

TEXAS FAMILY LAW PRESUMPTIONS

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In the state of Texas, family law has more presumptions than any other area of law. A “presumption” is a fact that the court will assume is true unless rebuttal evidence is presented. Many of the family law presumptions concern the conservatorship, visitation and financial support of children. While the following is a general guide to Texas Family Law in these areas, please remember that there are exceptions to many provisions of law and that laws do change, so it is important to consult with a family law practitioner regarding your specific situation.

Presumption of Joint Managing Conservatorship

The court will presume that the parents being appointed Joint Managing Conservators (“JMC”) of the child is in the child’s best interest. JMC does not presuppose that the parents will have equal time with the child. Generally, a JMC scheme gives both parents the same rights and duties with regard to the child except that one parent will have the exclusive right to designate the child’s primary residence (usually referred to as “Primary Joint Managing Conservator”) and one parent (usually the Primary Joint Managing Conservator) will have the exclusive right to receive child support.

Sole Managing Conservatorship

If there is credible evidence presented to the court that a parent has committed family violence, that parent cannot be a Joint Managing Conservator. In these circumstances, the court will appoint one parent as the Sole Managing Conservator and the other parent as a Possessory Conservator. There are other facts that may cause a court to appoint Sole/Possessory Conservators.

For more detail of rights and duties of parents see:
<http://www.lanwt.org/txaccess/VISRIGHTS.asp>

Presumption of Standard Visitation

Texas has a standard visitation scheme which is presumed to be in the best interest of the child of divorcing or separated parents. Standard Visitation is the first, third, and fifth weekends of the month throughout the year and every Thursday evening during the school term. The method to determine the first weekend of any month is that the preceding Friday must be in the same month as the first weekend. The parent awarded standard visitation can elect to have Expanded Standard Visitation. Expanded Standard visitation, generally, means that the parent can pick up the child when school is dismissed and/or return the child to school when school starts for that parent’s visitation periods. If there is a holiday which extends a weekend either by the Friday before or the Monday after during the weekend visitation of a parent, that holiday time is added to that parent’s visitation.

For Christmas and Thanksgiving the parent who has the child for the Thanksgiving school break, will have the child from December 28 until the child's school resumes after the Christmas break. This schedule will alternate each year, with the parent who does not have the child for Thanksgiving break exercising possession of the child from the time school is dismissed for the Christmas break until December 28. If the child is not old enough to attend school, the dates of the school district where the child primarily resides will dictate the dates for holiday visitation. Mother's Day and Father's Day will allow the mother or father to see the child on their respective weekends if they are not in possession of the child.

In summer, the non-primary conservator may have 30 days of visitation. If that parent notifies the primary parent by April 1, that parent can specify which days will compose that parent's summer visitation to be exercised in not more than two periods of time of not less than seven consecutive days (starting 7 days after school is dismissed and ending 7 days before school resumes). If the non-primary parent does not designate his/her 30 days of summer visitation by April 1, then his/her summer visitation will be from July 1 to July 31. Both parents have the right to "grab back" one summer weekend during which the other parent would normally have possession of the child, to block time for a family vacation or to see the child during the other parent's extended visitation.

The standard visitation scheme is presumed in the best interest of a child from the time a child reaches three years of age. For a child under the age of three years the court must provide a customized visitation scheme.

For more information see: <http://www.lanwt.org/txaccess/VISRIGTHS.asp> and <http://www.lanwt.org/txaccess/CHILDVISATATION.asp>

Presumption of Guideline Child Support

Texas law provides that guideline child support is presumed in the best interest of the child. The guideline child support (sometimes referred to as "standard child support") in Texas is a percentage of a parent's net income as established by the Texas Attorney General's Tax Charts. From a parent's gross income, the charts remove withholding for one dependant and the FICA and Medicare costs to reach the net monthly resources of a parent. Then a percentage of the net monthly resources is multiplied by: 20% for one child; 25% for two children; 30% for three children; 35% for four children; 40% for five children; and for six or more children not less than the amount for 5 children to establish standard child support. The parent paying child support normally provides the health insurance for the child and the monthly cost for this insurance is subtracted from that parent's net monthly resources for the purposes of establishing child support. See also: <http://www.lanwt.org/txaccess/health.asp>

The percentage amounts above can be discounted slightly if the parent has other children to support. Guideline child support only considers the first \$7,500 of a parent's net resources for establishing child support (in other words, \$1500 per month is the most child support that can be paid under guideline child support for one child). Child support is payable until a child reaches 18 years of age or completes high school which every is later. All child support ordered in Texas should be paid to the Texas Attorney General's Office. See

http://www.oag.state.tx.us/cs/publications_cs.shtml and
<http://www.lanwt.org/txaccess/CHILDSUPPORT.asp> for more information.

It is possible for the Court to order more than guideline child support. However, the financial needs of the child must be presented to the court and one parent will not be ordered to pay 100% of the financial needs of a child.

Helpful Websites:

Going to Court in a family law matter:

http://www.oag.state.tx.us/media/videos/play.php?image=understanding_court_process&id=334

Custody Questions:

<http://www.lanwt.org/txaccess/childcustudy.asp>

Retroactive child support:

<http://www.lanwt.org/txaccess/BACKCHILDSUPPORT.ASP>

Complaints re: child support collection by Texas Attorney General:

<http://www.lanwt.org/txaccess/OAG.asp>

For a listing of Texas attorneys who are board certified in Texas family law:

<http://www.tafls.org/> and <http://www.sbotfam.org/links.html>

Texas Attorney Tax Charts and how to use:

<http://www.sbotfam.org/links.html>