

Iowa

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Iowa Custody Basics

Iowa custody laws break custody into two categories: legal custody and physical care. Legal custody means that the parent or parents have decision-making rights and responsibilities over the child. Common issues involving legal custody include where the child attends school, medical decisions, and religious instruction. (Iowa Code § 598.1 (5).) Physical care refers to a parent's right to maintain a home for the minor child and provide a routine for care of the child. (Iowa Code § 598.1 (7).) Judges can award either type of custody to one or both parents, or a combination of both.

Preference for Joint Legal Custody

Iowa prefers to award joint legal custody to the parents if it is in the best interests of the child. (Iowa Code § 598.41 (1)(a)) Joint legal custody means that each parent has an equal right to make decisions about the child's education, medical care, religious upbringing, extracurricular activities, and the like. (Iowa Code § 598.1 (3).)

Iowa courts will only grant sole legal custody to one parent where there is clear and convincing evidence that joint legal custody is not in the child's best interests. The court also assumes joint custody isn't in the child's best interest when there's been domestic abuse in the family. (Iowa Code § 598.41 (2)(b).) When deciding whether joint custody is appropriate, the judge will evaluate the following:

- whether each parent would be a suitable custodian for the child
- whether the child's needs will suffer due to lack of contact with and attention from both parents
- whether the parents can communicate with each other regarding the child's needs
- whether each parent can support the other's relationship with the child and the other parent
- the child's preference for joint custody (if the child is old enough and mature enough to express an opinion)
- whether the parents agree to or oppose joint custody
- the geographic proximity of the parents
- whether joint custody will risk the child or either parent's safety
- whether there is a history of domestic abuse, and
- whether the parent lives with or allows the child to be around, a registered sex offender. (Iowa Code § 598.41 (3).)

No Preference for Joint Physical Custody

Though Iowa courts tend to prefer to award joint legal custody, they do not like to award joint physical care of the child. Instead, the courts favor custody awards that give one parent sole physical care and grant the other parent liberal visitation of the child. Iowa also does not express a preference for awarding physical care of younger children to the mother. Instead, every decision comes down to what will be in the best interests of the child.

It's important to understand that if the parents agree to share custody of their children, the court will approve the request, as long as it's in the child's best interest. (Iowa Code § 598.41 (4).) Regardless of whether the court awards joint custody, unless the judge orders otherwise, Iowa law permits both parents to have continued access to information concerning the child, such as medical, educational, and law enforcement records. (Iowa Code § 598.41 (1)(e).)

The Best Interest of the Child

When the court makes custody determinations the judge must give great weight to the best interests of the child standard. Iowa law does not provide a specific set of factors for judges to use when deciding custody. Instead, the law defines "best interest of the child" as the opportunity for the child to have maximum continuous physical and emotional contact with both parents unless the contact would cause the child emotional or physical harm. (Iowa Code § 598.1 (1).) Although Iowa child custody law doesn't provide the judge with specific factors to evaluate, judges will often consider:

- the child's age, maturity level, and mental and physical health
- the child's needs, including educational, social, moral, material, and emotional needs
- each parent's age, character, stability, and mental and physical health
- each parent's ability to meet the child's needs



Leading Case Law on Best Interest of a Child
In re PL, 778 NW 2d 33 - Iowa: Supreme Court 2010

Rules of Conduct Judges

https://www.iowacourts.gov/static/media/cms/Chapter51IowaCodeofJudicialConduct_1B34466ABBED7.pdf
<https://www.legis.iowa.gov/docs/publications/ICRC/51.pdf>

Attorney Ethics

<https://www.legis.iowa.gov/docs/publications/ICRC/32.pdf>
<https://www.iowabar.org/page/ProfessionalConduct>



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- the relationship between the child and his or her siblings and parents
- whether either parent has denied or interfered with the child's ability to maintain a frequent and continuing relationship with the other parent (Iowa Code 598.41 (c).)
- each parent's emotional and environmental stability and wholesomeness, and
- any moral misconduct committed by either parent.

If the child is of sufficient age and maturity level, the court can consider the child's preference as far as custody. The child's preference is not binding on the court, but it is one factor the judge may consider. In Iowa, judges may appoint an independent investigator or an attorney for the child to investigate the circumstances of the case. The investigator or attorney for the child makes a report and recommendation to the court, and judges generally place a great deal of weight on the recommendations of the investigator or attorney for the child. (Iowa Code § 598.12B.)

Modification of Child Custody

Either parent may request that a custody order be changed; however, a judge will only approve a change in certain situations. Most importantly, a parent requesting a change will need to prove to the court that there has been a substantial and material change in circumstances that occurred after the original custody order was issued, and that this change is permanent and was not something that the parents or the judge were aware of when the original custody order was issued.

Additionally, it is more difficult if a parent wants to modify custody to change who has physical custody of the child. In this situation, the parent asking to be named primary physical caretaker by the court must show an ability to care for the child's needs which is superior compared to what the other parent can do. If both parents are equally able to care for the children and it is in the children's best interest for the custody to remain the same, then custody should not be changed.

The documents that need to be filed in order to modify a custody order can be complicated. There could be issues that a non-lawyer would miss if they tried to file the documents without an attorney. It is best to have an attorney help you with a modification to ensure that you are filing the right documents in the right court and are protecting your interests.

To ask the court to modify the custody order, the parent will need to file an Application to Modify an Order. Jurisdiction to decide custody, meaning where or in what state a custody modification action can be brought, can be tricky.

A simple rule is that the state where the first custody action took place continues to have jurisdiction so long as one parent still lives there. For example, if the order is from Iowa and one parent still lives in Iowa, the Application should be filed in the Iowa court that issued the original order. If, however, the original order is from another state and both parents have moved out of that state, that state likely does not have jurisdiction to modify the order.

Here are some examples of situations that a judge could consider to be a big enough change to justify modifying a custody order:

- One parent started living with a person who uses drugs.
- The custody order states that the parents will meet halfway between their homes to exchange the children. One parent moved to another state, drastically increasing the distance between the two parents' homes.
- A parent is sent overseas for military duty.
- One parent becomes homeless and no longer has suitable housing for the children.
- A child develops severe health problems and needs constant care.

Here are some situations that a judge may not consider to be a big enough change to justify modifying a custody order:

- A parent falls behind on child support, but still wants to be involved with the child.
- A parent has a new boyfriend or girlfriend.
- A parent moves to a new home that is not very far from his or her previous home.
- A parent temporarily moves.
- A parent makes less money than they did when the court order was issued.

GAL In Iowa

HB 133, enacted in 2017, changes the law in Iowa as to representatives of children during dissolution of marriage or domestic relations proceedings.

Under the new law, the court may appoint a guardian ad litem to represent the child's best interests and such GAL must be a practicing attorney. Iowa Code § 598.12. Additionally, a new section provides that the court may appoint a separate attorney for the child to represent the child's legal interests. Iowa Code § 598.12A. Both § 598.12 and § 598.12A specify that the same person cannot fulfill both of these roles



Recusal of a Judge

<https://casetext.com/rule/iowa-court-rules/chapter-51-iowa-code-of-judicial-conduct/canon-2-a-judge-shall-perform-the-duties-of-judicial-office-impartially-competently-and-diligently/rule-51211-disqualification#:~:text=%5B1%5D%20Under%20this%20rule%2C,with%20the%20term%20%22disqualification.%22>

