

Full Custody Laws

Child custody disputes are very confusing and emotional, not only for the child but the parents as well. Because it can be complex any parent going into a child custody dispute would be well-advised to make the process as smooth as possible by taking a moment to understand some of the complexities of child custody, specifically the difference between legal and physical custody, and sole and joint custody.

Types of Custody

When people talk about the issue of custody they think of it simply, that the parent granted custody will be given physical control over the care and maintenance of the child. However, custody is not so simple as that. Indeed, custody breaks down into two distinct facets, legal custody and physical custody, either of which can be granted solely to one parent or the other or jointly to both.

Legal Custody

The concept of legal custody simply refers to the right of each parent to share in the major decisions regarding the child's welfare, such as medical treatment, school enrollment, religion and extracurricular activities. Legal custody is typically granted jointly because it is not based upon any amount of time the child may have spent with one parent or the other. Indeed, it can be granted even if one parent spends no time with the child.

Physical Custody

As physical custody tends to be based upon who provides the day-to-day care of the child, it is more likely to be granted solely to one party or the other. However, if the court is asked to grant joint physical custody it must consider the request and can order any custody arrangement up to a complete 50/50 division of time. In cases where it is not granted jointly, parenting time is award to the noncustodial parent.

Interestingly, physical custody isn't even a real 'thing' in Michigan. The statute only defines custody in terms of legal custody and makes no mention of physical custody. Physical custody is a relic of some other age and more and more these days the words 'physical custody' tends to be so divisive that many attorneys – including myself – tend to avoid using it, preferring simply to apportion legal custody and lay out a parenting time schedule.

Sole Custody

It is a rare occurrence for one parent to be granted sole legal and physical custody, only doing so when it is apparent that the parents cannot work together, where one parent is legally unfit, or where the best interests of the child require it. However, while a court may grant sole legal and physical custody to one parent, any parenting time order naturally grants the noncustodial parent the power to make routine and emergency decisions regarding the child that might arise during the parenting time.

Rights of Sole Custody

The most important right a parent with sole physical and legal custody has is that right to make all decisions regarding the child's welfare without first consulting with or notifying the other parent. However, this power does have its limits. A parent with sole legal and physical custody must still comply with court orders regarding parenting time and the limitations on the child's domicile, and would still need to keep the other parent informed about the child's well-being.

Caution

While laws are similar they do vary from state to state. Always consult with a licensed attorney if you have any questions.

Michigan Compiled Laws §§ 722.23; 722.30; 722.26a; 722.27a

Michigan Custody Guideline

<http://courts.michigan.gov/scao/resources/publications/manuals/focb/custodyguideline.pdf>

California Courts Self Help Center

<http://www.courtinfo.ca.gov/selfhelp/family/custody/basics.htm>