

CHILD CUSTODY MODIFICATION

What is a modification?

The word "modification" means "a change." A custody modification is a court action that you can file when you want to change a court order that sets out where your child lives and with whom he or she visits. This order might be called a Custody Decree or a Parenting Plan. This booklet will call all these orders "Parenting Plans." The Parenting Plan may be between you and your ex-spouse, you and an ex-boyfriend or girlfriend, or between you and someone else who has been taking care of the child, such as another relative. This booklet uses the word "custodian" to describe other people besides parents who may have a right to time with a child.

What can you ask for in a modification case?

In a modification case, you ask the court to sign a new Parenting Plan. The new Parenting Plan may be very different than the current one or just a little different. For example, if you do not have custody now, you can ask the court to give you custody. Or, if you do have custody and are worried about the other parent or custodian's time with the child, you can ask the court to change that. You can also ask the court to change child support.

Will there be a fee?

If you file your modification in the same county that entered your Parenting Plan, the court will charge you a filing fee. (Please check with a court clerk to find out the fee.) If you file your modification case in a county other than where your current decree was entered, or if you file it under a different case number, the filing fee may be a different amount. You will also need money to cover copying costs and possible fees for serving papers on the other parties. If you hire a lawyer, you will have to pay attorney's fees and costs.

What if you can't afford the filing fee?

If you cannot afford the filing fee, fill out a special form asking the court to let you file for free. This is called an "Affidavit of Indigency."

How do you prove that a major modification (such as custody) is necessary?

At the hearing, the parent who wants the change will have to prove that there has been a big change in the life of the child or the other parent or custodian since the current Parenting Plan was entered. The legal term is "substantial change of circumstances." It should involve an important reason like one of more of the following:

- The parent or custodian with custody under the current Parenting Plan has let the child live with the other parent for a substantial period of time;
- The place where the child is supposed to live under the current Parenting Plan is not safe for the child physically, mentally, or emotionally, and it would be more harmful to leave the child where he or she is than to move him or her to the other parent's home; or
- The other parent or custodian has been held in contempt of court for not following the Parenting Plan, or the parent was criminally convicted of custodial interference.

It usually is not enough that a parent wanting a change thinks that his or her life has improved so much that the child should now live with him or her.

How do you prove that a minor modification is necessary?

An example of a reason for a minor modification is a change in either parent's work schedule. Another reason might be that one parent wants to take the child on a longer vacation than allowed under the current Parenting Plan because the child is older now and can spend a longer time away from the other parent.

Whatever the requested change may be, you will need to show what is the change in the circumstances of one parent, both parents, or the child, and why the change in the Parenting Plan is in the best interest of the child.

What if you don't want to change the Parenting Plan, but you are having problems with the other parent or custodian?

If you are happy with the current Parenting Plan, but the other parent has not been following it, or if you need the terms of the current order clarified, you should file a petition for contempt, not for modification. If you just want to change the amount of child support a parent pays, you should file a separate legal action called "Modification of Child Support".

What if you don't have a final Parenting Plan for your child?

If a court has never signed a final Parenting Plan, you need to file a request for the modification of the decree that was previously entered by the court so that a Parenting Plan is embraced within it.

Should you file a modification if you want to move with your children? Yes, if the Parenting Plan says you should, as it often does.

Adapted from publications of Northwest Justice Project and Maryland Self-Help Network.