

This page provides an overview of the law relating to child custody issues. The facts surrounding your marriage, divorce, child and property are unique so what may have been true for a friend or other family member may not be true for you.

Because a child is involved, you and your spouse will need to continue working together at least until the child attains the age of majority. In reality, you and your ex-spouse (or soon to be ex-spouse) will be tied to each other for the rest of your lives. Remember, the two of you will share not only your children, but your grandchildren, great-grandchildren, etc. You will be together for countless family occasions over the years (graduations, weddings, religious ceremonies, etc.) The occasions can be happy and pleasant experiences or they can be nightmares. It will depend on the type of relationship with your ex-spouse you decide to have. A bitter battle over custody or continuing conflict after the conclusion of the divorce, will be traumatic and expensive to all parties, especially your child. Therefore, try to keep lines of communication with the other parent open.

Parental Rights and Responsibilities

Legal custody of a child gives one or both parents the authority to make decisions for the child on such matters as education, religion, health care, and the like. The judge must make an order for the care and maintenance of the minor children of the parties and allocate the parental rights and responsibilities of the parents. The judge may allocate the parental rights and responsibilities for the care of the children primarily to one parent, designating that parent as the residential parent, and dividing the other rights and responsibilities between the parents, or the court may issue a shared parenting decree requiring parents to share all or some aspects of physical and legal care of the children. In making the decision; the judge uses the standard of what parental rights and responsibilities arrangement is in "the best interests" of the child. In our state some of the factors used to determine custody are:

- The wishes of the child's parents regarding his care;
- The child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court;
- The child's interaction and interrelationship with his parents, siblings, and any other person who may significantly affect the child's best interest;
- The child's adjustment to his home, school, and community;
- The mental and physical health of all persons involved in the situation;
- The parent more likely to honor and facilitate visitation and parenting time rights approved by the court;
- Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor;
- Whether either parent previously has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child;

- Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent his or her right to visitation in accordance with an order of the court
- Whether either parent has established a residence, or is planning to establish a residence, outside this state.

Parenting Plan

You and your spouse know your child(ren) better than any third party. Because the judge has broad discretion, you and your spouse (father/mother of the child) may want to agree on the parental rights and responsibility arrangement and submit your agreement to the court for approval. If you and your spouse can work out an agreement as to parental rights and responsibilities, the court will presume that the agreement is in the child(ren)'s best interests and probably adopt it unless contrary to the child(ren)'s interests. Your parenting plan should include the child(ren)'s residence, plans for schooling, religion, child care, doctors and dentists, etc. The parenting plan should include methods to resolve disputes without coming back to court. Mediation, counseling and arbitration are alternative ways to settle disputes. If you cannot agree on parental rights and responsibilities, the judge can refer you and your spouse to the court's conciliation department/counselor/social worker, etc.. The court may order a home study or an investigation by a social worker of the living environment in which the child(ren) would live at each parent's home. These services cost additional money and take more time. There are also mediation services available.

Shared Parenting (Joint Custody)

Our state has adopted shared parenting (sometimes commonly referred to as "joint legal custody") as the preferred form of parental rights and responsibilities of a minor child. Shared Parenting means that both parents share the decision making authority for the child(ren) with respect to residence, education and religion. You can have shared parenting without having joint physical custody. The child does not need to spend six months with each parent.

Do you need a shared parenting plan? At the Law Office of Michael J. Davis we work with clients seeking joint custody/shared parenting to determine the financial, educational, medical and faith-based responsibilities that will affect their children. Your peace of mind is important to us. We're proud of having helped so many clients and children over our 20 years of service.

[Contact us](#) today by phone, fax or e-mail to schedule a **initial consultation**. Our attorney's client commitment and contribution to your shared parenting plan can make a positive

difference in your life and your family's.

Joint custody has been replaced in the Ohio Revised Code with the term "shared parenting." Parents awarded shared parenting duties enjoy equal legal rights in dealing with their children and, unless their shared parenting plan provides otherwise, equal decision-making authority as to vital areas of a child's development.

Contact our experienced Ohio divorce and shared parenting attorney today if we can be of service. We've helped countless couples in more than two (2) decades of family law practice. At the Law Office of Michael J. Davis, we want to be available to you, from start to finish of your divorce, custody and/or other family law matter. [Contact us](#) today to discuss the shared parenting feature of your marital dissolution in an

initial consultation

. We've been helping Ohio couples just like you for over 20 years.

Parenting Time (Visitation)

If the judge does not award shared parenting, one parent will be named the residential parent (unless both parents are deemed unfit). Being named as the residential parent gives decision making power to one parent for education, religion, and day-to-day activities. The non-residential parent is given specific visitation, called parenting time periods. Our judges believe in "liberal" parenting time absent extraordinary circumstances. The duration and frequency of parenting time should be determined by the child(ren)'s age; needs, and relationship with both parents. For your child(ren)'s sake, try to cooperate and create a good atmosphere for the child(ren)'s visits with the other parent. Failure to cooperate in visitation can be used against you. The payment of child support and the exercise of parenting time are separate issues in this state and one cannot be used to deny the other. If you are being denied visitation with your child(ren) let your attorney know immediately so that an appropriate means of resolving the problem can be determined.

Most of the courts in this state have established "parenting class" requirements. Both parents will be required to attend the classes at their expense, (usually around \$35-\$50) before the court will enter or enforce a parenting time order. If the residential parent fails or refuses to go, the court will enforce the parenting time order on behalf of a non-residential parent who has attended the class.

Mediation

If parents cannot agree on parental rights and responsibilities, the court may order the parties to attend sessions of mediation by court services. See our Mediation FAQ page for more information.

Child Support

Child support is money paid for the support and education of a minor child. The amount of child support is determined according to statewide child support guidelines. Buying clothes, making gifts or other direct contributions do not count toward the payment of child support. The guidelines require both parents to contribute to the expenses of child care and medical expenses. The Court can require support of a child only until the age of 18 or until graduation from high school if a child is still enrolled in school at the time he/she turns 18. The parent receiving child support does not have to account for how it is being spent for the children. The parent paying child support must realize that part of the cost of raising children includes the mortgage or rent payment, the costs of electricity, telephone, gas, food, cable, etc. Child support is not only for clothing or toys for the children.

You and your spouse can provide by agreement for college education or post-high school education. Absent such an agreement, however, the court can not order such payment after the child has reached the age of 18 (except that child support will continue for a child who has reached the age of 18 and is still in high school). If your child has a mental or physical disability, the court may order additional support. See our [Child Support FAQ](#) page for more information.

Temporary Relief

Once the "Complaint for Divorce" has been filed, you can have restraining orders to prohibit either you or your spouse from dissipating assets, or transferring or encumbering any of the property. If your spouse is being physically abusive to you or the child(ren), refuses to provide reasonable support or refuses to permit reasonable visitation, the court will hear your evidence and determine if you will get relief while the case is pending. The court may restrain you both from physical abuse to each other or to the child(ren). The court will make temporary orders providing for custody and visitation and support of the child(ren). If you feel you will need this temporary relief, the request should be filed with the Complaint.

Evaluations

In matters relating to child custody disputes, often one of the parties or the judge requests psychological evaluations of the parties and child. The psychologist's fees can add from \$150 to \$2,500 or more to the costs of the divorce.

Depositions

A deposition is testimony under oath taken by a court reporter, usually of one or both of the parties to the divorce action and, on occasion, of a witness who cannot attend the trial if there is one. The attorneys ask questions relating to issues raised in the case. The reporter's

services can range from \$100 to \$500 or more in addition to legal fees.

Court Costs

Filing costs for a divorce or dissolution vary in the various counties but range from approximately \$132.00 to \$200.00. If there are depositions or court ordered investigations, as stated above, the costs may be substantially higher. You must pay for these items as the expenses are incurred.

Fees

Generally, each party is responsible for paying his or her own attorney fee (although the court has the authority to order one spouse to pay part or even all of the other spouse's legal fees if there is a great disparity in assets or earnings). The exact amount of your legal fees will vary with the services. Fees are charged for additional personal or telephone conferences, extensive negotiations, frequent telephone calls (especially at home), expert witness fees, costs of examinations, and for all other court appearances. Difficult and complicated cases can get very expensive.

What to Tell a Child About Divorce

Parents should explain the divorce and prepare the child(ren). A child needs to make sense of the divorce, know its causes, and feel that the divorce brought some good.

- If possible, tell your child(ren) about the divorce before either parent leaves the home. A child may think that chronic fighting is normal and not realize it meant serious marital problems.
 - Both parents should tell the child(ren) at the same time about the divorce so one parent will not be viewed as the good parent and the other bad. Think about what you are going to say in advance and make the language age appropriate.
 - Both parents should tell all the siblings at the same time because they can support each other.
 - Both parents should be willing to talk to the child(ren) about the divorce and about the other parent.
 - Parents need to let the child(ren) know that the divorce is the parents' decision and was not affected by the child(ren)'s behavior.
 - The parents should explain the reasons for the divorce in a way that does not harm the parent-child relationship by cutting down the other parent. The child(ren) will probably remember forever the words said at this time.
 - Parents need to tell the child(ren) what immediate changes will be made and when.
- Parents should try to keep as many things, like bedtime, mealtimes, the home, and school, as

routine as possible. The child needs to know that there will be some disruptions as parents struggle to set up two households.

- The child needs to know where the moving parent will be living and how often the child will see the moving parent.
- The child needs to know that the decision is final and cannot be altered by the child's conduct.

Common Reactions of Children to Divorce

All children suffer some side effects when their parents are going through a divorce. Almost all children experience a degree of loneliness and guilt. One or both parents may withdraw emotionally from the child. The child may feel forced to choose between the divorced parents.

The longer and more protracted the divorce process, the more likely the child will suffer. Many psychologists believe there is a direct correlation between the length and degree of divorce litigation and the deterioration of the child's mental health. The faster the legal process can be completed, the better for everyone's mental health. To heal, the child must acknowledge the reality of the divorce, disengage from parental conflicts, resolve the child's sense of loss, anger and self-blame, accept the permanence of the divorce and achieve realistic hopes for future relationships.

How well a child is able to deal with the divorce depends upon the child's developmental stages and the ability of the parents to help the child. There are some predictable types of behaviors that parents should understand are normal and should try to help the child through by maintaining routines and security and being open to the child.

Children from birth to two years have no cognitive understanding but are aware of anxiety and tension if the primary caretaker changes. They can have eating or sleeping problems.

Preschool children often exhibit play aggressiveness. A child may not want the parent who is in the house to leave and may be afraid of sleeping alone. The child may even become phobic and irritable, fearing that things or people will vanish. A common reaction is regression. A preschool child may regress by starting to suck his or her thumb, wanting a diaper or wetting, or wanting to sleep with a security blanket that had been put away.

Young school age children may be depressed, irritable and moody, crying a lot. They may have difficulty sleeping and not want to go to school. Some may fear they will be asked to leave if the same sex parent was. Some engage in denial and fantasy by pretending that the parent will be coming back. The child may have a sense of the custodial parent "winning" in the divorce.

Older school age children, nine to twelve, may exhibit intense anger directed at one or both of the parents. A child may align with one parent, empathizing totally with that parent's position and parenting the parent. Placing blame and taking sides makes the separation easier to accept. Extreme anger directed at one of the parents may be the result of manipulation by the

other parent.

Although some children are good at coping and ventilating, others become depressed, feeling powerless and frustrated. One third of 9-12-year-old children in one study felt that they caused the divorce. The children who feel this way are most likely also to be psychologically disturbed and involved in court/custody battles.

Adolescents who are having a difficult time passing through the stage of maturation may experience additional stress caused by the divorce of their parents. Most are upset and some display regression, e.g., "Who am I, what do I want?" Anxiety escalates. They may worry about their parents or fear that when they grow up their own marriages will be bad. Some may parent their parents or become their parents' good friends which can be destructive. Studies seem to indicate that teenagers who can separate themselves from their parents' needs and pain do better in adjusting to life after divorce.

Second-hand Smoke and Child Custody

Secondhand smoke, also called environmental tobacco smoke (ETS), can have an impact on child custody decisions. The possible consequences of parental smoking in a custody case can range from termination of parental rights or a change of custody and restrictions on visitation to the smoking parent receiving custody with smoking restrictions and a requirement for follow up reports to the court.

First, here are a few facts about secondhand smoke that courts have already taken judicial notice of.

Secondhand smoke consists of mainstream smoke exhaled from a smoker's lungs and sidestream smoke that comes directly from the burning tobacco.

- Secondhand smoke comes from all tobacco products, including pipe tobacco and cigars.
- Secondhand smoke is a Class A carcinogen. That puts it in a class with 15 other substances, including asbestos, radon and benzene, that are known to cause cancer in human beings.
- Secondhand smoke contains 4,000 substances with more than 40 of them known to cause cancer and many of them known to be strong irritants to human tissues and organs. Examples of these substances are: carbon monoxide (CO), ammonia, nicotine, hydrogen cyanide, benzo[a]pyrene, dimethylnitrosamine, tar, formaldehyde, and beta-naphthylamine.
- The chemicals in secondhand smoke damage cell DNA.

Here are a few facts about how involuntary smoking, or passive smoking, effects children:

- Children, especially infants and toddlers, exposed to secondhand smoke have more lower respiratory infections, such as bronchitis and pneumonia, and are more likely to be hospitalized during the first two years of their lives for a serious lung problem.

There is a link between secondhand smoke and infants who died from Sudden Infant Death Syndrome (SIDS).

- Children exposed to secondhand smoke are more likely to have reduced lung functioning and symptoms like coughing, sneezing, excess phlegm, wheezing, stuffy nose, headaches, sore throat, eye irritation, hoarseness, dizziness, nausea, loss of appetite, lack of energy, or fussiness.

- Children exposed to secondhand smoke are more prone to middle ear infections. Passive smoking can lead to a buildup of fluid in the middle ear as a result of irritation and swelling of the Eustachian tubes connecting the middle ear and nasal passages.

The greater the amount of parental smoking the more frequently children of those parents have respiratory infections.

- In families where both parents smoke, the children have significantly more respiratory infections.

- Children exposed to passive smoking have significantly reduced pulmonary functioning and their lung growth is hindered. Since they subsequently fail to reach their optimum lung growth, they are more likely to have pulmonary health problems as adults.

- Maternal smoking relates more closely to childhood respiratory infection than paternal smoking.

- Children exposed to secondhand smoke are more likely to develop asthma. For those children who already have asthma, exposure to secondhand smoke increases the frequency and strength of a child's asthma attacks.

- Children exposed to parental smoking are more likely to suffer accidental cigarette burns and hazards from fires set by children playing with matches and butane lighters or parents leaving burning cigarettes unattended.

- Adults, who as children were exposed to significant levels of secondhand smoke, are more likely to have lung cancer, heart disease and cataracts.

- Children exposed to parental smoking are more prone to becoming smokers.

Children exposed to parental smoking have emotional and psychological concerns about the smoking parent's health.

Facts about secondhand smoke and smoking for pregnant women:

- Women who smoke during pregnancy or who are repeatedly exposed to secondhand smoke are more likely to have a miscarriage.

- Babies, whose mothers smoke or who are repeatedly exposed to secondhand smoke, are more likely to be born stillborn, premature and not fully developed, or with a lower birth weight.

- Infants whose mothers smoked during the pregnancy or were repeatedly exposed to secondhand smoke are more prone to Sudden Infant Death Syndrome (SIDS).

- Children, whose mothers smoked during the pregnancy or were repeatedly exposed to secondhand smoke are more likely to suffer from some childhood cancers.

In a custody fight, courts across the country can, and have, done the following:

- Determined that the risks to the child's health in exposure to secondhand smoke from parental smoking are one factor among several others that should be used when determining what custody arrangement is in the best interests of a child.
- Taken judicial notice of the effects of secondhand smoke on children.
- Ordered the smoking parent to restrict his or her smoking when the children are present or before exercising a period of custody.
- Transferred custody from the parent who smokes to the nonsmoker parent.
- Taken custody from both parents and awarded it to a relative or other third party.
- Retained jurisdiction for a period of months after entering a custody order to check on parental compliance with orders.
- Discounted the claims or efforts of a parent who is trying to quit smoking. The reasoning is that the parent may be more motivated by a desire to win the custody fight than a genuine concern for the health and welfare of the child.
- The smoking habits of grandparents, significant others and any other person who has frequent contact with the child may be a factor in a child custody decision.

One note of caution about parents who smoke and willfully and knowingly expose their children to secondhand smoke:

The language and definitions used in the child abuse and neglect laws of some states may be interpreted so that parental smoking around children is considered a form of child abuse. It is possible that professionals, like psychologists, pediatricians or certain care-givers, may be required to report a child suffering from symptoms caused by exposure to secondhand smoke to the appropriate child protection agencies.

If you smoke, here are some steps you can take to reduce the effects of your secondhand smoke on your children.

They could also decrease the detrimental effect your smoking could have on the outcome in a divorce, modification, or termination of your parental rights action:

- Always smoke outside and wait a while after you smoke a cigarette, cigar or pipe before entering your home.
- If you must smoke in your home, restrict it to one room away from your children. Always

have a window open for cross ventilation and use a good air cleaner with a clean air filter.

- Never smoke in a car when your children are present. Smoking with a window open or cracked is not sufficient.
- Take affirmative steps to avoid places where your children will be exposed to secondhand smoke.
- Quit smoking. If you need help to quit, visit QuitSmoking.com.

For more information and the sources for the facts in this article, see reports issued by the Centers for Disease Control, The Environmental Protection Agency, The American Academy of Pediatricians, and the American Lung Association.

Legal resources can be obtained from the Action on Smoking and Health (ASH), the St. Louis University Public Law Review, and the Marquette Law Review among several others

Contact the Law Office of Michael J. Davis

To talk to Michael J. Davis about your legal concerns, please contact us by calling 513-604-8391 or emailing us at davislaw01@gmail.com

Michael J. Davis is located in Mason, Ohio, and serves clients throughout Ohio, including Lebanon, Maineville, Mason, Morrow, Springboro, South Lebanon, West Chester, Warren County, Butler County, Hamilton County, Clermont County and Clinton County, Ohio.