

CUSTODY FAQ SHEET

What is legal custody?

Legal custody defines the right to make legal decisions for the child regarding education, health care, religion, and his or her general welfare.

What is joint legal custody?

Joint legal custody means there is equal decision making authority by both parties, including, but is not limited to, major non-emergency medical decisions, educational decisions, and religious upbringing. Parents shall communicate and cooperate with one another and attempt to reach mutual agreements regarding major issues affecting their child(ren). If their court order gives the parties joint legal custody and the parents aren't able to agree on a major decision, a party must file a motion to ask the court to make the decision.

What is sole legal custody?

One parent is responsible for making the major decisions regarding the children regarding medical care, education, and religion.

What is physical custody?

Physical custody is defined as where a child lives on a day-to-day basis.

What is joint physical custody?

This term means the child(ren) live with each parent part-time. This time does not have to be exactly equal. The parent who has care of the child(ren) at any given time is responsible for routine decisions regarding the children.

What is primary or sole physical custody?

The term is often used to denote the parent with whom a child spends or lives the majority of the time with during the year.

When can a child choose which parent they want to live with?

Age 18. A child's preference is only one of 12 factors that must be considered by the court when determining the best interest of the child. To find the best interest factors, please see section 722.23 of the Child Custody Act of 1970.

How do I change my custody order?

1. If the parties agree on this issue, the Friend of the Court (FOC) can help you modify your court order without the need for a court hearing.

- a. Step 1: write out the details of your agreement and have both parties sign and date it. (Please note this agreement is not a court order until it is signed by the judge, so you must complete the rest of the listed steps).
- b. Step 2: give the original copy of your agreement to the FOC by dropping it off in person or by sending it via mail to Allegan County Friend of the Court, PO Box 358, Allegan, MI 49010.
- c. Step 3: when the FOC receives your written agreement, the FOC will schedule an appointment for both parties to come into the office to put the agreement into a court order.
- d. Step 4: the FOC will process the paperwork and will mail you a copy once it is signed by the judge.

If the parties are not in agreement, you must file a motion in Circuit Court requesting changes. You may hire an attorney to represent you, or you may represent yourself. If you choose to represent yourself, you may pick up a motion packet in the FOC lobby. These packets are also available in the Allegan County Legal Assistance Center, who can also assist with completing the forms and provide directions for filing.

My order states I cannot move the children outside of Michigan, or more than 100 miles away, without the approval of the court. How do I get the courts approval?

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If the parties do not agree, you must file a motion in Circuit Court requesting changes. You may hire an attorney to represent you, or you may represent yourself. If you choose to represent yourself, you may obtain the proper paperwork from the Allegan County Legal Assistance Center, located in the garden level of the courthouse, who can also assist with completing the forms and provide directions for filing.

The other parent moved the child out of the State of Michigan, or more than 100 miles away without the approval of the court. What can I do?

Notify your Friend of the Court Enforcement Officer in writing and provide any known information on the custodial parent and where he/she may have moved to. The appropriate enforcement action will be taken. To seek legal charges against the other parent, you must contact the appropriate law enforcement agency.

I want to take my child out of state for vacation purposes. Do I need the courts approval?

No. You may take the child(ren) out of state and/or country for vacation purposes, however, the trip cannot interfere with the other parent's parenting time. In addition, the vacation must not be to a country that is not a part of the Hague Convention, unless otherwise stated in the court order. You can find a list of countries who are partners of the treaty here:

<https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/abductions/hague-abduction-country-list.html>. Any time travel like this is planned, the FOC encourages the party travelling with the minor child(ren), to provide the other party with a brief itinerary, complete with emergency contact information for the trip.

The last order in my file states that I have "reasonable parenting time rights." What does that mean?

Reasonable but not specific parenting time, means whatever the parties can mutually agree upon. The FOC is unable to enforce verbal or written agreements between the parties. The FOC will not be able to enforce any parenting time until a specific schedule is entered into an order.

Parties are encouraged to follow the FOC Reasonable Parenting Time policy if suggestions are needed, but "reasonable parenting time" does not denote that the parenting time policy will be what is enforced.

A copy of the policy is available at our website:

<http://cms.allegancounty.org/sites/Office/CC/FOC/SitePages/Home.asp>.

If the parties agree on a specific schedule to include in a court order, the FOC can help you modify your court order without the need for a court hearing.

- a. Step 1: write out the details of your agreement and have both parties sign and date it. (Please note this agreement is not a court order until it is signed by the judge, so you must complete the rest of the listed steps).
- b. Step 2: give the original copy of your agreement to the Friend of the Court by dropping it off in person, or by sending it via mail to Allegan County Friend of the Court, PO Box 358, Allegan, MI 49010.
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- d. Step 4: the FOC will process the paperwork and will mail you a copy once it is signed by the judge.

If the parties cannot agree upon what the specific schedule will be for parenting time, either parent may file a motion in Circuit Court to request a specific schedule. You may hire an attorney to represent you, or represent yourself. If you choose to represent yourself, you may obtain the proper paperwork from the Allegan County Legal Assistance Center, located in the garden level of the courthouse, who can also assist with completing the forms and provide directions for filing.

I have a specific parenting time schedule that I would like to change. What can I do?

To modify your court order, you can do one of the following:

1. If the parties agree on this issue, the Friend of the Court (FOC) can help you modify your court order without the need for a court hearing.

- a. Step 1: write out the details of your agreement and have both parties sign and date it. (Please note this agreement is not a court order until it is signed by the judge, so you must complete the rest of the listed steps).
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If the parties cannot agree upon what the specific schedule will be for parenting time, either parent may file a motion in Circuit Court to request a specific schedule be ordered. You may hire an attorney to represent you, or represent yourself. If you choose to represent yourself, you may obtain the proper paperwork from the Allegan County Legal Assistance Center, located in the garden level of the courthouse, who can also assist with completing the forms and provide directions for filing.

The other party is not following the parenting time order. What can I do?

You may file a parenting time complaint with the FOC office. This form is located on our website at: <http://cms.allegancounty.org/sites/Office/CC/FOC/SitePages/ParentingTime.aspx> or one can be picked up in the FOC lobby. When filing a parenting time complaint, you must provide specific information, such as dates and times and a brief explanation of what happened. These complaints must be filed immediately following an alleged violation of the parenting time order. The FOC will then send out a 21-day notice of Alleged Violation of Parenting time Notice to both parties. If the matter is not resolved, the case may be referred to Mediation and/or set for a violation hearing before the Referee, if necessary.

** Please note that the FOC cannot force a parent to exercise their parenting time. If a parent consistently fails to exercise their parenting time, you may file a motion in Circuit Court to request changes to your order.*

My child does not want to attend parenting time with the other parent. What can I do?

Parents must comply with the court orders, regardless of the child's age. It is the parent's responsibility to promote a positive relationship between the child and the other parent. There is no specified age in the State of Michigan as to when a child can decide when they can or cannot attend parenting time. Each parent must facilitate and encourage the court ordered parenting time until the child is 18 years of age, at which time the child is no longer governed by the court order for the purposes of parenting time.

You may also request changes to the court order. If the parties agree on this issue, the FOC can help you modify your court order without the need for a court hearing.

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Work out a different arrangement with the other parent – however, written or verbal agreements between the parties outside of the court orders are not enforceable by the FOC.

If the parties cannot agree upon changes to parenting time, either parent may file a motion in Circuit Court. You may hire an attorney to represent you, or represent yourself. If you choose to represent yourself, you may obtain the proper paperwork from the Allegan County Legal Assistance Center, located in the garden level of the courthouse, who can also assist with completing the forms and provide directions for filing.

In any case, the current court order must still be followed until a new order is signed by the judge and entered with the court.

It appears that the other parent may be under the influence of alcohol or drugs. What can I do?

It is your duty as a parent to protect your child. If you have concerns about the safety of your child, contact Child Protective Services at: 1-855-444-3911 and/or your local law enforcement agency. The FOC cannot advise you that it is okay to deny parenting time, nor can it investigate these allegations. If you deny parenting time and a complaint is filed by the other parent, you may be required to explain this denial at a show cause for contempt of parenting time hearing, where you could be held in contempt of the court order.

The other parent refuses to exercise parenting time with our children. What can I do?

The FOC cannot force a parent to engage in parenting time with his/her children. It is the parent's duty to promote a positive relationship with the other parent. Your options may include, counseling, mediation, and filing a motion to change the parenting time order with circuit court.

I am concerned that my children are being abused or neglected while in the other parents care. What can I do?

Report your concerns to Child Protective Services by calling 1-855-444-3911 and/or your local law enforcement agency. You may also provide this information in writing to the FOC to be made part of your file, however the FOC does not have the authority to investigate allegations of abuse/neglect. Child Protective Services is responsible to file an action in Family Court if intervention is necessary to protect the child. You may also file a motion in Circuit Court to change custody or parenting time.

Child Support payments are not being made. Do I have to allow parenting time?

Yes. Parenting time and child support are separate parts of a court order with separate enforcement remedies.

My child has extracurricular activities scheduled but they fall on the other parent's time. Do I have to send the child for parenting time?

Yes. The parties should cooperate with each other when enrolling the children in extracurricular activities to ensure that the activities do not interfere with the other parents parenting time. A non-custodial parent is not responsible to transport a child to extracurricular activities that the custodial parent enrolled them in, nor are they required to have the child attend. A parties' parenting time supersedes any type of extracurricular activities, unless otherwise specified in your court order.

I am running late for parenting time exchange. What can I do?

Communicate with the other parent immediately notifying him/her that you are running late. Parties are allowed a 30-minute leeway. The 30-minute leeway is only in time of exceptional circumstances, but should never become the norm.

What happens if both parties move from the State of Michigan?

Michigan can continue to enforce the support order the same as described above. Although Michigan can continue to enforce the order, if all parties have left the state, the custodial parent is encouraged to sign up for services at the local child support office. Should enforcement other than income withholding be necessary in the future, your case will already be established in the new state and may save time while you wait for enforcement action. However, the Michigan order cannot be modified if neither party resides in Michigan, the party wishing a modification of the order must register the order in the opposing state for modification.