

## The Facts About Custody

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A parent's rights and obligations toward their children are legally divided into two categories.

### Legal Custody

Parental rights and responsibilities associated with decisions regarding the child's upbringing fall into this category. Religious upbringing, education and medical care and other issues concerning raising a child are at the discretion of one or both parents that are granted legal custody.

### Physical custody

All duties regarding the day-to-day care of a child as well as the rights to direct the child's daily activities fall into the realm of physical custody. This includes the actual living arrangements and other matters of daily routine.

### Custody Solutions

The division of custody rights and responsibilities can occur in many ways. Parents are encouraged to work together to find a mutually agreeable option, however several of these options may be enforced by court order.

### Sole Custody

Sole physical custody occurs when one parent retains the exclusive, primary right to live with the child. Sole legal custody is the exclusive right to control the upbringing of the child. If one parent has the primary responsibility for a child, the other parent, known as the non-custodial parent, most often maintains rights to uphold a relationship with the child through visitation.

Sole custody usually takes the form of sole physical custody for one parent and a generous visitation schedule for the non-custodial parent. Sole physical and legal custody generally only occurs if a history of abuse and neglect is present.

### Joint Custody

With joint custody, both parents share responsibilities for decisions regarding their children. Any combination of custody is possible, however parents with joint physical custody often also have joint legal custody. However joint legal custody does not automatically imply joint physical custody. The nature of these arrangements can either be agreed to by both parties or ordered by a court.

### Shared Parenting

In shared parenting arrangements, parents share legal and physical custody and the children spend equal amounts of time with both parents.

### Split Custody

Split custody refers to cases in which each parent takes custody of different children.

## *The Facts About Custody (cont.)*

### **How Custody and Visitation are Determined**

Custody is one of the first issues discussed when couples separate. When parents resolve visitation and custody issues themselves, courts generally honor those agreements during divorce proceedings. If couples cannot agree, several procedures exist to resolve custody disputes.

### **Temporary Hearing**

Once the initial divorce papers are filed, the family court holds a temporary hearing to consider financial and custodial orders to put in place until the court enters its final divorce decree. If custody is contested during the temporary hearing, the court will issue a custody order that remains in effect until the trial.

### **Mediation**

Mediation is an alternative dispute resolution process where divorcing couples work with a specially trained neutral third party to try and resolve some or all of their disagreements. Mediation is often encouraged as an effective option, both financially and emotionally. It is recommended to include a provision in the final divorce agreement that makes it mandatory to return to mediation to resolve any future custody and visitation disputes,

### **Evaluations**

If the parents are unable to reach an agreement on custody on their own or through mediation, courts often order a custody evaluation by an outside expert prior to trial in order to determine what arrangement would be in the best interest of the child.

### **Trial**

If custody is disputed, the court will award custody at trial. This decision is based on a variety of factors, including the child's age, the physical and mental health of each parent, the child's attachment to the primary caregiver, any history of domestic violence or abuse and the child's wishes depending on the child's age and motivation.

### **Modifying Custody and Visitation**

Certain procedures are required to change custody and visitation arrangements depending on how those arrangements were made. If custody was granted by court order, additional involvement by the court is required. If an agreement was reached through mediation, a couple can return to mediation if they cannot agree to changes on their own. Either parent seeking any modification of custody or visitation arrangements must show that circumstances have changed substantially and that the modification is in the child's best interest.