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Factsheet, Series: 2019

Family Law Issues in Agriculture: Child Custody and Visitation

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National Agricultural Library

This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

Divorcing farm and ranch families with children invariably have to consider custody and visitation issues. This Fact Sheet first discuss custody and then visitation.

Importantly, the law varies from state to state on which factors the court considers when determining what is in the best interest of the children. Divorcing farm families should consult a lawyer in his or her jurisdiction to understand the list of statutory or factors established by case law. Such factors typically include the (a) wishes of the child (depending on age); (b) wishes of the parents; (c) historic caretaking and decision-making; (d) ability for a parent to facilitate a relationship with the other parent; (e) any history of abuse; (f) distance between the parents; (g) relationship between the parents, etc.

1. Custody

Importantly, there is a growing trend for states to move away from the term “custody” because the term sparks so much emotion. States such as Illinois have moved to calling it “allocation of parental responsibilities.” Regardless of the terminology, there are two types of custody: (1) residence; and (2) decision-making.

As for the primary residence of the children, if the children live with one parent 51% or more of the time, then that parent has primary residence (sometimes referred to as sole physical custody or primary residential custody). If the parents have a pure 50/50 arrangement, then there is no primary residence, and the parents have joint physical custody.

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With decision-making, this refers to major decisions, not day-to-day decisions such as brushing hair, doing homework, bedtime routine, etc. In most states, the applicable major decision applies to four spheres of influence: (1) non-emergency health; (2) religion; (3) education; and (4) extra-curricular activities. There are several choices with decision making and it is not related to physical custody. In other words, the parents can have joint legal custody even though only one parent has the primary residence with the children.

If the parents agree on joint decision making, then there are several options:

- a) Pure joint decision making;
- b) After good-faith consultation, then the custodial parent has the final say or tie-breaking vote;
- c) After good-faith consultation, the parents divide who has the tie-breaking vote 50/50 (e.g., the Mother has final decision making on health or religion while the Father has final decision making on education and extra-curricular
- d) After good-faith consultation, if the parents are still at an impasse, they agree to go to mediation (or possibly add a tie-break step if mediation is futile); and
- e) After good faith consultation, then a third party decides (e.g., a parent coordinator, general doctor for health decisions, school counselor for educational decisions, pastor for religious decisions).

Which option is chosen depends on the relationship between the parties and what is in the best interest of the children.

2. Parenting Time

Some parents prefer to have a loose schedule, which is referred to as liberal parenting time; however, most families prefer a dependable schedule. Parenting time is best to be broken up into (a) basic schedule; (b) school break schedule; (c) summer break schedule; and (d) holiday parenting time.

A) Basic Schedule

This is when school is in session and while there are no major holidays or school breaks. It is the “default schedule.” It is suggested that parents think about this schedule over a few-week time period. Here is an example blank worksheet:

Week	M	T	W	R	F	S	S
W1							
W2							
W3							
W4							

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There are unlimited combinations with the basic schedule. Parents should “reality test” potential schedules by thinking about the age of the children, distance between the parents, school logistics, extra-curricular activities (such as 4-H including 4-H animals and sports), church, etc.

For those parents considering joint parenting time, here are some options for 50/50 plans:

2/2/3 (Rotation)

	M	T	W	R	F	S	S
Week 1	Dad	Dad	Mom	Mom	Dad	Dad	Dad
Week 2	Mom	Mom	Dad	Dad	Mom	Mom	Mom
Week 3	Dad	Dad	Mom	Mom	Dad	Dad	Dad
Week 4	Mom	Mom	Dad	Dad	Mom	Mom	Mom

2/2/3 Schedule (Same Parent with M-T/W-R)

	M	T	W	R	F	S	S
Week 1	Dad ²	Dad	Mom	Mom	Dad	Dad	Dad
Week 2	Dad	Dad	Mom	Mom	Mom	Mom	Mom
Week 3	Dad	Dad	Mom	Mom	Dad	Dad	Dad
Week 4	Dad	Dad	Mom	Mom	Mom	Mom	Mom

2/3/2 Schedule – Alternating Wednesday’s and Weekends (Same Parent M-T/R-F)

	M	T	W	R	F	S	S
Week 1	Mom	Mom	Dad	Dad	Dad	Mom	Mom
Week 2	Mom	Mom	Mom	Dad	Dad	Dad	Dad
Week 3	Mom	Mom	Dad	Dad	Dad	Mom	Mom
Week 4	Mom	Mom	Mom	Dad	Dad	Dad	Dad

3/4 Schedule (Same Parent M-T-W/F-S-S with Alternating Thursdays)

² Mom and Dad are used here for illustrative purposes only. The family may have two Moms or two Dads.

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	M	T	W	R	F	S	S
Week 1	Mom	Mom	Mom	Dad	Dad	Dad	Dad
Week 2	Mom	Mom	Mom	Mom	Dad	Dad	Dad
Week 3	Mom	Mom	Mom	Dad	Dad	Dad	Dad
Week 4	Mom	Mom	Mom	Mom	Dad	Dad	Dad

3/4 Schedule (7 days in a row/split weeks)

	M	T	W	R	F	S	S
Week 1	Mom	Mom	Mom	Dad	Dad	Dad	Dad
Week 2	Dad	Dad	Dad	Mom	Mom	Mom	Mom
Week 3	Mom	Mom	Mom	Dad	Dad	Dad	Dad
Week 4	Dad	Dad	Dad	Mom	Mom	Mom	Mom

Alternating Weekends Plus 2 Midweek

	M	T	W	R	F	S	S
Week 1	Mom	Dad	Dad	Mom	Dad	Dad	Dad
Week 2	Mom	Dad	Dad	Mom	Mom	Mom	Mom
Week 3	Mom	Dad	Dad	Mom	Dad	Dad	Dad
Week 4	Mom	Dad	Dad	Mom	Mom	Mom	Mom

4/4 Schedule

	M	T	W	R	F	S	S
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Week 1	Dad	Dad	Dad	Dad	Mom	Mom	Mom
Week 2	Mom	Dad	Dad	Dad	Dad	Mom	Mom
Week 3	Mom	Mom	Dad	Dad	Dad	Dad	Mom
Week 4	Mom	Mom	Mom	Dad	Dad	Dad	Dad

7/7 Schedule

	M	T	W	R	F	S	S
Week 1	Dad						
Week 2	Mom						
Week 3	Dad						
Week 4	Mom						

B) School Break Schedule

Schools vary on their school breaks. Typically, there is a four-day weekend for Thanksgiving Break, a few weeks for Christmas/Winter break, and Spring Break (which is normally a long-week). Schools in some geographic regions like New York add a fourth school break in February on President's Day week (called the Mid-Winter Break). Schools that are year-long have their own unique calendar. Parents need to evaluate this in accordance with their children's calendar.

Here is an example worksheet with school breaks:

School Break	Description	Odd-Numbered Years	Even-Numbered Years
Thanksgiving	4-day weekend		
Winter/Christmas			
Mid-Winter Recess (President's Day) (some schools)			
Spring Break			

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C) Summer Break Schedule

Farm and ranch families involved in 4-H, FFA, livestock breed organizations or other agriculture organizations require special attention for the summer schedule. Some parents decide to have a certain number of consecutive or nonconsecutive weeks' vacation in the summer while other parents may agree on alternating weeks or on following the basic school schedule. Agriculture parents should consider the summer routine of the children, especially if it applies to 4-H and other agriculture activities.

D) Holiday Parenting Time

Finally, parents should think through holiday parenting time. Again, this schedule will supersede all the other schedules. The first step is for parents to think about what holidays they have observed historically. Typically, parents will alternate those holidays every other year, but some holidays may always be assigned to one parent (e.g., Mother's Day, Father's Day)

Here is an example worksheet on holidays:

Traditional Holidays

<u>Holiday</u>	<u>Odd Years</u>	<u>Even Years</u>
New Year's Eve		
New Year's Day		
Martin Luther King Jr. Day		
Easter		
Mother's Day		
Memorial Day		
Father's Day		
Independence Day		
Labor Day		
Columbus Day		
Halloween		

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Veteran's Day		
Thanksgiving		
Christmas Eve		
Christmas		

Additional Holidays (including religious holidays, birthdays)

Holiday	Odd Years	Even Years
Child's Birthday		

Conclusion

This Fact Sheet just hit the tip of the iceberg on custody and visitation issues. Ancillary issues include, but are not limited to: information sharing; relocation provisions; telephone/video conference access; travel (including itinerary requirements); co-parenting applications (e.g., Our Family Wizard, Talking Parents); or using a shared calendar like Google Calendar, and Alternative Dispute Resolution (such as mediation). Grandparent or sibling visitation (if half-siblings) may also be discussed.

For more information:

Cari B. Rincker et al., ONWARD AND UPWARD: GUIDE FOR GETTING THROUGH NEW YORK DIVORCE AND FAMILY LAW ISSUES (2015) available at <https://www.amazon.com/Onward-Upward-Getting-Through-Divorce/dp/0692556540>

Cari B. Rincker, "I'm Talking About the Big D and I Don't Mean Dallas" (May 2019), available at

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<https://www.slideshare.net/rinckerlaw/im-talking-about-the-big-d-family-law-issues-in-agriculture>

American Academy of Matrimonial Lawyers, Online Book store, available at
<https://aaml.org/store/ListProducts.aspx?catid=704530>

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