

Myth: 12-Year-Old Children Get to Choose Where They Live

This is an excerpt from the book I co-authored, "[All About Texas Law and Kids.](#)"

People frequently ask, "When my child turns 12 can't she decide to come live with me?" This is probably the *biggest myth* in all of family law.

When a child turns 12, she is entitled to express an opinion about with who she wants to live. The judge still makes the final decision based on the child's best interest. Before the age of 12, the child has no right to express an opinion in the court proceedings.

A [child](#) who is at least 12 years old begins to have opinions, and sometimes strong opinions, about her living environment. The judge remains the final authority on where the child lives so the judge can examine the basis of the child's choice and her motivations. For example, if the child is being defiant in Mom's house because she doesn't like Mom's rules, and Dad lets the child run wild, the judge will not likely listen to the child's desire to live with Dad. Or, if Dad promised the child a car if he "picked Dad," again, the judge will not likely listen to the child's desire. However, if the child wants to go live with Dad because Dad's house is within walking distance of the natatorium and the child is a competitive swimmer, then the judge might well listen to the child's wishes.

Prior to September 1, 2009, the law allowed the child to file a written preference as to where she wants to live. Many judges disfavored this law and the practice of some lawyers representing a parent in obtaining the child's signature on the written preference. Due to the disfavor and frequent abuses in that system, the Legislature eliminated the written preference statements effective September 1, 2009. HB 1151 81st Legislature, S3. A child may now express his or her preference, but not in writing. Upon request of a party at a trial hearing, a judge must interview in chambers a child 12 years or older. As one judge astutely noted, the law may require the judge to talk to the child in chambers, but the law does not tell him what to ask. For a judge who disfavors "putting kids in the middle," even making such a request may harm a parent's request for [conservatorship](#).