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Modifying Child Support Orders

A Guide for Non-Custodial Parents

By Jeffery Leving

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Young, divorced or never-married fathers join the National Guard or Reserve for the same reasons single or happily married people do: patriotism, job training, education or retirement benefits, to see the world, to earn a little extra money, and more. They understand that their military service will probably affect their civilian life in a variety of ways and they're willing to make that

sacrifice.

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Before You Go

If you're in the Reserve/Guard and you owe child support, the second you get your orders you absolutely must go to court to get your support order modified.

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But no one ever thinks that being in the Guard or Reserve could land them in jail. Yet it can. And as a lawyer who represents fathers in divorce and child-support matters, I've seen it happen over and over.

Here's a typical situation: A young man with a decent civilian job joins the National Guard or Reserve. He's fathered one or more children and has been ordered to pay child support based on his civilian salary. That's fine. The problems arise when that young father's unit gets activated and deployed. His military salary is a lot lower than his civilian one and he's not able to pay his child support. During his deployment, he gets further and further behind and when he finally gets back home, he's prosecuted for non-payment of support. Sounds crazy, doesn't it? But as the old saying goes, truth can be (and often is) stranger than fiction.

I can't emphasize enough how important it is to do that before you're deployed. By law, child support orders can't be retroactively

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reduced prior to the date of filing—any
reduction can be effectuated only from the
date of the judge's order. If you don't get it
done before you leave the country, you won't
be prosecuted while you're deployed. But
when you come home, you could be walking
into a real mess and facing jail time and
other penalties.

If Possible, Get a Lawyer

Petitions to modify child support are pretty simple and a good lawyer will be able to take care of it for you fairly quickly. But I understand that not everyone can afford lawyers. The good news is that you've got a lot of options.

- Check on base. Most military installations have legal assistance offices. The attorneys (called judge advocates, or JAG) may be able to give you some guidance and steer you towards other resources—but they are not allowed to represent you in a civilian court.
- Check with local legal aid. Many cities and counties have clinics where attorneys volunteer to help low-income individuals with basic legal issues. In my experience, though, these clinics generally are reluctant to help fathers.
- Check with your local District Attorney. But keep your expectations low. The justice system is authorized to represent—for free—custodial parents (usually mothers) to collect child support. Unfortunately, they have no obligation to help non-custodial parents reduce their support orders. As a result, they may refuse your request.
- Represent yourself. I'll talk about that in more detail below.

Going it Alone

If you're feeling intimidated by the prospect of filling out hundreds of legal documents and trying to understand a bunch of legal jargon, relax. The main document you need to worry about is the Petition to Modify Child Support (the actual name may be different in different states or counties, but it'll be something like that). All you're doing is showing that there has been a "substantial chance in circumstances." In other words, your original support order was based on your civilian salary and you'll be making a lot less during your deployment. As a result, your support payment should be reduced. That's pretty much it.

I've represented fathers all over the country, and every court I've been to has people who can assist "pro se litigants" (people representing themselves). They'll be able to help you fill out and file your Petition, set up a court date, and properly notify the child(ren)'s mother.

Your goal is to get in front of a judge. I've found that most judges are pretty flexible with people representing themselves and they may accept paperwork that isn't letter perfect and they'll likely ask one of the attorneys who happens to be sitting in the courtroom (and there are always a few) to draft the order reflecting the judge's decision.

Occasionally, the situation may be a bit more complex. For example:

- If you're going to be deployed sooner than you can get a court date, you can file for an emergency hearing. In this case, you'll likely need to file a notarized, sworn statement (called an affidavit) outlining why you need the emergency hearing.
- If you're in a different state than the one where the original child-support order was made, you may consider asking the court to "register" the order from the other state. Then you can file the petition to modify if jurisdiction exists.

In both of these cases, there are a few extra hoops to jump through, but it's definitely doable. That said, you can see why it's important that you leave plenty of time to get everything done before you ship out.

If you need assistance, the following resources may be able to point you in the right

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direction:

- [Fathers and Families Coalition](#).
- [Fathers' Rights](#) (my website)
- Air Force Legal Assistance: <https://aflegalassistance.law.af.mil>
- Navy Judge Advocate General's Corps (also serves Marine Corps): http://www.jag.navy.mil/legal_services.htm
- Coast Guard: http://www.uscg.mil/legal/la/Legal_Assistance_Find_Lawyer.asp

Jeffery M. Leving has been named one of "America's Best Lawyers" by Forbes Radio™ and selected by his peers as one of Illinois' top attorneys. He is the author of three books, Fathers' Rights, Divorce Wars, and How to Be a Good Divorced Dad, which received an endorsement from Francis Cardinal George of the Archdiocese of Chicago and praise from President Barack Obama.

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