

Modification of Custody Order

Generally- Orders are never final

Custody orders are unique in that they are never final. Child custody orders are temporary in nature and always subject to change if new circumstances affect the welfare of a child. The commonwealth has a duty of paramount importance to protect the child's **best interests and welfare**, and, that end, it may always entertain an application for modification and adjustment of custodial rights. Any order for the custody of the child of a marriage entered by a court in Pennsylvania or any state may, subject to jurisdictional requirements, be modified at any time to an order of shared custody in accordance with law. In evaluating whether a modification of custody is in a child's best interest, the court has an obligation to consider all relevant factors that could affect the child's well-being.

Filing of a Petition to Modify

The appropriate manner to bring about a change in a custody and or visitation order is by a petition for modification, which would follow, generally, the procedure under the rule pertaining to the commencement of action for custody proceedings, generally. A trial court cannot permanently modify a visitation order without a petition to modify being submitted by one of the parties.

Time for petition

Petitions for modification of custody orders may be filed at any time. In all such cases, the paramount and sole pertinent consideration in discerning the continuing validity of a custody order is, as in all such determinations regarding children, the best interest of the children involved. Thus, regardless of whether custody is challenged in an original proceeding or on a motion for a change in custody, the court is required to make the same inquiry into the best interests of the child.

Effect of Soldiers' and Sailors' Relief Act- Modification of Custody on Deployed Military Personnel

A court will not stay an action for the modification of custody pursuant to the Servicemembers Civil Relief Act as the paramount concern of the court is the best interest of the children. The mere fact that one of the parties is in the military and has been recalled to active duty cannot preclude the court from inquiring into the best interest of the children.

What does a Court consider?

A trial court may not revise a custody order until it fully considers the **totality of the circumstances** and discerns the **best interest of the child at the present**. A change of custody is just as important to the child and to others as an original award of custody, and the parties should be afforded the same type of hearing on the application as they are entitled to on an original award. A lower court is obligated to entertain a full evidentiary hearing on the issue of modification of custody before allowing even a de facto modification.

Whenever, in a custody dispute, a court is called upon to address the best interests of a child, traditional burdens or presumptions such as a substantial change in circumstances, the fitness of one parent over another, or the tender years doctrine must

all give way to the paramount concern, namely the best interests of the child; in determining the best interests of the child, ***a court must consider all factors that legitimately affect the child's physical, intellectual, moral and spiritual well-being.*** In order for a court to determine the best interests of a child in a proceeding to modify child custody, it must not limit its analysis to the present environment in which the child is situated; rather, the court must consider all possible environments and relevant factors.

Illustration: A trial court erred in transferring custody of children from the mother to the father after a brief hearing at which the mother did not appear due to the fact that she had relocated to Colorado just one year after the mother was awarded custody of the children at the conclusion of an exhaustive hearing. It was in the children's best interest to conduct a new custody hearing. In another case, a trial court did not abuse its discretion in "temporarily" transferring primary physical custody of the parties' five-year-old child from the mother to the father pursuant to the parties' separation agreement, which provided for change of custody from the mother to the father if the mother could not "provide a home environment which is in the best interests of the child." The court's order did not contemplate an "automatic" return of custody to the mother upon her relocation to more suitable living conditions; irrespective of whether the court used "ambiguous terminology," the father would maintain primary physical custody of the child unless and until the court determined otherwise. The trial court could reinstate the original custody arrangement if, after full consideration of the mother's petition, it determined that the child's best interests would be served with her mother.