

Changing a Custody, Visitation or Child Support Order

TexasLawHelp (<https://texaslawhelp.org/directory/legal-resource/texaslawhelp>) [1]

This article answers frequently asked questions about changing an existing custody, visitation, child support, medical support, or dental support order. [LINK TO FORMS INCLUDED.](#)



How do I change an existing custody, visitation, child support or medical support order?

You can ask a judge to change a custody, visitation, child support or medical support order by filing a [modification case](#).

Can a court order be changed without going to court?

No. Only a judge can change a [court order](#).

Are there do-it-yourself forms I can use to file a modification case?

Yes. Get instructions and do-it-yourself [modification forms](#) here: [I need to change a custody, visitation, or support order. \(https://texaslawhelp.org/family-divorce-children/child-custody-visitation/toolkit/i-need-change-custody-visitation-or-support-order\)](https://texaslawhelp.org/family-divorce-children/child-custody-visitation/toolkit/i-need-change-custody-visitation-or-support-order) [2]

Note: The [modification](#) instructions are written for uncontested cases (agreed or [default](#)). If your [case is contested](#), it's best to hire a lawyer or apply for help from [Texas Attorney General Child Support Division \(https://texasattorneygeneral.gov/cs/welcome-to-the-child-support-division\)](https://texasattorneygeneral.gov/cs/welcome-to-the-child-support-division) [3].

Who can file a modification case?

Either [parent](#) can file a [modification case](#).

If you are not the child's [parent](#), you can file a modification case if:

- You are listed as a party in the current [order](#),
- You have had actual care, control and possession of the child for at least 6 months ending not more than 90 days before the date you file the [modification case](#) with the [court](#) and you are not a [foster parent](#).
- You have lived with the child and the child's [parent](#), [guardian](#) or [conservator](#) for at least 6 months ending not more than 90 days before the date you file

the modification case, and the child's parent, guardian or conservator has died.

- You are the child's grandparent, great-grandparent, sister, brother, aunt, uncle, niece or nephew and:
 - Both parents are dead,
 - Both parents, the surviving parent or managing conservator agree,
 - The child's present circumstances will significantly harm the child's physical health or emotional development.



The **Texas Attorney General Child Support Division** (<https://texasattorneygeneral.gov/cs/welcome-to-the-child-support-division>) [3] can also file a modification case. Learn when the **Texas Attorney General Child Support Division** (<https://texasattorneygeneral.gov/cs/welcome-to-the-child-support-division>) [3] can help and how to apply for their services here: **Texas Attorney General - Frequently Asked Questions about Child Support Modifications** (<https://texasattorneygeneral.gov/faq/cs-frequently-asked-questions-about-child-support-modifications>) [4].

Can the Attorney General help me change a court order?

Maybe. Learn when the **Texas Attorney General Child Support Division** (<https://texasattorneygeneral.gov/cs/welcome-to-the-child-support-division>) [3] can help and how to apply for their services here: **Texas Attorney General - Frequently Asked Questions about Child Support Modifications** (<https://texasattorneygeneral.gov/faq/cs-frequently-asked-questions-about-child-support-modifications>) [4].

Do I need a lawyer to help me with my modification case?

You do not *have* to have a lawyer to file a modification case. However, before filing your case it's a good idea to talk with a lawyer about your situation. A lawyer can explain your rights and options.

If you need help finding a lawyer, you can:

- Use our **Legal Help Finder** (<https://texaslawhelp.org/legal-help/legal-help-finder>) [5] to search for a lawyer referral service, legal aid office or self-help center in your area.
- Check our **Legal Clinic Calendar** (<https://texaslawhelp.org/legal-clinic->

calendar) [6] to learn if there is an upcoming free legal clinic near you.

- Use **Ask a Question (https://texaslawhelp.org/ask-question) [7]** to chat online with a lawyer or law student.



Can I hire a lawyer just to give me advice?

Yes! You can hire a family law lawyer just to give you advice, review your forms, draft a document or help you prepare for a hearing. You may then be able to handle the other parts of your case yourself. Hiring a lawyer for a limited purpose is called “**limited scope representation.**”

How much does it cost to file a modification case?

When you file a court case, you must usually pay a “filing fee.” If you need to have the other parent (or other conservator) served, you must also pay an “issuance fee” and a “service fee.” These fees vary by county. Contact the district clerk’s office in the county where you plan to file your case to learn the fees.

If you don’t have enough money to pay the fees, you can ask a judge to waive the fees by completing and filing a **Statement of Inability to Afford Payment of Court Costs. (https://texaslawhelp.org/form/statement-inability-afford-payment-court-costs-or-appeal-bond) [8]** Read this short article to learn more: **Court Fees & Fee Waivers (https://texaslawhelp.org/article/court-fees-fee-waivers) [9]**.

How long does a modification case take?

That depends. If everyone agrees to the changes and is willing to sign the necessary forms, a modification case can be finished in a matter of days.

If everyone does not agree, your case is contested. Contested modifications will take much longer.

Where do I file a modification case?

You must file a modification case in the Texas county where the current order was made.

If the child has lived in **another Texas county** for the last 6 months, you must

still file the modification case in the county where the current order was made. However, you have the option of asking the court to transfer the case to the child's new home county. You must file a Motion to Transfer at the same time you file your Petition to Modify the Parent-Child Relationship. Talk to a lawyer about whether this makes sense for your case.

If your child has lived in **another state** for the last 6 months, talk with a lawyer about where to file your case. Use our **Legal Help Finder** (<https://texaslawhelp.org/legal-help/legal-help-finder>) [5] tool for help finding a private lawyer or free or low-cost legal help in your area.



Will I use the same cause number in a modification case?

Yes. The modification case is filed using the same cause number as the current order. The cause number and court number should be at the top of the first page of the current order.

What if my order is from another state?

Ask a lawyer to help you determine if Texas has jurisdiction to change your out-of-state order.

If you need help finding a lawyer, you can:

- Use our **Legal Help Finder** (<https://texaslawhelp.org/legal-help/legal-help-finder>) [5] to search for a lawyer referral service, legal aid office or self-help center in your area.
- Check our **Legal Clinic Calendar** (<https://texaslawhelp.org/legal-clinic-calendar>) [6] to learn if there is an upcoming legal clinic near you.
- Use **Ask a Question** (<https://texaslawhelp.org/ask-question>) [7] to chat online with a lawyer or law student.

What if my order is from Texas but the child, the other parent or I now live in another state?

Ask a lawyer to help you determine if the Texas court that made your order still has jurisdiction to change your order.

If you need help finding a lawyer, you can:

- Use our **Legal Help Finder** (<https://texaslawhelp.org/legal-help/legal-help-finder>) [5] to search for a lawyer referral service, legal aid office or self-help center in your area.

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Who is the “petitioner” in a modification case?

The person asking for the current order to be changed is the “petitioner.” This is true even if that person is listed as a “respondent” in the existing order.

Who must be listed as a “respondent” in a modification case?

Anyone else listed as a party in the current order must be listed as a “respondent.”

If the Office of the Attorney General Child Support Division is listed as a party in the current order you must also list it as a “respondent.”

Will the judge change my court order?

It depends. There are **legal standards** that judges must follow before changing a court order. It is up to the person asking for the change to prove the legal standard. Read about the different legal standards below.

What is the legal standard to change child support or medical support?

To change child support or medical support you must prove that:

- The circumstances of the child, a conservator or other person affected by the order have materially and substantially changed, or
- It has been at least three years since the last child support order, and a new support order, based on child support guidelines, would differ from the last support order by at least 20% or \$100.

The legal standards for modifying child support changed effective September 1, 2018. See below and read **Texas Family Code chapter 156.401** (<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.156.htm#156.401>) [10].

If, however, you and the other parent made an agreement about the amount of child support in the orders, then the legal standard *might* be different. If you and the other parent agreed to a current child support amount that is *different* than what the percentage guidelines in the Texas Family Code would have required, then you will not be able to modify the child support amount simply because it

has been three years since the last orders were signed and the monthly child support obligation differs by 20% or \$100 from the order.

In this situation, you can only modify the child support order if you can show that the “circumstances of the child, a conservator or other person affected by the order have materially and substantially changed.”

The Family Code does not define “material and substantial change,” and proving this depends on the facts of each case. Usually, in order to determine if the circumstances have materially and substantially changed, the court will look at the circumstances at the time the agreement on child support was made and ordered and compare them to the circumstances at the time of the modification seeking to change that child support agreement.

Also, if your order is an order in a Title IV-D (Attorney General) case and does not include orders for medical support or dental support for the child, then a court may modify the orders without anyone having to show that there has been a material change in circumstances since the last orders were entered.

See **Texas Family Code chapter 156.401** (<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.156.htm#156.401>) [10].

What is a “material and substantial change in circumstances” for changing child support or medical and dental support?

Generally, this means that at least one of these things has happened:

1. The income of the parent ordered to pay child support has either increased or decreased, or
2. The parent ordered to pay child support is legally responsible for additional children, or
3. The child's medical insurance coverage has changed, or
4. The child's living arrangements have changed.

Warning: Do not file a frivolous modification suit. You can be assessed attorney's fees if the court finds that the modification suit was filed frivolously or to harass the other side. See **Texas Family Code chapter 156.005** (<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.156.htm#156.005>) [11].

Some Texas courts have said that a decrease in a parent's salary can be a material and substantial change in circumstances supporting a modification in child support. To help you figure out if you could succeed in your modification suit, you should talk to a lawyer who practices in the county where your orders



were signed. Also, the Harris County Law Library has a [family law research guide \(http://www.harriscountylawlibrary.org/s/Family-Law-Research-Guide-p6ry.pdf\)](http://www.harriscountylawlibrary.org/s/Family-Law-Research-Guide-p6ry.pdf) [12] if you need to research the issue more.



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

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 making a new child support order that takes into account your responsibility to support the new baby.

If you are the person receiving child support (the Obligee) and your new baby has the same father as your other children, the baby is a material and substantial change in circumstances. You'll need to file a Paternity suit or Suit Affecting the Parent-Child Relationship (SAPCR) combined with a Suit to Modify the Parent-Child Relationship. File the case about your new baby in the same cause number as the order about your other children. The Attorney General's Office may be able to help you with this.

If you are the person receiving child support and your new baby has a different father, the baby is not a material and substantial change. You'll need to ask for child support from your new baby's father in a different case. The Attorney General's Office may be able to help you with this.

What is guideline child support?

Texas law sets the following general guidelines for calculating child support. Child support based on these guidelines is called "guideline child support."

1 child = 20% of the non-custodial parent's average monthly net resources

2 children = 25% of the non-custodial parent's average monthly net resources

3 children = 30% of the non-custodial parent's average monthly net resources

4 children = 35% of the non-custodial parent's average monthly net resources

5 children = 40% of the non-custodial parent's average monthly net resources

6 or more children = not less than 40% of the non-custodial parent's average monthly net resources

See **Texas Family Code 154.125** (<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.154.htm#154.125>) [13].

You can use the **Texas Attorney General Child Support Calculator** (<https://www.texasattorneygeneral.gov/cs/calculator/>) [14] to calculate guideline child support.



Note: Guideline child support is slightly different if the non-custodial parent has other children.

Read this short article to learn more: **Child Support & Medical Support** (<https://texaslawhelp.org/article/child-support-medical-support>) [15].

What if the existing order was not based on the child support guidelines?

If your agreed child support order differed from the guidelines at the time it was made, the court may change the order only if:

1. you and your ex agree to the change, **or**
2. the court finds that there has been a material and substantial change in circumstances.

What if it costs more for me to see the kids because they have moved?

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 find out that I'm not the child's genetic father, can I stop paying child support?

Not unless the court orders that you can stop paying child support. You may have the option of asking the court to terminate the parent-child relationship between you and the child if you find out you're not the genetic father and you meet certain other requirements. This would end your obligation to pay future child support, but not your obligation to pay child support you already owe.

What is the legal standard to change custody or visitation?

To change custody or visitation you must prove that the change is in your child's

best interest and that at least one of the following is true:

1. The circumstances of the child, a conservator or other person affected by the order have materially and substantially changed. or
2. The child is at least 12 years old and tells the judge (in the judge's chambers), who the child wants to live with, or
3. The person with primary custody has allowed someone else to have primary care and possession of the child for at least 6 months. (This does not apply if the person with primary custody is on active duty military deployment.)



Is family violence a material and substantial change in circumstances?

The law specifically says that a conviction or order of deferred adjudication for family violence is a material and substantial change in circumstances that will justify a modification of custody or visitation.

Family violence may also be a material and substantial change in circumstances even if the other parent has never been arrested or convicted. If family violence has occurred, you can ask a judge to make a new order for custody and visitation that protects the safety and well-being of you and your children.

If you need help, call one of the organizations listed below for more information:

- National Domestic Violence Hotline, (800) 799-SAFE (7233),
- Crime Victims, (888) 343-4414, or
- Family Violence Legal Line, (800) 374-HOPE (4673).

Is child abuse a material and substantial change in circumstances?

The law specifically says that a conviction or order of deferred adjudication for an offense involving abuse of a child is a material and substantial change in circumstances that will justify a modification.

Child abuse can also be a material and substantial change in circumstances even if the Respondent has never been arrested or convicted. If child abuse has occurred, you can ask a judge to make a new order for custody and/or visitation

that protects the safety and well-being of your child.

If you need help, call one of the organizations listed below for more information:

- National Child Abuse Hotline, (800) 4-A-CHILD (422-4453),
- Crime Victims, (888) 343-4414, or
- Family Violence Legal Line at (800) 374-HOPE (4673).



What else qualifies as a material and substantial change in circumstances?

The law does not specifically say what else qualifies as a “material and substantial change in circumstance.” However, there are many court decisions that talk about this.

An experienced family law lawyer can help you determine whether or not a judge is likely to find that there has been a material and substantial change in circumstances in your particular situation. The lawyer can also help you determine what type of evidence you will need to prove your allegations. It’s possible to hire a lawyer just to give you legal advice, this is called limited scope representation. You can use the **Legal Help Finder (<https://texaslawhelp.org/legal-help/legal-help-finder>) [5]** tool to search for a lawyer, free legal aid program or self-help center in your area.

Can I ask that custody be changed within one year of the current order?

Unless you meet certain legal requirements, you must wait at least a year before going back to court to change primary custody of a child. Learn more here: **Child Custody Modification within a Year of Current Order (<https://texaslawhelp.org/article/child-custody-modification-within-one-year-current-order>) [16]**.

What if the parent with primary custody is active in the military and is deployed?

Unless the parents (and anyone else named as a conservator) agree, the court can’t *permanently* change custody just because a military parent has been deployed. However, either parent can ask the court for temporary orders that *temporarily* change custody during the deployment.

In this case, the court's first choice for temporary custody must be the other parent. If living with the other parent would not be in the child's best interest, the court's second choice must be a person designated by the military parent. The court's third choice would be a person chosen by the court.

The court may also make temporary changes to child support and visitation. For example, the court may temporarily change who pays child support. Or the military parent may ask the court to allow a designated person, such as a grandparent or step-parent, to visit the child while the military parent is deployed.

When the military deployment ends, the temporary orders end. Custody returns to the military parent and the original child support and visitation orders resume.

What if the parent with visitation rights is deployed?

If the parent with visitation rights is deployed, he or she may ask the court to make temporary orders to allow someone (such as a grandparent or step-parent) to take the military parent's visitation with the child while the military parent is gone.

If the parent with visitation rights is deployed, he or she also has the right to ask the court to award make-up visits. This must be done within 90 days of the date the parent's deployment ends. Read **Texas Family Code 153.709** (<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.153.htm#153.709>) [17].

Can I stop following the existing order as soon as I file a modification case?

No. You must follow the existing order until a new order is signed by the judge. Talk to a lawyer if you have questions about this.

I am concerned the custodial parent will try to move our child far away or out of state. Is there anything I can do?

Some orders include a geographic restriction, which limits where the child can live. You should review your order to see if it includes one. If it doesn't, you can file to modify your order and ask that the judge add a geographic restriction. You can read more about geographic restrictions here: **Geographic Restrictions** (<https://texaslawhelp.org/article/geographic-restrictions>) [18].



A nonparent (e.g., grandparent) is caring for my child temporarily. Do I need to do a modification so that the nonparent can take my child to the doctor, enroll them in school, etc.?

If nonparent (e.g., grandparent) is caring for your child temporarily, you may think you need to do a modification so that the nonparent can take my child to the doctor, enroll them in school, etc.

This is not necessarily the case. If your child is temporarily in the care of a nonparent, you can get a temporary authorization for care of minor children. However, when there is a court order in place, you will need to get permission from the court to do this. You can read more here: **[Going to Court to Get Temporary Authorization to Care for a Child \(https://texaslawhelp.org/article/going-court-get-temporary-authorization-care-child\)](https://texaslawhelp.org/article/going-court-get-temporary-authorization-care-child)** [19].

If the other parent agrees, and you can reach them, see this article: **[Authorization for Nonparent Care of a Child \(https://texaslawhelp.org/article/authorization-nonparent-care-child\)](https://texaslawhelp.org/article/authorization-nonparent-care-child)** [20] There is a form you can fill out without having to go to court: **[Authorization Agreement for Nonparent Relative or Voluntary Caregiver \(https://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2638.pdf\)](https://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2638.pdf)** [21] is available in the **[forms bank web site of the Texas Department of Family and Protective Services \(https://www.dfps.state.tx.us/site_map/forms.asp\)](https://www.dfps.state.tx.us/site_map/forms.asp)** [22].

There is a toolkit for asking the court for temporary authorization here: **[Temporary Authorization for Care of Minor Child \(Texas Family Code 35\) \(https://texaslawhelp.org/toolkit/temporary-authorization-care-minor-child-texas-family-code-35\)](https://texaslawhelp.org/toolkit/temporary-authorization-care-minor-child-texas-family-code-35)** [23].

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Links

[1] <https://texaslawhelp.org/directory/legal-resource/texaslawhelp>

[2] <https://texaslawhelp.org/family-divorce-children/child-custody-visitation/toolkit/i-need-change-custody-visitation-or-support-order>

[3] <https://texasattorneygeneral.gov/cs/welcome-to-the-child-support-division>



- [4] <https://texasattorneygeneral.gov/faq/cs-frequently-asked-questions-about-child-support-modifications>
- [5] <https://texaslawhelp.org/legal-help/legal-help-finder>
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- [10] <https://statutes.capitol.texas.gov/Docs/FA/htm/FA.156.htm#156.401>
- [11] <https://statutes.capitol.texas.gov/Docs/FA/htm/FA.156.htm#156.005>
- [12] <http://www.harriscountylawlibrary.org/s/Family-Law-Research-Guide-p6ry.pdf>
- [13] <https://statutes.capitol.texas.gov/Docs/FA/htm/FA.154.htm#154.125>
- [14] <https://www.texasattorneygeneral.gov/cs/calculator/>
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- [21] <https://www.dfps.state.tx.us/Application/Forms/showFile.aspx?NAME=2638.pdf>
- [22] https://www.dfps.state.tx.us/site_map/forms.asp
- [23] <https://texaslawhelp.org/toolkit/temporary-authorization-care-minor-child-texas-family-code-35>

