



The FindLaw Guide to Child Custody

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A divorce can be especially hard when you have a child. During the divorce process, you will have to consider the needs of your child. Here is some information that can help you navigate through the complex issues regarding child custody.

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Introduction

When you divorce, you will have to work out an agreement with your spouse over which parent will have the primary responsibility of raising your child and the visitation rights of the other parent. Sometimes, you can reach an agreement by simply talking to your partner. However, when you and your former spouse are unable to see eye-to-eye, FindLaw and its directory of attorneys may be of assistance.

Types of Child Custody

One of the first steps in determining who will get custody of a child is to understand your options regarding different types of child custody arrangements.

Oftentimes, parents will have an arrangement where the child lives with one parent, while both parents share responsibilities over major decisions affecting the child like education, religion, and healthcare. In this arrangement, the custodial parent is considered to have primary “physical custody” of the child while both parents share “legal custody.”

In other cases, parents may have a joint physical custody agreement where the child lives with both parents equally. Courts may view this option unfavorably as a child’s home life may be less stable.

In rare circumstances, when one parent is deemed unfit to participate in the upbringing of a child, the other parent may be given sole physical and legal custody of the child. This means that only one parent will play a major role in the upbringing of the child, and the other parent is basically left out.

If you are not sure what type of child custody arrangement is best for you, FindLaw can help get you started.

How the Child Custody Decision is Made

Parents usually decide for themselves who will get custody of the child as well as the visitation arrangements. You don’t need an attorney or judge to come to this agreement. If parents are unable to reach an accord, an out-of-court process like mediation or collaborative family law can help.

Generally, it’s only when parents are unable to come to an agreement that a court will step in and make the child custody decision. If you and your former spouse are unable to reach an agreement regarding child custody and the issue is headed to a court, it’s probably a good idea to hire a good family attorney.

Every state has different standards for how a court makes the child custody determination, but the overriding factor in almost every state is the child’s “best interests.”



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Best Interests of the Child Standard

The most important factor a court will look at in making the child custody decision is the child's best interest. This standard is very subjective and the factors differ from state to state, but courts generally favor:

- the child's primary caretaker
- a parent who is mentally and physically healthy
- stable home environment
- the least adjustments to school and community
- the preferences of the child
- stability in religion and culture

Focusing on the child's best interest, courts have the ultimate goal of fostering and encouraging the child's happiness, security, mental health, and emotional development into young adulthood.

What Goes In a Custody Agreement

It doesn't matter if parents reach an informal agreement or if a court orders the custody decision, the custody agreement generally needs to be signed by a judge to become legally binding.

Typically, the parenting agreement should include details as to where the child will live, whether one parent will have primary physical custody, who will be involved in major decisions of the child's upbringing, visitation rights, how the child will spend his or her holidays, and how contact with grandparents, friends, and others will be handled.

STOP

Should I Talk to an Attorney?

You should probably talk to an attorney if you are unsure what type of child custody arrangement is best for you. Additionally, if you and your former spouse cannot come to an agreement informally, you will want to contact an experienced attorney to advocate for you if the matter is headed to court. Even if you and your former spouse can reach an agreement, it's still a good idea to have an attorney review the child custody agreement before it becomes legally binding.

You can locate a family law attorney now by visiting www.findlaw.com and choosing among several quality-assured lawyers in your area.

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