

Custody: Definitions and Court Overview

Definitions of Custody and Visitation

When entering into a custody case in court, it's important to understand the difference between legal custody, physical custody, joint custody, and sole 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.

When one parent has visitation, they have the child in their custody for that specified period of time. During the visitation, the parent can make day-to-day decisions for that child. What the actual visitation schedule looks like is going to depend on the circumstances, like how far apart parents live, what their relationship is like, what the judge believes is better for the child, etc.

In some situations, when the child is not safe with the non-custodial parent, the judge could order supervised visits or the supervised exchange of the child. Rarely, a judge will deny visitation entirely.

Custody Orders from Court

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.

Once a custody order is issued, it is supposed to be followed by both parties or else a parent can file a violation petition asking that the other parent be held in contempt. Usually, if circumstances change considerably, one of the parents can also ask the court to review/amend the custody order.

You can find more information about [custody](#) 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](#).

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.

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Custody and Domestic Violence

Relationship between Custody Cases and Domestic Violence

When a judge makes a decision about custody, they must decide what custody arrangement is in the child's best interest.

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

- the judge's determination or "finding" in a restraining order case;
- a conviction in a criminal case;
- 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 in a custody case. 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:

- provisions related to custody and visitation; and
- exceptions that allow the victim and abuser to communicate specifically about the children.

The custody provisions included in a restraining order generally apply as long as the restraining order is in place. Once it expires, the custody terms usually also expire. The terms of a restraining order may be temporarily controlling even if a prior custody order was issued.

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](https://www.womenslaw.org). You can send us your specific questions by writing to our Email Hotline at [Hotline.WomensLaw.org](mailto:Hotline@WomensLaw.org).

Interstate Custody and Domestic Violence

When thinking about leaving the state with your children, there are at least four legal issues to think about:

- Is there an existing court order regarding your children?
- What does your state relocation law say?
- What does your state parental kidnapping law say?
- And where will a custody case take place?

Before You Move, Consult an Attorney

If you leave the state with your children, you could be held in contempt of court, punished in a subsequent custody case, and even charged with parental kidnapping in some states. It is important to talk with an attorney who understands domestic violence and the state's parental kidnapping and relocation laws before moving.

Before leaving, check if the abuser already filed for custody in the original state. Usually you cannot leave the state ("the jurisdiction") with the children after one parent has filed for custody. Continue to check the family court in the original state after you leave to find out if the other parent filed for custody.

Filing for Custody

If your child has a "home state," which means the child has lived there for at least six months, that is the proper place for a custody case to be filed. If you just arrived in a new state, you can only file for custody if you ask for "emergency jurisdiction" under a uniform law called the UCCJEA. The judge can grant you temporary emergency custody if you, your child, or the child's sibling is subjected to or threatened with mistreatment or abuse.¹ However, for a long-term custody order, a custody case may have to be filed in the child's home state.

If the Abuser Took the Children and Won't Return Them

If the abuser takes the children in violation of an existing custody order or fails to return them after a visit in another state, ask law enforcement in the abuser's state to enforce the court order. If they refuse, you might be required to go to court in the new state to get a "pick up order" from the judge there before the police will get involved.

Although interstate cases can be complex, help is available. For legal advice, go to WomensLaw.org's [Finding a Lawyer](#) page. For information, but not legal advice, [The Legal Resource Center on Violence Against Women](#) focuses on interstate custody and domestic violence issues and can provide technical assistance to an attorney who may be representing you in an interstate case or can give you referrals.

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¹ The standard is slightly different in Massachusetts, which follows the UCCJA, not the UCCJEA.

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