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FREQUENTLY ASKED QUESTIONS CHILD CUSTODY MODIFICATIONS

Child custody and visitation issues are ever changing. A child can reach the age of majority, a parent can move to another state, or one of the parents can remarry which changes the dynamic of a custody and support agreement. These are some of the more frequently asked questions when it comes to modifying a child custody order.

- What do courts require for a change of custody?
- If I take a job in another city, can I bring my child with me?
- How does the court view the other parent if he or she has a drinking or substance abuse problem?
- Can I modify custody because I don't like my ex's parenting style?
- My ex-spouse has remarried and does not seem to have much interest in our child. Is this a reason to change custody?
- Can I ask for more custody time so that I do not have to pay as much child support?
- What will happen if one of the custodial parents is mentally ill?

Q: WHAT DO COURTS REQUIRE FOR A CHANGE OF CUSTODY?

A. Generally, courts are looking for a change in circumstances. What constitutes a change in circumstances could vary, and the courts tend to be fluid when reviewing a request to modify custody. The paramount concern in any custody modification request is what is best for the child with preference usually given to the parent who favors frequent and continuing contact with the other parent. Exceptions would be domestic violence, substance abuse, or a so-called “wild lifestyle”. Courts also look at which parent or parents the child is bonded with, the child’s age, the child’s extra-curricular activities, whether the child has special needs, the child’s physical and mental health, the dispute resolution skills of both parties, and whether each parent is meeting and sensitive to the needs of the child. The mere fact that parents disagree on parenting styles is not a legal basis to change custody, unless the parenting style includes things such as permissive drug use or drinking alcohol around the house, lack of parental supervision, missing school, failing grades, fighting at school, bullying, corporal punishment, eating disorders, or other psychiatric disorders. Working parents are usually not penalized for not being with the child as a stay at home parent would.

These are some examples of situations that would constitute a change in circumstances that would justify a motion to modify custody.

- One parent may take a job in another city or another state thus necessitating a change of custody.
- A parent may remarry and the minor child gravitates toward the other parent.
- A minor child may also reach their teen years and simply prefer to spend more time with the other parent.
- There is domestic violence in a household.
- One parent starts drinking excessively or using illegal drugs or overusing prescription drugs in the presence of the minor child.
- One parent is unable to cope with their living circumstances or cannot adequately care for the child.
- A parent fails to bond with a child and the minor child no longer wants to live with that parent or minimize their contact with that parent.
- A parent is having psychiatric issues and cannot adequately care for their child.

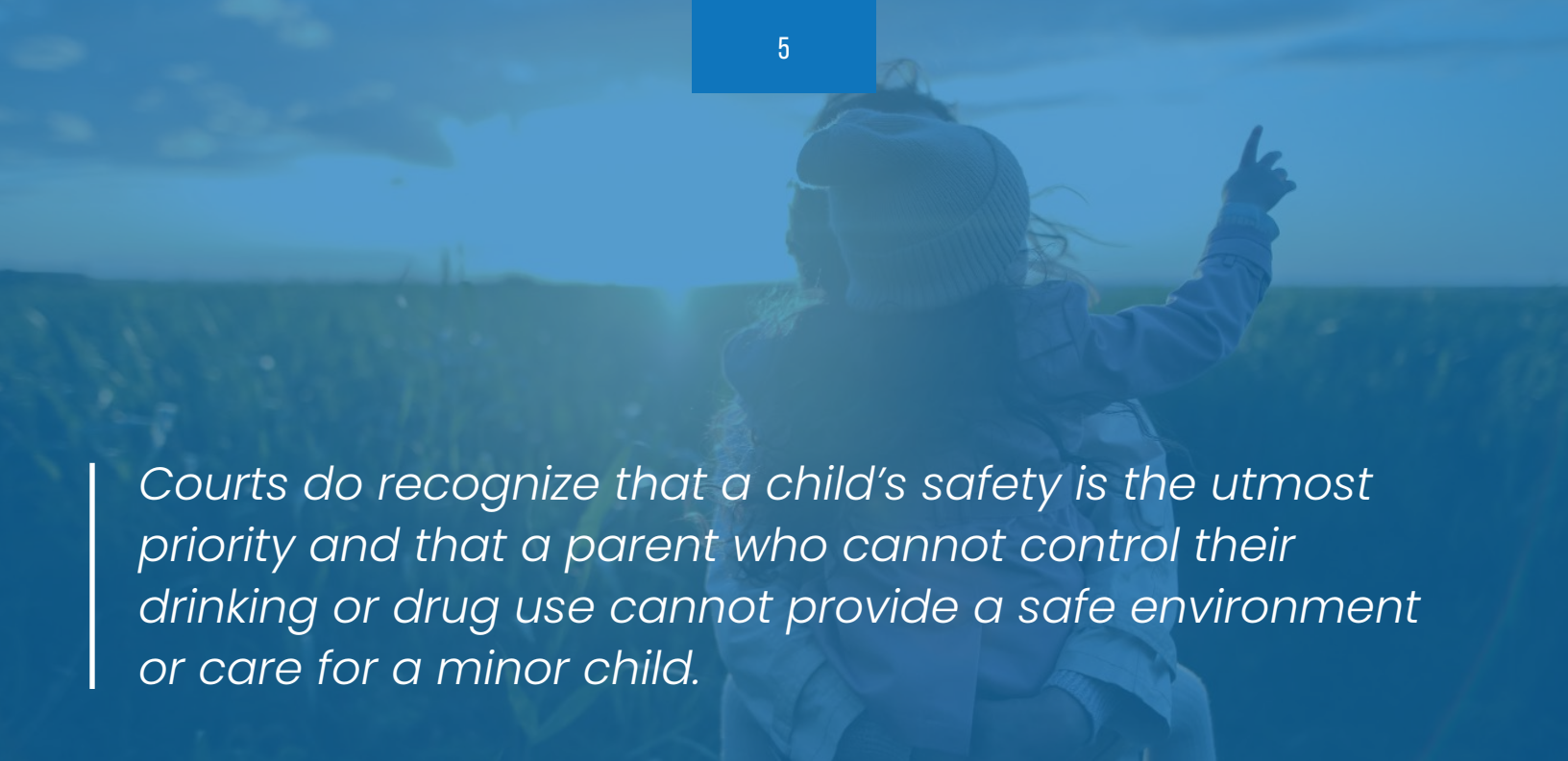
Q: IF I TAKE A JOB IN ANOTHER CITY, CAN I BRING MY CHILD WITH ME?

A. Yes, you can if (1) the other parent will agree in writing or (2) the court orders it. In this day and age, it happens often that people change jobs and move around the country. Courts take that into consideration. If you are considering a move to another city or state, it is important that you open a dialogue with the other custodial parent right away to see if you can work things out. Realistically, if one parent moves to another state that means that one of the parents is not going to see their child as often. Visitations will be limited to holidays and summers and the occasional long weekend. If you are considering a move such as this, be sure that you take all of these factors into consideration.

These are some of the factors that you should consider if and when you have to file a motion to modify custody on the basis of moving to another state (the so-called “move away” case). These factors will also be taken into consideration in any custody modification.

- Where does the child want to live? Have you spoken with your child about this and considered how it will affect your child? If your child is already in high school, they will have to leave their friends and the life that they have known.
- The age and health of the child. If the child is older, Courts are more likely to consider the child’s wishes. The child’s mental and physical health will also be taken into consideration.
- Does the child have a stronger bond with either parent? Some children heavily favor one parent over the other. If the child does really favor one parent over the other, that will weigh heavily into the Court’s decision, particularly if there is a mediation or a custody evaluation in which the child is interviewed.
- Is there any history of domestic violence, drug or alcohol abuse? If a parent has a substance abuse problem or is abusive, they are not likely to obtain custody of a child. If you are the abused parent or otherwise on the receiving end of an ex-spouse who cannot or will not stop drinking or using drugs, it is much more likely that you are going to obtain a favorable custody order. This assumes, of course, that these allegations are provable.
- Can you provide for your child financially or will you be dependent on assistance from family, a supporting significant other or child support? Financial independence does have its merits. If you are accepting a job in another state so that you can be financially independent and able to support yourself and provide for your child, that is a legitimate reason to move to another city or state. Conversely, if you are dependent upon third parties to support you and your child, Courts will look at those factors when issuing a custody order.
- Is the community in which you will be living kid friendly? What are the schools like? What kind of education will your child receive, and are there extra-curricular activities in which your child can be engaged in?
- What are your reasons for changing jobs and moving to another city? Better pay? A new marriage? Better quality of life or lower cost of living? The ability to buy a house? These are facts that the court will consider. If you are getting married and your spouse lives in another state, for example, courts are far more likely to consider that a reasonable, legitimate request. If, on the other hand, you are just looking for a change of scenery or to get away from your ex, that might not be enough to convince a trier of fact that your reasons for moving are genuine.

- Is there a support system for you and your child when you move? Extended family or close friends or a community of support are all facts that would weigh in your favor for an out-of-city or out-of-state move.
- Where and how would you be living? Is this a move up where you will live in a house or a large place, and where the child will have a room of their own and a place to play or study?
- Will the child be well cared for and supervised properly if the court agrees to the move?
- If your move is granted, what efforts will you make to ensure that your child has continuing contact with the other parent? For example, have you considered travel plans, inviting the parent to visit, summer vacations, holidays, birthdays, and special trips? Will you agree to encourage your child to talk on the phone or have video calls with the other parent a few days a week?
- The stability of both parents. If one of the parents has a history of mental illness, has long periods of unplanned unemployment, or otherwise evidences unstable behavior, those are facts that will affect the court's decision as to whether they will allow your child to move with you.
- How is this going to affect your child if you move and take your child with you? When appropriate, have a candid conversation or several with your child about how your child will feel about moving, and do your best to determine how this move will affect your child. To be sure, there will be an adjustment period, but looking at the long run is this what is best for your child or will your child just be making the best of it?
- Are you trading one problem for another? Will this move really achieve what you want or are you just trading one set of difficult circumstances for another? This is a personal decision but do think long and hard about it.



Courts do recognize that a child's safety is the utmost priority and that a parent who cannot control their drinking or drug use cannot provide a safe environment or care for a minor child.

Q: HOW DOES THE COURT VIEW THE OTHER PARENT IF HE OR SHE HAS A DRINKING OR SUBSTANCE ABUSE PROBLEM?

A. These are instances which usually warrant an immediate removal from the other parent's residence and care until the offending parent can get their drinking or drug use under control. This often involves, therapy, medication or other treatment depending upon the other parent's illness. This again assumes that this is provable. Courts do recognize that a child's safety is the utmost priority and that a parent who cannot control their drinking or drug use cannot provide a safe environment or care for a minor child. If you suspect and can prove the other parent's substance or alcohol abuse, file a motion right away and ask for sole custody with limited, perhaps supervised, visitation rights. Courts do utilize devices, such as Sober Link, to ensure that a parent is not drinking or may require a parent to undergo random drug testing to ensure the child's safety. If you are awarded custody in this situation and the other parent gets help getting sober or clean as they say, it is likely that the offending parent will be awarded visitation rights in the future. Court's orders tend to range from provable sobriety, supervised visitation, reunification therapy, and supervised visitations.

Q: CAN I MODIFY CUSTODY BECAUSE I DON'T LIKE MY EX'S PARENTING STYLE?

A. A difference in parenting styles is usually not considered a reasonable legal basis for a change of custody.

A difference in parenting styles is one of the main reasons for divorces and break ups, and courts do not usually allow parents' differences to carry over into the courtroom. That is not to say that if one parent is violent, abuses drugs or alcohol, or cannot otherwise care for the child that the court will not modify custody. However, just because parents disagree on how a child should be raised does not mean that a court will limit one parent's custody and visitation rights. These are some examples of situations in which a court will probably not change custody.

- A difference in religious views.
- A difference in educational goals. That is not to say if the child does not receive basic education that the court will not consider it. However, one parent may have dreams for a child becoming a doctor while the other parent would support the child becoming an artist or waiting to attend college.
- A difference of opinion as to extended family. Some people come from close families; others do not. The fact that one parent prefers frequent contact with extended family while the other does not will probably not affect a court's decision as long as both parents allow the child contact with an extended support system.
- A working parent lifestyle. This refers to a situation where a parent works and often has day care or other friends or family caring for their child. This is likely not going to persuade a court to change custody. That is, the law is clear that a parent cannot be penalized for having to work so long as the child is cared for during their custodial time.
- One parent is pro therapy and the other is not. Therapy is not for everybody, and courts recognize that, unless it is clear that a child needs therapy or that family therapy is recommended or clearly needed, it is not always best to force a particular viewpoint on the child.
- One parent has a new significant other or spouse. This is not usually an issue unless the child is being rejected or otherwise not included in the parent's "new life" with their partner or spouse. If the child is being well cared for and treated well, even with the introduction of a third party into the household, courts usually allow a transition period. Conversely, if the child is being mistreated, abused or neglected with the new living arrangement, that could be a basis for a change of custody.

Q: MY EX-SPOUSE HAS REMARRIED AND DOES NOT SEEM TO HAVE MUCH INTEREST IN OUR CHILD. IS THIS A REASON TO CHANGE CUSTODY?

A. The introduction of a third party and, eventually, a new family into a child's life can be problematic if not handled well. It is not unusual that the new spouse or partner wants to be the priority or does not want what they perceive as the competition of the child from a previous relationship. This is even more true if that new partnership or marriage results in another child or more children. If the child is not included in the "new family" the child can often feel confused, neglected, or even abused if such actions are in fact occurring in the household. If you feel that this is happening to your child, you need to talk openly with your child about their living circumstances and determine if a change of custody is necessary. If it is and your child is being rejected or otherwise neglected in the other parent's new living circumstances, the chances of obtaining a custody modification go up.

Q: CAN I ASK FOR MORE CUSTODY TIME SO THAT I DO NOT HAVE TO PAY AS MUCH CHILD SUPPORT?

A. This is one of the worst reasons to ask for a custody modification, and courts usually see right through it. If they do, it will not go well for you. The usual attitude of the court is that, if you want to spend more time with your child, great; but it had better not be to just get out of paying child support. Courts want to see a genuine interest by the requesting parent to see their children, care for them, and to be a part of their lives. You are going to have to prove that if you want a modification of custody. If you simply say that you just do not want to pay as much child support or make any such comments to the other parent, and it is proven, you will likely lose your motion. On the other hand, if you have given the situation due consideration and want to be a more active part of your child's life, that is a reasonable basis for a modification of custody request even with a reduction in child support.

Q: WHAT WILL HAPPEN IF ONE OF THE CUSTODIAL PARENTS IS MENTALLY ILL?

A. Mental illness is a sad and unfortunate part of many people's lives. It can devastate families and have lasting negative effects on the children. If you have a spouse who is mentally ill, the court will take this into consideration for a custody modification. These are some of the factors that the court will consider when reviewing your request for a modification of support.

- What is the other parent's diagnosis and has it been confirmed by a psychiatrist?
- The nature and severity of the other parent's mental health diagnosis.
- Whether the mentally ill parent can care for themselves.
- Whether the mentally ill parent is undergoing treatment and will cooperate with that treatment.
- Whether the mentally ill parent is on medication and will take that medication as prescribed.
- Whether the mentally ill parent can care for the child, supervised or unsupervised.
- Whether the mentally ill parent is able to work.
- Whether the mentally ill parent is able to control their behavior. For example, is the mentally ill parent having outbursts or exhibiting erratic or abusive behavior? If they are, the courts will take that into consideration.
- Whether the mentally ill parent presents a danger to themselves or others. Courts will also consider if there is a history of arrests or psychiatric holds or institutionalization.

This is not an exhaustive list of scenarios that can give rise to a change of custody, but, hopefully, it gives you an idea of legitimate and not so legitimate reasons to change custody and what courts are looking for if your motion is to be successful.