

# How Parenting Time or Custody Is Determined

When couples with children are divorcing, one of the most difficult things to work out is how their children will be raised – which parent will the child or children primarily live with, and how much time, if any, will they spend with the other parent. Here is what Illinois law says about this, and how courts view it.

## **The terminology can be confusing.**

Illinois no longer uses the terms “custody” or “visitation.” Instead, Illinois law decides who has “significant decision-making” authority and how much “parenting time” each parent has. However, I still tend to say custody and visitation instead of “parenting time” since that’s what most people have heard of.

## **The courts must consider the child’s best interest to determine how much “parenting time” a parent gets.**

The law in Illinois specifically states that the court must base its decision regarding a child’s custody on what is in the best interest of the child. This may sound like common sense, but what does it mean – and how does the court make that determination?



## **15 factors go into making up the child’s best interest.**

The best interest of the child is basically an abstract concept. But to get at what it consists of, the law sets out 15 factors that the judges are supposed to consider. The very first one is the wishes of the child. Others include the child’s adjustment to home, school, community, mental and physical aspects, desires of the parents, the child’s needs, and the level of each parent’s participation in prior significant decision making. The last one is a catch-all of any other factors that the court especially finds to be relevant.

Occasionally, attorneys might actually assemble a table of the 15 standards showing how their client meets each of them, therefore why their client should be awarded custody. But usually, it’s a much more informal presentation to the judge.

## **It matters a lot who has been doing most of the parenting.**

A court will try to understand which parent was primarily performing the day-to-day caring activities for the child before the divorce, and will generally assume that that parent will continue performing that role. Whether a judge will admit it or not, that is how the courts will begin with their analysis of when awarding custody.

The attorney for the parent who has been the caregiver will work to reinforce that image of their client. The opposing attorney will attack that position by trying to bring to light some other factors in that parent's benefit.

Example: Let's say Dad wasn't the primary caretaker before, but now he has moved to district with a top-tier school. The child already has friends from summer camp who live in that neighborhood, so they'd be able to hang out with those friends more often. There's also extended family nearby,

so the cousins that the child was close to will be even closer. Dad's attorney would make sure that these factors that come to light, to show the judge that the roles are changing.

In this case, the mom's attorney might argue that, if the marriage had remained intact, the family's lifestyle would have remained the same, and the kids would have continued going to their old school. So, why take them out of that school and put them somewhere else? Mom's attorney would also say that Mom here has attempted to facilitate a loving and healthy relationship with the other parent – who, by contrast, has not been showing any willingness or ability to promote or encourage a close and continuing relationship between the other parent and the child. Both of these things that could also affect the ruling



Each of the points in this is example is connected to one of the 15 factors listed in the law. This example demonstrates why custody cases often go to trial, because deciding among these factors is not easy. If it were easy, divorcing parents wouldn't need an impartial, objective judge to make a ruling – because they would have sorted it out amongst themselves.

**To sum up**, custody is determined based on the best interests of the child. Courts look at the 15 factors listed in the law. Typically, in practice, they find out who has been the primary caretaker, and assume that that will remain the case. If the other parent doesn't like that, they will try to show what they are going to do differently that would put the children in a better position in terms of those 15 factors.

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