

Have child support and parenting/visitation issues become a problem in your divorce? Do you need the help of a top divorce and family law attorney in separating the financial and logistical from the emotional? We're here for you at the Law Office of Michael J. Davis.

We handle all areas of family law, and handle them well. Your best interests, and those of your children, are our top priorities as we apply our talents and client commitments to your child support and visitation problems. Over two decades of service have made us good listeners. We carefully and sympathetically listen to your ideas and priorities related to child support and custody matters. We arm you with the information you need as well so you can make informed decisions that will impact your family's future. Our experienced family law attorney offers litigation or mediation services to meet your needs. We want just what you want: A fair settlement that will, above all, benefit your children and maintain your role in their lives.

For an **initial consultation**, [contact us](#) today by phone, fax or e-mail. For over 20 years, we've been here to serve people with child support and visitation issues in major categories such as:

- Child support calculations
- Child support guidelines
- Joint custody (Shared Parenting)
- Sole legal custody
- Child custody modifications
- Child support modifications
- Visitation/parenting rights
- Parenting time schedule
- Relocation and long-distance visitation
- Contested and uncontested divorce

As we handle all areas of family law at the Law Office of Michael J. Davis, we take on any aspect of child support and visitation on your behalf. Discuss the child support and visitation issues in your divorce with experienced Ohio divorce attorney Michael J. Davis. [Contact](#) our law office by phone, fax or e-mail to set your

initial consultation

Child support is the financial contribution one parent makes to another for the support of their children. Child support may be ordered in divorces, dissolutions, legal separations and actions

to establish paternity. It is ordered by the court or established by agreement of the parties in an amount that should allow the child to enjoy the standard of living he or she would have enjoyed had the parents remained (or had ever) married.

Who pays child support?

Although there are exceptions, in general, the “non-residential” parent pays child support to the “residential” parent (the parent with whom the child lives). In shared parenting plans, the amount of support may be reduced according to the amount of time the child spends in each parent’s home, if there is a near-equal division of that time.

How is child support calculated?

Child support is calculated according to a formula written into state law. That formula combines the father’s and mother’s gross income. Each parent is allowed certain gross income deductions, including the sum of local income tax actually paid, any child or spousal support order for other children or former spouses, and the value of a federal dependency exemption for each biological or adopted dependent of his or her household (not including the dependent(s) for whom child support has been ordered).

For example, assuming it were the tax year 2010 and you had a child by a new marriage and a non-residential child from a previous marriage, you would deduct \$3650 from your gross income before calculating support for the child of your earlier marriage. If you also had been ordered to pay spousal support to your former spouse, the annual sum of the spousal support actually paid would be deducted from your gross income and added to your former spouse’s income.

The total of both parents’ adjusted gross income is applied to a chart, which identifies the amount of support required to raise children in the parents’ income category. The paying parent pays his or her pro-rated share of that charted amount. For example, if Mom earns \$10,000 (gross salary) per year, and Dad earns \$30,000 (gross), the combined gross income is \$40,000. For one child, the 2010 charted amount is approximately \$6,500 of child support per year. If Dad were paying support, he would pay \$4,875 per year, or 75 percent of the charted amount, because he earned 75 percent of the total combined parental income.

What about day care expenses or health insurance costs?

Factored into the charted amount of child support is the cost of work-related day care expense and major medical insurance coverage for the child. Thus, if the charted amount is \$4,000 of child support per year, but Mom also pays \$1,500 per year in day care to go to work (after her day care tax credit), and Dad also pays \$500 per year for medical insurance to cover the child, the total child support cost is \$6,000 per year. It is this total cost of the child support, plus the child’s health insurance coverage cost and day care costs after tax credit, that is divided between the parents according to each parent’s relative share of their combined income.

The court typically will order one or both parents to carry health coverage, if available at reasonable cost. If no affordable coverage is available, then parents will be ordered to share in some way the costs of health care. Uncovered medical costs are usually ordered to be paid according to the pro-rated shares of the parents’ income, after the residential parent pays the first \$100 per year.

What is a cash medical support order?

Effective in 2008, child support law changed. It now requires any child support order to address the health insurance costs for a child in three separate ways:

- 1) The child support order must include the cost of health insurance when insurance is carried for the child. Depending upon the cost of the insurance, the amount of support required will vary.
- 2) If a party does not comply with a health insurance order or if reasonably affordable health insurance is not provided to begin with, the basic child support figure is applied, and a "cash medical support order" is added to it.
- 3) If there is no health insurance to begin with, or insurance is lost for some reason, then a cash medical support order is required.

The purpose of a cash medical support order is to provide money for the uncovered health care costs of a child, whether paid for by the other parent, a public agency or another person, and is charged only when private health insurance is not being carried for the child.

The law now requires a parent to carry health insurance for a minor child so long as the cost is reasonable. Cost is considered reasonable if the cost for covering the child is equal to or less than five percent of the party's gross income.

If I pay child support, do I automatically get to claim the child on my tax return?

Though federal tax law provides the dependency exemption to the custodial parent, state courts have the power to allocate the exemption to the non-custodial parent if it will result in a net tax saving that will benefit the child. The non-residential parent must have a signed IRS Form (presently, Form 8332) or its equivalent (such as a form the parents create solely to transfer the exemption) in order to declare the child as a tax exemption. A divorce decree can no longer be used for this purpose.

How long does child support last?

Child support is payable until the child reaches the age of 18, or until he or she graduates from high school, whichever is later. If, however, a child is no longer attending high school and is not living with or dependent upon a parent (i.e., is married or otherwise emancipated), then child support may end before age 18. If a child is over 18 years of age and still attends high school, support will continue until the child has completed high school, up to age 19, unless otherwise ordered or agreed.

Special rules apply to handicapped children who will not be expected to be self-sufficient by the age of 18. If a child is handicapped, child support can be ordered to be paid well beyond the child's 18th birthday. The duration will depend upon the child's capacity for independence.

The court's jurisdiction to order child support ends at age 18, with the exception of handicapped children and those still in high school after age 18. This is true even when a child over 18 is entirely dependent on parents while attending college. If, however, parents agree in their divorce decree to support a child beyond the age of 18 (to pay for college, for example), then the court can enforce that agreement.

For children born out of wedlock, the same rules described above apply. Support generally is due from the date of birth to the date of “emancipation” (age 18 or independence), but is ordered only after the fatherhood of the child is legally determined.

What happens if the court orders support and it isn’t paid?

All support orders must be paid. Payment can be made in one of three ways. Most common is the “withholding order,” in which the wages or bank account of the person owing support is “garnished,” meaning child support is taken directly from a paycheck or bank account. Self-employed persons must post cash bonds that may be used if the payor misses a payment. (The payee is paid from the bond, and the payor must then reimburse the bond fund.) A “seek work” order is used for unemployed parents. If a parent is not working when the child support order is issued by the court, then that parent must regularly report what he or she is doing to find work, and any income received or job obtained.

Any person involved in a support order has a support officer at the Child Support Enforcement Agency (CSEA). Without cost, the CSEA officer will attempt to enforce a support order by filing contempt motions on behalf of the payee and by garnishing wages or bank accounts of the person owing support.

The CSEA can take certain income sources to meet past due support. For example, any tax refund, company bonus or similar lump sum of money received by a delinquent payor can be taken to pay overdue child support. Also, the law now has enforcement provisions so that the renewal of certain licenses (such as recreational, professional or drivers’ licenses) may be denied or suspended if a license-holder is delinquent in paying child support.

Can parenting time be denied if a parent doesn’t pay support?

No! A parent who deliberately denies court-ordered parenting time rights may be considered in contempt of court, which is punishable by a jail sentence, a fine, imposition of attorney fees, and court costs. Also, if the parent who is denied parenting time seeks a change of custody, the custodial parent’s deliberate withholding of parenting time may be an important factor to the court in deciding who will receive custody. Depriving a parent of time spent with a child is not a way to get legal help in collecting child support.

Can support be stopped if a parent denies parenting time?

No! Just as a custodial parent may not deliberately disobey court-ordered parenting time to try to collect child support from a non-paying parent, the non-custodial parent also may not willfully disobey a child support order. A person who withholds support payments also may be considered in contempt of court. In addition, if the parent who withholds child support seeks custody, the deliberate non-payment of support may become an important factor in deciding that issue. The law provides remedies for denial or interference with parenting time. Depriving a child of support is not one of them.

Can support be modified?

Support may be modified if circumstances change (e.g., there is an involuntary loss of employment, military call-up, the birth of a new child or a disability determination, or an increase or decrease in the incomes of either parent or needs of the child). Either parent may

request a modification by contacting an attorney or the CSEA of the county in which the support order was issued.

Who has the duty to pay child support?

According to Ohio law, a biological parent of a child, a man determined to be the natural father of a child pursuant to law, an adoptive parent, a parent who acknowledged paternity on a child's birth certificate or a parent who acknowledged paternity in probate court has a duty to pay child support. This is in addition to the parental duty of support imposed upon married persons by Ohio law.

How long does the duty to pay child support last?

In general, the obligation continues until the child reaches the age of 18 or is otherwise emancipated before reaching the age of 18 (i.e. married; is living on his/her own, etc.), however, the obligation will continue beyond the age of 18 so long as the child continuously attends a recognized and accredited high school on a full time basis. Where the child is mentally or physically disabled (a child of "special needs") the duty to pay support may continue beyond the age of 18 if the child is unable to support him/herself.

How is child support determined?

In all matters in which child support is ordered or modified, the court is required, by law, to calculate the amount of support in accordance with current child support guidelines established by the Ohio Supreme Court. The court must use specific worksheets to calculate the child support obligation. The child support guideline schedules are presumed to be the proper amount of child support to be paid unless both of the following conditions are found to be applicable by the court: after the court considers certain statutory facts and criteria that are reasons for the court to deviate from the guideline amounts, the court determines that the guideline amount is unjust, inappropriate and would not be in the best interests of the child; and the court, after entering the amount of the child support calculated pursuant the guidelines, then issues specific findings of fact to support the determination that the amount would be unjust, inappropriate and would not be in the best interests of the child.

How does the court determine a parent's income for child support purposes?

"Gross income" means, the total of all earned and unearned income from all sources during a calendar year, whether or not the income is taxable, and includes, but is not limited to, income from salaries, wages, overtime pay and bonuses, commissions, royalties, tips, rents, dividends, severance pay, pensions, interest, trust income, annuities, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, benefits received by and in the possession of the veteran who is the beneficiary for any

service-connected disability under a program or law administered by the United States department of veterans' affairs or veterans' administration, spousal support actually received from a person not a party to the support proceeding for which actual gross income is being determined, and all other sources of income; income of members of any branch of the United States armed services or national guard, including, but not limited to, amounts representing base pay, basic allowance for quarters, basic allowance for subsistence, supplemental subsistence allowance, cost of living adjustment, specialty pay, variable housing allowance, and pay for training or other types of required drills; self-generated income ("self-generated income" means gross receipts received by a parent from self-employment, proprietorship of a business, joint ownership of a partnership or closely held corporation, and rents minus ordinary and necessary expenses incurred by the parent in generating the gross receipts); and potential cash flow from any source."

Gross income" does not include any benefits received from means-tested public assistance programs, including, but not limited to, aid to families with dependent children, supplemental security income, food stamps, or disability assistance, does not include any benefits for any service-connected disability under a program or law administered by the United States department of veterans' affairs or veterans' administration that have not been distributed to the veteran who is the beneficiary of the benefits and that are in the possession of the United States department of veterans' affairs or veterans' administration, does not include any child support received for children who were not born or adopted during the marriage at issue, does not include amounts paid for mandatory deductions from wages other than taxes, social security, or retirement in lieu of social security, including, but not limited to, union dues, and does not include nonrecurring or unsustainable income or cash flow items.

What if a parent quits his/her job or refuses to obtain employment?

When determining the income to be attributed to a parent that is voluntarily unemployed or underemployed, the court shall use the sum of the gross income of the parent, and any "potential income" of the parent. "Potential income" means both (a) imputed income that the court determines the parent would have earned if fully employed as determined from the parent's employment potential and probable earnings based on the parent's recent work history, the parent's occupational qualifications, and the prevailing job opportunities and salary levels in the community in which the parent resides; and (b) imputed income from any non-income-producing assets of a parent, as determined from the local passbook savings rate or another appropriate rate as determined by the court, if the income is significant.

Can the amount of child support be modified at a later date?

Child support is always modifiable if a material change in the circumstances of the child or the parent occurs not contemplated when the last order was issued. The court must decide if a change in circumstances exists and, if so, the court must determine the proper amount of the new support order. A material change would include a change in the needs of the child. When considering a motion for modification of child support, the court must recalculate the amount of

support using the child support worksheet and the child support guidelines. If the recalculated amount is more than ten per cent greater than or more than ten per cent less than the amount of child support that is required to be paid pursuant to the existing child support order, the deviation from the recalculated amount that would be required to be paid under the schedule and the applicable worksheet, shall be considered by the court as a change of circumstance that is substantial enough to require a modification of the amount of the child support order.

What about medical expenses and health insurance for the child?

In addition to child support orders, the court is required to order that one or both parents provide for the health care needs of the child. Either parent or both parents may be required to pay any amounts not covered by insurance.

The expected cost of ordinary and reasonable medical and dental expenses are already built in to the child support guidelines. The court will make a separate order with regard to who must pay the costs of extraordinary medical and dental expenses. The court may order one or both of the parents to pay the extraordinary medical and dental expenses, using a formula established by the court (i.e. in relation to the incomes of the parents).

How does the court assure payment of child support?

In any situation where the court has issued an order of child support, a "withholding order" must be made. A withholding order can be of several types, including an order requiring the employer of the person obligated to pay child support (the "obligor") to withhold the ordered amount from the paycheck of the obligor and to pay that amount directly to the bureau of support. The employer is then also required to notify the bureau of support of any benefit the obligor is to receive (including worker's compensation, severance pay, sick leave, bonuses, profit sharing, etc.) and any lump-sum payment of any kind that is \$500 or more. If the employer fails to comply with the withholding order, the employer is liable for any support payment not made.

In situations where the obligor is self-employed or unemployed, the court may issue an order requiring the obligor to post a cash bond with the court. Any cash bond required shall be in an amount determined by the court but must be at least \$500 but may not be more than \$10,000, conditioned on the obligor making payment as previously ordered and will pay any arrearages under any prior support order that pertained to the same child or spouse.

If the court determines that the obligor is receiving workers' compensation payments, the court may require the bureau of workers' compensation to withhold from the obligor's workers' compensation payments a specified amount for support in satisfaction of the support order.

Similarly, if the obligor is receiving retirement benefits, the court may require the entity paying the benefits to withhold from the obligor's pension benefits a specified amount for support in satisfaction of the support order.

What if the obligor doesn't make his/her child support payments?

Initially, if a person fails to make his/her child support payments as ordered, the court can find that person in contempt of court. If found in contempt, the obligor can be ordered to pay the costs of the contempt hearing, including attorney fees and can be ordered to jail under certain circumstances. In the event the obligor continually fails to pay child support (or spousal support), he/she can be charged criminally with potential penalties of up to 18 months in prison.

Will the court use my new spouse's income to determine my child support?

No. The court will NOT normally use your new spouse's income to determine or modify the amount of child support you are to pay or to include for child support calculations if you are to receive child support for your child(ren). Your new spouse has no obligation to support your child(ren) and thus, the court will not usually use his/her income except under very unusual circumstances (such as if the income is really yours but is being paid to your spouse to avoid paying support.)

Contact the Law Office of Michael J. Davis

To talk to Michael J. Davis about your legal concerns, please contact us by calling 513-604-8391 or emailing us at davislaw01@gmail.com

Michael J. Davis is located in Mason, Ohio, and serves clients throughout Ohio, including Lebanon, Maineville, Mason, Morrow, Springboro, South Lebanon, West Chester, Warren County, Butler County, Hamilton County, Clermont County and Clinton County, Ohio.