

# Custody

A parentage relationship is created when you are the parent of a child by blood or a court order. You only have a parentage relationship when the relationship is legal. In other words, if the child is a result of a non-consensual relationship (i.e., rape) then the one forcing the relationship will not have any legal rights to the child.

Custody refers to the control over decisions made for the child and the place where the child lives. Both parents have equal custody rights until a court order establishes custody.

Some of the most often asked questions about parentage follow:

## How do I end parentage?

You decide when to become a parent, but you do not get to decide when you no longer want to be a parent. You have to get permission from a court to end your parentage relationship. In order to do this, you will have to show that the child will be taken care of by someone else.

You will also have to get permission from a court if you want to end the parentage relationship of the other parent. In order to end that relationship, you must show the court the child will be taken care of or the child's relationship with the other parent is so harmful to the child that it should end.

## What happens to the children when a relationship ends?

In a marriage relationship, the issue of custody will be decided as part of the divorce.

Without a marriage relationship, the issue of custody is called a parentage action. A court looks at the best interest of the child to decide custody. You and your child will be better off if the parties can agree on custody. Sometimes an agreement cannot be reached. In that case, the court will decide for the parties. The court looks at many things to decide the best interests of the child. The court will also look at which parent has been the children's primary caretaker.

The court will look at many factors to decide who is the primary caretaker:

- who gets the child up in the morning;
- who feeds the child breakfast;
- who gets the child dressed;
- who gets the child ready for school;
- who takes the child to school;
- who picks the child up from school;
- who helps the child with homework;
- who watches the child play with friends;
- who prepares and eats meals with the child;
- who reads to the child;
- who gets the child ready for bed;
- who makes decisions on medical care;

- who share in activities with the child;

. . . and many other factors.

**Note:** Stepparents are not responsible for stepchildren following a divorce, unless they adopted them.

When the facts are unclear, the court may order a custody evaluation to help the judge decide the best interests of a child. A custody evaluation costs a lot of money, and the cost may be split between the parties. If a custody evaluation is ordered, you should work with the evaluator. The evaluator's decision can be adopted by the judge in the case.

## What are the different kinds of custody?

There are two different kinds of custody which may be shared in three main ways.

The two types of custody are:

- Legal custody: who gets to make important decisions about the children; and
- Physical custody: where the children live.

Custody may be shared in three different ways. This may be done differently for legal and physical custody:

- **Sole.** Legal and physical custody may be given to one parent alone. If sole physical custody is given to a parent, the other parent still has a right to visit the child.
- **Joint.** Both parents are involved with joint custody. With **joint legal custody**, both parents would have a right to make the important decisions about the children such as education, religion, and non-emergency medical care. Joint legal custody will only work when the parties get along and talk to each other often. **Joint physical custody** means the children will spend time with both parents based on what the parties decide or the judge. However, the children must spend more than 110 nights in each home to call it joint physical custody.
- **Split.** This means the children are split between the parents. For example, one child will live with the mother and one child will live with the father. This type of custody is advised only in few cases.

## What is a normal visitation schedule for non-custodial parents?

It is best to have a visitation schedule that both parents agree to, and one that works best with their schedules. If this cannot be done, Utah has a minimum visitation guideline which is used in almost every case, unless there is a very good reason not to use it. This schedule includes one weekday evening and every other weekend and holidays. The visitation for children under the age of five is different, and includes shorter, but more visits.

## Will I have to work or can I stay home and take care of my children?

The answer to this depends on your situation. Both parents will have to do their part to provide for their children's needs. Courts often expect you to work or get training to work.

## If I work, who will pay for day care?

Both parents often share the reasonable child care costs for the child. The parent that pays the cost of day care must give a receipt and name of a child care provider to the other parent. The parent paying the cost of day care must tell the other parent of any changes within thirty days. If the parent paying the cost of day care does not give notice, the court might decide the other parent does not have to pay.

## **Will my children be covered by medical insurance?**

If medical insurance is reasonably available to a parent, that parent should obtain medical insurance for any minor child. Both parents will share the medical costs not covered by insurance. The party paying out of pocket medical costs should tell the other parent in writing within thirty days.

## **Who gets to claim the child for income tax purposes?**

The parent with whom the child lives gets to claim the child as a dependent for income tax purposes. However, this is can be changed with a court order. It should be changed in a way that best fits your situation and results in the least amount of taxes paid by both parents. Some options are:

- Changing who claims the child every year. For instance, one parent will get to claim the children in odd years; the other will take it in even years.
- The same parent always takes the deduction. This may work in two ways:
  - if one parent does not work, the working parent should take the deduction each year; or
  - if there is more than one child, the deduction may be split between the parents.
- You may also include a “buy-out” clause. A buy-out clause lets one parent pay the other parent the amount the other parent would get if they took the deduction.

**Note:** a noncustodial parent may claim the children only if they are current in paying child support. The custodial parent must sign a form for the IRS allowing the noncustodial parent to take the deduction.

## **Are grandparents or other extended family allowed specific visitation rights?**

After the divorce, many parents are not sure how much time their children should spend with their ex-spouse’s family. Even though you are divorcing, your children are related to your ex-spouse’s family by blood. You should always focus on the best interest of your children. If your children have a bond with the extended family members, then time with them is probably in your children’s best interest. The judge is able to order visits that are in a child’s best interest. Also, there is a statute that allows grandparents to petition the court for visitation of grandchildren.

## **May I change the name of my children?**

Maybe. If both parents do not agree, the court may not change a child's name. The court looks at very specific things to decide to allow a name change for a child.

## **May I get help preparing the forms for parentage?**

Yes. The Utah Courts have the forms on their Online Court Assistance Program (OCAP) located at [www.utcourts.gov/ocap](http://www.utcourts.gov/ocap). After you answer the questions, the program will prepare the paperwork needed to file a custody case.

## **What if I disagree with the judge's order?**

You have the right to appeal a judge's decision you do not agree with. This means a higher court can review your case. You must file your appeal within thirty days of the final entry of the custody order. Appealing a case is a difficult process. You should consider hiring an attorney to help you.

## **What if I need to make changes after the order is signed?**

An order may be changed only if the parties show there is a major change since the order was entered. For example, this might mean a large change in one party's income, or one party moves from the state. When the court decides there is a major change, it needs to decide what the order should be. The court will always make its decision on the best interest of the children. If there is a major change, a petition is filed with the court asking that the order be changed.

## **May I deny visitation if I don't get child support?**

No. Child support and visitation are separate issues. You may not deny visitation just because child support has not been paid. The opposite is also true. Just because someone pays child support does not mean they are going to get visitation. Read the court order.

## **May I ever deny or limit visitation?**

Visitation should only be denied if there is some danger to the child if the visitation takes place. If there is some fear of abuse or neglect, you may ask for supervised visitation and say who will be present during visits. Courts do not like to restrict visitation, so parties must give a very good reason.

## **What is the best way to lower any negative effect of divorce on my child?**

There are many ways to help your child. The Divorce Education Class for Parents is a great place for ideas on what you may do to help your child. Below are some tips:

- Put your child's welfare first. Never use your child as a weapon against your spouse or ex-spouse. This harms your child, and if the judge finds out, it could also harm your case.
- Be sure your child has a lot of time with the other parent. They need it.
- Visitation with the other parent should usually NOT take place in your home.
- Don't take your child to your lawyer's office, to court, or any other place where you will discuss custody. If you need a babysitter to attend court hearings or meetings with your attorney, contact your local Family Support and Treatment Center; they may be able to provide temporary care for free.
- Be flexible with the visitation schedule, but do your best to be on time for visitation, and give plenty of notice if you may not be on time.

- Don't use your child to spy on the other parent.
- Don't ask for reports about the other parent from the child.
- Don't listen in on phone calls with the other parent.
- Tell your child that they are not to blame for the breakup and are they not being forgotten by either parent.
- Do not speak badly about the other parent in front of the child or anywhere the child will overhear.

## How much child support should I get?

The answer depends on the number of children you have and the amount of income you and the other parent has.

There is very little to fight about when it comes to child support. Utah has statutory child support guidelines. Both parties must give to the court their gross monthly income and complete the appropriate child support worksheet. The worksheet will give state the amount of child support that should be paid. There are different worksheets for sole custody, joint custody, and split custody.

## May I refuse child support?

No. Child support is not yours; it is your child's. Even if you and the other parent agree to no child support or less than the statute requires, the judge will not approve it unless there are very good reasons. In fact, even if someone is unemployed, the court will often assign income to that person. For example, if a party was making \$15 an hour and left their job, then the court will likely assign an income of \$15 an hour for 40 hours a week to that person.

## How do I enforce parentage, custody, and divorce orders?

Not obeying an order of a parentage, custody, or divorce order is considered to be "contempt". To enforce the order, you must file an "Order to Show Cause" that asks the court to find the other party is not obeying the order. The court may fine or otherwise punish the party not obeying the order. If the other party fails to pay money, a judgment may be entered against that party. The judgment must be collected by garnishment or sale of nonexempt property owned by the other party. Contempt may also result in the other party being sent to jail. The order is a civil order of contempt and does not go on a criminal record. The paperwork needed to enforce an order may be found at any Utah courthouse. The forms are also on the Online Court Assistance Program (OCAP) ([www.utcourts.gov/ocap](http://www.utcourts.gov/ocap)). After you answer all the questions, this program will prepare all the paperwork you need to file an action in contempt.

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