

CHILD SUPPORT

Both parents have a legal duty to support their child based to their ability to provide that support. Tennessee has a Child Support Schedule that provides a formula for calculating child support.

When Courts Get Involved

When parents divorce or stop living together with their children as a family, a court often becomes involved. The court is often required to decide how much support the non-custodial parent must pay. Unlike custody, the amount of support cannot be decided by agreement of the parents.

Which court is appropriate?

In order for a court to have jurisdiction to force a parent to pay child support, it must have personal jurisdiction over the parent. Personal jurisdiction means that the parent paying the support must have a connection with Tennessee, rather than another state. Similarly, not every Tennessee court has jurisdiction, and you must file in the appropriate one in the right county. (For married parents, that will usually be a Circuit or Chancery Court in the county where one of the parents resides. For unmarried parents, it may be a General Sessions or Juvenile Court where one of the parents resides.)

Once a valid child support order is entered, the court continues to have the power to award child support even though it no longer has contact with the supporting parent or child.

The Elements of the Child Support Order

There are several parts to most child support orders. First, the paying parent will almost always be ordered to make a monthly money payment to the custodial parent. Important points to notice about the child support order:

It Requires a Money Payment to the Custodial Parent. This may occur directly, via the Court Clerk, or through the Child Support Enforcement Office in Nashville. Many paying parents resent the child support order because it is made to the custodial parent and not the children. Because of this, some refuse to make the payments. Some see it as a form of alimony. However, this is not true. The direct payments are to be used to pay for the vital needs of the children, such as rent, food, and clothes.

The Court Keeps the Authority (Retains Jurisdiction) to Change the Order. A child support order is not set in concrete. It can be changed if conditions change substantially in the future. Either parent may later ask the court to raise or lower support.

Payments Automatically End When the Child Reaches Majority, Dies or Becomes Emancipated. A child reaches majority at age 18 or, if later, when the child's class graduates from high school. Note: If you are making payments through the Child Support Enforcement Office in Nashville, you need to advise it about your child's reaching majority to ensure that no arrearages (past due support) pile up.

Child Support Schedule

The Child Support Schedule is a chart which displays the basic child support obligation in dollar amounts which correspond to income and the number of children for whom a court order is being established or modified.

The Schedule shows the amount of support necessary to care for the child *based upon the combined income of both parents, not just the parent paying child support*. Each parent's obligation will be a percentage of that amount. The basic child support obligation is based upon *adjusted gross income*, the amount that results from series of calculations discussed here.

Worksheets. Two worksheets must be used to calculate a parent's financial obligation. Both parents must use them. (They are available on the Internet at <http://www.state.tn.us/humanserv/is/isdownloads.html>.) The *Child Support Worksheet* is used for calculating the child support obligation of both parents. It requires information about the children, the existing court orders, and other children not subject to the current orders. It also requires information about the amount of parenting time each parent has with a child in order to determine whether adjustments should be made, as well as information about proposed deviations to be made in the child support order. The *Credit Worksheet* is used less frequently and then only for determining the amount of credit for support provided to children from other relationships.

Income. When calculating child support obligations, the *gross* income of *both* parents is first used. This is the beginning of a series of calculations about what income is finally taken into account.

Exclusions. Gross income does not include: (1) child support payments *received* by either parent for the benefit of a child of another relationship; and (2) benefits received from means-tested public assistance programs like Families First.

Imputed Income. In an initial determination to set support, income may be imputed to parents who fail or refuse to produce reliable evidence of income and the court has no other reliable evidence of income or income potential. *Both parents are equally subject to having income imputed*.

Voluntary Unemployment or Underemployment: If a parent willfully reduces income and becomes unable to support a child in a reasonable manner given the parent's skills, education, and training, then a court may set support on the income the parent should be earning. It may do so for both parents, including parents receiving Families First benefits.

Determining Each Parent's Obligation. Once a parent's gross income has been determined and all exclusions, adjustments, and credits applied, the subtotal is called the *adjusted* gross income. Then the adjusted gross income of both parents is added, and the income of each parent is divided by the total income of both parents. The results are two percentages. They represent the parents' shares of the financial responsibility for the child. These percentages become the basis for allocating the basic child support obligation, the health insurance premium, child care, uninsured medical expenses, and extraordinary educational or special expenses.

Parenting Time Adjustment. The parent who resides more than 50% of the time with a child is usually called the primary residential parent. The parent who resides less than 50% of the time with the child is called the other parent.

When the other parent spends either more or less than standard amounts of parenting time with a child, it is assumed that the expenditures by the other parent for the child increase or decrease in proportion to the time spent. The obligation to pay child support may be adjusted – downward or upward – for this reason.

A “day” means a child spends the majority of a 24-hour calendar day with or under the control of a parent *and* the parent expends resources on the child during this period. Two hours per day with the child would not be a “day.” Keeping the child overnight, even if it were a majority of the calendar day, with no meaningful expenditures for the child’s care, would not be a “day.”

Additions to the Basic Child Support Obligation. Certain expenses are *not* included in the basic child support obligation, namely:

- a child’s health insurance premium,
- work-related childcare costs,
- a child’s uninsured medical costs, and
- extraordinary educational costs.

To include in the support obligation the mandatory expenses to be shared by the parents, an amount representing the actual cost to the parent for the *child’s* health insurance premium and work-related child care are added to the basic child support obligation. These expenses are to be averaged over a one-year period to determine a monthly amount, and then divided between the parents according to the percentages previously calculated.

A child’s uninsured medical expenses are *not* mandatory additions to the basic child support obligation. *But* any such expense that is reasonably identifiable and recurring must be added onto the presumptive child support order according to the percentage interests of the parents. Expenses that are neither reasonably identifiable nor recurring must be paid by the parents in the same proportion as their percentage interests. A provision for payment of uninsured medical expenses must be included in the child support order.

Deviations

Deviations from the Guidelines may be appropriate for reasons where the court finds it in the best interest of the child. The court’s order must include written reasons for the deviation, the amount that would have been otherwise awarded, and a written finding of how application of the Guidelines would be unjust or inappropriate in the particular case and how the best interest of the children is served by the deviation.

The court may consider a deviation for the following reasons:

- *Extraordinary educational expenses*
- *Special expenses in excess of 7% of the monthly basic support obligation, such as summer camp, music or art lessons, travel, and school-sponsored extracurricular activities.*
- *A child is in the legal custody of the Department of Children’s Services or any other child-caring entity, public or private.*

- *Travel expenses* are substantial due to the distance between the parents.
- *Extreme economic hardship* exists because of extraordinary medical needs not covered by insurance or other extraordinary special needs for the child of a parent's current family.
- *Low-income*: a parent is considered to be a low income person if his or her annual adjusted gross income is at or below the federal poverty level for a single person, but there is a minimum basic support obligation of \$100 per month if the parent has non-exempt gross income of that much.
- *High-income*: the primary residential parent has the burden of proving by a preponderance of the evidence that more support is reasonably necessary to provide for the needs of the child.
- *Hardship for either parent*: for the first modification of an order previously entered under the rules existing before January 18, 2005, a court may deviate if the modification will result in a hardship for the other parent due to a substantial increase in the order or a hardship to the primary residential parent and the children due to a substantial decrease in the amount.

Retroactive Support

In cases where initial support is being set, a judgment must be entered to include monthly support for the child for all periods up to the date of the order. Deviations are permitted but must include written justification for the deviation, the amount that would have been otherwise awarded, and a written finding from the court of how application of the Guidelines would be unjust or inappropriate in the particular case and how the best interest of the children is served by the deviation.

Modification

A child support order can be considered for modification only if there is a significant variance, if the request is for a child's health care needs, or if the reason for a previous deviation has ceased to exist. A significant variance is defined as:

- a 15% change in the amount of the current support order as compared to the proposed support order; OR
- a 7.5% change in the amount of the current support order as compared to the proposed support order where the parent's adjusted gross income is at or below the federal poverty level.

The modification may be requested due to a change in income for either parent that causes a proposed order to meet the significant variance requirements. The birth or final adoption of a child is a substantial and material change of circumstances that will enable the court to review the existing order. This review will determine if the addition of a child would result in a significant variance from the current ordered amount of support.

No variance is required to modify the order to meet health care needs of a child in an order.

Adapted from publications of the Tennessee Department of Human Services and Northwest Justice Project.