

Considering the Best Interests of the Child in NC Custody Cases

This guide is for informational purposes. It is not intended as legal advice and is not a substitute for seeking assistance from a qualified attorney. What documents, terms and provisions you need will depend on your individual circumstances. It is always best to consult an attorney for guidance.

In child custody cases, North Carolina courts must always prioritize “best interests” of the child/children.

IMPORTANT: Child custody cases are complex legal proceedings that may be difficult to pursue without assistance from an attorney. If you are interested in seeking Child Custody, please contact an attorney or a legal aid provider if you are unable to afford private counsel.

Factors That May Be Considered by the Court When Making Custody Decisions

The court may consider any and all factors relevant to the wellbeing of the child in determining what custody arrangement is in the child’s best interests, including:

- Whether one parent/party is the primary caregiver
- Childcare and/or school arrangements
- Access to medical, dental, and other necessary care
- Child’s access to family and support systems
- Substance abuse or mental health concerns of the parents/parties
- Any other factor that has an impact on the wellbeing of the child/children

In each custody case, the court will consider and prioritize the specific issues and needs of the parents/parties and child/children involved.

The law requires the Court to consider domestic violence between the parents/parties and the safety of the parents/parties and the child/children.

Issues solely between the parents/parties, such as adultery and financial disputes, will only be considered by the Court in a custody case if they impact the child/children.

Do NC Courts automatically presume that joint/shared custody between the parents is in the best interest of the child/children?

- **NO**, the law states that joint custody “shall be considered upon the request of either parent,” but the Court has the authority to order whatever arrangement it believes is best for the child, whether joint custody, sole custody with one parent/party, etc.
- There is **NOT** any presumption (starting point for the court) that custody with one parent is better for the child than another. The idea that young children are inherently better off with their mother, sometimes called the “Tender Years Doctrine,” is not the law in NC.

Does the Court consider the wishes of the child at a certain age?

- **NO**, there is NOT a specific age at which a child can choose which parent to live with. The wishes of the child may be considered by the Court as a factor, along with all other relevant factors, depending on the age and maturity of the child. The older a child is, the more likely their opinion will be strongly considered by the Court.

Testimony by Children in a Custody Case

Testifying in Court actions can be highly traumatic and harmful to the child/children, and participants in any Custody action should seriously consider this before attempting to have a child testify. Courts are hesitant to allow children, especially younger children, to be witnesses in court. If a child must testify, a judge may be able to speak privately with the child if the parents/parties agree.

Custody Awards to a Non-Parent

Any non-parent seeking Custody against the parent(s) of a child/children must meet additional, higher standards before the Court can award them Custody over the parent(s) of the child/children.