

## Collecting Late Child Support

Illinois law now mandates that interest accrue on all unpaid child support obligations. The interest rate is defined in the law<sup>1</sup> and the statute contains a complicated formula for calculating the interest.<sup>2</sup> It also establishes how late payments are to be handled.<sup>3</sup> For example, if a parent owing child support hasn't made a payment in, say, three years and seven months, then makes a payment equal to three months worth of child support, do you apply that money first to the accrued interest, the past due principal, or the current month's support obligation? Unfortunately, the judge will NOT make these calculations for you – if you are owed support, or owe support – you should contact our offices to ensure that your entire obligation, including all interest, is properly calculated and that all late payments are properly applied. That simple phone call has saved many of our client tens of thousands of dollars.

Child support obligations are generally NOT dischargeable in bankruptcy proceedings. Once a court establishes that you should be paid (or must pay), the only thing left to do is to collect. Unfortunately, that can sometimes be difficult. Child support collection efforts can be very complicated because, from the court's point of view, you are seeking to take away the other parent's property. In America, everyone – even deadbeats – are entitled to “due process” before they may be deprived of their property. That means you'll have to jump through many legal hoops.

**Statute of Limitations on Enforcement:** The right to collect unpaid child support does not go away. Be careful how you present your case, though: **waiting to long, or taking (or failing to take) certain actions may destroy your case. More importantly:** while Illinois' divorce law permits **collection of past due child support at any time without limitation, another** Illinois' law requires all child support claims to be brought within two years of **the happening of certain events**.<sup>4</sup> If you wait longer than two years **after the event** you **may** be locked out. Illinois' law regarding statutes of limitation specifically addresses unpaid child support.<sup>5</sup> Beyond the statutes, specific cases have dealt with the issue of how long one parent may wait to enforce unpaid child support orders before the obligation is considered too old to fairly be enforced<sup>6</sup> -- but those cases are old and have been superseded by recent changes in the law.

**Seizing Assets of the Obligor:** When an obligor owes past due support, each individual child support payment automatically becomes a judgment and can be enforced immediately.<sup>7</sup> Assets can be seized. In one case, a \$51,000 arrearage was partly satisfied by the seizure of \$44,000 worth of Certificates of Deposit.<sup>8</sup>

**Unemployed Obligor:** One of the more frustrating situations custodial parents can face is where the parent who is supposed to pay support becomes unemployed or simply never holds a job. The federal Constitution (the 13th Amendment) prohibits slavery and courts have, by that prohibition, been prevented from ordering non-custodial parents to work. Illinois law, however, permits judges to impute to an obligor the income he or she could earn. That's right, the judge has the power to direct the obligor to pay support commensurate with a wage he or she could earn if employment were sought in an occupation for which the obligor is trained and has the present ability to perform. The court may also order unemployed persons owing child support to keep a journal of their job search efforts and even to force them to report to at least three different job search services, work training, and work programs.<sup>9</sup>

Even incarcerated parents have an obligation to support their children. Illinois courts have held that to relieve incarcerated parents of their child support obligations would let them profit from their crimes and unfairly insulate them from their responsibility to their children.<sup>10</sup>

Where a parent is unemployed, underemployed, or has an income stream insufficient to pay adequate child support, it is sometimes possible to attack other assets<sup>11</sup> – bank accounts may be seized, real estate may be levied upon, and other assets may be taken for a Sheriff's sale. Courts may even impose QDROs on retirement accounts to collect past due child support.<sup>12</sup> Where an obligor parent sponges off friends and family, or receives large sums of money claiming it to be “loans” rather than “income,” there are still ways that child support may be enforced.<sup>13</sup> Again, talk with our attorneys to learn more.

**Obligors Who Work for Cash and Hide Income and Assets:** Many parents who are supposed to receive child support face the frustrating situation of trying to collect support from a parent who works for cash only and doesn't have any assets in his or her name. Working without an attorney, attempts at enforcement seem futile. Most parents who face this scenario give up before too long. That is a mistake. Experienced attorneys know there are many strategies that may be employed to determine the income of such cash-only workers<sup>14</sup> – and several very effective ways to enforce child support orders – even when there appears to be no income history or assets to seize.

Where an obligor works in a cash-based business or industry (restaurant service work, bars and taverns, taxi cabs, owning a coin laundry, etc.) courts have, in some cases, simply assumed the amount of income.<sup>15</sup>

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This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or [info@illinoisdivorce.com](mailto:info@illinoisdivorce.com).