



Arizona State Senate **Issue Brief**

August 9, 2007

Note to Reader:

The Senate Research Staff provides nonpartisan, objective legislative research, policy analysis and related assistance to the members of the Arizona State Senate. The *Research Briefs* series, which includes the *Issue Brief*, *Background Brief* and *Issue Paper*, is intended to introduce a reader to various legislatively related issues and provide useful resources to assist the reader in learning more on a given topic. Because of frequent legislative and executive activity, topics may undergo frequent changes. Additionally, nothing in the *Brief* should be used to draw conclusions on the legality of an issue.

CHILD SUPPORT AND ENFORCEMENT

CHILD SUPPORT ESTABLISHMENT AND GUIDELINES

If a parent requests, the court may order child support when a married couple is divorcing or separating, unmarried parents are separating or an unmarried parent who has never lived with the other parent requests child support. If the child's mother was married at any time during the ten months preceding the child's birth, her husband is presumed to be the child's legal father. Otherwise, paternity must be legally established voluntarily, administratively or by court action before child support may be ordered. Paternity can be legally established voluntarily if both parents agree who the biological father is, or it can be established through genetic testing.

A court order for child support determines which parent must pay support, the amount of the payment, how often the payment must be made and who receives the payment for the child. These elements are determined by the court based on the Arizona child support guidelines, which are in Arizona Revised Statutes as an appendix to § 25-320. The child support guidelines are not substantive law, but function as a source of guidance to trial courts in applying the substantive statutory and case law *Little v. Little*, 193 Ariz. 518, 975 P.2d 108 (1999). The Arizona child support guidelines were established and are reviewed and, if necessary, updated at least once every four years by the Arizona Supreme Court.

The current child support guidelines follow the Income Share Model developed by the Child Support Guidelines Project of the National Center for State Courts. This model estimates the amount that would have been spent on the child(ren) if the family was intact and requires each parent to contribute a proportionate share of the total child support amount. Factors include medical insurance costs, child care costs, education costs, the age of the child(ren), visitation adjustments, visitation travel costs, self support reserve, multiple children with divided custody, support assigned to the state, third party caregivers, income of a child, benefits, federal tax exemptions and gifts in lieu of money.

CHILD SUPPORT PAYMENT AND ARREARS

The Arizona Department of Economic Security (DES) contracts with a private vendor to operate a central payment processing clearinghouse (clearinghouse) through which all child support payments are directed, unless the court orders differently. The clearinghouse receives and records child support payments and forwards the payment to the payee. If the payor is employed, child support is generally paid through an order of assignment, or wage assignment, which is issued either by the court or by DES. A wage assignment instructs the employer to automatically deduct child support from the payor's paycheck and to send the payment to the clearinghouse.

Child support is a primary obligation superseding all other financial obligations. If child support is not paid timely, unpaid support accrues and is referred to as arrears. An annual interest rate of ten percent is charged on arrears. Child support may be enforced retroactively for a period up to three years prior to the time that the child support judgment is made. However, interest does not accrue on past child support obligations prior to the time the support order was issued. When determining past support, the court must first consider all relevant circumstances, including the conduct or motivation of the parties, the diligence with which service of process was attempted on the obligor spouse or was frustrated by the obligor spouse and any amount of temporary or voluntary support that has been paid. Unpaid child support and arrears can be collected through child support enforcement services.

CHILD SUPPORT ENFORCEMENT

Title IV-D of the Social Security Act, as amended, outlines federal requirements for state child support enforcement. The Division of Child Support Enforcement (DCSE) within DES administers Arizona's child support program (program). The goals of the program are: 1) to ensure that children are supported by their parents; 2) to foster family responsibility; and 3) to reduce the cost of welfare to taxpayers. DCSE services include: finding noncustodial

parents whose whereabouts are unknown; legally establishing paternity for children born out of wedlock; obtaining a court order indicating the monthly amount the noncustodial parent must pay to help support his or her child; and collection enforcement through income withholding, tax offsets, asset seizures and various other remedies.

In Arizona, counties have the first right to provide program services. Four counties (Gila, La Paz, Navajo and Pinal) have exercised that right in conjunction with their county attorney offices. DES contracts with a private company to provide program services for Cochise County. DES operates the program in the remaining ten counties with legal services provided by the Office of the Attorney General.

Eligibility for child support enforcement services is open to all parents. Individuals receiving Temporary Assistance for Needy Families (TANF) are automatically referred to the program, assign their rights to child support collections to the state and must cooperate with enforcement efforts unless there are extenuating circumstances as specified in statute. Federal law requires that any child support money paid to TANF clients be used to pay back the federal and state government for the total cumulative amount of TANF given to the client. When a TANF client stops receiving TANF cash assistance, the client receives current support payments. However, payments for arrears that accrued while the client received TANF are used to reimburse the government. Until June of 2007, individuals not receiving TANF could apply for and receive program services at no cost. Following June 2007, DES must charge an annual \$25 fee to recipients of child support enforcement services who have never received TANF if the recipient receives at least \$500 of support in a federal fiscal year. If a foreign country requests enforcement of a support order, DES must charge the fee to the parent who owes the child support.

CHILD SUPPORT EXPIRATION

Prior to the 2006 legislative session, unpaid child support expired three years after the emancipation of the last remaining

unemancipated child who was included in the court order, unless past due child support was reduced to a written judgment. The party entitled to receive child support or DES could file a request for a formal written judgment for past due child support no later than three years after the emancipation of all the children who were the subject of a child support order. Once obtained, written judgments are exempt from renewal and enforceable until paid in full. In cases without written judgments, DES often used administrative remedies to collect unpaid child support, such as income withholding orders and liens on property.

In 2002, Jack Hayden filed a petition seeking to terminate administrative collection efforts by DES with respect to unpaid child support, claiming that his obligation to pay child support had expired because the court order for child support had not been reduced to a written judgment within the statutory timeframe of three years. The superior court rejected Hayden's claim, which the Court of Appeals affirmed. On July 1, 2005, the Arizona Supreme Court vacated the opinion of the Court of Appeals and remanded the case back to the superior court for further proceedings, ruling that: 1) the child support obligation is statutorily transformed into a temporary judgment lasting only three years following emancipation of the last child included in the court order, and 2) when the judgment expires, so does the obligation.

Laws 2006, Chapter 209, eliminated the expiration date of three years after the emancipation of the last child for unpaid child support judgments not reduced to a written judgment. However, if collection efforts are made more than ten years after the emancipation of the youngest child, the person owing child support may assert as a defense, and has the burden to prove, that there was an unreasonable delay in attempting to collect child support debt.

ADDITIONAL RESOURCES

- Arizona Supreme Court (has child support guidelines, brochures and an online calculator)
www.supreme.state.az.us/childsup/
- DES Division of Child Support Enforcement
www.azdes.gov/dcse/
- DCSE Interactive Voice Response (IVR) Telephone System
602-252-4045
1-800-882-4151
- "Arizona Department of Economic Security - Division of Child Support Enforcement," Office of the Auditor General, January 2001, Report No. 01-01
www.auditorgen.state.az.us
- Annual Appropriations Report, Joint Legislative Budget Committee
www.azleg.gov/jlbc.htm
- State v. Hayden - Arizona Supreme Court Opinion
State v. Hayden, 210 Ariz. 522, 155 P.3d 116 (2005)
www.supreme.state.az.us/opin/