



FAMILY LAW BASICS

VICTORIA DAVIES, ESQ.

LARRY TUTHILL, ESQ.



Over 6,000 legal cases each year



Direct representation, phone consultations,



Brief service or referral



Offices in Hempstead, Islandia,
Riverhead



Case handling staff includes attorneys,
paralegals and social workers



Partnerships with Community
Agencies

About Nassau Suffolk Law Services



Legal Support Center for Advocates

Provide Technical
Support to
Advocates

“Advocates” include
legislative staff,
social workers,
outreach workers,
medical personnel,
and guidance
counselors

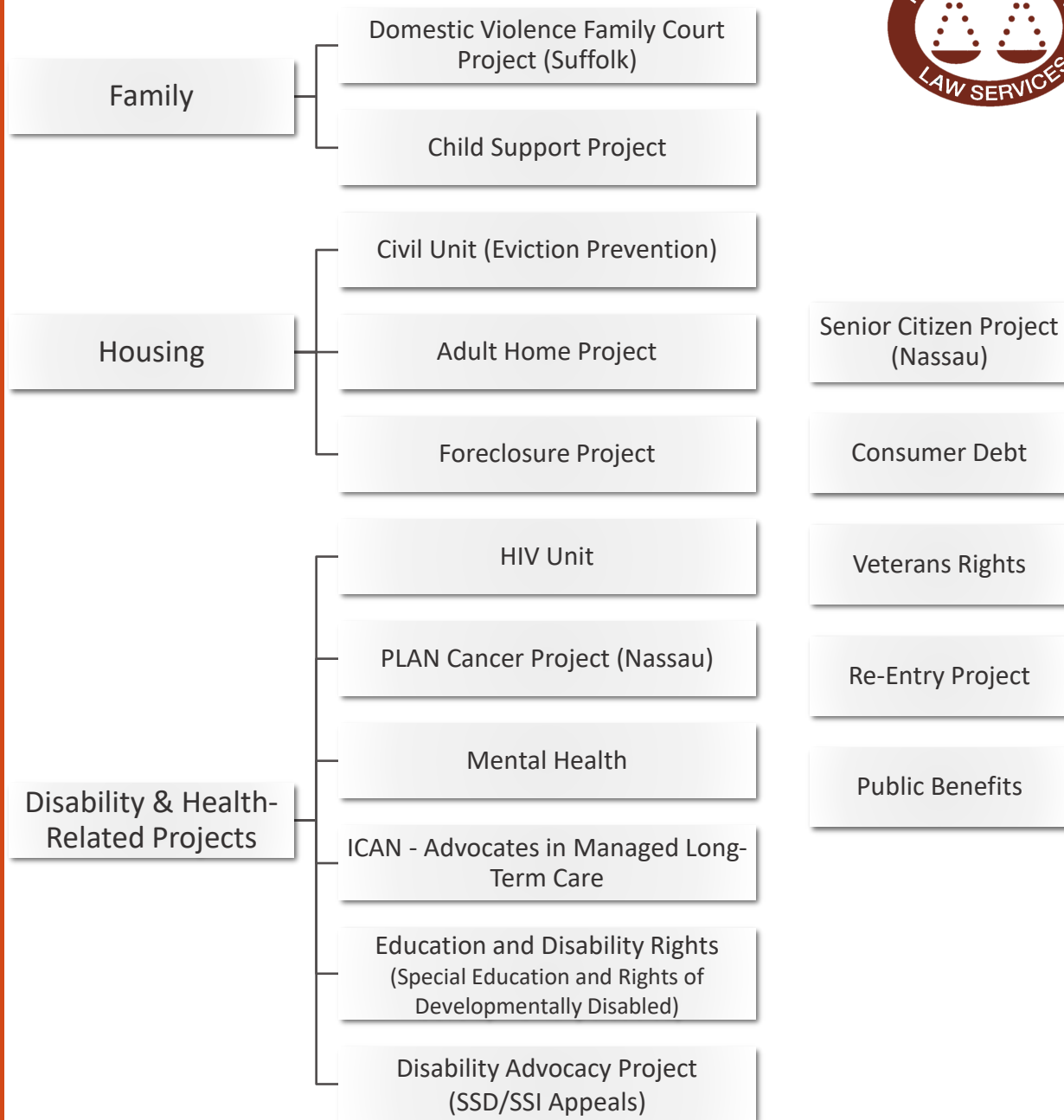
Host Community
Trainings

Publish Newsletters

**Advocates call (631) 232-2400 for assistance:
Vivian - x3309 Cathy - x3324**



Specialized Units





CHILD SUPPORT BASICS

VICTORIA DAVIES, ESQ.



Family Court: Status of Child Support Proceedings

- Court operations change daily!
- Court accepting new support petitions
 - Petitions can be mailed or dropped off
 - Court will notify of hearing date
 - Initial hearing could be a few months
- Currently re-scheduling pending petitions
- Personal appearance will not be the norm
 - Video or telephone conferences will be scheduled





Check court websites for the latest administrative orders or information:

Suffolk:

<http://ww2.nycourts.gov/courts/10jd/suffolk/index.shtml>

NYCOURTS.GOV NEW YORK STATE UNIFIED COURT SYSTEM

10th JD - SUFFOLK COUNTY

Nassau:

<http://ww2.nycourts.gov/COURTS/10JD/nassau/index.shtml>

NYCOURTS.GOV NEW YORK STATE UNIFIED COURT SYSTEM

10th JD - NASSAU County

Family Court
Operations
During COVID

- Filed by parent or non-parent caregiver
- DSS may file if parents/guardians are receiving family assistance or safety net, or Medicaid for child

Child Support: Initial Petitions





Child Support: Getting Help

- Probation/Intake - Not assisting in person, but will assist by phone
 - Riverhead: (east of 112): 631-852-1939
 - Central Islip: (west of 112): 631-853-4246
- NYCourts.gov:
 - <http://nycourts.gov/courthelp/>
- Child Support Enforcement Bureau (CSEB)
 - Only if you are receiving payment through Support Collection Unit (SCU)
 - Location of non-custodial parent or putative father
 - Address, employment, income, assets and health care coverage
 - Income execution
 - 631-854-3183
 - Helpline: 888-208-4485

Child Support Standards Act (CSSA)

Basic Child Support Obligation (BCSO) is percentage of income based on number of children

How is income calculated?

- Gross less
 - Medicare and Social Security (FICA) contributions
 - Child support or maintenance paid to another person pursuant to court order
 - New York City and Yonkers tax





Child Support Standards Act (CSSA)

Income can be

- Veteran's benefits
- Unemployment benefits
- Social Security benefits
- Workers compensation
- **NOT** SSI or public assistance

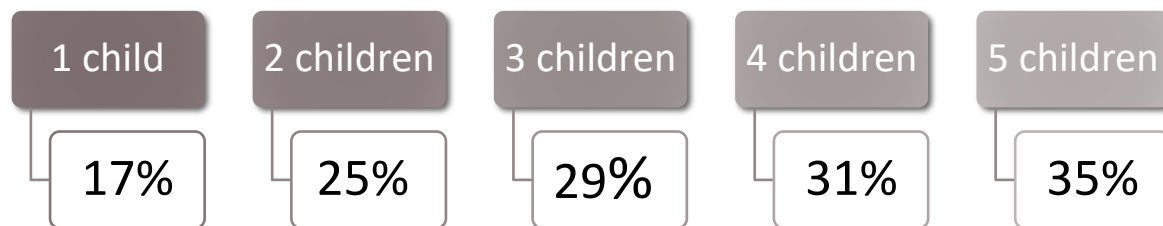
Imputed income

- Court suspects that income was artificially reduced
- Current income below earning potential
- Insufficient financial documentation provided



BCSO Standards

- For combined parental income under \$154,000/year:



- Variation from the standards fact specific



Reasonable education



Health expenses not covered under health insurance



Health insurance premiums



Reasonable childcare



College Tuition

Additional Child Support



Paternity Petition

Establish paternity with

- Acknowledgment of paternity form by unmarried parents, usually at birth
- Parents married at time of birth = presumption husband is father
- Paternity petition
 - Court determines father by Order of Filiation
 - DNA testing

Paternity Petition DIY Program

- <http://nycourts.gov/courthelp/DIY/paternity.shtml>





Automatic adjustments

- Cost of Living Adjustment (COLA) every 2 years
- **If** increase in Consumer Price Index (CPI) over 10%

Child Support Modification Petitions

- Attach prior child support order/modifications
- **Upward Modification:** Increase existing child support
 - Show expenses have increased
- **Downward Modification:** Decrease existing child support
 - Show substantial change in circumstances since the last child support order
 - Unemployment, disability, decreases in salary
 - Child turns 21
 - Arrears Satisfied

Child Support Modifications



Downward Modification Based on Change in Income



SSI/SSD Recipients

- Must prove can't work because of disability
- Evidence must be from medical records and medical provider testimony
- Court is not bound by SSA determination
- Permanent disability

Unemployment/decrease in salary

- Provide list of employment websites used
- Recruiters contacted
- List of employer applications
- Complete Odd Job Diary
- Show diligent efforts to find comparable work



Self-Support Reserve (SSR) may limit child support award

- If standard child support would reduce parent's income below Federal Poverty, child support could be limited to difference between income and SSR, but not less than \$25/month
- Not automatic
- SSR is 135% of Federal Poverty. For 2020, SSR = \$17,226.
- For 2020, Federal Poverty = \$12,760 for individuals
- Federal Poverty Levels for larger families:
<https://www.healthcare.gov/glossary/federal-poverty-level-FPL/>

Self-Support Reserve and Low-Income Parents



Getting Help

NSLS helps low-income non-custodial parents with modification petitions

Eligibility

- Income <200 % of poverty based on household size
- Regina Reid screens further to determine eligibility



Arrears

Child support arrears accumulate until date modification is filed

CSEB provides monthly statement

- If most recent CS Order requires payment towards arrears, must modify Order once arrears are satisfied

CSEB can take an "Add-On" of up to 65% to pay arrears

- CSEB add-ons do not need to be modified by court
- CSEB add-ons should not reduce income below Self-Support Reserve





Enforcement/ Violation Petitions

Need to look at agreement to determine whether to go to Family Court or Supreme Court to Enforce.

Non-payment of court ordered child support is assumed to be “willful”

- Subject to jail time (max 6 months) if found willful
- Any payment, even if below CS Order, could result in a finding of non-willful
- Show attempt to comply

Parent at risk of incarceration entitled to court appointed attorney

Arrears will likely be judgment, which carries 9% interest

VIOLATION



CUSTODY BASICS

LARRY TUTHILL, ESQ.

Joint Versus Sole Custody: Definitions

Joint legal custody (more common)

- Both parents must agree on important decisions about their children (medical, education, religious upbringing).

Sole legal custody

- Only one parent has the right to make major decisions for the child





Joint Versus Sole Custody: Definitions

Joint Physical Custody (rare)

- Child lives with each parent exactly 50% of the time

Sole Physical Custody (more common)

- Child lives primarily with one parent (more than 50% of the time)
- This parent has physical custody (also known as residential custody)
- Other parent has visitation
- Visitation = shared parenting time

Custody Decision Making: Factors

Best Interest of the Child Factors

- Financial status of the parties
- Quality of home environment
- Child's desires (not determinative)
- Ability of parent to provide for child's emotional and intellectual development
- Health of the parents
- Family relationships
 - Keeping siblings together is preference
- Domestic violence



Custody: Getting Started

File a petition or request mediation
in Family Court

- File in county where child lives
- In general, child must have lived
in NYS for at least 6 months



Custody: Getting Help



Legal Help

- Appointed attorneys available for low income parents **starting at first court appearance**
- Legal Aid Society of Suffolk or Legal Aid Society of Nassau
- Ask LAS in Suffolk to pre-screen for eligibility as soon as the first court date has been scheduled
- 18(b) panel
- DV survivors may be able to get support from DV agencies
- LIFT Online
 - Legal hotline and virtual consultations. May help prepare initial petition.
 - <https://www.liftonline.org/>
 - [212-343-1122](tel:212-343-1122)



Custody Decision Making: Process

Conferences



Attorney for the child (law guardian)

- Represents the child's interests



Court attorney referee v. Judge



Trial or stipulation



NYCOURTS.GOV

NEW YORK STATE UNIFIED COURT SYSTEM

HOME

[SEARCH NYCourts.gov](#)

COURT  **Help**

**Find the Help You Need
to Represent Yourself in NY Courts**



Custody: DIY Forms Modifications and Enforcement

- Modification Form
<https://nycourts.gov/courthelp/DIY/custodyModification.shtml>

- Enforcement Form
<https://nycourts.gov/courthelp/DIY/custodyEnforcement.shtml>

Custody and COVID

- Social distancing and visitation
- Parents who are essential workers
- Disruption in childcare arrangements
- Family relocation





DOMESTIC VIOLENCE BASICS



Retreat
631-329-2200



Brighter
Tomorrows
631-395-1800



VIBS
631-360-3606



LI Against DV
631-666-8833



Getting Help





Orders of Protection

Refrain From
(or Limited)
OP

Order to stop abusing, harassing or threatening the person

You can still live in the same home



Stay Away
(or Full) OP

Must stay away from the person entirely

Must move out if you live together (eviction moratoria don't apply)

May be limits on communication

Family Court v. Criminal Court

Family Court

Where to go
for OP?



Must be a family relationship






Must be related through blood or marriage, have a child together, or have an intimate relationship



Family Court v. Criminal Court

Criminal Court

Where to go
for OP?

-  There must be a criminal case
-  Prosecutor or victim may ask for OP
-  No family relationship needed





Family Offense Petition

- Address confidentiality affidavit
- Tell the court what the petitioner wants and why
 - Explain how you are related
 - Describe what happened
 - First event
 - Worst event
 - Most recent event
 - Explain what you want





What Comes Next?

Conference

Temporary OP issued same day without respondent present



Trial and disposition

Respondent's chance to consent to OP or object and present his side of the story



Enforcement

Call the police

Violation petition