

Child Support in South Dakota

A Handbook for Parents



DSS

South Dakota
Department of
Social Services

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Child Support in South Dakota

Every child needs support, including financial and emotional support. Every child has a right to this support from both parents. Devoted parents can be a loving and supporting force in a child's life.

Even when parents do not live together, they need to work together to support their children.

Without the involvement of both parents, too many children do not get the chance they need and deserve to reach their full potential.

The South Dakota Department of Social Services Division of Child Support (DCS) helps parents establish a financial partnership to support their children when they do not live together.

Child Support Services

The Division of Child Support (DCS) provides services to both parents and any adult who has legal custody and/or guardianship of a minor child. Services are also available to fathers who need help establishing paternity.

What DCS Can Do

Depending on your circumstances and the information available, DCS may be able to help:

- ✓ Locate payors of support;
- ✓ Establish paternity;
- ✓ Establish and enforce court orders for child support and medical support;
- ✓ Review and modify court orders for child support;
- ✓ Enforce alimony if child support is also being collected;
- ✓ Work with other states to enforce support when a parent doesn't live in South Dakota;
- ✓ Collect and process payments.

What DCS Cannot Do

DCS does not provide:

- ✓ Divorce assistance;
- ✓ Parenting time (visitation) and custody issues mediation/resolution;
- ✓ Spousal maintenance (alimony) order establishment;
- ✓ Legal advice or counsel.

Legal Services

In performing services, DCS may be assisted by a state’s attorney or special assistant attorney general. These attorneys represent the state. They do not represent either parent, thus no attorney-client relationship exists. DCS attorneys cannot provide services regarding custody, parenting time or any other issues not related to child support such as property settlements, attorney fees, medical expenses and other debts. If a parent retains a private attorney for any services provided by DCS, the agency must be notified immediately.

Alimony Enforcement

Alimony or spousal support is collected along with the child support payments only when alimony is a part of the order for child support. DCS does not provide enforcement services for alimony payments only.



Requesting Services

If you are a parent and receive public assistance through Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), Medicaid or Title IV-E Foster Care, you qualify to receive DCS services without completing a request for services form or paying a fee.

If you are not receiving public assistance and are interested in requesting child support services or have questions, you can contact any DCS office. You will have to fill out a form and pay a \$5 fee. You can also find information about child support services online at dss.sd.gov/childsupport.

A \$20 fee is charged for “location only” services. The fee for locating a payor of support in child custody or parental kidnapping cases is \$50 (\$54 if no Social Security number is provided). For “income withholding only” services, the fee is \$25.

Your Role in Your Case

You must take an active role in your case. Cooperating with DCS improves your chances of successful support establishment and collection. The office cannot succeed without your help. You must report changes that may affect your case.

You must contact DCS if:

- ✓ You or the other parent moves;
- ✓ You or the other parent gets a new phone number or job;
- ✓ The number of children living with you changes;
- ✓ You have new information that might help locate the other parent;
- ✓ You apply for public assistance;
- ✓ You receive a payment directly from the other parent;
- ✓ You are involved in other court actions regarding support payments;
- ✓ You hire an attorney.

Your Rights

If you request child support services, you have the right to:

- ✓ Receive fair and nondiscriminatory treatment;
- ✓ Have all private data treated as confidential;
- ✓ Be notified of all important actions concerning your case;
- ✓ Have the chance to participate in court action involving your case;
- ✓ Ask for reviews and adjustments to your support order.

DCS protects the confidentiality of information to the extent permitted by law. However, in providing child support services on your case, it may be necessary to provide an address and other information to other persons or agencies.

Locating the Payor of Support

To obtain any type of order, DCS must notify the payor of support that it is trying to establish an order. DCS cannot take action in some cases if the parent cannot be found.

If DCS does not know the whereabouts of the parent, there are many ways to gather information. DCS attempts to locate parents through the State Parent Locator Service, which links to information with other state agencies. If the parent has never lived in South Dakota or has left the state, DCS will request other states to search their files. DCS can also search on a national level through the Federal Parent Locator Service if the family has no knowledge of the other parent's whereabouts.

Information provided by the receiver of support can greatly increase the chances of locating the parent. The Social Security number, information about work history, friends, relatives, arrest records, former addresses or other pertinent information will speed the location process and increase the chance of collecting support.

In addition, DCS uses two other tools to locate parents:

- ✓ The Federal Case Registry contains limited information about each child support case in the United States. It matches quarterly wage information and unemployment compensation records submitted by each state with the National Directory of New Hires.
- ✓ Federal law requires all employers to report information about newly hired employees. They report the information to their state. The state then reports the information to the National Directory of New Hires for matching through the Federal Case Registry.

Establishing Paternity

Establishing paternity is determining who is the biological father. Child support cannot be ordered without establishing paternity. DCS helps parents establish paternity for a child who does not have a legal father.

Establishing paternity is important for children because they can obtain:

- ✓ A part of any Social Security retirement or disability their father receives;
- ✓ Life insurance and inheritance their father might receive;
- ✓ Information regarding the father's family medical history that can benefit the child.

Legal versus Biological Father

Every child has a biological father – the man who contributed half of the child's genetic makeup, but the legal father may not be the biological father. The legal father is who the law recognizes as a child's father. In most instances, when a married couple has a child, the law automatically recognizes the husband as the child's legal father; therefore, paternity doesn't need to be determined. When an unmarried woman has a child, an official act is needed to establish the legal father of a child.



Establishing Child Support Orders

DCS or a parent may ask the court to issue a support order. The support order may be part of an interim, temporary, permanent or modified court order in a divorce, paternity action, order for protection, child custody action or separate child support action. The court sets the amount of child support and medical support a parent must provide.

Steps to Establishing a Child Support Order

Once a parent has been located and if the parent with whom the child is residing with does not have an order for support, DCS may serve the parent a Notice of Support Debt advising the person of his or her duty to support the child(ren). The parent must respond to the notice and provide a financial statement.

If the person does not contest the amount of support, orders can be obtained within 60 days after the parent is served. If either parent does not agree with the amount of support recommended by DCS, he or she may request a hearing. This may take three to six months.

Determining Child Support Without a Court Order

Child support obligations are determined by the courts using guidelines set out in state law. When a child's parents are separated, divorced or unmarried, the guidelines help ensure both parents are sharing the cost to support their child. The child support obligation is set by looking at the combined monthly net incomes of both parents. The amount a person paying support must pay is based on their proportionate share.

When a person paying support's monthly net income falls within the low income areas of the guidelines, the child support amount is compared to their proportionate share using both parent's monthly net incomes. Whichever amount is lower becomes the child support obligation.

Paternity can be established in three ways:

- ✓ The mother and the alleged father can agree he is the father of the child and sign a Voluntary Acknowledgment of Paternity Form;
- ✓ The court may officially declare who is the child's legal father; or,
- ✓ If parents want proof the man is the biological father before he is named the legal father, they can request genetic testing. This can create a legal presumption of paternity if results show a 99 percent or greater probability the man is the father.

Once paternity is established, a child support order can be established. DCS can file an action in circuit court or make a referral to another state to determine paternity and establish a support order before a child is 18 if paternity has not been established.

The court may also split the costs for child care and health care coverage (i.e. medical, optometric, dental or orthodontic, or counseling costs) between the parents. These guidelines are believe to be appropriate unless either can show a change is necessary.

The child support guidelines are found in South Dakota Codified Law Chapter 25-7.

Changing a Child Support Order

Child support orders can be modified if either parent's income or circumstances change. Either parent (or their representative) may request a petition from the Department of Social Services for modification of a South Dakota child support order, as long as South Dakota retains jurisdiction. In certain circumstances, orders issued in other states may also be registered in South Dakota for modification purposes.

When the petition and attachments are received by the Division of Child Support, the forms are reviewed for completeness and forwarded to the clerk of court in the county where the order was entered. The court appoints a referee to hold a hearing. The referee will make a report to the judge with a recommendation for child support based on the state guidelines, before the judge signs a modified order of support. Child support referees are under the authority of the Unified Judicial System (UJS). To file a complaint against a referee, contact UJS at 605.773.3474.

Informal Agreements

DCS is required to enforce provisions of the order for child support. DCS will not honor informal agreements between the parents unless approved by a court order. All informal agreements must be brought before the court for entry of a conforming order. When one parent is ordered to pay support and now has custody of the children, the parent must have the child support order modified.

Enforcing a Support Order

When a parent does not meet their child support obligation, DCS works to enforce the support order. Below is a list of some enforcement methods.

Income Withholding

DCS may issue an income withholding order to the parent's employer to withhold current child support payments plus an additional amount to be applied to any past due support, if owed.

When served, the employer or payor of income is required to forward payments within seven business days from the date the employee is paid or their property is withheld. A prorated amount may be withheld, depending on the pay periods. The employer or payor cannot withhold more than 50 percent of the parent's gross income after mandatory deductions (state, federal and local tax; Social Security tax; and any other deductions which are required to be withheld either by law or as a condition of employment).

The employer or payor of income may assess a fee for withholding. The fee cannot exceed \$3 per month and may not reduce the amount of child support withheld. The fee is deducted from the parent's remaining net income and is not used in determining the 50 percent withholding limitation.

DCS relies primarily on employment records and new hire reporting information from the Department of Labor and Regulation to obtain the parent's most current employer.

Auto Withdrawal of Income

DCS may enter into alternative payment agreements with the payor of support instead of issuing an income withholding order to the employer. The payor of support signs an authorization agreement which allows DCS to withdraw an amount equal to the current monthly child support obligation, plus an appropriate amount for arrears (if any exist) from his or her financial institution account.

New Hire Reporting

Employers must report basic information about all newly hired employees to the South Dakota Department of Labor and Regulation. Employers must provide this information within 20 days from the day the employee starts work. Each state's child support agency receives data provided through new hire reporting. Staff use the information to locate parents, establish or modify child support orders and to enforce child support orders.

Credit Bureau Reporting

If a parent owes at least \$1,000 in past due child support, DCS reports the arrearage amount to credit bureau agencies. After the arrearages are paid, a zero balance will be reported to the credit bureau agencies. However, the zero balance will remain on the parent's credit report for seven years.

Driver's, Professional, Hunting and Fishing License Restriction

Driver's, professional, hunting and fishing licenses may be restricted for parents who:

- ✓ Owe at least \$1,000 in child support arrearages, and
- ✓ Have not made any child support payments for three months, or
- ✓ Have at least three months of child support arrearages that have not been reduced to judgment.

The parent is notified in writing when the restriction is placed on his or her license. In order for the restriction to be removed, the parent has to either pay the past due balance in full or enter into a written payment plan with DCS.

If the parent does not comply with the payment plan, DCS may request revocation of the driver's license.

Passport Denial

Passport applications may be denied if a parent owes at least \$2,500 in past due child support obligations. The U.S. State Department reviews passport applicants to see if they owe past due child support. The parent must pay the past due support in full before the restriction will be lifted.

Tax Refund Intercept

DCS can collect past due child support from a parent's federal income tax refund. If the parent does not have a tax refund coming, DCS will not be able to intercept an amount. South Dakota does not have a state income tax.

The money collected cannot be applied to current support and must be applied to arrearages owed to the state first. If a collection from an income tax refund is payable to the receiver of support, DCS will hold the refund for six months if it involves a joint refund with the payor of support's current spouse. This protects the state and the receiver of support should the spouse file an amended return stating the offset was due to the spouse's earnings. The receiver of support is personally liable for the return of any federal tax refund offset payments received erroneously, including any amounts which must be returned due to the filing of an amended return of the payor of support or his or her spouse.

Other Income

If a parent owes past due child support, DCS may withhold or intercept periodic or lump sum payments the parent receives from state or local agencies, including unemployment insurance, workers' compensation and lottery winnings. DCS may also withhold assets held in financial institutions or retirement funds.

Contempt Hearings

DCS may refer cases to a prosecutor for a contempt hearing when a parent has not paid any child support for a period of time. The court may find a parent in contempt of court if he or she has the ability to pay but is willfully not paying the child support obligation. This enforcement tool is used only when all other administrative enforcement actions have failed.

When One Parent Lives in a Different State

The most difficult cases to enforce are those in which the payor of support lives in one state and the child and receiver of support live in another.

If South Dakota does not have jurisdiction over the payor of support, DCS may request the other state to assist with establishing paternity and/or a support obligation as well as the enforcement of an order for support. DCS must rely on the responding state's laws, rules, regulations, policies and procedures.

State child support agencies must cooperate and help each other in handling requests for assistance.

In some cases, a backlog of child support cases in the responding state may slow interstate enforcement. The other state may assess or withhold fees from the support collected.

Medical Support Enforcement

Pursuant to SDCL 25-7-6.16, the court shall enter an order addressing how the child's health care needs will be met by medical support to be provided by one or both of the parents. The medical support order shall include a provision for medical insurance if the insurance is accessible for the child(ren) and available to a parent at a reasonable cost. Medical insurance is considered accessible if a medical insurance benefit plan is available and provides coverage for the child residing within the geographic area covered by the insurance policy.

Medical insurance is considered reasonable if the cost attributable to the child(ren) is equal to or less than 8 percent of the parent's net income, after proportionate medical support credit is applied, and the amount is specified in the order for support.

DCS will only enforce health insurance if it is available through the payor of support's employer. The receiver of support may prefer to obtain insurance if the payor of support is self-employed or is in work where the employers usually do not provide insurance. For insurance enrollment purposes, Medicaid is not considered satisfactory health insurance if medical insurance is available to one or both parents at a reasonable cost and is accessible to the child.

Medical Expenses Not Covered by Insurance

A parent may obtain a standardized form from the clerk of court, referee or DCS to request reimbursement of any medical or health care costs from the responsible parent. If the responsible parent does not reimburse the other parent, a small claims action may be initiated by the parent, guardian or other custodian to obtain a judgment against the responsible parent to collect unreimbursed medical or health care costs from the responsible parent. (SDCL 25-7-6.25)

Forms to initiate a small claims action may be obtained from the clerk of court. You must provide a written statement, signed and notarized, describing how the loss or damage occurred. This statement, along with supporting documents (receipts, cost estimates, etc) and the address of the parties, must be filed with the clerk of court. The fee for starting the action, and the postage and service cost required, may be added to the damages claimed against the defendant. DCS does not initiate the small claims action. For more information on initiating a small claims action, see the South Dakota Unified Judicial System's website at ujs.sd.gov.

Child Support Payments

The law requires parents to support their children until the child is 18 years old or 19 years old if a full-time student in high school. State law requires all child support payments be made to a central location which is called the Child Support Payment Center.

The address is:

Child Support Payment Center
700 Governors Drive, Suite 84
Pierre, SD 57501

All new and modified orders have this requirement. If the payor of support fails to make payments through the Payment Center, they may not be given credit for support payments made directly to the receiver of support.

Making Payments

DCS offers different ways for payors of support to make their child support payments online, in person, and by mail. Depending on the method of payment, it may take up to seven business days for DCS to receive the payment. See dss.sd.gov/childsupport for more information.

Payment Processing

The Child Support Payment Center generally processes all payments within two business days of receipt. Parents must allow two to three days for mail delivery. There can be delays in payments due to holidays, inclement weather, postal delivery service and computer problems. DCS accepts electronic funds transfers from employers. DCS disburses child support payments electronically to receivers of support through direct deposit or an electronic debit card.

Direct Deposit

Receivers of support may choose to have their child support directly deposited into their bank account. Direct deposit provides an increased measure of security and accountability for those receiving payments, as well as the convenience of having funds delivered directly to a designated bank account. Direct deposit avoids delays that may occur with mail delivery and assures payments will be

deposited into a bank account even when away from home. The electronic debit card will automatically be sent to receivers of support who do not participate in direct deposit.

Electronic Debit Card

Receivers of support who do not enroll in direct deposit will automatically receive the electronic debit card. The electronic payment card is not a credit card. It is a prepaid debit card to which your child support payments are directly deposited.

The card can be used to get cash at automated teller machines (ATMs) and cash back at many retail stores. The card can also be used at grocery stores, gas stations, shopping malls, online purchases, bill paying, and mail or telephone orders.

There may be some fees associated with the electronic debit card.

Obtaining Payment Information

The Child Support Payment Center has an automated voice response system that can be accessed toll-free from a touch-tone telephone 24 hours a day. The phone number is 1.800.286.9145. Parents must use the nine numeric digits of their case number and a personal identification number (PIN) to access this information. (DCS assigns PINs.)

DCS Customer Connect

DCS Customer Connect is a secure, interactive website providing recent payment information and the amount of child support owed, recent case actions taken, license restriction status and other beneficial case information. Customers also have the ability to update their address, telephone number, and employer information.

To access the DCS Customer Connect, a customer must use South Dakota's single sign-on application, MYSD Portal. MYSD Portal allows a user to access participating State of South Dakota web based application with one user id and password.

Child Support and Parenting Time

Child support and parenting time are separate matters. A receiver of support cannot withhold parenting time if the payor of support fails to pay support, and the payor of support cannot withhold support if the receiver of support does not allow parenting time.

DCS will not represent either parent in matters of parenting time or custody. Custody and parenting time can only be established and enforced through Circuit Court. Parties may hire an attorney for these actions. Additionally, the Unified Judicial System has developed pro se parenting time forms which allow parties experiencing parenting time problems to petition the courts without hiring an attorney. For more information, contact your local clerk of court or visit uj.s.sd.gov. The standard parenting time guidelines are also available online.

Receiving Public Assistance

People who apply for or receive TANF, SNAP or Medicaid benefits are automatically eligible for DCS services and must cooperate with DCS in locating the payor of support, establishing paternity and a support order or enforcement of the order. If the individual does not cooperate with DCS' action to establish paternity or child support, the applicant's public assistance benefits may be terminated. Applicants may have good cause for not cooperating with DCS; however, good cause must be approved by an Economic Assistance Benefits Specialist or by DCS.

If an applicant receives child support directly from the payor of support, the payment must be forwarded to the Child Support Payment Center. If the State makes a mistake and gives an individual more money than they are supposed to have, they must repay the State for the overpayment.

End of Public Assistance

When a public assistance case closes, DCS services will continue unless the receiver of support requests otherwise. If child care services are received, the receiver of support will be required to continue with

DCS services. The receiver of support will receive DCS collections ordered by the court which became due after the TANF case closed. For TANF and former recipients, the State of South Dakota may be entitled to part of the support payment. Collection of arrearages which accrued prior to or during the TANF eligibility may be retained as payment for past assistance for which the Department of Social Services has not received full reimbursement.

Administrative Complaints

Parents are entitled to an administrative review of their complaint where there is evidence an error has occurred or an action should be taken on his or her case. To obtain a review, a parent may contact the assigned DCS Child Support Specialist with the complaint in an attempt to informally resolve the same.

A parent may also submit a written complaint to DCS specifying the nature of the complaint and the action requested to be taken by DCS. Upon receipt of the written complaint, DCS will conduct a review of the complaint and, if appropriate, take necessary corrective action. DCS will advise the parent either orally or in writing of any action taken to resolve the complaint.

A parent is also entitled to request a fair hearing as allowed by law.



Termination of Child Support Services

DCS will provide a Notice of Termination for these reasons:

- ✓ No current support is due and arrearages are under \$500 or unenforceable under state law.
- ✓ No current support is due and arrearages are and assigned to the state.
- ✓ The payor of support is entering or has entered long-term care arrangements.
- ✓ The payor of support is living with the minor child as the primary caregiver or in an intact two-parent household.
- ✓ The payor of support is deceased and no further action can be taken or there is no available estate.
- ✓ Paternity cannot be established as the child is 18, genetic tests or the court has excluded the alleged father, DCS determines further efforts are not in the best interest of the child, or the alleged father is unknown and cannot be identified.
- ✓ DCS has not been able to identify or locate the payor of support over a period of two years, or six months when there is not sufficient information to initiate an automated locate effort.
- ✓ The payor of support's sole income is from SSI payments or concurrent SSI and SSDI payments.
- ✓ The payor of support cannot pay support for the duration of the child's minority because the parent is institutionalized or incarcerated, or has a medically-verified total and permanent disability.
- ✓ The payor of support is in a foreign country and DCS cannot obtain jurisdiction to proceed.
- ✓ DCS has documented the receiver of support has not cooperated, and cooperation is essential for the next enforcement step.
- ✓ DCS has been unable to contact the receiver of support by at least two different methods.

Services will not be terminated if the receiver of support contacts DCS within 60 days of the Notice to Terminate and provides information which could lead to the establishment or enforcement of a support order.

Child Support Offices

Aberdeen:

3401 10th Ave SE, 57402-1300
Phone: 605.626.3160 or 1.866.239.8855
Fax: 605.626.2610

Huron:

1000 18th St SW, Suite 3, 57350-1408
Phone: 605.353.7100 or 1.877.329.0019
Fax: 605.353.7103

Mitchell:

116 E 11th Ave, 57301-1432
Phone: 605.995.8000 or 1.800.231.8346
Fax: 605.995.8929

Pierre:

912 E Sioux Ave, 57501-3940
Phone: 605.773.3612 or 1.800.226.1033
Fax: 605.773.5390

Rapid City:

221 Mall Drive, Suite 101, 57701-7839
Phone: 605.394.2525 or 1.800.644.2914
Fax: 605.394.2621

Sioux Falls:

1501 S. Highline Ave, Suite 2C, 57110-1003
Phone: 605.367.5444 or 1.866.801.5421
Fax: 605.367.5515

Watertown:

2001 9th Ave SW, Suite 300, 57201-4029
Phone: 605.882.5000 or 1.866.239.6787
Fax: 605.882.5045

Yankton:

3113 Spruce St, Suite 200, 57078-5320
Phone: 605.668.3030 or 1.800.455.5241
Fax: 605.668.3014

Commonly Used Child Support Terms

Arrearage: Past due, unpaid child support owed by the payor of support.

Contempt of Court: Not doing what the court has ordered a person to do.

Default: Failure of a defendant to file an answer or appear in a civil case within the prescribed time after properly served with a summons and complaint.

Defendant: The person against whom a civil or criminal proceeding has begun.

Disbursement: The paying out of collected child support funds.

Good Cause: Valid reason(s) for not proceeding with: establishment of parentage or support, or enforcement and collection of child support.

Guidelines: A standard method for setting child support obligations based on the income of the parent(s) and other factors determined by state law.

IV-A Case: A child support case in which a receiver of support and child(ren) are receiving public assistance benefits under the state's IV-A program, which is funded under Title IV-A of the Social Security Act. (See also: TANF; Public Assistance)

IV-D Case: A child support case where at least one of the parties, either the receiver of support or the payor of support, has requested or received services from a state's IV-D child support agency.

Jurisdiction: Legal authority a court or administrative agency has over particular persons and over certain types of cases, usually in a defined geographical area.

Monthly Support Obligation (MSO): The amount of money a payor of support is required to pay per month.

Non-IV-D: A child support order not being enforced by a state/local child support (IV-D) agency.

Obligee: Person, state agency or other institution to which child support is owed. (See also Receiver of Support)

Obligor: The person who is obligated to pay child support. (See also Payor of Support)

Paternity: Legal determination of fatherhood. Must be established before child or medical support can be ordered.

Payor of Support: The parent who has a court order obligation to pay support. (Formerly known as noncustodial parent.)

Plaintiff: Person who brings an action; party complaining or suing in a civil case.

Public Assistance: Benefits granted from state or federal programs to aid eligible recipients. Applicants for some programs (TANF) are automatically referred to their state IV-D agency.

Putative Father: The person alleged to be the father of the child, but who has not yet been determined to be the legal father.

Receiver of Support: Person or agency who a minor child resides with and child support is owed to. (Formerly known as custodial parent.)

Support: Financial support owed by a parent to help support a child or children of whom they do not have custody. Child support can be entered into voluntarily or ordered by a court or a properly empowered administrative agency, depending on each state's laws.

Support Order: A judgment, decree or order, whether temporary, final or subject to modification, issued by a court or an administrative agency of a competent jurisdiction, for the support and maintenance of a child. (See also Monthly Support Obligation.)

Temporary Assistance for Needy Families (TANF): Time-limited public assistance payments made to families, based on Title IV-A of the Social Security Act.

Unreimbursed Public Assistance: Money paid in the form of public assistance (TANF) that has not yet been recovered from the payor of support.



