

How do I change child support and custody orders?

Why would I change my court orders?

Maybe when your kids were little, it made sense for the kids to live one week with you and one with your ex. But now, the kids are in school and it's not working. Maybe when you finalized things ten years ago, your spouse had little money. Now, money isn't a problem. Maybe you lost your high paying job and have to settle for a lot less to pay the bills. Can your child support be lowered?

Things have changed. How do you change those orders? If your Divorce Decree, Paternity Decree or Final Order in the Suit Affecting the Parent-Child Relationship no longer works for your family, you can ask the court to change the orders in a ***Suit to Modify the Parent-Child Relationship***.

What if we all agree?

If the other parent agrees to the changes you want, the process is easy. It's important to make the changes in a court order and get a judge to sign them, especially if you're lowering child support. Remember, the person ordered to pay child support (the Obligor) has to keep paying the same amount until the judge changes the orders. So, even if everyone agrees, the judge needs to sign your agreement.

Sometimes, other parties are involved. If the Home-Parent receives any state help like WIC or food stamps, or the Attorney General's Office worked on your case before, you may have to include the Attorney General's Office in your case. Contact the Attorney General's Office if you aren't sure whether or not to include them.

How do I start the modification?

The modification process begins with a ***Petition to Modify the Parent-Child Relationship***. Either parent can file the

Petition. The person filing the petition becomes the Petitioner in the modification, even if she was the Respondent in the original order.

Where do I file the Petition?

File the Petition in the clerk's office where your original orders were filed. If your children have lived in another county for at least six months, you can ask the court to transfer the case to the children's new home county.

What if my original order is from another state?

Texas courts must respect the orders of other states. Texas courts can't change those orders unless there is an emergency or Texas becomes the child's new "home state." In emergencies, it doesn't matter how long the child has been in Texas. But if it's not an emergency, the child must live in Texas for at least six months before Texas courts can act in the case.

How do I tell my ex I'm asking the court to change the orders?

After you file the Petition, all other parties must either sign a Waiver of Citation in front of a notary, voluntarily file an Answer, or receive Service of Citation by a process server. ***Other parties*** include everyone who was a party in the original order and any adult caregiver who the child has lived with for the last six months. See ***Giving Legal Notice*** for more information.

What's next, if we all agree?

If all the parties agree to your changes, you'll need to prepare an ***Order in Suit to Modify the Parent-Child Relationship*** with the changes, for the judge to sign. Have all parties sign the orders. Contact the clerk's office in your county to set the hearing (an appointment to see the judge.) Be sure to tell the clerk your case is ***uncontested***,

agreed. Some counties have special dockets for uncontested cases.

When the parties agree, there is no waiting period. Set your hearing at your earliest convenience.

What if we disagree?

When you disagree, your case is **contested**. Contested modifications can be very complicated. Consider finding an attorney to help you. If you're asking the court to change your child support order, you may find help at the Attorney General's Office. Legal Aid organizations may be able to help with other changes.

What are the steps in a contested modification for custody or visitation?

In contested custody or visitation cases, you have to prove many things. You must convince the court that:

1. the changes you want are best for the child, **AND**
2. circumstances have materially and substantially changed, **OR**
3. the Home-Parent allowed some one else to have primary custody of the child for at least 6 months, **OR**
the child is at least 12-years-old and has told the judge (in the judge's chambers), who s/he wants to live with.

What if my orders are less than a year old and I want to change custody?

When you file your petition, you'll need to file a statement explaining why one of the following is true:

1. the present environment endangers the child's physical health or impairs the child's emotional development, **OR**

2. the Home-Parent agrees to the changes and the changes are best for the child, **OR**
3. the Home-Parent allowed some one else to have primary custody of the child for at least 6 months, and the changes are best for the child.

The judge will review the statement. If the judge finds your statement lacks the facts to support your charges, the judge won't change your order.

What if it costs more for me to see the kids now that my ex has moved away with them?

The Court may change your orders to divide the increased costs fairly. Usually, the Court orders the person who moved to pay the extra expenses. The Court must believe any changes to the orders are best for the children.

What if I ask to modify because my ex has been convicted of child abuse?

A conviction or deferred adjudication for child abuse is a material and substantial change in circumstances. The Court will consider a modification on this ground. But, if you ask for new orders because of child abuse, and you know the party hasn't been convicted or received deferred adjudication for child abuse, you can be charged with a Class B Misdemeanor.

What if I ask for a modification because of family violence?

A conviction or deferred adjudication for family violence is a material and substantial change in circumstances. The Court will consider a modification based on this ground. But, if you ask for new orders because of family violence, and you know the other party wasn't convicted or didn't receive deferred adjudication for family

violence, you can be charged with a Class B Misdemeanor.

would differ from the last support order by at least 20% or \$100.

Can I ask for new orders so my parents can visit my child while I'm deployed in the military?

Yes, but your military deployment is not, by itself, a material and substantial change in circumstances. Instead of asking the court to permanently change your court orders, you can ask the court to issue temporary orders while a parent who is active in the military is deployed. The military parent can choose a person to take his or her visitation while s/he is deployed.

If the military parent is the child's Home-Parent, then the other parent will temporarily become the child's Home-Parent, while the military parent is deployed. In this case, the military parent can choose a person to take the same visitation that the other parent usually has. When the military deployment ends, the temporary orders will end, and everything will return to the prior court orders.

I'd like to change my child support order, but I'm not sure if there has been a material and substantial change. Is there anything I can do?

You may be able to change your child support order if it has been at least 3 years since your last order and the monthly amount of child support differs from today's guidelines by either 20% or \$100.

What if I want to change my child support orders? What will I need to prove in a contested case?

In a contested child support case, you will have to convince the court that:

1. circumstances have materially and substantially changed,
- OR**
2. it's been at least three years since the last child support order, and a new support order, based on child support guidelines,

What if the prior order wasn't based on child support guidelines?

If your agreed child support order differed from the guidelines, the court may change the order only if it finds a material and substantial change in circumstances for the parties or the child.

Is my new baby a material and substantial change in circumstances?

If you are the **person paying** child support (the Obligor), your new baby **is** a material and substantial change in circumstances. The court may consider a new child support order using child support guidelines for children in more than one household. If you are the **person receiving** child support (the Obligee) your new baby is **not** a material and substantial change that applies to your current child support order. Even if your new baby has the same father as your other children, your new baby is not part of your prior order. You'll need to file a Paternity suit or Suit Affecting the Parent-Child Relationship to get child support for your new baby.

If my ex remarries can I include the new spouse's income to get a new child support order?

No. The court can't add a new spouse's income to the Obligor's resources to determine child support. The court can't subtract a new spouse's or step children's financial needs from the Obligor's income, either.