

Custody

Physical and legal custody are two important aspects of raising children when parents are divorced. There are various types of custody arrangements that can be made to suit the needs of the child; and when conditions change, keep in mind that you may ask the court to modify a child custody arrangement. It's important that both parents involved understand the meaning of legal custody, how it relates to physical custody, and how parents are bound by their custody agreement to their children.

Most people understand what physical custody means, i.e. where the child will physically live (visitation rights may be made for most noncustodial parents without physical custody). However, many don't realize that physical custody is not the only kind of child custody arrangement available.

What Is Legal Custody?

"Legal custody" gives a parent the right to make long-term decisions about the raising of a child, and key aspects of the **child's welfare** -- including the child's education, tutoring, medical care, dental care, extracurricular activities, religious instruction and more.

In most child custody cases, legal **custody is awarded to** both parents (called "**joint legal custody**"), unless it is shown that one parent is somehow unfit, or is incapable of making decisions about the child's upbringing. A history of **drug abuse, domestic violence, or child neglect** would play a role in this decision, which is focused on what's best for the child (not the parents). "Physical custody," meanwhile, relates to where the child will live.

What Is Sole Legal Custody?

If you have sole legal custody of your child you can make all decisions regarding such issues as schooling, religion, medical care and housing. You may not have to take into consideration the wishes or opinions of the other parent regarding your child's upbringing. Keep in mind; most courts prefer awarding joint legal custody based on the best interests of the child.

Visitation rights are limitations or restrictions on child custody. When sole **custody is granted** by the court to one of the parents, the non-custodial parent maintains the right to see and visit the child, absent extraordinary circumstances—this is what is called “visitation rights.” It is a right given by the court to the non-custody parent allowing them to see their children after they lose custody in a divorce dispute.

An express prohibition on visitation must exist within the decree to deny parental visitation rights because visitation rights stem from the fact of

parenthood. Even though this strong **presumption** in favor of visitation rights exists, courts may impose restrictions on visitation by noncustodial parents. If a party convinces the court that visitation rights would be injurious to the **child's best interests**, then the court possesses the authority to **deny visitation rights**.

This best-interest-of-the-child analysis, however, does not automatically defer to the child's stated desires, because parents inherently possess the right to attempt to repair the parent-child relationship. Thus, even if a child does not want their parent to have visitation rights, that sentiment is insufficient to deny the parent their visitation rights. Cases in which courts deny visitation rights often include noncustodial parents who had physically or emotionally abused the child in the past, and noncustodial parents severely suffering from a mental illness that would emotionally devastate the child. Noncustodial parents who are incarcerated or who have a prison record are not categorically denied visitation rights.

Visitation rights can be modified after the divorce decree is ordered in a new proceeding where the party seeking the change in visitation rights presents evidence showing a change in the circumstances that affect the interests and welfare of a minor child.

Determining the Best Interest of a Child

Generally, the factors a judge will consider when determining the best interest of a child include:

- **Child's age:** Young children generally need more hands-on care. Courts look at the bond between child and parent when evaluating child custody options. In addition, when children are young, judges frequently defer to the parent who has been **the primary caregiver** in the child's life. Some courts also will consider the child's wishes, depending on their age.
- **Consistency:** Courts generally prefer to keep kids' routines consistent. This includes living arrangements, school or child care routines, and access to extended family members. Family court judges prefer not to disrupt a child's routine when possible.
- **Evidence of parenting ability:** Courts look for evidence that the parent requesting custody is genuinely able to meet the child's physical and emotional needs, including food, shelter, clothing, medical care, education, emotional support, and parental guidance. Courts also consider the parents' physical and mental health.

- **Impact of changing the existing routine:** When considering a change, the courts also try to determine how that change would affect the child. Generally, judges try to limit changes that would have a negative impact.
- **Safety:** This factor is always top of mind in family court, and judges will readily **deny custody** in cases where they believe the child's safety would be compromised.

What to Show the Court

You can show the judge that you have your child's best interests at heart by showing that you have been actively involved in his or her life and have provided attentive and loving care.

You can demonstrate this by showing that you have enrolled your child in school, are involved in their education and upbringing, have participated in extracurricular activities, and have made other parenting decisions demonstrating an interest in nurturing your child.

In cases where both parents are involved, the judge may also consider whether one parent is more willing to foster a loving relationship with the other parent, so working to rebuild trust with your ex also can help to demonstrate your intentions.

Factors Against a Child's Best Interests

Judges strongly favor keeping a child in an arrangement that the child is familiar with, such as allowing a child to remain in the same school or neighborhood. To that end, judges generally do not favor an arrangement in which one parent is denied access to the child or where visitation would be difficult.

Even in cases where one parent is granted sole physical custody, the other parent usually has the right to visitation. This is because courts favor custody arrangements that allow both parents to maintain a close and loving relationship with their child.

When Is Relocating Considered Best?

Relocating may or may not be in your child's best interest. For example, the judge will typically deny a request to move if he or she believes the parent making the request is trying to deny or limit the other parent's access.

However, moving may be in the best interest if the move allows a child to attend a better school, provides access to child care or a support system, or would benefit the child in some other way that can be demonstrated in court.

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