NEW YORK STATE BAR ASSOCIATION

LEGALEase Child Support

Determining the Amount

Under the Child Support Standards Act (CSSA)

NYSBA

What is the Child Support Standards Act?

The Child Support Standards Act (CSSA) is the name given to a set of laws that contain a formula for calculating child support. The laws can be found in section 240 of the Domestic Relations Law and section 413 of the Family Court Act.

The CSSA establishes child support amounts that allow children to have an appropriate standard of living, based on the income of their parents. Both parents' incomes are considered in the formula even if they have joint custody, because both parents have the duty to support their children. It applies equally to children whose parents have been married and to those whose parents have not married, and to children up to the age of 21 unless they are emancipated sooner.

Must the CSSA be used by the courts?

Yes. All child support orders made by the courts must be decided by using the CSSA. The formula amount must be ordered unless the judge or support magistrate finds it would be "unjust or inappropriate." Parents can agree to a different amount if they follow the rules described under *Can parents make their own agreements? (Page 11)*

How is the amount calculated?

After the judge or support magistrate determines the income of both parents and makes the deductions allowable by law, the incomes are added together to get the "combined parental income." See pages 6 and 7. Next, the judge or support magistrate selects a percentage based upon how many children in the household need to be supported.

The combined parental income is multiplied by this percentage, and the amount is divided between the parents according to their incomes. Where the combined parental income exceeds the level set and published by New York State, the judge or support magistrate may decide, instead, to apply the factors discussed on pages 9 and 10. The level set as of January 31, 2012 is $136,000. Levels are subject to change every two years and will be posted on www.otda.state.ny.us.

This amount, plus the cost of health insurance coverage, child care, health-related expenses that are not covered by insurance, and appropriate education costs, is called the total child support obligation. Unless the judge or support magistrate has a reason to change it, the non-custodial parent will be ordered to pay his or her share of this amount to the custodial parent.

Please see the examples on pages 6 & 7.

Child support percentages

One child	17%
Two children	25%
Three children	29%
Four children	31%
Five or more children	35% +

How is income determined?

All types of income must be considered, not just income reported to the Internal Revenue Service. Some sources of income are:

1. Wages, dividends, interest, business and investment income and capital gains.
2. Voluntarily deferred income or compensation.
3. Most cash benefits: Workers Compensation, disability (both private and government), Unemployment Insurance, Social Security and Veterans benefits, but not Public Assistance or SSI.

4. Pensions and retirement benefits.
5. Fellowships and stipends.
6. Annuity payments.

The judge or support magistrate can also include other income or potential income, such as:

1. Money, goods or services provided by relatives or friends.
2. Fringe benefits or employee compensation (such as meals, lodging, memberships or automobiles) which result in personal economic benefit to the parent, and self-employment or business deductions which actually reduce personal expenditures.

Finally, the judge or support magistrate need not be bound by a parent's claimed income, but may determine income (this is called "imputing income") based upon a parent's former income or resources, or based on a parent's ability to earn.

Are deductions from income allowed?

Yes. These deductions will be made from income before the formula is applied:

1. FICA (social security and medicare) taxes.
2. New York City or Yonkers income or earnings taxes.
3. Child support paid on behalf of another child and alimony or maintenance paid to a former spouse, if the payments are made because of a written agreement or court order.
4. Alimony or maintenance paid, or agreed to be paid, to the other parent, as long as the agreement or order provides for an increase in child support when the alimony or maintenance payments end.
5. Unreimbursed employee business expenses, unless they reduced personal expenditures.

Examples

Child Support Obligation for Two Children

Step 1

CP* income (after deductions)
NCP** income (after deductions)
Combined parental income

NCP share of combined parental income: 0.64 (64%)

Step 2

First $136,000 of combined income
Two children: 25%
Combined child support for income under $136,000

Step 3

Combined income over $136,000
Two children: 25%
Balance of combined child support

Step 4

Combined child support obligation

NCP share of basic support

Step 5

Plus NCP share of child care, health insurance, health

* CP = Custodial parent
**NCP = Noncustodial parent

For more information on calculating support, see ww

#1	#2
$22,500	$ 67,500
$40,000	$120,000
$62,500	$187,500
$62,500	$136,000
x .25	x .25
$15,625	$ 34,000
$ 0	$51,500
	x .25
	$12,875
	or amount set by court
$15,625	$46,875
x .64	x .64
$10,000	$30,000
($833/month)	($2,500/month)
	or amount set by court

-related and educational expenses.

w.nycourts.gov/divorce/childsupport/

Can child support be ordered from one-time income?

Yes. The judge or support magistrate may order a parent to pay a portion of money received from a non-recurring (one-time) source, such as:

1. Life insurance policies.
2. Discharges of indebtedness.
3. Recovery of bad debts and delinquency amounts.
4. Gifts and inheritances.
5. Lottery winnings.

What about child care, medical and education expenses?

The judge or support magistrate must enter an order that:

1. Requires either parent to provide health insurance benefits for the children if they are reasonably available and accessible, and requires that the cost of the insurance be prorated between the parents. Health insurance benefits are available if the cost of the benefits for the children does not exceed 5% of the combined parental income and if the children live within 30 miles or 30 minutes of the provided services.
2. Requires, if there is no private health insurance available, that a cash medical support obligation may be established against publicly provided insurance.
3. Requires that reasonable health care expenses not covered by insurance be prorated between the parties.

4. Requires that reasonable child care expenses while the custodial parent is working, attending school or receiving vocational training which will lead to employment be prorated between the parties.

The judge or support magistrate may also order the non-custodial parent to provide or pay for:

1. Accident insurance or insurance on the life of either parent.
2. Child care expenses while the custodial parent is looking for work.
3. Child's educational expenses.

Can the judge or support magistrate order a different amount?

Yes. If a parent thinks the formula amount is not enough or too much, he or she may ask the judge or support magistrate to raise or lower the amount using these factors:

1. Financial resources of both parents and the child.
2. The child's physical and emotional health, special needs, and aptitudes.
3. The standard of living the child would have had if the marriage or household had not split up.
4. Tax consequences.
5. Non-monetary contributions a parent makes toward the child's care and well-being.
6. Educational needs of either parent.
7. A substantial difference in gross incomes of the parents.
8. Needs of other children of the noncustodial parent, provided the financial resources

available to these children are less than are available to the children requesting support.

9. Extraordinary visitation expenses or expenses of extended visitation if, as a result, the custodial parent's expenses are substantially reduced. (This factor may not be considered if the child is receiving public assistance benefits.)

10. Any other factor the court thinks is relevant.

If the judge or support magistrate does not order the formula amount he or she is required to write in the order the formula amount and the reasons it was not ordered.

Does a parent with a very low income have to pay the full amount?

No. The formula for CSSA reduces the amount required to be paid by a non-custodial parent with a very low income.

Does the CSSA apply to temporary orders?

Yes. The law requires the judge or support magistrate to make an order for temporary child support. If there is sufficient information available at the time temporary support is requested, the order can be made through the method established by the CSSA.

Can an order be changed later?

Yes. An order issued before October 13, 2010 can be increased or decreased (modified) if the court finds, generally, that there has been a change in the parents' circumstances since the prior order was established. An order entered on or after October 13, 2010 can be changed if there has been a substantial change in circumstances since the prior order was

entered; OR, if three years have passed since the prior order; OR if there has been an increase or decrease in either parent's income by 15% since the prior order. But, parents may choose to opt out of these last two standards. If you are seeking a modification due to a job loss or otherwise, you should file a petition as soon as possible, since relief is retroactive to the date of filing. The standard to modify an order based upon an agreement entered into before October 13, 2010 is an unanticipated change of circumstances. But the standard for modifying an agreement entered into on or after October 13, 2010 is a substantial change in circumstances.

Where an order is more than two years old and it is being enforced by a local child support collection unit ("SCU"), either parent may request that the order be reviewed for a possible cost of living adjustment. For more information on local child support offices, see https://newyorkchildsupport.com.

Can parents make their own agreements?

Yes. Parents may enter into agreements which provide for more or less child support than the formula amount as long as the agreement and the order meet these requirements:

1. The agreement must contain a statement that both parents are aware of the provisions of the CSSA.
2. If either or both parents are not represented by an attorney, the unrepresented parent must be given a copy of a chart that shows the formula amount.
3. The basic child support obligation must be stated in the agreement and the order.
4. If the amount agreed upon is different from the basic child support obligation, the reasons for the different amount must be stated in the agreement and the order.

This pamphlet represents a summary of New York law in 2011 and does not contain every provision of the Child Support Standards Act. It is intended to inform, not to advise. No one should attempt to interpret or apply any law without the aid of an attorney. For more information on forms used in Family Court, see http://www.nycourts.gov/forms/familycourt/index.shtml.

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