

# Child Support

Podcast # 2 of 9

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Child support is primarily dependant upon the level of the parents' combined income. In those cases in which the parents' combined income is less than \$240,000 per year (net of taxes), the Child Support Guidelines will be the baseline determination of the amount of child support.

A determination must first be made as to which of the parents is the Parent of Primary Residence and which parent is the Parent of Alternate Residence. The parent with the more overnight time with the child is the Parent of Primary Residence and, thus, the parent to whom the child support is paid.

If the parents' combined after tax income is less than \$240,000, the amount of child support to be paid is presumptively defined by the New Jersey Child Support Guidelines, and is subject to basically only three variables:

1. The number of overnights per week which the child spends in each parent's home;
2. The total income of the parties;
3. Each party's respective share of the total income.

The computer programs which apply the Guidelines automatically take these variables into account.

Although, the amount calculated under the Guidelines is only presumptive as to the appropriate amount of child support, that presumption will be accepted in the vast majority of cases.

In addition to the basic child support, there are certain "extraordinary" expenses which must be allocated between the parents in the ratio of their incomes. Typically such "extraordinary" expenses include, but are not limited to, medical expenses or work related day care expenses.

In addition to medical and day care expenses, individual cases and a child's particular needs or interests may justify additional payments. For example, does the child have a learning disability or other educational deficit which may require specialized schooling or tutoring? Does a child have specific musical, athletic or other talents which have been nurtured or supported by the parents through individual lessons, training, coaching or camps?

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In those cases in which the parents' combined income exceeds \$240,000 per year net of taxes, the Court must consider specific factors in order to determine the amount of child support. The factors include:

- (a) needs of the child;
- (b) the standard of living and economic circumstances of each parent;
- (c) all sources of income for each parent;
- (d) the assets of each parent, or the earning ability of each parent;
- (e) the child's need and capacity for further education, including higher education;
- (f) the age and health of the child;
- (g) the age and health of each parent, and the income or assets of the child, and the responsibility of either parent for other Court ordered support;
- (h) the reasonable debts of either party.

The determination of the child support for such "above guidelines" cases is a complicated and somewhat subjective. "Above Guideline" child support requires a complete analysis of the child's needs and the standard of living during the marriage. It should only be done with the advice of a competent attorney.

In every case, the parties should also attempt to define when the child will be "emancipated" (meaning that the child support will terminate, See Chapter III) and if either party will be required to contribute to the child's college or other educational expenses.



*Robert J. Durst II is Chair of the Divorce Group of Stark & Stark and is certified by the New Jersey Supreme Court as a Matrimonial Attorney and by the National Board of Trial Advocacy as a Civil Trial Attorney.*

*Mr. Durst is a frequent lecturer on Family Law topics, was a Co-Founder of the New Jersey Summer Family Law Institute and is currently the Co Director of the American Trial Lawyers annual Boardwalk Seminar on Family Law. His leading lectures include a nationally known presentation on the distribution of stock options, the use and distribution of life insurance, and an original series on evidence in divorce cases.*