



When parents separate

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When parents separate

For children, it is a radical event when their parents separate. With a number of children, this has consequences for their development. They primarily experience damage when parents have heated and extensive conflicts. By controlling the conflicts and by keep talking with one another about the care and parenting of your children, you can limit the negative consequences for them.

It is important that you and your ex-partner both take responsibility and make good arrangements about the children. You have to decide together how you want to divide the care and parenting tasks after the separation. If you cannot work this out by yourselves or with the help of a mediator, the court will eventually make the decision on your behalf. This can be done on the basis of the recommendation of the Child Care and Protection Board. In this brochure, it is explained what this means.

For the sake of convenience, the text was written in the masculine form. Anywhere it says *he*, you can also read *she*. *Parents* can also mean parent (possibly with his or her partner), carer(s) or legal representative(s). *Partner* is used for husband, wife and for a parent that is living together unmarried or with a registered partner. With *child*, all minors are meant: Young people and children. With *client(s)*, parent(s) and/or child(ren) are meant.

The Child Care and Protection Board

For his development, a child is dependent on his parents. They must bring up and take care of their child so that he can grow to be an independent adult. When parents do not or cannot carry this responsibility, the child's right to a healthy and stable development is compromised. In that case the Child Care and Protection Board has the task, as a government organisation, to guarantee this right for the child.

The Board plays an important role in families where caring and parenting has become a problem. Furthermore, the Board is occupied

with young people who are involved with the police. The Board is also involved when children are given up for adoption and adopted. Besides this, the Board plays a role at the request of the court with parents who are separating and cannot see eye to eye on agreements about their children. That is what this brochure is about.

General information about the Board can be found in the brochure About the Child and Protection Board – Every child has the right to protection. On page 4 you can find out where to get a brochure.

> The focus is on the child

It is the task of the Child Care and Protection Board to defend the rights of children that are (on the verge of) getting into a fix. Therefore, the interest of the child is always the central duty of the Board. The employees of the Board also realise that the intervention of the Board can be an emotional and radical event for the parents.

The parenthood remains

A separation never means the end of your parenthood. Separated parents basically both keep their parental authority. This means that you have to make good arrangements with your ex-partner about the division of the tasks of caring for and parenting the children after the divorce: where the children will live, how the contact is arranged and how you inform each other.

> Your children need you

During your marriage, you are legally responsible for the children, together with your partner and you both have parental authority. For example, you will provide food, clothing, accommodation and education but also love and attention. Your children depend on the care of both of you. When you and your partner decide to separate, this does not change your responsibility towards your children. You will remain the father or mother of your children.

> Legal basis

According to the law, parents who separate both continue in principle to have parental authority over their children. Therefore, you will also remain responsible for them after the divorce. However, the court can decide to deviate from this basis. Furthermore, the law stipulates that children have the right to have contact with the parent that does not have the parental authority. This parent also has the right to information and consultation (see box on page 2). The court can also deviate from this basis in the interest of the children. On page 3 of this brochure you can read more about the legal basis.

> Making agreements

The development of the children is threatened when parents who separate have serious and long conflicts, for example about the children. Therefore, it is of great importance that you try to limit the consequences of your separation as much as possible. It is necessary to make good arrangements with your ex-partner about how you will divide the care for the children. You then have to decide where the children live, how you arrange the contact and how you will inform and consult your ex-partner about the children. These arrangements must be drawn up in the parent plan. For more information about this plan, please read page 3 of this brochure. It is important for the children that you and your ex-partner indeed keep to your agreements.

> If you cannot work it out

If you and your ex-partner do not succeed in making good arrangements together to keep to previously made agreements, you can ask a family member, friend or a professional mediator to mediate between you for example. Should this not succeed, the court has to decide and you will be summoned to appear in court. It is possible that the court will still refer you to a mediator or assisting institution for the mediation of your conflict. Another possibility is that, during the court session, the court will request the Child Care and Protection Board to investigate and advise. This duty of the Board is explained below.

Information and consultation

When the parents both have authority, the parent with whom the children live must inform the other parent of important matters that have to do with the children. Examples of this are school performances or the health of your children. We call this the right to information. Moreover, the parent with whom the children live must ask the opinion of the other parent on important decisions about the children. This is called the right to consultation. If the authority is with one parent, then the parent who has the authority may take the final decision. At the request of one of the parents, the court can determine how the other parent must be informed or consulted.

The role of the Board

If you and your partner continue to not see eye to eye about an arrangement for the children, the court will decide. It can ask for a recommendation from the Child Care and Protection Board. In that case an employee of the Board will investigate which arrangement is best for your children. The working method of the Board is officially established in the *Quality framework* (see page 3).

> The investigation

The Board investigates which arrangement - also in the long term - is best for your children. An employee of the Board, the child welfare investigator, tries to get the best possible image of the children.

The child welfare investigator will speak with you and with your ex-partner and with your children. He can also observe your children if they are too young to talk. The child welfare investigator will also possibly speak with others that are involved, such as a teacher or other assistants.

During the examination, the child welfare investigator is supported by a behavioural expert and, if necessary, a judicial expert. For example, the behavioural expert is called in to see how parent and child have contact with one another. By mutual agreement they will take decisions on the investigation. Obviously, the child welfare investigator will keep you informed on the investigation.

> Child protection measure

It may appear from the investigation that there are serious parenting or family problems apart from the problems with the divorce. In that case, the Board can request the court to impose a child protection measure. The measure that is implemented most frequently is the family supervision order. With this order, the authority of the parents is partially limited. This means that a family guardian is appointed that counsels the child and the parents when resolving parental problems. The Board only makes this radical request when assistance on a voluntary basis is no longer possible or satisfactory and the development of your child is seriously suffering under the situation. You can read more about the family supervision order and other child protection measures in the brochures *When parenting is a problem* and *If your child is under a family supervision order*. On page 4 you can find out where to get a brochure.

> Report and recommendation

The child welfare investigator will conclude his investigation with a report. In this report, he describes the course of the investigation and describes the development and the situation of your children. Besides this, the child welfare investigator reproduces relevant information from the conversations with you, your ex-partner, the children and any other people who might be involved. Finally, he will give a well-founded recommendation to the court, on for example with which parent the children can best live and/or how the division of care and parenting tasks must be arranged. The child welfare investigator will discuss his preliminary report with you and your ex-partner and depending on their ages, also with the children. Incorrectly represented fact can be altered. Other remarks will be added to the report in an enclosure. After this, the report is final and it is sent to the court. You and your ex-partner will receive a copy of the final report.

Quality framework

The working method of the Child Care and Protection Board has been laid down in the *Quality framework 2009*, which is drawn up jointly by the Ministers of Justice and for Youth and Families. For the employees of the Board, the guidelines from the quality framework are the guiding principles for their daily work. Amongst other things, the document describes how the investigation must be carried out, which information will be put in the report and how long an investigation may take. In addition to this, the Board makes use of documents (protocols) in which it is prescribed how the Board must work in certain cases. There is an *Authority and contact after the separation* protocol. This way, the board investigations are carried out as equal as possible and the client can work out for themselves what they can expect from the board. You can look through or consult the *Quality frame* as well as the protocol at any location of the board.

The court decides

When making its decision, the court will look at the recommendation of the Child Care and Protection Board. Your opinion, that of your ex-partner and the children also play an important role. After receiving the report with the recommendation of the Board, the court will hear your case at a court session in the presence of you and your ex-partner (and possibly lawyers). The court will ask you and your ex-partner for your opinions; the lawyers can also make statements. When the children are twelve years old or older, the court must also ask them what they think of the situation. This happens in the absence of the parents. The court can also ask the opinion of children younger than twelve but this is not required. On the basis of the recommendation of the Board and everything it hears in the court session amongst other things, the court subsequently makes a decision on an arrangement for your children. The court makes its own assessment in this. It is not required to comply with the recommendation of the Board.

Basic legal principles

In the law, several legal principles have been laid down that apply to a separation where children are involved. Both parents basically have authority, children and parents have the right to contact with each other, the non-caring parent has the right to information.

> Joint authority

In principle, parents keep their parental authority over their children after the annulment of their marriage. You and your ex-partner will decide together with whom the children will live. You also both remain responsible for their care and upbringing. Furthermore, you will make all important decision about the children together. Both parents have the right to information and consultation.

Exception

You or your partner can request the court to assign the authority to only one of you. The court will acknowledge this request if there is an unacceptable risk that the children will be stuck in the middle or lost in the conflict between the parents and there is no improvement of the situation. The parent who is awarded the sole authority (the authorised parent) can decide with whom the children will stay.

Change of authority

The decision of the court on the authority is based on a random indication of the situation of your children. If the circumstances change, it may be that you think that another authority agreement is better for the children. You must then consult your lawyer to see if a change is in your case possible.

> Parental plan

Parents who separate are required to draw up a parental plan. In this plan, agreements are described that the parents make about the division of care and parenting tasks, alimony and information exchange. The law requires the parents to indicate in which way they have involved the children when making agreements and how they informed the children.

> Contact and parental contact arrangements

Children and parents have the right to keep seeing each other, even after the parents have separated. If both parents have authority, there is a division of care and parenting tasks and there is contact between parent and child. This contact can also in certain circumstances be temporarily suspended. If only one of the parents has authority after the divorce, we refer to this as parental contact arrangements. You can discuss contact arrangements with your ex-partner to decide when and how often your children can meet the other parent. This parental contact arrangement can also be determined by the court.

Exception

The court can deny the parent who does not have authority parental contact. The parent who has authority can request this. The court will only impose the denial of parental contact on one or more of the following legal grounds for denying parental contact:

- The contact with the other parent can seriously disadvantage the mental or physical development of the children.
- The other parent does not appear to be suitable for or capable of having contact with the children.
- The children are twelve years or older and have serious objections to contact with the other parent. They have informed the court about this.
- Contact with the other parent is violating important interests of the children for other reasons

More information

> Questions?

Do you still have question about the work of the Child Care and Protection Board? Please direct them to your Board contact person, or contact a location in your vicinity: The addresses and route descriptions of the locations are at www.kinderbescherming.nl. Here, you can also find information about organisations that the Board collaborates with.

> Other brochures:

About separating

- *You are going to separate**
- *Authority, contact and information**
- *Alimony**
- *Separated... And what about the children?**
- *When your parents separate*

About the work of the Board

- *About the work of the Board Every child has the right to protection*
- *When parenting is a problem*
- *When your child is put under family supervision*
- *When your child has been involved with the police*
- *When you have a complaint*

These brochures are available from:

- www.kinderbescherming.nl
- Postbus 51 information line, telephone 0800 - 8051 (free phone number, Monday to Friday from 08:00 hrs to 20:00 hrs) or www.rijksoverheid.nl
- All locations of the Board

* These brochures are only available from Postbus 51.

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