

# Indiana Legal Services, Inc

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## Modifying Child Custody

The court can change a custody order if it is in the best interests of the child, and if there has been a substantial change in one of the factors courts think about when making custody decisions.

*[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].*

**My ex-wife has custody of our children, and I want custody. Do I have to go to court to change custody?**

**I want to modify custody to get custody of my child, but my ex-husband does not agree. Will the court change custody?**

**What are some examples of situations where a court might change custody?**

**What should I do if I want to get custody of my child from the other parent?**

**My ex-wife has custody of our children, and I want custody. Do I have to go to court to change custody?**

Generally, you should go through the court to change custody. If you don't, then the original court orders will still be in effect. You could end up with the children living with you, and still have to pay child support, if the original court order had you paying child support.

If you and your ex-wife agree on changing custody, you can generally get custody modified without a court hearing. However, you should still have the court approve your agreement and change the court's order to make your custody a legal arrangement.

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**I want to modify custody to get custody of my child, but my ex-husband does not agree. Will the court change custody?**

The court can change custody even if both parents don't agree. However, it is difficult to get a court to change custody, because courts don't like to move children around a lot.

You will need to prove that it is in the best interests of the child to change custody AND that there has been a substantial change in one or more of these factors:

- 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 are some examples of situations where a court might change custody?**

Of course, every case is different and depends on the circumstances of that case. Possible reasons for changing custody could include:

- Children getting older and wanting to live with the other parent, especially if the children are not doing well in school in their current home.
- If the custodial parent remarries and the new spouse is abusive to anyone in the home or if the new living situation is harmful to the child in other ways.
- If the custodial parent plans to move away to a place where the children have no family or friends.

These are just examples; a court may or may not change custody based on any of these facts.

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### **What should I do if I want to get custody of my child from the other parent?**

If you and the other parent can talk about this, you may want to discuss it with the other parent and see if you can reach an agreement. If you cannot reach an agreement, you will need to go to court and ask the court to change the custody order.

Before you go to court, you should think specifically of what reasons you have for changing custody, and what evidence you have to support these reasons. The court will probably not change custody unless you have good reasons for changing it, and proof to back up your reasons.

You can also ask the court to order a custody evaluation. This is a report done by a professional who would interview the parties and make a recommendation to the court concerning custody.

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