

# Custody, Parenting Time (Visitation), Shared Parenting (Joint Custody), and Child Support FAQ

## LEGAL CUSTODY

### **Q. If no court has ever ordered custody of a child, who has custody?**

- A. That depends on whether or not the parents were married at the time of the child's birth and whether or not any other court has ever issued a custody order.
- If the parents were married when the child was born and no court has issued an order of custody, the parents share joint custody. If the parents separate, it is between them to decide who will retain physical custody of the child unless and until a court orders otherwise.
  - If the parents were not married when the child was born, under Ohio law, the biological mother has full custodial rights unless and until a court orders otherwise.

### **Q. What is Legal Custody?**

- A. "Legal Custody" means a person or persons has full rights and responsibility for the care of a child. This includes the right to have the child in their physical custody (excluding any court ordered parenting time), to enroll the child in school, to seek medical care, and to make decisions regarding the child's education, medical care, religion, etc.

### **Q. What is the difference between custody and guardianship?**

- A. As stated above, custody grants a person the right to have physical custody, care, and control of a child. While Guardianship may also grant these same rights, guardianship is typically awarded in situations where the parent or parents are deceased and there is a financial component, such as an inheritance, that must be managed and reported to the court. Custody determinations are made through Juvenile Court or Domestic Relations Court while guardianship orders are made through Probate Court.

### **Q. Who has custody if the legal custodian is deceased?**

- A. Legal custody can only be changed by court order. Unless and until someone else is awarded legal custody of a child, the legal custodian still has custody even if they are deceased.

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## PARENTING TIME (VISITATION)

### Q. What is Parenting Time (also called visitation)?

A. Parenting time (visitation) orders grant a person the right to have a child in their care, usually for a designated time frame. There are different types of visitation orders (below). Parenting time does not grant the non-custodial parent any decision making power but may grant access to school and medical records, the right to attend school functions and / or extra-curricular activities, etc. These rights are not automatic and must be specifically included in the court's order.

- **Phase-In Parenting Time** – This type of order is usually given where a child is very young, has not had an opportunity to develop a relationship with the other parent, or has not spent time with the other parent in a significant amount of time. Phase-in starts with brief visits which increase gradually over several months. Once the phase-in order has been completed the parenting time automatically transitions to the Standard Order of Parenting Time.
- **Standard Order of Parenting Time** – This is the most common form of parenting time. It typically consists of one evening during the week, alternating weekends and holidays, and summer parenting time. The Standard Order also includes the right to access school and medical records, and contains provisions about transportation, extra-curricular activities, and notice to the other parent with regard to changes of address.
- **Supervised Visitation** – Supervised visitation places limitations on a party's ability to spend time with the child. This can take place at a visitation center, such as Erma's House, or may be under the supervision of a designated person or persons. There may also be limitations as to the time and / or location of the visits.
- **As Agreed By Parties** – This type of visitation places the decisions as to how, when, where, and even whether visitation occurs in the hands of the parties. The benefit of "as agreed" orders is that they are open-ended, so the parties are better able to work around work schedules, etc. The downside, however, is that they are difficult to enforce. With an "as agreed" order, the custodial parent or legal custodian ultimately has the power to determine what, if any, visitation is reasonable.
- **Companionship Time** - Companionship time is visitation awarded to a non-parent. This is often, but not always, a grandparent. Although some states have "grandparents rights" laws, Ohio does not. Ohio law places a great deal of weight on the wishes of the parents, so companionship time is often denied if the parent or parents are not in agreement. That said, the court may award

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companionship time in some instances, typically where a parent is deceased or incarcerated and the child will not have an opportunity to see or have relationships with the parent's family without a companionship order, or where the child has developed a strong bond with the person or family member and it is in the child's best interest to maintain that bond.

**Q. If I am not the biological mother but my name is on the child's birth certificate, do I automatically have visitation rights?**

A. No. Under Ohio law if parents are not married and no court has issued an order of visitation, no parent other than the biological mother has any legally established right to time with the child.

**Q. If I pay child support for a child do I have visitation rights?**

A. In most cases, no. Montgomery County Child Support Enforcement Agency (CSEA) may, in certain instances and by agreement of the parties, include a Parenting Time Opportunities for Children (PTOC) order in initial child support determination. If you have a PTOC order it will be very clearly stated in your child support order and your parenting time schedule will be attached. In all other cases, parenting time and child support are separate issues under Ohio law. In other words, paying child support does not automatically entitle a parent to visitation in Ohio.

**SHARED PARENTING**

**Q. What is Shared Parenting?**

A. Shared Parenting is joint legal custody held by a child's parents. Shared parenting does not necessarily grant the non-custodial parent any additional time with the child, nor does it necessarily impact child support. What shared parenting does grant is decision making power. Because both parents share equally in decision making, the shared parenting statute requires the court to find that the parties are able to work together to make decisions jointly with regard to the child and to encourage the sharing of love, affection, and contact with the other parent, among other factors. Generally speaking, shared parenting should be an agreement between the parents as to how they will work together to co-parent the child. As a rule of thumb, if the parents are not in agreement that they want to have shared parenting, the court will typically not grant it. This is because it is unlikely that parents will realistically be able to co-parent if they cannot agree that they want to.

**Q. Under a Shared Parenting Plan, what is "Residential Parent for School Purposes"?**

A. Within the Proposed Shared Parenting Plan the party or parties must designate a "residential parent for school purposes". Although the parties share joint custodial

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rights and responsibilities for the child, the residential parent is generally the primary custodian and is typically the party who would receive child support and / or other benefits for the child.

**Q. Does Shared Parenting mean 50/50 time with the child?**

- A.** In most cases, no. It is a common misconception that Shared Parenting means the parties have equal time with the child. This is not necessarily the case. Shared Parenting grants additional rights and responsibilities, but not necessarily additional time. When a party or parties files for shared parenting, they are required to submit a “Proposed Shared Parenting Plan” along with their filing. Within this plan the party or parties must include a proposed parenting time schedule. This schedule can be whatever the parties decide, though the Court must still determine that the schedule is reasonable and in the best interest of the child. Unless the parties agree to some other schedule, the non-residential parent will typically be awarded the Standard Order of Parenting Time (see above).

**TIP:** When drafting a proposed parenting time schedule, it is a good idea to include portions of the Standard Order of Parenting Time within the parenting time schedule. This takes the guesswork out of many decisions, such as where the child will be for birthdays and holidays or how long a parent must wait for the other parent to exercise parenting time if the other parent is late for pick-up.

Examples of how the Standard Order would be incorporated into a parenting time schedule would be including language such as “The parties wish to substitute the following in place of Items 1 and 2 of the Standard Order of Parenting Time. All other provisions of the Standard Order shall remain in place ...” or “The parties agree to work together to determine holiday and vacation schedules. If the parties cannot agree, the parties will follow the Standard Order of Parenting Time”.

**CHILD SUPPORT**

**Q. Will my child support be terminated if I have Shared Parenting?**

- A.** Possibly. There is a common misconception that support will be terminated or reduced if the parties have shared parenting. This is not the case. As stated above, the residential parent typically receives child support under a shared parenting order. However, so long as the State does not object (usually because the child is receiving State benefits) and if the court determines that termination is reasonable, the parties may agree to terminate child support or forego having a child support order with shared parenting. If the child is receiving any benefits from the State, including State medical insurance, the State will typically object to a support termination and it won't go through. Even if child support is terminated, the court may still make orders with regard to health insurance coverage.

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**Q. Will my child support be reduced if I have Shared Parenting?**

**A.** Possibly. Again, it is a common misconception shared parenting orders affect child support. While this may be true in some circumstances, it is not always the case. Whether the court will modify child support with a shared parenting agreement is based on the parenting time schedule and other factors. The court has the discretion to modify a support order in the interest of equity. In other words, if the parties agree on a parenting time schedule that would make the child support order unfair, the court may alter the order to balance things out. This is within the discretion of the court and does not happen automatically. As stated above, the residential parent for school purposes is the typically the child support recipient. This is because the child presumably resides with that parent the majority of the time. Based on the amount of parenting time the parties agree on in their proposed shared parenting plan, the court may, at its discretion deviate a child support order to make it fair and equitable. Deviation of a child support order is typically done on a percentage basis and still takes into account the relative incomes of the parties, cost for health insurance coverage, etc.

**Q. Will my child support be reduced if I have court ordered visitation?**

**A.** Possibly. In 2019 Ohio child support laws were modified to include a 10% reduction in child support if the party paying support has, at a minimum, the standard order of parenting time. This adjustment takes place when an initial support order is put into place or when a child support order is modified by the court. Reductions for parenting time do not go into place automatically with a visitation order and a change in the child support law is not, by itself, grounds for modification of a child support order. Child support can only be modified every three (3) years, or if a substantial change in circumstances has occurred. In order to qualify for child support reduction, visitation must be court ordered.

**Q. Can child support be modified or terminated by agreement of the parties?**

**A.** Possibly. Parties may agree to a modification or termination of child support so long as the State does not object and the court determines that the requested modification or termination is reasonable. If the child is receiving any benefits from the State, including healthcare coverage, the State will typically object to a support modification or termination. When this occurs, the court will typically deny the modification or termination. Even if child support is terminated, the Court may make orders with regard to health insurance coverage.

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