



Parenting Plans, Visitation & COVID-19 in Washington State

Introduction

Courts in each county are reacting to the epidemic in different ways and adopting their own precautionary measures. To find out what is happening in your local court, go to the court's website. Look at its emergency order. You can also contact the clerk of your county's court.

Many courts are only hearing family law motions and cases that involve emergencies. Otherwise, courts are continuing (postponing) matters or deciding matters **based upon the pleadings**. This means the court makes its decisions based solely on what you and the other party filed with the court.

I am concerned about a visit right now. What can I do?

First, read your parenting plan carefully. It may

- Give one parent the power to cancel or change visits.
- Say what to do when a child or parent is sick.

If your parenting plan does not say anything about this, you could let the other parent know your concerns. See if they would agree to a temporary change.

Think about how to talk to them about your mutual concerns and your family situations. Is your child or someone in one of your homes at high risk? Children may be more at risk than originally thought. Follow the latest CDC guidance and your healthcare provider's advice about any potentially high-risk considerations.

Discuss how your co-parent can feel connected to your children while they cannot see each other. You can reach agreement about your parenting plan without violating it. Some options include guaranteeing Skype Calls, creatively exercising residential time remotely, and make-up time when the pandemic is over.

Your co-parent may want other reassurances from you if they are not going to be able to see your children for an unknown amount of time. Are you willing to send them daily information about whether your child has a fever? How will you decide when it is safe enough to re-start visitation?

Everyone is on edge right now. Think about what you can do to help your co-parent feel confident in your children's health, especially if they are agreeing to less or no in-person time.

- If you and the other parent cannot agree, and the disagreement constitutes an emergency, you may need to go to court.
- If the disagreement does **not** constitute an emergency, look at the dispute resolution section of your parenting plan. It should say if you go to court or can use a mediator, arbitrator, or other third party for help solving disagreements.

❖ **This advice assumes you and the children have not been the victim of domestic violence by the other parent.** If you do not feel safe talking to the other parent, don't try it now!

We cannot agree. We cannot go to court. What do we do?

This is hard right now. If you keep a child from a visit, you risk being found in contempt.

Washington state courts are only hearing emergency cases through April 24, 2020. At this time, there is no official definition of what an "emergency case" is.

- **If there is actual risk to your child's physical safety** because of an underlying condition, you can probably go to court and ask for an emergency order.
- **If members of the household are at high risk**, it's unclear if this would be an emergency. You should weigh the pros and cons of trying to go to court. The court might refuse to hear your motion if it does not believe it is an emergency.
- **If you are just concerned about your child's health if they are in multiple households**, without more, it is unclear what might be a good excuse to not follow the parenting plan. Statements from the Governor's office suggest that the State intends for most parenting plans to continue as before. Read more at <https://bit.ly/3aGj5k1>.

We have supervised visits. What if the supervisor cannot oversee visits?

Depending on why there is supervised visitation, you can make agreements to have another person supervise, if available. In King County, you can ask the substitute supervisor to sign an Oath of Supervisor so they understand their responsibilities. It is available at <http://www.familylawcasa.org/wp-content/uploads/2017/09/Oath-of-Supervisor-Sample.pdf>.

If the parenting plan requires professional supervision because of fear of physical or sexual abuse to the child, **do not have just anyone supervise**. In this situation, you do not have to agree to any other supervisor.

If you cannot find a supervisor, or the child's safety would be at risk with anyone other than the court-ordered supervisor, do not let in-person visits happen. In this situation, you can try to file a motion that there is an emergency need for an order about visitation. The court might refuse to hear your motion if it does not believe it is an emergency.

What can one parent do when the other parent won't let them exercise their residential time during COVID-19?

When one parent fails to follow a parenting plan, the other can usually ask the court to hold that parent in contempt. Then the court can try to remedy (fix) the contempt. This often means the one parent gets make-up time with the child.

At this time, a parent can still file a contempt motion for failure to allow visitation during the COVID-19 crisis. The court will only schedule a hearing on a motion for contempt if the court considers contempt for failure to follow a parenting plan an emergency. If you have reason to believe the child is in physical danger with the other parent, it could be.

In any event, the court will only find a parent was in contempt if it finds the parent's failure to follow the parenting plan was knowing and willful. This may be hard to prove, given the massive disruption the COVID-19 crisis has caused.

Can a parent be arrested or charged with a crime for not allowing a visit or not returning the child to the other parent?

It depends. Washington State calls it "custodial interference," a felony, when one parent interferes with another's legal right to physical custody, including visits, of a child. This crime is typically only charged in serious cases. It is a defense to this

crime if the parent keeping the child did so to protect the child from imminent harm and tried to notify the other parent.

What if a parent refuses to exercise their residential time because of COVID-19?

You cannot force a parent to see their child. A court would probably not call this an emergency. The court has no power to force a parent to exercise their residential time.

Do I have a right to know if the other parent or someone in their household has COVID-19?

Yes. Parents have an obligation to inform each other if there is a risk the child could be exposed to someone who has tested positive.

Even if one parent has sole decision-making about health care for the child, all parents are responsible for the health care decisions regarding their child while the child is in their care. Knowing if a child has been exposed to COVID-19 is an important factor in making health care decisions about the child.

How does the Governor's Stay at Home order impact my Parenting Plan?

Follow your parenting plan as best as possible. This includes exchanging the children with the other parent. The Governor's office says families can proceed as normal when it comes to logistics and parenting plans.

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