

Contact Us Today

PHONE:
206-784-3049

EMAIL:
info@seattledivorceservices.com



A Guide Created by Seattle Divorce Services

Divorce and Your Child

Overview

If you're in the process of obtaining a divorce, then the fate of your children — and your ability to maintain a healthy relationship with them — is most likely your primary concern.

When children are involved, however, divorce can be messy. Resolving such disputes requires skillful work outside of court such as collaboration, or, in the event of litigation, persuasive courtroom advocacy that is centered around the child's interests.

It is worth noting that Washington State does not technically recognize the term "custody" on an ideological basis. Decades ago, lawmakers decided that the term implies that one parent wins caregiver rights over the child, while the other loses. This implication was seen as unhealthy, as both parents could (and ideally should) play an important role in raising their children. Family courts here use related terms like "residential time" and "visitation" as an alternative. Here, however, "custody" and "residential time" will be used interchangeably.

Curious about how parental rights and child support work in Washington State? Speak with an experienced Seattle family lawyer for more personalized guidance.

Fundamental Parental Rights

Child Custody — as in the assignment of residential time in accordance with an agreed-upon residential schedule — is determined on the basis of the type of arrangement that will promote the best interests of the child. Equality of time is not required as the Washington courts do not consider whether a given residential schedule will be perceived as a net positive for the parents, except insofar as it leads to continued conflict.

In assigning a residential schedule, the court will consider various arrangements that allow the children to maintain regular and frequent contact with each parent (if doing so is in the best interests of the children). In some cases, this may lead to a split-time schedule, but in most cases, structural differences in career, location, the children's needs, and pre-divorce parental investment leads to inequity in the residential schedule. Factors that the court will consider include:

- The closeness and level of dependency between the child and parent
- Developmental and emotional concerns
- Expressed desires of the parents and the children (if the children are old enough and mature enough to properly express such an opinion)
- Career concerns with respect to time spent with children
- Existence of prior abuse or neglect

Though many mistakenly believe that women are given preference in custody battles, that is not actually the case in Washington as a matter of policy. Courts here evaluate the closeness of the relationship between parent and child (before divorce) and the parenting roles each parent has assumed in the past. Oftentimes, this favors the mother, who in traditional households may be given a lion's share of the parenting duties.

Unless the family court creates an equal, split-time residential schedule, the parent with primary "custody" is known as the primary residential parent, while the other parent is given visitation rights.

Understanding Parental Rights

Decision-Making

Parents have a right to cooperate in making decisions that will impact their child's life and development. For example, if a child falls seriously ill, both parents must consult one another and determine the best course of action.

Washington State handles the assignment of decision-making (outside of a specific parenting plan that changes the decision-making authority of each parent) in a fairly rational manner. Everyday decisions — and decisions in emergency scenarios — are handled by whomever the child is staying with at the time. Larger decisions, such as those involving education and overall healthcare, are shared unless there are specific reasons not to such as demonstrated inability of the parents to cooperate during the divorce process, to geographical proximity, to the existence of an agreement otherwise.

Informational Access

Parents have a basic right to access information relevant to the care of their children, including documentation related to healthcare and educational records. Each parent has a right to request and access such information, even if they are not the primary residential parent. Although parents are not generally required to provide this information to one another (it is the third-party recordkeeper who is subject to this right), there may still be an imposition of sanctions if a reasonable request is made and subsequently refused by the parent with those records in-hand.

Non-Parental Rights

Generally speaking, non-parents (i.e., grandparents, family friends, stepparents who have not adopted the child at issue, and other relatives) do not have a right to visitation or residential time, even though they may play a critical role in raising the child. In certain limited circumstances, however, a non-parent may be able to secure residential time. If a non-parent can show that the child does not actually reside with either of their parents and if they can demonstrate that the actual parents do not properly qualify as caregivers when evaluating the best interests of the child, then custody may be granted.

Terminating Parental Rights

It's quite uncommon for parental rights to be terminated in Washington, as these rights are highly protected. Still, it does happen, but generally only in cases of adoption where another person is stepping into the parental role. In those rare cases where such rights are terminated involuntarily, it occurs after the court evaluates the facts pertaining to the child's care and discovers repeated and severe instances of abuse, neglect or abandonment that make it clear that the best interests of the child are served by the termination of parental rights.

Please note that parental rights are so strongly favored in Washington that individuals generally cannot voluntarily relinquish them, except in those cases where the child at issue is going to be adopted by another party.

Termination of parental rights (whether involuntarily or voluntarily) also terminates all child support obligations, which can act as something of a perverse incentive for "deadbeat" parents to relinquish their rights.



Negotiating a Parenting Plan

Often the most effective resolution of a divorce case is collaborative. The two parents may choose to develop a parenting agreement without the interference of the court. Parenting agreements, or parenting plans, are comprehensive and cover a host of parental rights. Provisions in such plans may specify the details of a residential schedule, prohibit certain behaviors with the children, allow or restrict certain informational access and otherwise assign decision-making authority over the children and their lives. Parenting plans also include provisions that require parties to resolve their disputes through particular means, such as mandatory mediation.

Given the importance of a parenting plan in governing the relationship dynamic of parents and children in a post-divorce scenario, in a litigated case skilled negotiation is necessary to secure a successful outcome. Your ability to establish extensive parental rights in the parenting plan will largely depend on whether you can persuade the other side that your "arguments" are likely to succeed should the case proceed to trial. If so, you may be able to expand your parental rights through pre-litigation negotiation. In some cases, however, you may find that you have to compromise in some way to earn more of what you want in another area (i.e., agreeing not to fight about decision making in exchange for expanded visitation time).

Washington Child Support Basics

Child support is a key component of the divorce process and is determined based on a variety of factors including overall parental income, the stability of such income, and whether the children have unique needs requiring additional financial support.



Residential Time and Child Support Are Uncoupled

Child support and residential time are uncoupled. In other words, you could be required to pay child support even if the court gives you minimal (or no) residential time. Further, a parent cannot use their provision of support as a means to bully the other parent into allowing for additional visitation.

Courts base their child support decisions on state guidelines that demand proper consideration of a wide range of factors, including:

- Independent asset wealth of each parent
- Income of each parent
- Stability of such income (i.e., salary-based, commission-based, etc.)
- Whether a parent is receiving other recurring income in the form of child support, pension, gifts, and more
- How child support payments will impact tax liabilities
- Whether the child requires additional financial assistance due to a disability or other special need
- Access to other resources, such as family property
- Lifestyle differences between parents

If one parent has chosen to be underemployed or unemployed despite being capable of working, the court will assess their income as if they were, in fact, actually employed in their field.



The Role of Parental Evaluators

Courts benefit from the guidance of experts in determining how to assign residential time in a custodial arrangement. In doing so, they often appoint parenting evaluators (i.e., typically licensed psychologists, social workers, etc.) who will investigate the facts and submit a comprehensive report. You and your spouse may choose to cooperate in selecting the parental evaluator for appointment by the court. The report may include data and conclusions drawn from, but not limited to, the following:

- An evaluator interview with your children
- An evaluator interview with each parent
- An evaluator interview with third-parties, such as teachers, physicians, relatives and friends
- Home visits
- Observations of interactions between children and parents

The parental evaluator report is meant to operate as a recommendation on what sort of residential schedule will be most suitable to promote the best interests of your children. However, the parental evaluator's recommendation is not a mandatory guideline that courts are required to follow. Instead, courts typically use such reports in an advisory manner. Washington family law judges have the discretion to follow or reject the recommendations therein.

About Us

At Seattle Divorce Services, our team of family lawyers regularly represents clients in challenging divorce cases, including those that involve children (and the complex arrangements necessary to provide for them both financially and emotionally). Child custody proceedings can be particularly difficult for parents who are attempting to navigate a minefield of pre-determined biases and expectations.

We are committed to resolving divorce cases so as to create a favorable overall result. We believe that creative problem-solving is foundational to this approach. Unlike many of our family law competitors, our firm is comprised of skilled lawyers who are also trained in mediation. We have significant experience in both litigation and collaboration. As such, we are able to help you choose the process that is best for your situation.

