CENTRAL VIRGINIA LEGAL AID SOCIETY
www.cvlas.org

115 S. 15th Street, Suite 400
Richmond, Virginia 23219
804-648-1012 or 800-868-1012
Fax: 804-649-8794

229 North Sycamore Street
Petersburg, Virginia 23803
804-862-1100 or 800-868-1012
Fax: 804-861-4311

103 E Water St, Suite 201/202
Charlottesville, Virginia 22902
434-296-8851 or 800-390-9983
Fax: 434-296-5731

Back Child Support

Once Child Support has been ordered and not been paid on time, unpaid child support becomes a judgment by operation of law. It can't be changed retroactively. You can't go back and undo, set aside, or change the amount of child support that was ordered and was not paid on time. You can't bankrupt it. All you can do is pay it. If you have proof of payment, you should show that to the court or agency that last ordered child support. Unless you have a good reason for not paying the back child support (such as receipt of SSI disability benefits), the minimum back child support payment in Virginia is $68 per month.

What should I do if I can't pay my child support?

Once child support has been ordered and you are unable to pay it, you need to file a Motion to Amend or Review as soon as possible. You do this with the agency or court that last ordered child support. You can ask that future child support be lowered and set according to the Child Support Guidelines.

However, the agency or court may not do this unless you show you made good faith efforts to pay the child support, or had a good reason for not paying the child support, such as receiving or seeking disability benefits, workers' compensation or unemployment compensation. In presenting the motion, you should address three issues:

1) Good cause for not having paid as previously ordered.
2) Good cause for not having previously moved to amend & review to lower the ongoing child support obligation.
3) Good cause to now amend & review to lower the child support.

Documents are helpful on all issues, especially #3. Come in with a budget, showing income and expenses, as well as documents showing actual expenses – rent, utilities, medical bills, etc.

A Motion to Amend or Review only affects child support that becomes due after the other party is served with the motion. A Motion to Amend or Review doesn't affect child support that became due before you filed.

What happens if I do not file a Motion to Amend or Review?

If you do not file this Motion to Amend or Review, child support continues to be due, and continues to become a judgment by operation of law. This is true even if nobody is asking for

child support or if somebody has agreed orally that child support does not have to be paid. Unless you get child support changed with a new written order, the old order stays in effect.

This can mean that after several years, you may owe a lot of child support. For example, if child support of $500 per month is not paid, you will owe $30,000 (plus interest) in five years. If you pay this at $68 per month, it will take you 36¾ years.

Who has to pay child support?

If you do not have physical possession of a child you owe a duty to pay child support, on behalf of the child, to the person who has physical possession of the child. You are called the "responsible party." Unless you have a good reason for not paying child support (such as receipt of SSI disability benefits), the minimum child support payment in Virginia is $68 per month.

Low-income exception to the $68 minimum. A court can set support below $68 if the payor's income is at or below 150% of the federal poverty level and the payor shows they can't pay. The court can't do this if it would seriously impair the custodial parent's ability to meet the child's basic needs.

How is child support set?

Child support is established either administratively through the Division of Child Support Enforcement (DCSE), or judicially through the Juvenile and Domestic Relations (J&DR) Court (or sometimes the Circuit Court).

● After receiving a petition, DCSE can issue an Administrative Support Order (ASO) and serve it on the responsible party. You then have 10 days to object and ask for a hearing. If no objection is made, the ASO is as good as a court's Child Support Order. It may be enforced by DCSE issuing a Mandatory Withholding of Earnings (MWE) to your employer or other entity paying you, such as the Social Security Administration.

● People may file Petitions for Child Support with the Court Services Unit of the J&DR Court in the city or county where the responsible party lives. The Petition usually will be heard within several weeks. The Judge will hear evidence as to the parties' income and issue a Child Support Order. The Judge also may issue an MWE.

How is the amount of child support set?

Child support is set using the Child Support Guidelines. This one page worksheet asks for the income of both parties. There are a few deductions. If a party has no income, or a very low income, income can be imputed to that party. This means it is assumed the party could obtain that much income, even if it is not really there. The income of the parties is combined.

Based on combined income, and the number of children for whom support is sought, the Guidelines set a combined child support obligation of both parties. There are a few deductions. The obligation then is divided between the parties according to the ratio of their incomes.

Do I have to pay child support if I can't visit the child?

Child support and child visitation are completely independent issues. You still have a duty to pay child support, even if the opposing party is denying child visitation. A party still has a duty to allow child visitation, even if you are not paying child support. In either case, the remedy is to go to court and enforce the order which is being disobeyed.

Authorized by Steve Dickinson, Esq., Executive Director, Central Virginia Legal Aid Society, 115 S. 15th Street, Suite 400, Richmond, VA 23219