

Custody Basics

Types of Custody

- **Legal custody** refers to the right to make important decisions for your child, such as where the child goes to school or what medical treatment your child should get.
- **Physical custody** refers to the right to have your child live with you most of the time.
- **Joint legal or joint physical custody** means that these rights are shared between the parents.
- **Sole legal or sole physical custody** means that just one of the parents has these rights and responsibilities.

Custody Arrangements

When there is a custody case going on in court, often the parents will come to a settlement and agree on how to divide custody. If they can't agree, it goes to a trial and a judge decide what's in the best interests of the child. The judge may consider:

- which parent could provide emotional, economic, and physical stability;
- which parent will promote a healthy relationship with the other parent, when appropriate;
- where the child has more social and family ties;
- who will provide better educational opportunities and stability to the child; and
- a history of child abuse or domestic violence.

If a custody order is violated, a parent can file a petition asking that the other parent be held in contempt. Usually, if circumstances change considerably, one of the parents can ask the court to amend the custody order.

Court Process

Be prepared to include in your petition the reasons that you should get custody and what custody arrangement you want. It's always best to have an attorney help you prepare your petition and represent you in court.

If you file because of an emergency, the judge might issue a temporary order that same day but this is rare. Usually, the first court date will be scheduled weeks or months away, followed by a series of court hearings. Mediation is sometimes required before seeing a judge. A guardian *ad litem* may be appointed to represent the child's interests. Interviews with a forensic psychologist or other professionals may be required.

If the parties cannot reach an agreement, then the judge will hold a trial where each side presents their testimony and evidence. 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. The parties and/or their lawyers can cross-examine the other party and their witnesses. 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** –if a substantial change in circumstances happen after the order goes into effect, you could ask for a modification of the order.

Custody and Domestic Violence

Evidence of domestic violence may be one of the “best interest factors” that a judge considers when making a custody decision. A victim may be able to prove domestic violence through:

- the judge’s determination (“finding”) in a restraining order case;
- a conviction in a criminal case; or
- presenting evidence of domestic violence in a custody case.

In some states, a finding of domestic violence may also create a rebuttable presumption that the abuser should not have sole or shared custody. This means that the judge assumes that the abuser should not have custody, but the abuser can present evidence to change or “rebut” this assumption.

If the judge decides the abuser and victim should share custody, the judge may put limits in place to make this safer. The judge may specify:

- when, where, and how the child is exchanged between the parents;
- the dates and holidays each parent has with the child;
- whether a third party needs to supervise visits or exchanges;
- how the parents communicate about the child; and
- which parent makes decisions regarding the child.

Relationship between Restraining Order Cases and Custody Cases

If a restraining order is issued to protect a parent from abuse, a judge generally can include:

- specific terms related to custody and visitation; and
- exceptions that allow the victim and abuser to communicate specifically about the children if needed.

The custody provisions included in a restraining order generally only apply as long as the restraining order is in place, although there are exceptions in certain states. The terms of a restraining order may be temporarily controlling even if a prior custody order was issued.

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

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