

# REQUESTING A MODIFICATION OF CHILD SUPPORT



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One of the most important responsibilities of parents is to provide their children's financial support. Parents who pay or receive child support have the right to ask for a review of the support amount. Michigan law allows a support review if either parent's financial circumstances change. Further, even without a change in financial circumstances, the friend of the court (FOC) office must review the support amount once every 36 months if the custodial parent receives public assistance or if requested by one of the parents. The following sections answer the most frequently asked questions regarding child support review and modification.

### **1. How can I change the amount required in my child support order?**

There are two ways that a parent may seek a change in a support order issued by a Michigan court. First, a parent may ask the local FOC office to review the order. After the review, if the FOC concludes that the support amount should change, the FOC will ask the court to modify the support order. Second, a parent may file a motion asking the court to change the support order immediately.

#### ***How to ask the FOC to review the order and seek a modification:***

You may write to the FOC office and ask for a review. You are entitled to a review every 36 months, but FOCs may review support orders more frequently if a parent requests a review and offers evidence that there has been a change in circumstances (MCL 552.517). A "change in circumstances" is a change of fact that has affected either party, or the child, and that is so significant that it is no longer fair to continue requiring support payments as previously ordered. Circumstances typically change when one parent experiences a significant decrease or increase in income or expenses.

If the FOC reviews the support amount and determines that it should be modified, the FOC must then file a motion that asks the court to modify the support amount. The entire process, including the court's ruling on an FOC motion, must be completed within 180 days after the FOC office starts its review.

#### ***How to file your own motion to ask the court to modify the support amount immediately:***

A parent who experiences a significant change in financial circumstances may file a motion to modify support. If possible, you should retain an attorney to file the motion for you. If you choose to represent yourself, you can obtain a Support Modification Forms packet from the FOC office. Commonly referred to as a "do-it-yourself," "pro per," or "in pro se" packet, it includes all the forms that you will need. You must then complete the forms, file the motion filing fee, and file the forms with the court.

If you do not want to go to the FOC office to pick up a forms packet, you can view and print state-approved domestic relations forms from the internet at

<http://courts.mi.gov/Administration/SCAO/Forms/Pages/Domestic-Relations.aspx>.

You may also be able to generate the forms you need at the Michigan Legal Help website, <http://michiganlegalhelp.org>. Michigan Legal Help was created to help people who have to resolve simple legal problems without a lawyer. However, the website does not provide legal advice and is not a substitute for a lawyer.

A party who files a motion must prove that the court should modify the support amount. The court may penalize a party who files a motion without having a good reason.

### **2. Should I try to change support amounts through the FOC or through the court?**

While it is more expensive to go through the court, it can be faster to ask the court to change support than going through the FOC.

The FOC, however, will review your support order and ask the court to change it at **no charge**. But the FOC may take up to 90 days or longer. You will still have to pay the original support until the court approves the change and after the other party is notified of your request to change the support amount.

If you ask the court to change your support, it can cost up to \$60 (a \$20 motion fee, and a \$40 fee). But the new support amount can start as early as the date you notify the other parent that you filed a motion.

You can ask the court to waive the fees if you cannot afford to pay them by filling out a Waiver/Suspension of Fees and Costs (Affidavit and Order) (Form MC 20), available at <http://courts.mi.gov/Administration/SCAO/Forms/Pages/General.aspx>.

### **3. What happens when the FOC reviews support orders?**

When an FOC office reviews support orders, it first asks parents for information regarding all of their dependents and proof of their incomes. It may also contact both parents' employers to prove their incomes. The FOC uses the Michigan Child Support Formula (MCSF) to determine the correct support amount. Michigan law requires that FOCs use the MCSF to calculate support. In rare situations, an FOC may recommend support at a different amount (called "deviation") if the FOC determines that basing support on the parents' actual incomes or a strict application of the MCSF would be unjust or inappropriate. In those circumstances, the court will decide whether to follow the MCSF or the FOC's case-specific recommendation. The court may also choose to deviate from the guidelines without the FOC recommending it.

After finishing a review, the FOC office will send notice of the proposed support amount to both parties. If both parties do not file an objection to the proposed amount, the new amount will replace the previous support order. If either party files an objection to the proposed amount, the FOC will schedule a hearing before a judge or referee to be held after 30 days from the date of the recommendation.

### **4. What do I do if I have been ordered to pay child support and I lose my job or my income decreases?**

The law requires that you write to the FOC, stating that your financial circumstances have changed. If you want your support amount changed, you may also use one of the options previously described to begin the support-review process. But remember that you remain responsible and must continue to pay the support amount ordered until the court changes that amount through a new order.

### **5. What do I do if I have been ordered to pay child support and I become incarcerated?**

Tell the FOC. The FOC is required to review your support order within 14 days of receiving notice that you have been incarcerated. The FOC will *not* be able to modify a support order unless it knows about the incarceration, and the current order will remain in effect.

### **6. When the court chooses support, is that change permanent?**

No, the court may change the support amount again in the future if either parent's circumstances require a change.

### **7. What if I disagree with the amount of support recommended by the friend of the court?**

If the FOC recommends that the support amount stay the same, you can write to the FOC office and ask it to schedule a court hearing to decide whether the support should change.

If the FOC recommends more or less support and you disagree with the recommended amount, you can get a support hearing before the judge by following the instructions that you will receive from the FOC, along with notice of its recommendation.

At a support hearing, you can explain to the judge why you think that the court should set support at a level that is different from the amount that the FOC has recommended.

**8. If both parents agree to a change in the support order, do both parents have to go to court?**

Some FOC offices will help parties write an agreement to ask the court to enter a new order. After both parties sign the agreement, the FOC sends it to the court for approval. If your FOC does not help parties prepare agreements, it will be up to the parties to draft their own agreement. A parent must file the motion and proposed agreement with the court to change the support order. Even if you agreed to a change, the current order remains in effect until the judge signs a new order and files it with the court. Instructions and forms to use in preparing a uniform child support order are available at <http://courts.mi.gov/Administration/SCAO/Forms/Pages/Domestic-Relations.aspx>.

**9. Besides support, what else does an order include?**

In addition to regular child support, Michigan law requires parents to provide for the child’s medical/health care expenses, and allows the order to require payments for child care and educational expenses. Also, a court order may include an order to pay the mother’s expenses for the birth of the child and to reimburse genetic tests.

**10. What if I still have questions?**

Additional information about modifying child support is available at the Michigan Legal Help website, <http://www.michiganlegalhelp.org>. The website has a list of common questions, self-help tool kits with forms, instructions, checklists, and information about going to court.

**11. What do I do if I want to hire a lawyer but cannot afford one?**

The State Bar of Michigan website has several resources for those who cannot afford legal services. The two most common resources are the Lawyer Referral Service and Legal Aid. You may find information about the State Bar’s Lawyer Referral Service at <http://www.michbar.org/programs/lawyerreferral>.

Information about free or low-cost legal assistance in your area can also be found at <http://michiganlegalhelp.org/organizations-courts/find-lawyer>.