

# Indiana

TRACEY BEE, THE DIVORCE SOLUTIONIST



## Overview of Indiana Child Custody

### Laws

A judge will decide two types of custody in your case: physical and legal custody. "Physical custody" refers to where the child physically resides, and the day-to-day care the child receives, such as bathing, meal preparation, and transportation. Parents can share physical custody equally or can arrange it so that one parent has primary physical custody, while the other has visitation.

"Legal custody" concerns a parent's right to make important decisions in a child's life, such as educational, cultural, medical, and religious decisions. Parents can share legal custody or one parent may have sole legal custody. A child's best interests are at the heart of any custody decision in Indiana

### Determining a Child's Best Interests

When judges face disputes about custody, Indiana custody laws requires them to apply a list of several factors to decide what's in the child's "best interests." Neither parent enjoys a custody preference and mothers and fathers are on equal footing when it comes to custody. The factors include:

- the age and sex of the child
- each parents' wishes
- the child's wishes, particularly if that child is at least 14 years of age (judges sometimes meet with children privately to ask about this)
- the child's interaction and interrelationship with his or her parent(s), siblings, and any other person who may significantly affect the child's best interests
- the child's adjustment to home, school, and community
- each parent's physical and mental health
- the child's health, medical, and emotional needs
- evidence of a pattern of domestic or family violence by either parent, and
- evidence that the child has been cared for by a "de facto custodian" (someone who is providing care but doesn't have legal rights to the child)

### Factors used to determine custody

A judge will award joint legal custody only if it's in the child's best interests. If parents want joint legal custody, it's very important that they show they're able to get along with one another. To decide whether to award legal custody to one or both parents, the court will look at some additional factors, including:

- each parent's fitness and suitability
  - whether the parents are willing and able to communicate and cooperate in advancing the child's welfare
  - the child's wishes, with more consideration given if the child is at least 14 years old
  - whether the child has established a close and beneficial relationship with both parents
  - whether the parents live in close proximity to each other and plan to continue to do so, and
  - the nature of the physical and emotional environment in each parent's home.
- It's important to know that just because a court awards two parents joint legal custody, it doesn't mean they will be awarded shared physical custody. In Indiana, many custody awards grant the parents shared physical custody, while still allowing one parent sole physical custody. The type of custody awarded in your case will depend on what's in your child's best interests.



*Leading case on the best interest of a child in Indiana*  
*ADS v. Indiana Dept. of Child Services, 987 NE 2d 1150*

### Rules of Conduct for Judges

[https://www.in.gov/courts/rules/jud\\_conduct/](https://www.in.gov/courts/rules/jud_conduct/)

<https://casetext.com/rule/indiana-court-rules/indiana-code-of-judicial-conduct>

### Attorney Ethics

[https://www.in.gov/courts/rules/prof\\_conduct/](https://www.in.gov/courts/rules/prof_conduct/)

<https://www.in.gov/courts/discipline/guidance/>

<https://thedivorcesolutionist.com>

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## Modification of Custody

Indiana limits the situations in which parents can ask the court to modify a child custody order. The parent requesting the modification must show a significant change in life circumstances. He or she must also prove that changing the custody arrangement serves the child's best interest.

Indiana courts will ensure that the requesting parent must show that a substantial change in one of these areas merits a change in custody:

- The child's age
- The wishes of the parents
- The wishes of the child if he or she is at least 14 years old
- The child's adjustment to his or her community, school and home
- The physical or mental health of the child or a parent
- A pattern of violent or neglectful behavior

A parent can also request a change in custody if someone else has cared for the child for at least six months. The court refers to this third party as the child's de facto custodian. In each case, the parent must also prove that the child will benefit from the custody modification



## GAL in Indiana

GAL whose role is to represent and protect the best interests of the child pursuant to I.C. 31-9-2-50. Indiana law states that the GAL shall provide the child with services requested by the court, including researching, examining, advocating, facilitating, or monitoring the child's situation. The GAL cannot act as a mediator, parenting time coordinator, or provide supervised visitation



## Recusal of Judge

<https://casetext.com/rule/indiana-court-rules/indiana-code-of-judicial-conduct/canon-2/rule-211-disqualification>

<https://thedivorcesolutionist.com>