

# Child Custody and Visitation Orders

## Who can ask for child custody or visitation?

You can ask for child custody or visitation if you are the parent or legal guardian.

It doesn't matter if you and the other parent are married or not.



## Can anyone else ask for custody or visitation?

Yes, you can ask the court for custody or visitation if you are a:

- Grandparent, stepparent, or former stepparent,
- Blood relative or other family member, or
- Any other person with a *legitimate interest* in the child.

## Does one parent have more rights to custody than the other?

No. Both parents have the *same* right to physical custody of their child. Virginia law does not prefer the mother or father.

## How to Ask the Court for a Custody or Visitation Order

There are legal steps you must take to get a child custody or visitation order.



You **MUST**:

1. Fill out and file custody forms,
2. Serve copies of those forms to everyone in the case,
3. Go to a court hearing, and
4. Get a written custody/visitation order from the court.

## Where do I get the custody forms?

If you are asking for a **new** custody/visitation order, fill out a:

- *Petition for Custody*, and/or
- *Petition for Visitation*.

Get the forms you need from the Court Services Unit of the Juvenile and Domestic Relations (J&DR) Court.

## Can I file in any county in Virginia?

You should file in the J&DR Court where the child has lived for the last 6 months.

## Do I have to pay to file a *Petition*?

Yes. The filing fee is \$25 for each child you list on each *Petition*. You may pay by cash, personal check, money order, or credit card.

## What if I can't afford the filing fee?

If you are a Virginia resident, you may fill out and file Form DC-606 (*Financial Statement for Application to Proceed in Custody or Visitation Case without Filing Fees*) to ask the Clerk to cancel the filing fee. The court will decide within **1 business day** if you have to pay the fee or not.

## Can I change a custody or visitation order on my own outside of court?

You **cannot** change a child custody or visitation order on your own, even if you and the other parent agree. You must get permission from the court.

If either parent has had a significant financial or life change since the most recent order, you can ask the court to change the order. To do this, file a *Motion to Amend or Review Order*, and it is free.

## Where to file to Change a Custody or Visitation Order

Read the court order.

### If a **J&DR Court** made the last order...

File a *Motion to Amend or Review* in the J&DR Court.

### If a **Circuit Court** made the order...

It may tell you to file a *Motion* in J&DR Court. If not, you must file a *Motion to Amend or Review* in Circuit Court.

If the last order was part of a **divorce order**, you can either file a *Motion to Amend or Review*, or a *Motion for Remand to J&DR Court*, in Circuit Court.

## What if the Order is not from Virginia?

You must fill out and file papers in the state that made the *last* custody or visitation order. Virginia can only change another state's court order in very few situations, such as if no one in the case still lives in the other state.

# “File” Your Completed Court Forms

## What happens after I fill out my court form(s)?

Take your completed court form(s) to the court clerk, along with any other court orders or legal papers concerning the children.



## What happens after I file my court forms?

You must have someone give (serve) a copy of all the papers you file to the other adult(s) in your case, so everyone knows the date, time and place of the first court hearing



In Virginia, there are 3 ways to serve:

1. Usually a Deputy Sheriff personally gives the papers to the other adult, or
2. A Deputy Sheriff may give the papers to a member of that adult's household who is 16 or older. The server must explain what the papers are about.
3. If no one is at home to receive the papers, the server may attach them to the front door then mail a copy of the papers by first class U.S. mail to the other adult in your case.



## Watch out for legal papers!

Because there are different ways to serve, it's possible to get legally served but still not know about the custody case. For example:

- Someone could have served a member of your household who didn't tell you about it, or
- The papers were posted and mailed to you but you never saw them.

Ask household members to pay attention to court papers. You should pay attention, too.

## What if a person I have to serve does not live in Virginia?

For out-of-state service, the other parent (party) can be served by:

- Certified mail with return receipt requested. If the other person signs and returns the green return receipt, the court papers have been legally served, or
- A Deputy Sheriff in the other state personally gives a copy of the papers to the person.



## What if the other person is in jail?

If the other person is in jail, he or she can be served by a Deputy Sheriff. But in any case where a person is in jail, under 18, in a mental hospital, or is not legally competent, the court **MUST** appoint a lawyer for that person. That lawyer is called a Guardian *ad litem*. The person who starts the case pays for the Guardian *ad litem*.

## What if I do not know where the other person is?

There is a special kind of service for cases when you don't know where the other person is. It's called service by publication. It costs \$150 or more. The person who starts the case must pay for it. Sometimes the judge decides you can publish the notice at the courthouse (for free) instead of the newspaper.

## What happens at the first court hearing?

It is rare that a judge makes a final order at the first hearing. But many things could happen at the first hearing. It depends on your case. For example, a judge could:

- Approve the agreement that you and the other parent (or party) made,
- Send you to mediation to try and make an agreement,
- Send you to a parenting class,
- Appoint a lawyer (called a Guardian *ad litem*) or a Court Appointed Special Advocate (CASA) for the child,

- Order a home study and/or a psychological evaluation of the people in your case,
- Make temporary orders about custody or visitation.

## What if we have an Agreement?

An agreement is like a legal contract. It says what you and the other adult(s) in your case agree to. It can be written or oral.

### If you make a *written* agreement...

Read it carefully *before* you sign. If you do not understand any part of it, talk to a lawyer before you sign. The judge will make your agreement part of the court order.

### If you make an *oral* agreement...

The judge will write your agreement in a court order. Get a copy of that order right away. Read the judge's order to make sure it says what you agreed. If not, tell the court as soon as you can.

## What is mediation?

Mediation is when a trained professional (a mediator) works with you and the other adult(s) in your case. The mediator's job is to help you both make an agreement – without going to court.



The mediator helps, but does not decide the case. If you cannot make an agreement in mediation, you will go back to the judge. The judge will decide for you. Mediation is free.

Mediation is not for cases with domestic violence or family abuse. If your case involves abuse, tell the mediator right away.

## What is a parenting class?

This is a special class for parents who are dealing with custody. You will learn about:

- How separation and divorce affect children,
- Parents' legal duties,
- How to solve disagreements, and
- Parents' financial responsibilities.

All Virginia parents must go to this 4-hour class the first time they ask for custody or visitation. The court only excuses you from this class if you have a very good reason.

**When:** You must go to the class within **45 days** of your first court hearing (or have gone during the previous 12 months).

**Fee:** Up to \$50 (sliding scale).

**Privacy:** Your information will be kept private. Exception: Information about crimes, child abuse or child neglect will be reported.

## Will the court appoint a lawyer for me?

No. But you can get help from a lawyer, if you want to. Circuit Court cases can be hard without a lawyer.

## What does a Guardian *ad litem* do?

In some cases, the judge decides the child needs a lawyer. If this happens, the judge appoints a Guardian *ad litem* (GAL, for short). GALs are usually free. But the judge may decide one or both parents must pay.



The GAL:

- Meets with your child,
- May look at and copy your child's school, medical or government records, and
- Tells the judge what seems best for the child.

The GAL is not a witness and should not testify or be cross-examined in court.

Parents and parties should work with the GAL. Answer the GAL's questions and let the GAL visit with you or your child.

**Remember:** The GAL is not *your* lawyer.

## What is a Court Appointed Special Advocate (CASA)?

In some cases, the judge could ask a CASA to get to know your child and your child's situation. A CASA is a trained volunteer who meets with your child and the other people in your case.

The CASA may tell the judge and the court:

- How your child is doing, and
- What the CASA thinks is best for the child.

The CASA may be called as a witness in court.

You should work with the CASA. Answer the CASA's questions and let the CASA visit with you or your child. CASA services are free.

## What if the judge orders a “home study?”

The judge may need to learn more about the home and the parties before making custody orders. If so, the judge may ask the Department of Social Services (DSS) to investigate and write a home study report.

The home study tells the judge about:

- The people who live in the home and their relationship to the child
- Their age, sex, education, marital status, and work and family history
- Their financial, physical, and mental situation
- The home and housekeeping standards
- The neighborhood and schools
- References from friends and neighbors
- Any alcohol or drug abuse
- Any history of domestic violence, family abuse, or child neglect
- Any criminal history

A DSS social worker will contact you and may visit several times to prepare the report. Answer their questions and let DSS visit with you and your child.

The court may ask you and other adults in the case to pay for the report. The fee is based on what you can afford.

DSS will file the report at least 5 days before your hearing. You (or your lawyer) will get a copy of the report. You are not allowed to make a copy of the report.

## Can the court order a psychological evaluation?

Yes. If the court wants information about your child or an adult in the case, it can order a psychologist to do an evaluation. Work with the psychologist and go to all appointments.

The psychologist will examine you and/or your child's personal mental health. The psychologist may also look at your parenting abilities.

The court will ask the adults in the case to pay for the evaluation. The fee is based on what you can afford.

The psychologist will file a report at least 5 days before a hearing.

## Can the court make *temporary orders*?

Yes. The judge can make *temporary* custody or visitation orders at the first hearing. The temporary orders may or may not be the same as the final orders. Usually the judge will leave the child where he/she is, unless the child will be in danger there. But the judge will NOT make final orders until:

- All parents (and adult parties) go to the parenting class, and
- Any homes studies or evaluations are complete.

# Going to Court for Your Custody Order



## When will the court decide my case?

It may take several months from the date you file your forms to get a full custody hearing. It depends on many things, including:

- If you and the other parent (or party) are able to make an agreement
- If the court requested a home study or psychological evaluations
- The schedule of the court that is handling your case

## How do I get ready for the full hearing?

Take **copies** of these **legal papers** to the courtroom (if applicable):

- Divorce order for the children's parents.
- Previous custody and visitation orders for the child.
- Previous child support orders (court and administrative orders) for the child.
- Any papers about the children's paternity.
- Separation agreements about the children.
- Protective Orders about a parent, child or anyone else in the case.
- Court papers for current cases about the children.

Also take **copies** of current and recent:/

- report cards, and
- health records for the child

## Can I bring other documents that support my case?

Yes. If you cannot get the documents on your own, ask the clerk for a *subpoena duces tecum*. That is a court order that says a person **MUST** bring the papers to court.

Ask the clerk to do this at least **15 days** before the hearing. Give the clerk the full name and address of the person who has the papers. Also describe the papers you want. The clerk will charge you \$12, unless you ask the fee to be waived and the judge approves.

## Can I bring witnesses to support my case?

Yes. If you think a witness may not want to come to court, ask the clerk for a witness *subpoena*. That is a court order that says a person **MUST** come to court.

Ask the clerk to do this at least **10 days** before the hearing. Give the clerk the full name and address of the witness. The clerk will charge you \$12, unless you ask the fee to be waived and the judge approves.

## Should I have a visitation plan in mind?

Yes. Have **2** different visitation plans ready to give to the judge.

- The first visitation plan should say what visitation you want to give to the other party if you get custody.
- The other plan should say what visitation you want to have if you don't get custody.

They do not have to be the same, but both plans should indicate when visitation should take place, and info about:

- Holidays,
- Summer vacations,
- Where to exchange the child, and
- Other important issues, like birthdays.

## Can I contact the judge outside of the hearing?

No. You are not allowed to call, write, talk to, or communicate with the judge in any way, except at your court hearing. The judge will only hear evidence in court at the trial.

## What do I do at my hearing?

**Get to court early.** You will need time to go through security and find your courtroom.

If you are late, the judge could dismiss your case or make an order against you. If you do not show up at all, the judge could have you arrested.

**Be polite.** When you speak to the judge, say "Sir," "Ma'am" or "Your Honor." **NEVER** interrupt the judge. If you want to speak, wait until the judge stops talking. Then ask the judge if you can say something.



## Make an “opening statement.”

Each parent (or party) can give a short summary of their case. This is called an “opening statement.”

The petitioner (person who filed the case) goes first. Then the respondent goes next. The judge wants to hear both sides of the case.

## Petitioner’s evidence and testimony

After the opening statements, the petitioner shows evidence and tells their story. You and your witnesses **MUST** swear to tell the truth.

Your evidence can include:

- Papers that back up your story, such as business, school, or health records, and/or photos,
- Anything else you that shows why the judge should make the custody or visitation orders you are asking for.

In general, you cannot show letters, statements or affidavits from people who are *not* parties in this case.

## Petitioner’s witness testimony

Many judges prefer no more than 3 or 4 witnesses for each side. The best witnesses:

- Know you and your child well, or
- Are related to the other side but will testify for you.



The next best witnesses are not related to anyone in the case, but will testify for you.

## The respondent cross-examines

The respondent can ask questions about the story after the petitioner speaks, shows evidence, and presents witnesses. This is called “cross-examination.” The judge may also ask questions at any time.

## Respondent’s evidence and testimony

After the petitioner presents their case, it is the respondent’s turn. The respondent tells his/her story, shows evidence, and presents witnesses.

The petitioner can cross-examine witnesses and ask questions about the respondent’s story. The judge may also ask questions.

## Make a closing statement

After both sides show their evidence, each side can make a short summary of their case. This is called a “closing statement.” The petitioner goes first.

Explain why it is best for the child to have the custody and visitation orders you are asking for. If the other party’s evidence doesn’t make sense, say why.

## The judge decides

After the closing statements, the judge decides who will get custody and/or visitation. Usually the judge makes a decision right away.

## What decisions can the judge make?

For most cases the judge will choose:

- Sole custody, or
- Joint legal and primary physical custody.

**Sole custody** is when the child lives mostly with one parent, that parent has the most responsibility for the child, and has the right to make all decisions about the child.

**Joint custody** is when both parents are responsible for the child and they share decision-making for the child. The child lives with each parent for a significant time.

**Joint legal custody** is when both parents share making major decisions for the child, even if the child lives mostly with one parent.

**Joint physical custody** is when the child lives with both parents, and both parents have a duty to care for the child.

**Split custody** is when there are 2 or more children, and each parent has sole custody of at least 1 child.

**Divided custody** is when the child lives with one parent, then the other for a specified time. Each parent has sole custody when the child lives with them. If possible, the child stays in the home and the parents move in and out.

**Joint Legal and Primary Physical custody** is when both parents have a duty to care for the child and must make important decisions together. But the child lives mostly with one parent, who makes the day-to-day decisions.

## How do judges decide custody?

Judges look at many things, including:

- The child’s age and mental health
- The child’s needs and best interests
- Each parent’s age, mental health, and relationship with the child

- Each parent's willingness to:
  - o support the child's contact with the other parent,
  - o cooperate and solve disputes with the other parent, and
  - o keep a close relationship with the child.
- Most importantly, how involved each parent has been and will be in raising the child.

## What kinds of things could make it harder to get custody or visitation?

The judge will also look at things that could put the child at risk, including:

- Family abuse
- Alcohol or drug abuse
- Adultery or living with someone who is not your spouse. Virginia does not recognize common law marriage
- Criminal convictions
- Founded complaints with Child Protective Services (CPS)
- Time in a mental health hospital
- Disabilities that make you unable to care for a child.

## Will the judge consider what the child wants?

The child's preference is just one factor the judge will consider. And it depends on the child's age and maturity.



## How does the judge ask the child what he or she wants?

Judges who want to talk to a child will meet privately with the child in their office. If a GAL is appointed, he/she will be present. The parents or parties and their lawyers will not be there. It's important to let the child say what they really feel. Do not tell the child what to say to the judge and do not ask the child about what happened in the meeting.

## How do judges decide visitation?

Judges must make sure both parents get regular contact with the children. If you do not get custody, you will probably get visitation.

In deciding visitation, judges look at:

- How far apart the parents live,
- How much contact you have had with the child in the past, and
- If you and the other parent can agree.

If both parents can agree, the judge may order "liberal and reasonable visitation." If you cannot work things out, your visitation will have scheduled days and times.

## Can a court order supervised visitation?

If the judge believes you may be a danger to your child, the court can order **supervised visitation**. That means DSS or a responsible adult will supervise your visits with your child.

# After the Custody Hearing



## What happens after the judge decides custody?

For most cases, the judge decides the case at the end of the hearing. The judge will also make a written custody order. Ask the clerk for a copy of the written order.

If the judge needs more time to make a final order, the court can make a temporary order, and a final order later.

## What if I disagree with the judge's order?

You have **10 days** to appeal (disagree with) a J&DR Court judge's final order. Your appeal **MUST** be in writing. If the 10<sup>th</sup> day is a Saturday, Sunday or court holiday, you can file your appeal the next business day.

File your appeal at the clerk's office of the J&DR Court that decided your case. You will have a new trial in the Circuit Court. Unless a judge says differently, the J&DR custody order is valid during the appeal period.

## What if the other parent does not follow the custody or visitation order?

You can go back to court and ask the judge to "enforce the order." To do this, file a *Motion for Show Cause Summons* at the court that made your custody order. If your case was transferred to a different court, file your *Motion* at the new court.

## Free Legal Information



Online: [www.vlas.org](http://www.vlas.org)

Phone: 866-LegalAid (534-5243)