

**Pro Se Membership
Program**



UNDERSTANDING ALL THINGS CHILD CUSTODY- IDAHO



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A STEP- BY-STEP E-GUIDE

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PHYSICAL AND LEGAL CUSTODY IN IDAHO

Idaho child custody laws recognize two types of custody: physical and legal custody. Parents can share physical and legal custody (called "joint custody") or one parent may be granted sole physical and/or legal custody. Ultimately, the type of custody awarded in your case will depend on your child's best interests.

"Physical custody" is where a child lives. A parent with physical custody spends a substantial amount of time with the child. Yet, even in joint custody arrangements, parents won't necessarily have equal time with their kids. One parent may have three overnights per week, while the other parent has four.

"Legal custody" refers to a parent's right to make major decisions for the child. Parents with legal custody can decide where a child will attend school, what kind of medical care they'll receive, and whether they should be raised in a certain religious faith.

In most cases, it's in a child's best interests for parents to share legal custody. Where parents have a contentious relationship or live far apart, a judge may award one parent sole decision-making power over a child. See Idaho Code § 32-1011 (2020).

MODIFICATION OF CUSTODY IN IDAHO

The standard you or your child's other parent must meet to modify child custody is based on an Alabama court case, *Ex parte McLendon*. It is sometimes called the "McLendon standards" or the "McLendon doctrine." Grounds for child custody modifications are not found in an Alabama statute.

For a judge to approve a change in your current child custody order, you or the other parent must prove:

- *There has been a material or substantial change in circumstances affecting child custody;*
- *Changing the custody order is in your child's best interests; and*
- *The benefits of altering the custody order outweigh the inherent disruption that results from the change.*

This is a high hurdle. If you wish to change the child custody order, you should speak with an attorney first. If you go to the court to try and modify the custody agreement and you cannot establish the three elements above, you will have wasted your and court's time. However, this high hurdle also works in your favor if your child's other parent attempts to alter the current custody order for an insignificant reason.

BEST INTEREST OF A CHILD

Custody decisions are easy when parents can agree on how to divide and share in the care and support their children, but a judge will step in when parents can't reach an agreement.

In Idaho, a judge will determine a child's best interests by considering the following factors:

- each parent's wishes for custody
- the child's relationship with siblings and each parent
- the child's preference
- each parent's physical and mental health, including parental fitness
- each parent's ability to meet the physical, emotional and basic daily needs of the child
- the child's adjustment to school and community
- each parent's history of domestic violence, if any
- the child's need for stability, and
- any other factor the court deems relevant.

Idaho child custody laws require a judge to consider any episodes of domestic violence committed by either parent. An abusive parent isn't automatically prohibited from receiving custody of his or her child, but he or she will face additional challenges to win full custody in Idaho.

The court may also consider any other circumstances affecting the safety, health or care of the child when deciding what arrangement will serve the child's best interests.

CUSTODY MODIFICATION IN IDAHO

Under Idaho law, courts make decisions about child custody after a divorce based on the child's best interest.

You can modify the custody agreement based on a "substantial and material change of circumstances." This means that there has been a major change in the life of one or both parents that calls for changing the custody order. The parent seeking to change the custody order must prove that the change in custody is in the child's best interest.

Suppose that after a custody agreement is made, you discover your ex-spouse is struggling with drug addiction. You can ask the court to change the agreement and grant you full custody.

Even if both parents are stable, loving, and able to look after the child, the custody agreement might need to be adjusted due to circumstances like a new job or moving out of state.

The court may consider changing the custody arrangement under the following circumstances:

- One parent is not financially stable due to the loss of a job or benefits
- One parent moving out of state
- The child is not happy
- A parent becomes emotionally unstable
- A parent is sentenced to a long-term prison sentence
- The parent abuses the child physically or mentally
- A parent's new spouse or partner has conflicts with the child
- A child develops special health or education needs that the custodial parent can't meet

GAL IN IDAHO

State law directs the Idaho Supreme Court to serve as grant administrator for funds the Legislature appropriates to the guardian ad litem account (I.C. 16-1638). A guardian ad litem (GAL) is a person appointed to advocate for the best interests of a person in certain court proceedings. This grant program focuses particularly on funding guardians for child protection cases. The Court awards funding to organizations in each of the seven judicial districts to maintain GAL programs and train volunteers to serve as these advocates.

RECUSAL OF JUDGE

[https://casetext.com/rule/idaho-court-rules/idaho-code-of-judicial-conduct/canon-2-a-judge-shall-perform-the-duties-of-judicial-office-impartially-competently-and-diligently/rule-211-disqualification#:~:text=Rule%202.11%20%2D%20Disqualification%20\(A\),a%20party's%20lawyer%2C%20or%20personal](https://casetext.com/rule/idaho-court-rules/idaho-code-of-judicial-conduct/canon-2-a-judge-shall-perform-the-duties-of-judicial-office-impartially-competently-and-diligently/rule-211-disqualification#:~:text=Rule%202.11%20%2D%20Disqualification%20(A),a%20party's%20lawyer%2C%20or%20personal)

RULES OF CONDUCT FOR JUDGES

https://judicialcouncil.idaho.gov/Judicial_Conduct_Code_6-27-16.pdf

ATTORNEY ETHICS

<https://isb.idaho.gov/wp-content/uploads/irpc.pdf>

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- ✓ Family Court Strategist,
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