

## Child Custody and Visitation Basics

One can think of a long list of issues that might be particularly emotional, contentious, and stressful in a divorce case. However, at the top of anyone's list is sure to be the issue of [child custody and visitation](#).

When married couples with children decide that their relationship is no longer viable, and a divorce is in everybody's long-term interest, a decision has to be made about who will get custody of the children, and what type of visitation rights the other parent will have.

Ideally, the parents will be able to come up with an agreement amongst themselves, and this sometimes happens. But unfortunately, this does not happen in many cases. If the parents can't come to an agreement themselves, that doesn't change the fact that a decision still has to be made. In cases like that, the intervention of a [family law](#) judge is usually necessary.

If it's come to this point, some serious soul-searching might be in order: ask yourself if you're really doing what you believe to be in the best interest of the child. All too often, divorce cases become so bitter and contentious that children are sometimes used as bargaining chips, or as a means for one spouse to harm the other, either emotionally or financially.

With all that said, the laws governing child custody disputes aren't always clear. However, if there is a single axiom that virtually every child custody court has to follow, it's this: all child custody decisions must be based on the child's best interests. Every decision a family court makes should follow from that principle.

Of course, if both of the parents want custody, and each of them appears to be loving, well-adjusted, and perfectly capable of taking good care of the child, how does a court decide who the "better" parent is?

### **What Factors Are Considered In Child Custody Cases?**

Courts will consider any and all facts which might be relevant to determining what course of action is in a child's best interests. So, obviously, the factors considered will be different from case to case.

However, there are some factors that a court almost always considers when determining what is in a child's best interests in the child custody context. They include:

- The age and gender of the child
- The income and other economic resources of each parent
- The stated preference of the child (if the child is above a certain age, usually 12 or 13)
- The quality of public and private schools available in each parent's locale
- The stability of each parent's home environment

Those are only some of the most common factors considered. As mentioned earlier, a family law court can consider just about any factor it deems relevant in determining what course of action serves the best interests of the child.

To make the necessary factual determinations, the court will usually call each parent, as well as the child, as witnesses to answer any questions the court has. It will probably also solicit other evidence.

### **What Type of Custody Arrangements Are There?**

First of all, it should be noted that there are two distinct rights that child custody entails: physical custody, and legal custody.

When a parent has physical custody of a child, it means that the child lives with that parent, and for that parent to control the basic day-to-day activities of the child.

Legal custody means that the parent has the right to make decisions about how the child is to be raised, what school to send them to, medical decisions, etc. Basically, it's a legal enshrinement of the right to make the decisions that parents simply assume they'll be able (and required) to make.

Sometimes, a court will give custody of a child to one parent (sole custody). Other times, if it finds that both parents are equally capable of caring for the child, and that such an arrangement would be in the child's best interests, it will give legal and physical custody to both parents (joint custody).

If the parents are able to come to an agreement regarding custody amongst themselves, they will typically agree to some form of joint custody. Courts usually approve these custody agreements as a matter of course, since it is assumed that the parents will have the best idea of what's in the child's best interest.

On the other hand, an arrangement involving sole custody is usually imposed by a court, when the parents are unable to agree.

### **What is Visitation?**

Typically, when one parent does not have legal or physical custody of their child, they will have visitation rights.

This is basically a legal right to visit the child. Visitation arrangements may be extremely liberal, providing nearly-unlimited rights to visit the child, or highly restrictive, with visitation only being allowed at specific times, maybe even with a supervisor present, and everything in between. Like custody, it's far preferable for the parents to come up with a visitation agreement by themselves, as opposed to forcing the court to impose one on them.

In all but the most extreme cases, it's assumed that having contact with both parents (even if contact with one of them is limited) is in the best interests of a child. Obviously, if the non-custodial parent has a history of child abuse or neglect, a court can deny him or her any visitation rights.

### **When Can a Visitation Agreement Be Modified?**

A child custody arrangement can be modified at any time if the parents simply agree to a change. Or, a court might order a change.

A court might do this for multiple reasons, such as a significant change in the circumstances of one or both of the parents, a showing that the current arrangement puts the child at risk of harm, one of the parents relocates, and several others.

### **Do I Need an Attorney?**

A family law [attorney](#) can advise you on your options in what is likely to be a very emotionally-trying ordeal, and help ensure that the best interests of your child are protected, and help negotiate a visitation and custody arrangement that both you and your spouse can live with.