

Illinois

TRACEY BEE, THE DIVORCE SOLUTIONIST



Establishing Child Custody in Illinois

Divorcing parents who live in Illinois will receive a custody order as part of their divorce case. Things can get complicated if parents live in different states or a parent has recently moved into or out of the state. Before an Illinois judge can issue a custody order, the Illinois court must have jurisdiction (legal right to make binding decisions) over your case.

In order to avoid conflicting custody opinions from courts in different states, a law called the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) sets the rules on which court has jurisdiction.

Among other things, the UCCJEA determines which state is the child's "home state" for custody matters. Courts in the home state have jurisdiction over custody litigation involving that child and are the only ones that can hear a custody case for that child. Illinois has jurisdiction to hear a child custody case if:

- the child has lived in Illinois for the last six months (or since birth if less than six months old)
- the child lives out of state, but lived in Illinois within the past six months and one of the child's parents still lives in the state, or
- no other state is the child's home state (or the child's home state has declined to exercise jurisdiction in deference to Illinois), and either (1) the child and at least one parent have significant connections with Illinois, and (2) substantial evidence exists in Illinois concerning the child's care, protection, training, and personal relationships.



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The UCCJEA and associated rules are complex. If you're unsure whether your child custody case should be heard in Illinois or in another state, you should consult with an experienced attorney. See 750 Ill. Comp. Stat. § 36/201 (2020). Unlike some states, Illinois custody laws don't presume that joint custody is automatically in the child's best interests. Judges will try to give both parents maximum involvement in the child's life. However, if one parent has committed domestic violence a judge will likely grant the victim parent sole physical and/or legal custody.

Determining a Child's Best Interests in Illinois

Even when parents agree on custody, a judge must ultimately determine what custody arrangement would be in the child's best interests. The emphasis in a custody determination is not on which parent is better or worse, but on the child's best interests considering all relevant factors, including but not limited to:

- each parent's wishes
- the child's wishes
- the child's relationship with his or her parent(s), sibling(s), and anyone else who may significantly affect the child's best interest
- the child's adjustment to his or her home, school, and community
- the parents' and child's physical and mental health
- whether there has been physical violence or a threat of physical violence by either parent, whether directed against the child or another person



Leading case on the best interest of a child in Illinois
In re DT, 818 NE 2d 1214 - Ill: Supreme Court 2004.

Rules of Conduct for Judges

<https://www2.illinois.gov/sites/jib/Pages/Code.aspx#:~:text=A.,and%20impairtiality%20of%20the%20judiciary.>

Attorney Ethics

<https://www.illinoiscourts.gov/rules/supreme-court-rules?a=viii>

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- whether there has been ongoing or repeated domestic violence, whether directed against the child or directed against another person
- the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child
- whether either parent is a sex offender, and
- the terms of either parent's military family care plan that must be completed before deployment, if the parent is a member of the U.S. Armed Forces who is being deployed.

It's usually in the best interest of siblings to keep them together, in the same household. There are exceptions where a child's special needs or family dynamics requires separation. In these cases, a judge may split children between the parents.

Every custody case is unique, and the court is free to decide what weight to give to these and other factors in making its decision. However, Illinois custody laws expressly state that the court should not consider a parent's marital conduct (such as adultery or reckless spending) unless it affects that parent's relationship with the child.

Modification of Custody in Illinois.

There are three situations when a parent can ask a court to modify a custody order:

- when both parents agree to the change
- when the child's present environment may seriously endanger the child's physical or mental health, or
- when at least two years have passed since the date of the custody order, a change has occurred in the circumstances of the child or parent(s), and a modification to the child custody order is necessary to serve the best interests of the child.

The changed circumstances must be based on facts that did not exist or were unknown to the parent seeking modification at the time the original order was entered. In other words, a parent can't simply return to court and relitigate the same issues the court has already considered. There must be new or previously unknown facts in play to justify a change.

A parent's indulgence in "moral indiscretions" aren't enough to justify a change of custody if the children are leading a normal, stable life with that parent.

However, if the actions of a custodial parent seriously endanger the mental or emotional health of the child, a change in custody may be necessary. Illinois law forbids courts from considering a parent's conduct in awarding custody unless that conduct affects the parent's relationship with the child

A custodial parent's death is a significant change in circumstances that requires custody modification. Upon the death of the custodial parent, the traditional rule is that the other parent gains legal custody of the child.

Likewise, a parent's incarceration is also a material change of circumstances giving rise to a custody modification. An incarcerated parent may make emergency arrangements for the child's immediate care, but he or she cannot dictate that a third party continue to act as custodian for the child for the duration of his or her incarceration. A judge will formulate a new custody and visitation plan that serves the child's best interests.

GAL in Illinois

A guardian ad litem (GAL) in Illinois is a person who has undergone specific and ongoing training that qualifies them to act as an independent representative of a child in a divorce or custody case. They are also often a licensed attorney, but when acting as a GAL, they do not represent either of the parents, but rather function as a kind of special investigator whose role is to collect information and analyze the entire family situation of the child.

If a guardian ad litem is appointed in your divorce or custody case, you should be calm, communicative, and honest with your guardian ad litem. Do not try to influence your child's perspective; if the guardian ad litem's report finds that the child is repeating what you say verbatim, this could reflect poorly on you. Likewise, if you try to hide or manipulate information and it later comes to light, you will not give the guardian ad litem—and therefore, the judge—a positive impression of you as an individual or of your parenting capabilities.



Recusal of Judge

[https://www.judicialrecusal.com/illinois/#:~:text=Supreme%20Court%20Rule%2063\(C,of%20one%20of%20the%20parties.](https://www.judicialrecusal.com/illinois/#:~:text=Supreme%20Court%20Rule%2063(C,of%20one%20of%20the%20parties.)

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