



CYBER LEGAL ADVOCACY BRIEF

Preventive Law Series

Cyber Center of Excellence Office of the Staff Judge Advocate
Legal Assistance Division, Fort Gordon



CHILD CUSTODY IN GEORGIA

Child custody and visitation are very important topics for parents who are separating or divorcing. Common questions about child custody and visitation in Georgia are answered below.

WHAT IF MARRIED PARENTS BOTH WANT CUSTODY AFTER THEY SEPARATE?

Both parents have equal rights to custody of a child born during their marriage, so a Court will have to decide how to divide custody and visitation in the event of a separation or divorce if the parents cannot agree. Divorcing parents in Georgia are required to submit a Parenting Plan to the Court for approval, or the Court will create a Parenting Plan if the parents cannot agree. Templates of standard Parenting Plans can be found at www.augustafamilybar.com under the "Forms" tab.

WHAT IF THE CHILD WAS BORN OUT OF WEDLOCK?

Generally, the mother has all rights to custody of the child, even if the father has signed the child's birth certificate and even if the father is paying child support.

Assuming the father has not married the mother or adopted the child since the child's birth, to either get custody or visitation rights, the father must prove he is the child's father by filing a court case to legitimate the child and to request custody or visitation. Note - if the child was born between July 1, 2005 and July 1, 2016, the child may have been administratively legitimated if the parents signed the Paternity Acknowledgement / Legitimation Form shortly after the child's birth.

WHAT CAN GRANDPARENTS AND OTHER RELATIVES DO?

Grandparents and certain other relatives may ask a Court for visitation with a child, but they must show that denying the visitation would be harmful to the child's welfare and best interest.

WHAT CAN THE DEPARTMENT OF FAMILY AND CHILDREN SERVICES (DFCS) DO?

DFCS can ask the Juvenile Court for custody if they believe the child is dependent (i.e. deprived or neglected by one or both parents). Essentially, DFCS must prove to the Juvenile Court, by clear and convincing evidence, that a parent is unfit to raise the child.

In Juvenile Court, an indigent (i.e. no income or very low-income) parent has the right to a free lawyer. Therefore, if you cannot afford a lawyer, ask for one in writing and give the request to the clerk of the Juvenile Court as soon as you know about your case.

WHAT FACTORS DOES THE COURT CONSIDER TO DECIDE CUSTODY?

The Court will decide what is in the "best interest of the child" to determine which parent will receive custody. Some questions the Court will likely ask are:

- Which parent cared for the child in the past? Which parent will be best able to care for the child in the future?
 - Who watches the child? Who feeds the child? Who plays with the child? Who helps the child with homework? Who has the contact information for the child's school or teachers?
 - Does one parent drink excessively or do drugs? Does one parent have a criminal record?
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WHAT TYPE OF INFORMATION SHOULD I BRING TO COURT AS EVIDENCE?

You will need witnesses who can testify you will best be able to take care of the child, such as family members, neighbors, teachers, friends, and members of religious groups.

School, medical, police, and possibly DFCS records can also be used as evidence that you would be the better custodial parent. Be prepared to subpoena the owner/custodian of these records to Court to verify these documents if you plan to use them in your case.

The Court will need to know if there has been any domestic violence involving either of the parents, because the Court may consider evidence of domestic violence when deciding custody.

You should also take evidence of income (such as pay stubs and tax returns), TANF (food stamps), Social Security benefits, financial help from relatives or friends, and child support you receive for any other children. Financial information is important because the parent who has primary custody of the child will in most cases be entitled to child support from the other parent.

WHAT KINDS OF CUSTODY ARE THERE?

Legal Custody: This is typically shared between the two parents, and includes the right to obtain the child's medical and school records, and to make legal/administrative decisions for the child while the child is in your custody.

Physical Custody: Typically, one parent is named the primary physical custodian (i.e. the parent with whom the child lives most of the time), and one parent is awarded visitation. Joint physical custody is also possible, in which both parents share equal time with the child, though that arrangement is not typical. Sole physical custody, where one parent has 100% physical custody, and the other parent has no visitation at all is also possible, though extremely rare.

DO I NEED 51% CUSTODY OF MY CHILD TO QUALIFY FOR BAH-WITH DEPENDENTS?

No, this is a myth. Per the Financial Management Regulation, a service member without primary custody may still qualify for BAH-With Dependents if he or she is not assigned to Government Quarters, and is paying child support greater than the BAH-Diff rate.

CAN THE CHILD DECIDE WHICH PARENT THEY WANT TO LIVE WITH?

Yes, once the child is 11 years old, the child has input into who they wish to live with, and at 14 years or older the child's choice of which parent they want to live with is presumptive. However, the Court can still refuse the child's decision if the Court determines that living with the chosen parent is not in the child's best interest.

WHAT IF A PARENT IS ILLEGALLY KEEPING A CHILD?

It is a crime, called Interference with Custody, for a parent to keep a child without having permission or custody/visitation rights. If a parent is illegally keeping a child and refuses to return the child to the child's lawful custodian upon request, you may report any illegal acts to the proper law enforcement authorities. The Court may consider a parent's illegal activities when deciding custody.

This Information Paper from the Fort Gordon Legal Assistance Office contains general legal information on a topic upon which Legal Assistance Attorneys typically advise. The information provided is general in nature and does not constitute formal, specific legal advice. If you wish to receive legal advice specific to your situation, please consult an attorney. You may schedule a legal assistance appointment by calling the Fort Gordon Legal Assistance Office at 709-791-7812/7813.