

CUSTODY IN OREGON

The content of this document is based on "How to Prepare for Your Divorce, Legal Separation, Custody or Support Trial," a brochure created by the State Family Law Advisory Committee's "Self-Represented Legal Services Subcommittee," based on an original version developed by the Douglas County Local Family Law Advisory Committee and the Douglas County Legal Aid Office in 2001.

The custody decision in a trial is based on the best interests of the children. The judge cannot give preference to the mother only because she is the mother or to the father only because he is the father. If the other side does not agree with your request for custody, have witnesses available who can testify about the following information:

- The emotional ties between the children and family members
- The party's interest or attitude towards the children
- The desirability of continuing an existing relationship
- Whether one parent has abused the other
- Who is the primary care giver of the children
- Conduct, marital status, income, social environment or lifestyle of either party only if any of these factors are causing or may cause emotional or physical damage to the children
- The presence of extended family members in the area
- The willingness and ability of a parent to facilitate and encourage a relationship between the children and the other parent, if appropriate.

Definitions and other information about types of custody and parenting time are available on the Legal Aid Services of Oregon website at www.Oregonlawhelp.org.

PARENTING TIME IN OREGON

Oregon law requires parents (married or unmarried) to file a parenting plan with their request for a divorce or child custody order. A parenting plan is a document that states how much time the child(ren) will spend with each parent and how decisions about the child(ren) will be made. It may be either general or detailed. Parents are encouraged to create their own parenting plan. If parents are unable to create or agree on their own plan, a judge will determine the parenting plan which fits the best interests of the child(ren). Most courts also require parents with children to attend a parent divorce education class where parents learn about the effect of divorce on children.

COMMON OREGON PARENTING TIME QUESTIONS

- 1. What is parenting time?** "Parenting time" is the time with the child that the parent without legal custody has by agreement or by court order. Until recently, "visitation" was the word used in Oregon for "parenting time."
- 2. What is a parenting plan?** This is the plan that sets out the schedule and rules for each parent's time with the child. All custody orders (except for those in restraining orders) must include parenting plans. The plan may be very detailed and cover many issues about the child, or it may be very general and address only a few issues.

All parenting plans in court orders *must* set out the minimum amount of parenting time and access that a parent without custody is entitled to have. In other words, a new court-ordered parenting plan cannot say that the noncustodial parent has just “reasonable parenting time.”

Parenting plans *may* address any of the following, or other issues, too:

- the schedule for when the child will be at each parent’s home
- holiday, birthday, and vacation plans
- how the child will get from one parent’s home to the other, or to school or day care
- how school, medical, and other information about the child will be shared
- when a parent should call the child while the child is in the home of the other parent
- what will happen if one of the parents has to move
- how the parents will try to resolve any disagreements about the child

3. Who decides on the parenting plan? The parents decide on the parenting plan if they can agree. If they can’t agree on their own, a mediator may be able to help them to reach an agreement. A mediator is a trained, neutral counselor who meets with parents in confidential sessions to help them discuss their disagreement. See Question 4.

If meeting with the mediator (“mediation”) doesn’t result in an agreement, then the parents (or their attorneys) may decide on a custody or parenting time study. This is an evaluation of the parents by a trained counselor or psychologist who will make recommendations to the judge.

Without mediation or a study, it is up to the parents (or their attorneys) to settle on the parenting plan. If parents don’t agree, either parent may ask the judge to decide on the plan. Some judges adopt standard schedules and rules that have been developed for that county. Oregon law requires that the plan be based on what’s best for the child and safe for the parents.

4. How can I find out about mediation in my county? Courts in many counties provide no-cost mediation services as a part of open court cases involving a child. In some counties, mediation may be available through the court even when no court case about a child is pending but the parents are having a disagreement about their parenting plan.

Private mediators *not* connected with the courts are also available for hire in many counties. These mediators charge fees. Some specialize in family law matters. You may be able to find a mediator for your parenting time problem by asking a family law attorney, looking in the yellow pages of the phone book, or contacting the Oregon Mediation Association.

5. Will a parenting plan require joint custody? No. A parenting plan does not require that the parents have, or want, joint custody. In fact, if either parent decides that they do not want a joint custody arrangement, then the judge will not order joint custody.

6. Who decides on the parenting plan if the other parent has not participated in the court case? When one parent has filed a court case, sometimes the other parent chooses not to participate. Usually this means the other parent doesn't file his or her own court papers in response. When this happens, the parenting plan proposed by the first parent is very often the plan approved by the judge.

7. Do I need to put my parenting plan in a court order if the other parent and I have agreed on the terms? Only parenting plans contained in court orders are enforceable. The decision on whether to put the plan in a court order depends on your situation and relationship with the other parent.

8. Can parenting time rights in a court order be denied or restricted? Yes, but only by a judge, and only if the parenting time would put the child in real danger. Usually, this means showing the judge that the visiting parent has physically or sexually abused the child, committed a violent crime, or has a very serious alcohol or other drug problem. Sometimes the judge will order that visits be supervised by a third person.

9. Can I deny parenting time to the other parent if child support is not paid? No. You must allow the other parent the parenting time ordered in the parenting plan even if child support is not being paid.

10. Can I stop paying child support if my parenting time is being denied? No. You must pay your child support even if you are not getting the parenting time that has been ordered. Only a court or agency judge can release you from your child support obligation.

11. Do I have to make my children go on visits if they don't want to? Your children should follow the parenting plan even if they don't agree with it. You should try to find out why your child does not want to go. Try to work out the problems by talking to the other parent or through counseling, if those are safe steps for you. You may also want to try mediation. See Question 4. In some situations, a judge may change the parenting plan.

12. What can I do if the other parent denies me the parenting time ordered by the court? You should first try to talk to the other parent to try to work out the problem if you can do this safely (and if no court order prohibits you from contacting the other parent). You may also want to contact a private mediator, or a mediator connected to the court, to see if that process helps. See Question 4, on mediation. You could also contact an attorney. Perhaps negotiation through attorneys will improve the situation.

If these steps fail or if they are not options for you, you can file papers with the court complaining about the denial of parenting time. Each county has a special procedure to handle parenting time problems. Go to the circuit court clerk's office at the county courthouse and ask for the "parenting time enforcement" forms.

13. Does the court's "parenting time enforcement procedure" cost anything? In most cases, you must pay at least \$45 to file a complaint about denial or interference with parenting time under this procedure. Some counties have added an extra charge on this filing fee to pay for mediation services.

If you have a very low income, the court might defer (postpone) payment of this fee until after the case is resolved. Some courts may even waive the fee. If you want to request a fee deferral or waiver, ask the clerk if a “fee deferral” or “fee waiver” form is available. You might also get these forms from a local Legal Aid office.

14. Do I need an attorney? The parenting time enforcement procedure is designed to be easy to understand and use. Judges expect that many people will use this procedure without attorneys. But it may be helpful to have an attorney, or at least to consult with one about your situation before you file the forms.

15. How do I start the “parenting time enforcement procedure” at the court? The first step is for you to fill out and file the “motion” (request) to the court asking that your parenting plan be enforced. The court will give you this form at no charge, but there is a fee for filing it. You will mark the form to show the type of enforcement action you want. You must attach to the motion a copy of the court order setting out your current parenting plan.

The court will also give you a signed order requiring the other party to come to court to “show cause” (explain why) the parenting plan should not be enforced in the way you request. The order also contains a notice about “contempt of court” penalties. The order may have a specific date for a hearing on it, or it may state that the hearing will be set later, after the other parent has had a chance to respond in writing to the court and to you.

Most courts want mediation to occur before a court hearing to help on parenting time issues. So you may also be given a signed court order requiring both parents to participate in mediation. If mediation is ordered, either parent can also get forms to fill out for “waiving” mediation if either has a good reason to skip the mediation step.

You must then make sure a copy of these court papers is “served on” (officially delivered to) the other parent. Some courts include forms for you (or a third person or the sheriff) to sign to prove that “service” (delivery) has taken place. This form is called a “Proof of Service” or an “Affidavit of Service.” If your court does not make this form available, you may be able to obtain one from a local Legal Aid office.

16. How long will it take to get a court hearing? The law says that the hearing must be held no later than 45 days after you filed your motion for enforcement, unless the parents agree to delay the hearing time. One reason for delay is the parents’ trying to work out an agreement with the help of a mediator, an attorney, or by themselves.

17. What if mediation doesn’t work, or isn’t an option in my case? If you and the other parent don’t agree on a solution, the judge will hold a hearing.

18. What will happen if a hearing is necessary? The first step the judge will probably take is to review the existing parenting plan to make sure that the judge and each parent understands what the plan says. The judge may then ask the parent who filed the request for enforcement to explain what happened. The other parent will then have a chance to explain whether or why the parenting time was denied.

Each parent may want to bring one or two witnesses to court to give information about times that the plan was not followed (or to show that the plan *has* been followed, or was not followed for a good reason). The judge will tell the parents when the witnesses may offer their information to the court. Each parent will have a chance to ask questions of their own witnesses and the other parent's witnesses.

The parent who filed the request for enforcement has the responsibility to prove that the other parent violated the parenting plan order.

It is important to be respectful to the other parent, to the witnesses, and to the judge. Even when you disagree with what is being said, you should not interrupt or speak rudely. It may also be helpful to bring a list of notes of the most important things that you want to tell the judge. You can use these notes at the hearing to help you remember all the points you wanted to make.

This hearing may be very short or it could last an hour or longer, depending on the case and the procedure in your county. Before you go to court, you may want to ask the court clerk how much time the hearing has been scheduled to last. In some counties, the court clerk may be able to tell you this when you first file your "motion" (request). In other counties, you may not know this until right before the hearing.

19. What can the court do at the hearing if it finds that the parenting time order has been violated? The judge has many options available, depending on the facts of the case. The court can:

- specify a detailed schedule, especially if only a general schedule now exists
- add new terms and conditions to the parenting time order
- order make-up parenting time, to compensate for time that was improperly denied to a parent
- order the parent who has violated the plan to post a bond (deposit money) with the court that the parent would lose for continuing to disobey the parenting time order
- require both parents to attend classes that teach the parents about the effect on children when parenting time is denied
- order the party who has violated the order (or the party who failed to prove the order was violated) to pay the costs of the hearing process (including filing fees, court fees, hearing costs, and attorney fees)
- end or modify spousal support terms that had been ordered between the parents
- end or modify child support (if the child lives in another state, the court may not have the power to do this)
- schedule a hearing for modification of custody, if the parent without custody has shown he or she has been repeatedly and unreasonably denied parenting time and files the correct legal papers for such a hearing.

Depending on the facts, a judge could decide that the complaining parent has *not* shown that the plan was violated. The judge could also decide that the plan was violated, but that a good reason existed for the violation in a particular situation. In cases like these, the judge might explain to the parties' possible ways to avoid problems in the future.

20. What if I am not satisfied with what the judge did at the enforcement hearing? A parent has a right to appeal the decision of this judge to a higher court. There is a deadline for making this request and the paperwork is complicated and lengthy. You will need the assistance of an attorney.

21. Are there other remedies for a parent when parenting time is denied? Yes. In addition to the new parenting time enforcement procedure, a parent can file legal papers to have the judge decide that the other parent is in “contempt of court” for violating a court order about parenting. The forms and procedures for this type of case are complicated and may not be available from the court. You should use the assistance of an attorney for this process.

It is also possible to ask the court to change (“modify”) custody or parenting time because of enforcement problems. A parent can file a modification motion asking for a new order. A few courts might have these forms available, but in many counties, you will need to contact an attorney for a modification.

When you have a custody or parenting time order from another state (or you have an Oregon order but your children have been living in another state), special laws control which state can decide a modification issue. You may need an attorney if you have this situation.

Finally, in some situations, major violations of parenting plans might be considered crimes. This is rare, however, and depends very much on the type of wording in the court order and the facts of the case.

22. Can a parent who has custody use this enforcement process if the other parent does not follow a parenting time court order? Yes. Either parent may start this court and mediation process by filing the forms available at the courthouse. If the parent with custody has the complaint, this parent must show that the other parent’s failure to follow the parenting time terms was “substantial.” In mediation, any type of parenting issue can be discussed.

Supervised parenting time

If you want the other parent to have a relationship with your children, but you have serious concerns about the children’s safety if they are alone with the other parent, you may ask the judge to order “supervised” parenting time. Find out if someone you trust is willing to supervise the other parent and your children during their time together. Tell the judge who the supervisor will be so that if there is an order for supervised parenting time, it will have the name of the agreed-upon supervisor in it. Your court’s family law facilitator also may have information on agencies or individuals who are willing to supervise parenting time. The following may support your request for supervised parenting time:

- The other parent has harmed or threatened harm to the children or to anyone else
- The other parent has acted as though violent behavior toward you or your children is okay in some instances

- The other parent has pushed, slapped, kicked, punched or physically hurt you or your child
- The other parent has sexually abused anyone by force, threat of force or intimidation
- The other parent has been served a protection or no-contact order
- The other parent has been arrested for harming or threatening to harm you or anyone else
- The other parent has threatened to keep or hide the children
- The other parent has a history of neglecting or physically or sexually abusing other children
- The other parent lacks parenting skills or has had little contact with the children
- The other parent leaves young children without supervision
- The child is afraid of the other parent
- The other parent has drug/alcohol or criminal problems that are a danger to the safety of the children
- The other parent has damaged or destroyed property or pets during an argument
- The other parent has threatened to commit suicide
- The other parent has needed medication to be safe around others
- The other parent has used weapons to threaten or hurt people

If the other parent has physically or sexually abused the children he/she had with you, the judge might order that the other parent have no contact with the children.

OREGON REVISED STATUTES

Non-Custodial Parents' Bill of Rights

107.101 State policy regarding parenting.

It is the policy of this state to:

- (1) Assure minor children of frequent and continuing contact with parents who have shown the ability to act in the best interest of the child;
- (2) Encourage such parents to share in the rights and responsibilities of raising their children after the parents have separated or dissolved their marriage;
- (3) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals, if necessary;
- (4) Grant parents and courts the widest discretion in developing a parenting plan; and
- (5) Consider the best interests of the child and the safety of the parties in developing a parenting plan.

107.149 Policy. It is the policy of this state to assure minor children of frequent and continuing contact with parents who have shown the ability to act in the best interest

of the child and to encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or dissolved their marriage.

107.159 Effect of order granting parenting time rights or restricting ability of custodial parent to change residence. (1) In any court order or decree granting custody of a minor child and parenting time or visitation rights relating to the child, except for an order under ORS 107.700 to 107.732, the court shall include in its order a provision requiring that neither parent shall move to a residence more than 60 miles further distant from the other parent without giving the other parent reasonable notice of the change or residence and providing a copy of such notice to the court.

(2) Notwithstanding subsection (1) of this section, a parent is not required to give notice of a change of residence if the court, upon ex parte or other motion of the parent and for good cause, enters an order suspending the requirement.

107.154 Effect of order granting sole custody of minor child to one parent on authority of other parent. Unless otherwise ordered by the court, an order of sole custody to one parent shall not deprive the other parent of the following authority:

- (1) To inspect and receive school records and to consult with school staff concerning the child's welfare and education, to the same extent as the custodial parent may inspect and receive such records and consult with such staff;
- (2) To inspect and receive governmental agency and law enforcement records concerning the child to the same extent as the custodial parent may inspect and receive such records;
- (3) To consult with any person who may provide care or treatment for the child and to inspect and receive the child's medical, dental and psychological records, to the same extent as the custodial parent may consult with such person and inspect and receive such records;
- (4) To authorize emergency medical, dental, psychological, psychiatric or other health care for the child if the custodial parent is, for practical purposes, unavailable; or
- (5) To apply to be the child's conservator, guardian ad litem or both.

107.164 When parents need to notify each other of emergency circumstances or substantial change in health of child. Unless otherwise ordered by the court, both parents shall have a continuing responsibility, once a custody or protective order concerning the child is issued, to provide addresses and contact telephone numbers to the other parent and to immediately notify the other parent of any emergency circumstances or substantial changes in the health of the child.

There are many places to find help with creating a parenting plan:

- The **Oregon Judicial Department website**, <http://www.ojd.state.or.us/familylaw> has a Basic Parenting Plan Guide or Packet for Parents with forms and

- instructions on how to create your own parenting plan. In addition, there is a Safety Focused Parenting Plan Guide available on this website, which can be used where there are safety concerns. Both guides include a list of books and resources, optional schedules for parenting time, and information about developmental stages, as well as other materials to help you with your parenting plan and other questions you might have.
- You can locate a **private attorney** through the Oregon State Bar at (800 452-7636 or <http://www.osbar.org>. If you have low income, you may be able to obtain an initial consultation for \$35 at the Oregon State Bar's "Lawyer Referral Service" as well as additional information about free or low-cost legal services available through non-profit agencies, volunteer programs, or the bar association of your county.
 - **OregonLawHelp** is a website offering legal information for low-income Oregonians. Contact information for legal aid offices is also available here. The website is available in the Spanish language too. <http://www.oregonlawhelp.org>
 - The **parent divorce education class** that your court may require you to attend may also have information about creating parenting plans. A list of parent education classes is available at the following website: <http://www.ojd.state.or.us/familylaw>.
 - A mediator may be able to help you and the other parent through the process of creating a parenting plan.

If your court has a **family law facilitator**, that person may be able to help you in completing the forms and can provide other referrals. A list of facilitators in Oregon is available at the following website: <http://www.ojd.state.or.us/familylaw>.

If you need assistance regarding any custody or parenting time issues, please do not hesitate to contact our firm at 503.693.6641.