



*Division of Public Defender Services*

*State of Connecticut*

*OFFICE OF THE CHIEF PUBLIC DEFENDER*

---

**FAMILY SUPPORT MAGISTRATE COURT**

**TRAINING MANUAL**

JUNE 2016

## A. PATERNITY

A-1 INTRODUCTION-----	P.1
A-2 MARITAL PRESUMPTION-----	P.2
A-3 ACKNOWLEDGEMENT OF PATERNITY-----	P.2
A-4 CHALLENGING AN ACKNOWLEDGEMENT-----	P.3
A-5 PATERNITY JUDGMENT-----	P.3

## B. CHILD SUPPORT

B-1 CHILD SUPPORT AND ARREARAGE GUIDELINES-----	P.5
B-2 CALCULATION OF CHILD SUPPORT PAYMENTS-----	P.5
B-3 DEVIATION CRITERIA-----	P.6
B-4 SHARED PHYSICAL CUSTODY-----	P.7
B-5 SPLIT CUSTODY-----	P.8
B-6 IMPUTED INCOME-----	P.8
B-7 MODIFICATION AND TERMINATION OF CHILD SUPPORT OBLIGATION-----	P.8
B-8 ENFORCEMENT OF CHILD SUPPORT ORDER-----	P.9
B-9 INTERSTATE SUPPORT ENFORCEMENT-----	P.12
B-10 APPEAL FROM DECISION OF FAMILY SUPPORT MAGISTRATE-----	P.12

## A. PATERNITY

### A-1 INTRODUCTION

A finding of paternity is the legal identification of a child's father. When a child is born during a marriage, the child is presumed to be the child of the husband and wife. On the other hand, if the child is born to unmarried parents there is no "presumption" as to the identity of the father. Children born out of wedlock do not automatically have a legal father meaning that affirmative action is required in such cases to establish fatherhood.

It is important to establish paternity because it provides benefits to the father, mother and child. Finding paternity provides the child with a needed identity and can encourage interaction with other members of the father's family (grandparents, aunts, uncles and cousins). It may also result in emotional benefits by creating a child/father bond and by permitting the father to exercise his parental rights such as custody and visitation. Legal fathers, in addition, have the right to access medical, school and other records/information about the child.<sup>1</sup>

One of the most important reasons to establish paternity is to obtain financial support as without a finding of paternity the biological father has no legal obligation to support the child. As a result of a paternity finding the child may, moreover, be eligible to receive benefits from the father including health insurance, social security, life insurance as well as veteran's and survivor's benefits.<sup>2</sup> The court in *Ragin v Lee*, 78 Conn App 848, 861 (2003) underscores a further important reason to determine paternity noting that "the child's interests [in this determination] extend to [his/her] health which may depend on an accurate family history."<sup>3</sup>

In Connecticut, there are three ways to legally establish paternity.<sup>4</sup> As noted above, one way to decide paternity is by marital presumption such that when a married woman gives birth it is presumed that her husband is the child's father. However, most paternity actions concern parents who are not legally married and

invoke the two other ways of deciding paternity. Unmarried persons can establish paternity voluntarily by completing an “Acknowledgement of Paternity” form or, if the parents disagree about paternity, by initiating a paternity action so that a court can determine and issue a Judgment of Paternity.

## **A-2 MARITAL PRESUMPTION**

“Connecticut law has long provided that a child born in wedlock is presumed to be the legitimate child of the mother and her husband, even if conceived prior to the marriage” *Weidenbacher v. Duclos* 234 Conn 51, 69 (1995). The presumption of legitimacy may be rebutted by the presentation of “clear, convincing and satisfactory evidence that the mother’s husband is not the child’s natural father.” *Id.* However, before a putative father calling into question the paternity of a child born in wedlock is permitted to present evidence in this regard, he is required to “offer proof, at a preliminary evidentiary hearing devoted to standing, that he is entitled to set in motion the judicial machinery to determine whether he is the biological father of the child.” *Id.* at 76. The putative father can prevail at such a hearing only if the trial court finds the proof be such that “his interests and the best interest of the child outweigh those of [preserving the integrity of] the marital family unit.” *Id.* at p. 77.

## **A-3 ACKNOWLEDGEMENT OF PATERNITY**

Unmarried parents can voluntarily establish paternity by completing an “Acknowledgement of Paternity.” This is a form from the Connecticut Department of Public Health.<sup>5</sup> Typically, the form is completed after birth at the hospital, although it can be completed later at an office of the Connecticut Department of Social Services (DSS) or at the Department of Public Health (DPH). The completed form is forwarded to DPH for filing in the Paternity Registry. Once the form is completed and processed, the father’s name will be included on the child’s birth certificate.

An “Acknowledgement of Paternity” is governed by Conn. Gen. Stat. Section 46b-172. When the acknowledgement is executed in accordance with requirements of this statute it has “the same force and effect as a judgment of the

Superior Court... [and is] considered a legal finding of paternity without requiring or permitting judicial ratification....”<sup>6</sup>

The acknowledgement form itself sets forth all the statutorily required advisements about the rights and responsibilities of acknowledging paternity. It includes an advisement about the mother and putative father’s right to rescind the acknowledgement within sixty days.<sup>7</sup> An “Acknowledgement of Paternity” must be accompanied by (a) an attested waiver of the putative father’s rights to a trial, genetic testing and an attorney; and (b) a written affirmation of paternity executed and sworn to by the mother.

#### **A-4 CHALLENGING AN ACKNOWLEDGEMENT**

After the 60-day rescission period expires, an acknowledgement is irrevocable unless the mother or acknowledged father challenge the judgment by filing a motion to open the judgment and by presenting evidence that the execution of the acknowledgement was invalid or procured by fraud, duress or material mistake of fact, i.e. that the legal father is not the biological father.<sup>8</sup> The filing of such a motion must be in accordance with the procedural requirements of Connecticut Practice Book Section 25a-17 which is entitled “Motion to Open Judgment of Paternity by Acknowledgement”.

#### **A-5 PATERNITY JUDGMENT**

By virtue of Connecticut General Statutes Section 46b-160, an unmarried mother can serve a verified petition<sup>9</sup> upon the putative father seeking an order of paternity. The petition must be brought before the child’s eighteenth birthday, but liability for past support is limited to the three years preceding the date of the filing of the petition.<sup>10</sup> As a practical matter, it is the state who usually initiates paternity actions. This is the case when the child is on state assistance or when the mother requests child support services from DSS to legally establish paternity.<sup>11</sup>

Practice Book Section 25-68 sets forth that an indigent putative father named as the respondent in a state initiated paternity action has a right to court

appointed counsel. Connecticut General Statutes Section 52-259b establishes that there is a rebuttable presumption of indigence when a person receives public assistance or has income (after taxes, mandatory wage deductions and child care expenses) amounting to 125% or less of the federal poverty level.<sup>12</sup> A putative father will usually receive court appointed counsel when his “Application for Waiver of Fees/ Appointment of Counsel Family”<sup>13</sup> demonstrates indigency.

The verified petition is accompanied by an “answer form” requiring the putative father to admit, deny or profess lack of knowledge as to fatherhood. If the putative father fails to return this form “a default judgment shall enter.” Conn. Get. Stat. Section 46b-160(4)(e)(2) (2015). If he does not admit fatherhood on the returned form, the putative father may file a motion for genetic testing to determine paternity<sup>14</sup> and ordinarily the court grants the motion thereby ordering the genetic test. This test is most often administered by LabCorp (Laboratory Corporation of America) technicians.

The putative father, mother and child are all tested. The lab employs a test known as the “Buccal Swab.” During the buccal swab test a cotton swab is rubbed on the inside cheeks of the mouth in order to collect DNA material. This test “can determine, with near perfect accuracy who is the biological father of a child.” *Weidenbacher v. Duclos*, 234 Conn. at 71. A genetic test indicating that the respondent is the father by a 99% or greater probability creates a rebuttable presumption of paternity as long as the mother provides testimony that she had sexual intercourse with the putative father during the time of conception.<sup>15</sup> When the genetic test results match or exclude the putative father the court may enter a judgment of paternity or a judgment of non-paternity.

A judgment of paternity pursuant to a section 46b-160 petition can therefore be based on the putative father’s admission, genetic test result or a default. As with an acknowledgment of paternity, it can only be invalidated by setting aside or opening the judgment. Section 17-4 of the Connecticut Practice Book underscores that the judgment “may not be opened or set-aside unless a motion to open or set

aside is filed within four months succeeding the date on which notice [of the judgment] was sent.” Notwithstanding the four month time limitation, a motion to open may be granted thereafter if the judgment is found to have been based on fraud, duress or material mistake of fact.<sup>16</sup> When determining whether or not to open and vacate a court-ordered paternity judgment, a court will weigh various factors, including “(1) the genetic information available; (2) the past relationship of the involuntarily adjudicated father and child; (3) the child’s future interests in knowing her parental biology; (4) the child’s ability to receive emotional and financial support from her biological father; and (5) any potential harm that the child may be caused to suffer by disturbing the paternity judgment, including loss of paternal relationship, and loss of financial support.” *Weaver v. Solone*, FA 98- 0160460S, 2006 WL 2730425 (Conn. Super. Ct. September 8 2006).

The defenses commonly raised to a motion to open paternity, whether the motion be addressed to an acknowledgement or a court judgment, are laches, collateral estopped and “best interests of the child.”

## **B. CHILD SUPPORT**

### **B-1 CHILD SUPPORT AND ARREARAGE GUIDELINES**

A child’s right to parental support is codified in Title 46b of the Connecticut General Statutes. Section 46b-56(e) authorizes Superior Court judges to decide “whether a child is in need of support and, if in need, the respective abilities of the parents to provide support.”<sup>17</sup> The judges refer to the “Child Support and Arrearage Guidelines” (Guidelines) to calculate child support payments.<sup>18</sup> Similarly, the Family Support Magistrates are also required to consider these guidelines in determining child support award amounts. (See, CGS Sec. 46b-215b).

### **B-2 CALCULATION OF CHILD SUPPORT PAYMENTS**

The Guidelines are based on the “Income Shares Model.” This model “is predicated on the concept that the child should receive the same proportion of parental income as he or she would have received if the parents lived together.”<sup>19</sup> The guidelines include a worksheet<sup>20</sup> that takes into account the net income (gross

income less allowable deductions) of each parent. While the Regulations of Connecticut State Agencies Section 46b-215a-1(11) lists most types of earned and unearned income as being included in gross income, it does identify six different sources that are to be excluded from gross income.<sup>21</sup> The expenses deducted from gross income to arrive at net income are identified on lines 2 through 12 of the worksheet.

The basic child support obligation is calculated by adding the parents' net weekly incomes together and then matching this total amount with the appropriate column in the Guideline that contains the applicable number of children.<sup>22</sup> In order to identify each parent's percentage share of the basic child support obligation, the worksheet requires each parent's net income to be divided by the total combined net income. This results in a support amount for each parent, but only the noncustodial parent pays the weekly support obligation as it is presumed that the custodial parent's share has already been spent on raising the children.

The worksheet is next used to calculate the parent's "net disposable income" (the money each has available to spend after factoring weekly net income, weekly current child support payments and any social security dependency benefits received by the child). Adjustments for unreimbursed medical expenses, child care contributions and payment of support arrearage are pro-rated based on net disposable income.

### **B-3 DEVIATION CRITERIA**

There can be a deviation from the presumptive child support obligation if the court finds one or more deviation criteria. The criteria for deviation from presumptive support amounts are as follows:

- (1) other financial resources available to a parent;
- (2) extraordinary expenses for care and maintenance of the child;
- (3) extraordinary parental expenses;
- (4) needs of a parent's other dependents;



(5) coordination of total family support (for example, consideration of the division of assets and liabilities as well as of alimony per the dissolution agreement);

(6) special circumstances found by the court such as when there is shared physical custody; extraordinary disparity in parental income; a total support award exceeding 55% of obligor's net income; the best interests of the child; and other equitable factors.<sup>23</sup>

The aforementioned are the only criteria that justify a deviation from the presumptive support obligation and "it is an abuse of discretion for a court to deviate from the Guidelines without [finding one or more of these criteria]." *Wallbeoff v. Wallbeoff*, 113 Conn. App. 107,110 (2009)<sup>24</sup>

#### **B.4 SHARED PHYSICAL CUSTODY**

Shared physical custody means that a child lives with each parent approximately an equal amount of time. The commission charged with issuing the Guidelines underscores that "an *equal* time-sharing is *not* required for such finding.... A finding of shared physical custody should be made only where each parent exercises physical care and control of the child for periods *substantially in excess of two* overnights on alternative weekends, alternate holidays, some vacation time, and other visits of short duration, which may occasion an overnight stay during the week... [leaving] sufficient room for the exercise of judicial discretion while providing a measure of predictability for the parties."<sup>25</sup> When the court finds shared physical custody, it may deviate from the presumptive support amounts provided the parents have nearly equal income or when the deviation reduces child expenses for the parent with the lower net weekly income and increases these expenses for the one with higher weekly income so long as the former has enough money remaining to meet the child's basic needs.<sup>26</sup>

## **B-5 SPLIT CUSTODY**

Split custody means that the children are for want of a better term “split up” such that each parent has primary custody of at least one child. In this situation, the court finds a single support obligation by calculating each parent’s theoretical current support obligation on separate worksheets and then subtracting the lower obligation from the higher obligation. The difference is to be paid as child support by the parent with the higher obligation.<sup>27</sup>

## **B-6 IMPUTED INCOME**

“Imputed income is a method courts use to assign or credit an income to a parent for the purpose of child support. If the court finds that either parent is, without just cause, voluntarily underemployed or unemployed, then the court will impute income to that parent.”<sup>28</sup> For example, parents may try to circumvent their support obligation by quitting a job and by making an inadequate effort to find new employment or by voluntarily transferring to a lower paying job. In such circumstances, the court may estimate the parent’s earning capacity (as demonstrated by the prior job(s)) and rely on this estimate rather than his/her current employment income to calculate his/her support obligation.

## **B-7 MODIFICATION AND TERMINATION OF CHILD SUPPORT ORDER**

If a party wishes to modify an existing child support order he/she must file a Motion for Modification<sup>29</sup> and demonstrate a substantial change in circumstances for either party occurring subsequent to the original court order. For example, an institutionalized or incarcerated party is entitled to a downward adjustment of a child support obligation unless he/she “is institutionalized or incarcerated for an offense against the custodial party or the child subject to such support order.”<sup>30</sup> Other common examples of a substantial change in circumstances are when there is a permanent change in custody; when one of the parties secures a higher paying job; when the obligor receives Supplemental Security Income (SSI), Social Security

Disability (SSD) or SAGA cash benefits; and when the obligor has a medical condition impacting on his/her capacity to work.<sup>31</sup>

There is a rebuttable presumption that there is a substantial change in circumstances if the difference between an existing award and the amount after a new calculation varies by 15% or more.<sup>32</sup>

As a general rule, a child support obligation terminates when the child emancipates upon reaching the age of eighteen years.<sup>33</sup> However, child support continues for unmarried children until the child “completes the twelfth grade or attains the age or nineteen, whichever occurs first.”<sup>34</sup> A support obligation may be extended further past the age of majority until age 21 if the child has mental retardation or a mental or physical disability and lives with a parent who is the child’s principal source of financial support.<sup>35</sup>

#### **B-8 ENFORCEMENT OF CHILD SUPPORT ORDER**

When the obligor fails to pay his/her court-ordered child support obligation, the aggrieved party may seek enforcement by filing a civil motion for contempt.<sup>36</sup> In order to prevail on this motion, the moving party must prove by clear and convincing evidence<sup>37</sup> that (1) there is a sufficient clear, unambiguous and valid court order on file with the court; (2) the obligor has not been in compliance with the terms of the order; and (3) the nonpayment has been willful meaning that the obligor knew about the order and had the ability to pay it.<sup>38</sup>

If the alleged contemnor in a family contempt matter is indigent and at risk of incarceration he/she has the right to appointed counsel pursuant to the due process clause of the fourteenth amendment to the United States Constitution.<sup>39</sup> The Connecticut legislature has codified this right in Connecticut General Statutes Section 46b-231 and Practice Book Section 25-63(a). Practice Book Section 25-63(a) reads as follows:

A person who is before the court in a civil contempt proceeding involving the failure to comply with the order of a judicial authority in a family matter and who faces potential incarceration shall be advised of his or her right to be represented by counsel and his or her right to court appointed counsel if he or she is indigent. If the person is unable to obtain counsel by reason of his or her indigency he or she shall have counsel appointed to represent him or her unless:

- (1) He or she waives such appointment pursuant to Section 25-64; or
- (2) At the time of the application for the appointment of counsel the judicial authority eliminates incarceration as a possible result of the proceeding and makes a statement to that effect on the record.

Should the moving party prevail on a motion for contempt, the court may find the obligor in contempt and issue orders “as are provided by law” to enforce the support obligation. (See, CGS Sec. 46b-231(7)). Such orders may include requiring the contemnor to make an immediate and/or future lump sum payments, job searches, participation in job training programs and other programs geared towards eliminating barriers to employment. The court may also commit the contemnor to the Department of Correction and set a specific amount which must be paid in order to “purge” the contempt and be released. In addition, the court can set a purge amount but suspend incarceration and require the contemnor to make future payments toward that purge while maintaining compliance with the existing support orders.

The court in the case of *Mays v. Mays*, 193 Conn. 261, 265-266 (1984) emphasizes that punishment for a civil contempt “is wholly remedial, serves only the purpose of the complainant and is not intended as a deterrent to offenses against the public....In civil contempt the punishment must be conditional and coercive....” The same court concluded, therefore, that an incarcerated contemnor in a family contempt matter “must be in a position to purge himself...otherwise the sanction would cease to be remedial and coercive but would become wholly punitive in actual operation.” The Connecticut Supreme Court remanded the *Mays* case ordering the trial court to “set forth in the order the conditions under which the defendant may be

deemed to have purged himself and to be entitled to his release from imprisonment.” *Id.* at 266. The *Mays* court concluded that the defendant must be reasonably able to meet these conditions such that they are not impossible for him to satisfy and that he has the “key to his [own] release.” *Id.* at 266-267.

Practice Book Section 25-63(b) also serves as a check on incarceration in child support matters requiring the contemnor to appear in court after 30 days of incarceration for a court review of the purge. In the event that the contemnor fails to purge himself or herself of the contempt at the time of the review, the court “may direct that the contemnor remain in custody...or may modify the order if the interests of justice so dictate.”

After finding a delinquent party in contempt, the court may set a purge but suspend incarceration and order that the purge amount be paid over time. The purge is a payment to be made in addition to weekly support payments, and the court often directs that the contemnor’s payments be applied first to the weekly obligation and then to the purge. However, the court is prohibited from ordering a “continuing purge” whereby unpaid weekly obligations are *added* to the purge amount. See, *Iturrino v. Frison*, 2007 Conn. Super. LEXIS 29 (Conn. Super. Ct., Jan. 5, 2007). The contempt is concluded upon satisfaction of the purge as originally ordered or as modified or reduced by the court.

Apart from ordering a purge payment, the court may take other enforcement action against a delinquent obligor, including income withholding; child support liens on property; withholding of federal and state tax refunds; withholding of lottery winnings; and reporting of overdue support to consumer reporting agencies.<sup>40</sup>

In addition, if the court finds that an obligor’s history of delinquency puts future support payments in jeopardy, it may order the obligor to provide a cash deposit “not to exceed the amount of four times the current monthly support and arrearage obligation to be held in escrow by the Connecticut Child Support Enforcement Bureau or Support Enforcement Services.” Conn. Gen. Stat. Section 52-362i (2015). Funds from this cash deposit may be disbursed to the obligee if one of the aforementioned child support agencies concludes the obligor is behind or late in

his current monthly support obligations.<sup>41</sup>

The court is further able to coerce payment by revoking licenses. The court may suspend the obligor's occupational, professional, recreational and/or driver's license for failure to pay child support when he/she is 90 days delinquent in child support; fails to maintain medical insurance for the child; or fails to comply with a subpoena or civil arrest warrant regarding child support proceedings.<sup>42</sup>

## **B-9 INTERSTATE SUPPORT ENFORCEMENT**

Interstate support is governed by the Uniform Interstate Family Support Act (UIFSA), Connecticut General Statutes Sections 46b-301 through 46b-425v. UIFSA, adopted by all states, spells out "the procedures for establishing, enforcing and modifying child and spousal support, or alimony, orders as well as for determining parentage where more than one state is involved in such proceedings." *Hornblower v. Hornblower*, 151 Conn App 332, 332 (2014). An order issued by a court of another state may be registered for enforcement in this state pursuant to Connecticut General Statutes Section 46b-213g. If the non-registering party raises no objection to the validity or enforcement of the order within 20 days after receiving notice of the registration then the order becomes enforceable in the same manner as if it were issued by Connecticut.<sup>43</sup> However, the registered order remains an order of the other state and may not be modified except as permitted by UIFSA.

## **B-10 APPEAL FROM DECISION OF FAMILY SUPPORT MAGISTRATE**

Connecticut Practice Book Section 25a-29 authorizes an appeal from a final decision of a family support magistrate in accordance with the provisions of Connecticut General Statutes Section 46b-231. The appeal must be filed within 14 days of the later of the date when the final decision was given to the clerk or the date when the notice of the decision on any request for rehearing was given to the clerk.<sup>44</sup>

The court may reverse or modify the decision if the FSM decision is: (A) In violation of constitutional or statutory provisions; (B) in excess of the statutory authority of the FSM; (C) made upon unlawful procedure; (D) affected by other

error of law; (E) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (F) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. (See, CGS Sec. 46b-231(n)(7)).