

## How to Modify Order of Custody and Visitation

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### How do I change an Order of Custody or Visitation?

You have to file a Custody Modification Petition in Family Court. You can get a blank copy online or at the Petition Processing desk in Family Court. Whichever county your child has lived in for the past 6 months is where you should file. Below is a list of the family court buildings in which you can file for custody.

- Erie County: One Niagara Plaza, 4th Floor, Buffalo, New York.
- Niagara County: 775 3rd St, Niagara Falls, NY 14301 OR 175 Hawley Street, Lockport, NY 14094, depending on which location you live closest to

You can obtain a copy of the forms from the court website as well:

<https://ww2.nycourts.gov/forms/familycourt/custodyvisitation.shtml>

### What should I include in my Petition?

Your modification petition must explain two things:

1. That there has been a **substantial change** in circumstances since the last order was entered that this change was unexpected.
2. You must then explain why it is in the child's **best interests** for custody or visitation to be changed and to what you want it changed to, because of those circumstances.

### How do I file my petition?

In Erie County, go to Petition Processing on the 4th floor of Family Court. In Niagara County, go petition processing in the respective court houses. You can file in either Niagara Falls at 775 3<sup>rd</sup> Street., Niagara Falls NY 14301 or Lockport 175 Hawley St., Lockport NY 14094. Tell the window clerk you want to petition for custody and visitation. The window clerk will then check the Family Court records to make sure there are no previous court orders in the case and that there isn't a court case pending. The clerk will review your petition and file it.

### Will I get a free attorney?

In any action affecting custody, a parent who cannot afford a lawyer has the right to have the court appoint a lawyer. In Erie County Family Court, the Court will issue an Order of Referral to the Assigned Counsel Program and an attorney will be appointed to represent you. In Niagara County the Court will issue an Order of Referral to the Public Defender's office to appoint an attorney to represent you. You may also apply to Neighborhood Legal Services, Inc. to determine if we can assist you.

## Will my child have a say in all of this?

The Court will appoint an Attorney for the Child to represent the child's wishes. If the Child had an attorney in the previous cases, then the court will make every effort to appoint the same attorney to the new case to provide continuity of counsel. The Attorney for the Child must zealously advocate for what the child wants. The Attorney for the Child is not a court evaluator and is not investigating the case to determine what is in the best interests of the child. The Attorney for the Child can only substitute their judgment, and advocate for something other than what the Child wants, when the child's stated position would put the child at imminent risk of physical or emotional harm.