

INFO CURRENT AS OF JULY 2006

PARENTING PLANS AND THE CHANGE IN NH'S CHILD CUSTODY LAW

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QUESTION: I understand that significant changes were recently made to New Hampshire's child custody laws. Please explain some of those changes and how they will impact my children.

ANSWER: For many years, parents and practitioners have sought to make the family law system more family-friendly and individually focused. These proposed changes were recently codified in RSA Chapter 461-A. The changes are designed to make New Hampshire's family courts more approachable, less adversarial, and increase the focus upon the best interest of children.

In many cases, parents have engaged in intense battles over "primary physical custody." The new laws require courts to place an emphasis on alternative dispute resolution. The laws also changed the terminology relating to parenting time in an effort to minimize disputes. "Custody" has now been eliminated from the legal vocabulary and it has been replaced with various terms that are designed to better describe each party's role as a parent.

"Legal custody" was previously used to describe the parental obligations involved in making major decisions affecting the children. For example, in regard to such things as medical care and educational options. "Legal custody" is now known as "decision-making responsibility." There is a presumption, under both the old law and the new law, that this responsibility will be shared.

Under the former statutory scheme, the term "physical custody" was used to designate the authority to determine a child's physical residence or schedule with his or her parents. "Physical custody" is now known as a "parenting schedule" and/or "residential responsibility." As the parenting schedule does not have a win/loss connotation, the goal is to focus parents upon the development of an appropriate schedule, rather than achieving victory over the other parent.

Schedules, rights and obligations must also be spelled out in greater detail under the new laws, again in an effort to avoid disputes between parents. These details are contained in a newly required document, known as a "parenting plan." An example of such a document can be found at <http://www.courts.state.nh.us/fdpp/forms/index.htm>.

A parenting plan is a document created by the parties or the court which describes each parent's rights and responsibilities. It may be as specific or as basic as the parents wish. Nevertheless, at a minimum, parenting plans must address the following subjects: (a) decision making responsibility; (b) residential responsibility; (c) information sharing and access, including telephone and electronic access; (d) legal residence of the child for school attendance; (e) parenting schedule including holidays, vacations, birthdays and weekends; (f) transportation and exchange of the child; (g) relocation of the parents; and (h) procedure for review and adjustment of the plan.

The parenting plan may address other subjects if the parents so desire, including: how future disputes shall be resolved; how changes to the schedule will be made; what information should be communicated between the parents; and how medical or psychological issues relating to the children will be handled.

When the parents are unable to agree upon the allocation of parental rights and responsibilities, the court will make a decision on the basis of the "best interests of the child." This has long been

the legal standard for custody determinations. The new law, however, specifies what factors will be considered to determine the best interests of a child. Among the long list of factors to be considered are: the parent/child relationship; the ability of each parent to provide the child with nurture, love, affection, and guidance; the ability to provide a safe and healthy environment for the child; the child's various needs and the ability of each parent to meet them; the child's adjustment to his or her school and community and the potential effect of any change; and the ability of the parents to communicate, cooperate with each other, and make joint decisions concerning the child. Great emphasis is placed upon the ability of each parent to promote a healthy relationship between the child and the other parent.

Circumstances such as the sex of the child, sex of the parent or financial resources of a parent are not appropriate considerations in determining the best interest of the child. Instead, the court will make an effort to review the circumstances relating to the best interest of each child and then establish a schedule which will serve the child's best interest. In addition, in the case of a child of sufficient maturity, usually children ages fourteen and older, the court may also give substantial weight to the preference of the child, so long as the preference is not the product of undesirable or inappropriate influences.

The new laws represent a laudable legislative effort to reduce divorce disputes in order to minimize the negative effect on the children.

A knowledgeable family law attorney can help you understand further the impact the new law has on your specific situation.

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