

# **Indiana Legal Services, Inc**

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## **What if I think the non-custodial parent's visits are harmful to my child?**

### **I am the custodial parent. Can I stop the non-custodial parent from visiting our child?**

Usually, the non-custodial parent is entitled to reasonable visitation. The court may limit or stop visitation rights **ONLY IF** the court has a hearing and finds that visitation might:

- hurt the child's physical health; or
- significantly impair the child's emotional development.

The parenting guidelines recognize that overnight visitation may not be in the best interest of some very young children. In those cases, visitation should take place three times a week for two hours each time for children up to four months old, and gradually increase as the child gets older.

### **What will happen if I stop allowing visitation?**

If there is a court order for visitation and you stop visitation without the judge's approval, the non-custodial parent may take you to court for contempt or to get an injunction. You may have to pay the non-custodial parent's attorney fees. Under some circumstances, the non-custodial parent may even be able to get custody.

### **When can I ask a judge to limit visitation?**

Visitation can be limited at the:

- Provisional hearing in divorce;
- Final hearing in divorce;
- Paternity hearing; or
- Hearing on a petition to modify visitation or custody.

It is also possible to limit visitation in an Order of Protection hearing.

### **What evidence do I need to limit visitation?**

You will need to prove that visitation will:

- hurt the child's physical health; or

- significantly impair the child's emotional development.

You will need enough evidence to outweigh the basic belief that visitation by the non-custodial parent is in the child's best interests. Examples of evidence that might convince a judge to limit visitation include:

- Witnesses who have seen the non-custodial parent, or a member of the non-custodial parent's household, abuse the child.
- Witnesses who have seen the non-custodial parent use illegal drugs or abuse alcohol in the presence of the child.
- Medical testimony and records that show injuries or sexual abuse to the child caused by the non-custodial parent or a member of the non-custodial parent's household.
- Records of criminal convictions of the non-custodial parent.
- Testimony from the child's mental health provider, teacher, behavior therapist, or doctor about the effect of visits on the child's emotional health.

Your evidence must be about behavior or problems that have occurred since the last time the Court decided how much visitation the non-custodial parent should have. It is important to tell the court your concerns about visitation as soon as possible. You will not be able to testify about violence or other problems during your marriage, if you try to limit visitation after the divorce is final.

### **How can visitation be limited?**

Depending upon the facts, the court can grant:

- No visitation.
- Supervised visitation.
- Reduced visitation.
- Visitation only if the non-custodial parent finishes treatment or classes to address addictions, anger management, mental illness, or other problems that might make visits harmful to the child.
- Visitation only if the non-custodial parent agrees not to use alcohol or drugs during the time the child is visiting.

### **If the court grants supervised or no visitation, what happens if the custodial parent dies?**

When the court orders supervised or no visitation, the court should also appoint someone to serve as temporary custodian if the custodial parent dies. This person would be able to take care of the children right after their parent's death. The temporary custodian would then have to go to court to become the children's legal guardian.

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