

## What does ‘custody’ mean?

Custody refers to the person responsible for the care, control and maintenance of a child. There are two types of custody: **Legal and Physical**.

-Legal custody involves long range plans and important decisions such as education, religion, and medical care. Parties may have joint legal custody or one of the parties may be awarded sole legal custody.

-Physical custody refers to where the child is living and deals with the child’s everyday needs. Parties may be awarded shared physical custody or one of the parties may be awarded primary physical custody.

Legal and physical custody can be split in different ways depending on the situation.

## What is visitation?

Visitation defines the conditions for the parent without custody to have contact with the child. In some cases, the court may require that visitation be supervised by a designated chaperone. Depending on the circumstances, a court **can deny** visitation to a parent – even if that parent’s parental rights have not been terminated.

## Who is allowed to petition the court for custody of a child?

**Anyone with a legitimate interest may petition for custody of a child.** A person with “legitimate interest” may be a grandparent, uncle, aunt, sibling, stepparents, former stepparents etc. Unless there is a court custody order, Virginia law states that both parents have equal rights to physical possession of the child. If the parents are unmarried, for the father to get rights to the child, paternity must be admitted or established in court. If paternity is established, both parents have equal rights to the child.

## How do I get a court custody order?

You or your attorney may file a petition for child custody with the Court Services Unit of Juvenile and Domestic Relations (J&DR) Court. The petition should be filed in the county (and state) where the child last lived for at least six consecutive months. If the child is **under 6 months** old, the custody petition should be filed in the county where the child lived at birth.

## What happens after I file for child custody? (Varies by county)

After a petition for custody is filed, your petition will usually be heard within several weeks. At the first hearing, the judge usually will enter a temporary custody and visitation order. In some counties, the first hearing will not involve

the presentation of evidence but will be used for setting the trial date only.

At this hearing the judge may also issue an order requiring a parenting education class, appoint an attorney called a Guardian Ad Litem to represent the interests of the minor child as well as appoint a Court Appointed Special Advocate (CASA worker) to do an investigation. CASA volunteers are appointed to watch over and advocate for **abused and neglected children**. Depending on the circumstances, the judge may order the Department of Social Services (DSS) to do Home Studies. This is a report by DSS on you and your home surroundings.

## How does the judge decide who gets custody?

Judges look at many factors in deciding child custody. The most important factor is the **best interest of the child**. The role that you have played in the past upbringing of the child and the role that you will play in the future upbringing of the child are also very important. (A full listing of factors can be found in the Virginia Code 20-124.3).

**Judges will look negatively at factors such as alcohol abuse, illegal drug use or other drug abuse, and criminal convictions.**

## **How does the judge decide about visitation?**

**Presumably** the judge would like to assure regular and frequent contact with the child by both parents but **ultimately**, the judge will order visitation based on what's in the child's best interest.

-If a parent is found to exhibit negative factors then the judge will adjust the visitation length and frequency to a level that is in the child's best interest.

If you don't get child custody, the judge will almost always give you child visitation. Depending upon the circumstances, visitation may also be denied.

If you can work things out with the other party, you may be given "liberal and reasonable visitation." If you can't work things out with the other party, you may be given visitation at specific times. (This depends on many things, such as how far you live from the other party and how much contact you've had with the child in the past.)

## **What if the other party isn't following a court custody or visitation order?**

If a court order is not being obeyed, you may go to court to ask the judge to enforce an order, which you do by filing a

Motion for a Rule to Show Cause Summons. You will file this with the court that issued the last order.

## **What if I want to change a court custody or visitation order?**

Once a judge has issued a child custody or visitation order, it can't be changed unless there has been a material (important) change in circumstances or events **SINCE** the last court order. This means you can only bring up things that happened since the last court hearing. Only a judge can change a court order.

## **This brochure is intended for information purposes only and is NOT a suitable substitute for legal advice from a certified attorney.**

If you have a specific question, please consult Legal Aid Works<sup>SM</sup> at:

500 Lafayette Boulevard  
Suite 100  
Fredericksburg, VA 22401  
Telephone: (540) 371-1105  
Fax: (540) 371-1114  
[www.LegalAidWorks.org](http://www.LegalAidWorks.org)



# **Legal Aid Works<sup>SM</sup>**

**Fredericksburg Office**

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## **Child Custody/Child Visitation**

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