



GEARING, RACKNER  
& MCGRATH LLP

# Portland Child Custody



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The process of going through a divorce is almost always a difficult time. Divorces are often, although not always, acrimonious proceedings that are rife with the potential for conflict. However, the most challenging divorces are those in which children are involved.

Not surprisingly, determining child custody is frequently the most contested aspect of a divorce case. In Oregon, the court is bound to implement a custody arrangement that is in the “best interests” of the child. However, determining what is in a child’s best interest can be exceedingly difficult, especially when it comes to a child’s relationship with their parents.

## Types of Child Custody in Oregon

Generally, there are two types of custody: physical and legal. Physical custody refers to where a child primarily lives, whereas legal custody refers to a parent’s right to make major decisions for their child. In Oregon, there are two forms of child custody: joint custody and sole custody. These terms both refer to a parent’s legal custody of their child, rather than physical custody. Oregon courts consider physical and legal custody as separate matters, and a parent who does not have legal custody could theoretically have physical custody of a child, or what is referred to as parenting time.

In a joint custody arrangement, both parents share in the decision-making responsibilities of a child. This refers to major life decisions, but not necessarily everyday life choices. For example, parents with a joint custody arrangement may each have a say in the child’s religion, healthcare, education and living arrangements. However, each parent would be the sole decision maker during their parenting time when it comes to everyday decisions such as the child’s diet, who the child keeps as friends and the household rules that the child must follow.

## Decision-Making Authority

Legal custody allows parents to make the major decisions about the child’s welfare, including items like:



EDUCATION



NON-EMERGENCY  
MEDICAL



RELIGION



PRIMARY RESIDENCE

Importantly, the word “joint” in the term joint custody does not necessarily refer to where the child lives. In fact, in many joint custody arrangements, the child lives primarily or exclusively with one parent. Under Oregon law, a judge can only award joint custody if both parents agree. Similarly, a judge cannot overrule an agreement between parents for joint custody. However, for a joint custody arrangement to be successful, the parents must be able to effectively co-parent because an agreement for joint custody necessarily requires some level of agreement as to the child’s living arrangements. If an agreement for joint custody cannot be reached, the judge will award one parent sole custody of the child. Of course, in such situations the non-custodial parent may still be able to obtain significant or equal parenting time with the child. Notably, child support obligations are entirely unaffected by the legal custody arrangement but significantly impacted by physical custody or parenting time.

## Oregon Child Custody Factors

The guiding principle for Oregon family court judges when it comes to determining child custody matters is what is in the best interest of the child. Section 107.137 of the Oregon Revised Statutes explains the factors that a judge must consider when evaluating the best interests of a child, including:



Which parent has been the primary caregiver



Which one parent has a history of committing domestic abuse



Fitness and emotional stability of the primary caregiver



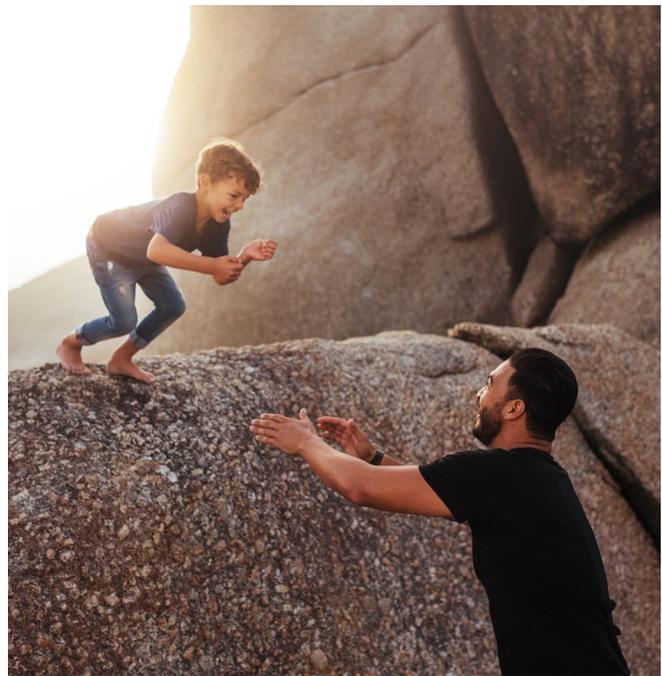
Which parent is the most likely to the other's parent-child relationship



Emotional ties between child, parents and family members



Criminal records of either parent



Under the terms of the statute, a court cannot rely exclusively on one factor to the exclusion of the others. Instead, a court must consider each factor individually, and appropriately weigh it against the other factors. Similarly, there are certain facts that a court cannot consider. For example, a court cannot base its custody determination on a parent's disability, unless the parent's disability impacts the child's health, safety or welfare. Similarly, as long as paternity is established, courts will treat married and unmarried parents the same.

Child custody issues are very emotional, and it is not uncommon for parents involved in a child custody dispute to try to raise any issue they think makes their case stronger. However, when it comes to factors such as a parent's conduct, marital status, income, social environment or lifestyle, courts can only consider these to the extent they may cause emotional or physical harm to the child. Finally, courts give no automatic preference to a child's mother based on gender when making a custody determination.



***Once a judge makes a child custody determination, that order is final unless appealed to a higher court.***

Once a judge makes a child custody determination, that order is final unless it is appealed to a higher court. However, if a party is later able to show that there has been a change in circumstances and that a modification to the child custody order is in the best interests of the child, the court may modify the order.

## What Is a Parenting Plan?

A parenting plan refers mainly to the amount of time a child spends with each parent. A parenting plan may be the product of a mutual agreement between parents or, if the parents cannot agree, the court will create a parenting plan. Understanding that parents know their children best, courts prefer that the parents at least try to come up with a workable parenting plan on their own or through mediation. However, if no agreement can be reached, a court-ordered parenting plan will be required.

Parenting plans vary in detail, with some being quite simple and others fairly complex. However, at a minimum a parenting plan must outline the amount of time a child will spend with each parent, usually in terms of number of nights spent with each parent. Oregon parenting plans may include other details pertaining to the parties' co-parenting relationship, such as:

Schedules for holidays, birthdays  
and summer vacations

Plans for weekends and days when schools  
are closed

Each parent's role in making important life  
decisions for the child

Limitations on a parent's ability to relocate

Each parent's responsibility to share  
information with the other parent

Methods of resolving future disputes  
between the parties

If there are concerns about a child's safety when spending time with a parent, a court may impose supervised parenting time, which means that the child will only be permitted to spend time with the parent when a third party is present. In some cases, the supervisor must be a professional or even a therapist.

Additionally, in some situations, a child's grandparents or step-parent can obtain visitation rights by petitioning the court. Grandparent or step-parent visitation may be awarded only when, 1.) the grandparent or step-parent has had an "ongoing personal relationship" with the child for at least a year, and 2.) the biological or legal parent(s) are clearly found to be acting against the child's best interest.





## **GEARING, RACKNER & MCGRATH LLP**

At Gearing, Rackner & McGrath, LLP, we understand the emotional impact of divorce, as we have been helping clients in Oregon and Washington with their family law issues since 2005. Our child custody attorneys are intimately familiar with how the courts determine child custody matters and are prepared to aggressively advocate on behalf of our clients' interests throughout every step of the process.

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