

Modification of Parental Rights & Responsibilities

Changing a court order

If you and your children's other parent already have a court order regarding where your children will live and which of you will make decisions about their up-bringing and you want to change that order, you are thinking about asking a court for a Modification of Parental Rights and Responsibilities. A court order may have been made by a judge, or a judge may have approved an agreement made by you and your child's other parent. In either case, if you want to change that order and the other parent does not agree, you will have to file a court action and ask a judge to change the order. In these materials, we are not talking about orders involving DCYF or guardianships, just cases involving the two parents of a child – whether or not they were ever married.

Changing a court order is not easy. There are lots of reasons why a parent may want to file a modification case, but that does not mean that a court will grant the request.

For the most part, New Hampshire law prefers to keep a child's living arrangements stable, not to change the schedule or primary residence often. The laws are written to make it hard to change residential responsibility once there is a court order. This is viewed as being in a child's best interests; a stable residence and schedule help provide a child with security and predictability.

Before filing a Petition for Modification you should consider the requirements of the law which control these cases, and you should know that a judge will be reluctant to grant a modification unless you have clearly met the requirements.

There are nine ways a parent may get an order modifying parental rights and responsibilities. These nine ways mostly pertain to the child's residence, or the residential responsibilities of the parents. A court may modify a final order concerning parental rights and responsibilities under any of the following circumstances **but the court is not required to do so:**

1. The parties agree to a modification. This part is pretty clear. If the two parents agree, then a court is likely to approve the requested modification.
2. If the court finds repeated, intentional, and unwarranted interference by a parent with the residential responsibilities of the other parent, the court may order a change in the parental rights and responsibilities without the necessity of showing harm to the child, if the court determines that such change would be in accordance with the best interests of the child.

This part is harder to apply. In order to use this part to change the parenting plan, you would have to prove two things. First, you would have to prove that the other parent has engaged in a course of behavior that would constitute **repeated, intentional, and unwarranted** interference with your parental rights. This does not mean cancelling some weekends or rescheduling exchanges. Think about these three words: repeated, intentional, and unwarranted. All three must be shown. If you can show this, then you must still be able to show the judge that changing the order would be in your child's best interests. In this case the judge is going to want to know about the child's best interests, not your interests. So, even if your child's other parent is making your life miserable, and is interfering with your parental rights in a repeated, intentional, and unwarranted manner, that does not mean that the court will necessarily change the schedule.

3. The court finds by clear and convincing evidence that the child's present environment is detrimental to the child's physical, mental, or emotional health, and the advantage to the child of modifying the order outweighs the harm likely to be caused by a change in environment.

This part has three elements that are important to consider before filing. First, you must show that your child's situation is harmful to your child. Second, you must prove that the change in residence is going to be less harmful to the child than staying put. This may be harder than you think given the court's preference for maintaining the child's stable residence. Third, you must show these things by clear and convincing evidence. "Clear and convincing evidence" is a phrase that means something more than just a tilt of the scales in your favor. It makes proving the two pieces of this section much harder.

4. If the parties have substantially equal periods of residential responsibility for the child and either each asserts or the court finds that the original allocation of parental rights and responsibilities is not working, the court may order a change in

allocation of parental rights and responsibilities based on a finding that the change is in the best interests of the child.

This part only applies in cases where the parents start out with equal periods of time with the child (or at least quite close to equal). In this kind of case, if the parents agree that the schedule is not working or the judge finds that the schedule is not working THEN the judge may change the schedule based on what the judge finds to be in the child's best interests.

5. If the court finds by clear and convincing evidence that a minor child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature minor child as to the parent with whom he or she wants to live. Under these circumstances, the court shall also give due consideration to other factors which may have affected the minor child's preference, including whether the minor child's preference was based on undesirable or improper influences.

This part only applies when the child in question is old enough to make decisions that are in his or her own best interests. This can be hard to prove. Many teenagers believe they know what is best for them, but it is not unusual for the adults who are responsible for them to disagree. Sometimes a judge will appoint a guardian ad litem (GAL) to figure out whether or not a child is mature enough to make a sound decision. Sometimes the judge will decide whether or not the child is mature on his or her own. In these cases the court will also consider what kind of influences the child may have received that might have affected his or her views.

6. If one parent's allocation of parenting time was based in whole or in part on the travel time between the parents' residences at the time of the order and the parents are now living either closer to each other or further from each other by such distance that the existing order is not in the child's best interests. For example, if the parents were given shared residential custodial time with the child because they lived in the same town at the time the custody order was issued, the court could consider a request to modify the custody order if one of the parents moved so far away from the other that the consequences of transporting the child between the parents, so as to maintain the shared custodial arrangement, would not be in the child's best interests.
7. If one parent's allocation or schedule of parenting time was based in whole or in part on his or her work schedule and there has been a substantial change in that work schedule such that the existing order is not in the child's best interests. This could occur when a parent was given weekend custodial time under the court order but now has a new job that requires him/her to work on weekends.

8. If one parent's allocation or schedule of parenting time was based in whole or in part on the young age of the child, the court may modify the allocation or schedule (or both) based on a finding that the change is in the best interests of the child, provided that the request is at least five years after the prior order. This often occurs when the child is an infant at the time the order is issued and the court believes that the non-residential parent's skills in attending to the needs of an infant are lacking. The court may not hold this same opinion once the child is over the age of six and may very well agree that additional custodial time with the non-residential parent would benefit the child.
9. If the parties agree on or the court authorizes the relocation of a residence of a child, the court may modify the allocation or schedule of parenting time or both based on a finding that the change is in the best interests of the child. This could happen when the parents share residential responsibility of the child and the child then moves to a different part of the country with one of the parents thereby making it impractical and thus, not in the child's best interest, to try to maintain the current shared custodial schedule.

Before filing a court case, carefully consider the implications of doing so. There is a very good chance that your relationship with the other parent will suffer as a result. It is also likely that any change in your child's primary residence will be a difficult adjustment for your child. It is worth considering whether or not some agreement can be reached with the other parent to avoid the necessity of filing a court case. The courts in New Hampshire assume that you will make decisions that are best for your child – this does not include making choices that are based on your convenience, or your inability to have a good relationship with your child's other parent. Carefully think through all of these issues before filing, and you will have a greater likelihood of a positive outcome.

Try Also Reading...

- [Parents' Rights - A Place to Start](#)
- [Parental Rights and Responsibilities](#)
- [Whether to File a Petition for Parental Rights and Responsibilities](#)
- [Child Support](#)
- [Parenting Plans](#)
- [Medical Support](#)

- [Paternity and Child Support](#)
- [Enforcing an Order](#)
- [Residential Responsibility](#)

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