

Georgia

TRACEY BEE, THE DIVORCE SOLUTIONIST



Types of Child Custody in Georgia

Georgia recognizes two types of custody – physical and legal custody. A parent with physical custody lives with the child. Parents can share physical custody (called "joint custody") or one parent may have sole physical custody. When parents share joint custody in Georgia, they have roughly equal time with the child. For example, one parent may have four overnights per week and the other parent may have three. A parent with legal custody may make major medical, legal, educational, and religious decisions on the child's behalf. In many cases, a judge will award parents joint legal custody. Joint legal custody in Georgia means that both parents have a say in all major decisions involving their children. Generally, in cases where parents share legal and physical custody, one parent will be designated the "primary custodial parent." This parent has the final say in decisions involving the child when the parents can't agree. Generally, the parent who spends more time with the child will be designated the "custodial parent" and the other parent will be designated as the "noncustodial parent"



Best Interests of the Child in Georgia

Georgia's custody laws require a judge to make a child's best interests the focus of any custody decision. A judge will consider several factors to determine what kind of custody arrangement best serves a child's needs.

Child custody laws in Georgia require a judge to consider the following factors, and any other factor that impacts a child's best interests:

- each parent's home environment and ability to care for and nurture the child
- each parent's physical and mental health
- each parent's emotional ties to the child
- each parent's ability to provide the child with clothing, food, and medical care
- the relationship between the child and any siblings, half-siblings, or stepsiblings who are in either parent's home
- each parent's familiarity with the child's health, educational, and social needs
- each parent's involvement in the child's schooling and extra-curricular activities
- each parent's willingness to foster a relationship between the child and the non-custodial parent
- the relative stability of each parent
- any history of substance abuse by either parent
- any history of physical abuse, sexual abuse, or neglect of children by either parent, and
- any criminal histories of either parent.

In some cases, a judge will appoint a guardian ad litem (a person whose job is to represent the interests of the child in court) or a custody evaluator to meet with the family and make a custody recommendation to the judge. Although a judge is not required to follow the recommendation of the guardian ad litem or the custody evaluator, judges will give professionals' input significant weight when determining the best interests of the child. See Ga. Code § 19-9-3 (2020).

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Leading case on the best interest of a child in Georgia

Brooks v. Parkerson, 265 Ga. 189 - Ga: Supreme Court 1995

Attorney Rules of Ethics

<https://www.law.uga.edu/sites/default/files/uploaded-files/Georgia%20Rules%20of%20Professional%20Conduct%2028Panel%20231%29.pdf>

Rules on Conduct of Judges
Canon 1 - Judges Shall Uphold the Independence, Integrity, and Impartiality of the Judiciary and Shall Avoid Impropriety and the Appearance of Impropriety in All of Their Activities

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Modification of Custody

Modification of custody orders on the other hand, are allowed only on the basis that a significant change in family circumstances has taken place since the original order. If the change has affected the best interests of the child, a court might find that modification is appropriate. The parent requesting the change in custody will have to submit a new proposed parenting plan to the court. Under current Georgia law, a planned move by a parent with sole or joint custody is always a sufficient basis for a modification hearing. The court will consider whether the best interests of the child require a change in custody in light of all applicable circumstances.

Parents must inform each other of any planned change in residence. A custodial parent must give anyone with visitation rights or court-ordered parenting time at least 30 days advanced notice before a planned move and must include the full address of the new residence.

In Georgia, a child 14 or older may choose which parent to live with, and a judge will honor the decision as long as it's in the child's best interests. If a child 14 or older requests a change of custodial parent, this will automatically be a sufficient change of circumstances for a custody re-evaluation, unless the court has already granted the child a request for a change within the past two years. The judge will give great consideration to the child's wishes, but will still evaluate other circumstances bearing on the child's best interests.

A child who is at least 11 may also state a preference of which parent to live with, but the judge will review the overall circumstances more closely before accommodating the preference. In some cases a court will appoint a neutral third party called a Guardian Ad Litem (GAL) to represent the child and help the judge make a decision. The GAL can investigate the child's home and school situation and contact parties with information about the child, such as teachers, doctors, and therapists.

GAL in Delaware

Family Court Civil Rule 17(b) of the Family Court Rules of Civil Procedure requires the Court to appoint a GAL whenever a child is properly named as either a petitioner or a respondent in a court case. This means if a child files a petition, the Court will appoint a GAL for the child. Similarly, if a person files a petition against a child, the Court will also appoint a GAL. A GAL is not required when a petition is filed between adults "in the interest" of a child

If a non-custodial parent demonstrates that the custodial parent has become unfit or unable to care for a child, this will also justify a modification. If the situation is serious, for example, if the custodial parent has developed a mental illness or a drug abuse problem that affects a child's safety, the court might consider the modification request on an emergency basis. In less clear situations, a court will consider all of the facts of a case before deciding whether or not a change in circumstances is substantial enough to justify re-evaluation of custody. An improvement in the health or home situation of the non-custodial parent may be a major factor.

GAL in Georgia

Before the appointment as a guardian ad litem in dependency cases in Juvenile Court, such person shall have received training appropriate to the role as guardian ad litem which is administered or approved by the Office of the Child Advocate for the Protection of Children (OCA). (OCGA 15-11-104(f))

The child's attorney may serve as GAL unless or until a conflict of interest arises. (O.C.G.A. §15-11-104)

A GAL can be an attorney or a non-attorney. In the case of a non-attorney, Georgia law requires the court to appoint a Court Appointed Special Advocate (CASA) volunteer to serve as GAL whenever possible, and a CASA may be appointed in addition to an attorney serving as the child's Guardian ad Litem. (O.C.G.A. §15-11-104)



Judge Recusal

[https://casetext.com/rule/georgia-court-rules/georgia-code-of-judicial-conduct/canons/canon-2-judges-shall-perform-the-duties-of-judicial-office-impartially-competently-and-diligently/rule-211-disqualification-and-recusal#:~:text=Rule%202.11%20%2D%20Disqualification%20and%20Recusal%20\(A\)%20Judges%20shall%20disqualify,of%20disputed%20evidentiary%20facts%20concerning](https://casetext.com/rule/georgia-court-rules/georgia-code-of-judicial-conduct/canons/canon-2-judges-shall-perform-the-duties-of-judicial-office-impartially-competently-and-diligently/rule-211-disqualification-and-recusal#:~:text=Rule%202.11%20%2D%20Disqualification%20and%20Recusal%20(A)%20Judges%20shall%20disqualify,of%20disputed%20evidentiary%20facts%20concerning)



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