

STRATEGIES FOR COLLECTING CHILD SUPPORT

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I. INTRODUCTION

As you exit the courthouse, you feel drained but relieved. The judge ordered your child's other parent to pay you a weekly child support amount calculated according to your state guidelines.

Payments begin and you hope they will continue. What can you do now to increase the likelihood that your ex will keep paying?

Suppose, after a few months, the payments stop. Soon, a considerable arrearage accrues; you are struggling to meet expenses. How can you get your ex to pay up?

You have both non-legal and legal tools at your disposal to encourage child support payments and to collect past due child support. If your child's other parent is behind on child support, take steps now to minimize the possibility that large arrearages could accumulate in the future.

II. MAINTAIN FAMILY RELATIONSHIPS TO PREVENT OR QUICKLY FIX A NON-PAYMENT ISSUE

An important often overlooked dynamic is the relationship between you and your child and your ex and his or her family.

Even if you and your child's other parent have a contentious relationship, try to keep your communications civil. Avoid provoking arguments. Once your ex is riled up, he or she may decide to skip child support payments just to spite you.

Do everything you can to foster a bond between your child and the other parent. Your child will benefit from the relationship and your ex will have one less justification for withholding child support. Your ex will see how child support payments contribute to the child's development. When you enroll your child in summer camp or sports or music lessons, let your ex know that his or her child support payments have made these activities possible. An involved parent can see how essential child support is to meet a child's needs and is more likely to pay.

Maintaining a positive relationship with your ex's family may also provide benefits. Should your child's other parent relocate out of state, be terminated from or change employment, or change careers or professions, his or her family may assist in swiftly rectifying a nonpayment issue. Family members may be able to tell you where to find a parent who has temporarily gone AWOL. They may also be able to exert some influence on their son, daughter, or sibling to pay up.

III. WHEN AN ARREARAGE DEVELOPS: PRACTICAL TIPS FOR ENCOURAGING PAYMENT

When a parent fails to pay child support, he or she violates the court's order. Occasionally missing one or two child support payments could have a reasonable explanation and the parent may catch up voluntarily. Failing to make multiple payments will result in the accrual of back child support. This is a problem that requires action. If an arrearage develops, prompt collection is necessary.

Here are some tips for dealing with an arrearage:

- Do not discuss child support issues with the parent in the child's presence.
- Do not fight with the parent who owes you child support, especially not in the child's presence. Do not use vile or vulgar language.
- Maintain your positive relationship with the family constellation.
- Speak directly with the parent about the arrearage and provide a written follow-up statement detailing the arrearage owed and requesting immediate payment. Give him or her a specific time to pay the arrearage, i.e., "pay by Tuesday, the 5th of the month." Keep a copy of all communications and demands for your records and for the court and your attorney.
- Request payment of the arrearage promptly. Do not let a large arrearage accumulate before taking action. It is likely the parent will more easily pay three weeks' arrearage, rather than three months' arrearage.
- Keep original receipts for health care co-pays, office visits, deductibles, and other expenses your child incurs for your records and to give to the other parent.
- If the arrearage is not paid by your requested time, obtain a child support print out certified by the Clerk of Court (or prepare your own), indicating the amount of arrearage due. Provide it to the parent and inform him or her that you plan to commence legal action immediately. Indicate you prefer payment without court intervention.
- If you have a genuine and cordial relationship with the grandparents (your ex's parents), you may inform them that he or she has stopped paying support for their grandchild. Grandparents have a soft heart and may encourage their son or daughter to make the arrearage payment or they may pay it themselves.
- Do not withhold visitation despite the child support delinquency. If you do, you will violate a court order and could be penalized.

IV. LEGAL ACTION TO COLLECT BACK SUPPORT (WILL LIKELY REQUIRE AN ATTORNEY'S HELP)

A. File a Motion for Civil Contempt Requesting Payment and Incarceration

A motion for contempt alleges the parent has been ordered to make support payments and has willfully refused to do so, violating the court's order. If the court finds that the parent has willfully failed to pay, the court will hold the parent in contempt of court. The parent can be incarcerated in the county jail for nonpayment. A "purge amount" (a portion of the arrearage to be paid to secure release) will be set. When the "purge amount" is paid, the parent is released from incarceration. On your request, the court will enter an income withholding order (if one has not already been entered) requiring the parent's employer to withhold from the parent's paycheck the usual child support payment plus an additional amount toward the arrearage until the arrearage is paid.

B. Get a Money Judgment

If the court finds the nonpaying parent in contempt, depending on the parent's financial solvency, you may find it advisable to request that the court enter a money judgment against the parent in the amount of the arrearage. The judgment typically will include a provision that interest at the current legal rate will accrue until the judgment is satisfied. The money judgment in your favor can be recorded in the public records of the county in which litigation has taken place, and it may also be recorded in the county where the parent resides or owns property. This outstanding money judgment will affect the parent's credit score and will prove problematic if he or she seeks a loan, applies for a credit card, or tries to finance a vehicle.

C. Request a Writ of Execution, Writ of Attachment, or Writ of Garnishment

If the parent owing child support has assets such as boats, motorcycles, coin or art collections, bank accounts, and investments, you have several options for collecting back child support. Along with a money judgment, you can get a writ of execution that directs



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the county sheriff to take possession of the parent's non-exempt assets (typically tangible assets) and sell them at public auction. You will get the sale proceeds until the judgment is fully satisfied.

A writ of attachment is similar, but is typically used before you get a judgment to "freeze" the asset and prevent the parent from disposing of it so, once you have the judgment, the asset can be used to satisfy it.

The writ of garnishment is similar to an income withholding order. It orders the parent's employer to deduct child support from his or her pay and forward it to you. Some states refer to it as wage garnishment for the payment of child support. The writ of garnishment is continuing and will be effective until the outstanding arrearage is fully satisfied.

D. Request Suspension of Driver's License, Business License, Professional or Occupational License, and Passport

All states have enacted laws to compel parents to make regular child support payments by suspending driver's and professional licenses until they do. If an arrearage accrues, these laws may force compliance with the court's order even if other methods have failed. Each state has its own rules about how much child support must be past due before a license can be suspended.

Many parents who owe child support are employed in occupations and professions that require licensing, such as physicians, pharmacists, nurses, accountants, electricians, and barbers, to name a few. Engaging in these professions without a license is unlawful. On your request, the court may enter an order suspending a professional license for nonpayment of child support. Suspending a professional license is expected to coerce the delinquent parent into satisfying the arrearage immediately, so he or she can get back to work.

Another effective tool is the state's ability to suspend the parent's driver's license. Without a valid driver's license, the parent is unable to operate a motor vehicle legally. This situation gravely impairs his or her ability to travel for any purpose and may be especially effective if the parent earns money as a driver. The parent finds himself or herself in the unenviable position of trying to get a needed license reinstated as quickly as possible by making payments on the arrearage.

If the child support arrearage exceeds \$2,500.00, the Office of Child Support Enforcement notifies the federal Passport Denial Program which has the authority to deny, revoke or restrict U.S. Passports. This mechanism has been quite successful in collecting back child support from parents who could pay but choose otherwise.

E. State Child Support Collection and Tools

The federal Office of Child Support Enforcement works in concert with the child support collection agencies of the various states. The states participate in child support collection through Title IV of the Social Security Act of 1975. While there are several different Title IV programs, generally any parent who is owed child support may request collection and enforcement services from the state agency at no charge. Through the Title IV program, the state has a wide range of resources to discover the employment status of a delinquent parent, the whereabouts of a runaway parent (Federal Parent Locator Service), and the ability to intercept state and federal tax refunds and lottery winnings.

F. Consult Attorney Regarding Federal Law for the Collection of Child Support Arrearage

An additional federal mechanism may be available to you to enforce payment of child support. 18 U.S.C. § 228 makes it illegal for an individual to fail to pay child support in certain circumstances. Depending on the amount of the arrearage, the length of time the parent has been delinquent and where he or she resides, the violation may be a misdemeanor with a potential fine and prison sentence of up to six months or a felony with a potential fine and prison sentence of up to two years. If the parent owes more than \$5,000.00 or has been delinquent for longer than one year, the law prohibits him or her from crossing state lines or fleeing the country with the intent to avoid paying child support. There are restrictions regarding when prosecution under this law can be initiated. Accordingly, consult with your attorney to see if it applies in your case.

G. Contact State Child Support Collection Agency for Intrastate Enforcement

People in the United States are highly mobile. It is common for one or both parents to relocate to another state due to a job transfer, a new job offer, a military reassignment, or a simple desire to live where the grass appears to be greener. Most states have adopted the Uniform Intrastate Family Support Act (UIFSA) to implement the payment and collection of child support in a sister state. A private attorney may bring a collection action under this Act in another state, but your state child support collection agency has the requisite tools and relationships with other states to effectively facilitate this type of collection. Under UIFSA, you may petition for enforcement of child support in another state, and, in some circumstances, prosecute or defend a petition to modify the amount of child support.

V. PREDICTABLE PROBLEMS AND CONCLUDING THOUGHTS

Parents with child support obligations can roughly be placed into three categories. Those in the top tier take their support obligations seriously, pay regularly, and on time. Parents in the middle tier have difficulty paying regularly and often miss payments, fall into arrearage

from time to time, and require coercion, encouragement and often enforcement to ensure payment. Those in the bottom tier have little or no desire to pay the obligation. Parents in this group refuse to work, or if working, change jobs and employers frequently, work for cash under the table if possible, and keep their employment lives a mystery. Many of these non-payors relocate in state and out of state.

These schemes are purposely designed to frustrate the recipient parent and the child support system resulting in financial abandonment of the child. If you find that your ex is in this third tier, maintain a cordial relationship with his or her family to learn where your ex lives and works. Take action to remedy a delinquency after only a few missed payments before the arrearage becomes unmanageable. If the non-paying parent, cannot be located or is known to have moved out of state, contact your attorney or your local child support enforcement office as soon as possible to prevent an untenable situation from escalating further.