

CUSTODY MODIFICATION IN PA

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THE “WHERE”

In order for a Pennsylvania court to modify an existing child custody order, it must have jurisdiction. The requirements for jurisdiction vary depending on whether or the initial custody order was entered by a Pennsylvania court, or a court of some other state.

Where the child and both parents all reside in Pennsylvania, the jurisdictional issue is pretty simple. Pennsylvania will be able to make an initial child custody determination, which, as you will learn below, generally allows a court in this state to modify that order later on. If Pennsylvania had jurisdiction to enter the initial custody order (and did so), Pennsylvania will have what is called “exclusive, continuing jurisdiction” over any modification of that order. This means that unless Pennsylvania loses jurisdiction, it is the only state that may modify the original order. So, for example, a Pennsylvania court issues an initial custody order. Mom and Kid have lived, and continue to live in Pennsylvania, but Dad moves to New Jersey. Dad cannot ask a New Jersey court to modify the Pennsylvania order, but rather, he would have to drive all the way back to Pennsylvania and ask for a modification there.

On the other hand, if a state other than Pennsylvania entered the initial custody order, it may be difficult to establish that a Pennsylvania court has jurisdiction to modify the out-of-state order, as that other state may still retain continuing, exclusive, jurisdiction over the matter. In Pennsylvania, a court will not modify another state’s custody order unless: (1) Pennsylvania had jurisdiction to make an initial custody determination based on the criteria discussed above regarding the initial custody determination, and (2) the state that entered the initial child custody determined that it no longer has exclusive, continuing jurisdiction or a Pennsylvania court would be more convenient; or if neither the child, nor the child’s parents (or any person acting as a parent) personally reside in the state which entered the initial order. Things can get really messy if multiple states have jurisdiction at the same time, because each state could enter their own orders, which could potentially conflict with one another. For this reason, only one state is allowed to have jurisdiction at a time.

THE “WHY”

If Pennsylvania courts have jurisdiction to modify an order for child custody, it will only do so if it serves the best interests of that child. For example, a court will not alter the child’s routine and inhibit continuity for nefarious reasons, such as one party being jealous of how much time the other party was awarded. On the other hand, if serious allegations are made, the custody order in place may not serve the child’s best interests and thus, the court may modify it.

During these proceedings, if the conduct of one party was “obdurate, vexatious, repetitive or in bad faith,” the court may award reasonable interim or final attorney’s fees to the other party.