

## Parental Rights and Responsibilities

**Basics** - The New Hampshire Parental Rights and Responsibility Act states that, “Children do best when both parents have a stable and meaningful involvement in their lives.” It gives as the policy of the state to “support frequent and continuing contact between each child and both parents” and “to encourage parents to share in the rights and responsibilities of raising their children.”

“Custody” and “visitation” have been eliminated from New Hampshire’s divorce and parenting law. The law for separating and divorcing parents also eliminated the terms “legal custody” and “physical custody.” Instead, “parental rights and responsibilities,” including the schedule of what time the child spends with each parent, are allocated between the parents.

**Child and Divorce/Separation** - Child psychologists teach that what harms children is hostility between their parents, rather than the divorce or separation itself. To ensure that parents know how to help their children through the family changes, the court requires that every parent attend the Child Impact Seminar. This is a 4-hour program offered in every county. See [http://www.nhcbha.org/cf/ChildrenFirst\\_CourseDescription.cfm](http://www.nhcbha.org/cf/ChildrenFirst_CourseDescription.cfm).

**How are parenting decisions made?** Most parenting decisions are made by the parents using informal negotiation, mediation, collaborative practice, negotiation through lawyers, or a combination of these. See article on **decisions** for details. The alternative, a contested parenting case, would be expensive, exhausting, and disruptive. Each parent would pay attorney's fees of *at least \$10,000*.

**Parenting Plan** - The law requires divorcing and separating parents to complete a “parenting plan” describing how they will share responsibility for their child or children. This includes the weekly and holiday schedule, information-sharing and access, decision-making procedures, transportation and exchange of child, relocation, and procedures for adjustment of the plan.

One of the specifics is decision-making responsibility, which covers who will make major decisions such as education, healthcare, and religion. Unless there has been domestic abuse, the statute presumes that there will be “shared decision-making responsibility.” Approximately 99 percent of cases resulted in shared decision making. However, the parents may agree on one of them having sole decision-making responsibility.

Parents often spend a lot of time working out the routine parenting schedule. This schedule usually outlines the time each week (or 2 weeks) that each parent has the care and responsibility for the child or children. It generally works best to try out the proposed schedule for a month or more before including it in the final parenting plan.

**How to Prepare Your Parenting Plan** - For help in developing a parenting plan for your child or children, see the booklet "Planning for Shared Parenting: A Guide for Parents Living Apart" <http://www.mass.gov/courts/docs/courts-and-judges/courts/probate-and-family-court/afccsharedparenting.pdf>. This booklet includes information about children by age group, and suitable parenting plans for each.

Mediation is one **decision-making** option for parents to work out a parenting plan and make other divorce decisions. The court requires most parents to participate in mediation. In mediation, a trained neutral person assists the parents in making decisions for their children.

**Contested Parenting** - If the parents are unable to decide on the routine parenting schedule, the court may appoint a temporary guardian or guardian *ad litem* (often abbreviated as GAL) to represent the child. The appointment order spells out the issues the guardian should investigate, such as parenting skills, substance abuse, living conditions, physical abuse. The guardian gathers information about the child's needs, each parent's ability to care for the child, and the specific issues listed in the order. This information is given to the court before the contested hearing. Usually, the guardian prepares a written report with his/her recommendations. The parents must pay for the GAL.

If parenting responsibility is disputed, the judge will use the legal standard of what is in the *best interest* of the child. There is no preference based on the gender of the parent (or of the child). In applying the best interest test, the court looks at the needs of the child, considering her age and any individual factors, and at the pattern of parenting in the family. There is an additional factor in cases concerning teenagers. A *mature minor's* opinion on the parenting schedule should be very influential as long as the choice is not based on "improper influences."

**Changes After-Divorce** - Often the parenting plan, especially the routine schedule, will need updates as the child grows older. Changes in parental work schedules or residence are other reasons for revisions. Most parents sort out such changes by informal negotiation; others use mediation or other **decision-making** options.

If parents can't agree on changes to the parenting plan, there may be a contested hearing. At the time of the divorce or separation, both parents have theoretically the same chance at time with the child. Once a final parenting plan has been made, that equality disappears. Any substantial modification of the parenting schedule after the divorce is frowned on by the court, because stability is important for children. The parent seeking a change must show that the child is being harmed by the current parenting arrangements. This is a difficult test. An exception to this test is in the case of a "mature minor". If a mature minor wishes a change in the parenting schedule, the judge would likely grant it.

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