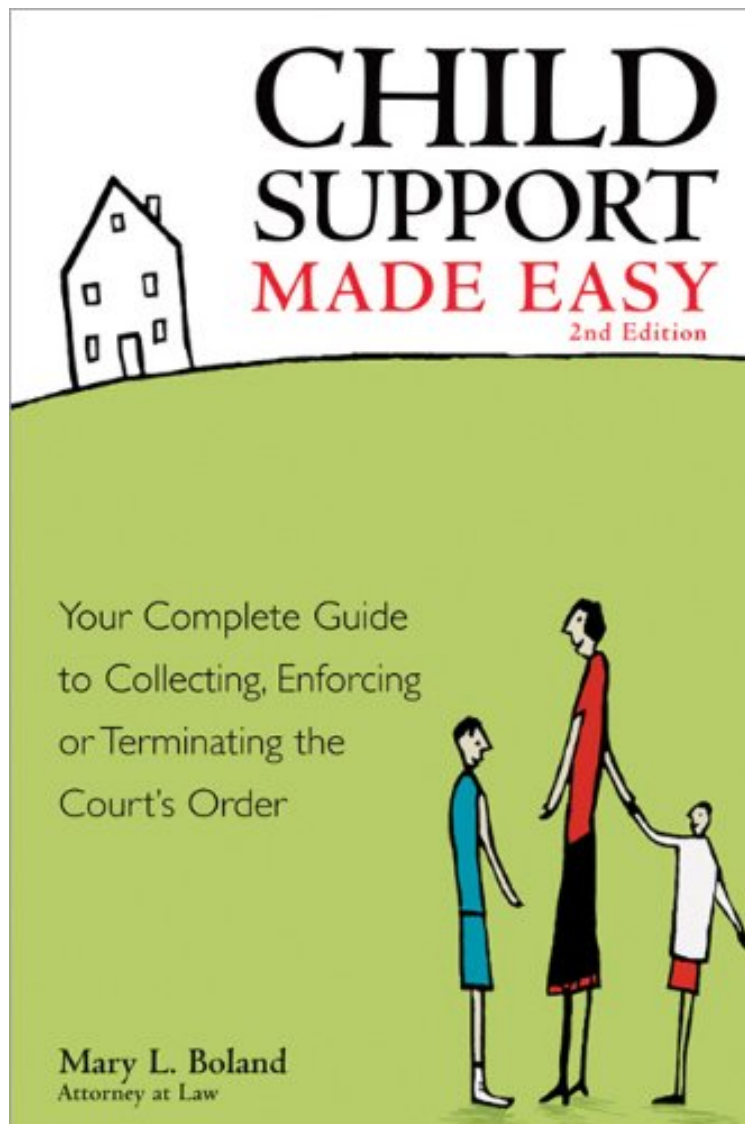


[E-BOOK] Child Support Made Easy: Your Complete Guide to Collecting, Enforcing or Terminating the Court's Order

Child Support Made Easy: Your Complete Guide to Collecting, Enforcing or Terminating the Court's Order

Mary Boland

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Mary Boland : Child Support Made Easy: Your Complete Guide to Collecting, Enforcing or Terminating the Court's Order before purchasing it in order to gage whether or not it would be worth my time, and all praised Child Support Made Easy: Your Complete Guide to Collecting, Enforcing or Terminating the Court's Order:

The laws of all states provide that every parent has a legal duty to support his or her child. This is true whether the parents are married or not and whether the child lives with them or not. However, getting an order for child support and having that order enforced are totally different issues—ask any parent who has returned to court, repeatedly, in order to be able to take care of his or her child. This updated edition explains in detail what the child support order is and what it is not. It discusses legal measures that can be taken to collect child support; gives clear direction for anyone interested in changing the child support order; and, finally, addresses the termination of support. Various problems like kidnapping, abuse, visitation problems and a parent living in another state are also discussed. Appendices identify state-by-state child support laws, child enforcement agencies and additional resources for further assistance in pursuing child support.

About the Author Mary L. Boland received her law degree from John Marshall Law School. She serves as a consultant to the United States Department of Justice, Office for Victims of Crime and is a member of the Victim's Rights Committee of the American Bar Association. Ms. Boland currently practices law and resides in the Chicago, Illinois area.

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Factors to Consider When Agreeing to Child Support Excerpted from *Child Support Made Easy* by Mary L. Boland 2006 In agreeing on a child support amount, the parents should consider a number of factors, including: what the state's guidelines require; additional quality of life or standard of living issues; each parent's financial resources; the needs of the child; who will be responsible for health care expenses; what educational expenses will be paid; other expenses; who takes the tax exemption; when and how payments will be made; whether there will be security (trust, life insurance) for the payments; what happens when the paying parent dies; and, if there is more than one child, what effect does it have on the payments if a child dies, reaches majority (age 18 or 21), marries, or joins the military.

YOUR STATE'S GUIDELINES In the previous chapter, you learned generally about the state child support guidelines in effect in every state. The guidelines that cover your case will be found either in your state's statutes, administrative rules, or court opinions. From your legal resource library, you can obtain the language of the guidelines. Many states also list their guidelines on the Internet, but be aware that these may not be the most current versions, since the guidelines are subject to review every four years. You can also contact your local child support enforcement agency for information on obtaining your state's guidelines. Working through your state's guidelines may feel a bit like doing your taxes. Many states provide specific worksheets and forms to assist the process. These are available through your local clerk's office, local child support enforcement agency, and increasingly on the Internet. With your state's guidelines as a basis, you can formulate an amount of child support to put into an agreement.

DETERMINING YOUR BASIC GUIDELINE AMOUNT Begin by determining your relevant income amount. Read your guidelines to determine whether your state is a combined income state. If so, begin by determining the amount of monthly income that both parents have. If your state is a percentage of income state, begin by determining the income of the parent without custody. Look to your state's definition of income to see which amount (net or gross) the guideline is based on. For example, your state might include in its definition of gross income: salary, wages, interest, and dividends; commissions, allowances, overtime, or tips; business income; disability benefits; workers' or unemployment compensation; pension or retirement payments; Social Security benefits; and, maintenance, alimony, or spousal support. Now look to your guidelines to determine which income amount (for both parents or just the noncustodial parent)—gross or net—will be applied to the formula for support of the number of children you have. Next, if your state permits, deduct from your income the permitted amounts. If yours is a net income state, this will usually include: federal, state, and local income taxes; FICA; Medicare or self-employment taxes; mandatory union dues and retirement payments; health insurance (but not for the child); maintenance; alimony or spousal support paid; and, child support for other children.

Total Your Income In combined income states, you next add the final income amounts together for a combined total. In a percentage state, you only calculate the guideline amount from the paying parent (so do not combine incomes in those states). Add or Deduct the Permitted Amounts Check your state's permitted adjustments to income to determine whether expenses can be added or deducted. Compare Your Income Amount to the Guideline On the guideline schedule for your state, find the amount due for your income amount. In combined income states, determine the proportionate share due from each parent. In percentage states, find the percentage amount of income from the paying parent that will be due.

DETERMINING YOUR CHILD SUPPORT AMOUNT Now that you have determined the minimum guideline amount that would be acceptable in your state, you and the other parent should consider what additional amounts, if any, you believe would be best applied to your child's support. Every year the federal government publishes an annual estimate of how much it costs for both parents who live together to raise a child. Using these figures, researchers have shown that on average, it costs around \$7,000 every year to raise a child when the family income is around \$40,000. When the family income is between \$43,000 and \$70,000, expenditures for raising a child increase to about \$10,500. The figures increase in households with more than one child. Overall, housing accounts for the biggest share of the expense—about 35% of the total—followed by food (15%–20%) and then transportation (15%). (See U.S. Department of Agriculture Center for Nutrition Policy and Promotion, *Expenditures on Children by Families: 2005 Annual Report*.) Some states have raised their guideline amounts. You can compare your state's current guideline amounts to

the United States Department of Agriculture annual expenditure amounts, or simply compute the cost of raising your own child on a monthly basis. Check to see how it compares to the minimum guideline amount for a truer picture of how much you spend on child-related costs.

WRITING THE CHILD SUPPORT AGREEMENT

Once you have worked through the relevant issues and determined that your agreement meets, exceeds, or is permitted to be less than the guideline amounts, begin writing. Make sure your written child support agreement covers: how much the payment shall be; the duration of the child support order; when and how child support will be paid; who is responsible for health care coverage; any special conditions of support; and, who will take the tax credit or exemption. The agreement must indicate that the parents are fully aware of their obligations under their state's guidelines. For example, in California, a court will approve the parties' agreement for child support that is below the guidelines only if all the following are true. They are fully informed of their rights concerning child support. The order is being agreed to without coercion or duress. The agreement is in the best interests of the children involved. The needs of the children will be adequately met by the stipulated amount.

Language you might use to express a change from the guideline amount may be as follows.

Child support will be set in accordance with the State of ____ [your home state's] guidelines. We know this is the presumptively correct amount of the child support obligation. We know we can agree to pay more than the State guidelines require, and we also know that we cannot pay less without an approved reason under our state law.

Duration of the Order

The length of the child support order depends on the agreement of the parties or the terms ordered by the court. Many orders expire when the child reaches 18 years of age (the age of majority in most states), but parents may agree that they will support a child after he or she reaches the age of majority. This usually arises when the parents are in agreement that the child should go to college. Sometimes there will be an agreement to support the child until he or she becomes self-supporting. Unless some kind of agreement is made beyond the period of time that a child reaches the age of majority, the court usually will not order such support. Sometimes, though, there is a state law that requires the parents to support their child longer. Some states extend support to age 19 if the child is still in high school. Maryland has a statute that permits a civil action to be filed when the child is exceptional, such as if the child has emotional problems. In Florida, a court held that parents of a disabled 50-year-old had a lifelong duty to support their dependent adult child. (*Hastings v. Hastings*, 841 So.2d 484 (Fla. App. 2003).)

An example of the language you can use to express the duration of the order follows. We further agree that child support shall be paid until our child reaches the age of 18 (or 19 if still in high school), dies, marries, or joins the military. We also agree that we will review our child's progress and encourage our child to go on to college or technical school as his or her interests and abilities permit, and we agree to contribute sums towards our child's education beyond high school to the extent our financial situation reasonably permits.

Payments

Historically, the child support order required that payments be made directly to the other parent. However, this proved problematic and made enforcement very difficult. Some states still require payments made to the court clerk's office, but federal regulations implemented in the states now require a centralized location to process payments of child support, and most states have begun to implement this change.

FOR EXAMPLE: In Nebraska, payments had been made to the clerk of the court, but that changed in 2004 when the state implemented a centralized payment center for the 100,000 payments processed every year. More and more, payments can be made by credit card or even electronically over the Internet. In fact, some jurisdictions mandate that, unless the parties agree otherwise (and the court approves), the payments must be made to the state registry. Many states have a form that must be filed with a child support order that provides information on the parents and child, so as to be able to properly track payments and disbursements through the state's central registry. Payment to the state registry allows a record of dates and amounts of payment to be kept. To be effective, of course, the parent entitled to payments must be sure to notify the registry if he or she moves. State laws require parents to keep registry information updated.

An agreement should include when and how child support will be paid. For example, the parents might agree to the following. Child support shall be paid by the paying parent on the 1st and 15th of every month to the state central registry for ____ [jurisdiction, county, or district]. **OR** Child support shall be paid by the paying parent on the 1st and 15th of every month to the receiving parent directly beginning on _____ [date]. Payment should begin under the order on the date of judgment. However, a separate amount should be designated for support from the date of filing of the petition. The parties should further agree to the following. The paying parent agrees he or she is responsible to pay child support from the date of filing of the petition to ____ (the date of the order) less the sum of \$ ____ (the amount already paid) as follows: \$ ____ immediately and \$ ____ on the 1st and 15th of every month.

Income Withholding

Automatic withholding of income (also called wage withholding) is one of the simplest ways to pay child support. It is also one of the most effective tools for collecting child support. Most often it takes the form of a payroll deduction. If the paying parent is employed, when the employer makes out the payroll, the child support is withheld and sent to the clerk of the court in the county where the court order was filed. The funds are then dispersed according to state and federal laws. Certain fees may apply. **FOR EXAMPLE:** In Illinois, there is a clerk of court fee. Because the clerk of the court is the official record keeper for all child support payments, it is allowed to charge the noncustodial parent a \$36 annual processing fee. Income withholding is not limited to wages.

Electronic Funds Transfer

While some parents pay their child support directly by check, many states now offer an automatic payment option, known as electronic funds transfer (EFT). This automatically deducts the child support

from your checking or savings account. This saves time preparing payments, saves money on postage and check fees, and ensures that your payments cannot get lost or delayed in the mail. In Illinois, all employers with at least 250 employees must use EFT. Employers with fewer than 250 employees but with at least ten Income Withholding Notices must also use EFT to pay all child support amounts withheld (except for support orders entered in another state or those orders where the parties have agreed that payments not be made through income withholding). Receiving Child Support Automated options also exist for receiving child support. If you are entitled to court-paid child support, you may be able to use a direct deposit method for your child support payments. Using direct deposit provides quicker access to the support funds, and your check cannot be delayed in the mail, lost, or stolen. In the states with an automated option, all that is needed is for you to have a checking or savings account, and the clerk of the court or the child support agency will electronically deposit your funds for you. If the state agency is collecting and disbursing child support payments to you, it will most often use electronic funds transfer. Some states are also experimenting with debit cards-Iowa actually requires all disbursements to be paid this way. The custodial parent can use the card to make purchases or obtain money from ATMs. This helps parents who might not have a bank account, but also eliminates stolen checks, check cashing fees, and even hundreds of thousands of dollars of postage stamps.

Schedule of Payments Most states express child support payments as a fixed dollar figure. In the past, some child support orders were expressed as a percentage to allow the amount of child support to increase or decrease with the income level of the paying parent without the parties having to return to court. A combination order, for example-17% of gross earnings or \$400 per month, whichever is greater-was intended to set a minimum amount of support while allowing the amount to increase with increased earnings. However, a percentage or combination order is harder to calculate, and therefore, more difficult to enforce. Listing the child support obligation as a fixed dollar amount makes it easier to utilize orders for withholding. Also, a fixed amount allows past-due support to be automatically calculated and makes it easier to enforce an arrearage. Seasonal work hours can be adjusted in a fixed dollar amount, and there will be no need to recalculate when the paying parent quits a job or reduces working hours. Instead, the paying parent will have the responsibility to seek an appropriate modification. Keep in mind, however, that occasional overtime will not be factored into a fixed dollar amount unless overtime is consistent enough to be included in the order. Therefore, you should use a fixed dollar amount to schedule payments. **FOR EXAMPLE:** Even though Wisconsin uses a percentage of income model to calculate child support, it requires all child support obligations to be expressed as a fixed monthly figure. This makes it easier for other states that require fixed dollar amounts to enforce Wisconsin's orders. Check your state's guidelines for the appropriate method of stating the child support payment.

Health Care It should be clear in any agreement which parent is responsible for providing accident and health care coverage for the child. To make it clear, the parents might agree by using the following language. It is agreed that _____ (name) can obtain suitable health care coverage through an employer's group health plan at the most reasonable cost. Therefore, the parents agree that health, medical, dental, optical, and prescription drug care coverage shall be provided by _____ (the paying parent). The paying parent also agrees to increase insurance coverage if the child becomes eligible under the employer's group plan. For out-of-pocket health care costs above those covered by insurance, the parents agree to prorate the expenses according to our _____ (state) guideline percentage of support income, which is currently ___% for (Father) and ___% for ____ (Mother). These payments shall be made within thirty (30) days of the billing or insurance notice of payment due, whichever comes last. Both parties agree to promptly execute and deliver any necessary forms or documents to assure timely payment of insurance claims. The parties also agree that in the event the paying party fails to maintain insurance in violation of this provision, that party will be presumed to be responsible for all health care expenses incurred by the minor child.

Life Insurance As security for future support, parents may agree to maintain life insurance on themselves, naming their child the beneficiary. In the agreement, parents might indicate this as follows. It is agreed that during the existence of the child support order for _____ (name of child), both parents will obtain and maintain suitable life insurance coverage in the amount of \$_____. Both parents further agree that their child _____ (name of child) will be named the irrevocable beneficiary of such policies. Each parent will provide the other with a copy of the policy and annual proof of payment of the premiums.

Tax Exemption Parents should cover tax credits and exemptions in any agreement. For example, parents might agree to share the exemption, possibly passing it back and forth every other year. Typical language to this effect could read as follows. For income tax purposes, _____ (Mother) can claim _____ (Child) as an income tax exemption in odd-numbered years, and _____ (Father) can claim _____ (Child) as an income tax exemption in even-numbered years. Both parents agree to cooperate in the timely signing and filing of any required or necessary revenue forms to accomplish this purpose.