



FAQ About Custody, Parenting Time, and Covid-19 Pandemic (April 7, 2020)

These Frequently Asked Questions (FAQ) are intended to be a guide to helping parents and caregivers make basic decisions regarding custody and parenting issues during the pandemic. These FAQ are not legal advice, and if you need legal advice, you should consult an attorney.

The basic principle you will see behind these questions is that it is in a child's best interests to have continued ongoing contact and relationships with both parents, and that all court orders regarding custody and parenting time are still in effect at the time of writing these FAQ. Please keep these guiding principles in mind, and remember that eventually, the pandemic will pass. When normal court functions resume, you do not want to appear to have taken advantage of this situation to deprive your child of contact and a relationship with the other parent.

1. One parent traveled overseas or through a U.S. area that has a high rate of infections. What do we do about parenting time?

First, please understand that all court orders regarding parenting time are still in effect. You should follow them, unless there is an extremely compelling reason that would withstand court scrutiny not to do so.

This is a situation that would benefit from both parents discussing the matter and coming to an agreement. Practically speaking, courts are limited in their ability to hear and respond to matters such as these. If a child is truly in a high risk category, and one parent has been exposed, it is worth considering having the exposed parent self-isolate for the appropriate amount of time, and then resuming normal custody and parenting time arrangements after that.

This carries with it the risk of later being found in contempt of court, and courts will likely want to know what medical data that is specific to the child supports a decision like this, if both parents did not agree.

2. One parent wants to take the child and travel to the beach/to the mountains/somewhere out of state/somewhere within Indiana. Is this allowed?

On March 23, 2020, the Indiana Governor issued the "Directive for Hoosiers to Stay at Home". On April 6, 2020, the Indiana Governor issued the "Continued Directive for Hoosiers to Stay at Home," which continues the stay at home order until Monday, April 20, 2020 at 11:59 pm. This order may be extended if the circumstances warrant it. Travel that is for recreation is now

banned, and most, if not all, places that offer recreation are closed or must maintain strict social distancing.

Exception for travel include travel that is aimed at the care of a family member and travel necessary for custody arrangements; other travel exceptions, which mostly all work or care related, may be found in Section 16 of the order, titled “Essential Travel.”

3. Should we continue to do parenting time exchanges like normal?

Yes. Parenting time with both parents is essential to children and in their best interests even in normal times. In times of high stress, instability, and even fear, it’s best for children to have as much normalcy as possible. Spending time with both parents is a way to achieve that.

In addition to your child’s best interests, at the time of writing these FAQs, the “Stay at Home” order includes exceptions for the continued care of minors and family members, as well as exception for exchanging a child pursuant to custodial arrangements. This means that the exercise of parenting time should continue as ordered.

There are no instructions or orders suspending parenting time. All court orders regarding custody and parenting time are still in effect.

4. What about parenting time when one parent lives far away or out of state?

All court orders regarding custody and parenting time are still in effective, and you should follow your court orders. See the above answer to FAQ #3 for more details.

5. How does the “Stay at Home” order affect parenting time?

The March 23, 2020, and the April 6, 2020 orders do not affect parenting time. Parenting time and parenting time exchanges should occur pursuant to your current court order or agreement. These activities are considered essential, as parenting time is part of the provision of care for a minor, and are explicitly listed as essential in the order.

6. Our child is immunocompromised, and one parent has recently been traveling through infected areas, or one parent is a frontline worker, such as a healthcare provider. What do we do?

This is a situation that would benefit from both parents discussing the matter and coming to an agreement. Practically speaking, courts are limited in their ability to hear and respond to matters such as these. If a child is truly in a high risk category, and one parent has been exposed, it is worth considering having the exposed parent self-isolate for the appropriate amount of time, and then resuming normal custody and parenting time arrangements after that.

This carries with it the risk of later being found in contempt of court, and courts will likely want to know what medical data that is specific to the child supports a decision like this, if both parents did not agree. Courts are unlikely to order that one parent's parenting time should completely stop because they are a frontline worker. The only complicating factor in this could be a child's own categorization as high risk. Unlike the question involving a parent who was exposed and can self-isolate and then move on, this carries the possibility of a parent being separated from their child for the duration of the pandemic or the parent's job tenure.

As such, this is a question that should be addressed to an attorney, and if the parents do not agree, would likely need to be addressed by a court. Courts will likely require medical data that is specific to the child when making a decision on this topic.

7. I am a single parent, and there is no other legally established parent for my child; or, we are the parents of children and we want to jointly make a plan for our children in case we become ill. What steps should I/we take?

No matter whether you are a sole parent with no other living, legally established or legally presumed parent, or whether you are married parents making joint decisions for your children, you may wish to make a Family Safety Plan. A Family Safety Plan can cover situations where one or both parents become unable to provide care for their children due to severe illness.

A Family Safety Plan likely includes making a plan with another trusted person in your and your child's life, and ensuring that this back-up caregiver will provide care, support, and supervision for your child until you are well enough to resume your parental duties. You can achieve this through a Parental Power of Attorney or a Standby Guardianship. For more information on this, see our website at <https://www.kidsvoicein.org/family-safety-planning-in-indiana/>.

8. My child has special educational needs/has an IEP/has a 504. How do we handle education needs during a pandemic?

Even while everyone deals with the uncertainties surrounding the novel coronavirus, schools are still bound by the provisions of IDEIA, at least until such time as those requirements are addressed by Congress. As such, school districts are to provide a "free appropriate public education" to students with disabilities in their buildings or district, as described in each student's IEP. However, due to the extenuating and unique circumstances presented by the virus, it is reasonable to expect that schools will be unable to provide all modifications and accommodations described within an IEP when schools are closed for public health reasons. That is not to say, however, that students with special needs should be ignored or neglected. Instead, schools should make reasonable efforts to make the educational curriculum accessible to students with disabilities, whether through visual or auditory media, or through the use of software. Further, the school should make the effort to provide as many modifications, accommodations, and services as they can, without risking the safety of their employees or students.

9. I am unemployed/underemployed/otherwise not receiving my normal income. How do I handle child support during a pandemic?

Unless there is a court order abating child support, child support must be paid. Courts do understand that people are likely to lose their jobs, and that they will not be able to quickly get a hearing regarding child support. If you need to modify child support, file a request for modification immediately. You likely will not be able to get a hearing right away, but modifications may be made to be retroactive to the date of filing. There appears to be a high likelihood of that be granted under these circumstances.

Pay something every week, even if it is not the full amount. It shows the Court you were mindful and making an effort which will minimize sanctions and work to your benefit if facing a later contempt. You should also keep in mind that this may affect whether you can claim the child dependency exemption for 2020 if you fall too far behind this year. If there is no paycheck, you are supposed to pay through the Clerk's office, but Clerk's offices may be closed. At the time of writing this, it was still possible to make child support payments at Walmart, CVS and possibly Meijer.

10. One parent missed parenting time as a result of the pandemic, either voluntarily, or involuntarily. What do we do, and will the time be made up?

If one parent is not able to have contact with the child due to pandemic, the other parent should make every effort to facilitate other avenues of contact. Other methods of contact include: (1) telephone calls; (2) emails; (3) cards and letters; (4) use of video telephonic technology, such as FaceTime, Skype, Zoom, or Marco Polo.

Courts will most likely order make-up parenting time.