

Custody of Children

The New Mexico Legislature has passed a statute designed to encourage parties to share decision-making responsibility for their children. This statute provides that it is presumed that it is in the best interests of the children for the parties to have joint legal custody in the sense that the parents will jointly make decisions regarding the children's area of residence, health care, education or child care, religion and recreation. However, joint legal custody does not mean that the parents will spend an equal amount of time with the children or have equal financial responsibility.

The question of physical custody (how the parents should divide up periods of time when they will have responsibility for caring for the children) is a separate question. If the parties cannot agree on whether they will share decision-making responsibility and/or how they will divide up their periods of physical responsibility for the children, the court will refer the case to mediation, if available. If the parties cannot resolve their differences in sessions with professional mediators (or if mediation is unavailable), the court will decide what arrangements are in the best interests of the children. In doing so, the court will consider the following factors (this list is not all-inclusive):

- the recommendations of professionals;
- the parenting abilities of the parents;
- the relationships of the children with their respective parents;
- the age of the children;
- the input of those who significantly interact with the children, such as teachers and caregivers;
- the children's adjustments to their home, their school and their community; and,
- the mental and physical health of all of the individuals involved.

New Mexico does not require notice to the courts if you have primary custody and leave the state with your children. You are required, however, to keep the child's other parent notified of the child's whereabouts. It may be necessary to work out new visitation periods to accommodate the distances involved. Be reasonable. It is in the best interest of your children that they have maximum contact with both parties.



CHILD CUSTODY AND CHILD SUPPORT IN NEW MEXICO

Introduction

Child custody

Child support is money paid on a regular basis for the support, maintenance and education of a child. The legislature has passed very detailed and specific guidelines for parents to use to determine their support obligations. The guidelines basically consider each parent's gross income (before taxes) and each parent's period of physical responsibility for the children. A court will apply these guidelines to order the payment of child support. In addition to the amount established by the guidelines, parents must share other costs in proportion to their income.

Child Custody Definitions

Legal and physical

Best Interest of the Child Standard

Under the best interests of the children standard, courts have wide latitude to consider all relevant factors affecting the welfare of minor children. Relevant factors include:

DISCLAIMER:

The information contained in this pamphlet is meant for the sole use of active duty members, retirees, their families, and other persons eligible for Legal Assistance from the Holloman AFB, NM, 49 WG/JA Office. The information is general in nature and presented to assist eligible persons in preparing for a Legal Assistance appointment with an attorney in the legal office. It is not an all-inclusive guide to federal or New Mexico law. It is not a substitute for legal advice from an attorney regarding individual situations. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general statements of background information presented here without discussing your specific situation with an attorney prior to taking any action in court. (As of January 2017)



CHILD CUSTODY AND CHILD SUPPORT IN NEW MEXICO

[HOW TO BEGIN A CUSTODY CASE](#)

[Where to File](#)

The case should be filed in the child's "home state." This "means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months **immediately before** the commencement of a child-custody proceeding." Temporary absences are included as part of the period. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned."

[How to File](#)

Either or both parents may file a petition in district court, asking the court to make a decision on custody. In Otero County, you must file specific forms with the Clerk of the 12th Judicial District. There may be fees associated with filing the forms. Be prepared with copies of the forms; generally, bring three copies. Forms can be found:

Otero County Courthouse
1000 NY Avenue, Room 209
(575-437-7310)

Alamogordo Public Library
920 Oregon Avenue, Alamogordo (copying fees apply)
(575-439-4140)

NM Supreme Court Website,
<http://www.supremecourtlibrary.org/>

[Notice Requirements](#)

When filing for custody, the filing parent (petitioner) has to let the other parent (respondent) know about the case. This includes respondents who are outside of the state where the case is filed. Notice can be given personally through a non-interested third party, by certified mail, or, when other means are not effective, by publication (newspaper).

[Who Decides My Case?](#)

A judge hears child support and custody cases in New Mexico. You may agree to a settlement before trial through arbitration or mediation. You don't need a lawyer for arbitration or mediation. Arbitration is informal and faster than court proceedings, but it's not free. During the divorce, parties may seek an arbitrator. Alternatively, the judge may appoint an arbitrator or special master to help with complex property division. If the parties agree to be bound by the findings of the arbitrator, those findings become part of the final divorce decree. Mediation is commonly used in conjunction with arbitration to narrow areas of dispute. The mediator visits each party separately in an attempt to find common ground between them

While you may agree to custody, visitation and support, the judge ultimately determines what is in the best interests of the child and the competency of the parents. If he thinks it's in the best interests of your children, the judge will prefer to adopt the agreement you made with the other parent. Reach an agreement with the other

parent if you can since it's easier to live with agreements you make than with the decisions a judge makes for you.

If there are children involved, New Mexico requires the parents to take a parenting and education class. You can take a civilian class (\$50) or one on base (free). For on-base, contact Family Advocacy at DSN 572-7061. For off-base, call (575) 443-1086.

[Child Support](#)

The New Mexico Statute §40-4-11.1 provides a schedule that guides the court in determining child support. The amount of child support is usually based upon this schedule unless there are unusual circumstances which require the judge to order some lesser or greater amount (such as a physically handicapped child that requires specialized care). The monthly amount is determined by:

- The monthly take home pay of both parties
- Each parties' monthly living expenses;
- Other bills and obligations which either party is responsible for paying;
- The number of children, their ages and their particular needs.

If one parent fails to pay support, the other parent is NOT entitled to deny visitation rights. Likewise, if one parent wrongfully denies visitation, the other is not entitled to withhold support. In addition, you should consult with Finance about the requirements for receiving BAH at the with dependents rate after your divorce.

To estimate child support payments, use the following site to calculate: http://www.nmcourts.gov/cgi/prose_lib/

When the court determines the amount of child support owed by the parent liable for support, **the court cannot consider** welfare financial assistance payments to or on behalf of the children in making its determination of the amount of support.

[Income Withholding](#)

Income withholding is intended to ensure compliance with the court's order for support and is a way to exterminate any unpaid support. The court can, for good cause, order the parent liable for support of a minor child to assign to the person or public office entitled to receive the child support that **portion of the parent's periodic income** or other periodic entitlements to money. The procedures for the issuance of the notice to withhold income, the content of the notice to withhold income, the duties of the parent liable for child support and the duties of the employer responsible for withholding income can be found in the Support Enforcement Act [40-4A-1 NMSA 1978]. Because of the procedural requirements and their complexity, when either initiating or avoiding withholding of income, the case should be assigned to an attorney.

[Name Change](#)

After a divorce, women often wish to use a former last name or adopt a completely new last name. The District Court that issues the divorce decree will usually issue an order allowing a person to use a name which is different than the person's married name. The woman must petition (request) the court for a name change. In New Mexico, a person must file notice before the petition. The notice of application for a name change must be filed in a newspaper in the county where the divorce was filed and where the applicant lives at least once a week for two consecutive weeks. The applicant must provide the court with proof of publication of this notice. For more information, refer to the *Change of Name*, available with other Preventive Law Series handouts, in the 49 FW Legal Office.

[Your Lawyer's Role](#)

A lawyer's duty in a domestic divorce case is to inform you of your rights and obligations and assist in negotiating an equitable settlement. If a settlement cannot be reached, your attorney's obligation is to prepare your case for trial and to represent your interests in court. The attorney should advise you of all settlement negotiations and whether a proposed settlement is equitable and in accordance with what the law provides. It is best to have your attorney represent you in all negotiations with your spouse. Never sign any documents without discussing them with your attorney.