



# Child Custody in New York

A comprehensive guide to understanding New York custody law, factors courts weigh, and how to protect your parenting rights.

## 1. — How New York Determines Custody

New York courts decide custody based on one paramount principle: **the best interests of the child**.

**No Presumptions:** Unlike some states, New York has *no* legal presumption favoring either mother or father. The court does not begin with the assumption that one parent is more suited to custody than the other. Each case is decided on its unique facts.

**Both Parents' Rights:** New York law recognizes both parents' rights and encourages involvement by both in the child's life, unless there are safety concerns (abuse, substance abuse, neglect). A parent seeking to exclude the other must demonstrate that contact is harmful to the child.

## 2. — Types of Custody

New York recognizes several custody arrangements. Understanding the distinctions is critical:

Type	Definition
<b>Legal Custody</b>	The right to make major decisions about the child's upbringing: education, medical care, religious instruction, and major life choices. Can be joint (both parents decide together) or sole (one parent decides).
<b>Physical Custody</b>	Where the child actually lives day-to-day. Can be joint (child spends substantial time with both parents) or sole/primary (child lives primarily with one parent, the other has visitation).
<b>Joint Legal Custody</b>	Both parents share decision-making authority. Decisions about school, healthcare, and religion require agreement (or court intervention if they cannot agree).
<b>Sole Legal Custody</b>	One parent has the exclusive right to make major decisions. The other parent may still have parenting time and input, but lacks legal authority.
<b>Primary Residential Custody</b>	One parent is designated as the primary custodian; the child's residence is with that parent. The other parent has visitation (often 'parenting time' to reflect active involvement).



**Shared Physical Custody**

The child spends roughly equal or substantial time with each parent. May be 50/50, or patterns like 5 days with one parent, 2 with the other, rotating weekly. Requires logistics and cooperation.

### 3. — The Best Interests Factors

When deciding custody, New York courts weigh statutory factors. While judges have discretion, these factors guide the analysis:

Factor	What It Means
<b>Parent-Child Relationship</b>	The quality, strength, and nature of each parent's bond with the child; which parent has been the primary caregiver or nurturer.
<b>Parent's Ability to Provide</b>	Each parent's capacity to provide adequate food, shelter, education, medical care, and emotional support.
<b>Child's Preference</b>	If the child is mature enough (usually 12+), the court considers the child's reasonable preference about custody arrangements.
<b>Health &amp; Safety</b>	The physical and mental health of the child and both parents; any history of abuse, substance abuse, or domestic violence.
<b>Stability &amp; Continuity</b>	The degree to which each parent can provide a stable home environment and maintain the child's connection to school, friends, and community.
<b>Each Parent's Willingness</b>	Whether each parent encourages the child's relationship with the other parent (called 'parental fitness to parent'). Courts favor parents who promote the child's bond with both parents.
<b>Work &amp; Practicality</b>	Each parent's work schedule and availability to care for the child; logistical feasibility of custody arrangements.
<b>Domestic Violence History</b>	Any history of domestic violence or abuse between the parents or against the child (heavily weighted against the abuser).
<b>Distance &amp; Relocation</b>	Whether one parent is seeking to move the child far away; feasibility of maintaining relationships if one parent relocates.
<b>Sibling Relationships</b>	If the child has siblings, keeping siblings together is generally in the child's best interest.

### 4. — Creating a Parenting Plan

A **parenting plan** (or custody agreement) is a detailed document outlining how parents will co-parent. Courts prefer parenting plans because they reduce future conflict and give children predictability.



**Key Elements of a Parenting Plan:**

- Regular Schedule: Days/nights each parent has the child (e.g., Tuesday–Thursday and alternate weekends).
- Holiday Schedule: Thanksgiving, Christmas, spring break, summer vacation, and birthday arrangements for each parent.
- School Decisions: Which parent decides on school choice, tuition, special education evaluations, and academic concerns.
- Medical & Dental Care: Who makes routine healthcare decisions; how parents communicate about health issues.
- Religion & Moral Training: Which parent decides on religious instruction or whether both parents agree on faith matters.
- Travel & Relocation: Whether a parent can take the child out of state; notice required; passport/permission arrangements.
- Communication: How parents will communicate about the child (e.g., email preferred, weekly check-ins, no disparagement in front of the child).
- Dispute Resolution: What happens if parents disagree—will they use mediation, or go back to court?
- Modification Terms: Under what circumstances the plan can be changed (e.g., if the child's needs change, a parent's job changes).

A detailed parenting plan reduces conflict because expectations are clear and both parents know what to expect.

## 5. — Modifying a Custody Order

Custody orders are not set in stone. However, courts will not modify an order without good reason.

**Standard for Modification:** A parent seeking to modify custody must show a **substantial change in circumstances** since the original order. The change must be significant enough that the original order is no longer in the child's best interest.

**Examples of Substantial Changes:**

- One parent loses a job or becomes unable to care for the child.
- One parent moves far away, making the original schedule impractical.
- The child develops special needs requiring different support or scheduling.
- One parent develops a substance abuse or mental health issue affecting parenting capacity.
- The child's relationship with one parent improves or deteriorates significantly.
- One parent remarries or has new children, altering household dynamics.

Simply disliking the current arrangement is not enough. Courts rarely modify orders lightly, as stability is important for children.

## 6. — High-Conflict Custody



Some custody disputes are contentious—parents cannot cooperate, communication is hostile, or one parent actively undermines the other's relationship with the child. New York courts have tools to manage these situations.

**Parental Alienation & Interference:** A parent who deliberately damages a child's relationship with the other parent—by blocking visits, disparaging the other parent to the child, or falsely accusing the other parent—may lose custody or have supervised visitation imposed. Courts view this behavior as harmful to the child.

**Documentation:** If you are experiencing interference or alienation, document it: emails, text messages, missed parenting time, witnesses. This evidence is crucial if you need to return to court.

**Attorney for the Child (AFC):** In very high-conflict cases, the court may appoint an Attorney for the Child—an independent advocate whose only client is the child. The AFC investigates the family situation, interviews both parents, observes the child, and reports to the court on the child's best interests. This neutral voice often breaks deadlock.

**Pieter Weinrieb's AFC Experience:** Attorney Weinrieb has served on the Attorney for the Child panel for the Western District, bringing deep experience in high-conflict family dynamics and understanding how courts view parental behavior in custody disputes.

## 7. — Relocation

One of the thorniest custody issues: what if a custodial parent wants to move far away (e.g., across the country for a job or family)? Can they take the child?

**The New York Standard (Tropea Factors):** In *Tropea v. Tropea*, New York established that a custodial parent may relocate with the child if relocation is in the child's best interest. Courts weigh:

- The reason for relocation (better job, closer family, lower cost of living, etc.).
- The impact on the child's relationship with the other parent.
- The feasibility of maintaining contact (distance, cost, frequency of visits).
- The quality of life improvement for the child.
- The non-custodial parent's ability to remain involved.

**Notice Requirements:** A parent planning to relocate must provide notice to the other parent. If relocation is contested, the court holds a hearing and decides based on the Tropea factors. Distance matters: moving to the next town is easier to justify than moving across the country.

## 8. — Frequently Asked Questions

### **Do children have to testify in court?**

Not necessarily. Most judges prefer to spare children the trauma of testifying against a parent. Instead, judges may conduct an in-camera interview with the child (judge and child alone, off the record) to learn the child's perspective. Testimony is a



last resort.

**At what age can a child choose which parent to live with?**

There is no magic age. New York law says a child's preference is one factor courts consider, typically more weight given to older/mature children. A preteen's preference is noted but not determinative. A teenager's preference (14+) carries significant weight if the child can articulate reasons. However, courts do not let a child 'choose' simply to avoid a parent they dislike.

**Does it matter if one parent caused the divorce?**

In custody (unlike spousal support), 'fault' for the divorce is largely irrelevant. A parent who committed infidelity or acted badly in the marriage is not automatically worse for the child. The focus is on current parenting capacity, not marital misconduct.

**What if the custodial parent violates the custody order?**

That is contempt of court. You can file a motion to enforce the order and ask the court to impose sanctions (fines, forced make-up time, or even attorney fees). Repeated violations can result in a modification of custody in the violating parent's disfavor.

**Can a non-custodial parent prevent the custodial parent from relocating?**

In some cases, yes. If relocation would significantly harm the child's relationship with the non-custodial parent, a court may deny relocation or condition it on expanded parenting time or virtual contact.

**How is child support calculated?**

New York uses an income shares model. Guideline support is calculated on the combined parental income up to a cap (~\$193,000). The formula is roughly 17–25% of combined income for one child (higher percentages for more children). The percentage is adjusted based on custody arrangements. Courts can deviate from guidelines if equity requires.

**Can parents agree to custody and skip court?**

Yes. If both parents agree on all custody terms, they can prepare a Stipulation and Agreement (settlement), submit it to the court, and have a judge approve it. This avoids trial and is much faster and cheaper.

**What if one parent has a substance abuse or mental health issue?**

Courts take these issues very seriously. If a parent has active addiction or untreated mental illness that impairs parenting, the court may impose supervised parenting time, require treatment as a condition of unsupervised custody, or restrict custody until the parent demonstrates recovery. Safety is paramount.

**Ready to speak with an attorney?**

(716) 759-4529 [pgw@weinrieblaw.com](mailto:pgw@weinrieblaw.com)

[www.weinrieblaw.com](http://www.weinrieblaw.com)

*This guide is provided for general informational purposes only and does not constitute legal advice or create an attorney-client relationship. Laws change; verify current rules with a licensed New York attorney. © 2026 Weinrieb Law PLLC. All rights reserved.*