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2020 Edition

Modification of Judgments in Family Matters

A Guide to Resources in the Law Library

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Introduction

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- **Modification:** “a modification is defined as ‘[a] change; an alteration or amendment which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject-matter intact.’ Black’s Law Dictionary (6th Ed. 1990).” [Silver v. Silver](#), 200 Conn. App. 505, 516, 238 A.3d 823, cert. denied 335 Conn. 973 (2020).
- **Modification of support:** “any final order for the periodic payment of permanent alimony or support or an order for alimony or support pendente lite may at any time thereafter be continued, set aside, altered or modified by said court upon a showing of a substantial change in the circumstances of either party or upon a showing that the final order for child support substantially deviates from the child support guidelines” Conn. Gen. Stat. § [46b-86](#)(a) (2019).
- “...alimony typically is modifiable, while dispositions of marital property are not.” [Dombrowski v. Noyes-Dombrowski](#), 273 Conn. 127, 133, 869 A.2d 164 (2005).
- **Modification of Custody:** “means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the prior custody determination.” Conn. Gen. Stat. § [46b-115a](#)(11) (2019).
- **Modification of child custody and visitation standard:** “In making or modifying any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests.” Conn. Gen. Stats. § [46b-56](#)(b) (2019).
- “In ruling on a motion to modify visitation, the court is not required to find as a threshold matter that a change in circumstances has occurred. [Szczerkowski v. Karmelowicz](#), 60 Conn. App. 429, 433, 759 A.2d 1050 (2000); see also [McGinty v. McGinty](#), 66 Conn. App. 35, 40, 783 A.2d 1170 (2001). Instead, ‘[i]n modifying an order concerning visitation, the trial court shall “be guided by the best interests of the child....” General Statutes § 46b-56 (b).’ [Kelly v. Kelly](#), 54 Conn. App. 50, 57, 732 A.2d 808 (1999);” [Balaska v. Balaska](#), 130 Conn. App. 510, 515-16, 25 A.3d 680 (2011).

Section 1: Modification of Alimony

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the grounds and procedures for modifying alimony in Connecticut.

DEFINITION:

- **Cohabitation:** "Section 46b-86 (b), known as the 'cohabitation statute,' provides in pertinent part that a court may 'modify such judgment and suspend, reduce or terminate the payment of periodic alimony upon a showing that the party receiving the periodic alimony is living with another person under circumstances which the court finds should result in the modification . . . of alimony because the living arrangements cause such a change of circumstances as to alter the financial needs of that party.'" [D'Ascanio v. D'Ascanio](#), 237 Conn. 481, 485-486, 678 A.2d 469 (1996).
- **Substantial change in circumstances:** "It is ... well established that when a party, pursuant to § 46b-86, seeks a postjudgment modification of a dissolution decree ... he or she must demonstrate that a substantial change in circumstances has arisen subsequent to the entry of the [decree].'" *Borkowski v. Borkowski*, 228 Conn. 729, 736, 638 A.2d 1060 (1994). 'Once a trial court determines that there has been a substantial change in the financial circumstances of one of the parties, the same criteria that determine an initial award of alimony ... are relevant to the question of modification.'" [Dan v. Dan](#), 315 Conn. 1, 8-9, 105 A.3d 118 (2014).
- To obtain a modification, the moving party must demonstrate that circumstances have changed since the last court order such that it would be unjust or inequitable to hold either party to it. [Borkowski v. Borkowski](#), 228 Conn. 729, 737-38, 638 A.2d 1060 (1994).
- **Burden of Proof:** Under that statutory provision, the party seeking the modification bears the burden of demonstrating that such a change has occurred. [Borkowski v. Borkowski](#), 228 Conn. 729, 734, 638 A.2d 1060 (1994).
- **Decree or order of the court:** "Thus, even if the parties had agreed that the defendant would not be obligated to comply with the alimony order, that agreement would not be effective to modify the defendant's obligation because, as previously stated, '[d]ecrees in a dissolution action cannot be modified by acts of the parties without further decree or order by the court.'" [Albrecht v. Albrecht](#), 19 Conn. App. 146, 151, 562 A.2d 528, cert. denied, 212 Conn. 813, 565 A.2d 534 (1989)." [Ford v. Ford](#), 72 Conn. App. 137, 141, 804 A.2d 215 (2002).

STATUTES:

- Conn. Gen. Stat. (2019)
[§ 46b-82](#). Alimony.
[§ 46b-86](#). Modification of alimony or support orders and judgments.

PRACTICE BOOK:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Connecticut Practice Book (2020)
[Chapter 25](#) Superior Court—Procedure in family matters
§ [25-24](#)(b) "...Each such motion shall state clearly, in the caption of the motion, whether it is a pendente lite or a post judgment motion."
§ [25-26](#). Modification of custody, alimony or support
§ [25-30](#). Statements to be filed

FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- [Filing a Motion for Modification - Connecticut Judicial Branch](#)
- *Library of Connecticut Family Law Forms*, 2d ed., MacNamara, Welsh, and George, editors, Connecticut Law Tribune, 2014.
5-038 - Motion for Modification of Unallocated Alimony and Support (Pendente Lite)
16-000 - Commentary – Post Judgment Pleadings, p. 542
16-005 - Motion for Modification of Unallocated Alimony and Support (with OTSC papers)
- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., 2010, Thomson West, with 2019-2020 supplement (also available on Westlaw).
§ 35.31 Motion for modification of alimony—Form
§ 35.32 Motion for modification of alimony based on cohabitation—Form

CASES:

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- [Ross v. Ross](#), 200 Conn. App. 720, 738, 239 A.3d 1280 (2020). For the foregoing reasons, we conclude that the court erred in modifying the unallocated alimony and child support award without unbundling the child support award from the alimony award, and, further, erred in failing to consider and to apply the child support guidelines or the principles espoused therein.
- [Marshall v. Marshall](#), 200 Conn. App. 688, 719, --- A.3d ---- (2020). "Separately, the court found that the plaintiff had established a substantial change in circumstances, and it modified his alimony obligation, reducing it to zero, retroactive to September 1, 2011. Because the plaintiff's motion to modify was served on the defendant on August 31, 2011, the court's alimony modification retroactive to September 1, 2011, did not violate § 46b-86."
- [Budrawich v. Budrawich](#), 200 Conn. App. 229, --- A.3d ---- (2020). "This court previously has construed certain language contained in a separation agreement to relieve the party seeking to modify alimony of the statutorily mandated burden of demonstrating that a substantial change in circumstances has occurred. See [Steller v. Steller](#), supra, 181 Conn. App. at

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584, 584–85 n.1, 187 A.3d 1184; [Taylor v. Taylor](#), 117 Conn. App. 229, 231, 978 A.2d 538, cert. denied, 294 Conn. 915, 983 A.2d 852 (2009).”

- [Halperin v. Halperin](#), 196 Conn. App. 603, 622, 230 A.3d 757 (2020). The plaintiff next argues that his interests in CSCE and ISOI were purchased using cash assets awarded to him at the time of the dissolution and, therefore, the income received from his investment of **the cash assets** ‘should not be **redistributed yet again.**’ In support of his argument, he cites *Gay v. Gay*, 266 Conn. 641, 835 A.2d 1 (2003), *Schorsch v. Schorsch*, 53 Conn. App. 378, 731 A.2d 330 (1999), and *Denley v. Denley*, 38 Conn. App. 349, 661 A.2d 628 (1995), a line of cases that he concedes is ‘factually distinguishable’ but that he suggests evidences a ‘modern trend’ in our courts of reluctance to ‘designate as income for purposes of support, funds received as a result of the conversion of assets awarded at the time of the dissolution.’ The defendant responds that ‘[t]he plaintiff’s argument confuses an award of assets with a support award based on the income stream derived from an asset.’ We agree with the defendant.”
- [Nappo v. Nappo](#), 188 Conn. App. 574, 591, 205 A.3d 723 (2019). The court was correct in considering the income of the defendant’s current wife because it was relevant to his current expenses, a material factor in determining his current net income and, therefore, his ability to pay the increased alimony. See [McGuinness v. McGuinness](#), 185 Conn. 7, 12-13, 440 A.2d 804 (1981).
- [Peixoto v. Peixoto](#), 185 Conn. App. 272, 283, 196 A.3d 1229 (2018). “*In Dan*, our Supreme Court held that it was permissible for a court to order an upward modification of alimony on the basis of an increase in the payor’s income if either: (1) the initial alimony award was insufficient to fulfill the underlying purpose of alimony; or (2) the court finds that other exceptional circumstances exist. *Dan v. Dan*, supra, 315 Conn. 15-17. Although the purpose of the alimony award ordered by the dissolution court may be unclear from the record, what is clear is that Judge Colin, after an evidentiary hearing, a review of the dissolution transcript and decision, and in full consideration of *Dan*, found that exceptional circumstances exist in this case that warrant a modification of the alimony award. We find no abuse of discretion in that conclusion. On the basis of the foregoing, we conclude that the defendant’s claim that the trial court acted in contravention of the standard and the holding established by our Supreme Court in *Dan*, thus, is unavailing.

The judgment is affirmed.”

- [Cohen v. Cohen](#), 327 Conn. 485, 499, 176 A.3d 92 (2017).

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“As we recognized in *Dan*, however, ‘it is well established that an increase of the paying spouse, standing alone, is sufficient to **justify reconsideration**, of a prior alimony order pursuant to § 46b-86’ (Citation omitted; emphasis in original.) *Id.*, 9. In other words, a party seeking modification of an alimony award need only claim in the motion for modification that there has been a substantial change in circumstances to warrant reconsideration. We have never required a party seeking modification to cite in the motion for modification itself all of the reasons **why** the substantial change in circumstances **justifies a modification or the case law supporting the motion.**”

- [Ceddia v. Ceddia](#), 164 Conn. App. 266, 274, 137 A.3d 830, 834 (2016). “When the parties wished to preclude one aspect of possible periodic alimony modification, they knew how to do so. Their marital dissolution agreement specifically stated that the alimony was nonmodifiable as to duration. However, the parties were silent as to any similar restriction on any later modifications as to the **amount** of periodic alimony. That omission leads us to the conclusion that it was not barred by the marital dissolution agreement or the judgment of dissolution that incorporated the agreement’s terms. We **therefore reject this waiver claim.**”
- [Dan v. Dan](#), 315 Conn. 1, 11-15, 105 A.3d 118 (2014). “There is little, if any, legal or logical support, however, for the proposition that a legitimate purpose of alimony is to allow the supported spouse’s standard of living to match the supporting spouse’s standard of living **after** the divorce, when the supported spouse is no longer contributing to the supporting spouse’s income earning efforts. Rather, the weight of authority is to the contrary. We are persuaded by the reasoning of these cases, namely, that, when the amount of the original alimony award was and continues to be sufficient to fulfill the purpose of the award, whether that purpose was to maintain permanently the standard of living of the supported spouse at the level that he or she enjoyed during the marriage or to provide temporary support in order to allow the supported spouse to become self-sufficient, an increase in the income of the supporting spouse, standing alone, is not a sufficient justification to modify an alimony award. In short, when the **sole** change in circumstances is an increase in the income of the supporting spouse, and when the initial award was and continues to be sufficient to fulfill the intended purpose of that award, we can conceive of no reason why the supported spouse, whose marriage to the supporting spouse has ended and who no longer contributes anything to the supporting spouse’s income earning efforts, should be entitled to share in an improved standard of living that is solely the result of the **supporting spouse’s efforts.**”
- [Lynch v. Lynch](#), 153 Conn. App. 208, 211, 100 A.3d 968 (2014), cert. denied, 315 Conn. 923, 108 A.3d 1124, cert.

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denied, --- U.S. ----, 136 S. Ct. 68, 193 L. Ed. 2d 66 (2015). **"The plaintiff specifically claims that the court improperly (1) awarded alimony to the defendant, Laurie Lynch, and not to him; (2) denied his request for equitable financial relief in his motion for modification, even though he had met his burden of establishing a substantial change in circumstances; (3) granted the defendant's October 11, 2012 motion for contempt; (4) granted the defendant's May 1, 2013 postjudgment motion for contempt; (5) calculated the reimbursement for stipulated shared household expenses owed to him by the defendant; (6) failed to calculate a pendente lite arrearage owed to him by the defendant; (7) awarded \$7500 in appellate attorney's fees to the defendant; (8) entered financial orders that were inequitable to him and that demonstrated the court's bias against him; and (9) failed to hear certain of his motions and denied others without consideration of his due process rights. We disagree with all nine of the plaintiff's claims and affirm the judgment of the trial court."**

- [Olson v. Mohammadu](#), 310 Conn. 665, 666, 81 A.3d 215 (2013). **"...a court that is confronted with a motion for modification under § 46b-86 (a) must first determine whether the moving party has established a substantial change in circumstances, and in making that threshold determination, if a party's voluntary action gave rise to the substantial change in circumstances warranting modification, the court must assess the motivations underlying the voluntary conduct to determine whether there is culpable conduct foreclosing the threshold determination of a substantial change in circumstances, and, if the court finds such a substantial change in circumstances, the court may determine what modification, if any, is appropriate."**
- [Von Kohorn v. Von Kohorn](#), 132 Conn. App. 709, 716, 33 A.3d 809 (2011). **"The court, by granting the plaintiff's request for clarification, lacked the authority to alter the substantive terms of the prior judgment beyond those terms that it determined were omitted from the original order. See [Mickey v. Mickey](#), supra, 292 Conn. at 604-605, 974 A.2d 641. It also lacked any authority to make substantive changes pursuant to General Statutes § 52-212a or Practice Book §§ 17-4 and 11-11 because the court did not grant reargument of the terms of the alimony orders, and the court reasonably could not have treated the plaintiff's post-judgment motion as a motion to open the judgment and modify the alimony award because such relief was neither directly nor implicitly requested in the postjudgment motion."**
- [Lehan v. Lehan](#), 118 Conn. App. 685, 696, 985 A.2d 378 (2010). **"For purposes of § 46b-86(b), the plaintiff must demonstrate that the defendant's financial needs, as quantified by the court in setting the alimony award pursuant to General Statutes § 46b-82, have been altered by her living arrangements. See *id.*, at 324, 951 A.2d 587. 'Although the**

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alteration need not be substantial ... the difference must be measurable in some way before the court can conclude whether a difference, in fact, exists.... In other words, the court must have the ability to compare the [defendant's] financial needs at different points in time in order to determine whether those **needs either have increased or have decreased over time.**"

- [Ucci v. Ucci](#), 114 Conn. App. 256, 261, 969 A.2d 217 (2009). **"Although the defendant's motion for modification included the language of the modification provision of the separation agreement, as well as the substantial circumstances language of the statute, the defendant did not alert the court at any time that he sought modification pursuant to the agreement only and that the court could not consider the statutory criteria of § 46b-82."**
- [Simms v. Simms](#), 283 Conn. 494, 502-503, 927 A.2d 894 (2007). **"[Section] 46b-86 governs the modification or termination of an alimony or support order after the date of a dissolution judgment. When, as in this case, the disputed issue is alimony, the applicable provision of the statute is § 46b-86 (a), which provides that a final order for alimony may be modified by the trial court upon a showing of a substantial change in the circumstances of either party. . . . Under that statutory provision, the party seeking the modification bears the burden of demonstrating that such a change has occurred. . . . Because a request for termination of alimony is, in effect, a request for a modification, this court has treated as identical motions to modify and motions to terminate brought under § 46b-86 (a). . . ."** [[Borkowski v. Borkowski](#), 228 Conn. 729, 734-735 (1994).]
- [Doody v. Doody](#), No. FA 02-0731061 (Conn. Super. Ct., Hartford J.D., May 17, 2005). **"However, a defendant's inability to pay 'does not automatically entitle a party to a decrease of an alimony order.'** [Sanchione v. Sanchione](#) 173 Conn. 397 (1977). Such inability to pay must be excusable and not brought about by the defendant's own fault before a motion for modification may be granted. [Wanatowitz v. Wanatowitz](#). [sic] 12 Conn. App. 616 (1987); [Gleason v. Gleason](#), 16 Conn. App. 134 (1988)."
- [Talbot v. Talbot](#), 148 Conn. App. 279, 287 (2014). **"The plaintiff's attested net annual income at the time of the dissolution of judgment was \$245,000; his attested net (and gross) annual income in June, 2012, was \$204,108—or approximately 17 percent less. We conclude that this evidence demonstrates that the court acted within in its discretion when it determined that the plaintiff's reduction in income and his illness did not necessitate a finding of a substantial change in circumstances."**⁶

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^{FN6}“We do not mean to imply that a 17 percent reduction in net income could not be a substantial change in circumstances in all cases. Each case must be considered **on its own facts.**”

- [Simms v. Simms](#), 89 Conn. App. 158, 162 (2005). “The defendant's claim that the self-executing alimony alterations constitute modifications of the dissolution orders is untenable. Those alterations were required not by a subsequent court order or adjudication by the court, but rather by the express terms of the settlement agreement incorporated into the 1979 **dissolution orders. This court has held that '[d]ecrees in a dissolution action cannot be modified by acts of the parties without further decree or order by the court.'** [Albrecht v. Albrecht](#), 19 Conn. App. 146, 151, 562 A.2d 528, cert. denied, 212 Conn. 813, 565 A.2d 534 (1989). The record reveals no **further decree or order by the court since 1979.**”
- [Gay v. Gay](#), 266 Conn. 641, 647-648, 835 A.2d 1 (2003). “[T]he purpose of both periodic and lump sum alimony is to **provide continuing support.**” [Smith v. Smith](#), 249 Conn. 265, 275, 752 A.2d 1023 (1999). At least where, as is generally the case, **capital gains** do not represent a steady stream of revenue, the fact that a party has enjoyed such gains in a particular year does not provide a court with an adequate basis for assessing that party's long-term financial needs or resources. For this reason, we conclude that capital gains are not income for purposes of modification of an order for continuing financial support if those gains do not constitute a steady stream of revenue. This is true without regard to whether the assets from which those gains are derived were acquired before or after the dissolution. There is nothing in the record to suggest that the plaintiff can, through the ongoing sale of capital assets, maintain the income stream found by the trial court. Accordingly, we conclude that, regardless of when the capital assets sold by the plaintiff were acquired, the gains **on the assets were not income.**” (Emphasis added.)
- [Distefano v. Distefano](#), 67 Conn. App. 628, 633, 787 A.2d 675 (2002). “In accordance with General Statutes § 46b-86 (b) and the holding in [DeMaria](#), before the payment of alimony can be modified or terminated, two requirements must be established. First, it must be shown that the party receiving the alimony is cohabitating with another individual. If it is proven that there is cohabitation, the party seeking to alter the terms of the alimony payments must then establish that the recipient's financial needs have been altered as a result of the **cohabitation.**”
- [Clark v. Clark](#), 66 Conn. App. 657, 665, 785 A.2d 1162 (2001). “The court is not required, however, to consider all of the § 46b-82 criteria when modification of alimony is sought pursuant to a dissolution agreement.”

- [Grosso v. Grosso](#), 59 Conn. App. 628, 634, 758 A.2d 367 (2000). **"In the present case, however,** the defendant moved to modify the alimony payments pursuant to § 46-86 (a). The court fashioned a remedy for the defendant's changed circumstances in a way contemplated by subsection (a). Accordingly, we find that the court acted properly and did not abuse its discretion in **suspending the alimony payments."** (Emphasis added.)
- [Way v. Way](#), 60 Conn. App. 189, 194, 758 A.2d 884 (2000). **"When a decree contains language precluding modification, a** trial court, under its continuing jurisdiction, has the power to determine whether the preclusive language in the decree should be **enforced."**
- [DeMaria v. DeMaria](#), 247 Conn. 715, 720, 724 A.2d 1088 (1999). **"Because, however, 'living with another' person without** financial benefit did not establish sufficient reason to refashion an award of alimony under General Statutes § 46b-81, the legislature imposed the additional requirement that the party making alimony payments prove that the living arrangement has resulted in a change in circumstances that alters the financial needs of the alimony recipient. Therefore, this additional requirement, in effect, serves as a limitation. Pursuant to § 46b-86 (b), the nonmarital union must be one with attendant financial consequences before the trial court **may alter an award of alimony."**
- [Borkowski v. Borkowski](#), 228 Conn. 729, 736, 638 A.2d 1060 (1994). **"In general the same** sorts of [criteria] are relevant in deciding whether the decree may be modified as are relevant in making the initial award of alimony. They have chiefly to do **with the needs and financial resources of the parties.' . . .** More specifically, these criteria, outlined in General Statutes 46b-82, require the court to consider the needs and financial resources of each of the parties and their children, as well as such factors as the causes for the dissolution of the marriage and the age, health, station, occupation, employability and **amount and sources of income of the parties."**
- [Dooley v. Dooley](#), 32 Conn. App. 863, 632 A.2d 712 (1993). **"Alimony pendente lite may not be modified unless there has** been a substantial change in circumstances since the date of **the award."**
- [Scoville v. Scoville](#), 179 Conn. 277, 279, 426 A.2d 271 (1979). **"Lump sum alimony, unlike periodic alimony, is a final** judgment which cannot be modified even should there be a **substantial change in circumstances"**

DIGESTS:

- West Topic and Key Numbers: *Divorce*
V. Spousal support, allowances and distribution of property
C. Spousal support #558-649

Modification of judgment or decree #618-635

- Dowling's Digest: *Dissolution of marriage* § 19
- *Connecticut Family Law Citations*, by Cynthia C. George and Aidan R. Welsh, LexisNexis, 2020.
Chapter 8. Alimony
§ 8.07. Modification of Alimony

ENCYCLOPEDIAS:

- 24A *Am. Jur. 2d* Divorce and Separation (2018).
III. Spousal Support; Alimony and Other Allowances
B. Temporary Alimony
6. Modification of Award
§§ 600-602
D. Permanent Alimony
7. Modification of Permanent Alimony
a. In General
§§ 693-696
b. Grounds for Modification of Permanent Alimony
§§ 697-706
c. Procedure for Modification of Permanent Alimony
§§ 707-710
8. Retrospective Termination or Modification of Permanent Alimony
§ 711
- James Lockhart, *Cause Of Action To Obtain Increase In Amount Or Duration Of Alimony Based On Changed Financial Circumstances Of Parties*, 19 COA 1 (1989).
- Beth Bates Holliday, *Cause Of Action For Modification Of Amount Of Permanent Alimony Based On Changed Financial Circumstances Of Party Making Payment*, 38 COA 2d 73 (2008).
- *Modification of Spousal Support Award*, 32 POF 2d 491(1982).
§§ 12-20. Proof of supported spouse's right to increased support
§§ 21-27. Proof of supporting spouse's right to decrease or terminate support
- *Modification of Spousal Support on Ground of Supported Spouse's Cohabitation*, 6 POF 3d 765 (1989).
§ 17. Checklist—Proving cohabitation
§§ 18-19. Model interrogatories
§§ 20-45. Proof of cohabitation as basis of support modification

TREATISES:

- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., 2010, Thomson West, with 2019-2020 supplement (also available on Westlaw).
Chapter 35. Modification of Alimony Provisions
§ 35.2 Necessity of changed circumstances
§ 35.3 Modifiability of lump sum award

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References to online databases refer to in-library use of these databases. Remote access is not available.

- § 35.4 Modification where no alimony is originally granted or reserved
- § 35.5 Modification to change duration of alimony award
- § 35.6 Effect of provisions limiting or prohibiting modification
- § 35.7 Effect of modification on accrued alimony
- § 35.10 Facts justifying modification
- § 35.11 Inadequacy of original order
- § 35.12 Changes in health of the parties
- § 35.13 Child's increased earnings, expenses or needs
- § 35.14 Changes in custody or child support
- § 35.15 Increases in cost of living
- § 35.16 Changes in earnings or assets of the payor
- § 35.17 Changes in earnings or assets of the payee
- § 35.18 Loss of employment
- § 35.19 Effects of general business conditions
- § 35.20 Rehabilitation after divorce
- § 35.21 Remarriage of payor
- § 35.22 Remarriage of payee
- § 35.23 Misconduct of the party receiving alimony
- § 35.24 Criteria to be considered for modification
- § 35.25 Modification of alimony based upon cohabitation
- § 35.26 Proof of cohabitation
- § 35.27 Relief available based upon cohabitation
- § 35.28 Burden of proof and notice requirement
- § 35.29 Modification and appeal distinguished
- § 35.30 Effect of Child Support Guidelines

- ***LexisNexis Practice Guide: Connecticut Family Law***, Louise Truax, Editor, 2020 edition, Matthew Bender, 2019.
 - Chapter 5. Alimony
 - Part III: Preparing for the Temporary Alimony Determination
 - § 5.20 Modifying Temporary Alimony Orders
 - Part V: Seeking a Modification of Alimony Orders
 - § 5.29 CHECKLIST: Seeking a Modification of Alimony Orders
 - § 5.30 Analyzing statutory provisions for modification
 - § 5.31 Construing provisions prohibiting or limiting modification
 - § 5.32 Determining the underlying alimony order to be modified
 - § 5.33 Proving a substantial change in circumstances
 - § 5.34 Determining criteria to be considered for a modified award
 - § 5.35 Preparing a Motion for Modification
 - § 5.36 Seeking a retroactive modification
 - § 5.37 Interpreting "Second Look" provisions**
 - § 5.38 Modifying alimony based upon the cohabitation of the recipient

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References to online databases refer to in-library use of these databases. Remote access is not available.

- *Connecticut Lawyer's Deskbook: A Reference Manual*, 3d ed., LawFirst Publishing, 2008.
Chapter 19. Dissolution of Marriage.
pp. 487-488
- *2 Dupont on Connecticut Civil Practice*, by Ralph Dupont, LexisNexis, 2020.
Chapter 25. Procedure in Family Matters General Provisions
D. Modification
§§ 25-26 Modification of Custody, Alimony or Support.
- *A Practical Guide to Divorce in Connecticut*, Barry F. Armata et al., Editor, 2014, Massachusetts Continuing Legal Education, with 2018 supplement.
Chapter 6. Alimony
§ 6.13 Alimony Modification
§ 6.14 Consideration of Property in Alimony Modification
§ 6.16 Second Look
- *Friendly Divorce Guidebook for Connecticut: Planning, Negotiating and Filing Your Divorce*, by Barbara Kahn Stark, LawFirst Publishing, 2003.
Chapter 11. Alimony.
Reduction and Modification, p. 293
- 5 Arnold H. Rutkin, *Family Law and Practice*, Matthew Bender, 2020 (also available on Lexis).
Chapter 52. Modification of Matrimonial Determinations
§ 52.02 Modification of Maintenance or Alimony
- Cynthia George, *Combating The Effects Of Inflation On Alimony And Child Support Orders*, 75 *Connecticut Bar Journal* 223 (1983).

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries](#).

Table 1: [Dan v. Dan](#), 315 Conn. 1 (2014)

<p>Grounds for modification of alimony or support orders and judgments. Conn. Gen. Stat. § 46b-86(a) (2019)</p>
<p>“We begin our analysis with a review of the legal principles governing the modification of alimony awards. ‘It is ... well established that when a party, pursuant to § 46b–86, seeks a postjudgment modification of a dissolution decree ... he or she must demonstrate that a substantial change in circumstances has arisen subsequent to the entry of the [decree].’ <i>Borkowski v. Borkowski</i>, 228 Conn. 729, 736, 638 A.2d 1060 (1994). ‘Once a trial court determines that there has been a substantial change in the financial circumstances of one of the parties, the same criteria that determine an initial award of alimony ... are relevant to the question of modification.’”</p> <p>Dan v. Dan, 315 Conn. 1, 8–9, 105 A.3d 118 (2014).</p>
<p>“For the following reasons, we now conclude that an increase in the supporting spouse’s income, standing alone, ordinarily will not justify the granting of a motion to modify an alimony award.”</p> <p>Dan v. Dan, 315 Conn. 1, 10, 105 A.3d 118, 124 (2014).</p>
<p>“When the initial award was not sufficient to fulfill the underlying purpose of the award, however, an increase in the supporting spouse’s salary, in and of itself, may justify an increase in the award. For example, if the initial alimony award was not sufficient to maintain the standard of living that the supported spouse had enjoyed during the marriage because the award was based on a reduction in the supporting spouse’s income due to unemployment or underemployment as a result of an economic downturn, and, after the divorce, the supporting spouse’s income returns to its previous level, a modification might well be justified.”</p> <p>Dan v. Dan, 315 Conn. 1, 15–16, 105 A.3d 118 (2014).</p>
<p>“Accordingly, we reject the defendant’s claim that Dan held, as an inviolable rule of law, that it is not a legitimate purpose of alimony to allow the supported spouse to share the supporting spouse’s standard of living after the divorce, even to a limited extent. Rather, the main teachings of Dan are that the ordinary, but not necessarily exclusive, purposes of alimony are either to allow the supported spouse to continue enjoying the standard of living that he or she enjoyed during the marriage or to allow the supported spouse to become self-sufficient; <i>id.</i>, at 10–11, 105 A.3d 118; and that any modification of an alimony award should implement the original purpose of the award to the extent possible.”</p> <p>Cohen v. Cohen, 327 Conn. 485, 504, 176 A.3d 92, 103 (2018).</p>

Section 2: Modification of Child Support

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to modification of support including grounds but excluding IV-D child support cases.

DEFINITIONS:

- **Modification of child support:** “any final order for the periodic payment of permanent alimony or support or an order for alimony or support pendente lite may at any time thereafter be continued, set aside, altered or modified by said court upon a showing of a substantial change in the circumstances of either party or upon a showing that the final order for child support substantially deviates from the **child support guidelines**” Conn. Gen. Stat. § [46b-86](#) (a) (2019).
- **Burden of Proof:** The plaintiff bore the burden of persuading the court that his circumstances had changed **substantially...**(“[t]he party seeking modification bears the burden of showing the existence of a substantial change in the circumstances” [Bolat v. Bolat](#), 191 Conn. App. 293, 315, 215 A.3d 736, cert. denied, 333 Conn. 918, 217 A.3d 634 (2019).
- “...a party seeking a modification must show that the continuation of the prior order would be unfair or inequitable.” [Robinson v. Robinson](#), 172 Conn. App. 393, 403, 160 A.3d 376 (2017).
- “We therefore conclude, in light of the different purposes of alimony and child support, that the Appellate Court improperly relied on *Dan in determining that* ‘both alimony and child support orders are subject to the same modification requirements under § 46b-86 (a);’” [McKeon v. Lennon](#), 321 Conn. 323, 336, 138 A.3d 242 (2016).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2019)
 - § [46b-86](#). Modification of alimony or support orders and judgments
 - (a) *[Substantial change in circumstances or deviation from child support guidelines as grounds for modification]*
 - (c) *[When a motion to modify must be filed with the Family Support Magistrate Division]*
- Chapter 816. Support ([2020 Supplement](#))
§ [46b-215](#)(e). Relatives obliged to furnish support. Attorney General and attorney for town as parties. Orders.

- § [46b-215e](#). Initial or modified support order where child support obligor is institutionalized or incarcerated.
- § [46b-224](#). Effect of court order changing or transferring guardianship or custody of child on preexisting support order.
- § [46b-231](#). Definitions. Family Support Magistrate Division. ([2020 Supplement](#))

[Chapter 817](#). Uniform Interstate Family Support Act (§§ 46b-301 to 46b-425)

LEGISLATIVE HISTORY:

- P.A. 90-188. An act concerning use of guidelines for modification of support orders
House Bill No. 5668 (1990)
Senate proceedings: 2702-2705, 2754-2755
House Proceedings: 3624-3628
Hearings, Judiciary Committee: 411-412, 415-416, 421-428, 475, 502-503, 512, 553-554, 556, 589-591, 619-620, 621, 628

REGULATIONS:

- Conn. Agencies Regs. (3/7/2015)
Title IV-D Program
§ [17b-179\(m\)-8](#). Review and modification
- [Child Support and Arrearage Guidelines](#) (July 1, 2015)

PRACTICE BOOK:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Connecticut Practice Book (2020)
[Chapter 25](#). Procedure in Family Matters
§ [25-26](#). Modification of custody, alimony or support
§ [25-30](#). Statements to be filed
§ [25-57](#). Affidavit concerning children

OLR REPORTS:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication. Current law may be different from what is discussed in the reports.

- Lawrence K. Furbish, *Child Support Obligation when the Custodial Parent and Child Relocate*, Connecticut General Assembly. Office of Legislative Research Report, [99-R-0395](#) (March 15, 1999).
- George Coppolo, *Modification of Child Support Order*, Connecticut General Assembly. Office of Legislative Research Report, [2007-R-0003](#) (January 16, 2007).

FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- **Official Forms**
[Filing a Motion for Modification](#)
[JD-FM-174](#). Motion for Modification
[JD-FM-174H](#). Motion for Modification Help Text
[JD-FM-202](#). Request for Leave

- *Library of Connecticut Family Law Forms*, 2d ed., MacNamara, Welsh, and George, editors, Connecticut Law Tribune, 2014.
16-005 Motion for Modification of Unallocated Alimony and Support
16-009 Modification Agreement

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

- [Righi v. Righi](#), 172 Conn. App. 427, 434, 160 A.3d 1094 (2017). "The court granted the defendant's motion to modify on the basis of the second modification criteria, that there was a substantial deviation from the child support guidelines without the requisite specific finding that application of the guidelines would be inequitable or inappropriate. Under these circumstances, it was not necessary for the court to find first that there had been a change in circumstances before granting the defendant's motion to modify."
- [LeSueur v. LeSueur](#), 172 Conn. App. 767, 779, 162 A.3d 32 (2017). "**For the foregoing reasons, we conclude that the court did not abuse its discretion in modifying the defendant's child support obligation to December 9, 2014**, rather than to July 14, 2014, because it reasonably determined that December 9, 2014 was the proper date given that as of that date the primary physical custody of the daughter '*was no longer temporary.*' (Emphasis added.)"

"Although there is no bright line test for determining the date of retroactivity of child support payments, this court has set forth factors that may be considered."

- [Gabriel v. Gabriel](#), 324 Conn. 324, 152 A.3d 1230 (2016). "**Specifically, the plaintiff asserted that 'the financial circumstances of the parties have changed as a result of the defendant's relocation. [The defendant] no longer has primary residential custody of the children and is no longer primarily responsible for their financial needs. The [plaintiff] now has custody and primary responsibility for all three minor children.'** Both the trial court and the Appellate Court concluded that the plaintiff's filing of the motion for modification triggered § 46b-224. [Gabriel v. Gabriel](#), supra, 159 Conn. App. at 820-21, 123 A.3d 453. **We agree.**" (p. 332)

"[I]n order to address the plaintiff's motion for modification, it was necessary for the trial court to know how much of the original award of unallocated alimony and support was attributed to child support. Because the court that issued the original support order did not make such a finding, the trial court was required to make that determination before ruling on the motion for modification. . . . On remand, the trial court should conduct a hearing to

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determine, based on evidence presented by the parties, the specific amount of child support required at the time the defendant had primary physical custody of the parties' children." (p. 340)

- [McKeon v. Lennon](#), 321 Conn. 323, 336, 138 A.3d 242 (2016). "We therefore conclude, in light of the different purposes of alimony and child support, that the Appellate Court improperly relied on *Dan* in determining that 'both alimony and child support orders are subject to the same modification requirements under § 46b-86 (a)'; *McKeon v. Lennon*, supra, 155 Conn. App. at 434, 109 A.3d 986; and that the court improperly concluded that the plaintiff was required to show additional circumstances, beyond the increase in the defendant's income, to justify modification of the child support award."
- [Olson v. Mohamradu](#), 169 Conn. App. 243, 248, 149 A. 3d 198 (2016). "The Supreme Court held that 'the Appellate Court improperly concluded that the defendant's voluntary relocation and income change necessarily precluded him from establishing a substantial change in circumstances.' *Olson v. Mohamradu*, supra, 310 Conn. at 670-71, 81 A.3d 215. The court reasoned as follows: '[T]he trial court should have taken into account the defendant's motivation for relocating in deciding the threshold issue of whether there was a substantial change of circumstances warranting modification. In other words ... the trial court should have determined whether the defendant's alleged inability to pay was a result of his own extravagance, neglect, misconduct or other unacceptable reason.... Because the trial court made no finding on the culpability of the defendant's conduct, we conclude that the trial court incorrectly applied the law when it denied the defendant's motion for modification.'"
- [Malpeso v. Malpeso](#), 165 Conn. App. 151, 176-177, 138 A.3d 1069 (2016). "Section 46b-86 (a) provides in relevant part: 'No order for periodic payment of permanent alimony or support may be subject to retroactive modification, except that the court may order modification with respect to any period during which there is a *pending motion for modification of an alimony or support order from the date of service of notice of such pending motion upon the opposing party...*' (Emphasis added.) Therefore, notwithstanding the general rule that in Connecticut, absent an agreement, a parent's obligation to support a child ends at the age of majority, the party seeking to terminate such obligation must file a motion with the court."
- [Farmassony v. Farmassony](#), 164 Conn. App. 665, 672-673, 138 A.3d 417 (2016). "The child support award, as defined

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in the child support and arrearage guidelines, § 46b-215a-1 of the Regulations of Connecticut State Agencies, and in the parties' separation agreement, includes child care costs. Thus, the entirety of the order of child support, including its provisions for the payment of child care costs, is part of the order for support. Therefore, § 46b-86 (a) bars any retroactive modification of the order of child care costs because it is an integral part of the overall order of support. Accordingly, we reverse the order of the trial court for retroactive repayment of the child care costs."

- Vincent v. Vincent, Superior Court, Judicial District of Fairfield at Bridgeport, No. FBT-FA12-4041710-S (April 26, 2016) (2016 WL 2891285) (2016 Conn. Super. LEXIS 399). "There are a number of cases in which a motion for modification of support has been denied, despite a substantial change in circumstances, when the moving party's culpable conduct formed the sole basis of the substantial change in circumstances. In Sanchione v. Sanchione, 173 Conn. 397, 407, 378 A.2d 522 (1977), the court held that culpable conduct precludes a threshold showing of a substantial change in circumstances. 'Nearly every human action is voluntary, but not every voluntary action is fault worthy. The words used by this court in Sanchione-"fault . . . extravagance, neglect, misconduct or other unacceptable reason"-underscore that the crux of the inquiry is culpability and not voluntariness. ' . . . The *nationale* [sic] in Sanchione was recently affirmed in Olson. The court held that if: 'a party's voluntary action gives rise to the alleged substantial change in circumstances warranting modification, the court must assess the motivations underlying the voluntary conduct in order to determine whether there is culpable conduct foreclosing a threshold determination of a substantial change in circumstances.' *Olson at 684.*"
- Collin v. Collin, Superior Court, Judicial District of Windham at Putnam, No. WWM-FA10-4010129-S (February 4, 2016) (61 Conn. L. Rptr. 798, 800) (2016 WL 888066) (2016 Conn. Super. LEXIS 332). "In determining the question on appeal as to whether the children's social security dependency benefits, which are independent of the defendant's social security disability payments, should be used to pay the defendant's child support order including any arrearage that accrued between June 2012 and December 2014, the cases of Jenkins v. Jenkins, 243 Conn. 584, 704 A.2d 231(1998) and Tarbox v. Tarbox, 84 Conn. App. 403, 853 A.2d 614 (2004), are instructive."

"Although divergent decisions exist on this subject not only in our trial courts...our appellate courts have not provided authority for this court to conclude that the defendant is entitled to use the children's dependency benefits as a

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credit or reimbursement against her arrearage. Our appellate court cases, however, have said that the amount of children's dependency benefits should be included in the gross income of the noncustodial parent as earnings of the contributing parent for purposes of determining the amount of that parent's child support obligation under the guidelines. In addition, our courts have stated that the noncustodial parent should file a motion for modification of the child support obligation reflecting a change in financial circumstances, a procedure consistent with § 46b-86(a)." (Conn. L. Rptr. p. 802)

- [Coury v. Coury](#), 161 Conn. App. 271, 294-295, 128 A.3d 517 (2015). **"The defendant's child support obligation to the plaintiff was suspended by operation of law pursuant to General Statutes § 46b-224 when the court transferred sole physical custody of the parties' three minor children to him. Extending [Shedrick](#) to the facts of this case, and prohibiting the court from retroactively modifying the child support portion of the unallocated support award would conflict with § 46b-224, which requires modification of a child support order, or the child support portion of an unallocated support order, from the moment that a court transfers custody of minor children from a recipient of child support to a payor of child support. See [Tomlinson v. Tomlinson](#), 305 Conn. 539, 552, 557, 46 A.3d 112 (2012) (noting that § 46b-224 operates to require modification of child support order and holding that child support portion of unallocated support order was modifiable despite provision in parties' separation agreement prohibiting modification)."**
- [Fulton v. Fulton](#), 156 Conn. App. 739, 749, 116 A.3d 311 (2015). **"The parties and the court are entitled to rely on the financial affidavits submitted at the time of the dissolution, which are presumed to be reliable for that purpose. If, however, a party makes a preliminary showing that an affidavit submitted at the time of the dissolution was inaccurate, that the error was not intentional or misleading to the court or another party, and that it would thus be inequitable to rely only on the mistaken information, a postdissolution court may consider factors other than the financial affidavit in deciding whether there has been a substantial change of circumstances."**
- [Fox v. Fox](#), 152 Conn. App. 611, 621, 99 A.3d 1206 (2014). **"Thus, [w]hen presented with a motion for modification, a court must first determine whether there has been a substantial change in the financial circumstances of one or both of the parties.... Second, if the court finds a substantial change in circumstances, it may properly consider the motion and, on the basis of the § [46b-84] criteria, make an order for modification...."**

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(Citations omitted; footnotes altered; internal quotation marks omitted.) [Olson v. Mohamradu](#), 310 Conn. 665, 671-74, 81 A.3d 215 (2013).”

- [Olson v. Mohamradu](#), 310 Conn. 665, 684, 81 A.3d 215 (2013). “A court that is confronted with a motion for modification under § 46b-86(a) must first determine whether the moving party has established a substantial change in circumstances. In making this threshold determination, if a party's voluntary action gives rise to the alleged substantial change in circumstances warranting modification, the court must assess the motivations underlying the voluntary conduct in order to determine whether there is *culpable* conduct foreclosing a threshold determination of a substantial change in circumstances. If the court finds a substantial change in circumstances, then the court may determine what modification, if any, is **appropriate in light of the changed circumstances.**”
- [Tanzman v. Meurer](#), 309 Conn. 105, 117-118, 70 A.3d 13 (2013). “As the present case shows, the failure to specify the dollar amount of the earning capacity leaves the relevant party in doubt as to what is expected from him or her, and makes it extremely difficult, if not impossible, both for a reviewing court to determine the reasonableness of the financial award and for the trial court in a subsequent proceeding on a motion for modification to determine whether there has been a substantial change in circumstances. We therefore conclude, pursuant to our inherent supervisory authority, that, when a trial court has based a financial award pursuant to § 46b-82 or § 46b-86 on a party's earning capacity, the court must determine the specific dollar amount of the party's earning capacity. We further conclude that, because the trial court in the present case could not reasonably have concluded that there had been no substantial change in the plaintiff's earning capacity between the time of the original financial award and the motion for modification without ever having determined the plaintiff's specific earning capacity, the trial court abused its discretion when it denied the motion for modification. Finally, we conclude that the remedy when the trial court has indicated that it failed to determine the specific amount of a party's earning capacity at the time of the original financial award is for the trial court to conduct **a new hearing on the issue.**”
- [Tomlinson v. Tomlinson](#), 305 Conn. 539, 556, 46 A.3d 112 (2012). “Although we recognize that it is fundamental that ‘parties are free to contract for whatever terms on which they may agree,’ and, accordingly, that ‘[w]hether provident or improvident, an agreement moved on calculated considerations is entitled to the sanction of the law’; (internal quotation marks omitted) [Crews v. Crews](#),

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295 Conn. 153, 169, 989 A.2d 1060 (2010); it is equally clear that contracts relating to the maintenance or custody of children 'will not be enforced longer than it appears to be for the best interests of the child, and parents entering into such a contract are presumed to do so in contemplation of their obligations under the law and the rights of the child.' (Internal quotation marks omitted.) [Guille v. Guille](#), supra, 196 Conn. at 264, 492 A.2d 175. Because the parties enter into a contract in contemplation of their obligations under the law, a contractual provision is ineffective to prohibit modification of child support when, as in the present case, there has been a change in custody."

- [Shipman v. Roberts](#), 130 Conn. App. 332, 338-339, 23 A.3d 764 (2011). "In the present case, the obligor is incarcerated for the criminal offenses of manslaughter and risk of injury to a child: offenses against the child who was killed. The deceased child is not the subject of the support order nor is she the custodial party. Although we certainly agree with the minor child that the defendant's conduct was traumatizing to the plaintiff and the minor child, they were not the victims of the criminal offenses for which the defendant is incarcerated. Thus, the court properly determined that § 46b-215e does not bar a modification of the defendant's child support obligation."
- [Cannon v. Cannon](#), 109 Conn. App. 844, 851, 953 A.2d 694 (2008). "It is well within the law and the court's discretion to make the modification retroactive to the date that the motion for modification was served, which was July 9, 2003. See [Sabrowski v. Sabrowski](#), 105 Conn. App. 49, 57, 935 A.2d 1037 (2007)."
- [Cervizzi v. Cervizzi](#), Superior Court, Judicial District of Tolland at Rockville, No. FA02-0079710S (August 29, 2007) (2007 WL 2597615) (2007 Conn. Super. LEXIS 2313). "The husband claims that as the result of his voluntarily retiring from his principle employment, there has been a substantial change in circumstances justifying a downward modification of his child support order For the foregoing reasons, the motion to modify is denied."
- [Santoro v. Santoro](#), 70 Conn. App. 212, 218, 796 A.2d 567 (2002). "In addition, a child support order cannot be modified unless there is (1) a showing of a substantial change in the circumstances of either party or (2) a showing that the final order for child support substantially deviates from the child support guidelines absent the requisite findings."
- [W. v. W.](#), 248 Conn. 487, 494, 728 A.2d 1076 (1999). "Therefore, we conclude that regardless of whether the

child at issue in the present case is considered a 'child of the marriage,' the trial court had subject matter jurisdiction to order pendente lite child support."

- [Turner v. Turner](#), 219 Conn. 703, 720, 595 A.2d 297 (1991). *Substantial deviation from the child support guidelines (added by P.A. 90-188) applies retroactively.* See [Table 1](#).
- [Brock v. Cavanaugh](#), 1 Conn. App. 138, 141, 468 A.2d 8 (1984). "The obligation to comply with a divorce decree requiring support payments is not conditioned upon the ability of the noncustodial parent to exercise rights of visitation. [Bozzi v. Bozzi](#), supra, 237-38. Furthermore, a support order can only be modified by the court."
- [Hardisty v. Hardisty](#), 183 Conn. 253, 258-259, 439 A.2d 307 (1981). "Once a trial court determines that there has been a substantial change in the financial circumstances of one of the parties, the same criteria that determine an initial award of alimony and support are relevant to the question of modification."

WEST KEY NUMBERS:

- *Child Support.*
 - VI. Modification, #230-364.
 - (A) In general, #230-235
 - (B) Particular factors and grounds, #236-307
 - 1. In general, #236-244
 - 2. Factors relating to obligors, #250-266
 - 3. Factors relating to custodian, #270-285
 - 4. Factors relating to child, #290-307
 - (C) Proceedings, #320-343
 - (D) Amount and incidents of award, #350-364

DIGESTS:

- *Connecticut Family Law Citations*, by Cynthia C. George and Aidan R. Welsh, LexisNexis, 2020.
 - Chapter 10. Child Support
 - § 10.07. Modification of child support
- ALR Quick Index:
 - Custody and Support of Children. Change or Modification

ENCYCLOPEDIAS:

- 24A *Am. Jur. 2d* Divorce and Separation (2018)
 - II. Child Custody and Support; Visitation Rights
 - B. Child Support
 - 8. Modification of Child Support Award or Decree
 - a. In General §§ 944-949
 - b. Change in Circumstances Required
 - (1) In General §§950-956
 - (2) Change in Income of Obligor §§ 957-962
 - c. Procedure §§ 963-966

- 27C **C.J.S.** Divorce (2016)
 - VII. Custody, Visitation, and Support of Children
 - C. Support of Children
 - 6. Order or Decree
 - c. Modifying or Vacating Order or Decree
 - 1203-1225
- Elizabeth O'Connor Tomlinson, *Cause of Action for Reduction of Amount of Child Support Based on Changed Financial Circumstances of Obligor*, 55 *COA 2d* 687 (2012)
- *Change In Circumstances Justifying Modification Of Support Order*, 1 *POF2d* 1 (1974).
 - §§ 6-16. Proof of change in circumstances justifying increase in child support payments
 - §§17-29. Proof of change in circumstances justifying decrease in child support payments
- *Proof of Modification of Child Support Due to Unemployment of Noncustodial Parent in Child Support Hearings*, 135 *POF 3d* 341 (2013).
- *Proof of Imputing Income to Parent in Modification of Child Support Proceedings*, 140 *POF 3d* 1 (2014).

TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., 2010, Thomson West, with 2019-2020 supplement (also available on Westlaw).
 - Chapter 37. Temporary Child Support
 - § 37:11 Modification
 - Chapter 39. Modification of child support provisions of judgment
 - § 39:2. Grounds for modification
 - § 39:3. Grounds for modification, deviation from the Child Support Guidelines
 - § 39:5. Timing of factors to be considered
 - § 39:6. Parties entitled to seek modification
 - § 39:9. Modifiability of support payments; limitations
 - § 39:10. Modification based on agreement of the parties
 - § 39:11. Automatic modification provisions
 - § 39:12. Modification where no order for support originally entered
 - § 39:13. Specific grounds for modification of support
 - § 39:14. Factors relating to visitation or custody
 - § 39:16. Remarriage of either parent
 - § 39:17. Death of either parent
 - § 39:18. Change in financial circumstances of either parent
 - § 39:19. Health of the children

- § 39:20. Changes in cost of living
- § 39:21. Earnings of the child
- § 39:22. Effect of modifications on arrearages;
retroactive changes
- § 39:23. Effect of prior modification

- ***LexisNexis Practice Guide: Connecticut Family Law***, Louise Truax, Editor, 2020 edition, LexisNexis, 2019.
Chapter 7. Child Support.
Part IX: Preparing Motions for Modification
- **2 *Dupont on Connecticut Civil Practice***, 2020-2021 ed., by Ralph Dupont, LexisNexis, 2020.
Chapter 25. Procedure in Family Matters General Provisions
D. Modification
§§ 25-26 Modification of Custody, Alimony or Support.
- **1 *Legal Rights of Children 3d***, by Donald T. Kramer, Thomson West, 2020 (also available on Westlaw).
Chapter 4. Child Support and Enforcement
§ 4:7. Modification
§ 4:8 Retroactivity of Child Support Order
- **5 Arnold H. Rutkin, *Family Law and Practice***, Matthew Bender, 2020 (also available on Lexis).
§ 52.03 Modification of Child Support
[3]. Grounds for modification
[4]. Defenses
[a]. Emancipation of Child
[b]. Frustration of Visitation
[c]. Termination of Parental Rights; Adoption

LAW REVIEWS:

Public access to law review databases is available on-site at each of our [law libraries](#).

- ***Calculating And Collecting Child Support: Sixteen Years After The Guidelines...And Counting***, 23 *Family Advocate* no. 2 (Fall 2000).
—Alexander S. deWitt, ***Making Your Case For Modification***, p. 30.
- Cynthia George, ***Combating The Effects Of Inflation On Alimony And Child Support Orders***, 75 *Connecticut Bar Journal* 223 (1983).

PAMPHLETS:

- ***Connecticut Network for Legal Aid. [How To Change Your Child Support Order](#)***

Table 2: [Turner v. Turner](#), 219 Conn. 703 (1991)

<p>Grounds for modification of alimony or support orders and judgments. Conn. Gen. Stat. § 46b-86(a) (2017)</p> <ul style="list-style-type: none">• substantial change in circumstances; or• substantial deviation from child support guidelines
<p>“Both the ‘substantial change of circumstances’ and the ‘substantial deviation from child support guidelines’ provision establish the authority of the trial court to modify existing child support orders to respond to changed economic conditions. The first allows the court to modify a support order when the financial circumstances of the individual parties have changed, regardless of their prior contemplation of such changes. The second allows the court to modify child support orders that were once deemed appropriate but no longer seem equitable in the light of changed social or economic circumstances in the society as a whole, as reflected in the mandatory periodic revisions of the child support guidelines. See General Statutes 46b-215a. In light of the similar purposes and language of these provisions, we conclude that the legislature intended both provisions to be applicable to orders entered before the provisions became law.” Turner v. Turner, 219 Conn. 703, 718 (1991).</p>
<p>“In further support of our interpretation of the legislative intent underlying P.A. 90-188, we take judicial notice of a statutory development that occurred in the 1991 legislative session, a few months after the trial court rendered its judgment in this case. While the legislature was considering a bill that would establish a standard by which a court could determine what degree of deviation from the child support guidelines might be considered ‘substantial,’ an attorney for a legal services organization informed the Judiciary Committee that trial courts had construed P.A. 90-188 to preclude its retrospective application to orders entered before the effective date of the act. See Conn. Joint Standing Committee Hearings, Judiciary, March 22, 1991, pp. 888-89, remarks of Amy Eppler-Epstein. [fn10] The legislature subsequently enacted Public Acts 1991, No. 91-76, 1 (P.A. 91-76), which added the following provisions to General Statutes 46b-86 immediately following the text that had been added by P.A. 90-188: ‘There shall be a rebuttable presumption that any deviation of less than fifteen percent from the child support guidelines is not substantial and any deviation of fifteen percent or more from the guidelines is substantial. Modification may be made of such support order without regard to whether the order was issued before, on or after the effective date of this act.’ This act was signed by the governor on May 9, 1991, and became effective on that date. See Public Acts 1991, No. 91-76, 7.” Turner v. Turner, 219 Conn. 703, 718-719 (1991).</p>
<p>“The magistrate concluded, nevertheless, that the express statement of retroactivity added by the 1990 amendment was intended to apply only to the ‘substantial change of circumstances’ provision of 46b-86. We conclude, to the contrary, that these amendments, which were enacted in the same legislative session to enhance the ability of parties to modify support orders, must be construed to create one consistent body of law.” Turner v. Turner, 219 Conn. 703, 718 (1991).</p>

Section 2a: Factors Used in Child Support Modification

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the factors used by the courts in determining and modifying child support.

DEFINITIONS:

- **Earning capacity:** “is an amount which a person can realistically be expected to earn considering such things as his vocational skills, employability, age and health.” [Weinstein v. Weinstein](#), 280 Conn. 764, 772, 911 A.2d 1077 (2007).
- “The guidelines define **gross income** as the “average weekly earned and unearned income from *all sources* before deductions....” (Emphasis added.) Regs., Conn. State Agencies § 46b-215a-1 (11). Gross income includes, inter alia: “salary ... commissions, bonuses and tips ... [and] profit sharing, deferred compensation and severance pay....” Id., § 46b-215a-1 (11)(A)(i), (iii)-(iv). **Net income** is defined as “gross income minus allowable deductions.” Id., § 46b-215a-1 (17).” [Hendricks v. Haydu](#), 160 Conn. App. 103, 112-113, 124 A.3d 554 (2015).
- **Supplemental order** “... to pay a percentage of a future lump sum payment, such as a bonus. Such supplemental orders may be entered only when: (i) such payment is of an indeterminate amount; and (ii) the percentage is generally consistent with the [guidelines] schedule....” Regs. Conn. State Agencies § 46b-215a-2b (c)(1)(B).” [Hendricks v. Haydu](#), 160 Conn. App. 103, 112-113, 124 A.3d 554 (2015).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2019).
 - § [46b-84](#)(d). Parents' obligation for maintenance of minor child. Order for health insurance coverage.
 - § [46b-215b](#)(c). Guidelines to be used in determination of amount of support and payment on arrearages and past-due support.
 - § [46b-215e](#). Initial or modified support order where child support obligor is institutionalized or incarcerated.
 - § [46b-231](#). Definitions. Family Support Magistrate Division. ([2020 Supplement](#))

REGULATIONS:

- [Child Support and Arrearage Guidelines](#) (July 1, 2015)

CASES:

- [Flood v. Flood](#), 199 Conn. App. 67, 234 A.3d 1076, cert. denied, 335 Conn. 960, 239 A.3d 317 (2020). “Our Supreme Court in [Dowling](#) provided clear guidance for determining child support obligations in high income situations: ‘In a trilogy of recent cases, [our Supreme] [C]ourt has already discussed the guidelines and accompanying schedule in

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

detail. See [Maturo v. Maturo](#), *supra*, 296 Conn. 80, 995 A.2d 1; [Misthopoulos v. Misthopoulos](#), [297 Conn. 358, 999 A.2d 721 (2010)]; [Tuckman v. Tuckman](#), 308 Conn. 194, 61 A.3d 449 (2013).”

- [Robinson v. Robinson](#), 172 Conn. App. 393, 397–98, 160 A.3d 376 (2017). “**Section 46b–215a–1(11)** of the Regulations of Connecticut State Agencies defines gross income as the average weekly earned and unearned income from all sources before deductions That section includes a nonexhaustive list of twenty-two inclusions. In that list of inclusions is: **‘alimony being paid by an individual *who is not a party to the support determination.*’** (Emphasis added.) Regs., Conn. State Agencies § 46b–215a–1(11)(A)(xix). The specific wording of this inclusion makes clear that only alimony received from a nonparty to the support determination is included in **gross income.**” [Internal quotation marks omitted.]
- [Valentine v. Valentine](#), 164 Conn. App. 354, 368–369, 141 A.3d 884 (2016). “**In the present case, the court had before it the parties’ financial affidavits, reflecting their net incomes, and it specifically stated that it had considered the ‘amount and sources of income,’ and had taken ‘into account the net income of the parties’ in fashioning periodic alimony and child support orders.** The court further indicated that its award of \$300 per week in child support, retroactive to May 20, 2013, and reduced to \$215 per week as of the date the oldest child graduated from high school, June 27, 2014, was **‘in accordance with the child support guidelines,’** which would have required a consideration of the parties’ net incomes. Although the court made passing references to the parties’ gross incomes, it never stated that it was relying solely on their gross incomes. Facially, the court’s consideration of alimony and child support included evidence of the parties’ net incomes. The court was not required to make explicit findings as to net income. See [Hughes v. Hughes](#), 95 Conn. App. 200, 207–208, 895 A.2d 274, cert. denied, 280 Conn. 902, 907 A.2d 90 (2006).”
- [Mingo v. Blake](#), Superior Court, Judicial District of Hartford at Hartford, No. HHD-FA15-4077658-S (January 22, 2016) (61 Conn. L. Rptr. 714) (2016 WL 572028) (2016 Conn. Super. LEXIS 149). “**General Statutes § 46b–215e** governs a court’s authority to impose a current child support order upon an incarcerated obligor. Although § 46b–215e does not explicitly define the phrase **‘substantial assets,’** the statute indicates that **‘an initial order for current support [shall be] ... based upon the obligor’s ... substantial assets, if any, in accordance with the child support guidelines** established pursuant to section 46b–215a.’ (Emphasis added.) Thus, the plain language of the governing statute directs a court to consider the child support guidelines when imposing a

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current order of child support upon an incarcerated obligor.” (p. 715)

“The court concludes that the pending personal injury claim of the defendant was properly considered an asset by the FSM. And while the claim was unliquidated and the precise value undetermined at the time of the hearing, there was ample evidence from which he could properly conclude that the asset was ‘substantial.’” (p. 716)

- [Hendricks v. Haydu](#), 160 Conn. App. 103, 112-113, 124 A.3d 554 (2015). “The guidelines also permit courts, in appropriate cases, to enter ‘a supplemental order ... to pay a percentage of a future lump sum payment, such as a bonus. Such supplemental orders may be entered only when: (i) such payment is of an indeterminate amount; and (ii) the percentage is generally consistent with the [guidelines] schedule....’ Regs., Conn. State Agencies § 46b-215a-2b (c)(1)(B). ‘A supplemental order treats the unknown future lump sum payment separately from the basic current support order and is intended to account only for those instances in which the parties have knowledge of an anticipated future lump sum payment of an unknown amount, such as a bonus.’ (Internal quotation marks omitted.) [Gentile v. Carneiro](#), 107 Conn.App. 630, 643, 946 A.2d 871 (2008). However, our Supreme Court has stated that it broadly interprets the ‘definition of gross income contained in the guidelines to include items that, in effect, increase the amount of a parent’s income that is *available for child support purposes*.’ (Emphasis added.) [Unkelbach v. McNary](#), supra, 244 Conn. at 360, 710 A.2d 717; see also [Tuckman v. Tuckman](#), 308 Conn. 194, 213-14, 61 A.3d 449 (2013) (remanding ‘the ... case for a determination of what portion of the defendant’s income was available income for purposes of fashioning ... child support orders’).
- [Tanzman v. Meurer](#), 309 Conn. 105, 113-114, 70 A.3d 13 (2013). “It is well established that the trial court may under appropriate circumstances in a marital dissolution proceeding base financial awards [pursuant to General Statutes §§ 46b-82 (a) 3 and 46b-86] on the earning capacity of the parties rather than on actual earned income. [Lucy v. Lucy](#), 183 Conn. 230, 234, 439 A.2d 302 (1981). Earning capacity, in this context, is not an amount which a person can theoretically earn, nor is it confined to actual income, but rather it is an amount which a person can realistically be expected to earn considering such things as his vocational skills, employability, age and health.’ (Internal quotation marks omitted.) [Weinstein v. Weinstein](#), 280 Conn. 764, 772, 911 A.2d 1077 (2007). ‘When determining earning capacity, it ... is especially appropriate for the court to consider whether [a person] has wilfully restricted his [or her] earning capacity to avoid support obligations.’ [Bleuer v.](#)

[Bleuer](#), 59 Conn.App. 167, 170, 755 A.2d 946 (2000).”

- [Maturio v. Maturio](#), 296 Conn. 80, 106, 995 A.2d 1 (2010). “...when there is a proven, routine consistency in annual bonus income, as when a bonus is based on an established percentage of a party's steady income, an additional award of child support that represents a percentage of the net cash bonus also may be appropriate if justified by the needs of the child. When there is a history of wildly fluctuating bonuses, however, or a reasonable expectation that future bonuses will vary substantially, as in the present case, an award based on a fixed percentage of the net cash bonus is impermissible unless it can be linked to the child's **characteristics and demonstrated needs.**”
- [Auerbach v. Auerbach](#), 113 Conn. App. 318, 334-335, 966 A.2d 292 (2009). “It is well established that the trial court may under appropriate circumstances in a marital dissolution proceeding base financial awards on the earning capacity of the parties rather than on actual earned income.... Earning capacity, in this context, is not an amount which a person can theoretically earn, nor is it confined to actual income, but rather it is an amount which a person can realistically be expected to earn considering such things as his vocational **skills, employability, age and health**.... [I]t also is especially appropriate for the court to consider whether the defendant has wilfully restricted his earning capacity to avoid support **obligations.**”
- [Battersby v. Battersby](#), 218 Conn. 467, 471-472, 590 A.2d 427 (1991). “The Guidelines themselves list several factors that may be relevant to the determination of support amount, including the ‘needs of a second or prior family’ and ‘other reasonable considerations.’ ”

**FAMILY SUPPORT
MAGISTRATE
DECISIONS:**

- [Family Support Magistrate Decisions](#) are available through the Law Libraries’ website.

**WEST KEY
NUMBERS:**

- *Child Support*.
III. Factors considered, #40-125.
(A) In general, #40-63
(B) Factors relating to custodians and obligors, #70-99
(C) Factors relating to child, #100-125

DIGESTS:

- *Connecticut Family Law Citations*, by Cynthia C. George and Aidan R. Welsh, LexisNexis, 2020.
Chapter 10. Child Support
§ 10.03. Child Support Guidelines
§ 10.04. Additional factors to be considered
[1] Age of child
[2] Child care expenses
[3] Earning capacity

- [4] Emancipation
- [5] Health of child
- [6] Incarceration of obligor
- [7] Needs of the child
- [8] Station

TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., 2010, Thomson West, with 2019-2020 supplement (also available on Westlaw).
 - Chapter 38. Child Support
 - § 38:12. Factors affecting amount of support required
 - § 38:13. Child's need for maintenance**
 - § 38:14. Statutory factors for determining child's need**
 - § 38:17. Parent's ability to provide support**
 - § 38:18. Statutory factors for determining **parents'** respective abilities
 - Chapter 39. Modification of Child-Support Provisions of Judgment
 - § 39:13. Specific grounds for modification of support
 - § 39:14. Factors relating to visitation or custody
 - § 39:15. Circumstances relating to education
 - § 39:16. Remarriage of either parent
 - § 39:17. Death of either parent
 - § 39:17.10. Incarceration or institutionalization
 - § 39:18. Change in financial circumstances of either parent
 - § 39:19. Health of the children
 - § 39:20. Changes in the cost of living
 - § 39:21. Earnings of the child
 - § 39:22. Effect of modification on arrearages; retroactive changes
 - § 39:23. Effect of prior modification
- *LexisNexis Practice Guide: Connecticut Family Law*, Louise Truax, Editor, 2020 edition, LexisNexis, 2019.
 - Chapter 7. Child Support.
 - Part IV: Considering the Statutory Criteria in Establishing Child Support
 - Part VII: Establishing Permanent Child Support Orders

Section 3: Modification of Child Custody

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the authority, grounds and procedures for modification of court orders relating to custody of minor children.

DEFINITION:

- **Modification:** “means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the prior custody determination.” Conn. Gen. Stat. § [46b-115a\(11\)](#) (2019).
- “[T]here is an important distinction to be drawn between **motions to modify custody, which generally require a material change in circumstances**; see [Clougherty v. Clougherty](#), supra, 162 Conn. App. at 868, 133 A.3d 886; and motions to modify visitation alone, which do not require a material change. [Balaska v. Balaska](#), 130 Conn.App. 510, 515–16, 25 A.3d 680 (2011); [Szczerkowski v. Karmelowicz](#), 60 Conn. App. 429, 433, 759 A.2d 1050 (2000).” [Petrov v. Gueorguieva](#), 167 Conn. App. 505, 522 n16, 146 A.3d 26, 38 (2016). (Emphasis added.)
- “We repeat: **not every change in circumstances is material; and not every material change in circumstances necessarily affects the best interests of the child.** To conclude otherwise would be to encourage microscopic analysis of every decision made by a custodial parent in circumstances such as these.” [Clougherty v. Clougherty](#), 162 Conn. App. 857, 873, 133 A.3d 886 (2016). (Emphasis added.)

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stat. (2019).
 - [Chapter 815j](#). Dissolution of Marriage, Legal Separation and Annulment
 - § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
 - § [46b-56a](#). Joint custody. Definition. Presumption. Conciliation. Parental responsibility plan. Modification of orders.
 - § [46b-56e](#). Orders of custody or visitation re children of deploying parent.
 - § [46b-71](#). Filing of foreign matrimonial judgment; enforcement in this state.
 - [Chapter 815p](#). Uniform Child Custody Jurisdiction and Enforcement Act
 - § [46b-115m](#). Modification of custody determination of another state.

[Chapter 816](#) – Support

§ [46b-224](#). Effect of court order changing or transferring guardianship or custody of child on preexisting support order.

PRACTICE BOOK:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Conn. Practice Book (2020).
[Chapter 25](#). Superior Court – Procedure in Family Matters
§ [25-26](#). Modification of custody, alimony or support
§ [25-30](#). Statements to be filed

OLR REPORTS:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each report's publication. Current law may be different from what is discussed in the reports.

- Susan Price-Livingston, *Child Custody Questions*, Connecticut General Assembly. Office of Legislative Research Report, [2002-R-0146](#) (February 14, 2002).
- Lawrence K. Furbish, *Joint Custody and Moving Out-of-State*, Connecticut General Assembly. Office of Legislative Research Report, [98-R-0202](#) (February 4 1998).
- Susan Price-Livingston, *Changing Child Custody During a Deployment*, Connecticut General Assembly. Office of Legislative Research Report, [2007-R-0606](#) (October 30, 2007).

COURT FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- [Filing a Motion for Modification](#)
- [Filing a Motion for Contempt](#)
- [JD-FM-174](#). Motion For Modification
- [JD-FM-222](#). Application for Emergency Ex Parte Order of Custody

FORMS:

- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., 2010, Thomson West, with 2019-2020 supplement (also available on Westlaw).
Chapter 44. Modification of Custody and Visitation Orders
§ 44:3. Motion for modification of custody/visitation—Form
§ 44:9. Motion for temporary change of custody—Form
- *Handbook of Forms for the Connecticut Family Lawyer*, by Mary Ellen Wynn & Ellen B. Lubell, Connecticut Law Tribune, 1991.
Form VI-C-5. Motion for temporary change of custody pending final determination of motion to modify custody, p. 111

CASES:

- [Merkel v. Hill](#), 189 Conn. App. 779, 785–86, 207 A.3d 1115 (2019). "On appeal, the defendant claims that the court

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improperly modified the existing orders relating to custody and the parental access plan. In support of her claim, the defendant first argues that the court violated her right to procedural due process under the United States constitution because it modified the existing custody order without any notice and after a hearing at which it repeatedly was confirmed that the only issue was the modification of the parental access plan. Second, she argues that the court abused its discretion by adopting the recommendations contained in the report because Fraser specifically testified that the report was outdated and that her recommendations contained therein were not current. **We agree.**”

- [Kyle S. v. Jayne K.](#), 182 Conn. App. 353, 371–72, 190 A.3d 68 (2018). “It is well settled authority that [n]o court in this state can delegate its judicial authority to any person serving the court in a nonjudicial function. The court may seek the advice and heed the recommendation contained in the reports of persons engaged by the court to assist it, but in no event may such a nonjudicial entity bind the judicial authority to enter any order or judgment so advised or recommended.... A court improperly delegates its judicial authority to [a nonjudicial entity] when that person is given authority to issue orders that affect the parties or the children. Such orders are part of a judicial function that can be done only by one clothed **with judicial authority.**’ (Citation omitted; internal quotation marks omitted.) [Keenan v. Casillo](#), 149 Conn. App. 642, 660, 89 A.3d 912, cert. denied, 312 Conn. 910, 93 A.3d 594 (2014);”
- [Lugo v. Lugo](#), 176 Conn. App. 149, 154–55, 168 A.3d 592 (2017). “**In the circumstances of this case, we cannot** conclude that the court erred in granting the plaintiff sole legal custody. Significant case law supports the plaintiff’s position on appeal. In [Kidwell v. Calderon](#), 98 Conn. App. 754, 911 A.2d 342 (2006), the plaintiff had filed a custody complaint seeking joint legal custody and ‘[a]ny further orders that the [c]ourt in law or equity deems necessary.’ Id., at 755, 911 A.2d 342. The trial court awarded the plaintiff sole custody. The defendant argued to this court that ‘because the plaintiff did not specifically ask for sole custody in his complaint or file a motion seeking sole custody, the court abused its discretion in granting him sole custody.’ Id., at 757, 911 A.2d 342. This court disagreed. Due process requirements of notice and reasonable opportunity to be heard had been satisfied; the defendant had adequate notice. Id., at 758–59, 911 A.2d 342. Although the complaint had not requested the specific relief of sole custody, the requested relief was broadly stated and, in the circumstances of that case, the court properly considered the best interests of the child.”

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- [Ward v. Ward](#), Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FA104018922S (August 16, 2016) (2016 Conn. Super. Lexis 2212) (2016 WL 5173364). **"The defendant's motion for modification of custody requests that he be awarded sole legal and primary physical custody of the children. It also seeks other relief. He alleges that the current custody orders are no longer in the best interests of the children. The court disagrees. The problem does not lie in the terms and conditions of the current court orders that were carefully crafted by a highly skilled guardian ad litem, and agreed upon by the parties five years ago. The current predicament is due to each party's failure to strictly adhere to the detailed and well-crafted provisions contained in the parenting plan. The court does not find that a modification of the parenting plan, in the manner suggested by the defendant, would serve the children's best interests."**
- [Petrov v. Gueorguieva](#), 167 Conn. App. 505, 514-515 (2016). "We note that the requirements for what the court may permissibly decide or order on pleadings involving custody matters historically have been much less circumscribed than in other types of actions . . . Even in the context of child custody proceedings, however, the pleadings play an important role in providing notice as to the claims before the court. See [Strohmeier v. Strohmeier](#), 183 Conn. 353, 354-56, 439 A.2d 367 (1981) (reversing decision granting parents joint custody without further hearing where mother sought sole custody, father did not contest request for sole custody in pleadings or at trial, and court suggested at trial that it would give sole custody to mother). In exercising its statutory authority to inquire into the best interests of the child, the court cannot sua sponte decide a matter that has not been put in issue, either by the parties or by the court itself. **Rather, it 'must ... exercise that authority in a manner consistent with the due process requirements of fair notice and reasonable opportunity to be heard. Without a hearing, a trial court may not adjudicate a question of such vital importance to the parties, and one so inherently fact-bound in its resolution. Before a parent is permanently deprived of legal custody, or any change is made therein, the usual and ordinary procedures of a proper and orderly hearing must be observed.' Id., at 356, 439 A.2d 367."**
- [Daddio v. O'Bara](#), 97 Conn. App. 286, 292-293, 904 A.2d 259, 263 (2006). **"To obtain a modification, the moving party must demonstrate that circumstances have changed since the last court order such that it would be unjust or inequitable to hold either party to it. Because the establishment of changed circumstances is a condition precedent to a party's relief, it is pertinent for the trial court to inquire as to what, if any, new circumstance warrants a modification of the existing order. In making such an inquiry, the trial court's discretion is essential. The power of the trial court to modify the existing order does**

not, however, include the power to retry issues already decided.... Rather, the trial court's discretion only includes the power to adapt the order to some distinct and definite change in the circumstances or conditions of the parties.' (Citation omitted; emphasis added; internal quotation marks omitted.) [Kelly v. Kelly](#), 54 Conn. App. 50, 55-56, 732 A.2d 808 (1999); see also [Hall v. Hall](#), 186 Conn. 118, 122, 439 A.2d 447 (1982); [Bretherton v. Bretherton](#), 72 Conn. App. 528, 543, 805 A.2d 766 (2002)."

WEST KEY NUMBERS:

- *Child Custody*
550-662. Modification.

ENCYCLOPEDIAS:

- 24A *Am. Jur. 2d* Divorce and Separation (2018).
IV. Child Custody and Support; Visitation Rights
A. Child Custody; Visitation Rights
9. Modification of custody or visitation order
a. In General §§ 849-857
b. Factors or Circumstances Justifying or Affecting Modification §§ 858-866
- 27C *C.J.S.* Divorce (2016).
VII. Custody, Visitation, and Support of Children
§§ 1050-1076. Modification of custody order
- 67A *C.J.S.* Parent and Child (2013).
II. Rights and Duties Incident to Relationship
§§ 141-145. Modification or change of custody order
- James Lockhart, *Cause of Action for Modification of Child Custody or Visitation Arrangement Based on Abuse of Child*, 6 *COA 2d* 287 (1994).
- Rebecca E. Hatch, *Cause of Action for Transfer of Child's Custody Based on Custodial Parent's Interference with Visitation Rights*, 40 *COA 2d* 241 (2009).
- Beth Holliday, *Cause of Action for Modification of Child Custody Based on Neglect of Child by Custodial Parent*, 50 *COA 2d* 431 (2011).
- Beth Holliday, *Cause of Action for Modification of Child Custody or Visitation Arrangement Based on Parent's Sexual Orientation or Sexual Activity*, 57 *COA 2d* 1 (2013).
- *Change in Circumstances Justifying Modification of Child Custody Order*, 6 *POF 2d* 499 (1975).
- *Proof of Alienation in Action for Modification of Custody of Child*, 127 *POF 3d* 237 (2012).
- *Child Custody Litigation*, 22 *Am. Jur. Trials* 347 (1975)

VI Selecting the Remedy
§50 Motion for Change in Custody
XVII Post-trial Matters
B Modification of Custodial Decree
§§ 140-149

TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

- ***LexisNexis Practice Guide: Connecticut Family Law***, Louise Truax, Editor, 2020 edition, LexisNexis, 2019.
Chapter 8. Custody and Visitation
Part VI: Filing Custody or Visitation Actions Post Judgment
 - § 8.40 Finding a material change in circumstances for custody determinations
 - § 8.41. Seeking a modification
 - § 8.43. Restricting the ability of a parent filing a motion for modification
- 8 Connecticut Practice Series, ***Family Law and Practice with Forms***, 3d ed., by Arnold H. Rutkin, et al., 2010, Thomson West, with 2019-2020 supplement (also available on Westlaw).
Chapter 44. Modification of Custody and Visitation Orders
 - § 44:2. Procedure for seeking modification
 - § 44:4. Standards for modification
 - § 44:5. Time of events and circumstances to be considered
 - § 44:6. Parties entitled to seek modification
 - § 44:7. Pleading specific facts justifying modification
 - § 44:10. Particular reason for modifying order
 - § 44:22. Automatic modification provisions
- 2 ***Dupont on Connecticut Civil Practice***, 2020-2021 ed., by Ralph Dupont, LexisNexis, 2020.
Chapter 25. Procedure in Family Matters General Provisions
 - D. Modification
 - §§ 25-26 Modification of Custody, Alimony or Support.
- 5 Sandra Morgan Little, ***Child Custody & Visitation Law and Practice***, Matthew Bender, 2020.
Chapter 25. Modification and Enforcement of Forum **State's Custody**-Visitation Directives
 - § 25.02. Modification proceedings: Procedural issues
 - § 25.03. Modification standards
 - § 25.04. Key modification factors
- 3 Arnold H. Rutkin, ***Family Law and Practice***, Matthew Bender, 2020 (also available on Lexis).
Chapter 32. Child Custody and Visitation

- § 32.10. Modification
 - [1] Generally
 - [2] Jurisdiction
 - [3] Time for modification
 - [4] Procedure
 - [5] Modification standards
 - [6] Reasons for modification

- 5 Arnold H. Rutkin, *Family Law and Practice*, Matthew Bender, 2020 (also available on Lexis).
 - Chapter 52. Modification of Matrimonial Determinations
 - § 52.04 Modification of Custody and Visitation
- 1 Ann M. Haralambie, *Handling Child Custody, Abuse and Adoption Cases*, 3d ed., 2009, Thomson West, with 2020 supplement.
 - Chapter 7. Postdecree Modification of Custody
 - § 7: 1. Jurisdiction
 - § 7: 2. Grounds for modification generally
 - § 7: 3. Military Deployments
 - § 7: 5. Time limits for modification
 - § 7: 18. Modification of custody agreements
 - § 7: 19. Modification of joint physical custody
 - § 7: 20. Modification to or from joint legal custody
- 1 *Legal Rights of Children 3d*, by Donald T. Kramer, Thomson West, 2020 (also available on Westlaw).
 - Chapter 2. Child Custody
 - § 2: 26. Modification of custody

LAW REVIEWS:

- Kathryn E. Abare, *Protecting the New Family: Ireland v. Ireland and Connecticut's Custodial Parent Relocation Law*, 32 Conn. L. Rev. 307 (Fall, 1999)

PAMPHLETS:

- Connecticut Network for Legal Aid.
[How to Change Your Custody or Visitation Order](#)

Section 4: Modification of Child Visitation

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the grounds and procedures for modification of child visitation orders.

DEFINITIONS:

- **Modification:** "In making or modifying any order as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests." Conn. Gen. Stats. [§ 46b-56\(b\)](#) (2019).
- "...[T]here is an important distinction to be drawn between motions to modify custody, which generally require a material change in circumstances; see [Clougherty v. Clougherty](#), supra, 162 Conn. App. at 868, 133 A.3d 886; and **motions to modify visitation alone, which do not require a material change.** [Balaska v. Balaska](#), 130 Conn.App. 510, 515-16, 25 A.3d 680 (2011); [Szczerkowski v. Karmelowicz](#), 60 Conn. App. 429, 433, 759 A.2d 1050 (2000)." [Petrov v. Gueorguieva](#), 167 Conn. App. 505, 522 n16, 146 A.3d 26, 38 (2016). (Emphasis added.)
- **Best Interests of the Child:** "In ruling on a motion to modify visitation, the court is not required to find as a threshold matter that a change in circumstances has occurred. [Szczerkowski v. Karmelowicz](#), 60 Conn.App. 429, 433, 759 A.2d 1050 (2000); see also [McGinty v. McGinty](#), 66 Conn.App. 35, 40, 783 A.2d 1170 (2001). **Instead, '[i]n modifying an order concerning visitation, the trial court shall "be guided by the best interests of the child...."** General Statutes § 46b-56 (b)." [Kelly v. Kelly](#), 54 Conn. App. 50, 57, 732 A.2d 808 (1999);" [Balaska v. Balaska](#), 130 Conn. App. 510, 515-16, 25 A.3d 680 (2011).
- **Third Party Visitation:**
 - **Roth Standards Are Applicable to Modifications:** "Furthermore, the *Roth standards apply equally whether a third party initially moves for an order of visitation or a parent moves to modify such an order.*" [Martocchio v. Savoie](#), 153 Conn. App. 492, 502-503, 101 A. 3d 953 (2014).
 - **Best Interest of the Child Standard in Relation to Roth Standard:** "We conclude that the trial court improperly determined that the best interest of the child standard can

overcome the *Roth* standard for ordering visitation.” [DiGiovanna v. St. George](#), 300 Conn. 59, 69, 12 A. 3d 900 (2011).

STATUTES:

You can visit your local law library or search the most recent [statutes](#) and [public acts](#) on the Connecticut General Assembly website to confirm that you are using the most up-to-date statutes.

- Conn. Gen. Stats. (2019)
 - § [46b-56](#). Orders re custody, care, education, visitation and support of children. Best interests of the child. Access to records of minor child by noncustodial parent. Orders re therapy, counseling and drug or alcohol screening.
 - § [46b-59](#). Petition for right of visitation with minor child. Order for payment of fees.
 - § [46b-59a](#). Mediation of disputes re enforcement of visitation rights
 - § [46b-61](#). Orders re children where parents live separately. Commencement of proceedings
 - § [46b-71](#). Filing of foreign matrimonial judgment; enforcement in this state
 - § [46b-115m](#). Modification of custody determination of another state.
 - § [46b-115w](#). Registration of child custody determination

PRACTICE BOOK:

Amendments to the Practice Book (Court Rules) are published in the [Connecticut Law Journal](#) and posted [online](#).

- Connecticut Practice Book (2020)
- § [25-26](#). Modification of Custody, Alimony or Support
 - § [25-30](#). Statements to be filed

OLR REPORTS:

[Office of Legislative Research](#) reports summarize and analyze the law in effect on the date of each **report's** publication.

- Saul Spigel, [Modifying Visitation Orders After Divorce](#), Connecticut General Assembly, Office of Legislative Research, Report No. 2001-R-0250 (February 23, 2001). **“You wanted to know what existing state laws could prevent a father who had sexually abused another child from having unsupervised visits with his daughter following a divorce.”**

COURT FORMS:

Official Judicial Branch forms are frequently updated. Please visit the [Official Court Webforms page](#) for the current forms.

- [Official Family Forms](#) (Connecticut Judicial Branch)
 - See also: [Filing a Motion for Modification](#)

Unofficial Forms

- [Ruggiero v. Ruggiero](#), 76 Conn. App. 338 (2003), Connecticut Appellate Court Records & Briefs, January 2003.
Ex Parte Motion for Modification of Visitation and Custody (p. 28)
- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., 2010, Thomson West, with 2019-2020 supplement (also available on Westlaw).
§ 44.3. Motion for modification of custody/visitation-Form
- *Handbook of Forms for the Connecticut Family Lawyer*, by Mary Ellen Wynn & Ellen B. Lubell, Connecticut Law Tribune, 1991.
XVI-b-2. Motion to Fix Visitation, p. 245
- [Dufresne v. Dufresne](#), 191 Conn. App. 532, 546, 215 A.3d 1259 (2019). "The plaintiff's second claim is that the court improperly refused to credit the testimony of the family relations counselor, which was admitted into evidence without objection. We agree."
- [Morera v. Thurber](#), 187 Conn. App. 795, 799, 204 A.3d 1, (2019). "On appeal, the plaintiff claims that the court violated his right to due process of law by improperly dismissing his motion without giving him the benefit of an **evidentiary hearing**.... He contends that the failure of the court to schedule and conduct an evidentiary hearing under such circumstances, constitutes a violation of his right to due process of law under the federal and state constitutions. We agree."
- [Balaska v. Balaska](#), 130 Conn. App. 510, 515–16, 25 A.3d 680, 684 (2011). "In ruling on a motion to modify visitation, the court is not required to find as a threshold matter that a change in circumstances has occurred. [Szczerkowski v. Karmelowicz](#), 60 Conn. App. 429, 433, 759 A.2d 1050 (2000); see also [McGinty v. McGinty](#), 66 Conn. App. 35, 40, 783 A.2d 1170 (2001). Instead, '[i]n modifying an order concerning visitation, the trial court shall "be guided by the best interests of the child....' General Statutes § 46b-56 (b)." [Kelly v. Kelly](#), 54 Conn. App. 50, 57, 732 A.2d 808 (1999); see [Szczerkowski v. Karmelowicz](#), supra, at 432, 759 A.2d 1050 ('[w]hen a court rules on a motion to modify visitation, it is statutorily incumbent on the court that its order be guided by the best

CASES:

Once you have identified useful cases, it is important to update the cases before you rely on them. Updating case law means checking to see if the cases are still good law. You can [contact your local law librarian](#) to learn about the tools available to you to update cases.

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interest of the child standard'). Accordingly, the court's alleged failure to find a substantial change in circumstances did not render its order modifying visitation improper."

- [McGinty v. McGinty](#), 66 Conn. App. 35, 40, 783 A.2d 1170 (2001). "In [Szczerkowski](#), as here, the defendant claimed that the court abused its discretion by modifying a visitation order without finding that there was a substantial change in circumstances... We concluded that when considering motions to modify visitation, the court's should apply the best interest of the child standard."
- [Szczerkowski v. Karmelowicz](#), 60 Conn. App. 429, 433, 759 A.2d 1050 (2000). "The defendant cites no case, and our independent research discloses none, that requires a court ruling on a motion to modify visitation to find as a threshold matter that a change of circumstances has occurred. Rather, the standard the court applies is that of the best interest of the child."
- [Kioukis v. Kioukis](#), 185 Conn. 249, 440 A.2d 894 (1981). At the time of the action to modify visitation Connecticut was not the "home state" of the child and therefore lacked jurisdiction to grant a modification.

Support payments are independent of visitation rights.

- [Baumert v. Baumert](#), Superior Court, Judicial District of Stamford-Norwalk at Stamford, No. FA96-0152534-S (Jan. 28, 1997) (19 Conn. L. Rptr. 59) (1997 WL 66500) (1997 Conn. Super. Lexis 268). The court concluded that Texas should have jurisdiction to hear a motion to modify visitation based on the fact that 'all visitation took place in Texas' and 'Texas would seem to possess the greater information as to the child's best interests'".

ENCYCLOPEDIAS:

- 24A *Am. Jur. 2d* Divorce and Separation (2018).
IV. Child Custody and Support; Visitation Rights
B. Child Custody; Visitation Rights
9. Modification of custody or visitation order
a. In General §§ 849-857
b. Factors or Circumstances Justifying or Affecting Modification §§ 858-866
- 27C *C.J.S.* Divorce (2016).
VII. Custody, Visitation, and Support of Children
§§ 1050-1076. Modification of custody order
- 67A *C.J.S.* Parent and Child (2013).
II. Rights and Duties Incident to Relationship
§§ 141-145. Modification or change of custody order
- James Lockhart, *Cause of Action for Modification of Child Custody or Visitation Arrangement Based on Abuse of Child*,

6 *COA 2d* 287 (1994).

- Rebecca E. Hatch, *Cause of Action for Transfer of Child's Custody Based on Custodial Parent's Interference with Visitation Rights*, 40 *COA 2d* 241 (2009).
- Beth Holliday, *Cause of Action for Modification of Child Custody or Visitation Arrangement Based on Parent's Sexual Orientation or Sexual Activity*, 57 *COA 2d* 1 (2013).
- Change in Circumstances Justifying Modification of Child Visitation Rights, 15 *POF 2d* 659 (1978).
- Proving Child Sexual Abuse in Visitation or Custody Dispute, 33 *POF 3d* 303 (1995).
- *Child Custody Litigation*, 22 *Am. Jur. Trials* 347 (1975)
 - XVII Post-trial Matters
 - B Modification of Visitation Rights
 - §§ 150-151
- *LexisNexis Practice Guide: Connecticut Family Law*, Louise Truax, Editor, 2020 edition, Matthew Bender, 2019.
 - Chapter 8. Custody and Visitation
 - Part VI: Filing Custody or Visitation Actions Post Judgment
 - § 8.40 Finding a material change in circumstances for custody determinations
 - § 8.41. Seeking a modification
 - § 8.43. Restricting the ability of a parent filing a motion for modification
- 8 Connecticut Practice Series, *Family Law and Practice with Forms*, 3d ed., by Arnold H. Rutkin, et al., 2010, Thomson West, with 2019-2020 supplement (also available on Westlaw).
 - Chapter 44. Modification of Custody and Visitation Orders
 - § 44:2. Procedure for seeking modification
 - § 44:4. Standards for modification
 - § 44:5. Time of events and circumstances to be considered
 - § 44:6. Parties entitled to seek modification
 - § 44:7. Pleading specific facts justifying modification
 - § 44:10. Particular reason for modifying order
 - § 44:22. Automatic modification provisions
- 4 Sandra Morgan Little, *Child Custody & Visitation Law and Practice*, Matthew Bender, 2019.
 - Chapter 25. Modification and Enforcement of Forum State's Custody-Visitation Directives
 - § 25.02. Modification proceedings: Procedural issues
 - § 25.03. Modification standards
 - § 25.04. Key modification factors
- 3 Arnold H. Rutkin, *Family Law and Practice*, Matthew Bender, 2020 (also available on Lexis).

TREATISES:

Each of our law libraries own the Connecticut treatises cited. You can [contact](#) us or visit our [catalog](#) to determine which of our law libraries own the other treatises cited or to search for more treatises.

References to online databases refer to in-library use of these databases. Remote access is not available.

Chapter 32. Child Custody and Visitation

§ 32.10. Modification

- [1] Generally
- [2] Jurisdiction
- [3] Time for modification
- [4] Procedure
- [5] Modification standards
- [6] Reasons for modification

- 5 Arnold H. Rutkin, *Family Law and Practice*, Matthew Bender, 2020 (also available on Lexis).

Chapter 52. Modification of Matrimonial Determinations

§ 52.04 Modification of Custody and Visitation

- 1 Ann M. Haralambie, *Handling Child Custody, Abuse and Adoption Cases*, 3d ed., 2009, Thomson West, with 2020 supplement.

Chapter 5. Visitation

§ 5:12. Modification

- 1 *Legal Rights of Children 3d*, by Donald T. Kramer, Thomson West, 2020 (also available on Westlaw).

Chapter 3. Secondary Custodial Rights: Visitation, Parent Time, and Parenting Time

§ 3:10. Modification

PAMPHLETS:

- Connecticut Network for Legal Aid.

[How to Change Your Custody or Visitation Order](#)

Table 3: Request for Leave May Be Ordered to File Motion to Modify

Request for Leave JD-FM-202 Rev. 8-07	
Conn. Practice Book § 25-26 (2020)	<p>(g) Upon or after entry of judgment of a dissolution of marriage, dissolution of civil union, legal separation or annulment, or upon or after entry of a judgment or final order of custody and/or visitation for a petition or petitions filed pursuant to Section 25-3 and/or Section 25-4, the judicial authority may order that any further motion for modification of a final custody or visitation order shall be appended with a request for leave to file such motion and shall conform to the requirements of subsection (e) of this section. The specific factual and legal basis for the claimed modification shall be sworn to by the moving party or other person having personal knowledge of the facts recited therein. If no objection to the request has been filed by any party within ten days of the date of service of such request on the other party, the request for leave may be determined by the judicial authority with or without hearing. If an objection is filed, the request shall be placed on the next short calendar, unless the judicial authority otherwise directs. At such hearing, the moving party must demonstrate probable cause that grounds exist for the motion to be granted. If the judicial authority grants the request for leave, at any time during the pendency of such a motion to modify, the judicial authority may determine whether discovery or a study or evaluation pursuant to Section 25-60 shall be permitted. (Emphasis added.)</p> <p>(Adopted June 29, 2007; Effective October 1, 2007.)</p>
History	<p>HISTORY—2008: Prior to 2008, the first sentence of subsection (g) read: “Any motion for modification of a final custody or visitation order or a parental responsibility plan shall be appended to a request for leave to file such motion and shall conform to the requirements of subsection (e) of this section.”</p>
Official Commentary	<p>COMMENTARY—2008: The above change establishes that the procedure outlined in subsection (g) is no longer required in every case. Upon or after the entry of judgment of a dissolution of marriage, dissolution of civil union, legal or final order of custody and/or visitation for a petition or petitions filed pursuant to Section 25-3 and/or Section 25-4, the judicial authority may order that a party seeking to modify a final custody or visitation order must file a request for leave to do so accompanied by an affidavit setting forth the factual and legal basis for the modifications.</p>