

Information for Non-Attorneys on Third Party Custody

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Disclaimer

This paper and the forms do not create an attorney-client relationship between the reader and Kids’ Voice of Indiana, Inc.

Purpose of this Paper

The purpose of this paper is to explain:

- (1) legal terms for situations when a non-parent wants to be awarded custody of a child;
- (2) what third party custody means, and when third party custody may be requested under Indiana law;
- (3) how divorce cases, paternity cases, and the signing of a paternity affidavit affect a non-parent’s ability to be appointed legal custodian for a child;
- (4) the legal process of awarding third party custody, including forms for self-represented litigant non-parents who want to be awarded custody of a child.

It is best for non-parents who want to be awarded legal custody of a child to be represented by an attorney who is licensed to practice law in Indiana. Non-parents who have limited financial resources should contact Indiana Legal Services at **(844) 243-8570** to find out whether they are eligible to receive free legal representation to be awarded custody of a child. Non-parents may also consult the [Indiana Supreme Court Website](#) at the Self Service Legal

Center by clicking on [Getting Legal Help](#). This link connects users to information for District Pro Bono providers who might be able to provide free legal representation. The forms provided in addition to this Information should be used as a last resort when: (1) both parents are consenting to the award of custody to a third party; (2) and the parents and third party are unable to secure the services of an attorney.

Explanation of the Terms Used in this Paper

“Child” a child under age 19 in a custody case.

“CHINS petition” is a legal case filed in court by the Department of Child Services when child abuse or neglect has been substantiated. Having a CHINS case filed is different from an assessment (formerly called an investigation) by Child Protective Services (CPS).

“Judge” means a trial court judge who has been elected by the county voters or another judicial officer, including a magistrate, commissioner, or referee.

“Modification of third party custody” means that a person has asked the court to modify its previous custody order.

“Non-parent” means a person who is not the child’s mother or legal father.

“Self-represented litigant” means a person who does not have an attorney.

“Third-party custodian” means a non-parent who is seeking custody of a child in a divorce (“dissolution”) case or a paternity case.

“Third-party custody” means that a non-parent has the legal authority to provide a home for the child and make decisions on the child’s behalf, including decisions about the child’s medical care and education.

The Meaning of Third Party Custody

The award of third party custody requires a court hearing. A Judge is the only person who has the legal authority to sign a court order awarding custody of a child. A parent may sign a consent to the award of custody to a third party for the parent’s child, but signing the consent is only one of the steps needed to obtain court ordered custody for a third party. A parent’s signature on a will, a power of attorney form, or a consent to third party school enrollment form does not award legal custody to a third party. The Judge may consider the parent’s wishes as shown in a signed document, but the Judge is not required to agree with the parent’s wishes when awarding custody to a third party. The Judge must decide, among other things, whether awarding custody to a third party is in the child’s best interests.

The non-parent does not need to be a relative of the child in order to be awarded legal custody of the child. The non-parent cannot give money or something valuable to the parents “in exchange for” the parents’ consenting to award of third party custody.

Legal Situations When a Judge Can Award Third Party Custody

Indiana law does not allow a Judge to appoint a guardian for a child if there is already a divorce case or a paternity case about the child. If the child's parents are divorced, only the divorce court has the authority to make court orders about the child's custody until the child is at least nineteen years old. This is true even after the parents have been divorced. A non-parent who wants custody of the child must file a petition in the court case for the parents' divorce requesting to be appointed the child's "third party custodian." If the parents have been divorced, and later one of the parents dies, the non-parent should ask the Judge with jurisdiction over legal guardianships to appoint a legal guardian for the child, because the divorce court's jurisdiction ends when a parent dies.

If the child's paternity has been established in a court case and a custody and child support order has been entered, only the paternity court has the legal authority to make orders about the child's custody until the child is at least nineteen years old. This is true even after the identity of the child's biological father has been legally established in court. A non-parent who wants custody of the child must file a petition in the paternity court and request to be appointed the child's "third-party custodian." The authority of the paternity court to make orders about the child's custody continues, even after the death of one of the parents. If paternity was established as part of a Title IV-D child support case, the non-parent should request third party custody in the Title IV-D court case.

If the Department of Child Services (DCS) has filed a CHINS petition about the child, non-parents' requests for "third-party custody" should be filed in the CHINS case as long as the CHINS case remains open. Non-parents should cooperate with the DCS case manager when requesting custody of a CHINS.

Responsibilities of a Legal Custodian

When a Judge awards legal custody of a child to a third party, the custodian has the responsibility to provide a clean, safe home for the child. There must be no abuse, neglect, domestic violence, or exposure to illegal drugs or persons who have been convicted of serious crimes, such as murder, or sex crimes in the home. The custodian must be sure that the child receives medical care, dental care, food, clothing, supervision, and education. The legal custodian must not "give" the child back to the parents or other non-parents without permission from the Judge in advance.

If a non-parent has been awarded legal custody of a child, the non-parent will have the legal authority to obtain medical care for the child, enroll the child in school, and apply for financial benefits for the child, including Social Security, child support, health insurance (including health insurance from the guardian's employer, depending on the employer's insurance policy), Supplemental Security Income, and Veteran's Administration benefits. The

Judge can specifically limit the legal custodian's powers and duties and also order the legal custodian to comply with specific orders, including providing parenting time for the parents. If the legal custodian becomes unwilling or unable to care for the child, the legal custodian must petition the Court for modification of custody so that another person can be awarded custody.

Information for Non-Parent Self-Represented Litigants Who Want to Be Awarded Legal Custody of a Child

Court procedures are different in each of Indiana's 92 counties. In some counties, the Judge who has the legal authority to award custody of a child allows a non-parent to petition for third party custody without an attorney. The legal forms in this article may be helpful to a non-parent self-represented litigant. The forms may be used only if the child's parents sign notarized consents to the award of third party custody to the non-parent. Using these forms is a last resort when efforts to secure the services of an attorney have failed. The Verified Petition for Modification of Custody of the Minor requires the person who is requesting to be awarded third party custody to swear or affirm under the penalty for perjury that the statements in the petition are true. The cause number for the parents' dissolution case or paternity case should be obtained from the parents, if at all possible. Non-parent self-represented litigants who do not have the correct cause number may be able to obtain the cause number from the Office of the Court Clerk where the dissolution or paternity case was filed.

If the parents are divorced, the self-represented litigant will need:

- (1) Dissolution Verified Motion to Intervene and Be Joined as Necessary Parties and Petition for Modification of Custody;
- (2) Dissolution Order Granting Motion to Intervene;
- (3) Dissolution Parent's Consent to the Appointment of Third Party Custodians of Minor Child;
- (4) Dissolution Order Granting Intervener's Petition for Modification of Custody.

If there is a pending paternity case regarding the child, the self-represented litigant will need:

- (1) Paternity Verified Motion to Intervene and Be Joined as Necessary Parties and Petition for Modification of Custody;
- (2) Paternity Order Granting Motion to Intervene;
- (3) Paternity Parent's Consent to the Appointment of Third Party Custodians of Minor Child;
- (4) Paternity Order Granting Intervener's Petition for Modification of Custody.

Make four copies of Completed Documents (1) through (3) listed above. Attach the Parents' Consents to the Verified Motion to Intervene and Be Joined as Necessary Parties and

Petition for Modification of Custody. Remember that both parents' consents are needed in a dissolution or paternity case. If, in a paternity case, one or both of the parents is deceased, a copy of the death certificate (which may be obtained through the funeral director or the State Department of Health) or other documentation that the parent is deceased is needed. Ask the County Clerk's Office for the procedures used in your county to file custody petitions. Usually, you will need to give the Court a stamped addressed envelope for yourself and for each parent when you file the Verified Motion to Intervene and Be Joined as Necessary Parties and Petition for Modification of Custody and the Order Granting Motion to Intervene and Setting Hearing. In this way, when the Court assigns a hearing date, all legal parties will receive a notice of the hearing date in the mail. Both the non-parent who is requesting custody and the parents should appear at Court if possible. If a parent is incarcerated and has signed the Consent, the Court may allow the hearing to go forward without the presence of the incarcerated parent. The Court will usually need to hold a hearing before awarding custody to the non-parent. Along with awarding custody, the Court will usually establish the amount of child support each parent must pay, set out what each parent's parenting time should be, determine who should pay for health insurance for the child(ren), and determine who may request a tax deduction for the child(ren).

Modification of Third Party Custody

If a parent wants to ask the Court to modify its award of third party custody, the parent or must file a Petition to Modify Custody in the divorce or paternity court where the third party custody order was made. The parent must also file a request to set the Petition to Modify Custody for hearing. The reasons which could cause the parent to request modification of custody include: (1) the parent wants to resume having custody of the child; (2) the other parent wants to have custody of the child; (3) the parent has not been receiving court ordered parenting time or wants to have court orders about parenting time changed; (4) the parent wants another person to have custody of the child. The third party custodian and the parent may agree to modify the award of third party custody, but the agreement is not legally valid until the Judge approves the agreement. If the parent and the third party custodian do not agree to modify custody, the Court will set a hearing and the Judge will make the decision after hearing evidence.