

What are the factors for deciding Legal Custody?

Factors used when deciding Legal Custody

Legal custody means the right to make important decisions regarding your child(ren). In Wisconsin, a judge must start with the assumption that giving both parents the right to make those decisions, called joint legal custody, is in the best interests of the child(ren). With joint legal custody, both parents share the right to make major decisions equally, and neither parent has more say than the other.

In limited cases, a judge may grant one parent sole legal custody. This can happen if both parents agree that one parent should have sole custody, and the judge believes it's in the child(ren)'s best interest to grant that parent sole custody.

If at least one of the parents has requested sole custody but the parents don't agree on who should have it, the judge will only grant sole custody if it's in the child(ren)'s best interest and at least one of the following applies:

- One parent is not able to handle parental duties and responsibilities.
- One parent doesn't want to be involved in raising the child(ren).
- There are conditions that would make joint legal custody difficult or inappropriate.
- One parent unreasonably refuses to cooperate with the other parent.
- The parents are unlikely to work together to make decisions about their child(ren) in the future.
 - If there's evidence that one parent abused the child(ren) or the other parent, the judge will assume that the parents can't work together.

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

Effect of Domestic Abuse

The presumption in favor of joint legal custody is reversed if a case involves domestic abuse. If a judge finds that a parent has committed serious or repeated acts of abuse, the judge must presume that giving that parent custody (whether joint or sole) is harmful to the child(ren).

If both parents have committed abuse, the judge will decide which parent was the main aggressor, considering factors like past acts of violence between the parents; the severity of injuries; the likelihood of future injuries; whether either parent acted in self-defense; and whether there is a pattern of controlling or abusive behavior. If neither parent is identified as the main aggressor, then the new presumption (against custody) does not apply.

If an abuser wants custody, they may be able to overcome the presumption against them if they complete certified treatment for abusive behavior, don't abuse drugs or alcohol, and the judge finds that granting them joint or sole custody is in the child(ren)'s best interest.

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