



# Legal Aid Society of Hawai`i

## Visitation Information for parents

Use this brochure for general information on visitation rights of parents, including:

- what is visitation,
- who has a right to visitation,
- how to get a visitation schedule, and
- how to change an existing visitation schedule

### **IMPORTANT NOTE:**

This brochure is for parents who want information on visitation rights for their children.

**If you are a grandparent, relative, or friend who wants visitation, this brochure does not apply to you.** Call the Legal Aid Society of Hawai`i for more information.

## What is visitation?

Visitation rights are usually given to the parent who does not live with his/her child. This parent is called the *noncustodial parent*. Custody orders are almost always made at the same time as visitation orders. Court orders that usually include custody and visitation orders are (1)divorce decrees, (2)paternity orders, and (3)temporary restraining orders (TRO's).

Visitation rights can range from frequent to never. They can also be flexible or very rigid, depending on the situation. ***If both parents cannot agree on a visitation schedule on their own, the court will have to decide for them.***

**Because visitation and custody are so closely related, read this brochure along with Legal Aid's "Child Custody" brochure.**

### A. How To Get A Visitation Schedule If You Don't Have One

#### **If you and the other parent were never married**

***Fathers:*** You need to establish paternity before you have any rights to visitation and/or custody. A paternity order legally establishes who is the father of a child; without it, the father has no legal claim to the child and no legal visitation rights. *Call Legal Aid for more information and see the Legal Aid brochure "Paternity."*

***Mothers:*** If paternity was not established, you are your child's only legal parent. This means you have full legal and physical custody of your child. Without a paternity order, the father has no visitation rights. *Call Legal Aid for more information on Paternity and see the Legal Aid brochure "Paternity."*

#### **If you and the other parent are married**

If you and the other parent are married, both parents are equal custodians of the child unless there's a court order establishing custody and visitation. This means you both have 100% access to the child. However, beware of the custodial interference law, which makes it a crime for one parent to take the child without consent from the other parent, even if there is no custody order. *See the Legal Aid "Child Custody" brochure.*

To get a custody and visitation schedule when you are married, you need to either get a legal separation or a divorce. You may also be able to get a temporary custody/visitation order through a TRO. *Call Legal Aid for more information.*

### B. How Much Visitation Can I Have?

There are three visitation terms you should be familiar with: (1) Reasonable, (2) Supervised, and (3) None. If you are in the process of or thinking about getting a divorce, establishing paternity, or getting a TRO, read the descriptions carefully to decide which type(s) of visitation are best for you.

**IMPORTANT!** There are an infinite number of possible visitation schedules, so you should think about different things that will work in your situation. Your order could include a combination of reasonable, supervised, and/or no visitation. For example, the court may order no visitation until the noncustodial parent completes parenting classes, then supervised visitation for a year, and then reasonable Type A visitation.

#### (1) Reasonable Visitation

#### **Reasonable Visitation could mean any one of the following:**

- The court order says "reasonable visitation" and nothing else. This assumes that you and the other parent can talk and agree on a visitation schedule on your own, and do not need to have specifics written down. OR

- The court order sets down a specific schedule that you and the other parent agreed on. The schedule can be anything that you and the other parent feel is best for your child. OR,
- The court order sets down a specific schedule that the court decides for you and the other parent. If the court feels that the noncustodial parent can safely spend time with the child alone, but you and the other parent cannot agree on the specific schedule, the court can order a visitation schedule that both parents must follow.

There are three examples of reasonable visitation schedules below (Types A, B, and C). These may help you work out your own "reasonable" visitation schedule.

## REASONABLE VISITATION SCHEDULE GUIDELINES USED BY THE COURT

These guidelines are put out by the court to help you think about possible visitation schedules for your child. They are not cast in stone; they can be changed to suit both parents' needs. However, if the court chooses a visitation schedule for your child, it will probably choose Type A, B, or C below.

### **Reasonable Visitation Type A: You & the Other Parent are on the Same Island**

(Type A usually applies to children 3 years and older. If you have a child under 3, see "Reasonable Visitation Type C" on the next page.)

1. **Alternate weekends** with each parent.
2. **One night per week with noncustodial parent:** from after school until an agreed time of return no later than 7:00 p.m. (Time of return depends on the child's age and bedtime.)
3. **Telephone contacts:** ranging from daily to once a week at reasonable hours. Reasonable hours depend on the age of the child and the child's daily schedule.
4. **Vacations:**
  - Christmas Vacation:** One week of Christmas vacation each year with each parent, alternating the first and second week. The first week will include Christmas Eve and Day. The second week will include New Year's Eve and Day.
  - Summer Vacation:** Maximum one half of summer, with alternate weekends to the custodial parent. The child will be returned to the custodial parent the week before school starts. If possible, state the number of weeks in summer vacation to avoid future problems.
  - Spring Vacation:** One half of spring vacation. If possible, state the number of days in spring vacation to avoid future problems.
5. **Holidays & Special Days:**
  - a. Alternate Easter, Thanksgiving, and Halloween.
  - b. Child's birthday: parents share one half of the child's birthday or alternate yearly.
  - c. Father's Day with father and Mother's Day with mother. Same with parent's birthday.
  - d. On extra state and federal holidays the parents will alternate yearly or it can go to whomever has that weekend with the child.
6. **Reports:** The parents will share medical and school reports with each other at appropriate times.
7. **Child's Activities:** The parent who has the child is responsible for taking the child to activities that are important to the child (e.g., team sports, birthday parties, etc.).

### **Reasonable Visitation Type B: You and the Other Parent live on Different Islands or in Different States**

(This usually applies to a child who is at least three years old. If your child is younger than 3, see "Reasonable Visitation Type C" on the next page.)

1. **Unlimited correspondence** and up to daily telephone contacts at reasonable hours. Reasonable hours are determined by the child's age and usual daily schedule.
2. **Vacations:**
  - Christmas Vacation:** Entire vacation in alternate years with the return of the child to the custodial parent at least two days before school begins.
  - Summer Vacation:** Depending on the age of the child, the maximum summer visitation period will be two months. Both parents should be flexible regarding the child's summer activities. The child should be returned at least one week before school starts.
  - Spring Vacation:** Alternate years.
3. **Special visitation rights** If the noncustodial parent comes to the child's island or state, special visitation rights should be granted. The noncustodial parent must give at least two weeks notice before the visit. The visitation should take into account the child's usual school activity schedule, if any. At a minimum the noncustodial parent should get one weekend and one day during during the week from after school until reasonable night return on the same day.
4. **Reports:**
  - a. Medical and school reports should be shared with the other parent as appropriate.
  - b. Annual reports by the custodial parent to the other parent or as appropriate for children with handicaps or special needs.

### **Reasonable Visitation Type C: Your Child Is Under 3 Years Old**

(For children below the age of three, visitation should be as frequent as possible, at least once a week if on the same island.)

### **(2) Supervised Visitation**

Supervised visitation means the noncustodial parent may visit the child only if another adult is there. Supervised visitation may require that the visitation, drop-off, and pick-up happen only in a certain place. A friend or relative can supervise the visits, or some agencies provide supervised visitation sites for a small fee. *See back of brochure for information on Visitation Centers.*

**Supervised Visitation can be ordered if the parties agree to it, or if the judge thinks supervised visitation is in the best interest of the child.**

For example, supervised visitation may be ordered if:

- the noncustodial parent abuses drugs, especially around the child;
- the noncustodial parent has abused the other parent and/or the child; AND/OR
- there is some other reason to fear for the child's safety.

### **(3) No Visitation**

The court rarely grants no visitation at all because it is usually in the best interest of the child to have a relationship with both parents. The court may grant no visitation if there are extreme circumstances, such as severe physical and/or sexual abuse by the noncustodial parent. Otherwise, the court will usually grant supervised visitation.

## C. How Visitation is Decided

- **Both Parents Decide**

The most common, and often best, way to decide on a visitation schedule is for both parents to agree on one together. If you and the other parent can agree on a visitation schedule, the court will probably approve that schedule. If it is safe to do so, talk to the other parent about schedules that will work for both parents and the child. Be creative; the court wants to know what you think is best for the child, even if it does not fit their normal visitation guidelines.

- **Best Interest of the Child**

If the parents cannot agree on a visitation schedule, then the court will decide based on the “best interest of the child.” Studies have shown that children who continue to feel loved and wanted by both parents are able to deal with their parents’ separation best. The court wants to hear about what is best for the child, not about all the problems you have with the other parent, how mean s/he is, etc.

### How Courts Decide In Abuse Situations

When the court feels that one parent has been abusive, the visitation rights of that parent may be limited to protect the custodial parent and the child.

***If the noncustodial parent is considered a danger to the child,*** the court can order:

1. Parenting classes and/or drug treatment,
2. Supervised visitation,
3. Anger management classes, and/or
4. Something else to protect the child.

***If the noncustodial parent has abused the other parent, but the court believes s/he is not a danger to the child,*** the court can order:

1. Drop-off and pick-up in a public place,
2. To keep the custodial parent’s address confidential,
3. A restraining order against the noncustodial parent, and/or
4. Something else to protect the parent.

## D. Changing Your Visitation Order

### How to modify if you and the other parent CAN agree:

File a stipulated agreement. A stipulated agreement means that you and the other parent can agree on a change in the original order. A stipulated agreement doesn’t require a lot of attorney time, and you may be able to file on your own. Legal Aid Society of Hawaii and Volunteer Legal Service handle some stipulated agreements. Call both agencies for more information.

### How to modify if you and the other parent cannot agree:

To modify your current order, you need to show the court there has been a “material change in circumstances which affect the child.” In other words, since the last court order was entered, the situation has changed, so a new custody/visitation order needs to be made.

Examples of a material change in circumstances could include:

- Drug or alcohol use by either parent;
- Child abuse by either parent;
- A parent is moving to another island or another state; AND/OR
- The other parent is not following the visitation schedule in your first order.

If there has been no abuse in your relationship, try mediation to come to an agreement. *See the back of this brochure for phone numbers.* If you reach an agreement, call Legal Aid Society of Hawaii or Volunteer Legal Services for possible help with a stipulated agreement.

If you cannot agree even after mediation, try getting a private attorney to assist you. Call different attorneys and ask for an estimate of how much it would cost to hire them. Look through the yellow pages or call the **Lawyer Referral Service at 537-9140** (Neighbor Islands call collect).

### If there has been abuse in your relationship...

It is best to get an attorney to help you with any changes in custody and/ or visitation orders.

In abuse situations, victims are sometimes intimidated into making certain decisions that may not be in the best interest of the child.

Call Legal Aid Society of Hawaii and the Domestic Violence Clearinghouse & Legal Hotline for possible assistance.

If you call private attorneys, ask for an estimate of how much it would cost to hire them. Look through the yellow pages under "Attorney." Make sure you can afford it and that you feel comfortable with the attorney.

## What to do if you have problems with an existing visitation order

### If you're not being allowed to see your child even though visitation has been awarded:

1. Read the visitation order to find out exactly what it says.
2. If you feel safe doing so, discuss the situation with the other parent. If you think you may need help reaching an agreement, mediation services are available for a small fee. Mediation is usually NOT a good idea in relationships where there has been abuse. *See the back of this brochure for names and phone numbers of mediation agencies.*
3. Ask the police to help you enforce your order. Depending on the situation, the police may not get involved; however, you should still make a police report.
4. Consider going back to court to enforce and/or change the existing visitation order if it isn't working. Think about exactly what you want to change and why it should be changed.

## Useful Names and Phone Numbers

### **Legal Aid Society of Hawai`i** (<http://www.legalaidhawaii.org>)

LEGAL HOTLINE (Monday-Friday 9:00 - 11:30 a.m. & 1:00 -3:30 p.m.)

Oahu call 536-4302 Hilo call 242-0724 Kaua`i call 245-7580 Moloka`i call 553-3251

Maui call 242-0724 Kona call 329-8331 Lana`i call 565-6089

### **Courts**

O`ahu (1st Circuit)

777 Punchbowl Street

539-4200

Maui County (2nd Circuit)

2145 Main Street Suite 226

Wailuku

244-2770

Kaua`i (5th Circuit)

3059 Umi Street

Lihue

246-3350

Hawai`i County(3rd Circuit)

Hilo: Pick up forms & file documents at:

75 Aupuni Street

934-5700

Hearings held at:

345 Kekuanaoa St. Rm 40

Kona: Pick up forms & file documents at:

Old Kona Hospital, Keakealani Bldg. Rm. 240

329-2790

Hearings held at:

77-6399 Nalani Street

### **Mediation Services**

O`ahu: Mediation Center of the Pacific  
(formerly Neighborhood Justice Center)

200 N. Vineyard Blvd, Suite 320

521-6767

Maui: Mediation Services of Maui, Inc.

95 Mahalani Street, Wailuku

244-5744

Hilo: Waiakea Settlement YMCA

Kuikahi Mediation Center

300 W Lanikaula Street

935-7844

Kona: West HI Mediation Services

P.O. Box 7020, Kamuela

885-5525

Kauai: Kauai Economic Opportunity

Mediation Program

2804 Wehe Road, Lihue

245-4077

Moloka`i:

Mediation Center of Molokai

Meyer Bldg #9

Kaunakakai

553-3844

### **Supervised Visitation Centers**

Oahu: Parents and Children Together.....847-2884

Maui: Child and Family Service.....877-6888

Big Island: YMCA Visitation Center.....935-3721

Kauai: none

### **DVCLH (Domestic Violence Clearinghouse Legal Hotline)**

O`ahu: 531-3771

Maui: 242-8645

Neighbor Islands: 1-800-690-6200

**Puuhonua (Domestic Abuse Response Team)** 522-5535 Oahu

**AmeriCorps SAVD (Student Advocates for Victims of Domestic Violence)** 566-0661

**Volunteer Legal Services** (formerly Hawai`i Lawyers Care)

Oahu: 528-7046 Neighbor Islands: 1-800-839-5200