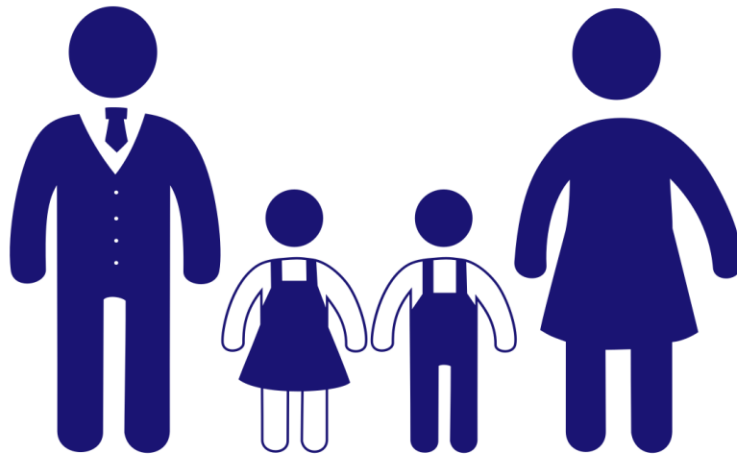


KNOW YOUR RIGHTS

Co-Parenting Done Right.



From Child Custody to Child Support in Texas,
A Short Guide to Understanding Your Rights as a
Parent and Dealing with a Difficult Co-Parent.

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When you appear before the judge, you need to know your rights as a parent.

Physical custody and Legal custody - what is the difference?

Physical custody is different from legal custody. The main difference is that physical custody is about physical possession while legal custody is about a parent's rights and duties.

Also, physical custody deals with whom the child lives with. This usually falls into a parent's period of possession. In Texas, the most common possession order is called Standard Possession Order (SPO). In this type of Order, the parent who does not decide where the child lives may visit the child on the 1st, 3rd, and 5th Friday of the month. During this time, the parent has physical custody of the child.

On the other hand, legal custody is about responsibilities. Generally, the Texas Family Code addresses certain decisions that parents have to make. Some examples are health decision (invasive and non-invasive). Also, one or both parents decide the religious training, marriage, and education of the child.

The court may grant one parent sole (legal) custody. Therefore, only the sole managing conservator (parent with sole custody) makes the decision. The other parent may have independent rights or no rights to these decisions. The court considers the best interest of the child. That is the standard.

What is Conservatorship? This is also known as Custody.

Although we use the word 'custody' in our everyday vocabulary, it is a legal term.

Custody simply means 'in care of'. However, in family law, custody generally refers to child custody.

This type of relationship is between a caregiver or parent and a minor. As a parent, you may have sole custody or joint custody. There are rights, duties, and responsibilities attached to appointment in a suit affecting parent-child relationship: independent rights, joint rights, or exclusive rights.

The arrangement is called conservatorship.

The person assigned to the arrangement is called a conservatorship. There are sole conservators, joint managing conservators, and possessory conservators.

In ***Sole managing conservatorship***, one parent or non-parent has sole rights and duties of a child's welfare. This includes decisions such as medical, education, and designating child's residence.

In ***Joint managing conservatorship***, both parents or non-parents have joint rights and duties. Both parents (or parties) have similar rights and duties concerning the children, although the children may live most of the school year with one parent or the other.

Although joint managing conservatorship is the preferred arrangement in Texas, it is not the only arrangement. If one parent is in prison or has a history of violence or drug abuse, the court may designate the other parent as the "Sole Managing Conservator". In other words, he/she holds all the rights listed below and holds them exclusively.

If you have a child under the age of 18 or has not graduated from high school, your final decree of divorce must have a parenting plan. What should you put in your parenting plan? Well, the three important parts are:

1. **Conservatorship** is how the parents will share decision-making rights relating to their children.
2. **Possession and Access** is the default rules for how the parents will share the children's time.
3. **Child Support** sets out how the parents will provide for the children's financial and medical needs.

There are other issues covered in a parenting plan, depending on the facts in your case, such as:

1. Passport provisions and provisions for international travel.
2. Long-distance travel provisions when parents are living more than 100 miles apart.
3. When and where to exchange possession of the child.
4. Electronic communications with the child via phone or video.
5. Right to watch the children when the parent in possession of the children is absent.

Conservatorship

The law in Texas encourages stability in the homes. Both parents should have meaningful relationships with their children.

The rights and duties that Texas law recognizes include:

All Parents Receive the Following Rights. The Right to:

- receive information concerning the health, education, and welfare of the child;
- confer before making a decision concerning the health, education, and welfare of the child;
- access to medical, dental, psychological, and educational records of the child;
- consult with a physician, dentist, or psychologist of the child;
- consult with school officials concerning the child's welfare and educational status, including school activities;
- attend school activities, including lunch with child;
- be designated as an emergency contact on the child's records;
- consent to medical, dental, and surgical treatment during an emergency;
- manage the estates of the child;
- consent to medical and dental care not involving an invasive procedure;
- direct the moral and religious training of the child;

Rights That Parents/Conservators Fight Over are the Rights to:

- designate the primary residence of the child;
- receive child support;
- make decisions concerning the child's education;
- consent to medical, dental, and surgical treatment involving invasive procedures;
- consent to psychiatric and psychological treatment of the child;

Rights That are Often Shared and that Do not Attract Conflict. The Rights to:

- represent the child in legal action;
- consent to marriage and to enlistment in the armed forces of the United States;
- the services and earnings of the child;
- act as an agent of the children in relation to the child's estates if the child's action is required by a state, the United States, or a foreign government.
- manage the estate of the child, to the extent created by the joint or community property of the parties / or by the property of the parent.

These rights can be either exclusive, independent, or joint.

Exclusive: You can exercise the right without conferring with the other parent and do not need the other parent's consent. The other parent cannot exercise this right at all.

The rights to receive child support (if any) and the right to designate the primary residence of the children (if given) are always exclusive.

Independent: Either you or the other parent can exercise the right without conferring with each other and neither of you needs the other's consent. The rights to receive information about the children, consult with physicians and teachers, and direct the moral and religious training of the children are almost always independent.

Joint: A joint right is one that you can exercise subject to the consent of the other parent. The right to consent to marriage or enlistment in the armed services is frequently a joint right. If possible, where a right is held jointly by both parents, it's a good idea to include a tie-breaker provision so that the parents are not forced to sue each other if they can't agree.

Duties

With rights, come duties. The duties recognized by the Texas Family Code are:

- inform the other parent of significant health or educational issues concerning the children;
- inform the other parent if you begin to live with a registered sex offender;
- duty of care, control, protection, and reasonable discipline of the children;
- support the children, including providing the children with clothing, food, shelter, and medical and dental care not involving an invasive procedure;
- provide medical support for the children (health insurance);
- notify the other parent of changes of address or employment, if you are ordered to pay child support.

Geographic Restriction on the Primary Residence of the Children

The Family Code provides that the judge *must* designate one of the parents as having the exclusive right to designate the primary residence of the children. This is absent a mutual agreement by the parents or parties.

An exception to this general rule is that the parents can agree to a geographic restriction the children's primary residence. Having this one right is what is meant when someone is the "primary parent." It just means that a parent chooses where the child lives. Many parents fight over who gets to be called the 'primary parent'. Ironically, this title can affect tax provision - such as who files using the child as a dependent.

Also, parents fight and spend a lot of money on the designation because of child support. In the end, the focus should be on what is best for the child. For example, if

mom has been the primary caretaker - feeding, clothing, caring for the child while dad went to work; then, it makes more sense (legally and factually) to designate Mom as primary. This applies vice versa - if Dad was the primary caretaker of the child in the home.

Both parents can decide that no one should be designated primary too.

Possession and Access

The Texas Family Code insists that, unless there are good reasons to deny one parent access to the children, the parents are free to exchange the children between them in any manner that they can agree to and which is also in the best interest of the children. However, if the parents cannot agree, then they must follow the detailed rules set out in their final decree of divorce. These detailed rules are usually the "Standard Possession Order" supplied by the Texas Legislature. Even though the Standard Possession Order is the default rule, parents can negotiate and agree to completely different provisions based on their work and travel schedules and what they believe is in the best interest of their children.

Under the standard possession order, the children live with one parent most of the time during the school year, with the other parent having possession of the children on the first, third, and fifth weekends and on Thursday evenings. The standard possession order also provides that the parent who has less time with the children during the school year gets up to 30 days with the children during the summer, every other spring break, and every other Thanksgiving, with the Christmas holiday shared between the parents.

It may seem like one parent gets a lot more time with the children than the other; however, it may be more even. Under the standard possession order, over a two-year period, each parent will have the children to him- or herself about 180 days per year with all the other days being shared. Look at it over a two year period because some holidays such as Spring Break are alternated between parents every other year.

NOTE: the standard possession order does not automatically apply to children under the age of three years. A modified possession order applies.

Who is "Unfit" parent?

When two parents are fighting for child custody, the bottom line, at times, is who is a better parent.

The best interest of the child rests on which parent is 'better' capable of caring for the child.

No parent is perfect - because life is not perfect. But both parents want more time with the child.

Therefore, being an unfit parent will reduce a parent's chance of getting more time with his or her child.

The Texas Family Code, section 153.131 states that a parent is unfit to have custody of a child if it would “significantly impair the child's physical health or emotional development.”

Unfortunately, this definition is opened to broad interpretation. In other words, it is up to the parent to provide evidence of impairment.

What are some signs that the Court may look at and likely categorize a parent as 'unfit'?

1. Is there any history of child abuse or family violence?
2. Is there any history of substance abuse or criminal records?
3. Is the parent responsive to the child's needs or neglectful?
4. How involved is a parent in a child life - education, medical, and social functioning?
5. How has the parent work with the other parent? Co-parenting?
6. Is the parents providing for the child's welfare?
7. Does the parent have medical illness that incapacitate her or him from caring properly for the child?

Best Interests of the Child and the Holley Factors

In Texas, child custody decisions will be made by a court based on the best interests of the child. A Texas court will presume that joint legal custody will be best unless one parent can prove otherwise. A court will consider many factors in deciding primary physical custody, including:

- The history of contact between the parent and child
- The relationship between each parent and the child
- The health, safety, and welfare of the child
- The health of the parents
- Where the parents live
- How close the parents live to each other
- Each parent's finances
- Any child abuse

In *Holley v. Adams*—a case involving termination of parental rights—the Texas Supreme Court listed factors a judge should consider when deciding the “best interest” test.

How do Courts Determine Best Interest?

The first *Holley* factor requires the court to consider the desires of the child.

The second factor is the physical and emotional needs of the child now and in the future.

The third factor is any emotional and physical danger to the child now and in the future.

Fourthly is the parent's ability or of the person seeking custody. You can satisfy this factor by showing a parent's understanding and involvement with the child's developmental needs.

Next factor is the programs available to assist the parent and the children; what programs are available to meet developmental needs?

The sixth factor is the plans for the child by the parent seeking custody.

Next is the stability of the home for proposed placement.

The eighth and ninth factors are acts or omissions of the parent. These factors are important because you can use these factors to show that the current parent-child relationship is not proper. Here, a court shall not allow any excuses for these failures to act or omissions.

The trial court has little evidence to distinguish between the abilities of each parent to meet those needs.

What is the Goal? Protect the Child.

The goal and policy of the family laws are to protect the interests of the children and promote amicable resolution of differences.

Lastly, a court presumes that a parent is in the best position to care for their kids. This presumption can be rebutted. In other words, a court may take steps to make sure that children have frequent and continuing contact with their parents. The contacts are only towards parents who have shown the ability to act in the best interest of the child.

Regardless of whether a parent has custody or not, courts want to encourage healthy parent-child relationship. In situations where a parent's or individual's access to the child is an endangerment, Courts step in to protect the child.

CHILD SUPPORT

In most cases, child support is calculated according to guidelines set up by the state legislature. When the Court orders a parent to pay child support in accordance with these guidelines, it is called "guideline support."

Computing Guideline Support

The exact formula is complex, but you can estimate guideline support as follows:

Net Resources = Monthly Gross Income
less Federal Income taxes (single, one deduction)

less Union Dues

less Medicare and Social Security Taxes

less Insurance premiums paid for children

Number of Children Support Factor

1	20%
2	25%
3	30%
4	35%
5	40%

Guideline Child Support = Net Resources X Support Factor

How Long is Child Support Paid?

Child support is paid as long as the minor child is under the age of 18 or still in high school, whichever is longer.

If the child dies, gets married, joins the armed services, or begins to live on his or her own as an emancipated minor, then the parent who pays no longer has to pay. Also, if the spouse that is receiving child support (the OBLIGEE) dies, child support is still paid by the other parent (the OBLIGOR).

But, if the obligor parent (the parent paying child support) dies while child support is still payable, your divorce decree controls whether the obligor's estate pays child support or not. A well-drafted decree will specify that child support is an obligation of the obligor's estate.

Child support can be paid for a longer period of time if the child is handicapped and needs support for a longer period. The parents can also agree that child support will be paid for a longer time, even without a court order, but agreed child support is enforced by the Court differently.

Step Down Provisions

If you have more than one child, the amount of child support will change over time. For example, if you have two children, the obligor parent will most likely pay 25% of his or her net resources as child support. When the first child graduates from high school (or child support is no longer payable for that child for another reason), the obligor parent would start paying 20% of his or her net resources as child support.

Child Support Above and Below Guidelines

If a child's provable needs are greater than can be met by guideline support, the child may be entitled to greater than guideline support. Examples of circumstances that might result in provable needs being greater than guideline support are special healthcare or educational needs of a child.

Some parents agree to a possession and access order that either splits the children between the two parents (e.g. son lives with dad, daughter lives with mom) or provides for almost equal time between the two parents on a week-on/week-off basis. In these situations, the parents can agree that each would pay guideline support for one child to the other parent, with the net actually being paid as cash support.

For example, suppose Mom has net resources of \$5,000/month, Dad has net resources of \$4,000/month, and that they have two children. If guideline support was appropriate, Mom would have a support obligation of \$1,000/month while Dad's would be \$800/month. The difference is \$200/month, so Mom (the higher wage earner) would pay Dad child support of \$200/month.

How Is Child Support Collected?

When the Court orders child support, it will also sign a wage-withholding order. The wage withholding order can be filed with the obligor's employer so that child support is directly deducted from the obligor's paycheck. Sometimes divorcing spouses agree that the wage withholding order will not be sent to the obligor's employer UNLESS and until the obligor gets behind on his or her child support payments.

Whether you are the obligor (person paying support) or the obligee (person receiving support), you should insist that all support payments be made directly through the State

Child Support Disbursement Unit. If you are the obligor, this protects you in the event that you make your full payments on time but your ex-spouse claims not to have received them. If you are the obligee, this protects you in situations where you have not received support payments but the obligee insists he or she has made the payment. The state disbursement unit acts as an impartial intermediary that records each payment received from an obligor and each payment sent to an obligee.

If you are an obligor, you need to understand that **INFORMAL PAYMENTS DO NOT COUNT**. If you hand your ex-spouse some cash instead of making your payment through the disbursement unit, that cash is simply a gift to the ex-spouse and will not be credited against your support obligation. **DO NOT MAKE INFORMAL PAYMENTS OF CHILD SUPPORT.**

There is a difference between retroactive child support and arrears.

What is the difference? Well, let's first take a look at retroactive child support.

Retroactive Child Support

It is as simple as the word. "Retro" is short for 'retrograde' which means backward" or "behind".

When a judge orders retroactive child support, she is ordering you to **START** making a certain payment for a period of time in a child's life that you did not financially support him or her. For example, the custodial parent may ask the court that you should pay child support (\$500) from the date of separation. So, if you are filing for divorce, but you have been separated for 3 years, and the child is now 6 - well, let's do the math.

$6 \text{ years} - 3 \text{ years} = 3 \text{ years.}$

$500 * 36 \text{ months} = \$18,000$

Therefore, custodial parent is asking that, upon final hearing, you begin to make payment of \$500 plus \$18,000 in retroactive child support.

Once the judge signs an order to this effect, it becomes a payment you owe. The good news is that you can include in your Final Order a payment plan. Especially, if you are on a wage withholding order, add an extra \$100 to your monthly child support payments.

By the end of the divorce - assuming it doesn't drag on for a year or so, you are responsible for \$600 until your retroactive support is paid in full. Once paid in full, your monthly payment returns to the court ordered amount of \$500.

What are Arrears?

Arrearages or Arrears refer to 'back child support'. In other words, you fail to pay the support amount that the judge ordered.

This is dangerous. It is? Absolutely.

Non-custodial parent can be placed in contempt of court order.

If you fail to pay child support, it becomes a debt.

Keep in mind that child support is a debt that cannot be discarded. You cannot get rid of it by filing bankruptcy. Some supports even survive the death of the obligor. That is, your estate may have to continue to pay your child support death. It is a serious issue for the state.

Tips

1. Know the difference
2. Keep track of your child support debts and payments
3. Calculate - you can use the child support calculator on the office of attorney general's website
4. Don't ignore court order - read your court order and know what, where, and to whom you make payment

Bonus: Did you know that a divorcing couple can agree on retroactive child support? That's right!

A couple can agree on a retroactive child support amount. The court will not make that decision on its own; however, it may place the non-custodial on child support, if he is not already on one.

What do I do if I am in arrears?

Maybe you received a letter from the Office of the Attorney General (OAG) - child support division on missed child support payments.

It is the job of the state of Texas to enforce the court order and track your payment. This is especially true if a child is on government assistance program or welfare. Someone has to pay for these programs.

So, what do you do when you get the letter?

First, follow the instructions in the letter.

Next, contact the child support office to schedule an appointment for a negotiation conference. But, it is even more important to know your rights and what the child support guideline is. You must know how much you should pay.

Lastly, talk to the state's attorney to arrange a payment plan.

If you are able to retain an attorney, do so! It will make life and the entire process stress-free and smoother.

Sometimes, life happens. If you lose your job and are struggling with payments, ask for modification of child support payments based on a "material change in circumstance". You are not required to attend the negotiation conference. If you do not show up, be prepared to be served with a lawsuit from the OAG.

AMINU LAW FIRM, PLLC
Give us a call: (832) 529-1255
www.aminulaw.com