Self-Executing Modifications of Custody Orders: Are They Legal?

by
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I. Introduction

This article will explore the legality of what are interchangeably termed "self-executing" or "automatic" modifications of custody orders. Sometimes these orders are referred to as "step-up" parenting plan orders, as well. That is, they are orders entered by the court that modify the custody of, legal decision-making for, and/or parenting time with minor children upon the predetermined occurrence of some future event. In some states, the answer to the legality question is clear, but in many jurisdictions the state of the law is silent or unsettled and these orders are utilized by courts and litigants quite frequently.

The first part of this article explains what self-executing modification orders are and how they are typically used. The second part of this article discusses the legality of the self-executing orders across the country. A Table[2] is also provided in Appendix A that surveys cases state-by-state and references whether the self-executing orders are permissible, not permissible, or whether legality is unknown or questionable. The third part of this article considers the legality of self-executing orders on a *pendente lite* or temporary orders basis. Finally, this article in part four addresses the legality of the self-executing orders where stipulated to by the parents.

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[2] Every effort has been made to identify applicable cases across the United States. It is possible, however, that other cases exist that were not discovered because they do not necessarily use the terminology relied on by the author, *i.e.*, "self-executing," "automatic modification," or "step-up plans."

II. What Is a Self-Executing Modification Order?

Self-executing orders for purposes of this article are orders entered by a court that modify custody, legal decision-making, or parenting time upon the occurrence of a pre-determined future event.[3] For example, one parent seeks to relocate with the child and the other parent objects.[4] The parents proceed to evidentiary hearing, after which the court denies the petition to relocate the child. In rendering its orders, the trial court includes a provision that automatically modifies the child's primary residence or the parenting schedule or decision-making if the move occurs. The order may say that the child will primarily reside with the mother, but if the mother moves from Jersey City to New York City, the child will primarily reside with the father.

Another example might involve a parent with substance abuse issues.[5] One parent may approach the court for a modification due to the potential or real harm to the child resulting from the other parent's alcohol or drug use. In deciding the case, the court may remove the child from the substance using parent until the parent engages in some type of testing protocol, success-

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[3] The Iowa Supreme Court analyzed the meaning of "self-executing orders" for purpose of a supersedeas stay in *Scheffers v. Scheffers*, 44 N.W.2d 676 (Iowa 1950). The issue was whether an ordered transfer of custody of the child in that case from one parent to the other was a self-executing order. *Id*. at 679. In answering the question, the court observed that "A self-executing order has been defined by this court as one which requires 'no act of a ministerial or other officer to put it into effect.'" *Id*. Moreover:

> a self-executing order presupposes that no act of the defeated party is required in order to render its fruits available to the successful party. A self-executing order is ordinarily one which is injunctional and prohibitive, or one which fixes the status of a party, as in an action of divorce, or in an action to test the right to office, or one which adjudicates the title to property, and especially where a title is quieted in a party in possession. An order which in its nature and its terms is mandatory upon the defeated party, requiring him to perform an affirmative act, is not a self-executing order, for the simple reason that it is not executed at all while the defeated party refuses to perform. In such a case compulsory process is available to enforce performance. This is just what the contempt proceeding was. If the order had been self-executing, there would have been no need of compulsory process.

Id.

[4] *See, e.g.,* Bojrab v. Bojrab, 810 N.E.2d 1008 (Ind. 2004).

[5] *See, e.g.*, Hughes v. Binney, 285 So. 3d 996 (Fla. Dist. App. Ct. 2019).

fully completes a treatment program, and/or maintains sobriety for some specified period of time. As part of the orders, the court indicates that custody will change upon the achievement of certain milestones automatically and without further hearing. The same type of order can be used in domestic violence cases. For example, a court might impose supervised parenting time until completion of a treatment program, at which point unsupervised parenting time automatically resumes.[6]

Many orders that are self-executing and include step-up parenting time plans are put into place for temporary order purposes or are agreed upon by the parents. Because these orders are temporary and/or stipulated, it is not unusual that appellate decisions discussing the legality of the orders are rare.[7] The step-up parenting time plans are also attractive to parents of very young children because the child's needs and development change so quickly. These plans are also heavily used when an absent parent re-enters the child's life.

III. The Legality of Self-Executing Orders

It is universal that courts entering orders that impact a child are guided by the best interests of the child standard. In fact, the best interests of the child is said to be the "polestar" and "paramount" consideration when courts are considering parenting orders.[8] When a court enters a self-executing or automatic modification order, the issue of legality focuses on whether the

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6 *See, e.g.,* Parks v. Parks, 214 P.3d 295 (Alaska 2009).

7 *But see* Acre v. Tullis, 520 S.W.3d 316 (Ark. Ct. App. 2017).

8 *See, e.g.,* Ballard v. Ballard, 289 So.3d 725, 732 ¶ 24 (Miss. 2019) ("In child custody cases, the polestar consideration is the best interest of the child, and this must always be kept paramount."); Bastian v. Bastian, 160 N.E.2d 133, 136 (Ohio Ct. App. 1959) ("The pole star in all custody matters between parents is, what is for the best interests of the child whose custody it is sought to change . . . ."); Cramer v. Zgela, 969 A.2d 621, 625 ¶ 6 (Pa. 2009) ("the polestar and paramount concern in evaluating parenting visitation . . . is the best interests and welfare of the children.); Bah v. Bah, 668 S.W.2d 663, 665 (Tenn. Ct. App. 1983) ("We are in agreement that the child's best interest is the paramount consideration. It is the polestar, the *alpha* and *omega*.") (emphasis in original).

court can determine today what will be in the best interests of a child in the future.[9]

It is interesting to consider this issue because self-executing orders, automatic modifications, and step-up parenting plans are very common; yet, the illegality of the orders is settled in only fifteen states.[10] In five states the illegality can be presumed, but must be qualified because the cases found are not published.[11] In three states, the outcome is unclear because, in two of the three states, the orders existed but were not analyzed in terms of their legality.[12] In two states it appears courts will find the orders legal depending on the terms of the order.[13] Only one state unequivocally finds automatic modifications permissible.[14] Finally, in Minnesota, three cases exist: one is published and two are not published; however, the published case and one of the unpublished cases reversed without analysis. The other unpublished case maintained fairly bizarre orders that sustained a self-executing modification. In twenty-three states, no law was found.[15]

A. *Self-Executing Orders Are Illegal in the Majority of Reported Decisions*

Based on the cases found while surveying the fifty states, the majority of states that have actually addressed the issue directly hold that self-executing orders are not legal. The Alabama Court of Appeals considered a case in which the trial court imposed an equal parenting time schedule for the older child, but ordered a more abbreviated schedule for the younger child.[16] When the younger child turned one year old, however, the parenting sched-

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9 *See, e.g.,* Koskela v. Koskela, Nos. 2011–CA–000543–ME, 2011–CA–000544–ME, 2012 WL 601218 (Ky. Ct. App. Feb. 24, 2012).

10 Alabama, Alaska, Arkansas, California, Colorado, Florida, Illinois, Indiana, Louisiana, New York, North Dakota, Pennsylvania, Vermont, Washington, and Wyoming.

11 Delaware, Iowa, Kentucky, New Jersey, and Virginia.

12 Maryland and Utah.

13 Georgia and Missouri.

14 Hawaii.

15 Arizona, Connecticut, Idaho, Kansas, Maine, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Wisconsin, and West Virginia.

16 Cleveland v. Cleveland, 18 So. 3d 950, 952 (Ala. Civ. App. 2009).

ule automatically changed to place that child on the equal schedule.[17] On appeal, the order was reversed because:

> Alabama law forbids automatic modification clauses that change physical custody of a child based on future contingencies. Once a trial court awards physical custody of a child to one parent, the trial court may change that award based only on proof that, due to a material change of circumstances, the change would materially promote the best interests of the child and would more than offset the inherent disruption in the life of the child. A provision automatically changing custody of the child based on some future event improperly relieves the noncustodial parent of his or her burden of satisfying the *McLendon* standard and can only be "premised on a mere speculation of what the best interests of the children may be at a future date."[18]

Likewise, Alaska considered an automatic future modification from supervised parenting time to unsupervised parenting time after the father completed a domestic violence program.[19] That appellate court decided that the future change was not in the child's best interest and shifted the burden of proving compliance from the mother to the father.[20]

The California courts rejected a self-executing provision that imposed a step-up parenting plan conditioned on the father's completion of therapy.[21] The reversal was conditional until the father actually rebutted the presumption against joint custody with evidence, which had not been received by the court.[22] The trial court could not enter those orders, even where delayed, without proof the condition had been met.[23] In the second case, the court of appeals considered the enforcement of a statute that automatically reinstated parenting time to deployed military parents.[24] Notably, the statute "establishes a presumption that a servicemember returning from military service should regain his or her predeployment custody of a child, unless the court determines it is not in the child's best interest."[25] The father argued

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17 *Id*.

18 *Id*.

19 Parks, 214 P.3d at 295 .

20 *Id*.

21 Jason P. v. Danielle S., 215 Cal. Rptr. 3d 542 (Cal. Ct. App. 2017).

22 *Id*. at 570.

23 *Id*.

24 *In re* Marriage of E.U. & J.E., 152 Cal. Rptr. 3d 58 (Cal. Ct. App. 2012).

25 *Id*. at 60.

the "reinstatement directive is self-executing."[26] The court agreed the directive was "unconditional," but stated it was "loath to consider a previously issued court order to be wholly self-executing as to future custody changes. In our view, when a court is asked to enforce such an order, it should conduct a *limited* inquiry into the child's best interests."[27]

In Colorado, a case addressed the issue in a footnote that says a "[c]hange of custody may only be ordered based on circumstances existing at the time the change is being contemplated. An automatic order of modification in the future is thus inappropriate. A court cannot determine what will be in the child's best interests in the future."[28]

Florida also reversed a trial court's imposition of an automatic reversion to equal parenting time if the father achieved certain milestones related to opioid addiction recovery.[29] In doing so, the court of appeals held that parenting time:

> may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. Determining what

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26 *Id*. at 70.

27 *Id*. (emphasis in original). The author did not research the statutes of every state for purposes of this article. The military reinstatement statute is, however, not novel to California. *See, e.g.*, Arizona statute ARIZ. REV. STAT. § 25-411. That said, none of the cases found while conducting the research for this article referenced any statute other than the California case, *E.U. & J.E.*, 152 Cal. Rptr. 3d 58, referenced herein. The unreported Kentucky case, *Koskela*, refers to a parental agreement to modify on the father's return from deployment. The Uniform Law Commission (ULC), in 2012, adopted the Uniform Deployed Parents Custody and Visitation Act, which has been adopted by 10 states. Mark Sullivan, *The Uniform Deployed Parents Custody and Visitation Act*, FAM. LAW. MAG., Mar. 17, 2020, https://familylawyermagazine.com/articles/uniform-deployed-parent-custody-visitation-act/. According to Mr. Sullivan, ten states had adopted the Act as of March 2020. Neither the referenced Arizona statute, nor the California statute, are based on adoption of the Act, but some states have passed legislation similar to the Act, which bundles what the Uniform Law Commission deemed to be the best provisions from various state laws to uniformly address issues such as jurisdiction. *Id*. As seen in California, however, even a provision that provides for automatic presumptions is subject to review at the time of the event.

28 *In re* Marriage of Francis, 919 P.2d 776, 786 n.13 (Colo. 1996), *citing* Missouri case *Koenig v. Koenig*, 782 S.W.2d 86, 90 (Mo. Ct. App. 1989).

29 *Hughes*, 285 So. 3d at 998, *citing Arthur v. Arthur*, 54 So. 3d 454 (Fla. 2010).

> course of action is in the best interests of the child requires a court to evaluate "all of the factors affecting the welfare and interests of the particular minor child and the circumstances of" the family. Trial courts may not engage in a "prospective-based analysis" when modifying a time-sharing schedule that attempts to anticipate what the future best interests of a child will be.[30]

The Illinois Court of Appeals reversed a trial court's order that made the award of custody to the mother contingent on her residence in one of two counties.[31] The court specifically rejected the order because it automatically modified custody rather than assessing the child's best interests when the situation came to pass.[32] The court of appeals considered such an order arbitrary.[33]

Indiana agrees that an automatic modification on a parent's relocation is not appropriate.[34] In reversing the trial court, the appellate court confirmed "that a trial court may not prospectively order an automatic change of custody in the event of any significant future relocation by the wife."[35] However, the court interpreted the subject order as providing the father with the basis to seek modification if the "custody order is undermined" by a relocation by the mother.[36]

The Louisiana Court of Appeals considered a case with somewhat different facts relied on to render an automatic change of custody.[37] In that case, the original custody orders contained a provision prohibiting a particular woman from associating with the minor children.[38] In a subsequent modification proceeding the father asserted that the mother had violated that provision.[39] When the trial court entered its orders, it maintained custody with the mother, but imposed an automatic reversal of custody should the mother again violate the no-contact prohibition.[40]

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30 *Id*.

31 *In re* Marriage of Seitzinger, 775 N.E.2d 282, 289 (Ill. App. Ct. 2002).

32 *Id*.

33 *Id*. at 288.

34 *Bojrab*, 810 N.E.2d at 1012.

35 *Id*.

36 *Id*.

37 Cook v. Cook, 902 So. 2d 981 (La. Ct. App. 2006).

38 *Id*. at 982.

39 *Id*.

40 *Id*. at 983.

The court of appeals, however, reversed, instructing that the trial courts maintain continuing jurisdiction and are not bound by orders over time where they are not in the children's best interest.[41] An "automatic non-judicial change" to a custody order is not permissible.[42]

North Dakota reversed an automatic modification based on relocation that occurred "without analysis under the best-interest factors at the time of (the parent's) possible relocation. The court's provisions essentially seek to control a future determination on primary residential responsibility, regardless of when (the parent's) 'imminent' relocation to Grand Forks would occur."[43]

Pennsylvania reversed an order that provided for automatic change of custody on further denial of visitation to the other parent.[44] The court indicated it was not clear that the provision was intended to be self-effectuating without a hearing, but "the threat implicit therein should be removed from the order. In this way, the regularity of future proceedings will best be preserved."[45]

Vermont's Supreme Court reversed a trial court order that automatically shifted custody at a date in the future when the child started kindergarten.[46] In doing so, the court held that such provisions are contrary to Vermont law and the public policy on which custody statutes are based.[47] The court went on to instruct that a modification of custody must be based on the best interest of the child assessed at the time of the change.[48] Moreover, the court expressed concern that an automatic modification could create instability for the child, whether the change event is anticipated or not.[49]

Washington and Wyoming also disapprove of automatic modification orders. Washington held that an automatic modification triggered by a parent's move was impermissible without the filing of a modification petition.[50] The Wyoming Supreme

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41 *Id*.
42 *Id*.
43 Woelfel v. Gifford, 948 N.W.2d 814, 817 ¶ 15 (N.D. 2020).
44 Rosenberg v. Rosenberg, 504 A.2d 350 (Pa. Super. Ct. 1986).
45 *Id*. at 353.
46 Knutsen v. Cegalis, 989 A.2d 1010, 1013 (Vt. 2008).
47 *Id*. at 1013 ¶ 7.
48 *Id*. at ¶ 8.
49 *Id*. at 101 ¶ 12.
50 *In re* Marriage of Christel, 1 P.3d 600 (Wash. Ct. App. 2000).

Court invalidated what it referred to as an "anticipatory conclusion" that a parent's relocation would be harmful to the child's best interests.[51]

Based on the referenced reported decisions, courts fairly uniformly decide that a trial court cannot anticipate what the child's best interests will be at some future time resulting from even an anticipated event. Most of the cases dealt with relocation provisions in which the trial courts appeared to be imposing a harsh consequence to influence a parent not to leave the state or locale. None of these reasons, however, were thought adequate to supplant the court's duty to examine the facts at the time of the event to ensure the child's best interests were adequately evaluated.

B. *Illegality May Be Presumed in Many States*

It is possible to presume that self-executing orders are illegal in a number of states, but that conclusion is not definitive because the cases are not published. In Iowa, Kentucky, and New Jersey, the courts reached similar results relying on the same basic reasoning: the events that triggered the automatic modification (relocation in two cases and military deployment in the third), replace the court's analysis of the child's best interests at the time of modification, which essentially results in creating a dispositive result.[52] As the New Jersey court pointed out, a hearing is necessary.[53]

In Delaware, an unpublished disposition exists that very briefly discusses a trial court order that conditioned placement of primary residence with the mother on her residence remaining in Delaware.[54] The higher court affirmed placement of the child with the mother, but rejected the condition that was outside the current circumstances.[55]

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51 Bruegman v. Bruegman, 417 P.3d 157, 168 (Wyo. 2018).

52 Hoffman v. Muff, 791 N.W.2d 430 (Iowa Ct. App. 2010); Koskela v. Koskela, Nos. 2011–CA–000543–ME, 2011–CA–000544–ME, 2012 WL 601218 (Ky. Ct. App. Feb. 24, 2012); K.F. v. N.V., No. A-1742-19, 2021 WL 772880 (N.J. Super. Ct. App. Mar. 1, 2021).

53 *K.F.*, 2021 WL 772880, at 12.

54 Anderson v. Anderson, No. 513, 1998 WL 309848 (Del. May 28, 1998).

55 *Id* at 1.

While these decisions do not create precedent, they are similar in factual circumstances and legal reasoning to the majority of states that hold automatic modifications are illegal. It is reasonable to assume, therefore, that self-executing modifications are, likewise, not enforceable in these states.

C. *Georgia, Missouri and Minnesota May Allow Self-Executing Orders*

Georgia is probably the most prolific state in terms of the published law on this issue. In what is likely the seminal case in that state, the Georgia Supreme Court struck down an automatic change of custody provision based on a parent's relocation.[56] In that case, the court reflected that "children are not immutable objects but living beings who mature and develop in unforeseeable directions" and, thus, the award of custody at one point is not necessarily in the best interests of the child at another point in time.[57] Importantly, the child's best interests control modifications of custody.[58]

The court referenced automatic changes of custody provisions as "draconian" and reflected that the provisions apply automatically to uproot the children despite their current circumstances.[59] The court stated that the purpose of such provisions "is to provide a speedy and convenient short-cut for the non-custodial parent to obtain custody of a child by bypassing the objective judicial scrutiny into the child's best interests that a modification action . . . requires."[60] However, if that were allowed, it would be accomplished to the detriment of the child.[61] Importantly, "[n]either the convenience of the parents nor the clogged calendars of the courts can justify automatically uprooting a child from his or her home absent evidence that the change is in the child's best interests. The paramount concern in *any* change of custody must be the best interests of the minor child."[62]

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56 Scott v. Scott, 578 S.E.2d 876 (Ga. 2003).
57 *Id*. at 878.
58 *Id*.
59 *Id*. at 879.
60 *Id*.
61 *Id*.
62 *Id*. at 880 (emphasis in original).

A later Georgia Supreme Court decision considered a self-executing visitation provision that set out two parenting plans: one that contemplated equal time and one that automatically went into effect if the mother moved more than thirty-five miles away from the existing county.[63] That court cited favorably to *Scott* and held that self-executing material changes in visitation violate this State's public policy founded on the best interests of a child unless there is evidence before the court that one or both parties have committed to a given course of action that will be implemented at a given time; the court has heard evidence how that course of action will impact upon the best interests of the child or children involved; and the provision is carefully crafted to address the effects on the offspring of that given course of action. Such provisions should be the exception, not the rule, and should be narrowly drafted to ensure that they will not impact adversely upon any child's best interests.[64] The court went on to invalidate the provision at issue in that case.[65]

A more recent Georgia Court of Appeals case affirmed an automatic modification provision despite the existence of *Scott* and *Dellinger*.[66] That said, an even later and almost contemporaneous decision followed the holding in *Scott*.[67] Both cases bear further discussion to understand Georgia's perspective on the subject issue.

Durden concerned an admittedly "self-executing automatic future modification" provision.[68] Specifically, the order implemented an automatic modification that *reduced* the father's parenting time when the child entered school.[69] The *Durden* court held that such a provision "may be permissible if the provision gives paramount importance to the child's best interests," citing *Scott*.[70] The court then found that this provision was acceptable because "it is not an open-ended provision conditioned upon the occurrence of some future event that may never take

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63 Dellinger v. Dellinger, 609 S.E.2d 331, 332 (Ga. 2004).

64 *Id*. at 333.

65 *Id*.

66 Durden v. Anderson, 790 S.E.2d 818 (Ga. Ct. App. 2016).

67 Hardin v. Hardin, 790 S.E.2d 546 (Ga. Ct. App. 2016).

68 *Durden*, 790 S.E.2d at 819.

69 *Id*. at 820.

70 *Id*. at 820-21.

place; rather, it is a custody change coinciding with a planned event that will occur at a readily identifiable time."[71]

The court in *Hardin* addressed a trial court order that permitted the mother to restart visitation at a therapist's office.[72] In that case the court considered the report of a custody evaluator who identified concerns about the mother's mental health.[73] After hearing, and despite no evidence in the record of the mother's improved condition, the trial court entered an order allowing the mother to automatically begin visitation at the therapist's office if she first completed eight sessions with her own therapist over two months.[74] The trial court's order gave detailed instructions to the therapist, who also was tasked by the court with making further treatment recommendations, and continued until the child reached the age of majority.[75] The trial court based its orders on its belief that the therapeutic involvement would repair the relationship, and that doing so was best for the child.[76] The Georgia Court of Appeals disagreed and determined that the order was "impermissibly self-executing."[77] The *Hardin* court noted that Georgia does not forbid all self-executing orders; however, a trial court holds the authority to determine if evidence exists that supports a modification or termination of visitation, which responsibility cannot be allocated to a third party, no matter how knowledgeable that person may be.[78] The court also observed that impermissible orders contain two flaws – the order relies on a third party's expertise or direction, thereby delegating the court's authority; and the timing at which the provision goes into place is not certain.[79] Importantly, the court stated:

> This is troubling for precisely the reason the father argues in his appeal – the mother may not actually have made 'progress' in her therapy in the sense that the trial court intended, or she may not be complying with the counselor's additional treatment recommendations

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71 *Id*. at 821.
72 *Hardin,* 790 S.E.2d at 547.
73 *Id*.
74 *Id*. at 548.
75 *Id*. (quotations omitted).
76 *Id*.
77 *Id*.
78 *Id*. at 549.
79 *Id*.

> or the rest of the court's order. . . . This makes the event triggering the automatic change in visitation arbitrary, with 'only a tangential connection' to the child's best interests. Thus, the order lacks 'the flexibility needed to adapt to the unique variables that must be assessed in order to determine what serves the best interests and welfare of a child.[80]

In Missouri, self-executing orders are referred to as "conditional judgments" that depend "upon the performance of future acts by a litigant"; and are void.[81] Two cases decided in 1991 and 1983 refused to enforce automatic changes of custody on relocation.[82] However, a more recent 2009 case affirmed an order that changed parenting time when the child started kindergarten, reasoning that "the enforcement of the trial court's judgment is not dependent upon future acts by the parties, but is, instead, based upon the known need of the child to have a predictable and stable custody arrangement, particularly when school begins."[83] The court said the order was not speculative and "it makes little sense to force the parties back into court thirteen months later under these circumstances."[84]

The state of the law in Minnesota is unclear. In a reported Minnesota appellate court decision, the court considered an order that shifted custody between the parents every six months, which arrangement was reversed without analysis related to automatic or self-effectuating modifications.[85] That said, it would seem rational to categorize such an order as imposing successive automatic modifications and, indeed, in a later unpublished case a father made that argument.[86] Notably, in *In re Marriage of Henderson*, the trial court ordered that parenting time to the mother would resume if she was released from prison while the children were minors.[87] The father argued this was an impermissible automatic modification prohibited by *In re Marriage of*

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80 *Id*. at 549-50 (emphasis in original).

81 Burch v. Burch, 805 S.W.2d 341, 343 (Mo. Ct. App. 1991).

82 *Id.*; *In re* Marriage of Dusing, 654 S.W.2d 938 (Mo. Ct. App. 1983).

83 Pijanowski v. Pijanowski, 272 S.W.3d 321, 327 (Mo. Ct. App. 2009).

84 *Id.*

85 Wopata v. Wopata, 498 N.W.2d 478 (Minn. Ct. App. 1993).

86 *In re* Marriage of Henderson, No. A05-1696, 2006 WL 1891182 at 1 (Minn. Ct. App. July 11, 2006).

87 *Id*.

Wopata.[88] The court of appeals disagreed with the father, distinguished *Wopata*, and affirmed the trial court.[89] The court rationalized its decision by reflecting that the mother was unlikely to be released from prison during the children's minority.[90] In another questionable twist, the court also affirmed a time sharing arrangement that placed the children in the care of the incarcerated mother's husband despite no procedural request from the step-parent seeking that order.[91]

Finally, a third Minnesota case decided after *Henderson* reversed an automatic modification order based on an evaluator's recommendation that the parenting schedule increase in three steps at certain ages.[92] The court of appeals reversed the automatic modification, but did so based on the lack of findings and without analysis of the legality of self-executing modifications.[93]

It appears that both Georgia and Missouri have moved toward approval of a self-executing order where the modification is based on a known event and date. That said, these cases do not resolve how a trial court can know what will be in the best interest of a child at a future date despite that a modification event is predictable (*e.g.*, entering school at a certain date). As for Minnesota, the facts of *Henderson* are so unusual that it is not possible to rely on that unpublished case as giving any assurances for purposes of precedential value, especially where the other two cases, one of which was reported, disallow the automatic modifications.

D. *Hawaii Is the Only State that Unequivocally Allows Self-Executing Orders*

Only one case was found that unequivocally holds that an automatic modification provision is legal and where no other cases potentially dilute or make the decision conditional or questionable. The subject case, *Maeda v. Maeda*, was decided by the

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88 *Id.* at 2.

89 *Id.*

90 *Id.*

91 *Id.* at 3.

92 Wilson v. Wilson, No. A09-1386, 2010 WL 2362749 (Minn. Ct. App. June 15, 2010).

93 *Id.* at 2.

Hawaii Court of Appeals.[94] In *Maeda*, the parents were litigating custody of their children in tandem with the mother's potential desire to relocate away from Hilo, Hawaii to the mainland.[95] The trial court awarded the mother sole legal and physical custody and afforded visitation rights to the father.[96] That said, the trial court made the award to the mother conditional on remaining in Hawaii.[97] If the mother relocated to the mainland, the custody and visitation orders essentially reversed in favor of the father.[98] The court of appeals affirmed this result in a way that is interesting. The court said that the trial court's order was based on the child's best interests, but no evidence existed as to whether *a move in the future* would be in the child's best interests.[99] The court, thus, looked at the issue in the exact way other courts look at the issue, but came to the opposite result. That is, the automatic modification was in the child's best interests because it did not have evidence of the future best interests as opposed to the reasoning that no automatic modification can be had because no evidence of best interests existed at the time the ruling was made.

E. *Should States Allow Self-Executing Orders?*

No cases were located in twenty-three states that in any way address self-executing orders. In at least one state, Arizona, the courts are imposing such orders routinely. The question, thus, is whether those states, once presented with the issue, should allow self-executing orders. The answer should be a resounding "no." The vast majority of states that have actually analyzed the issue hold that self-executing orders are not legal. The major reason for that result is founded on the perceived inability of the trial court to predict with any reliability what will be in the best interest of a child in the future. Two courts (Georgia and Missouri) have departed from the mainstream to distinguish a future modification based on a knowable event as allowable despite other decisions, even of higher courts in the case of Georgia, which

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94 794 P.2d 268 (Hawaii Ct. App. 1990).
95 *Id*. at 269.
96 *Id*.
97 *Id*.
98 *Id*.
99 *Id*. at 270.

overturned such orders. Those cases are in the distinct minority, however.

Judicial officers probably do not want to be told that self-executing orders are illegal. Many reasons for this attitude might exist, including that the orders are convenient and can reduce the need for future hearings and litigation. That reality was candidly addressed by the Georgia Supreme Court as discussed above; however, it is simply not permissible to sacrifice the child's best interests for the convenience of the parents or the courts

IV. Are Stipulated Self-Executing Orders Legal?

It is likely that many litigants enter into self-executing modification orders frequently, but the very nature of these stipulated orders defies locating a reported decision. When folks agree, they tend not to appeal. That said, reaching agreements at one point does not mean that litigation will not take place in the future. Five cases did not address the entry of self-executing orders in the first instance, but, indeed, were at issue in later litigation. In *Acre v. Tullis*, the parents entered into an agreed order that alternated the primary residential parent status between the parents in the school year and summer when the child entered kindergarten.[100] When the mother then wanted to relocate from Arkansas to Mississippi, the court declined to enforce the parties' agreement, and allowed the relocation.[101] The father appealed. The court of appeals affirmed the trial court because "the parties cannot enter into a contract with regard to custody that seeks to avoid the provisions of (Arkansas case law) which created the presumption in favor of relocation by a custodial parent."[102]

Another case, *Finnerty v. Finnerty*, is similar in result to the Arkansas case, albeit unpublished.[103] In that case, the court rejected the parents' agreement to an automatic loss of custody if that parent later raised the children observant to a religion other than Roman Catholicism.[104] The court held that such a contractual provision cannot be embodied as a nearly self-executing,

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100 Acre v. Tullis, 520 S.W.3d 316, 318 (Ark. Ct. App. 2017).
101 *Id*. at 320.
102 *Id*.
103 Finnerty v. Finnerty, 22 Va. Cir. 523 (Va. Cir. 1982).
104 *Id*. at 528-29.

custody-terminating decree provision. To do so would create not only an auto-da-fe against the non-complying parent but also a means of immolation of the court's own necessary continuing control over child custody and an instrument to destroy basic civil tenets on that subject.[105]

While the Arkansas court did not expressly comment on the legality of the automatic modification orders themselves, the reference to the parents' inability to enter into a binding contract around custody issues is illustrative. Likewise, the Virginia court focused on the inability to usurp the court's control over custody decisions, but also disapproved of the self-executing nature of the provision. Of course, in many if not most states, decisions about the best interests of a child are within the sole purview of the court and that authority cannot be delegated to others.[106] Parents do, of course, settle their custody matters, but the settlement is subject to adoption by the court. In the Arkansas case, the parents had an agreement that was part of earlier orders, but, as seen in this case, the prior adoption of that order by the court did not guarantee enforcement later. Thus, if parents agree to step-up plans or automatic modification provisions, they do so at their own risk.

In a third case, the parents agreed to orders that imposed a "penalty for any violation by the mother would be the transfer of physical custody to the father."[107] After violation by the mother, the court entered a temporary order transferring custody to the father and then held a final hearing after which the father was granted sole legal and physical custody.[108] The court of appeals affirmed, but did so only after recognizing that "a best interests analysis is required even where, as here, the parties agreed to automatic change in custody 'upon one's failure to satisfy a condition or the happening of a specified event.'"[109] Thus, while the end result was consistent with the parents' agreement, the court

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105 *Id*. at 529.

106 *Id*.; *see, e.g.*, Nold v. Nold, 304 P.3d 1093, 1097 ¶ 14 (Ariz. Ct. App. 2019); Kyle S. v. Jayne K., 190 A.3d 68, 81 (Conn. App. Ct. 2018); Meyr v. Meyr, 7 A.3d 125 (Md. Ct. Spec. App. 2011); Matter of Acosta v. Melendez, 118 N.Y.S.3d 730, 733 (N.Y. Ct. App. 2020).

107 Zwack v. Kosier, 61 A.D.3d 1020, 1021 (N.Y. Ct. App. 2009).

108 *Id.*

109 *Id.*

was nonetheless required to assess whether the orders were in the child's best interests.

Finally, an Ohio trial court enforced the automatic change of custody from the father to the mother based on an agreement by the parents that was incorporated into a prior court order.[110] The court of appeals reversed, not based on an analysis of the automatic modification provision, but because it held that the trial court was not bound by the parties' agreements.[111]

V. Are Self-Executing *Pendente Lite* Orders Legal?

Not surprisingly, appellate decisions addressing the legality of self-executing orders entered for temporary or *pendente lite* orders purposes are not numerous. Only two cases, *Zwack v. Kosier* and *Acre v. Tullis*, mentioned temporary orders.[112] In *Zwack*, as discussed above, the parents had agreed to an automatic modification penalty, which the trial court enforced as a temporary order before the trial court later maintained the result after a full evidentiary hearing.[113] The result in that case was affirmed, but the appellate decision included a reminder that a full best interests analysis is required despite agreements.[114] The appellate court did not address or criticize the temporary order.[115] In *Acre*, the parents agreed to an alternating custody schedule, which the court enforced on a temporary orders basis.[116] Two years later, the court kept that order in place while allowing the mother to relocate.[117] Again, however, the appellate court did not analyze the temporary order.[118]

As might be inferred from *Zwack* and *Acre*, it is very possible that self-executing orders entered while a divorce case or post-decree modification case is pending before final decree, judgment, or order, are legal. This is because those orders, by

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110 Bastian v. Bastian, 160 N.E.2d 133, 136 (Ohio Ct. App. 1959).
111 *Id.* at 136-37.
112 *Zwack*, 61 A.D.3d 1020, 1021; *Acre*, 520 S.W.3d at 316.
113 *Zwack*, 61 A.D.3d at 1021.
114 *Id.*
115 *Id.*
116 *Acre*, 520 S.W.3d at 318-19.
117 *Id.* at 319.
118 *Id.*

their very nature, remain under review by the court. Because the case is not resolved and will be subject to a full analysis by the court at the entry of the final decree, judgment, or order, the court can consider the best interests of the child as the step-up plan, for instance, rolls out. That said, if those orders are adopted wholesale in the final decree, judgment, or order, enforceability and legality is questionable.

VI. Conclusion: Self-Executing Orders Should Be Illegal

Based on a review of the cases, self-executing orders are not a good idea other than, perhaps, on a temporary or *pendente lite* basis. Even if the court accepts a stipulated self-executing order in the first instance, the risk remains that such an order will not be enforced in later litigation. While the orders can reduce ongoing litigation, at least conceptually, they are fundamentally improper where the best interests of the child at the time of the modification is secondary to convenience.

What do litigants or courts do, then, to address issues for which step-up plans or other changes make sense given the facts? For example, a parent may or may not relocate; a parent may or may not stay sober; a parent may or may not control their violent outbursts. These situations are, admittedly, perfect for such orders, which is why the orders likely exist. The best way to ensure legality of the orders is for the court to schedule review processes over time as the modification occurs. While this will, of course, require more court involvement, it also ensures that the child's best interests are paramount.

Appendix A
50 State Survey of Self-Executing Custody Orders

State	Permissible or No	Rules or Qualifications	Citation
Alabama	No	The court imposed a parenting schedule for an infant that automatically changed to equal visitation on the child's first birthday. "Alabama law forbids automatic modification clauses that change physical custody of a child based on future contingencies. Once a trial court awards physical custody of a child to one parent, the trial court may change that award based only on proof that, due to a material change of circumstances, the change would materially promote the best interests of the child and would more than offset the inherent disruption in the life of the child. A provision automatically changing custody of the child based on some future event improperly relieves	*Cleveland v. Cleveland*, 18 So.3d 950, 952 (Ala. Civ. App. 2009)

State	Permissible or No	Rules or Qualifications	Citation
		the noncustodial parent of his or her burden of satisfying the *McLendon* standard and can only be "premised on a mere speculation of what the best interests of the children may be at a future date."	
Alaska	No	"Automatic future change from supervised to unsupervised visitation when husband completed domestic violence program was not in daughter's best interest." The court also opined that the trial court's order shifted the burden of proof from the father to the mother because the father was not required to prove his completion of court-ordered steps. It was, therefore, the mother's obligation to monitor the father's compliance.	*Parks v. Parks*, 214 P.3d 295 (Alaska 2009)
Arizona	Unknown		None found
Arkansas	No	The parents entered into an agreed order that provided that when	*Acre v. Tullis*, 520 S.W.3d 316 (Ark. Ct. App. 2017)

State	Permissible or No	Rules or Qualifications	Citation
		the child entered kindergarten, the mother would be the primary residential parent and the father would be the same during summer. They also provided for parenting time during weekends. When the mother wanted to relocate to Mississippi, the court declined to enforce the parties' agreement and allowed the relocation. The father appealed. The court of appeals affirmed, because "the parties cannot enter into a contract with regard to custody that seeks to avoid the provisions of (Arkansas case law) which created the presumption in favor of relocation by a custodial parent."	
California	No	In *Jason P.*, the trial court put a self-executing provision into place that awarded joint legal custody and a step-up parenting plan after the father completed six	*Jason P. v. Danielle S.*, 215 Cal. Rptr. 3d 542 (Cal. Ct. App. 2017) *In re Marriage of E.U. & J.E.*, 152 Cal. Rptr. 3d 58 (Cal. Ct. App. 2012).

State	Permissible or No	Rules or Qualifications	Citation
		months of therapy. The court of appeals conditionally reversed finding that the presumption against joint custody had to be rebutted by evidence and the trial court did not receive evidence that the father had participated in the counseling and, thus, it could not award joint custody to the father, even delayed joint custody. However, because two years had passed, the reversal was conditional so the court could look at whether the counseling had since been completed. If so, the trial court could reinstate the original order. The same argument applied to the step-up parenting plan and the error would be harmless if the father would now have the ability to rebut the presumption. The *E.U.* case addressed the rein-	

State	Permissible or No	Rules or Qualifications	Citation
		statement statute as applied to deployed military parents. Notably, the statute "establishes a presumption that a service member returning from military service should regain his or her predeployment custody of a child, unless the court determines it is not in the child's best interest." The father argued the "reinstatement directive is self-executing." While the court agreed the directive was "unconditional," the court stated it was "loath to consider a previously issued court order to be wholly self-executing as to future custody changes. In our view, when a court is asked to enforce such an order, it should conduct a *limited* inquiry into the child's best interests." (Emphasis in original.)	
Colorado	No	This case, in a footnote, says that "Change of custody	*In re Marriage of Francis*, 919 P.2d 776, 786 n.13 (Co-

State	Permissible or No	Rules or Qualifications	Citation
		may only be ordered based on circumstances existing at the time the change is being contemplated. An automatic modification in the future is thus inappropriate. A court cannot determine what will be in the child's best interests in the future."	lo. 1996), *citing* Missouri case *Koenig v. Koenig*, 782 S.W.2d 86, 90 (Mo. Ct. App. 2989)
Connecticut	Unknown		None found
Delaware	Unclear because case unpublished	Reversed conditional award of custody to the mother based on remaining in Delaware.	*Anderson v. Anderson*, No. 513, 1998 WL 309848 (Del. May 28, 1998).
Florida	No	Reversing the trial court's imposition of an automatic reversion to 50/50 time if the father achieved certain milestones related to addiction recovery. Parenting time "may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests	*Hughes v. Binney*, 285 So. 3d 996, 998 (Fla. Dist. Ct. App. 2019), citing *Arthur v. Arthur*, 54 So.3d 454 (Fla. 2010).

State	Permissible or No	Rules or Qualifications	Citation
		of the child. Determining what course of action is in the best interests of the child requires a court to evaluate all of the factors affecting the welfare and interests of the particular minor child and the circumstances of the family. Trial courts may not engage in a prospective-based analysis when modifying a time-sharing schedule that attempts to anticipate what the future best interests of a child will be."	
Georgia	It depends	Scott struck down an automatic modification where best interests could not be determined as to the future. *Dellinger* held that self-executing modification provisions (here upon relocation) were contrary to public policy, citing *Scott*. *Durden*, however, affirmed an automatic modification provision that re-	*Scott v. Scott*, 576 S.E.2d 876 (Ga. 2003); *Dellinger v. Dellinger*, 609 S.E.2d 331 (Ga. Ct. 2004); *Durden v. Anderson*, 790 S.E.2d 818 (Ga. App. 2016); *Hardin v. Hardin*, 790 S.E.2d 546 (Ga. Ct. App. 2016)

State	Permissible or No	Rules or Qualifications	Citation
		duced a father's parenting time when the child started school. Durden said such a provision can be enforceable of it "gives paramount importance to the child's best interests." The provision here was acceptable because "it is not an open-ended provision conditioned upon the occurrence of some future event that may never take place; rather it is a custody change coinciding with a planned event that will occur at a readily identifiable time." *Hardin*, which was decided almost contemporaneously with *Durden*, addressed a situation where a motion was allowed to resume parenting time through weekly therapy sessions after she completed a certain number of sessions of therapy herself. Hardin determined that	

State	Permissible or No	Rules or Qualifications	Citation
		this was an impermissible order, but also said that Georgia does not forbid all self-executing orders. "[I]t is the trial court's responsibility to determine whether the evidence is such that a modification or suspension of custody/visitation privileges is warranted, and the responsibility for making that decision cannot be delegated to another." The *Hardin* order contained two flaws: the court delegated its authority to another and the timing of the change was uncertain.	
Hawaii	Yes	The trial court order awarded the mother sole legal and physical custody with visitation rights to the father; however, that was award automatically shifted to the father if the mother decided to move to the mainland. The appellate court affirmed that order	*Maeda v. Maeda*, 794 P.2d 268 (Hawaii Ct. App. 1990)

State	Permissible or No	Rules or Qualifications	Citation
		on the basis that the trial court made its decision in the child's best interests and no evidence existed to know if moving would be in the child's best interests.	
Idaho	Unknown	Trial court entered an order that automatically transferred custody of the children to father if mother relocated. The mother challenged the order on the basis that the court's decision was erroneous, but not because of the automatic modification. The court of appeals affirmed, finding that the court's decision was not a change of custody, but a decision about the city in which the children would reside. Custody was secondary. There was discussion of whether the automatic modification provision was had by the court.	*Roberts v. Roberts*, 64 P.3d 327, 330 (Id. 2003).

State	Permissible or No	Rules or Qualifications	Citation
Illinois	No	The court's conditioning retention of sole custody on the mother's remaining in a certain county was impermissible.	*In re Marriage of Seitzinger*, 775 N.E.2d 282 (Ill. Ct. App. 2002)
Indiana	No	Reversing the court imposed automatic modification if a parent relocated. The court confirmed "that a trial court may not prospectively order an automatic change of custody in the event of any significant future relocation by the wife." But then the court interpreted the subject order as providing the father with the basis to seek modification if the "custody order is undermined" by a relocation by the mother.	*Bojrab v. Bojrab*, 810 N.E.2d 1008, 1012 (Ind. 2004)
Iowa	Qualified No (Qualified because the case is unpublished.)	Striking from the decree automatic modification if a parent relocates. Self-executing provisions "abrogate a contextualized analysis of facts pertinent to the physical care determination and	*Hoffman v. Muff*, 791 N.W.2d 430 (Iowa Ct. App. 2010) -- **UNPUBLISHED**

State	Permissible or No	Rules or Qualifications	Citation
		impermissibly elevated the parties' locations on a future date to the sole dispositive factor."	
Kansas	Unknown		None found
Kentucky	Qualified No (Qualified because the case is not published.)	Reversing an automatic modification on the deployment of a parent. Automatic modification of parenting time "upon the occurrence of a single event . . . , at an indeterminate future date, without considering (because it is impossible to do so) the best interest of the children *at that time*" is impermissible.	*Koskela v. Koskela*, Nos. 2011-CA-000543-ME, 2011-CA-000544-ME, 2012 WL 601218 (Ky. Ct. App. Feb. 24, 2012) -- **UNPUBLISHED**
Louisiana	No	A trial court order automatically reversing custody if the mother allowed the child to visit with a particular person was impermissible.	*Cook v. Cook*, 920 So.2d 981 (La. Ct. App. 2006)
Maine	Unknown		None found
Maryland	Unclear (Unclear because the court does not address	The trial court awarded supervised visitation to the mother and sole legal custody to father, but also or-	*Sviatyi v. Sviatyi*, No. 781, 2018 WL 3619391 (Md. Ct. Spec. App. July 30, 2018) – **UNPUBLISHED**

State	Permissible or No	Rules or Qualifications	Citation
	the legality of the self executing order and, despite that the court entered a self executing order, the court also set a review hearing. The mother seemed to argue it could not do so, but the appellate court disagreed.)	dered "it would allow (the mother) to have unsupervised visitation once she gets a mental health evaluation and complies with any treatment recommendations." The mother appealed because, among other reasons, the court "erred in scheduling a review hearing disregarded the self executing authentication of the custody order that required her to obtain a mental health evaluation." (Sic.) The court of appeals affirmed, holding that the mother's "argument misses the mark because the circuit court's order was not entered until May 3, 2018. Until that time there was no 'self executing order' in place. Further, as we have explained, there was 'significant evidence' to support the court's	

State	Permissible or No	Rules or Qualifications	Citation
		finding that appellant suffered from a mental health issue. As such, the court was within its discretion to schedule a review hearing to ensure that (the mother) followed through with the evaluation and any treatment recommendations." (Sic.)	
Massachusetts	Unknown		None found
Michigan	Unknown		None found
Minnesota	Unclear	*Wopata*, the only reported decision, involved an order that shifted physical and legal custody between the parents every six months, which arrangement was reversed without analysis related to automatic or self-effectuating modifications. In *Henderson*, the court ordered parenting time to the mother would resume if she was released from incarceration while the children were minors. The father argued this was an impermissible au-	*In re Marriage of Wopata*, 498 N.W.2d 478 (Minn. Ct. App. 1993) **UNPUBLISHED**: *In re Marriage of Henderson*, No. A05-1696, 2006 WL 1891182 (Minn. Ct. App. July 11, 2006) *Wilson v. Wilson*, No. A09-1386, 2010 WL 2362749 (Minn. Ct. App. June 15, 2010)

State	Permissible or No	Rules or Qualifications	Citation
		tomatic modification per *Wopata*. The court of appeals disagreed, distinguished *Wopata*, and affirmed while stating that it was not likely the mother would be released during the children's minority. (This case also, however, affirmed a time sharing arrangement that put the children at the mother's husband's home despite no procedural request establishing that possible outcome.) In *Wilson*, the court adopted an evaluator's recommendation that imposed a parenting schedule that increased in three tiers at certain ages. The court reversed this automatic modification, but in doing so relied on the lack of findings supporting such a schedule.	
Mississippi	Unknown		None found
Missouri	It depends	"A conditional judgment, that is one whose en-	*Pijanowski v. Pijanowski*, 272 S.W.3d 321, 327

State	Permissible or No	Rules or Qualifications	Citation
		forcement is dependent upon the performance of future acts by a litigant and which is to be annulled if default occurs, is void." *Burch* "found that a provision ordering a change of custody if the mother stopped residing with her parents was unenforceable." *Dusing* and *Rice* "refused to enforce provisions that provided for automatic transfers of custody if one of the parents relocated." *Pijanowski*, however, affirmed an order that changed parenting time when the child started kindergarten, stating "the enforcement of the trial court's judgment is not dependent upon future acts by the parties, but is, instead, based upon the known need of the child to have a predictable and	(Mo. Ct. App. 2009) *Burch v. Burch*, 805 S.W.2d 341 (Mo. Ct. App. 1991); *In re Marriage of Dusing*, 654 S.W.2d 938 (Mo. Ct. App. 1983); *Rice v. Shepard*, 877 S.W.2d 229 (Mo. Ct. App. 1994)

State	Permissible or No	Rules or Qualifications	Citation
		stable custody arrangement, particularly when school begins." The court said the order was not speculative and "it makes little sense to force the parties back into court thirteen months later under these circumstances."	
Montana	Unknown		None found
Nebraska	Unknown		None found
Nevada	Unknown		None found
New Hampshire	Unknown		None found
New Jersey	Qualified No (Qualified because case is not published)	The court reversed an automatic modification of custody if the mother relocated from New Jersey to Pennsylvania. The court held that the order was "improvidently entered. It contained no end date and was not premised upon an assessment of the parties' and the child's circumstances at the time such a move might occur." The court went on to cite authority holding that "absent exigent	*K.F. v. N.V.*, No. A-1742-19, 2021 WL 772880 (N.J. Super. Ct. App. Div. Mar. 1, 2021) – **UNPUBLISHED**

State	Permissible or No	Rules or Qualifications	Citation
		circumstances, changes in custody should not be ordered absent a full plenary hearing." The court cited to *Faucett v. Vasquez*, 411 N.J. Super. 108, 199 (N.J. Seper. Ct. App. Div. 2009), for the last concept. That case, however, does not address automatic modifications.	
New York	No	Parents agreed to orders that included a "penalty for any violation by the mother would be the transfer of physical custody to the father." After a violation by the mother, the court entered a temporary order transferring custody to the father and then held a final hearing after which the father was granted sole legal and physical custody. The court of appeals affirmed, but did so recognizing that "A best interests analysis is required even where, as here, the parties	Zwack v. Kosier, 61 A.D.3d 1020, 1021 (N.Y. App. Div. 2009)

State	Permissible or No	Rules or Qualifications	Citation
		agreed to automatic change in custody 'upon one's failure to satisfy a condition or the happening of a specified event.'"	
North Carolina	Unknown		None found
North Dakota	No	The court reversed an automatic modification on relocation of a parent made "without analysis under the best-interest factor at the time of (the parent's) possible relocation. The court's provisions essentially seek to control a future determination on primary residential responsibility, regardless of when (the parent's) 'imminent' relocation to Grand Forks would occur."	*Woelfel v. Gifford*, 948 N.W.2d 814, 817 (N.D. 2020)
Ohio	Unknown	In *Bastian*, the parties agreed that the child would be in the care of the father until the mother acquired adequate living arrangements. When that occurred, the mother moved to modify	*Bastian v. Bastian*, 160 N.E.2d 133 (Ohio Ct. App. 1959) *Cavanagh v. Sealy*, No. 69907, 69908, 69909, 1997 WL 25521 (Ohio Ct. App. Jan. 23, 1997) – **UN-**

State	Permissible or No	Rules or Qualifications	Citation
		and the court shifted the child to the mother because it believed it was required to observe the prior agreement and order. The court of appeals reversed, not based on an analysis of the automatic modification provision, but because the court was not bound by the prior order. The *Cavanaugh* case discusses an order in which the father's parenting time would be automatically suspended if he engaged in domestic violence directed toward the mother, which occurred. The mother filed a restraining order, which was granted. The court never addresses the legality of the suspension because the pro per father did not raise a timely or appealable issue.	**PUBLISHED**
Oklahoma	Unknown		None found

State	Permissible or No	Rules or Qualifications	Citation
Oregon	Unknown	The issue is mentioned, but not decided.	*Sakraida v. Sakraida*, 217 P.2d 242 (Or. 1950).
Pennsylvania	No	The court reversed a provision that provided for automatic change of custody on further denial of visitation to the other parent. The court indicated it was not clear that the provision was intended to be self-effectuating without a hearing, but "that the threat implicit therein should be removed from the order. In this way, the regularity of future proceedings will best be preserved."	*Rosenberg v. Rosenberg*, 504 A.2d 350 (Pa. Super. Ct. 1986)
Rhode Island	Unknown		None found
South Carolina	Unknown		None found
South Dakota	Unknown		None found
Tennessee	Unknown		None found
Texas	Unknown		None found
Utah	Unclear, but likely no	The litigant argued that the court's order reverting to prior stipulated parenting terms was an automatic modification forbidden by Utah law. The court did	*Day v. Barnes*, 427 P.3d 1272 (Utah Ct. App. 2018)

State	Permissible or No	Rules or Qualifications	Citation
		not address the viability of those provisions directly, but did not disagree either. Rather, the court held that the provision did not operate as the litigant claimed. An inference can, therefore, be made that automatic modifications are not sustainable in Utah.	
Vermont	No	The court reversed a trial court order automatically shifting custody at a date in the future when the child starts kindergarten. "[A]utomatic changes in parental rights and responsibilities are contrary to precedent and contravene policies behind the child custody statutes." "Any change of custody, … , must be based on an independent assessment of the best interests of the children at the time of the contemplated change." "Automatic change	*Knutsen v. Cegalis*, 989 A.2d 1010 (Vt. 2008)

State	Permissible or No	Rules or Qualifications	Citation
		provisions like the one at issue in this case build instability into a child's life, and this is so whether the automatic change is premised on an anticipated or unanticipated event."	
Virginia	Qualified No (Qualified because case is not published)	Qualified because the decision is not reported. The case, however, rejects parents' agreement to automatic loss of custody if a parent raises the children observant to a religion other than Roman Catholicism. The court held that such a contractual provision "cannot be embodied as a nearly self-executing, custody –terminating decree provision. To do so would create not only an auto-da-fe against the non-complying parent but also a means of immolation of the Court's own necessary continuing control over child custody and	*Finnerty v. Finnerty*, 22 Va. Cir. 523 (Va. Cir. 1982) -- **UNPUBLISHED**

State	Permissible or No	Rules or Qualifications	Citation
		an instrument to destroy basic civil tenets on that subject."	
Washington	No	Automatic modification triggered by move was impermissible absent a modification petition.	*In re Marriage of Christel*, 1 P.3d 600 (Wash. App. 2000)
Wisconsin	Unknown		None found
West Virginia	Unknown		None found
Wyoming	No	Automatic modification on relocation was an impermissible "anticipatory conclusion."	*Bruegman v. Bruegman*, 417 P.3d 157 (Wyo. 2018)