

## Child Custody and Visitation

There are many different circumstances involved in child custody and visitation. No two cases are ever exactly alike. This interaction is about custody and visitation issues that arise when a divorce involves minor children. The custody section of the divorce decree states who will have responsibility for day-to-day decisions concerning your child.

### Children and Marriage

Custody is only an issue when the divorcing parties have children together. The law assumes the divorcing parties are the parents if a child is born during the marriage. Paternity may be determined during the divorce if:

- a child was born prior to the marriage and either of the divorcing parties want to know who the father is; or
- either party says the husband is not the father of the child.

When a child is born to an unmarried woman, the mother of the child has legal custody of that child automatically. However, if the child was born outside of marriage, paternity must be proven before the court will enter an order to obtain child support.

### Contested Custody

If the individuals involved cannot agree who will have custody of the children, then custody becomes **contested**. This means it will have to be proven to the court whether the mother, father or grandparent should be given custody of the children. Parents have to raise the custody issue in their complaint for divorce.

There are no hard and fast rules about who gets custody. The judge decides based on the **Best Interests of the Child Standard**. Arkansas law

considers both parents equally when deciding who will get custody. The courts no longer favor the mother for custody. The court considers many factors when determining the best interests of the child, including:

**Continued contact:** Who will most likely provide continued contact with the other parent?

**Domestic abuse:** Has there been domestic abuse against any family member, not just to a spouse or in front of a child?

**Character:** Is the spouse requesting custody honest? Does he or she possess a caring attitude, have a stable work record and have a good reputation? Does the spouse requesting custody have a history of alcohol abuse, drug use or criminal record? The parent with drugs, alcohol or criminal record in his or her past will have to convince the court that placing a child in his or her custody is in the best interests of the child.



**Environment:** The court may order **home studies** performed on the residence of each party, which can be expensive. Generally, the court will order each party to pay half of the cost of the home study. The court may consider the presence of a live-in boyfriend or girlfriend as a negative

factor. The court sometimes orders both parties to avoid overnight guests of the opposite sex while the children are present in the house.

**Economics:** The court will generally look at both parties' financial condition in order to determine whether the child's needs for food, clothing, shelter, medical care and other basic needs can be met. The court should not compare the financial of the parties in relation to each other.

**Child's Preference:** While the judge may consider the child's wishes, the judge is not bound by the child's request. Many people mistakenly believe that the court will follow the wishes of the child. Some judges will allow an older child to state a preference, generally in the judge's chambers; others do not.

**Maintaining Children Together:** Courts will attempt to keep brothers and sisters together, but if it is in the children's best interest, the courts may divide custody between the parents and/or grandparents.

### **Attorney Ad Litem**

In some cases, the court may appoint an **attorney ad litem** to represent the child's best interests. The attorney ad litem will conduct an independent investigation on the issue of custody that may include interviewing the parties and the children and getting information from outside sources such as schools, doctors or counselors. The guardian ad litem will make a recommendation to the court about who should get custody of the children based on the information he or she gathers.

### **Mediation and Parenting Classes**

When divorcing parents have minor children, the court may require the parents to complete parenting classes and/or submit to mediation to address issues regarding parenting, custody and visitation issues.

### **Custody by a Third Person**

When someone contests custody other than a parent, a **grandparent** or other relative, for example, the court gives preference to the parent unless the parent is "incompetent or unfit." Even then,

the judge will decide based on what is best for the child.

### **Joint Custody**

The parents may request or the court may order joint custody, sometimes called "friendly parent provisions" in the divorce decree. Under joint custody orders, each party generally has equal rights to custody and care of the child. The court may order one or both of the following:

- The child shall live with one parent part of the time and the other parent part of the time.
- The parents will share in making decisions on important issues dealing with the child.

Joint custody works best where both parties can work together and come to agreement regarding their child's upbringing. If the individuals involved are considering joint custody, request that the divorce decree require both parties reside in state. If this issue is not addressed in the divorce decree, one party may move to another state with the child. The remaining parent's or grandparent's only remedy is to ask for a motion for contempt.

### **Visitation**

Visitation orders vary widely. The court may grant what is called "liberal" visitation. This generally means that it is up to the parents to work together to decide when, where and how long the visitation takes place.

If the parents cannot work together, then it is probably best to include a visitation schedule in the court's order. Some courts have visitation guidelines that they follow. A "standard visitation schedule" might include visitation every other weekend, alternating holidays and an extended period of time during the summer for school-age children.

If a specific visitation schedule is included in the court's order, the start date for the visitation should be included in the order. This aids law enforcement officials in determining whether or not a noncustodial parent is supposed to have visitation at a particular time.

Visitation may be restricted when it is in the best interests of the child. The court may order supervised visitation. This means that the non-custodial parent can visit with the child but only under certain circumstances, such as being in the presence of another adult (e.g., a relative), or that the visitation can only happen in a certain place, or both.

## Visitation and Child Support

Visitation and child support do not depend on each other. If the noncustodial parent is not getting visitation, he or she cannot withhold child support payments. If a custodial parent is not receiving child support, he or she cannot deny visitation. If one parent is not doing what he or she is supposed to do, the other parent should file a motion for contempt in court, asking the judge to enforce the court order.

## Enforcing an Existing Order

If one party is not doing what he or she is required to do under the divorce order, the other party can petition the court by filing a **contempt action**. The party who petitions the court must

prove that the other parent did not follow the custody or visitation rules in the divorce order. The party that files the petition asks the court to find the offending party “in contempt of court.” If the judge agrees that the other party is in contempt, the judge has many ways to make the party obey.

## Modifying Custody

To get an order changed, the party asking for the modification must prove a **material change in circumstances** since the date of the original decree. A petition must be filed to reopen the case and set a hearing date. There is a fee to re-open a case.

## Modifications When Parties Move

The county where the divorce took place will retain jurisdiction to modify the divorce decree as long as at least one of the parties to the divorce still lives in the state, even if the custodial parent moves to another state. If both parents move to another state, then different courts have jurisdiction over different matters.

## Reference

Center for Arkansas Legal Services, Legal Aid of Arkansas, Inc., [www.arlegalservices.org](http://www.arlegalservices.org).

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