

CHILD CUSTODY AND VISITATION



**Office of the Staff Judge
Advocate
Eielson AFB, Alaska**

354 FW/JA
Legal Assistance and Preventive
Law
Pamphlet Series

As of 1 August 2015

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Usually, the most traumatic issue in any breakup is custody of the children. The underlying principle for all custody decisions in court is the best interests of the child. This includes the needs of the child, the ability of each parent to meet these needs, the child's preference, the stability of the home, and each parent's willingness to allow the child to visit the other parent. The court will take any allegations of domestic violence or substance abuse quite seriously. You will present your best case for custody by keeping these factors in mind and understanding the process the court uses to determine custody.

TYPES OF CUSTODY

The first step in any custody case is determining the custody of the child. Generally, there are two types of custody: legal custody and physical custody. There may be sole or joint custody in either legal or physical custody. Please consult an attorney for more details on the consequences of legal and physical custody.

Sole custody does not rule out visitation by the other parent.

Joint custody is some sharing of the child beyond mere visitation. The court can impose joint custody without the consent of the parents in Alaska, but usually does not do so.

PATERNITY

The court presumes the husband is the father of any child born during the marriage, absent proof to the contrary. For unmarried couples,

either the mother or father may file a paternity suit, or the Child Support Services Division may initiate the case on the mother's behalf. The case almost always hinges on the results of a DNA paternity test.

INITIATING THE CUSTODY CASE

A custody hearing can be initiated in a variety of ways. Usually, the hearing is part of a divorce or dissolution case ending a marriage. A parent may start a custody case after learning that the paternity of the child is in question. Also, unmarried parents may petition the court for a custody determination incident to breaking up. Filing with an Alaska State Court starts all these proceedings.

CUSTODY INVESTIGATORS

Once a case is filed, the court will often appoint a custody investigator to help the judge determine the best interests of the child. The Child Custody Investigator's Office will determine whether you have a low enough income to qualify for a free investigator, or whether you will need to hire one yourself. The investigator will meet with both parents and the child and write a report expressing his or her opinion as to the best interests of the child.

The investigator should not have a bias towards either parent. If you are hiring your own custody investigator, talk to the investigator to make sure the investigator is not biased against military members, who are subject to changes of assignment and deployments.

You should try to make the best impression possible on the investigator. The court rarely disregards the investigator's recommendation.

Your child's preference may be very important. Courts making custody determinations generally will consider the child's preference if the child is of sufficient age and capacity to form a preference.

VISITATION

Visitation is the ability of a non-custodial parent to see his or her children for a limited period of time. You may agree to various times of visitation, or the court may impose them. The standard conditions of visitation are two weekends a month and two weeks a year, but courts and parents may vary significantly from this guideline. Parents often divide major holidays, and may agree to longer, less frequent periods of visitation if one parent resides out of state. You should also determine who will be responsible for paying the expenses related to visitation, and who will accompany the child during travel.

Once the court enters an order, you must abide by it. Custodial interference is a felony in Alaska, and denying reasonable visitation can result in heavy financial penalties.

MODIFICATION OF CUSTODY ORDERS

The custody determination by the court is not necessarily the end of the matter. While the courts prefer not to disturb existing child custody arrangements, they will look at custody again if the parents make significant lifestyle changes. Please see an attorney if you are considering asking the court to change custody.

CONCLUSION

The most important thing you can bring to a custody hearing is a mature attitude. The best shot you have is to present your case calmly and coherently. Always remember that the court only cares about what is best for the child.

This pamphlet is for basic information on child custody and visitation for military personnel stationed in Alaska. It is not intended to take the place of legal advice from a Judge Advocate. There may be important exceptions in some states to the information presented here. Please contact the 354th Fighter Wing Legal Office for further questions and information.

