

The Ultimate Guide to Child Custody Modification in Texas

by Texas Board Certified Attorneys
Brian Walters and Jake Gilbreath



WALTERS GILBREATH PLLC
HOUSTON | AUSTIN | DALLAS

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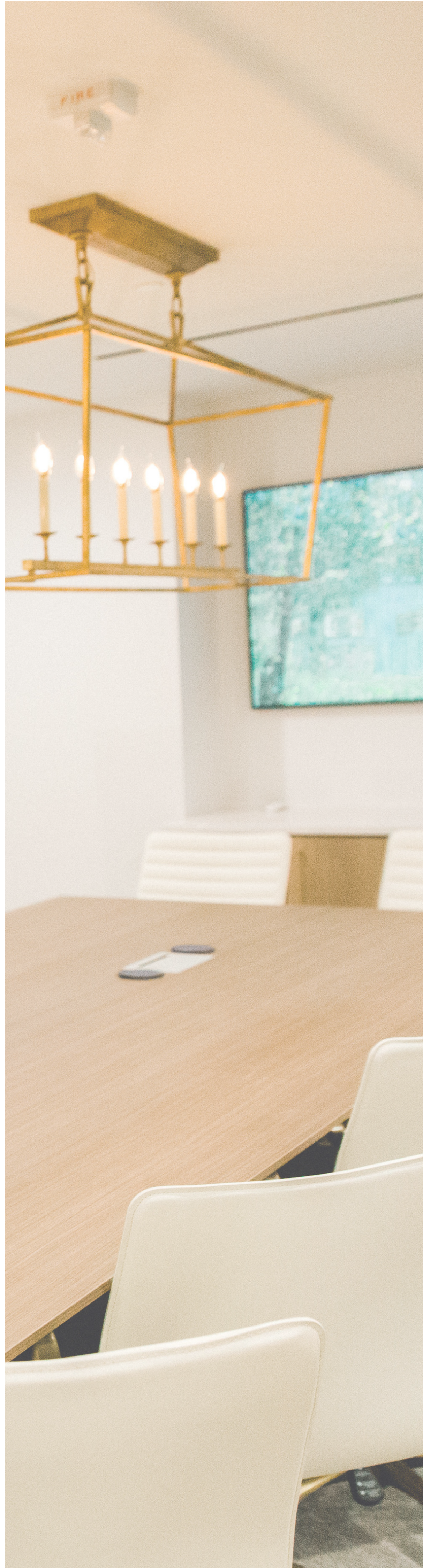
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Modifying Child Custody Orders in Texas

There are several instances that permit a need for a modification to your current child custody orders. We'll dive into our top reasons in the next section, but we thought we'd discuss the logistics of modifying child custody orders in Texas.

Modifying an earlier custody determination under the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) is governed by the Texas Family Code which outlines Texas's exclusive continuing jurisdiction over custody determinations and describes how Texas courts may not modify child custody determinations made by the courts of another state.

If a Texas court has issued a final order in an earlier determination of custody under proper jurisdiction, then that specific court has continuing exclusive jurisdiction (CEJ) over future custody determination or modifications. Basically, the Court that initially determined the custody order will still have jurisdiction to determine modifications as long as the initial order was made under proper jurisdiction.

Emergency Jurisdiction in Texas

A Texas court has temporary emergency jurisdiction if:

- the child is present in Texas and
- the child has been abandoned OR the child needs to be protected because the child, or a sibling or parent of the child, is being subjected to or threatened with mistreatment or abuse

“Impending” mistreatment can be shown by the party in addition to actual mistreatment or abuse. There are certain circumstances in which an emergency custody determination may become a final custody determination. In order for this to happen there must be:

- No earlier child-custody determination enforceable under the UCCJEA
- No other proceeding may have taken place in another court
- The emergency order must state that it will become a final order; and Texas becomes the new home state of the child

Regardless, Texas courts are required to communicate with the courts of another jurisdiction as soon as they find out that proceedings have been properly filed there, to appropriately resolve the emergency. Texas courts may not exercise jurisdiction if a custody proceeding has been started in another state with jurisdiction under the UCCJEA, unless the proceeding in the other state has been terminated, or is stayed by the court of the other state because a Texas court is a more convenient forum. If a Texas court does begin a custody proceeding and finds that the proceeding has been commenced in another state with jurisdiction, the Texas court should stay its proceeding and communicate with the court of the other state. However in a proceeding to modify a child custody determination, a Texas court has the options to:

- Stay the proceeding
- Enjoin the parties from continuing with the proceeding
- Proceed with modification if the Texas court deems it appropriate



A Texas court may decline to exercise its jurisdiction if it determines that it is an inconvenient forum and that the appropriate forum is the court of another state. This issue may be raised upon a party's motion, the court's own motion, or request of another court. Before making a decision on whether it is an inconvenient forum, the Texas court must consider whether another state may appropriately exercise jurisdiction. The court should consider all relevant factors including occurrence or likelihood of occurrence of domestic violence, finances of the parties, how long the child has lived outside of Texas, distance between Texas court and the other state's court, and the location of evidence necessary to the litigation.

Essentially, if an emergency occurs you need to immediately reach out to an experienced custody attorney to assist you in your modification to ensure your orders are properly addressed.

Top 5 Reasons to Modify a Child Custody Order

Most times, child custody orders are modified because there has been a “material and substantial change in circumstances.” Thus, the petitioner (party asking for the modification) must show two things:

- A material and substantial change in the circumstances of the child or a parent and
- The requested modification is in the best interest of the children.



The party seeking the modification has the burden to establish these two elements by a preponderance of the evidence.

The need for a modification of a child custody order often arises as the lives of both parents and the children progress overtime. There are many, many reasons why there may be a need to modify a child custody order. The following list in our experience is the Top 5 Reasons to Modify a Child Custody Order.

I. You are Being Alienated From Your Child

Parental Alienation is an attempt by one parent to exclude the other parent from a child's life. Parental Alienation can take place in all shapes and sizes, but the consistent theme is that the other parent, without justification, is waging a campaign with the child to harm that child's relationship with the other parent. The ultimate goal of the alienating parent is that the other parent is rejected by the child and/or removed from the child's life. Parental Alienation can take place before a couple separates, during separation, or after a child custody order has been established.

Addressing Parental Alienation is a difficult process, but it must be done. There are many different approaches to the problem, but almost all, if not all, involve litigation. If there is a child custody order that gives the alienating parent custody of the child, then that order may, and most likely will, have to be modified to address the alienation. Possession and access (visitation) may also have to be addressed to limit the alienating parent's access to the child.

Finally, the court may need to address therapeutic decisions in the underlying order and may need to make modified orders for mental health intervention for the family.

2. The Other Parent Cannot Co-Parent

Most child custody orders are set up with the parents appointed as joint managing conservators. (NOTE: Joint managing conservatorship does not require equal time.) Regardless of how decision making is allocated, the goal of a joint managing conservatorship is for parents to co-parent the children together. In fact, it is the public policy of the State of Texas to “encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.” Tex. Fam. Code s. 153.001(3).

Some parents simply fail at achieving this goal. Because of anger or bitterness from a separation or divorce, a parent may refuse to co-parent. In these situations, the parent in charge of making decisions for the child will refuse to consult the other parent, refuse to take the other parent’s opinions into consideration, and/or refuse to inform the other parent about significant information concerning the children.



In these situations, the court may be inclined to modify the order and re-allocate the rights and duties of the parents, including which parent has the right to establish the primary residence of the child (“custody”) and which parent has the right to determine where the child attends school. The court may also need to modify possession and access to limit the access of the parent who refuses to co-parent.

3. Issues With Drugs and Alcohol

A parent struggling with drugs or alcohol issues can seriously affect a child's life and child custody arrangements. Sometimes a parent struggles with addiction issues prior to separation. Sometimes the issues do not arise (or do not become known) until after a child custody order is in place.

If a court is concerned about a parent's drug or alcohol use, the court may need to modify the underlying child custody order. In a modification suit the court can change which parent has custody, limit a parent's access to the child, make orders for counseling, and/or make orders for drug and alcohol testing.



4. A Need or Desire to Move

Most child custody orders provide for a geographic restriction – a certain area in which the parent who has custody must reside. However, circumstances may change that require a parent to seek to have the restriction modified. For example, a parent may have a geographic restriction of Harris and surrounding counties, but may then have a job opportunity that requires that parent to move to Dallas or Austin.

In the reverse, a custody order may provide for a larger geographic restriction, and a parent may need to seek to restrict the geographic restriction. For example, a parent may have a geographic restriction of the State of Texas, but the non-custodial parent is seeking to shrink the restriction to prevent constant moves throughout the state.

Geographic restriction fights are often high stakes and very determinative of how much access a non-custodial parent will have to the child. The issue of a geographic restriction can be tried to either a judge or a jury.

5. Desires of the Child

As shown above, if a child 12 years or older desires to live primarily in the other parent's household, this is grounds for a modification. Furthermore, a child's desire to change a possession schedule or primary household may be a material and substantial change in circumstances.

If a child has expressed desires to change the custody arrangement and/or possession and access arrangement this may be grounds for a modification. If the child is under the age of 12, the child's desires, assuming the child is of sufficient maturity, could possibly be grounds for a modification. If the child is 12 or older, the child's desires will almost always be grounds for a modification.

Conclusion

Child custody orders are living documents that may be modified if an appropriate modification lawsuit is brought. Prosecuting or defending against a modification requires care and skill. If a modification is brought and then denied, future modifications are more difficult (see above re: stability of a child). Thus, it is important whether you are bringing a modification or defending against a modification that the lawsuit is taken seriously, and all efforts are used to demonstrate to the judge or the jury what is in the best interest of the children moving forward.



Relocation of the Custodial Parent

Do you have visitation rights to your children with your ex-spouse or ex-partner though you don't have custody? Though many people use the word "custody" quite loosely, it is a word that people typically use to describe the parent that has the right to designate the child's residence. What happens if you are exercising visitation that the court awarded you, but then your ex decides to move to another city? What if they are planning on moving out of the state or even out of the country? It is not uncommon for the custodial parent to want to move out of state or further, especially if there is no prior court order explicitly forbidding it.

In this section, we'll go over what is expected of the custodial parent if they want to relocate and what the non-custodial parent can do if they would like to open a case against the custodial parent.

What if the Custodial Parent Wants to Move?

Texas law encourages parents to have equal access to their children. Family law court orders concerning child custody often require the custodial parent to live in a specific geographical area, generally, the county where the children currently reside or even possibly the adjoining counties. Additionally, the custodial parent must allow the non-custodial parent maximum visitation time with the children.

Custodial parents who need to move out of the designated area must give the non-custodial parent at least 60 days' written notice of the move and petition the court for permission. If the non-custodial parent does not object to the move, the parents need to file a document with the court stating they both agree to move the child and outlining how visitation will be conducted.

If the non-custodial parent objects to the move, the court will have a hearing where both sides present evidence to support why the move should or should not be allowed. The parent who wants to relocate must show there has been a "material and substantial change in circumstances" since the prior order, and there are compelling reasons for the move. Compelling reasons may include relocation for a job or being closer to other family members that can help care for and support the children.



The Court Will Consider, Among Other Things:

- The compelling circumstances for the relocation
- How disruptive the move will be for the children
- What influence the relocation will have on the children's education, extra-curricular activities, relationship with other siblings, step-siblings, or grandparents

The court bases its decision on what is in the best interest of the children. If the court believes the custodial parent wants to move to disrupt the relationship with the non-custodial parent, the court will deny the request to move.

What Happens When a Non- Custodial Parent Moves Out of State?

Texas Courts want children to be raised by both parents, even though they have split up. Therefore residency rules come into place which are referred to as 'domicile restrictions'.

Domicile restrictions are often as heavily litigated as custody itself. There are several reasons for this:

- Custody is usually pretty predictable at the outset of a case
- With the non-custodial parent usually having a Standard Possession Order with elections, the amount of free time each parent gets to spend with their kids is relatively similar
- Domicile restrictions rulings are usually more difficult to predict than custody

The non-custodial parent is the one that pushes for a domicile restriction because they want to be part of their children's lives. If the custodial parent doesn't agree to the restriction, it is usually because they want to be closer to family, work, or a new love interest. Courts usually consider those desires less important than the children having both parents nearby.

When the non-custodial parent moves away, then what happens? That does destroy the whole purpose of a domicile restriction, after all. The answer depends on what is in the Order/Decree that governs your children. There are usually two options in this situation:

- If the non-custodial parent moves outside of the domicile restriction, then the custodial parent can move anywhere that they want to
- The domicile restriction stays in place (no change is mentioned or a move is forbidden)

Well written Orders/Decrees will have the first option in them. This usually solves any problems, in part because the non-custodial parent knows the consequences of a move ahead of time.

If the Decree is silent, then you'll need to get an agreement (best is a revised Court Order) to make the move; or a trial to give you that right. Filing and getting to a hearing/trial is a long and expensive process. Courts should usually allow a move if the other parent has moved, although it might be within reason (if the non-custodial parent moved 50 miles away, the Court might not allow the custodial parent to move 1,000 miles away).

In summary, it is best to have a clear and well-written Order in place at all time. Normally when the non-custodial parent moves away, the custodial parent is allowed to move.



Conclusion

It isn't always possible to get child custody orders that are best fit for all life scenarios as life progresses. You should always do your best at co-parenting as the Texas Courts advise. In the event that you will need a custody modification, hire a lawyer who understands your needs and prioritizes your case. After all, you wouldn't hire any surgeon off the street for a surgery; find a lawyer with experience. A lawyer with experience will know what gaps need to be filled when considering all pieces of a child custody order.

Partners



Brian Walters, Partner
*Board Certified in Family Law
Texas Board of Legal Specialization*



Jake Gilbreath, Partner
*Board Certified in Family Law
Texas Board of Legal Specialization*



WALTERS GILBREATH PLLC
HOUSTON | AUSTIN | DALLAS



Contact Our Team

We proudly serve all of Texas

- ▶ Greater Houston Area
440 Louisiana St, #2450
Houston, TX, 77002
(713)-804-8071
- ▶ Austin, San Antonio, and Hill Country
316 West 12th St., #110
Austin, TX 78701
(512)-320-9160
- ▶ Dallas-Fort Worth Metroplex
3811 Turtle Creek Blvd. #825
Dallas, TX 75219
(469)-250-0447