

ASK AN EXPERT

Q. My husband and I are divorced. At what age can our son decide to live with one parent or the other? How much input do I have?

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Factors which the court will consider in determining the best interests of the child include things like the child's emotional and physical needs, any possible physical or emotional danger to the child, the parenting skills of the parents, the stability of the home where the child will live and the

support systems available to the parents (through government agencies, friends, extended family, etc.).

A. When a child reaches the age of 12, he can file what is called a Statement of Preference with the court. This is a document, signed by the child, which says, "My name is John Smith and I am 14 years old. I prefer that my mother, Jane Smith, have the exclusive right to designate my primary residence. I understand that my preference is not binding on the Court."

In addition, if the child is already living with one parent and the other parent wants to make a change, that parent must show that there has been a material and substantial change in the circumstances of the child or one of the parents since the original order was signed. (Texas Family Code § 156.101)

This is filed by an attorney as part of any court proceeding in which the custody of the child will be considered, such as a divorce or a modification.

The definition of "material and substantial change" is somewhat subjective. It can include issues ranging from a new step-parent to a parent going to jail. Any kind of abuse is generally grounds for a modification as well.

You should note that the child's preference is not binding on the court. Under Texas law, "[t]he best interest of the child shall always be the primary consideration of the court." (Texas Family Code § 153.002) Sometimes children, even those we consider very mature for their ages, want things that aren't good for them.

One of the reasons behind the "material and substantial change" requirement is the need for permanence in the child's life. Courts have held that "[t]he need for permanence is the paramount consideration for the child's present and future physical and emotional needs. The goal of establishing a stable, permanent home for a child is a compelling interest of the government." (Hann v. TDPRS, 969 S.W. 2d 77, 1998)

It is not unheard of for a parent to make promises to the child of presents and privileges in order to induce the child to want to live with that parent. ("Come live with Daddy and I'll buy you a pony, and you won't have a curfew, and you can eat chocolate chip cookies for breakfast every day.")

I believe that as a general rule it is best for adult decisions — such as who the child lives with — to be made by the adults without putting the children in the middle. Children should be listened to and allowed to express

Parents have also been known to tell lies about the other parent ("Daddy doesn't love us any more, that's why he left.") which have an effect on the child's wishes.

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their feelings and wishes, but it is

never good for a child to be used as the rope in the parents' legal tug-of-war.

****This article is meant to be infor-**

mational in nature and should not be considered legal advice. Every situation is unique. For specific questions, contact your attorney.

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