

## The Difference Between Modifying Parental Decision-Making Responsibilities and Parenting Time

Under Illinois law, modifications to parental decision-making responsibilities made earlier than two years after its entry may only be made in cases of serious endangerment of the child, where the change is determined to be in the child's best interest, and a substantial change in the circumstances of the child or either parent. 750 ILCS 5/610.5(a)-(c). Modifications to parenting time are not subject to the two-year bar and don't require serious endangerment of the child. 750 ILCS 5/610.5(a). To change parenting time, the parent who wishes to do so must show a change in circumstances that requires modifying the parenting time schedule to serve the best interests of the child. *Id.* Unlike modifications to parental decision-making responsibilities, the change in circumstances does not need to be substantial. 750 ILCS 5/610.5(a)-(c).

Courts considering modifications to parenting plan or allocation judgment must consider two factors. 750 ILCS 5/610.5(c). First, whether there was a substantial change in circumstances, and second, whether changing the parenting plan or allocation judgment would be in the child's best interest. *Id.* While the Illinois Marriage and Dissolution of Marriage Act (IMDMA) does not define "substantial change in circumstances," courts have considered several factors in these determinations. One such factor is the child's aging, as courts have recognized that a child's needs are different across various stages of life. *In re Marriage of Davis*, 792 N.E.2d 391 (Ill. App. Ct 2003). Further, changes in either parent's employment or the existence of a new half-sibling or similar new relation residing with either parent with whom it may be in the child's interest to develop a bond may constitute a substantial change in circumstances. *Wise v. Williams*, 2021 IL App (1st) 210085-U. The court must look at the totality of the circumstances when considering all relevant factors. *Davis*, 792 N.E.2d at 394.

However, a court is able to modify a parenting plan or allocation judgment without a change in circumstances in a few limited circumstances. 750 ILCS 5/610.5(e). This may occur if the modification is determined to be in the child's best interest and if either (1) the modification reflects what the child's care arrangement has been for six months prior to filing a petition to modify the parenting plan or allocation agreement, as long as both parents voluntarily consented to the arrangement; (2) the modification is considered minor in the allocation judgment or parenting plan; (3) the modification is necessary to fix an erroneous allocation judgment a court

made when not fully aware of all relevant circumstances; or (4) all parties agree to the modification. 750 ILCS 5/610.5(e)(1)-(4).

The IMDMA delineates fourteen relevant factors for courts to consider when determining the best interests of the child in parental decision-making responsibilities modifications, including (1) the best wishes of the child (taking into account the child's maturity level and ability to express independent and reasoned preferences); (2) their comfort in their home, school, or community; the mental and physical health of all involved; and (3) the ability of the parents to cooperating in making decisions for the child, among others. 750 ILCS 5/602.5(c)(1)-(3). However, the statutory factors are different for parenting time modifications. 750 ILCS 5/602.7(b). Those considerations include (1) the wishes of the parents seeking parenting time, (2) the wishes of the child (after appraising the child's maturity level and ability to express reasoned and independent preferences), (3) the amount of time each parent spent providing care for the child in the twenty-four months prior to filing the petition requesting modification, as well as additional factors. 750 ILCS 5/602.7(b)(1)-(3). While courts are not required to make specific findings for all relevant factors, all must be considered when the court makes its final decision. *In re Marriage of McLean*, 2025 IL App (5t) 250094 at ¶73 (citing *In re Marriage of Diehl*, 582 N.E.2d 281 (Ill. App. Ct 1991)). Courts must determine whether a modification would be in the child's best interest in both allocation of parenting time and allocation of parental decision-making responsibilities modifications.

In conclusion, modifications to parental decision-making responsibilities made earlier than two years after entry must meet the high threshold of substantial changes in circumstances, which is not required of changes to parenting time. Parties also do not have to wait two years after entry of either the parenting plan or allocation judgment to file a petition to modify parenting time. However, modifications to both allocation of parenting time and parental decision-making responsibilities require that the change be in the child's best interest.