

JURK

Juridisk rådgivning for kvinner

Parents and children

www.jurk.no

FOREWORD

This brochure is published by Legal Advice for Women (JURK).
JURK is an independent legal organisation run by law students.
JURK provides free legal assistance to those who identify as women.

Reservation is made in case of changes in regulations after publication.

Thank you to all our helpful colleagues in JURK.

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Oslo, March 2023

You can find more information about JURK on our webpage:
www.jurk.no

You can call us on 22 84 29 50 or visit our office at Skippergata 23,
0154 Oslo.

You can always register a new case online by visiting our webpage
www.jurk.no → “English website” → “Send us your case”

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1.0 INTRODUCTION

1.1 The aim of this brochure

Our aim in publishing this brochure is to give a short overview of common legal questions regarding Norwegian children law.

2.0 PARENTAL RESPONSIBILITY (FORELDREANSVAR)

2.1 What does parental responsibility mean?

Barnelova (The Children Act) § 30

Those who have parental responsibility have a duty to care for and show consideration for the child. In Norwegian this is called “foreldreansvar”.

Those who have parental responsibility have the right to make decisions on behalf of the child.

Parental responsibility also entails:

- a right and a duty to take part in important personal decisions regarding the child, such as which school the child should attend, the choice of name, medical treatment, adoption, membership in a religious community and the issuance of a passport;
- a duty to provide the child with care and consideration;
- an obligation to give the child a satisfactory

upbringing and support;

- to ensure that the child receives an education according to their abilities;
- to prevent that the child is subjected to violence. Both physical and psychological violence towards a child is prohibited. It is also prohibited to scare the child, for instance through threats of violence, or by using violence as part of the upbringing.

Parental responsibility shall be exercised based on the child's best interests and needs.

2.2 When do parents have joint parental responsibility?

Barnelova § 34 and § 35

Parents who are or have been **married**, have joint parental responsibility for their mutual child.

Parents who are **cohabiting**, also have joint parental responsibility for their mutual child, if the child was born January 1st 2006 at the earliest. If the child was born before this date, the mother has sole parental responsibility. This applies even if the parents lived together, unless they come to a different agreement.

Parents who **are neither married nor living together**, have joint parental responsibility for their mutual child, if the child was born January 1st 2020 at the earliest, unless the parents come to a different agreement. In these cases, however, the mother or father may report that the mother shall have sole parental responsibility. This has to be reported to Folkeregisteret (the National Population Register) within one year after the paternity was established. The father can take the case to court if he disagrees. If

the child was born before January 1st 2020, and the parents are neither married nor living together, the mother automatically receives sole parental responsibility.

If the parents divorce or move apart

Joint parental responsibility continues even if the parents divorce or move apart. This applies even if one of the parents no longer lives permanently with the child. The parents can agree that only one of them shall have parental responsibility. If they do not agree on the matter, the parents can take the case to court.

If the parents have an agreement concerning parental responsibility, and this is violated, there may be imposed a fine, similarly to a violation of an agreement about access. You can read more about this in section 4.5.

Registration of agreement

If the parents decide to change who has parental responsibility, they have to register the agreement at Folkeregisteret (the National Population Register) for it to be valid.

3.0 CUSTODY (FAST BOSTED)

3.1 What is custody?

Barnelova § 36

If the parents move apart, the parents have to agree where the child shall live permanently. “Custody” is called “fast bosted” in Norwegian.

Sole and joint custody

Where the child lives permanently, the child has “fast bosted”. The parents may agree that the child shall live permanently either with one of them (sole custody) or with both of them (joint custody). If they cannot agree, the parents can take the case to court.

If the parents have an agreement concerning custody, and this is violated, there may be imposed a fine, similarly to a violation of an agreement about access. You can read more about this in section 4.5.

“Daily care” The parent who has custody, also has what is often called the "daily care" for the child.

Right of access A parent without custody, still has a right of access. Custody does not necessarily say anything about how much time the child gets to spend with the parents. The parents themselves must agree. You can read more about the right of access in the next chapter.

The term “custody” does not only relate to where the child lives, it also determines what the parents can decide.

3.2 What does custody entail?

Barnelova § 37 Even if both parents have parental responsibility, a parent with sole custody can make some decisions alone.

Sole custody The parent with sole custody can make decisions concerning important aspects of the child’s care, such as which day-care the child should attend, where in Norway the child should live and other major decisions concerning everyday life.

Joint custody If the parents have joint custody, they must make these decisions together.

4.0 RIGHT OF ACCESS (SAMVÆR)

4.1 What is right of access?

Barnelova § 42 If the parents move apart, the child has a right to spend time with both parents (access). This applies even if the parents disagree or there is a conflict between the parents.

Access The parent without custody has a right of access. In Norwegian this is called “samvær”. The parent who does not live with the child is entitled to access regardless of whether the parent has parental responsibility or not.

The child is entitled to care and consideration from the parent who is spending time with the child during access. During this time the parent with access may make decisions concerning the care of the child, such as decisions regarding bedtime, what the child eats and who the child spends time with.

The general rule is that the parent who has custody cannot refuse to give the other parent access. The parents have a mutual responsibility for making sure that access is carried out.

One cannot force a parent to spend time with the child if this parent does not want to. This would not be in the best interests of the child. However, the extent of access can affect the amount of child support.

The aim of access

These rules aim to secure that a child does not lose contact with one of the parents after their break-up. It is also a way to secure the parents’ contact with their child. The child has the right to have contact with both parents if the parents also want contact. The problems between the parents should affect the child as little as possible.

4.2 Terms of access

The parents can enter into an agreement on terms of

access. A court may also impose such terms. Circumstances that may imply that there should be restrictions on the right of access are, among others, severe conflicts between parents, that the access appears distressing for the child, risk of sexual assault, risk of kidnapping and personal traits of the parents who demands access – such as frightening or violent behavior or substance abuse.

There can be made requirements for the parent with access, such as drug control, treatment for substance abuse, treatment for mental health conditions and anger management classes.

If treatment with an aim to change behavior is set as a term of access, the court must assess whether such a change in behavior has taken place before the parent is entitled to access without conditions again. It is not sufficient that the treatment has been carried out.

4.3 The extent of access

The parents decide together how much access each of them shall have. The parents should agree on how many times a week or a month the child should be with the parent who does not have custody. The agreement should also include the length of the visits. The parents decide how detailed their agreement should be.

Considerations Important considerations when making an agreement:

- That the child should have the best overall contact with both parents
- The child's age
- The child's attachment to their community

- The distance between the parents
- The child's opinion
- The child's best interests

“Ordinary right of access” Barnelova (the Children Act) has a suggestion regarding the extent of access. This is described as the “ordinary right of access” (vanlig samværsrett). The “ordinary right of access” is

- one afternoon a week with an overnight stay;
- every other weekend;
- a total of three weeks during the summer break,
- every other autumn break, Christmas holiday, winter break and Easter holiday.

Barnelova § 48 The “ordinary right of access” may not work for every family. The parents can agree on a different solution, as long as they have the child's best interest in mind.

4.4 The implementation of access

Access agreement

The parents can make an agreement on how the access should be carried out. For instance, they can agree on who should deliver or pick up the child. If the parents do not agree, the main rule is that the parent who has the right of access should pick up and deliver the child. Both parents must contribute so that the access can take place.

The child must be heard before a decision is made. The child's opinion must be emphasized based on its age and maturity.

Travel expenses The child’s travel expenses related to access are to be shared proportionally between the parents according to their income, unless they agree to a different division. Only the parents’ necessary travel expenses should be divided. These should be kept as low as possible. If special reasons exist, the court may determine a different division of the travel expenses. It is usually not considered a “special reason” if one of the parents move.

Other expenses The parent who has right of access should cover all other expenses during access, like food and cinema tickets.

4.5 When the agreement on access is not respected

Legally binding When the parents have made an agreement on access, it is legally binding. This means that the agreement must be respected.

If access is prevented If the parent who has right of access does not get access, for example because the parent with sole custody is not cooperating, the court may decide that this parent has to pay a fine. Tingretten (The District Court) may determine a fine for each time the right of access is not respected.

Fine In order for a fine to be imposed, there must be a basis of enforcement (tvangsgrunnlag). This could be a judgment, a court settlement, or a decision by statsforvalteren (the County Governor) by force.

Exception: risk of harm There will be no fine if fulfilment of access is impossible. Access is considered “impossible” when there is a risk of the child being subjected to violence or otherwise treated in a way that harm or endanger the child’s mental or physical health. If the child’s

safety is in danger, we recommend contacting your closest women's shelter (krisesenter) or the police for guidance.

The child's opinion

The child shall be heard before a decision about a fine is made by the District Court. The child's opinion shall be considered according to his or her age and maturity.

Statens innkrevingsentral (The State Collection Agency) collects the fine. The money goes to the state, not to the other parent.

4.6 Loss of right of access and supervised access

Barnelova § 43

When access is not in the best interests of the child, the court can deny access or determine access with special conditions. The parents can also agree on this. However, the child's opinion must be taken into consideration when taking such decisions, see section 5.2.

Access with supervision

One special condition that can be imposed by the court or agreed upon by both parents, is access with supervision. This means that the parent cannot spend time with the child alone. Another person always has to be present during access.

Access with supervision is mainly used in cases where the child has been subjected to abuse, or where there is a risk of abuse. The term "abuse" refers to psychological or physical violence, or sexual abuse. The term also includes having to witness violence, which may cause the child harm and lead to the child being afraid of the parent granted access. The rule also protects the child against experiencing a parent affected by substances during access.

The court may order access with supervision in two forms: protected supervision and supported supervision.

Protected supervision

Protected supervision means that the parent is not allowed to meet the child alone. Protected supervision is limited to 16 hours per year.

Supported supervision

Supported supervision is used when it is not necessary with supervision during the entire access. The supervisor could be present for the first few hours of access. Supported supervision is limited to 32 hours per year.

Considerations

If you are considering taking a case about denial of access or supervision to court, some elements are considered relevant. These are:

- the way the parents have behaved towards each other and the child;
- the degree of violence;
- the severity of how access affects the child and the parent who has custody;
- the violent parent's ability to acknowledge his or her behavior and the need for change, as well as a genuine willingness to make a change;
- if the parent who has custody has suffered serious psychological or emotional injuries as a result of the violence, and both the parent and the child need time to recover from the trauma.

If you wish to take a case like this to court, we recommend that you contact an attorney.

5.0 IMPORTANT CONSIDERATIONS IN AGREEMENT MAKING

In the following, you will find some important factors parents have to consider when making an agreement regarding parental responsibility, custody and access.

5.1 The best interests of the child

Barnelova § 48 All agreements regarding the child should be based on the best interests of the child. This includes decisions on parental responsibility, international relocation, custody and access.

The parents are not supposed to consider their own interests or negative emotions related to the other parent.

5.2 The child's right of co-determination

Barnelova § 31 As the child becomes able to form its own point of view on matters that concern them, the parents should listen to the child's opinion before making a decision concerning the child. The child's opinion shall be considered according to his or her age and maturity.

Age and maturity

A child who has reached the age of seven, and younger children who are able to form their own point of view, must be provided with information and opportunity to express their opinion. This has to happen before decisions concerning personal matters affecting the child. When the child has reached the age of twelve, the child's opinion shall carry *significant* weight. An important factor is the child's maturity, and the matter of the case.

The child is not obliged to express their opinion. If the child does not want to make a choice regarding whom to live with, that is fine. The child can still share their

views, without being forced to make a choice.

The child is to take part in the decision-making, but not to *make* the decision itself. There could be other factors to consider when making a decision or an agreement. It is up to the parents to consider all relevant factors when making a decision.

5.3 Requirements of the agreement

The agreement between the parents may be oral or in writing. However, JURK recommends making the agreement in written form. If the parents disagree about the content of the agreement later on, the written agreement could prove what was originally intended.

It is up to the parents to decide how detailed the agreement should be. It should contain who has parental responsibility, custody and the extent of access for both parents.

Agreements concerning parental responsibility must be notified to Folkeregisteret (the National Population Register) to be valid.

When the parents have made an agreement, it is binding. If the parents wish to change the original agreement, they are free to do so or make a new one. In that case, both parents have to agree. If they do not agree, they can take the case to court.

6.0 MEDIATION

There are familievernkontor (family counselling offices) in every county in Norway. Mediation at the family counselling office is free. The mediators are bound by confidentiality.

6.1 Who shall attend mediation?

Barnelova § 51 Mediation at the family counselling office is usually voluntary, but in some situations the parents are obliged to attend. These situations are:

- When a married couple wants a separation or divorce, and they have mutual children under the age of 16;
- When cohabitants want to move apart, and they have mutual children together under the age of 16;
- If the child is under the age of 16 and a parent wants to take a case to court regarding access, parental responsibility, custody or moving abroad with the child;
- If the parents do not agree on one of them moving with the child.

The parents shall attend mediation in person and at the same time.

Separate mediation

Under special circumstances, the mediator may permit that parents can attend the mediation separately. The mediator may also permit one or both parties to attend with a representative (lawyer, friend etc.)

There must be strong reasons why the parents should not attend at the same time. If your partner has subjected you to violence during the relationship, you can apply for a separate mediation.

Other circumstances that may justify separate mediation are where one of the parents is in prison or living at a secret address, or where there is an

imbalance of power.

Exception for serious illness A parent is not obligated to attend mediation if he or she has a valid reason. Serious illness is an example of a valid reason, and the mediator has to be informed of this. Usually, the illness has to be documented.

When a parent lives abroad If the parent who has not demanded mediation lives abroad, this parent is not required to attend. In such cases, the parent who demanded mediation can attend alone.

6.2 The purpose and process of mediation

Barnelova § 52 The purpose of the mediation is for the parents to reach a written agreement concerning parental responsibility, custody and access.

The agreement made at the family counselling office should be based on the child's best interests. The mediator is to make the parents aware of the most important financial consequences of the agreement. If the mediator does not say anything about the financial consequences, the parents can ask the mediator.

If the parents fail to reach an agreement after one hour of mediation, they shall be encouraged to continue mediation for up to three more hours. They may be offered mediation for an additional three hours, if the mediator thinks this will result in the parents reaching an agreement.

6.3 Mediation certificate

Barnelova § 54 When the parents have attended one hour of mediation with a mediator, they receive a mediation certificate. The parents do not have to come to an agreement. Spouses have to include the certificate when applying

for separation or divorce. If the parents want to take a case to court regarding the child, a valid mediation certificate is required.

The parent who attends the mediation gets a certificate, even if the other parent does not attend. The mediation certificate is valid for six months.

7.0 PARENTAL DISPUTE TO COURT

The main rule is that the parents have to agree on questions regarding the child, including parental responsibility, custody and access. Parents are usually best qualified to make decisions about what is in the child's best interest.

If the parents disagree on who should have parental responsibility, custody or access, either one of them may take a case to court. Cases regarding moving abroad with the child may be taken to court by a parent with parental responsibility, or by a parent who is claiming parental responsibility at the same time. The parents do not need to agree on taking a case to court. It is enough that one of them wants to do it.

Mediation certificate

A condition for taking a case to court when the child is below the age of 16, is that the parents as a general rule must present a valid mediation certificate.

The child's best interest

The court will make a decision based on what is in the child's best interests. Each case is assessed individually.

If you want to take a case regarding a parental dispute to court, you can contact a lawyer. You can find a list of lawyers in your local area on the webpage www.advokatenhjelperdeg.no. Choose "Barn og

foreldre”.

8.0 FREQUENT ISSUES

8.1 Travelling abroad with the child

**Barnelova §
41
Short trips**

A parent with sole or joint parental responsibility may bring or send the child on short trips abroad without consent from the other parent. If the parents have joint parental responsibility, a parent may bring the child on such short trips, without the other parent’s consent. According to Norwegian law, less than four weeks is considered a short trip.

**Access has to
be respected**

However, the parents still have to respect the access agreement. They cannot travel with the child while the other parent is supposed to have access, unless this parent agrees.

The parent without parental responsibility cannot travel abroad with the child, unless they have consent from the parent with parental responsibility or the court.

If it is uncertain whether the child will return to Norway, and the parents have joint parental responsibility, the court may prohibit the parent from travelling abroad with the child.

**A temporary
prohibition
against
leaving the
country**

If a parent fears that the child will not return to Norway, this parent should call the police. The police may impose a temporary prohibition against leaving the country until the case is handled by the court. A temporary prohibition against leaving the country, means that the police have decided that the child cannot leave the country. The prohibition is valid until a case is taken to court, and will be discontinued if the case is

not taken to court within a reasonable amount of time. A reasonable amount of time is considered to be within a week. The court will then decide whether the prohibition will continue, or be discontinued.

A parent should also call the police if they fear that the child will be or is about to be abducted. The court may impose a temporary prohibition against leaving the country in urgent cases.

8.2 Moving with the child

**Barnelova §
36 and § 37**

8.2.1 Moving within Norway

The parent who has sole custody can decide where in Norway the child shall live. The parent with sole custody does not need consent from the other parent to make this decision. It is not relevant whether the parents have joint parental responsibility or not. If the parents have joint custody, a parent wanting to move needs consent from the other parent.

If a parent has sole custody and wishes to move, she or he must notify the other parent if they have an access agreement. The parent who wants to move must notify the other parent three months before moving. This does not mean that the other parent can deny the parent and child from moving. The reason that the other parent must be notified is so the parents have the opportunity to create a new custody agreement. Even if one of the parents move, the other parent has a right to access. The access must accommodate the new travelling distance between the parents.

The duty to inform the other parent when planning to move, applies to both parents with custody and parents

with access.

If the parents do not agree on one of them moving with the child, the parent who wants to move with the child has to demand mediation.

8.2.2 Moving abroad

**Barnelova §
40**

If one of the parents has sole parental responsibility, the other parent cannot deny them moving abroad with the child. If the parents have joint parental responsibility, both of them must consent to the child moving out of Norway or staying abroad other than for short trips.

If the parents disagree on who shall have parental responsibility, custody or if the child shall move abroad, the child cannot move abroad until the matter has been settled.

8.3 Choice of law

Cases regarding parental responsibility, moving abroad with the child, custody and access can be brought before a Norwegian court if the child's "habitual residence" is in Norway. As a main rule, the "habitual residence" is where the child usually lives, and has the center of their life interests. A certain duration of stay will normally be required. The requirement for "habitual residence" is usually met if the child lives permanently in Norway and is not on a transit journey.

9.0 WHO YOU MAY CONTACT FOR MORE HELP

9.1 The County Governor

The County Governor (Statsforvalteren, tidligere fylkesmannen) can answer all questions regarding separation and divorce.

The County Governor has offices in every county in Norway.

On the webpage www.statsforvalteren.no you can find a list of all the County Governor offices. Here you can easily find your county and contact information to your local County Governor office.

9.2 Family counselling office

The family counselling office (familievernkontoret) can provide mediation for parents. You can find your local family counselling office on the webpage: <https://www.bufdir.no/familie/familievernkontorer/>.

9.3 Lawyer

If you need help from a lawyer, you can find a list of local lawyers on the webpage: www.advokatenhjelperdeg.no

9.4 The courts

If you want information about the legal proceedings of a parental dispute, you can find more information at the webpage: www.domstol.no.

You can also talk to a lawyer about this.

9.5 The police and passport office

If you have questions regarding passport, you can contact your local passport office. The passport office is part of the police. You can call the police on the phone number 02800. They will transfer you to your local passport office.

If you are having an emergency, and you need help immediately, you have to call the police on the phone number 112.

9.6 Legal aid organizations

If you have a legal issue, you can contact a legal aid organization.

JURK

JURK is an organization run by law students providing free legal advice in cases regarding Norwegian law. JURK helps anyone who identifies as women.

JURK gives advice and provides guidance in cases regarding parental responsibility, custody and access. In these cases, we usually provide you with information about the rules. JURK cannot take a case to court.

We accept new cases:

Monday: 12.00-15.00

Wednesday: 09.00-12.00 and 17.00-20.00

You can call us on our phone number 22 84 29 50 or visit us at Skippergata 23, Oslo.

You can always send us your case on our webpage: www.jurk.no → “Send us your case”.

JURK does not reply to legal inquiries sent to us by e-

mail.

JUSSHJELPA I NORD-NORGE

Jusshjelpa i Nord-Norge is an organization run by law students providing free legal advice. Jusshjelpa is located in Tromsø. You can register a new case by calling them or by going to their office.

They accept new cases:

Monday-Thursday: 10.00-14.00

Phone number: 77 64 45 59

Address: Terminalgata 38, 9019 Tromsø

You can always submit your case on their webpage:
www.jusshjelpa.no → “Send oss din sak”.

Jusshjelpa i Nord-Norge does not reply to legal inquiries sent by e-mail.

JURK



www.jurk.no

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