

Child Custody, Visitation and Support



Custody

Types of Custody

Joint Legal Custody

- Both parties should consult each other about major decisions for the children.
- This includes, but is not limited to: where the children go to school; where they go to church; who their doctors are; if they should be allowed to get piercings, tattoos, etc.; consent to marriage; whether braces are a good idea; whether therapy should be sought; and whether the child should receive certain medications.
- Both parents have equal access to medical and school records.
- Joint Legal Custody is the preferred method of custody in Kansas. It has nothing to do with who the children live with or the amount of time each party spends with the children.

Sole Legal Custody

- The residential parent does not have to consult with the other parent about major decisions for the children.
- Both parents have equal access to medical and school records.
- It does not give the residential parent the right to move the children without notice to the other parent. The parent still must follow the law and give 30 day notice before moving.
- This does not prevent or limit the other party's parenting time with the children.
- The Judge must make the finding that there are facts to support the awarding of sole legal custody.

Full Custody - There is no such thing as "full custody" in Kansas.

Divided Custody - This means that one child lives with one parent and another child with the other. Each party has visitation with the child in the custody of the other. It is used in rare cases.

Non-parental Custody - This can be granted in the short term if the court believes the parents are unfit or that the child is in need of care and an action will be filed pursuant to the Kansas Code for the Care of Children. Grandparent placement is non-parental custody.

[INSTRUCTIONS FOR ESTABLISHING, ENFORCING AND MODIFYING PARENTING TIME](#) for self-represented litigants (doing it yourself)

<https://youtu.be/oyT4ZWrVYQ0>

Last updated on September 15, 2022.

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Factors a Judge Looks for When Deciding Custody

- When deciding placement or custody of the minor children, the Court mainly looks at the children's best interest, not the parent's wishes.
- The Court studies several factors and considers the child's best interests to be whatever promotes the children's physical and mental health and safety.

- The Kansas statute lists the following factors, among others: the child's adjustment to home, school and community; the wishes of the parents and the child; which parent will most cooperate in helping the child keep a bond with the other parent; and evidence of spousal abuse.
- Neither the mother nor the father is preferred because of sex.
- Each case is reviewed on its own facts according to child's best interests.
- If the child is a teenager, the judge may be willing to consider the child's wishes as to residence and the child's reasons. There is no specific age when a child gets to decide where they live, but normally, the older the child, the more weight that child's desires are given by the court.

Can the parties agree as to the custody plan for their child?

- Yes, the parties may agree on the type of custody that best fits their circumstances. They may then present their agreement to the judge for approval.
- Kansas law provides a presumption that a written agreement between the parties about custody or residency of their minor child is in the child's best interest.

After a Court determines which parent should have the primary residence of a child, can the court ever change that?

- Yes. The Court keeps the power to change the primary residence of a child until the child reaches the age of 18 or graduates from high school, whichever occurs first.
- Generally, if the parties stay in the same state, a motion to change primary custody must be filed in the same court where the divorce or paternity was determined.

What reasons would a court need to change the child's primary residence?

- The law usually requires *a material change of circumstances* before a judge will change a custody order.
- Usually the change of circumstances will be something in the residential parent's home that has an adverse impact on the child. This can be changes

such as physical abuse, use of illegal drugs, alcohol abuse or neglect.

Visitation

What is visitation?

- Visitation is the right of the non-residential parent, the parent who does not have residential custody, to spend time and have access to their child.
- The court will sometimes order 'reasonable' visitation. This entitles a parent to see the child at sensible times under reasonable conditions, after ample notice. The court then allows the details to be worked out amongst the parents.
- Alternatively, the court may order specific visitation with specific times or places for access to the child.

What happens if the parties cannot work out a schedule or do not follow a schedule ordered by the Court?

- If a case outlining the visitation rights is still pending, then you will need to ask for a temporary order for visitation. If there is a final order on file outlining visitation, then it is a matter of either filing a motion for specific visitation or filing a motion to enforce the current ordered visitation.
- The Court may find a party in contempt of court for refusing to comply or can change the existing order.

Mediation

- Where visitation is an issue, the court can order the parties into mediation or other alternative dispute resolution methods.
- Judges are happiest when the parties work out their issues themselves. In order to promote this, the Court may turn to different forms of dispute resolution, known as ADR, such as:
 - Mediation – The parties sit down with a neutral third party who tries to help them reach an agreement about parenting time and custody of the minor children.
 - It is non-binding and anything that occurs or is said in mediation is confidential.

- Limited Case Management - Process where the parties meet with a trained third party who, upon interviewing the parties, looking at evidence, and interviewing witnesses, makes recommendations to the Court on who the children should live with and the other parties' parenting time based on statutory factors.

Can a judge ever prohibit access by a parent?

- A judge may restrict, or even prohibit, access if there is evidence that visitation would be very harmful to the child, as in instances of child abuse.
- Sometimes a Court will order that any visitation be supervised by a third party, such as a social worker, relative or court officer.
- Supervised visitation is sometimes held at locations such as TFI, where parents enter through different doors and visits are watched by experts. These services usually come with a fee, which is often split between the two parents.
- A parent who is banned from seeing a child may, at a later time, petition the Court for visitation if conditions improve.

Courts often give parents the following guidelines about visitation:

- The residential parent should have the child ready at the mutually agreed time.
- The residential parent should encourage and make the child feel good about going to visit the other parent.
- The nonresidential parent should pick up and return the child on time unless there is an emergency or the parent has called ahead.
- The nonresidential parent should tell the other parent as soon as possible if unable to keep visitation.
- The nonresidential parent should make the time spent with the child as pleasant as possible by not questioning the child about the former spouse's activities, or making promises that cannot be kept, not discussing the faults of the other parent, or by making excessive gifts.
- Parents should not argue with each other in front of the child.
- The nonresidential parent should not visit the child after drinking or taking illegal drugs.
- The parent should not visit the child at unreasonable hours or take them to unsafe places.

Can a judge order visitation rights for anyone other than a parent?

- Kansas statutes say that following a divorce, grandparents and step-parents may be granted visitation rights if it is in the best interest of the child.
- In addition, Kansas law allows grandparents to petition for visitation if they have established a substantial relationship with the child or if their child has died and their grandchild has been adopted by a step-parent. The judge has the discretion to make a visitation order.
 - For more information, see [Grandparent Rights](#).
- However, natural grandparents do not have a right to visitation when their grandchildren are adopted by third parties, or when the grandparents' child has had his or her parental rights severed.

Child Support

What is Child Support?

Child support is payment from one parent to the other parent for support of the minor children.

- Child Support may be ordered whether the parties exercise shared residential custody or primary residential custody.
- It is calculated through a formula created by the Kansas Supreme Court.
 - It is based on the income of the parties, the number of children of the parties, other children that the paying party may be financially responsible for, daycare expenses, and health care expenses.
 - The tables are located at www.kscourts.org. There is a child support calculator at www.kansaslegalservices.org.

More Information on Child Support

- Visit [F.A.Q. About Child Support](#)

Additional Resources

[Click here](#) to go to a page on the Kansas Bar Association website that provides comprehensive information on many questions about custody, support and visitation when the parents separate.

It also explains how to get an order modified so the custody, support or visitation orders can be changed.

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- Very helpful

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