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CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

Basics of Custody & Visitation Orders

This section helps you understand some legal words that are used in family court to describe the sharing of parenting responsibilities. For example, you will often hear the words “custody” and “visitation” being used in separation and divorce cases. “Child custody” refers to the rights and responsibilities between parents for taking care of their children. In your case, you will need to decide on custody. You also need to decide on “visitation,” which means how each parent will spend time with the children.

In California, either parent can have custody of the children, or the parents can share custody. The judge makes the final decision about custody and visitation but usually will approve the arrangement (the parenting plan) that both parents agree on. If the parents cannot agree, the judge will make a decision at a court hearing. The judge will usually not make a decision about custody and visitation until after the parents have met with a mediator from Family Court Services.

Types of custody orders

There are two kinds of child custody:

- Legal custody, which means who makes important decisions for your children (like health care, education, and welfare), and
- Physical custody, which means who your children live with.

Legal custody can be:

- Joint, where both parents share the right and responsibility to make the important decisions about the health, education, and welfare of the children.

OR

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- Sole, where only 1 parent has the right and responsibility to make the important decisions about the health, education, and welfare of the children.

Parents with legal custody make decisions or choices about their children’s:

- School or child care
- Religious activities or institutions
- Psychiatric, psychological, or other mental health counseling or therapy needs
- Doctor, dentist, orthodontist, or other health professional (except in emergency situations)
- Sports, summer camp, vacation, or extracurricular activities
- Travel
- Residence (where the children will live)

Parents who share legal custody both have the right to make decisions about these aspects of their children's lives, but they do not have to agree on every decision. Either parent can make a decision alone. But to avoid having problems and ending up back in court, both parents should communicate with each other and cooperate in making decisions together.

Physical custody can be:

- Joint, which means that the children live with both parents.
- Sole or primary, which means the children live with 1 parent most of the time and usually visit the other parent.

Joint physical custody does not mean that the children must spend exactly half the time with each parent. Usually the children spend a little more time with 1 parent than the other because it is too hard to split the time exactly in half. When 1 parent has the children more than half of the time, then that parent is sometimes called the "primary custodial parent."

Sometimes, a judge gives parents joint legal custody, but not joint physical custody. This means that both parents share the responsibility for making important decisions in the children's lives, but the children live with 1 parent most of the time. The parent who does not have physical custody usually has visitation with the children.

Types of visitation orders

Visitation (also called "time-share") is the plan for how the parents will share time with the children. A parent who has the children less than half of the time has visitation with the children. Visitation orders are varied, depending on the best interests of the children, the situation of the parents, and other factors. In general, visitation can be:

- **Visitation according to a schedule:** Generally, it helps the parents and children to have detailed visitation plans to prevent conflicts and confusion, so parents and courts often come up with a visitation schedule detailing the dates and times that the children will be with each parent. Visitation schedules can include holidays, special occasions (like birthdays, mother's day, father's day, and other important dates for the family), and vacations.
- **Reasonable visitation:** A reasonable visitation order does not necessarily have details as to when the children will be with each parent. Usually, these orders are open-ended and allow the parents to work it out between them. This type of visitation plan can work if parents get along very well and can be flexible and communicate well with one another. But if there are ever disagreements or misunderstandings, this kind of an open schedule can cause issues between the parents, and the children may suffer as a result.
- **Supervised visitation:** This is used when the children's safety and well-being require that visits with the other parent be supervised by you, another adult, or a professional agency. Click for [more information on supervised visitation](#). Supervised visitation is sometimes also used in cases where a child and a parent need time to become more familiar with each other, like if a parent has not seen the child in a long time and they need to slowly get to know each other again.
- **No visitation:** This option is used when visiting with the parent, even with supervision, would be physically or emotionally harmful to the children. In these cases, it is not in the best interest of the children for the parent to have any contact with the children.

The law on deciding custody and visitation

The law says that judges must give custody according to what is in the "best interest of the child."

To decide what is best for a child, the court will consider:

- The age of the child,
- The health of the child,

- The emotional ties between the parents and the child,
- The ability of the parents to care for the child,
- Any history of family violence or substance abuse, and
- The child's ties to school, home, and his or her community.

Courts do not automatically give custody to the mother or the father, no matter what the age or sex of your children. Courts cannot deny your right to custody or visitation just because you were never married to the other parent, or because you or the other parent has a physical disability or a different lifestyle, religious belief, or sexual orientation.

In addition to custody orders, the judge will probably also make child support orders. Keep in mind that a child support order is separate from child custody and visitation, so you cannot refuse to let the other parent see the children just because he or she is not making the child support payments that the court ordered. And you cannot refuse to pay child support just because the other parent is not letting you see your children. But child support and custody are related because the amount of time each parent spends with the children will affect the amount of child support. Click to read [more about child support](#).

Sometimes, if giving custody to either parent would harm the children, courts give custody to someone other than the parents because it is in the best interest of the children. Usually this is called "guardianship," where someone who is not the parent asks for custody of the children because the parents cannot care for them. Click for more [information on guardianship](#).

Ways to get a custody and visitation court order

In most cases, parents can make their own agreements for custody and visitation, without a court order. If you make an agreement between the 2 of you, the agreement becomes binding and enforceable. But if 1 of you does not follow the agreement, a court cannot enforce it until it becomes a court order. So if you and the other parent agree on custody and want a court order that either of you can enforce if 1 of you violates the agreement, you can turn in your agreement to a judge. The judge will probably approve the agreement, sign it, and it will become a court order. After the judge signs your agreement, file it with the court clerk. Click for more information on [writing up a custody and visitation agreement or parenting plan](#).

If you cannot agree, the judge will send you to mediation and a mediator from [Family Court Services](#) or another court-related program will help you. If you still cannot agree, you and the other parent will meet with the judge. Generally, the judge will then decide your custody and visitation schedule. Learn more about [mediation of custody cases](#).

In some cases, the judge may appoint a child custody evaluator to do a [custody evaluation](#) and recommend a parenting plan. A parent can also ask for an evaluation, but the request may not be granted. Parents may have to pay for an evaluation.

The judge also may appoint lawyers for children in custody cases. The judge will also decide who will pay for the children's lawyer's fees.

After a judge makes a custody or visitation order, 1 or both parents may want to change the order. Usually, the judge will approve a new custody and visitation order that both parents agree to. If the parents cannot agree on a change, 1 parent can ask the court for a change. That parent will probably have to complete certain forms to ask for a court hearing and prove to the judge that there is a significant change in circumstances (for example, the children would be harmed unless the order is changed) or other good reason to change the order. Both parents will most likely have to meet with a mediator to talk about why the court order needs to be changed.

To get an overview of the child custody and visitation process, read the *Child Custody Information Sheet (Form FL-314-INFO)*. This information sheet is also available in [Spanish](#), [Chinese](#), [Korean](#), and [Vietnamese](#).

Contested custody or visitation cases, where the parents cannot agree, are complicated. Talk with a lawyer to understand how the law affects you and your rights. Click for [help finding a lawyer](#).