

What You Need To Prove

Since you filed the Motion for Change of Custody, you must prove the reason or reasons for that request. You must convince the Judge or Magistrate that:

- circumstances have changed regarding the child or residential parent since the original custody order granting your ex-spouse custody
AND
- as a result of those changes, it is now in the best interests of the child or children that you get custody
AND
- the change of environment would cause more good than harm to the child or children.

Examples of circumstances that justify a change in custody:

Your ex-spouse is:

- currently in jail or has been convicted of a crime;
- has been charged with child neglect or abuse;
- is drinking or using drugs excessively; or
- is in the hospital for some physical or mental incapacity.

Your child:

- is not doing well in school; or
- has been declared unruly or delinquent.

If you and your ex-spouse agree on the change of custody, your testimony and the testimony of your ex-spouse should be enough to get custody changed.

If you and your ex-spouse do not agree on the change of custody, you must present evidence to show that your children will be better off in your custody.

REMEMBER

If your ex-spouse cannot or will not appear in court, have him/her write a paper stating that he/she agrees to the change of custody. Get that statement notarized (sign the paper in front of a notary public who will also sign and stamp the

document).

Show Up for the Hearing On Time !

The Court will set a time and date for a hearing on your case and let you know this date immediately after you file your court papers or by mailing you a reminder notice. **Mark this date in your calendar.** If you do not show up at the hearing, the court will automatically rule in favor of your ex-spouse.

REMEMBER

If you move your home any time after filing the motion to modify custody, **you must notify the court of your new address.** If you don't, the Court will have no way of letting you know the time and date of the hearing.

What to Bring to Court

Documents and other evidence that prove that a change of custody should occur:

- school records for the child
- certified copy of judgment entry of conviction against your spouse (proof convicted of crime)
- certified copy of your child's adjudication of delinquency

Witnesses who will testify on your behalf. Only use witnesses who will testify in your favor. You can testify on your own behalf. If your children are old enough, they can also testify that they would rather live with you.

Financial information, including proof of income. Bring at least one of the following:

- a letter from your welfare office or employer
- your paycheck stub and tax return
- letter from the Social Security Administration

TIP

If your children do not want to testify in court, ask the Judge or Magistrate to speak to the children in his or her office alone after he has heard all of the other witnesses. The Judge probably will not let either you or your ex-spouse hear what the children say.

What to Do at the Hearing

Explain generally to the Judge why it is that you believe custody should be changed and why that change would be best for your child or children. Your ex-spouse may be given a chance to summarize his/her reasons for opposing the change of custody.

Call your first witness. Don't forget—you can call yourself as a witness. If you have more than one witness, you can call them in any order you want to.

If you are the witness, tell the Judge or Magistrate why you believe that custody should be changed (include the reasons stated in your Motion). Also explain why this change is in the best interests of your child or children.

Only testify to things that you know or have observed yourself.

When someone else is the witness:

- Ask the witness to tell the court his/her name and relationship to you and/or your ex-spouse.
- Question the witness about the topics or incidents that you want him/her to talk about.

TIP

When questioning witnesses:

- Keep your questions short and open-ended. For example, "Have you ever seen my ex-husband interacting with our children? Can you tell me what you observed?"
- Don't argue with the witness. If they don't answer as you expected, just move on.

REMEMBER

The topics your witnesses discuss should support your reasons for wanting custody changed or show that the change is in the best interest of the children.

After each of your witnesses testify, your ex-spouse or his/her attorney will have a chance to question that witness as well.

When you are questioned:

- Listen carefully to each question and make sure you understand it before you answer it. If you do not understand the questions or are not sure what you are being asked, say so.
- Do not volunteer unnecessary information, only answer the question that is asked.
- Answer all questions truthfully.
- Only testify about things you personally saw or heard or know from your own experiences.

CAUTION



Witnesses generally cannot testify about what another person told them. This is called “hearsay.” One exception to this rule is that witnesses CAN testify to what they have heard your ex-spouse say, and sometimes to what has been said by other people when your ex-spouse was present.

After you have offered all of your witnesses, your ex-spouse has the right to present witnesses, also.

After each of your ex-spouse’s witnesses testify, you will have a chance to ask him/her questions as well. All of your questions must be about subjects raised by your ex-spouse’s questions. The Judge can also question these witnesses.

After all the witnesses have testified, you can summarize all of the testimony for the Judge and briefly state again why you

believe custody should be changed. Your ex-spouse will be given the opportunity to do the same.

RULES TO REMEMBER

1. The judge is more interested in facts than in your opinions. If you can prove something, do so! For example:
 - Rather than telling the judge that your ex-spouse is no good for your child, prove it! Get a copy of his/her school records showing that the child’s grades have dropped since living with your ex-spouse.
 - Rather than telling the judge that your ex-spouse is a violent person, prove it! Get a certified copy of your ex-spouse’s judgment entry of conviction for assault or domestic violence, or have a witness testify that he/she has seen your ex-spouse act violently.
 - Rather than telling the judge that you are a reformed drug addict, prove it! Get your counselor or social worker to testify that you have been in treatment for one year and sober for 12 months.
2. Be professional and control your temper at all times! If your ex-spouse tells horrible lies about you, don’t get angry and start yelling at him/her. This only makes you look bad.

FINAL DECISION

After the Judge or Magistrate has heard all of your testimony and comments, he/she will:

- come to a decision, sign a judgment entry, and give you a copy of the signed entry or send a copy to you by mail;
- wait to make a decision, and mail a copy of the judgment entry to you.

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Court Hearing on Change of Custody

How to Prepare

What You Must Prove

How to Present Your Case at the Hearing

