

Answering your questions about custody and placement

When your marriage ends, your role as a parent does not – and neither does your former spouse’s. Both of you love your children and want what’s best for them.

Now that you’re divorcing, you must devise child custody and placement arrangements. How well the two of you handle these arrangements will have an enormous impact on how well your children cope during and after your divorce.

The basic assumption behind child custody and placement laws is that children are healthiest and happiest when they have good relationships with both parents. When parents divorce, the law requires the court to make provisions for parental decision-making. The court also must set periods of physical placement with each parent.

Legal processes and terminology come into play throughout the process of creating a custody and placement agreement. This pamphlet answers common questions you may have.

What is legal custody?

This is the legal right to make *major decisions* about your children. Major decisions cover such matters as elective health care, choice of school, and choice of religion. Others include parental consent to marry, obtain a driver’s license, or join the military. Additional matters also could be major decisions, if the court so determines. Legal custody can be *joint* or *sole*, and it’s different from *physical placement* (see below).

How do joint legal custody and sole legal custody differ?

Joint legal custody means both parents have *equal* rights to make major decisions about their children. *Sole legal custody* means only one parent has the right to make such decisions. The court also may order that one parent or the other has the sole right to make certain types of major decisions, such as health care.

What happens if we have joint legal custody and can’t agree on a major decision?

Neither parent has the superior right to make a major decision. Family courts encourage parents to make these decisions together. Otherwise you each could make decisions that contradict the other.

For example, one of you could send your children to one school, and the other could select a different school. The children would attend different schools on different days. This clearly would be chaotic and stressful for your children.

It’s best for children if their parents try to resolve disagreements about major decisions. One good way to work out your differences is to discuss them with a mediator. A mediator can help you reach a decision that addresses both parents’ concerns. Most counties provide at least one mediator to help people through such situations. For more information, call your county’s family court commissioner or clerk of court.

If you’re unable to reach an agreement in mediation, you may file a *motion* to ask for a court ruling. Each parent presents his or her position to the court. The court also may appoint a *guardian ad litem*, an attorney who represents your children’s best interests. After hearing everyone’s position, the court chooses which parent gets to make the major decision.

People often prefer, however, not to have the court decide. Leaving it to the court means that neither parent has any control over the outcome. Plus, going to court is costly and time-consuming for both of you.

This pamphlet, which is based on Wisconsin law, is issued to inform and not to advise. No person should ever apply or interpret any law without the aid of a trained expert who knows the facts, because the facts may change the application of the law. 6/07



What is physical placement?

This is the time your children are with you or in your care. During *physical placement*, you have the right to make *routine daily decisions* about your children’s care.

Most court orders provide a *placement schedule* of the times the children are to be with each parent. The placement time with each parent might be about the same. Or the order might provide placement with one parent more of the time. Then the children would be with the other parent at reasonable times upon reasonable notice, as agreed upon by both parents.

Some court orders are detailed, stating the exact times when placement switches from one parent to the other. Specific fixed schedules often are helpful for parents who have significant difficulty in enforcing placement times.

Which decisions are considered routine daily decisions?

These include bedtime, study time, diet, extracurricular activities, social activities, discipline, and so on. The right to make routine daily decisions legally belongs to the parent during his or her placement time. But legal restrictions exist. Any routine daily decision must be consistent with major decisions made under the legal custody provisions. And it must not break any laws about safety.

Whatever the parents’ legal rights are, children do best when their parents agree to similar rules and routines in both households.

Also, while neither parent has legal control over what goes on in the other parent’s home, it’s helpful for everyone if you respect each other’s right to know about your children. Both parents need to know the children are safe and well cared for. And children benefit when their parents coordinate their upbringing.

What are my rights to information about my children?

All parents have a right to their children’s school, medical, and dental records. The only exception is if the court denies a parent any visitation or physical placement with the children.

How can I get information about my children without relying on the other parent to give it to me?

You may contact the school or health care provider directly to get school, medical, and dental records (including report cards, notices of parent/teacher conferences, health notices, prescription information, and so on). Wisconsin statute 767.41(7) requires schools and health care professionals to give you this information. You may want to provide a self-addressed, stamped envelope to make it easier for the school or clinic to send you copies of records. You also may need to pay a fee for copying records.

What happens if the other parent won't let me see our children?

First, check your court order. Does it state specific times the children are to be with you? If it does, you may want to remind the other parent of this order. Or you might give the other parent a copy of the order.

If the order states no specific placement times, you may want to ask the court to change the order. The court could add specific times and thus clarify your right to see your children (see more on this below).

If the other parent still won't let you have the children during your placement times, you may ask the court for help in enforcing the order. You would file a "petition to enforce physical placement orders" or an "order to show cause and affidavit for finding of contempt." Ask your county family court commissioner or clerk of court for more information. You also can obtain some forms online at www.wicourts.gov.

What is a "petition to enforce physical placement orders"?

This is a request to the court for help in enforcing a placement order. After you submit a properly filed petition, the court schedules a hearing. The court also may appoint an attorney (guardian ad litem) to investigate and represent the best interests of your children. At the hearing, you and the other parent (and the guardian ad litem, if the court appointed one) present evidence to support your positions.

After hearing the evidence, the court might find that the other parent, without good reason, intentionally denied or interfered with your court-ordered time with your children. In that case, the court must give you additional placement to make up for the missed time. Also, the court must award you a reasonable amount of costs and attorney fees.

As the court deems necessary, it also may: (1) make a more specific placement schedule; (2) find the other parent in contempt; or (3) issue an injunction ordering the other parent to follow the placement schedule or be subject to fines or imprisonment.

What is an "order to show cause for finding of contempt"?

This is another type of request for the court's help in enforcing an order. After you submit a properly filed request, the court schedules a hearing. You and the other parent present evidence to support your positions. If the court finds that the other parent, without good reason, failed to follow a court order, the court will hold that parent in contempt.

The court then decides what *sanction* is appropriate. It might be paying compensation for losses, up to six months in jail, a fine of up to \$2,000 for each day the contempt continues, or anything else the court finds appropriate.

The sanction, however, won't happen immediately. The court

must give the other parent a last chance to start obeying the court order (and often make up for the past failure to abide by the order). This opportunity is called the *purge*. The parent's failure to satisfy the purge will result in the court imposing the sanction or sentence.

What if my order doesn't specify times the children are to be placed with me?

You may want to ask the court to change the order to state specific times for placement with each parent.

How do I get a placement order changed?

You have two choices. First, you may come to an agreement with the other parent. Put your agreement in writing and ask the court to approve it. The court usually approves a placement agreement, as long as it seems to be reasonable and voluntary for both parents. If the court doesn't approve the agreement, the agreement is not an order, and the parents aren't required to follow it.

Parents having difficulty reaching a placement agreement may find it helpful to see a mediator. Most counties provide a mediator to assist people in resolving disputes about their children. A form entitled "stipulation and order to amend judgment" is available online. Call your county family court commissioner or clerk of court for information.

The second way to get a placement order changed is to file a "motion to change physical placement." This requests the court to make a new order. After you submit a properly filed motion, the court usually appoints an attorney (guardian ad litem) to represent the children's best interests. The court may ask a trained expert to investigate and recommend a specific placement schedule that's in your children's best interests. This investigation may take several months to a year.

After learning of the guardian ad litem's and expert's recommendations – and before a court hearing is held – some parents come to a written agreement about placement. The court usually adopts such an agreement.

If the parents and guardian ad litem can't reach an agreement, the court schedules a hearing. The parents and guardian ad litem present their evidence at the hearing. The court then makes a decision about placement.

If your placement schedule doesn't have specific days and times for you to see your children, and the other parent won't let you see your children at all, you also may file a "petition to enforce physical placement," described above.

What if I don't think it's good for the children to be with the other parent or a stepparent?

Start by discussing your concerns with the other parent. Try to work out something mutually acceptable. It's better for children when their parents are sensitive to each others' concerns, and when parents work together to share information and routine decision-making.

That's not saying it's easy to do, especially if one or both of you have new partners. But making the effort definitely will help your children.

If you've talked things over and you still have concerns, you can ask for a mediator's assistance. Contact your county's family court commissioner or clerk of court.

When mediation doesn't resolve your concerns, you may file a "motion to change the placement schedule," described above. But a motion based solely on the fact that you don't like the other parent's parenting style will be difficult to win. Unless there's evidence of actual harm to the children, the court will rule it's best for them to have substantial relationships with both parents.

What happens if I refuse to let the other parent see our children?

Violating a court order that states certain times for the children to be placed with the other parent could lead the court to hold you in contempt (see above). Or the court could grant the other parent relief under a "petition to enforce physical placement" (see above). Also, the court could charge you with committing a felony crime, depending on your circumstances.

Certain situations might justify violating a court order – for example, to protect you or your children from immediate abuse or harm. Before intentionally disobeying any court order, talk to an experienced family law attorney.

What happens if the other parent refuses to take our children as provided in the order?

It's difficult to force an unwilling parent to spend time with his or her children. If your children's other parent fails to take them for placement as provided in your order, you may want to find out why. Talk it over together. Is there a problem you could work out? Could the order be revised to better suit the other parent's scheduling or other needs?

If the other parent still refuses to take your children as provided in the order – and if you're losing money as a result – you may file a "petition to enforce physical placement" (see earlier explanation). This could force the other parent to pay you for money lost (such as for added child care expenses). You'll need to prove three points to the court: (1) how much money you lost; (2) that the other parent intentionally failed to take the children as ordered, and that this failure was *unreasonable*; and (3) that the parent didn't give you *adequate notice*, given your circumstances. The court decides what's unreasonable and adequate.

Reasonable failure might be due, for instance, to a medical emergency or a car breaking down on the way to pick up the children. Adequate notice might be enough time for you to arrange for a babysitter.

If a parent *repeatedly* and *unreasonably* fails to take the children as provided in the court order, you may file a "motion to change the placement schedule" (described earlier). You could ask the court to order a schedule consistent with what's actually happening. Again, the court decides what's repeated and unreasonable.

Taking this action is especially appropriate when a child support order was reduced based on the children spending significant time with the child support payer. If the placement order changes, you can (with a properly filed request) ask the court to change the child support order accordingly.

Where can I get more information?

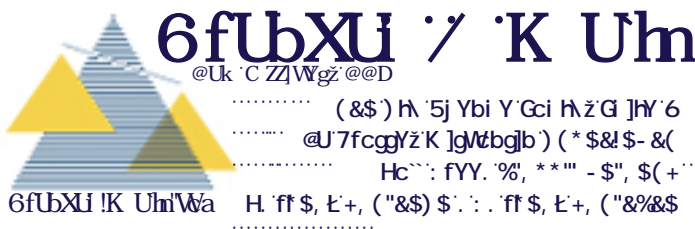
Perhaps you want to learn more about how to raise your children in cooperation with their other parent. One common term for this is *co-parenting*. You might want to work with a private counselor or therapist trained in divorce issues. Or you could see a family court counselor or mediator through your county's family court commissioner office (if available).

To learn more about custody/placement law, see an experienced family law attorney. *Only an attorney can review the facts of your situation and give you legal advice.* You also may choose to hire an attorney to file motions or orders to show cause for you. Many county courthouses also have do-it-yourself papers for filing on your own and most regularly-used forms are available online at www.wicourts.gov.

This is one in a series of consumer information pamphlets sponsored by the State Bar of Wisconsin's Communications Committee and produced by the Communications Department. Single copies are available by sending a self-addressed, stamped envelope with your request to: Public Information Pamphlets, State Bar of Wisconsin, P.O. Box 7158, Madison, WI 53707-7158. These titles also are available for viewing on the State Bar's consumer Web site, LegalExplorer, at www.legalexplorer.com.

Bulk copies and display racks also are available, for a charge, by writing to the above address.

- | | |
|--|------------------------------|
| Alternative Dispute Resolution | Health Care |
| Arrest | Hiring/Working with a Lawyer |
| Bankruptcy | Landlord/Tenant Law |
| Buying/Selling Residential Real Estate | Marital Property |
| Custody and Placement | Personal Injury |
| Durable Powers of Attorney | Probate |
| Divorce | Revocable Living Trusts |
| Guardians Ad Litem in Family Court | Small Claims Court |
| | Starting a Business |
| | Traffic Accidents |
| | Wills/Estate Planning |



(800) 728-7788 Nationwide
 (608) 257-3838 from Madison
 P.O. Box 7158, Madison, WI 53707-7158
 E-mail service@wisbar.org
 On the Web at www.legalexplorer.com
 © State Bar of Wisconsin