

ESTABLISHING OR CHANGING CUSTODY INFORMATION & QUESTIONNAIRE

The first issue for the Judge in deciding how to handle a Motion to Change Custody is to determine if there has been a substantial change in circumstance or proper cause shown to change custody. The legislature has created a system which prefers stability regarding custody arrangements rather than frequent changes for minor improvement in living situations so the Court will not even address the issue of a change in custody unless it is determined that there has been some significant change affecting the child's life.

The second step in a Motion to Change Custody is to determine whether there is an established custodial environment with one or both parents. There is an established custodial environment when, for a significant period of time, the child has been provided the parental care, discipline, love, guidance and attention appropriate to the child's age and individual needs. The environment is considered both in the physical and psychological sense and is marked by qualities of security, stability and permanence. If there is an established custodial environment with one parent, in order to change custody to the other parent, the burden of proof is clear and convincing evidence. If the established custodial environment does not exist with one parent and a change is necessary, it only must be shown by a preponderance of the evidence.

Once the Court addresses the above issues, the Court then has to look at the best interests of the child and there are specific factors which must be considered and evaluated. These factors are somewhat vague so I have included some suggested questions to help them evaluate the factors. Not all of the questions will apply in your situation. If the two of you have been living until recently in the same household, the question is who is doing the actual hands-on parenting of the child. If the two of you have been separated for an extended period of time, it is assumed that each of you is doing the feeding, bathing and discipline in your own homes so those issues will not apply.

ON A SEPARATE SHEET OF PAPER, please address the following questions:

1. What has changed since the last time there was a Court Order with respect to custody and parenting time that makes it necessary for the Court to make a change? Disregard this question if this will be the initial custody Order.

2. Address your strengths and weaknesses and the other parent's strengths and weaknesses with respect to each of the best interests factors. Providing specific examples when answering these questions is very helpful. Please consider the following kinds of issues for

the factors below:

- a. *The love, affection and other emotional ties existing between the Parties involved and the child..*

If you are still living together, who is making the child breakfast lunch and dinner? How has the child been affected by your separation? Who do you feel the child is closest too and why? If your child is upset or crying or excited about something and both of you are present, who does the child go to first, if either? Please provide any other examples you can as to the emotional bond between you and your child.

- b. *The capacity and disposition of the Parties involved to give the child love, affection and guidance and to continue the education and raising of the child in his or her religion or creed, if any.*

Please consider the following: Who is responsible for discipline and how do each of you discipline the child? Who stays home from work when the child is sick? Why is that person responsible? Because of their work schedule or because that is the person who always handles those types of issues? If the child throws up in the middle of night, who gets up with the child? Did you go to church as a family? Do you continue to participate in church activities? What about the other parent?

- c. *The capacity and disposition of the Parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care and other material needs.*

Who selects and pays for the children's clothing, toys, sporting equipment, etc.? Who makes and takes the child to the doctor or dentist appointments? Who arranges daycare or babysitting services? Does the child have any special needs? Medical, educational, speech, etc.? How well do you manage money? How well do you feel the other parent manages money? If employed, what are the arrangements for the child when not in school?

- d. *The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.*

Describe the home where the child currently lives. Describe the proposed home. Who sleeps where in each house? How long has the child resided in the current home? Where do the child's friends and relatives reside?

e. *The permanence, as a family unit, of the existing or proposed custodial home or homes.*

What is the child's relationship to other siblings or stepsiblings? What is your current status with respect to romantic relationships? What is the other parent's status with respect to romantic relationships? How does the child feel about any new people in your life or their other parent's life?

f. *The moral fitness of the Parties involved.*

Has there been any problem with drug or alcohol by either parent or stepparent? Were there affairs when the Parties were together? Did the child become aware of those affairs? Does either parent swear in front of the child? Are there any allegations of physical or sexual abuse by either parent or other person in the family? Does either parent have a criminal history?

g. *The mental and physical health of the Parties involved.*

Are there any chronic physical illnesses or medications that are taken regularly by either Party? Are there any mental or emotional health issues by either Party?

h. *The home, school and community record of the child.*

Where does the child go to school? What is their attendance record? What kind of grades does the child receive? Does the child enjoy school? What extracurricular activities does the child participate in? Which parent goes to parent-teacher conferences? Which parent arranges and attends extracurricular activities? What are the child's responsibilities at home in terms of chores? Has the child ever been in any criminal difficulty? Does the child have close friendships in the area?

i. *The reasonable preference of the child, if the Court considers the child to be of sufficient age to express preference.*

Do you know who your child wants to live with? **You should not be asking your child this question.**

j. *The willingness and ability of each of the Parties to facility and encourage a close and continuing parent-child relationship between the child and the other parent or the child and parents.*

What do you propose the visitation schedule to be? Do you and the other parent get along? Do you ever argue in front of the child? Have you ever prevented the child from seeing or calling the other parent or their family? Has the other parent ever prevented you from seeing or calling the child?

k. Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

Is this an issue?

l. Any other factor considered by the Court to be relevant to a particular child custody dispute.

Is there anything else that has not already been addressed that you think is important for the Judge to know when deciding the custody and parenting time situation for your child?