

Community Legal Aid

A non-profit law firm serving the legal needs of low-income individuals and families in central northeast Ohio



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Representing Yourself on a Motion for Change of Custody

Filing a Motion for Change of Custody

What Do I Need to Prove? Since you filed the Motion for Change of Custody, you must prove the 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 to 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. The court will let you know this date immediately after you file your court papers or mail you a reminder notice. **Mark this date on 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 anytime 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 the 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 tell the court 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 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

1. The Court may ask if you want to make an opening statement.

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

2. 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 seen 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 saw?"*
- Don't argue with the witness. If they don't answer as you expected, just move on.

3. If the other parent testifies or has witnesses, you will be allowed to cross examine them. Don't do it. This is very hard to pull off. Take notes. Ask the judge to allow you or your witness to testify about what the witness said if you think it was wrong.

*This article is meant to give you general information and not to give you specific legal advice.
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