

WHAT IS CUSTODY?

Note: This guide is intended to provide general legal advice regarding the two types of custody in Idaho and how the court determines custody. Determining custody is a difficult and complicated matter. If you need specific legal advice regarding your situation, please consult an attorney.

If you are looking for information on [Third Party Custody](#) or [Grandparent Visitation](#), please see our [Third Party Custody Guide](#) or our [Grandparent Visitation Guide](#).

IDAHO CUSTODY LAW: THE BASICS

In Idaho, a custody arrangement is determined by the court's analysis of the child(ren)'s best interests. See Idaho Code Sections [32-717](#) and [32-717B](#). Courts presume that joint custody is in the best interests of the child(ren) unless evidence demonstrates otherwise. Idaho Code Section [32-717\(B\)\(4\)](#).

Domestic Violence Exception

However, if one parent is a "habitual perpetrator of domestic violence", the court assumes that joint custody is not in the child(ren)'s best interest. See Idaho Code [32-717\(B\)\(5\)](#). "Domestic violence" is defined as: "the physical injury, sexual abuse or forced imprisonment, or threat thereof, of a family or household member, or of a minor child by a person with whom the minor child has had, or is having, a dating relationship, or of an adult by a person with whom the adult has had, or is having, a dating relationship. See [Idaho Code Section 39-6303](#).

DEFINITIONS: JOINT PHYSICAL CUSTODY

Where each of the parents is granted significant periods of time in which a child or children resides with, or is under the care and supervision of, each parent. Idaho Code Section [32-717B\(2\)](#).

DEFINITIONS: JOINT LEGAL CUSTODY

Where the parents or parties are required to share decision-making rights, responsibilities, and authority relating to the health, education, and general welfare of the child(ren). Idaho Code Section [32-717B\(3\)](#).

WHAT CAUSES JOINT CUSTODY TO BECOME SOLE CUSTODY?

THE "BEST INTERESTS OF THE CHILD" STANDARD

Idaho Code Section [32-717\(1\)](#) provides factors for the custody, care, and education of the child(ren) for the court to decide what is necessary for the best interests of the child(ren).

THE COURT WILL CONSIDER ALL RELEVANT FACTORS WHICH MAY INCLUDE:

- The wishes of the parent(s)
- The wishes of the child(ren)
- The interaction and interrelationship between the child and his or her parent(s) and his or her sibling(s)
- The child's adjustment to his or her home, school, and community
- The character and circumstances of all individuals involved
- The need to promote continuity and stability in the child's life.

Idaho Code Section [32-717\(1\)\(a\)-\(f\)](#).

This list is not exhaustive. The court will consider any factor that it deems to be relevant to custody decisions.

SOLE CUSTODY CONSIDERATIONS

In almost all cases of sole **physical** custody, the other parent will have regular visitation rights with the child(ren). See [Danti v. Danti](#), 204 P.3d 1140, 1151 (2009).

For joint legal custody to become sole **legal** custody, there must be "substantial and competent" evidence in support of the sole legal custody. [Doe v. Doe](#), 239 P.3d 774, 776 (2010). In this case, such evidence included, but was not limited to:

- Telling lies to the other parent to prevent access to the child.
- An inability to change or understand dysfunctional behavior.

Additionally, if the court declines to award joint custody, the reasons for denial must be clearly stated. Idaho Code Section [32-717B\(1\)](#).

GRANDPARENT AS PARENT

Grandparents: Where the child is residing with a grandparent in a stable relationship, the court may recognize the grandparent as having the same standing as a parent when evaluating custody and the best interests of the child(ren). Idaho Code Section [32-717\(2\)](#).

OTHER CUSTODY CONSIDERATIONS

Disability: A parent's disability should be considered on a case-by-case basis in relation to that parent's fitness to parent. A parent with a disability may provide evidence and information regarding adaptive equipment and/or supportive services that will assist in parenting. Idaho Code Section [32-717\(2\)](#).

WHAT IF ONE PARENT WANTS TO RELOCATE?

An award of physical custody to a relocating party will be made only if he or she proves that the move is in the child or children's best interests. [Roberts v. Roberts](#), 64 P.3d 327, 332 (2003).

Note: Idaho's presumption in favor of joint custody does not impose a presumption against relocation.

In determining relocation, the court will consider **all** relevant factors. While traditional factors (like continuity and stability or the characters of the parties involved) are common, [Danti](#), 204 P.3d at 1146, other factors may be considered.

Example: In [Lamont v. Lamont](#), these unique factors supported the mother relocating with the children from Salmon, ID to Meridian, ID:

- The financial condition of school districts in each location;
- The mother's employment/ financial opportunities in each location;
- Parenting skills;
- Primary caregiver relationships with children.

See [Lamont v. Lamont](#), 347 P.3d 645, 649-50 (2015).

Factors relevant in some relocation cases may be irrelevant in others and courts are free to consider factors unique to each case.

See [Lamont](#), above.

CHANGING CUSTODY WITH A MILITARY PARENT

Military: If an active member of the Idaho National Guard or military is ordered or called to duty, this service will not be a substantial or material and permanent change in circumstance to justify reducing the member's previous custody or visitation privileges. Idaho Code Section [32-717\(2\)](#).

UNEQUAL JOINT CUSTODY BETWEEN PARENTS/ PARTIES?

For joint physical custody, it is not required that the child's time with each parent be exactly the same length, nor does it necessarily mean the child should alternate back and forth over certain periods of time. The court will determine the actual amount of time with each parent in a joint physical custody situation. Idaho Code Section [32-717B\(2\)](#).

Since joint legal custody relates to several elements of the child or children's upbringing, there is more flexibility.

Example: In [Boe v. Boe](#), the following evidence supported modifying custody to give the father sole legal custody over educational issues (even though the children liked their prior schools):

- The children were well-adjusted to the school near the father's home;
- The children enjoyed the social component of having friends in the neighborhood;
- The children's academic performance had improved while attending a school near their father's home.

See [Boe v. Boe](#), 422 P.3d 1128, 1138-39 (2018).

Additionally, if substantial, competent evidence supporting a change in custody is presented, this evidence will succeed even if conflicting evidence is presented. [Woods v. Sanders](#), 244 P.3d 197, 204 (2010).

OTHER HELPFUL RESOURCES

Link to the full text of Idaho Code Section 32-717: [Idaho Code Section 32-717](#)

Link to the full text of Idaho Code Section 32-717B: [Idaho Code Section 32-717B](#)

Idaho Judicial Branch self-help forms for filing for or altering a custody arrangement: <https://courtselphelp.idaho.gov/Forms/Custody>

Applying to Idaho Legal Aid Services for help:

<https://www.idaholegalaid.org/node/2413/apply-legal-assistance>

Other Legal Assistance and Referrals: <https://www.idaholegalaid.org/node/1073/self-help-warning>