

Legal Services Programs

Statewide Legal Services: (Entry point for the legal services network in Connecticut). **860-344-0380** Central CT area or **1-800-453-3320**.

Other Legal Services Programs:

Hartford, Hartford County:

Greater Hartford Legal Aid
999 Asylum Avenue
Hartford, CT 06105
(860) 541-5000
FAX: (860) 541-5050

Greater New Haven Area:

New Haven Legal Assistance Association, Inc.
426 State Street
New Haven, CT 06510
(203) 946-4811
TDD: (203) 946-4811
FAX: (203) 498-9271

This pamphlet was produced by the Legal Assistance Resource Center of CT in cooperation with Connecticut Legal Services, Greater Hartford Legal Aid, New Haven Legal Assistance Association, and Statewide Legal Services.

The information in this pamphlet is based on the laws in CT as of May 2010. We hope that the information is helpful. It is not intended as legal advice for an individual situation. If you need further help and have not done so already, please call Statewide Legal Services (see above) or contact an attorney.

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Throughout Connecticut:

Connecticut Legal Services
Offices:
211 State Street
Bridgeport, CT 06604
(203) 336-3851

16 Main Street
New Britain, CT 06051
(860) 225-8678

153 Williams Street
New London, CT 06320
(860) 447-0323

20 Summer Street
Stamford, CT 06901
(203) 348-9216

85 Central Avenue
Waterbury, CT 06702
(203) 756-8074

872 Main Street
Willimantic, CT 06226
(860) 456-1761

AIDS Legal Network for CT

999 Asylum Avenue
Hartford, CT 06105
(860) 541-5027 or 1-888-380-3646

Visit us on the internet:

www.slsct.org
www.ghla.org
www.nhlegal.org
www.connlegalservices.org
www.larcc.org



How to Modify **Child Visitation Orders**



May 2010



Please be sure you carefully read all the steps in this pamphlet before starting your paperwork.

How to Modify Visitation Orders

If you are having problems with visitation, you should first contact the Family Services Office in the court where the visitation orders were made.

Someone from that office may be able to meet with both parents and informally work out the problems. If the Family Services Office cannot help you, this pamphlet is designed to help you ask the court to change the child visitation court orders.



There will be a \$125 fee to file your Motion for Modification and about a \$40 to \$70 marshal's fee. (Note: *Marshals* used to be called *sheriffs*.) If you cannot afford to pay certain fees, you can ask the court to waive them by filing a fee waiver application. See the Legal Aid pamphlet, *A Guide to Fee Waivers*).

If you can afford to get a lawyer to represent you, we urge you to do so. If not, be sure you follow the steps in this pamphlet very carefully. Please note that court and marshal procedures may be different from one part of the state to another. **Read the entire pamphlet before going forward.**

The procedures outlined in this pamphlet will work only if:

- A. A visitation order has been made by a court in Connecticut, and the other parent of your child now lives in Connecticut;
- and**
- B. You can prove that there has been a "*substantial change in circumstances*" since the last court order about visitation. A *substantial change* means that there has been **more than** one minor problem. *For example:* a minor problem would be if

one visit was missed because of a temporary scheduling problem, while a substantial change would be a work schedule change or if you think the other parent is hurting your child.

If **both A and B** described above are **NOT true** for you, you will need to talk to a lawyer about your case.



It is often much easier to use the court system if you are represented by a lawyer. If you cannot afford a lawyer, this pamphlet can help you represent yourself.

Note: Even if there are specific court orders for visitation, you cannot force a parent to actually visit if s/he chooses not to.

A

Fill Out Your Papers

1. There are a few forms you need to fill out and file with the court clerk (see list below). **You can get the forms at the court clerk's office, Court Service Center and on the State of Connecticut Judicial web site (www.jud.ct.gov).** You also will need to fill out a letter to give to the marshal (included in this pamphlet) to get the papers served.

Court Forms

- Motion for Modification (Form #JD-FM-174).
- Affidavit re Children (Form #JD-FM-164).
- Appearance (Form #JD-CL-12). *Only if needed. See Step 3.*
- Fee Waiver Application (Form #JD-FM-75)
May not apply to you. See Step 5.

2. Fill out a *Motion for Modification* form (JD-FM-174) using the sample form 1 on page 10 as a guide. This sample will help you understand what goes in the blanks. **Do NOT fill** in the **second page** of the form--the court clerk will fill that out. You can ignore questions about alimony or child support if you only want to change visitation.

You need to file your Motion with the same court that made the original order. (*See Step B-5*). If you don't know your docket number, contact the clerk's office in person or by telephone. Give the name of your case and ask for your docket number and the dates of any child visitation orders made or changed by the court.

3. Fill out an *Affidavit re Children* form (JD-FM-164). This form asks where each child lived during the past five years and if there were other court cases that relate to (or affect) this new court case. If you need help with the form, go to the Court Service Center in the courthouse or call Statewide Legal Services.

4. Fill out an *Appearance* form (JD-CL-12). You only need to fill out this form if you have not already filed one, or you are the plaintiff (the one who filed the case), or you have had an address change, or a long time has passed since the final judgment was made. The Appearance form tells the court that you are representing yourself.

B Take the Papers to the Clerk's Office

5. Give your completed forms to the clerk at the courthouse that made the original order. The clerk will fill in the date and time to appear in court, etc. That time is for both parties, not just the other parent.

6. In some courts, you must pay the filing fee (or file a Fee Waiver) at this time. In other courts, you pay the fee after the papers have been served. If you cannot afford to pay the fee, fill out a Fee Waiver Application (JD-FM-75). (See the legal aid pamphlet, *A Guide to Fee Waivers*).

7. Ask the clerk for a list of marshals to arrange getting the papers "served" (*see below*).

8. Make three copies of the original papers that the clerk gives back to you. Keep one copy for yourself; give one to the court clerk. The original and the third copy are for the marshal (*see below*).

C Get the Papers "Served" (Officially given to the other parent)

9. Before you contact the marshal, fill out the blank letter to the marshal (white paper in the center of this pamphlet). This letter makes it easier for the marshal to "serve" the other parent.

10. Contact a marshal who covers the town where the other parent lives or works. You can get a list of marshals from the court clerk or from the CT Judicial Department website (www.jud.ct.gov).

The marshal's fee for serving the papers is around \$40 to \$70. Some marshals will bill you *after* the papers are served and some marshals make you pay *before* papers are served. You can call the marshal and find out. Tell the marshal if you have a fee waiver.

Either bring or mail the marshal:

- the letter to the marshal, and
- the original Motion **and** one copy of the Motion. (Check with the marshal--you may need two copies.)

11. After the marshal serves the papers, he/she will give you the original Motion of Modification with a Return of Service. The Return of Service is a paper signed by the marshal showing when and where he/she gave the other parent the papers. **Make a copy** of the *Return of Service* and keep it with your copy of the Motion. Some marshals file the Return of Service with the clerk directly.

D File the Court Forms at the Court Clerk's Office

12. Bring or mail the original Motion of Modification, the marshal's Return of Service, and the Affidavit re Children to the clerk's office to file. You will have to pay the \$125 filing fee unless the court waived the fee.

E Present Your Case in Court

13. Be in court on the day and time set for the hearing. It's a good idea to arrive about 15-20 minutes early. **Note:** Your witnesses (who must have personally seen or heard what they are testifying to) must also go to court. Witnesses might be the child's doctor, teacher or someone who was watching how the other parent behaved with the child.

14. Go to the court clerk's office and ask about the way the court starts the day. Courts operate differently--some courts open with a "calendar call" (where the names of the cases are read out loud in the courtroom), while others do not call the cases.

If you do not have an agreement with the other party **or if you think you need help writing down your agreement**, also ask the clerk about signing up on the Family Services list. (*See Step 15 for more on Family Services.*)

■ **Calendar Call**

- If you **do NOT have an agreement**, say, "Ready," when your name is called. You will probably have to meet with Family Services to try to work out an agreement.
- If you **do have an agreement**, say, "Ready with an agreement" and follow the judge's instructions. The judge may take agreements immediately after the calendar call. All agreements must be in writing.

■ **NO Calendar Call**

- If you **do NOT have an agreement**, find your name and room assignment on the list which is posted in the lobby. Then go directly to your assigned room to meet with Family Services. Put your name on the Family Services list.
- If you **do have an agreement**, prepare a "Memo to the Clerk" form (you can get it from the court clerk) to let the court know that you are ready to present your agreement to the judge. All agreements must be in writing.



IMPORTANT: Agreements do not change a court order until the judge approves or accepts the agreement and makes it an order of the court. Once the judge issues an order, you must follow it and abide by its terms.

15. Meet with Family Services. A meeting is only needed if you do not have an agreement or if you need help writing down your agreement. Be sure to read the agreement carefully to make sure it is what you have agreed to. The Family Services Officer (sometimes called Family Relations Officer or Counselor) will ask both of you questions and try to help you reach an agreement. If you are a victim of domestic violence by the other parent, ask Family Services to see you and the other parent separately.

The Family Services Officer may make a recommendation to both of you about how to settle your disagreement. You do not have to accept his/her recommendation. You have a right to tell your side to the judge. The judge may order something different after hearing both sides.

If you still have not reached an agreement after this meeting, you will have a hearing where you present your case to the judge. The judge will then make a decision. You will have to accept and follow his/her orders.

16. Present your case to the judge after your meeting with Family Services:

- If you **do have an agreement** after the meeting,
 - Write down the agreement. Both parties must sign it.
 - In some courts you will need to fill out a “Memo to the Clerk” to let the court know you are ready to present your agreement. Just check the proper boxes.
 - When your name is called, say, “Ready with an agreement.” Then follow the judge's instructions.
 - Present the agreement to the judge for approval.
- If you **do NOT have an agreement** after meeting with Family Services, you will have a *hearing* (called an "oral argument") where you will present your side to the judge.
 - Go back to the courtroom. You may need to fill out a “Memo to the Clerk”. Check the box that says you do NOT have an agreement.
 - When your name is called, say, “Ready.” Then go stand behind one of the tables in the front of the courtroom and follow the judge’s instructions.

What happens at the hearing (oral argument) if you DO NOT have an agreement after meeting with Family Services?

- ✓ You will present your case first since you filed the Motion for a change in the court's order(s).
- ✓ Be polite and respectful of the judge and the other side. The judge will probably require that you be “sworn in” (take an oath to tell the truth) before you testify.
- ✓ Give your side of the story slowly and completely. **Be specific as to what changes you want in visitation and give the reasons why you want these changes and why it is in the child's best interests to make these changes.** Stick to the facts. The other side will have the right to ask you questions (*cross-examine*).
- ✓ When you finish testifying, call your witnesses to the witness stand one at a time. Ask the witnesses to tell the judge what they saw. The other side can cross-examine your witnesses.
- ✓ The other side will be allowed to present its case when you are finished presenting your case. You have the right to cross-examine his/her witnesses. Your questions should relate only to what they testified. Never argue with a witness. You also have a right to testify again to rebut (prove false) what was said.
- ✓ The judge may allow both sides to make a short argument or summary after the witnesses have testified. You will probably be given the chance to speak first. Stay on the specific issues raised in your Motion and be brief.

The Judge Rules on the Case:

At the end of the hearing, the judge may make a ruling "from the bench" (right at that moment). Often, though, the judge will say "I'll take the papers," which means that a decision will be made later. In that case, the court clerk will send you a copy of the decision that has the judge's orders. If you do not hear from the court in a few days, call the clerk and ask about the case.

◆ **Remember:** At the hearing, you will have to prove to the judge that the circumstances pertaining to the original visitation order have *changed* since the last visitation order was entered so that the original orders are no longer in the best interests of the child.

Are Visitation Orders Not Being Followed?

If someone does not obey court orders, he or she may be held in "contempt of court". For example, if the other parent does not allow you to visit the children as the court ordered, you may ask the court to hold him/her in contempt. If found in contempt, the offending parent may have to pay court costs (including the attorney fees of the other parent), may be ordered to allow the parent to make up the missed visitation time, and may be ordered to spend time in jail. See our pamphlet, *How To Get a Contempt Order*.

Sample Form

MOTION FOR MODIFICATION

JD-FM-174 Rev. 8-09
C.G.S. § 46b-86, P.B. §§ 25-26, 25-30, 25-57, 25-65

STATE OF CONNECTICUT

SUPERIOR COURT

www.jud.ct.gov

COURT USE ONLY

MFMOD



(Check one)

Before judgment After judgment (If the court has ordered you to attach a request for leave with a motion for modification of a final custody or visitation order, you must complete and attach a Request for Leave form (JD-FM-202) to this motion.)

Judicial District of (court that made orders)	At (Town) (city where court is located)	Docket Number (from court papers)
Plaintiff's Name (Last, first, middle initial) (see earlier court papers on the case)	Plaintiff's Address (Number, street, city, state, zip code) (enter address)	
Defendant's Name (Last, first, middle initial) (see earlier court papers on the case)	Defendant's Address (Number, street, city, state, zip code) (enter address)	
Type of Motion to Modify		
<input type="checkbox"/> Child Support <input type="checkbox"/> Alimony <input type="checkbox"/> Custody <input checked="" type="checkbox"/> Visitation <input type="checkbox"/> Other (Specify): _____		

I (**enter your name**), am the Plaintiff Defendant. I respectfully represent that:

1. This Court issued an order dated (**put date**) directing (**put other person's name**), residing at (**put address**) to:

(Number, street, city, state, zip code)

(Complete the boxes that apply to your motion)

Pay Child Support in the Amount of: Per _____ Per _____	Pay Alimony in the Amount of: Per _____ Per _____	Have Custody of the Child/Children: (Check one) <input type="checkbox"/> Joint <input type="checkbox"/> Sole
Have Visitation or Parenting Time as Follows: (Attach a copy of the visitation schedule if available) (attach a copy of visitation order, if available.)		Primary Residence with: (write who it is)
Other:		

2. (Check appropriate box(es) and explain briefly why you are seeking a modification)

Since the date of the order, the circumstances concerning this case have changed substantially as follows:

EXAMPLE: my work hours have changed and my son wants to spend more time with me.

The final order for child support is substantially different from the Child Support Guidelines as follows:

I ask the Court to modify the current order as follows: (Check all that apply)

Child Support (You must file a Financial Affidavit (JD-FM-6) at least 5 days before the hearing. You must also file an Affidavit Concerning Children (JD-FM-164), a completed child support and arrearage guidelines worksheet (CCSG-1), and an Adversment of Rights Re: Income Withholding (JD-FM-71)).

Increase Decrease the amount of child support to be paid. Order immediate income withholding.

Alimony (You must file a Financial Affidavit (JD-FM-6) at least 5 days before the hearing. You must also file an Adversment of Rights Re: Income Withholding (JD-FM-71)).

Increase Decrease the amount of alimony to be paid.

Custody (You must file a Financial Affidavit (JD-FM-6) at least five (5) days before the hearing. You must also file an Affidavit Concerning Children (JD-FM-164) and a completed child support and arrearage guidelines worksheet (CCSG-1)).

Modify custody as follows:

Visitation (You must file a Financial Affidavit (JD-FM-6) at least five (5) days before the hearing. You must also file an Affidavit Concerning Children (JD-FM-164) and a completed child support and arrearage guidelines worksheet (CCSG-1)).

Modify visitation (parenting time) as follows:

EXAMPLE: have my son visit every other weekend (Sat. noon until Monday 8am)

Other (Please be specific):

Signature	Print Name (print your name)	Date Signed (date)
Address (Number, street, city, state, zip code) (your address)	Telephone (Area code first)	

(Continued on back/page 2)

Check appropriate court: Superior Court Family Support Magistrate Division

Date: _____

(*Marshal's Name*)

(*Address*)

(*City, State*)

Dear Marshal:

Enclosed please find a **__Motion for Modification**

to be served on _____.

The best place to serve him/her is at his/her home address at _____
_____ between the hours of _____ and _____ or at his/her place
of employment, _____, located at _____
_____, between the hours of _____ and _____.
_____ is _____ years old, _____ tall, and

(*Name of person to be served*)

(*physical description*).

Please make your return of service to me and (*check one*)

_____ bill me directly, or

_____ submit to State of CT for payment in accordance with enclosed order to waive fees.

Please file proof of service with this court at least six days before the hearing. Please call me if you have any questions. Thank you.

Sincerely,

(*Your Name*)

(*Your Street Address*)

(*Your City, State, Zip*)

(*Your Telephone Number*)