

# Child Custody

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Divorce in itself is trying enough. If children are involved it becomes even more trying and extremely emotional. Parents often lose sight of what is in the best interest of their children. Where do the children fit into this whole new life that is being created. Unfortunately children often become financial pawns in a divorce when child custody issues are being decided.

Before the divorce is finalized a temporary custody arrangement is put into place. This can usually be done without the court's intervention if both parties can reach an agreement. The temporary custody arrangements are not necessarily what the final custody arrangement will be. The agreement should be well thought out and comprehensive. It is best to put it on the court record to make it binding.

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## TYPES OF CUSTODY

There are two basic issues in regard to custody: **Physical Custody** and **Legal Custody**.

**Physical Custody** refers to that parent or parents who has the physical responsibility for the care of the child. **Joint Physical Custody**, often referred to as shared parenting, is when the child resides with both parents for a significant amount of time. This arrangement does not always work out to be an exact 50/50 split and is often disproportionate. Such as an alternate week schedule for one parent and the other parent having the rest of the time. In order for this type of situation to work, there must be cooperation on both sides. The parents would also have to live in close proximity as not to affect the child's schooling. A few years ago there was a trend towards awarding this type of custody, however recently it has been determined that this may not be in the best interest of the child. Oftentimes the term "primary physical custody" is used to designate the parent who has the day-to-day care of the child.

**Legal Custody** refers to the parent(s) who will have the decision-making authority relating to the health, education, and welfare of the child. The most common form of custody is **Joint Legal Custody**. This is where the children live with one parent while the other parent has visitation rights. With joint legal custody, both parents have the authority to make decisions on behalf of the children regarding health, education, religion and general welfare. **Sole Legal Custody** is when one parent has the right to make all the legal decisions regarding issues such as health, education, general welfare and religion. This type of custody is not very common anymore.

When the divorce is finalized both physical and legal custody will be determined.

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## THE CUSTODY AGREEMENT

The purpose of the custody agreement is to reach an understanding on how to raise and care for the child with both parents sharing in the responsibilities and maintaining involvement in the day-to-day life of the child. For the custody agreement to work it is essential that you be flexible. Make every attempt to encourage and respect the relationship of your child and the other parent. Don't assume anything and keep an open mind. Easier said than done when in the midst of the turmoil that naturally goes with a

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RungeLawOffice,P.C.

Concord, New Hampshire

[www.rungelaw.com](http://www.rungelaw.com) • Toll Free: 1-866-rungelaw(786-4352)

Phone: (603) 225-9944 • fax: (603) 225-9993

divorce. Keep in mind you and your spouse are getting the divorce, you are not divorcing your children. What if you can't come to an agreement on custody? Then be prepared for a custody battle.

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## THE CUSTODY BATTLE

Unfortunately, a battle is exactly what it will turn into. Before you reach the point of court intervention to decide custody, think long and hard. A custody battle puts the child rights smack in the middle of your battle. Why are you fighting for custody? Are you fighting FOR custody or fighting so that your ex-spouse DOESN'T HAVE custody? Is it in the best interest of the child? If you've determined that it's the right thing to do for the child to go forward, what can you expect when the court intervenes?

- The court will take into consideration the best interest of the child when making the decision.
- If the court feels that neither parent is acting in the best interest of the child, a guardian ad litem may be appointed to help in making decisions on the behalf of the child.
- Depending on the age of the child, their wishes may or may not be taken into consideration. Some states strongly take into consideration the wishes of the child depending on their age, some states do not consider the child's wishes at all, without regard to age.
- Traditionally, the judicial system leans towards deciding in favor of the mother in custody cases. However, with more women pursuing full-time careers, this trend may be changing. It is no longer assumed that the mother is the primary caregiver.
- Unless the situation is so obvious that one parent should have custodial rights over the other (such as in drug abuse or physical abuse), a court ordered independent evaluation will probably be ordered. The evaluation is usually done by a court appointed mental health professional such as a psychologist or a social worker. A thorough evaluation can include the following: interviews with all the parties involved (individually and possibly with the parent and child together); psychological testing of both parents and the child; review of school records and/or conversations with teachers; review of medical records and developmental history; review of legal records, such as the papers filed regarding the divorce, any possible domestic disputes and any criminal records of either party involved. Be prepared for the evaluation to take at least four to six weeks if not longer. Be prepared for a time-consuming and costly battle.

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No matter how strongly you believe you would be the better parent and should have custody of the children, be prepared for the court to decide against you. Be ready to accept the court's decision and move forward to work with your ex-spouse to raise your children in a way that is best for them.

NEVER use a custody battle as a chip in negotiating a better financial settlement. Once the battle has begun, everyone will be scarred including the children. So think long and hard about the consequences of your actions and always keep the children's best interest in mind, long and short term.

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