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Handbook for Non-Custodial Parents

Introduction

The comments in this section are informational in nature and not necessarily intended as statements of law. If you have additional questions or are seeking legal advice, you will need to contact a private attorney.

What a Non-Custodial Parent Should Know

1. Your paternity or child support case will be decided without your input if you fail to respond to legal proceedings. That means, the judge can determine you to be the father of the child if you fail to show for the hearing and a support order can be entered against you.
2. Record as much information as you can about the child support staff member you meet with. Get his or her name, title, and the date you spoke. Keep this information in a folder along with your copies of court documents, letters, etc.
3. Understand what you are signing. Make sure you understand the document(s) prior to signing it.
4. Simply signing a paternity affidavit (getting your name on the birth certificate) does not give you any legal rights to the child in terms of visitation or custody. You must get these things via court order.
5. Make sure you bring written proof of your financial situation to your court hearings. This helps to determine the appropriate order in your case.
6. Stay in touch with the child support division. Contact them immediately when your job situation or address changes (terminated, laid off, new job).
7. Pay support consistently each week, even if what you pay is less than what is ordered. Keep track of your payments.
8. Trying to avoid your child support obligation will only make your situation worse. It does not go away.
9. The age of emancipation in the State of Indiana is twenty-one. That means you must pay child support until the child is twenty-one unless otherwise stated by a judge. Under certain circumstances, there may be provisions for ordering support beyond the age of twenty-one.

Frequently Asked Questions (Non-custodial parents)

How can I be listed as the father on the birth certificate?

Under Indiana law, if you were married to the mother of the child when the child was born, your name will automatically appear on the birth certificate of the child.

If you were not married to the mother of the child, there are two ways to have your name added to the birth certificate – by signing a paternity affidavit or by court order.

What does “paternity” mean?

Legally and biologically, the word “paternity” means the identity of the father of the child. If you were never married to the mother of the child, Indiana law does not give you any rights or responsibilities as the child’s father unless legal paternity is established. If you were married to the mother when the child was

born, you are presumed to be the legal father of the child. A child born to an unwed mother has no legal father until paternity is established.

How is paternity established?

Paternity is established in one of three ways. First, if you and the mother were married at the time of the child's birth, paternity is automatically established and you are the legal father. Secondly, if you and the mother were not married at the time of the child's birth, you may have been asked to sign a paternity affidavit at the hospital. This lists your name as the father on the child's birth certificate and does legally establish paternity. It does not, however, give you any rights regarding that child. Rights to custody, visitation, etc. must be ordered by a court. Finally, if you and the mother were not married at the time of the child's birth, you or the mother or the State of Indiana can petition the court to establish paternity in a court of law.

If you are absolutely certain you are the father of the child, you can state that in court and the judge can enter an order. If you have some doubt that you are the father of the child, you can ask for a genetic test. The genetic test biologically determines whether or not you are the father of the child. In most cases, if you are proven to be the father through genetic test, the court will most likely order you to repay the cost of the test.

What if the mother won't let me visit with the child?

If you and the mother were never married and paternity has not been established, you have no legal visitation rights. That is why it is vital that paternity be established in court. The judge will then give specific orders regarding visitation and custody. If the judge has ordered visitation and the mother refuses to comply, you will have to seek the advise of a private attorney. The attorney may have to get your case back before the judge to convince the mother to comply. Do not make the mistake of thinking that simply because the mother refuses to let you visit with the child you do not have to pay the court ordered child support. That is not a reasonable excuse to a judge and you may face contempt proceedings for failure to pay. Support and visitation are two completely separate matters.

How do I make my child support payments?

The fastest and easiest method of payment for child support is to have the child support deducted from your paycheck and sent to the local clerk's office. If an employer is ordered by the court to take money out of your check, they must do so by law. They can charge a slight fee to you for doing so, but your employer cannot discriminate against you because of the child support withholding procedure.

If you are working for cash or self-employed, you can mail or walk your payments into the St. Joseph County Clerk of the Court at 101 S. Main, South Bend, Indiana 46601. Please make certain to list your name, the custodial parent's name and the case number on your payment. For further information regarding payments, you can contact the KIDS Line at (800) 840-8757 or the St. Joseph County Clerk of the Court.

How does the court decide how much child support I should pay?

Indiana law has clearly established guidelines for determining child support amounts. Many different criteria go into this calculation including visitation credits, the number of children you have, both parents' incomes, etc.

What if I cannot afford to pay the amount that is determined by the child support guidelines?

Indiana puts the best interest of the child first in all matters. You can attempt to persuade the judge that the amount ordered is unjust or inappropriate in your case. You may wish to seek the advise of a private attorney on this matter.

How did the court determine the amount of child support I owe if I was not there and they did not know my income?

Remember, if you do not show up at court, a child support order can and usually will be entered without you. If your income is not known, the order will be based on you having a job that pays at least the federal minimum wage and working 40 hours per week.

Why is the amount coming out of my paycheck greater than my child support order?

Indiana and Federal laws allow for payments to be deducted from your paycheck to go to the arrears, or “back child support” that you owe. Therefore, if you owe back support you may find an extra \$10, \$20, or more being taken out of your check for the arrears specifically.

What if circumstances change and I need to decrease what I pay in child support?

Only a judge can legally change your child support order. Therefore, you must petition the court for a modification hearing. You can request that our office review your case for a downward modification. However, you should be aware that we will go forward on the case if we determine that you should be actually paying more support. We cannot go forward if the case merits a downward modification. We will give you the information and then you must either hire a private attorney or petition the court “Pro Se” (without an attorney). The St. Joseph County Law Library can offer you the appropriate packet for filing Pro Se.

Be aware that the judge will only grant a downward modification if substantial and continuing change in circumstances has affected your ability to pay child support.

What if I buy things for my children like diapers and formula and clothes instead of paying child support?

It is unlikely that any payments other than those required by the court will count as payment of support. If you give the child or the child’s mother something, you will still be required to pay your support order. Generally speaking, the court views these things as gifts to your child.

Can I be put in jail for not paying child support?

YES. You can be placed in jail if the judge finds you in “contempt of court”. That is a legal term that means you are willfully not following a court order. You do have the right to a court hearing regarding contempt. At this hearing, you can hire a private attorney or argue yourself as to why you were unable to make payments. If you do not show for your hearing, a warrant can be issued for your arrest.

In some cases, nonsupport of a child can be a criminal offense. At that point, you are charged in criminal court for nonsupport of a dependant and you can be imprisoned.

If I am incarcerated, for support or some other criminal matter, what happens to my child support?

Nothing. Your child support will continue to accrue each and every week. You will owe support when you are released.

How do I figure out what I owe in child support?

This can be a complicated matter depending on the specific order in your case.

Generally speaking, your arrearage is calculated by:

$$\text{Number of weeks ordered to pay} \times \text{Order amount} - \text{Payments} = \text{Arrears}$$

To determine the number of weeks, get your child support. Use the date that the judge stated your order was effective. Pay close attention to this as the judge can actually go as far back as the birth of the child, not necessarily the day of court. Then, get a calendar and count every Friday since that date. Multiply that by your ordered amount each week. Get your payment records and subtract them from the above figure. That will give you your arrearage figure.

Remember, your case may have special situations in which your order stops for a certain amount of time each year. This is just a general and generic process that may give you a rough idea.

What if I don't think I owe as much as the child support division shows?

You can request a review of your arrears. To do so, you must submit the request in writing to our office. You must include copies of your order(s), payment records, docket (available through the clerk of the court) and show your math calculations. Simply disagreeing with your arrears is not enough for our office to do a formal review. Let’s

face it, no one thinks they owe as much as they do. You must supply specific reasons and documentation.

Finally

This Handbook is based solely on Indiana law and is accurate as of September 1, 2003. It does not reflect any changes in law since that date.

This Handbook gives only general information about child support. If you can afford it, you may wish to consult with a private attorney for your case's specific needs.