

# Understanding Child Custody: When a Child Refuses to See a Parent

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By Sydney Halloran

[Family Law](#), [Child Custody](#), [Contempt](#)



*We explore the legal implications of a child's refusal to visit one parent, the impact on custody arrangements, and the recourse available to the estranged parent.*

Once a court has established [parenting time](#), the parties must adhere to it, like any court order. When a child refuses to visit one parent, it is challenging for all involved. Consider, for instance, a younger child who refuses to see one parent due to non-safety-related issues. Perhaps they are angry at the parent for leaving the marriage, uncomfortable with the parent's new home, or suffering from anxiety from another source. This scenario will differ if there are instances of abuse, mistreatment, or alienation by one parent. When the estranged parent

brings the issue to court, there may not be a clear solution.

## **A Child's Preference for One Parent Does not Automatically Render the Other Parent Unfit**

In general, a child's refusal to see one parent should not be determinative when setting or [modifying the current parenting plan](#) without evidence of abuse or mistreatment [When children get closer to reaching the age of majority](#), Judges are more likely to consider their

preference for parenting time. However, the law continues to say that a minor's preference is not determinative, despite children 16 years old and older having quasi-adult rights, such as driving a motor vehicle and the right to drop out of high school.

In the care and custody context, a recent case tells us that a child under the age of 18 has no authority to declare their parent unfit simply by refusing to engage with the parent. In [Guardianship of Raya](#) (2023), the court declined to find the mother unfit despite the child's preference for a different guardian. In that case, a 14-year-old nominated her maternal grandmother and uncle as guardians. The Probate & Family court granted the guardianship and found that the mother was unfit due to the child's unwillingness to be parented by the mother and the mother's related inability to remedy the breakdown of the relationship. This decision was reversed on appeal, with the Appeals Court finding that it is not enough to revoke the estranged parent's visitation rights on the grounds of parental unfitness simply by the child refusing to see the parent.

[Parental unfitness](#) in a [guardianship of a minor](#) case arises when a biological parent demonstrates grievous shortcomings that would put the child's welfare in danger, proven by clear and convincing evidence. Although the unfitness standards differ somewhat from the "best interest of the child" standard that controls in cases involving two biological parents, the reasoning in the Raya case remains relevant in the child custody context. Raya tells us that a child's preference for which parent they wish to spend their time is not determinative; rather, there must be additional evidence proving the unfitness of that parent. Likewise, in the context of child custody, a child's preference for one parent should not, without more, be conclusively determinative of parenting time.

## **What Recourse Does an Estranged Parent Have?**

In scenarios where a child's refusal to see one parent is the product of abuse, mistreatment, or changed circumstances, the estranged parent should present evidence of the misconduct at the time of the initial custody order or request a [modification](#).

In a situation where a child is refusing to see one parent without justification, there may be no basis for modifying the current parenting schedule. However, a [complaint for modification](#) may still be the appropriate vehicle for seeking other remedial action, such as family or reunification therapy. Conversely, suppose the issue is brought before a judge. In that case, the non-estranged parent may be found in [contempt of the child custody order](#) if the estranged parent can show clear and convincing evidence that the non-estranged parent disobeyed the parenting order.

Whether a non-estranged parent will be found in contempt for a child's refusal to comply with the parenting schedule is often a fact-specific inquiry that can turn on the individual steps the parent took to comply with the order. For example, if the non-estranged parent transports the child to the estranged parent's home, and the child then refuses to exit the first parent's vehicle, a Court may hold that the parent did all they could (short of physically forcing the child) to comply with the order. However, if the same non-estranged parent declines to prepare the child for parenting time or otherwise appears to have acceded to the child's demands to avoid the other parent, the risk of the first parent being found in contempt increases.

Our case law is notably thin on what constitutes contemptuous parental behavior when a child refuses to see the other parent. To the extent that Massachusetts appellate cases have addressed the issue, many seem to center on whether the parent had a genuine “[inability to comply](#)” with the order, and center on the parent’s historical non-compliance with parenting orders.

## **Not All Child Estrangement is the result of the Other Parent**

Although courts will carefully examine the actions of the non-estranged parent, it is important to recognize that not all parent-child estrangement is the product of [parental alienation](#). Particularly with older children and/or children whose parents have been divorced or separated for many years, estranged parents must examine their actions to determine if they did their part to preserve a positive relationship with their child. It can be common for adolescents and teenagers to take an unreasonably hostile view of one parent for reasons unrelated to the other parent’s influence.

## **Physically Forcing the Child to Attend Visitation May not be Realistic**

Over time, the line between [parental discipline and child abuse](#) has become increasingly murky in Massachusetts. Accordingly, it has become increasingly clear that it is not realistic for parents to physically force children (other than perhaps infants and toddlers) to visit with their estranged parent. Without the option of physical force, if a child refuses to see a parent, the non-estranged parent needs to encourage contact.

If a parent is found to be alienating the child from the estranged parent, changing custody to the estranged parent might make sense. Moreover, even if a non-estranged parent is not actively engaging in parental alienation, they risk being found at fault if they passively accept the child’s refusal without actively encouraging the child to see the other parent.

Often, in estrangement cases – particularly in cases involving older children – the problem is conflict between the estranged parent and the child rather than the other parent. Such cases often present thorny issues for courts, where compelling an adolescent to adopt reasonable views about an estranged parent lies beyond the court’s power. The court’s ability to compel children is difficult, particularly when the non-estranged parent appears to be doing their part to encourage contact.

## **Solutions for a Child’s Refusal to See One Parent**

Proactive communication between parents is crucial when a child refuses visitation. Documenting efforts to encourage contact and addressing underlying issues with the child is essential. Additionally, a judge may mandate reunification therapy or family counseling to improve the parent-child relationship and facilitate successful parenting time. In some cases, the appointment of a [Guardian ad Litem \(GAL\)](#) may be necessary to obtain the child’s perspective and determine the best course for resolution.

Each case is unique, and judges have broad discretion in deciding the best course of action. Despite the emotional toll, parents must prioritize adhering to the parenting plan and recognize their responsibility in fostering the child’s relationship with both parents.

## **Not Every Case of Parental Rejection Can be Solved by the Court**

Unfortunately, even the most determined court cannot control a child's subjective feelings. Although younger children can often be compelled to attend parenting time with an estranged parent, as a child moves through adolescence and approaches adulthood, the tools shared by courts and parents to compel the child's behavior may become increasingly limited, particularly if the non-estranged parent's behavior is not the apparent cause of the problem.

Sadly, any child can become estranged from one or both of their parents in ways that cannot be fixed. The challenges faced by divorced and [unmarried parents](#) may be amplified, but the mere existence of a child custody case does not always mean that there is a judicial solution to parent-child estrangement.

**About the author:** [Sydney Halloran](#) is a third-year law student and 3:03 Certified Student Attorney at Suffolk University Law School, and is currently a law clerk for Lynch & Owens.

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