

Child Custody Modification

What's 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 final court order that sets out where your child lives and with whom s/he visits. This order might be called a Custody Decree, a Residential Schedule, or a Parenting Plan. This publication 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’s been taking care of the child, such as another relative. This publication uses the word “custodian” to describe other people besides parents who may have a right to time with a child.

What can I ask for in a modification case?

In a modification action, you ask the court to sign a new Parenting Plan. The new Parenting Plan may be very different than the current order, or just a little different. Examples: if you don’t 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, if the change to the Parenting Plan is major.

What's the difference between a “major” and “minor” modification?

There are two kinds of modifications. A major modification is a court action to ask the court to make a big change to your current Parenting Plan. A minor modification is a court action to ask the court to make only small changes to

your Parenting Plan. Examples: asking the court to change custody is a major modification. Asking the court to change the dates of holiday visits is a minor modification.

How much does a modification cost?

If you file your modification in the same county that entered your parenting plan, the court will charge you a \$30 - \$56 filing 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 will be between \$200 and \$205.

You’ll also need money to cover copying costs and possible fees for serving papers on the other parties. If you hire a lawyer, you’ll have to pay attorney’s fees and costs. If you can’t afford a lawyer and need to start a modification action on your own, you may download the necessary packets from

www.washingtonlawhelp.org or call CLEAR at 1-888-201-1014 and ask to have a copy mailed to you. If you’re low-income, you may be eligible for free legal services. Find out by calling CLEAR at 1-888-201-1014.

What if I can't afford the filing fee?

If you can’t afford the filing fee, there’s a special form to fill out asking the court to let you file for free. It’s called a “fee waiver” or “in forma pauperis.” Ask your court clerk for a copy of the form. If your court clerk tells you that they don’t have their own form, call CLEAR at 1-888-201-1014 and ask for a copy of the packet called **Filing In Forma Pauperis**.

Will the court grant a request for a modification automatically?

No. First, the person asking for the change will have to prove to the court that there's a good reason to make the change. Before the court will allow a change or even a trial, the court will hold a hearing called an "Adequate Cause" or "Threshold" hearing. If the person asking for the change can't prove there's a good reason at that hearing, the court will dismiss the modification case.

How do I prove that a major modification is necessary?

If the parent asking for the change proves that there's a good reason at the first "Adequate Cause" hearing, then the court will set a date for a trial. If the other parent or custodian doesn't agree to the change, then there will be a trial where a judge will decide whether or not to allow the modification.

At the trial, the parent who wants the change will have to prove that there's 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 for this big change is "substantial change of circumstances." The substantial change of circumstances must be one of the following:

- 1) The parents and any custodian agree to the modification;
- 2) 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;
- 3) The place where the child is supposed to live under the current Parenting Plan isn't safe for the child physically, mentally, or emotionally, and it would be more harmful to leave the child where s/he is than to move him/her to the other parent's home;

- 4) The other parent or custodian has been held in contempt of court at least twice in three years for not following the Parenting Plan, or the parent was criminally convicted of custodial interference in the first or second degree.

It isn't enough that a parent wanting a change thinks that his/her life has improved so much that the child should now live with him/her.

◆ PARENTS IN THE MILITARY: If a parent involved in a modification action is in the military, and has been deployed, activated, or mobilized, special rules apply. See a family law attorney for advice about your specific situation.

How do I prove that a minor modification is necessary?

The court may order a minor modification of the Parenting Plan if:

- 1) there's been a substantial change of circumstances in either parent's life or the child's life,
- and**
- 2) the modification is in the child's best interests.

An example of a reason for a minor modification is a change in either parent's work schedule. Another reason for a minor modification 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.

A minor modification may **not** change custody of the child unless one parent or custodian is moving with the child.

What if I don't want to change the order, but I'm having other problems with the other parent or custodian?

If you're happy with the current order, but the other parent hasn't been following it, or if you need the terms of the current order clarified, you should file for contempt or clarification, not for modification. If you just want to change the amount of child support a parent pays, you should file a separate action called "Modification of Child Support." For more information, request the **Changing Your Child Support Court Order** publication from CLEAR by calling 1-888-201-1014 or download it from www.washingtonlawhelp.org.

What if I don't have a final Parenting Plan for my child?

If a court has never signed a final Parenting Plan, you need to start a different kind of action to get one. For more information, request the **Parenting Plans (court orders about child custody)** publication from CLEAR by calling 1-888-201-1014 or download it from www.washingtonlawhelp.org.

Should I file a modification if I want to move with my children?

The process is different if the reason you need to change your current Parenting Plan is because of a move. For more information, request the **Moving with Children: Washington's New Relocation Law** publication from CLEAR by calling 1-888-201-1014 or download it from www.washingtonlawhelp.org.

Where can I find the law about modification?

You can find some law about modifying a Parenting Plan at most public libraries or online at <http://apps.leg.wa.gov/RCW/default.aspx>. Some of the law is set out in the Revised Code of Washington (RCW) 26.09.260 and other parts of RCW 26.09. Some law about modifications comes from cases decided by courts. Ask your public library's reference section about how to find court cases. If you don't have enough money to hire an attorney for your whole case, some attorneys might be able to help you with some parts of your case for less pay. For example, you may hire an attorney to research a particular issue for you, or to check over legal papers you've prepared. Many counties offer free advice-only clinics for low-income people. To see if you qualify for free legal services in your county, call CLEAR at 1-888-201-1014.

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