



Help Yourself

Child Custody and Visitation in D.C.

Custody is a legal arrangement that establishes who has the right to make decisions about a child, who has an obligation to take care of a child and where a child will live. Custody applies to children under the age of 18, unless the child is disabled (custody could continue after age 18) or the child is living independently (custody could end before age 18). When you get a custody order from a judge, it will determine two types of custodial arrangements: *legal custody* and *physical custody*. You can agree to a custody arrangement, or the court may decide that a certain arrangement is in the *best interest of your child*.

■ What is *legal custody*?

Legal custody means legal responsibility for the child. This includes the right to make decisions regarding the child's health, education, and general welfare; the right to access the child's educational, medical, psychological, dental, or other records; and the right to speak with and obtain information regarding the child from school officials, health care providers, counselors, and other persons interacting with the child. You could have *joint legal custody* (the parents make all the decisions about the child together) or *sole legal custody* (one parent has the right to make all the decisions about the child).

■ What is *physical custody*?

Physical custody means a child's living arrangements. This includes a child's residency or visitation schedule. You could have *joint physical custody* (the child stays with each parent some of the time) or *sole physical custody* (the child lives with one parent, and might have visitation with the other).

■ What if I don't want custody, I just want to see my kids?

Access (sometimes called visitation) is your right to have the child in your care on a regular basis while the child lives with the other parent. You and your co-parent can arrange access in whichever way suits your family (for example, one afternoon per week, or overnight on alternate weekends, or several weeks during the summer).

■ Do I need a custody order?

You may want a custody order if someone is challenging your custodial rights, or to avoid such challenges in the future. A custody order can be helpful because it is legally enforceable.

■ What is a parenting plan?

A *parenting plan* is a written plan for how the parents will care for a child's needs, and can be as detailed or flexible as the parties wish.

You can use a parenting plan to address a wide range of issues, such as custody, access, child support, decisions about the child's school, medical and behavior issues, or access to school and medical records. It is best if co-parents can agree on a parenting plan before their court case begins. Once the terms are written out and signed by both parents, you can ask the judge to enter a Consent Custody Order requiring the parents to follow the terms of the parenting plan.

■ What if we can't agree?

Even if your case is contested, you may be able to resolve it without a trial. The Family Court offers free mediation through the Multi-Door Dispute Resolution Division (202-879-1549), which provides trained mediators who can work with you and the other parent to negotiate the terms of your parenting plan.

■ What if we still can't agree after mediation?

If you cannot agree on a parenting plan, there will be a custody trial. Each party will try to prove what is in the best interest of the child. Once the trial is complete, the judge will decide, based on the evidence, what arrangement is best.

■ Can I file for custody in D.C.?

In order for a D.C. court to make a custody determination, the court must have authority to decide your case. This is called *jurisdiction*. Although there are several ways D.C. could have jurisdiction, the most common is when it is currently or was very recently the child's *home state*. This means that

- ▲ The child has been living in D.C. for at least six months before the case is filed, or
- ▲ The child lived in D.C. and has been away less than six months, and even though the child is no longer in D.C., a parent or person acting as a parent continues to live in D.C.

■ How can I start a custody or visitation case?

You must file a Complaint for Custody or a Complaint for Access to Children and a court form called a cross-reference intake. After you file your complaint you must give a copy to the defendant according to very specific legal requirements. If someone else filed the complaint, you are the defendant. After you have been legally served with a copy of the complaint, you must file your Answer to Complaint for Custody or Access within 20 days. After you file your answer, you must give a copy to the plaintiff. See “Help Yourself: Serving Court Papers in D.C. for Divorce and Custody Cases.”

You can get the necessary *pleadings* (legal documents) at www.dcbar.org/pleadings or at the D.C. Family Court Self-Help Center (500 Indiana Avenue NW, room JM-570), open Monday through Friday, 8:30 a.m. to 5:00 p.m. (202-879-1471). The Self-Help Center staff can explain the process and help you fill them out.

■ How does the judge decide custody?

The judge is required to make the decision by considering the *best interest of the child*. The law assumes that in most cases it is best for a child to be raised by both parents. This idea is described as a *presumption* that *joint custody* is in the best interest of a child. The law also assumes that in cases where there has been child abuse, child neglect, parental kidnapping, or domestic violence, joint custody is *not* in the best interest of a child.

■ What is a rebuttable presumption?

The presumption that joint custody is in the best interest of the child is the starting point for the judge. Before the judge hears any of the facts, he or she assumes that joint custody is in the best interest of the child (unless there has been child abuse, child neglect, parental kidnapping, or domestic violence). You can *rebut* (overcome) the presumption of joint custody if you present evidence to the judge that indicates that joint custody is not in the best interest of the child in your case.

■ What does the law mean by “best interest of the child”?

To determine what is in the best interest of a child, D.C. law requires the judge to consider *all relevant factors*. In addition, the law says the judge must specifically consider all of these 17 issues:

- ▲ The wishes of the child;
- ▲ The wishes of the parents;
- ▲ The child’s relationship with his or her parents, siblings, and others;
- ▲ The child’s adjustment to his or her home, school, and community;
- ▲ The mental and physical health of all individuals involved;
- ▲ Evidence of domestic violence;
- ▲ The parents’ ability to communicate and make shared decisions about the child;
- ▲ The willingness of the parents to share custody;
- ▲ The prior involvement of each parent in the child’s life;
- ▲ The potential disruption of the child’s social and school life;
- ▲ The distance between the parents’ homes;
- ▲ The demands of parental employment;
- ▲ The age and number of children;
- ▲ The sincerity of each parent’s request;
- ▲ The parent’s ability to financially support a joint custody arrangement;
- ▲ The impact on Temporary Assistance for Needy Families; Program on Work, Employment, and Responsibilities; and medical assistance; and
- ▲ The benefit to the parents.

For more information, you can go to www.lawhelp.org/dc or listen to recorded messages about custody by calling the D.C. Bar Legal Information HelpLine at 202-626-3499.

There is a **free Pro-Se-Plus Custody Clinic** each month at D.C. Superior Court where people without lawyers can learn about the custody laws and process, and get help with questions and paperwork. To register, go to www.dcbar.org/custodyclinic, or call the D.C. Bar Pro Bono Program at 202-737-4700 ext. 424 for more information.

The D.C. Bar Pro Bono Program provides general information only. This is not legal advice. You can only obtain legal advice from a lawyer. If you need legal advice for a specific situation, contact an attorney. We make every effort to keep the legal education materials up-to-date, but laws change frequently. Therefore the D.C. Bar Pro Bono Program does not guarantee the accuracy of this information.