

# Kansas

TRACEY BEE, THE DIVORCE SOLUTIONIST



## Custody Arrangements in Kansas

Kansas law provides that, if parents can't agree on a parenting plan after a divorce, the court can evaluate the case and create a custody plan for them. (Kan. Stat. Ann. § 23-3201.) In cases where the parents do agree on custody, they can present the court with a written "permanent parenting plan." (Kan. Stat. Ann. § 23-3202.) The parenting plan is not binding on the court. A judge can still find that the parenting plan is not in the best interests of the child and order alternative arrangements based upon the evidence presented. In most cases, the court will approve the parenting plan.

### Two types of custody

Judges split custody into two categories: legal custody and residency. Legal custody refers to the allocation of each parent's rights and responsibilities to make educational, religious, moral, and legal decisions about the child. Residency is sometimes used interchangeably with physical custody, which refers to which parent the child will reside with throughout the year.

### Sole, joint, or divided?

Judges can award either type of custody to one parent, both parents, or a combination. Joint legal custody means that both parents have an equal right to make decisions regarding the child's wellbeing. If parents can't agree on a particular issue, the court will decide for them. If the court grants sole legal custody to one parent, that parent doesn't need to seek permission on any decision regarding the child. It's rare for judges to award sole legal custody and will only do so if the court believes it's not in the child's best interest for both parents to have equal decision-making responsibility for the child. Judges who award sole legal custody to one parent must explain, on the record, the reasons for the decision. (Kan. Stat. Ann. § 23-3206.) Because the law favors stability for children, it's more common for judges to award primary custody or residency to one parent and parenting time (visitation) to the other. (Kan. Stat. Ann. § 23-3207 (a).) However, the judge will evaluate each case on an individual basis before deciding on sole or joint residency of a child. Rarely, in cases with multiple children, the court may award "divided" residency, which is where the court may order a residential arrangement where each child resides with a different parent and has parenting time with the other. (Kan. Stat. Ann. § 23-3207 (b).)

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## The Best Interest of the Child in Kansas

In Kansas, a judge, not a jury, decides how to divide legal custody and residency of the child based on what is in the best interests of the child. The best interest standard also guides the judge's decisions about visitation. The court has broad discretion to determine the best interests of the child and will consider all relevant factors including:

- each parent's role and involvement with the child before and after their separation
- each parent's desire for custody or residency
- the child's preference (if the child is of sufficient age and mature enough to express an opinion)
- the child's age
- the child's emotional and physical needs
- the child's interaction and relationship with the parents, siblings, and any other family members in the household
- the child's adjustment to home, school, and community
- both parents' willingness and ability to respect and appreciate the bond between the child and the other parent, and allow a continuing relationship between the child and the other parent
- evidence of domestic abuse
- the parents' ability to communicate and cooperate
- the child's school activity schedule
- each parent's work schedule
- the location of each parent's home and workplace, and
- the location of the child's school. (Kan. Stat. Ann. § 23-3203.)

These factors are not exhaustive or exclusive. If one parent offers other relevant information, the judge will consider it in determining the best interests of the child.

Kansas does not automatically presume that it is in the best interests of an infant or young child to be with the mother. Instead, the law explicitly states that judges must consider all relevant evidence and all the best interest factors when determining which parent should have custody. (Kan. Stat. Ann. § 23-3204.)



Leading Case Law on Best Interest of a Child  
In re Marriage of Ross, 783 P. 2d 331 - Kan: Supreme Court 1989

### Rules of Conduct for Judges

<https://casetext.com/rule/kansas-court-rules/kansas-rules-relating-to-judicial-conduct/rule-601b-code-of-judicial-conduct>

### Attorney Ethics

<https://www.kscourts.org/Attorneys/Office-of-Disciplinary-Administration>  
<https://www.kscourts.org/Rules-Orders/Rules/1-1-Competence>



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If one of the parents is living with a registered sex offender or someone convicted of child abuse, there is a rebuttable presumption that it is not in the child's best interests for that parent to have custody. A rebuttable presumption means the court starts with that presumption, but a parent can overcome if that parent presents enough evidence to the court. (Kan. Stat. Ann. § 23-3205.)

To assist the court in determining the best interests of the child, the judge may appoint an investigator to evaluate the child's needs and each parent's ability to meet those needs. The court may also order that either parent undergo physical or mental examinations. The investigator's recommendations based on these investigations and examinations are not binding on the court, but the court will give them significant weight. (Kan. Stat. Ann. § 23-3210.)

### Modification of child custody, residency, visitation and parenting time; examination of parties

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### GAL In Kansas

Kansas law requires the court to appoint an attorney as guardian ad litem to appear for and represent the best interests of a child during a child-in-need-of-care (CINC) proceeding under the statutes governing care of children. Whether a GAL is appointed in a CINC proceeding or another type of case, a GAL has specific duties and responsibilities.

The duty of a guardian ad litem is to represent the best interests of the child. Those interests may or may not be the same as the child's own interests or wishes. If the child's wishes are inconsistent with the GAL's determination of the child's best interests, the GAL must inform the court of the disagreement and inform the Court of any information that the child would like to share to the Court. In that situation, the child or GAL may request appointment of a second attorney to represent the child's own position.

The relationship between a guardian ad litem and a child is not the same as the traditional relationship between an attorney and client, since the GAL represents the best interests of the child. Even so, a guardian ad litem creates a strong on-going relationship with the child, to encourage information-sharing and participation to the greatest possible extent. While a GAL may maintain confidentiality of the child's communications in building that relationship, the attorney-client privilege does not extend to communications between a guardian ad litem and the individual the GAL represents.



### Recusal of a Judge

If a party or a party's attorney believes that the judge to whom an action is assigned cannot afford that party a fair trial in the action, the party or attorney may file a motion for change of judge. The motion shall not state the grounds for the party's or attorney's belief. The judge shall promptly hear the motion informally upon reasonable notice to all parties who have appeared in the case. If the judge disqualifies the judge's self, the action shall be assigned to another judge by the chief judge. If the judge refuses to disqualify the judge's self, the party seeking a change of judge may file the affidavit provided for in subsection (b). If an affidavit is to be filed it shall be filed immediately.

[http://www.kslegislature.org/li\\_2020/b2019\\_20/statute/020\\_000\\_0000\\_chapter/020\\_003\\_0000\\_article/020\\_003\\_0011d\\_section/020\\_003\\_0011d\\_k/#:~:text=](http://www.kslegislature.org/li_2020/b2019_20/statute/020_000_0000_chapter/020_003_0000_article/020_003_0011d_section/020_003_0011d_k/#:~:text=)

(a)%20If%20a%20party%20or,motion%20for%20change%20of%20judge.  
<https://casetext.com/rule/kansas-court-rules/kansas-rules-relating-to-judicial-conduct/rule-609-disqualification-or-recusal>  
<https://www.brennancenter.org/sites/default/files/legal-work/Solomon%20v%20%20State%20Motion%20for%20Recusal%20-%20FINAL%20with%20exhibits.pdf>

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