



WALTERS GILBREATH PLLC
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The Ultimate Guide to Child Custody in Texas



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The Ultimate Guide to Child Custody in Texas



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Custody cases are the most contentious and emotionally driven types of family law cases. Unlike divorces, custody battles involve the most important thing to you: your children.

To say that you care or are concerned about what happens to your children is an understatement. 'Scary' and 'nerve-wrecking' are words that we often hear our clients' use to describe how they're feeling about their custody case.

What if you and your ex cannot come to an agreement regarding your children and become entangled in a custody battle over them? Let's imagine that you both want what many people call "custody", but cannot agree on which parent the children should live with.

Fortunately, we're here for you. Our lawyers, with decades worth of combined experience in custody battles, have compiled this guide to help you through this process and get the results you want.

1. Be the Primary Caretaker of the Children

How does a Texas Court decide which parent is awarded custody? The answer to that question is a complicated one because the Court can and will consider multiple factors in order to decide what is in the best interest of the child.

The largest factor in the case is often caretaking.

Now what do we mean by this? We aren't saying that you're obligated to do every single thing for your child alone and we aren't implying that you should spend every waking moment with them.

Instead, the Court will weigh both parents' involvement with the child.

Which parent usually helps the child with their schoolwork? Who takes and picks them up from school? What about doctor's appointments?

"One of the most important factors that the Court will consider is how much the parent that is requesting custody cares for the child on a daily basis."

- Jake Gilbreath

Which parent established and maintains the children's routine? Which parent can identify and treat a child's illness? How long have you been the primary caretaker for the child?

Did one parent start spending more time with the kids because of an ongoing custody battle or has their involvement been consistent throughout the child's life? It's also important to know that ***the Court will look at the quality of time spent with the child***, not just the quantity of time, as well as both parents' ability to put the child's needs before their own.

2. Keep Your Kids in School

This one seems like a given, but you'd be surprised at how many parents fall short with this rule. In our experience, we have witnessed clients (and their spouses) withdraw their children out of school because of the litigation.

Some parents may believe that if they take their children out of school, it will give them an advantage with their children, even if not with the Court. The truth is they couldn't be more wrong.

Permanent Withdrawal from School

One common mistake that parents make is to suddenly withdraw their children from the school for which they have been enrolled (prior to filing the lawsuit) in order to "hide" or alienate the children from the other parent.

In cases like these, the parent will even go as far as to

relocate and enroll the children in a different school without disclosing that they have done so (or the location of the new school) to the other parent.

Typically, a standing order or injunction is in place in pending litigation which prohibits parents from withdrawing the children from school.

Violations to standing orders and injunctions can result in serious consequences in Court and be detrimental to the overall outcome of custody litigation for the violating parent.

In instances where no order or injunction prohibits a litigant from withdrawing the children, it is still typically ill advised to disrupt the children's routine. Such acts may be frowned upon by the Court if there is not a valid reason for doing so.

Certain instances may warrant a change in the children's school, for example a child has special needs that the school can't accommodate and the child's treatment team or developmental pediatrician is recommending another school or program.

However, even in this instance, there are legal mechanisms to effectuate this change through the Court system so it's imperative that you consult with an attorney before making such a serious decision that could potentially impact your case.



Constant Unexcused Absences or Tardies

Another commonly made mistake is when a parent allows the children to accumulate unexcused absences (for whatever reason) or multiple tardies in school.

Since Texas has mandatory attendance laws, parents and their children can face serious consequences for failure to adhere to these laws.

More importantly, in regards to custody litigation, the Court could look at this situation and determine that the parent is not prioritizing the child's education or consider whether there are other parenting issues occurring in that home that prohibit the family from waking up and getting the kids to school on time.

We can all agree that good attendance is important for many reasons and the Court

will likely feel the same way.

Another reason that your child should have good attendance is so that he or she can get the maximum benefit out of their education. Moreover, numerous studies show a strong link between academic performance and consistent attendance. As with so many of the parenting issues discussed herein, Courts want to see that parents are consistent in providing their children with a dependable routine.



Absences Excused by Texas Law

Although we hope that our children are able to go to school every single day that instruction is given, the reality is that this is not always possible.

Sometimes, you have no choice, but to keep the child out of school on occasion for his or her own best interests.

School districts are required to excuse a student's absence for reasons listed in state law, such as to:

- Observe a religious holiday
- Attend a required court appearance
- Serve as an election clerk
- Attend a healthcare appointment

The Texas Education Code describes these reasons in greater detail and lists additional statutorily excused absences.

Each school district has its own criteria for determining other absences that may be considered an excused absence.

Generally, an absence may qualify as excused in cases of:

- Personal illness (usually a doctor's note is required)
- Death of an immediate family member (we have seen some schools request copies of the obituary for said person)
- Medical treatment



The 90% Rule

In addition to Texas' mandatory attendance law, most school districts are required to enforce the 90% rule, which states that students in grades K-12 must attend class for at least 90% of the time it is offered in order to receive credit or a final grade.

This rule applies to all absences, including excused absences. If the student doesn't meet this requirement, an attendance committee or board may grant the student credit or a final grade, depending on the circumstances. The Texas Public School Student Handbook explains guidelines on absences, tardies, and making up missed schoolwork.

Becoming familiar with your school's policies will help you manage your child's attendance and ensure that he or she avoids too many missed school days.

3. Provide a Safe Environment

This tip is pretty simple. The Court will want to feel confident that the children are safe while in your custody.

If your new boyfriend has been convicted of a sexual crime or if your new girlfriend has been convicted for multiple DWIs, the Court will likely order or enjoin the new paramour from having access to the child.

That also means that if you have a history of alcohol or drug abuse, you will need to demonstrate to the Court that you are on a constant and consistent path to recovery.



Consider this example:

Ashley and John are getting divorced in Texas. Though both have filed their petitions for divorce, the case is still open/ongoing. About a month after John filed for divorce Ashley moved out of their marital home (with their two small children) against John's wishes and into the home of her new boyfriend, Keith.

Keith has a history of illegal drug use, though he claims to have "been clean" for the last six months. In addition to that, Keith has a felony conviction for the intent to sell illegal drugs on his criminal record from five years ago. When Ashley and John have a Temporary Orders hearing, Ashley's attorney requests that the children be allowed to live primarily with Ashley (i.e. that she have the exclusive right to designate the residence of the children).

In response to this request, John's attorney from Walters Gilbreath, PLLC, offered evidence of Ashley's new boyfriend's questionable past as well as evidence that Ashley already introduced the children to Keith.

His attorney argued that it would be in the best interests of the children if John were designated as the parent with the exclusive right to designate the primary residence of the children.

The Court agreed and Ashley was given a Standard Possession Order and the Court ordered that the children be returned to John's custody. The children would live with him while this case was still pending.

If you've read [our article on Temporary Orders](#), you may know that this substantially increases the chance that this possession schedule and custody determination will be made a permanent one when the divorce is finalized.

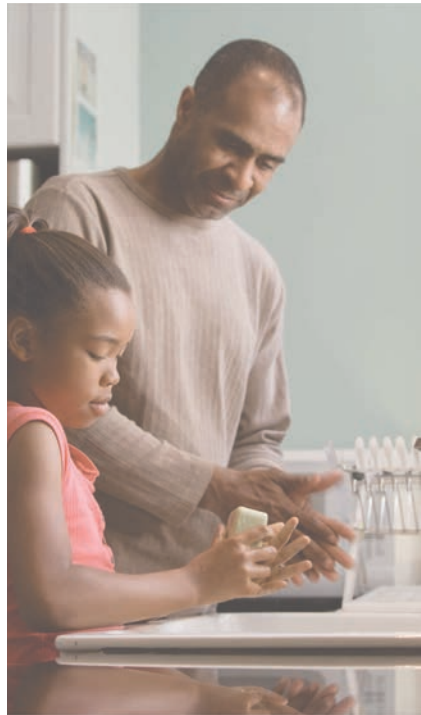
4. Be Stable

If you want to win your custody battle, you'll likely need to show the Court that you and your household are stable. Courts will attempt to cause as little disruption to the children during litigation and this will help put the Court's mind at ease.

These are all some factors the court will consider:

- Do you switch jobs frequently or do you have a consistent employment history?
- What about where you live?
- Do you move homes frequently?
- If you have any type of mental and/or physical illness or disability, are you following your treating medical and/or mental health providers recommendations?
- If you are on medication prescribed by your doctor, do you take it as prescribed?

The Court will look at answers to these questions when determining how financially, emotionally, and/or mentally stable you are when considering what are in the child's best interests.



5. Don't Alienate the Other Parent

Parental alienation occurs when one parent isolates and attempts to inflict negative feelings about the other parent on their child.

In a way this takes us back to Number 2 since some parents switch the child's school in an effort to hide the child from the other parent. However, there are other ways, as we are sure that you can imagine, that parents alienate the other parent from their children.

Here are some common signs of parental alienation though there are many more:

- Withdrawing the child from school without informing the other parent
- Speaking ill about the other parent (and/or their family) to the child or in earshot of the child
- Refusing to disclose the location/whereabouts of the child without good cause

- Taking away the child's phone in an effort to prevent them from communicating with the other parent
- Attempting to or coaching the child to be against the other parent or to live with you

Courts are motivated to facilitate a positive relationship with both parents and look to each parent to encourage and support a positive relationship between the child and other parent. Therefore, if you interfere with the goals of the Court by engaging in this behavior, it could negatively and severely impact your case the next time that you are in front of a Judge (or jury). With this in mind, if you have a Court order regarding which parent should have possession and access to the child (and when), you should follow the Order to the letter, that is unless you and the other parent both agree to deviate from that schedule.

This issue is a very serious one and deserves its own guide. So we wrote one. **[You can download it here.](#)**

6. Keep Your Children Out of Litigation (If Possible)

This tip is so important that we decided to dissect and explore this topic in more detail. Again, Courts do not like for children to have involvement in the litigation and conflict between you and your ex. Instead, the Court will seek the route that has as little disruption (and confusion) to them as possible.

Involving your children in your case will likely cause them stress and confusion as they will typically attempt to "pick a parent" or at least take a parent's side over the other.

This can be emotionally traumatic for any child, especially if both parents are discussing the litigation where the child can hear.

You also need to be cautious to protect your children from feelings that you are "fighting" with your ex or that your opinion is a bad one of him/her both in your words and your actions.

Now besides potential trauma for your child, the courts will also look unfavorably on you if you are found to be involving your child in litigation.

The reasons for this can be somewhat confusing, so to help illustrate this point, we've created an example on the next page.

"We have witnessed clients intentionally involve the children (subject to the suit) in the case by directly speaking with them about the case just as we have had clients merely speak about the case where the child can hear them. Both are frowned upon by the Court."

- Jake Gilbreath

Consider this example:

Ashley has possession of the children for the weekend. She has John's name saved as, "Cheater" in her phone. When John calls Ashley while she is in her car, this name appears on the display in her car, which is visible to all passengers.

The children, both in the backseat are able to read the name displayed and have now started calling their dad a "cheater". Additionally, when Ashley is in the car with the children, she does not refrain from engaging in a swearing and a bashing match with John.



This would be an example of indirectly involving the children in the litigation. The Court would definitely fault Ashley for this behavior and it could hurt her chances of winning her custody case.

An exception to this rule is if your child is at least 12 years old and will speak with the judge in chambers regarding certain issues in the case. This "meeting" must be requested, approved, and scheduled by the Court ahead of time.

Many times in these cases, neither party's attorney will be allowed to be present. If you would like for your child (12 years old or older) to speak with the Judge in chambers, you should speak with your attorney about the advantages and disadvantages of doing so.

7. Pay Your Child Support on Time

A major tip is to pay your support on time. That means that if you have been ordered to pay child support or even spousal maintenance/support, you should pay it in full and on time.

This will demonstrate to the Court that you are compliant with Court orders as well as your ability to financially provide for your children and/or spouse.

In addition to that, you could suffer serious consequences and setbacks in your case if you fail to do so.

The other party can also sue you for the failure to pay the support as ordered and seek monetary relief (the past due amount plus interest) and/or seek jail time in an action called an Enforcement. With this in mind, you should be sure to pay the support by the due date in the manner ordered.

This means that child support payments should be paid directly to the Texas Child Support Disbursement Unit.

Do not pay the other spouse directly or you will likely risk not receiving credit for the support paid. We'd argue that a vast majority of orders for child support will even have a provision which states that you will not receive credit for any "informal" payments to the other party. Spousal support payments are typically made directly to that spouse, but you should consult with your attorney prior to making your first payment about how to submit the payments.



8. Be a Positive Co-Parent

We know, this tip is one that can be one of the most difficult. In fact, many relationships end due to the constant disagreement regarding how to raise their children. So, we understand that sometimes it is a struggle for the parties to get along.

However, we would say that Courts tend to be impressed or at least more complacent when they see that the parents can work together when making decisions regarding the children.

Now, we want to be clear: this does not mean that you have to give in to everything that the other party wants. Instead, we are suggesting that it is better to compromise on as many issues as possible (without the necessity of Court intervention). With this in mind, you should refrain from fighting with your ex as much as possible regarding the children.



If you believe that your ex is the one that is contentious, it may be best to refrain from communicating with them regarding the children and to instead have your attorney communicate with theirs (if they have one).

Either way, if you and the other party are having trouble co-parenting you should consult with your attorney regarding the best way to approach this issue.

This will help ensure that the Court gets the right impression: that you are trying to co-parent (even if the other parent does not want to cooperate). This will go a long way with the Court when deciding how much possession and access to the children each parent should have.

9. Act in the Best Interest of the Child at All Times

This one seems like a given, but still it doesn't come naturally to everyone.

During a custody battle, you can be sure that emotions are high. That makes sense because the stakes are so high. With that said, we have witnessed clients act in their own best interests without acting in the best interest of the child.

Let's go back to our Parental Alienation example. If a parent is keeping the child away from the other parent merely because he or she is upset with their ex, this is not in the best interest of the child.

Another common example is the mere failure to act when the parent should. An example of this could be if the child is obviously sick and a reasonable person would take the child to the doctor, but that parent fails to do so. A good "rule of thumb" would be to think to yourself, is this what is best for my child", prior to making any major decisions that could impact your case (or your children).



10. Show the Court Your Best Self

This tip is equally important. You have to remember: the Court won't know you, your spouse, or even your children, but rather sees a snapshot of the family dynamic.

At first, the Court will perceive who the parties are based on what is written in black and white on your pleadings. The Court won't form a real opinion about who you are as a person, and most importantly as a parent, until the Court "meets" you.



The Court will familiarize itself with the allegations of the case, pending issues between the parties, as well as observe the actions of each party. The Court will consider evidence regarding the parties' character and stability (as mentioned above).

With this in mind, we strive to paint the best and most authentic picture of who our client is as a person and a parent to the Court in order to support our clients' requests for possession and access, custody and conservatorship, support and the many other decisions a Court needs to make when children are involved.

Helpful Links

- [Modifying Child Custody Orders](#)
- [Understanding the Uniform Child Custody Jurisdiction Enforcement Act Part 1](#)
- [Understanding the Uniform Child Custody Jurisdiction Enforcement Act Part 2](#)
- [Conflicting Custody Orders: Which Court Will Decide](#)
- [Do Stepparents Have Visitation Rights in Texas](#)
- [Grandparents' Rights in Texas](#)
- [How a Recent DWI or DUI Will Affect Your Child Custody Case](#)
- [Child Custody and Changing Schools](#)
- [Understanding the Impact of Child Abuse](#)



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