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# Why Courts Modify Child Custody And Parenting Time



It is not uncommon for the lives of separated parents to change significantly after their [divorce](#) or, in the case of parents who were never married to each other, [paternity case](#) is over. Sometimes the [child custody](#) and parenting arrangements mandated in the court judgment may begin to break down and fail. Perhaps the parenting time that was allotted to each parent no longer fits the needs of the child, or one parent insists that recent developments have made it appropriate for him or her to have sole [legal or physical custody](#).

In either case, parents can request a [modification](#) to their divorce agreement to make the custody arrangements fit their evolving needs.

## The Two Requirements for Child Custody and Parenting Time Modifications

Modification of child custody judgments are permitted under [G.L. c. 208 § 28](#). Under this statute, modification requests have to satisfy a two-pronged test:

1. There has been a “material and substantial change in the circumstances” of the parents since the original custody determination, and
2. Modification is necessary to serve the best interests of the children.

The first prong – “material and substantial change in circumstances” – is the same one applied to other modification requests, such as [those to modify child support orders](#). Satisfying this requirement means showing that the existing custody arrangements are no longer appropriate due to a significant new development in the lives of either the parents or the child. An example of a material and substantial change in circumstances might be if one parent accepted a new job that required them to travel frequently out of state. If the parenting schedule had been for each party to have shared physical custody of

the child on alternate weeks, for example, this may no longer be feasible due to the travel required by the new job.

The second prong – “the best interests of the children” – is the same one that [drives initial decisions concerning child custody in a divorce](#). The best interests of the child can depend on numerous factors can include:

- The quality of the relationship between the parents and the child;
- The age of the child;
- Each parent’s ability to communicate with the other on child-related issues;
- The ability of the parents to provide a stable environment for the child;
- The child’s academic performance;
- Any mental health or wellness issues affecting the child;
- The living accommodations at each parent’s home.

In cases where the issue is contested, courts often rely on a [report from a guardian ad litem](#) (GAL) to help determine what custodial arrangement would serve the children’s best interests.

## Jointly Filing the Modification Request Can Expedite Its Passage

In Massachusetts, parties who agree on the terms of a modification to custody or parenting time can file a [Joint Petition and Agreement to Change Judgment](#). While the Court must still ensure that the modification would further the best interests of the children, the jointly filed paperwork means the requested modification will be entered as a judgment far more quickly than if the matter were litigated.



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## Modifications to Child Custody Not Taken Lightly

Changes in physical custody or parenting time are not trivial, but changing from shared to sole legal custody of a child is often more difficult to achieve. Because a modification that demands sole legal custody of a child would remove the other parent's right to make important decisions concerning the child's health, safety and welfare, judges in Massachusetts are often hesitant to approve such modifications absent strong evidence of the other parent's inability to act in the children's best interests.

Typically, this requires a showing that the other party has deeply troubling issues, such as substance abuse or mental health problems, that adversely impact their parental fitness. However, that is not always the case. In [Malachi M. v. Quintina Q.](#), 483 Mass. 725 (2019), for example, the Supreme Judicial Court approved a modification awarding sole legal custody to the father where the judge found that the mother was "still attempting to punish Father and has not been able to separate their prior relationship [from] that of his relationship with the child." In another case, [Macri v. Macri](#), 96 Mass. App. Ct. 362 (2019), the Massachusetts Appeals Court upheld the Probate and Family Court's modification from joint legal custody to sole legal custody to the mother. The father had "refused to consent to the child working with an educational consultant retained by the wife and unilaterally chose to include sensitive information regarding the child in the applications, over the wife's objection."

The judge found that both decisions by the husband was "unable to put [the child's] needs first in regard to his communication and decision-making with [the wife]." The father had argued no material change in circumstances existed because the parties had communication issues at the time of the initial judgment. Interestingly, the Appeals Court affirmed the modification judge's finding that "[t]he parties' continued inability to communicate," as illustrated above, constituted a "material and substantial change in circumstances", and that it was in the child's best interests to grant the wife sole legal custody.

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**Schedule a free consultation with [Kimberley Keyes](#) today at (781) 253-2049 or send her an email.**

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