

### PARENTAL DUTY TO SUPPORT CHILDREN

- Parental duty of support begins at birth
- Law presumes married parents are providing support for their children
- Parental duty of support presumed:
  - Biological parent of a child;
  - Man determined to be the natural father of child under R.C. 3111.01 through R.C. 3111.19 or R.C. 3111.20 through R.C. 3111.29;
  - Adopted child [R.C. Chapter 3107];
  - Parent signed an acknowledgement of paternity that became final under R.C. 3111.82, R.C. 3111.64, and R.C. 2151.232.

In any proceeding for divorce, dissolution, legal separation, or child support, the court may order either or both parents to support their children.

### JURISDICTION



Check local rules of practice to determine if a proceeding would fall under the domestic relations or juvenile court, and determine what becomes of a juvenile court or administrative order if one is issued prior to filing of divorce. Recent changes to R.C. Chapter 2151 regarding the juvenile court jurisdiction may impact which court should receive an appeal from an administrative support order.

- The domestic relations court has jurisdiction over child support for children born prior to the marriage if there is no juvenile-court support order.
- The domestic relations court does not have jurisdiction to award child support prior to the filing date for the divorce as long as the married parents did not seek a child support order prior to filing for divorce.
- The domestic relations court has continuing jurisdiction to enforce or modify child support orders.

### DURATION OF CHILD SUPPORT [R.C. 3119.86]

- The domestic relations court has jurisdiction to order child support to continue through age 18 or finished with high school, but no later than age 19.
  - Duty of support continues beyond age 18 as long as the child continuously attends, on a full-time basis, any recognized and accredited high school; OR
  - A court-issued child support order provides the duty of support to continue beyond the age of majority.
  - The child support order shall not remain in effect after the child reaches age 19, even if the child still is enrolled in high school.
- Disabled children
  - In the case of mentally or physically disabled children, the duty of support may continue beyond age 18 if the child is unable to support himself/herself:
    - The physical or mental disability existed prior to the child reaching age 18;
    - The court must make factual determination that the child is unable to support himself/herself before extending the support beyond age 18.
  - A trial court may award an ongoing obligation for a child disabled under the definition in *Castle v. Castle*, 15 Ohio St.3d 279, 473 N.E.2d 803 (1984), even if the child is over the age of 18 at the time of the divorce, because the child has not and will not reach the age of majority by being self-sufficient or self-sustaining at any foreseeable point.

## IMPORTANT TERMS AND DEFINITIONS

- **Income Share** – Percentage derived from a comparison of each parent’s annual income (after allowable deductions and credits as indicated on the worksheet) to the total annual income of both parents. [R.C. 3119.01(C)(10)]
- **Self-Sufficiency Reserve** – The minimal amount necessary for an obligor to adequately subsist upon. [R.C. 3119.01(C)(20)]
- **Health Insurance Coverage** – Accessible private health insurance that provides primary care services within 30 miles from the residence of the children subject to the support order. [R.C. 3119.29(C)]
- **Family Coverage** – The health insurance plan that provides coverage for the children who are the subject of a child support order. [R.C. 3119.29(A)]
- **Reasonable Cost** – The cost of private health insurance to the person required to provide health insurance coverage for the children, subject to the child support order, that does not exceed five percent of the annual income of that person. [R.C. 3119.29(G)]
- **Cash Medical Support** – An amount ordered to be paid in a child support order toward the ordinary medical expenses incurred during a calendar year. [R.C. 3119.01(C)(1)]
- **Ordinary Medical Expenses** – Copayments and deductibles, and uninsured medical-related costs for the children of an order. [R.C. 3119.01(C)(14)]
- **Extraordinary Medical Expenses** – Any uninsured medical expenses incurred for a child during a calendar year that exceed the total cash medical-support amount owed by the parents during the year. [R.C. 3119.01(C)(7)]
- **Child Care Costs** – The annual out-of-pocket costs for the care and supervision of a child subject to a child support order that is related to work or employment training. [R.C. 3119.01(C)(2)]
- **Court-Ordered Parenting Time** – The amount of parenting time a parent is to have under a parenting time order or the amount of time the children are to be in the physical custody of a parent under a shared parenting order. [R.C. 3119.01(C)(4)]
- **Split Parental Rights and Responsibilities** – A situation in which there is more than one child who is the subject of an allocation of parental rights and responsibilities and each parent is the residential parent and legal custodian of at least one of those children. [R.C. 3119.01(C)(21)]
- **Income** – The gross income of a parent employed to full capacity or the sum of the gross income and potential income of a parent who is unemployed or underemployed. [R.C. 3119.01(C)(9)]
- **Gross Income** – The total of all earned and unearned income from all sources during a calendar year, whether taxable or not. [R.C. 3119.01(C)(12)]
  - Gross income does NOT include:
    - Benefits received from means-tested government administered programs;
    - Benefits for any service-connected disability under a program or law administered by the U.S. Department of Veterans’ Affairs or Veterans’ Administration that are not means-tested, that have not been distributed to the veteran who is the beneficiary of the benefits, and that are in the possession of the U.S. Department of Veterans’ Affairs or Veterans’ Administration;
    - Child support amounts received for children who are not included in the current child-support calculation;
    - Amounts paid for mandatory deductions from wages, such as union dues, but not taxes, social security, or retirement in lieu of social security;

- Nonrecurring or unsustainable income or cash-flow items;
- Adoption assistance and foster care maintenance payment made pursuant to [Title IV-E of the Social Security Act](#).

## CHILD SUPPORT SCHEDULES

- The child support schedules are rebuttably presumed to be the correct amount of child support. [\[R.C. 3119.03\]](#)
- The child support schedule shall be used when calculating the amount of child support, unless the combined annual income of the parents is less than \$8,400.00 per year or more than \$336,000.00 per year.
  - More than \$336,000.00 per year:
    - Child support calculated on a case-by-case basis and the court shall consider the needs and standard of living of the children and the parents. [\[R.C. 3119.04\]](#)
- The child support obligation shall be no less than the obligation that would have been computed under the child support schedule and applicable worksheet for the combined annual income at \$336,000.00, unless the court determines that it would be unjust or inappropriate and would, therefore, not be in the best interest of the children, the obligor, or obligee to order that amount.
  - If the court makes the best interest determination, then it shall include findings of fact.
  - Less than \$8,400.00:
    - If the combined annual income of both parents falls below \$8,400.00, then the court shall apply the minimum support amount, which is \$80.00 per month for all children.

## CALCULATION OF CHILD SUPPORT

- The court shall calculate the amount of the parents' child support and cash-medical obligation in accordance with the basic child support schedule, the applicable worksheet, and other provisions of [R.C. Chapter 3119](#).
- The court shall specify the support obligation as a monthly amount due.
- The court is not required to accept any calculations in a worksheet prepared by any party to the action or proceeding.



Parties should be encouraged to submit proposed worksheets and/or stipulate to the figures contained within the worksheet.

## CHILD SUPPORT WORKSHEET OVERVIEW

### 1. Income

- When computing the amount of child support to be paid, all of the following apply:
  - Parents' current and past incomes shall be verified with suitable documents;
    - A parent's income does not include income earned by the parent's spouse.
  - Annual income shall include the lessor of the following as income from overtime and bonuses:
    - The yearly average of all overtime, commissions, and bonuses received during the three years immediately prior to the time when the child support obligation is being computed; OR
    - The total overtime, commissions, and bonuses received during the year immediately prior to the time when the child support is being computed.

- When appropriate, the court may average income over a reasonable period of years;
- A court may impute income to a parent when the court determines that the parent is unemployed or underemployed voluntarily.
  - Unless it would be unjust, inappropriate, and, therefore, not in the best interest of the child, a court shall not determine a parent to be unemployed or underemployed voluntarily and shall not impute income to that parent if any of the following apply:
    - The parent is receiving recurring monetary income from means-tested public assistance benefits or means-tested veterans' benefits.
    - The parent is approved for Social Security disability-insurance benefits because of a mental or physical disability, or the court determines that the parent is unable to work based on medical documentation that includes a physician's diagnosis and a physician's opinion regarding the parent's mental or physical disability and inability to work.
    - The parent proves that the parent has made continuous and diligent efforts without success to find and accept employment, including temporary employment or part-time employment at less than the parent's previous salary or wage.
    - The parent is complying with court-ordered family reunification efforts in a child abuse, neglect, or dependency proceeding, to the extent that compliance with those efforts limits the parent's ability to earn income.

- The parent is incarcerated or institutionalized for 12 months or more with no other available assets, unless the parent is incarcerated for an offense related to the abuse or neglect of a child who is the subject of the support order or an offense under Title XXIX of the Revised Code against the obligee or a child who is the subject of the support order.



Spousal support received is income to the person receiving the spousal support.



The cost of union dues and uniform fees are not income and, therefore, should be deducted from the income of the person paying the union dues or uniform fees.

## 2. Adjustments to Income

- The number of children each parent has that are not included as part of the child support obligation being calculated.
- The amount of verifiable court-ordered spousal support actually paid, excluding arrearages.
- The total out-of-pocket cost paid for health insurance premiums for the children for the parent or parents ordered to provide coverage.

## 3. Income Shares

- Considers the adjusted incomes of each parent to their combined income to determine each parent's income-share percentage of the combined obligation.
- Takes into consideration the self-sufficiency reserve.

#### 4. Child Support Calculation

- The child support schedule shall be applied to the parents' combined annual incomes and to each parent's individual income.
  - If the annual individual income of a parent is within the self-sufficiency reserve:
    - Calculate child support for the parents using the schedule amount applicable to the combined annual income and the schedule amount applicable to the income in the self-sufficiency reserve;
    - The applicable child support obligation is the lessor of the following:
      - The amount that results from using the combined annual income of the parents not in the self-sufficiency reserve;
      - The amount that results from using the individual parent's income within the self-sufficiency reserve of the schedule.
- A 10-percent reduction in child support is built into the child support calculation when the child support obligor has court-ordered parenting time that equals or exceeds 90 overnights per year. [\[R.C.3119.051\]](#)
- Derivative Benefits – Any non-means-tested benefit received by a child resulting from the claims of either parent shall be deducted from that parent's annual child support obligation after all other adjustments are made.
  - If the benefit exceeds the child support obligation of the parent from whose claim the benefit is realized, then the child support obligation for that parent shall be zero.

- Child Care Expenses – Parents shall be ordered to share the cost of child care.
  - The child care cost is necessary to allow a parent to work or attend activities related to employment training;
  - The child care cost shall be determined by verifiable evidence;
  - The child care cost shall exclude any reimbursed or subsidized child care cost, including state or federal tax credit for child care available, whether claimed or not;
  - The child care cost shall not exceed the maximum statewide average-cost estimate.
    - Child care expenses are broken down in a chart on the worksheet based upon the number of children, the age of each child, the maximum allowable cost of child care, and the actual out-of-pocket cost of child care.
    - The ultimate child care figure will be the lower of the actual out-of-pocket cost or the maximum figure.

#### 5. Cash Medical

- An amount ordered to be paid in a child support order toward the ordinary medical expenses incurred during a calendar year.
  - Cash medical is a set amount determined by the director of the Ohio Department of Job and Family Services using the U.S. Department of Health and Human Services Medical Expenditure Panel Survey.
  - The cash medical amount may vary from year to year.
  - Cash medical amount currently is \$388.70 per child.
  - Cash medical is prorated between the parents within the child support order.



## 6. Deviation Factors

- The amount of child support and cash-medical support calculated pursuant to the schedule and worksheet may be deviated from if the court finds that the calculated amount of child support or cash-medical support would be unjust or inappropriate and, therefore, not in the best interest of the minor children.
- If the court deviates from the calculated amount of child support, then the court order must include the child support amount calculated pursuant to the schedule and worksheet, a determination that the amount would be unjust or inappropriate and, therefore, not in the best interest of the children, and findings of fact to support that determination. [R.C. 3119.22]
- Factors to be considered in granting a child-support deviation [R.C. 3119.23]:
  - Special or unusual needs of the children, including needs arising from the physical or psychological condition of a child;
  - Extended parenting time or extraordinary costs associated with parenting time, including extraordinary travel expenses when exchanging the child for parenting time;
  - The financial resources and the earning ability of the children;
  - The relative financial resources, including the disparity in income between parties or households, other assets, and the needs of each parent;
  - The obligee's annual income, if it is equal to or less than 100 percent of the federal poverty level;
  - Benefits that either parent receives from remarriage or shared living expenses with another person;
  - The amount of federal, state, and local taxes actually paid or estimated to be paid by a parent or both parents;
  - Significant in-kind contributions from a parent, including, but not limited to, direct payment for lessons, sports equipment, schooling, or clothing;
  - Extraordinary work-related expenses incurred by either parent;
  - The standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued or had the parents been married;
  - The educational opportunities that would have been available to the child had the circumstances requiring a child support order not arisen;
  - The responsibility of each parent for the support of others, including support of a child or children with disabilities who are not subject to the support order;
  - Post-secondary educational expenses paid for by a parent for the parent's own child or children, regardless of whether the child or children are emancipated;
  - Costs incurred or reasonably anticipated to be incurred by the parents in compliance with court-ordered reunification efforts in child abuse, neglect, or dependency cases;
  - Extraordinary child care costs required for the child or children that exceed the maximum statewide average cost, including extraordinary costs associated with caring for a child or children with specialized physical, psychological, or educational needs;
  - Other court-ordered payments;
  - Any other relevant factor.

- Additional factors that may be reason to deviate from the calculated support amount.
  - If the court-ordered parenting time exceeds 90 overnights per year, then the court shall consider whether to grant a deviation pursuant to the [R.C. 3119.23](#)-factor related to extended parenting time. The parenting time adjustments apply to both shared parental rights and responsibilities and a sole allocation of parental rights and responsibilities. [\[R.C. 3119.231\]](#)
    - This deviation would be in addition to the credited 10-percent reduction in the child support obligation.
    - If court-ordered parenting time is equal to or exceeds 147 overnights per year and no deviation is granted, then the court must specify the facts that are the basis for not granting a deviation.
  - A separate order is needed for an order for payment of private education expenses or other appropriate expenses.
  - A separate order is needed for medical support for extraordinary medical expenses, including orthodontia, dental, optical, and psychological services.
- Deviation from calculated child support amount when the parties have shared parenting [\[R.C. 3119.24\]](#)
  - In addition to the deviation factors discussed when determining whether there should be a deviation in the calculated child support amount when the parties have shared parenting, the court needs to consider if the amount of child support would be unjust or inappropriate to the children or either parent and, therefore, not in the best interest of the children because of extraordinary circumstances of the parents or based upon the parenting-time credits set forth in statute.

- Extraordinary circumstances include:
  - The ability of each parent to maintain adequate housing for the children;
  - Each parent’s expenses, including, but not limited, to child care expenses, school tuition, medical expenses, and dental expenses;
  - Any other expenses the court considers relevant.

## HEALTH INSURANCE

### 1. Health Insurance Coverage

- In any proceeding where child support is ordered or modified, the court shall determine the person or persons responsible for the health care of the children subject to the support order and shall include provisions for the health care of the children in the support order.
- The order shall specify that the obligor and obligee both are liable for the health care of the children not covered by private health insurance.
- The child-support obligee is presumed to be the parent responsible for providing health insurance coverage for the children subject to the child support order. This presumption may be rebutted after a consideration of the following factors:
  - The obligor already has health insurance coverage for the children that is reasonable in cost;
  - The obligor already has health insurance coverage for the children that is not reasonable in cost, but the obligor wants to be named the health insurance obligor and provide coverage;
  - The obligor can obtain coverage for the child that is reasonable in cost through an employer or other source;

- The obligee is a non-parent individual or agency that has no duty to provide medical support.
- If private health insurance is not available to the obligee or obligor at the time the support order is issued, then the order shall include a requirement that the obligee obtain private health insurance coverage for the children no later than 30 days after it becomes available to the obligee at a reasonable cost and inform the child support agency that health insurance was obtained.
- To order a parent to provide private health insurance for the children, the private health insurance needs to be accessible and the private health insurance has to be a reasonable cost.
  - If the court orders a parent to provide health insurance for the children subject to the child support order that is not determined to be a reasonable cost, then the court must include a finding related to the ordering of private health insurance.

## 2. Cash Medical Support

- A child support order shall include a cash-medical-support amount for each child subject to the support order and split between the parties based on the parents' income shares.
  - If the children are on Medicaid, then the cash-medical support paid by the obligor is paid to the Department of Medicaid if there is a Medicaid assignment in effect for the child; otherwise the cash-medical-support amount is paid to the obligee if the children are not on Medicaid.
  - The court may deviate from the cash-medical-support amount.

## **PARENTING TIME** [R.C. 3119.08]

- All child support orders must include specific parenting time or visitation orders for regular, holiday, and vacation parenting time, as well as special visitation.
- Child support must not be withheld because of the denial or interference with the right of parenting time.

## **DETERMINATION OF DEPENDENTS FOR FEDERAL INCOME-TAX PURPOSES**

- When issuing or modifying a child support order, the court shall designate which parent may claim the children as dependents for federal income-tax purposes.
  - The court may accept the agreement of the parents; OR
  - The court is permitted to designate that the non-residential parent claims the children as dependents only if it determines that it would further serve the child's best interest.
- Factors to be considered
  - Net tax savings;
  - Relative financial resources and need of the children;
  - The amount of time the children spend with each parent;
  - The eligibility of either or both parents for the federal earned-income-tax credit or other state- or federal-tax credit;
  - Any other relevant factor concerning best interest.
    - The court is not required to discuss each factor as long as it discusses the operative facts related to the decision and the statute.
- The award is not in the nature of a property division and always is modifiable.



- The child support payments of the obligor must be substantially current in the year in which the children will be claimed as dependents, unless the parents agree.
- When awarding the non-residential parent the children as dependents, the court has inherent power to order the residential parent to release the exemption to the other parent or be subject to a finding of contempt.
- The court has no jurisdiction to enforce an award of tax dependency exemptions for emancipated children.

### **MODIFICATION OF PRIOR CHILD SUPPORT ORDERS** [R.C. 3119.79]

- Jurisdiction
  - The domestic relations court retains jurisdiction to modify child support under the civil rules and statutes.
  - A motion to modify child support must be filed with the court and the other party must be served with the motion pursuant to the **Rules of Civil Procedure** for the court's jurisdiction to be invoked.
    - Exception for appeal from an administrative modification from a support enforcement agency.
  - The court may consider multiple worksheets based on the changes in income and status while the motion to modify is pending.
- Change in circumstances
  - Two-step analysis
    - The court must decide if change of circumstances exists.
- A difference of 10 percent is a change of circumstances. [R.C. 3119.79 ]
  - The 10-percent difference must be between the amount currently ordered and the new amount calculated pursuant to the child support worksheet.

- An alternative substantial change not contemplated at the time of the last order.
  - After finding a change of circumstance, the court must determine the appropriate amount of support.
    - No need to prove increase in the needs of the child to justify an increase.
    - Error to overrule a modification without explaining why it found no change of circumstances existed without completing a child support worksheet.
- Commencement date of support modification and retroactive child support
  - General rule modification effective on the date the motion is filed.
  - Choice of commencement date subsequent to date of filing is within discretion of the court.
    - A reason must be provided for commencement date if it is other than the date the motion filed.
  - A modification cannot commence prior to the physical possession of the child if the modification is based on a modification of parental rights.

### **TERMINATION OF CHILD SUPPORT OBLIGATION** [R.C. 3119.88]

- Child attains 18 and finished high school;
- Beyond age 18 if child continuously attends, on a full-time basis, any recognized and accredited high school, but no later than age 19;
- If by separation agreement and parent agreed to pay child support beyond 18, the court may enforce the provision.

- Emancipation
  - Determined on a case-by-case basis dependent on individual facts and circumstances.
  - Party requesting termination bears burden of proving emancipation.
- Death of obligor-parent
  - Child support order does not survive the death of the obligor-parent unless the order provided for it to survive.
- Adoption
  - Terminates a child support order since the adoption terminates parental rights.
  - Past-due child support is not forgiven by adoption.
- Child's death
- Child's marriage
- Child's enlistment in the armed services
- Child's deportation
- Change of legal custody of the child.

## NEED-BASED PAYMENTS

- Social Security Insurance (SSI) paid due to a child's disability is a need-based payment that fluctuates based on other sources of income for the child.
  - SSI received by a disabled child does not constitute a financial resource for the child to justify a deviation from the child support schedule.
  - Adoption subsidies received on behalf of a special-needs child may be treated the same way as SSI for a disabled child.
- Social Security Payments
  - Any benefits paid to a child on behalf of a parent that are non-means tested, including retirement, disability, or survivor benefits, are treated as a deviation against that parent's child support obligation.

## ADMINISTRATIVE REVIEW OF COURT CHILD SUPPORT ORDER [R.C. 3119.60]

- A child support enforcement agency periodically or at the request of an obligor or obligee may review a court child support order.
- All of the following must be done prior to an agency review of a child support order:
  - Establish a date certain on which the review will formally begin;
  - At least 30 days before the formal review begins, the obligor and obligee must be sent notice of the planned review and the date the formal review will begin;
  - Require each parent provide the following no later than the scheduled review date:
    - Copy of federal income-tax return from previous year;
    - Copy of all pay stubs obtained within the previous six months;
    - Copy of all records evidencing the receipt of any other salary, wages, or compensation within the preceding six months;
    - A list of group health insurance and health care policies, contracts, and plans available and their cost;
    - The current health care policy, contract, or plan in which the parent is enrolled;
    - When either parent is a member of the armed services and on active duty, a copy of IRS form W-2, "Wages and Tax Statements," and a copy of a statement detailing earnings and leave with the armed services;
    - Any other information necessary to properly review child support.

- If a court-ordered child support order is being reviewed, the notice shall include that a willful failure to provide the documents and information requested is contempt of court.
- Review of court child support order [R.C. 3119.63]
  - Calculate the revised amount of child support to be paid under court child support order;
    - Provide notice to the obligor and obligee of the revised amount of child support;
    - Provide notice to obligor and obligee of right to request administrative hearing on revised amount of child support;
    - Provide notice of procedures and time deadlines for requesting a hearing;
    - Provide notice that the revised amount of child support will be submitted to the court for inclusion in a revised child support order, unless a request for an administrative hearing on the proposed changes is made within 14 days of receipt of the notice;
    - Provide notice that if the court child support order contains a deviation or if the obligor or obligee intends to request a deviation from the child support amount to be paid under the court child support order, then the obligor or obligee has a right to request a court hearing without first requesting an administrative hearing and must make the request for a court hearing within 14 days of the receipt of the notice.
- The agency may apply the deviation from the existing child support order to the revised child support order provided it can determine the monetary or percentage value of the deviation.
- Administrative hearing timely requested
  - Schedule a hearing;
  - Give obligor and obligee notice of the hearing date, time, and location;
  - Conduct the hearing;
    - Redetermine the revised amount of child support to be paid under the court child support order;
- Provide notice that the obligor or obligee may request a court hearing on the revised amount of child support within 14 days after receipt of notice;
- Provide notice that if a court hearing is not requested, then the agency will submit the revised amount of child support to the court for inclusion in a revised child support order.
- Court hearing timely requested
  - The court shall schedule a hearing giving the obligor, obligee, and the agency at least 30 days' notice of the date, time, and location of the hearing.
  - The court must determine [R.C. 3119.66]:
    - Whether the revised amount of child support is in the appropriate amount; AND
    - Whether the amount of child support being paid under the court child support order should be modified.
- If the court determines the revised child support amount calculated by the agency is correct, then the court shall issue a revised court child support order.

- If the court determines that the revised child support amount calculated by the agency is not the appropriate amount:
  - Determine the appropriate child support amount;
  - If necessary, issue a revised court child support order requiring the obligor to pay the child support amount determined by the court.
- Modification relate back [\[R.C. 3119.71\]](#)
  - If a court hearing is not requested, then the modification shall relate back to the first day of the month following the date certain on which the review of the child support order began.
  - If a court hearing is requested and the court modifies the court child support order, then the modification shall relate back to the first day of the month following the date on which the review of the court child support order began.
- Factors considered in calculating revised amount of child support [\[R.C. 3119.73\]](#)
  - The agency shall consider, in addition to the other factors required by law:
    - The appropriate person – obligor, obligee, or both – to be required to provide health insurance coverage for the children;
    - The cost of health insurance coverage that obligor, obligee, or both have been ordered to obtain for the children.
  - In a hearing, the court shall consider, in addition to other factors required by law:
    - The appropriate person – obligor, obligee, or both – to be required to provide health insurance for the children;
    - The cost of health insurance that obligor, obligee, or both are ordered to obtain.