

**CAO M INSTRUCTION 1-1
PETITION TO MODIFY AN ORDER, JUDGMENT OR DECREE
ADA COUNTY**

Talk to an attorney, if possible.

WARNING: When you represent yourself in a court case you are held to the same standard as an attorney. This applies to your preparation of paperwork and your conduct at all hearings and/or trial. Your lack of legal knowledge may cause you to make serious errors in handling your case. These instructions are not a substitute for legal advice. The laws and court rules are complex and following these instructions will not guarantee that your rights are protected or that you will be satisfied with the result. You should always talk to a lawyer about your legal problems before filing any legal paperwork. Even if you do not hire a lawyer to appear in your case, a lawyer can give you more information about your rights. Call the Idaho State Bar (208-334-4500) to provide you with the name of an attorney who handles this type of case. Contact the Court Assistance Office for information about resources for low-income people, or visit the Idaho Supreme Court's Self-Help Center at <http://www.courtselfhelp.idaho.gov/>.

You will be signing a sworn statement that you have read the Petition, know what it says, and believe it's true. To guarantee the truthfulness of that statement, be sure to read the entire completed form.

Instructions

Fill in the forms by typing or by printing neatly and legibly in **black ink**. Always keep a copy of the completed form for your records.

At the top left-hand corner of page 1, fill in your full legal name, mailing address, telephone number, and email address (if you have one).

The Court Heading. Fill in the county and judicial district in capital letters (for example, "IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT, IN AND FOR THE COUNTY OF ADA") exactly like it is in the Order, Judgment or Decree you are asking to be changed.

The Caption. Fill in the names of the Petitioner and Respondent exactly as they appeared in the caption in the original case.

The Case No. Fill in the case number from the original court case. This is not the same as your Department of Health and Welfare Child Support case number.

If you do not have your case number or the party names from your original case, you can look them up on the iCourt Portal: <https://mycourts.idaho.gov/>.

Fill in your full legal name as the party asking the court to enter a modification of a previous order.

1. Fill in the name and date of birth for each minor child and the city and state where each child has lived for the last five years. If none of the children and no parent still live in Idaho, the Idaho court may lack authority ("jurisdiction") to modify custody. In that event you should consult an attorney to determine whether there may be other grounds for jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act, Section 32-11-203, I.C.

2. Write in the city, county and state where you reside and the city, county and state where the other parent resides.

3. UCCJEA Jurisdiction.

You are required to inform the court if there have been any other cases involving your child/ren in any court or if there are any other people claiming custody or visitation rights with the child/ren. In paragraphs 3a, b, c and d, check the appropriate box and provide all requested information.

4. Child Custody.

Before asking the court to modify (change) the order, judgment or decree now in effect, you must provide information to the court explaining what significant (“substantial and material” for child custody) change(s) in circumstances make the modification necessary.

- Check the first box if there will be no change, **or**
- Check the second box if you are seeking to have the previous order, judgment or decree modified with respect to custody (or “Parenting Plan”) **and**
 - Write in the date of the most recent Order, Judgment or Decree of Custody. Consult the court file if you are unsure about the date of the most recent order or decree.
Note: There may be different orders if you have changed either support or custody before.

4a. Legal Custody.

“Joint legal custody” means the parents are required to share the decision-making rights, responsibilities and authority relating to the health, education and general welfare of the child/ren. The court will award joint legal custody unless you can prove it would not be in the best interest of the minor child/ren for the other parent to share the decision-making rights.

- Check the first box if there will be no change, **or**
- Check the second box if both parents are fit persons to share the decision-making rights, responsibilities and authority relating to the health, education and general welfare of the child/ren, **or**
- Check the third box if you are declaring that one parent should have sole legal custody of the child/ren, **and**
 - Write in the name of the parent who should be awarded sole legal custody **and**
 - State why the other parent should NOT be allowed to share legal custody.

4b. Physical Custody.

“Joint physical custody” means each parent has significant periods of time in which a child resides with or is under his/her care and supervision. Joint physical custody assures the child/ren frequent and continuing contact with both parents but does not necessarily mean the child spends exactly the same amount of time with each parent. The court will award joint physical custody unless you can prove it would not be in the best interest of the minor child/ren.

- Check the first box if there will be no change. **or**
- Check the second box if both parents should be given physical custody of the child/ren **and**
 - Complete the **Parenting Plan**. Write **Schedule A** on the bottom of the first page of the Parenting Plan and attach (staple) it to the back of the Petition for Modification.
IMPORTANT: The Parenting Plan must be attached to make it a part of the Petition for Modification. Make an extra copy of the Parenting Plan to attach (staple) to the back of the Judgment of Modification **or**
- Check the third box if you are asking the court to give sole physical custody of the child/ren to only one parent, **and**
 - Write in the name of the parent who should be given sole physical custody **and** state why the other parent should NOT be given periods of time when the child/ren resides with or is under his/her care and supervision, **and**
 - Check the fourth box and write the other parent’s name and if you want the court’s order to give the other parent restricted or conditional time with the child/ren **and**
 - Check the fifth box and state specifically what you want the court to order; **or**
 - Check the sixth box to refer to the Parenting Plan. Complete the Parenting Plan, write **Schedule A** on the bottom of the first page of the Parenting Plan and attach (staple) to the back of your Petition.

5. Child Support. Existing Child Support Orders.

Note: If the percentage of time the child/ren is with each parent is changed, the amount of child support will probably also need to be changed. Before you complete this section, you will first need to complete an **Affidavit Verifying Income and a Child Support Worksheet**.

In Ada County, Family Court Services (phone: (208) 287-7600; email: fcs@adacounty.id.gov) may help you generate these documents if you provide the required information.

The Child Support Worksheet will be used to complete this section. If you want the court to enter a support amount that is different from the Idaho Child support Guidelines amount, you must come to court for a court hearing and persuade a judge why that is in the best interests of your children and meets their financial needs.

- In paragraph **5a**, list all child support orders, judgments, or decrees signed by a judge. If it is in the same case as the case you are presently modifying, fill in the case information. If it is a different case filed by the Department of Health & Welfare that sets child support, fill in the support case information, **and**
- In paragraph **5b**: change the amount of child support:
 - If you want that order, judgment or decree to continue and control child support instead of getting a new order, judgment or decree, check the first box. If the child support order is from a different case, then make a copy of that Order, Judgment or Decree mark it as **Schedule B** and attach (staple) it to the back of the Petition to Modify. If the child support order is in this case, a copy of that order, judgment and decree is not required. **Skip section 6 and sign in the end, or**
 - Check the second box if you believe there are substantial and material reasons why the child support set in this case or the other case should be changed by an order issued in this case which would control future child support payments.

Warning: You should be aware that jurisdiction as to child support is a complicated issue and having a child support order, judgment or decree in a separate case can create problems for enforcement and future modifications. If the child support order is in a different case and you want to change it, that case and this case will need to be consolidated so the child support can be modified. Even if you want child support to be controlled by the separate order, your judge may require you to consolidate that case with your Modification, and serve the Petition to Modify on the Department of Health and Welfare. Also, your judge may require you to join the Department of Health and Welfare as a party in this case, or consolidate the two cases, before a new child support order can be issued in this case

6. Child Support. New Child Support Amount.

6a. Reasons for Changing Child Support .

If you believe there are substantial and material reasons why the child support should be changed by an order issued in this case which would control future child support payments, check any boxes that apply.

6b. New Child Support Amount.

- Check the first paragraph, write in the name of the parent who will pay child support and from the child support worksheet, insert the adjusted child support total, **or**
- If you want to request a different child support amount fill in the next section and explain why the judge should order it.

In paragraph **6c**, select the month you want the payments to start.

In paragraph **6d**, if you have more than one minor child, check the box. You will need to have a separate calculation to reflect the changed amount of support as each child is no longer eligible for support under Idaho law. These calculations are provided if you have used a computer program to calculate child support. In Ada County, Family Court Services may help you with these calculations if you do not have them.

If needed, write **Schedule B** on the bottom of the first page of the **Affidavit Verifying Income and Child Support Worksheet** and attach (staple) it to the back of the Petition, behind the Parenting Plan (if applicable). **IMPORTANT: A copy of the Affidavit Verifying Income and Child Support Worksheet must be attached to make it part of the Petition.**

Warning: If you are the parent paying child support (the “obligor”) you should be aware the decree will provide for collection of unpaid child support from your wages and from your real estate or personal property. The decree will also provide that if you move to another state, the child support award (and any spousal maintenance award) can be enforced directly by courts in other states. Additionally, you should be aware that, according to Idaho law, if unpaid child support equals or exceeds the total support owing for ninety (90) days or the sum of \$2,000, whichever is less, you are subject to suspension of any license to practice or engage in any business, occupation or profession, operate a motor vehicle, carry a concealed weapon, or engage in any recreational activity, including hunting or fishing. Further, the State Tax Commission will withhold and set-off any state tax refund to collect any unpaid child support, or unpaid spousal support, and the Idaho State Lottery will likewise withhold and set-off a prize of a lottery prize-winner.

6e. Extended Visits

In paragraph **6e**, check the first box if the child/ren will be living in the home of one parent at least 75% of the time under your proposed parenting plan. If you do not check this box, go directly to paragraph **6f**. Otherwise,

- Check the second box in paragraph **6e** if you want the court to order a reduction in child support when the parent paying child support has physical custody of the child/ren for 14 or more overnights in a row. Next, check the appropriate box to indicate if the reduction should be 50% or some other percentage.
- Check the next box if you have more than one child, but the parent paying child support will have some, but not all of the children for a period of 14 overnights in a row. If this box is selected, the reduction of support will be applied only to the child/ren who are actually with the parent paying child support during those 14 overnights in a row.

Note: If the child/ren resides with each parent more than 25% of the time (overnights), this is considered shared physical custody and certain adjustments are made in the calculation of child support. Section J(5) of the Idaho Child Support Guidelines, Rule 126 of the Idaho Rules of Civil Procedure, describe “Shared Physical Custody” and computation of child support with that parenting arrangement. The reduction of child support for extended visits is not permitted if child support has been calculated with a shared physical custody adjustment. You can get a copy of the Child Support Guidelines from a Court Assistance Office or the Internet at <http://www.courtselfhelp.idaho.gov/>.

6f. Work-Related Child Care Costs

Work related child care costs are separate from the basic monthly child support amount. The cost is prorated between the parents in proportion to their Guidelines income.

- Fill in the percentages each parent will pay from your Child Support Worksheet.
- **Or**, if you want to request a different cost sharing percentage fill in the next section and explain why the judge should order it.

- Note: Under this section you are asking the court to require each parent to pay their share directly to the care provider if permitted by the provider, otherwise, the parent who pays the costs must be reimbursed within ten days after the other parent receives a copy of the bill and proof of payment.

6g. Medical Insurance

The cost of medical, dental and/or optical insurance for the child/ren is separate from the basic monthly child support amount. The cost is prorated between the parents in proportion to their Guidelines income.

A. Pro Rata Share:

- Fill in the percentages each parent will pay from your Child Support Worksheet.
- **Or**, if you want to request a different cost sharing percentage, fill in the next section and explain why the judge should order it.

B. Insurance Currently Provided:

- Check the first, second or third box to indicate how health insurance for the child/ren is now being provided. If you select the first paragraph, write in the name of the parent(s) currently providing health insurance.

C. In Addition to or Included in Monthly Child Support:

- Check the appropriate box indicating how insurance costs should be paid.

Warning: The Order, Judgment or Decree will provide: Failure to provide medical insurance coverage may result in the direct enforcement of a medical support order by either the obligee (party or parent other than the parent ordered to carry or provide a health benefit plan for the parties' minor child/ren) or the Department of Health and Welfare. A national medical support notice will be sent to your employer, requiring your employer to enroll the child in a health benefit plan as provided by Sections 32-1214A through 32-1214J, Idaho Code, and applicable rules of the department.

6h. Out-of-Pocket Health Care Costs

The actual cost incurred for health care expenses for the child/ren not paid in full by insurance is separate from the basic monthly child support amount and is also prorated between the parents in proportion to their Guidelines income.

- Fill in the percentages each parent will pay from your Child Support Worksheet.
- **Or**, if you want to request a different cost sharing percentage, fill in the next section and explain why the judge should order it.

6i. Income Tax Exemption

Both parents are entitled to share in the benefits of income tax credits and exemptions for the child/ren regardless of which parent actually claims those benefits in a tax return. (If you do not agree otherwise, the parent with the most income will claim the children.)

Note: The child support calculation must reflect the same designation.

- Check the first box; and
- Check the second box if the Petitioner will claim some or all of the child/ren as dependent/s on their income tax return(s).
- Check the third box if the Respondent will claim some or all of the child/ren as dependent/s on their income tax return(s).

Date and Signature. Sign and date the form certifying that all of the information is true and accurate, subject to the penalty of perjury if it is not.

Schedules (attachments):

- Complete the Parenting Plan. Mark it as **Schedule A**.
- **Schedule B** will be either a copy of the Child Support Order already in effect (if it is a different case) or the Affidavit Verifying Income and Child Support Worksheet(s).

The schedules must be stapled to the back of the Petition.

Copies: Make two more copies of the Petition with Schedules attached, one copy for each party.

The Decree you will be preparing will have the same Parenting Plan, Child Support Order. **Make an extra copy** of these Schedules so you will have them to attach to the Decree.

Refer to CAO M Instruction 1 – Filing a Petition for Modification – for complete instructions.