

MODIFICATION OF CHILD SUPPORT ORDERS

When can a Child Support Order be Changed?

- Children are entitled to be supported by their parents in the same way they would have been had their parents not separated. Therefore it follows that as parents' incomes change, the support of their children should also change. Child support ordered by the court can be changed by the court if one parent can show there has been a real, substantial and unanticipated change of circumstances since the last child support order was issued.

When is a Change "Real" and "Substantial"?

- A change is considered real and substantial if it would make the child support amount payable under the child support guidelines **at least 10% higher or lower** than the amount of the current child support order. A typical change of circumstances occurs when one parent's income changes substantially.
- Involuntary loss of employment, where wages are replaced by unemployment compensation, worker's compensation, or disability benefits, is good reason to seek reduction in child support.
- A promotion, a new, higher-paying job, or a substantial inheritance could all be good reasons to seek an increase.
- Changes in the parenting plan can also be a reason to seek a modification. For example, if a child goes to live with the other parent on a long-term basis, it will cost that parent more money to provide for the child's care. Therefore, child support should be adjusted.

When is a Change Not "Unanticipated"?

- The change in circumstances must be unexpected and not merely because a parent decides to make a change in employment. Voluntarily quitting one's job cannot be used to justify a reduction in child support. The court will **not** reduce a child support order based on a **voluntary** decision to leave a job unless such termination of employment was done for good reasons.
- Many parents are seasonally unemployed. If such unemployment or other temporary unemployment was already taken into consideration when the amount of child support was determined, temporary unemployment will not be unanticipated.

How do you find out what the Other Parent's Income is?

- Once per year, each parent is allowed to ask the other parent for a copy of her or his last income tax return, recent pay stubs showing employment income, and other paperwork showing what income the parent is earning at this time. For as long as the parents have an obligation to support their children, the parents are required by law to exchange this information once per year when asked, even if the court is not involved. This informal exchange of income information will give each parent the opportunity to see whether the child support should stay the same or should be adjusted.

How can you get the Order Modified?

- To begin the process you fill out a written Petition to Modify Child Support. (Ask the clerk for Form #803.) The Petition must be accompanied by an Affidavit (form#804). (An affidavit is a statement that explains in your own words why you are asking that the child support order be changed. This statement must be signed by you in front of a notary public.) The affidavit must also state what the real, substantial and unanticipated changes of circumstances are. You must also complete a financial affidavit which shows your income and assets. (Ask the clerk for Form #813.)
- You must also pay a filing fee of \$35.00. If you feel that you cannot afford the filing fee, ask the court for form 228c, "Application to proceed *In forma pauperis*" to ask to waive or reduce the fee.
- Before the court will hold a hearing on the Petition to Modify, the other parent must be served with a copy of the Petition and Affidavit. (See #25 [Serving the Divorce Papers](#).) If the other parent agrees to the modification, the two of you can complete the Child Support Order (Form #802) and file it with the court, together with the income and asset affidavits (ask clerk for Form #813), and a child support worksheet. (If you have trouble filling out the worksheet or child support order, contact the Office of Child Support (See #6 [Child Support](#)) or the Family Court Clerk's Office case manager to help you fill it out. If your agreement is approved, the magistrate will issue a new child support order and no hearing will be necessary. If the magistrate has questions about your requested modification, or there is no agreement between the parents, a hearing will be scheduled on the Motion/Petition to Modify.

Can the Parents Informally Modify their own Child Support Orders?

- Modification of a child support order must be approved by the court. If the parents agree to change the support, the change does not legally take effect until the court has approved it. The "advantage" of informally agreeing to a change in the support order is that you do not have to fill out any forms, do child support guideline calculations or complete the other requirements to get the order modified by the court. The disadvantage is that your agreement cannot be enforced by the court.
- A frequent example is when a parent, who is obligated to pay support, gets laid off and both parents agree informally to reduce the child support. Later, the parents have a falling out, and the parent who is entitled to support decides that the child support order should be enforced. If this issue is brought to the court, the judge or magistrate has to enforce the child support order as written, i.e. the higher amount, regardless of the informal agreement, and order repayment of all back support based upon the written order and not your informal agreement. (See #34 Enforcement of a Child Support Order).

When is the Modification Effective?

- The court cannot change the support order unless and until you ask for a change in writing. If the modification is granted, the court has discretion to change the support back to the date you first filed the Petition to Modify. The court cannot make the modification effective before the filing date of the Petition. Therefore, if you believe you are entitled to a modification, it is important to file as soon as possible. Until the order is modified, the original Child Support Order remains in effect even if a change in circumstances has occurred.

**You can obtain helpful information, as well as court forms at:
www.VermontJudiciary.org.**