

Indiana Legal Services, Inc

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General Information About Child Custody

The court will decide what is in the best interests of the child. The court does not assume that either the mother or father will be the better custodial parent.

[Note: You can click on the question to go directly to the answer to that question, or you can scroll down the page to see all the questions and answers].

How does a court decide who gets custody of a child when the parents are getting a divorce?

What if I was never married to the father of my child? How will the court decide custody?

What is joint custody?

My aunt is trying to get custody of my child through a guardianship. Do the same factors apply?

How does a court decide who gets custody of a child when the parents are getting a divorce?

The court will decide what is in the best interests of the child. The court does not assume that either the mother or father will be the better custodial parent. When parents are married to each other, each parent has equal rights to custody of the child. The court will look at all important factors, including:

- The age and sex of the child.
- The wishes of the child's parent or parents.
- The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
- The interaction and interrelationship of the child with the child's parents, siblings and other people who affect the child's best interests.
- The child's adjustment to the child's home, school, and community.
- The mental and physical health of all individuals involved.
- Evidence of a pattern of domestic or family violence by either parent.
- Evidence that the child has been cared for by someone other than a parent for at least six months to a year, depending on the child's age. This person is called a "de facto

custodian". If there is a "de facto custodian," the court shall consider:

- The wishes of the child's de facto custodian.
- The extent to which the child has been cared for, nurtured, and supported by the de facto custodian.
- The intent of the child's parent in placing the child with the de facto custodian.
- The circumstances under which the child was allowed to remain in the custody of the de facto custodian, including whether the child was placed with the de facto custodian to allow the parent now seeking custody to work, look for work, or go to school.

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What if I was never married to the father of my child? How will the court decide custody?

The court will look at the same factors listed in the answer above. If the parents were never married, the mother has legal custody of the child until a court issues a different custody order.

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What is joint custody?

Joint custody is when the people who have custody of a child share the authority and responsibility for the major decisions about raising the child. This includes decisions about the child's education, health care and religious training. It does not necessarily mean that each parent has the child one half of the time.

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My aunt is trying to get custody of my child through a guardianship. Do the same factors apply?

No. The factors listed above apply to custody disputes between children. If the custody dispute is between a parent and a non-parent, the court will still consider the best interests of the child. However, the court will also assume the parent should have custody. Generally, the non-parent will get custody through guardianship only if the child's parents can't or won't take care of the child.

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