

CUSTODY/VISITATION and the LAW: Options for Creating and Changing Orders

- While you are waiting for class to begin, please:
- Mute your audio
- Print your class materials. “Family Law Court Resources,” “Family Law Facilitator Classes”:
<https://www.santabarbara.courts.ca.gov/divisions/family-law/family-law-zoom-classes>
- Have a pen and paper available
- Be ready to start promptly at 8:30 a.m.

Thank you!





CUSTODY / VISITATION AND THE LAW

Options for Creating or Changing
Orders

**SANTA BARBARA COUNTY SUPERIOR COURT
OFFICE OF THE FAMILY LAW FACILITATOR
Deborah K Mullin, J.D.**

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Children Learn What They Live

If children live with criticism, they learn to condemn.

If children live with hostility, they learn to fight.

If children live with ridicule, they learn to be shy.

If children live with shame, they learn to feel guilty.

If children live with encouragement, they learn confidence.

If children live with tolerance, they learn to be patient.

If children live with praise, they learn to appreciate.

If children live with acceptance, they learn to love.

If children live with approval, they learn to like themselves.

If children live with honesty, they learn truthfulness.

If children live with security, they learn to have faith in themselves and others.

If children live with friendliness, they learn the world is a nice place in which to live.

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Family Law Facilitator

- Court attorney who can help you better represent yourself
- Available to either side
- Nothing is confidential
- Can help you with legal papers
- Can help you with service of the legal papers
- Can help with the filing of papers
- FLF does **not** go to court with you
- FLF does **not** represent you



GOALS:

To help you understand:

“What is custody and visitation?”

“What is important to the court in making first orders?”

“How can such orders be changed?”

WANT TO GET OR CHANGE CUSTODY / VISITATION ORDERS????

1. Must have a **court case** in Santa Barbara Superior Court;
2. Must **attend once the free 2-hour PEACE** parenting class online;
- 3A. Must attend voluntary mediation through Family Court Services and come to an agreement that is signed by a judge;

OR

- 3B. Must prepare legal papers (Request for Order FL-300) to get a court-ordered mediation appointment and a court hearing date;
4. Attend court-ordered Family Court Services mediation, and if there's no signed agreement, then;
5. **Go to court** and have a judge make orders regarding custody and visitation

OPTIONS FOR DOING THE LEGAL PAPERS TO GO TO COURT:

- **California Courts Self-Help Center:** Lots of Information and the free forms available that you complete on your own
- **Law Help Interactive:** Free forms that you complete yourself by answering written interview questions
- **Guide and File:** Answer online questions and automatically create the forms. File electronically or print and file on your own.

Websites to create the legal forms:

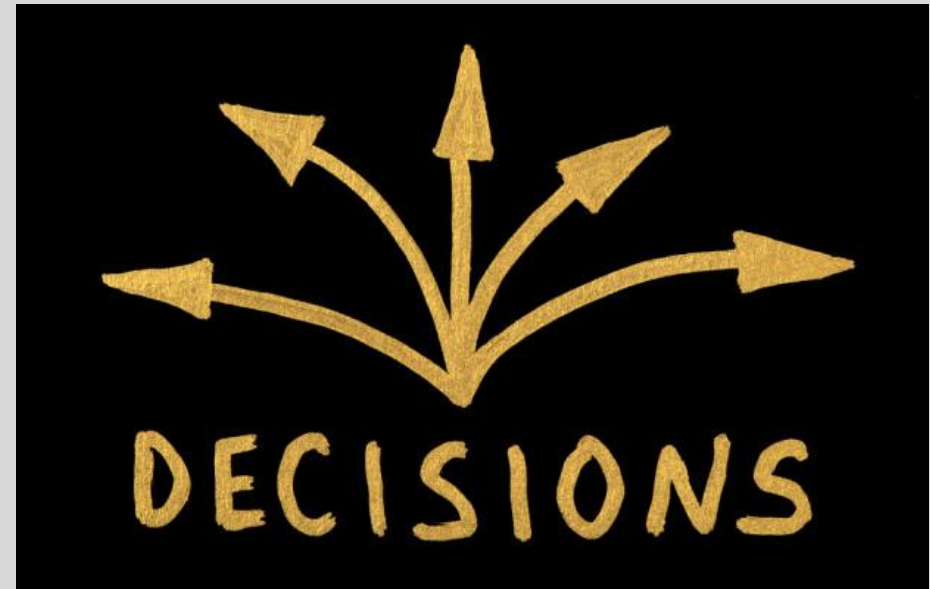
- **California Courts Self-Help Center:** Extensive information and free forms to complete on your own: <https://selfhelp.courts.ca.gov/child-custody>
- **Law Help Interactive:** By answering written interview questions, you complete legal forms for free: <https://www.butte.courts.ca.gov/self-help/online-resources>
- **Guide and File:** Answer online questions on your own and your forms are created for free. You can then print the documents to serve and file or electronically file: www.guideandfile.com

“Custody” = RESPONSIBILITY

1. Physical custody:



2. Legal custody:



#1: PHYSICAL CUSTODY:

- Based on who is *responsible* for the child on the day-to-day level?
- Based on how much time the child spends with each parent
- Determines where the child will live: “you,” “me,” or “us”



PHYSICAL custody: can be ordered as either:

JOINT:

- Child spends a significant amount of time in each parent's home
- Does not have to be 50/50 in order to be joint physical custody

SOLE TO ONE PARENT:

- The child lives with and is under the supervision of one parent and the other parent has "visitation"



VISITATION: Times when non-custodial parent has the children and is fully responsible for them

- **Ex.: Every other weekend and one evening during the week**
- **“Supervised” visitation means that a neutral third party is present during visitation:**
 - **Done by court order**
 - **Due to drug, alcohol or physical abuse; mental health problems; or long period of no contact with children**



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Looking for what is the **BEST INTERESTS** of the child...

Try to create the ideal “parenting plan” or “timeshare schedule”

- What kind of parenting structure is age appropriate?
- What does the child need?
- What can each parent offer and when?



#2: LEGAL CUSTODY:

Decisions, decisions, decisions regarding child's health and welfare:

- Which childcare provider or which school?
- Which doctor or dentist?
- Get vaccinations?
- Go into therapy? With whom?
- Become baptized or have a bar mitzvah?



LEGAL custody: can be ordered as either:

JOINT:



- **JOINT:** Both parents share the right and responsibility to make the decisions about the child's health, education and welfare
 - Success depends on...
 - Communication and
 - Cooperation

SOLE TO ONE PARENT:



SOLE: One parent has the sole right and responsibility to make the important decisions for the child

Q: Did you know that the parent without legal custody still has the right to access records and information, including medical, dental and school records? (Family Code 3025)

Joint legal custody can be ordered in writing as:

- Just “joint legal custody”: This means that EITHER parent can make decisions for the minor child

OR

- “Joint legal custody” ordered WITH ADDITIONAL language regarding how the responsibility is shared. In this way, BOTH parents must consult and agree with each other on the decision. Look at form FL-341(e) Joint Legal Custody Attachment.



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Summary of custody order options:

**Joint legal AND
physical custody** (both
parents)



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**Joint legal custody and sole
physical to one parent**
(other parent has the right of
visitation)

**Sole physical and legal
custody to one parent**
(other parent has the
right of visitation)



“Best interests of the child”

GOAL: Want *stability and continuity* for the child

- Look at **who can provide for the basics: Food, clothing, shelter, safety and love**
- Look at **the child’s basic needs, age, health, personality, experiences and abilities**
- Look at **the emotional ties between each parent and child**

“Best interests” continued...

- Look at **degree of cooperation between parents**: Which parent will allow frequent and continuing contact by the kids with the other parent?
- Look at any **history of domestic abuse**



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River of Life



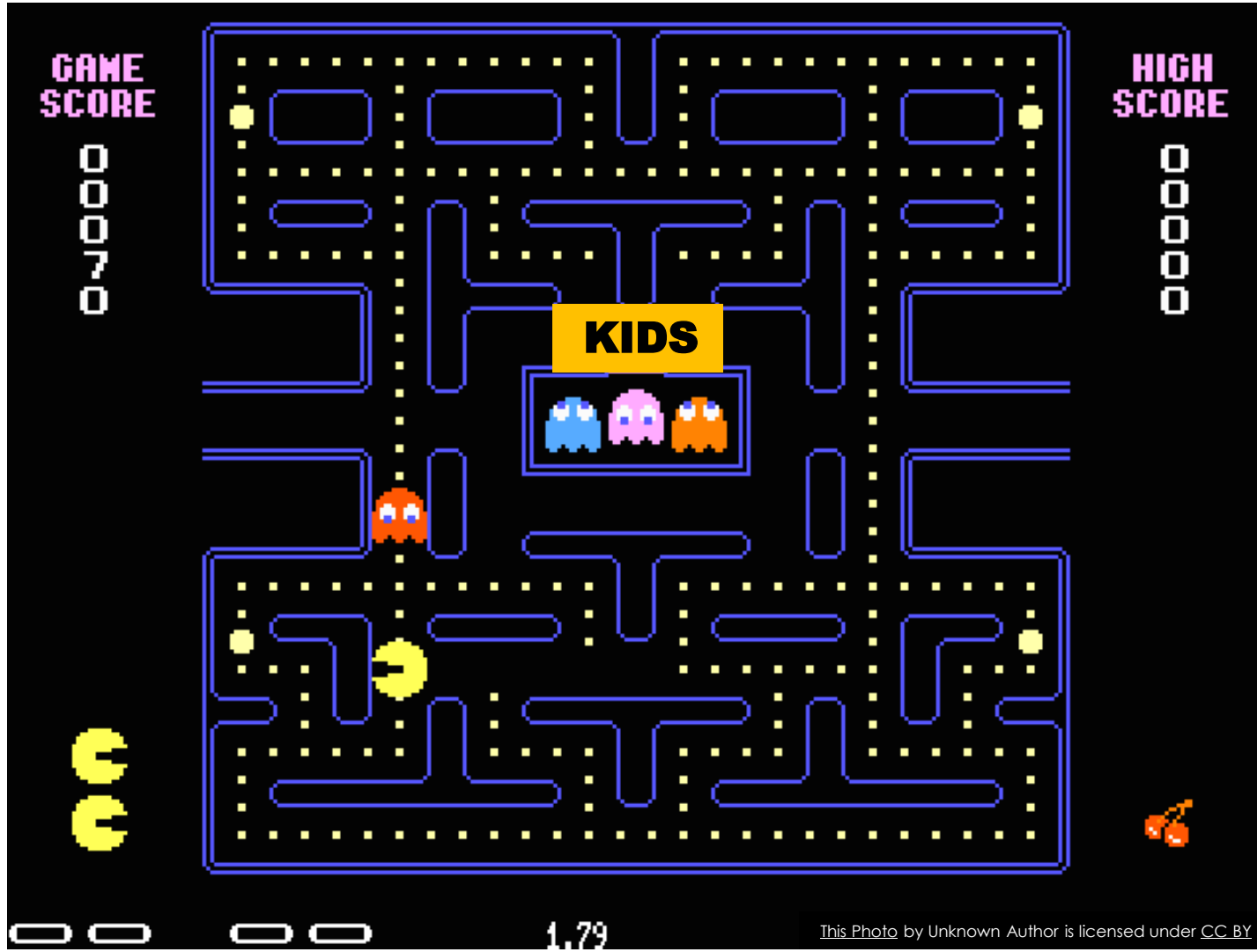
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PARENT #1



PARENT #2

PAC-PERSON!



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Your goal in getting court orders...

You want a **SPECIFIC and DETAILED** parenting plan:

- Who has physical custody?
- Who has legal custody?
- Who transports?
- Where are the pick-up and drop-off locations?
- Who gets holidays and breaks?

Remember: The purpose of an order is to bring order to your lives!

Domestic abuse and custody:



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- Rebuttable (“yay, but your honor...”) presumption *against giving custody to the domestic abuse perpetrator*:
- Abuse within the past 5 years
- Regarding **sole or joint physical or legal custody**: Court can assume that custody to the perpetrator would be detrimental to the child’s best interest (**Fam. C. §3044.**)

How to overcome the presumption against you (and show your “halo”):

- Successfully complete the:
 - Batterer’s treatment program
 - Alcohol or drug abuse counseling
 - Parenting class
- Comply with terms of probation or parole
- Comply with terms and conditions of criminal protective order or restraining order
- No further acts of domestic violence

Visitation and drug/alcohol testing...

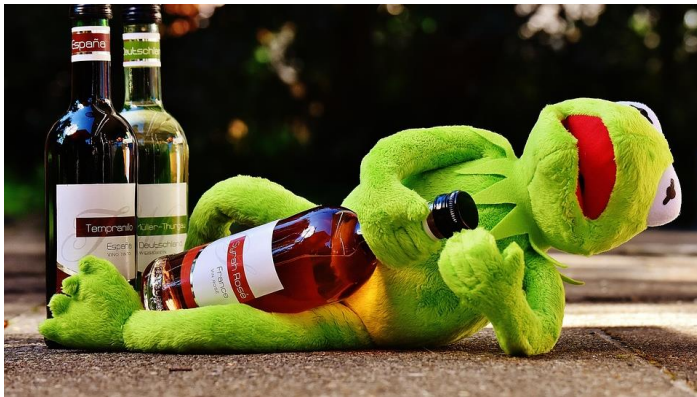
Court can order testing if preponderance of evidence shows “habitual, frequent, or continual use”

Can consider prior convictions in past 5 years

Test results are confidential & may be used only in custody/visitation hearing

Positive test alone does not determine custody (Fam. C. §3041.5)

Best interests of the child require consideration of all factors



Children's wishes re parenting plan:

- A child **14 years old or older** has the right to provide **their input** to the court regarding a new parenting plan or changes to an existing plan (Family Code section 3042 and CA Rules of Court 5.250)
- **The court is to consider and give due weight to the child's wishes if it is in the best interests of the child to do so.**



Getting that FIRST custody/visitation order

1. Have a court case in the Santa Barbara County Superior Court

2. Attend the PEACE parenting class

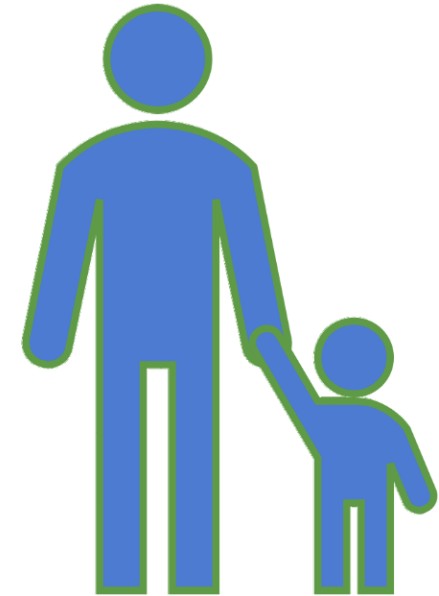
3A. Attend Family Court Services mediation. If you get a written agreement, you're done! You'll have orders for FREE!

OR

3B. If mediation doesn't work, then you **must prepare legal papers** to get a court-ordered mediation appointment and a court hearing date

4. Attend court-ordered Family Court Services mediation, and if still needed,

5. Go to court and have a judge make orders regarding custody and visitation





Family Court Services mediation

1. You **need** to have a **family law court case** in Santa Barbara County

2. You **must attend the PEACE class**

FREE and **CONFIDENTIAL** service

Uses neutral 3rd person (mediator) to help you and the other parent discuss and resolve custody/visitation problems

Goals:

- To help the parents better communicate
- To develop a parenting plan agreement that gives both parents time with their child in a way that is in the **child's best interest**





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ENGLISH:

<https://www.santabarbara.courts.ca.gov/divisions/family-law/peace-online>

SPANISH:

<https://www.santabarbara.courts.ca.gov/divisions/family-law/peace-en-linea>

PEACE Parenting Class

- Currently **NOT offered in person**
- Attend **online 24/7**
- Must be able to **print Certificate of Attendance**
- **File the Certificate of Attendance** with court
- **FREE**

How Family Court Services mediation works:

- This is a **FREE** service of the court. Call **805-882-4667** to set the appointment.
- Currently, all sessions are conducted through the **Zoom** platform
- **First**, you and the other parent will first speak individually and privately with the mediator
- **Second**, the mediator may ask to speak privately with any child 6 years and older
- **Finally**, you and the other parent will then meet together on Zoom with the mediator
- If there's a history of **domestic abuse**, it's possible to ask for separate meeting rooms, one for each parent. **Inform the office** of this when you make your appointment.

<https://www.santabarbara.courts.ca.gov/divisions/family-law/family-court-services>



Family Court Services, cont'd.

- **Agreement?** It's put in writing by the mediator, parties sign, judge signs, and then a copy comes in the mail to each parent. You have your court order!
- **No agreement?** You or the other parent will need to prepare, file and serve legal papers to go to court for the judge to decide and make an order.



CHANGING A CUSTODY ORDER:

Change of circumstances rule:

Often, if you want to change a custody order...

- **FIRST, you must prove a “material change in circumstances” to the judge:** Important facts related to custody are different now from those facts that existed at the time when the court last decided the custody issue
- **If you can't prove this: The court will not hear your case!**



CHANGE OF CIRCUMSTANCES:

Examples...

- **New unfit parenting**
- **New abuse**
- **Frustration of visitation/parental alienation** (courts can't agree)
- **One parent moving away**



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Changing a visitation order is much easier!

- The court will decide what is in the child's best interests
- No need to prove a change of circumstances

Summary: To get FIRST custody order or change custody or visitation, you need:

- 1. To have or start **a court case in Santa Barbara County**
- 2. To attend the **required PEACE parenting class**
- 3. To attend Family Court Services **mediation**
 - **Sign an agreement, or,**
 - **if no agreement...then do legal papers**
- 4. To **go to court**

Summary: To CHANGE a custody order:

Prove a “change of circumstances”:

Something really important relating to the children is now **different** from what was happening at the time the original order was made



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Remember!!!

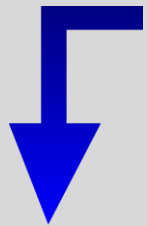
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Remember, if you cannot show a **change of circumstances**, then the **court might not hear the rest of what you have to say!**



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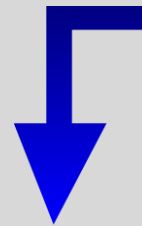
So, let's get to work...What option do YOU want?



Voluntary mediation

STEPS:

1. Have a case in court
2. Attend the PEACE class
3. Set the mediation appointment if the other parent agrees to go
4. Call 805-882-4667 for more information



Court hearing

STEPS:

1. Have a case in court
2. Attend the PEACE class
3. Prepare the legal papers
4. File and serve the papers (\$\$\$)
5. Prepare for and go to court

Going to court is NOT EASY!

1. Prepare many legal papers

2. Pay a filing fee or try to qualify for fee waiver

3. Need to get your papers personally served on the other side



NOT like Judge Judy!

5. Need to accept the decision of the judge—a complete stranger who doesn't even know your kids

4. Need to prepare your case for hearing in front of a judge and in front of everyone else in the Zoom hearing!

YOU NEED TO DECIDE: Hmmmmm....



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Is agreement possible in FREE voluntary mediation?

- If yes: Work with the other parent to set the appointment and come to an agreement
- If no, do the necessary papers to set a court hearing. Remember, you will still do court-ordered mediation!



Thank you.

For further assistance,
please:

call **805.882.4660**

or email us at

SBFLF@sbcourts.org

Check us out at

<https://www.santabarbara.courts.ca.gov>