

# Answering your legal questions about custody and placement

## What are my rights? How do I petition for divorce? How does child custody and support work?

When your marriage ends, your role as a parent does not – and neither does your former spouse's. Both of you love your children and want what's best for them.

Now that you're divorcing, you must decide legal custody and placement decisions. How well the two of you handle these arrangements will have great impact on how well your children cope with their parents' separation as well as their emotional well-being during and after your divorce.

Custody and placement decisions also must be made in paternity cases by parents who have never married. This includes cases that began with the filing of a Voluntary Acknowledgement of Paternity.

Generally, child custody and placement laws assume that children are healthiest and happiest when they have good relationships with both parents. When parents divorce, the court must order for decision-making and periods of physical placement with each parent. The term "visitation" is used for other relatives, but not for parents. In most cases, the parents reach their own custody and placement agreements that the court then approves.

Legal rules and terms come into play throughout the process of creating a custody and placement agreement. This pamphlet answers common questions you may have regarding your divorce or paternity case.

### What is legal custody?

This is the legal right to make *major decisions* about your children. Major decisions cover such matters as non-emergency health care and choice of school and religion. Others include parental consent to marry, obtain a driver's license, or join the military. Legal custody can be *joint* or *sole* – it means who decides. It does not mean where the children live.

### How do joint legal custody and sole legal custody differ?

*Joint legal custody* means both parents have *equal* rights to make major decisions about their children; decisions should be made jointly after consultation since neither parent's rights are superior. *Sole legal custody* means only one parent has the right to make such decisions. The court

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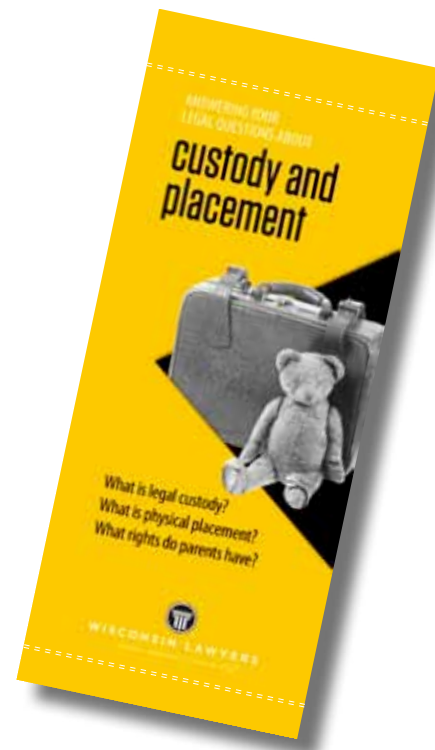
also may order that one parent or the other has the sole right to make certain major decisions, such as education. Joint legal custody is presumed unless there is an agreement otherwise or specific reasons for a court to grant sole custody, such as domestic violence.

### What is physical placement?

This is the time your children are in each parent's care. During *physical placement*, you have the right to make *routine daily decisions* about your children's care.

Most court orders provide a *placement* schedule of the times the children are to be with each parent. Placement schedules can vary from brief time with one parent and the remainder with the other to the same amount of time with each parent. Placement schedules also provide for placement on holidays and vacations.

Court orders can be general or specific. Very general court orders (such as "reasonable times on reasonable notice") can be hard to follow or enforce. This can create conflict for the parents and stress for the children. Orders that spell out specific periods of placement with each parent and transitions can be helpful and can provide a safety net for parents and children to rely on if parents are not communicating well. It is best for children if each parent is flexible and considerate of the child and other parent's needs.



## **Is it true that the law requires that each parent have equal placement?**

No. The law provides that the children should have a schedule that allows regularly occurring, meaningful periods of placement, and *maximizes* the time the children spend with each parent, considering the geographical distance between the parents and each parent's household accommodations. Factors in the statute to be considered in determining what schedule is in a child's best interests include each parent's availability to provide care for the children, each parent's wishes, family and other significant relationships, past parenting time and proposed changes, individual adjustment, needs and wishes of each child, availability of child care, communication and cooperation between parents, and support or interference of each parent with the other's relationship with the children.

## **Which decisions are considered routine daily decisions?**

These include decisions such as bedtime, study time, diet, extracurricular activities, social activities, and discipline. The right to make routine daily decisions belongs to the parent during his or her placement time. Any routine daily decision must be consistent with major decisions made under the legal custody provisions and must not break any laws about safety.

Whatever the parents' legal rights are, children do best when their parents agree to similar rules and routines in both households. Also, many daily decisions, such as extracurricular activities, overlap periods of placement and require parental communication and coordination.

It's helpful for everyone if you respect each other's right to know about your children. Both parents need to know the children are safe and well cared for. Children do best when their parents work together. Parents must cooperate to make joint custody and shared placement work for their children.

## **How do custody and placement issues get resolved?**

It's best for children if their parents reach their own agreements about custody and placement. You should first try to come to an agreement with the other parent; then put your agreement in writing and ask the court to approve it. Parents may work with family counselors or child specialists to get professional assistance in creating plans that best meet their children's needs. The court usually approves a placement agreement if it is reasonable and voluntarily agreed to by both parents. You can go to [www.wicourts.gov](http://www.wicourts.gov) for forms to assist putting your agreements in writing. Parents can reach agreements by direct discussion, mediation (joint sessions with a neutral mediator), or collaboration (each parent hires a lawyer and all four commit to an out-of-court settlement process).

Parents who are unable to reach agreements must meet at least once with a mediator. For information about court services for mediation, call your county's family court commissioner or clerk of court. Parents also may retain private mediators to assist them in reaching parenting agreements. Parents also may work with a child specialist or co-parent counselor to help them address issues in the best way possible for their children.

If you're unable to reach an agreement in mediation, you ask the court to decide. The court will appoint an attorney (called a guardian ad litem) to investigate and represent the best interests of your children. Some counties also have court social workers who conduct studies and recommend allocation of custody and a specific placement schedule. The social worker and guardian ad litem process may take several months to a year. Some parents reach agreements, with the approval of the guardian ad litem, after receiving such input. If no agreement is reached, the court schedules a hearing. The parents and guardian ad litem present their evidence at the hearing, and the court decides the issues.

Most parents prefer not to have the court make decisions about their children. Going to court is costly and time-consuming for both of you and takes an emotional toll on the whole family. Alternatives to the court process that may assist you in reaching agreements include hiring a mediator and/or hiring a lawyer. Collaborative practice is a popular process to resolve issues. Information on using the collaborative process in divorce cases and lists including lawyers and child and family specialists are available at [www.collabdivorce.com](http://www.collabdivorce.com).

## **What are my rights to information about my children?**

All parents have a right to their children's school, medical, and dental records. The only exception is if the court denies a parent any visitation or physical placement with the children.

You may contact the school or health care provider directly to get school, medical, and dental records (including report cards, notices of parent/teacher conferences, health notices, prescription information, and so on). Wisconsin statute 767.41(7) requires schools and health care professionals to give you this information. You may want to provide a self-addressed, stamped envelope to make it easier for the school or clinic to send you copies of records. You may need to pay a fee for copies.

## **What happens if the other parent won't let me see our children?**

First, check your court order. Does it state specific times the children are to be with you? If it does, you may want to remind the other parent of this order and give the other parent a copy of the order.

If the order states no specific placement times, you may want to ask the court to change the order. The court could add specific times and thus clarify your right to see your children.

If the other parent still won't let you have the children during your placement times, you may ask the court for help in enforcing the order. You would file a "petition to enforce physical placement orders" or a "motion and affidavit for contempt."

Parents can get in legal trouble if they do not follow the court order. The court can provide make-up time, and order the losing party to pay the other party's attorney fees. If the court finds a party in contempt, the court then makes orders which can include fines, jail time, or anything else the court finds appropriate.

Neither parent should ignore a court order, and neither party should take legal action unless necessary. You may want to try counseling or mediation before involving the court to avoid the cost and effect of conflict on you and your children. You may ask your county family court commissioner or clerk of court for information about court mediation or filing a court action. You should consult with a family law attorney before filing.

### **What if I have concerns about the other parent or a stepparent?**

Start by discussing your concerns with the other parent. Try to work out something mutually acceptable. It's better for children when their parents work together to share concerns, information, and decision-making.

That's not saying it's easy to do, especially if one or both of you have new partners. But making the effort definitely will help your children. If you've talked things over and you still have concerns, you can pursue family counseling or meet with a child specialist. You also could agree to obtain a mediator's assistance or contact your county's family court commissioner or clerk of court for court-referred mediation. When mediation doesn't resolve your concerns, you may file a motion to change placement. But a motion based solely on the fact that you don't like the other parent's parenting style will not support a change. Unless there are safety issues, it is generally best for parents to find a way to work out issues without the court's involvement. You should consult with a family law attorney before filing any court action.

### **What happens if I refuse to let the other parent see our children?**

Violating a court order that states certain times for the children to be placed with the other parent could lead the court to hold you in contempt or grant the other parent relief under a "petition to enforce physical placement." Withholding children also can result in criminal charges.

Certain situations might justify violating a court order – for example, to protect you or your children from immediate abuse or harm. Before disobeying any court order, talk to a family law attorney.

### **What happens if the other parent does not take our children as provided in the order?**

It's difficult to force an unwilling parent to spend time with his or her children. If your children's other parent fails to take them for placement as provided in your order, try to discuss the problem. Could the order be revised to better suit the other parent's scheduling or other needs? Consider co-parent or family counseling.

If the other parent still refuses to take your children as provided in the order – and if you're losing money as a result – you may file a request with the court to order the other parent to pay you for money lost (such as for added child care expenses).

If a parent repeatedly and unreasonably fails to take the children as provided in the court order, you may ask the court to modify the placement schedule to order a schedule consistent with what's actually happening. A change in placement may also be a basis for you to ask for a change in child support.

### **Can I move with the children?**

If you have physical placement of the children and you wish to move the children out of Wisconsin, or move the children more than 150 miles from your home at the time the court order was made, you must provide certified mail notice to the other parent. If the other parent notifies you and the court of an objection, the court orders mediation and, if no agreement is reached, a guardian ad litem will be appointed and a hearing held to determine what is in the children's best interests. No move may occur until the issue is resolved. Even moving less than 150 miles can impact the ability to follow the placement schedule.

The court has the power to allow the children to move and to adjust the placement schedule or order the children to stay with the other parent if you move. The court will consider various factors in making decisions that reflect the best interests of the children. The decision to move with the children can have a major impact on your children and their relationship with each parent and on other aspects of the children's lives such as school, extended family, and friends. You should obtain professional input and explore the impact of such an action before proceeding.

### **How do I change an existing order?**

Changes may occur anytime by mutual agreement of both parents. To be legally binding, the agreement must be submitted to the court for approval. If the court doesn't approve the agreement, the agreement is not an order, and

the parents aren't required to follow it. Either parent may bring a motion to return to court and request a change in a custody or placement order if there is a substantial change in circumstances that supports the parent's claim that a change would be in the children's best interests. If it is within two years of the first placement order, the court will not order a change unless there is a showing that the current conditions are physically or emotionally harmful to the child. The procedure for resolving issues about changing orders is the same as for deciding original orders as discussed above.

### Where can I get more information?

There are many resources to learn more about the impact of divorce on children and how to cooperate and co-parent. Effective co-parenting helps promote healthy outcomes and development for your children. You might want to work with a private counselor or child specialist trained in divorce and separation issues. If you have disputes, you could obtain information about private mediation or collaborative practice. You also could request court information through your county's family court commissioner office or clerk of courts.

To learn more about custody/placement law, see a family law attorney experienced in children's issues. Attorneys can discuss options and the potential legal consequences of different decisions and process choices. *Only an attorney can review the facts of your situation and give you legal advice.* Some county courthouses have papers for filing on your own and most regularly-used forms are available online at [www.wicourts.gov](http://www.wicourts.gov).

This is one in a series of consumer information pamphlets published by the State Bar of Wisconsin. Bulk copies and display racks also are available, for a charge, by contacting the State Bar of Wisconsin.

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