



## CHILD CUSTODY

### **What is custody?**

When parents do not live together, either because they are separated, divorced, or never married, "custody" means who is responsible for the children.

### **What is "physical custody"?**

When a parent has "**physical custody**" over a child, it means that the child would spend time living with that parent on a regular basis. If the parents have "**joint physical custody**," the child lives at each parent's home. However, if one parent has **sole physical custody**, the child usually spends significantly less time at the other parent's home.

### **What is "legal custody"?**

If a parent has "**sole legal custody**" of a child, it means that he or she has the right to make decisions regarding the child's health, education, and welfare, such as what school or doctor shall be used. "**Joint legal custody**" means both parents share decisions regarding health, education and welfare.

### **Can physical and legal custody be shared by parents?**

Yes. A judge may approve joint physical or joint legal custody. The child may live equally with both parents or may spend more time in the home of a parent that is named the primary caretaker. The court order will define the days and times spent with each parent as well as holidays and summer vacation.

### **When parents divorce who makes the final decision where you live?**

In California, county superior court judges make the final decision on any custody and visitation issues that the parents do not agree to in a parenting plan.

### **How does the judge come to a decision?**

If the parents agree on a custody plan, the judge will usually approve it. If the parents cannot agree on a custody plan, they will, according to the law, have to speak with a mediator or counselor who will try to help them work out a plan. The judge will decide any disputed issues that parents are unable to resolve during mediation.

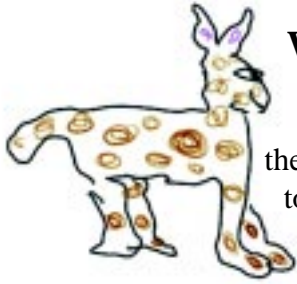
### **When will the judge consider what the child wants?**

The law says when a child is "**of sufficient capacity to reason**," the judge must consider what the child says. The judge will consider what the child says but not necessarily follow it.



## **Can a minor have a lawyer represent him or her during the custody proceeding?**

Generally, no. A child custody proceeding is between the parents, and the parents are supposed to look out for the best interests of their children. However, if the judge feels that the parents are not acting in their children's best interests, she may appoint a lawyer to represent the children.



## **What happens if the judge decides that one parent should not have physical custody, can the child still see that parent?**

Generally, if one parent is given physical custody over a child, the court will order that the other parent be given generous visitation with the child, unless there is a good reason to restrict visitation such as domestic violence or the other parent's inability to care for the child.

## **What if the custody arrangement doesn't work, can it be changed?**

If the custody plan does not work, parents can change a custody arrangement if they come up with a new plan and ask a judge to make it official. If the parents can't agree on changes, they can ask a judge to make the change, but they need to show the judge that there has been a significant "**change in circumstances**" to merit a modification. The judge's decision will be based on what is in the child's best interests. However, getting the custody arrangement changed may be difficult if the child is well cared for or if the custody plan has been in effect for some time.

## **What if the parent the child is living with won't let the child visit with the other parent?**

The parent who has been denied court-ordered visitation with the child may ask the judge for a "**contempt**" order. This means that the parent denying visitation could receive court sanctions for continuing to refuse to allow visitation. If the judge finds that the parent who denied visitation did it on purpose, the other parent may have grounds for obtaining custody over the child. However, the judge may require the parents to try to work things out with the help of a mediator before going to court.



## **Can someone other than parents have custody over a child?**

California law says that judges first must consider giving custody to one parent or both. But a judge may give custody to another person such as a grandmother, step-parent or friend -- without the parents' consent -- if she believes that giving custody to either parent would be detrimental or harmful to the child and that the child would be better off with someone else.

## **Can someone other than parents have a right to visit with the child?**

A judge may give visiting rights to anyone interested in the child's welfare. The law specifically says that stepparents and grandparents who ask the court for visiting rights may attend mediation sessions along with parents. If no agreement is reached through mediation, the judge will decide whether stepparents and grandparents may visit the child. However, the grandparents will not be given visiting rights against the wishes of both parents.

## **Is there a place that parents can call to get help with child custody issues?**

If the parent is a minor, that is, he or she is under eighteen years old, that minor can call **Legal Advocates for Children and Youth** at (408) 280-2416. If the parent is an adult, he or she may get limited assistance from the **Family Law Clinic** at (408) 299-8567 or the **Legal Aid Society** at (408) 998-5200.

*Fact Sheets for Teen Parents can be found on-line at: <http://www.teenparents.org>*