



## Child Support/Custody

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- [Background](#)
- [Child Custody](#)
- [Child Support](#)
- [Mediation](#)
- [State Laws](#)
- [Additional Resources](#)
- [Organizations](#)

### Background

Historically, fathers had sole rights to [CUSTODY](#). Since custody was connected to [INHERITANCE](#) and property laws, mothers had no such rights. Beginning in the late nineteenth century courts began to award custody of young boys and of girls of all ages solely to mothers on the presumption that mothers are inherently better caretakers of young children. Most states followed this maternal preference and mothers almost always received custody. Eventually, many state courts found this preference to be unconstitutional, and gender-neutral custody statutes replaced maternal preference standards in forty-five states by 1990. Today, the custody arrangement is typically part of the DIVORCE DECREE. The decree provides specifics as to where the child will live, how visitation will be handled, and who will provide financial support. Courts consider custody and [CHILD SUPPORT](#) issues as subject to change until the child involved reaches the [AGE OF MAJORITY](#). In many divorces physical custody is awarded to the parent with whom the child will live most of the time. Often, the custodial parent shares joint legal custody with the noncustodial parent, meaning that the custodial parent must inform and consult with the noncustodial parent about the child's education, health care, and other concerns. In this situation, courts may order visitation, sometimes called temporary custody, between the child and the noncustodial parent. A clear schedule with dates and times is often incorporated into the decree. Child support is usually paid by the noncustodial parent to the custodial parent. States have formulas to assist judges in determining the appropriate amount of child support.

### Child Custody

#### *Joint Custody*

Some states have a presumption that joint custody is in the best interest of the child, while other states have no provision for it. Advocates of joint custody claim it lessens the feeling of losing a parent that children may experience after a divorce and that it is fair to both parents. However, because of the high degree of cooperation joint custody requires, courts resist ordering it if either of the parents does not want it or if there is [EVIDENCE](#) of past [DOMESTIC VIOLENCE](#). Later problems regarding medical or education decisions concerning the child may develop necessitating long and lengthy court proceedings.

## ***Split Custody***

Split custody is an arrangement in which the parents divide custody of their children, with each parent being awarded physical custody of one or more children. In general, courts try to avoid split custody because it separates siblings, which is usually not considered to be in the best interest of the child.

## ***Custody Disputes***

Many states have adopted a standard that places primary emphasis on the best interests of the child when custody is disputed. Today, courts exercise their discretion in awarding custody, considering all relevant factors, including marital misconduct, to determine the children's best interests. The court may consider such matters as the wishes of the child's parents; the wishes of the child; the relationship between each parent and the child, and any other person who interacts with the child (including stepparents); the child's adjustment to home, school, community; the mental and physical health of all individuals involved; which parent will foster a positive parent-child relationship between the child and the other parent; who was the primary caretaker; the nature and extent of [COERCION](#), if any, by a parent in obtaining an agreement regarding custody; and whether either parent has complied with an order to attend domestic relations education if the state requires it. Domestic violence is considered not to be in the best interest of a child and in many states a parent's [CONVICTION](#) for any domestic violence can weigh heavily against that parent's bid for custody.

## **Child Support**

In determining child support obligations, courts generally hold that each parent should contribute in accordance with his or her means. Child support is a mutual duty, although the primary caretaker of preschool children may not be required to obtain employment. All states have enacted some form of the Reciprocal Enforcement of Support Act. URESA is a uniform law designed to facilitate the interstate enforcement of support obligations. URESA allows an individual who is due [ALIMONY](#) or child support from someone who lives in a different state to bring action for receipt of the payments in the home state. This measure circumvents such problems as expense and inconvenience inherent in traveling from one state to another in pursuit of support.

In response to federal legislation, state laws regarding child support payments have become more severe. State laws can require employers to withhold child support from the paychecks of parents who are delinquent for one month. Employers are to be held responsible if they do not comply fully. State laws must provide for the imposition of liens against the property of those who owe support. Unpaid support must be deducted from federal and state [INCOME TAX](#) refunds. Expedited hearings are required in support cases.

## **Mediation**

MEDIATION is a centered resolution process assisted by an [IMPARTIAL](#) trained third party to assist the parties in reaching an informed and consensual agreement. Many parents find the process useful in figuring out which custody and visitation arrangement can work best for them and their child. Mediation typically provides a non-adversarial setting in which to resolve the conflicts that arise over financial, parenting, and other issues. It allows the parents to control many aspects of the court process, rather than deferring to a judge. Additionally, parties who are able to reach an agreement in mediation can save significant court costs and attorneys' fees.

## State Laws

State law varies considerably with respect to divorce. States have differing residency requirements, property rules, and spousal support provisions.

**ALABAMA:** Both parents have an equal right to the custody of their children. Under Alabama law, a court may consider an award of joint custody, whereby the parental rights of both parties remain intact, with one parent as the primary custodian of the children and the other as the secondary custodian. Under this arrangement, both parents remain involved in the decision making responsibilities regarding the children, with each parent having "tie breaking" authority regarding certain issues, such as education, health and dental care, religion, civic and cultural activities, and athletic involvement. Child support is determined under the Alabama Child Support Guidelines, unless the Court finds grounds to deviate from the guidelines. In Alabama, the Department of Human Resources is responsible for enforcing child support obligations. The court retains [JURISDICTION](#) to modify child support, up or down, until the children reach the age of 19.

**ALASKA:** The court determines custody in accordance with the best interests of the child and may consider all relevant factors. Domestic violence may be considered contrary to the best interest of the child. There is no presumption in favor of sole custody or joint custody. Joint custody may be ordered if both parents agree and submit a written parenting plan and such joint custody is in the child's best interest. Child support is based on Flat Percentage of Income model. Support terminates at age 18, or 19 if child is enrolled in high school or the equivalent and is residing with custodial parent. Court may not require either parent to pay for post-majority college tuition.

**ARIZONA:** There is no presumption in favor of joint custody. Joint custody may be granted if both parents agree, the parents submit a parenting plan, and the order is in the child's best interests. Evidence of domestic violence must be considered contrary to the best interests of the child. In determining the best interests of the child, the court can consider: the wishes of the child's parents; the wishes of the child; the interaction among the child and relatives; the child's adjustment to school, home, and community; the mental and physical health of the parties; which parent is more likely to involve the child in the life of the other parent; if either parent has been the primary care giver; the nature and extent of coercion used by a parent in obtaining a written agreement regarding custody; whether either parent has complied with an order to attend domestic relations education. The non-custodial parent is entitled to reasonable visitation, which shall not be restricted unless the court finds serious endangerment to the child. Child support guidelines are based on Income Shares Model, and award is calculated on [GROSS INCOME](#). Support terminates at age 18, or when the child graduates from high school. The court may not order the parents to pay for the college education costs of the child.

**ARKANSAS:** The court shall determine custody in accordance with the best interests of the child. Child Support guidelines adopt Varying Percentage of Income Model, basing noncustodial parent's obligation on a percentage of [NET](#) income, which percentage decreases as income goes higher. Support terminates at age 18 or when child graduates from high school. Parents cannot be compelled to pay for the college education of their children.

**CALIFORNIA:** There is no presumption in favor of joint or sole custody; custody shall be awarded to both parents jointly or to either parent [AS IS](#) in the best interests of the child. However, where the parties agree to joint custody, then joint custody shall be presumed to be in the best interests of the child. In awarding custody, the court shall consider which parent is more likely to foster a positive relationship between the child and the other parent. An explicit link between custody and child support is made by the provision that a court may order financial compensation to one parent for those periods of time the other parent fails to assume care taking responsibility. There may be additional financial compensation awarded to a parent who has been repeatedly thwarted by the other parent in attempts to exercise custody/visitation. Statewide Uniform

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Guidelines are an Income Shares model, explicitly taking into consideration the time each parent has custody of the child.

**COLORADO:** Joint custody, with one parent designated residential custodian, may be awarded when the parties submit a parenting plan. If no plan is submitted, the court shall determine custody in accordance with the best interests of the child. Child Support Guidelines are based on Income Shares model, based on gross income of both parents. Support terminates at age 18 or when child graduates from high school. Parents cannot be compelled to pay for the college education of their children.

**CONNECTICUT:** If the parents agree to joint custody, then it is presumed that joint custody is in the best interests of the child, and the court must state its reasons for denial of joint custody. The court may award joint legal custody with primary physical custody to one parent. Visitation may be granted to grandparents or any person if it is in the child's best interests. Child Support guidelines are based on the Income Shared Model, taking into consideration the net income of both parents. Child support terminates when the child reaches 18 years of age.

**DISTRICT OF COLUMBIA:** There is no presumption as to the form of legal custody. The court may order frequent and continuing contact between each party and the child. The court's order shall be based on the best interests of the child. The court can consider the wishes of the parents, the wishes of the child, the interaction and interrelationship among all family members, the mental and physical health of all parties, the capacity of the parties to communicate, the demands of parental employment, the age and number of children, the parents' financial ability to support the custody arrangement and the impact of governmental assistance. Child support guidelines are a hybrid model, sharing aspects of both the income shares and percentage of income model. The award is based on parties' gross incomes, with a self-support reserve for each parent. By [STATUTE](#), a child is entitled to support until age 21.

**FLORIDA:** The court must order that parental responsibility for a minor child be shared by both parents, unless it is detrimental to the child. The court may grant to one party the ultimate responsibility over specific aspects of the child's welfare. The court shall order sole parental responsibility with or without visitation to the other parent when it is in the best interests of the child. The court may order rotating custody. Child Support Guidelines are the Income Shares Model of support, figured on net income. Health insurance, childcare, and education expenses are added to the basic award. Support terminates at age 18, or 19 if the child will graduate from high school by that time.

**GEORGIA:** The court may award joint custody and may consider agreements of the parties, if they are in the best interests of the child. The court shall award custody as in the best interests of the child. If a child is 14 years old or older, the child shall have the right to select the parent with whom he desires to live, and such selection shall be controlling unless the parent is not fit. The court may consider family violence in making a decision. Visitation shall be ordered unless there is a history of family violence. Child support is [STATUTORY](#). It is the flat percentage of income model, calculated on gross income, with most extra expenses being a deviation factor.

**HAWAII:** Custody is determined according to the best interests of the child. If a child is of sufficient age and capacity to reason, so as to form an intelligent preference, the child's wishes can be considered. Joint custody may be awarded in the discretion of the court. Visitation may be awarded to grandparents or any person interested in the welfare of the child. Guidelines set out in court rule follow the Melson Formula. Support is calculated on net income, with allowances for household members.

**ILLINOIS:** There is no presumption for or against joint custody. Custody is determined based on the best interests of the child, considering the parents' and the child's wishes. Child support guidelines are statutory, based on a flat percentage of income model based on net income.

## Encyclopedia of Everyday Law: Child Support/Custody

**INDIANA:** Joint custody may be awarded if it is in the child's best interests. The relevant factors for determining custody are the parents' and child's wishes, the interaction and relationship of the child with any person who may significantly affect his or her best interests; the mental and physical health of all individuals involved, and a pattern of domestic violence. Child support guidelines are set out in the Indiana Rules of Court. The guidelines are based on the income shares model, based on gross income. Support may include sums necessary for a child's education, including post-majority education.

**IOWA:** If either party requests joint custody, there is a presumption of joint custody. If the court does not grant joint custody, it must clearly state its reasons why joint custody is not in the best interests of the child. Joint custody does not necessarily require joint physical care. Physical care shall be awarded as is in the best interests of the child. Child support guidelines are enacted by the supreme court of Iowa by court rule. The guidelines are based on the income shares model, based on gross income.

**KENTUCKY:** The court may grant joint custody to the child's parents if it is in the child's best interests. The court may not consider conduct of a custodian that does not affect his or her relationship to the child, nor may it consider [ABANDONMENT](#) of the family residence if it was to avoid physical harm. Child support guidelines set out by statute. The guidelines are based on the income shares model, based on gross income. Support may include sums necessary for a child's education, including post-majority education.

**LOUISIANA:** The court shall award custody in accordance with the parents' agreement, unless the best interests of the child require otherwise. If there is no agreement or if the agreement is not in the best interests of the child, the court shall award joint custody, unless custody by one parent is shown by clear and convincing evidence to serve the child's best interests. Factors for determining the child's best interests include a stable environment and the primary caretaker preference. The parent not awarded custody is entitled to reasonable visitation. Child support guidelines are statutory. They are based on the Income Shares Model and are based on gross income of the parents.

**MARYLAND:** The court may award joint custody or sole custody. The court shall deny custody to a party if the court has reasonable grounds to believe that the party abused or neglected the child and that there is a likelihood of further abuse or neglect. Child support guidelines set out by statute. The guidelines are based on the income shares model, based on gross income.

**MAINE:** When the parties have agreed to shared parental rights and responsibilities, the court shall make such an award absent substantial evidence that it should not be ordered. In making an award of parental rights and responsibilities, the court applies the best interests of the child standard. The court may not apply a preference for one parent over the other on account of either parent's gender or the child's age and gender. The court may order grandparent or third party visitation. Child support guidelines are statutory. They are based on the Income Shares Model, based on gross income.

**MASSACHUSETTS:** Each parent must submit to the court a shared custody implementation plan. The court may modify or grant the plan. The court may reject the plan and award sole custody to one parent. Child Support Guidelines are provided in the Massachusetts Court Rules, promulgated by the Supreme Judicial Court. The Massachusetts guidelines are a hybrid form of the Percentage of Income model and Income Shares Model. Support is calculated on the gross income of the non-custodial parent, but then offset by a percentage of income of the custodial parent over a certain floor. Support for education of the child is through age 21.

**MICHIGAN:** Custody is awarded based on the best interests of the child, based on the following factors: moral character and prudence of the parents; physical, emotional, mental, religious and social needs of the child; capability and desire of each parent to meet the child's emotional, educational, and other needs; preference of the child, if the child is of sufficient age and maturity; the love and affection and other emotional ties existing between the child and each parent; the length of time the child has lived in a stable,

## Encyclopedia of Everyday Law: Child Support/Custody

satisfactory environment and the desirability of maintaining continuity; the desire and ability of each parent to allow an open and loving frequent relationship between the child and other parent; the child's adjustment to his/her home, school, and community; the mental and physical health of all parties; permanence of the family unit of the proposed custodial home; any evidence of domestic violence; and other factors. There is a joint custody presumption if the parties agree to joint custody. The court may also award joint custody if one party requests joint custody and the court finds it to be in the best interests of the child. In deciding whether to grant joint custody, the court shall consider all of the above factors plus whether the parents will be able to cooperate; whether the parents have agreed to joint custody. Child support payments are made through the Michigan FRIEND OF THE COURT Bureau. Child support guidelines are contained in the Michigan Friend of Court Child Support Manual. The guidelines are based on the Income Shares Model, calculated on each parent's net income.

**MINNESOTA:** If both parents request joint custody, there is a presumption that such an arrangement is in the best interests of the child, unless there has been spousal abuse. Sole custody can be awarded based on the best interests of the child. Additional visitation may be ordered for wrongful denial or interference with visitation orders. Child support guidelines are based on the Varying Percentage of Income formula, calculated on net income.

**MISSISSIPPI:** Custody is determined based on the best interests of the child. Joint custody may be awarded if both parents request joint custody, and if they so request joint custody, there is a presumption that joint custody is in the best interests of the child. The court may order any of the following: Joint physical custody to one or both parents, with legal custody to one or both parents; physical custody to both parents, with legal custody to one parent; physical custody to one parent, with legal custody to both parents; custody to a third party if the parents have abandoned the child or are unfit. Child support guidelines are based on the Flat Percentage of Income model, calculated on net income.

**MISSOURI:** The court determines custody based on the best interests of the child. Custody can be joint legal, joint physical, sole legal, sole physical, or any combination. An award of joint custody is encouraged. Child support guidelines are based on the Income Shares Formula, calculated on gross income.

**MONTANA:** Each parent is required to submit, either jointly or separately, a proposed "parenting plan." Sole or joint parenting is awarded based on the best interests of the child. Child support guidelines are set out in the Montana Administrative Rules. The support guidelines are based on the Melson Formula, calculated on net income.

**NEBRASKA:** The court makes a custody determination based on the best interests of the child, which include the relationship of the child to each parent; the desires and wishes of the child; the general health, welfare, and social behavior of the child; credible evidence of any abuse in the household. Joint custody may be awarded when both parents agree to such an arrangement. Child support guidelines were established by court rule and are contained in the Rules of the Supreme Court. The guidelines are based on the Income Shares Formula and are calculated on net income.

**NEVADA:** Best interests of the child is the standard. The court awards custody in the following order of preference unless in a particular case the best interest of the child requires otherwise: to both parents jointly or to either parent; to a person or persons in whose home the child has been living and where the child has had a wholesome and stable environment; to any person related within the third degree of consanguinity; to any other person or persons whom the court finds suitable and able to provide proper care. In determining the best interests of the child, the court considers: the wishes of the child if the child is of sufficient age and maturity; any nomination by a parent for a [GUARDIAN](#); whether either parent has engaged in domestic violence. A finding of domestic violence creates a rebuttable presumption that custody would not be appropriate by the [PERPETRATOR](#). Child support guidelines are based on the varying percentage of income model. Support is

## Encyclopedia of Everyday Law: Child Support/Custody

figured by applying a percentage to the obligor's gross income, which percentage gradually decreases as the income rises.

**NEW HAMPSHIRE:** Joint legal custody is presumed to be in the best interests of the child, unless the child has been abused by one of the parents. Custody is awarded based on preference of the child, education of the child, findings and recommendations of a neutral mediator, and other factors. Child support amounts are set out by statute. The guidelines are based on the Income shares model figured on net income.

**NEW MEXICO:** Joint custody is presumed to be in the best interests of the child. The court may award joint or sole custody as in the best interests of the child, upon consideration of five enumerated factors. Child support guidelines are based on the Income Shares Model, calculated on gross income.

**NEW JERSEY:** Sole or joint custody may be awarded based on the needs of the child. There is no preference for either parent and no preference for joint custody. Child support guidelines are contained in New Jersey Court Rules. The guidelines are based on the Income Shares model figured on net income.

**NEW YORK:** Joint or sole custody is determined according to the best interests of the child. Neither parent is entitled to a preference. Child support guidelines are based on the Income Shares Model, calculated on net income.

**NORTH CAROLINA:** Joint or sole [CHILD CUSTODY](#) is determined according to the interests and welfare of the child. There is no presumption that either parent is better suited to have custody. The court considers all relevant factors, including acts of domestic violence and the safety of the child. Child support guidelines are based on the Income Shares Model and calculated on gross income.

**OHIO:** If at least one parent requests shared parenting and files a plan that is in the child's best interests and approved by the court, the court may allocate parental rights and responsibilities of the child to both parents and issue a shared parenting order. Otherwise, the court, consistent with the child's best interests, allocates parental rights and responsibilities primarily to one parent. Child support guidelines are based on the Income Shares Model and is calculated on net income. Termination of child support is at age 18 or graduation from high school, whichever occurs later.

**OREGON:** The court may order joint custody if the parents agree, but if one parent objects, the court cannot order joint custody. An order for joint custody may specify one home as the primary residence of the child and designate one parent to have sole power to make decisions regarding specific matters while both parents retain equal rights and responsibilities for other matters. When ordering sole custody, the court can consider the conduct, marital status, income, social environment or lifestyle of either party only if it is shown that these factors are causing or may cause damage to the child. Any person who has established emotional ties creating a parent/child relationship with a child may petition for custody, placement, or visitation. The child support guidelines formula is based on the Income Shares Formula, calculated on gross income.

**TEXAS:** Joint or sole custody is determined according to the best interests of the child. The court considers the best interests of the children deciding upon the terms and conditions of the rights of the parent with visitation. Child support guidelines, by statute, are based on a percentage of income of the noncustodial parent's net income. Support terminates at age 18 or graduation from high school, whichever is later. No statute or [CASE LAW](#) requires support for college.

**UTAH:** The court considers the best interests of the child along with the past conduct and demonstrated moral standards of the parties. There is a presumption that a spouse who has been abandoned is entitled to custody. State law contains advisory guidelines for visitation schedules, broken down by age of the child. Child support guidelines are based on the income shares model, calculated on gross income. Support terminates at

age 18 or when the child graduates from high school. In a divorce action, the court may order support to the age of 21.

WEST VIRGINIA: There is a presumption in favor of the parent who has been the primary caretaker of the child. There is no provision for joint custody. Child support guidelines are based on the income shares model, calculated on [ADJUSTED GROSS INCOME](#). Support terminates at age 20, or up to age 20 if the child is still enrolled in secondary school. The court may award support for college tuition.

## Additional Resources

*Joint Custody with a Jerk: Raising a Child with an Uncooperative EX.* Ross, Julie, St. Martin's Press, 1996.

*Why Did You Have to Get a Divorce? and When Can I Get a Hamster?: A Guide to Parenting through Divorce.* Wolf, Anthony E., Farrar, Straus & Giroux, 1998.

## Organizations

### *American Bar Association*

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