

Child Custody and Visitation

Who gets custody of the children in a separation? Before filing a lawsuit for divorce or child custody, you and your spouse may want to try to work out an agreement among yourselves to resolve this issue. If you and your spouse cannot agree, however, than a judge will have to decide who will be the primary custodian of your child. A judge will normally look at who the primary care provider for the child was during the marriage and during any period of separation, and the current ability of each parent to provide for the physical, emotional, educational, and social needs of the child. The judge will consider the child's age, sex, educational and behavioral history, and special needs in making this decision. After weighing all of these factors, the judge almost always awards the custody of young children to their mother, unless there are good reasons not to – such as drug abuse, child neglect, or some other misconduct.

Is the judge bound by our custody decision in our custody agreement? No. Even if you and your spouse come to an arrangement regarding custody, support and visitation, the judge can always modify this agreement if the judge feels that modification is in the child's best interest. However, the judge will normally abide by wishes as expressed in the separation agreement.

What kind of visitation will be required? Ordinarily the non-custodial parent is entitled to reasonable visitation rights with a minor child, unless there has been a history of abuse or other misconduct. Visitation schedules vary between states and can be very flexible or highly structured. Texas has a very detailed, semi-mandatory plan that provides for a lot of visitation time for the non-custodial parent. As a practical matter, it is often very difficult for a military parent to have regular visitation with a child. For military parents it is important that the arrangements include the right to take the child out of his or her state of residence. The arrangements should also address the issue of travel expenses.

Will a custody agreement prevent the other parent from snatching my child? No. There are criminal laws against parental kidnapping, but they apply only if you have a court order. If you are concerned about a military parent snatching the child, you can ask that parent's commander to order the parent not to remove the child from the area. It would then be criminal violation to disobey the order. If you are concerned about a non-military parent snatching the child, you can go to the local court and get a temporary restraining order.

Can custody arrangements ever be changed? Yes. However, it often requires a finding of a substantial change in the previous arrangement that has an effect on the child. If you wish to modify the current arrangements, the best way is to go back to court to modify the original court order.

Questions? See the Texas Attorney General's website at <https://www.oag.state.tx.us/cs/index.shtml>, or contact the Fort Bliss Legal Assistance Office at (915) 568-7141 for an appointment to speak with an attorney.