

FACT SHEET



Families and Child Custody Options

In Family Court, custody is a legal term that describes the legal rights and responsibilities of each parent or guardian toward their child(ren) when they are no longer living together as a family unit. To obtain a custody order, the parent or guardian files a complaint in the Superior Court, Family Part in the county where the child resides.

Both parents have the right to participate in raising their child(ren). In fact, the New Jersey Legislature determined that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing. The law requires the judge to assure that the child has ongoing contact with both parents, unless that contact is harmful.

There are different kinds of custody or *parenting time* arrangements that parents can agree to, or which can be ordered by the judge. In *sole custody*, the child lives with one parent, who has the right to make decisions for the child, and spends time with the other parent. In *joint custody*, the parents share physical custody and decision-making. The child alternates living in one parent's home and then the other parent's home.

Another arrangement would be *joint legal custody, with one parent having primary residential custody*. The child lives with one parent, but both parents have the right to be involved in making decisions about the child's education, health, and general well being.

Courts have *mediation programs*, which can help parents reach an agreement about custody in a friendly manner. If parents cannot agree to a parenting plan or custody agreement for their child, a judge must make the decision. If the judge makes the decision regarding custody, there are certain factors that he or she must consider. Parents' rights to custody are equal - the judge should not give preference to the mother just because she is the mother, or to the parent who makes the most money.

Giving Every Child A Chance

The judge can approve any custody/parenting agreement that the parties agree to unless that agreement is not in the child's best interests. If the parties cannot reach an agreement, the judge must apply to the following factors to the facts of the case to *determine what arrangement is in the child's best interests*:

- The parents' ability to agree, communicate and cooperate in matters relating to their child
- Fitness of each parent
- Each parents' willingness to accept custody and any history of unwillingness to allowed parenting time not based on substantiated abuse
- The interaction and relationship of the child with his/her parents and siblings
- Any the history of domestic violence
- The safety of the child and the safety of either parent from physical abuse by the other parent
- The extent and quality of the time spent with the child prior to or subsequent to separation
- The age and number of children; their needs
- The stability of the home environment offered
- The quality and continuity of the child's education
- The child's preference when of sufficient age and capacity to reason so as to form an intelligent decision
- The geographical proximity of the parents' home
- The stability of the home environment
- Each parent's employment responsibilities

When making a decision as to custody, the judge may appoint an attorney to represent the child or children, called *Counsel for the Child*, under the New Jersey Rules of Court. The judge may also appoint a *guardian ad litem* for the child or children involved. The *guardian ad litem* or GAL is an independent fact-finder for the judge.

Changing Custody Orders

Once the judge approves an agreement that the parties made, thus making the agreement part of a court order, or the judge orders a parenting arrangement for a child, the court's order is difficult to change. Anyone who wants the judge to reconsider a court-ordered parenting time arrangement must prove that circumstances of the child and parents, which existed when the order was signed by the judge, have changed and that a new custody/parenting plan is needed. This is to make sure that the child's living arrangement is stable and consistent.

Finding a Lawyer

Although a parent does not need a lawyer to file a custody complaint, it is always helpful to consult with a lawyer regarding one's rights and obligations. Every county bar association has a Lawyer Referral Program. The telephone numbers and other contact information for each program are on the website for the New Jersey State Bar Association located at www.njsba.com.

For more fact sheets and guides on this and other topics related to children, visit www.acnj.org

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