



## RESIDENTIAL RESPONSIBILITY, AKA CUSTODY

The legal custody process in North Dakota is called residential responsibility. A parent can file a custody case whether or not they are married to each other.

Residential responsibility deals with how much parenting time each parent may have with their child if the parents do not live together. Either the parents can agree on how much time each parent gets with the child by what is known as a parenting plan, or the court decides, based on the “best interests of the child”.

### *Best Interest Factors*

Best interest of the child includes many factors, which include:

- Love and emotional ties between parent and child
- Ability to assure the child gets adequate food, clothing, shelter, medical care, and a safe environment
- Ability to meet child’s developmental needs
- Sufficiency and stability of home environment, impact of extended family, length of time child has been in home, and desirability of maintaining child in home and community
- Moral fitness, at it impacts the child
- Mental and physical health, as it impacts the child
- Home and school record and effect of change
- If the child of sufficient maturity for sound judgment, child’s preference (there is not set age)
- Evidence of domestic violence
- Interaction of child with any person who resides or frequents the home
- Making false allegations of harm to child by other parent
- Any other relevant factors that the court should consider

### [North Dakota Century Code Section 14-09-06.2](#)

### *Domestic Violence Factor For Determining Custody*

Domestic violence can affect residential responsibility. If domestic violence has occurred and there is one incident that resulted in serious bodily injury or a dangerous weapon was used, the court may presume the parent who committed domestic violence should not be granted custody of the child. The court may also presume the parent who committed domestic violence should not be granted custody of the child if there is a pattern of domestic violence within a reasonable time of the proceeding. North Dakota includes physical harm and the infliction of fear of physical harm when defining domestic violence.

A parent who is presumed to not be granted custody under the above circumstances can show with clear and convincing evidence that it is in the best interest of the child to have custody. The judge will take all of this evidence into consideration and the judge has the choice to decide how to assign residential responsibility.

### *Parenting Investigators*

When the court has special concern about the child's future or when parties in divorce or separation cases where residential responsibility is contested, the court may appoint a Parenting Investigator. This investigator is an advocate for the child's best interest in residential responsibility, child support, and parenting time issues.

[North Dakota Century Code Section 14-09-06.4](#)

### *Parenting Plans*

A parenting plan is a detailed schedule that is either done by the parents or, if parents cannot agree, is created and ordered by the court.

North Dakota law requires parents to have a parenting plan in regards to custody and visitation. This parenting plan is created to be in the best interest of the child and should be as detailed as possible. The parenting plan is meant to help establish parental roles, set up parenting time, decrease conflict, and keep the parents from having to have a court involved in the future.

An example of a parenting plan is [here](#) under Paragraphs 4 through 18.

### *Third Party Custody*

Generally, the parents of a child are given priority in residential responsibility. However, when both parents have harmed the child or the parents have left the child, a court may consider giving residential responsibility to a third party. The child's closest adult family member is given priority in these situations.

### *Termination of Parental Rights*

Typically a parent cannot terminate the parental rights of another parent.

However, there are certain circumstances where a parents rights may be terminated by the court. The court may terminate a parents rights if the child was abandoned, aggravated circumstances are present, or the child is deprived. Aggravated circumstances include torture, continued abuse or sexual abuse. Parental rights may also be terminated when a parent fails to make efforts to get treatment for addiction or mental illness. A child is deprived when the child is neglected when a child is not properly taken care of by the parent and this will most likely continue.

In child deprivation cases a parent accused may be allowed to get counsel if that parent is low income. Though a court may not terminate the parents it rights the court may order the parents to do others things such as treatment or have a child go live with other relatives.

[North Dakota Century Code Section 27-20-02](#)

### *Grandparent Rights – Custody and/or Visitation*

In North Dakota, grandparent do not have rights to custody or visitation.

However, a grandparent may be granted guardianship of a child if depravation is present. A child is deprived when the child is neglected when a child is not properly taken care of by the parent and this will most likely continue.

[North Dakota Century Code Section 27-20-30](#)

### *Moving Children Out of State*

A parent with primary residential responsibility for a child may not move the child out of state unless a court order says or with written consent of the other parent. This means the court will have to say that the parent can move out of the state with the child or the other parent says in writing it is okay.

However, a court order is not required if the other parent has had no contact with the child for a period of a year or the other parent moved to another state and lives more than fifty miles from the child.

[North Dakota Century Code Section 14-09-07](#)