

CHILD SUPPORT IN VIRGINIA

The idea behind child support is that it is supposed to allow the child to share in the standard of living of both parents. Both parents have an emotion and financial obligation to their children and the idea behind child support is to try to equalize the financial situation for both parents in the best interest of the child. Many years ago, most women stayed home with the children while the man earned the living that paid the bills allowing the woman the luxury of staying home with the kids. Back then, there would be a great disparity in income if the couple divorced due to the fact that the mother typically had no work experience; therefore it is understandable that the father would have to pay a significant amount in child support back then. The fact is, times have changed and these days most families consist of two working parents. Especially in the economy we are in experiencing now, where budgets are tight for everyone. The Court system has failed to keep up with the times and instead, the system is creating a huge disparity in the lives of those in the middle and lower income levels, in many cases plunging the non custodial parent (usually the father) straight into poverty while also stripping him of his drivers license and threatening him with or throwing him in jail. Without his license, he loses the ability to pick up his children or even get to get to work. In too many cases, even if the parent is able to find a way to get to work but isn't able to pay all of his living expenses and the total amount of child support that has been imposed upon him, that parent is then sent to jail for failure to comply with child support. While in jail, he will usually lose his job, yet his child support is still due each month. The state doesn't front the money for the custodial parent (usually the mother) so the parent who won the child still goes without any financial support at all from the father while he is behind bars. The father, unable to work in jail, will continue to have his child support arrearages build up each month he is behind bars, so when he eventually serves his time for not paying support, he is already in default once again for being behind bars and can realistically be sent back to jail for failure to comply with support. If the father had a job, vehicle or home, these would all be a thing of the past for him. How is ANY of this in "the best interest of the child"? I can understand if a party has been WILLINGLY defying court orders and not paying or even trying to pay anything in regards to financial support for his child(ren), but these methods of punishment should be used as a final alternative rather than the first choice. These parents are rarely given their lawful due process in regards to WHY they have not been able to pay the entire amount of court ordered support. The law allows for this but DCSE does not and the Court rarely does. This goes against parents basic rights. And honestly how can anyone seriously support a system that regularly incarcerates a child's parent simply for their inability to pay an ordered amount of financial support to the other parent. Just one look at the jails filled with parents who are incarcerated for inability to pay support should be a wake up call to this state (the country really) that we need to make some serious changes to how we look at support and what we can do to help children maintain physical and emotional bonds with BOTH parents and how we define and determine financial support. Jail and revocation of drivers licenses should be saved for the worst of the parents and only when all other options have failed. Those cases are not as prominent as DCSE would like us to believe. In most cases, parents do want to assist financially but they also need to have the ability to afford a place of their own and pay their bills too.

When parents split up, the custody should automatically be shared (since the family has lived a 'shared' arrangement while they were together by both working and both being actively involved with the children)...especially in cases where both parents were employed. IF the best interest of the child is truly to continue the stability of the child, then it makes sense that maintaining **BOTH** parents as active participants in the child's life physically and emotionally is the way to maintain that stability. When the parents shall physical custody of the children, the focus is not going to be just on the money that is transferred from one parent to the other. It is important for everyone to understand that parents divorce each other, they do NOT

divorce their children. The Court system needs to stop yanking fathers out of children's lives and diminishing their roles to that of the "every other weekend visitor". Parents don't "Visit" their children...they PARENT their children. Most of the men who are ripped from their child's lives were loving actively involved parents who are hard working law abiding citizens who did nothing to deserve having their child ripped from their lives. More importantly, the *children* did nothing to deserve having their father ripped from their lives and *they* are the ones who suffer the consequences of only seeing their father an average of 4 days per month. Sharing physical custody of children is not only emotionally healthier for the family and especially for the child, but a shared custody situation will reduce the financial burden on each parent since both of them will be taking an active role in maintaining the children's needs when the children are with them.

The financial disparity is glaring in regards to parents who earn similar income. When a father is paying 30-50% of his gross monthly income in child support and cannot afford to find suitable housing for himself, it will also end up limiting the time he is allowed to spend with his child because he might not be able to afford a suitable place to have the child stay overnight. The problem with the child support guidelines is simply that they are not a "one size fits all" solution. Every family is unique and every situation should be evaluated on its own merit instead of the cookie cutter way things are currently handled.

For instance, if a mother is living with her parents or siblings and doesn't have to pay rent or utilities, the father should also have a reduction in his child support obligation because the child support paid by the father is supposed to be utilized for these very things. After all, if the mother's family was providing the mother with cash, that SHOULD have to be reported as "income" to the mother for the sake of calculating guidelines (*Va Code 20-108.2 section C which indicates "gifts" as income*). If she is receiving free room and board and free food from her family it is the same thing. We are to count BAH and BAS for military members even though that is allotted for housing and food...we are to count those items as "in kind" payments...so why do we not count free housing and food to someone who is receiving it? Or at the very least, the court should deduct a reasonable amount from the child support calculations based on the fact that some of these things are *free* to the mother. This is why it is important that each case needs to be reviewed on its own merit. In cases where the custodial parent is receiving free housing and food, why should the other parent have to pay that parent excessive child support payments? These are things that **MUST** be taken into account.

PROBLEMS WITH DCSE

Why doesn't DCSE require a worker to "witness" the signature on the affidavit the client fills out in their office?

The fact that DCSE does not require a worker to witness the signature of the party filling out the affidavit makes it impossible for the other party to file perjury charges on the parent who makes false statements on the affidavit. The police department requires the name of the person who witnesses the signature of the affidavit before they can file perjury charges. The way things are done currently allows for fraud to run rampant despite the fact that the DCSE affidavit clearly states "information is true under penalty of perjury". How can DCSE just take one parent's statements as truth and then go after the other parent without allowing verification? And I know for a fact that there are *no* repercussions for the parent who chooses to provide false information on this very important document that is filed with DCSE. Since no one at DCSE witnesses the signature of the filing parent, there is no recourse for the parent who has been wrongly accused of failing to provide support. (Perjury charges must be filed with the police who require the name of the person who

witnessed the signing of the affidavit. Since no one at DCSE takes responsibility for witnessing the signatures of those who file...even though the affidavit states that information provided is done so under penalty of perjury...the perjury charge cannot be filed against the affiant.

Why doesn't DCSE send a copy of the affidavit to the other parent and require them to bring in THEIR statements to show how much THEY say has actually been paid?

In many cases, the paying parent is not in arrears and yet loses his license or is threatened with jail because the filing parent chose to present false information on the affidavit. This pertains to cases where the parents have a court order indicating direct payment from one parent to the other and then the custodial parent decides to get DCSE involved and must fill out an affidavit of payments received by the other parent. It is imperative to send a copy of this very affidavit to the NCP for verification BEFORE following through with punitive action on the NCP.

IF a parent already has a wage withholding through DCSE and DCSE has worked out a payment arrangement for any arrearage that might have been owed, why does DCSE maintain the power to harass that parent even further by threatening to put a lien on his property?

If DCSE has already worked out a payment plan with a NCP in regards to any arrearages they deem are owed to the custodial parent, *and* they enforce a wage withholding for the entire amount of current support and arrearages *and* these amounts are taken out religiously each payday, then how is DCSE allowed to suddenly put a lien on the NCPs property when no other arrearages have occurred since the payment plan began? It should be one or the other, not both...especially when the NCP has been paying on time every month. Once a payment plan has been worked out and adhered to, DCSE should NOT be allowed to toy with the NCPs livelihood, license or personal property. If they want to take out a lien, then they should do it in the beginning and not spring it on the parent midway through the agreed upon payment arrangement.

DCSE's perceived role in the Court is that of representation for the custodial parent. DCSE always sits with the custodial parent while the ncp is left on his own and has no representation. DCSE attorneys should sit in a neutral area of the Court so as not to appear as though they are representing either party.

Direct from a DCSE site...***"DCSE attorneys act on the behalf of the Commonwealth of Virginia. They do not represent the custodial or noncustodial parent nor are they supposed to provide individuals with legal advice. Should DCSE determine a child support case requires legal action, your case may be prepared for a court hearing and referred to the judicial system. In a case that DCSE refers to court, our attorneys will represent DCSE"***. The problem is that in many cases, DCSE has proof that a custodial parent has submitted false information on their affidavit, information that proves to be detrimental to the non custodial parent...yet no action is ever taken on the parent who falsifies an affidavit with DCSE!! If DCSE has the power to penalize the paying parent, they should also have the same power to penalize a parent who provides false information to them as well. Why is the only legal action DCSE is willing to take is against the father? There should be an obligation to prosecute those who perjure themselves on DCSEs affidavits as well.

PROBLEMS WITH THE COURT

The Court System is creating the need for higher support amounts from NCPs by ripping fathers out of their children's lives and making them 'visitors' instead of "parents".

The act of removing a actively involved, loving caring father from a child's life takes place on a regular basis in the American Court System. These fathers are demoted to the role of 'visitor' in their children's lives and typically 'allowed' to visit with their children every other weekend for an average total of FOUR DAYS PER MONTH! Meanwhile the children will typically spend more time than that in a daycare setting, even when the father is willing and able to take care of the child!! Unless an NCP is lucky enough to be "allowed" to spend 91 or more overnights with their child per year, the 'sole custody' formula for support is applied and the ncp ends up paying a huge percentage of their gross monthly income to the other parent while unwillingly being removed as an active loving parent and demoted to that of a 'visitor'

Child support is supposed to create an equal standard of living for the child at both parents home. Child support is NOT supposed to leave the paying parent without the means to support himself.

Support is supposedly awarded to provide for the child's basic needs and to allow the child to 'share in the standard of living of both parents'. Although both mothers and fathers can be ordered to pay support, there are studies that show mothers are required to pay child support in fewer than one in five cases in which fathers received sole custody. A greater proportion of noncustodial fathers are ordered to pay support.

Many fathers are left without the ability to support themselves and must resort to 'renting a room' from strangers, which then puts them at a disadvantage when it comes to visitation with their children. This creates emotional distress for children who have already seen their father reduced to a visitor in their lives.

The idea that the same standard of living can continue for either parent after a divorce (or in the event that the parents were never married) is appalling. In cases of divorce, it makes no sense that two parents living in one household are going to be able to maintain that standard of living when they split up. Instead of one household, now there will be two, therefore the standard of living is going to diminish somewhat for *both* parents and subsequently the child. To force one parent to maintain the standard of living for the other parent is going to have only one consequence...and that is one where the paying parent will be living below poverty wages. The child will end up experiencing this standard of living and the emotional toll it takes on his/her parent who is working twice as hard as he was before and yet having very little to show for it.

According to Virginia Code, 20-108.1 section 12 it states that "tax consequences including claims for exemptions, child tax credit and child care credit for dependent children are to be used in the calculations". Child support guidelines are supposed to include ALL income, including tax credits that are provided to the custodial parent, yet the Courts and DCSE do not do this despite the fact that in many cases this creates a financial disadvantage to an already cash strapped ncp.

To name a few, there is the daycare credit (which should be deducted from the total amount of daycare paid) and the dependent credit as well as the earned income tax credit. The other child related 'credits' (outside of the daycare credit which should be deducted from daycare expenses) should be totaled and then divided by 12 in order to apply it to that parents gross monthly income. The custodial parent *always* has the tax advantage despite the fact that taxes are taken from the ncp before child support is deducted. The custodial parent is not required to include child support on her tax forms and the ncp cannot deduct child support payments...yet it's the custodial parent who benefits entirely from the tax credits. These credits are actual cash payments (much like bonuses) that are supposed to be used in calculating the guidelines and yet it is rarely, if ever, utilized. Why is it part of the code if no one is going to apply it?

Why doesn't DCSE take into account "in kind payments (rent, utilities)" for the custodial parent who lives with family members and does not have to pay rent or utilities?

If child support is supposed to be for the basic needs of the child, and the mother chooses to live with family members for free, why does the father still have to pay the full amount for child support? The child support that the father pays is for the basic necessities such as rent, utilities, food, etc. If the mother is choosing to live rent free, the father should be allowed a reduction as well...especially when he is paying rent, utilities, etc.

When a parent moves away from the other parent thereby limiting that parents time with the child and creating a need for daycare, DCSE should not impose that daycare cost to the non custodial parent if that parent would have been able to provide care for the child if the parent had not moved the child away. If the custodial parent creating the need for an increase in support due to her actions, that should not be held against the father.

According to Va Code 20-108.2 (section F), the Court is supposed to take into account the fact that if the ncp is willing and able to have child with him instead of sending the child to a daycare facility. Having the ncp take care of his own child is in everyones best interest...it helps nurture the bond between the child and the father and it saves both parties money that could be better spend on other things. This is also the section of the code that pertains to the fact that the Court is supposed to take into account the tax consequences in regards factoring the daycare amount into the guideines. This should ALWAYS apply, but especially in cases where the child can avoid spending their entire summer in daycare while with the custodial parent. Many ncps are able to provide care for their child over the entire summer without the need for a daycare provider and that should be the primary consideration for the courts. Again, this would not only benefit the child in that he/she will continue to nurture their bond, but also financially for BOTH parents since no daycare costs will be incurred.

Why do the Courts only punish fathers? Children don't just need financial support, they also need to bond with each of their parents and when the mother willfully withholds a child from the other parent and violates the custody and visitation orders, the Courts NEVER take that parents license or put that parent in jail.

If a father falls behind in support for whatever reason there might be, the Courts go after the father with a vengeance, taking away his license, thereby limiting his ability to work, thereby further limiting his ability to

pay. The Courts will also throw fathers in jail and label them as "Deadbeats". Many of these fathers did not abandon their children...the Courts ripped them out of their children's lives, labeled them as visitors, pillaged their wallets and call them deadbeats. Custody, visitation and support are ALL Court orders, yet the violation of each of these orders is handled differently. Mothers who withhold the children and do all they can to prevent the bonding and continuing relationship between the child and the father are never held accountable even though under Virginia law such actions from a custodial parent are grounds for transferring custody to the other parent and are grounds for possible jail time. There is no "Department of Custody Enforcement" or "Department of Visitation Enforcement". The Court does not appear to be interested at all in the emotional well being of the very children they themselves rip away from their fathers. Currently, the major interest appears to be that of assessing child support at unfair rates to the fathers (fathers who have not abandoned their children) and unequivocally labeling ALL fathers as deadbeat dads if they have been affected by the economy. The irony of this is that these very same fathers would not face any of these hardships if they were with the child's mother. When married parents lose their jobs or quit their jobs and have to go on assistance, the state does not throw them in jail and take away their drivers licenses despite the fact that they are not able to provide adequate financial support for their children...then only do that to disenfranchised fathers...those fathers who have had divorce papers served on them or those fathers who never married the mother. If it is a crime to fail to provide support for your children then why aren't ALL parents subject to the penalties? Because it wouldn't make any sense, that's why. So why are we discriminating in regards to who we choose to target? If a ncp is ordered to pay more than he can afford, he is usually told to "get another job". Of course if he is able to get another job, he will be brought back to court for an INCREASE in support because he is now making more money!

THE DOUBLE WHAMMY FOR FATHERS WHO HAVE NO CHOICE BUT TO TAKE ON A SECOND JOB...

When the court assesses a child support amount to be paid by the Father and it leaves the father unable to pay his own bills, most dads will have no choice but to take on a second job. Not only does this now serve to limit the precious little time he can spend with his kids, it also puts him at risk for being taken back to court for an increase in support because his income has increased! Why does the system make it impossible for fathers to get ahead? Many of the dads who try to comply with the court ordered support and take on a second job so that they can afford to pay the child support AND take care of their own bills do not know that the second job is putting them in jeopardy of being forced to pay even more in child support. Currently if a father takes on a second job so that he can pay arrearages, the Court will not penalize him by making him pay more in current support. However, if there are no arrearages and the man just wants to make enough money to survive after child support, the Court will not hesitate to take more money from him. Ironically if the Courts would stop ripping fathers out of their children's lives and demoting them from "father" to "visitor", they would be able to have a shared custody arrangement for custody of their children which is what the children deserve.

There are so many things that need to be taken into account and the entire calculation of child support should be taken more seriously and on a case by case basis because each and every situation is different. These child support decisions have a serious impact on children, families and societies when the child is deprived of a loving relationship with one parent and child support amounts are too high for the paying parent. There is clearly a problem with child support but is it really in the rates of "compliance" or is it more in regards to "determinations and calculations"? Sadly, in making the child support collections a "for profit" business for the cities and states, we are selling out the childhood of so many children. The

money should be spent on assisting parents with parent education, access and visitation that will allow for REAL and ACTUAL increases of time between the child and each of their parents. We should be working WITH parents who are truly trying to meet their child support obligations while still trying to maintain a minimal standard of living for themselves. We should be working to assist parents in education and job searches so that they will be able to maintain their support obligation and we should be working with the Courts to ensure that support orders are just and fair for both parents, taking into consideration not only how much each parent makes, but also their access to other means of support (in regards to free housing, utilities, daycare, etc). We must stop thinking that there is a cookie cutter method for determining support that is presumed to be fair and just.

Parents and children would benefit from these changes and of course society will benefit as well in that children who are allowed to maintain a loving bond with each of their parents tend to do better in all aspects of life. Parents who have reasonable support obligations will be able to pay them, which will keep them out of the already overcrowded jails and our tax dollars will be better spent housing dangerous criminals rather than good fathers who are doing their best to do whats right by their children.

~~Use often in anger as a mediator I hear the words "I am going to nail your ass to the wall" or "You are going to have to pay me half of your paycheck and I am going to throw you in jail the first time you mess up!"~~