

## MODIFICATION OF SUPPORT/MAINTENANCE ORDERS

Orders relating to maintenance and/or child support may later be changed or modified by either party after the entry of a judgment of annulment, divorce or legal separation. The amount of maintenance or child support which a Court has ordered to be paid may be changed or modified by the Court upon motion by a party to the action upon sufficient evidence. If a person wishes to file this type of a motion and is indigent, the filing fee may be waived. The burden of proving that such a modification is necessary rests with the party seeking to alter the provision of the prior judgment. The modification generally requested is for a decrease or increase in the present ordered support. The Court will not change a maintenance or child support order unless the party requesting such a change presents proof of a substantial change in circumstances. If you have any questions regarding what constitutes a substantial change in circumstances, they should be directed to a private attorney. Court personnel, including employees of the Family Court Commissioner's Office, Clerk of Court's office and Child Support Agency cannot provide you with legal advice. [Note: the statute relating to revision (modification) of child support and maintenance orders is attached.]

### PROCEDURES AND INSTRUCTIONS FOR FILING MOTION FOR CHANGE IN CHILD SUPPORT, FAMILY SUPPORT OR MAINTENANCE ORDER

A party seeking a revision of the support order may file a motion and obtain a hearing on this issue without hiring an attorney. The issue before the Court is limited to whether or not the amount of support should be adjusted. Other disputes over the payment of medical bills, visitation or problems that may have arisen subsequent to the entry of the final judgment or order which do not relate to the level of support will not be heard. If you wish to raise these issues, you may not do so in this proceeding.

1. Forms for filing a motion to revise (change) a support order are available from the Court Commissioner's office or the Sauk County Child Support Agency. It is your responsibility to correctly complete these forms. The staff of the Family Court Commissioner's office, the Child Support Agency and the Clerk of Court's are not allowed to give legal advice. If you desire legal advice, you should consult with a private attorney.

2. Complete the motion to the best of your ability and sign it. A financial statement is attached. You must fill out the financial statement and bring it with you to the hearing (see 3., below).

3. Once you have completed the motion, take it to the Sauk County Child Support Agency to obtain a date and time for hearing. After receiving the original documents back, make **three** copies of each document (you may want to utilize the library for making copies, which is just down the street from the courthouse) and then take the original and all copies to the Clerk of Courts office for filing. You will be required to pay a **\$30.00 filing fee** at that time. The Clerk of Court will retain the original documents and give the authenticated (red-stamped) copies back to you. Please then take two of those copies to the Sauk County Child Support Agency (the third copy is yours). The Child Support Agency will mail one authenticated copy of the motion to the other party (along with a blank financial statement for that party to complete and bring with them to the hearing). The Child Support Agency will retain the other copy for their records.

**767.59 Revision of support and maintenance orders.**

(1) **DEFINITION.** In this section, "support or maintenance order" means a judgment or order providing for child support under this chapter or s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a), 938.363 (2), or 948.22 (7), for maintenance payments under s. 767.56, for family support payments under this chapter, or for the appointment of trustees or receivers under s. 767.57 (5).

(1c) **COURT AVIORITY.** (a) On the petition, motion, or order to show cause of either of the parties, the department, a county department under s. 46.215, 46.22, or 46.23, or a county child support agency under s. 59.53 (5) if an assignment has been made under s. 46.261, 48.57 (3m) (b) 2., or (3n) (b) 2., 49.19 (4) (h), or 49.45 (19) or if either party or their minor children receive aid under s. 48.57 (3m) or (3n) or ch. 49, a court may, except as provided in par. (b), do any of the following:

1. Revise and alter a support or maintenance order as to the amount and payment of maintenance or child support and the appropriation and payment of the principal and income of property held in trust.
2. Make any judgment or order on any matter that the court might have made in the original action.

(b) A court may not revise or modify a judgment or order that waives maintenance payments for either party or a judgment or order with respect to final division of property.

(1f) **SUPPORT: SUBSTANTIAL CHANGE IN CIRCUMSTANCES.** (a) Except as provided in par. (d), a revision under this section of a judgment or order as to the amount of child or family support may be made only upon a finding of a substantial change in circumstances.

(b) In an action under this section to revise a judgment or order with respect to the amount of child support, any of the following constitutes a rebuttable presumption of a substantial change in circumstances sufficient to justify a revision of the judgment or order:

1. Commencement of receipt of aid to families with dependent children under s. 49.19 or participation in Wisconsin works under ss. 49.141 to 49.161 by either parent since the entry of the last child support order, including a revision of a child support order under this section.
2. Unless the amount of child support is expressed in the judgment or order as a percentage of parental income, the expiration of 33 months after the date of the entry of the last child support order, including a revision of a child support order under this section.
3. Failure of the payer to furnish a timely disclosure under s. 767.54.
4. A difference between the amount of child support ordered by the court to be paid by the payer and the amount that the payer would have been required to pay based on the percentage standard established by the department under s. 49.22 (9) if the court did not use the percentage standard in determining the child support payments and did not provide the information required under s. 46.10 (14) (d), 301.12 (14) (d) or 767.511 (1b), whichever is appropriate.

(c) In an action under this section to revise a judgment or order with respect to an amount of child support, any of the following may constitute a substantial change of circumstances sufficient to justify revision of the judgment or order:

1. Unless the amount of child support is expressed in the judgment or order as a percentage of parental income, a change in the payer's income, evidenced by information received under s. 49.22 (2m) by the department or the county child support agency under s. 59.53 (5) or by other information, from the payer's income determined by the court in its most recent judgment or order for child support, including a revision of a child support order under this section.
2. A change in the needs of the child.
3. A change in the payer's earning capacity.
4. Any other factor that the court determines is relevant.

(d) In an action under this section to revise a judgment or order with respect to child or family support, the court is not required to make a finding of a substantial change in circumstances to change to a fixed sum the manner in which the amount of child or family support is expressed in the judgment or order.

(1k) **MAINTENANCE: CHANGE IN COST OF LIVING.** In an action under this section to revise maintenance payments, a substantial change in the cost of living for either party or as measured by the federal bureau of labor statistics may be sufficient to support a revision of the amount of maintenance, except that a change in an obligor's cost of living is not by itself sufficient if payments are expressed as a percentage of income.

(1m) **PAYMENT REVISIONS PROSPECTIVE.** In an action under sub. (1c) to revise a judgment or order with respect to child support, maintenance payments, or family support payments, the court may not revise the amount of child support, maintenance payments, or family support payments due, or an amount of arrearages in child support, maintenance payments, or family support payments that has accrued, prior to the date that notice of the action is given to the respondent, except to correct previous errors in calculations.

(1n) **CREDIT TO PAYER FOR CERTAIN PAYMENTS.** In an action under sub. (1c) to revise a judgment or order with respect to child support or family support, the court may grant credit to the payer against support due prior to the date on which the petition, motion, or order to show cause is served for payments made by the payer other than payments made as provided in s. 767.57 or 767.75, in any of the following circumstances:

(b) The payer shows by documentary evidence that the payments were made directly to the payee by check or money order and shows by a preponderance of the evidence that the payments were intended for support and not intended as a gift to or on behalf of the child, or as some other voluntary expenditure, or for the payment of some other obligation to the payee.

(c) The payer proves by clear and convincing evidence, with evidence of a written agreement, that the payee expressly agreed to accept the payments in lieu of child or family support paid as provided in s. 767.57 or 767.75, not including gifts or contributions for entertainment.

(d) The payer proves by documentary evidence that, for a period during which unpaid support accrued, the child received benefits under 42 USC 402 (d) based on the payer's entitlement to federal disability insurance benefits under 42 USC 401 to 433. Any credit granted under this paragraph shall be limited to the amount of unpaid support that accrued during the period for which the benefits under 42 USC 402 (d) were paid.

(e) The payer proves by a preponderance of the evidence that the child lived with the payer, with the agreement of the payee, for more than 60 days beyond a court-ordered period of physical placement. Credit may not be granted under this paragraph if, with respect to the time that the child lived with the payer beyond the court-ordered period of physical placement, the payee sought to enforce the physical placement order through civil or criminal process or if the payee shows that the child's relocation to the payer's home was not mutually agreed to by both parents.

(f) The payer proves by a preponderance of the evidence that the payer and payee resumed living together with the child and that, during the period for which a credit is sought, the payer directly supported the family by paying amounts at least equal to the amount of unpaid court-ordered support that accrued during that period.

(2) **PERCENTAGE STANDARD REQUIRED: EXCEPTIONS.** (a) Except as provided in par. (b) or (c), if the court revises a judgment or order with respect to child support payments, it shall do so by using the percentage standard established by the department under s. 49.22 (9).

(b) Upon request by a party, the court may modify the amount of revised child support payments determined under par. (a) if, after considering the factors listed in s. 767.511 (1m), the court finds, by the greater weight of the credible evidence, that the use of the percentage standard is unfair to the child or to any of the parties.

(c) If the court revises a judgment or order providing for child support that was entered under s. 48.355 (2) (b) 4., 48.357 (5m) (a), 48.363 (2), 938.183 (4), 938.355 (2) (b) 4., 938.357 (5m) (a) or 938.363 (2), the court shall determine child support in the manner provided in s. 46.10 (14) or 301.12 (14), whichever is applicable.

(2s) **STIPULATION FOR REVISION OF SUPPORT.** In an action under sub. (1c), the court may not approve a stipulation for the revision of a judgment or order with respect to an amount of child support or family support unless the stipulation provides for payment of an amount of child support or family support that is determined in the manner required under s. 46.10 (14), 301.12 (14), 767.511, 767.805 (4), or 767.89, whichever is appropriate.

(2w) **WHEN REVISION EFFECTIVE.** A revision of a judgment or order with respect to child support, family support, or maintenance payments has the effect of modifying the original judgment or order with respect to the payments to the extent of the revision from the date on which the order revising the payments is effective. The child support, family support, or maintenance payments modified by the order for revision shall cease to accrue under the original judgment or order from the date on which the order revising the payments is effective.

(3) **REMARKS: VACATING MAINTENANCE ORDER.** After a final judgment requiring maintenance payments has been rendered and the payee has remarried, the court shall, on application of the payer with notice to the payee and upon proof of remarriage, vacate the order requiring the payments.

(4) **REVIEW WHEN THE STATE IS A REAL PARTY IN INTEREST.** In any case in which the state is a real party in interest under s. 767.205 (2), the department shall review the support obligation periodically and, if appropriate, petition the court for revision of the judgment or order with respect to the support obligation.

(5) **NOTICE OF CHILD SUPPORT INFORMATION.** A summons or petition, motion, or order to show cause under this section shall include notification of the availability of information under s. 767.105 (2).

In re the Marriage/Paternity/Support of: (circle one)

NOTICE OF MOTION AND MOTION TO:

\_\_\_\_\_,  
First Name M.I. Last Name Petitioner/  
Joint Petitioner

vs.

\_\_\_\_ Change Child Support  
\_\_\_\_ Change Maintenance  
\_\_\_\_ Other:

\_\_\_\_\_,  
First Name M.I. Last Name Respondent/  
Joint Petitioner

Case No. \_\_\_\_\_

The State of Wisconsin (Child Support Agency)  
\_\_\_\_ is  
\_\_\_\_ is not a party to this action.

NOTICE OF MOTION AND MOTION

TO: \_\_\_\_\_  
(enter name of person this motion is to be mailed to)

You are notified that at the following date and time:

Before: Leo J. Grill, Court Commissioner  
Location: Room 320 (Courtroom 4)  
Sauk County Courthouse  
515 Oak Street  
Baraboo, Wisconsin 53913

Date: \_\_\_\_\_  
Time: \_\_\_\_\_ a.m./p.m., or as soon as the matter  
may be heard.

I will be asking the Court to change the existing order in this case as indicated below.  
*If you object to this motion, you need to appear and say so. Otherwise, the Court may proceed without you and grant the request.*

You may contact the Family Court Commissioner under Section 767.081, Wis. Stats. for more information on modifying and enforcing Court orders or judgments.

1. I am requesting that the Court:
  - A. \_\_\_ Change the following support orders as follows:
    1. \_\_\_ Child Support that is currently \$\_\_\_\_\_ per \_\_\_\_\_ to:
      - \_\_\_a. a new amount based on state child support standards determined by the Court.
      - \_\_\_b. a new set amount of \$\_\_\_\_\_ per \_\_\_\_\_.
      - \_\_\_c. Payments to be made by \_\_\_\_\_.



business days before the date of the hearing. If service is by mail, it must be mailed at least 8 business days before the date of the hearing.