

# PA's CHILD CUSTODY LAW: What You Need To Know

## WHAT IS A CUSTODY ORDER?

A custody order is a written order signed by a judge. It defines the amount of time the parent or other caretaker will spend with the child (physical custody) and how major decisions are made about the child (legal custody).

**Note:** People who file for custody and people they file against are referred to as "parties." Each is known as a "party."

**This brochure is meant to give you general information and not legal advice.**

## WHERE SHOULD I FILE MY CUSTODY PETITION?

**Jurisdiction** – Your child must have lived in the county for at least 6 months before the court in that county will hear your case. Until 6 months have passed, you must file in the county where the child lived before. There are a few exceptions to this rule, for example if the child is under 6 months old, or for certain emergencies.

## WHO MAY FILE FOR CUSTODY?

- A **parent** of the child may file for any form of physical or legal custody.
- **Someone who has acted *in loco parentis*** to a child may file for any type of physical or legal custody. You have acted *in loco parentis* if the child is not your legal child, but you have acted as a parent and taken on the responsibilities of *parenthood* for a period of time.
- A **grandparent** of the child who is **NOT *in loco parentis*** to the child may file for any form of physical or legal custody, **IF:**

- A parent of the child allowed the grandparent to form a relationship with the *child* **OR** the court ordered that the grandparent and child be permitted to form a relationship;
  - **AND**
- The grandparent is willing to take responsibility for the child;
  - AND**
- When one of the following conditions is met:
  - ✓ The dependency court has determined that the child is "dependent" under PA's child abuse and neglect law;
    - OR**
  - ✓ The court determines that the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity;

**OR**

- The child has lived with the grandparent for at least 12 consecutive months (not counting brief absences) and is removed from the home by the parents. In this case, the grandparent must file for custody within six months after the removal of the child from the home. Grandparents and great-grandparents may also file for **partial physical custody or supervised physical custody** in the following situations:

- The parent of the child has died

**OR**

- The parents of the child have been separated for at least six months or have started divorce proceedings

**OR**

- The child has lived with the grandparent for at least 12 consecutive months (not counting brief absences) and is removed from the home by the parents. In this case, the grandparent must file for custody within six months after the removal of the child from the home.

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## HOW DOES THE LAW DEFINE CUSTODY?

**Physical custody** – There are several types:

- **Shared** – More than one party is allowed to take physical custody of the child, and each of them has significant periods of time with the child.
- **Primary** – A party spends the majority (more than half) of the time with the child. The other party may get partial or supervised custody.
- **Partial** – A party spends less than a majority of time with the child.
- **Supervised** – Custodial time during which an agency or adult named by the court monitors interaction between a party and the child.
- **Sole** – One party has physical custody all of the time.

**Legal custody** – There are two types:

- **Shared** – More than one party has the right to make major decisions for the child.
- **Sole** – One party makes all major decisions for the child.

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## HOW DO I FILE FOR CUSTODY?

### What does it cost?

Each county sets its own fees. Check with your county court to learn more.

### What if I cannot afford the filing fee?

You may ask to be excused from paying the fee. Do this by filing a petition to proceed *In Forma Pauperis* (IFP). Ask your local court for and fill out an IFP Petition. If you are on welfare or SSI, bring your welfare photo ID or proof that you receive these benefits.

### Where do I go to file?

Go to your county courthouse or family court. Call the courthouse or check its website for the address.

### What should I bring?

You should bring any important papers and information such as previous custody orders, protection from abuse orders, the opposing party's address, and social security numbers for all parties. In many PA counties, you must complete your own petition, according to the rules of your county court, and take it to court.

### What if I have an urgent situation?

The new PA custody law provides help when you believe the other party is facing a criminal charge. In this case, you may file an **Expedited Petition**. The court must schedule your hearing as soon as possible. To obtain evidence of the criminal charge, go to <http://www.jendaveprogram.us/> and follow the instructions carefully. The court recognizes information obtained through this program as evidence in custody cases.

### What happens on the day I file?

This depends on the county where you file. In some counties, you will be told of your court date. In many other counties, you will be told to expect a mailing from the court with your court date.

## HOW DO I PREPARE FOR THE HEARING?

- **Testimony** – each party may present their side and ask questions of the other side. You may prepare a list of your main points as well as questions that you want to ask the other party and bring that list to court with you.
- **Evidence** – you may bring school or medical records or other important papers or photographs. You have the right to see everything that the other side wants to show the court. Make two copies of whatever you plan on giving to the court — the judge or master gets the original, the other side gets a copy and you keep a copy.

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- **Witnesses** – you may want to bring witnesses to testify on your behalf. In some counties, witnesses must present a subpoena to be admitted into the court. Check with your county courthouse to learn how to get witnesses into the courthouse. Ask whether you need a subpoena. If the answer is yes, ask how to get the subpoena and how to serve it on the witness.

You may want to prepare and bring with you a list of questions to ask your witnesses and any witnesses the other party brings. Remember:

- Witnesses may only testify to events they have actually seen.
- If your witness can't come to court, you may ask the judge to permit your witness to testify by telephone. You should try to ask by letter before the hearing date. Letters or affidavits from witnesses will not be accepted without the witness present.

### WHAT HAPPENS IN COURT?

Each county has its own rules that govern all court procedures. You must call your county courthouse or check its website to learn more.

### HOW DOES THE COURT DECIDE CUSTODY?

A judge or master, after holding a hearing, decides custody based on the **best interest of the child**. The court is required to consider all relevant factors. **It must give more consideration to factors which affect the safety of the child.** The law lists many factors:

1. Which party is more likely to encourage and permit frequent and continuing contact between the child and the other party.
2. Abuse, past and present, by a party or member of a party's household. Is there a continued risk of harm to the child or an abused party? Which party can better protect and supervise the child?
3. What each party does to parent the child.
4. The need for stability and continuity in the child's education, family life and community life.
5. The availability of extended family.
6. The child's relationships with sisters and brothers.
7. The preference of the child. The court must determine if the child carefully thought about his/her preference. The court must also assess the child's maturity and judgment.
8. Attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are necessary to protect the child from harm.
9. Which party is more likely to maintain a loving, stable, consistent and nurturing relationship with the child adequate for the child's emotional needs.
10. Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.
11. How close the parties' homes are to one another.
12. Each party's availability to care for the child or ability to arrange appropriate child-care.
13. The level of conflict between the parties and the willingness and ability of the parties to cooperate with one another. A party's effort to protect a child from abuse by another party is not evidence of unwillingness or inability to cooperate with that party.
14. The history of drug or alcohol abuse of a party or member of a party's household.
15. The mental and physical condition of a party or member of a party's household.
16. Any other relevant factor.

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## What about criminal charges and convictions?

The court must also consider certain criminal charges and convictions, mostly relating to violent crimes, including domestic abuse, but also including DUI and drug-related offenses. If you learn that the other party is facing certain criminal charges and poses a risk to the child, you may file a motion for temporary custody or, if there is an existing custody order, a motion to modify custody, and the court must hold a hearing in an expeditious manner (quickly). If a party or a member of a party's household has certain criminal charges or convictions, the court **MUST** take several steps, including evaluations and possibly counseling.

To obtain evidence of a criminal charge or conviction in Pennsylvania, go to <http://ujportal.pacourts.us/docketsheets/cp.aspx> and follow the instructions carefully. Print the information you find and take it to court. If you do not have internet access, you may ask the judge to check this website for evidence of a criminal charge or conviction.

## Parenting Plans

When the parties do not agree on custody, the court may require each party to submit a parenting plan to help it make a decision. The plan must include a detailed description of how the parties will be involved in making decisions about the child and a schedule of when the child will live with each party. Your plan must be presented to the court in a special format. There are limits to how they may be used in court.

## WHAT IF I DISAGREE WITH THE COURT ORDER?

If you disagree with a Judge's order, you may file a *request for reconsideration*. You may wish to talk to an attorney if you want to file such a request. You may also file an appeal with the Superior Court of Pennsylvania *within 30 days* of the date of the court order. Appeals are very complicated. You may want to talk to an attorney if you decide to appeal to Superior Court. A request for reconsideration does not stop the 30 days from running.

## WHAT IF I WANT TO MOVE AWAY WITH MY CHILD?

The new custody law requires parents who want to relocate to take a number of steps. These steps begin with notice to the other party at least 60 days prior to the planned relocation. If this is not possible, the party who plans to move must give notice to the other party at least 10 days prior to the move. There is a particular order to the steps that follow, and a particular structure. In addition, there are strict timelines for the entire process.

## WHERE CAN I TURN FOR MORE HELP?

It can be very helpful to have a lawyer to represent you in a custody case. Suggestions for finding a lawyer:

Your County's Bar Association – Most bar associations have lawyer referral programs. Most of them only refer to private lawyers whom you must pay for representation. A few have low-fee programs, through they refer to lawyers who will handle certain types of cases for a reduced fee.

Your County's Legal Aid – for contact information, go to [www.palegalaid.net](http://www.palegalaid.net).

What to do if you cannot afford a lawyer:

Visit the website [www.palawhelp.org](http://www.palawhelp.org) for information about legal procedures in many of Pennsylvania's counties. This website also lists local resources.

Call the Women's Law Project. We offer a free Telephone Counseling Service. An Intake Operator will take your information and a trained volunteer telephone counselor will call you back. Through this service, we provide information about the law and about legal procedures in Philadelphia. Call 215-928-9801 or visit [www.womenslawproject.org](http://www.womenslawproject.org) to learn more.