

# Answering your questions about custody and placement

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 child custody and placement arrangements. How well the two of you handle these arrangements will have an enormous impact on how well your children cope and their emotional well-being during and after your divorce.

The basic assumption behind child custody and placement laws is that children are healthiest and happiest when they have good relationships with both parents. When parents divorce, the law requires the court to make provisions in the final judgment for parental decision-making and allocating periods of physical placement with each parent. In most cases, the parents reach their own agreements that the court approves.

Legal processes and terminology come into play throughout the process of creating a custody and placement agreement. This pamphlet answers common questions you may have.

## What is legal custody?

This is the legal right to make *major decisions* about your children. Major decisions cover such matters as nonemergency health care and choice of school and religion. Others include parental consent to marry, obtain a driver's license, or join the military. Additional matters also could be major decisions, if the court so determines. Legal custody can be *joint* or *sole*, and it's different from *physical placement* (see below).

## 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. *Sole legal custody* means only one parent has the right to make such decisions. The court also may order that one parent or the other has the sole right to make certain types of major decisions, such as health care. 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 for vacation periods.

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 specify periods of placement with each parent 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 to account for unpredictable events.

## Is it true that the law gives each parent equal placement?

No. The law provides that the children should have a schedule that allows them to have regularly occurring, meaningful periods of place-

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ment that *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 and needs 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. A maximized schedule is not the same as an equal placement schedule.

## 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 benefit when their parents work together.

## How do custody and placement issues get resolved?

It's best for children if their parents try to resolve disagreements 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. 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, media-

tion (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.

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 you and your spouse could not agree on.

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 an increasingly popular process to resolve issues. Information on using the collaborative process in divorce cases is available on the Internet. For example, visit [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 also may need to pay a fee for copying records.

### **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 an "order to show cause and affidavit for finding of contempt."

These procedures provide significant consequences if the parents 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 decides what *sanction* is appropriate which can include fines, jail time, or anything else the court finds appropriate.

Neither parent should ignore a court order, and neither party

should use either proceeding unless necessary. You may ask your county family court commissioner or clerk of court for more information. You also can obtain some forms online at [www.wicourts.gov](http://www.wicourts.gov).

### **What if I don't think it's good for the children to be with 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. 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's evidence of actual harm to the children, the court generally will rule it's best for them to have a substantial relationship with each parent.

### **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 intentionally disobeying any court order, talk to an experienced family law attorney.

### **What happens if the other parent refuses to 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 force the other parent to pay you for money lost (such as for added child care expenses). You'll need to prove three points to the court: (1) how much money you lost; (2) that the other parent intentionally failed to take the children as ordered and this failure was *unreasonable*; and (3) that the parent didn't give you *adequate notice*, given your circumstances.

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. You could ask the court to order a schedule consistent with what's actually happening.

Taking legal action can be appropriate when a child support order was reduced based on the children spending significant time with the child support payer. If the placement order is changed, you can (with a properly filed motion) ask the court to change the child support order accordingly.

### Can I move with the children?

If you have physical placement of the children and you wish to move the children out of Wisconsin, move the children more than 150 miles from your home at the time the court order was made, or remove the children from Wisconsin for more than 90 consecutive days, you must provide certified notice to the other parent. If the other parent notifies you and the court of an objection, the court orders mediation and, if still no agreement, 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.

The court has the power to allow the children to move and to adjust the schedule with the other parent or to allow you to move but order the children to stay with the other parent. 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. It may be helpful to 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 initial 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 resolving original orders as discussed above.

### Where can I get more information?

Perhaps you want to learn more about how to raise your children in cooperation with their other parent. One common term for this is *co-parenting*. Effective co-parenting helps promote healthy outcomes and development for your children. You might want to work with a private counselor or therapist trained in divorce and separation issues. If you have disputes, you could obtain information about private mediation or collaborative practice. You also could request 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).

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