

HelpYourself

## **Who will get the children if we go to court?**

For married couples with children, the question of “Who will get the children?” is often the most important one they’ll face, even in divorces where financial issues are hard to resolve and create a lot of conflict. For many parents, their kids come first, and the prospect of being separated from them even part of the time is one of the most jarring realities of divorce.

If a litigated divorce goes to trial, the answer to the question is most likely the same as if it gets resolved before it goes to trial or through an alternative means of resolution. More often than not, both parents will get the children, under a parenting schedule known in the Texas courts as the *standard possession order*.

In the standard possession order, one parent will be designated the *possessory conservator* and one will be designated the *managing conservator*. During the school year, the *possessory conservator* (let’s say, for example, the father) gets the children on Thursday nights and on the first, third, and fifth weekends on the month, starting Friday after school and extending to Sunday at 6 p.m. Outside of those times, the children stay with the mother (the managing conservator in this example).

The father, in this scenario, also gets 30 days of parenting time in the summer, with the dates determined through a request procedure detailed in the orders (or, if that’s not followed, through a default series of days spelled out in the orders).

Regardless of which parent is the possessory conservator, the father and mother get Father’s Day Weekend and Mother’s Day Weekend respectively under the standard possessory orders.

Judges will typically want to do what's in the best interest of the children, and in most cases, having each parent involved in the children's lives will be seen as being in the best interest of the children. It's therefore unlikely that a judge will award a parent sole custody of the children.

There are exceptions, of course. If a parent has a history of domestic violence or sexual abuse, the other parent can attempt to win rights to be sole conservator of the children. Those cases obviously require a great deal of preparation, but if there is a danger present to children, it's definitely worth taking that to the judge.

Some parents want an alternative parenting plan, seeking a different schedule than what standard possession offers. Some find, for instance, that a week on-week off parenting plan gives the parents and children more stability. For those parents who want to do this, it's best to work this out prior to entering court. It's unlikely that a judge awarding parenting time to both parents will deviate from the standard possession orders on his or her own.