

Child Custody and Visitation in Iowa

A Guide To Using the Court Forms for
Custody When Parties Are Not Married

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Important Notice:

Read this information before using any part of this publication.

This booklet is a general summary of the law. It is not meant to completely explain the subjects in this booklet. **It is not a substitute for legal advice.**

The information in this booklet was correct as of the date it was printed (see the back cover). The laws may have changed. **Do not assume that the information in this booklet is now correct.**

You should see a lawyer to get complete, correct, and up-to-date legal advice. Do not rely on the general information in this booklet for your specific case.

If you need a lawyer but can't afford one, contact Iowa Legal Aid. You may be able to get free legal help. Call or write Iowa Legal Aid. The address and phone numbers are on the back cover.

As you read this booklet, remember it is not a substitute for legal advice.

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Words Commonly Used in Custody Proceedings

ACCEPTANCE OF SERVICE: Respondent tells the Clerk of Court (in writing) the Petition has been received.

ANSWER: Written response of Respondent to Petitioner's Petition. Respondent admits or denies the separate paragraphs of the Petition.

MINOR CHILD: Any person under legal age.

DECREE: A legal document (court order) signed by a judge providing for the legal custody, physical custody or visitation with respect to a child.

DEFAULT: Failure of a party to respond to a pleading of the other. Generally it results in granting all requests not answered.

DOMESTIC ABUSE: An assault committed between parents of the same minor child.

EXTRAORDINARY VISITATION: Court-ordered visitation in excess of 127 overnights per year.

HOME STATE: The state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

INITIAL DETERMINATION: The first child-custody determination concerning a particular child.

JURISDICTION: When a court has the power to make legal decisions and enter judgments.

MODIFICATION: A child-custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

ORIGINAL NOTICE: A notice served with the Petition stating that an action has been filed against the Respondent. It says a judgment will be taken if she/he fails to answer.

PETITION: The first set of papers filed in the action. The Petitioner requests custody be established and for other relief such as visitation schedule, support, attorney fees, etc.

PETITIONER: The person who starts the custody proceedings.

RESPONDENT: The person against whom the action is brought.

SERVICE: Delivering the Petition to Respondent. This can be done by the Sheriff's office or a private process server. It can be done by the petitioner or Petitioner's Attorney if the Respondent will voluntarily accept service. Service of other court papers after this initial service are usually done as directed by the court.

STIPULATION: The written agreement made by the parties resolving all issues in dispute. There can be temporary stipulations on custody, support, or attorney fees to protect one or both parties while the dissolution action is pending. A final stipulation can resolve all issues arising out of the divorce action so the case can be finalized without a trial.

Introduction

This booklet is intended to help people in unmarried situations who want to obtain information on custody law. The booklet also explains the legal process you use to obtain a custody or visitation order in Iowa. This booklet is not intended for persons who have children who were born during a marriage or those who wish to change the custody provisions of a divorce decree. For custody situations involving a marriage, you should consult Iowa Legal Aid's booklet entitled, "DIVORCE LAW WITH CHILDREN." Iowa Legal Aid also has several articles on its website for people with custodial issues in marital situations located at <http://www.iowalegalaid.org/>.

This booklet explains the rights of parents when there is no custody order yet in place and discusses the process of obtaining a court ordered custody decree. It also summarizes what the court looks at in making final decisions about custody, visitation and child support. The information in this booklet is intended to describe the custody laws where Iowa has jurisdiction over custody of the child. Custody law varies from state to state. If Iowa does not have jurisdiction over your child's custody issues, you should not use this booklet to determine the law in your situation. You should consult an attorney licensed in the state that has jurisdiction. Custodial jurisdiction is discussed in this booklet on page 7.

General Information

Filing as a Self-Represented Litigant or Pro Se

If you feel that you are able to represent yourself, you can use the custody forms available on the Iowa Judicial Branch's website. If you do not have access to a personal computer and printer, you may be able to use a computer at your public library. The website where you can find the forms is www.iowacourts.gov. Click on "For the Public" on the top of the page. Then, click on "Court Forms" in the drop-down. Then, click on "Custody (Parents not Married)."

You will need to print out the appropriate forms and follow the instructions provided on how to complete and file them with the court. **Throughout this booklet, you will see numbers in parentheses following some sentences. These are the form numbers from the Iowa Supreme Court forms that go along with the particular topic being discussed.**

How Much Does It Cost to Get a Custody Order?

You must pay a fee of \$185 to the Clerk of Court when the custody Petition is filed. There are also service fees to the Sheriff if service of the action on a party must be made by the Sheriff. Service fees are usually \$20 to \$30. If you are unable to pay the fees, you can ask the court to defer payment of the costs (409). You must provide specific details about your income and expenses. A petitioner who asks to defer payment can file without paying a fee. The fee will still be charged to one of the parties to the case at the end of the custody case.

Many lawyers require "retainers" or money up front to start a custody action. Fees vary from city to city and from law firm to law firm. Lawyers often want at least \$500 to \$1,000 or more for a retainer. Discuss fees and payment options with your lawyer. Be sure you know how much your lawyer charges per hour. If he or she charges a flat rate, find out what it will be. Ask if that flat rate goes up if the case gets more difficult than it seemed at first. Ask your lawyer to put the fee agreement in writing and make sure you understand its terms before you hire the attorney. Keep a copy of the fee agreement in case you have questions or concerns over billing later on. If you have questions about the fees as the case proceeds you can request the attorney provide you with an accounting of the fees they have charged you.

A contested custody case is when the parties cannot agree on the issues. Most of the time this costs more than an uncontested one. The reason is because a trial is often involved. Courts may require the party in the best financial position to pay part or all of the legal fees. This may include some of the other side's attorney fees.

Do I Need to Have a Lawyer to File a Custody Action?

It is best to have a lawyer. There are times when parties are able to work out a settlement on their own. No law says people must have a lawyer in order to file a custody case. However, in cases where the parties do not agree on the issues in a case involving custody, visitation and child support provisions, you should talk to a lawyer before filing a custody case.

Many people worry about the cost in deciding whether or not to have a lawyer. If you do not have a lawyer, your rights may not be addressed in your custody petition and decree. This may end up costing more in the long run if you have to later file another action to try to get changes in the initial decree. Courts are reluctant to make any changes later unless there has been a major change of circumstances. Consider, too, the negative feelings you will have if you feel that your rights were not considered in the initial petition and decree.

In some parts of the state, special programs help reduce the expenses involved, such as attorney's fees. Talk to the Clerk of Court in the county the custody case is filed to find out if there is such a program in your area.

The Court may order the other parent to pay attorney's fees. This will not occur until after a hearing on temporary support and fees or the decree is final. In the meantime, most lawyers will want payment in order to start the custody case.

Talk to your lawyer to see if you can pay in installments.

If you are a victim of domestic abuse and are low-income, Iowa Legal Aid may be able to help. Call the toll-free number on the back of this booklet or go to iowalegalaid.org on the Web to find out which office serves your county.

What If I Think I May Be Married To The Other Parent?

Common law marriage is generally an informal marriage. There is no ceremony. It is an agreement between two persons who are legally capable of marrying. You must be able to show that:

1. Both parties intended to be married and agreed to it;
2. There must be some degree of living together, though no set length of time is required. The simple act of living together, without more, is not enough to establish a common-law marriage;
3. There must be public declaration or “holding out” as married. While there is no formula to determine if the parties have been “holding out” as a married couple there are several factors a court looks at to determine if the parties considered themselves to be married.

If you are unsure whether you are common law married, you should consult Iowa Legal Aid’s booklet entitled, “DIVORCE LAW WITH CHILDREN.”

You can also find out more on common law marriage from Iowa Legal Aid or on the website iowalegalaid.org. PLEASE NOTE: Iowa is one of a small number of states recognizing common law marriage.

Custody Law Before a Custody Order is Entered

Who Has Custody When a Child Is Born to an Unmarried Mother?

The mother of the child usually has sole custody of her child if she is not married when the child is born. The mother can make decisions and has the right to take care of the child.

The father can “acknowledge” paternity. This means that the father publicly states he is the father or does some other act to show he is the father. Some ways a father can acknowledge paternity are by signing a Paternity Affidavit, signing the child’s birth certificate, providing support to the child and mother, or telling people that he is the father of the child. If the father acknowledges paternity within a “reasonable time” after the child’s birth, he and the mother both have equal rights to be with the child until a court decides custody issues.

How Is Paternity Established?

Both the mother and father can sign a Paternity Affidavit. A paternity affidavit can be signed in the hospital after the child’s birth or the parents can obtain a paternity affidavit from a local Iowa Child Support office, local County Recorder/Registrar office or the Iowa Department of Health and Human Services Bureau of Health Statistics & Vital Records.

Iowa law states that completing and filing a voluntary paternity affidavit with the Iowa Department of Health and Human Services legally establishes paternity for a child born to parents who are not legally married to each other. There is no age limit for the parents and no fee for filing a voluntary paternity affidavit. Both parents must sign the form in front of a notary public.

Either parent may cancel this affidavit by completing and filing a Rescission of Paternity Affidavit form with the state Bureau of Health Statistics. You have 60 days from the date of the last notarized signature on this form, or until a court order is entered regarding this child, whichever is earlier. CAUTION: Once a form has been completed and processed, the information on a form cannot be changed except by court order. It is very important to be sure of the paternity of a child before completing an affidavit. If the parents are not sure who the biological father is, a paternity affidavit should not be used as it legally establishes paternity to a child. It can be difficult and costly to disestablish paternity once it is established. Once paternity is established by affidavit, the father will have a duty to support the child and a child support order could be entered if requested by either party.

Paternity can also be established as part of a child support order. Child Support will start a child support action if the custodial parent fills out an application requesting Child Support assist in obtaining an order or if the mother or child received any government benefits (such as FIP or Title XIX). See paternity establishment through child support orders in the next section.

Paternity can be established by the court in a custody case or as part of a juvenile court case in a Child In Need of Assistance Case.

Paternity Established By A Child Support Order

Child Support is part of the Iowa Department of Health and Human Services. Child Support represents the State of Iowa. One of Child Support's goals is to ensure that children are being supported financially by their parents. Either a mother or father of a child can apply with Child Support seeking help from Child Support to establish a child support order. You can obtain an application for services from your local Child Support office or on Child Support's website at: <https://secureapp.dhs.state.ia.us/customerweb/forms>

Child Support can file a petition with the court seeking to establish a child support order on behalf of the child. Child Support must then serve a copy of the petition on the person from whom support is sought. If the person against whom support is sought is the alleged father, then the alleged father can request DNA testing to determine whether or not he is the actual biological father of the child. It is important that the alleged father request genetic testing within the timeframes given on the notice. If an alleged father does not respond after being served with a petition by either filing an answer, motion, or request for genetic testing, a default judgment may be entered establishing him as the father of the child.

Generally, Child Support will cover the initial costs for the DNA testing. If, however, the alleged father is found to be the biological father, then Child Support will seek in the court action to be reimbursed for the costs of the genetic testing.

If the court finds an alleged father to be the child's father, then he is established as the legal father to the child in the child support action. The court does not have the authority to decide custody and visitation issues in cases started by Child Support. A separate custody action would need to be filed to establish custody and visitation rights. See The Custody Process on page 7 for information on how to establish a custody order.

The Custody Process

Can Anyone File for Custody in Iowa?

You must meet certain requirements before bringing a custody action in Iowa. Iowa must have jurisdiction or authority to decide custody issues over the child. Which state has jurisdiction over your child is determined by the Uniform Child Custody Jurisdiction and Enforcement Act. All the states in the United States and the District of Columbia have adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) except the state of Massachusetts.

The UCCJEA says that only one state can make decisions about custody of the child(ren). This is to avoid having different orders from different states about the same child that require different things.

Once a custody action is filed in Iowa, the other parent may raise the issue of whether Iowa has jurisdiction over the custody of the child. There may be circumstances where jurisdiction is an issue if the child has lived in more than one state. Generally, a person should bring jurisdictional issues to the court's attention as soon as the person is served with a Petition for Custody and Visitation (401).

How Does the Court Decide What State has Jurisdiction Over Custody Issues?

Iowa has jurisdiction to make an initial child custody determination under the Uniform Child Custody Jurisdiction and Enforcement Act if Iowa is found to be the child's "home state." The child's home state is usually the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months (or since birth if younger than 6 months) immediately before the filing of a custody case. This is because the place where the child lived is where most of the evidence and witnesses will be. There are exceptions to this general rule, however such as in an emergency or very recently moving from the State where the case has been filed.

Sometimes it can be hard to determine which state has jurisdiction. The UCCJEA is complicated. Sometimes the judges in different states have to talk to each other and decide what to do. If you have questions about your situation, consult an attorney.

The child does not necessarily need to be currently living in Iowa at the time the action is filed for Iowa to have jurisdiction over custody issues. As long as Iowa was the child's "home state" when the action was filed, Iowa will have jurisdiction over the custody issues. Also, if Iowa is the child's home state and an action is filed within 6 months of the child leaving the state of Iowa, Iowa will continue to have jurisdiction.

For Example, CHILD A lived in Iowa for 6 continuous years. The parents have never obtained a custody

order. On January 1, 2023, the mother of the child decides to move to Nebraska and takes CHILD A to live with her in Nebraska. Either parent could file an action to establish custody in Iowa for 6 months from the date the child left the state of Iowa. In this scenario, either parent could file a custody case in Iowa until June 30, 2023. If no custody case is filed in Iowa by June 30, 2023, and the child remains in Nebraska, Iowa would lose jurisdiction over custody issues and Nebraska would gain jurisdiction over custody issues. After June 30, 2023, neither party could file an initial custody action in Iowa involving the child. Nebraska would not have jurisdiction over custody issues the first 6 months the child resided there as jurisdiction would remain in Iowa during that time.

Sometimes it can be hard to determine which state has jurisdiction. For example, when the child has moved back and forth between two states and has not been in just one state for a continuous 6-month period. If the parents file custody cases in more than 1 state, the judges assigned to the case in each state will most likely contact each other to determine which state should have jurisdiction over the custody issues. Generally, one state will decline to take jurisdiction and jurisdiction will be left with only one state. Some of the things the court looks at in these situations are which state contains substantial evidence concerning the child’s care, protection, training, and personal relationships.

How Long Does it Take to Get a Custody Order?

The time it takes to obtain an order for custody can vary greatly from case to case. If the parties can work out the terms of their agreement, a hearing date is scheduled. If the parents agree on the terms of what they want in the custody order and both parents sign and file a stipulation (agreement) containing the terms, the court should decide whether to approve the stipulation at the hearing. Most hearings on uncontested cases can be scheduled soon because they require a short amount of time and can fit more easily into the court’s schedule.

If the parties are unable to work out an agreement, the custody case is contested. This means a trial must be scheduled. Depending on the number of issues and how difficult they are, a trial date may be many months away. A contested case is generally scheduled for a date a few months to over a year in the future after one of the parties asks for a hearing. This is because the court has to generally set aside 1-2 days for trial. Once a judge hears the case, it may be weeks or even months before getting a final decision and decree.

In certain cases, it is possible to get the custody order without a court hearing. Among other requirements, all the necessary documents must be on file. The parties must also have entered into a written agreement settling all the issues involved.

Electronic Filing

All Iowa counties now use electronic filing of court papers. The electronic filing system is called “EDMS”. It allows people to file papers online without going to the clerk’s office. The system notifies parties by email when the judge enters an order or another party files a document. You can ask to be exempted from electronic filing by filing a motion with the court and explain why you cannot use electronic filing (422).

What is the Petition and What Information Does It Contain?

In a custody action, the petition is a formal, written request to the Court (401). It asks the Court to establish custody of the child and visitation provisions. It can also request the court establish paternity of the child, order DNA testing and set child support. In addition, the petition should have:

- Names of the parties.
- The initials of the child, year of birth and present address of each minor child affected by the custody petition. (You cannot use a child’s name in court filings that are not sealed from the public.)
- The places where every child has lived for the past five years and names and present addresses of the persons with whom the child has lived during the past five years.
- A list of any current court cases that could affect custody or child support, including protective orders, juvenile orders, termination of parental rights, other child support actions and adoptions. For any lawsuit list the name of the court, case number and type of case.
- Include the names of any person not the petitioner or respondent who has physical custody of the child or claims some right to physical custody of the child. For any person, include the name and address.
- Whether the petitioner wants temporary and/or permanent child support.
- Who should have physical care of the child(ren).

- What the petitioner wants the court to do. For example, grant the petitioner primary care of the child(ren), order a set visitation schedule and order child support.

What Happens after the Petition Is Filed?

After the petition has been filed, the other parent needs to be served with the petition. It is up to the person filing the petition to make sure that the other parent is served. The petition needs to either be served by a process server or can be given to the other parent personally or by mail if the other parent is willing to sign an Acceptance of Service which is a document that a person sign stating that the person received the petition (404-410).

A hearing may be set on temporary matters if one party requests it (see the section on What are Temporary Orders on page 9). If the parties cannot come to an agreement on the issues a final hearing takes place and the custody decree is entered.

What Should I Do if I Was Served Custody Papers?

If you are the respondent and have been served the Original Notice, you must file an Answer with the Court within 20 days (415, 416). If you do not file an answer, the custody case will continue, but you will not be taking part. The Court will grant a custody decree without your input. You might not even know about it (custody decree by default). So, if you are served with a custody action and cannot afford a lawyer, you can place a written answer on file with the Clerk of Court on your own. If you are not using the EDMS system, be sure to send a copy to the other parent's lawyer (or the other parent if he/she is unrepresented). Keep a copy for yourself.

The Answer tells the court what parts of the petition you agree with, and which ones you do not. It is also the place to ask the court for certain things you might want that are not in the petition. For example, you may ask the court to award you child support.

What is the “Mandatory Child Education Course?”

Break ups can be hard on children. The law says parents must take part in a special class. The purpose is to “educate and sensitize” parents on the needs of the children. A final decree will not be granted unless the parents attend the class. Agencies in various places offer the class on a regular basis for a small fee. The requirement may be waived only under limited circumstances, such as if the parties already took part in a similar class. Generally, courts require the class be taken by the parents within a specific number of days after the filing of the custody case. The courts generally enter an order in the case letting the parties know how long they have to take the class. It is very important that a parent sign up and take the class. If a parent does not attend the class the court can impose sanctions against the party such as not letting the parent present evidence at trial or not entering a custody decree until the class is taken.

What are Temporary Orders?

Certain issues may need to be dealt with between the time a Petition is filed and the Final Custody Order is granted. For example, one parent may have concerns about finances or the welfare of the children. If so, either party may request temporary orders from the court for attorney's fees, temporary custody of the children, child support, or visitation (422). Before the Court will rule on temporary matters, the court will likely require a hearing. Such hearings are not automatically scheduled. A request for a hearing must be submitted in writing. You will be able to testify or submit affidavits in support of your case. Affidavits are written statements that are sworn under oath and signed in front of a notary (421). The courts follow guidelines to decide how much temporary child support should be ordered. Please see the section on How Does the Court Award child support on page 13 for information on how child support is calculated. The judge will listen to both sides and then enter a temporary order. This order will be controlling until the final decree is entered.

What If There is Domestic Abuse?

You may be filing for custody because the other parent has harassed or physically abused you. It is important that you tell this to your lawyer. If you have a protective order or no-contact order, you should note this on the petition. If you do not have a protective order but need one, you may be able to obtain a civil protective order in a separate case. The protective order forbids the other parent from contacting you.

An abusive partner tends to say he or she is sorry and promises not to repeat the abusive behavior. However, the abuse usually continues. It often becomes more violent in time, especially when the abuser believes he/she

is “losing” the other parent. Domestic violence intervention programs offer temporary housing and counseling for victims of violence.

Also, evidence of abuse has an effect on decisions about counseling and mediation. Some courts require mediation in custody cases. Mediation is a way of helping the parties come to an agreement. See “What is Mediation?” in the section below. If domestic abuse is involved in the relationship, a party can ask the court to waive any court-ordered mediation.

Contact Iowa Legal Aid and ask for the booklet Domestic Abuse and the Law. Call the 24-hour statewide, toll-free number to find out about the local Domestic Abuse Program that can help you.

Statewide Domestic Abuse Hotline: 1-800-770-1650

Working Out a Stipulation

The parties can try to negotiate a settlement (428 and 429). Matters such as custody, visitation, and child support should be decided in the custody case. In most cases settlements are agreed upon through a negotiation process and approved by the Court at a final hearing.

If the parties cannot reach an agreement, a Pre-Trial Conference is scheduled. The parties and their lawyers (if any) meet with court personnel or a judge to determine which issues the court will resolve. A trial will be scheduled sometime after the conference. Custody cases are heard by a judge without a jury. These trials may be closed to the public.

What Is Mediation?

Mediation is when a neutral third person agrees to help the parents work out an agreement. It is used when the parties can’t agree on custody or visitation. Frequently the court will require the parties to take part in mediation. A party can also request it. However, if there is a history of domestic abuse, the court should not require mediation. Trained mediators usually charge by the hour and can be expensive. However, you can request an application for a reduction in fees. Most mediation centers provide a sliding scale fee arrangement.

The parties may negotiate a settlement on their own or with the help of a mediator anytime before the final decree is entered. Matters such as custody, visitation and child support need to be decided. If the parties can work out the terms, a “stipulation,” which is a written agreement between the parties, can be filed and a hearing scheduled to approve the agreement (428 and 429). Once a judge approves the agreement, it will be entered as the final order and the case is complete.

How Does the Court Decide Child Custody?

Above all, the court’s custody decision will consider what is best for the child or in the best interests of the child. The court wants to know which parent is best able to meet the needs of the child. It is also important which parent is best able to put the child’s interests above the parent’s own interest. The court must decide two different kinds of custody. One is legal custody and the other is physical custody. Different types or kinds of custody are listed below.

What is Legal Custody?

Legal custody is the right to ask questions and make decisions about important matters concerning minor children. This may include decisions that affect the child’s education, health care, school, religious instruction and other similar issues. The judge can decide that the parents have joint legal custody or that only one parent has sole legal custody.

What is Joint Legal Custody?

In Iowa, the laws on custody favor joint custody unless there is a history of domestic abuse. Joint legal custody gives both parents the right to participate in decision making about a child’s education, health care, school, religious instruction and other similar issues. Joint legal custody is common. Joint legal custody does not require joint physical care. One parent may be awarded physical care while the other has visitation

rights. The idea is to give the children maximum physical and emotional contact with both parents. It also encourages both parents to continue to share the rights and responsibilities that go along with raising children. Joint legal custody may be ordered even if the parents don't want it. (See "What is Sole Legal Custody?" below.)

What is Sole Legal Custody?

If a judge believes it will be better for the child to have one parent making the decisions about the children, then the judge will award that parent sole custody. When this happens, the court must cite clear and convincing evidence that joint custody is unreasonable and not in the best interest of the child.

Also, if there has been a history of domestic abuse, the court cannot automatically award joint custody. The law assumes joint custody is not best in these situations. "History of domestic abuse" can include any of the following:

- Starting an action under the Domestic Abuse Act to obtain a protective order.
- The issuance of a protective order.
- The police have been called to the scene of alleged domestic abuse.
- An arrest or conviction for domestic assault.

Unless the presumption against joint custody is overcome (shown not to be valid), sole legal custody will be awarded. A parent who has sole legal custody of the children has complete responsibility for decisions affecting the child's welfare. This includes such matters as medical care, education, activities, and religious instruction.

What Factors Might Be Considered by the Court in Awarding Sole Legal Custody?

In considering what custody arrangement is in the best interest of the minor child, the court shall consider the following factors:

- Whether each parent is suited to raise the child.
- Whether the child will suffer emotionally/psychologically due to lack of contact with both parents.
- Whether the parents can communicate with each other regarding the needs of the child.
- Whether both parents have actively cared for the child before and after they separated.
- Whether each parent can support and foster the other parent's relationship with the child.
- The child's wishes about custody.
- Whether one or both parents agree or disagree about joint custody.
- How far apart the parents live.
- Whether the child or the other parent will be safe if joint custody is awarded.
- Whether there is a history of domestic abuse in the relationship.

What is Physical Custody or Care?

The judge will decide the physical custody or care of the child. The judge can decide that one parent will have the child most of the time (primary physical care). The judge could also decide that the child will split time between both parents (joint or shared physical care).

What is Joint Physical Care?

Joint physical care (can also be called shared care) means both parents have rights and responsibilities to maintain a home for the child. Neither parent will have physical care rights superior to those of the other parent. Some people call this "shared parenting" or "shared custody" because each parent tends to spend about the same amount of time with the child. The law says if joint legal custody is awarded to both parents, the court may award joint physical care to both parents if either parent requests it. Prior to ruling on the request, the court may require each parent to submit a proposed joint physical care parenting plan. The plan should tell how the parents will decide to divide time with the child. It should explain how the parents will resolve disputes. If the court denies the request for joint physical care, the court's decision must include specific findings and conclusions showing why joint physical care is not in the best interests of the child.

Either parent can ask for joint physical care. The Iowa Supreme Court has said that several factors have to be considered when deciding about joint physical care:

- The amount of time that both parents have spent with the children. If the time is about equal, that would make it more likely that joint physical care would be ordered.
- The ability of parents to communicate and show mutual respect. If one parent shows controlling behavior or there is evidence of domestic abuse, it is less likely that joint physical care would be ordered.
- The degree of conflict between parents. It will be less likely that joint physical care is awarded if one parent objects or if there is a history of conflict.
- The ability of parents to agree about approaches to daily matters. If the parents cannot agree about things like discipline and education, it is less likely that joint physical care will be ordered. Joint physical care may have an impact on child support, public benefits and tax issues.

How Does the Court Decide Who the Child Will Live With or Who Will Have Primary Physical Care?

If joint physical care is not an option, the judge must decide which parent will have primary physical care. The court looks at many factors in deciding who will have primary physical care. It is hard to say which factors are most important to the court. The factors the court looks at are:

- Characteristics of the child such as the child's age, maturity, mental and physical health.
- Emotional, social, moral, material and educational needs of the child.
- Characteristics of each parent including age, stability, mental and physical health, and character.
- The interest and ability of each parent to provide for the emotional, social, material and educational needs of the child.
- The relationship between each parent and the child.
- Relationship between the child and any brothers or sisters of the family.
- What effect there will be on the child if the court continues or changes current custody arrangement.
- The home environment that the child will be living in. For example, the court may look at whether one party moves frequently from one home to another, while the other party has lived at the same place for a longer period of time.
- Where the child wants to live. How much weight the court gives this factor depends on how old and mature the child is.
- The report and recommendation of either an independent person who investigated both parties concerning who should get primary physical care, or a lawyer representing the child's interests.
- Any other options available for physical care.
- Whether awarding custody to one parent would separate siblings.
- A parent's immoral behavior that is shown to adversely affect the child.
- A parent's substance abuse or if the parent is inclined to be violent or abusive.
- Any other important information that was given to the court.

What If the Children Have Strong Feelings About Who They Want to Live With?

A court may consider the wishes of a child who is quite mature. But the Court, not the child, makes the final decision. There is no specific age at which a child can decide the parent with whom the child may wish to live.

Does the Noncustodial Parent Always Have Visitation Rights?

Not always, but almost always. While the one parent may be awarded physical care of the child, the other (noncustodial)parent is almost always awarded visitation rights. The reason the parent almost always has visitation is that it generally benefits a child to have an ongoing relationship with both parents. If the court believes that such visitation will not be in the child's best interest, then a party's right of access to a child may be denied, but is rare. Even parents who have physically or sexually abused their children may get supervised visits. The law does say that the Court shall consider the criminal history of the parent if the parent has been

convicted of a criminal offense against a minor. Also, if a parent has been convicted of murdering the other parent, they will probably not have visitation.

A party who is awarded visitation can expect a number of safeguards from the court. The custodial parent cannot simply cut off visitation rights if the noncustodial parent fails to pay support. Also, courts will not approve or enforce arrangements between parties where one parent gives up visitation rights in order to get out of paying child support. It is fairly common for decrees to state a parent is entitled to “reasonable visitation.” If this happens, the parent with physical custody usually has a lot of say over what is “reasonable.” While it is best that the decree be specific in regard to visitation, a noncustodial parent may still arrange for visitation even where there is no mention of visitation in the decree. If “extraordinary visitation” is agreed to, or ordered, this will impact the amount of child support.

A typical visitation schedule would be every other weekend, every other holiday, and 2-4 weeks in the summer.

It is assumed that children benefit from frequent contact with both parents. Unless children are in danger while with the other parent, it is best for the custodial parent to not interfere with visitation. It is better to be flexible and to work out visitation whenever possible. If the court orders visitation, it is important that the custodial parent comply with the visitation.

Finally, in a split custody arrangement (one child lives with one parent; one lives with the other), the court may order visitation between the children.

What If a Noncustodial Parent Has More Than Ordinary Visitation?

A noncustodial parent who has “extraordinary visitation” (more than 127 overnights per year) may have his or her child support lowered. This type of visitation must be court ordered if it is to change child support.

Can Grandparents or Great-Grandparents Get Visitation Rights?

Grandparents and great grandparents can only petition the court for visitation rights in one very limited situation. The law says that a grandparent can only ask for visitation if the grandparent’s child, who is the parent of the minor child, is deceased. In addition, the court has to give strong consideration to a fit parent’s decision about grandparent visitation. The court must generally follow that decision unless there are strong reasons to the contrary. The grandparent must show that the parent is not fit to make the decision. The grandparent must show that the grandparent and child have a substantial relationship. It must also be in the best interest of the child to have the visitation.

How Does the Court Award Child Support?

The Court will order child support to be paid by the person not receiving physical custody of the children. The Court must follow certain Guidelines (set up by the Iowa Supreme Court) to decide how much support should be paid. These Guidelines take into account each parent’s monthly net income. The Guidelines also factor in the number of children. Generally support will be based on the combined net monthly incomes of both parents. Based on that combined income amount, a total amount of monthly child support is found on the child support schedule. The noncustodial parent’s share of that monthly amount is determined by multiplying the support schedule amount by the noncustodial parent’s proportional share of the total parental income. For example, the parents have one child who will be living with Parent 1. Parent 2’s net income is \$1600 a month, and Parent 1’s is \$400 a month. The total parental net income is \$2000 a month. Applying the Guidelines, the total support amount is \$455. Parent 1’s net income is 80% of the combined income of the parents. Parent 1’s support amount is $\$455 \times .8 = \364 . There may be an additional adjustment for health insurance or cash medical support.

For low-income obligors, only the noncustodial parent’s income is counted. For example, if the noncustodial parent’s adjusted net income is \$1000 per month and there is one child, then the noncustodial parent’s child support obligation is \$111.

Net income is the money left after deductions for taxes, Social Security, prior child support obligations being paid, actual medical support paid pursuant to an order, and actual child care expenses paid while the custodial parent is employed. It is also important to note that public assistance payments are specifically excluded from the definition of income under the Guidelines. Also, a reduction of up to 25% of the Guidelines amount is made when extraordinary visitation is granted.

A child support estimator can be found at <https://secureapp.dhs.state.ia.us/CustomerWeb/>.

- Click on the “Resources” tab at the top of the screen.
- Scroll down to find and click on “Child Support Estimator” and fill out the form to figure out child support.

These Guidelines will be applied in every case unless the Court finds special circumstances which make it unfair to use them. The Court must make a written finding as to why the Guidelines are not being followed.

A party’s support obligation extends only to natural or adopted children until the children are no longer minors. In Iowa, children who turn 18 are no longer minors. However, support must continue to age 19 if a child is still in high school and can be expected to graduate before turning 19. Support can continue for a child of any age if the child is dependent due to a physical or mental disability.

There is no “post secondary education subsidy” allowed under Iowa law for children of parents who were never married to each other.

If the parents have been separated for a while, there may already be a child support order in place through Child Support. Iowa law states there can only be one order for child support against a payor of child support for each child the payor is required to support under an order. If Child Support has already set up an order for a child, the judge will not issue a new order in the custody case. A court may, however, modify the existing order if the proper documents are filed in the existing case.

What Financial Information Will the Court Want?

Both parties are required by the Court to make a true and complete statement of their financial status if child support is at issue in a custody case. A “Custody and Visitation Financial Statement” must be filed before the custody hearing (424). The form requires details on current income, expenses and debts.

Will the Court Divide the Parties’ Property?

No. The court does not have jurisdiction to divide the parties’ personal property or real estate in a custody action. Often times unmarried couples buy furniture, appliances, homes and other property together and cannot decide how the property should be divided or who owns the property when they separate. A court will not decide those issues in a custody case. The parents can file a separate equitable action to determine ownership of property or, if they own a home together, to ask the court to order the property to be sold and the proceeds divided or for some other division.

Juvenile Court Orders

Sometimes due to problems in the family, the Iowa Department of Health and Human Services (HHS) becomes involved with the family and the children. If HHS determines that court intervention is needed to address the family’s issues, they will request the county attorney become involved and ask that a Child in Need of Assistance (CINA) action be filed. Once a CINA is filed the juvenile court has exclusive jurisdiction to determine custody issues involving the children. If there is an existing custody order, the juvenile court can issue an order that overrides the prior custody order provisions. As long as the CINA action is ongoing the juvenile court judge has the power to decide all custody issues. Sometimes in the CINA case the juvenile court judge decides that a long-term custody order is needed for the time after the CINA case ends. The juvenile court will then grant the district court the power to decide long-term custody issues. Once the juvenile court grants the district court power to decide custody issues either parent may file a custody action in district court.

After The Decree Is Entered

What If a Party Ignores an Order or the Final Decree?

Sometimes a party fails to pay support, give visitation, or disobeys another order within the decree. When this happens, the other party may bring a contempt action to try to get the uncooperative party to obey the Court’s orders. Also, parties who fail to comply with court orders may be given a jail sentence, or be deprived of some right that was awarded in the custody decree. There is a court fee of \$50 to file a contempt action.

Can We Change the Final Decree Later?

Certain terms within a custody decree (custody, visitation or child support) can change in the future if the party who asks the court to modify the orders can show a substantial change in circumstances. The court knows that reasonable and ordinary changes are likely to occur. So this change must be one that the trial court had no knowledge of at the time of the original decree. Also the change must be permanent and not temporary.

Changing Child Support

If a party asks the court to change the child support order, the court will look at each parent's earnings. If the order for child support varies by ten percent or more from the amount which would be due under the child support guidelines, the court will consider it to be a substantial change in circumstance. Most of the time getting married alone is not a good enough reason for the court to change child support payments. The reason is that at the time of the original decree, the court knows marriage could happen. Also, reductions in income must be involuntary. A parent will usually not be allowed to lower support payments if the parent quits a high-paying job and takes one that pays less in order to lower their support obligation.

Sometimes, the party paying child support wants to reduce the payments while the children are visiting him/her. The courts do not allow this because the custodial parent has household costs even while the children are away.

Change in Child Custody

A court will not change the custody of a child unless convincing reasons for such change can be shown. The reason for this is because children benefit from stability. They get used to their surroundings, come to expect certain routines, and become attached to his or her primary caretaker. Again, in a modification action, the basis of the Court's decision is what is best for the child.

So long as a custodial parent is caring for the child's social, moral, and educational needs, a court will be reluctant to change custody. The requesting party would have to make a superior claim based on his/her ability to more effectively care for the needs of the child.

What If One Parent is Deployed, and Custody Needs to Be Changed Until They Return?

If a parent or other person with custody of a child is in the military, a court can sometimes enter a temporary order for custody of a child while the service member is deployed. The court could grant custody, at least temporarily, to another suitable adult who is not the parent. This can happen only if the party agrees or the court enters an order. The deployment must be more than 90 days, but less than 18 months. The deployment must be one where family members cannot go with the service member.

To get a deployment custody order, the service member must give notice to the other parent within seven days of the deployment notice. The parties can agree to a temporary arrangement that the court will put into an order. Instead of a court order, the parties can sign a power of attorney during deployment. This power of attorney must be filed with the court. If the parties do not agree, the court may enter an order after a hearing. The hearing will be held soon after filing. Testimony by phone or videoconferencing is allowed.

Whether the arrangement is agreed to or entered after a hearing, the order may specify:

- Who takes care of the child while the service member is away, and who makes decisions for the child;
- Parenting time while the service member is on leave, and electronic contact while the person is deployed;
- Contact between the child and a non-parent;
- Child support.

Orders are temporary and end when the parties file an agreement to end the order or 60 days after the deploying parent gives notice of return.



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