

The ABCs of Child Support in St. Louis

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THE ABC'S OF CHILD SUPPORT IN ST. LOUIS

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If child support is at issue in your case, here is a basic overview of what you need to know.

The statute

The right to receive (and the obligation to pay) child support in Missouri is governed by statute (§452.340 (RSMo.)), which reads:

In a proceeding for dissolution of marriage, legal separation or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for the support of the child, including an award retroactive to the date of filing the petition, without regard to marital misconduct, after considering all relevant factors including:

- (1) The financial needs and resources of the child;
- (2) The financial resources and needs of the parents;
- (3) The standard of living the child would have enjoyed had the marriage not been dissolved;
- (4) The physical and emotional condition of the child, and the child's educational needs;
- (5) The child's physical and legal custody arrangements, including the amount of time the child spends with each parent and the reasonable expenses associated with the custody or visitation arrangements; and
- (6) The reasonable work-related child care expenses of each parent.

The Form 14 – an overview

Despite all of this language directing the judge to consider all of these different things, child support in the overwhelming number of cases is determined by the use of a formula referred to as the Form 14. Here is a link to the form:

<http://www.courts.mo.gov/file.jsp?id=29740>. The Form 14 uses the gross incomes of the parents and other costs paid for the child(ren) with respect to which the child support is being calculated (such as work-related daycare, health insurance and in somewhat extraordinary circumstances, education, medical or extra-curricular expenses) to calculate the presumed amount of child support.

The Form 14 – special considerations

Even though the Form 14 seems simple and straightforward, it is not, and there are some nuances.

Gross income is used for each parent, and that includes virtually all income such as wages, draw, dividends – but not public assistance based on income (like food stamps or TANF) or child support received for children not part of the situation for which the Form 14 is being prepared.

The Form 14 – self-employed, unemployed and underemployed

If a parent is unemployed or under-employed, income may be imputed to that person based on what he or she could reasonably be making.

There are special considerations for persons who are self-employed or have trust income that are beyond the scope of this article. There are also specific considerations for individuals working overtime at their primary employment or working another job (“secondary”) that are addressed in the Directions, Comments on Use and Examples for Completion of Form No. 14 prepared by the Missouri Supreme Court. See <http://www.courts.mo.gov/file.jsp?id=29741>.

With self-employed persons or those that receive bonuses, the court most likely average the parent’s last three year’s of earnings and use that number.

If the court believes that a parent is not working to their full capacity, the court can project (called “imputing”) income to that parent based on prior earnings and education and experience.

The Form 14 – work related childcare

Although there is a specific line on the Form 14 for work-related childcare, whether you are the person paying support or the person paying support impacts whether the childcare should be included in the Form 14 (there can be an agreement for each parent to pay the daycare a specific proportion of the total cost directly to the daycare). Once a child starts kindergarten,

child care costs generally go down. That means that the person paying child support may be paying too much. If you have anything but two W-2 wage earners, you should consult an experienced family law attorney about the child support in your case.

On the other hand, child support may be withheld from the obligor's wages by wage assignment, which virtually assures that the child support will be paid (at least so long as the obligor is still employed. Day care expense that is paid separately (in attorney parlance "outside the chart") can not be regularly collected by wage assignment. The amount due must be determined by a judge and that judgment collected as with any judgment, most commonly by garnishment of wages or a bank account.

The Form 14 – health insurance

Health insurance for the child is included in the Form 14. If a parent pays one amount to cover himself or herself and another amount for one dependent child, the amount paid for health insurance for the child is simple to determine. If the parent pays one amount for any number of dependents, the total amount paid is divided by the total number of people covered to determine the cost for the child. In most situations, this method is used even if the parent providing insurance is obligated to provide coverage for another child and there is no additional charge to add the child who is the subject of the Form 14.

The Form 14 – educational expenses

Education-related expenses may only be included in the Form 14 by the Judge (the parties are free to agree to include them) if private school is required to meet the particular educational needs of the child. Judges generally do not include the cost of private school in the Form 14 unless the parent seeking such proves that the public school available cannot meet the particular educational needs of the child. The parent's desire that the child attend or continue to attend a parochial school is not in and of itself a reason to include private school in the Form 14 calculation.

The Form 14 – other extraordinary child expenses

Other extraordinary child expenses, including but not limited to extraordinary medical expenses that are not covered by or reimbursed by insurance may be included in the Form 14, but that is very rare.

The Form 14 – basic operation (including the visitation credit)

Once all of these numbers have been plugged into the Form 14, the result is two numbers that represent each parent's support obligation. Those numbers are determined by multiplying the "Total Combined Child-Rearing Costs", a number representing what is presumed to be the total cost for both parents to raise the child and multiplying that number by each parent's share of the total gross income.

The final step in preparing the Form 14 is to determine what visitation credit – if any – the parent paying child support should receive. If the income of the parent does not reach a specified threshold, based on the number of children, there can be no visitation credit. Otherwise, the parent paying support will get a credit against the child support to be paid (computed as a percentage of Total Combined Child-Rearing Costs) based upon the overnight visitation that he or she has. Less than 36 nights, 0%; 26-72 nights, 6%; 73-91, 9% and 92 – 109, 10%. If the parties share true joint physical custody (each has 50% of the time), the credit can be up to 50%. Determination of the visitation credit can depend on number of factors in addition to the number of overnights, which are beyond the scope of this article. It is best that you consult an experienced family law attorney on such a circumstance.

Child support after graduation from high school

The law about whether child support will continue after a child who is capable of caring for himself or herself reaches age 18 or is graduated from high school, whichever is later, is somewhat complicated. There are a series

of requirements that must be met or the right to receive child support will be lost forever or suspended (or abated) for a semester or more.

The statute

The actual wording of the statute regarding child support after a child is 18 or has been graduated from high school is set forth below, with my comments inserted in italics,

If when a child reaches age eighteen, the child is enrolled in and attending a secondary school program of instruction, the parental support obligation shall continue, if the child continues to attend and progresses toward completion of said program, until the child completes such program or reaches age twenty-one, whichever first occurs.

“Progressing toward completion” has been interpreted by the appellate courts as passing the classes. A “D” grade is not considered passing.

The October 1 deadline following high school graduation

If the child is enrolled in an institution of vocational or higher education not later than October first following graduation from a secondary school or completion of a graduation equivalence degree program and so long as the child enrolls for and completes at least twelve hours of credit each semester, not including the summer semester, at an institution of vocational or higher education and achieves grades sufficient to reenroll at such institution, the parental support obligation shall continue until the child completes his or her education, or until the child reaches the age of twenty-one, whichever first occurs.

The statute does contain an exception to the October 1 deadline when “the circumstances of the child manifestly dictate.” In the event that the child does not enroll in secondary education or fails to give the required notice does not mean that child support paid on or after that date must be

repaid, even if the child support is being paid by way of a wage assignment.

Child support continuing to 21 for child in post-secondary education

To remain eligible for such continued parental support, at the beginning of each semester the child shall submit to each parent a transcript or similar official document provided by the institution of vocational or higher education which includes the courses the child is enrolled in and has completed for each term, the grades and credits received for each such course, and an official document from the institution listing the courses which the child is enrolled in for the upcoming term and the number of credits for each such course.

The appellate courts have held that a printout from the school's website that cannot be altered will suffice as a "similar official document." The appellate courts have further held that the transcript or similar other document may be delivered to the obligor (the parent paying child support) by the child or by the obligee (the person receiving child support). Blacking out the dates and times of the classes (to prevent the parent from "popping in") does not affect the notice. If the address of the parent is unknown, a good faith effort is all that is required. Sending the information to the last known address is essential (as is keeping the returned item) as well as to the last known e-mail (and keeping the bounce-back notice). One court even suggested sending the notice to the last attorney of record with a request to forward it.

Failure to provide this notice – if the original notice was properly given – will relieve the parent ordered to pay child support of the obligation to pay child support for that semester, and that child support cannot later be recovered. This "abatement" of child support will end once the child gives the proper notice at the beginning of a semester, "Beginning" is not defined in the statute and the appellate courts have only said that prior to the semester is not required and that within the first week of classes is acceptable.

When enrolled in at least twelve credit hours, if the child receives failing grades in half or more of his or her courseload in any one semester, payment of child support may be terminated and shall not be eligible for reinstatement.

Again, the statute contains no provision for an extraordinary occurrence like an accident or illness as the basis for an exception to this rule.

The right to request proof of the grades of the child in post-secondary education

Upon request for notification of the child's grades by the noncustodial parent, the child shall produce the required documents to the noncustodial parent within thirty days of receipt of grades from the education institution. If the child fails to produce the required documents, payment of child support may terminate without the accrual of any child support arrearage and shall not be eligible for reinstatement.

Note the use of the word “may” – that means that it is within the discretion of the judge whether or not to terminate the child support retroactive to the date of the demand.

Payment of child support directly to the child

If the child is enrolled in such an institution of vocational education , the child or parent obligated to pay support may petition the court to amend the order to direct the obligated parent to make the payments directly to the child.

There is no appellate case law on this point, and judges vary in their approach to this issue.

As used in this section, an "institution of vocational education" means any postsecondary training or schooling for which the student is assessed a fee and attends classes regularly.

"Higher education" means any community college, college, or university at which the child attends classes regularly.

Child with a developmental disability

A child who has been diagnosed with a developmental disability, as defined in section 630.005, or whose physical disability or diagnosed health problem limits the child's ability to carry the number of credit hours prescribed in this subsection, shall remain eligible for child support so long as such child is enrolled in and attending an institution of vocational or higher education, and the child continues to meet the other requirements of this subsection.

Section 630.005 (RSMo.) defines a developmental disability as:

a disability:

(a) Which is attributable to:

a. Intellectual disability, cerebral palsy, epilepsy, head injury or autism, or a learning disability related to a brain dysfunction; or

b. Any other mental or physical impairment or combination of mental or physical impairments; and

(b) Is manifested before the person attains age twenty-two; and

(c) Is likely to continue indefinitely; and

(d) Results in substantial functional limitations in two or more of the following areas of major life activities:

a. Self-care;

b. Receptive and expressive language development and use;

c. Learning;

d. Self-direction;

e. Capacity for independent living or economic self-sufficiency;

f. Mobility; and

(e) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, habilitation or other services which may be of lifelong or extended duration and are individually planned and coordinated;

Exception to credit hour requirement for child working 15 hours per week during school

A child who is employed at least fifteen hours per week during the semester may take as few as nine credit hours per semester and remain eligible for child support so long as all other requirements of this subsection are complied with.

There are no appellate decisions on this point, but it is my opinion that short interruptions where there are less than 15 hours worked such as Spring Break and the week of finals and the week before should be fine. It is preferable to keep paycheck stubs or other indicia of hours worked, from the employer.

About Leigh Joy Carson

Clients often choose Leigh Joy Carson as their family lawyer because of her reputation as an aggressive, experienced attorney who cares for her clients. Her approach also guides The Carson Law Firm, whose lawyers are committed to giving their clients sound legal advice rather than simply telling them what they would like to hear.

Carson explains, “Once clients know where they stand in the legal system, they can make informed decisions that allow them to move forward in life.”

Carson, a Chicago native, decided while attending the Saint Louis University School of Law that St. Louis was the place she’d like to call home. In 1986, after graduating, Carson accepted a prestigious clerkship with Judge Carl R. Gaertner of the Eastern District of the Missouri Court of Appeals.

“Judge Gaertner was an extraordinary jurist,” Carson recalls. “One of the most important lessons I learning during my two-year clerkship is that the law isn’t just about legal arguments — decisions affect people’s lives.”

After her clerkship ended, Carson joined Bryan Cave, the largest law firm in St. Louis, as an associate. There, she says, “they teach you how to provide clients excellent legal representation.”

Having laid down a strong foundation early in her legal career, Carson moved to Love Lacks & Paule, a boutique firm with a strong family law practice. Once exposed to the practice area of family law — her first such case involved registering a divorce in St. Louis that had been obtained in Japan — Carson knew that it was the field for her.

But Carson had inherited a strong entrepreneurial streak , and in 1995 she established her own firm in Clayton. In the 16 years since she has enjoyed a thriving practice, representing spouses and parents, as well as numerous children through guardian ad litem appointments.



Those varied legal experiences on all sides of family law cases give her clients a distinct advantage. “I understand the strengths and weaknesses of my client’s case,” Carson says. “Using that knowledge, I can guide them to the best outcome possible.”

In addition, her firm’s focus on family law matters — divorce, child support, child custody, adoptions, guardianships and other domestic matters — require Carson to be well versed in established law and on top of the latest decisions coming out of the Missouri courts and aware of new statutes being passed by the Missouri Legislature. Clients can relax in the knowledge that this is not someone who is just learning the law.

To promote her practice and give back to the profession, Carson regularly shares her experience at legal seminars and conferences for lawyers and judges. Her guest articles have appeared in numerous publications.

Carson is proud of her firm’s reputation for excellence. “After 20 years of practice focused primarily on family law, I know how to help my clients think their way out of a problem. I often meet people during some of the worst times of their lives and help them move ahead.”

Bar Admissions

- Missouri

Education

- Saint Louis University School of Law, juris doctor, *cum laude*, 1986
- Ripon College, bachelor of arts, *cum laude*, 1983

Speaking Engagements

Carson has spoken at continuing legal education seminars sponsored by:

- University of Missouri–Kansas City
- University of Missouri–Columbia
- Bar Association of Metropolitan St. Louis
- Missouri Bar
- National Business Institute
- Land of Lincoln Bar Foundation

Volunteer and Board Memberships

- Caring for Kids, current board member
- St. Louis County courthouse accessibility ad hoc committee
- Kids in the Middle, past board member
- Heritage Foundation, past board member