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Getting Custody FAQ

What follows are some of the most frequently asked questions we get regarding child custody, joint custody, child visitation, and family law:

- [When considering who should get custody of a child, what factors does a court look at?](#)
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When considering who should get custody of a child, what factors does a court look at?

In almost all situations, a court will keep one primary question in mind when deciding a custody case, namely, what is in the best interests of the child? To answer this question, courts generally look at a number of different factors, such as:

- A parent's financial and physical ability to provide a child with essentials like food, medical care, shelter and clothing
- A parent's medical history, both physical and mental
- The child's age, sex and medical history, both physical and mental
- A parent's vocation and habits, including things like excessive drinking or smoking
- The child's choice if the child is of a certain age, normally 12 years old
- The emotional bond between child and parent
- The wishes of both parents
- The willingness of each parent to support the child's relationship with the other parent
- The level of adjustment needed from the child if forced to move to a new school, city, or state, and
- The quality of life the child enjoys in the child's current status quo, and
- Whether any parent has brought false or malicious charges of child abuse on the other parent.

If, upon looking at all of these factors, a court cannot decide what is in the best interests of the child, courts normally tend to look closely at which parent would most likely provide the child with a stable household. This can vary depending on the child's age. If the child is young, custody may go to the primary caregiver. However, if the child is older, custody may be awarded to the parent that is better situated to provide the child with access to education, friends, and social development.

Does it hurt my chances of getting custody of my children if I move out of the home and leave the children with their other parent?

In short, yes, it probably will hurt your chances of getting custody of your children. Parents that leave the home, even for good reasons, may have a lesser chance of getting custody of the children when it comes time to go to court. By leaving, the judge will see an implied message from the parent's actions. Also, assuming that the parent left the family home, a judge will probably be more inclined to grant custody to the parent that is currently residing in the home so as to disrupt the children's status quo as little as possible.

However, if you take the children when you leave the home, this may send a message to the judge that you are trying to protect your children. If you do move away from home and take the children with you, you need to be sure to go to court as soon as possible so that it does not look like you are attempting to take the children away unlawfully. If you do not set up a court appointment soon after taking the children away from the home, the other parent may ask the judge to take the children away from you as you took them without court authorization.

Who is more likely to be awarded custody of a child, mothers or fathers?

Although it has not always been so, today's courts will generally award custody to whichever parent would be in the best interests of the child. However, in the past, custody of young children (typically under 5 years old) normally went to the mother of the child if the parents divorced. This rule has been phased out in almost every state, and instead, judges must decide on the merits of the case which parent having custody would be in the best interests of the child.

However, just because the rule has been phased out, that does not mean that parents cannot ask a judge to award custody to the mother. Sometimes parents will agree that the mother has more time and inclination to raise the children, and will stipulate to such an order. However, some fathers may only stipulate to this arrangement because they believe that the court already favors the mother, which is not true.

Fathers have every right to ask for, and argue for, full custody of the children during a divorce. These days, both men and women commonly enter into the workforce full-time, meaning that the custody decision could be as simple as which parent could spend the most time with the child, all other factors being equal. For example, if a father works from home while the mother works a 60+ hour a week job as a corporate attorney, a judge may decide that the best interests of the child are to be with the parent that can spend the most time with the child, which would be the father in this example. Fathers are just as willing and able to be parents as mothers, and they can present that argument in court.

Is custody always awarded to just one parent?

In short, no. It is very common for a court to award partial custody to both parents, otherwise known as joint custody. This type of custody arrangement normally falls into one of three forms. First, joint physical custody is where a court orders a child to spend a substantial amount of time with both parents during the course of the year. Second, joint legal custody is where, although one parent may have full physical custody, both parents must agree on any decisions that impact the child, such as their education, medical care and spiritual matters. Lastly, both joint physical and legal custody is a combination of the first two.

It is ultimately up to the court to decide whether any type of joint custody is in the best interests of a child. However, you, as a parent, have the right to argue for joint custody if you so wish it.

I am a gay or lesbian parent seeking child visitation rights, are there any special considerations I need to take into account?

There are some states that expressly forbid a judge from considering a parent's sexual orientation when deciding a custody dispute. In these states, the best interests of the child must be considered without giving weight to the sexual orientation of either parent.

However, other states do not have such express laws, and gay and lesbian parents may suffer for it. Judges may impose their own community expectations and biases onto a custody dispute involving gay and lesbian parents., It is often the case that a judge will weigh various factors in favor of a non-gay or non-lesbian parent when considering the best interests of the child.

Do judges or courts even consider race to be a factor in child custody hearings?

Courts are not permitted to consider race as a factor when deciding the best interests of the child. A United States Supreme Court decision in the mid-1980s ruled that a court cannot consider race when a non-custodial parent challenges a prior custody decision based on the fact that the custodial parent married a man of another race. In that case, the father of the child petitioned to change the custody agreement after the mother married an African-American man and moved to an African-American neighborhood. Although the father won in state court, the Supreme Court overruled them and decided that racial stereotypes cannot be the basis for a custody ruling.

Who will be the person deciding how much child visitation is fair and reasonable?

In general, the parent with primary custodial rights over a child will get to decide what kind of visitation for the other parent is fair and reasonable. In many situations, this works out well for both parents and they can often come to an amicable arrangement regarding visitation hours and days.

However, what is often in the news and on TV is a result of breakdown in communication between the parents. This usually happens when the parent with full custody of a child decides to be vindictive and uses the child as a weapon. To this end, the parent with custody will set the other parent's visiting rights at a bare minimum, often only for a few hours each week during the most inconvenient times.

Some courts are allowing parents to make custody and visitation plans that the judge will sign into law. Parenting agreements, as they are called, are agreed upon visitation schedules and times where the child will be. These agreements can also include plans that deal with how decisions about the child will be made. For example, the agreement could include

language that dictates that the parent with custody at the time of a medical emergency can make a decision about the child's health without consulting the other parent first. Parenting agreements are a great idea and you should look into it more carefully if you want to take full advantage of them.

Is mediation better than a court setting for determining child custody arrangements?

Mediation is a great way to come to terms for a custody agreement instead of child custody lawsuits. The process of mediation works when the two parties, most of the time both parents in child custody situations, agree to sit down with a neutral third-party mediator. The mediator's job is to invoke discussion between the two parties and help them come to some middle ground on which to settle.

There are some great advantages to using mediation over litigation. First and foremost, it is a lot cheaper. Mediation often does not require either side to bring an attorney with, not does it require witnesses or other court time. This can save lots of money on both sides. Second, mediation by itself improves communication between the two disputing parties. By opening an honest discussion, many times problems can be resolve and the child will benefit the most by having both parents thinking along the same lines. Lastly, mediation is much faster than litigation. Litigation can often run for several months of court time, during which the fate of your child's upbringing causes you considerable stress. Mediation, on the other hand, often ends in settlement in as little as ten hours of discussion spread over two weeks.

Your local bar association should be able to point you to a local, experienced family law mediation clinic.

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