

## Custody: Court Process

### Filing a Custody Petition May Not Be Necessary in Certain Situations

There are pros and cons to starting a custody case in court. Filing in court often makes the situation adversarial and it can be difficult to co-parent in that environment. If you get along with the other parent, if paternity has not been established, or if you are only seeking child support, you may not need a custody order. Of course, there are times when filing a petition is necessary, for example:

- The parents cannot agree on custody and/or visitation.
- One of the parents is refusing visitation or contact with the child or has taken the child away.

### The “Players” in a Custody Proceeding

Other people who may be involved in the custody process, depending on the situation, are:

- **Guardian ad litem or attorney for the child** – represents the interests of the child.
- **Social worker** – conducts a home study or bonding study and makes recommendations.
- **Forensic psychologist** – interviews the parties and child to issue a report.
- **Parenting coordinator** – helps to work out details of the parenting arrangement.
- **Mediator** – attempts to work out a custody arrangement with the parents.

### Court Process

Be prepared to include in your petition the reasons that you are filing for custody and what custody arrangement you want.

If you file because of an emergency, the judge might issue a temporary order that same day, but most likely a court date will be scheduled before an order is issued. If the parties cannot reach an agreement, then the judge will hold a trial and will make a decision based on the best interests of the child.

At the trial itself, each side presents their evidence. The parties and/or their lawyers are able to cross-examine the other party and their witnesses. It helps to have an outline of your case. You can use your state’s best interest factors as a guide to plan what you want to prove. Then, the judge will issue a decision, either that same day or in writing sometime later.

### Options If You Lose Your Case

If the judge does not decide in your favor, you may have a few options to consider:

- **Motion to reconsider** – ask the judge to decide differently based on the law or new evidence.
- **Appeal** – move the case to a higher court to review the lower court’s decision.
- **Petition to change the order** – ask for a modification based on a substantial change of circumstances.

Read more about [Preparing for Court – By Yourself](#) on WomensLaw.org.

You can also find state-specific legal information on restraining orders, domestic violence, sexual assault, and stalking, as well as resources for getting help on [WomensLaw.org](#). You can send us your specific questions by writing to our Email Hotline at [Hotline.WomensLaw.org](#).