



# Child Custody and Visitation Fact Sheet

## Introduction

This fact sheet is about custody and visitation issues when a divorce involves minor children. The custody section of your divorce decree says who will have responsibility for day to day decisions about your child.

## Divorce

Custody is only an issue when a divorcing couple has children together. The law assumes a divorcing couple are both the child's parents if the child was born during the marriage.

Paternity may be determined during the divorce if either of the following occur:

- a child was born prior to marriage and the husband or wife want to know who the father is
- either party says the husband is not the father

### If You Were Never Married

When a child is born to an unmarried woman, the mother of the child has legal custody of that child automatically. That means if the father desires visitation or custody with the child, he must petition for paternity, custody, or visitation before he has the rights of visitation or custody. In addition, if a child was born outside of marriage, paternity must be proven before the court will enter an order to obtain child support.

## Types of Custody

### Joint Custody

The parents may request or the judge may order joint custody, sometimes called "friendly parent provisions." Under joint custody orders, each party usually has equal rights to custody and care of the child.

The judge may order any of the following:

- the child shall live with one parent part of the time and the other parent part of the time
- the parents will share in making decisions on important issues dealing with the child

Joint custody is the preferred custody arrangement in Arkansas absent any additional circumstances. Joint custody works best where the mother and father can work together and agree on their child's upbringing. If you want joint custody, you should ask that the divorce decree requires both parties live in the same state. If you do not put this in the divorce decree, one party may move to another state with the child.

### Contested Custody

If you cannot agree who will have custody of the children, then custody becomes contested. This means you will have to prove to the court whether you or your spouse should have custody of your children. The judge decides who will get custody of the children and bases this decision on the "best interests of the child" standard. The court considers many factors when deciding the best interests of the child. The questions in the next section are some issues that the court uses to help determine what is in the best interests of the child.

Arkansas law considers both parents equally when deciding who will get custody. The judge cannot favor the mother for custody just because she is the mother.

## Best Interests of the Child

### Continued Contact

Who will most likely provide continued contact with the other parent?

### Care

The judge is more likely to grant custody or visitation if you show that you can (and will) provide love, affection, and guidance for your child.

### Domestic Abuse

Has there been any abuse against a family member (not only a spouse or in front of a child)?

### Character

Is the spouse requesting custody an honest person? Does the spouse have a caring attitude, stable work, and a good reputation? Does the spouse have a history of alcohol abuse, drug use, or a criminal record?



### **Environment**

The judge may order home studies performed on the residence of each party, which can be expensive. The court may order each party to pay half of the cost of the home study. The court may consider a live-in boyfriend or girlfriend as a negative factor and may order both parties to avoid overnight guests of the opposite sex if the child is in the home.

### **Economics**

The judge usually will want to know if you have money or other resources to provide for the child's food, clothing, shelter, medical care, and other basic needs. However, the judge should not compare your financial condition to your spouse's.

### **Child's Preference**

The judge may consider the child's wishes, but the judge does not have to follow the request. Some judges will allow an older child to state a preference (often alone with the judge and without the parents' presence).

### **Maintaining Children Together**

The judge will try to keep the children together with one parent instead of splitting them up. However, the judge may separate the children if it is in their best interests. The judge may allow the children visitation rights for one another.

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*The information and statements of law in this fact sheet should not be considered legal advice. This fact sheet is provided as a broad guide to help you understand how certain legal matters are handled in general. Courts may interpret the law differently. Before you take action, talk to an attorney and follow his or her advice. Always do what the court tells you to do.*

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