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Child Custody and Visitation in New York

What is child custody and visitation?

- Custody is the authority to make decisions about the child’s care, including education and medical care.
- There are two types of custody.
 - Sole custody means that one parent has the authority to make decisions about the child. The non-custodial parent may have the right to receive medical or education information, but he/she does not make the decisions.
 - Joint custody means that two parents (and sometimes other caregivers) share the authority to make decisions about the child. With joint custody, the parents must communicate well enough to keep each other informed of the child’s needs and to make decisions together.
- Decision-making authority is separate from where the child lives or visitation.
- Courts in New York use different phrases like “physical custody” or “primary placement” to describe where the child lives primarily. Courts use phrases like “visitation” or “secondary placement” to describe the parenting time for the other parent.
- The court can set a visitation schedule that suits the child and the parents’ schedules. Or the court can keep visitation as agreed between the parents.

Who can get custody of a child in New York?

- The mother and legal father can ask for custody. A legal father is a man who has signed an Acknowledgement of Paternity or received an Order of Filiation from the court or is listed as father on the child’s birth certificate. Each of these documents states that the man is the legal father of the child. See the article Paternity in New York.
- Neither parent has a greater right to custody. If there is no custody order, either parent can keep the child.
- Relatives and friends of the child can ask the court for custody. First, they must prove that there are “extraordinary circumstances” that would give them the right to ask for custody in preference to either parent. If they can show extraordinary circumstances, then they must prove that it is in the best interest of the child to have custody.

Who can get visitation in New York?

- Either parent, siblings and half-siblings, and grandparents can ask for visitation. The court will determine whether visitation is in the child's best interest. A parent is entitled to frequent and meaningful visitation, unless it is shown that it would be harmful to the child.

How do I ask the court for custody or visitation of my child?

- Anyone can file a custody or visitation petition in Family Court. The parent must name the other parent on the petition and explain the reasons why he/she should have custody. Either parent in a custody or visitation petition has the right to an attorney. If a parent or custodian cannot afford an attorney, Family Court will assign one to him/her.
- A parent can request custody or visitation when he/she starts a divorce in Supreme Court. While a divorce case is open or pending, pending or new petitions in Family Court will be transferred to the divorce case in Supreme Court.
- An Attorney for the Child will be assigned to represent the child. He/she tells the court what the child wants. The Attorney for the Child will meet with the child and perhaps the parents.
- At one or more court appearances, the parents will have the opportunity to reach an custody and visitation agreement. The court can issue temporary and final orders.
- If there is no agreement, the court will have a trial.
- If a parent or custodian does not appear in court, the court may issue a warrant for his/her arrest or the court may issue a default order.

How does a court decide who gets custody of a child?

- First, the court decides if it has jurisdiction to hear the case. A court has jurisdiction if:
 - the child is less than six months old and lived in New York his/her entire life,
 - the child has lived in New York for the past six months,
 - New York issued the last custody order for that child, or
 - the child is in New York after an emergency occurred in his/her home state.
- If a parent requests custody, the court decides what custody arrangement is in the child's best interest. The court will consider each parent's lifestyle, stability, and ability to care for the child. For example, the court will consider whether a parent uses drugs, whether a parent has a clean and stable home, and how much time each parent spends with the child. The court will also consider whether there is domestic violence.
- The child can state his/her preference through the Attorney for the Child. Older children have greater weight given to their preference, but until the child is 18, the court makes the final decision regarding where the child lives.

Can custody or visitation of my child be changed?

- Either parent can file a petition to change custody or visitation. That parent must prove that there is a significant change of circumstances since the last order and that a change to custody is in the child's best interest.
- Either parent has the right to an attorney in this type of case. If a parent or custodian cannot afford an attorney, one will be assigned.

Can a parent move away with the child?

- If the parent with physical custody or primary placement wants to move with the child so far away that the other parent's visitation will be affected, the parent must obtain permission from the other parent or the court before moving.
- A parent can request permission to relocate with the child by filing a custody modification petition in Family Court.

What happens if the other parent does not follow the custody and visitation order?

- If you have a custody and visitation order and the other parent refuses to return the child to you, you may contact the police for assistance in returning the child or in serious circumstances for the other parent's arrest. Also, you may file a violation petition in Family Court. Parents and custodians can have attorneys assigned to represent them regarding violation petitions.
- If the other parent refuses to visit the child, the court cannot force him/her to visit. Instead, that parent's visitation might be limited and will not be increased until he/she visits the child consistently.

Can a parent stop visitation if the other parent does not pay child support?

- The custodian or parent cannot stop visitation if the other parent does not pay child support. Instead, he/she can file a child support violation petition to require payment. See the article Child Support in New York.

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

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