



# Custody, Visitation & Jurisdiction

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This guide discusses what happens when someone starts a custody or visitation case, and the parents do not live in the same county or state.

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## What is jurisdiction?

**Jurisdiction** (joo-r-is-DIK-shun) is having control over something.

## What does it mean for a court to have jurisdiction?

When a court has jurisdiction, it has the power to make decisions in a particular case.

## What court do I go to for a custody or visitation case?

In New York State, you can go to Family Court or Supreme Court.



Usually the cases begin in Family Court unless the **parties** in the case are parents who are getting a divorce. Parties are the people involved in the case. Divorce cases are heard in Supreme Court.

## If I am not getting a divorce, can I go to any Family Court about my custody or visitation case?

No. There are jurisdiction rules that say which court can decide a case. One rule involves where the child lives. There is also a rule about what happens if a court has already made a decision about custody or visitation.

## Why is it important where my child lives?

You must file for custody or visitation in the **home state** of your child. The home state is the state where your child has lived for at least six months.

If your child recently moved to a new state, you cannot file for custody in that new state until your child has lived there for at least six months. Until then, the case must be started in the last state your child lived for at least six months.



## What is the Uniform Child Custody Jurisdiction and Enforcement Act?

The **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)** is the law that says what a **home state** is. The UCCJEA was created to make it easier to figure out which state gets to make a decision in an **interstate** case. Interstate means that more than one state is involved.

## Does the home state rule also affect what county I file in?

Yes. You must file in the county where the child has lived for the past six months. In New York City, this means the borough.

## Are there any exceptions to the home state rule?

Yes. A court in another state can sometimes get temporary emergency jurisdiction even if a child has not lived in the state for the last six months. For example, a court can get emergency jurisdiction if the child, child's sibling (brother or sister), or parent of the child is at risk of being abused.

## What happens if my child is younger than six months old?

If a child is less than six months old, then the child's home state is the state where he or she has lived since birth. (Leaving the state for a short period of time does not change a child's home state).



## If I want to change a custody or visitation order, do I have to go back to the same court that made the order?

Yes. Things sometimes change after a court makes a custody or visitation order. That is called a **change of circumstances**. If this happens, you can file a **petition to modify** the old **order**. A petition is a written request. An order is a decision made by a judge. To modify means to change.

The court that made the original custody or visitation order is the court that has jurisdiction to modify that order. This is the rule even if your child now lives somewhere else, and has lived there for more than six months.

## Can I ask for my case to be switched to a court in a different state, county, or borough?

Yes. You can ask the judge to have your case moved.

## How do I ask the judge to move the case to a different location?

If you would like to have your case moved, you have to file a **motion** asking the judge to change the **venue** (VEN-yoo) of the case. A motion is a written **request**. Venue means the location of the case. A **motion for a venue change** is a written request to the court to change the location of your case. When you request something you ask for it.

## How will the judge decide whether or not to move the case?



The judge will think about:

- Where the child now lives and how long the child has lived there
- Where each party lives
- The financial situations of the people involved
- The nature and location of the evidence needed in the case (including child testimony and other witnesses)
- Any other things that the judge thinks are important

## Can a custody or visitation case ever be started in two different states?

Yes. Sometimes one parent will start a case in one state, and the other parent will start it in a different state. If this happens, the judges from the two courts will talk to each other and decide which court should make the decision. The state that is considered the home state of the child will usually get to decide the case.

## How do I serve my court papers on someone who lives in a different state or country?

If you know where the person is living, you can contact the local police station or sheriff's office to see if they can help with service. You can also hire a private service company to serve the papers. You can also ask the judge how to serve the person. For more information on service, please see the LIFT guide, "Serving Court Papers."

## What is a telephonic hearing?

A **telephonic** (tel-uh-FON-ik) hearing is when one or both of the parties to a case are allowed to testify or appear using the telephone rather than in person.



## How do I ask for a telephonic hearing?

To ask for a telephonic hearing, you make a written request to your judge. To do this, you must fill out a form. The form is called "Electronic Testimony Application and Waiver of Physical Presence." On the form, you must explain why you are asking for the telephonic hearing.

One reason might be because you live in another state.

Your request has to be approved by the judge hearing your case.

## How do I get the form?

The form can be downloaded from the New York State Courts website here: <http://www.courts.state.ny.us/forms/familycourt/pdfs/ucCJEA-7.pdf>.



You can also get the form by contacting the judge's Part (courtroom) to ask for the form. In some courthouses, you can get the form from the petition room or record room.

The same form can be used to request permission to testify by audio-visual or other electronic means.

## I want to modify the custody or visitation order from my divorce. Do I have to go back to the Supreme Court or can I modify the order in Family Court?

Your divorce papers may tell you which court has jurisdiction: Family Court or Supreme Court. If the papers tell you which court has jurisdiction, you can file a petition in that court.

Often the divorce papers will say that Supreme Court and Family Court have **concurrent jurisdiction**. Concurrent jurisdiction means that the case can be heard in either court. You can choose which court you want to file in.

## I am sending my child to live with a relative in a different state. Do I need to get an order of custody or guardianship for the relative?

If there is no custody, guardianship or visitation order for your child, then you do not need to get anything from Family Court before sending your child to your relative.



However, it is possible that your relative might encounter problems registering your child for school and getting medical care for your child without having a court order for custody or guardianship.

If your relative encounters these problems, he or she can go to Family Court to file for custody or guardianship. The home state rule still has to be followed. This means that if your child has not been

in the new state for six months, your relative will have to file for custody or guardianship in New York. For more information on relatives, please see the LIFT guide, “The Rights of Relatives in Family Court.”

## If I have a custody or visitation order in New York State, and I move (or the other parent moves) to a new state, will the new state enforce the order from New York State?

Generally the answer is yes, as long as your order follows the rules of UCCJEA and any other relevant federal law.

Some states will require you to register the order before they will enforce it. Registering the order means having the order put into their records. To find out if you have to do this, you can contact a legal services organization in the new state or you can contact the family court in the new state. They can also tell you what steps you would have to take to register the order.

You can look up legal services organizations in other states by going to [www.lawhelp.org](http://www.lawhelp.org).

**For more information on custody cases, please see the LIFT guide, “Custody and Visitation,” or call our Legal Information Hotline at (212) 343-1122.**

**Please note that the information in this guide is about cases in New York State. Every state has different laws about custody and visitation.**

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*This document should not take the place of a consultation with a lawyer. LIFT encourages all individuals involved with the Criminal and Family Court systems to consult with a lawyer.*

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