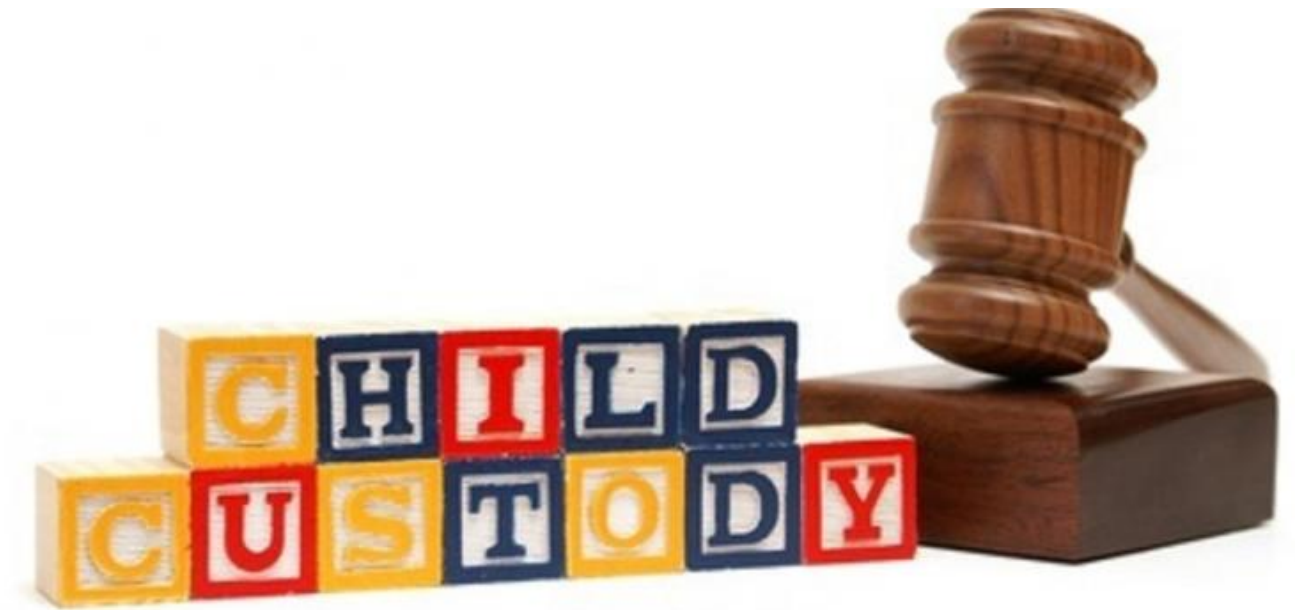


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# Custody



## What is Custody?

There are two kinds of child custody:

- Legal custody, which means who makes important decisions for your children (like health care, education, and welfare), and
- Physical custody, which means who your children live with.

## What is Legal Custody?

Parents with legal custody make decisions or choices about their children's:

- School or child care

- Religious activities or institutions
- Psychiatric, psychological, or other mental health counseling or therapy needs
- Doctor, dentist, orthodontist, or other health professional (except in emergency situations)
- Sports, summer camp, vacation, or extracurricular activities
- Travel
- Residence (where the children will live)

Parents who share legal custody both have the right to make decisions about these aspects of their children's lives, but they do not have to agree on every decision. Either parent can make a decision alone. But to avoid having problems and ending up back in court, both parents should communicate with each other and cooperate in making decisions together.

Courts grant joint legal custody in the overwhelming majority of cases. When one parent has a severe criminal record or history, substance abuse problem, or history of child neglect, then the Court may grant sole legal custody. Also, where there is a history of severe domestic violence between the parents, the Court may grant sole legal custody.

### **What is the difference between Joint and Sole Legal Custody?**

**Joint** - where both parents share the right and responsibility to make the important decisions about the health, education, and welfare of the children.

**Sole** - where only 1 parent has the right and responsibility to make the important decisions about the health, education, and welfare of the children.

### **What is Physical Custody?**

**Joint** - Children live with both parents.

**Sole** - Children live with 1 parent most of the time and usually visit the other parent.

Joint physical custody does not mean that the children must spend exactly half the time with each parent. Usually the children spend a little more time with one parent than the other because it is too hard to split the time exactly in half.

Sometimes, a judge gives parents joint legal custody, but not joint physical custody. This means that both parents share the responsibility for making important decisions

in the children's lives, but the children live with one parent most of the time. The parent who does not have physical custody usually has visitation with the children.

### **What is the process for getting a custody plan for my children?**

Each Court has different requirements regarding litigating a custody case. The failure to file the correct documents, or to meet Court deadlines can result in a litigant losing their case. Therefore, it is important to obtain an attorney to represent you, if possible. However, most Courts' custody cases contain the following general parts:

Custody cases begin with the filing of a Petition. The party that files the Petition is called the "Petitioner." The Petition is then served in person on the other party, the "Respondent." The Respondent has 30 days to file an Answer to the Petition. If the Respondent does not Answer in 30 days, then it is possible that the Court would grant the Petitioner their requests, without the Respondent being allowed to present evidence.

After the Petition and the Answer are filed, the parties may schedule hearings for temporary custody and child support orders, in order to have a plan in place while the case is still active.

While the case is ongoing, the Court may require the parties to file other forms, such as an Income and Expense Statement; a Property and Debt Statement; and a Child Support Calculation Worksheet. The Court also may have the parties attend a parental education course.

If the parties have no agreement, then the Court can order the parties to attend mediation. The parties may additionally ask each other what evidence they plan to present at a hearing, through a process called "discovery."

If an agreement is reached, the parties can request a hearing to ask the Judge to approve and order the agreement. If no agreement is reached, then a final hearing will be scheduled. At the hearing, the parties present their evidence and proposals, and the Judge makes a final decision.

### **What does the court look at when deciding physical custody?**

The law says that judges must give custody according to what is in the "best interest of the child."

To decide what is best for a child, the court will consider:

- The wishes of the children's parents
- The needs of the child for frequent contact with both parents
- The child's relationship with relatives and other third parties
- The child's adjustment to the child's home, school, and community;
- The ability of the parents to care for the child,
- Which parent is likely to allow the other parent to have meaningful contact with the child
- Any history of family violence or substance abuse
- The mental and physical health of the individuals involved
- Whether either parent plans to move
- The wishes of the child, if the child is old enough to have their opinion weighed in the determination

Courts cannot grant custody based on the race or sex of a parent or child. Courts cannot deny a parent custody or visitation due to the parents not being married. Courts cannot deny custody or visitation due to physical disability, religious belief, or sexual orientation.

The Court will probably issue a child support order when making their custody determination. The factors that go into making a child support order include the parents' incomes, the amount of time each parent spends with the child under the Court's judgment, health insurance costs, day care costs, and whether either parent has other children. Custody and child support orders are separate. A parent is not entitled to deny visitation simply because the other parent has failed to pay child support.

### **When does the court order supervised visitation?**

Courts grant supervised visitation when unsupervised visitation would endanger the child's physical health or impair the child's emotional development.

Final judgments granting supervised visitation are not typical. Courts usually only grant supervised visitation as a permanent order when there has been a significant history of child abuse or neglect, or a parent has a significant substance abuse problem.

A judge also may order supervised visitation on a temporary basis to help reintroduce a parent into the child's life.

The Court will specify the time and duration of the visits.

Usually the parents must propose a suitable individual to the Court to supervise the visits. The supervisor should be willing to do the supervision, and should not have a history of child neglect or substance abuse. Courts typically avoid choosing a supervisor that has a poor relationship with the parent being supervised.

### **When does the court order no visitation?**

Missouri law prohibits a parent from having any visitation rights if they have been convicted of certain specific child abuse felonies. The victim of the felony does not necessarily have to be the child in the custody case for the parent to be denied visitation. In other situations, the court normally will grant some visitation, even if it may be very limited.

### **What is a Parenting Plan?**

A parenting plan is required to be ordered by the Court in custody cases. It addresses legal custody and physical custody issues in detail. Parents are required to follow the parenting plan when they cannot otherwise reach an agreement.

The Court is required to address the following issues in the parenting plan:

- (1) A specific written schedule detailing the custody, visitation and residential time for each child with each party including holidays
- (2) A plan for sharing transportation duties associated with the residential schedule;
- (3) Appropriate times for telephone access;
- (4) Suggested procedures for notifying the other party when a party requests a temporary variation from the residential schedule;
- (5) A specific written plan regarding legal custody which details how the decision-making rights and responsibilities will be shared between the parties including the following:

- Extracurricular activities, including a method for determining which activities the child will participate in when those activities involve time during which each party is the custodian;
- Child care providers, including how such providers will be selected;
- Communication procedures including access to telephone numbers as appropriate;
- A dispute resolution procedure for those matters on which the parties disagree or in interpreting the parenting plan;

(6) If a party suggests no shared decision-making, a statement of the reasons for such a request;

(7) How the expenses of the child, including child care, educational and extraordinary expenses, will be paid

### **What is a custody modification?**

After a judge makes a custody and visitation order, one or both parents may want to change the order. A new order requires a new court case. The parent requesting the change must show that there has been enough of a change in the circumstances that a new plan is in the best interests of the child.

When parents have moved or the child has a new schedule, a new plan is often needed. If a parent has not exercised their custody time for long periods of time, a change also may be needed. When a parent has engaged in behavior that endangers the child, a change may also be needed.

Parents should exercise caution in filing modifications. Once a new case is filed, the other parent also is free to ask the Court for change in custody or child support that favors them.

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