

# Custody & Parenting Time Laws

## Legal Custody

Legal custody means the making of major decisions regarding the child's schooling, medical needs and religious upbringing.

## Presumption for Joint Legal Custody

Minn. Stat. § 518.17

1. When either or both parties request joint legal custody, the court uses a rebuttable presumption that joint legal custody is in the best interests of the child
2. If domestic abuse (as defined in § 518B.01) has occurred between the parents, the court will use a rebuttable presumption that joint legal or physical custody is *not* in the best interests of the child

When domestic violence has occurred, the Court is to consider:

- The nature and context of the abuse;
- The implications of the abuse for parenting; and
- The implication of the abuse for the child's safety, well-being and developmental needs.

## Physical Custody

Physical custody means where a child resides. Joint physical custody is defined as the child having a structured parenting time schedule between the two parents – the statute does not say how much time is spent with each parent.

There is no presumption for or against joint or sole physical custody.

The term “primary residence” means what is considered the main place where the child lives. This is important when the parenting time schedule has the child living equally or almost equally between the parents and there is a joint custody label. The “primary residence” would determine what school the child attends.

## Best Interests of the Child – Factors for determining custody

Minn. Stat. § 518.17 subd. 1

The court is to consider and determine the “best interests of the child” when making a judgment on child custody. This requires the court to consider 13 best interest factors.

- A single factor cannot be used to the exclusion of all others,
- Detailed findings must be made as to each factor
- The court must explain how the factors led to its conclusions
- The court will not consider any conduct of a proposed custodian that does not impact the custodian's relationship to the child

The factors are:

1. A child's physical, emotional, cultural, spiritual and other needs and the effect of the proposed arrangements on the child's needs & development;
2. Any special needs of the child;
3. The reasonable preference of the child (if the court considers the child to be of sufficient age to express a preference);
4. Whether domestic abuse has occurred, the nature and context of the abuse and implications of the abuse for parenting and child safety;
5. Physical, mental, or chemical health issues of the parents that affect the child;
6. The history and nature of each parent's care of the child;
7. The willingness & ability of each parent to provide ongoing care for the child, to maintain consistency;
8. Effect on the child of changes to home, school, community;
9. Effect of the arrangements on the child's relationships with parents, siblings and other significant people;
10. Benefit to child in maximizing parenting time with both parents and detriment in limiting parenting time;
11. The disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child (except where domestic abuse has been found)
12. The willingness and ability of the parents to cooperate, share information, minimize child's exposure to parental conflict and utilize dispute resolution mechanisms.

## **Parenting Time**

Minn. Stat. § 518.175

Upon request of either parent the court will grant parenting time on behalf of the child and a parent such that the child and parent are able to maintain a child to parent relationship that will be in the **best interests of the child**.

If either party requests, an order for parenting time will include a specific schedule for parenting time (as practicable).

### **Rebuttable presumption for 25%+**

There is a rebuttable presumption that a parent is entitled to at least 25% of the parenting time for the child.

- This is calculated based on the number of overnights a child spends with a parent or by some other measure if the parent has significant time periods on separate days when the child is in the parent's physical custody but does not stay overnight.

### **Restricting or denying time**

If the court finds that parenting time with a parent is likely to endanger the child's physical or emotional health or impair the child's emotional development, the court will restrict parenting time with that parent through time, place, duration, or supervision restrictions. If necessary, the court will deny parenting time entirely.

### **Modification of custody order or parenting plan**

Minn. Stat. § 518.18

Unless the parties agree in writing, a motion to modify a custody order or parenting plan cannot be made earlier than one year after the date of entry of a decree of dissolution or legal separation containing a provision regarding custody UNLESS:

1. The court finds there is persistent and willful denial or interference with parenting time;  
or
2. The court has reason to believe that the child's present environment may endanger the child's physical or emotional health or impair the child's emotional development

Similarly, if a motion for modification has been heard, whether or not it was granted, a subsequent motion cannot be filed within two years after the disposition of the prior motion on its merits, unless the parties agree in writing or one of the two requirements listed above is met.

If the court has jurisdiction over custody matters, the court will not modify a prior custody order or parenting plan provision specifying the child's primary residence unless it finds that a **change has occurred in the circumstances** of the child or the parties and that the modification is necessary to serve the **best interests of the child**. The court will retain the prior custody arrangement unless:

1. (1) The court finds that a change in the arrangement or primary residence is in the best interests of the child and the parties previously agreed in an approved writing to apply the best interests standard; and (2) [re: agreements approved by a court on or after 5/28/2000] both parties were represented by counsel when the agreement was approved or the court found the parties were fully informed, the agreement was voluntary, and the parties were aware of its implications;
2. Both parties agree to the modification;
3. The child has been integrated into the family of the petitioner with the consent of the other party;
4. The child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the potential harm caused by a change of environment is outweighed by the advantage of a change to the child; or
5. The court has denied a request of the primary custodial parent to move the residence of the child to another state and the primary custodial parent has relocated to another state despite the court's order

## **Domestic Abuse (and Child Abuse) in Child Custody & Parenting Time Statutes**

Domestic Abuse is defined in the order for protection statute (518B.01 subd. 2 – Domestic Abuse Act) as:

1. Physical harm, bodily injury or assault; or
2. The infliction of fear of imminent physical harm, bodily injury, or assault; or
3. Terroristic threats, criminal sexual conduct, or interference with an emergency call
4. Committed against a family or household member by a family or household member

This is a list of where in the custody/parenting time laws domestic abuse (and/or child abuse) is explicitly mentioned.

### **1. Minn. Stat. § 518.165 – Guardians for Minor Children**

- a. The court will appoint a guardian ad litem in all proceedings for child custody or for marriage dissolution or legal separation in which custody or parenting time with a minor child is an issue if the court has reason to believe that the child is a victim of domestic child abuse or neglect
  - i. Unless the alleged domestic child abuse or neglect is already before the court on a juvenile dependency and neglect petition
- b. The court is not required to appoint a guardian ad litem if an allegation of domestic child abuse or neglect has not been made

### **2. § 518.17 – Custody and Support of Children on Judgment**

- a. Best interests of the child
  - i. If domestic abuse has occurred in the parents' or either parent's household/relationship; the nature and context of the domestic abuse and the implications of the abuse for parenting and child safety are to be considered.
  - ii. Where domestic abuse has been found, the court will not consider the disposition of each parent to encourage and permit frequent and continuing contact by the other parent with the child.
- b. Courts will consider evidence of false allegations of child abuse in violation of Minn. Stat. § 609.507
- c. When joint custody is sought
  - i. Courts will consider, in addition to the “best interests” factors, whether domestic abuse has occurred between the parents
  - ii. If domestic abuse has occurred between the parents, the court will use a rebuttable presumption that joint legal or physical custody is *not* in the best interests of the child

### **3. § 518.1705 – Parenting Plans**

- a. The court cannot create a parenting plan on its own motion if it finds that a parent has committed domestic abuse against a parent or child who is party to, or subject of, the matter before the court

- b. Parties cannot be required to utilize a dispute resolution process other than the judicial process if a parent is alleged to have committed domestic abuse toward a parent or child who is party to, or subject of, the matter before the court

4. **§ 518.175 – Parenting Time**

- a. Order for protection (OFP) & supervised time: If a parent requests supervised parenting time under this section and an (OFP) under chapter 518B or a similar law of another state is in effect against the other parent to protect the parent with whom the child resides or the child, the judge or judicial officer must consider the OFP in deciding parenting time
- b. Moving to another state: When the parent with whom the child resides requests to move the child's residence to another state, the court will apply the best interests standard, which includes the effect of domestic abuse on the safety and welfare of the child or of the parent requesting to move
  - i. The burden of proof is generally upon the parent requesting to move the child, unless the person requesting permission to move has been a victim of domestic abuse by the other parent (the burden there shifting to the parent opposing the move)
- c. Modification: If a parent makes a specific allegation that parenting time by the other parent puts the parent or child in danger of harm, the court will hold a hearing at the earliest possible time to determine the need to modify the order granting parenting time
- d. Child care parent: The court may allow additional parenting time to a parent to provide child care while the other parent is working if the arrangement would be reasonable and in the best interests of the child. The court will consider the 13 factors under § 518.17 subd. 1, the ability of the parents to cooperate, methods for resolving disputes and the parents' willingness to use those methods, and whether domestic abuse has occurred between the parties

5. **§ 518.1751 – Parenting Time Dispute Resolution**

- a. A party may not be required to refer a parenting time dispute to a parenting time expeditor if:
  - i. One of the parties claims to be the victim of domestic abuse by the other party, or
  - ii. The court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party

6. **§ 518.179 – Participation in a Parenting Plan When Person Convicted of Certain Offenses**

- a. If a person seeking child custody or parenting time has been convicted of a crime described in subd. 2 of this section (i.e. assault, criminal sexual conduct, incest, neglect of child), the person has the burden to prove that custody or parenting time by that person is in the best interests of the child if:
  - i. The conviction occurred within the last 5 years;

- ii. The person is currently incarcerated, on probation, or under supervised release for the offense; or
- iii. The victim of the crime was a family or household member as defined in §518B.01 (Domestic Abuse Act)

## Timeline for filings – Divorce

1. **Summons and Petition**
  - a. Written by one spouse
  - b. Must be properly served on the other spouse – need personal service
  - c. Once the Summons and Petition are filed, along with an affidavit of personal service, a court file for the case will be opened
    - i. Divorce papers generally must be filed in a Minnesota county where one of the spouses lives
    - ii. One of the spouses must have lived in Minnesota for at least 180 days (6 months) to get a divorce in the state
2. **Answer**
  - a. Spouse who received Summons and Petition must read them and decide how to respond [agree or disagree with issues/requests in the Summons and Petition]
  - b. The Answer must be filed within 30 days or a default divorce judgment may be entered
3. **Initial Case Management Conference (ICMC)**
  - a. Parties may be sent to Early Neutral Evaluation (ENE) or Mediation
  - b. Guardian ad Litem or custody evaluator may be appointed if children are involved
4. **Motions** (most courts will not allow any motion until after the ICMC conference)
  - a. **Motion for Temporary Relief**
    - i. Allows party to ask the court to issue a Temporary Order for child custody, child support, spousal support, and certain property issues
      1. Allows party to get necessary financial support while the case is pending in court
      2. Expires when the final divorce decree is signed by the Judge and entered by court administration
  - b. **Motions Generally**
    - i. Anytime between the filing of the initial Summons and Petition and Trial, if a party wants the court to make a decision, the party needs to file a motion and have a motion hearing.
    - ii. **See “How to File a Motion” for details on the motion procedure.**
5. **Pretrial Conference**
  - a. Parties are given a timeline for submission of important trial documents
6. **Trial**
  - a. Parties present evidence and witness testimony to the judge, who will make a ruling on each of the issues presented
7. **Final Divorce Decree**
  - a. Once the document entitled Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree has been signed by a judge and is entered by court administration, the divorce is considered final
  - b. The Court has 90 days to issue the final order.

\*At any time during divorce proceedings, the parties may agree to a resolution of issues and submit their proposed settlement to the court for approval. If only some of the issues are agreed to, *a partial settlement* can be written up and submitted to the Court.

## **Timeline for filings – Custody**

The timelines and procedures on a custody case are similar to a divorce case.

### **1. Start Action**

- a. If there is no Recognition of Parentage (ROP), need to file a Summons and Petition for Paternity. After parentage is recognized by the court, the matter proceeds under the divorce custody/parenting time statutes.
- b. If there is a valid ROP, need to file a motion for custody/parenting time.

### **2. Mediation Type Processes**

- a. The Court may set an ICMC on the case or may go directly to a motion hearing.
- b. The Court may ask/require the parties to try some type of mediation to resolve issues

### **3. Motion Hearings**

- a. Motion hearings will be set to resolve any temporary issues and trial issues.
- b. See **“How to File a Motion”** for details on the motion procedure.

### **4. Pretrial Hearing**

### **5. Trial**

### **6. Final Order**



## How to File a Motion

After a family court matter is started (divorce or custody petition is filed), the way in which issues are heard by the court is to file a motion.

### Procedure for filing a motion:

1. Call the judge’s clerk and get a day and time for a motion hearing. This date must be at least 17 days away, longer if you need time to put together your paperwork.
2. Contact the opposing party or their attorney. Let them know the day and time of the motion hearing. You do not have to provide any details about your motion request. This is to be sure the other side will be available for the hearing. (If you are still living in the same house with the opposing party and you are concerned for your physical safety, there are special considerations about notifying the other side.)
3. 17 days before the hearing date (14 days plus 3 days for mail service), file with the court and serve the other party the following documents:
  - Notice of motion
  - Motion
  - Affidavit(s)
  - Exhibits
  - Affidavit of service
    - The originals go to the court with a filing fee (unless you have IFP status)
    - A copy goes to the opposing party/counsel
    - Keep a copy for your records
    - Service on the court and opposing party/counsel can happen by mail.
4. 10 days prior to the hearing, the opposing party/counsel must serve you with responsive paperwork that raises any NEW issues.
5. 5 days prior to the hearing, the opposing party/counsel must serve you with responsive paperwork to the issues that you have raised.
6. 5 days prior to the hearing, you must respond to any new issues raised by the opposing party/counsel.
7. Attend the hearing. You will not call witnesses or offer any new evidence. Be prepared to talk about the paperwork that you submitted with your motion.
8. The court has 90 days to issue a decision/order.

### Timeline for Motion Hearings: [P = Petitioner; R = Respondent]

