

GETTING A DIVORCE WITH MINOR CHILDREN:

UNDERSTANDING **CUSTODY, PLACEMENT**

AND **CHILD SUPPORT** IN WISCONSIN



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Getting a divorce in Wisconsin when you have one or more minor children involves several emotional issues that other couples without minor children need not consider. In addition to deciding how to divide your assets and liabilities, the court will also determine with whom the child will live during and after the divorce, who gets to make major decisions on behalf of the child, and whether one parent will make regular child support payments to the other.

Understanding the difference between legal custody, physical placement and child support, as well as understanding the factors courts consider when making these determinations that impact minor children, can help you better know what to expect as you navigate the divorce process. This, in turn, may make the process smoother for you – and most importantly, for your children.

What's in a Word? Custody vs. Placement

While they sound similar, the words “custody” and “placement” have separate and distinct meanings in Wisconsin divorce proceedings.

Custody

If the court awards you legal custody, it means you have decision-making authority for your child’s medical care, education, religious upbringing and more, including providing permission for your child to do things like join the military, get married before age 18, or get a driver’s license. The court may award sole legal custody to one parent, but in most cases, Wisconsin courts award joint custody.

When joint custody is awarded, both parents generally share legal authority over making major decisions for the child. Neither parent can unilaterally make a decision without consulting the other parent and attempting to come to agreement. However, it is also possible for the court to award joint legal custody but give one parent sole decision-making authority over certain issues, or give one parent impasse power over certain disputes. This outcome can occur in cases where one of the parents is physically distant from the parent with whom the child lives, one parent has health or other issues that might make co-parenting difficult in certain regards, or where the parents are unable to effectively communicate with each other.

Placement

Placement, on the other hand, refers to where, when and with which parent the child is physically placed on a daily basis. In other words, physical placement refers to where the child lives, along with the daily routine decisions that go along with it.



“Primary placement” refers to the parent with whom the child lives the majority of the time. If the court awards “shared placement”, each parent has the child at least 25 percent of the time. In families with more than one child, it is also possible for the court to award “split placement”, where one parent has primary placement of one or more of the children while the other parent has primary placement of the other child(ren).

While a child is placed with one parent, that parent has the authority to make day-to-day decisions about the child’s care. These decisions include things like a child’s bedtime, extracurricular activities, study time, and discipline. One parent may be awarded sole placement, but this isn’t a common outcome. In most situations, the court determines and sets a placement schedule designed to give the child meaningful time with both parents as it is presumed that is in the child(ren)’s best interest.

Understanding Child Support

Where custody and placement deal with a child’s physical care, child support is intended to address the financial needs of caring for a child until he or she reaches adulthood. Essentially, child support is ongoing financial support the court orders one parent to pay to the other parent, to help provide for each minor child’s needs and care. Child support is not automatic, and it is not ordered in every Wisconsin divorce. The placement schedule of the child(ren) and the parents’ respective financial positions both play important parts in determining whether child support is appropriate.

How Do Wisconsin Courts Make Custody, Placement, and Child Support Decisions?

Wisconsin courts are tasked with making legal custody, physical placement, and child support decisions that are in the child’s best interests. This is a difficult task, and often requires input from experts, Guardian ad Litem, and others.

Parenting Plans

It's generally best for the child when parents can agree on custody and placement. Many Wisconsin courts offer parents mediation at a free or reduced cost to assist in coming to an agreement on custody and placement. In cases where custody and placement are at issue and the parties cannot easily come to an agreement, divorcing parents are encouraged to propose parenting plans to the court. A parenting plan documents how parents will handle holidays, birthdays, school or daycare schedules, vacation days, work schedules, and other issues impacting childcare for minor children. If parents cannot agree on a parenting plan, the court will decide what's best for the child.

Factors in custody and placement decisions

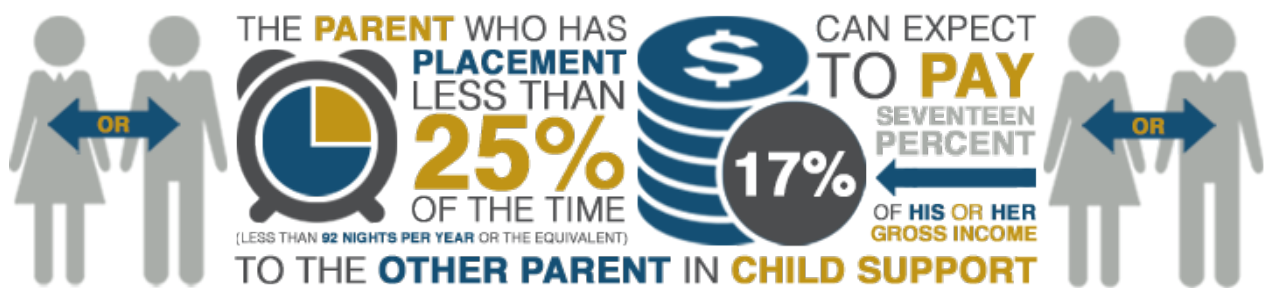
Wisconsin courts generally start with the presumption that the interest of the child will be best served by maximizing time with both parents. However, this isn't always the outcome. In situations where parents weren't able to agree on a parenting plan, Wisconsin courts consider these factors:

- ◆ The child's age
- ◆ The child's physical and emotional health
- ◆ The parents' physical and mental health
- ◆ Any substance abuse issues in the household, or a history of domestic violence or child abuse in the home
- ◆ Relationships between the child and his or her parents, siblings, caregivers, extended family, and other people involved in the child's life
- ◆ How much time each parent has spent with the child in the past, as well as the quality of that time
- ◆ Whether there are lifestyle factors that could impact either parent's ability to spend quality time with the child in the future
- ◆ The child's involvement in his or her community, school, and extra-curricular activities
- ◆ The parents' ability to cooperate and communicate with each other
- ◆ The child's wishes (if at least 14 years old), as well as the parents' wishes
- ◆ Other factors, as relevant and appropriate

Child support calculations

If the court awards child support, the amount one parent will pay the other is based on percentage standards established by the Wisconsin Department of Children and Families. Child support is generally payable until the youngest child reaches the age of 18 or until age 19, if that child is still in high school.

When support is ordered for one child, the parent who has placement less than 25 percent of the time (less than 92 nights per year or the equivalent) can expect to pay 17 percent of his or her gross income to the other parent in child support.



This percentage rises to 25 percent for two children, 29 percent for three children, 31 percent for four children, and 34 percent for five or more children.

If both parents share placement, with each of them having the child for at least 25 percent of the time, the support obligations are calculated for both parents. The percentages are adjusted to reflect for household maintenance expenses incurred by both parents, multiplied based on the percentage of time the child spends with each parent, and then offset.

It is important to note that “gross income” for purposes of determining child support includes salary and wages before taxes and deductions, as well as workers’ compensation payments, Social Security Disability payments, unemployment income, and income earned from assets. Public welfare assistance or child support received for other children are not included when determining gross income.

While the courts start with these percentage standards when calculating support, the judge has the ability to deviate from them and can base child support on the parents’ ability to earn income. Courts also apply special rules in situations with split placement, parents with existing child support obligations, and those with very high or very low incomes.

Your Attorney Will Help You Advocate for Your Child's Best Interests

Divorces can be contentious; it is common for one parent to want sole legal custody and primary physical placement of their minor child(ren), especially when that parent is angry with the other parent for an issue that perhaps gave rise to the divorce. However, if the court determines that both parents are fit to care for the children and that it is in each child's best interest to divide time and decision-making authority between the parents, joint custody and shared placement will be the likely outcome.

Issues related to child custody, placement, and support are emotional and stressful, and are rarely straight-forward. Your divorce attorney will play a key role in helping you through this process, advocating for your best interest, and for the interest of your minor child(ren).



ABOUT THE AUTHOR

Attorney AnnMarie M. Sylla focuses her practice on representing clients across southeastern Wisconsin in litigation and family law including complex cases involving divorce, paternity, modifications of child custody and placement, child support and maintenance disputes. Attorney Sylla is known for her passion in fighting for her clients' interests.



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