

A brief guide to custody and parenting time

Why should you establish custody and parenting time through a court case?

If there are no court orders in place that state which legal parent has legal custody and what the visitation schedule will be for the children, either parent can do whatever they want with the children. This means one parent could take the children and not let the other parent see them. The other parent would not have any quick legal options for seeing the children again. Law enforcement cannot help parents when there are no court orders outlining parents rights and responsibilities in regard to the children.

After parents have custody and parenting time orders in place through a divorce or custody case, they can get help from the courts and / or law enforcement when the other parent isn't following the order.

What is legal custody?

Legal custody refers to the legal authority to make "major life decisions" for one's children, including the children's education, medical treatments, and religious upbringing. To establish legal custody, parents must file either a custody case (if they're not married) or file for divorce (if they are married).

Legal custody does not determine how much time the children spend with either parent. This is determined by the parenting time schedule or the parenting plan. Both parents can have equal parenting time with the children even when only one parent has sole legal custody.

Joint vs. sole custody

Parents can either have joint (shared) custody or one parent can have sole custody. A judge in Oregon cannot order joint custody unless both parents agree to that arrangement. If the parties do not agree to joint custody, a judge must choose which parent shall have sole custody.

What is parenting time?

Parenting time refers to the visitation schedule that the children are with each parent. Parenting time schedules should be set taking into account the best interests of the child. Parenting time schedules should be customized to meet the unique needs of each family.

What is a parenting plan?

A **parenting plan** is a legal document that lays out the parenting time schedule for each parent and also includes rules for parenting time. A parenting plan can be brief, or it can be very detailed with rules for parenting time and detailed schedules. A parenting plan should be customized to meet the unique needs of your family. There is no one-size-fits-all plan. A parenting plan must be included in your custody or divorce judgment when you finalize your case.

How is legal custody, parenting time, and the parenting plan decided?

There are two main ways parties can establish legal custody and put a parenting plan in place for their children:

- **By reaching an agreement.** Parents can agree on who gets custody and what the parenting plan will be for their kids. If they reach

an agreement, they will need to start a court case, prepare a legal document called a “judgment” that lays out the agreement, sign the judgment, file it, and then wait for a judge to sign the judgment. After the judgment is signed by a judge and entered in the court file, the parties have a legally enforceable agreement.

- **Trial.** If parties cannot agree on custody and parenting time, then they can take their case before a judge. The judge will decide these issues based on the law and the facts of the case.

If you need to establish legal custody and create a parenting plan for your children, The Commons Law Center can help you with this process. We offer a variety of affordable legal solutions to help parents of all income levels.

How does a judge decide which parent gets legal custody?

If parents cannot agree who should have legal custody, a judge will decide which parent should have custody based on the best interests of the children. In making this decision, the judge must consider the following factors:

- The emotional ties between the children and family members;
- Each parent’s interest in or attitude towards the children;
- The desirability of continuing an existing relationship with both parents;
- Whether one parent has abused the other parent (If the judge finds that a parent was abusive, they cannot award custody to the

abusive parent, unless there is strong evidence that the non-abusive parent is not a fit parent);

- Who has been the primary caregiver of the children;
- The willingness and ability of a parent to facilitate and encourage a relationship between the children and the other parent, unless one parent was abusive to the other.

A judge cannot consider a parent’s conduct, marital status, income, social environment or lifestyle unless these factors may cause emotional or physical harm to the children.

How does a judge decide the parenting plan for the children?

A judge must create a parenting time schedule and a parenting plan based on the best interests of the children. The judge should create a customized plan that meets the needs of the children and parents.

In creating a parenting plan, the judge will consider the following information:

- **Details about the children**—their age, where they go to school, who do they spend time with, health concerns, where the children have living in the last few years, which parent they’ve lived with, etc.
- **Details about the parents**—how involved both parties are as parents, what their relationship with the kids is like, where the parents live, etc.
- **Safety concerns**—whether parents have drug or alcohol issues, are abusive to the kids or other parent, have untreated mental health issues, etc.

Should you create and file a proposed parenting plan for trial?

Yes. If you and the other parent do not agree on the parenting plan for your children and you need

to go to trial on this issue, it is highly recommended that you create and file your own proposed parenting plan with the court prior to your trial. This will allow the judge to clearly understand what type of parenting plan you would like them to order.

What are standard parenting plans?

Although you may have heard that many counties have “standard parenting plans,” it is impossible to predict what parenting plan a judge will order in your case.

A judge should create a custom parenting plan to meet the unique needs of your family. You may advocate for a plan that is different than one of the standard plans if you believe your plan is better for your children.

How do you create your proposed parenting plan?

There are three main options for creating a proposed parenting plan:

- Use a form parenting plan from the state court website or your local county website;
- Use a parenting plan created by a mediator during mediation; or
- Create your own custom plan.

Use one of the parenting plans available online

There are variety of statewide and local plans available online that you can choose from. The statewide plans are available online at: <https://www.courts.oregon.gov/programs/family/children/Pages/parenting-plans.aspx>

Your local county will likely have it’s own county-specific plans as well. Contact your local courthouse to get a copy of one of these plans.

Again, there is no one right plan that you must follow. You can use any of these plans as templates to create a parenting plan this is best for your family.

Use a parenting plan created by a mediator

During custody and parenting time mediation, a mediator will try to help you come up with a parenting plan. Sometimes, you and the other party are able to develop a fairly comprehensive parenting plan with the help of the mediator, but then something happens at the end of the mediation process and one party refuses to sign the agreement.

If you are satisfied with the parenting plan developed through mediation, you can use that plan as your proposed parenting plan when you go to court.

Create a custom parenting plan

Lastly, you can also write up your own unique parenting plan. This plan could be based on other parenting plans you have seen, proposals made during mediation, or it could be entirely your own. There are no rules that require you to use a specific form, you can type up your own plan and file it with the court.

Can custody and parenting time be changed in the future?

Yes, both custody and parenting time can be modified by either party in the future. To do this, either party must file a motion with the court to start a modification case.

It is more challenging to modify custody than it is to modify parenting time.

To modify custody, the parent seeking to change custody must prove there has been a substantial change since the last custody decision was made. If a parent is seeking to modify joint custody to a sole custody arrangement, this is usually easy to prove. However if a parent is seeking to change sole custody from the other parent to themselves, this is usually much more challenging.

Modifying parenting time is easier. The parent seeking a change simply has to prove a change is in the children’s best interests.