



## Custody + Visitation FAQ

**If there is no custody order, what are each parent's rights regarding custody of the kid(s)?**

Without a custody order, both parents have the same equal rights and responsibilities for the child. Either parent can interfere with the other parent's rights to have the child with them. Ideally, parents who are no longer together will agree on a custody arrangement without court involvement.

If the parents are no longer together, and there is a disagreement regarding the kid(s), it is important to bring the issue before the court as soon as possible to get resolution. The police cannot assist if there is no order to enforce.

**Does this answer change if the father's name is not on the birth certificate?**

No, a biological father still has parental rights regardless of whether he is named on the child's birth certificate. In addition, even if not named on the birth certificate, the law will *presume* that the person who was married to the child's mother when the child was conceived or born is the legal parent. The father may also establish parentage by signing a voluntary Declaration of Paternity, by court order, by agreement of the parents, or by blood test proving he is the biological father.

**How does a parent get a custody order?**

When the child has two legal parents, one parent can file a case to establish custody and support. If a case is already open between the parents, such a divorce case, a child support case, or domestic violence restraining order case, then the parent who wants a custody order can file a request for a custody order in that case.

**How does a court determine which parent gets custody?**

During the court process, California law requires that parents participate in a mediation to try to work out a custody agreement. The judge appoints a custody mediator, who is a court employee, and does not charge a fee to the parents. In all counties in California, parents must participate in mediation before there is a custody hearing with a judge. If the parents do not reach an agreement in mediation, the judge decides the custody arrangement.

If this will be the first custody order for the parents, the judge determines custody based on the "best interests of the child," while trying to ensure that the child has

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continuing contact with both parents. Parents should be prepared to explain to the judge why their custody plan is in the best interests of the child. The judge will consider many factors. The parent should be able to provide details regarding the child's age, special needs, school schedule, extracurricular activities, and religious activities; the parent's emotional tie to the child, ability to care for the child, ability to facilitate contact with the other parent; and any history of domestic violence.

## **How is visitation determined?**

Generally, a noncustodial parent has the right to "reasonable visitation" unless it is shown that visitation with the noncustodial parent would be detrimental to the best interests of the child. Among other things, courts have found that child abuse and domestic violence are "detrimental." Courts have broad discretion in defining a parent's right to "reasonable visitation" and establishing a visitation schedule, the main guideline being the child's best interests. In addition to prioritizing the child's health, safety, and welfare, courts will consider such practical factors as the child's age, maturity, special needs, the parent's physical proximity to the child's primary residence, and if appropriate, the child's own preference.

## **How does a parent modify a custody or visitation order?**

If the court has made a "temporary" custody order, the judge may modify the order if a parent can show that the requested change is "necessary or proper" and in the child's best interests. If the court has made a "final" custody order, the parent who wants to modify the order must show that there has been a "significant change of circumstances." The parent will need to show that, because of the changed circumstance, the child could be harmed if the order is not modified.

To request that a custody or visitation order be changed, the parent seeking modification must file a Request for Order in the county where the original order was made. The court clerk will provide a hearing date. The Request for Order must be served on the other parent prior to that hearing date.

## **If a parent has LEGAL custody, what do they have to consult with the other parent about?**

If a parent has *sole legal custody*, they may make all the major decisions but must still keep the other parent fully informed before making any changes to where the child lives, what school they attend, and what medical care they receive. A parent with sole legal custody may not withhold medical or school records from the other parent and may not move away without the consent of the other parent or a court order allowing them to do so.

Even if one parent has an exclusive custody order, the other parent's parental rights are not terminated. The noncustodial parent still has the right to visitation,

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as ordered by the court, and the right to seek and obtain a custody modification based on a proper showing of changed circumstances.

If the parents have *joint legal custody*, they share decision-making responsibilities, even if one parent has sole physical custody. This means that both parents have rights to decide where the child will live, which school the child will attend, what medical care the child can receive, etc. It is important that the parties work together to make life decisions for the child. Note, however, that *joint legal custody* does not require that the parents agree on all decisions on a daily basis. Unless a court has issued an order requiring mutual consent for specific decisions, either parent acting alone can exercise legal control of the child.

**What happens if one parent does not consult with the other parent?**

If a parent is not being consulted when they have the right to be involved in the decision-making process, that parent may ask the court to help. The parent may ask the judge to make the decision for the parties, to clarify which parent makes the decision, or to change who has custody of the child.

**What happens if a parent violates a custody or visitation agreement or order?**

For minor violations of the custody order (for example, consistently not showing up on time or canceling visits) the court can make orders to force the parent to comply, up to and including changing custody. The parent who wants the order enforced can return to court to ask for a change in custody. For major violations of the custody order, such as kidnapping, the party can be held criminally liable for their actions. If a parent has kidnapped a child, the other parent should contact the District Attorney.

**What can a domestic violence survivor with shared custody do to allow her to leave without being accused of kidnapping her child?**

If a parent is considering fleeing a home with the child in order to escape domestic violence and does not want the other parent to know where they are, it is important to file a "good cause" report with the local District Attorney. Upon the filing of this report, the DA will not attempt to arrest or prosecute the fleeing parent for kidnapping. The DA will also keep the location of the fleeing parent confidential from the abusive parent. The fleeing party then has 30 days in which to file a motion with the local court to establish custody and visitation.

**Does custody impact which parent(s) can claim a child on their tax return?**

If the parents are divorced or separated, the custodial parent can claim the child as a dependent on their tax return. The other parent may not claim the child as dependent unless the custodial parent signs an IRS form release. If the parties do not agree, the court may determine who gets to claim a child as a dependent each year.

## In custody and visitation disputes, when do you need a lawyer's help?

Each court in California has a Family Law Facilitator or Self-Help Center to help parents fill out the paperwork required for custody and visitation. The Facilitator or Self-Help Center does not represent anyone or provide legal advice, but they will assist you to file your case and to request any necessary hearings.

A parent should seek legal advice or representation if the child's best interests are not being met in the absence of counsel. Obtaining a lawyer is advised if there is a lack of communication between the parents affecting the physical health, safety, and happiness of the child, particularly when domestic violence, child abuse, child neglect, or drug and alcohol abuse are present.

## Definition of Terms

### **Custodial parent:**

This term generally refers to the parent who has the physical custody of the child for the majority of the time. The other parent is the non-custodial parent.

### **Custody agreement:**

An arrangement between parents about who will care for and supervise the kid(s). Parents have the right to come up with any agreement they see fit. This agreement can be made outside of court or at court-ordered mediation. It will only become an order if a judge signs it.

### **Custody order:**

A custodial arrangement ordered by the court that can take the following forms: (a) sole custody, (b) joint custody, (c) "divided" or "split" custody (different custody arrangements for different children or periods of time), or (d) nonparent custody.

### **Dependency case:**

Case opened in dependency court based on a social worker's investigation and suspicion of abuse or neglect in the home where the kid(s) live. The kid(s) may have been removed from the home. In dependency cases, the state opens the case against the parent(s).

### **Exclusive custody:**

When one parent has sole legal and physical custody rights.

### **Legal custody:**

This refers to a parent's right and responsibility to make decisions relating to the child's health, education, and welfare. A parent could have sole or joint legal custody. *Sole legal custody* gives one parent this exclusive right and responsibility, while *joint legal custody* grants both parents a shared right and responsibility to make decisions regarding the child's health, education, and welfare.

### **Parentage case:**

A case filed to establish that the parties are the legal parents of the children.

### **Physical custody:**

Physical custody refers to a parent(s) who supervises the child and with whom the child resides. A parent can have sole or joint physical custody. *Sole physical custody* grants one parent exclusive physical rights, while *joint physical custody* awards each parent with "significant periods" of physical custody that must be shared in a way that gives the child "frequent and continuing contact with both parents."