

Child Custody Modification Lawyer in Utah

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An existing Utah court order for child visitation or custody can be modified. If you have decided to seek a modified child custody order in Utah, then you first need to be aware of the various forms of custody that are possible for you to obtain through a court judgment. Then, you should understand the steps you will need to follow in order to have your request for a modification of child custody considered and decided by the court.

The following information is provided to help you in making your evaluations of the types of custody petitions that you can file, and in undertaking the necessary legal actions to pursue your custody interests in the Utah court system.

Steps for Filing a Petition for Child Custody Modification in Utah

To file a petition with the Utah court to modify an existing child custody order requires a number of legal steps. Print or download the Checklist PDF file provided by the Utah court's Modifying Custody website, to help you through the steps leading up to the point of your court hearing. (Forms and detailed information on various points below are accessible through portals found on the above linked landing page for the state's site.)

1. **File a Petition** to Modify Child Custody (Indicate whether or not there are any other legal cases in which the children have been involved.)
2. **Explain the new terms of custody that you would like** to have the judge order—how you would like the existing custody order to be changed. (Keep in mind that the court may not give you what you ask for.)
3. **Pay a filing fee.**
4. **File all required associated child custody modification forms** with the Clerk of the Court. (NOTE: The forms provided are for cases to be submitted to the district court only.)

5. **Have the other party properly served** with copies of all papers you are filing with the court, *and* with the Writ of Summons, which the Civil Clerk of the Court will provide.
6. **File a Request for Hearing or Proceeding.** (Your Petition to Modify Child Custody will not be sufficient to get your case heard in court. You may also be required to file a Request for Hearing or Proceeding.)
7. **Educate yourself on what will be expected** in addressing your case in court, what you should expect to happen in court, and what should be done if/when various potential issues arise in a custody proceeding.
8. **Attend the court hearing.**

How To Succeed In Your Child Custody Modification Case

Child custody cases are typically among the most complex and difficult kinds for judges to decide. If your petition for change in custody is being contested by the other party, you should not proceed with your case alone. **Contact a qualified Utah child custody modification lawyer to help you through the legal process and to stand with you in court:**

- To ensure that all legal requirements are met at every step of the process.
- To ensure that all Utah court system procedural rules are obeyed.
- To ensure that all of your rights under Utah and U.S. federal law are fully protected.

KEEP IN MIND: Nearly two dozen forms are required by the court in petitioning for modification of a child custody order. See Forms to Petition That Child Custody be Modified.

Jurisdiction

The Utah court can only modify child custody orders over which it has legal “*jurisdiction*”. Determining jurisdiction can be quite complex. If the current order was issued by a court in another state, or if the child or parents reside outside Utah, the question of jurisdiction can become complicated. **Before you pursue a custody modification, see the Utah state chart explaining Jurisdiction to Modify a Custody or Parent-time Order.**

Types of Custody

There is physical child custody and legal child custody. **Physical custody determines where a child lives.** And, **legal custody determines which parent will make the major decisions about the child’s life.** Joint legal custody is generally viewed by the court as being ***in a child’s best interest***, if there are no child abuse or logistical issues that make joint custody infeasible. The several arrangements recognized by the court for custody of minor children in Utah include:

- **Sole Legal and Sole Physical** — The child will live with one parent, who makes the important decisions about the child’s life. And, the non-custodial parent is granted parent-time on a schedule that the court determines is appropriate.

- **Joint Legal and Joint Physical** — The child will live with both parents, and share responsibilities for making major decisions about the child’s life. Joint legal custody has no effect on where a child will live. When parents share joint physical custody, the child will live a minimum of 111 nights per year with each parent.
- **Joint Legal and Sole Physical** — The child will live with one parent for more than 225 nights of the year. The other parent has parent-time. Both parents make the major decisions about the child’s life.
- **Split Custody** — Each parent is granted sole physical custody of one or more of the children. Legal custody by the non-custodial parent might or might not be shared, per order of the court.

Modification of Child Custody

Alternative Dispute Resolution (ADR) Before Petitioning to Modify— When you have an existing order for joint physical custody or for joint legal custody, then the order probably states what kinds of dispute resolution must be undertaken before either parent can file a petition for modification of a child custody order with the Utah court. For example, the controlling order **may require parents to work with a professional mediator in attempt to resolve a custody dispute prior to petitioning the court.**

Follow the process for dispute resolution described in your court order (or in the parenting plan provided under the court order). See the state’s posted information on Alternative Dispute Resolution for additional information on legal requirement applicable to your particular case.

Changes Justifying a Custody Modification Request

If both parents do not agree to the requested child custody modification, the court is required to do the following two things in order to establish grounds for child custody modification:

1. It must evaluate changes in circumstances that may have occurred after the existing order was issued by the court.
2. It must decide whether or not modifying the existing custody order would better serve the best interests of the child.

If the custody modification case is **contested** by the other party, then parties will be required to **present evidence** of both changed circumstances and better service of the child’s interest by granting the modification.

A few examples of reasons to modify child custody that the Utah court may consider include:

- A parent has moved to a different community
- The child must change schools
- A parent has remarried

NOTE: Petitions for modification of child custody must be filed in the same juvenile or district court in which the *existing order* was issued.

Child's Best Interests

The court's priority in considering a petition for modification of child custody is in evaluation of its potential **to serve the best interests of the child**. Some factors that the court reviews, if the parents are in dispute about the requested custody change can include:

- Which parent is most likely to act in the best interest of the child
- The depth and nature of the two respective parent/child relationships
- Which parent is most likely to permit the child continuing and frequent contact with his/her other parent
- Whether or not both parents have been involved in raising the child
- Potential for child abuse
- Distance between parents' homes
- Various other factors that the court deems relevant

Child Custody and Parent-Time

Child custody modification also entails modifying the existing "parent-time" order. The state court's webpage on Modifying Parent-Time offers more information on this entailment.

Custody and Child Support

Modification of child custody entails also modifying the existing child support order. For more information on this issue, see the Utah court's webpage on Modifying Child Support.

Military Service Members and Child Custody

Regarding issues of child custody when a parent who is a military service member is being deployed, refer to the Utah Civil Code, Section 78B-20-102: Uniform Deployed Parents Custody, Parent-time, and Visitation Act.

Child Custody Orders from Other States

A child custody order from a court in another state (a "foreign" order), involves several conditions that that must be satisfied before a judge in a Utah court can legally modify the order. Registration of the foreign order must be completed with the Utah court system, and the registered order must then be confirmed as a judgment of the Utah court, prior to submitting a petition for custody modification.

The Law Offices of Eric Swinyard in Salt Lake City, and Provo, Utah

Eric Swinyard is a Utah family law and divorce lawyer in Utah. He provides high-quality, affordable legal help for clients going through divorce, child support, child custody, paternity, alimony, and parent-time scheduling cases. Our team of experienced legal professionals understand our clients' situations in child custody and divorce cases, and ***we are dedicated to providing experienced legal assistance, to fully protect your rights in the Utah court system, and to help you and your family successfully move beyond difficult family legal issues.***

For More Information

If you would like more information about modifying child custody in Utah, or to ***make an appointment to discuss your divorce case or interest in custody modification, contact the Law Offices of Eric Swinyard*** at (801) 938-4345, to find out how we can help you with this most important legal matter. We have locations in Provo and Salt Lake City, Utah.