

VISITATION INFORMATION FOR PARENTS

Use this brochure for general information on visitation rights of parents, including:

- What is visitation,
- Who has a right to visitation,
- How to get a visitation schedule, and
- How to change an existing visitation schedule.

IMPORTANT: This brochure is for parents who want information on visitation rights for their children. If you are a grandparent, relative, or friend who wants visitation, this brochure does not apply to you. Call Legal Aid for more information.

WHAT IS VISITATION?

Visitation rights are usually given to the parent who does not live with his or her child. This parent is called the noncustodial parent. Custody orders are almost always made at the same time as visitation orders. Court orders that usually include custody and visitation orders are (1) divorce decrees, (2) paternity orders, and (3) temporary restraining orders (TROs).

Visitation rights can range from frequent to never. They can also be flexible or rigid, depending on the situation. **If both parents cannot agree on a visitation schedule on their own, the court will have to decide for them.**

Because visitation and custody are so closely related, read this brochure along with Legal Aid's "Child Custody" brochure.

I. HOW TO GET A VISITATION SCHEDULE

If the parents were never married:

Fathers: Fathers must establish paternity before they have any rights to visitation and/or custody. Paternity is established if the father's name is on the birth certificate, or by paternity order. *For more information, call Legal Aid and see the "Paternity" brochure.*

Mothers: If paternity was not established, the mother is the child's only legal parent. This means the mother has full legal and physical custody of the child. Without a paternity order, the father has no visitation rights. *For more information, call Legal Aid and see the "Paternity" brochure.*

If the parents are married:

If the parents are married, both are equal custodians of the child unless there is a court order establishing custody and visitation. This means that both parents have 100% access to the child. To get a custody and visitation schedule when still married, a parent must get either get a legal separation or a divorce. While a divorce is pending, either party can also request that the court grant them certain relief by filing a motion for pre-decree relief. These requests can involve, for example, a request for temporary custody and visitation orders, child support, and/or spousal support. If one spouse is abusive, the non-abusive spouse may be able to get a temporary custody or visitation order through a temporary restraining order (TRO). *For more information, call Legal Aid.*

II. DIFFERENT TYPES OF VISITATION

There are three visitation terms to be familiar with: reasonable, supervised, and none. These types of visitation are important to know if a parent is in the process of or thinking about getting a divorce, establishing custody and visitation when not married, or getting a TRO.

IMPORTANT: There are an infinite number of possible visitation schedules, so parents should think about different things that will work in their own situations. An order could include a combination of reasonable, supervised, and/or no visitation. For example, the court may order no visitation until the

noncustodial parent completes parenting classes, then supervised visitation for a year, then reasonable Type A visitation.

1. Reasonable Visitation

Reasonable visitation could mean any of the following:

- “Reasonable visitation,” which assumes that the parents can talk and agree on a visitation schedule on their own, and do not need to have specifics written down. OR,
- A specific schedule that **both parents agree on**. The schedule can be anything that the parents feel is best for their child. OR,
- A specific schedule that **the court decides for the parents**. If the court feels that the noncustodial parent can safely spend time with the child alone, but the parents cannot agree on the specific schedule, the court can order a visitation schedule that both parents must follow.

Here are three examples of reasonable visitation schedules below (Types A, B, and C). These examples may help parents work out their own “reasonable” visitation schedule.

Reasonable Visitation Type A: Both Parents are on the Same Island

Type A usually applies to a child who is at least three years old. If the child is younger than three, see “Reasonable Visitation Type C.”

- **Alternate weekends** with each parent.
- **One night per week with noncustodial parent:** from after school until an agreed time of return no later than 7:00 pm. (Time of return depends on the child’s age and bedtime.)
- **Telephone contacts:** ranging from daily to once a week at reasonable hours. Reasonable hours depend on the age of the child and the child’s daily schedule.
- **Vacations:**
 - **Christmas Vacation:** one week of Christmas vacation each year with each parent, alternating the first and second week. The first week will include Christmas Eve and Day. The second week will include New Year’s Eve and Day.
 - **Summer Vacation:** maximum one half of summer, with alternate weekends to the custodial parent. The child will be returned to the custodial parent the week before school starts. If possible, state the number of weeks in summer vacation to avoid future problems.
 - **Spring Vacation:** one half of spring vacation. If possible, state the number of days in spring vacation to avoid future problems.
- **Holidays & Special Days:**

- Alternate Easter, Thanksgiving, and Halloween.
- Child's birthday: parents share one half of the child's birthday OR alternate yearly.
- Father's Day with father and Mother's Day with mother. Same with parent's birthday.
- On extra state and federal holidays, the parents will alternate yearly or it can go to whomever has that weekend with the child.
- **Reports:** the parents will share medical and school reports with each other at appropriate times.
- **Child's Activities:** the parent who has the child is responsible for taking the child to activities that are important to the child (e.g., team sports, birthday parties, etc.).

Reasonable Visitation Type B: You & the Other Parent Live on Different Islands or in Different States

Type A usually applies to a child who is at least three years old. If the child is younger than three, see "Reasonable Visitation Type C."

- **Unlimited correspondence** and up to daily telephone contacts at reasonable hours. Reasonable hours are determined by the child's age and usual daily schedule.
- **Vacations:**
 - **Christmas Vacation:** entire vacation in alternate years with the return of the child to the custodial parent at least two days before school begins.
 - **Summer Vacation:** depending on the age of the child, the maximum summer visitation period will be two months. Both parents should be flexible regarding the child's summer activities. The child should be returned at least one week before school starts.
 - **Spring Vacation:** alternate years.
- **Special visitation rights:** if the noncustodial parent comes to the child's island or state, special visitation rights should be granted. The noncustodial parent must give at least two weeks' notice before the visit. The visitation should take into account the child's usual school activity schedule, if any. At a minimum, the noncustodial parent should get one weekend and one day during the week from after school until reasonable night return on the same day.
- **Reports:** medical and school reports should be shared with the other parent as appropriate. Annual reports by the custodial parent to the other parent or as appropriate for children with disabilities or special needs.

Child's Activities: the parent who has the child is responsible for taking the child to activities that are important to the child (e.g., team sports, birthday parties, etc.).

Reasonable Visitation Type C: Your Child Is Under 3 Years Old

For children below the age of three, visitation should be as frequent as possible, at least once a week if on the same island.

2. Supervised Visitation

Supervised visitation means the noncustodial parent may visit the child only if another adult is there. Supervised visitation may require that the visitation, drop-off, and pick-up happen only in a certain place. A friend or relative can supervise the visits, or some agencies provide supervised visitation sites for a small fee.

Supervised visitation can be ordered if the parties agree to it, or if the judge thinks that supervised visitation is in the best interest of the child.

For example, supervised visitation may be ordered if:

- The noncustodial parent abuses drugs, especially around the other child;
- The noncustodial parent has abused the other parent and/or the child; AND/OR
- There is some other reason to fear for the child's safety.

3. No Visitation

The court rarely grants no visitation at all because it is usually in the best interest of the child to have a relationship with both parents. The court may grant no visitation if there are extreme circumstances, such as severe physical and/or sexual abuse by the noncustodial parent. Otherwise, the court will usually grant supervised visitation.

III. HOW VISITATION IS DECIDED

Both Parents Decide

The most common, and often best way, to decide on a visitation schedule is for both parents to agree together. If the parents can agree on a visitation schedule, the court will probably approve that schedule. If it is safe to do so, parents should talk about schedules that will work for both them and the child. They should be creative; the court wants to know what the parents think is best for the child, even if it does not fit the court's normal visitation guidelines.

Best Interests of the Child

If the parents can't agree on a visitation schedule, then the court will decide based on **the best interest of the child(ren)**. Studies have shown that children who continue to feel loved and wanted by both parents are able to deal with their parents' separation best.

The court will look at a number of factors in either parent's history, **including, but not limited to**: sexual or physical abuse, neglect or emotional abuse, mental health, drug or alcohol abuse, caregiving for the child, and ability to meet the child's needs. The court will also consider factors concerning the child, **including, but not limited to**: the child's relationship with each parent, physical health, emotional needs, educational needs, and safety. The court wants to hear about what is best for the child. The court **does not** decide based on problems parents have with each other, such as whether or not there was cheating in the relationship.

How Courts Decide in Abuse Situations

When the court feels that one parent has been abusive, the visitation rights of that parent may be limited to protect the custodial parent and the child.

If the noncustodial parent is considered a danger to the child, the court can order:

- Parenting classes and/or drug treatment,
- Supervised visitation,
- Anger management classes, and/or
- Something else to protect the child.

If the noncustodial parent has abused the other parent, but the court believes he or she is not a danger to the child, the court can order:

- Drop-off and pick-up in a public place,
- To keep the custodial parent's address confidential,
- A restraining order against the noncustodial parent, and/or
- Something else to protect the parent.

IV. HOW TO CHANGE A VISITATION ORDER

How to modify if the parents CAN agree:

The parents should file a stipulated agreement. A stipulated agreement means that both parents can agree on a change in the original order. A stipulated agreement doesn't require a lot of attorney time, and the parents may be able to file on their own.

How to modify if the parents CANNOT agree:

To modify your current order, the parents need to show the court that the proposal is in the **best interests of the child(ren) (see above)**. Visitation changes are more common than custody

changes. This is because children's needs change as they age. Some parties may be simply seeking to alter the weekly schedule, while others may be seeking to change whether visits are supervised or unsupervised.

Mediation

If there has been no abuse in the relationship, mediation can be used to reach an agreement. In mediation, the parents meet with a neutral third person to try to come to an agreement.

Find an Attorney

If one parent is afraid of the other OR if the parents cannot agree even after mediation, an attorney may be helpful. For private attorneys, parents can call the Lawyer Referral & Information Service at 537-9140. Parents should call different attorneys and get estimates for their services.

If one parent is afraid of the other, or if there is a history of abuse, call the Legal Aid Society of Hawaii or the Domestic Violence Action Center to apply for assistance.

V. IF THERE ARE PROBLEMS WITH AN EXISTING VISITATION ORDER

If a parent is not being allowed to see their child even though visitation has been awarded, they should:

1. Read the visitation order to find out exactly what it says.
2. If it is safe to do so, discuss the situation with the other parent. For assistance reaching an agreement, mediation services are available for a small fee. Mediation is usually NOT a good idea in relationships where there has been abuse.
3. Ask the police to help enforce your order. Depending on the situation, the police may not get involved; however, the parent should still make a police report.
4. Consider going back to court to enforce and/or change the existing visitation order if it isn't working. The parent should think about exactly what they want to change and why it should be changed.