

# Child Support

The South Dakota Legislature established guidelines which courts must use to decide that a fair share of parental income and resources is allocated to the child when that child's parents are separated, divorced or unmarried. The joint monthly net incomes of both parents must be used in determining the obligation and divided proportionately between the parents based on their respective net incomes, even if the parties have joint physical custody. The noncustodial parent's proportionate share establishes the amount of the child support obligation.

## What is a child support order? Do I have one?

A child support order is a legal paper that sets up parents' duties if the parents no longer live together. The order's purpose is to make sure a child's living expenses, such as housing, food, and medicine, are taken care of and divided fairly between the child's parents.

The order sets out:

- How much money is needed to support the child or children.
- Who pays that money.

Child support may be given to non-parents that care for the child, but only parents can be forced to pay child support. The parenting plan lays out how the parents share time (custody, visitation) and other responsibilities for their children. It also shapes how the support is divided between the parents.

South Dakota guidelines lay out standard support amounts based on the parents' incomes and necessary expenses. Other costs, such as daycare, health insurance and care, and school tuition, may be added to the standard amount.

## **How do I get a child support order if I don't have one yet?**

Once a noncustodial parent has been located and if the custodial parent does not have an order for support, DCS may serve the noncustodial parent a Notice of Support Debt advising the person of their duty to support the child(ren). The noncustodial parent must respond to the notice and give a financial statement. If the person does not contest the amount of support, orders can be obtained within 60 days after the noncustodial parent is served. If either parent does not agree with the amount of support recommended by DCS, they may ask for a hearing. This may take three to six months.

## **How do I make the other person pay if I have a support order?**

When a parent does not meet the child support obligation, DCS works to enforce the support order. Below is a list of some enforcement methods.

**Wage Withholding/Income Withholding** DCS may issue a wage withholding order to the noncustodial parent's employer to withhold current support payments plus an extra amount to be applied to any past due support, if owed.

**Auto Withdrawal of Income** DCS may enter into alternative payment agreements with the noncustodial parent instead of issuing a wage withholding order to the employer. The noncustodial parent may enter into an authorization agreement which allows DCS to withdraw an amount equal to the current monthly child support obligation, plus an proper amount for arrears (if any exist) from thier financial institution account. New Hire Reporting Employers must report basic information about all newly hired employees to the South Dakota Department of Labor. Employers must give this information within 20 days from the day the employee starts work. Each state's child support agency receives data provided through new hire reporting. Staff use the information to locate non custodial parents, create or change child support orders and to enforce child support orders.

**Credit Bureau Reporting** If a noncustodial parent owes at least \$1,000 in past due child support, DCS reports the arrearage amount to credit bureau agencies. After the

arrearages are paid, a zero balance will be reported to the credit bureau agencies. However, the zero balance will stay on the noncustodial parent's credit report for seven years.

Driver's, Professional, Hunting and Fishing License Restriction Driver's, professional, hunting and fishing licenses may be restricted for noncustodial parents who:

- Owe at least \$1,000 in child support arrearages, and
- Have not made any child support payments for three months, or
- Have at least three months of child support arrearages that have not been reduced to judgment.

The noncustodial parent is notified in writing when the restriction is placed on their license. For the restriction to be removed, the noncustodial parent has to either pay the past due balance in full or enter into a written payment plan with DCS. If the noncustodial parent does not follow the payment plan, DCS may ask revocation of the driver's license.

Passport Denial Passport applications may be denied if noncustodial parents owe at least \$2,500 in past due child support obligations. The U.S. State Department reviews passport applicants to see if they owe past due child support. The noncustodial parent must pay the past due support in full before the restriction will be lifted.

Tax Refund Intercept DCS can collect past due child support from a noncustodial parent's federal income tax refund. If the noncustodial parent does not have a tax refund coming, DCS will not be able to intercept an amount. South Dakota does not have a state income tax. The money collected cannot be applied to current support and must be applied to arrearages owed to the state first. If a collection from an income tax refund is payable to the custodial parent, DCS will hold the refund for six months if it involves a joint refund with the noncustodial parent's current spouse. This protects the state and the custodial parent should the spouse file an amended return stating the offset was due to the spouse's earnings. The custodial parent is personally liable for the return of any federal tax refund offset payments received

erroneously, including any amounts which must be returned due to the filing of an amended return of the noncustodial parent or their spouse.

**Other Income** If a noncustodial parent owes past due child support, DCS may withhold or intercept periodic or lump sum payments the noncustodial parent receives from state or local agencies, including: unemployment insurance, workers' compensation and lottery winnings. DCS may also withhold assets held in financial institutions or retirement funds.

**Show Cause Hearings** DCS may refer cases to a prosecutor for show cause hearings when a noncustodial parent has not paid any child support for a period of time. The court may find a noncustodial parent in contempt of court if they have the ability to pay but is willfully not paying the child support obligation. This enforcement tool is used only when all others have failed.

The most difficult cases to enforce are those in which the noncustodial parent lives in one state and the child and custodial parent live in another. If South Dakota does not have jurisdiction over the noncustodial parent, DCS may ask the other state to help with establishing paternity and/or a support obligation as well as the enforcement of an order for support. DCS must rely on the responding state's laws, rules, regulations, policies and procedures. State child support agencies must cooperate and help each other in handling requests for assistance. In some cases, a backlog of child support cases in the responding state may slow interstate enforcement. The other state may assess or withhold fees from the support collected.

## **Can I stop their visitation until they pay?**

Child support and visitation are separate matters. A custodial parent cannot withhold visitation if the noncustodial parent fails to pay support, and the noncustodial parent cannot withhold support if the custodial parent does not allow visitation.

## **What are the guidelines for South Dakota Child Support?**

The South Dakota Child Support Obligation Calculator is designed to give you a general idea of what your child support payment may be. This calculator is for informational purposes only. The Division of Child Support or the court assumes no responsibility for the accuracy of the child support amount you decide based upon your use of this calculator.

This child support obligation calculator is based on the South Dakota Child Support Guideline laws and is intended to give the basic support obligation for child support for a combined monthly net income up to \$30,000. For a joint net income above the schedule in SDCL 25-7-6.2, the child support obligation shall be established at a proper level, taking into account needs and standard of living of the child (SDCL 25-7-6.9).

The child support amount you decide may not be the same amount we may calculate or the court may approve. The calculator provides an estimate and is not a guarantee of the amount of child support ordered by the court. Many factors affect the amount of child support and each situation is different. Deviations and adjustments (for child care, visitation, or other factors) the court may allow are not included in the calculation of the basic support obligation.

The child support amount may be higher or lower depending on the income figures you use in this calculator. This calculator assumes all children will primarily live with one parent. It is not intended to apply to situations where there is joint physical care (the children spend half their time with each parent) or split custody (each parent has custody of one or more of the children).

Visit the [DSS Child Support Obligation Calculator](#) to find out more.

## **How do I change a child support order?**

In South Dakota, the Circuit Court is the only entity with authority to change a child support obligation. This is usually done in response to a petition filed by one of the parents. Either parent or a representative may file a petition to change their child support order. A support order may be modified without showing any change in circumstances if the order was entered before July 1, 2017.

View the video below to learn how to modify child support.

# Should I hire an attorney?

It depends on your situation. You do not have to have an attorney to file the papers necessary to get a child support order, but many parents hire attorneys to help them. An attorney's help may be an especially useful choice if, for example, you believe that your ex-spouse or partner is hiding money to reduce what they owe or is otherwise trying to avoid paying child support.

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