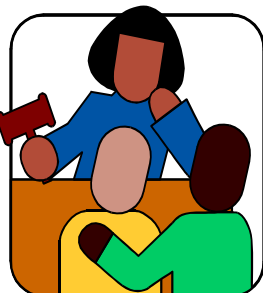
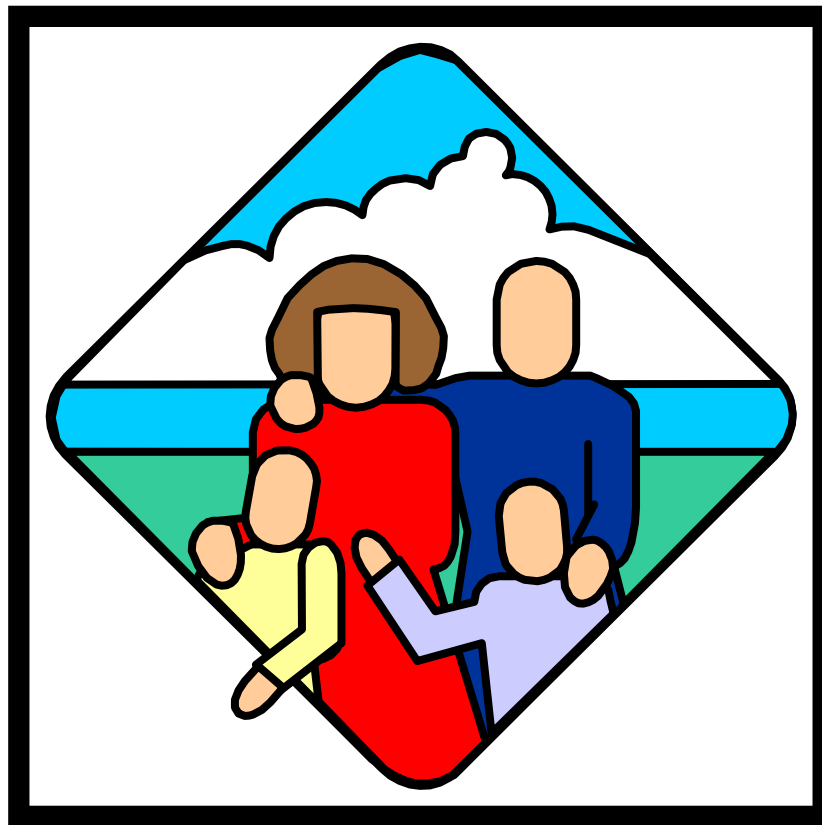


How to modify a child support order in Illinois©

Family #4
Spring 2001



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Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

Look for these symbols to tell you when to:



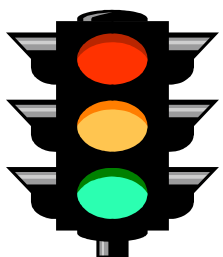
STOP!

You need legal representation or advice to continue.



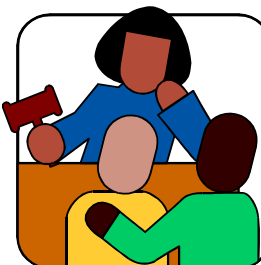
USE CAUTION!

This is very important so pay attention.



GO!

You can proceed to the next step.



CHECK IT OUT!

This issue is discussed in another packet.

Warning to all readers



Before you proceed with using this packet, you should ask yourself the following questions:

1. Have I tried to consult a private attorney?

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

3. Is this something that I can do on my own?

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

Free sources of legal help

Land Of Lincoln Legal Assistance

Serves the 65 southernmost counties in Illinois

Toll Free: 877-342-7891

Prairie State Legal Services

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

Coordinated Advice and Referral Program for Legal Services

serving Cook County

312-738-9494

West Central Legal Assistance

Serves Knox, Henderson, Stark, Warren, McDonough, and Fulton counties

800-331-0617

Will County Legal Assistance

Serving Will County

815-727-5123



It is very important that you read each section of this packet completely before you take any action in regard to a legal problem including using any forms that supplement this packet.

Because this packet discusses terms and actions you are likely not familiar with, you will need to refer back to the following sections from time to time when reading this packet:

People you should know

This section describes people that you may come into contact with in regard to a particular legal problem. It is important that you understand who these people are and what they do and don't do.

What these legal terms mean

This section defines commonly used legal terms in words that you can understand. To use the rest of this packet and any supplemental forms, you need to understand exactly what these terms mean.

Summary of the law in this area

This section contains summaries of important areas of the law that you need to know.

How to file a document in a court file

This section answers commonly asked questions about filing documents.

Myths and Tips

These two sections discuss commonly held mis-beliefs about the law and steps that you should take (or not take) that could make your task easier.



Who these people are



Judge:

The judge is the person who presides over the courtroom. In most cases, including child support cases, the judge makes all of the final decisions and approves all agreements. When a judge makes a decision or a finding, it has the force of law. The judge also sets and enforces court rules (like dress codes) and in some courthouses, the judge decides when cases are scheduled.



Circuit Clerk:

The Circuit Clerk is responsible for creating, managing, and updating court files. When you want to put something in a court file, see a court file, or make a copy of something in a court file, you talk to the Circuit Clerk's staff. In some courthouses, the Circuit Clerk also decides when cases are scheduled.



Sheriff:

The Sheriff's main duty is to keep the peace and to enforce the law. His/her role in the legal system, however, is usually to "serve" (give notice) to people that they are being sued. The sheriff does this by giving the person a notice called a "summons". The sheriff also enforces the judge's orders.



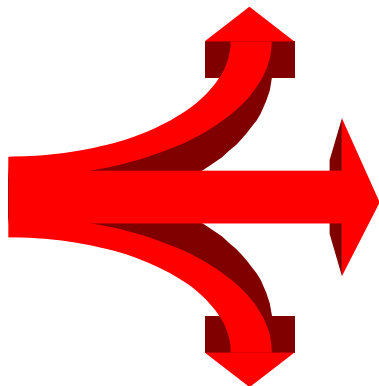
Attorney:

An attorney is someone who can help you with your legal problem by providing you with advice about the law, the legal system, and the merits of your case. An attorney can act as your advocate and can represent you in court and in negotiation settlements.



State's Attorney/Attorney General:

The State's Attorney and the Attorney General are attorneys who represent the State of Illinois in lawsuits. Generally, the State's Attorney's office handles criminal cases and the Attorney General's office handles civil cases. If you need assistance getting a child support order enforced in a state outside of Illinois, you should call either of these offices.



Illinois Department of Child Support Enforcement

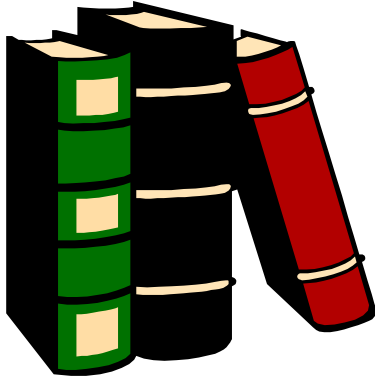
For assistance in getting child support, contact the Illinois Department of Child Support Enforcement. You can find their number in the Yellow Pages.

Office of The Attorney General

For assistance in getting a child support order enforced in a state other than Illinois, contact the Office of the Attorney General for that state. You can find their number in the Yellow Pages.

State's Attorney's Office

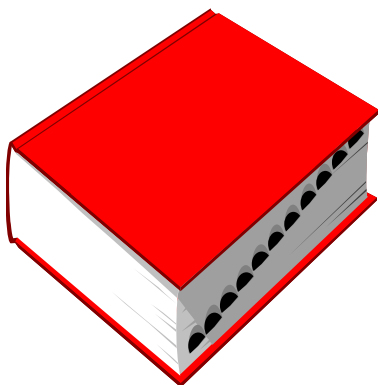
For assistance in getting a child support order enforced in a county outside of Illinois, contact the State's Attorney's office in that county. You can find their number in the Yellow Pages.



Disclaimer: Please Read !!

The following is a list of publications which discuss the issues of child support. Some of these publications are specific to Illinois and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular publication will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

At the time we printed this packet, there were no self help publications which we were aware of which discussed this topic. Consult your local public or law library to see if there are any new publications on this topic. For the most recent information, consult the Self Help Legal Center.



affidavit

A sworn statement by a person. Lying in an affidavit can result in a charge of perjury which could mean a fine, imprisonment, or both.

alimony (maintenance)

Financial support paid to one spouse by another. This support is not for the children, but, rather is to maintain the standard of living for the receiving spouse. The supplemental forms waive maintenance.

arrears

When a supporting parents is behind on paying their support, it is called in arrears. An arrearage is the total amount of support a supporting parent is behind in paying.

child support

This is what the non-custodial parent pays to the custodial parent to help support his or her child. The amount of child support is set by law.

circuit

The judicial system in Illinois is divided into circuits. Each circuit defines a geographic area in Illinois.

custody

The parent who makes the decisions in the child's life regarding issues of health care, education, religion, and lifestyle. It is not who has physical control over the child or where the child resides.

defendant

A person who is sued.

divorce

The end of a marriage. The legal proceedings that you go through to end your marriage, divide property and debt and determine the custody and visitation for your minor child(ren).

hearing (trial)

An opportunity for both parties to tell the judge or jury their side of a dispute. Some hearings are court ordered so missing them can result in being held in contempt of court. For hearings which are not court ordered, failure to appear can result in the other side getting what they want in relief.

joint custody

When two parents share custody of a child or children. (see custody)

joint parenting order

A document that sets forth the terms of an agreement between two parents who share joint custody of a child. Most joint parenting orders are completed as part of a divorce. Generally, joint parenting orders discuss when the child(ren) will spend time with each parent, who is responsible for expenses of the child(ren), a method for resolving disputes between the parents, and rules for raising the child (ren). Like a judgment, a joint parenting order has the force of law.

judgment

A final decision or order of the court.

jurisdiction

Whether the court in a particular state has the power to hear a case or to order someone to do something depends upon whether it has "jurisdiction". Jurisdiction can be either over a person or over a thing. For a state court to have jurisdiction over a person, generally, the person must either reside in the state or have committed an act in the state that gave rise to the case.

marital settlement agreement

A document that sets forth the terms of an agreement between spouses as part of a divorce. Generally, marital settlement agreements discuss items such as property, debts, taxes, custody, and visitation. If it is made part of a judgment, a marital settlement agreement has the force of law.

minor children

Children under the age of eighteen.

motion

A written or oral request to the judge after a lawsuit has been started (see petition).

notary public

A person who verifies that a signature on a document is made by the person whose signature appears. The notary public does not verify the content of the document itself.

petition

A written request to the court. A petition usually starts a lawsuit and contains the facts that one person alleges has happened along with the relief that they are requesting from the court.

plaintiff or petitioner

The person who starts a lawsuit.

primary caretaker or residential parent

The person whom a child resides with most of the time. It is not who has custody of a child.

What these legal words mean

pro-se

A person who is not represented by an attorney and is involved as a party in a lawsuit.

serve or service

The process where a person is officially notified of a pending lawsuit.

statute

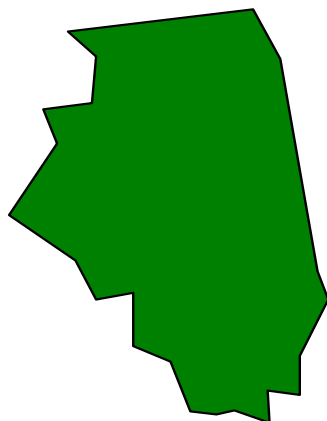
The law that the state legislature or federal government enacted on a particular subject.

supporting parent

The non-custodial or non-residential parent who has been ordered to pay child support to the custodial or residential parent.

Summary of the law in this area

12



The law which governs most of the area of child support in Illinois is the Illinois Marriage and Dissolution of Marriage Act. It can be found in Act 5, Section 505, of Chapter 750 of the Illinois Compiled Statutes. The Interstate Family Support Act governs out of state child support orders. It can be found in Act 22 of Chapter 750 of the Illinois Compiled Statutes.

How the court decides how much child support a non-custodial parent should pay:

How much child support a supporting parent pays from his/her net (after taxes) salary is determined by statute. The current rates are: 1 child - 20%, 2 children - 28%, 3 children - 32%, 4 children - 40%, 5 children - 45%, 6 or more children - 50% These are guidelines and a judge can go above or below them with good cause.

What the court considers in making a decision to modify child support:

To modify a previous order of child support, a judge must find that there has been a "substantial change in circumstances." Some of the factors that the court will likely consider in making this determination are: 1) have the needs of the children changed?; 2) have the needs of either the supporting or receiving parent changed?; 3) has there been a change in custody?; and 4) has one of the children reached the age of eighteen?

How child support is paid:

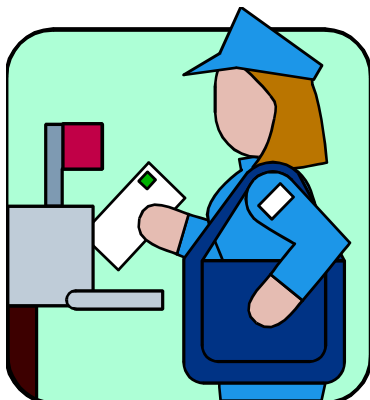
In most cases, child support is paid by wage garnishment. This means that the amount of support is deducted from the supporting parent's salary at the time that he/she is paid. The amount is then forwarded to the Circuit Clerk so that the amount of support and the time it was paid can be properly recorded. After the Circuit Clerk records the amount of support paid, the amount is then transferred either to the residential/custodial parent or the Illinois Department of Human Resources.

Special rules for welfare recipients:

If you are currently receiving financial cash assistance for your child from the Illinois Department of Human Resources, any child support payments that you receive will be sent by the Circuit Clerk to the Department and you will receive what is called a "pass thru" payment in addition to your monthly benefit amount. The pass thru payment is currently \$50.00 or the monthly child support payment, whichever is less. The remainder amount (if any) is kept by the Department to offset the cash assistance that you receive. If you stop receiving cash assistance, then you will receive all of the child support that is paid.

As such, if you are seeking to change a child support order in court and the person receiving the child support is receiving cash assistance from the Illinois Department of Human Services, you must notify the Department of your lawsuit. You will find a notice in the supplement to this packet.

Please note that the fact that a person receives cash assistance from the Illinois Department of Human Services and will not receive all of the child support is not a valid reason for a judge to order a lower amount of child support.



The court must have jurisdiction over you to give you what you want. Similarly, to order a person to do something — like pay support or give you a piece of personal property (a TV, a chair), —the court must have jurisdiction over him/her.

If you are using this packet, it means that a court in Illinois must have already entered a child support order in your case. Since the court has already entered a child support order, the court already has jurisdiction over you and the other parent. What this means is that you can “serve” or notify the other parent **by mail** about your request to modify the existing order.

How you notify or “serve” someone by mail.

Serving by mail can be completed in 3 steps.

- 1) Mail a file-stamped copy of your Petition, Complaint, etc. to the party you are suing.
- 2) Complete and file a Certificate of Mailing indicating the date you mailed your document and the address to which you mailed it.
- 3) Send a file-stamped copy of the Certificate of Mailing to the person you have sued.



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Step One: Prepare the necessary forms to start the process.

In the supplement to this packet you will find 3 forms: the Petition For Modification of Child Support, the Child Support Data Sheet and the Application to Sue as a Poor Person. Using the guide in the supplement to this packet, you will need to complete these forms.

The Petition is your formal written request to the court for a modification of child support. It also serves as a notice to your spouse as to your position on these issues so your spouse can respond. The Petition is a very important form and needs to be completed carefully. If you do not request something in your Petition, the court cannot grant it to you. **You must attach a copy of the Order that you are trying to modify to your Petition.**



The Data sheet is for use by the circuit clerk in the administration of the child support account. It is a list of all the information the clerk might need in administering the account. The employer ID number is the employer's tax identification number. That number is available from the employer, if they will give it to you, or it is on the W-2 form the employer sends to the employee annually. If you cannot obtain it prior to filing, the court has been known not to say anything. The Data sheet has nothing to do with the determination of the amount of support ordered.

The Application is your request that the court waive the fees that are required for a person to file a Petition. The amount of these fees varies by county. Typically, only persons of low income will receive a fee waiver, but there is no statutory definition as to what level of income is required for a person to receive a waiver. Consequently, if you think you may be eligible — your best bet is to apply. Denial of a fee waiver will not impact your case except that you will have to pay a fee to file documents with the Clerk.



Step Two: File your documents

You should file your Petition in the county where the original child support order was entered. If you do not apply for a waiver of the filing fee — see below — you may have to pay to file your Petition.

If you want to apply for a fee waiver, your first step is to give the Application To Sue as A Poor Person to the Circuit Clerk and ask that it be presented to a judge for his/her approval. Wait (this may take several days) to see if it is approved, and if it is, you can then file your Petition without paying any filing fees.

After your fee waiver is either approved or denied (or if you don't apply for a waiver) you should file your Petition for Modification of Child Support and Child Support Data Sheet. Remember to take the original and 2 copies of the Petition with you to the Circuit Clerk's office (one for yourself and one for your spouse).

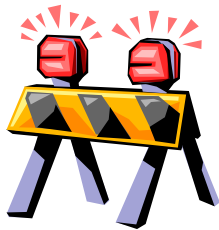


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Step Three: Notify the other parent of the request to modify child support.

You will need to serve a copy of your Petition on the other party. Since you are modifying an existing court order, you can serve the other party by mail. Mail a file stamped copy of the Petition to the party you are suing. After you have mailed the Petition to the other parent, you will need to complete and file a Certificate of Mailing with the Clerk certifying the date and the address to which you mailed the Petition. This form is included in the supplement to this packet. You will then need to mail a file stamped copy of the Certificate of Mailing to the person you are suing.

If the person receiving child support is receiving cash assistance from the Illinois Department of Human Services or if the Department helped them obtain the child support order you are attempting to modify, you must send the Department notice of your Petition as you did the person you have sued. Included in the supplement to this packet is a form entitled Certificate of Mailing of Petition to Illinois Department of Human Services. To find the address for the Department of Human Services, check the court file or the original support order. You must mail the Department a copy of your Petition, and then complete and file the Certificate of Mailing. You must then mail a file-stamped copy of the Certificate to the Department.



If the person you are trying to sue will waive being served by mail and will agree to the terms as you have requested in your Petition, have him/her sign the Entry of Appearance, Waiver, and Consent form included in the supplement to this packet. Please note that this person must have seen a copy of the Petition that you filed as well as a copy of the Order you plan to give to the Judge. Your spouse's signature must be notarized. Once you file this form with the Circuit Clerk, you can move to Step Four. If the person you are suing will not sign this form, you will need to serve this person as described in the above paragraph.



Step Four: Request/Get a hearing date:

Once you have served the other party with your Petition, you will need to wait 30 days to see if he/she files a response to your Petition. If he/she has failed to file a response after 30 days have passed, you should request a hearing date.



NOTE: If the person you are suing has signed an Entry of Appearance, Waiver, and Consent form waiving service, you do not need to wait the 30 days before requesting your hearing.



If the person you are suing has filed a response and it appears from the response that he/she has an attorney, or if an attorney contacts you at any time before or during the hearing, you should seek legal assistance immediately as it is not a good idea for you to proceed against a person who is represented by an attorney on your own.

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Depending upon the county in which you filed your Petition, you will need to contact either the Circuit Clerk or the secretary of the judge who usually handles the child support cases to request a hearing date. You can do this either by phone, or by mail. When contacting the clerk or the judge's secretary, be sure to ask for the default or pro se hearing date. Some counties require you to send a Notice to your spouse of the hearing. If this is the case, you will need to complete and send the Notice form to your spouse and file the Certificate of Mailing of Notice to certify when you mailed it. These forms can be found in the packet supplement.



Step Five: Prepare for the hearing:

You will need to prepare the Notice to Withhold Income for Child Support, the Order for Modification of Child Support, and the Uniform Order for Support. The Order for Modification of Child Support is the document which the judge signs which awards you your support. The Notice is a form which is sent to the employer of the party you have sued for support so his/her wages can be garnished. The Uniform Order for Support is used in actually collecting the support.

Prepare your testimony using the Petition for Modification of Child Support as your guide. You will need to testify about all of the facts you have alleged in your petition (the numbered parts of the petition) and you will need to testify as to what you want the court to do (the letter parts of the petition). If you ask the court to do something that was not in your petition, you may have to either amend your petition or you may not get it.



Step Six: Attend the hearing:

While there is no way to know exactly what will happen at your hearing. Here are some things you should do:

- Bring with you your copies of all the documents you filed with the Circuit Clerk and any other papers relating to your Petition.
- Arrive at least 30 minutes before your hearing. Whatever you do, don't be late. Check the docket or ask the Clerk exactly what room you will be in. Tell the Clerk or the Judge's secretary that you are ready to proceed when called and wait for your case number and name to be called.
- When the Judge enters the courtroom, stand until you are told to be seated. When your case is called, approach the bench. Always refer to the Judge as "your honor".
- Before you begin, the Judge may then ask you preliminary questions about your case. Be prepared to answer whether your spouse was served, and if so, when.
- To testify, you will need to call yourself as a witness. At this time, the Judge will put you under oath and you will present your testimony. when you testify, your testimony should include:

your name and address;

the other party's name and children;
the names and birth-dates of the children;
where the children live;
where the person you have sued works and how much he/she makes after taxes each month; what the current support amount is and why you think it should be changed;
and how much you want the support amount to be.

• After you have testified, the other party (if they show up) will be allowed to ask you questions. You should answer all questions truthfully and directly. After the other side is finished asking you questions, you can either continue to testify to clear up any matters brought up by the questions asked by the other parent or you may sit down.

If you need other witnesses to testify about certain facts, you should call these witnesses at this time. Like yourself, they will have to be sworn in. Since you are representing yourself, you will have to ask your witness questions so that they give the judge the information you want them to. When you are done asking questions, the other party can ask questions of your witnesses.

After you are finished with your side of the case, the other party will be given the opportunity to testify and to call witnesses. Like the other party, you too will be given the opportunity to ask the other party and their witnesses questions about their testimony.

After both sides are finished presenting their case, the judge will ask both sides if they have any final comments to make and he/she will then either make a decision or he/she will tell you when you can expect to receive a decision.

If the Judge grants your Petition present your Order for Modification of Child Support and Uniform Order for Support to the Judge for his/her signature. If the Judge wants corrections made, don't panic, you can ask for permission to submit a corrected version by mail.



Step Seven: Wrap it up:

After the judge has signed the Order for Modification of Child Support and Uniform Order for Support you will need to file them with the Clerk and send a file-stamped copy of the orders to the other party.

To certify (prove) that you have done this, you will need to file a Certificate of Mailing with the Clerk. As with all documents you file, be sure to keep file stamped copies of these documents for yourself. Remember to hold on to the Orders as they are your proof that you are entitled to support. If you lose the Orders, however, don't panic, as with any document you file, you can always get another copy from the Circuit Clerk. You may, however, have to pay for the copies.

After you have mailed the Certificate of Mailing, complete and file the Notice of Withholding. After you have filed the Notice of Withholding, mail a copy to the supporting parent's employer so that the child support can be deducted from his/her wages. To certify (prove) that you have done this, you will need to file a Affidavit of Service of Notice of Withholding with the Clerk. As with all documents you file, be sure to keep file stamped copies of these documents for yourself.

Q: What if my request is denied?

If your request to modify support was denied because you did not have enough evidence to support your request, then you will have to wait until the circumstances surrounding your request for support change before you can file another Petition. The reason for this is because once the court makes a decision about an incident or an event, it cannot address that same incident or event again.

If your request was denied because of some procedural error on your part (for example, you did not get proper service), then you should correct the error and request another hearing.



Finally, whenever you lose in court, you have the right to request the court to reconsider its decision and you have the right to appeal the decision to a higher court. Please note that in most cases you have 30 days or less from the date of the judge's decision to exercise these rights or you may lose your right to reconsideration or appeal. You should seek the assistance of an attorney to exercise these rights.



Q: What is a court file?

A: The file is the way that the courthouse keeps track of a lawsuit.

The file includes all of the documents that were filed, notices of hearings, notes by the judge and clerk, and letters to and from the judge and clerk.

Q: When do you need to file a document in a court file?

A: Generally, you will file a document when you want to:

have evidence that a task was completed; record an event or a statement; or give notice to someone about something.

Q: What does it mean to file a document in a court file?

A: Generally, filing a document means giving the Circuit Clerk a copy of a document so that he/she can place it in the court file you want it to go in. When the Clerk files the document, he/she will stamp it with a stamp that says the date (and sometimes the time) the document was filed.

Q: Does filing a document make it legal?

A: No. The Clerk will not check to make sure that your document is in compliance with the law. Most of the time you can file anything you want as long as you are willing to pay for the filing costs. It does not mean, however, that what you have filed is correct.

Q: Why is filing so important?

A: Most of the time, filing is the primary way to show that you have met the deadline for something — either to initiate a lawsuit or to notify someone of a lawsuit or a hearing. Filing is also the way that you notify the court of your answer (response) to lawsuit started against you.



Please note that failure to file something on time can cause you to lose your right to proceed with your claim or you may be forced to start over.



3 Commonly held beliefs about child support

which are not true:

I (or the supporting spouse) can support my child by providing clothes or gifts and not by paying money.

While sending clothes, property, and gifts is definitely encouraged, almost all court orders which order support require support to be paid in the form of money and while other types of support (babysitting, clothes, etc.) definitely cost money, it is not in the form in which the court wants it provided. As such, supporting parents must pay their monthly support obligation before paying for other items because the court will not treat these other items as having met the support obligation.

I can send support directly to the custodial/residential parent and not through the Clerk.

There are 3 reasons why this can or would be a very bad idea.

First, most child support orders require that payments of support be sent directly to the Circuit Clerk and not to the custodial/residential parent. The main reason for this is so the Clerk can keep a record of when and how much support is paid. Consequently, not sending your monthly support to the Clerk would put you in direct violation of a court order.

Second, sending your support directly to the custodial/residential parent is very risky as if they don't notify the Clerk that the payment was made, it may not be recorded. If the payment is not recorded, as far as the Court is concerned, you have not made the payment. Consequently, send all of your payments to the Clerk so that a record is kept of your payments.

Finally, some custodial/residential parents receive financial assistance for their child(ren) from the Illinois Department of Human Resources. By law, any child support received must go to them. Sending your support directly to the supporting/residential parent would be in violation of that law.

As a supporting parent, I am entitled to an accounting as to how the money I am sending is spent.

In Illinois, a parent receiving support for their child is not required to show or explain how they spend the monetary support that they receive from the supporting parent. The law presumes that the money received is spent on behalf of the child.



Try to get agreement

where you can

While it is not required, if you can get agreement with the other party on the terms or amount of support, it will make the process easier.

Go to other pro-se hearings before yours

If your county courthouse has a special date when they schedule the pro-se (no attorneys) hearings, try to attend at least one hearing before the date of your hearing. This way, you can watch what happens, (including what mistakes others make) take notes, and be more prepared for your hearing date.

Keep track of the payments of child support made.

While the Clerk is supposed to keep track of your payments of child support, including when they were made and in what amount, mistakes do happen. As such, whether you are receiving or paying support, it is a good idea to keep a record yourself (including pay check stubs, checks, receipts, etc.), in case a question arises as to whether a payment was made or not.

Get help if you need it



If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, modifying your own support order may be much more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if modifying your own child support order proves to be too difficult a task for you, talk to an attorney.