



Legal Assistance Office
Office of the Staff Judge Advocate

Lewis Main Post
Building 2027
Liggett Avenue and North 8th Street
253-477-1875

McChord Airfield
Suite 1096
100 Col Joe Jackson Blvd
253-982-5513

Child Custody in Washington State

1. What is child custody?

Child custody is the legally recognized power to have possession of a child and to make decisions on behalf of the child. Legal custody goes beyond mere physical possession of a child. Legal custody of a child is generally awarded by a court.

2. What does a judge consider when making a custody determination?

The judge considers what is in the child's best interest. Both parties generally submit a proposed parenting plan for the court to review. The court may appoint a guardian ad litem to act as the child's representative in the proceeding. The court will consider the relative strength, nature, and stability of the child's relationship with both parents; the agreements, if any, of the parents; the parents past and future performance as parents; the child's emotional needs and developmental level; the child's relationship with siblings and significant adults; the child's physical surroundings; the parent's and child's wishes; and parents employment schedules.

3. What is jurisdiction and why is it important?

For a court to take action the court must have power over the people involved in the dispute. If the court does not have jurisdiction it cannot act. Jurisdiction is a complicated issue and cannot be adequately addressed in an informational paper. A good rule of thumb is that if your children have been in Washington State for at least six months and there are no other court orders from other states regarding the children, the court has jurisdiction. Please schedule an appointment with a legal assistance attorney if you have questions about jurisdiction.

4. What if I am not on the birth certificate?

If you are not on the birth certificate, were not married to the mother immediately before, during, or soon after pregnancy, have not signed a state recognized affidavit of paternity, or have not had a court determine that you are the parent of the child then you



are not the legal parent of the child. Before attempting to gain any custody you must be legally established as the parent. Please see our informational paper on paternity.

5. What is a custodian?

The person with whom the child will live with most of the time is often called the custodian or physical custodian.

6. What is a visiting parent?

The visiting parent is the person with whom the child does not live with most of the time. Generally, this parent has defined visitation dates.

7. How do I get custody of my child?

That depends on several factors. Factors include whether or not you are the legal parent of the child, whether there are existing court orders regarding custody, the location of the child and other parent, and other considerations. You should schedule an appointment with a legal assistance attorney to get more information on seeking custody.

8. Can I get joint custody?

Probably not. Courts in Washington do not award "joint" custody, and they rarely approve a final Parenting Plan that provides for a 50/50 residential schedule.

9. I am a single Soldier, can I get custody?

The court determines whether living with a specific parent is in the child's best interest. It is impossible to gauge without knowing all the details, but in our experience it is difficult for single soldiers to get custody of a child over the objection of the non-military parent. Please schedule an appointment with a legal assistance attorney if you have questions about gaining primary custody.

10. How do I terminate my spouse's parental rights?

This is very difficult to do and usually requires abuse, sexual misconduct, series neglect rising to the level of putting the child's physical wellbeing at risk. A legal assistance attorney can give you an idea of how realistic your chances are.

11. What is a parenting plan?

A parenting plan is a court order which sets out: Which parent the child will live with (custody); the amount of time the child will spend with each parent; which parent will



make major decisions about the child; and how you and the other parent will address disagreements.

12. What is a residential schedule?

A residential schedule is functionally equivalent to a parenting plan, but does not include decision making powers or dispute resolution provisions.

13. How much does it cost to file a parenting plan or residential schedule?

The filing fee is \$200-\$250 depending on which county the case is filed in. No additional filing fee is required for a parenting plan/residential schedule if it is filed with divorce or separation paperwork and the associated fee.

14. What happens if I deploy?

Normally, the law says a parent has grounds to modify a parenting plan if s/he can prove the other parent has "voluntarily failed to exercise residential time for an extended period." Before 2009, this meant that if you were deployed, the other parent had grounds to file a modification action against you and say that your deployment was keeping you from exercising your time with the child. The law now says that a court cannot hold against you in a parenting plan modification case any time periods that you were deployed.

15. I am deploying soon, what can I do?

In a dissolution or parenting plan modification case, you have the right to an expedited or specially scheduled hearing if your deployment is going to otherwise affect your ability to show up for court. You also have the right to testify and submit evidence in your modification case by phone, video conference, or internet if your deployment otherwise affects your ability to show up in person for court. To request an expedited or remote hearing, you will file the Motion for Expedited Hearing found on the Washington State Courts website. If you are deployed, you can delegate your residential time with your child to a family member of your choice for the duration of your absence so long as it is in the child's best interests.

16. What happens if the custodian moves or wants to move?

All parenting plans entered by a court on or after June 8, 2000 must state what will happen if you or the other parent wants to move (relocate) with the child. The parent who wants to move the child must give the other parent written notice before a move. The notice gives the other parent a chance to object to the move and to ask the court to change the existing Parenting Plan.



17. How do I modify the current custody arrangement?

It is hard to change a Parenting Plan after it is final. Usually, the court will change it if you and the other parent agree to the change. If you do not agree, the court may make major changes, such as which parent the child lives with, only if a major change has taken place in the child's life or the other parent's life since the original Parenting Plan was final. It is not enough that the parent wanting the change thinks that his/her life has gotten better and so the children should now live with him/her.

18. How do I enforce a parenting plan?

Once the court signs a Parenting Plan, it becomes a binding court order. Both parents must follow it. If the other parent does not allow you to see the child when you have the right to do so, the other parent may be found in contempt of court. If a parent is found in contempt, the court could order make-up visitation time, jail time, fines, or some other type of punishment. If the court finds you in contempt more than once in a three-year period, the court can use that as a reason to change custody of the child.

19. What can I do to help my legal assistance attorney?

You can help your legal assistance attorney by bringing all court documents related to your case to the appointment. This includes child support documents, divorce decrees, custody orders, etc.

20. What can a legal assistance attorney do to help me?

Legal assistance attorneys can assist you in understanding the law, give you their best guess as to what might happen at court, assist you in understanding the forms needed to file, and assist you in filling out the forms. It is important to note what the legal assistance attorney cannot do. A legal assistance attorney cannot mediate your custody dispute. A legal assistance attorney cannot appear in court on your behalf. A legal assistance attorney can inform you when it would be best to hire a private divorce attorney to adequately handle your case.