

CUSTODY MODIFICATION

FAMILY COURT OF THE STATE OF DELAWARE

<https://courts.delaware.gov/family>



Family Court Contact Information

New Castle County

Leonard L Williams
Justice Center
500 N. King Street
Wilmington, DE 19801
302-255-0300

Kent County

Family Courthouse
400 Court Street
Dover, DE 19901
302-672-1000

Sussex County

Family Courthouse
22 The Circle
Georgetown, DE 19947
302-855-7400

**All Family Court
Forms, FAQs, Filing
Instruction Packets,
and additional
information can be
found on the Family
Court Website at:**
<https://courts.delaware.gov/family>

Who can Petition to Modify Custody?

The biological mother, biological father or adoptive parent of a child may petition to modify custody of the child. If a state agency has custody, you must file to rescind custody, not to modify custody.

How do I modify a custody Order?

You may file a Petition to Modify Custody if the following requirements are met:

1. There is a Custody Order in place in Delaware. (If the Order is from a state other than Delaware, see below); **AND**
2. You want to change the terms of the current Order; **AND**
3. The child, parent, or person acting as parent resides in Delaware.

What if the custody order was entered in a state other than Delaware?

To request modification of a Custody Order entered in another state, the child must have resided in Delaware for the previous 6 months and the state that entered the Order must be willing to relinquish jurisdiction. You must contact the Court that entered the Order to find out how this is done.

What if both parties agree on the modification?

You may file a Consent Order along with your Petition to Modify Custody. A Judicial Officer will review your Consent Order. If the Consent Order is signed by the Judicial Officer, it becomes a Court Order, which must be followed.

Will I attend mediation?

After all of the Respondents have been served with the Petition to Modify Custody and each of the Respondents has had an opportunity to file an Answer, the Court normally will schedule your visitation matter for Mediation. ALL PARTIES are required to attend. Mediation will not be scheduled if there is an active no contact Order between the parties or a finding of domestic violence, or if one of the parties is a sex offender as defined by Delaware law.

How does the Court make a decision regarding custody modification?

A Custody Order can only be modified in certain situations:

- If the original Custody Order that you want to change is a Consent Order (you and the Respondent(s) agreed to the custody arrangement), then it can be modified anytime the Court finds that it is in the "best interest" of the child.

- If the original Custody Order was entered by the Court after a full hearing AND it has been less than two years since it was entered, the Order can be changed only if the Court finds that continuing to enforce the Order would endanger the child's physical health or significantly impair the child's emotional development.
- If the Order was entered by the Court after a full hearing AND it has been more than two years since it was entered, the Order can be changed only after the Court considers the following factors:
 - Whether any harm caused by changing the Order is outweighed by the benefit of changing the Order; **AND**
 - Each parent's compliance with the prior Order; **AND**
 - The "best interest" of the child.

How can I file my petition and related paperwork?

Petitions and papers may be filed at or mailed to the Family Court in each county. Family Court also now accepts petitions and papers by email. To file your petition by email, you must send the petition and all required forms to: FC_CustodyVisitation@delaware.gov

Please see the below list for the forms that must be filed with your petition. Family Court will serve the other parties your petition.

You may also use FC_CustodyVisitation@delaware.gov to file with the Court answers, motions, and any other required papers. Although you can file these documents with the Court by email, you must still serve copies of these documents on the other parties personally or by mail.

****Before filing by email, please review the Civil Filing by Email FAQ:** <https://courts.delaware.gov/family/faqs>

Required Forms

- [Petition to Modify Custody Order](#) (Form 348)
- [Custody Separate Statement](#) (Form 346)
- [Information Sheet](#) (Form 240)

Situational Forms (Please review all forms and scenarios)

- [Affidavit of Unknown Address](#) (Form 241)
This form should be filed if you do not know where the Respondent(s) live
- [Consent Order - Custody](#) (Form 349)
File this document only if you and the Respondent(s) have already agreed on how the custody modification should be arranged
- [Affidavit of Non-Military Service](#) (Form 405)
This form should be filed if the Petitioner (the person filing the petition) has knowledge that the Respondent is **NOT** in the military service of the United States of America.
- [Waiver of Rights under the Servicemembers' Civil Relief Act](#) (Form 420)
 - File this form only if the Respondent is in the military
 - If the Respondent does not file an Answer or Affidavit of Appearance, you must have the Respondent(s) sign the form
 - If you are unable to reach the Respondent to obtain any of these documents, you must file a Motion to Appoint and Attorney ([see Motion Packet](#))

For more information on custody modification, please see the Custody Modification Instruction Packet. This packet is available in the Resource Centers located in each courthouse and online at <https://courts.delaware.gov/family>.