

## How to Modify Child Support

Child support is ALWAYS modifiable – even if you have an agreement that says otherwise. If you're considering modifying your child support payments, call our office to work with the attorneys who have the experience, expertise, and resources to protect your rights.

**Modification of Support (Increase):** A custodial parent may seek an increase in child support, but only when there has been a "substantial change in circumstances" that justifies the increase.<sup>1</sup> Child support is always modifiable. It may not be non-modifiable – even if the parents agree to that term.<sup>2</sup> The law spells out specific thresholds that must be satisfied before the request may even be considered by the court.<sup>3</sup> In most cases, frequently-filed requests for increases should really be dismissed. Unaware of the threshold requirements, the paying parent doesn't ask to have the request dismissed and ends up paying an increase.

**Modification of Support (Reduction):** A non-custodial parent may be able to reduce his or her child support payments based on a "substantial change in circumstances;" that is, when new circumstances justify it. Generally speaking, the court will permit a reduction where the change in circumstances is beyond the control of the parent paying support. For example, if you pay support and you get laid off from your job, the court will probably grant a reduction in your support payments. If, however, you voluntarily reduce your income,<sup>4</sup> quit your job, or do something intending to get yourself fired, you probably won't get much sympathy from the court – meaning no reduction.

The denial of voluntary reductions in income is not hard and fast, however, and the judge must consider all of the circumstances surrounding the request for the reduction. In perhaps the most famous case<sup>5</sup> where a reduction in support was permitted following a voluntary reduction in income, an attorney quit his high-paying job with a nice law firm to start his own practice. The reason? His former wife married one of the law firm's biggest clients and the partners at the law firm were attempting to dictate to the former husband the course of his post-decree litigation with his former wife. The court agreed that such a situation was untenable and concluded that when he quit his high-paying job at the law firm, he did so in good faith and not merely as an attempt to reduce his child support obligation.

**Agreements Between Parents May Not be Enforceable:** Many parents make the colossal mistake of agreeing outside of court to change the amount of child support that one will pay to the other. When child support has been established by a court order, only a court may modify that order.<sup>6</sup> That child support order remains in effect until a judge modifies the order. Only a judge can modify a child support order – parents do not have the power to modify court orders without a judge's approval. You must get court approval – in writing and signed by a judge – for any agreement to modify support to be enforceable.

In one case, the parties divorce in 1983 and the mother was awarded sole custody of the three children. The father paid some support, but the parties (so the father alleged) agreed to terminate the support requirement. Eighteen years later, she sued to collect unpaid child support. The father argued that 1) at one point the parties had agreed out-of-court that he wouldn't have to pay any more support and 2) he was at a disadvantage because his bank only kept records for seven years and he couldn't prove how much he did – or did not – pay beyond seven years. The mother testified that, to the best of her recollection (she didn't even have records – just her recollection) the father owed her over \$60,000. Just like that, the father was ordered to pay \$60,000 in back child support.<sup>7</sup> The point is, the child support order was not (and could not have been) modified by the parties out-of-court agreement. Only courts can modify court orders. The father failed to meet his burden of proof – always keep records of payments.

In some cases, however, parents do some things that may convince a court that their agreement should be honored.<sup>8</sup> Under an ancient, common law theory,<sup>9</sup> many courts will enforce the terms of an out-of-court agreement even though no judge approved the agreement beforehand. In one case, for example, the mother was awarded custody of the children but she soon consented to have the children live with the father. He, of course, stopped paying support when the children moved in with him. The mother later sued for unpaid child support. The court concluded that her consent to let the children live with the father lent credibility to the father's assertion that there

had been an understanding that he would no longer pay child support to the mother.<sup>10</sup>

two years after the divorce one of the parties two children went to live with the father. He, therefore, reduced his child support payments by half – without court approval. Ten years later, the mother sued for past due support.

The requirements one must show to the court in order to win in such cases can be tricky.<sup>11</sup> Trying to prove<sup>12</sup> these cases without the help of an attorney is very difficult. If you thought you had an out-of-court agreement to modify support, but are now faced with the possibility that the agreement may not be valid, talk with one of our attorneys today to see if we can save (or undermine) the agreement and save you a lot of money.

**Act Quickly: Reductions Cannot Be Retroactive:** Court orders modifying child support can effect only future payments – they cannot go back in time and retroactively reduce (or increase) support orders. Even if your support order is wrong – like if the math was done improperly – there are only a few things that can be done about it retroactively.<sup>13</sup> Nunc pro tunc orders (court orders that have retroactive effect) cannot be used to correct errors by the judge or your attorney.<sup>14</sup> If you think your child support order should be changed – whether you're seeking an increase or a reduction – the sooner you act the sooner the modification can go into effect. Every day that goes by until you start the process in court is a day that the court cannot later change – you're just throwing money away.

**Increases in Child Support CAN be retroactive:** Special wording in your child support order, increases in child support can sometimes be made retroactively. In one case, the recipient was able to go back over fifteen years and increase child support – thanks to some crafty wording in the child support order.<sup>15</sup> It all boils down to the language in your child support order – work with an informed and experienced attorney who can obtain the law's advantages for your benefit.

**Act Quickly: You May Not Get Full Credit for Overpayments:** The traditional rule in Illinois is that no credit is given for voluntary overpayments of child support, even if they are made under the mistaken belief that they are legally required.<sup>16</sup> Nevertheless, every general rule has exceptions. Whether you've overpaid, or received overpayments, consult with one of our experienced attorneys to find out how you can best protect yourself financially.

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This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or [info@illinoisdivorce.com](mailto:info@illinoisdivorce.com).