

Virginia

TRACEY BEE, THE DIVORCE SOLUTIONIST



Types of Custody

There are two types of custody in Virginia: [legal and physical](#). Legal custody is a parent's right to make decisions regarding the child's welfare, including education, religion, and medical care. Physical custody refers to which parent will provide a primary residence for the child. The court may award joint custody, sole custody, or a combination of both.

Joint Custody

If the parents get along and have decent communication skills, judges usually award them joint legal custody. Joint legal custody means that both parents have the right to participate in making decisions for their child, regardless of where the child lives. For instance, the judge may award sole physical custody to one parent but joint legal custody to both. When parents share legal custody, neither can make important decisions for the child without consulting the other first. If you can't agree on an issue, you'll need the court to decide for you.

Joint physical custody means that the parents share physical care and custody of the child, though it doesn't always mean that the child will spend exactly 50% of the time with each parent. In some cases, the child might alternate week-long visits at each parent's residence. In others, the child may spend every weekend with one parent, but remain with the other parent during the week while school is in session. (Va. Code § 20-124.1 (2022).)

Sole Custody

Sole legal custody means that only one parent has the authority to make decisions concerning the child. Sole physical custody means that only one parent retains responsibility for the the child's care and control.

It's rare for the court to award sole legal custody. In most cases, it's more appropriate for the parents to share decision-making authority than it is for only one parent to have this authority. It's more common for judges to award one parent sole physical custody, when they believe the child would benefit from having only one primary residence while still being able to visit with the other (noncustodial) parent.

Unlike some states, where the laws assume that joint custody is in the child's best interest, Virginia law specifically prohibits judges from beginning a custody evaluation with the assumption that any particular type of custody is in the child's best interest. Instead, judges must make an independent evaluation using specific factors based on the child's best interest. (Va. Code § 20-124.2(B) (2022).)

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How Does the Court Determine Custody Virginia?

One of the easiest ways to settle a custody case is for the parents to create a plan together. If you and your ex can communicate and agree on all the provisions in a custody agreement (physical and legal custody, sole or joint, and parenting time), the judge will approve your agreement if the arrangements appear to be in the child's best interest.

If you're having trouble agreeing on all the custody details, you may consider attending mediation together. If you've already filed for divorce without a custody agreement, you'll at least have to attend an orientation session to learn about mediation, and you might be ordered to participate in mediation. (Learn more about [how divorce mediation works in Virginia](#).)

When you need to have the court resolve your custody disputes, the judge will first evaluate what is best for the child, based on the following factors:

- the age and physical and mental health of the child
- each parent's age and physical and mental health
- the relationship existing between each parent and the child, giving consideration to the positive involvement with the child's life, the parent's ability to accurately assess and meet the child's emotional, intellectual and physical needs
- the child's needs, including a relationship with siblings, peers, and extended family
- the role that each parent plays in the child's upbringing



Leading Case law on Best Interest of Child
Logan v. FAIRFAX COUNTY DEPT. OF HUM.
DEV., 409 SE 2d 460
Kaywood v. DEPT. OF SOCIAL SERVICES,
394 SE 2d 492

Rules of Conduct for Judges

https://www.vacourts.gov/courts/scv/canons_of_judicial_conduct.pdf
<https://casetext.com/rule/virginia-court-rules/virginia-rules-of-supreme-court/part-six-integration-of-the-state-bar/section-iii-canons-of-judicial-conduct-for-the-state-of-virginia>

Attorney Ethics

<http://www.vsb.org/pro-guidelines/>
https://www.vsb.org/pro-guidelines/index.php/main/print_view

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- the propensity of each parent to actively support the child's relationship with the other parent (including whether either parent has a history of denying the other parent access to the child)
- the willingness of each parent to maintain a close and continuing relationship with the child
- both parent's ability to cooperate in and resolve disputes regarding the child
- the child's reasonable preference, if the court finds that the child is of reasonable intelligence, understanding, age, and experience to express a preference
- any history of family abuse, child abuse, sexual abuse, or any violent acts or threats within the past 10 years, and
- any other factors the judge thinks are relevant. important to the case.

Judges may not give a preference to one parent over the other based on gender. In the end, however, they have wide latitude when making custody decisions, and they may decide how to weigh these different factors. However, judges do need to communicate the reasons for their decisions. (Va. Code §§ 20-124.2(B), 20-124.3 (2022).)

Modification of Custody

§ 20-108. Revision and alteration of such decrees. The court may, from time to time after decreeing as provided in § 20-107.2, on petition of either of the parents, or on its own motion or upon petition of any probation officer or the Department of Social Services, which petition shall set forth the reasons for the relief sought, revise and alter such decree concerning the care, custody, and maintenance of the children and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require. The intentional withholding of visitation of a child from the other parent without just cause may constitute a material change of circumstances justifying a change of custody in the discretion of the court. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification in any court, but only from the date that notice of such petition has been given to the responding party.

Any member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other reserve component thereof, who files a petition or is a party to a petition requesting the adjudication of the custody, visitation or support of a child based on a change of circumstances due to one of the parent's deployment, as that term is defined in § 20-124.7, shall be entitled to have such a petition expedited on the docket of the court.

Code 1919, § 5111; 1926, p. 105; 1927, p. 184; 1934, p. 515; 1938, p. 784; 1944, p. 397; 1948, p. 593; 1986, c. 537; 1987, c. 649; 1991, c. 438; 2002, c. 747; 2004, c. 204; 2006, c. 371; 2011, c. 351.

Guardian ad Litem

The appointment of a GAL by a juvenile and domestic relations district court is mandatory in certain cases and permissive in others. [Virginia Code § 16.1-266](#) provides that a juvenile and domestic relations district court shall appoint a GAL in any case involving a child who is:

- alleged to be abused or neglected.
- the subject of an entrustment agreement.
- the subject of a petition seeking termination of residual parental rights.
- the subject of a proceeding where the parent(s) seeks to be relieved of the child's care or custody.

A juvenile and domestic relations district court shall also appoint a GAL in cases involving a child who is:

- the subject of a foster care plan review or a hearing to review the child's status in foster care. [Virginia Code § 16.1-281](#).
- seeking emancipation. [Virginia Code § 16.1-332](#).
- the subject of a proceeding by parents seeking to commit an objecting minor, 14 years of age or older, to a psychiatric facility. [Virginia Code § 16.1-339](#).
- the subject of a petition for involuntary commitment. [Virginia Code § 16.1-341](#).

The court may appoint a GAL in other cases, which in the discretion of the court require a GAL. [Virginia Code § 16.1-266](#). These include certain custody cases where parents or persons claiming custody are represented by counsel ([Virginia Code § 16.1-266](#)), as well as those cases in which a petition is filed by a juvenile seeking judicial authorization for a physician to perform an abortion ([Virginia Code § 16.1-241](#)).



Recusal of a Judge

https://www.vacourts.gov/programs/jeac/opinions/2016/16_1.pdf



<https://thedivorcesolutionist.com>