

Maryland Legal Aid : Who We Are

Maryland Legal Aid is a private, non-profit law firm that provides free, high-quality civil legal services to Maryland's most vulnerable residents and communities and is dedicated to protecting and advancing human rights for all.

Who should read this brochure?

When a couple separates, one of the most difficult questions is, "Who gets custody of the children?" It is often best if parents work out a custody arrangement themselves, however, that is not always possible. This brochure provides a brief overview of the different types of child custody and the factors a judge will consider when deciding child custody between parents.

This brochure provides general information, not specific legal advice. Every effort is made to keep this brochure up to date. However, the law sometimes changes. If you have specific legal questions or a pending legal case, you are strongly encouraged to contact an attorney for legal advice. You may be eligible for free legal services from Maryland Legal Aid or a volunteer attorney program.

Types of Child Custody

Legal Custody. Legal custody is the right and obligation to make long-range decisions about important issues for your child. That means decisions about education, religious training, discipline, medical care, and other significant matters. Legal custody is not related to where a child lives. You can have legal custody even if your child is living with someone else.

Sole Legal Custody. If you have sole legal custody, you have the authority to make these long-range decisions without having to ask the other parent.

Joint Legal Custody. If you and the other parent have joint legal custody, you share an equal voice in making these long-range decisions. For joint legal custody to work, parents must be able to get along and set aside their differences for the sake of the child.

Sometimes parents communicate well enough to have joint legal custody, but they may be unable to agree from time to time. One parent may be given "tie-breaking" authority, which means that parent can make a final decision if good faith attempts at joint decision-making don't work.



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For more information visit www.mdlab.org.

The Basics of
Child Custody
& Visitation

Maryland Family Law: The Basics of Child Custody & Visitation

Advancing Human Rights and Justice for All in Maryland since 1911



How will a judge decide custody?

Physical/Residential Custody. These two terms mean the same thing: the parent's right and obligation to provide a home for the child at given times, and to make day-to-day decisions when the child is actually with that parent.

Joint Physical or Residential Custody.

This means the child spends substantial time with each parent. Joint physical custody can mean "50/50," but it doesn't have to. For example, joint physical custody can mean your child spends three days per week with you and four days with the other parent. The term is also used when a child lives with one parent during the school year and the other parent during the summer.

Split Custody. The term "split custody" only applies to families with multiple children. With split custody, one parent has sole custody of at least one child, and the other parent has sole custody of the other children. Each parent has visitation rights. Some courts also call this "divided custody."

Shared Custody. Shared custody has a very narrow meaning that has to do with child support. Maryland's child support guidelines are different for parents who have "sole" custody and parents who have

"shared" custody. When looking at child support only, shared custody means that each parent keeps his or her child overnight for more than 35 percent of the year, and that both parents contribute to the expenses of the child, as well as paying child support.

Visitation/Access

When a child lives the majority of time with one parent and spends scheduled time with the other, it is usually called "visitation." Sometimes it is called "access" or "parenting time," instead of visitation. Some judges use the words "physical custody" when referring to visitation. For example, "the father has physical custody and that is where the child makes her home, and the mother has physical custody on alternate weekends."

A judge will order "supervised visitation" if it is in the child's best interest. The judge's order will specify what type of supervision is needed. It may be that the parent can only visit with the child at a relative's home. In more serious cases, it may mean that visits can only take place at a "supervised visitation center," or in the presence of the child's therapist. Supervised visitation is not the norm, and the court will order it only when there is a very good reason.

If parents cannot reach a custody agreement, one parent will need to file a custody case in court. This may be done as part of a divorce proceeding. After the case is filed, the judge usually refers the parents to mediation to try to resolve the dispute. If no agreement is reached, a court hearing will be held before a judge. The most important thing a judge looks at when deciding custody is what is in the best interest of the child. Some of the other factors that a judge considers are listed below.

- The fitness of the parents (ability to provide basic care)
- The character and reputation of the parents
- The desires of the parents and agreements between them
- The potential for maintaining relations with extended families
- The preference of the child
- The material opportunities affecting the future life of the child
- The age, health, and sex of the child
- Where the parents live and the opportunity for visitation
- The length of separation from a parent
- Whether the parent voluntarily left the child with the other parent

When deciding whether to grant joint custody, in addition to the factors above, a judge considers:

- The capacity of the parents to communicate and reach shared decisions
- The willingness of the parents to share custody
- The potential disruption of the child's social and school life
- The demands of the parents' work

Remember that custody and visitation decisions are never considered to be final. As situations change, parents may be able to return to court and request changes.

