

# Rights and Responsibilities of Parents After Paternity is Established by Court Order

## What is custody?

There are 2 parts to custody

1. Legal Custody
2. Physical Custody

## Legal Custody

**Legal custody** could be called “decision making custody.” This custody involves the right of a parent to make major decisions about the child’s life, such as

- where home is
- schooling
- religion and
- major medical care.

The court can give legal custody to one parent or to both parents together. This is called **joint legal custody**. Joint legal custody means both parents have equal rights in making major decisions. The court prefers that parents have joint legal custody, unless there has been domestic abuse.

**Sole legal custody** means one parent makes these decisions.

Whether legal custody is sole or joint, both parents have the right to be informed about the child’s schooling, medical care and other major decisions. Both parents can attend school conferences, attend medical appointments, have reasonable telephone contact with the child, etc.

## Physical Custody

The parent that the child lives with has **physical custody**. Joint physical custody means that the child lives part of the time with each parent and both parents schedule where the child lives. It does not necessarily mean that part time is 50% with each parent.

**If the parties do not agree about custody and the court must decide, it looks at 13 factors to decide what is in the best interest of the child.**

1. What each parent wants for custody.
2. What the child wants, if the child is considered old enough to have a say.
3. Which parent has been the primary caretaker.
4. The intimacy of the relationship between each parent and the child.
5. The relationships between the child and parents, brothers and sisters, and other people who play a part in the child's life (such as grandparents, parent's new partner, etc.)
6. The child's adjustment to home, school and community.
7. The length of time the child has lived in a good, stable, environment and how important it is to keep things the way they are.
8. The permanence as a family unit of the proposed custodial home.
9. The mental and physical health of everyone involved.
10. The ability and willingness of the parties to give the child love, affection and guidance, and to continue to educate and raise the child in his/her culture or religion.
11. The child's cultural background.
12. Whether there is or has been domestic abuse by one parent against the other and the impact of the actions of the abuser on the child.
13. Unless there is or was domestic abuse, the willingness of each parent to encourage and allow continuing contact by the other parent with the child.

## Can custody be changed after the court has made its order?

Yes, custody can be changed. But, once the court makes its first decision about custody, that decision controls what happens and is very hard to change later. The court can only look at facts that have changed since the prior order. The court may change custody

- if both parents agree to the change or
- if the custodial parent has let the child become part of the other parent's home or
- there has been a big change of circumstances and the child's present custody harms or endangers the child or
- if the parent with custody has denied or interfered with parenting time (parenting time problems are usually not enough to change custody).

