

## §2009. Modification of existing support orders

**1. Motion to modify support.** A party, including the department, may file a motion to modify support. The commissioner may designate employees of the department who are not attorneys to represent the department in court proceedings to hear a motion to modify support filed by the department or any other party. Unless a party also files a motion to amend the divorce judgment, a petition to amend under section 1653, subsection 10 or a motion for judicial review under Title 22, section 4038, the child support obligation is the sole issue to be determined by the court on a motion to modify support. The court, in its discretion, may bifurcate the support issue from other issues presented by the party's pleadings.

[PL 2005, c. 352, §6 (AMD).]

**1-A. Motion to modify by department.** When a parent receives public assistance for the benefit of a dependent child, the department may file a motion to modify support regardless of whether the parent has been allocated the primary residential care of the dependent child pursuant to chapter 55.

[PL 2009, c. 290, §17 (NEW).]

**2. Retroactive.** Child support orders may be modified retroactively but only from the date that notice of a petition for modification has been served upon the opposing party, pursuant to the Maine Rules of Civil Procedure.

[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

**3. Substantial change of circumstances because of variance.** If a child support order varies more than 15% from a parental support obligation determined under section 2006, the court or hearing officer shall consider the variation a substantial change of circumstances and if it has been less than 3 years since the order was issued or modified, the court or hearing officer shall modify the order according to the child support guidelines under chapter 63. If it has been 3 years or longer since the order was issued or modified, the court or hearing officer shall review the order without requiring proof or showing of a change of circumstances and shall modify the order if the amount of the child support award under the order differs from the amount that would be awarded under the guidelines. If a child support order was established under section 2007, a 15% variation between the amount of the order and the parental support obligation determined under section 2006 does not constitute a substantial change of circumstances.

[PL 1997, c. 537, §24 (AMD); PL 1997, c. 537, §62 (AFF).]

### 4. Service.

[PL 2009, c. 290, §18 (RP).]

**4-A. Service.** Except as otherwise provided in this subsection, service of a motion to modify support must be made in the manner provided for service of summons by the Maine Rules of Civil Procedure, Rule 4. For the purpose of this subsection, this service must be deemed to be an action pursuant to Chapter XIII of the Maine Rules of Civil Procedure. When the department is providing child support services, personal service within the State of a motion to modify support may be made by authorized representatives of the commissioner. Service of the motion must be accompanied by:

A. A notice that the court may enter an order without hearing if the party does not request a hearing; [PL 2009, c. 290, §19 (NEW).]

B. A notice of the right to request a hearing; [PL 2009, c. 290, §19 (NEW).]

C. A notice of the requirement of mediation prior to a hearing; [PL 2009, c. 290, §19 (NEW).]

D. The income affidavit of the moving party or the party receiving the assistance of the department, as well as the responding party's affidavit, if available; [PL 2009, c. 290, §19 (NEW).]

E. A proposed order, incorporating the child support worksheet; and [PL 2009, c. 290, §19 (NEW).]

F. Any stipulation entered into by the parties. [PL 2009, c. 290, §19 (NEW).]  
[PL 2009, c. 290, §19 (NEW).]

**5. Request for hearing.** A request for hearing must be made in writing within 30 days of receipt of service and be accompanied by the requesting party's income affidavit and child support worksheet. If a party requests a hearing, the matter must be referred for mediation prior to trial.  
[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

**6. Order without hearing.** If a party does not request a hearing within 30 days after service, the court may enter an order modifying support without hearing using the proposed order, as long as the proposed modified support obligation is equal to or greater than the obligation resulting from the application of section 2005. If a downward deviation is proposed, the court shall hold a hearing prior to entering an order. The court may apply the presumptions set out in section 2004, subsection 1, paragraph D.  
[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

**7. Motion to set aside.** An order entered without hearing pursuant to this section may not be set aside except on motion in which the moving party demonstrates good cause for the failure to request a hearing and a meritorious defense to the proposed order. The Chief Justice may establish costs to be paid by a party moving to set aside an order modifying child support after an order has been entered following that party's failure to file a timely written response.  
[PL 1995, c. 694, Pt. B, §2 (NEW); PL 1995, c. 694, Pt. E, §2 (AFF).]

**8. Motions by department.** When the department provides child support enforcement services, the commissioner may designate employees of the department who are not attorneys to prepare motions under this section, to file those motions in District Court and to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this section.  
[PL 1997, c. 466, §4 (NEW); PL 1997, c. 466, §28 (AFF).]

#### SECTION HISTORY

PL 1995, c. 694, §B2 (NEW). PL 1995, c. 694, §E2 (AFF). PL 1997, c. 466, §4 (AMD). PL 1997, c. 466, §28 (AFF). PL 1997, c. 537, §24 (AMD). PL 1997, c. 537, §62 (AFF). PL 2005, c. 352, §6 (AMD). PL 2009, c. 290, §§17-19 (AMD).

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