



# Child Support Basics

This guide answers questions that a non-custodial parent might have about child support. All of the information is helpful for custodial and non-custodial parents. This information has been adapted for the following New York State counties: Nassau and Suffolk.

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## Why did I get papers saying I must go to court?

Someone or an agency filed a **petition** in court asking you to pay child support. A petition is a request in writing to the court, asking for an order to be made.

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## Who can file a child support petition?

A child support petition can be filed by:

- The person caring for the child
- The Department of Social Services if the child is, or was, receiving public assistance; or
- The child (although this usually applies only to older children).

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## When does child support end?

In New York State, a child can receive child support until the age of 21. Sometimes child support can end earlier. Examples of when it can end earlier are if the child joins the military or gets married.

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## What will happen when I go to court?

At your court appearance, a **support magistrate** will hear the case and make an **order for child support**. The order for child support is a piece of paper that tells you how much money you have to pay, how often you have to pay it, and where to send it. A support magistrate is similar to a judge and has the power to make decisions about child support and **paternity** cases. A paternity case is about who the legal father of a child is.

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## Can I get a lawyer for my child support case?

In general, Family Court does not give parents free lawyers in child support cases. If the non-custodial parent is the **respondent** in a violation petition and is in danger of going to jail for not paying, they can request a lawyer to be assigned by the court. The respondent is the person against whom a case is filed. All parties may hire a lawyer if they want to. In some cases, the support magistrate may assign a lawyer called an **attorney for the child** to make sure that the best interests of the child are being protected.

### Definitions of key terms

**Custodial Parent:** The parent living with the child most of the time.

**Non-Custodial Parent:** The parent not living with the child.





## How is the amount of child support decided?

The amount is based on the **Child Support Standards Act**. First, the court determines the **gross income** of the two parents together. Gross income is the amount of money you earn before taxes are taken out. Some special expenses will reduce your income level for child support. Ordinary expenses are things you pay all the time, such as the electric bill, credit card bills, and rent. These bills will not reduce your income level for child support. Once the court determines your total income, it uses the formula to the right to decide the amount needed to support the child. Note that the calculation may be different if both parents' combined gross income is above a certain amount. The amount changes regularly. As of March 1, 2022, the amount was \$163,000.

1 child = 17% of your income  
2 children = 25% of your income  
3 children = 29% of your income  
4 children = 31% of your income  
5 children or more = 35% of your income

You will be required to pay at least \$25 per month, even if you receive public assistance.

You may be ordered to pay extra for child care and health care costs. Or you may be ordered to include the child on your insurance.

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## What happens if I have not been paying regular child support?

The court can order **retroactive** support. This means you have to pay support from the date the petition was filed, even if that was long before you went to court. You can ask for credit for any payments you made after the petition was filed.

If you do not pay child support you were ordered to pay, you will owe **arrears**. Arrears are unpaid child support. If you owe arrears, the court can add a set amount to your payment until you have paid all the money you owe.





## What should I bring to court?

1. A carefully completed Financial Disclosure Affidavit. This form is used to give the court information about your income and expenses.

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2. Documentation that proves your salary, such as pay stubs.

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3. Copies of recent Federal and state income tax filings.

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4. Documentation of health care expenses for you and/or for family coverage, and the amount of that coverage.

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5. Documentation that shows your Social Security or disability benefits, worker's compensation, unemployment benefits, veterans benefits, pension or retirement funds investments, fellowships, or annuities.

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6. Information or statements about any public assistance you receive, such as Medicaid, rental assistance, or SNAP benefits.

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7. Proof of expenses, such as child support paid for other children. These expenses may be subtracted from your income before the court determines your support payments.

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8. If you were ordered to pay support for another child, bring a copy of the order and proof of payments you made. Some ways to prove what you have paid are receipts for money orders, canceled checks, or pay stubs showing that the support has been removed.

## What if I work "off the books?"

If you work "off the books" or do not receive regular paychecks, the court may base your income on one of the following:

- What you earned before
- What the court thinks you could earn
- What the standard of living is in your household

The amount the court decides on is called an **imputed income**. The court then uses this imputed income to decide how much child support you have to pay.



## What if I miss my court date?

If you miss a court date, a support magistrate can issue a **default judgment**. A default judgment is an order that is made when someone does not show up for court. In child support cases, the default judgment is an order for child support against the non-custodial parent. The order is based on the information the custodial parent gave to the court.

If you want to cancel the order, you may file a **motion to vacate**. This is a written request asking the court to cancel the order. You must give the court a good reason for not showing up. Remember, if you cannot make a court appearance, you must file a written request to the support magistrate **BEFORE** your court date, explaining why you cannot appear. The support magistrate will decide what to do with your case.



## What if I do not agree with the final support order?

You have the right to tell the court that you do not agree with the order. This is called an **objection**. If you receive a copy of the order in court the day it was made, you have 30 days to file an objection in writing. If the order was mailed to you, you have 35 days from the day it was mailed to file the objection.

You can file the objection with the clerk of the Family Court where the decision was made. A judge will decide the case. You may not have to come back to court for another hearing. However, you must continue to pay the child support until the court changes the order. The court will mail the decision to you. For more information, see the Family Legal Care guide, "**How to File an Objection or a Rebuttal to a Child Support Order**," which is available at [familylegalcare.org](http://familylegalcare.org).

## What if I am not the father?

If you were married to the mother when the child was born, the law presumes that you are the father. If you were married to the mother and believe that you are **NOT** the father, tell the support magistrate right away. This is called **contesting paternity**. Paternity means who is the legal father. The court must determine paternity before it can order child support. The court may order a DNA test. If the test shows you are the father, the court will issue an **Order of Filiation**. This is a legal document saying who the father of a child is.

## Will the court give me a lawyer in a paternity case?

If someone starts a paternity case against you, and you cannot afford a lawyer, you can ask the support magistrate to **appoint** a lawyer to you for free. Appoint means to give. You can also hire your own lawyer. If you start a paternity case, the court may not give you a lawyer, even if you cannot afford one.



## How do I make support payments?

It depends what the court order says. You may be ordered to pay the custodial parent directly or through the Support Collection Unit (SCU). If the custodial parent receives public assistance, SCU will automatically collect the support. There is a small fee for SCU services. SCU will keep track of all payments.

**Remember: Always write the case number on your payment to SCU to make sure you get credit for the payment. Do not use cash – especially if you make payments directly to the other parent! Always make payments by money order or check.**

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## What if SCU makes a mistake?

Go to the SCU office in your county, and ask to speak with a customer service representative. See page 8 for contact information for the local SCU offices.

**You can also call the New York State Office of Child Support Enforcement at 1-888-208-4485.**

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## How long is a support order in effect?

Once child support has been ordered, it stays in effect until someone asks the court to change it, your children turn 21 years old, or your children are **emancipated**. Children are emancipated if they are living separately from the custodial parent and supporting themselves, are married, or are in the military. You can file a modification petition to terminate, or stop, orders of support. Remember that you will have to show proof of these changes.

If you pay through the SCU, they automatically reconsider the case every three years. When they evaluate the case, SCU may add a cost-of-living (COLA) increase. SCU can do this without going back to court. If they do this, they will send you a letter.





## What happens if I do not pay?

Once there is a court order to pay child support, you must pay. If you do not pay, you will have arrears. Arrears WILL NOT go away, even after your child turns 21. Declaring bankruptcy will NOT get rid of arrears either. SCU has different ways to get the money from you. For example:

- SCU can have your employer take the child support directly from your paycheck. This is called **garnishing your wages**. (By law, your employer must do this. Your employer cannot fire you because of it.)
- SCU can take your state or federal tax refund before you get it. SCU can also take money directly from your bank account.
- If you owe more than a few months of support, SCU can suspend your driver's license or professional license until you pay the arrears.
- If you owe a lot of money, and SCU or the custodial parent asks the court to find that you are **willfully violating** the support order, you could be put in jail for up to six (6) months. Willfully violating means not following the order when you have the ability to pay.

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## What can I do if I lose my job or cannot pay?

If you lose your job or cannot pay for another reason – such as your income was lowered or you are going to prison – the court will not automatically change the amount of child support you are supposed to pay. If you cannot pay, you can immediately file a **petition for downward modification** in the Family Court where the order was made. This is a written request asking the court to lower the amount of child support you pay. To get the court to lower the amount, you must prove that a substantial change of circumstances has happened since the support magistrate made the final order

- A substantial change of circumstance can be that you are incarcerated as long as the incarceration is not because of not paying child support or a crime against the custodial parent or child.
- You can also ask for a modification if three (3)
- years have passed since the last order was made.
- Also, if either your or the custodial parent's income changed (either up or down) by 15% or more since the last order was made, you may request a modification.

When you go to court, you must bring proof that your income changed. You can ask the court to reduce your support going back to the date when you filed the petition. However, until the court makes a different order, you must continue to pay the original amount.

The court may look at what you made before and decide that you could make more than you do now. If this happens, the court might not change the order.

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## What if I already support my children?

Be sure to keep receipts for all support payments so you can show that you have paid them. Paying bills or buying gifts does not replace paying child support. You must make regular child support payments. You must also pay for any arrears that have added up.



## If I have been paying support, can I also get visitation?

Not necessarily. Child support and visitation are not connected. If you have not been able to see your children, you can file a petition for visitation in Family Court. Whether or not you are seeing your children, you are still responsible for paying child support. For more information on getting visitation with your children, see the Family Legal Care guide “[Custody and Visitation Basics](#)”, which is available at [familylegalcare.org](http://familylegalcare.org).

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## What if there is no child support case, but I want to support my children?

In general, non-custodial parents cannot start child support cases. If you want to support your children but do not know where they are, you can put the money in a separate bank account until you find them.

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## If my children are on public assistance and I pay support, who gets the money?

If the custodial parent receives public assistance, SCU will automatically collect the support. If you do not owe arrears, \$100 of your monthly payment will go directly to the custodial parent. This is called a **pass-through**. If you owe arrears, support will go toward the arrears first. The county will still collect support payments from you even if you give money directly to the custodial parent. The county may also reduce the child’s public assistance budget to recover this “extra” money received by the family.

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## Can I take my child off public assistance?

The non-custodial parent cannot take children off of public assistance. Only the custodial parent who started the public assistance case can do so.

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## Why would a custodial parent take children off of public assistance?

If your income is high enough, your children may receive more money by getting support from you instead of from public assistance. For example, if you are the father of all the children in the mother’s home, and she can show that you will support them, taking them off public assistance should not be a problem. If the mother has children by other fathers on her public assistance budget, taking your children off is more difficult. The state wants all children in a household to have the same income, so the mother might not be able to take only your children off of public assistance.







## Where can I go for help?

If SCU is working on your case, go to the SCU office in your county and ask to speak to a customer service representative. You can also call the New York State Office of Child Support Enforcement at 1-888-208-4485.

SCU offices by county:

### Nassau County

60 Charles Lindbergh Boulevard, Suite 160  
Uniondale, NY 11553

### Suffolk County

3455 Veterans Memorial Highway  
Ronkonkoma, NY 11779

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**Need more help?** Family Legal Care offers free legal information and advice on New York family law and court procedure.



Call our Helpline: 212-343-1122 or 800-696-8629 | Visit: [familylegalcare.org](http://familylegalcare.org)