

AGREED MODIFICATIONS – Changing Orders Concerning Children in Texas:

Custody Visitation Child Support Health insurance

This brochure explains the ***uncontested modification*** process in Texas.

The process for a contested modification is different.

Your modification case is “***uncontested***” when you and the other parties in your case ***agree to change terms*** in a previous order about custody, visitation, or child support.

If you’re trying to Do-It-Yourself, make sure you:

1. Meet residency requirements.

- **The children must have lived in the county where you’re filing for at least the last 6 months.**

-Or-

- The order you want to change was signed by a judge in the county where you’re filing.

2. Understand all of your legal rights.

You must protect yourself.

If you begin to represent yourself, but later find:

- You are not sure that a modification or the forms you have are really what you need. -
- Or-**
- You find the process too difficult. -Or-
- You realize that you and your child’s other parent can’t reach an agreement. -Or-
- Your child’s other parent hires an attorney. -Or-
- You fear for your safety.

Then you need to find an attorney to complete your modification for you.

3. Understand the steps involved.

- 1) Fill out the Original Petition for Modification.
- 2) File the completed Petition with the Clerk’s Office. Pay the filing fee.
- 3) Give the other parties legal notice of the modification, using:
 - Waiver of Citation
 - Or-
 - Service of Citation by Personal Service
 - Or-
 - Service by Publication.
- 4) Fill out the Order in Suit Modifying Parent-Child Relationship.
- 5) Go to a hearing for the judge’s signature on the order.
- 6) Once the order is signed by the judge, file the Order in Suit Modifying Parent-Child Relationship in the Clerk’s Office.
- 7) If your order includes changes to child support, be sure to give a copy of the new order to the child support registry office that is used in your local county. You can find the address for this office in your previous order.

**ONLY A LICENSED ATTORNEY
CAN GIVE LEGAL ADVICE.**

Librarians and courthouse staff want to help you, but they are not attorneys, and they cannot give you legal advice. Judges are also prohibited from giving you legal advice.

Cause number- The number usually found at the top of the prior court order. It's assigned by the clerk's office, and is different from a number assigned by the Attorney General's Office. In the court system, your case is identified by the cause number.

Conservator – A person who has a legal relationship to a child.

Conservatorship – The legal term for custody.

Possession and Access - The legal term used for visitation.

Petition - The form that begins the modification process by telling the court that you want to change a prior court order.

Answer Period- When you give the other party legal notice by personal service or service by publication, the Answer Period is the time period when the other party has to respond to the case. The other party must file a written response, called an **answer**, before the answer period ends. If an answer isn't filed before the deadline, the Petitioner can get a default judgment against the Respondent.

To calculate this time period, count the day the other party was served on a calendar, and count out 21 days. Go to the next Monday on the calendar. The deadline to answer falls on this Monday at 10am.

Order – The form signed by the judge that finalizes the changes to your previous order.

Waiver of Citation - The Respondent may sign this form in front of a notary, waiving his or her right to be given a copy of the Petition by a process server. Sometimes, a Waiver waives other rights, including the right to tell the judge his or her side of the case.

Petitioner - The person who files the modification case, even if this person was not the Petitioner in the original order.

Respondent - Any person with a legal relationship to the child should be included as a Respondent in the case. Include agencies, like the Attorney General's Office, if the agency was a party in your original order, too.

Step 1. Start with the Petition

Begin by completing the **Petition to Modify Parent-Child Relationship**. The Petition is the form that begins the modification process.

The **Petition** tells the judge and the other parties that you want to change the terms in a previous order, such as a divorce decree or child support order.

You may find examples of Petitions online at www.TexasLawHelp.org and in form books available at the law library. If you choose to use these forms you are responsible for making sure that they comply with current Texas law and meet your needs.

No matter which forms you choose to use, you must understand that they are no substitute for seeking the advice and counsel of a lawyer trained to protect your legal rights.

Step 2. File the Petition

Once the Petition to Modify Parent-Child Relationship, is completely filled out, file it in the **Clerk's Office**.

When you file your Petition:

- Be prepared to pay the filing fee (around \$45).
- Take extra copies of the Petition with you for yourself and every party. (The Clerk's Office will not provide you with free copies.)
- Tell the clerk that you are there to file a Petition to Modify, and hand the Clerk your original and all copies.
- The clerk will **"file stamp"** your papers, showing the date and time that you filed your Petition.
- The clerk will ask you to pay your filing fee.
- The clerk will give you your copies, but will keep the original for the court's file. You should keep one copy for yourself. Save the other copies to give to the other conservator(s).

Step 3. Giving Legal Notice

You must tell the other conservator(s) that you have asked the court for a modification. This is called **“giving notice.”** There are three ways to give notice.

1) Waiver of Citation or Answer

You can “give notice” to the other conservator(s) if you give him or her a file stamped copy of your Petition **and** s/he signs a Waiver of Citation in front of a notary and files the it in the Clerk’s Office. If the other conservator doesn’t want to waive any legal rights in the case, s/he can file an Answer with the Clerk’s Office, instead.

IMPORTANT NOTES ABOUT WAIVERS OF CITATION!!

For the Waiver of Citation to be valid, you must file the Original Petition **before** the Waiver is signed, and the Waiver must be filed in the District Clerk’s Office before you finalize the modification.

If you have been asked to sign a Waiver of Citation, read it over very carefully before you sign it. **Make sure you understand what legal rights you are giving up by signing the Waiver.** If you don’t understand the Waiver, or you are uncomfortable about signing it, **talk to an attorney.**

-Or-

2) Service of Citation

You may give notice by having a process server “serve” the other conservator(s) with the **Petition.**

If the other conservator(s) is served, he or she can file an answer (response to the Petition) until 10 a.m. on the Monday following 20 days after s/he was served.

After serving the other conservator(s), the process server will file proof of the service (called a Return of Service) with the District Clerk. Before you can get your modification finalized, the Return of Service must be on file for at least 10 days, and the answer deadline must have passed.

-Or-

3) Citation by Publication

If you are unable to locate the other conservator(s), you may have him or her served by placing a public notice in the newspaper.

If you serve the other conservator(s) by publication, he or she will be entitled to have an attorney appointed to represent his or her interests. You would be responsible for paying for the attorney’s services.

Step 4 Write your Order Modifying Parent-Child Relationship

The **Order Modifying Parent-Child Relationship** changes the terms in the previous order. For example, the new terms may state which parent the children will live with most of the time, how major decisions concerning the children will be made, who pays child support and how much, etc.

An attorney can draft the Order Modifying Parent-Child Relationship for you, or you can write it yourself.

If you choose to write the Order Modifying Parent-Child Relationship yourself, you may use the forms that are available in the law library’s form books or at www.TexasLawHelp.org.

After you have written your order, both you and the other conservator(s) should sign it to show that you agree to its terms. Having the other conservator(s)’s signature on the order will simplify things when it is time to finalize your modification in front of the judge.

MEDIATION:

WHAT IF YOU DON’T HAVE AN AGREEMENT?

It is best to try to reach agreement with the other conservator(s) if you plan to complete your modification without an attorney.

If you are having trouble reaching an agreement, you might consider going to mediation. In mediation, an unbiased person tries to help two sides reach an agreement. A judge must approve any agreement that is reached in mediation.

Some counties offer free or low-cost mediation services. Check your local listings for a Dispute Resolution Center or mediation services in your area.

If you and the other conservator just cannot reach an agreement, then you should consult an attorney.

Step 5. Court: Finalize your order in Court

To finalize your order, you will need to go before a judge. In some counties, this means you will have to set your case for a hearing. Some counties have a special docket for cases that are agreed. If you and the other conservator(s) have agreed to the terms of the modification order (and have signed the order), or if the other conservator(s) has waived his or her right to tell the judge his or her side of the case, your case is uncontested. Before you set your case for a hearing, ask the clerk if your county has an uncontested docket for agreed cases. If not, ask the clerk for instructions on how to set a case for a hearing in your county.

Before your hearing, read the docket sheet to make sure the other conservator(s) was given proper notice. If the other conservator filed an Answer, s/he needs to sign your orders, showing that s/he agrees with the changes you have requested, or you will need to give him or her notice of the hearing that you have set in your case.

If the other conservator did not file an Answer, check the docket sheet to make sure that either a Waiver of Citation or the Return of Citation (which would be completed by the process server), is on file. ***If the other conservator(s) was served, the Return of Citation must be file stamped with a date that is at least 10 days before the day you go to court to finalize your modification.***

If your new order will set up child support for the first time, check with the clerk to see if there is additional paperwork that you might need.

Ask the clerk where the Docket is being held. Take your Order and two copies of your order with you to the courtroom.

Once you arrive in the courtroom, GIVE to the clerk seated next to the judge's bench:

1. The docket sheet,
2. Your Order,
3. Any other paperwork required in your county.

Then, sit down and wait for the judge to call your case.

When it is your turn, the judge will call your case by its **Cause Number** (the number at the top of

your paperwork), and maybe by the parties' names. At this time, stand up, and walk to the front of the judge's bench.

- ◆ The judge will **swear you in**
- ◆ The judge may ask you to "**proceed,**" with your testimony, or ask you questions.
- ◆ Answer the judge in a courteous, respectful, and honest manner.

After the judge has finished hearing your testimony and reviewing your paperwork, he or she will sign your Order, granting your modification. If the judge refuses to sign your order, your modification is denied.

Suggestions for the Courtroom

Treat the courtroom with the same type of respect that you would for a church or religious sanctuary.

- ◆ Leave all food and drinks outside of the courtroom.
- ◆ Address the judge as "Your Honor," and answer his or her questions in a truthful and courteous manner.
- ◆ Don't lean on any furniture when you are standing before the judge.
- ◆ If you need to speak with someone while you are in the courtroom, speak in a very quiet voice.

Step 6. File the Order

After the judge signs your Order, take it to the Clerk's Office.

The clerk will file stamp the original and two copies of the Order. The original will remain in the court file, one copy will be sent to the other conservator(s), and you will keep the other copy.

Consider asking the clerk to print a certified copy of your Order for you. Certified copies are often needed to change child support orders that are withheld by an employer. There is a fee for a certified copy.

Step 7. Child Support Registry

If you have **child support ordered for the first time**, you must set up a child support account. Check with the clerk's office about specific rules in your county. Texas law requires payments to be mailed to the State Disbursement Unit, PO Box 659791, San Antonio, Texas 78265-9791.