

Child Custody and Support: Jurisdiction to Modify

Unlike other civil judgments, custody and support orders can be modified when there has been a substantial change in circumstances since the order was entered. This rule is codified in North Carolina at [GS 50-13.7](#) and every state in the country has a similar statute.

While this authority is broad and straight forward, there are other statutory provisions that place significant limits on a court's subject matter jurisdiction to modify a custody or support order – whether the order originally was entered in NC or in some other state or country. These statutory provisions were enacted for the purpose of discouraging parents from running from state to state in the hope of obtaining a more favorable court order.

Custody and Support Orders are Different

Even though custody and support often are addressed in the same order, the law relating to subject matter jurisdiction for each is different and found in different statutes. Custody jurisdiction is addressed in [Chapter 50A, the Uniform Child Custody Jurisdiction and Enforcement Act \(UCCJEA\)](#), while support jurisdiction is addressed in [Chapter 52C, the Uniform Family Support Act \(UIFSA\)](#).

Both are uniform acts and both have been adopted by every state in the country. Fortunately, this means that the law relating to jurisdiction to modify is substantially similar, if not identical, in every state in the country.

Consent to Jurisdiction: It Works for Support but Not For Custody

Perhaps the most important thing to remember is that these statutes define subject matter jurisdiction rather than personal jurisdiction. While requirements of personal jurisdiction can be waived, subject matter jurisdiction generally cannot be conferred upon a court by the parties. *Foley v. Foley*, 156 NC App 409 (2003). Similarly, a failure to object to a lack of jurisdiction does not result in a waiver of that objection. *In re NRM*, 165 NC App 294 (2004). An order entered without subject matter jurisdiction is void.

A custody order entered by a state without jurisdiction under the UCCJEA is void, regardless of whether it is an initial determination or a modification, even if the parties consent or fail to object. *Foley; In re NRM*. In addition, the [federal Parental Kidnapping Act \(the PKPA\)](#) provides that a custody order entered in violation of its provisions (which are identical to the provisions in the UCCJEA) is not entitled to Full Faith and Credit. [28 USC sec. 1738A\(c\)](#). The [Federal Full Faith and Credit of Child Support Orders Act](#) (the FFCCOA) provides the same regarding support orders entered in violation of UIFSA. [28 USC sec. 1738B](#).

However, UIFSA allows parties to agree to litigate a child support modification in a state that does not have jurisdiction under the Act, if that agreement is in writing and signed by both parties. [GS 52C-2-205](#).

Continuing Exclusive Jurisdiction (“CEJ”)

Modification jurisdiction for both custody and support is based on the concept of *continuing exclusive jurisdiction (CEJ)*. If the state that entered the original support or custody order has CEJ at the time the motion to modify is filed, only that state has authority to handle the case. [GS 52C-2-205\(support\)](#); [GS 50A-203\(custody\)](#). See also *Hook v. Hook*, 170 NC App 138 (2005)(support) and *Crenshaw v. Williams*, 211 NC App 136 (2011)(custody); *In re NRM* (Termination of parental rights).

A state that entered a support order will have CEJ to modify that order if, at the time the motion to modify is filed, the state continues to be the residence of the obligor, the obligee or the child. Even if the state is not the residence of one of these people, the state also will have CEJ if the parties agree to jurisdiction in writing or on the court record. [GS 52C-2-205](#).

A state that entered a custody order will have CEJ to modify that order until either:

- 1) that state determines that the child, the parents and any other person acting as a parent no longer have a significant connection with the state and that substantial evidence is no longer available in the state about the child, or
- 2) any state determines that the child, the parents and any person acting as a parent do not reside in the state.

[GS 50A-202](#).

For custody modification, the state with CEJ can, instead of litigating the modification request, decide that another state is a more convenient forum for the matter to be resolved. [GS 50A-207](#). But the authority to make that determination rests exclusively with the state with continuing exclusive jurisdiction. [Id.](#)

When Continuing Exclusive Jurisdiction is Lost

In both custody and support cases, the state that entered the order sought to be modified loses CEJ when the parents and the child (and any person acting as a parent in a custody case) all leave the state. [GS 52C-2-205\(support\)](#); [GS 50A-202\(custody\)](#).

So the first question to ask in any modification case is whether anyone continues to live in the state that issued the order to be modified. If the answer to that question is yes, then absent an

emergency situation that will justify the temporary exercise of child custody jurisdiction or a ruling by that court that the state no longer has significant connection/substantial evidence to support the exercise of jurisdiction for custody modification, the state that entered the order will be the only state with jurisdiction to modify the order. No other state has subject matter jurisdiction to modify either a child support order (absent written consent of the parties) or a custody order. [GS 50A-203\(custody\)](#); [GS 52C-2-205\(child support\)](#). See also PKPA, [28 USC sec. 1738A\(c\)](#) (full faith and credit for custody); FFCCOA, [28 USC sec. 1738B](#) (full faith and credit for child support).

But if no one continues to reside in the issuing state, the UCCJEA and UIFSA contain different rules regarding what state will have jurisdiction to modify.

For custody, any state that could make an initial determination will have jurisdiction to modify when there is no state with CEJ. [GS 50A-203](#). This means a state that is *the home state of the child at the time the motion to modify is filed has priority jurisdiction*. If there is no home state, then a court with substantial evidence/significant connection jurisdiction can modify the order. [See GS 50A-201\(initial determination jurisdiction\)](#).

For support, the play-away rule applies. UIFSA provides that if no state has CEJ, the party seeking modification must litigate in the state where the other parent resides (unless both parties agree in writing to litigation in another state). If they reside in the same state, it is convenient for both parties. But if they reside in different states, UIFSA provides that the inconvenience of traveling falls upon the party seeking modification. [GS 52C-6-611](#). *Crenshaw, Barclay v. Makarov, unpublished*, 767 SE2d 152 (2014).

Same Rules Apply When Original Order was Entered in North Carolina

It is common for people to assume that North Carolina can modify any custody or support order entered by a North Carolina court, but that is not true. Instead, the rule regarding CJE applies to our own orders as well as to orders entered by other states or countries. If NC does not have CEJ at the time the motion to modify is filed, then NC does not have jurisdiction to modify either type of order. [GS 50A-202\(b\)\(custody\)](#); [GS 52C-205\(support\)](#).