

**PRACTICAL LAW:
Focus on Family Issues**

Unpaid Child Support

1. The Census Bureau reports that only about half of the parents entitled to receive child support receive the full amount that is due. About one-quarter of parents to whom support is due receive partial payments, and the other one-quarter receive nothing at all. The Census Bureau estimates that each year, about \$5 billion dollars in court-ordered child support is not paid.
2. Non-payment by fathers is not the only child support enforcement problem. Prosecutors who handle support collections estimate that between 2% and 5% of their cases involve mothers who did not pay their child support obligations.
3. Payment of child support correlates with visitation with the child. The Census Bureau reports that 8 out of 10 fathers with visitation paid child support and 9 out of 10 fathers with joint custody paid support. Of the fathers with no visitation rights, fewer than half paid support.

Enforcing child support orders

- The most common enforcement method is a wage attachment order, which orders an employer to send a portion of the non-custodial parent's wages to a state agency. The state agency then sends the money to the parent who has custody of the child. Beginning in 1994, all new child support orders were required to provide for automatic attachment of the non-custodial parent's wages unless the parties have agreed on an alternative payment arrangement or the court finds that it would not be in the best interest of the child. If immediate wage attachment is not ordered, the order must provide that a wage attachment will begin without returning to court if the person owing child support falls more than 7 working days behind in payments. Wage withholding can be used to collect current support as well as past-due support
- **Tax refund intercepts.** The government sends a notice to the Internal Revenue Service or the state department of revenue, directing that the non-custodial parent's tax refund is sent to the state child support agency for payment of support.
- **Liens on property.** A lien can be placed on real estate, automobiles or other property of the parent behind in support payments. If support is not paid, the property can be confiscated and sold.

- **Contempt of court.** The person to whom support is due or the government can ask a court to hold the parent behind in payments in contempt of court for willful failure to pay support. If found guilty, the person could be jailed, fined, or both.
- **Collection agencies.** Some agencies are willing to collect past-due support, like they collect other past due debts. They usually charge a portion of the amount collected.
- **Revocation** of licenses. Driver's licenses and/or professional licenses of people who have not paid child support as ordered by court can be revoked.
- **Interstate** collections. State and federal laws make it easier now to enforce support orders when the parents live in different states. State and federal prosecutors may be able to help.

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CHILD SUPPORT GUIDELINES

The Federal government requires each State to use guidelines to determine child support amounts. In Delaware the guidelines are known as the Delaware Child Support Formula. The formula is based on studies of how much families ordinarily spend for raising children. Regardless of whether the parents were married or not, the formula is applied in all child support cases.

The Delaware Child Support Formula is based on the incomes of both parents and the needs of the children. If either parent is unemployed or underemployed, the Court may attribute income based on the parent's earnings in a previous job. At the least, income approximately equal to 40 hours work at minimum wage will be attributed for the purpose of calculating support.

The Formula includes childcare, medical and dental expenses, and special educational needs, such as private school or speech therapy. It does not consider the parents' expenses such as car payments or mortgage payments.

When there are special circumstances that cause the Formula to be inequitable, the Judge or Hearing Officer may order an amount above or below the amount calculated using the Formula. This is called a deviation from the Formula. When there is a deviation, the Judge or Hearing Officer must state in the Child Support Order the Formula amount, and explain the reason for the deviation.

When the parent's incomes or children's expenses change, either parent may ask the Court to change the support amount. The Court will apply the Formula using the changed income or expense amounts, and modify the order.

Both parents have an obligation to support a child until he or she is 18 years of age, or if still in high school, until the 19th birthday or graduation, whichever happens first.

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Tips for Divorced Parents

1. Put your children's welfare ahead of any conflict with your former spouse.
2. Help your children have a good relationship with the other parent.
3. Honor your time-sharing schedule.
4. Don't use children as messengers or spies.
5. Try to agree on major decisions.
6. Don't undermine the other parent.
7. Use common sense - - don't let minor disagreements become major battles.
8. Don't send or collect child support through children.

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Determining Custody

Sometimes parents agree on custody. If they can't the judge will hear evidence and determine custody based on the best interests of the children.

Factors include:

- ◆ The children's relationship with each parent, each other, and anyone else who may significantly affect the child's best interests;
- ◆ Each parent's wishes;
- ◆ The children's wishes (especially for older/more mature children);
- ◆ Each parent's past and present compliance with their parental rights and responsibilities;
- ◆ The children's adjustment to home, school and community;
- ◆ Evidence of spousal abuse or domestic violence;
- ◆ The mental and physical health of all individuals involved.

American Bar Association
Division for Public Education

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Dividing Property in Divorce

1. Some couples agree to a property settlement and don't ask a judge to decide for them, however, the law a judge would use to decide a case inevitably influences negotiations.
2. Many states allow parties to keep non-marital property—property brought into the marriage and kept separate, or gifts and inheritances during the marriage which are kept separate.
3. Marital property is general property or income acquired during the marriage—even if only one party earned wages or the property was bought by one party.
4. Some states divide marital property 50-50. Most, though apply a concept called equitable distribution. This means courts divide the property as it thinks is fair—50-50, 60-40, 70-30, etc. Factors include:

Length of the marriage;

Any prior marriage of either party;

The age, health, station, amount and sources of income, vocational skills, employability, estate, debts, and needs of each of the parties;

Whether the property award is in addition to or in place of alimony;

The opportunity of each person to acquire capital assets and income in the future;

The contribution to or waste of marital funds by each party, including the contribution of each party as a homemaker, husband or wife;

The value of the property given to each party;

The financial circumstances of each party;

Whether the property was a gift;

Tax consequences.

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Separation, Annulment, and Divorce

Separation

1. **Separation** means the wife and the husband are living apart.
2. A separation is not the same as a divorce. Persons who are separated may not remarry.
3. A separation does not mean the husband and wife must divorce. They are free to reconcile at any time and resume living together.

Annulment

1. **An Annulment** is a court ruling that a supposed marriage was never valid. Grounds are fraud, one of the parties being already married, underage or too close a blood relative.
2. Annulments may be preferable to divorce in certain relations, and might avoid some of the financial obligations that a court might impose in a divorce.

Divorce

1. **A divorce** is a decree by a court that a valid marriage no longer exists. A divorce leaves both parties free to remarry. If requested a divorce case may provide for division of property and provide for child custody and support.
2. Most divorces do not end up in a contested trial.
3. The party seeking a divorce must state a ground for divorce in the papers filed with the court. The grounds may be based on **no-fault** or **fault**, depending on the state. All states now offer no-fault divorces; approximately thirty-one states also offer fault-based grounds as an additional option. **Delaware has a no-fault statute.**
4. In a no-fault divorce, neither the wife nor husband blames the other – there is no need to prove “guilt” or “fault”. Common bases for a no-fault divorce are “irreconcilable differences”, “irretrievable breakdown”, or “incompatibility”.
5. In the states that allow divorces based on fault (in addition to no-fault divorces) grounds include adultery, physical cruelty, mental cruelty, desertion and use of addictive drugs among others.

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