

## THE BASICS OF CHILD SUPPORT FOR INCARCERATED PARENTS

*This pamphlet provides a quick reference for general information and answers to commonly asked questions on child support and the court process.*

*This pamphlet is not a substitute for legal advice in your case.*

*Protect your rights. Always get legal advice so you understand your rights, responsibilities, and any legal documents.*

Published by:

Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, California 94102-3688

[www.courtinfo.ca.gov/selfhelp/](http://www.courtinfo.ca.gov/selfhelp/)

February 2007

### Do I still have to pay child support when I am unemployed or incarcerated?

Yes. You continue to owe the monthly child support plus 10 percent interest on any past-due support until the court changes the order. To change the child support amount, you must file a request for a court hearing.

NOTE: The court cannot change your child support retroactively. The earliest date the court may change your support order is the date you file your court papers or the date of your court hearing.

### Where do I get the forms to request a hearing to change my child support court order?

Court forms are available at every court clerk's office in California. Child support forms are also available at the Office of the Family Law Facilitator. Always provide a self-addressed stamped envelope if you want any forms to be mailed to you.

Court forms can be printed from the California Courts Web site: [www.courtinfo.ca.gov/forms/](http://www.courtinfo.ca.gov/forms/)

### Is there any filing fee to request a hearing?

Yes. If you receive public assistance, have low income, or have no income, you can ask the court to waive any court filing or copy fees by completing forms **D** and **E** from the list in this brochure.

### How can I get a copy of a past court order or other court papers filed in my case?

You must contact the court clerk in the courthouse where your case is filed to get copies of your file.

Provide your name, the other party's name, the type of case, the case number (if available), and the approximate date of the court order or document requested. There is a photocopy charge unless you have no income or qualify as low income. Ask the court clerk for a fee waiver application form to waive this photocopy fee.

### What forms do I need to file to change my child support order?

There are many different forms that you may use. Here are the typical forms you will need to fill out for each child support order you want to change:

**A. Notice of Motion** (form FL-301)

**B. Application for Order and Supporting Declaration** (form FL-310). Explain all the reasons why you are asking to change the court order. (For example, state when you became unemployed, why you are no longer employed, why you cannot pay the court-ordered support, why you cannot attend the court hearing, and what change you are asking the court to make in the current order).

**C. Financial Statement (Simplified)** (form FL-155)

**D. Application for Waiver of Court Fees and Costs** (form 982(a) (17))

**E. Order on Application for Waiver of Court Fees and Costs** (form 982(a) (18))

Complete and sign (in black or blue ink) the above forms.

**Make three (3) copies** of each document. **(Always keep one copy for your records!)** File your forms with the proper court in the county where you owe child support.

To file with the court by mail, send **the original and two (2) copies** to the court clerk, **along** with a **self-addressed stamped return** envelope and a cover letter asking the court clerk to file your forms.

When the court clerk returns the "Filed" stamped copy to you, find someone over 18 years old, and not a party in your case, to serve your documents. **You cannot serve your own documents.** There are two ways to serve documents: (1) by personal delivery or (2) by first-class mail. The person who serves the documents must complete a *Proof of Service* and file it with the court clerk. He or *she* must serve the local child support agency (LCSA) and the other parent at least:

- o **16 court days** before the hearing (if serving by personal delivery), or
- o **ADD 5 calendar days** (+ 16 court days) if serving by mail within California, or
- o **ADD 10 calendar days** (+16 court days) if serving by mail outside California, but within the U.S.A.
- o See C.C.P. §1005 for other situations.

### What paper do I file if I am served with a Notice of Motion or an Order to Show Cause?

You must **file** a *Responsive Declaration* at the court clerk's office at least **9 court days** before the hearing date, or the court may grant the requested relief mentioned in the papers.

You must also have someone (over 18 years old who is not a party to your case) **serve a copy of the document** on the other parent and the local child support agency (if applicable)

- o **9 court days** (if by personal delivery). **ADD 5 days** if by mail service within California. (See C.C.P. §1005 for other situations.)

## Where can I get free or low-cost information or help with my child support questions?

Free self-help information is available from the Office of the Family Law Facilitator (FLF) in every county, where you can get help with child support, spousal support, and health insurance issues. The FLF can:

- Provide educational materials.
- Provide court forms.
- Provide assistance with court forms.
- Prepare guideline child support calculations.
- Provide referrals to the local child support agency, family court services, and other community agencies.

The FLF is *not* your attorney and does not represent either party. A FLF may assist both parties in the same case. The FLF is not responsible for the outcome of your case.

There is no attorney-client privilege and no confidential relationship between any person and the FLF.

You should contact your own attorney if you want personalized advice or strategy, a confidential conversation, or representation in court.

[www.courtinfo.ca.gov/selfhelp/lowcost](http://www.courtinfo.ca.gov/selfhelp/lowcost)

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## Where on the Internet can I get information about self-help in family law matters?

[www.courtinfo.ca.gov/selfhelp/](http://www.courtinfo.ca.gov/selfhelp/)  
[www.childsup.cahwnet.gov/cshandbook.htm](http://www.childsup.cahwnet.gov/cshandbook.htm)  
[www.youthlaw.org/](http://www.youthlaw.org/)

## How is child support calculated?

The California Family Code (sections 4050-4076) establishes a statewide **guideline for child support**. The amount of child support ordered by the court depends on:

- Number of children
- Percentage of time each parent shares with the children
- Income, earnings, or earning capacity of each parent
- Tax filing status
- Support of children from other relationships
- Health insurance expenses
- Mandatory union dues
- Mandatory retirement contributions
- Child care and uninsured health expenses
- Other factors

The court will order that health insurance be maintained, if available, at no or reasonable cost through the employment of the parent(s). The court will also order, as additional child support, reasonable uninsured health-care costs and child-care costs related to employment or to education or training for employment.

The child support order may also include the cost of travel for visitation, educational expenses, and other special needs.

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## When will the child support order end?

Child support payments are usually court-ordered until the child reaches the age of 18 years and completes high school, or age 19 if the child is still in high school full time and not self-supporting. Disabled adult children may be entitled to be supported by both parents beyond this period.

## What paper do I file if I am served with a *Summons and Complaint* or a *Petition*?

You must file the ***Answer to the Complaint*** or the ***Response to the Petition*** at the court clerk's office within **30 days** after you receive the papers, or a default judgment will be entered against you. You must pay the required filing fee or submit a completed ***Application for Waiver of Court Fees and Costs*** form with your papers. (Sending your ***Answer or Response*** to the child support agency without filing the original with the court clerk will not protect you.) You must have someone over 18 years old who is not a party to your case serve your ***Answer or Response*** on the other party and the local child support agency and file a ***Proof of Service*** with the court clerk.

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## The court "presumed" that I earned a certain amount of money. How can I change the order?

If a judgment for child support was based on a "presumed income," you have 1 year from the date of the first collection of money by the local child support agency to file a ***Notice and Motion to Cancel (Set Aside) Support Order Based on Presumed Income*** (form FL-640) plus the forms **C, D, and E** on the other side of this pamphlet.

**WARNING:** Do not wait to file your motion. Your deadline for filing may be less than one year if there are other legal grounds. See a lawyer for help.

The court may, where appropriate, set aside the original support order and recalculate the guideline amount based on your actual income, or possibly your income earning ability, for the period of time for which a support judgment was entered.

If you are not successful in setting aside an order for child support, you may also seek to change the order by filing a ***Notice of Motion*** for modification of child support.

## How can I avoid the interest charges?

You can contact the local child support agency (LCSA) to determine how much you owe plus interest and work out a payment plan. You should also file a request for a court hearing to determine the arrears and interest.

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## Which agency in California is responsible for child support enforcement?

The Department of Child Support Services (DCSS) is the state agency responsible for child support enforcement. The local office in each county is called the local child support agency or the local Department of Child Support Services.

**Toll-free DCSS number: 1-866-249-0773**  
**TDD: 1-866-223-9529**  
[www.childsup.cahwnet.gov/county\\_locations.htm](http://www.childsup.cahwnet.gov/county_locations.htm)

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## Who can I contact if the local child support agency does not respond to my request for assistance?

You can contact the **ombudsperson** of your local child support agency, who can:

- Help you resolve issues with your child support case;
- Explain your rights and responsibilities; and
- Tell you the ways you can get child support services.

Call **1-866-249-0773** (toll-free) to find the ombudsperson in the local child support agency handling your child support case.