

Read more at [www.lynchowens.com/blog](http://www.lynchowens.com/blog)

# Modifying Child Support Orders in Massachusetts

By Kimberley Keyes | October 29, 2019

Child Support Family Law Modification

**Massachusetts Attorney Kimberley Keyes examines modifying child support orders and judgments in Massachusetts.**



In general, [Massachusetts child support orders](#) can be modified at any time until the final emancipation of a child through a [Complaint for Modification](#) filed by either parent seeking a change in child support. In this blog, we explore the following subjects surrounding the modification of [child support](#) orders in Massachusetts:

- The difference between temporary orders and judgments for child support
- Grounds for modifying child support in Massachusetts
- Proving an increase/decrease in income in child support cases
- When to file a complaint to modify child support
- Risks to modifying child support
- Impact of changes to the Child Support Guidelines on modifications to child support
- How changes in child custody and parenting trigger changes in child support
- How the emancipation of one or more child impacts modification
- Modifying orders for the payment of college expenses
- Child support deviations in modification cases
- How the end of child support can sometimes trigger an alimony order
- Defending against requests to modification child support
- Mediating child support modification cases

In Massachusetts, [child support](#) is calculated based on the [Massachusetts Child Support Guidelines](#). The Guidelines calculate the presumptive amount of child support based on the gross (pre-tax) earnings of each parent, along

with credits for a parent's contributions to medical/dental/vision insurance, child-care costs, and support paid for other children not covered by the order at issue. Child support can continue until a child's 23<sup>rd</sup> birthday in Massachusetts, making child support modification cases some of the most common post-judgment filings in Probate and Family Courts.

Child support depends on the court's order for physical custody (i.e., parenting time) of the child. A parent who has sole or primary physical custody of a child is entitled to child support. If parents share physical custody (i.e. 50/50 parenting time or close to it), child support is only paid if there is disparity between the parties' earnings. In a shared physical custody scenario, the parent who earns greater gross income pays child support to the parent who earns lesser income under the Guidelines.

## What is the Difference between a Judgment and Temporary Order for Child Support?

Litigants often express confusion over the difference between a "final" judgment for child support and a "temporary" order for child support. This confusion is understandable. Although a judgment represents finality in terms of concluding any open legal proceedings between parents, the issue of future child support is never really "final", where either parent can re-open child support at any time before the child(ren) is emancipated by filing a [Complaint for Modification](#).

That said, there are some important differences between a judgment and temporary order for child support. As the name suggests, [temporary orders](#) for child support are *temporary*. Such orders are the product of an open, unresolved case that will eventually proceed to trial if the parties cannot reach agreement. Under the law, a Probate Court can retroactively modify temporary orders at the time of trial, such that a parent who has been underpaying or overpaying child support throughout the case (at least in the eyes of the judge) can be required to pay (or receive) [retroactive child support](#) dating back to the date the complaint was served. Judges have the power to decrease or eliminate child support arrears arising out of a temporary order in ways that simply are not available after a final judgment for child support enters. (For parents filing a Complaint for Modification of child support, a retroactive recalculation of child support is [generally only available](#) back to the date the new complaint is served.)

A final judgment represents the end of the litigation process. Following the entry of judgment, there will be no further hearings or discovery. Any arrears that arise after the judgment will not be retroactively modifiable by a court, right up until the time when a party files a new Complaint for Modification. Although a child support can be “re-opened” after the entry of judgment by the filing of a Complaint for Modification, any change in child support will be restricted to the period *after* the filing of the Complaint for Modification.

It is important to note here that parties who agree to modify a judgment for child support outside of court *must* formalize their agreement in a written instrument that is approved by a judge. [Out of court agreements to modify child support](#) that are not entered and approved by the court are generally not modifiable, absent very unusual circumstances. Similarly, [child support arrears](#) that build up after a judgment generally cannot be reduced by a court for the period before a party files a Complaint for Modification (subject to one very [narrow exception](#)). Thus, if a party is unable to meet his or her child support obligation due to a decrease in income, or some other change, that party must file a Complaint for Modification if he or she hopes to avoid payment of [child support arrears](#).

## Grounds for Modifying a Child Support Order in Massachusetts

Child support orders can be modified through a [Complaint for Modification](#) filed by either parent. The amount of child support is determined by the [Massachusetts Child Support Guidelines](#). A child support judgment may be modified for any of the following reasons set forth in the Guidelines as follows:

- There is an inconsistency between the amount of the existing order and the amount that would result from the application of the guidelines.
- Previously ordered health care coverage is no longer available.
- Previously ordered health care coverage is still available but no longer at a reasonable cost or without an undue hardship.
- Access to health care coverage not previously available to a parent has become available.
- [Any other material and substantial change in circumstances](#) has occurred.

Most child support modifications are driven by reason #1 – i.e. a change in the child support guideline calculation order based on an increase or decrease in one or both parties’ gross incomes. Such modification actions are often

triggered by the filing parent's job loss or a promotion or new job for the other parent.

A surprising number of child support modifications start with the filing of a [Complaint for Contempt](#), which requires the parties to file financial statements, which then leads to a recalculation of child support. (Parties who are brought to court on a [contempt for failing to pay child support](#) are often encouraged to file a Complaint for Modification if their non-payment is the result of job loss or a decrease in income.) Similarly, a major change in [parenting time](#) – i.e. a change in primary physical custody between parents, or a [change from shared physical custody to sole custody for one party](#) – can also trigger child support modifications, since amount of child support under the Guidelines varies widely based on [whether the parties share physical custody](#) of the child(ren) versus one parent serving as the primary custodian.

Courts can also modify child support based on “material and substantial change in circumstances”. A change in circumstances must be significant enough to render the initial child support order inappropriate under the circumstances. For example, if a parent loses a job through no fault of their own, they may seek a modification to reduce their child support, at least until they become gainfully employed again. (The complexities of [income attribution](#) in such cases are a blog unto itself.)

Similarly, if a child developed a medical condition that required the use of adaptive equipment—such as a wheelchair, or crutches—and routine physical therapy treatments, a party can request the court to modify the child support order to increase the amount of payments to help cover the additional expenses arising from the child's medical condition. (Often, however, the parties have an agreement that they will split equally the cost of any uninsured medical expenses for the child, so a modification of base child support in that situation may not be necessary.) A [parent's illness](#) can also justify a modification in support, in both the child support and alimony contexts. (Indeed, the law includes very specific remedies if the [child support paying parent begins receiving SSDI](#).)

The Guidelines also provide judges broad discretion to modify child support for unusual, unexpected circumstances affecting the lives of a party or child. Perhaps a parent's new spouse contracts a terminal illness. Perhaps a child is admitted in a special education facility full-time. Perhaps one parent hits the lottery. Courts can increase or decrease child support based on a wide variety of factors. However, to the extent that the new child support judgment

represents [deviation from the Child Support Guidelines](#), judges are required to enter written findings explaining the [purpose of the deviation](#).

## Proving an Increase/Decrease in Income in Child Support Modification Cases

Providing [documentary proof](#) of the new circumstances – often an increase or decrease in one party’s income – is frequently the primary challenge in modification cases. For parties alleging that they have become unemployed, the evidentiary burden may be lighter, with such cases often turning on whether the unemployed parent has been deemed eligible for unemployment benefits or [SSDI benefits](#). (Parents who voluntarily leave their jobs, or are [fired from a job for misconduct](#), may face a less receptive judge, however.) Parties whose Complaint for Modification depends on a change in the *other* party’s income must obtain evidence from the other party (or his or her employer, bank, etc.) to prove their claim. Obtaining records from the other party and/or his or her bank or employer sometimes requires a party [to perform discovery](#), including Requests for Production of Documents and Deposition Subpoenas.

For W2 employees, proving an increase or decrease in income is relatively simple. However, unemployed parents – particularly those paying child support – may receive pushback from the court about their job-seeking efforts. Parents who are found not to be engaging in reasonable efforts to obtain employment may face an order of [income attribution](#).

[Self-employed parents](#), parents earning rental income, and/or parents who receive complex forms of compensation such as [stock options and RSUs](#), often face challenges when seeking to prove their current income to the court in a modification. (Notably, Massachusetts courts have held that self-employed parent have the burden of proof for documenting their own income, since that parent are in the best position to access records and information pertaining to their self-employment income.) Similarly, if the opposing party receives payment in cash, proving his or her income definitively can be a challenge.

## Knowing When to File a Complaint for Modification

Massachusetts courts will modify child support any time there is an inconsistency between the current child support order and the application of

the Child Support Guidelines to the parties' current incomes. However, parties often struggle to know when is the right time to seek a modification. In general, following the entry of a final judgment for child support, neither party is entitled to demand documentation from the other party regarding changes in the other party's earnings. (It is worth noting that parties sometimes include a provision in their agreement in which the parties *agree* to exchange earnings documents on monthly, quarterly or annual basis in the future. However, the right to receive ongoing updates on the other party's future income is a bargained for right that many attorneys are reluctant about. While such provisions are quite helpful, it probably isn't realistic for parties to assume that such provisions are achievable in many negotiations.)

In order to demand the other party's earnings records following a judgment, parties must generally file a Complaint for Modification in order to utilize discovery tools, such as [document requests and subpoenas](#). Thus, parents find themselves in a "chicken or the egg" scenario, in which the only way to know the other parent's new income is to file a Complaint for Modification – while at the same time, knowing whether they *should* file a Complaint for Modification depends on information they don't yet have.

For parties seeking to decrease their child support obligations due to job loss or decreased earnings, the choice is often simple. Such parties know exactly what evidence they intend to present and are not dependent on their other party for substantial documents or evidence. For parties seeking to increase child support based on an increase in the other party's income, there are greater challenges. A big question often surrounds how the parent *knows* the other parent is earning more. Does the party seeking increased child support have definite information about the other party's greater earnings or is it a guess?

Although it's not uncommon for child support recipients to seek an increase in child support based only on a guess about the other party's greater earnings, parties must consider the risks involved with filing an ill-considered Complaint for Modification.

## **Are There Risks to Filing a Child Support Modification?**

In a word, "yes". Re-opening litigation through a Complaint for Modification is a major decision. Any defendant served with a Complaint for Modification, can easily and quickly file a Counterclaim for Modification – seeking their own



changes to virtually any order pertaining to the children. It is not uncommon for a parent who files a Complaint for Modification seeking to change child support to be served with a Counterclaim for Modification seeking a change in custody and parenting time, and/or the other party's request for a change in child support in the opposite direction.

Parents who file an ill considered Complaint for Modification of child support sometimes find that a recalculation of child support achieves the opposite of what they anticipated. For example, a parent who seeks a reduction in child support because [his or her oldest child turned 18](#) may find him or herself paying *more* child support if there are additional minor children (i.e. under 18) that are still subject to the order. Or, if the party seeking a reduction has experienced an increase in his or her income since the original order was calculated, the result of the modification may simply be a larger child support order.

Finally, parents seeking a modification of child support should consider the law of unintended consequences for issues that can arise when either party initiates litigation. One party's Complaint for Modification can often trigger the other party's Complaint for Contempt, or a new Complaint for Modification on other issues. It may be impossible to predict exactly what kind of litigation is triggered by the first filing, but it's important for parties to be aware of the general rule: litigation often creates more litigation.

In short, filing a Complaint for Modification is a big decision which should not be taken lightly.

## Changes in the Child Support Guidelines Impact Modifications

Every four years, Massachusetts revamps its child support guidelines. The last major changes in the Guidelines [occurred in September 2017](#); however, after [errors were discovered](#) in the 2017 Guidelines, an even [newer version of the Guidelines were issued in June 2018](#). Following the June 2018 revisions, the "current" version is widely referred to as the [2018 Guidelines](#).

The process employed by the state to revise the Guidelines has been subject to some [criticism for a lack of transparency](#), and it is often difficult to predict what changes may be included in the next edition of the Guidelines.

Regardless, under our caselaw, a parent may modify child support any time a new version of the Guidelines results in a change to the amount of child

support. For example, if an initial child support order issued in 2013, a parent could have filed a modification in 2018 based on changes in the 2018 Guidelines to how [medical insurance and child-care costs](#) affect child support. (This parent's modification request would have been valid, to the extent that the amount of child support differed under the 2018 Guidelines, even if the parties' Financial Statements had not changed since the original judgment entered.)

The 2018 Guidelines include [numerous important changes](#) including changes [affecting adult children \(i.e. children over 18 years old\)](#) and [children attending college in Massachusetts](#), and changes to how [medical insurance and child care costs](#) impact the Guidelines. Under prior versions of the Guidelines, child support to adult children was strictly a matter of the discretion of the judge. Under the 2018 Guidelines, [child support orders for children over 18](#) are presumptively restricted to 75% of the weekly child support payable for minor children. Meanwhile, the new Guidelines also included a presumptive "cap" for parents' obligation to contribute to their children's college expenses, with the cap set for each parent at 50% of the annual cost of room, board, tuition and fees at UMass Amherst.

The [2018 Guidelines](#) present some complex questions for parents of adult children. Although the Guidelines reduce child support to adult children by 25% (compared to child support for minor children), there is no guarantee that parents paying child support for one or more adult children will obtain a reduction in child support in a Complaint for Modification. Factors to consider include whether there are any remaining minor children (i.e. under age 18) who are subject to a child support order and whether the income of the party paying child support has increased substantially since the time of the initial order.

Changes in the Guidelines can have a major impact on a potential Complaint for Modification. However, there are often complex legal questions surrounding whether a change in the Guidelines warrants the filing of a Complaint for Modification. Parents who believe a change in the Guidelines may justify filing a Complaint for Modification are advised to [consult with a qualified family law attorney](#).

## **[Changes in Child Custody Can Fuel Changes in Child Support](#)**



It is important to recognize that child support is likely to change if there is a change in the physical custody of the child, such as a change [from shared physical custody from primary physical custody for one party](#) (or vice versa). Typically, the noncustodial is responsible for paying support to the custodial parent, who will use that support to supplement his or her financial resources to cover their child's needs.

Meanwhile, if parents share custody, child support is calculated based on each party's earnings; if parties with shared custody have approximately equal earnings, there may be no child support order at all. In contrast, if there is a major disparity in incomes between parents with shared custody, then the lesser earning parent may receive child support that is nearly equal to that paid to a party with sole physical custody.

Although changes in physical custody are relatively rare, Probate and Family Court judges won't hesitate to change physical custody if one parent is found to [engage in parental alienation](#) or other forms of [bad behavior on parenting issues](#). Similarly, if the custodial parent experiences a change in mental or physical health that leaves them unable to primarily care for the child, the noncustodial parent can seek to modify the original custody arrangement to give them primary custody of the child. Under this new arrangement, the former custodial parent may have to pay child support to the new custodial parent.

Simply put, any change in physical custody can drastically impact child support.

## **How Emancipation Impact Child Support Modification**

In addition to these complexities, Massachusetts parents often struggle to determine if their children have become [emancipated for child support purposes](#). In some ways, Massachusetts law appears quite clear about emancipation. For example, [G.L. c. 208, § 28](#) suggests that a child who has reached the age of 23 is emancipated, absent extraordinary circumstances. At the same time, adult children between the ages of 18 and 20 are generally considered to be not emancipated if they are living with a parent, although exceptions certainly exist (such as the child supporting him or herself with a full-time job or paying rent to a parent). Significant complexities often arise, however, for adult children between ages 21 and 23, where the law restricts child support for such children to those enrolled in an educational program,

while providing little guidance on what level of educational program (Community college? Undergrad? Full-time or part-time?) qualifies.

What is clear is that child-support paying parents must be certain that all of their children are emancipated before unilaterally stopping child support payments, even if the parents have reached an out-of-court agreements to end child support – where such agreements are [generally not enforceable](#), and [child support arrears are extremely difficult to reduce](#).

## **Modifying Agreements and Orders for the Payment of College Expenses**

Under the 2018 Child Support Guidelines, judges in Massachusetts may order each parent to contribute to the college expenses of adult children up to [a presumptive “cap” equal to 50% of the cost of UMass Amherst](#). The direct inclusion of college expenses in Guidelines is new; prior to the 2017-2018 Guidelines, the decision of whether (and how much) to make parents contribute to their children’s college expenses was left solely in the hands of the judge.

Although the 2018 Guidelines provide a presumptive maximum “cap” on how much parents should be required to contribute to college, the Guidelines do not provide a “formula” for determining how much parents should be required to contribute to college in a typical case (for example, the 2018 Guidelines do not include a minimum requirement for parents to contribute, nor is a particular amount suggested based on the parties’ incomes).

Without a clear formula for calculating college contributions under the Guidelines, a parent seeking to modify his or her obligation to pay for college faces different challenges compared to a parent seeking to modify weekly child support. These challenges are explored in our blog, [“The Challenge of Modifying College Payment Agreements in Massachusetts Probate and Family Courts”](#).

## **Child Support Deviations in Modification Cases**

Included in the many big changes in the 2017/2018 Child Support Guidelines, was a new section in the Guidelines dealing specifically with child support deviations. We explored these changes in our blog, [“Child Support Deviations Encouraged in 2017 MA Guidelines”](#). In the modification context, it is worth knowing that the 2018 Guidelines specifically suggest that any child support deviation present in the original child support judgment may be carried

forward in a modification, so long as the conditions that gave rise to the original deviation remain present. Specifically, the 2018 Guidelines provide:

Upon a request for modification of an order that deviated from the guidelines at the time it was entered, the Court shall apply the existing deviation to the modification action if:

- 1.) the facts that gave rise to deviation still exist; and
- 2.) deviation continues to be in the child's best interest; and
- 3.) the guidelines amount would be unjust or inappropriate under the circumstances

As noted in our blog on the subject, the 2017/2018 Guidelines further explain as follows:

The Task Force refined the language to clarify that if circumstances that resulted in a deviation are still in existence during a modification action, those circumstances shall be considered to remain even though it may be appropriate to modify the existing order. For example, a child may have a medical condition that results in ongoing, extraordinary medical expenses and the existing child support order deviates from the guidelines amount. The recipient is now unemployed and files a complaint for modification. The underlying circumstances for the existing deviation remains; however, the Court also considers the additional circumstances.



**L&O**  
DIVORCE & FAMILY LAW ATTORNEYS

*Need a family law lawyer? Hire the Best*

*Need a Child Custody Attorney?*

CONTACT KIMBERLEY TODAY!

**Kimberley Keyes**  
Senior Associate Attorney

## Termination of Child Support May Trigger Alimony

Finally, a Complaint for Modification to terminate child support can have unpredictable effects for unprepared parties. For example, several Massachusetts cases have suggested that the [termination of child support](#)

may trigger the imposition of a [new alimony order](#), depending on the recipient spouse's eligibility for alimony under the law. While such cases are relatively unusual, they reflect some of the twists and turns that parties can face when seeking to modify child support in the Probate and Family Court.

## Representing Defendants in Facing Complaints to Modify Child Support

Needless to say, every case involving a plaintiff also includes a defendant. Although much of this blog focused on modifying child support from a plaintiff's perspective, it's important to acknowledge that there is always often one parent who seeks to preserve the current order. Defendants in a modification action include parents opposed to a requested reduction in child support due to the paying parent's alleged loss of work or decrease in income. Similarly, a defendant could include a child support paying parent who opposes the other party's request to increase child support.

Unlike in [criminal law](#) or [personal injury law](#), divorce and family law attorneys rarely view themselves as "defense attorneys" or "plaintiff's attorneys". Most family law attorneys are experienced representing both plaintiffs and defendants in modification actions. That said, many family law attorneys have areas of expertise, and it is important for parties to select an attorney with the financial acumen, courtroom experience and knowledge of the law required to defend the client's interest in a modification action.

There is no method for defending against a Complaint for Modification. In some cases, a defendant parent's primary defense may stand on point of law, such as the recent Massachusetts cases impacting [attribution of income for unemployed parents](#). In other cases, the best defense may include a strong offense – in the form of a counterclaim for modification. In still others, the attorney may rely on procedural tactics, a particular discovery strategy, or the smart deployment of an expert witness.

## Mediation and Child Support Modifications

One way for parties to reduce the unintended consequences of filing a Complaint for Modification is to use a neutral third party to [mediate a child support settlement](#). Using a [family law mediation](#) provides a variety of advantages over litigating child support issues. [Mediation for child support modifications](#) is particularly attractive when the case centers around one party's temporary job loss.

In cases where one parent has lost a job at no fault of his or her own, and that parent is actively seeking new work, mediation is a fantastic options for bringing the family through a difficult financial stretch without the cost, stress and conflict of litigation.

We recently wrote about mediating child support modification cases at the [South Divorce Mediation](#) blog, our sister website, where we blogged, “[Mediating Modifications: Child Custody, Child Support and Alimony](#)”. If you would like to mediate your child support modification with South Shore Divorce Mediation, give our office a call today.

## Contact Lynch & Owens to Consult with an Experienced Attorney

If you are looking for quality legal advice from an experienced family law attorney in Massachusetts, you should call Lynch & Owens to get in touch with a dedicated member of our legal team. We have experience litigating various family law issues in Massachusetts, including those involving child support and the modification of child support orders.

**Call our office at (781) 253-2049 or [contact us online](#) to schedule an initial case evaluation with one of our attorneys about your family law issues.**

**About the Author:** [Kimberley Keyes](#) is a Massachusetts divorce lawyer and Massachusetts family law attorney for Lynch & Owens, located in [Hingham](#), Massachusetts and [East Sandwich](#), Massachusetts. She is also a mediator for [South Shore Divorce Mediation](#). Before law school, she worked as a newspaper reporter and editor in several South Shore communities, including Kingston.

© Lynch & Owens, P.C. and [www.lynchowens.com](#),2019. Unauthorized use and/or duplication of this material without express and written permission from this site’s author and/or owner is strictly prohibited. Excerpts and links may be used, provided that full and clear credit is given to Lynch & Owens, P.C. and [www.lynchowens.com](#) with appropriate and specific direction to the original content.