
DIVORCE AND CHILDREN

INTRODUCTION

Often, the greatest conflict in a divorce arises from disagreements about the best interests of the children. At the time of the divorce, you and your spouse will try to come to an agreement on:

Custody

- Who will the children live with most of the time?
- Who will make the major decisions about their lives?

Visitation Rights

- When and where can the person who does not have custody see the children?
- Should other people such as the children's grandparents be granted visitation rights?

Child Support

- How much money will the parent who does not have physical custody pay to the other parent to support the children?

Custody battles can be ugly, angry, and emotionally upsetting for you and your children. There are many possible ways to arrange custody and visitation. Try to reach a settlement that is truly in the best interests of your children.

CUSTODY

If you and your spouse cannot agree on custody, a judge will decide for you.

How does the judge decide custody?

In making a decision, the judge has a lot of discretion. The judge:

- Will probably order the Court Support Services Division (CSSD, formerly Family Relations) of the court to evaluate the situation. They will look at the spouses, their home life, and the children. This can take 6 weeks or more. When making a decision, judges often depend heavily on the recommendations of CSSD/Family Relations;
- Must be guided by the best interests of the child;
- Must give consideration to the wishes of the child -- if the child is of sufficient age and capable of forming an intelligent preference;
- May take into consideration the grounds for the divorce if they seem relevant in determining the best interests of the child.

***Note:** In some courts, CSSD is called Family *Relations* or Family *Services*.

How does the judge decide the best interests of the child?

Under Connecticut law, neither parent has a presumed right to custody of the children. In trying to decide the “best interests of the child” the judge might consider the following topics for each parent and child.

The judge might consider each *parent’s*

- Custody status – who has custody now and for how long
- Custody wishes
- Home environment
- Economic status
- “Fitness,” which can include mental and physical health, and the ability of each parent to:
 - Meet the child’s particular needs,
 - Help build and maintain an appropriate relationship between the child and the other parent,
 - Be actively involved in the child’s life.
- Behavior in involving the child in the parent’s dispute (manipulation, putting down the other parent, etc.)
- History of abuse, if any, and its effect on the child.

The judge might consider each *child’s*

- Current home stability
- Adjustment to his home, school, and community
- Developmental needs (can include age or physical or mental health)
- Cultural background
- Attachment or relationship to each parent.

Are there other ways the judge can protect my child’s best interests?

Yes. To represent your child during the divorce or custody process, the judge may appoint:

- An *attorney for the minor child* or “AMC” (who represents the child’s legal interests), or
- A *guardian ad litem* or “GAL” (who is appointed to represent the child’s best interests during the divorce proceeding)

You or your spouse may be responsible for paying your child’s attorney’s fees. There is a sliding scale if the parents earn less than \$100,000 combined.

The judge may also award custody to a third party, if that is seen to be in the child’s best interests.

What can I do if I do not like the judge’s decision on custody?

You can appeal the decision, but your appeal must be based on more than just the fact that you do not like the decision. As you can see from the factors above, the judge has a lot of discretion in deciding custody. Your appeal must prove that the judge clearly abused her discretion. Appealing is time consuming and expensive. It is best to have an attorney handle an appeal.

Can a custody decision be changed?

Yes, a custody decision can be changed if there has been a substantial change in circumstances. For more information, see the section “After the Divorce” at the end of this booklet.

Does it make any difference who has custody during the 90-day waiting period?

It may make a difference. If there is a custody battle, the judge may favor the parent who has temporary custody, regardless of how that custody was awarded. See the “Temporary Orders” section in *CWEALF’s Divorce in CT* booklet.

What is sole custody?

Sole custody is when one parent has full responsibility to make decisions (**legal custody**) about the child’s life. The child will typically live with that parent (**physical custody**), but the court may allow the other parent to have visitation (See “Visitation” below).

What is joint legal custody?

Joint legal custody means that both parents continue to share decision-making responsibilities and rights regarding the children.

It usually also means that **physical custody** is shared in some way to assure the child continues contact with both parents. The arrangements can vary greatly from case to case.

I have legal custody of our children. If I die, will my ex-spouse get custody?

Probably. You can name a guardian for your children in your will and request that the guardian have physical custody. However, if your ex-spouse is found fit by the probate judge, your ex-spouse will probably be appointed as the children’s legal custodian. You

may appoint a trustee to protect the assets of your children.

What happens if my husband says that our child is not his?

Any child born in a legal marriage is considered to be the husband’s child unless he can prove through paternity testing that the child is not his. He would have to ask a judge to order the tests.

Any child born to a couple who later marry is considered to be the legitimate child of both spouses.

Adopted children are considered to be the same as biological children.

What if the other parent and I were never married?

See the Section under “Child Support” below.

Will custody or visitation decisions be affected if I am LGBTQ?

Decisions may be affected depending on the facts of your case and the attitude of the judge. However, since Connecticut has passed co-parent adoption in 2000 and then legalized marriage between same-sex couples, attitudes have changed dramatically about these issues. The judge is guided by the best interests of the child and can consider any factors, including sexual orientation. If you believe you are being discriminated against because of your sexual orientation, you may want to contact an attorney who specializes in this area of law.

I am in the military. What happens if I am deployed and separated from my children?

A judge cannot *permanently* change a deploying parent's custody or visitation rights until 90 days *after* the deployment ends.

However, if the deployed parent gives consent, the change can be made before that time.

A judge can *temporarily* change a deploying parent's custody or visitation rights if certain conditions are met.

VISITATION

What are visitation rights?

Visitation rights give the parent who does not have physical custody (called the non-custodial parent) the legal right to spend time with the children. Other people (such as grandparents) may also have visitation rights.

The non-custodial parent may ask for visitation time. This could be a few hours, days, weekends, holidays, summers, or some other arrangement. The visits can take place at the either parent's home or another place that is acceptable to both parents.

Visitation Agreement

To avoid problems later, it is usually better to be **specific**, including:

- When,
- Where,
- How often,
- How much time,
- Who, and
- What notice is required.

If the other parent abused the child, will the judge allow visitation?

Again, the judge must consider the best interests of the child when deciding visitation rights. The judge generally assumes that both parents have a right to see the children.

However, if the judge is convinced that it is not safe for the children, **visitation rights may**

- Be denied,
- Be severely limited, or
- Need to be supervised by a third party.

If you feel your child's safety is at risk, you may ask the judge to order supervised visitation.

What can I do if I do not want my spouse to come to my home?

You can ask that the visitation take place in a neutral place and that someone else pick up and bring back the children to your home. This arrangement may be done

- *Informally* - using family or friends, or
- *Formally* - with the help of a social service agency.

Local domestic violence shelters may offer suggestions about how other parents have made these arrangements.

Do grandparents or other family members have any rights to visitation?

It depends on the circumstances. Grandparents and other family members may be awarded visitation rights if the judge feels it is in the best interests of the child. *However*, unless the child would be greatly harmed *without* the visits, a judge will likely go along with the wishes of the parents.

Can a visitation decision be changed?

Yes, a visitation decision can be changed if there has been a substantial change in circumstances. If the differences are about values or lifestyles, the judge will probably not stop a parent from seeing the children. You may want to look for some non-legal help from a counselor or a mediator.

Try to remember that visitation is for the benefit of the children and most children want to see both parents. For more information, see the section "After the Divorce" at the end of this booklet.

Our divorce judgment allows me "reasonable visitation." My ex-spouse has limited when I can visit and how much notice I have to give. Is this "reasonable"?

It depends on the circumstances. One of the biggest post-divorce problems is deciding what "reasonable visitation" is. You may be able to get help from a mediator from the CSSD/Family Relations Office at the court where your orders were made. If that doesn't work, you will have to go back to the judge to try to clarify your visitation rights.

Given the problems with visitation, it is usually better to be specific in the original visitation agreement to avoid problems later. You might want to include:

- When,
- Where,
- How often,
- How much time,
- Who, and
- What notice is required

Need Help with Child Support? *Getting - Enforcing - Changing*

**Call the state's Child Support Call Center:
1-800-228-5437 (KIDS).**

*If you receive state cash assistance (TFA) or
Husky "A" medical insurance from the state:
Call your local DSS Child Support Office.*

CHILD SUPPORT

What is child support?

Child support is money that the non-custodial parent gives to the custodial parent to pay for food, clothing, and other expenses required to raise children.

You need a court order to get child support.
(See *How do I get a court order?* below.)

How is the amount of child support determined?

The court will use the State's Child Support Guidelines, a formula, to determine the amount of child support. The judge decides the amount based primarily on:

- How much a child needs for support,
- Each parents' income, and
- The number of children.

For take-home pay below \$1000 a week, the non-custodial parent will have to pay about the amounts shown here:

The judge might order an amount that is different from the Guidelines. This is called a

“deviation” and the judge must explain why the amount being ordered is different.

Can we decide the amount of child support ourselves?

Judges encourage parents to reach a voluntary child support agreement, but there still needs to be an order by the court for it to be enforceable later. However, if the amount you agree upon differs from the amount required by the Guidelines, the judge will have to decide whether the new amount is fair and appropriate and does not disadvantage children.

Can I still get child support if I get state cash assistance (TFA)?

Yes, but you will **not** get all of your child support. Each month you will get

- \$50 of each child support payment (the state gets the rest), and
- The full amount of your state cash assistance.

| Number of Children | % of Weekly Pay |
|--------------------|-----------------|
| 1 | 25% |
| 2 | 35% |
| 3 | 40% |

How do I get a child support order?

To get a court order, you may

- Hire an attorney,
- Represent yourself in court, or
- Get free help from the state’s Child Support Services. Call 1-800-228-5437.

If you receive state cash assistance, call your local DSS office.

What if we were never married?

If the couple is not married, legally both parents have equal rights to the children. To get a child support order, paternity must be established.

Paternity has been established if **either**:

- Both parents voluntarily signed paternity papers (“Acknowledgement of Paternity”) at the hospital after birth, or any time before the child’s 18th birthday; **OR**
- A paternity test (DNA) has been done.

Where can I get help establishing paternity?

- Call the state Child Support Services Hotline: 1-800-228-5437
- If you are representing yourself in court, and the father denies paternity or will not agree to be tested, you can ask the court to order a paternity test.
- *If you receive state assistance or DSS is helping you to establish a child support order, the state will also help to establish paternity. Call your local DSS office.*

Is child support taxable income?

The IRS does not consider child support to be income so you do not have to pay taxes on it. However, *when you apply for credit* in your own name, you can list the child support as income.

Note: Child support payments are not tax deductible. Since tax laws change, you should consult a tax accountant or tax attorney about deductions.

What happens to my child support payments if I remarry?

Child support must continue to be paid until the children are 18, regardless of whether you remarry or live with someone else.

However, no support, custody, or visitation decision is final. If the parent paying support believes that the circumstances have changed substantially, the parent can go back to judge and ask for a modification. For more information, see the section “After the Divorce” at the end of this booklet. And, see the court brochure, [What Happens When You Go to Family Support Magistrate Court](#).

Can a child support order be changed?

Child support orders can also be modified in a few situations:

- Your income has gone up or down substantially.
- The cost of taking care of your child has changed very much. *Example*: changes in health needs.
- The child support order is now 15% more or less than the Child Support Guidelines. (This is called a *substantial deviation*.)

However, judges do not consider predictable changes, such as inflation or normal wage increases, to be grounds for modifying a support order.

How do I get the child support order changed?

You can call the Child Support Hotline for help. If you are representing yourself, gather the forms from the Judicial Branch website or the

Court Service Center, fill them out and bring them to the court clerk. Remember to include an application to waive the fee if you need it. The court clerk will tell you the date and time of the hearing.

Then you must “serve” them on the other parent through a marshal. Bring the financial affidavit and any other supporting documents to the hearing with you.

ENFORCING CHILD SUPPORT ORDERS

How can I make sure the other parent pays the child support?

Call 1-800-228-5437 (the state’s Child Support Call Center).

The Call Center can use the state’s Support Enforcement Services (SES) to help collect the child support you’re owed even if the other parent:

- Lives out of state,
- Is unemployed, or
- Is in the military and has not paid support.

What is SES?

SES (Support Enforcement Services) works with state and federal agencies to help collect and modify child support orders. It is part of the State of Connecticut Judicial Branch.

Ways to collect support.

You can do the following actions on your own, but the Call Center / SES will do them at no cost to you (except for a \$25 fee if your income is too high.)

To help collect support, SES can

- Take the money from the other parent’s

- *Paycheck*, if the other parent fails to pay or if the court support order required automatic withholding from paychecks (called “income withholding”);
- *Tax refund*; or
- *Bank account*.
- Bring the other parent to court for contempt,
- Put a lien on the other parent’s property,
- Report the other parent to credit bureaus,
- Intercept the other parent’s federal and state tax refunds and lottery winnings, or
- Stop the other parent from getting a passport.

My ex-spouse lives out of state and has not paid child support for several months. Is there anything I can do?

SES will help you enforce a child support order even if the parent lives in, or moves to, another state. If the SES already is trying to enforce your child support order, they will take steps to try to enforce the order in the other state. If SES is not already involved, contact DSS (Department of Social Services) at 1-855-626-6632 to start an “interstate” child support case.

AFTER THE DIVORCE

Many problems can arise after the divorce is final, including issues with alimony, money and credit, custody, child support and visitation. The situation may have changed or you may need help because the other parent is not

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Getting - Enforcing - Changing

Call 1-800-228-5437 (KIDS)
the state’s Child Support Call Center

following the court orders. Unfortunately, these issues can often be difficult to solve, and you may need to consult an attorney.

Can the judge’s decisions be changed?

Decisions about custody, visitation, child support, and alimony are never final, but you must usually show there has been a “substantial change of circumstances” to get it changed. **Important note on alimony:** If you waived your right to alimony, it can never be changed. See our booklet, *Divorce and Money*.

Orders about property *cannot* be changed after the divorce.

Judges do NOT like to change divorce settlements unless...
the circumstances have changed drastically and affect the child’s best interests.

Drastic or substantial changes that affect the best interests of the child could include:

- Changes in income, employment, illness, or living situation;
- Proof of physical, sexual or emotional abuse;
- Proof of negligence.

Typically, a change in child support would require a 15% change (up or down) in the income of either parent.

How do I change a court order?

To ask for a change (modification), you must file a court form (Motion to Modify). The court will hold a hearing and you will have to prove to the judge that a change is needed. Keep in

mind that either parent can ask for a modification.

You may represent yourself in court, hire an attorney, or ask Support Enforcement Services for help. If you want a child support change, we recommend you contact the Child Support Hotline. See the Resources section for other places to get help.

What can I do if the court orders are not being followed?

Child Support Orders: See the section “Enforcing Support Orders” above.

Custody or Visitation Orders: If the other parent has disobeyed a custody or visitation order, contact the CSSD/Family Relations Office in the court that made the order. They can meet with you and the other parent to try to work out the problem. If CSSD/Family Relations cannot help you, you can then ask the court to change your custody or visitation order. (See “How do I change...” above.)

RESOURCES

LEGAL ASSISTANCE

CT Women’s Education and Legal Fund

Information & Referral (I&R) Line

1-800-479-2949

860-524-0601

www.cwealf.org

Walk-in Hours at Hartford Public Library

Tuesdays, 4-6pm

Statewide Legal Services

(information and referrals to free legal aid)

1-800-453-3320

860-344-0380

www.ctlawhelp.org

Children’s Law Center

(provides legal advocates to children in very contested family court cases)

1-888-529-3667

www.clcct.org

GLAD (Gay & Lesbian Advocates & Defenders)

1-800-455-GLAD (4523)

617-426-1350

CHILD SUPPORT

CT State Government Agencies

Judicial Branch:

Support Enforcement Services (SES)

www.jud.ct.gov/childsupport

Child Support Call Center: 1-800-228-5437

Executive Branch:

Department of Social Services (DSS)

www.ct.gov/dss/childsupport (for local offices)

DOMESTIC VIOLENCE

Domestic Violence Programs in CT

24-Hour Statewide Hotline: 1-888-774-2900

(Emergency shelter, crisis intervention, information, and referral services)

FAMILY RELATIONS - SUPERIOR COURT

For a list of Family Relations Offices (Court

Support Services Division), addresses, and

phone numbers throughout the state, visit:

www.jud.ct.gov/directory/directory/family.htm