

DOMESTIC VIOLENCE AND CHILD CUSTODY

If you are involved in a family law case involving children and there has been domestic violence, here is important information about a law that affects you.

What is "child custody"?

There are two types.

- *Physical custody:* Whom the child lives with
- *Legal custody:* Who makes important decisions regarding the child's health care, education, and welfare

What is "domestic violence"?

It means to hit, kick, scare, throw things, pull hair, push, follow, harass, sexually assault, or threaten to do any of these things. It also includes other actions that make someone afraid of being hurt. Domestic violence can be spoken, written, or physical.

How does the judge decide if there is domestic violence in my case?

The judge will treat your case as a domestic violence case if, in the last 5 years,

- A parent was convicted of domestic violence against the other parent *OR*
- Any court has decided that one parent committed domestic violence against the other parent or the children

Otherwise, the judge will decide based on all the evidence in your case. The judge cannot decide based only on the conclusions or recommendations of CCR Counselor or a child custody evaluator.

What if the judge decides there is domestic violence in my case?

If a court decides there is domestic violence (now or in the past 5 years) against a parent or the children, the judge must follow special rules to decide custody of the children.

Usually, the judge cannot give custody to the person who committed domestic violence. But the judge can give that person visitation.

Are there exceptions?

Yes. The judge can give custody to the person who committed the domestic violence. To do so, the judge must consider whether:

- It is best for the child
- The person has:
 - Completed a 52-week batterer's program --Not committed any other domestic violence
 - The person has obeyed court orders to:
 - Complete an alcohol or drug abuse program or a parenting class
 - Follow all terms of probation or parole or a protective or restraining order

This law applies to any person seeking custody, not only a parent. To read the law, see California Family Code section 3044. Other laws also apply.

Need Help?

For more information, contact:

**Alameda County Bar Association
Lawyer Referral Services
Phone: (510) 302-2222**

**Superior Court of California
County of Alameda
Self Help Centers
Oakland, Hayward, Fremont, Pleasanton
Phone: (510) 272-1393
www.alameda.courts.ca.gov**

**California Courts Online Self-Help Center
www.courts.ca.gov/selfhelp**

