

Prior Period Support

South Dakota law 25-7A-21.1 and 25-8-5 allows for prior period support to be established back 3 years from date of application with any Title IV-D agency, date of filing with a court of competent jurisdiction, or date of written demand served on the payor of support. SDCL 25-8-5 is in relation to paternity proceedings.

25-7A-21.1. Order establishment case--Limitation on prior-period support obligations or arrearages.

In any order establishment case, the custodian is limited to a prior-period support obligation or arrearage not exceeding three years before either the date of application with any Title IV-D agency, the date of filing with a court of competent jurisdiction, or the date of a written demand served personally or by registered or certified mail, return receipt requested, upon the noncustodial parent at the noncustodial parent's last known address, whichever occurs earlier.

Source: SL 2005, ch 134, § 9; SL 2013, ch 119, § 10.

25-8-5. Custodian's recovery of support from noncustodian--Period support recoverable.

The custodian may recover support for a period of three years before the date of application with any Title IV-D agency, the date of filing with a court of competent jurisdiction, or the date of a written demand served personally or by registered or certified mail, return receipt requested, upon the noncustodial parent at the noncustodial parent's last known address, whichever occurs earlier.

Source: SDC 1939 & Supp 1960, § 37.2102; SL 1984, ch 190, § 5; SL 2005, ch 134, § 13; SL 2013, ch 119, § 14.

History

Initially, child support obligations could go back to date of birth of the child. This means if a parent applied for child support services and the child was 16 years old, a prior period support judgment could be obtained for 16 years of support. SDCL 25-8-5 was amended in 1984 to limit prior period support to 6 years.

In 2004, DSS introduced a bill ([HB 1011](#)) which would have created a statute to limit prior period support to 2 years. This bill was deferred as it would have only pertained to DSS cases. The House Judiciary Committee had concerns with disparity in handling of paternity cases pursued by DSS as opposed to actions handled by private attorneys and the court system.

The 2004 Commission on Child Support recommended SDCL 25-8-5 be amended from 6 years to 3 years and a new statute, SDCL 25-7A-21.1, be enacted for cases pursued by DSS. This ensured cases were treated the same whether handled by DSS or private attorneys. The recommendations passed during the 2005 Legislative Session ([Senate Bill 60](#)).

Discussion

Even with 3 years of prior period support, DCS continues to see many cases wherein a mother conceived a child and failed to advise the putative father of either her pregnancy or subsequent birth of the child. Based upon the current child support guidelines, if both parents earn minimum wage [\$1,744 (1,820 hours per month x \$11.50 per hour / 12 months)] and 3 years of prior period support is requested, this establishes a judgment against the father for \$13,860 (\$385 Monthly Support Obligation x 12 months x 3 years).

The statute also allows for the 3 years to be calculated from date of application or filing. With this wording the prior period support may exceed 3 years. For example: The parent applies for services on March 1, 2024, and requests 3 years prior period support. The payor is unable to be located until April 15, 2025. The prior period support would exceed 3 years as statute allows 3 years from date of application (March 1, 2024).

Due to the prior period support judgment being over \$1,000, the parent is reported to credit bureaus, IRS tax offset, passport restriction, and other administrative enforcement actions which are automatically triggered by the DCS computer system. In addition, if the parent is employed, DCS will issue an Income Withholding Order for a minimum of \$481 (\$385 current support + \$96 for arrears) per month to the parent's employer. With the parent being imputed at minimum wage, this leaves them with an estimated \$1,080 to pay their living expenses (i.e., rent, food, utilities, etc.).

Child Support Referees have indicated at their yearly meeting that 3 years is too much.

Prior Period Support by State

(Source: Office of Child Support Services Intergovernmental Referral Guide)

22 states have no prior period support or go from date of application.

No Prior Period Support	California, Georgia, Maryland, New Jersey, Ohio, Oregon, South Carolina, Virginia (except for TANF), Wyoming (parents have to petition the court)
Date of Filing of Petition or Application of Services	Alaska, Colorado, Idaho, Louisiana, Michigan, Nevada, New Hampshire, New York (or date public assistance started), North Dakota, Pennsylvania, Vermont, Washington, Wisconsin
One Year Prior Period Support	Mississippi
Two Years Prior Period Support	Alabama, Delaware, District of Columbia, Florida, Hawaii, Minnesota, Oklahoma (paternity)

Three Years Prior Period Support	Arizona, Arkansas, Connecticut, Iowa (public assistance case only; no prior period support in non-public assistance), New Mexico, North Carolina, South Dakota, West Virginia
Four Years Prior Period Support	Texas, Utah (paternity case – no prior period)
Five Years Prior Period Support	Missouri, Tennessee
Six Years Prior Period Support	Maine, Rhode Island (paternity)
Birth of Child	Illinois, Indiana (paternity; non-paternity – date of filing), Kentucky (child age 2 or under – paternity cases only; other cases to date of filing), Massachusetts, Montana, Nebraska
As Determined by Court	Kansas

Considerations

1. Amend statute to 1 year or to not allow for prior period support (go from date of application).
2. Amend statute to indicate prior period support would be calculated at the current minimum wage amount.