

Q. We do not have a custody order. Our child lives with me. Should I get a custody order?

The answer to this question is "it depends." Court orders help people enforce their rights. If you think you need legal protection to keep custody of your child, it makes sense to ask for a custody order.

Q. How do I get a custody order?

You need to file a court case to get custody order. Sometimes there already is a child support order. A child support order is based on a finding that someone is the child's father. If so, you can ask the court to modify the child support order to grant you custody. Talk to an attorney about this.

There may not be a child support order. If that is the case you would need to file a complaint to establish paternity, custody and visitation.

Q: I'm not sure what kind of custody arrangement is right. What do I do?

A: The answer to this question depends upon how well you and the child's other parent work together. There are two major types of custody:

- Legal custody, and
- Physical custody.

Legal custody means the authority or right to make major decisions about a child's well-being. Examples of major decisions are:

- What religion, if any, the child will learn;
- What medical treatment a child will receive; and
- Where a child will go to school.

Physical custody means your child is living with you.

A custody decision always includes two decisions:

- Who will have legal custody of the child; and
- Who will have physical custody of the child?

There are four types of custody arrangements:

- Joint Legal & Sole Physical Custody;
- Joint Legal & Joint Physical Custody;
- Split Custody;
- Sole Legal & Sole Physical Custody.

- **Joint legal custody & sole physical custody.** The child lives with one parent most of the time. This parent is called the primary parent. The other parent has visitation or “parenting time.” Both parents work together to make major decisions about the child. When the parents cannot agree on an issue, the primary parent gets to make the final decision.

Parents can agree to joint legal custody. A court can order joint legal custody. Generally, a court will approve joint legal custody only when the parents are able to work with each other.

- **Joint legal & joint physical custody.** The child lives with both parents for equal amounts of time. The child has two homes. The child moves from one parent’s home to the other’s home. The child spends a block of time with one parent and a block of time with the other parent. The parents decide together what will be best for their child.

- **Split custody.** This situation only comes up when there is more than one child. One child lives with one parent. The other child or children live with the other parent. Courts do not like this arrangement. The courts have concerns about separating children from each other.

- **Sole legal & sole physical custody.** The child lives with one parent. This parent makes all major decisions about the child. The other parent has visitation or parenting time.

Q. Can a judge order joint custody even if the parents do not want that?

Yes, it is possible. A court makes a decision based on what is in a child’s best interests. Joint custody works best when both parents agree to joint custody.

Q: My child’s other parent has custody of our child and is planning to move from Nebraska after the divorce. Can he/she do that?

A parent must get a court’s permission before moving a child from the state. Children have a right to have a relationship with both parents. A move may mean a parenting plan needs to be changed. If both parents agree to the move, a court is likely to let one parent move away with the child. If the other parent objects to a move, there will be a trial.

There is a two-part test courts use to figure out whether one parent should be able to leave the state with child. It is very hard to meet this test. A court may approve the move if the parent with custody of the child proves that:

- (1) There is a good reason for leaving the state; *and*
- (2) It is in the child's best interest to continue to live with that parent.

Examples of good reasons to leave the state are:

- The parent has a better job opportunity; or
- The parent is remarried and the spouse has to move.

This is not a complete list. These are only examples of good reasons to move out of state with the child.

The second part of the test is whether the move is in the child's best interests. To decide this the Court will look at the following factors:

- Whether the move would provide the child with a better life;
- A parent's reasons for moving;
- The other parent's reasons for fighting the move; and
- The effect a move will have on visitation between the child and the non-custodial parent.

Q: I don't know what kind of visitation to ask for. What should I do?

A: There is no single answer to this question. In fact, the answer to this question depends on your answers to other questions. The most important question is what is in your child's best interests? The next most important question is how well you and your child's other parent can work together? Another important question is are both parents "fit" to parent their child?

Let's assume both parents are "fit" to parent their child. A non-custodial parent has a right to a basic amount of visitation. The basic amount of visitation is

- every other weekend from Friday evening to Sunday evening;
- a few hours one day each week; and
- every other holiday.

Q: The other parent wants to do split custody of the children so there will no child support ordered. Can we do that?

A: The answer is that it depends. The most important question is what is in the children's best interests? Parents know their children better than a stranger does.

Parents are in the best position to decide whether children should live together or apart. Separating children does not always mean there will be no child support.

Child support is based on:

- the combined net income of the parents; and
- the amount of time children spend with each parent.

If parents think it is best to have one child with one parent and the other child with the other parent, a court may approve this arrangement. If parents do not agree on split custody it is unlikely a court will separate children just to reduce child support.

Q. How do the courts handle custody issues?

In 2008, the Nebraska Legislature passed the Nebraska Parenting Act. The Nebraska Parenting Act spells out most of the rules for custody cases. The Parenting Act applies to any court case where a child is involved. In every case involving children, parents must take a parenting class. After the class the parents have the chance to meet with a "mediator." A "mediator" is someone trained to help people solve problems.

Mediation is a meeting. It may be one or more meetings. You, the other parent and the mediator will be at the meeting. The meeting is a chance for you and the other parent to agree on what custody arrangement is best for your child. The mediator will help you talk to each other about your child. The mediator will help you both come up with a plan for your child. You may not agree on everything. You probably can agree on some things. You can ask a judge to decide the things you and the other parent cannot agree on.

If you cannot agree on a plan for your child your case will go to trial. At trial the judge will listen to each parent's argument. The judge will look at the evidence. The judge will make a decision based on a child's best interests. To figure out what is in a child's best interests a judge will try to answer these questions:

1. Are both parents "fit" to parent the child?
2. What is the child's relationship to each parent?
3. What does the child want?
4. Is the child healthy?
5. Does the child have special needs?
6. Which parent can take better care of a child's special needs?
7. Is the child doing well?
8. What kind of relationship do the children have with each other?
9. Which parent can provide better physical care of the child?
10. Which parent will take better care of the child's educational needs?

11. Which parent will make sure the child continues to have a relationship with the other parent?
12. What kind of home can each parent offer the child?

Q. What if the other parent will not go to mediation? What do I do?

Go to trial. The court will have to decide the questions of custody and visitation. You will be able to ask the court to adopt your parenting plan. You also can ask the court to think about the other parent's refusal to cooperate and come up with a plan.

Q. Do we have to go through mediation?

Yes, unless the court agrees to excuse mediation. There is an exception to this rule. If the parties come up with their own parenting plan and agree on everything, the parties may not have to go to mediation.

Q. How is child support calculated?

The Nebraska Supreme Court has special rules for figuring out child support. The rules are called Child Support Guidelines. These Guidelines spell out how much financial support each parent must give a child when the parents are not living together. This financial support is called "child support."

One goal of the Guidelines is to give a child the lifestyle the child would have had if the parents were living together. How much a parent pays in child support depends on a number of things:

- How many children a couple has;
- How much money each parent makes; and
- How much time the children spend with each parent.

All of this information is plugged into a formula. First, the formula looks at each parent's gross income. Then the formula deducts:

- taxes,
- social security contributions,
- retirement account contributions (up to 4% of a parent's income),
- health insurance premium for the parent and the child (if insured), and
- support for other children from each parent's income.

This new figure is "net income." The formula then combines the parents' net income. This combined income shows on a table what support a child would receive if parents were together.

Then the formula divides the income into two percentages:

- what percent of the total income is contributed by one parent; and
- what percent of the total income is contributed by the other parent.

Each parent's percent is then multiplied by the total income to come up with the monthly child support obligation.

Q. There is a court order giving me custody of our child. Our child does not want to visit the other parent. Do I need to make my child go to visits?

The short answer is "yes." This is true for a number of reasons:

- Your child's other parent has a right to a relationship with the child;
- Your child has a right to a relationship with both parents; and
- There is an order granting the other parent visitation.

If you do not follow a court order the other parent can ask the court to hold you in contempt. You do not have to make your child visit with someone who hurts or neglects the child. You must have proof of the harm or neglect. You need to be ready to explain to the judge why you did not follow the court order. If you want to change a visitation plan:

- See if you can get the other parent to return to mediation; or
- File a complaint in court asking to change the order.

Q. My child's other parent is getting drunk or using drugs during visitation. Do I still have to send my child to visit with the other parent? Will I get in trouble if I don't send the child?

The answer to the first question is "no." If the other parent puts your child in danger during visits you do not have to send your child on a visit.

The answer to the second question is "maybe." There is a court order for visitation. Courts expect people to follow court orders. Both parents are expected to keep their child safe. When you act to protect your child, you have a good reason for disobeying a court order. You will have to explain your reasons for not following the order to the judge. It is a good idea to have proof to back up your reasons. The best way to protect yourself and your child is to ask the court to change the order.

Q. There is no order for custody or visitation. How do I see my child?

The answer to this question depends on what rights you have. The “right” to visitation flows from being a parent. If your name is on a child’s birth certificate, you are the child’s parent. Make sure your name is on your child’s birth certificate. If your name is on your child’s birth certificate you have a right to a relationship with your child. You might have to file a court case to enforce your right to have a relationship with your child.

If your name is not on the child’s birth certificate you will have to file a court case to establish your right to a relationship with your child. You may not be able to establish your right to see the child if the child is older than 4, if you did not sign the birth certificate

Q. My child’s other parent is not paying child support. Do I have to let the other parent have visits with our child?

If there is a court order granting the other parent visitation, the answer is “yes.” You have to obey the court’s order even if the other parent is not. You can ask the court to hold the other parent in contempt for violating the court order. You also can get help to enforce the child support order. Contact the Nebraska Department of Health & Human Services Child Support Enforcement for more information. (hyper link: <https://dhhs.ne.gov/Pages/child-support.aspx>.)

Q. My child’s other parent will not let me visit our child. There is a court order saying I can visit. What can I do?

Both parents have to obey the court order. Someone who disobeys a court order is in “contempt” of court. You can ask the court to hold the other parent in contempt of court. Here is a link to the Nebraska Supreme Court’s website. (hyperlink: <https://supremecourt.nebraska.gov/self-help/families-children/enforcement-visitations-orders>. Click on this link to learn how to ask the court to hold the other parent in contempt of court.

Q. I am ordered to pay child support. There is no custody order. My child’s other parent dropped off our child two months ago. Child support still is being taken out of my paycheck. What do I do?

The first thing to do is ask the court to end your child support payment. You do this by filing a formal request with the court. The formal request is called a “motion.” You will need proof your child is living with you. Talk to an attorney about this.

The second thing to do is file a court case to establish custody and parenting time. Talk with an attorney about this.

Q. There is no custody order. My child lives with me. I let my child visit his/her other parent. Now my child's other parent is refusing to bring our child back to me. What do I do?

There is no easy answer to this question. In Nebraska, both parents have an equal right to custody of their child. First, check the birth certificate. If the other parent's name is not on the birth certificate, that parent does not have any rights. Second, take one or all of these steps:

- Call the police to see if they can help;
- Pick your child up at daycare or school; and/or
- File a court case to get a custody and visitation order.

Q. Will it hurt my chances for custody if I have a new boyfriend?

Maybe. It depends on whether your boyfriend is around your children. It depends on what kind of person your boyfriend is. If you are dating someone who puts your children at risk of harm, the answer is "yes."

A parent's first job is to care for his or her children. Change is hard for children. Stability is important for children. When parents split up, life becomes unstable for a child. A new boyfriend or girlfriend may make life even more unstable for a child. A court will look at which parent offers a more stable home for a child.

Q. I have a custody order. If I die, where does our child go?

Your child will go to live with the other parent. A parent has stronger rights to a child than anyone else. A parent has stronger rights to a child than a grandparent or other relative.

Q. Can my child's other parent take our child out of state during his/her visitation?

Look at your Parenting Plan for an answer to this question. If the Parenting Plan does not answer the question, then the answer is "yes." You do have a right to know if the other parent is going to take your child out of state. Parents have a right to know where their children are.