

INTRODUCTION

As a parent contemplating or going through a divorce, the whole process may seem complex, unintuitive, or just plain absurd. With this report you can begin to get an understanding of the courts process. My goal is to give an overview of a Washington divorce and issues that will affect you and your child. After reading this report, you will understand how courts establish “custody,” what the best interest of the child means, and what a parenting plan does.

WHAT ARE THE GROUNDS FOR DIVORCE?

Washington is a “no fault” divorce state. If one spouse believes the marriage is “irretrievably broken,” then a divorce may be started. The court does not need to determine who is at fault for the divorce. In other words, parties do not argue about whose fault it was that the marriage ended.

TIME FRAME FOR DIVORCES

Washington law requires that the parties wait at least ninety (90) days from the time of the filing and service of the Summons and Petition for Dissolution of Marriage before a divorce can be finished. During this time, parties can “cool down,” reconcile or begin preparing to finalize the divorce. Although each county is different, in King County the trial date is set roughly ten to eleven months after the date of filing. The final time frame can vary depending on whether the parties contest parenting arrangements or child support issues.

WASHINGTON STATE MANDATORY FORMS

The Washington State legislature requires mandatory forms to be filled out in order to get a divorce. To start a divorce, a Summons and Petition for dissolution of Marriage must be filed. Other forms such as the Parenting Plan, Child Support Worksheets, and Financial Declaration may also be filed, depending on your circumstances.

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These forms may be found on the Washington State Court's Web site. In King County, they are available at the Family Court Facilitators office in the downtown Seattle Courthouse or the Kent Regional Justice Center. The facilitators will help you get the proper forms, but they cannot give you any legal advice or tell you how to fill out the forms. A family law attorney will be able to answer any of your questions about these forms.

WHAT HAPPENED TO DIVORCE, CUSTODY, VISITATION AND ALIMONY?

Washington divorce law is filled with terms that are different from what is commonly used. I'll help you get acquainted with some commonly used terms. Since the passage of the Parenting Act of 1987 a number of changes have occurred.

- A divorce is now called “**dissolution of marriage**”.
- Custody is now referred to as “**residential placement**” or **residential time**.
- A “custodial parent” is now called the “**primary residential parent**.”
- Visitation is now “**residential time**.”
- Alimony is now called “**spousal maintenance**”

The purpose of these semantic changes is to stop the parties from treating the children as a possession, and to instead focus on the best interest of the child.

IF CUSTODY IS DISPUTED, WHO GETS THE CHILD?

In a disputed case, the court will do what is in the best interest of the child. The “best interest of the child” is not specifically defined anywhere in Washington law. However, the policy of Washington recognizes that,

“The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.”

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When custody is contested, the courts compare “the parents’ competing home environments and awards custody, by a preponderance of the evidence, for the better environment.” The court considers seven factors to determine which parent’s home is “best.”

- (i) The relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
- (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;
- (iii) Each parent's past and potential for future performance of parenting functions;
- (iv) The emotional needs and developmental level of the child;
- (v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;
- (vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and
- (vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

The court will weigh each of these factors to determine what parent should have primary residential custody, but the first factor is the most important.

What this means is that you will have to show the court, in some detail, your relationship with your child. The parent who has a strong bond with the child, a close relationship, stability, and who was the primary caretaker will be more likely to get “custody” of the children. The judge tries to determine what home is “best” for the children, and you must be able to show the court evidence. Each case is different and unique. If you have heard horror stories about custody battles, do not assume your situation will be the same. Simply be aware that you will be asked to show the court why your parenting plan would be in the best interest of the children.

GUARDIAN AD LITEM (GAL)

To help the court determine what is in the best interest of the child, often a Parenting Evaluator or *Guardian Ad Litem* (GAL) is assigned by the court or requested by a party to evaluate the parent’s homes. A GAL is an independent third party, either an attorney or social worker, who investigates parenting arrangements and reports to the court their recommendations. The GAL tries to find what is in the “best interest of the child.” Although there is some debate about using these evaluators, the courts often give great weight to their reports.

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PARENTING PLANS

Washington law requires that parents create a parenting plan. There are two types of parenting plans, *temporary* and *permanent*. A Temporary plan is used during the interim between filing the Petition and the trial. A Permanent Parenting Plan is the final agreement that the court orders. Although it is called permanent, it may be modified if there is a “substantial change in circumstances” or if there is a minor adjustment to the schedule. Many parents agree on the parenting plan (often through mediation or some other alternative dispute resolution) without going to court to decide the issue.

The Parenting Plan details the duties and responsibilities of each parent toward the children and addresses three distinct issues.

- Who will make the **decisions** about the children;
- Where will the children **live** and how will they **visit** the other parent; and
- How the parents will **resolve disputes** about the parenting plan.

Let’s look at each of these in turn.

Who Makes the Decisions?

You and your former spouse will create a parenting plan. The parenting plan sets down in writing who will make decisions about the children. It addresses major decisions about education, medical treatment, and religion. If you and your former spouse are agreeable and cooperative, joint decision-making may work. It will depend upon each individual’s relationship with one’s spouse. Of course, parents can still make decisions about the daily issues, including emergencies, that arise while the children are in that parent’s custody.

Besides these major decision-making issues, you will have to decide many other important decisions about your children. Think about the strange questions that you will need to answer in the future? Does Jonny need braces? Should Jimmy play football? Is Sarah ready to date? In or out of state college? Questions like these will be with you for some time, and it will be up to you and your former spouse to resolve them. If you have a tough time making a decision

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with your spouse, divorce does not totally eliminate all the problems¹. That is why it is important to write down the rules and expectations of each parent in a parenting plan. An experienced attorney will help a parent to see issues that are not apparent at first glance.

What About Visitation?

Although the kids live with one parent, the other parent still needs to see them. The parenting plan states in writing who is the primary residential parent, that is, whom the children live with, and the schedule for visiting the other parent. A common plan is for the non-residential parent to have visitations every other weekend and one day during the week. Specific days and times that the children will spend with the parents are written into the parenting plan. For instance, provisions for holidays, birthdays, or other special events are listed and divided between the parents. Begin thinking about where the children should stay for Christmas, Thanksgiving, Spring Break, and other holidays.

Many parents want “joint” custody. Not every situation will warrant 50/50 joint custody. Courts often feel a child should have a stable consistent home environment and should not be bounced from home to home. Ask a family law attorney if joint custody will work for you.

¹ There are exceptions to this. If your spouse commits domestic violence, abandoned the child, has no emotional ties with the child, or has sex offense charges, there may be limits on visitation. Contact an attorney for further assistance.

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What if the Parents cannot Agree?

A dispute resolution process such as mediation, counseling, or arbitration must to be put into the permanent parenting plan². Depending on the parties involved, different types of dispute resolution will work better than others. It is up to the two parties involved to decide what would work best for them. In King County, Family Court Services provides mediation on a sliding scale based on income. Other private mediators are also available to settle disputes.

CHILD SUPPORT

It is the duty of both parents to support their children. The court will usually order a non-residential parent to pay child support (the residential parent does not). The child support is computed by adding both parents' income. That income is then compared to the Washington State Child Support schedule to determine the total obligation for the children. If it is necessary, the parties may deviate from this amount if the court finds good reason. That obligation is then divided between the parents in proportion to their income.

An important point to keep in mind is that failure for one parent to pay child support does not mean you can withhold visitation time from that parent. What you can do is ask the Division of Child Support or a private attorney to enforce the order. Failure to pay can result in the court finding the person in contempt or even suspending drivers and business licenses issued by the state.

I hope that this brief outline has answered some of your questions. Please keep in mind, however, that your situation is unique and that this report is merely a general guide to the law. This report is not a legal opinion. For specific legal advice about your situation, contact a family law attorney.

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² If there is domestic violence or other limitations, dispute resolution is not required.

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