

Montana Legal Services Association

Child and Medical Support Orders in Montana (FAQ)



Providing, protecting, and enhancing access to justice.

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In this article, we'll answer the following questions:

- What is Child Support?
- What if the other parent has hurt me or the children?
- How do I get Child Support?
- How do I open a case with CSSD?
- How is the amount of Child Support determined?
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- What is a Medical Support Order?
- What goes into a Medical Support Order?
- What if my access to health insurance changes?

What is Child Support?

Child Support is money that is paid by one parent to the other to provide care for a minor child. A Child Support Order is a legal document that says one parent must pay another parent a certain amount of Child Support by a certain date. A District Court or the Child Support Services Division (CSSD) may issue a Child Support Order. District Courts in Montana have the authority to review a Child Support Order issued by CSSD.

What if the other parent has hurt me or the children?

There are a few important things to know if you are leaving a violent or abusive relationship. The end of a violent relationship is sometimes the most dangerous point for the victim and children. There may be free legal and non-legal help for people leaving a domestic violence relationship. It is a good idea to come up with a safety plan. You may also want to look into getting an Order of Protection. It is important to know that the

Court may base some of its decisions on safety concerns for the parents and/or children.

How do I get Child Support?

There are two ways to get a valid Child Support Order. You may:

- Apply and open up a case with the Child Support Services Division (CSSD);
Or,
- You can ask the District Court to issue a Child Support Order.

Every Parenting Plan must include a Child Support Order. The District Court will issue a Child Support Order along with the Final Parenting Plan at the end of the legal case. During the legal case, a District Court may issue an interim Child Support Order as well. Interim means temporary.

There are 3 ways to ask the Court to issue a Child Support Order. You can ask that the Court consider:

- Calculating Child Support itself;
- Adopting the CSSD's Child Support Order; or,
- Adopting a Child Support Order that you submit to the Court.

If you'd like the Court to come up with a Child Support calculation, it's a good idea to ask the Clerk of District Court or the Self Help Law Center if they have a process for asking the Court to calculate Child Support.

Private lawyers may be able to help you come up with a Child Support Order that you can submit to the Court to consider. A private lawyer may be a good option if you have the money to hire one and a complicated situation.

You may also be able to use the free Montana Online Child Support Calculator to come up with a calculation that you can submit to the Court to consider. The Montana Online Child Support Calculator is a good option if you know the other parent's financial situation and neither parent gets any temporary income. An example of temporary income would be money from seasonal work.

Opening a case with CSSD is a good option if you are having trouble using the Montana Online Child Support Calculator and cannot hire a lawyer. CSSD can also help with enforcing the Child Support Order as well as the Court.

Opening a case with CSSD may also be a good option if you don't have a Parenting Plan and do not want to file for one. You may get Child Support even if you don't file for a Parenting Plan or divorce.

How do I open a case with CSSD?

If you would like to get a Child Support Order through CSSD you'll need to contact CSSD and ask for an application. You can find an application on the CSSD website or by contacting one of their field offices.

CSSD Region	Telephone Number	Counties or Areas Served
Region 2	(406) 727-7449	Blaine, Cascade, Choteau, Glacier, Hill, Liberty, Pondera, Teton, Toole
Region 3	(406) 655-5500	Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Musselshell, Petroleum, Rosebud, Sheridan, Treasure, Valley, Wibaux, Yellowstone
Region 4	(406) 497-6600	Beaverhead, Broadwater, Deer Lodge, Fergus, Gallatin, Golden Valley, Granite, Jefferson, Judith Basin, Lewis & Clark, Madison, Meagher, Park, Powell, Ravalli, Silver Bow, Stillwater, Sweetgrass, Wheatland
Region 5	(406) 329-7910	Flathead, Lake, Lincoln, Mineral, Missoula, Sanders
Region 8	(406) 444-9767	Children residing outside of Montana

How is the amount of Child Support determined?

The amount of Child Support that a parent must pay is based on what the Court or CSSD considers reasonable and necessary for raising the child. Marital misconduct

does **not** affect the amount of Child Support. The Court or CSSD will base the amount of Child Support on:

- The financial resources available to the child;
- The financial resources available to each parent (income, pensions, etc.);
- The standard of living the child would have had if the parents were still together;
- The child's emotional, educational, and medical needs;
- The age of the child;
- The cost of daycare; and
- How much time the child spends with each parent.

You can find the law that addresses child support at Montana Code Annotated (M.C.A.) § 40-4-204. The “§” is a symbol that means section. 40 is the Title number. 4 is the Chapter number. And, 204 is the Section number.

How are the resources of the parents determined?

The Court or CSSD will determine the resources of the parents based on their financial information. The Court or CSSD gathers your financial information through the **Child Support Guidelines Financial Affidavit**. An Affidavit is a sworn statement of facts. Along with the Affidavit, you must attach copies of your pay stubs or other documentation of your income such as copies of your recent federal tax returns. CSSD or the Court will use the Affidavit to come up with a Child Support calculation. During a Parenting Plan legal case, you will be required to file a copy of the Financial Affidavit with the Court and serve a copy on the other parent.

Can I ask the Court to accept a different amount than what is calculated?

Yes. When you have good reason for why Child Support should be different than what has been calculated, you may ask the Court to consider a different amount. For example, if the parent responsible for Child Support is struggling financially at the time that may be a good reason. Another example may be when there is domestic violence present and it feels unsafe at the time to ask for Child Support. Asking for a different amount than what is calculated now does not prevent you from asking for more in the future.

How does unemployment affect Child Support?

Even if a parent is unemployed, or if their earnings are not known, the parent may still be responsible for paying Child Support. In general, the Court assumes that each person could be working 40 hours each week and earning at least minimum wage unless you can show with good reason why that person cannot work 40 hours a week. The amount of money a parent would make from a full time job at minimum wage is "**imputed**" to each parent. Imputed means the Court assumes that parent could make that much money.

The court may impute more than minimum wage if a parent has the potential to make more money. Education level and work history may affect earning potential. For example, if one parent made \$75,000 a year for a few years and then took another job at \$50,000 a year, the Court may impute an income over \$50,000 based on the parent's earning potential.

How are Child Support payments made?

Child Support payments are usually made by automatic income withholding. Automatic income withholding is when CSSD takes Child Support out of a paycheck and pays it to the other parent. The Court may come up with another arrangement for Child Support payments to be made. But, the Court would have to find a good reason why income withholding is not appropriate. You can find the law that says this at Montana Code Annotated (M.C.A.) § 40-5-411.

Income also can be withheld if the Child Support is usually paid in a different way but a payment is delinquent. Support is delinquent if it is 8 days late. If you and the children are getting public benefits under Temporary Assistance to Needy Families (TANF), the Child Support payments must be made through CSSD.

Do I need to notify CSSD about my divorce or parenting case?

You must notify CSSD about your divorce or parenting case if you are already getting services from CSSD or if you get TANF benefits. Otherwise, you do not need to notify CSSD.

How can I change the amount of the Child Support payments?

You can ask for a change for many reasons. Some common reasons are if your income has changed or if your child's living arrangements have changed. There are two ways to ask to change a Child Support Order:

- By filing a Motion in the District Court which first ordered the Child Support, or
- By sending a written request to CSSD.

If a District Court in Montana ordered your Child Support, you can ask that Court to change it by recalculating the support based on the current financial information of the parents.

Or, you can ask CSSD to do an **Administrative Review** of the Child Support Order. In an Administrative Review, CSSD would recalculate the Child Support based on the current financial information of the parents. Then, CSSD would propose that the District Court adopt the updated amount.

It's a good idea to talk to a lawyer before asking the Court to change a Child Support Order.

What is a Medical Support Order?

Every Child Support Order also must include a part about who will pay for the health insurance and out-of-pocket medical expenses of the minor children. This is called a Medical Support Order. You can find the law that says this at M.C.A. § 40-5-805.

The responsibility to pay medical expenses ends when the Child Support obligation ends. The amount of Child Support is not offset by the cost of paying for medical care. But, the Child Support calculation will take into account the costs of medical care.

What goes into a Medical Support Order?

The general rule is that a parent who has health insurance available at a reasonable cost through their employment must cover the children. If both parents have health plans, they may both provide coverage for the children.

Sometimes the court will order both parents to pay premiums, deductibles, or other health care expenses based on percentages determined by the Child Support guidelines. For example, one parent may have to pay 25% of the expenses, while the other parent has to pay 75%.

Parents may agree in writing to other arrangements. But, the Court will need to approve that agreement based on the best interests of the children and parents.

There may be times when neither parent can afford health insurance. In that case, the Court may order the parent with the most parenting time to apply for a free or low cost health insurance plan through the state. For example, the Order might say a parent must apply for Healthy Montana Kids (HMK) or Medicaid.

You can read what the law says about what goes in a Medical Support Order at M.C.A. § 40-5-806.

What if my access to health insurance changes?

The law says that a Medical Support Order must include alternatives in case circumstances change. The goal is to make sure that the children's medical needs are met even when the parents' financial or health insurance situation changes. This helps parents avoid having to go back to Court. So, Medical Support Orders will have some flexibility in case things change.

If things change, and the alternative plan in the Medical Support Order is not reasonable or cost-effective, a parent may ask the Court or CSSD to reconsider. You can find the law that says this at M.C.A. § 40-5-807.

How do I get more help?

Montana Legal Services Association (MLSA) provides free civil legal help to low-income people. Contact us to see if you qualify:

- Apply anytime online at mtlsa.org;
- Call our Helpline at 1-800-666-6899 (Helpline hours are limited).

What help can I find at MLSA?

- Legal advice and representation;
- Referrals to volunteer attorneys and other providers;
- Self-help clinics and materials.

www.MontanaLawHelp.org

Need legal information or forms? Visit www.MontanaLawHelp.org.

Can't find what you want? Use LiveHelp. Click on the LiveHelp icon and get help finding the information you need.

www.MTLA.org

Find copies of all our brochures online.

They are all available for free download!

This pamphlet is meant to give basic legal information, not legal advice about your problem. The law changes often and each case is different. We recommend you talk to an attorney about your legal problem.