

Child Custody Factors

Custody, ultimately, must be decided "in accordance with the best interest of the child."¹ Illinois law spells out eight specific factors² that a court must consider in making any custody determination.

First, the court is to consider the wishes of the parents. Where parents agree (whether it be sole custody or joint custody) the court must consider those wishes. The court is not bound by a custody agreement between the parents, however, if it seems contrary to the best interests of the child.³

The Second Factor the court must consider is the wishes to the child, which has its own topic on our website. The remaining factors to be considered by the court are addressed below:

The Third Factor the court must consider is the interaction and interrelationship of the child with his parents, siblings, and others. The court must consider the connection a child has with each parent.

Additionally, the court must give weight to the impact of separating siblings. Judges have been admonished by the appellate courts to try to keep siblings together.⁴ On the other hand, some situations arise where it may be in the best interest of the children to separate siblings.⁵ Such split custody arrangements are the exception, of course.

The Fourth Factor the court is to consider is the child's adjustment to his home, school and community. In other words, the court should consider the benefit to the child of maintaining the child's status quo. Judges like to try to keep kids in their homes so as to maintain some semblance of continuity. They get to stay in their neighborhood, go to the same school, keep their same friends, etc. Where the parents separate early in a case, judges tend to leave the kids with the parent who stays in the marital residence for the sake of maintaining the children's status quo.

The Fifth Factor the court must consider is the mental and physical health of parents and children. This factor arises in virtually every case. Even if both parents and the children are physically healthy, the mental health of both parents is put in play in any custody case. Mental health treatment received by a parent prior to or during the case is usually not admissible in court. Both parents, however, are usually subjected to a battery of interviews and psychiatric tests in any custody case.

The Sixth and Seventh Factors for the court to consider in making a custody award are whether there is whether a potential custodial parent has been guilty of, or threatened, any physical violence toward the child or the other parent and whether any abuse is currently ongoing.

Whether or not committed in the presence of the children, violence may be enough to undermine a parent's custodial aspirations. Illinois law specifically requires courts to consider the threat of violence against the children or others,⁶ and to also consider any history of violence or abuse against the children or any other person.⁷

It is for this reason that many unscrupulous divorce attorneys are quick to try to obtain an Emergency Order of Protection on flimsy facts. An attempt to obtain an Order of Protection can backfire: it may look to the court like you're trying too hard to destroy the bond between the children and the other parent. That can hurt you later on in the case. Be wary of any attorney who claims to advise all his clients to seek an Emergency Order of Protection. Any attorney who uses the procedure routinely will probably do you-and your children-a great disservice. There is no bright line test that will determine which facts will produce a legitimate Order of Protection and which circumstances will only result in a denial of the request. Only experience can guide you. Be sure you talk with one of our seasoned and informed attorneys to weigh the benefits and the risks of seeking an Order of Protection.

If your spouse has obtained an Emergency Order of Protection against you, don't delay. You need to attack the order as soon as possible. Failing to do so will establish a status quo: you're out of the house, your spouse is the primary care-giver for the children, the bills are being paid, everyone is getting along without a further threat of violence, and you're out of the picture. For a judge, your case is almost over. To preserve any realistic chance for a claim of custody or joint custody, you must attack that status quo as soon as possible to reinsert yourself in the children's lives. Call our attorneys immediately to learn how you should proceed to best protect your custodial claims.

The Eighth Factor for the court to consider is the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child

In many contested custody cases one parent will deliberately sabotage efforts at cooperation and communication so as to be able to later argue that the parents aren't really capable of co-parenting. Such a finding by the court would probably preclude an award of joint custody.⁸ The irony here is that the non-cooperating parent thinks belligerence will help his or her claim for sole custody. In reality, all other things being equal, a refusal to communicate, cooperate, and compromise usually undercuts a claim for sole custody.

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.