



10 THINGS TO KNOW ABOUT Parenting Plans in Cases Involving Domestic Violence

SELF-REPRESENTED LITIGANTS SERIES

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A main goal of a custody case is to create a parenting plan that meets the family's needs. If you're a domestic violence survivor, that plan needs to be safe for you and your children. A knowledgeable lawyer is one of the best sources of help. But many survivors cannot find or afford a lawyer. If you're on your own, this guide has basic information on parenting plans to help you get started.

Laws and programs may be different for each state, and even for courts in the same state. Some of the information here may not apply to your situation. To learn about your local laws, call your family court, self-help center, or law library. You can also look at *10 Ways to Find Help with Your Case*, available at <https://rcdvpc.org/10-ways->

[to-find-help-with-your-case.html](https://rcdvpc.org/10-ways-to-find-help-with-your-case.html). Or you can contact us at the **Resource Center on Domestic Violence: Child Protection and Custody** at our confidential toll-free number, **1-800-527-3223**, or email us at info@rcdvpc.org. We cannot provide legal advice, but we can refer you to people and places that may be able to help.

This guide can help create a safe parenting plan for domestic violence survivors and their children. We have other guides at <https://www.rcdvpc.org/resources/self-represented-litigants-series.html>. Other resources that might help you are on our website at www.rcdvpc.org. You can also call us and we can mail them to you.

For more help, visit the website or call anytime.

What is a parenting plan?

01

Parenting plans are also sometimes called custody agreements, parenting schedules, custody and

visitation agreements, or parenting plan forms. They describe how parents will take care of their children, when each parent will spend time with them, and how the costs of raising them will be shared.

Not all parenting plans are the same. Each parenting plan should make sense given the parents' schedules, the children's needs, and the family's situation. What works well for one family may not work for yours. Look closely at your own family's needs when creating your parenting plan or asking the court to do so.

In many places, you can find forms or tools to help you create a parenting plan. Try your self-help center, court clerk's office, law library, legal aid office, or court website. These can be very helpful since they will be based on your state's law. Often, though, they aren't as helpful for domestic violence survivors. They don't always have information on how to be sure the plan is safe for you and your children. This guide, together with any local information you may have, can help you create a safe, workable parenting plan.

Who decides the parenting plan?

02

When possible, parents usually do best at creating their own parenting plans. Parents know what will work for them and

their children. Plus, parents are the ones that have to live with the parenting plan down the road. So think about your family's situation and what would work best while staying safe. If the parents agree on a plan, the court almost always approves it (as long as it meets any legal requirements in your state). If the parents can't agree, the court sets the parenting plan.

You may be able to reach an agreement about custody and parenting with the other parent without outside help. If so, you can write up the plan and file it with the court. You may be able to have an attorney review it to make sure it meets legal requirements. (See where you might be able to meet with a lawyer for free in *10 Ways to Find Help with Your Case*.) For a domestic violence survivor, though, discussing custody with the other parent can be difficult and may not be safe. Reaching a safe agreement with the other parent may not be possible, especially without help.

Many courts have programs to help parents reach an agreement. Some are mandatory, meaning you have to participate. (You are

never required to reach an agreement, just to try.) These programs can be useful if you agree on some things but not everything. A mediator or other neutral party can help parents reach an agreement. Ask for information about your program. Will it be safe? Will you be comfortable speaking for yourself? Will you feel threatened? Ask about whether program staff has domestic violence training. If not, they may make mistakes that could put you and maybe even the children in danger. Also, be sure to ask about safeguards that might be available. Check our guide, *How to Navigate Custody Mediation in Cases Involving Domestic Violence*, at <https://www.rcdvcpc.org/how-to-navigate-custody-mediation-in-cases-involving-domestic-violence.html>, for more information.

Sometimes, the judge can best decide the case if it's not safe to try to reach an agreement with the other parent, even with a mediator's help. Cases involving domestic violence, substance abuse, mental illness, or a parent in jail are more likely to need a judge. The judge can consider the needs of the children and family based on the information you and the other party provide. Then the judge decides on a parenting plan that protects the safety and wellbeing of the children and you. You can ask for things you'd like the judge to include. Be sure to say why you're asking for something. We have guides that may

help you give the judge the information needed for a safe, workable parenting plan. Visit our website at <https://www.rcdvcpc.org/resources/self-represented-litigants-series.html> or call us at **1-800-527-3223** for more information.

What should survivors know about parenting plans?

03

Domestic violence may, and often does, continue after separation. A parenting plan cannot guarantee that the abuse will stop. But some things can help increase safety for you and your children.

Usually, a very specific and detailed parenting plan is best. Batterers can take advantage of vague terms in a parenting plan to harass you. When parenting plans are not specific about what is allowed, they can be dangerous.

So parenting plans should clearly state the places, dates, and times that the children will be exchanged. Sometimes, parents exchange the children in a public place with video cameras and/or security guards. Some examples are a superstore or fast food restaurant. Sometimes, parents have another person make or

supervise the exchange. This can be a friend, grandparent, or other neutral person.

Parenting plans should also clearly discuss how parents will communicate. They should state when each parent may have telephone contact with the children. Also, state whether video calls will be allowed. Sometimes, video calls can be dangerous because they allow the abusive parent to see into your home, even though the call is with the child(ren).

Parenting plans should also state how the parents will communicate about the children. Sometimes parents agree to communicate only by text messages. Sometimes, parents agree to use an app-based program for all communication. Some programs are My Family Wizard, Talking Parents, AppClose, Divvito Messenger or CoParenter. Some have a small subscription fee, and some are free. They can track communication between parents in a record that can be used in court later if needed.

Avoid terms that allow an abusive parent to micromanage you. For example, a first right of refusal is usually not a good idea in these cases. The first right of refusal requires each parent to let the other parent know when they cannot care for the children. The other parent can choose to take the children before they

are sent to a babysitter. This can create problems in cases involving domestic violence. It requires parents to tell each other when they are not with the children. It also increases the amount of contact between parents. And it allows one parent to control the other's childcare arrangements.

Other common agreements in parenting plans can create problems for survivors. For example, plans commonly have one parent let the other know when and where they travel. But this may increase danger for survivors. Agreements to support the other parent's parenting may also be improper when violence is present.

These are decisions that you, the other parent, and/or the court must make based on your family's circumstances, sense of safety, and history. Avoid terms that will make it easier for abusive parents to continue to coerce or harass survivors. When deciding whether an agreement makes sense, always ask whether it will help to keep you and your children safe. If the answer is no, those terms should not become part of the agreement.

A good parenting plan can set up a safe and happy future for you and your children. It should account for safety concerns. It should not allow a parent who has used violence to continue abusive or harassing tactics. A plan that ignores

these points will create stress and can even be dangerous. Use the ideas and tips in this guide and any help available to you in your community. Rely on your own knowledge of what your family needs. Then put it together to create the plan that is best for you and your children.

What are custody, decision-making and parenting time?

04

Two types of custody are usually discussed in parenting plans; sometimes they're referred to as types of parenting. In some places, they're called legal and physical custody. In others, they might be called decision-making and parenting time. Ask at your self-help center or clerk's office for the words used where you live.

Legal custody or decision-making

Legal custody refers to which parent or parents will make major decisions about the children. This doesn't mean little day-to-day parenting decisions. Instead, this means decisions about big issues like medical care, education, and religion. Legal custody or decision-making can be sole or joint. **Sole legal custody**

or **sole decision-making** means one parent makes all major decisions about the children. They don't need the other parent's approval. **Joint legal custody** or **joint decision-making** means that both parents share decision-making. They must talk about major decisions and try to agree. If not, they can ask the court or a neutral party like a mediator to help them decide.

Courts usually want parents to share decision-making. This may not work, though, if the parents cannot safely talk to each other about the children. It also won't work if one party won't let the other have a different opinion. Sole legal custody may sometimes be granted in these cases. It may also be a good idea where one parent is in jail or unable to be a part of the children's lives. Most parents, though, have joint legal custody. If you don't think joint legal custody will work for you, you must be ready to explain why.

Physical custody or parenting time

Physical custody or parenting time refers to which parent or parents the children will live with and for what periods of time. The children's day-to-day needs are handled by the parent they are living with at the time. If the child spends most of the time with one parent, it may be called **primary physical custody**.

Joint physical custody is when the parents each spend about half the time with the children. Most states don't require it to be exactly half due to many families' work and school schedules. Instead, most states treat anything between 40-60% of the time spent with each parent as joint.

Although not common, some states may give one parent **sole physical custody**. This means that the other parent does not have any parenting time with the children. Courts only order this in extreme situations. Examples include serious safety issues or one parent is unable to be present.

Not all physical custody arrangements are the same. Physical custody agreements can be creative to meet the family's needs. Some examples of common joint schedules are in *Appendix A (pg. 14)*. Examples of common visitation schedules are in *Appendix B (pg. 16)*. When thinking about a parenting plan, these are some options. But you can try something different if it works better for your family. Most importantly, the plan must be safe for the children and you.

What topics are included in parenting plans?

05

Decision-making and parenting time are always part of parenting plans. Other topics may also be included.

Read the list and possible options. Then you can decide which might work for your parenting plan:

- ▶ **Parenting time (visitation) schedule:**
The key piece is the regular schedule of each parent's time with the children. This time can be supervised if needed for safety. A supervised visitation center is usually best if available. If not, others such as friends and family may help supervise visits. (Safety measures are important for a plan with friends or family supervising visits. Please call the Resource Center at **1-800-527-3223** for more information.)
- ▶ **Holidays and school breaks:**
Sometimes, parents follow the regular schedule all year, even during school breaks or holidays. Usually, though, parents have a different plan for holidays and school breaks. Some parents alternate holidays and breaks with the children. Others split the holidays and breaks so that they each

have some time with the children. The parenting plan must clearly state with which parent the children will spend holidays and school breaks to avoid conflict down the road.

- ▶ **Vacation:** Sometimes, parenting plans state when or how the parents can take a vacation with the children. They may take vacations on their set parenting time or may have a certain amount of vacation that they can each take with the children each year. Sometimes specific dates are used. More often, parents agree that they can each take a certain amount of vacation each year, as long as they give the other parent enough notice. The parenting plan should clearly state how much vacation each parent has and how much notice is required.
- ▶ **Transportation and/or details of exchange:** Parenting plans should say which parent will be driving the children to and from visits with the other parent. Exchanges can be one of the most dangerous times for the survivor parent. Ask for safeguards or for an arrangement that means you don't have to see the other parent. Sometimes, parenting plans state that the "receiving parent" will drive to the exchange point. This way, the parents share responsibility for transporting

the children. Sometimes parents meet at a location in between their homes. These options only work if they will be safe for you and the children. Some supervised visitation centers can supervise exchanges. If one is not available, exchanges may take place at a public location instead. Ideally, the public location will have security cameras and guards (for example, a superstore like Walmart or a mall). Sometimes, parenting plans have one parent stay inside the house while the other parent stays in the car. This only works if it's safe that your home address be known to the other parent or that you visit the other parent's home. If the children are old enough to walk between you, you don't have to talk to one another. Another option is for parents to use day care or school drop off and pick up for exchanges. This can be a good option because you don't have to see each other at all and there is less opportunity for conflict.

- ▶ **Telephone/video contact with the children:** Plans usually cover calls with the children while they are with the other parent. One option is for parents and children to call whenever they like. Other plans set a specific time for calls or video chats. The plan should work for you and your family. Just remember that phone or video time with the

children can be used by a batterer for harassment and be careful. For example, without limits, the batterer could call 50 times a day, pretending to call the children but really harassing you. In addition, video calls let the other parent see into your home, which may be dangerous.

▶ **Education:** Many parenting plans include information about which parent(s) will have access to school records. Most of the time, both parents have access. Some require one or both parents to share school information with the other parent. With domestic violence, this could allow harassment to continue. If the other parent is entitled to the information, the plan should state that parent can obtain it directly from the school. The plan may also explain how parents will decide where the children will go to school, who will attend school conferences, etc.

▶ **Extra-curricular activities:** Many parenting plans talk about the children's extra-curricular activities (sports, music, etc.). How will activities be chosen? Who will be allowed to attend the activities? Who will pay for them? If it is not safe for both parents attend, parenting plans should clearly state who can go to what events.

▶ **Childcare:** Many parenting plans have a section that talks about childcare. Who may be used? What information is shared with the other parent? This may include the provider's contact information. Who pays the costs? Having childcare specified in the plan may avoid problems later.

▶ **Communication between the parents:** With domestic violence, parent communication about the child(ren) can be difficult. A plan may state that parents can only text and only about the children. In some cases, parents may use a smartphone app for all communication. Examples include My Family Wizard, Talking Parents, AppClose, Divvito Messenger or CoParenter. These programs monitor and record contact between parents that can be used in court. Many also offer other features to help reduce conflict. They can help increase safety for parents if used carefully. Most have a fee, but some are free.

▶ **Medical decisions:** Many parenting plans include a section on medical care to talk about the following questions. Who will pay medical insurance premiums and medical bills? Does the other parent have to pay some back? If so, state how and when it must be paid. Who chooses

the medical providers and takes the children to appointments? How will you handle sick days from school?

- ▶ **Religion:** Parenting plans may also include a section regarding religion. Will the children receive any religious instruction? If so, list the details. Where will it take place? Who will take the children? What religious services will they attend? Can both parents attend with them? What holidays will be celebrated? Include any other provision that makes sense for your family.
- ▶ **Financial provisions:** Parenting plans may include a section that states which parent will be responsible for creating or investing in a college savings plan. They may also state which parent can claim the children on their income taxes. Sometimes parents choose to alternate who will claim them from year to year.
- ▶ **First right of refusal:** A first right of refusal says that the parents will give each other the choice to spend more time with the children before a babysitter is used. Some plans include this option any time a parent plans to use a babysitter. Other plans only include this option when a babysitter will be required for a long time or overnight. Beware, though, a parent who has engaged in violence can use

this to continue harassment. If you decide to include this in your plan, be very careful about how it is stated.

- ▶ **Travel provisions:** Sometimes, parenting plans require parents to let each other know when they are traveling. This could include when and where they are going and a contact number where they can be reached. Sometimes parenting plans include this section only for travel out of state. Other times, this only applies when a parent plans to take the children out of the country. This section may also include instructions for how the parents plan to request and use a passport. Be careful not to include travel provisions that reduce your freedom to travel with the children. Avoid giving access to your information to the other parent that is not safe. Any concerns you may have about possible parental kidnapping should be raised and addressed.
- ▶ **Relocation:** Parenting plans may include a statement that neither parent will relocate to another state without written agreement of the other party and/or order of the court. This is usually the law of the state and is more of a reminder to the parents.

- ▶ **Military provisions:** If one or both parents are in the military, the parenting plan may include specific information. Many states have laws about custody when one parent is deployed. State how you want to handle other issues that might come up as a result of military involvement.
- ▶ **Non-disparagement clauses:** Parenting plans often remind parents not to talk badly about one another. (These are called non-disparagement clauses.) They may also tell parents to encourage a loving relationship between the children and the other parent. They'll tell parents to try to work together and communicate. These provisions are easily manipulated by a parent who has used violence. Be sure that the plan protects the safety and wellbeing of the children and you.
- ▶ **Future dispute resolution clause:** Many parenting plans say that the parents may choose to use mediation if they want to change the plan later. If you like this option, feel free to include it. You may decide against it if you don't feel you can speak openly and honestly with the other parent and feel safer having the court decide your case.
- ▶ **Other provisions:** Parenting plans can include any restrictions or requirements

that make sense for the family. For example, some parenting plans say that parents cannot drink alcohol while with the kids. Others require parents to blow into a breathalyzer before driving with the children. Parenting plans can include any provisions that make sense for the family.

How is child support decided?

06

Child support is the amount of money that each parent must pay to help care for the children. Child support is meant to provide for the children's care, not the other parent's care. Child support is not optional, since parents have a legal duty to provide for the cost of their children's care. Child support is usually decided based on a percentage of each parent's income. The amount each parent pays will also depend on how much time each parent spends with the children. States have different laws about how much to pay, so talk to a local attorney or self-help center to find out what your law is. When creating a parenting plan, it is hard for parents not to focus on how the custody arrangement will impact child support. Often, parents need child support to pay their children's expenses.

But child support should not be the only thing driving what a parenting plan looks like. It is also important to think about which parent is able to meet the children's emotional and physical needs.

Child support may or may not be included in the parenting plan. This depends on the state and how they handle parenting plans. It may also depend on whether the parenting plan is created privately, through the court, or through court-ordered mediation. For more information about how your own state handles child support, please reach out to your family court, self-help center, or law library. For help finding local resources for survivors, you may also contact us at the Resource Center on Domestic Violence: Child Protection and Custody at our confidential toll-free number, **1-800-527-3223**, or email us at **info@rcdvcpc.org**. We cannot provide legal advice, but we can refer you to people and places close to you that may be able to help.

How specific should parenting plans be?

07

Every parenting plan should address the needs of the individual family. Because every family is different, not all parenting plans are the same. And not

all parenting plans need to be as specific as others. When parents are getting along well, they sometimes want a plan that gives them some flexibility to figure things out as they go. In those cases, parents may create a plan that is not very specific.

With domestic violence, though, parenting plans should be as specific as possible. State what time the children will be exchanged, where, and who's allowed to be there. Clearly describe how communication will happen between the parents and with the children. The more specific the parenting plan, the less room there is for an abusive parent to continue harassment or abuse.

How can parents prepare for making a parenting plan?

08

When preparing to create a parenting plan, you have a lot to think about. This includes:

- ▶ The children's needs (social, emotional, and physical)
- ▶ The children's age and developmental stage
- ▶ The children's school environment, including extra-curricular activities
- ▶ The children's ability to adjust to change and/or need for stability

- ▶ The physical distance between the parents' homes
- ▶ The parents' work schedules, travel, or other obligations
- ▶ Whether any non-parental assistance is available (for example, grandparents or friends)
- ▶ The parents' history of and ability to work with each other
- ▶ The parents' history of handling conflict and resolving disagreements
- ▶ Safety concerns (including a history of stalking, harassment, or violence)
- ▶ Any history of substance use or abuse that impacts safe parenting
- ▶ Mental health concerns that impact safe parenting
- ▶ Each parents' role in childcare responsibilities before separation
- ▶ Parental involvement in the children's extracurricular activities before separation
- ▶ Each parents' strengths and weaknesses as a parent
- ▶ The parents' interest in sharing parenting responsibilities
- ▶ The children's relationships with family members (siblings, half-siblings, grandparents)
- ▶ The children's preferences, if they are old enough to have a meaningful opinion

These factors will affect what plan is best for you and your children. Think

about them, talk to trusted friends and family, or see if you can have a brief free consultation with a lawyer through one of the suggestions in *10 Ways to Find Help with Your Case*. Then put together a plan you believe will be safe and workable for your family.

Can parenting plans be changed?

09

Parents can usually make small changes to the parenting plan if they both agree.

Sometimes, parenting plans include language that says that the parents can do something different if they both agree. Even if that language is not there, courts encourage parents to try to work together. For minor changes, like an extra weekend one month, parents can usually agree to the change without telling the court. Even if the parents agree, it is always best to do this in writing. This can be done through email or text message. And it should be clear whether the change is just once or ongoing.

Although small changes are usually okay, don't make big changes to the parenting plan without telling the court. Changes that are not approved by the court cannot be enforced. Many parenting plans include directions about how parents can make

major changes to the plan. This sometimes includes an agreement that they will work together to file an updated parenting plan with the court. Or, the parenting plan may say that the parents will try to mediate changes before they go back to court.

When parents do not agree about whether to change the parenting plan, they can go to court. To do this, one parent can file a motion to modify the custody order. The case may be set for court-ordered mediation or another kind of alternate dispute resolution. If not, or if the parents cannot reach an agreement, the judge will decide.

State laws usually require parents to show that there has been a significant change in circumstances before a judge can agree to change the parenting plan. Changes could include safety issues, a parents' decision to move out of state, new work schedules, changes due to the children's age, or other things. Judges will look at the information with the best interests of the children in mind. What is in a child's best interest is decided by state law. The judge will approve the new parenting plan if (1) the judge agrees that changed circumstances require a new plan, and (2) the change is the children's best interest.

How are parenting plans enforced?

10

No one from the court is checking to see if parents are following their parenting plans.

If things are going well and parents are getting along, they are usually free to do what works for them and their children. If not, though, parenting plans set the rules if the plan has been filed with the court and approved by the judge. (If the plan has not been filed with the court, it cannot be enforced in court against the other parent.) A parent can turn to the court for help enforcing the plan.

The first step is usually to file a motion with the court. Check with your local self-help center or see if you can have a free consultation with a lawyer to talk about the process where you live. (Don't be nervous if it has a long name like, "motion for order to show cause why [the rule-breaking parent] should not be held in contempt." That's old legal language that is sometimes still used when trying to enforce a court order. It just means you're asking for a chance to show the court that the parenting plan is not being followed and the other parent should be "held in contempt" – that is, punished and made to comply with the plan.) The motion allows the judge to bring the other parent to court to explain why he or she is not

following the parenting plan. If the other parent is not doing what he or she is supposed to do, the court can find that parent in contempt of court. The court may make the parent pay a fine for not following the plan. If the parent was keeping the children away from the other parent, the court may give the other parent extra time with the children. In extreme situations, the court may change the custody order and parenting plan completely.

Appendix A:

Common Joint Physical Custody Arrangements (40-60% with each parent)

ALTERNATING WEEKS						
SUN	MON	TUES	WED	THURS	FRI	SAT
					3 P.M.	
					3 P.M.	
PARENT 1 ■ PARENT 2 ■ NEITHER ■						

2 WEEKS ON, 2 WEEKS OFF						
SUN	MON	TUES	WED	THURS	FRI	SAT
					3 P.M.	
					3 P.M.	
PARENT 1 ■ PARENT 2 ■ NEITHER ■						

2-2-5-5 SCHEDULE						
SUN	MON	TUES	WED	THURS	FRI	SAT
	3 P.M.		3 P.M.		3 P.M.	
			3 P.M.			
PARENT 1		PARENT 2		NEITHER		

2-2-3 SCHEDULE						
SUN	MON	TUES	WED	THURS	FRI	SAT
	3 P.M.		3 P.M.		3 P.M.	
	3 P.M.		3 P.M.		3 P.M.	
PARENT 1		PARENT 2		NEITHER		

ALTERNATING EVERY 2 DAYS						
SUN	MON	TUES	WED	THURS	FRI	SAT
	3 P.M.		3 P.M.		3 P.M.	
3 P.M.		3 P.M.		3 P.M.		3 P.M.
	3 P.M.		3 P.M.		3 P.M.	
3 P.M.		3 P.M.		3 P.M.		3 P.M.
PARENT 1		PARENT 2		NEITHER		

Appendix B:

Common Primary Physical Custody Arrangements (more than 60% of time with one parent)

EVERY WEEKEND						
SUN	MON	TUES	WED	THURS	FRI	SAT
4 P.M.					4 P.M.	
PARENT 1 ■ PARENT 2 ■ NEITHER ■						

5-2 SCHEDULE						
SUN	MON	TUES	WED	THURS	FRI	SAT
4 P.M.					4 P.M.	
PARENT 1 ■ PARENT 2 ■ NEITHER ■						

EVERY 3 RD WEEK						
SUN	MON	TUES	WED	THURS	FRI	SAT
					3 P.M.	
					3 P.M.	
PARENT 1 ■ PARENT 2 ■ NEITHER ■						

EVERY 3 RD DAY						
SUN	MON	TUES	WED	THURS	FRI	SAT
3 P.M.		3 P.M.	3 P.M.		3 P.M.	3 P.M.
	3 P.M.	3 P.M.		3 P.M.	3 P.M.	
3 P.M.	3 P.M.		3 P.M.	3 P.M.		3 P.M.

PARENT 1 ■ PARENT 2 ■ NEITHER ■

EVERY OTHER WEEKEND						
SUN	MON	TUES	WED	THURS	FRI	SAT
					3 P.M.	
	9 A.M.					

PARENT 1 ■ PARENT 2 ■ NEITHER ■

1 ST , 3 RD , AND 5 TH WEEKENDS						
SUN	MON	TUES	WED	THURS	FRI	SAT
	9 A.M.				3 P.M.	
	9 A.M.					
					3 P.M.	
	9 A.M.					
					3 P.M.	

PARENT 1 ■ PARENT 2 ■ NEITHER ■

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