

# **OFFICE OF THE STAFF JUDGE ADVOCATE 48<sup>TH</sup> FIGHTER WING, RAF LAKENHEATH, UK**



## **CHILD SUPPORT**

### **1. Q. How much child support should I receive if I'm separated from my spouse?**

A. When we mention “child support,” we are referring to a court awarded amount, typically after a divorce has taken place. However, before a divorce is final and child support entered, active duty members are under a continuing obligation to provide “adequate support.” (AFI 36-2906).

Adequate support varies according to the needs of the child or children, the incomes of the parents, the parents' reasonable needs and the accustomed standard of living of the child(ren). While separated, the terms and conditions of support should be set out in a separation agreement using the child support guidelines for the county and state where you have filed for divorce or where the child resides, if no divorce case is pending.

### **2. Q. Where can I originally file for child support?**

A. The original child support order is entered in conjunction with the divorce decree. In other words, where ever you file for divorce that is where you would motion for child support. If child support is being sought separate from divorce, you would file in the state where the child lives. Make sure you check local law as most states have residency requirements, or time limits, that determine when a state court may hear a support issue. Filing for child support in the U.K. is possible, but remember that the Department of Finance and Accounting Services (DFAS) will not take a foreign order and may make enforcement difficult down the road.

**3. Q. Before a court order is entered, how do I know how much child support I'm entitled?**

A. Generally, all 50 states have adopted two ways of determining child support; either through considering both parties income in reaching a fair amount, or by simply taking a flat percentage of the non-custodial parents wages. Using the joint income approach, courts examine both incomes and establish a percentage of support. A flat percentage approach is much less arbitrary – there is little argument for more or less support. In most states, the flat percentage approach is determined after things like taxes and social security is removed. However, in both approaches, income can be anything. For example, even though a military members OHA is not considered income for purposes of the IRS, courts will generally consider this amount, including BAH and COLA.

**4. Q. When my child is visiting my ex-spouse, can my ex-spouse unilaterally reduce the child support paid to me?**

A. No. Unless the court order or separation agreement specifically provides for a reduction, the child support payment should remain the same.

**5. Q. If I cannot see my child for visitation, can I stop paying child support?**

A. Under most state law, denial of visitation is not a legal justification for withholding child support. In the eyes of the courts, the two issues are entirely separate and not conditioned upon each other. In other words, a party shouldn't have to pay to see the children. On the flip side, the lack of child support is not a legal excuse for refusing the other parent visitation rights. The parents do not have the right to try to link together these separate obligations. Even if a parent is not paying any child support, he/she may still visit the children. And even if a parent is not allowing visitation, the children are still entitled to child support. The denial of visitation or payments must be dealt with through the courts.

**6. Q. When does child support stop?**

A. Simply put, child support ends when the court order says it ends. This varies by state statute, but typically most states allow child support to cease upon the child turning the age of majority (18 yrs to 21 yrs). However, most states provide that support will continue beyond the age of majority if the child is still in high school, so long as the child is not over twenty years old. A separation agreement or court order by consent may set a higher age, such as upon graduation from college or at age twenty-one. Child support may end earlier than the above if the child is emancipated, such as by joining the military, moving away from home or getting married. Finally, a few states provide for a continuing obligation for secondary education, such as helping with college tuition.

**7. Q. Can the other parent's paycheck be garnished for child support?**

A. It depends. Garnishment is a court proceeding that requires a lawyer or the help of the Child Support Enforcement Office. Garnishment is allowed only if a *court order* for child support is violated; it does not apply if there is only a separation agreement.

**8. Q. What if I need more child support in the future?**

A. No child support order is ever "permanent". If the child support is set out in a court order, you may petition the court to increase child support if you can show that there has been a substantial change of circumstances since the date the order was signed. Such a change may consist of increased living expenses, inflation or an increase in the earnings of the other parent. Sometimes the parents can agree between themselves on a regular increase in child support. If they wish, they can enter into an agreement

that adjusts child support annually on the basis of, say, the Consumer Price Index or the wage increases of the noncustodial parent. When the parents cannot agree, the court must resolve the matter and the custodial parent must prove that present child support is inadequate.

**9. Q. Can child support also be reduced?**

A. Yes. The court has the power to modify child support upwards or downwards, so long as there has been a substantial change of circumstances since the entry of the original order. Thus, for example, a parent who just lost his/her job or has had a substantial pay cut could petition the court to reduce the child support payments that they are making.

**10. Q. Can child support be paid through the court?**

A. Yes. If the court order says so, the child support may be made payable through the court. Payment in this manner is the preferred method and in fact, is the growing trend among state enforcement agencies. This allows parents to be sure that payments are properly recorded and avoids problems of payments made in cash directly to the custodial parent with no receipt given. If child support is paid through the clerk's office, the clerk will also help enforce the order through contempt proceedings if the payor is in arrears. Payment through a state agency is usually accomplished by setting up an allotment. The people at finance can assist you with this.

**11. Q. How does the court decide medical expenses?**

A. State statutes vary on who pays and maintains medical insurance. If one of the parents has medical insurance, that parent is usually required to keep it in place for the minor child or children. The remaining costs -- *uncovered health care expenses* -- are divided by the judge between the parents in a way that is fair. Often this means that the parents divide these expenses equally or in proportion to their incomes.

**12. Q. What if I need more child support than the guidelines show I should get?**

A. You may ask for a variance in child support so long as you provide written advance notice to the other side before the hearing. A variance could be needed because of unusually high needs of a child, extremely high or low income of a parent, or several other reasons (daycare, after school activities, and private school are a few examples). It is very important to document the reasons for a variance so that they can be shown clearly to the court in testimony or written evidence.

**13. Q. If I'm ordered to pay child support, will I get visitation rights?**

A. Remember, one is not conditioned on the other. These are two separate issues and approached entirely differently. For example, if visitation rights are revoked for any reason, the party will still be under an obligation to continue to provide support. However, the noncustodial parent is usually entitled to reasonable visitation rights with a minor child except in extraordinary situations, such as when the noncustodial parent has a history of abusing the child. Some states allow a noncustodial parent to completely relinquish their parental rights to the child in exchange for not paying support. This is a very extreme and limited procedure. The parent relinquishing rights loses all rights to the child, including visitation. It basically means that the parent is removed from the birth certificate as if they never existed. This should never be considered without first talking to an attorney who specializes in family law.

**14. Q. If I have other questions, what should I do?**

A. See a legal assistance attorney or private attorney as soon as possible. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters.