

FAQs: Responding to a Modification Case

This article answers frequently asked questions about responding to a modification case.

What is a modification case?

A modification case asks a judge to change existing custody, visitation, child support, medical support, or dental support order.



Where should a modification case be filed?

A modification case should be filed in the Texas county where the existing order was made.

What if the child no longer lives in the county where the existing order was made?

If the child has lived in **another Texas county** for the last 6 months, 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** before your answer deadline or before the court hearing (whichever happens first). Talk to a lawyer about whether filing a motion to transfer makes sense for your case.

TexasLawHelp.org does not currently have motion to transfer forms.

If your child has lived in **another state** for the last 6 months, talk to a lawyer. The Texas court **may** have lost the power to make orders about your child.

What does it mean to be “served” with court papers?

Unless you agree to change the existing order, the petitioner (the person who filed the modification case) must have you served with the initial court papers.

The **initial court papers** include:

- a **Citation** (a form issued by the court to officially notify the respondent of the case) and
- a copy of the **Petition to Modify the Parent-Child Relationship** (the form filed by the petitioner to start the case).

The initial court papers will also include the following (if applicable in your case):

- any other forms filed by the petitioner at the beginning of the case and/or

- any orders signed by the judge at the beginning of the case.

If you are the respondent, there are several ways you can be served with the Citation and Petition to Modify the Parent-Child Relationship

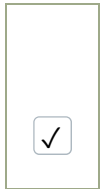
- You can be **served in person** by a constable, sheriff, or private process server. (If you are served in person, you will **not** need to sign anything.)
- You can be **served by certified or registered mail** (return receipt requested) by the court clerk, constable, sheriff or private process server. (Service by certified mail is valid only if you sign the return receipt showing that you received the letter.)
- You can be **served by posting or publication** if the petitioner can't find you. This means the citation will be posted at the courthouse, published in a newspaper, or published on the state's citation by publication web site (<https://www.txcourts.gov/judicial-data/citation-by-publication/>) [1].
- You can be **served any other way approved by the judge**. For example, if the constable, sheriff or private process server is unable to serve you in person or by certified mail but can confirm your home address or work address, the judge could order that the Citation and Petition be:
 - posted to your door, or
 - left with anyone over 16 at your home or work, or
 - mailed to you at your home or work by regular mail.

Note: Papers filed by the petitioner **later** in the case will usually be mailed (regular mail) or emailed to you.

Talk to a lawyer if you have questions about being served.

What should I do if I'm served with court papers in a modification case?
Read the modification papers carefully and right away. Is there a standing order? Has the judge signed a temporary restraining order? Are there any hearings dates? If so, read these articles to learn more: **Standing Orders** (<https://texaslawhelp.org/article/standing-orders>) [2], **Temporary Orders & Temporary Restraining Orders (TROs)** (<https://texaslawhelp.org/article/temporary-orders-temporary-restraining-orders-tros>) [3]

Calculate the deadline to file an answer. Find the day you were served with modification papers on a calendar, count out 20 more days (including weekends



and holidays), then go to the next Monday. You must file an answer with the court on or before this date at 10:00 a.m. If you don't, the petitioner may finish the modification without you. **Note:** If the 20th day is a Monday go to the next Monday. If the courts are closed on the day your answer is due, then your answer is due the next day the courts are open.

Try to talk to a lawyer. A family law lawyer can explain your options and give you advice about your particular situation. You can hire a family law lawyer **just** to give you advice. Or, you may be able to talk with a lawyer for free at a legal clinic.



If you need help finding a lawyer, you can:

- Use our **Legal Help Finder** (<https://texaslawhelp.org/legal-help/legal-help-finder>) [4] 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>) [5] for free legal clinics in your area.
- Use **Ask a Question** (<https://texaslawhelp.org/ask-question>) [6] to chat online with a lawyer or law student.

Decide how you want to respond.

- **Option 1: File an answer.** If you have been served with modification papers and want to have a say in the case, you **must** file (turn in) a Respondent's Original Answer form with the court. If you don't, the petitioner may finish the modification without you. Get answer forms here: **Instructions & Forms for Filing an Answer in a Modification Case** (<https://texaslawhelp.org/checklist/instructions-forms-filing-answer-modification-case>) [7].

Warning! It's important to talk with a lawyer **before** filing an answer (or any other form) with the court if you don't live in Texas or think the modification should be transferred to another court in Texas.

- **Option 2: File an answer AND a counter-petition for modification.** A counter-petition for modification tells the judge what orders **you** want the judge to make in your modification. If your modification is contested, you may want to file (turn in) a Respondent's Original Answer form AND a Respondent's Original Counter-Petition for Modification form. Modification counter-petition forms are not currently available on TexasLawHelp.org.

- **Option 3: Do nothing.** If you have been served with modification papers and do nothing, the petitioner can finish the modification without you. This is called a “default judgment.” You will not have a say in any of the issues involved in the modification case.

If you have questions about your options, it’s important to talk with a lawyer.



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

Modification cases can be complicated. It’s a good idea to talk with a family law lawyer who can explain your options and give you advice about your particular situation.

It’s **really** important to talk with a family law lawyer if any of the following are true.

- You are afraid for your or your children’s safety.
- Your case is contested.
- The petitioner has a lawyer.

If you need help finding a lawyer, you can:

- Use our **Legal Help Finder** (<https://texaslawhelp.org/legal-help/legal-help-finder>) [4] 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>) [5] for free legal clinics in your area.
- Use **Ask a Question** (<https://texaslawhelp.org/ask-question>) [6] to chat online with a lawyer or law student.

What if I’m concerned about my safety or the safety of my children?

If you are concerned about your safety or the safety of your children, get help right away by calling one of the organizations listed below. You may qualify for free legal help.

- **National Domestic Violence 24 Hour Hotline** (<http://www.thehotline.org/>) [8], 800-799-SAFE (7233)
- **Crime Victims** (<http://www.tlsc.org/victims-of-crime.html>) [9] (AVOICE),

888-343-4414

- **Family Violence Legal Line (<https://www.texasadvocacyproject.org/free-legal-services/legal-phone-lines>) [10]**, 800-374-HOPE (4673)

For situations involving sexual assault, you can also call:

- **Legal Aid for Survivors of Sexual Assault (<http://www.legalaidforsurvivors.org/>) [11]**, 800-991-5153

If you are an immigrant, you can also call:

- **Refugee and Immigrant Center for Education and Legal Services (<http://www.raicestexas.org/>) [12]** (RAICES) 512-994-2199

In an emergency, call 911.

Find out more in the **Protection from Violence or Abuse** (<https://texaslawhelp.org/protection-from-violence-or-abuse>) [13] section of this website.

What is an answer?

An answer is a legal form filed by the respondent in a court case.

Filing an answer with the court protects your right to have a say in the issues involved in the case.

If you file an answer, the petitioner cannot finish the modification case unless:

- you and the petitioner (and anyone else named as a respondent in the case) agree to and sign an Order in Suit to Modify the Parent-Child Relationship, **or**
- the petitioner gives you written notice of a contested hearing date.

Get instructions and answer form here: **Instructions & Forms for Filing an Answer in a Modification Case (<https://texaslawhelp.org/checklist/instructions-forms-filing-answer-modification-case>) [7]**.

How much does it cost to file an answer?

Filing an answer is **free**.

Can I file an answer if I haven't been served?

Yes. When a modification is agreed, the respondent will often voluntarily file a **Respondent's Original Answer (<https://texaslawhelp.org/sites/default/files>)**



/fm-mod1-102 mod answer final 0.pdf) [14] form or **Waiver of Service Only (Specific Waiver)** (https://texaslawhelp.org/sites/default/files/fm_mod1_103_mod_waiver_final.pdf) [15] form. If you voluntarily file an answer or waiver of service, you will not need to be formally served.

Read about the steps in an agreed modification here: **Instructions & Forms for an Agreed Modification** (<https://texaslawhelp.org/checklist/instructions-forms-agreed-modification>) [16].



Will the judge change the current 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?

In general, to change child support or medical support you must prove that:

1. The circumstances of the child, a conservator or other person affected by the order have materially and substantially changed. -or-
2. 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 change 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>) [17].

In some cases, you may only be able to modify the child support order by proving that the circumstances of a child, a conservator, or other person affected by the order have materially and substantially changed.

For example: If 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.

Again, see **Texas Family Code chapter 156.401**
(<https://statutes.capitol.texas.gov/Docs/FA/htm/FA.156.htm#156.401>) [17].

This information is not a substitute for the legal advice and counsel of a lawyer. A lawyer is trained to protect your legal rights. Even if you decide to represent yourself, try to talk to a lawyer about modifying your child support before filing anything. Use the **TexasLawHelp Legal Help Finder tool**
(<https://texaslawhelp.org/legal-help/legal-help-finder>) [4] for assistance in locating a lawyer.

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

IMPORTANT: The law about changing child support changes effective

September 1, 2018. Read **What is the legal standard to change child support or medical support** (<https://texaslawhelp.org/faq/what-legal-standard-change-child-support-or-medical-support>) [18]? (<https://texaslawhelp.org/faq/what-legal-standard-change-child-support-or-medical-support>) [18]

Read this short article to learn more: **Child Support, Medical Support, and Dental Support** (<https://texaslawhelp.org/article/child-support-medical-support>) [19].



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 you have never been arrested or convicted.

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.

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. Although you can **do your own legal research** (<https://texaslawhelp.org/article/legal-research-steps-follow>) [20], you need to talk to a lawyer.

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.



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

Texas law says that a modification case to change primary custody can be filed within one year of the current custody order **only if**:

1. the person with primary custody is asking for or agrees to the change, **or**
2. the child's present environment may endanger the child's physical health or significantly harm the child's emotional development, **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. (*Number 3 does not apply if the person with primary custody is on active duty military deployment.*)

The allegation (that one of the above is true) must be supported by specific facts.

If the judge decides that the facts alleged **would be enough** to support a modification, the judge will schedule a hearing.

If the judge decides that the facts alleged (even if true) **would not be enough** to support a modification, the judge will refuse to have a hearing and the modification case will be dismissed.

See Texas Family Code Section 156.102.

Read this article to learn more: **Child Custody Modification within a Year of Current Order** (<https://texaslawhelp.org/article/child-custody-modification-within-year-current-order>) [21].

Where can I read the law about modification?

Read the law here: **Texas Family Code Chapter 156**

(<http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.156.htm>) [22].

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Links

- [1] <https://www.txcourts.gov/judicial-data/citation-by-publication/>
- [2] <https://texaslawhelp.org/article/standing-orders>
- [3] <https://texaslawhelp.org/article/temporary-orders-temporary-restraining-orders-tros>
- [4] <https://texaslawhelp.org/legal-help/legal-help-finder>
- [5] <https://texaslawhelp.org/legal-clinic-calendar>
- [6] <https://texaslawhelp.org/ask-question>
- [7] <https://texaslawhelp.org/checklist/instructions-forms-filing-answer-modification-case>
- [8] <http://www.thehotline.org/>
- [9] <http://www.tlsc.org/victims-of-crime.html>
- [10] <https://www.texasadvocacyproject.org/free-legal-services/legal-phone-lines>
- [11] <http://www.legalaidforsurvivors.org/>
- [12] <http://www.raicestexas.org/>
- [13] <https://texaslawhelp.org/protection-from-violence-or-abuse>
- [14] https://texaslawhelp.org/sites/default/files/fm-mod1-102_mod_answer_final_0.pdf
- [15] https://texaslawhelp.org/sites/default/files/fm_mod1_103_mod_waiver_final.pdf
- [16] <https://texaslawhelp.org/checklist/instructions-forms-agreed-modification>
- [17] <https://statutes.capitol.texas.gov/Docs/FA/htm/FA.156.htm#156.401>
- [18] <https://texaslawhelp.org/faq/what-legal-standard-change-child-support-or-medical-support>
- [19] <https://texaslawhelp.org/article/child-support-medical-support>
- [20] <https://texaslawhelp.org/article/legal-research-steps-follow>
- [21] <https://texaslawhelp.org/article/child-custody-modification-within-year-current-order>
- [22] <http://www.statutes.legis.state.tx.us/Docs/FA/htm/FA.156.htm>