

New Child Support Laws in Minnesota

Child support laws in Minnesota have changed!

New

This information is meant to give you general information about parts of the new child support law. For more detailed information or to know how the new law applies in your case, talk to a lawyer or your county child support office.

An updated booklet on child support from the Minnesota Department of Human Services, Child Support Enforcement Division, has helpful information about child support and the new changes to the law. This booklet, called "*Understanding Child Support*," is available online at: <http://edocs.dhs.state.mn.us/lfsrserver/Legacy/DHS-3393-ENG> . You can also go to the Minnesota Department of Human Services website, www.dhs.state.mn.us. Look under Topics A-Z, pick "Child Support," then "Brochures." Find the title in the list of documents. Also, some child support offices hold general informational sessions that are open to the public. They include information about the new child support laws. Contact your local child support agency for more information.

Child Support Guidelines Calculator: How to figure out what you may pay in child support.

As part of the new child support law, the Minnesota Department of Human Services, Child Support Enforcement Division, came up with an online calculator. Parents can enter financial information and get an estimate of what their child support order might be. The calculator is at:

<http://childsupportcalculator.dhs.state.mn.us>



The website with the calculator asks you for information about jobs and benefits and costs for things like child care and doctor bills. It also has forms, worksheets, and instructions.

Remember: The calculator only gives you an estimate. It is not a guarantee of what the court will order. The court has the final decision about what amount of child support to order.

When you use the web-based calculator, keep the following in mind:

- The calculator does not save your work. Get all the information you need together before you sit down to use it. You have to print out your work after putting the information in or you will lose it.
- The estimate made by the web-based calculator is only as good as the information you put in. If you are just guessing, then the estimate of the child support amount will not be as good as when the court gets the exact information.

Children need financial support from both parents. The parent who the child lives with (the parent with physical custody) supports the child by providing a home, paying bills like lights and heat, providing transportation, clothing and school supplies, and other things. The term "child support" usually refers to the money that the other parent pays to help support the costs of the child. Child support is determined by a court order.


A child support order usually includes 3 types of support:

- basic child support (to help pay for regular expenses of the child),
- medical support, and
- child care support.

The court has to look at all 3 types of support and what may be needed. But the court will look at each situation and may “reserve,” instead of order, any or all of the 3 types depending on the situation of each case. “Reserving” part or all of a child support order means that the parent does not have to pay now for the support that is reserved, but the issue can be brought up in the future. Some examples of when child support may be reserved include: if the parent who would owe child support is getting public assistance for other children, or is completely disabled and unable to earn an income. An order for child support may also have an order or judgment for past, unpaid child support amounts, called “arrearages.”

Some highlights of the new law:

- **Income Shares – Income of Both Parents Used to Determine Child Support.** Under the old child support law, the basic child support calculation was determined only by looking at the noncustodial parent's income, unless the parents shared joint physical custody. Under the new law, the income of both parents is used to determine child support.
- **Gross Income.** Child support used to be figured out using “net income” (your take home pay). Now they use “gross income” (the amount before taxes are taken out). But, when calculating gross income for the purposes of determining child support, some things get added in and some things get subtracted. Gross income for setting child support is not the same as gross income for tax purposes – there are different rules that apply. You must look at the law to see how “gross income” for child support is determined. For more information, see the *Understanding Child Support* booklet referred to above.
- **Parenting Expense Adjustment.** This adjustment is a deduction that the parent without primary physical custody gets to subtract from the basic support they pay if they have court ordered parenting time between 10 and 45 percent. It gets figured into the child support amount in the court order.

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|---|--|
|  | Obligor: The person who has to pay child support. |
| | Obligee: The person who gets child support. |

Under the old child support law, the amount of child support was affected by the amount of parenting time the noncustodial parent had with the child **only if** the parents had joint physical custody.

Under the new law, the custody label does not matter for the purposes of child support.

- If a noncustodial parent has court ordered parenting time between 10 percent and 45 percent, they will get a 12 percent parenting expense adjustment (deduction) off the basic child support calculation. The parenting time must be stated in a court order to get the adjustment.
- If a noncustodial parent has between 45.1 percent and 50 percent parenting time, then parenting time is seen as equal for the purposes of child support and a different formula is used.
- If there is no court ordered parenting time, then no parenting expense adjustment will be included in the basic support calculation, unless the court orders parenting time in the same hearing. For example, if the parents signed a Recognition of Parentage (ROP), and there has not been an order for custody or parenting time issued, and the county brings the case to court to establish child support, no parenting expense adjustment will be included in the basic support obligation.

Again, it is the amount of parenting time that is stated in the court order that controls the parenting expense adjustment—not the label of custody!


- **Nonjoint Child Deduction.** Under the new law, parents who have nonjoint children living within their home receive a deduction when determining gross income for the purposes of child support. A nonjoint child is the legal child of one of the parents for whom child support is being determined, but not both parents. For this definition, a legal child is a child for whom the parent has a *legal* responsibility to support *and* is living primarily in the parent's home who is claiming the nonjoint child deduction.

(Parents who have child support orders for other children do not qualify for the nonjoint child deduction because these children are not living in their home. Also, they already receive a deduction in the gross income calculation for the child support orders they have for other children.)

- An example of a child that would qualify a parent for a nonjoint child deduction is if a mother is divorced and has the child from that marriage living with her, and the court is now deciding child support for a new child that the mother has with a different man. In this case, she would get a deduction for one nonjoint child for the child that lives in her home from her previous relationship.
- Children not included are: a stepchild, or a child of a significant other living with the parent for whom child support is being decided, or a child for whom the parent's rights have been terminated.
- The deduction is for up to, but no more than, 2 nonjoint children. So, for example, if a father is divorced and has four children from that marriage living with him, he can only get a deduction as if he had two nonjoint children.

- **Minimum Orders and Self Support Reserve.**

The new child support law includes a "self support reserve" for the parent who owes child support (the obligor). The self support reserve is an amount of money set aside so that the obligor has some money to pay for his basic living expenses. This reserve amount is set by law at 120 percent of federal poverty guidelines for one person. If the obligor's gross income is greater than 120 percent of the federal poverty guidelines, but not enough to pay all the child support he is calculated to pay, then the court reduces support until the support order is equal to the obligor's income available for support (leaving the obligor at 120 percent of federal poverty guidelines for his own expenses). If the obligor's gross income is less than 120 percent of federal poverty guidelines for one person, the court must order a minimum basic support order (but not medical or child care support). The minimum basic support order for 1 or 2 children (of the same parents) is \$50 a month, for 3 or 4 children (of the same parents) is \$75 a month, and for 5 or more children (of the same parents) is \$100 a month. If the court determines that a person has no income and completely lacks the ability to earn income, then the minimum support does not apply and child support may not be ordered. Also, minimum support orders do not apply to an obligor who is incarcerated, unless he has income and assets to pay support.

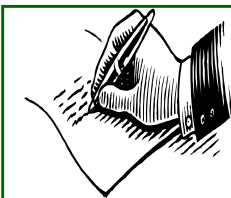


The minimum orders are set by law:
\$50 per month for 1 or 2 children*
\$75 per month for 3 or 4 children*
or
\$100 per month for 5 or more children*.
*(*with the same mother)*

- **Financial Affidavit.** Under the new law, parents must serve all parties with, and file with the court, a financial affidavit that discloses all sources of gross income for purposes of child support. The financial affidavit must be served and filed with the initial court papers in which child support could or will be determined. For parents who were never married, the first court papers filed that need the financial affidavit could be a custody summons and petition or a notice of motion and motion to establish custody and parenting time. Or, if custody is not part of the court action, the first court papers that need a financial affidavit could be a notice of motion and motion to establish child support or response to such a motion. The financial affidavit must include relevant supporting documents, such as three months of pay stubs. Minnesota law and the financial affidavit form tell you what to include with your financial affidavit.

The financial affidavit form is a specific form that is prepared by the Minnesota Department of Human Services and can be found at:

<http://edocs.dhs.state.mn.us/lserver/Legacy/DHS-4912-ENG>



(or go to the Minnesota Department of Human Services website, www.dhs.state.mn.us, under "Topics A-Z," "Child Support," "Forms". If the financial affidavit is not served on the other parent or parties (including the child support office if they are involved with the case) and filed with the court at the start of the court case, the court may disregard your information and base the child support order on other evidence before the court, or base an order on what an obligor could potentially earn.



Q: What do they mean by “party” in a child support case?

A: A “party” in a court case is generally someone who is part of the court case and whose rights may be affected by the outcome of the case. In child support cases, the parents are usually the “parties.” Many times the child support office is also a party to the case. The child support office is a party to the case if public assistance money (MFIP, Medical Assistance, etc.) is being spent on the child or was spent in the past on the child. The child support office is also a party if a parent has applied to the child support office for help. Other people could also be a party in a child support case, like a grandparent who has custody and wants child support from the parents.

Q: Why does it matter who is a party to the case?

A: Parties to the case must get notice of court hearings and must get served with copies of all court papers. If the child support office is a party to the case, they must get notice of the hearing and be properly served with the court papers for the hearing. Sometimes, a parent forgets to let the child support office know when that parent schedules a hearing or doesn't serve the child support office (when they are a party to the case) with the court papers asking for their child support order to change. If all parties are not notified or served properly for the hearing, the court could dismiss the request you are making to have the child support order changed. Then, you will have to start all over from the beginning and re-file and re-serve your papers and get a new hearing date. Failing to serve all the parties with the financial affidavit could also have other negative results, such as the court disregarding your information in deciding a child support order and using other information provided to it about your financial situation (see also section on financial affidavit).

- **6-month Review Option.** The new law allows for a 6-month review option. Either parent can ask for a 6-month review on child support and/or parenting time. They can ask for the review after a divorce, legal separation, or court order that first decides child custody, parenting time, or child support rights and obligations of parents. This form to ask for a review is attached to your order that decided the rights or obligations. If a parent asks for the 6-month review hearing, the court must review:
 - (1) if child support is current; and
 - (2) if both parents are following the parenting time rules of the order. This is not a hearing to change child support or parenting time, but a hearing to look at how the order is being followed.
- **Medical and Child Care Support.** There were many changes made in the new child support law that have to do with medical and child care support. Many of these changes are for low-income obligors when public assistance money is being spent for the child (such as Medical Assistance, MinnesotaCare, or a child care subsidy). The *Understanding Child Support* booklet explains these changes in detail.

Using the new law:

- **For New Child Support Orders:** The new child support law went into effect January 1, 2007. Cases to begin new child support orders that were filed in court after January 1, 2007 will be decided under the new law. Parties to a case can agree to apply the new law in other cases, such as case that was filed before January 1, 2007 but is being decided after January 1. (Normally, such a case would fall under the old law.)

- **For Existing Child Support Orders:** Generally, child support orders that existed prior to January 1, 2007, will not change until there is a new court order. To get a new court order, a parent or party must file a motion and have a legal basis that qualifies for a new court order. See next paragraph, *Modifying or Changing an Existing Child Support Order*.

However, if you have an order to pay child care costs, payment of those costs can be suspended without going to court if the county gets verification that the child care costs have stopped. The child care costs can also be restarted without going to court.

Modifying or Changing an Existing Child Support Order

The fact that there is a new child support law is not a reason to change a child support order decided under the old law. A parent must have a legal basis to change an existing child support order.

In 2008 and after, a parent has a legal basis to change an existing child support order if there are changes that make the order they have now unfair. Like any of these things:

- (1) A big increase or decrease in the income of either parent;
- (2) A big change in need (increase or decrease) of either parent or the child;
- (3) Getting public assistance;
- (4) A change in the cost of living for either parent (this is measured by the Federal Bureau of Labor Statistics);
- (5) Extraordinary medical expenses of the child that were not covered in the medical support order;
- (6) A change in availability of health coverage or a big increase or decrease in the costs of health care coverage;
- (7) New work-related or education-related child care expenses of the obligee. Or a big increase or decrease in current work-related or education-related child care expenses;
- (8) Emancipation of the child as defined in child support law.



There are some situations when the court assumes there is a big change in circumstances and that a child support order is unreasonable and unfair. For more information, see the *Understanding Child Support* booklet.

Because the child support system is going through major changes, there are limited legal reasons to change a child support order in 2007. Those reasons are:

- (1) There is at least a 20 percent change in the gross income of the obligor; or
- (2) There is a change in the number of joint children for whom the obligor is legally responsible and actually supporting; or
- (3) A parent or another caregiver of the child who is supported by the existing support order begins to receive public assistance; or
- (4) There are additional work-related or education-related child care costs of the obligee or a big increase or decrease in existing work-related or education-related child care expenses; or
- (5) There is a change in the availability of health care coverage, or a substantial increase or decrease in the cost of existing health care coverage; or
- (6) The child supported by the existing child support order becomes disabled; or
- (7) Both parents consent to modification of the existing order under the new law.

If you are changing a child support order for child care or medical support in 2007, the change applies only to that part of the order you are changing. So, in 2007, the court is not going to change your basic child support obligation using the new law if the only thing that needs to be changed is child care or medical support, but the court will consider a change to the child care or medical support part of your order.

Understanding the Child Support System

Sometimes the parent with custody gets financial help from the government, called “public assistance,” to pay some of the costs for the child. Public Assistance in Minnesota are things like MFIP (Minnesota Family Investment Program), child care assistance (day care subsidy), Medical Assistance, MinnesotaCare, and IV-E foster care.

The child support agency has to get a child support order when there is public assistance.

If a parent with physical custody of a child gets some type of public assistance, that parent must work with the child support agency to help establish paternity for the child and set a child support order. This is true unless they receive a waiver because of a situation of family violence. This means that many custodial parents do not have a choice in "getting child support on the father" because they are receiving public assistance from the government. The government is also *required* to start a child support case against the noncustodial parent when public assistance is involved.

The child support agency must establish paternity before a child support order can be set.

The first thing the county child support agency must do when starting a child support case with unmarried parents is to make sure paternity is decided. If paternity is not decided, the county must work to get paternity decided. This can be done voluntarily by both parents signing a Recognition of Parentage (ROP) or by filing a paternity action in court. If paternity is decided by an ROP and public assistance is involved, a child support proceeding will almost always be started by the child support agency. If paternity is decided in court, the court will usually set a child support order at the same time. You can ask for genetic testing before signing a ROP or when going through court to decide paternity. If you have an open child support case with the county and it is trying to establish paternity, the county must pay for the genetic test for you. Some counties won't make you pay back the cost of genetic test, or the cost they ask you to pay is much less than if you paid for a genetic test yourself.

If public assistance is not involved, the custodial parent can ask the child support agency to help them get child support from the noncustodial parent.

What about child support when it is not court ordered?

There is no law that says parents have to get a child support order through the court system, unless public assistance is involved (see above). But almost any parent can apply for help from the child support agency to get a child support order from the court. Whether public assistance money is involved or not, you can be held responsible for back child support. It can be for up to 2 years before the start of a court action or dated back to the birth of the child, whichever comes first (so, at most, 2 years). You can also be required to pay part of the costs of genetic testing and for part of the mother's birthing costs.

Don't start out with child support debt when a child support order is first set: Plan Ahead!



Sometimes fathers pay informal child support directly to the mother prior to a court-ordered child support order. Informal support paid by cash or by buying things (such as diapers, food, clothes) for the child will usually not be given credit when the court addresses what amount you should pay for back child support.

As an unmarried father, you can plan ahead to try to avoid large payments for back child support. The best option is to pay child support that is not ordered by the court (or "informal support") by check or money order directly to the custodial parent, with it clearly marked on the payment that it is child support for a specific month. You should never pay money (cash) directly to the mother or buy the child things that you intend as support, hoping that it will later count for child support. **Things, such as diapers, clothing, and food, while necessary and important, are almost always considered gifts, both before and after a child support order is set.**

You should check with your local child support agency if you plan to pay child support to the custodial parent before court-ordered child support is set to make sure that you can receive credit for your informal payments if it goes to court. Another option is for you to contact the child support agency to get a child support case open and/or to start making voluntary payments into the main child support payment center for the State of Minnesota (every county should be able to do this). **A father, just like a mother, can ask for a child support case and request that his child support be paid through the child support agency.**

If your child's mother is getting public assistance, then you should not be giving her any informal support, like the things mentioned above, and think that it counts as child support. You will probably not get credit for it later on. If you want to pay support for the child in this situation, you should contact the county child support agency. If you are living with your child's mother while she is getting public assistance, you should get on the public assistance grant with her and not pay child support to her. If you live with your child's mother while she gets public assistance but it is not reported, the public assistance may be cut off and you and the mother could be charged with fraud.

Why can't I get my parenting time or custody issues decided at child support court?

Child support hearings are usually in front of a child support magistrate who cannot decide disputes about parenting time and custody. A child support magistrate is a decision-maker, like a judge, but they *only* hear cases about child support. They do not have the power to hear and decide many kinds of disagreements. The only time a child support magistrate can decide an issue with parenting time and custody at a child support hearing is when the child support hearing is part of a hearing to establish paternity.

Then the child support magistrate can issue an order about those issues the mother and father AGREE on, like custody, parenting time, or the name of the child. If there is an action to decide paternity in front of a child support magistrate, and one side raises an issue about custody or parenting time in the papers that are served before the court hearing, and the other side FAILS TO APPEAR OR RESPOND, then the magistrate can issue an order about the things that the party raised but the other side failed to respond to. If you and the mother cannot agree on custody, parenting time, and/or the name of the child, the child support magistrate should issue an order for the issues you do agree on and may order temporary support, and refer the rest of the issues to a district court judge for another hearing. A district court judge can make decisions about custody, parenting time and the child's name, even if you and the mother do not agree.



If you had a paternity action brought against you or you plan to bring one yourself in District Court (not with a child support magistrate), then the judge may order child support at the same time. The judge may also decide parenting time and custody issues.

As a general rule, if you file a motion or have a hearing because of child support, only child support can be addressed and not parenting time or custody. However, if you have a motion in district court for parenting time and/or custody, child support issues can also be raised and decided at the same time.

What happens to my child support order if I lose my job or am making less money?

Nothing! The amount you are ordered to pay in child support stays the same UNTIL a court order says differently.

You can send a letter to the county child support office asking them to help you modify (change) your child support order. However, it may take 6 months or longer to get your order changed through the county child support agency. Sometimes the child support agency cannot help you. In any case, it is always the responsibility of the person who owes the money to ask the court to change the child support order when necessary.

If you lose your job or need to modify your order because of a **substantial change** that makes your prior order unfair, **you** have to bring a motion to modify child support. A judge or child support magistrate cannot go back in time and change past amounts of child support that you were supposed to pay but could not. They can only change the amount you are ordered to pay in the future. They can start this new amount from the date that your motion to modify your child support order was served on the other parent and the county child support office, if they are a party to the case.

This means that you **must take action right away** if your circumstances change and you think that your child support order needs to be changed. Waiting to do something will only add to your child support debt. Remember: it is your job, not the job of the mother of your child or the county, to change your child support order.

So, how do I change my child support order?

The forms to modify child support can be found at your local county administrator's office, the county law library, or on the internet at: www.mncourts.gov. Click on "Forms," then "Child Support."

But remember—if your child support order is changed by the court, the new amount you owe can only start as early as the date the motion was served on the other party (and county child support agency, if it is a party to the case).

What happens if I quit my job and can't find another one?

What happens if I want to go back to school?

You can still bring a motion to modify child support but the magistrate or judge who hears your case may not modify your order if they find that you could get a job to meet your needs and your child support order. Also, a magistrate or judge may not modify your order if they find that you are voluntarily unemployed or underemployed. You won't be considered voluntarily unemployed if:

- (1) the change will only last for a short time (it is a temporary change) and you will be making more money because of the change; or
- (2) the unemployment or underemployment represents a bona fide career change (not just a way to get out of paying child support) and that this career change is better for the child in the long term than the short term impact on the child because of a lower child support payment.

It is your burden to prove that either (1) or (2) above is true. In other words, simply quitting a job because "I don't like it" is not going to be a good enough reason to modify your order. Also, deciding to go back to school may also not be a good enough reason to modify your order, or modify it as much as you think it should be modified.

For more information on modification of child support orders under these circumstances, see the Written Resources section at the end of this booklet.

How can I get my child support debt to go away?

Once you have child support debt, called arrears, it will not go away until it is paid off or until it is "compromised" (forgiven). The debt will be there forever—even when your children are grown and have children of their own. Your child support debt does not end just because your children become adults. The only exception to this is if you get your arrears legally forgiven. You owe your child support debt to either the custodial parent or the government (or in some cases you may owe them both). If you owe child support debt to the custodial parent, the custodial



parent can agree to forgive the child support debt you owe her. The government can also forgive debt that you may owe it, *in some cases*. You should contact your county child support agency for more information about “arrears forgiveness.” Agreements to forgive child support arrears must be in writing and go through the child support agency and/or court to be effective.

How can I get the interest stopped on the child support I owe?

If you pay your full monthly child support order and any monthly back ordered amounts of child support, on time, for 12 months straight (no breaks), you can file a motion with the court or ask the county to stop the interest. They can do this for as long as you continue to pay the full amount that you owe each month. There are a few other circumstances in which the court can stop interest. Contact the child support office for more information.

What happens if I don't pay my child support order?

The child support agency has many ways to try to get parents to pay their child support orders. Some things that could happen to you if you are not paying your child support order include:

- suspension of your driver's license
- suspension of your fishing or hunting license
- suspension of your occupational license (such as realtor's license or barber's license)
- denial of your student grant application
- taking money from your bank accounts or other financial accounts (only up to the amounts you owe)
- intercepting and taking your state and federal tax refunds (only up to the amounts you owe)
- contempt of court (possible jail)
- denial of your passport application



Each of these different enforcement remedies have different rules that apply to them. For example, before they can have your driver's license suspended, you must owe at least three months of child support and not be following a payment plan. The child support office must give you notice that they intend to suspend your license before it is suspended. That notice is mailed to your last known address. This is one reason why it is very important that you notify the child support office every time that you move. Otherwise, you may not receive the important notices that they send you.

For more information about these ways that the child support office uses to enforce child support orders, read the *Understanding Child Support* booklet or contact your local child support agency.

The phone number and address for your county and state child support agency is listed in the phone book. This information is also available on the internet at: www.dhs.state.mn.us. Choose “Topics A-Z,” then pick “Child Support,” then “Applying for Child Support Services,” and then click on the link to county child support agency. **The child support agencies do not represent *either* parent but are there to *serve* both parents on behalf of the child.** The child support agencies have a lot of educational material about child support.