

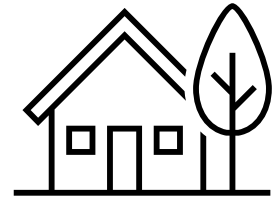
## Child Custody and Placement Fact Sheet

Child custody and placement can be complicated and can involve families going through a legal separation or divorce, or with unmarried parents. Below are some frequently asked questions to help you navigate family court through the civil legal system.

### What is custody?

The legal right to take care of and make major decisions concerning the child(ren) – ex. non-emergency medical decisions, school-related decisions.

1. Sole Custody - One parent has custody and can make decisions without permission from the other parent.
2. Joint Custody - Both parents have decision-making authority and must agree to major decisions for the child(ren).



### What is placement?

A period of time the child(ren) spends in the care of a parent.

1. Primary Placement - Where the child(ren) lives most of the time.
2. Shared Placement - The child(ren) lives with each parent at least 25% of the time.
3. Split Placement - A family with two or more children, in which one parent has primary placement of one or more children, and the other parent has primary placement of the other child(ren).

### I'm unmarried. Who has custody and placement?

When the child(ren)'s parents are not married, the mother has sole custody and placement until the court orders otherwise. This is true even if the father signed a voluntary paternity acknowledgement at the hospital and is on the birth certificate.

### I'm married. Who has custody and placement?

Married parents have equal rights to custody and placement of the marital child(ren). But, you have joint custody and shared placement until a court makes an order that says something else.

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## There is no custody/placement order in place, how do I get one?

To get custody and placement orders you will need to request a Temporary Order by filing an *Order to Show Cause (FA-4128VB)* and *Affidavit to Show Cause and Request for Hearing for Temporary Order (FA-4128VA)*.

1. For **unmarried** parents: To file for custody/placement, paternity must be established. You will need to contact your county's Child Support Agency to get their help in establishing paternity. Once paternity is established, a motion can be filed.
2. For **married** parents: Both parents share custody and placement equally of their child(ren) while married. If you no longer wish to be married, you can file for legal separation or divorce.



## Do I need an attorney to file for custody/placement?

No, you do not have to have an attorney to file in court. It is highly recommended that you get an attorney to make sure that your rights are protected. If you cannot afford an attorney, you may be able to find free or low-cost legal help, but you may have to proceed on your own.

1. If you plan to file for custody on your own, you can visit The [Wisconsin Law Library](#), a website that provides links to paperwork you need to fill out and file with the court, and additional information about custody. Even if you plan on representing yourself, you should consider having a lawyer review your papers before you file them.
2. If you are going to be in court without an attorney, you can review the [Preparing for Court – By Yourself](#) resource guide at WomensLaw.org.

## How can I change custody/placement?

If you and the other parent can agree to a change in custody and/or placement, you can write down your agreement using the *Stipulation to Change:*

*Custody/Placement/Support/Maintenance/Arrears form (FA-604A)*, which you will need to submit with the *Order on Stipulation to Change form (FA-604B)*. If the court signs the Order on Stipulation, that agreement will then be the binding court order.

1. If you and the other parent cannot agree to a change in custody and/or placement, you would file the *Notice of Motion and Motion to Change form (FA-4170V)* to request changes to custody, placement, child support, maintenance, or arrears payments.

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2. If you file this Motion within two years after the most recent, final order for custody and placement was entered, the court will not consider changing the order unless the current conditions are physically or emotionally harmful to the child(ren).
3. If you file this Motion after two years since the most recent, final order for custody and placement was entered, you will need to show that there has been a substantial change in circumstances that supports your claim that a change would be in the child(ren)'s best interests.
  - o Please note, if the current order states no specific placement times, you may want to ask the court to change the order. The court could add specific times and thus clarify your right to see your child(ren). You can do this using the Motion or Stipulation mentioned above, depending on whether you and the other parent can agree to a schedule.

### **The custody or placement order is not being followed, what do I do?**

Once an order is in place, both parents must follow the order or else they may face legal consequences. If, for example, the other parent does not return the child(ren) to you after they take them for a visit, you may file a *Notice of Hearing and Motion to Enforce Physical Placement Order (FA-609)* and *Order to Show Cause for Finding of Contempt (FA-4172VB)* and *Affidavit for Finding of Contempt (FA-4172VA)*.

1. Contempt is a willful violation of a court order and can come with fines or even jail time. This route is reserved for more significant violations of the court order.
2. Enforcement helps require the other party to follow existing court orders, but it does not include a request for sanctions, such as fines or jail time.
3. Certain situations might justify violating a court order — for example, to protect you or your child(ren) from immediate abuse or harm. We recommend that you talk to an attorney to think through your options and to understand the consequences you could face.

### **Do I need to notify the other parent if I move with the child(ren)?**

If the court ordered shared physical placement of the child(ren) with the other parent and you wish to move the child(ren) more than 100 miles from the other parent, you must request permission from the court by filing a *Notice of Motion and Motion to Relocate form (FA-4178V)*. The court must hold a hearing within 30 days after filing of the motion.

1. The other parent must object within 5 business days of the scheduled hearing.

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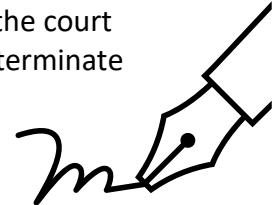
2. If the other parent objects or does not agree to the relocation proposals, the court will likely order the parents to mediation. Mediation is the process of creating an agreement when there is conflict between two people. The conversation is guided by a neutral party. If no agreement is reached during mediation, the court will appoint a Guardian Ad Litem (GAL) to determine what is in the child(ren)'s best interest. The court should set a follow up hearing within 60 days.

### **What do I do if my child refuses to go to the other parent's house? When can my child legally decide which parent they want to live with?**

Parents are responsible for following the court order. If the child is refusing to visit the other parent, then the custodial parents should speak with an attorney. A minor child does not have the legal right to decide which parent they will live with. The wishes of the child are just one factor of many to be considered by the Court.

### **Can a parent voluntarily sign over their rights to the child(ren)? What's the process?**

Wisconsin law does allow an individual to ask a court to voluntarily sign over their parental rights in some circumstances. The parent that is interested in signing over their rights must file a petition to the court requesting a voluntary termination of parental rights. There will be a court hearing in which the parent will be asked a series of questions by the judge. The point of this questioning is to prove the parent fully understands the consequences of ending their parental rights and is competent to make the decision. Usually, in Wisconsin the court prefers that children are not left with one parent, so the court may refuse to terminate the rights unless there is a stepparent willing and able to adopt the child(ren) at the same time.



### **Do other people have visitation rights to my child(ren)?**

A grandparent, great-grandparent, stepparent, or person who has maintained a relationship similar to a parent-child relationship with a child may file a motion with the court for visitation during or after an action affecting the family (such as divorce, legal separation, and paternity actions).

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(800) 472-1638

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## **How do I file an emergency custody/placement order?**

Wisconsin does not have a court form to file for emergency custody and placement. Parents would need to go through the process of getting court orders or modifying an existing court order. For more information on these processes see page 2 & 3 of this document under headers: **There is no custody/placement order in place, how do I get one?** and **How can I change custody/placement?**

## **What is a Guardian Ad Litem (GAL)?**

In a case involving the family, a GAL is an attorney assigned by the court to represent the best interests of the child(ren). The GAL has 120 days to investigate. Investigation may include interviewing friends or family members, reviewing school and medical records, and talking directly to the child(ren). Once the GAL's investigation is complete, they will give their recommendation to the judge who will consider the evidence presented and make the final decision. There is a cost associated with having a GAL appointed to your case. The judge decides who pays for the GAL's services. In most cases, each parent must pay half of the GAL's total cost.

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