

Child Support

By K. Dean Kantaras & Emily Saladrigas



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Under Florida law, each parent has the duty and obligation to support their minor or legally dependent child. Determining how much each parent owes in support to the child is calculated through the child support guidelines. The guidelines are based on the parents' combined monthly net income estimated to have been allocated to the child as if the child was living in a two-parent household. The court may impute monthly income onto a parent if the parent is found to be voluntarily unemployed or underemployed.

In an initial determination of child support, the court may award retroactive child support from the date the parents stopped residing together in the same household with the child. This award may not exceed a period of twenty-four months preceding the filing of the petition, regardless of whether that date precedes the filing of the petition. In determining the award for retroactive child support, the court shall apply the guidelines in effect at the time of the hearing subject to the obligor's demonstration of their actual income. The court shall also consider the payments made by the obligor during the retroactive period, and whether to impose an installment payment plan for the retroactive child support. A parent may request retroactive child support even if the obligor's child support obligation has been terminated.

Different from retroactive child support is past-due child support. Past-due child support is when a parent fails to pay child support as previously required by a court order. If a parent is owed child support payments from the obligor, then that parent has the right to collect "child support arrears," which not only includes the cost of child support owed, but interest as well. The owed parent maintains this right to collect indefinitely, even after the

child has turned eighteen. If the child support payments were ordered to be made through a local depository or through the State Disbursement Unit, any payment or installment of support that is due is considered delinquent. After providing notice and time for response to the obligor, the unpaid payment becomes enforceable as a final judgment by operation of law with the same full force, effect, and attributes of a judgment entered by a Florida court.

Pursuant to Florida's public policy, children shall be maintained primarily by their parents in order to relieve government assistance programs with the same responsibility. To enforce this state value, there are criminal penalties in place to dissuade parents owing child support from willfully avoiding their court ordered obligations. If an owing parent is found to be willfully avoidant of their child support obligation and has the ability to fulfill their payments or failed to acquire the resources necessary to comply, that parent commits a misdemeanor of the first degree. If a parent is found in violation again and owes the child more than one year of support equal to or greater than \$5,000, that parent commits a felony of the third degree. Upon conviction, the court will order restitution in the amount equal to the unpaid child support owed at the time of sentencing.

The court may use other penalties available to enforce compliance as well. The court may enter a judgment for arrears, ordering the obligor to pay either in lump sum or in installment plans. The court can

also garnish the obligor's wages to ensure compliance. When wages are garnished, the obligor's paycheck is automatically applied to the outstanding balance. The state may also collect federal or state tax refunds to cover the unpaid child support. If the obligor has repeatedly failed to fulfill their obligations, the obligor's driver's or professional licenses may be suspended until the obligor has complied. In more dire cases, the court may find the obligor in contempt and order him to pay fines or sentence him to jail.

If the obligor wishes to modify their existing child support obligation, the obligor is able to do so if there are grounds for the sought modification. To modify the obligation, there must be a permanent substantial and material change in circumstance that hinders the obligor's ability to pay the court-ordered child support. However, this modification can only adjust prospective child support; not child support arrears. ❖

EDITOR'S NOTE: K. Dean Kantaras is the managing partner of K. Dean Kantaras, P.A., a firm handling cases in family law and immigration. Mr. Kantaras is board certified in marital and family law by the Florida Bar. He has been practicing for over 30 years and is "AV" rated by Martindale-Hubbell. Emily Saladrigas received her Bachelor of Science from Florida State University and her Juris Doctor and Certificate of Advocacy from Stetson University College of Law. Outside the office, Emily serves as a Guardian ad Litem volunteer, where she makes sure the child's best interests are valued and prioritized by the family, caregivers, and the court. Their offices are located at 3531 Alternate 19, Palm Harbor, 34683, (727) 781-0000; 1930 East Bay Drive, Largo, 33771; and 111 S. Albany Ave., Suite 200, Tampa, 33606, kantaraslaw.com.