

States who do not allow postsecondary support

Alaska The Alaska court ruled in *Hinchey v. Hinchey*, 625 P.2d 297 (Alaska 1981), that AS 25.24.160(2) authorized the superior court to enter post-minority educational child support awards. This case was overruled three years later by *Dowling v. Dowling*, 679 P.2d 480 (Alaska 1984). The Dowling Court ruled that the legislature did not intend to provide for post-majority educational support. This case was upheld by the Alaska Supreme Court in the case of *Propst v. Propst*, 776 P.2d 780 (Alaska 1989). **Courts continue to follow Dowling. Courts have found that the rule in Dowling is clear and cannot be ignored: when a husband and wife with kids divorce, the courts cannot require either parent to pay for post-majority college education. H.P.A. v. S.C.A. 704 P.2d 205 (Alaska 1985). The age of majority in Alaska is eighteen.** Alaska courts have ruled that they have the authority to award support for adult children who are handicapped. *Streb v. Streb*, 774 P.2d 798 (Alaska 1989).

Arizona A.R.S. 25-320 says that **child support should continue only until the child reaches majority**. The age of majority in Arizona is eighteen. There is an exception for disabled children. There is also an exception for children who reach majority while still in high school. The legislature did not intend the child support obligation to continue past the age of majority while a child is still in high school if the child has become emancipated for reasons other than reaching majority. *Guzman v. Guzman*, 175 Ariz. 183, 854 P.2d 1169. Courts will enforce separate contracts to provide post-minority support in a separate contract action. *Solomon v. Findley*, 167 Ariz. 409, 808 P.2d 294 (Ariz. 1991), which overruled *Helber v. Frazelle*, 118 Ariz. 217, 575 P.2d 1243.

Arkansas A.C.A. Section 9-14-105 gives the court jurisdiction to grant support for minority children. The age of majority is eighteen. **Courts have ruled that once a child reaches majority, the legal duty of the parents to provide support ceases.** *Towery v. Towery*, 285 Ark. 113, 115, 685 S.W.2d 155, 156 (1985). However, there is an exception for when the child is mentally or physically disabled at the time the child reaches majority. In *Turney v. Turney*, 1992 WL 61671 (Ark.App.) an 18 year old was denied post-minority support.

California Ann.Cal.Code Sec. 3901 states that the duty to pay child support continues until the child turns 18. **Support can continue while they are a full time high school student, not self-sufficient, until they reach the age of 19 or finish the 12th grade, whichever comes first.** Sec. 3910 allows for support of an incapacitated adult child.

Delaware D.C.A. Title 13, Chapter 5, Sec. 501(d) states that support continues until the child reaches the age of 18 if the child is a full time high school student and is likely to graduate. **Duty ends at 19 or graduation, whichever comes first.**

District of Columbia Sec. 16-916 states that **only minor children are entitled to support. The courts have no power to require the support of any child after the child reaches the age of majority.** *Norris v. Norris*, 473 A.2d 380 (1984). For child support purposes, a person is considered a child until the age of 21. *Butler v. Butler*, 496 A.2d 621 (1985); therefore, the duty of a parent to support a child ceases once the child reaches 21. *Graham v. Graham*, 597 A.2d 355 (App.D.C. 1991). Under exceptional circumstances, parental support may continue past the age of majority. *Nelson v. Nelson*, 548 A.2d 109 (D.C. 1988).

Florida F.S.A Sec. 743.07(2) states that support can be required past 18 for dependency due to mental/physical incapacitation prior to child reaching majority, or if the person is dependent, between 18-19, still in high school, performing in good faith and with a reasonable expectation of graduation. In that case, support will continue until 19. This statute also says that "[this section shall not prohibit any court of competent jurisdiction from requiring support for a dependent person beyond the age of 18." Courts have ruled that there is no fixed rule forbidding an order of increased child support to finance a child's college education until they reach 21 years of age. *Nicolay v. Nicolay*, 387 So.2d 500 (1980). The trend has been that parents do not have to pay for college for their children unless the child is actually dependent. **Florida will compel postsecondary support upon a finding of actual dependency, but attendance at college does not necessarily render a child dependent.** *Slaton v. Slaton*, 428 So.2d 347, (Fla. 1 Dist. App. 1983). Children who will turn 19 before they graduate from high school "are entitled to no support during their eighteenth year, even though they are in school." 686 So.2d 753, 755 (1997).

Idaho Sec 32-706(2) **provides that if a child continues on with his or her education after reaching 18 years of age, the court may, at its own discretion order the continuation of child support payments until the child discontinues his education or reaches 19, whichever comes first.** See *Walborn v. Walborn*, 120 Idaho 494, 499-500, 817 P.2d 160, 165-66 (1991). In *Noble v. Fisher*, 126 Idaho 885, 894 P.2d 118 (1995), an Idaho court ruled that a settlement agreement for the husband to pay one-half of his children's college expenses was held to be a provision requiring post-majority support. Because of the merger in the divorce decree, the agreement was not enforceable as a separate contractual obligation.

Kansas Post-secondary educational support is basically only by agreement of parties in Kansas. Sec. 60-1610(a)(1) states that the court may order the child support and educational expenses to be paid by either or both parents for any child less than 18 years of age, at which age the support shall terminate unless the parent or parents agree, by written agreement approved by the court, to pay support beyond the time the child reaches 18 years of age

Kentucky Post-majority support only for child after 18th birthday if child becomes physically or mentally incapacitated. Court has no power to decree support in any other circumstances. Reed v. Reed, 457 S.W.2d 4 (1970). Emancipation when child reaches age 18.

Louisiana LA. Rev. Stat. Ann. Sec. 9:315.22 terminates the child support upon majority or emancipation, or for so long as child in secondary school in good standing and not reached the age of 19.

Maine Sec. 303(2)(A) states that the child support decree remains in force until the child reaches 18 years of age. For recent decrees (after 1990), if the child is 18 years old and attending a secondary institution, the decree can remain in force until graduation, withdrawal, or expulsion from school or when the child reaches 19, whichever comes first

Nebraska Sec. 42-5-201 states that support is owed to a child and Sec. 43-2101 states that all persons under 19 are minors. Sec. 43-504 states that the term dependent child shall mean a child under the age of 18 years, or 19 years if full time student in secondary school. The Supreme Court of Nebraska ruled that a "district court in a dissolution action may not order child support beyond the age of the majority of a child over the objection of any parent." Zetterman v. Zetterman, 512 N.W.2d 622, 624 (1994).

New Mexico The trend is that the trial court does not have jurisdiction over post-minority support for children. See Christiansen v. Christiansen, 666 P.2d 781 (1983). In Phelps v. Phelps, 509 P.2d 254 (1973), the Supreme Court of New Mexico held the trial court had no authority to enforce divorce judgment regarding support payments for parties' 18 year old daughter.

Nevada Sec. 125B.020 states that parents have a duty to provide the child necessary maintenance, health care, education, and support. A dependent child is one who is 18 or less, or is under 19 years of age and is still a high school student. In Norris v. Norris, 560 P.2d 149 (1977), the court held that where the husband's obligation to support the son derived solely from divorce decree provision ordering him to pay support until son reached age of majority or was otherwise emancipated, and where husband and wife did not enter into agreement fixing support obligation, such obligation derived solely from divorce decree itself, and thus courts power to order child support was limited to the minority of the child.

Oklahoma The Oklahoma Supreme Court held that pursuant to 43 O.S. 1991, Sec. 112(D), if the custodial parent is providing a dependent child, over the age of majority who is attending high school, with the necessities of life, the continuation of child support until the age of 19 is warranted. Carr v. Carr, 834 P.2d 970 (1992).

Ohio The obligation of the parent to support his children extends to, but not beyond, each child's majority. Thiessen v. Moore, 137 N.E. 906 (1992). Sec. 3109.01 sets 18 as the age of majority. An order in a divorce decree requiring payment of a child's educational expenses beyond 18th birthday is reversible error. Verplatse v. Verplatse, 477 N.E.2d 648 (1984).

Pennsylvania The Supreme Court of Pennsylvania found that the statute requiring post-secondary educational support violated the equal protection clause of the 14th Amendment. Curtis v. Kline, 666 A.2d 265 (1995).

Rhode Island The Supreme Court of Rhode Island in Perreault v. Perreault, 40 A.2d 27 (1988), cited General Laws 1956 Sec. 15-5-16.2 which states "[t]he court may, if in its discretion it deems it necessary or advisable, order child support and education costs for children attending high school at the time of their eighteenth birthday and for ninety (90) days after graduation, but in no case beyond their nineteenth birthday

South Dakota The Supreme Court of South Dakota in Conway v. Grohs, 466 N.W.2d 641 (1990), held that parents of any child were under a legal duty to support their children until the child attained the age of 19 if the child was a full-time student in a secondary school. In 1986, the legislature adopted SDCL 25-5-18.1 which provides: The parents of any child are under a legal duty to support their child in accordance with the provisions of Sec. 25-7-6, until the child attains the age of 18, or until the child attains the age of 19 if he is a full-time student in a secondary school.

Tennessee T.C.A. Sec. 34-1-101(b) provides: parents or guardians shall continue to be responsible for the support of any child or children for whom they are responsible after the age of 18 if such child or children are in high school. Such duty shall continue until the child graduates or the class of which the child is a member graduates, whichever occurs first. In Nash v. Mulle, 846 S.W.2d 803 (1993), the Supreme Court of Tennessee found that "[b]y lowering the age of majority from 21 to 18 years of age the Legislature has completely emancipated the minor from the control of the parents and relieved the parents of their attendant legal duty to support the child."

Texas Court held in *Cohen v. Sims*, 830 S.W.2d 285, 289 (1992), that support awards were based on Texas Family Code Annotated Sec. 4.02 which sets forth that **each parent has the duty to support his or her child during the period that the child is a minor, and thereafter so long as the child is fully enrolled in an accredited secondary school program leading toward a high school diploma until the end of the school year in which the child graduates**

Vermont The Supreme Court of Vermont stated in *Bradley v. Bradley*, 575 A.2d 190 (1990), that a trial court was empowered to increase the amount of child support being paid by the husband during the statutory period, notwithstanding stipulation incorporated in a divorce judgment providing for payment of child support beyond the statutory period. Under 15 V.S.A. Sec. 658 (c) **the court may order support to be continued until the child attains the age of majority or terminates secondary education, whichever is later.**

West Virginia The Supreme Court of Appeals of West Virginia ruled that if a child is incapable of supporting himself as a result of physical or emotional disabilities, parents obligation to support the child continues beyond the child's age of majority. *Kinder v. Schlaegel*, 404 S.E.2d 545. However, in *McKinney v. McKinney*, 337 S.E.2d 9 (1985), the **Supreme Court of Appeals held that the trial court erred in extending child support payments of the husband beyond the child's 18th year, since emancipation statutes, Cod 2-3-1, act as an absolute bar to any extension of support obligations. Therefore, the husband is not obligated to support a child after the child reaches 18.**

Wyoming In *Jennings v. Jennings*, 783 P.2d 178, the **Wyoming Supreme Court held that a father could not be required to support a child after reaching the age of majority**, except that there is a duty of support of a child beyond the age of majority in the case of a physically/mentally disabled child, (continuing disability prevents child from becoming emancipated). The Supreme Court affirmed the District Court's holding that the father had no obligation to support his son beyond age 19 years.

Kentucky Post-majority support only for child after 18th birthday if child becomes physically or mentally incapacitated. **Court has no power to decree support in any other circumstances.** *Reed v. Reed*, 457 S.W.2d 4 (1970). Emancipation when child reaches age 18.

Wisconsin In *Miller v. Miller*, 227 N.W.2d 626 (1975), the **Supreme Court of Wisconsin stated** that it is well established that, divorce being a statutory proceeding, **the authority of the court to order support is limited to the minor children of the parties.** In Wisconsin, a person loses his status as a minor at 18.

States that allow PSES with stipulations

Colorado The Colorado legislature adopted Section 14-10-115(1.5) in 1991. This statute provides that child support terminates at emancipation or when the child attains nineteen years of age. However, support can continue under the following circumstances: (I) the parties agree otherwise; (II) the child is mentally or physically disabled; (III) if the child is still in high school or an equivalent program; (III)(b)(1) **"If the court finds that it is appropriate for the parents to contribute to the costs of a program of postsecondary education, then the court shall terminate child support and enter an order requiring both parents to contribute . . . for the education expenses of the child."** Courts shall not issue orders providing for both child support and postsecondary education to be paid at the same time. The order for post-secondary education may not extend beyond the earlier of the child's **21st birthday** or the completion of an undergraduate degree. See *Marriage of Robb v. Robb*, 934 P.2d 927 (Col. App. Div. II, 1997).

Connecticut General Statute Sec 46b-84(b) states that support terminates at 18. However, if the child is still in high school, unmarried, and still lives with one of the parents, support continues if the child is in need of maintenance until the child completes the 12th grade or turns 19, whichever comes first. Otherwise, courts will not compel post-secondary educational support unless there is a specific agreement between the parties. Case law has followed these trends. See *Cariseo v. Cariseo*, 459 A.2d 523 (1983) and *Gallo v. Gallo*, 440 A.2d 782 (1981). **A recent case found the jurisdiction of the superior courts is limited to approval and incorporation of written agreements between the spouses.** 1997 WL 381234, at 8.

Georgia Code of Georgia Sec. 19-6-15(e) says that support continues until majority, death, marriage of child, or emancipation. Trial court, in its sound discretion, may allow financial assistance to a child (not married or emancipated) who is **enrolled in college, provided that assistance shall not be required after the child is 20. Parents are free to contract with each other to provide for their children's educational expenses, and these contracts will be enforced by the courts.** 366 S.E.2d 766, 767.

Maryland Sec. 12-202(a)(2)(iii) states that in determining whether the application of the guidelines would be unjust or inappropriate in a particular case, the court may consider the terms of any existing separating or property settlement agreement or court order, including any provisions for payment of college educational expenses. The author was unable to find any case law under this statute.

Michigan Sec. 552.16(a)(1) states that a court may order support for a child after child turns 18, but only until child reaches 19 years and 6 months of age. [Agreements between the parties are enforceable. It is necessary for the child to be a full-time student to qualify for post-majority support.](#) *Rowley v. Garvin*, 562 N.W.2d 262 (Mich.App.Ct. 1996).

Minnesota Unless a court order provides otherwise, a child support obligation terminates automatically upon the emancipation of the child as provided under Sec. 518.52(2). A child is "an individual under age 20 who is still attending secondary school." 1983 Minn. Laws ch. 144 Sec. 1. A court may extend child support payments beyond the age of majority if it finds "a demonstrated inability of the 18-year-old, still in high school, to be self-supporting." *Welsh v. Welsh*, 446 N.W.2d 191, 194 (Minn.App. 1989); see also *Seeman v. Seeman*, 1997 WL 259994 (Minn.App. 1997) (Unpublished opinion and may not be cited). [The inability to be self-supporting must be something more than the result of attending school. Mere proof that a child is still in high school is insufficient](#)

Montana Sec. 40-5-201 defines "child" as any person under 18 who is not otherwise emancipated, self-supporting, married, or a member of the armed forces. However, Sec. 40-4-204(2)(d) [allows a court to consider the child's educational needs.](#)

North Carolina Sec. 50-13.4(c) states that payments ordered for support of a child shall terminate when the child reaches 18, except if the child is still in primary or secondary school when he reaches 18, the court in its discretion may order support payments to continue until he graduates, otherwise ceases to attend school on a regular basis, or reaches age 20, whichever comes first. The Court of Appeals of North Carolina held that child support obligations entered by a court terminate upon child reaching 18 unless the child is otherwise emancipated prior to reaching 18 or the trial court in its discretion continues to enforce payment obligation after the child reaches 18 and while the child is in primary or secondary school. In *Ross v. Voiers*, 1997 WL 592624, the North Carolina Court of Appeals held that ["a parent can assume contractual obligations to his child greater than the law otherwise imposes."](#) In other words, contracts are enforceable between parents that provide for educational expenses of their children.

North Dakota Sec. 14-09-15 states that when a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation in the absence of an agreement therefor. Minors are persons under 18. The Supreme Court in *Freyer v. Freyer*, 427 N.W.2d 348 (1988), held that Sec.14-09-10 permits a trial court to award child support beyond the age of majority if the child is unable to maintain himself by work, and a child who has reached the age of 18 but is still in high school may, under appropriate circumstances, be considered unable to maintain himself by work. *Freyer* is still good law in North Dakota. It was followed recently in the case of *Johnson v. Johnson*, 527 N.W. 2d 663, 667 (Supreme Court of N.D. 1995)

Utah The Court of Appeals of Utah held in *Balls v. Hackley*, 745 P.2d 836 (1987), authority of the trial court, [to extend a parent's obligation to support his or her child beyond the age of 18 is discretionary and may only be exercised upon a finding of necessity and special/unusual circumstances.](#) Utah Code Ann. Sec. 15-2-1 states: The period of minority extends in males and females to the age of 18 years; but all minors obtain their majority by marriage.

Virginia [Agreements extending support would be upheld although the statutory age of majority is 18.](#) *McCaw v. McCaw*, 403 S.E.2d 8 (Va.App. 1991).

States that require PSES

Hawaii Sec. 580-47(a) says that courts can require support of adult children. Notice must be sent 3 months before the child reaches 19 that support will end. It will then be suspended unless proof provided by custodial parent or adult child before the 19th birthday that the child is enrolled as a full time student or accepted as a full time student to a college or university. Courts consider factors in determining whether support is needed (financial resources, standard of living, age, marriage duration, parties' physical/emotional condition etc.).

Indiana Sec. 31-1-11.5-12(b)(1) states that the child support order can include sums for the child's education at institutions of higher learning, where appropriate. Sec. 31-1-11.5-12(d)(1) states that the duty to support a child ceases when the child reaches 21 years of age unless the educational needs mentioned in section (b)(1) are present. In *Schueneman v. Schueneman*, 591 N.E.2d 603 (In.App. 4 Dist. 1992), the court followed both of these provisions and found that support obligations stop at 21, unless parents are required to pay for the educational needs of their adult children. [Parents are also free to contract with each other to provide for the educational expenses of their children](#)

Illinois Ill. St. Ch. 750, Sec 5/513 (formerly Title 40, Sec. 513) provides that the court can make provisions for the educational expenses of the children of the marriage, whether of minor or majority age. An application for such support can be made after the child has attained majority. Support is for any period during which the child is still attending high school even though past 18, and for college education or other professional training after high school. Expenses include room board, dues, tuition, transportation, books, fees, registration and application costs, medical expenses (including insurance), living expenses during school year and periods of recess. Court should consider financial resources of child, parents, and the standard of living the child would have enjoyed had the marriage not been dissolved. See also 648 N.E.2d 304.

Iowa Sec.598.1(2) states that "support" means an obligation which may include support for a child who is between 18-21 who is regularly attending an accredited school, or is, in good faith, a full time student in college, or has been accepted for admission to college and the next regular term has not begun. The trial court may order college support for children, although college support is not always required, based on consideration of parent's financial condition, child's ability to perform college work, child's age, and whether child is self-sustaining or not. In *re Marriage of Baker*, 485 N.W.2d 860 (IowaApp. 1992).

Massachusetts Sec. 208:28 allows a court to render a judgment for children between 18-21 domiciled in the home of a parent, and principally dependent upon said parent for maintenance. A judge can, under certain circumstances, make orders of support for children enrolled in educational programs who have attained the age of 21 but who have not attained the age of 23. Courts will consider the need and capacity of the child for education, including higher education. *Doe v. Roe*, 585 N.E.2d 340 (Mass.App.Ct. 1992).

Mississippi The Mississippi Supreme Court in *Stokes v. Maris*, 596 So.2d 879 (Miss. 1992), held that the trial court did not have authority to order a father to pay college expenses of a child after the child reached the age of majority. 21 is the age of majority in Mississippi

Missouri Sec. 452.340.5 states that "if the child is enrolled in an institution of higher education . . . , the parental support obligation shall continue until the child completes his education, or until the child reaches the age of 22, whichever occurs first. In *Sinclair v. Sinclair*, 837 S.W.2d 355 (Mo.App.W.D. 1992), the court held that a father had a statutory duty to provide child support until his son completes his education, is no longer a student, or attains the age of 22. Moreover, college expenses are properly considered as bearing

upon amount of child support that is reasonable in determining whether support award should be modified. *Weber v. Weber*, 804 S.W.2d 756 (1990).

New Hampshire The New Hampshire Supreme Court ruled in *Gnirk v. Gnirk*, 589 A.2d 1008 (N.H. 1991), that a divorced spouse's support obligations may not automatically end when the child reaches 18, and support may be awarded for college expenses of adult children in appropriate circumstances. The court considers what is equitable in light of the circumstances of the parties. "We consistently have granted the superior court broad discretion in its decision whether or not to order a divorced parent to contribute toward college expenses." 624 A.2d 1350. The legislature does not mandate that the superior court order a divorced parent to contribute toward college expenses in all cases.

New Jersey Sec. 2A:34-23 states that parents have a duty to support their minor children. However, the court had jurisdiction to entertain a motion to modify the original judgment of divorce to award a payment of support and expenses of a child attending college even though the child had reached the age of majority. The court found that there is no fixed age when a child becomes emancipated. *Wanner v. Litvak*, 433 A.2d 445 (A.D. 1981).

New York Sec. 240 of Book 14, subd. 1-b(c)(7) states that when the court determines that the child requires educational expenses, such as for college or private school or for special enriched education, the court may award educational expenses. The non-custodial parent may be required to pay those expenses as the court directs, including direct payment to the school. However, a parent may not be directed to pay child support and/or contribute toward college education for a child who is 21 years of age or older absent express agreement to do so. *Breslaw v. Breslaw*, 156A.D.2d 627, 548 N.Y.S.2d 815 (1989).

Oregon The Court of Appeals of Oregon held that ORS 107.108 authorizes a court to order a parent to pay child support (or to continue a child support obligation) for a child attending school until that child is 21 years of age. In the *Matter of Marriage of Wiebe*, 113 Or.App. 535, 833 P.2d 333 (Or.App.Ct. 1992). The court further stated that the educational expenses of a child may justify a deviation from the presumed amount of child support provided by the guidelines, but those expenses are a part of, and not in addition to, a child support obligation and are subject to the statutory limitations of such an obligation. However, it should be noted that a recent trial court decision found ORS 107.108 to be unconstitutional for violating equal protection under the state and federal constitutions. See: Multnomah County Circuit Court Case No. 8706-64201 (Sept. 1997)

South Carolina The Court of Appeals of South Carolina in *West v. West*, 309 S.C. 28, 419 S.E.2d 804 (S.C. App. 1992), held that jurisdiction of the family court is vested in cases of children over 18 years of age where exceptional circumstances warrant it. A family court judge may require a parent to contribute that amount of money necessary to enable a child over 18 to attend high school and four years of college, where there is evidence that: (1) the characteristics of the child indicates that he or she will benefit from college; (2) the child demonstrates the ability to do well, or at least make satisfactory grads; (3) the child cannot otherwise go to school; and (4) the parent has the financial ability to help pay for such an education.

Washington The Washington State Supreme Court ruled in *Childers v. Childers*, 89 Wn.2d 592, 575 P.2d 201 (1978), held that judges have the discretion to require a parent to support a child beyond the age of 18 if the child remains dependent on his/her parents for support. In 1990, the Legislature enacted RCW 26.19.090 governing post secondary educational support awards. Under the statute, the court will determine whether the adult child is in fact dependent and is relying upon the parents for the reasonable necessities of life. The court will exercise its discretion when determining whether and for how long to award post secondary educational support based upon consideration of factors that include but are not limited to the following: (a) Age of the child; (b) Child's needs; (c) Parent's expectations for their children when they were together; (d) Child's prospects, desires, aptitudes, abilities or disabilities; (e) Nature of the post secondary education sought; and (f) Parents' level of education, standard of living, and resources