

## CHILD SUPPORT

### ***What is child support?***

The parents of every child have a duty to take care of the child—providing day-to-day care, a home, schooling, food, clothing, medical care, etc. When parents live apart, it is difficult for the parent who is living with the child to pay for all of these costs alone. Federal and state law require the other parent to help pay these costs.

### ***When does a parent have to pay child support?***

Whenever parents are permanently living apart, either one can ask a court for custody, and for child support from the other parent. This is true even if the parties are married and are not asking for a divorce. In addition, a court can require either or both parents to pay for the cost of care for their child in a foster home or juvenile facility.

### ***What do I need to do to get child support for my child?***

If the other parent of your child is not providing reasonable financial support, you can file a petition in court for an order of support. (Note that a man who is not the legal

father of a child has no duty to pay support; he does not have any rights regarding the child, either.) You can also ask the state's Child Support Enforcement Division (CSED) to get a court order of support for your child. CSED also can establish paternity if necessary. To find out more, contact CSED at (800) 288-7207; or look at the CSED website at <http://www.hsd.state.nm.us/csed>. CSED will want to know the Social Security number and the name and address of the employer of the parent who should pay support.

CSED handles many cases; it may take some time for it to start working on your case. Going directly to court to get an order of child support is usually faster, but CSED is much less expensive.

### ***What if I don't know who the child's father is?***

If you are the mother of a child and you are unsure who the father is, a court can “establish paternity” by requiring possible fathers to get medical tests to see if they are the father. Until a court order or other legally enforceable document says a man who is not married to the mother is the father of the child, that man has no legal duty to the child (such as the duty to pay

support and carry health insurance) and no legal rights to the child (such as the right to custody or visitation).

If you want to have paternity established, you can work with a lawyer to start a paternity case in court, or you can ask for help from the New Mexico Child Support Enforcement Division. The New Mexico Supreme Court has court forms online that can be used to establish paternity, and some county district courts also have packets of forms for this purpose. You may find these forms difficult to use without legal advice or assistance. For more information about paternity, see “Paternity” on [www.lawhelpnewmexico.org](http://www.lawhelpnewmexico.org).

If your child receives TANF or Medicaid, the law requires you to cooperate with the Child Support Enforcement Division to establish paternity and get a court order for child support—unless the state’s going after that parent for support would endanger you or your child. See “Public Benefits” on [www.lawhelpnewmexico.org](http://www.lawhelpnewmexico.org) for more information about your rights.

### ***Which court should I go to for an order of child support?***

In New Mexico, the state district court decides child support cases, so long as it has authority (“jurisdiction”) over the parent who should pay support and the child who needs support. There is enough of a connection with the parent if that parent consents to have the case decided in New Mexico; if the parent lived with the child in the state, provided prenatal expenses or support, engaged in sex that caused conception of the child, claimed to be the parent, or received court papers about the child support case while the person was in New Mexico. Sometimes a New Mexico court cannot get jurisdiction over an out-of-state parent.

Sometimes CSED can help establish a child support order in this situation. It can work with a support enforcement agency in another state that has jurisdiction over the parent.

Once a court does have jurisdiction to order support, it keeps that jurisdiction; the same court can make changes to the order later on.

### ***Once support is ordered, how does it get paid?***

Courts almost always order child support to be paid through “income withholding”—that is, an

employer must take the money out of the parent's paycheck before paying the worker. This method works for most people who are employees. The money goes to the Child Support Enforcement Division (CSED), which sends it to the other parent. If a parent receives TANF or Medicaid for the child, the parent may receive only part of each support payment the agency receives. CSED uses the rest of the money to reimburse the state for the TANF or Medicaid used by the family.

It makes sense to use CSED to collect and keep records about payment—that way, both parents are protected from claims by the other about payment or nonpayment. CSED also has enforcement power, such as the ability to intercept tax refunds, suspend licenses, make credit bureau reports, etc.

### ***How much money does the parent have to pay as child support?***

Either a court or the state Child Support Enforcement Division (CSED) decides how much the parent must pay, based on a formula. The amount depends on the incomes of both parents, and follows state guidelines. Under the guidelines, the parent who pays

support is responsible only for his or her percentage of the total cost, based on his or her income. In most cases, the parent who does not have the child will be responsible for the standard amount calculated under the formula. To find out what the child support amount could be in your child's case, you can look at the New Mexico guidelines and "child support calculator" online at [http://www.nmcourts.com/cgi/prose\\_lib/](http://www.nmcourts.com/cgi/prose_lib/)

Sometimes there may be exceptions for medical, dental, counseling, or educational expenses, or transportation and communication expenses necessary for long-distance visitation. In some cases, the parent who does not have the child may be disabled and unable to support himself or herself. The law does not expect people who depend on SSI or other need-based public assistance to be able to support children. Thus, some parents may have a good reason to appeal the amount of support calculated by the guidelines.

### ***What if the parent who is supposed to pay support doesn't have a job?***

The law presumes that a parent can find at least a minimum wage job

even if the person does not have a job right now. For a parent who is out of work, it is very important to keep records of efforts to find a job. In addition, a parent who has the ability to earn a high income will have to explain why he or she has taken a low-paying job. People who can't show they tried in good faith to support their child can be held in contempt of court; they can lose their driver's licenses, hunting and fishing licenses, and even licenses related to work—such as the license to practice law or work as a hairdresser. In rare cases, they can end up in prison for refusing to pay support.

***What if the parent who is ordered to pay support loses his or her job after child support has been ordered?***

Child support can be withheld from unemployment benefits checks. If the amount withheld leaves the parent unable to pay basic bills, the parent can appeal the amount being withheld. However, in most cases unemployment is a short-term problem; an appeal is more likely to succeed if there is a good reason to believe the person will be unable to find any kind of work for a long time. The court will not

reduce a child support based on a short-term job loss, or on a voluntary decision to leave a job, or if the past job was seasonal and the current support amount already took into account the seasonal nature of the job.

***What if the parent who is ordered to pay support is paid “under the table”?***

It is illegal not to report income to the Internal Revenue Service and state taxing authorities. Tax evasion is a felony. It also is unlawful for employers not to report employee earnings. Still, when income is not reported, it is difficult to enforce a child support order. CSED will make every attempt to find the method that works best to get the non-custodial parent to comply with the order.

***Can the child support amount ever be changed?***

Yes, in some situations. Every court order for child support requires the parents to exchange financial information every year. The parents can see if they should ask for a change in the amount of child support based on that information. A court may change—“modify”—child support after a significant change in

circumstances after an earlier court order. A short or temporary change would usually not be considered significant. An injury that causes long-term disability, a term in prison, or winning the lottery would probably count as significant—whether it happens to one of the parents or the child. The law presumes there is a change in circumstances if (1) a parent’s income goes up or down so much that the child support guidelines would change the support amount by more than 20% and (2) at least one year has passed since the court’s last order.

If the Child Support Enforcement Division established your child support order, you can ask it to change the order for you if you have a good reason. If the child support amount was decided originally by a court, either parent can ask the court to modify the amount by filing a motion and other court documents. In either case, the state guidelines still apply.

***Does getting joint custody of a child mean a parent does not have to pay child support?***

No. Both parents have a duty to support the child; the child support

income guidelines still apply. The guidelines do take into account how much time each parent has the child with him or her, however; the more overnights the child spends with you, the lower your portion of the support amount will be.

***What happens if I am paying child support and then have another child with a different partner?***

Having more children does not end your duty to support your other children. (Sometimes the court will consider whether you are paying the costs of raising children born later.)

***If I am ordered to pay child support, how do I get credit for other payments I make for the benefit of the child—things like school clothes or summer camp?***

Parents who pay support through CSED do **not** get credit against the amount ordered for any payment they make directly to the family or for things they purchase for the child directly. Only payments made in the amount and in the method stated in the court order

are counted as child support. Anything else you provide is viewed as a gift. Even if you do not pay through CSED, you must be able to prove that extras you provided were the kinds of things regular child support is supposed to pay for, how much they cost, and that the child actually got them.

***After a court order requires a parent to pay child support, does the duty to pay support end if the parents start living together and sharing the costs of rearing the child?***

Sometimes parents who have been living apart begin to live together after a court or CSED has ordered one of them to pay child support. People who do this should immediately ask the court order or CSED to terminate the order for support. Otherwise, the law will assume that the parent ordered to pay support continues to have the duty to pay until a new court order says otherwise.

***What happens to a parent's duty to pay child support if the child stops living with the other***

***parent and starts living full-time with the paying parent?***

The paying parent will continue to “owe” support until there is new court order terminating the child support obligation. It is important to ask for this change as soon as possible. The parent who now has the child can seek support from the other parent.

***One of my children has turned 18 and is no longer in school. Shouldn't my child support payment go down?***

Yes, unless there is some other reason stated in the court order for it to remain at the current rate. Even though it should go down, you should ask the court or CSED to change (“modify”) the amount you are ordered to pay. You will probably have to ask for the same kind of change when your younger children finish school, too.

***My ex-spouse tells me it's okay if I don't pay any child support. How can CSED tell me I have to?***

Children have the right to support from both of their parents. One parent cannot “give away” this right. Furthermore, in order to get TANF or Medicaid for a child, a parent must allow the state to get reimbursed by the other parent for the TANF and any Medicaid benefits used by the child.

***I don't approve of the way the child's other parent is using the child support that I send. How can I control the way the money is used?***

The short answer is, “You can't”. If you have good reason to believe that the child is being neglected or abused, you may want to work with a child protection agency (in New Mexico, that's the Children, Youth, and Families Department) to change custody or find a safer environment for the child. Even in that situation, you still have a duty to comply with a court order for support until the child lives with you.

***My child's other parent hasn't paid child support. Do I have to allow visits with the child?***

Yes. Not being paid support is not a legitimate reason to deny a parent's time with a child.

***If the other parent hasn't paid child support, is there anything I can do to force payment?***

If you are using the Child Support Enforcement Division to collect support for your child, CSED will ask the court to force payment after the amount overdue reaches a certain level. If you did not use CSED to establish your child support, you can file a motion with the court to order the non-paying parent to give a good reason for not paying. You also can ask the court for a garnishment order. Such an order would allow you to get money from things like bank accounts and investments (but not SSI, veteran's benefits, etc.). It is best to get advice from a lawyer on how to proceed in these cases.

***The child's other parent refuses to let me spend time with my child. Do I have to keep paying support?***

Yes, you do. It's important to keep records of your efforts to have contact with the child, however, as

you may be able to have the court force the other parent to permit reasonable visits if that parent has no good reason to deny you your time together and keeps refusing to allow contact.

[http://travel.state.gov/law/info/info\\_608.html](http://travel.state.gov/law/info/info_608.html).

***If there is a court order in this state for child support, what happens if the person who must pay leaves the state?***

Leaving the state does not end the duty to pay support. If you know where the parent has moved, CSED can transfer the collection of the support to the child support enforcement agency in the other state. If you are not sure where the parent has moved, CSED can use the Federal Parent Locator Service to find the parent. Someone who flees the state to avoid paying child support can be charged with a felony.

***What if the parent with a duty to pay child support leaves the country?***

Leaving the country does not end the duty to pay support. The United States cooperates with many countries, including Canada and Mexico, to collect child support. For more information, see