement action." If the noncustodial parent falls one or more months behind in child support payments and if the CSEA determines that action requires service, CSEA must: (1) serve papers to bring a court action, such as a contempt action, against the noncustodial parent and (2) start the action, or (3) document unsuccessful attempts to serve the noncustodial parent with papers within 60 days.

Unemployment Benefits: CSEA must intercept 25% of UIB from noncustodial parents who owe support.

Refer Case to IRS: if the noncustodial parent is still not paying child support and s/he owes at least \$750 in back support, CSEA must send your case to the IRS for collection every 6 months.

- If CSEA does not do what it is supposed to, complain. (See text box, this page.)

C. Can I try to enforce my child support myself? Yes, CSEA does not have exclusive jurisdiction to sue to collect past due child support. However, you will probably need to have an attorney assist you. Legal Aid cannot provide representation to enforce your order.

Options:

- Motion for post decree relief. File a motion in the family court seeking post-decree (paternity or divorce) relief that tacks an additional amount on to child support to go toward arrears. If you win your motion, your attorney may be able to collect his/her attorneys' fees. If you are owed a large amount of child support, you may be able to get an attorney to take your case on a contingency fee basis.
- Lawsuit: If you got your support order through a CSEA administrative process (i.e., no divorce or paternity decree) you can sue the noncustodial parent in small claims, district or circuit court, depending on the amount owed.

- Be the CSEA: If the NC parent is not paying, and CSEA not doing what it should, you can hire a private attorney to file liens, etc.

CSEA won't help you or has failed to meet its deadlines.

Complain: CSEA must help you get a child support order, enforce an order and meet stated time limits in all cases. Workload is no excuse. If at any point CSEA won't help you, or if you believe they have acted incorrectly, complain.

- Write a complaint letter directly to the Administrator of the CSEA**, 601 Kamokila Boulevard, Suite 251, Kapolei, HI 96707);

- Write a complaint letter to the Attorney General of the State of Hawaii**, 425 Queen Street, Honolulu, HI 96813);

- Call the Office of the State Ombudsman** Oahu: 587-0770, Other Islands: 1-800-468-4644 ext. 70770.

Content of Complaint:

- Explain what CSEA did wrong. Be specific in stating the actions taken or not taken, and any deadlines missed.
- State your CSEA case number and/or your Family Court case number.
- Sign and date your letter(s) and be sure to include your mailing address and phone number.

Keep a copy of all letters to or from CSEA

IV. Parents are in Different States. (Interstate Compact)

A. If the non-custodial parent lives in or moves to another state, CSEA can help you in one of two ways:

1. "Long-arm" jurisdiction allows CSEA to bring an action against someone not living in Hawaii provided the person has had "sufficient contact" with Hawaii (the child was conceived here, or the NCP used to live here). If long-arm jurisdiction is available, your case will be heard in Family Court in Hawaii.
2. CSEA can use the URESA to send your case to the state where the noncustodial parent lives and request that state to obtain a child support order against parent located in that State.
 - URESAs is the Uniform Reciprocal Enforcement of Support Act: An agreement between states to help collect child support.
 - If CSEA cannot use long-arm jurisdiction, it must use URESA. CSEA must refer your case to the state where the NC parent lives within 20 days of finding the NCP in the other state.
 - You would still work with CSEA in Hawaii

- If the child support agency in the other state won't help you, write a complaint letter to: Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, 307 L'Enfant Promenade, S.W., 4th Floor, Washington, D.C., 2044

B. Custodial Parent is Moving from Hawaii

- You can still use CSEA in Hawaii to help get your child support; or
- You can move the case to the child support agency in your new state, however, any modification of child support must be done by Hawaii, as long as one parent remains here.
- If you are on welfare, you will have to use the child support agency in the new state.

V. Can CSEA Close My Child Support Case?

A. CSEA can only close your case in one of the following situations:

- Paternity cannot be established
- The non-custodial parent (NCP) is dead and has left no assets.
- The NCP cannot be located even though CSEA has tried at least every 3 months for 3 years, using all available knowledge and resources.
- The NCP cannot pay now or in the future because:
 - i. S/he has no assets, and
 - Is in jail and has no possibility of parole; or
 - Is in a mental institution; or
 - Has a total and permanent disability.
 - ii. S/he is a citizen of a foreign country who does not work for the U.S. Government or a U.S. based company; Has no assets that CSEA can get; and There is no agreement between the U.S. and their country to enforce each other's court orders for support.
- There is no longer a current support order and the order for back support is not enforceable. The order for back support is not enforceable when:
 - The arrearage is less than \$500; or
 - The order for back support cannot be enforced by law, for example, where the statute of limitations has run.
- You are on welfare and have "good cause" not to establish child support.
[ADVOCATE: See text box, p. 2, and Paternity script for more information.]
- You request the case be closed, and
 - You are not on AFDC; or
 - If you used to be on AFDC, your case cannot be closed if the State is owed back support;
 or
 - You only asked CSEA to locate the non-custodial parent.
- CSEA cannot find you or you refuse to work with CSEA

B. How Does CSEA Close A Case?

- CSEA must give you 60 days notice before closing the case, unless:
 - You requested case closure; or
 - You requested locate services only; or
 - Your case is closed because a welfare office determines that the non-custodial parent could harm you and/or your child(ren).

C. You can prevent your case from being closed if:

- In response to the closure notice, you give CSEA information helping your case, for example, locate information. Written information is best (keep a copy of all letters to or from CSEA)
- CSEA must reopen your case if circumstances change. You must fill out an application to have CS reopen your case.
- If the CSEA has mistakenly closed your case, complain. *[ADVOCATE: See text box p.5]*

VI. Payors: You've received a notice from the CSEA

A. Notice of Intent to Establish Child Support.

1. What does it mean/What are my rights?

Someone is claiming that you are the noncustodial parent of their child and is seeking CSEA's help get you to pay child support.

- A child support order must be established before any child support can be collected from you. CSEA's letter is notice that it is starting the process to establish a child support order.

- To get a support order, the paternity of the child(ren) at issue must be established.

[ADVOCATE: If paternity is an issue, see Paternity script.]

2. What will CSEA do?

- CSEA will request financial information from both you and the custodial parent,
- CSEA will come up with a proposed child support order based on child support guidelines,
- CSEA will then send you and the noncustodial parent a copy of:
 - Proposed administrative order (proposed monthly child support amount)
 - Child support guidelines worksheet
 - Notice of administrative proceedings and financial responsibility
 - Request for hearing form
 - Statement of defenses

3. If you agree with the proposed order:

- You don't need to do anything. If the other parent also agrees, the case will be referred for default processing, meaning that the proposed order will be the final order.

4. If you do not agree with the proposed order:

- Request a case hearing before an administrative hearing officer: you have 10 days from the date you were served with the documents from CSEA to request a case hearing in writing. The administrative hearing officer will request financial and other factual information from both you and the custodial parent. You must show documentation of expenses.

- The officer will issue an order for child support. You can appeal the order to the Family Court within 30 days from receipt of the hearing decision. You will need an attorney if Legal Aid will not be able to help you.

B. Notice of Enforcement from CSEA

1. What does it mean/What are my rights?

CSEA is putting you on notice that you are at least one month delinquent on your child support obligations and that it intends to start collecting on the arrearage. The “notice of enforcement” is a notice to you that CSEA plans to implement one of its enforcement tools, such as an order for income assignment, withholding unemployment benefits, etc.

- Read your notice carefully!! Your notice from CSEA should tell you, among other things:
 - What action CSEA plans to take against you,
 - How long you have to respond to the notice,
 - Whether you have the right to request a hearing and how to do so.

- If you do not request a hearing in response to the notice, CSEA will obtain the order(s) necessary to start collecting the delinquent child support debt from you

- If you request a hearing within the time specified in your notice:
 - Your request will be set for a hearing and you will be notified of the hearing date, time and place.
 - Any relevant information you have should be submitted to CSEA (e.g., documents or affidavits showing you now have custody of the child).
 - The hearing officer will get copies of various documents including a copy of the most recent support order, the CSEA generated list of delinquent obligations, the advance notice, statements of payments, and proof of service.

- If you miss the hearing a default judgment will be entered against you.

2. At the hearing:

- Some of your defenses may be:
 - You have been paying child support,
 - The amount CSEA is claiming you owe in back support is wrong, and/or
 - CSEA should not be allowed to collect back support at this time (e.g., you have custody of child)

- You will have to provide evidence to the court: Bring any documents, such as receipts, canceled

checks, that support your claims:

- You can appeal the decision in the family court within 30 days after receipt of the decision. You probably need the assistance of a private attorney.

VII. Information on License Suspension and Revocation [HRS §576D-13]

This is just general information on the process of suspension of licenses for non-custodial parents who do not comply with child support orders.

Process:

CSEA will start the process for suspension, non-renewal, non-reinstatement, non-restoration, or denial of license after:

- Three (3) months for driver's license and recreational licenses
- Six (6) months for professional and vocational licenses

1. CSEA sends notice to last known address by regular mail to non-custodial parent.

2. Non-custodial parent can do one of the following to avoid license being revoked:

- Contest the action by requesting a hearing. Request must be written and received by CSEA within thirty (30) days of notice date.
- Contact CSEA within thirty (30) days of notice date to enter into a monthly payment plan. Payment plan must begin within thirty (30) days of contacting CSEA to avoid license being revoked.

3. CSEA can take away license(s) if:

- Non-custodial parent does not contact agency within thirty (30) days of notice date.
- Non-custodial parent does not enter into a payment plan with CSEA.
- CSEA decides in the hearing that non-custodial parent has not followed the child support order.

About the hearing:

- The only issue that will be covered is whether or not non-custodial parent is following the child support order. The hearing officer will not decide whether or not child support order is fair or correct.
- The hearing officer will make a written decision within ten (10) days of the hearing.

IMPORTANT:

Once a license is suspended or denied, CSEA can do the same with other licenses that belong to non-custodial parent, as long as thirty (30) days has passed.