



Coparenting: State Law Standards for Legal Custody and Physical Placement

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When a minor child is involved in an action for divorce, legal separation, annulment, or paternity, a court must determine the legal custody and physical placement arrangements for the child. This issue brief describes the general standards a court uses in determining those arrangements.¹

DETERMINING LEGAL CUSTODY

Legal custody is the decision-making authority for major decisions about a child's life. Major decisions include consent to marry, consent to enter military service, consent to obtain a driver's license, authorization for nonemergency health care, choice of school, and choice of religion.

Presumption for Joint Legal Custody

A court must presume that joint legal custody is in the best interests of a child. Joint legal custody means both parents equally share the right to make major decisions, and neither parent has a superior right over the other for such decisions.²

If the presumption for joint legal custody is challenged, a court must consider the best interests of the child using a number of specific factors that are identified in the statutes, described below. A parent may challenge the presumption for joint legal custody in the following limited circumstances:

- A parent is not capable of performing parental duties and responsibilities.
- A parent does not wish to have an active role in raising the child.
- Conditions exist that would substantially interfere with exercising joint legal custody.
- The parents will not be able to cooperate in the future.

Other Considerations in Determining Legal Custody

The presumption for joint legal custody is reversed if a case involves domestic abuse. If a court finds that a parent has engaged in a pattern or serious incident of interspousal battery or domestic abuse, the court must presume that joint or sole legal custody to that parent is detrimental to the child and cannot be awarded to that parent.³

In determining legal custody for the child of a military service member, a court cannot consider the service member's absence from the home for a call to active duty in the U.S. armed forces.⁴

DETERMINING PHYSICAL PLACEMENT

Physical placement is the actual time a child is in a parent's care. A parent may make routine daily decisions regarding the child's care while the child is physically with that parent. Physical placement does not authorize decision-making on major issues such as choice of school, religion, or health care.⁵

Maximizing Physical Placement

A court must consider the best interests of the child when determining a physical placement schedule. Unless physical placement with a parent would endanger a child's physical, mental, or emotional health, a child is entitled to periods of physical placement with both parents. The statutes do not provide a

standard placement schedule, but, instead, specify that a schedule must allow a child to have regular, meaningful periods of physical placement that maximize the amount of time a child may spend with each parent. If a court grants physical placement to one parent for less than 25 percent of the time, the court must enter specific findings of fact as to why a greater allocation is not in the best interests of the child.⁶

Other Considerations in Determining Physical Placement

A court may not prefer one parent over the other on the basis of the parent's sex or race. A court also may not deny physical placement for a child based on a parent's failure to provide financial support.⁷

If a court finds that a parent has engaged in a pattern or serious incident of interspousal battery or domestic abuse, the safety and well-being of the child and the safety of the parent who was the victim of abuse are the paramount concerns in determining periods of physical placement.⁸

Also, as with legal custody, in determining periods of physical placement, a court cannot consider a service member's absence from the home for a call to active duty in the U.S. armed forces.⁹

FACTORS IN DETERMINING THE BEST INTERESTS OF A CHILD

When determining the best interests of a child for purposes of both legal custody and physical placement, a court must consider the following factors:¹⁰

- The wishes of the parents.
- The wishes of the child.
- The cooperation and communication between the parents.
- Whether a parent can support the other parent's relationship with the child.
- The interaction and interrelationship of the child with siblings and other significant persons.
- The interaction and interrelationship of the child with the parents, including the parents' history of amount and quality of time with the child, and any proposed reasonable lifestyle changes.
- Whether a parent, person in a dating relationship with a parent, or other person in the household has a significant problem with alcohol or drug abuse.
- The child's adjustment to the home, school, religion, and community.
- The child's age and developmental and educational needs.
- The mental or physical health of a parent or other person in the household that may affect the child's well-being.
- A criminal record, or abuse or neglect of the child or of any other child, by a parent, person in a dating relationship with a parent, or other person in the household.
- Whether there is evidence of interspousal battery or domestic abuse.
- Reports of appropriate professionals admitted into evidence.
- Any other relevant factor.

¹ The principles governing a court also guide the parties and their attorneys when reaching an agreement for the court's approval.

² ss. 767.001 (1s), (2), and (2m) and 767.41 (2) (a), (am), (b), and (c), Stats.

³ s. 767.41 (2) (d), Stats.; Legislative Council, [Effect of Domestic Abuse in Child Custody Disputes](#), Issue Brief (October 2019).

⁴ s. 767.41 (2) (e), Stats.

⁵ s. 767.001 (5), Stats.

⁶ s. 767.41 (4) (a) and (b) and (6) (a), Stats. The Wisconsin Supreme Court has held that "maximizing" does not mean "equal" placement. [*Landwehr v. Landwehr*, 2006 WI 64, at par. 11.]

⁷ s. 767.41 (4) (c) and (5) (am) (intro.), Stats.

⁸ s. 767.41 (5) (bm), Stats.; Legislative Council, [Effect of Domestic Abuse in Child Custody Disputes](#), Issue Brief (October 2019).

⁹ s. 767.41 (5) (c), Stats. To address additional issues during a call to active duty, the Legislature enacted [2021 Wisconsin Act 161](#), the Uniform Deployed Parents Custody and Visitation Act.

¹⁰ s. 767.41 (5) (am), Stats.