

Co-Parenting During the Pandemic

One of the thornier issues facing divorced parents during the COVID-19 pandemic is how to manage their co-parenting rights and obligations in light of legitimate health and safety concerns. In several recent high-profile cases in New Jersey and Florida, emergency room physicians have seen their custody rights temporarily suspended over concerns that they might expose their children to COVID-19. In each of the out-of-state cases, the emergency actions were initiated by ex-spouses seeking to modify custodial arrangements on the basis that the pandemic presented threats to the children's safety and welfare. New York is likely to see similar cases soon, and not just involving parents working on the front lines of the pandemic.

These cases raise important questions: should courts limit access to children whose parents are working on the front-line to combat the pandemic and thus facing greater risk of exposure than a parent who can stay at home? What safeguards could be implemented to protect a child's safety and welfare while still preserving access to an essential-employee parent? And separate and apart from the issues concerning parents on the front lines, how will the court system protect children from opportunistic parents who use the pandemic to deny access to children? Is there a way to avoid these heartbreaking decisions entirely?

While every case will present its own unique facts and circumstances best evaluated with the assistance of a family law attorney, parents should be cautious about making unilateral decisions to withhold access — particularly where there are court orders in place setting forth access schedules. But what should parents do to avoid emergency custody proceedings and ensure that children are appropriately protected during the pandemic?

First, parents should ensure they follow all executive and judicial orders. While Governor Cuomo's executive orders have not explicitly mentioned court-ordered custody and access, parents should understand that such court orders remain in effect notwithstanding the COVID-19 pandemic.

Second, when considering custody changes to protect a child's health, the parents should give weight not only to the child's physical health, but also to the child's emotional health. While special considerations may need to be made for children with pre-existing health conditions such as asthma or a compromised immune system, a sudden change in access to the other parent may add another layer of trauma and stress to a child who is already experiencing trauma and stress resulting from the massive disruptions caused by school closures and social distancing requirements.

Third, parents should make efforts to communicate cooperatively with the other parent to discuss changes in circumstances and how modifications to access may be helpful to address those circumstances. The solutions will vary from family to family but could include reducing pick-ups/drop-offs, agreeing to limit the children's interactions with others, arranging for make-up time for any lost time, or utilizing technology to help children maintain relationships with both parents.

If you have concerns regarding custodial access during the pandemic, we can assist you in creating a plan that prioritizes your child's best interest — and hopefully avoids the need for emergency custody proceedings.