

Child Custody types

Regardless of what you may have heard, in Illinois there are only two types of child custody: sole and joint custody. The actual differences between these types of custody are minimal. Unless there are special circumstances from which a parent poses a danger to a child, both parents will have access to and time with the child; both parents will be entitled to review the child's school and medical records; both parents will be involved in important decisions affecting the child's life; and neither parent will have the right to unilaterally make major decisions without consulting the other parent.

The statutory custody forms

The custody form reflects the ability of the parents to get along. In joint custody, the parties agree (or the court finds) the parties are able to cooperate where the children are concerned. Sole custody reflects the conclusion the parents cannot cooperate. Courts tend to view the inability of parents to agree upon custody form as an indicator the parties cannot cooperate, and usually sole custody will be ordered.

Joint custody is not favored in appellate court opinions in Illinois. It is rarely ordered in McHenry County courts unless the parties agree. But "joint custody" and "sole custody" are not indicative of the amount of time a parent spends with the children, and really have nothing to do with the time spent with the children.

The other form of custody right is visitation. For example, assume the mother smokes marijuana. However, the father smokes or smoked marijuana with the mother. Neither smokes when the children are in the house. The court is unlikely to consider the conduct of either parent in determining custody or visitation unless a parent's conduct can be connected to the child. In this example, the parent with whom the child does not habitually reside would probably receive unrestricted, although scheduled, visitation. And since both parents participated in the conduct (they smoked together), the court will probably not put a lot of weight in the activity.

Now, assume both parents drink alcohol, but the mother has multiple DUIs, the last occurring within the last several months. If the DUI can be shown to affect the children, then the DUI might be considered in both a custody and visitation context. The court will consider whether the mother is able to drive, how long she has been sober, the treatment she has received. The court may also look to whether she continues to drink in front of the children.

Other than in exceptional cases, one parent will be the residential parent and the other will visit based upon a schedule. Whether the form of custody is joint or sole, the parent with whom the child is living at a given time will make routine, day-to-day decisions. The parent with whom the child lives at any given time will also make emergency medical decisions. Otherwise, the parents should share decision making on major decisions. Both parents will have the right to be involved in school, extracurricular and other activities. Both parents will get to spend holidays, birthdays and vacations with the children based upon a schedule.

Other custody terms

Often, people will come to our office saying they want “full custody” or “split custody.” These are not legal terms. These are forms of sole and joint custody that have arisen either from public misuse or as terms lawyers use to describe variations on sole and joint custody.

Here are common terms and what they have come to mean:

- Residential custody: Residential custody is where the child lives. This is what most people mean when they say they want custody of the children.

- Split or shared custody: People often confuse “joint” custody with “split” custody. Split or shared custody is a type of joint custody in which both parents spend substantial time with the children. In the split custody variation, time with the children can approach 50-50. As with joint custody, courts generally will not order split or shared custody unless the parties agree, or unless the parties have already implemented split custody. Split custody will not be ordered unless the parties reside within the same school district, due to logistical issues of getting the children to school.
- Nesting: This unique form of joint custody involves the parents having separate households and maintaining a third household where the children live. Again, it is unlikely to be ordered unless the parents agree.
- Full custody: This term often refers to the unfettered right of a parent to make all decisions regarding the children. It will almost certainly not be ordered, the exception being in cases of violence toward children. Even where supervised visitation occurs, it is likely both parents will have at least the right to be involved in major decisions. Sole custody is often referred to, incorrectly, as “full custody.”