

How Does Adultery Affect Custody for Men Vs. Women?

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By Wall Legal Solutions



The demise of many a relationship and marriage comes about, when one person in the relationship finds out that their spouse has been cheating on them and committing adultery. Most people assume, when adultery is the cause of marriage termination, that the faithful spouse holds all the advantages in the divorce settlement. This is not necessarily true. Whether or not adultery even has an impact on the divorce proceedings and decree is different from state to state. Some states place little to no weight on adultery, when considering the outcome of a divorce. Other states show even up to heavy favoritism towards the faithful spouse, when determining the separation of assets and custody in a divorce.

Adultery: Facts and Statistics

Nowadays, adultery is not the marriage-ender it historically was. More couples are “trying to work it out.” Historically, men have been granted much more of a pass to commit adultery than women. When women committed adultery, it was usually punished more seriously. Even today in some countries, like Saudi Arabia and Iran, women who commit adultery can be put to death. In the U.S., a handful of states still legally consider adultery a crime, but the law is rarely, if ever, prosecuted.

Adultery and Assets

In most cases of divorce, where adultery has been committed by one of the persons in the relationship, adultery almost never plays a role in determining the separation of assets. Only when the cheating spouse has used shared assets from the marriage to finance the extra-marital affair does the adultery affect the distribution of assets. For example: If a cheating husband sold stock that was in the wife's name to support his mistress, then the court would likely take this into account, when distributing assets.

Adultery and the Custody of Children

As long as the cheating spouse has not carried on the extra-marital affair in front of the children, adultery also does not play a role in determining, which parent is given custodial rights to the children. However, in some states, when it is known in the divorce that one spouse committed adultery, this can affect the faithful spouse's obligation to pay alimony to the unfaithful spouse, even if the unfaithful spouse can show a real financial need for the alimony. Also, in many states, the obligation to pay alimony is immediately rescinded, when the spouse receiving the alimony begins residing with another partner or person.

Does Adultery Affect Child Custody for Men vs. Women in Utah?

Child custody is a thorny issue that comes fast on the heels of families breaking up due to divorce, especially when the man or woman's infidelity has been cited. While adultery is not a legal consideration for the divorce process in the state of Utah, it will undoubtedly affect the preliminary negotiations for settlement and custody. But how does adultery child custody compare for men vs. women after divorce?

Typically, a husband or wife that has been cheated on might feel that they have a right to full custody, but in the sight of a judge, adultery doesn't make anyone unfit to be a child's caregiver. In Utah, moral conduct during the marriage is not a factor considered when the court determines whether the man or woman should get primary custody. ***A child custody lawyer will be a competent mediator for adultery divorces and argues equal men vs. women consideration for shared parenting unless the court finds them otherwise unfit.***



Factors That May Cause Adultery to Be Considered During Custody Proceedings

Two factors are looked at when mediating between couples who are undergoing custody battles where adulterous situations were involved, and they include;

Carrying on an extramarital relationship in front of the children

Exposing minors to inappropriate behavior when the affair took place

Since the most stable living environment is a priority for the child, infidelity issues are separated from the legal divorce litigation during the custody process. Child custody lawyers for fathers with their counterpart child custody lawyers for mothers represent parents who have grievances that infidelity will affect their children's wellbeing. The best child custody lawyer will endeavor to show that the parent who undergoes the least change or has the strongest bond with the child will prevail in better parenting, and proves that they can place their children's needs above their own.

Patterns of behavior which a Utah court will consider as grounds for awarding the opposite or offending party custodial rights include;

A woman who files for primary custody but at the same time tries to alienate the adulterous ex-husband from the children due to the affair

A man who discloses to the children that the marriage ended due to their mother's cheating

Where couples divorcing due to infidelity have been unable to repair cordial relationships, parallel parenting is advised to limit adverse psychological effects on the children.

Can the Court Extend Child Custody to an Adulterous Man or Woman?

Due to the disregard that a party has over the children's mental and psychological wellbeing, the court will favor the person who has been accused of infidelity during a custody process. According to the Utah Code § 30-3-10(1), the judge considers custody following after the child's best interests through weighing factors such as;

If there was evidence of domestic violence, child abuse or neglect

If the man or woman has the ability to cater to the child's development needs

Whether the man vs. woman has the willingness and capacity to fully function as the child's parent

The husband or wife's past moral conduct and character

The emotional stability of the man vs. woman

Any history of excessive alcohol, drug use or other effecting factors

Other extenuating factors, such as *religious compatibility and financial responsibility*, may come into play during the court's determination for child custody. Only in such instances as when the unfaithful spouse wants to include their new partner in the child's life will adultery become a consideration in Utah.

Adultery Affects the Divorce Settlement the Most

Adultery does not really affect the distribution of assets or the custody of children in a divorce case. Adultery does have an impact, however, in the settlement negotiations during a divorce. The great majority of divorce cases will settle (more than 85%), before going to trial. The emotional turmoil of divorce can cause people to behave erratically anyway. With the discovery of adultery, the emotions on both sides of the negotiation table are a ticking time bomb of chaotic distress. The faithful spouse is typically (and understandably) deeply hurt, angry, and seeking retribution. The unfaithful spouse is usually left feeling more guilty and angry at his or herself.

In most states, adultery does not play a role in the distribution of assets. Adultery also does not play a role in determining the custody of children. In many situations, adultery is the main contributing factor in leading a couple to divorce. Adultery is also a main influence in the emotional state of each spouse, when they come to the divorce settlement negotiations.

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