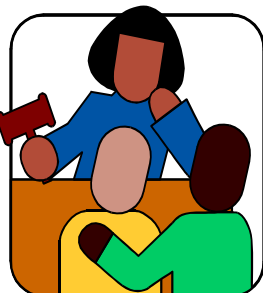
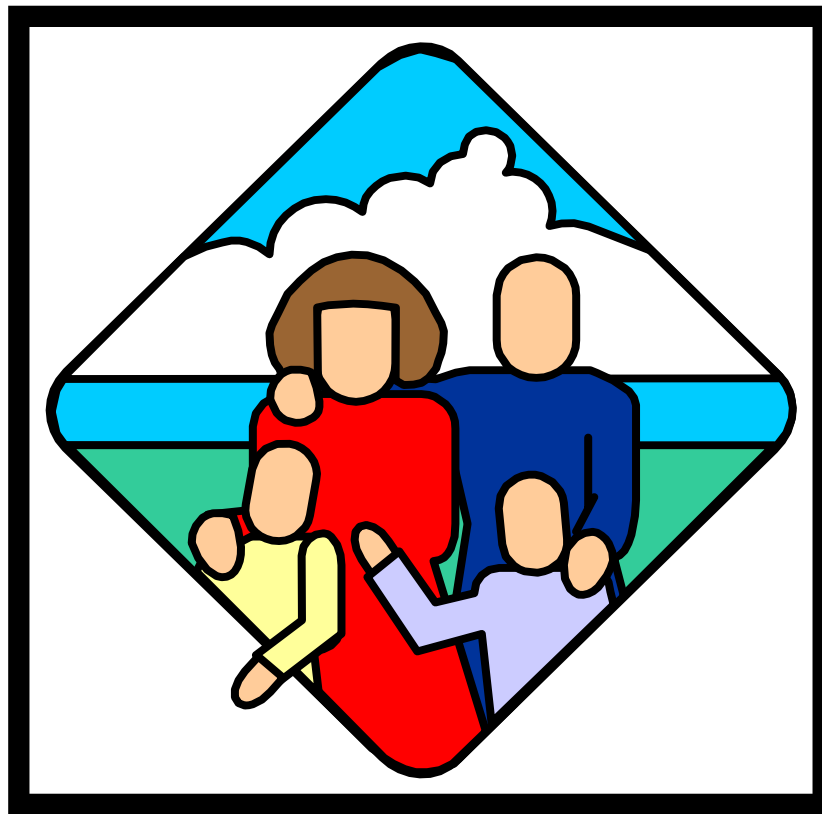


How to enforce a child support order in Illinois©

Family #3
Spring 2001



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Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

Look for these symbols to tell you when to:



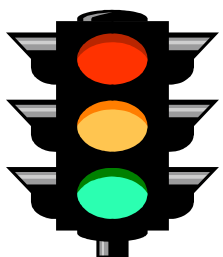
STOP!

You need legal representation or advice to continue.



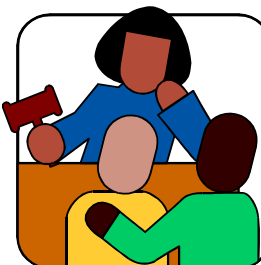
USE CAUTION!

This is very important so pay attention.



GO!

You can proceed to the next step.



CHECK IT OUT!

This issue is discussed in another packet.

Warning to all readers



Before you proceed with using this packet, you should ask yourself the following questions:

1. Have I tried to consult a private attorney?

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

3. Is this something that I can do on my own?

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

Free sources of legal help

Land Of Lincoln Legal Assistance

Serves the 65 southernmost counties in Illinois

Toll Free: 877-342-7891

Prairie State Legal Services

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

Coordinated Advice and Referral Program for Legal Services

serving Cook County

312-738-9494

West Central Legal Assistance

Serves Knox, Henderson, Stark, Warren, McDonough, and Fulton counties

800-331-0617

Will County Legal Assistance

Serving Will County

815-727-5123



It is very important that you read each section of this packet completely before you take any action in regard to a legal problem including using any forms that supplement this packet.

Because this packet discusses terms and actions you are likely not familiar with, you will need to refer back to the following sections from time to time when reading this packet:

People you should know

This section describes people that you may come into contact with in regard to a particular legal problem. It is important that you understand who these people are and what they do and don't do.

What these legal terms mean

This section defines commonly used legal terms in words that you can understand. To use the rest of this packet and any supplemental forms, you need to understand exactly what these terms mean.

Summary of the law in this area

This section contains summaries of important areas of the law that you need to know.

How to file a document in a court file

This section answers commonly asked questions about filing documents.

Myths and Tips

These two sections discuss commonly held mis-beliefs about the law and steps that you should take (or not take) that could make your task easier.



Who these people are



Judge:

The judge is the person who presides over the courtroom. In most cases, including child support cases, the judge makes all of the final decisions and approves all agreements. When a judge makes a decision or a finding, it has the force of law. The judge also sets and enforces court rules (like dress codes) and in some courthouses, the judge decides when cases are scheduled.



Circuit Clerk:

The Circuit Clerk is responsible for creating, managing, and updating court files. When you want to put something in a court file, see a court file, or make a copy of something in a court file, you talk to the Circuit Clerk's staff. In some courthouses, the Circuit Clerk also decides when cases are scheduled.



Sheriff:

The Sheriff's main duty is to keep the peace and to enforce the law. His/her role in the legal system, however, is usually to "serve" (give notice) to people that they are being sued. The sheriff does this by giving the person a notice called a "summons". The sheriff also enforces the judge's orders.



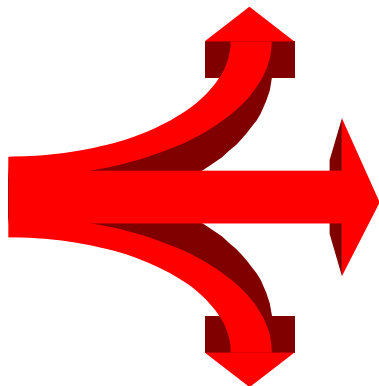
Attorney:

An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court and in negotiation settlements.



State's Attorney/Attorney General:

The State's Attorney and the Attorney General are attorneys who represent the State of Illinois in lawsuits. Generally, the State's Attorney's office handles criminal cases and the Attorney General's office handles civil cases. If you need assistance getting a child support order enforced in a state outside of Illinois, you should call either of these offices.



Illinois Department of Child Support Enforcement

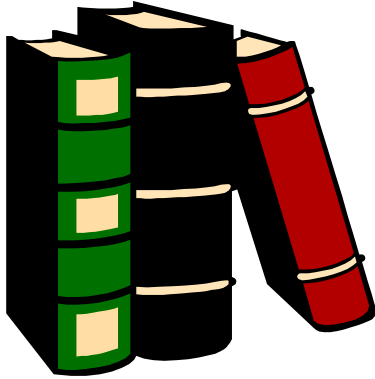
For assistance in getting child support, contact the Illinois Department of Child Support Enforcement. You can find their number in the Yellow Pages.

Office of The Attorney General

For assistance in getting child support order enforced in a state other than Illinois, contact the Office of the Attorney General for that state. You can find their number in the Yellow Pages.

State's Attorney's Office

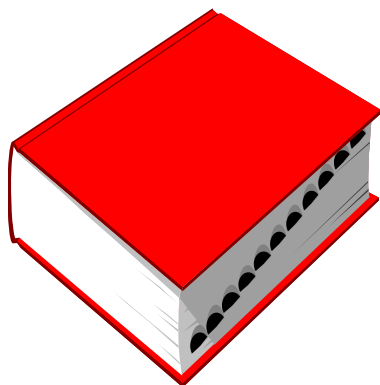
For assistance in getting child support order enforced in a county outside of Illinois, contact the State's Attorney's office in that county. You can find their number in the Yellow Pages.



Disclaimer: Please Read !!

The following is a list of publications which discuss the issues of child support. Some of these publications are specific to Illinois and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular publication will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

At the time we printed this packet, there were no self help publications which we were aware of which discussed this topic. Consult your local public or law library to see if there are any new publications on this topic. For the most recent information, consult the Self Help Legal Center.



affidavit

A sworn statement by a person. Lying in an affidavit can result in a charge of perjury which could mean a fine, imprisonment, or both.

alimony (maintenance)

Financial support paid to one spouse by another. This support is not for the children, but, rather is to maintain the standard of living for the receiving spouse. The supplemental forms waive maintenance.

arrears

When a supporting parents is behind on paying their support, it is called in arrears. An arrearage is the total amount of support a supporting parent is behind in paying.

child support

This is what the non-custodial parent pays to the custodial parent to help support his or her child. The amount of child support is set by law.

circuit

The judicial system in Illinois is divided into circuits. Each circuit defines a geographic area in Illinois.

custody

The parent who makes the decisions in the child's life regarding issues of health care, education, religion, and lifestyle. It is not who has physical control over the child or where the child resides.

defendant

A person who is sued.

divorce

The end of a marriage. The legal proceedings that you go through to end your marriage, divide property and debt and determine the custody and visitation for your minor child(ren).

hearing (trial)

An opportunity for both parties to tell the judge or jury their side of a dispute. Some hearings are court ordered so missing them can result in being held in contempt of court. For hearings which are not court ordered, failure to appear can result in the other side getting what they want in relief.

joint custody

When two parents share custody of a child or children. (see custody)

joint parenting order

A document that sets forth the terms of an agreement between two parents who share joint custody of a child. Most joint parenting orders are completed as part of a divorce. Generally, joint parenting orders discuss when the child(ren) will spend time with each parent, who is responsible for expenses of the child(ren), a method for resolving disputes between the parents, and rules for raising the child (ren). Like a judgment, a joint parenting order has the force of law.

judgment

A final decision or order of the court.

jurisdiction

Whether the court in a particular state has the power to hear a case or to order someone to do something depends upon whether it has "jurisdiction". Jurisdiction can be either over a person or over a thing. For a state court to have jurisdiction over a person, generally, the person must either reside in the state or have committed an act in the state that gave rise to the case.

marital settlement agreement

A document that sets forth the terms of an agreement between spouses as part of a divorce. Generally, marital settlement agreements discuss items such as property, debts, taxes, custody, and visitation. If it is made part of a judgment, a marital settlement agreement has the force of law.

minor children

Children under the age of eighteen.

motion

A written or oral request to the judge after a lawsuit has been started (see petition).

notary public

A person who verifies that a signature on a document is made by the person whose signature appears. The notary public does not verify the content of the document itself.

petition

A written request to the court. A petition usually starts a lawsuit and contains the facts that one person alleges has happened along with the relief that they are requesting from the court.

plaintiff or petitioner

The person who starts a lawsuit.

primary caretaker or residential parent

The person whom a child resides with most of the time. It is not who has custody of a child.

What these legal words mean

pro-se

A person who is not represented by an attorney and is involved as a party in a lawsuit.

serve or service

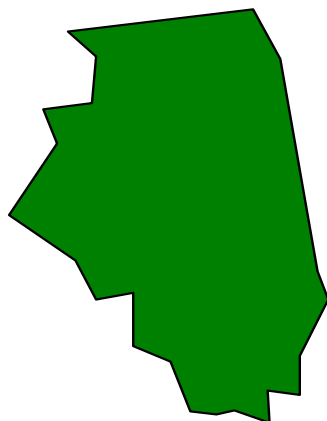
The process where a person is officially notified of a pending lawsuit.

statute

The law that the state legislature or federal government enacted on a particular subject.

supporting parent

The non-custodial or non-residential parent who has been ordered to pay child support to the custodial or residential parent.



The law which governs most of the area of child support in Illinois is the Illinois Marriage and Dissolution of Marriage Act. It can be found in Act 5, Section 505, of Chapter 750 of the Illinois Compiled Statutes. The Interstate Family Support Act governs out of state child support orders. It can be found in Act 22 of Chapter 750 of the Illinois Compiled Statutes.

How the court decides how much child support a non-custodial parent should pay:

How much child support a supporting parent pays from his/her net (after taxes) salary is determined by statute. The current rates are: 1 child - 20%, 2 children - 25%, 3 children - 32%, 4 children - 40%, 5 children - 45%, 6 or more children - 50% These are guidelines and a judge can go above or below them with good cause.

How child support is paid:

In most cases, child support is paid by wage garnishment. This means that the amount of support is deducted from supporting parent's salary at the time that he/she is paid. The amount is then forwarded to the Circuit Clerk so that the amount of support and the time it was paid can be properly recorded. After the Circuit Clerk records the amount of support paid, the amount is then transferred either to the residential/custodial parent or the Illinois Department of Human Resources.

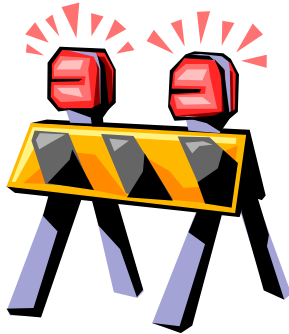
Special rules for welfare recipients:

If you are currently receiving financial cash assistance for your child from the Illinois Department of Human Resources, any child support payments that you receive will be sent by the Circuit Clerk to the Department and you will receive what is called a "pass thru" payment in addition to your monthly benefit amount. The pass thru payment is currently \$50.00 or the monthly child support payment, whichever is less. The remainder amount (if any) is kept by the Department to offset the cash assistance that you receive. If you stop receiving cash assistance, then you will receive all of the child support that is paid.

What the court can and can't do to enforce a support order:

The court can hold a supporting parent in contempt and punish a person who willfully refuses to comply with a order to pay child support. Similarly, the judge can seize assets or income which the supporting parent has and use them to pay support and can require an unemployed person to look for work. The judge, however, cannot order someone to take a certain job, nor can the judge force an employer to hire a supporting parent. Finally, and most importantly, the judge cannot order a supporting parent to pay support when he/she does not have the money to pay it.

Can you file in Illinois?

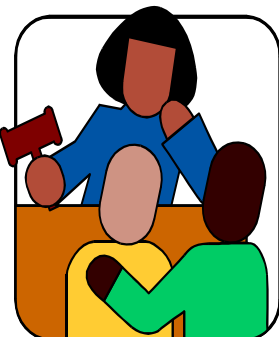


The court must have jurisdiction over you to give you what you want. Similarly, to order a person to do something — like pay support or give you a piece of personal property (a TV, a chair), the court must have jurisdiction over him/her. To know if the court has jurisdiction over you or the party you are suing, you need to know the following rules.

How the court gets jurisdiction over you:

The court can have jurisdiction over you if you have lived in the State of Illinois for at least 90 consecutive days.

How the court gets jurisdiction over the supporting parent:

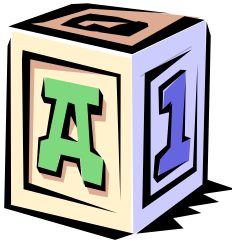


The court can have jurisdiction over the supporting parent if he/she has received proper notice of the lawsuit that you have started. To do this, you will need to “serve” him/her. In child support cases, however, you must serve the supporting parent in person, you cannot serve him/her by publication. For a discussion on service inside the State of Illinois, check Packet #1 of the Court Series. For a discussion on service outside the State of Illinois, check Packet #2 of the Court Series.

Special rules for spouses who don't live in Illinois:

If your spouse has never lived in the State of Illinois or committed an act inside Illinois which would cause him/her to come under the jurisdiction of the court, the court cannot order your spouse to do anything like pay child support.



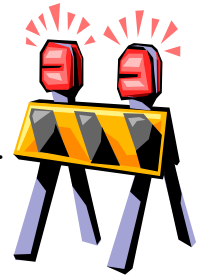


Step One: Prepare the necessary forms to start the process.

In the supplement to this packet you will find 5 forms: an Affidavit, a Petition For Order To Show Cause, an Order To Show Cause, the Application to Sue as a Poor Person, and the Child Support Data Sheet. Using the guide in the supplement to this packet, you will need to complete these forms.

The Affidavit In Support of Petition For Order To Show Cause is a sworn statement by you that the supporting parent has not paid and you have not received any of or as much child support as you are supposed to be receiving under the child support order. The Affidavit also states that you swear that the supporting parent has the financial ability to pay the support that is owed. You cannot file your Petition without the supporting Affidavit.

The Petition is your formal written request to the court for a hearing on why the supporting parent has not paid the child support he/she was ordered to pay. It also serves as a notice to your spouse as to your position on these issues so your spouse can respond. The Petition is a very important form and needs to be completed carefully. If you do not request something in your Petition, the court cannot grant it to you. **You must attach a copy of the child support order you are attempting to enforce to your Petition. If you do not have a copy of the child support order you are attempting to enforce, you can get one from the Circuit Clerk's office.**



The Application is your request that the court waive the fees that are required for a person to file a Petition. The amount of these fees varies by county. Typically, only persons of low income will receive a fee waiver, but there is no statutory definition as to what level of income is required for a person to receive a waiver. Consequently, if you think you may be eligible — your best bet is to apply. Denial of a fee waiver will not impact your case except that you will have to pay a fee to file documents with the Clerk.

The Order to Show Cause form is the order the Judge signs informing the supporting parent that the court has granted your request for a hearing and orders the supporting parent to attend to explain why it is that he/she has not complied with the support order.

The Data sheet is for use by the circuit clerk in the administration of the child support account. It is a list of all the information the clerk might need in administering the account. The employer ID number is the employer's tax identification number. That number is available from the employer, if they will give it to you, or it is on the W-2 form the employer sends to the employee annually. If you cannot obtain it prior to filing, the court has been known not to say anything. The Data sheet has nothing to do with the determination of the amount of support ordered.



Step Two: File your Petition, Affidavit, and Data Sheet and get your Order signed

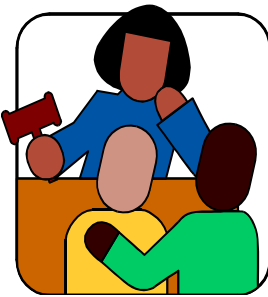
You should file your Affidavit, Petition, and Data Sheet in the county where the original child support order was entered. If you do not apply for a waiver of the filing fee — see below — you will have to pay to file your Petition.

If you want to apply for a fee waiver, your first step is to give the Application To Sue as A Poor Person to the Circuit Clerk and ask that it be presented to a judge for his/her approval. Wait (this may take several days) to see if it is approved, and if it is, you can then file your Petition without paying any filing fees.

After your fee waiver is either approved or denied (or if you don't apply for a waiver) you should file your Petition for Order to Show Cause with its supporting affidavit and the Data Sheet. Remember to take the original and 2 copies of the Petition with you to the Circuit Clerk's office (one for yourself and one for your spouse). When filing your Petition, ask the Clerk to present the Petition and Order to a judge for his/her approval. Give the Clerk a self addressed stamped envelope to return the Order to you if it is approved.



Step Three: Notify the other party of the Order to show up and explain



You will need to serve a copy of the Petition, Affidavit, and Order to Show Cause on the supporting parent. If the supporting parent lives inside the State of Illinois, use Packet #1 of the Court series; if the supporting parent lives outside the State of Illinois, use Packet #2 of the Court series. If you don't know where the supporting parent is or if attempts to serve him/her have been unsuccessful, you cannot proceed with your request for a hearing because you cannot serve someone with an Order To Show Cause by publication (discussed in Packet #3 of the Court series).

If you are receiving cash assistance from the Illinois Department of Human Services, you must notify the Department of your Petition. Included in the supplement to this packet is a form entitled Certificate of Mailing of Petition to Illinois Department of Human Services. To find the address for the Department, check the court file or the original child support order. You must mail the Department a copy of your Petition and then complete and file the Certificate of Mailing. You must then mail a file-stamped copy of the Certificate to the Department.



Step Four: Wait and see if the supporting parent is served

Once you have served the supporting parent with your Petition, Affidavit and Order, he/she is ordered to appear at the hearing date selected by the Court. Even if the supporting parent was not served, you should show up to your hearing.



If the person you are suing has filed a response and it appears from the response that he/she has an attorney, or if an attorney contacts you at any time before or during the hearing, you should seek legal assistance immediately as it is not a good idea for you to proceed against a person who is represented by an attorney on your own.

Before your hearing, you should go to the Circuit Clerk's office and get a certified copy of the child support payment history for your case. Make a copy of this for yourself and take both copies with you to your hearing. If you do not have a certified copy of the record, it will be difficult for you to prove how much the supporting parent is behind in child support.

In case the judge wants to enter a new child support order, you should prepare a Notice to Withhold Income for Child Support, the Order for Modification of Child Support, and the Uniform Order for Support. The Order for Modification is the document which the judge signs which awards you your support. The Uniform Order is used in collecting the child support. The Notice is a form which is sent to the employer of the party you have sued for support so his/her wages can be garnished.



Step Five: Go to the hearing:

While there is no way to know exactly what will happen at your hearing. Here are some things you should do:

If the supporting parent was served and shows up:

You should tell the judge that the supporting parent has not been paying the child support he/she was ordered to pay. You should present your certified copy of the child support record to the judge and you should tell the judge how far behind the support payments are. The judge will then listen to the supporting parent to find out why the support was not paid and will make a decision.

The judge will decide whether the supporting parent is behind in payments and if so, by how much. If the judge finds that the supporting parent is behind, the judge will then decide how the overdue amount will be paid. Unless the supporting parent has the money, the judge will not order that it be paid all at once. Normally, the supporting parent will have to make an extra payment each month in addition to the regular monthly support payment until the overdue amount (called an arrearage) is paid.

If the judge orders a change in the support amount or orders that the supporting parent pay an extra amount to pay off back support, you should present the Order For Modification of Child Support and Uniform Order for Support to the judge for his/her approval. If the Judge wants corrections made, don't panic, you can ask for permission to submit a corrected version by mail.

If the supporting parent was served but does not show up:

You should request that the court order a body attachment and have the supporting parent arrested and brought to the court to appear at a future hearing. If the judge does this, you will then have to call the Clerk from time to time to see if/when the supporting parent was arrested and if the judge has set a hearing.

You will have to prepare another Order To Show Cause and repeat Steps 3-5.



Step Six: Wrap it up:

If the Judge has signed a new Order for Modification of Child Support and Uniform Order for Support, you will need to file these new Orders with the Clerk and send a file-stamped copy of each of them to the other party.

To certify (prove) that you have done this, you will need to file a Certificate of Mailing with the Clerk. As with all documents you file, be sure to keep file stamped copies of these documents for yourself. Remember to hold on to the Orders as they are your proof that you are entitled to support. If you lose the Orders, however, don't panic, as with any document you file, you can always get another copy from the Circuit Clerk. You may, however, have to pay for the copies.

After you file the Certificate of Mailing, complete and file the Notice To Withhold Income For Child Support with the Clerk. After you have filed the Notice To Withhold Income For Child Support, send a file-stamped copy to the supporting parent's employer so that the child support can be deducted from his/her wages. To certify (prove) that you have done this, you will need to file a Affidavit of Service of Notice of Withholding with the Clerk. As with all documents you file, be sure to keep file stamped copies of these documents for yourself.

Q: What if my request is denied?

If your request for a hearing was denied because you did not have enough evidence to support your request, then you will have to wait until the circumstances surrounding your request change before you can file another Petition. The reason for this is because once the court makes a decision about an incident or an event, it cannot address that same incident or event again.

If your request was denied because of some procedural error on your part (for example, you did not get proper service), then you should correct the error and request another hearing.



Finally, whenever you lose in court, you have the right to request the court to reconsider its decision and you have the right to appeal the decision to a higher court. Please note that in most cases you have 30 days or less from the date of the judge's decision to exercise these rights or you may lose your right to reconsideration or appeal. You should seek the assistance of an attorney to exercise these rights.



Q: What is a court file?

A: The file is the way that the courthouse keeps track of a lawsuit.

The file includes all of the documents that were filed, notices of hearings, notes by the judge and clerk, and letters to and from the judge and clerk.

Q: When do you need to file a document in a court file?

A: Generally, you will file a document when you want to:

have evidence that a task was completed; record an event or a statement; or give notice to someone about something.

Q: What does it mean to file a document in a court file?

A: Generally, filing a document means giving the Circuit Clerk a copy of a document so that he/she can place it in the court file you want it to go in. When the Clerk files the document, he/she will stamp it with a stamp that says the date (and sometimes the time) the document was filed.

Q: Does filing a document make it legal?

A: No. The Clerk will not check to make sure that your document is in compliance with the law. Most of the time you can file anything you want as long as you are willing to pay for the filing costs. It does not mean, however, that what you have filed is correct.

Q: Why is filing so important?

A: Most of the time, filing is the primary way to show that you have met the deadline for something — either to initiate a lawsuit or to notify someone of a lawsuit or a hearing. Filing is also the way that you notify the court of your answer (response) to lawsuit started against you.



Please note that failure to file something on time can cause you to lose your right to proceed with your claim or you may be forced to start over.



3 Commonly held beliefs about child support

which are not true:

I (or the supporting spouse) can support my child by providing clothes or gifts and not by paying money.

While sending clothes, property, and gifts is definitely encouraged, almost all court orders which order support require support to be paid in the form of money and while other types of support (babysitting, clothes, etc.) definitely cost money, it is not in the form in which the court wants it provided. As such, supporting parents must pay their monthly support obligation before paying for other items because the court will not treat these other items as having met the support obligation.

I can send support directly to the custodial/residential parent and not through the Clerk.

There are 3 reasons why this can or would be a very bad idea.

First, most child support orders require that payments of support be sent directly to the Circuit Clerk and not to the custodial/residential parent. The main reason for this is so the Clerk can keep a record of when and how much support is paid. Consequently, not sending your monthly support to the Clerk would put you in direct violation of a court order.

Second, sending your support directly to the custodial/residential parent is very risky as if they don't notify the Clerk that the payment was made, it may not be recorded. If the payment is not recorded, as far as the Court is concerned, you have not made the payment.

Consequently, send all of your payments to the Clerk so that a record is kept of your payments.

Finally, some custodial/residential parents receive financial assistance for their child(ren) from the Illinois Department of Human Resources. By law, any child support received must go to them. Sending your support directly to the supporting/residential parent would be in violation of that law.

As a supporting parent, I am entitled to an accounting as to how the money I am sending is spent.

In Illinois, a parent receiving support for their child is not required to show or explain how they spend the monetary support that they receive from the supporting parent. The law presumes that the money received is spent on behalf of the child.



Try to get agreement

where you can

While it is not required, if you can get agreement with the other party on the terms or amount of support, it will make the process easier.

Go to other pro-se hearings before yours

If your county courthouse has a special date when they schedule the pro-se (no attorneys) hearings, try to attend at least one hearing before the date of your hearing. This way, you can watch what happens, (including what mistakes others make) take notes, and be more prepared for your hearing date.

Keep track of the payments of child support made.

While the Clerk is supposed to keep track of your payments of child support, including when they were made and in what amount, mistakes do happen. As such, whether you are receiving or paying support, it is a good idea to keep a record yourself (including pay check stubs, checks, receipts, etc.), in case a question arises as to whether a payment was made or not.

Get help if you need it



If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, enforcing your own support order may be much more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if enforcing your own child support order proves to be too difficult a task for you, talk to an attorney.