

# CHILD CUSTODY: MYTHS VS. FACTS



WHAT  
EVERY PARENT  
NEEDS TO  
KNOW



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## **MYTH: Mothers and Non-Working Parents Get Special Preferences in Custody Cases.**

**FACT:** Gender, in particular, is forbidden to be a factor in a custody decision per California Family Code 3040, however, the state of California does require a variety of factors to be considered. No one factor is the final determinant, though, and co-parenting is always preferred. When it comes to factors like which parent works, there's a varying amount of influence that comes into play, always based on the conditions that are best for the child.



For instance, a very young child may spend more time with a parent that doesn't work in order to ensure they receive regular attention.

## **MYTH: If a Certain Parent Has Custody Before a Court Order, They'll Keep Custody.**

**FACT:** While the status quo is a factor considered by the court, it isn't the only one. In fact, California Family Code section 3046 explicitly

outlines factors that cannot be held against non-custodial parents, especially if the non-custodial parent has proven they have not abandoned the child and has in fact made reasonable efforts to visit the child. Furthermore, the custodial parent does not have the right to interfere with a non-custodial parent's attempts to maintain regular contact with the child.

## **MYTH: Teens Can Determine Which Parent They'll Live With.**

**FACT:** While California Family Code 3042 does permit teens to offer input on where they'd prefer to live and why, this is hardly the final word on the matter. The law only requires the court to hear what the child's preferences are before making a determination based on that and other, more important factors to serve the best interests of the child.



## **MYTH: Joint Custody Means No Child Support; Otherwise Only One Parent Is Responsible for Child Support.**

**FACT:** Both parents are obligated to financially support the child, but what that looks like is determined by a number of factors.

Depending on how legal and physical custody is balanced (i.e., the type of joint custody) in conjunction with income, one parent may need to send money to the other. However, if both parents make the same amount of money and spend equal amounts of time with the child, there may not need to be child support payments.

## **MYTH: If I Pay Child Support, I Have the Right to Know How It's Spent on the Children.**

**FACT:** The custodial parent has a number of responsibilities to ensure the health and success of the child, from healthcare, insurance, and education to the possessions that improve quality of life. Furthermore, the custodial parent is



expected to care for themselves. That means **the parent paying support doesn't have the option to decide what does or does not get paid for out of the child support payments, nor do they have the right to know whether or not the money is spent solely on the child.**

## **MYTH: Delinquent Child Support Does Not Need to Be Paid if the Child Is Older than 18 Years.**

**FACT:** Unless otherwise addressed by the court, delinquent child support must be paid in full, no matter the age of the child. Just because the child is 19 does not remove the non-custodial parent's responsibility to have been helping support the child financially. Be aware that if you need to file a motion to receive delinquent child support, it must be filed within three years of the date the payment was due but went unpaid.



## **MYTH: Parental Alienation Is Impossible to Prove, So It Shouldn't Be Attempted.**

**FACT:** Because false allegations of abuse can have serious consequences in court, including the final custody decision, some parents believe it's better to avoid attempting to prove parental alienation. **On the surface, it may seem impossible to prove that it's happening, however, it's important — both for the parent and the child — that this form of abuse is documented and ultimately addressed.**



### **Sources:**

<http://farzadlaw.com/california-child-custody/gender-alienation-false-allegations-contempt/>

<http://www.familiaabogado.com/Divorce/Myths-Vs-Facts-Of-Child-Support.shtml>

<http://www.divorcenet.com/resources/child-support-enforcement-california.html>