

Family Legal Care

Modifying a Child Support Order

Large Print Edition

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This document should not take the place of a consultation with a lawyer. Family Legal Care encourages all individuals involved with the Criminal and Family Court systems to consult with a lawyer.

This guide provides information for both custodial and non-custodial parents about modifying child support.

What reasons are there for a modification of child support?

Generally either parent can ask the court to **modify**, or change, the child support order if:

- Either parent's income changes by 15% or more since the last child support order; or
- Three (3) years have passed since the last child support order was made; or

- There has been a substantial change in circumstances (for example, if the child is now living with the other parent or if one of the children on the order has turned 21).

Remember that you will have to show proof to the court of these changes.

What if I lost my job or cannot pay?

The court will not automatically lower your order of child support. You must go to Family Court to file a petition for a downward modification. See page 2 of this guide for more information about this process.

I am the non-custodial parent. How can I lower my order of child support with the court?

If you have a final order of child support, and your ability to pay the order has changed or there has been a substantial change in

circumstances, you can ask the court to decrease the amount of child support that you are ordered to pay.

You can do this by filing a **petition for downward modification** at the same Family Court that decided your last child support order.

Can I change a temporary order of child support?

Generally, you cannot change this order until the next court date. Be sure to bring proof of your income and expenses to the next court date.

How does the Support Collection Unit (SCU) help to change child support orders?

If the custodial parent chooses for support payments to go through SCU, SCU will create accounts for both parents to keep track of

payments. SCU can also help the custodial parent with locating and serving court papers to the non-custodial parent.

Can I get a free lawyer for my child support case?

There are no free lawyers for child support cases, unless you are the non-custodial parent and you are at risk of going to jail because a violation petition has been filed against you. If this happens, the court may **appoint**, or assign, you an attorney at no cost to you. You may be asked to give information about your income so the court can determine if you are financially eligible.

Custodial parents are not given court-appointed attorneys in child support cases. All parties can hire private lawyers at their own expense.

What can I do if the other parent files for a modification?

The **burden of proof** is on the party asking for the order to change. This means that the person asking for the change has the responsibility to prove to the court that the change should be made.

For example, if the non-custodial parent is asking to pay less, it is their responsibility to show proof to the court as to why their request should be granted.

Custodial parents can also present proof of the non-custodial parent's ability to pay child support. The court relies on information from all parties to decide if the order of child support should change.

What is a COLA? How can I undo this adjustment?

A cost of living adjustment (COLA) for a child support order can happen automatically if the custodial parent and your child are on public assistance or if the custodial parent requests a COLA through the SCU. COLAs happen outside of Family Court and without court hearings. Any party (but not a custodial parent who receives public assistance) can file a written objection to the COLA with the Family Court where the original order of support was issued. If neither party files objections to the COLA, it will increase the child support order going forward.

What kind of proof do I need to show the court?

When you go to court, you must bring proof that your situation has changed.

If you lose your job and ask for a downward modification, you will need to show the court:

- 1.** You did not lose your job through your own fault (for example, you did not get fired for cause or you did not quit voluntarily), and
- 2.** You have made efforts to find a job with income at the same rate of pay or higher.

You must also bring any other proof requested by the court. If you are asking to modify because you have been in jail, you cannot have been in jail because of a violation of a child support order or a crime against the other parent or the child.

You can ask the court to change your support order going back to the date when you filed the modification petition. You must continue to pay the same amount of child support on the order until the court makes a different child support order.

The court may look at the amount you made before you lost your job and decide that you could make more than you do now. If this happens, the court might not change your child support order.

What if I am on disability and ask for a downward modification?

In addition to what is listed above, you may also need to show the court

- Disability benefits letter; and
- Certified medical record from your doctor stating your diagnosis, prognosis, and ability to work; and
- Any other proof requested by the court.

What are child support arrears?

Child support **arrears** are unpaid amounts of child support. It is important for all parties to know that unpaid child support arrears add up until the child turns 21 in New York, but that

they never go away. Arrears do not go away with bankruptcy and can affect the non-custodial parent's credit. Arrears only go away when they are paid.

Can I modify arrears that I owe?

This depends on how the child support case starts and who gets paid. If the order says the non-custodial parent pays directly to the custodial parent, even through the SCU:

- Only the custodial parent can forgive these arrears. If the parties agree to forgive arrears, both parties may still need to go to court to agree to the change in front of the support magistrate.

If the order is paid by the non-custodial parent to the Department of Social Services (DSS) because the child is on public assistance:

- Incarceration – DSS may forgive arrears for time when the non-custodial parent was in jail, but proof of dates of incarceration will be required.
- Public assistance – DSS may forgive arrears for time when the non-custodial parent was also on public assistance, but proof of benefits and income will be required.

If the order is paid through SCU, the non-custodial parent may be eligible for programs to reduce their arrears. All parents can visit their local SCU office or call the New York Child Support Helpline at 1-888-208-4485 to find out more information about child support.

What is a default order?

If you miss a court date or do not bring proof of your income, a support magistrate can enter a default order. This means the order for

child support can be based only on the information the custodial parent gave to the court. If you want to cancel the default order, you may file a **motion to vacate** the default order of support.

How can I file a motion to vacate for a default order of support?

A motion to vacate a default order of support is a written request asking the court to cancel the order. This motion must also have an **affidavit**, where you describe to the court what happened and why you were not in the courtroom when the order of support was made. An affidavit is a sworn statement made in writing and signed. It must be signed by you in front of a notary public and it must be notarized. You can contact your local Family Court for motion forms or you can visit the New York State Unified Court System's website (www.nycourts.gov/forms).

In the motion, you must give the court a good reason for not showing up to court – for example, if you were never served court papers. Also in the motion, you must explain how the order of support would be different if you had been in court and if you were able to give the support magistrate information about your income.

Remember that on your court date you will have to prove anything you write in your motion and in the affidavit. Be sure to also bring proof of your income and expenses to your next court date.

How can I terminate an order of support?

Parties can file a modification petition to terminate, or stop, orders of child support. Some examples of when this might be possible are when:

- A child on the order is now 21 years of age or older; or
- A child on the order is emancipated (for example the child is active military duty and stationed overseas); or
- Custody of the child has changed who has the right to collect child support.

Remember that you will have to show proof to the court of these changes.

