

## CAN A CUSTODY ORDER BE CHANGED?

Yes. A judge, at the request of either side, may change a custody order at anytime if it appears that a change would be the best for the children.

## CAN GRANDPARENTS GET CUSTODY?

Grandparents and great-grandparents can ask for partial physical custody or supervised physical custody under the following circumstances:

- If the child has lived with them for 12 consecutive months or more and is removed by parent(s) (note, must file within 6 months of removal)
- If the parent whom they are related to has died
- If the parents are separated or their marriage has been dissolved for at least 6 months.

In some cases a grandparent can ask the court for primary physical custody of a child:

- if they stand in loco parentis to the child or
  - if they meet the following:
1. If their relationship began with consent of a parent or court order
  2. Has assumed responsibility for the child; and
  3. When one of the following conditions are met:
    - a. child is dependent under juvenile law
    - b. if the child is at risk because of parental abuse, neglect, drug or alcohol abuse or mental illness on the part of the parent(s) or
    - c. child has resided for 12 consecutive months or more with grandparent and is removed by a parent and grandparent files for custody within 6 months of removal.

## CAN OTHER RELATIVES GET CUSTODY OR VISITATION?

Yes, but only in special cases. Non-parents, such as aunts, uncles, or friends, can sue a parent for custody if they raised the child, meaning have in loco parentis status. If the child is dependent (neglected, abandoned, or without proper care or control), a court may give custody of the child to an agency such as Children & Youth Services, or in some cases to a non-parent.

## CAN I MOVE TO A NEW RESIDENCE WITH MY CHILD?

Maybe! No one may change the residence of the children if it will significantly impair the other parties' exercise of custody UNLESS every person who has custody rights consents to the move OR the court issues an order approving the move. If you fail to comply with this part of the law, you may lose custody of your children.

## WHAT IF A PARENT VIOLATES A CUSTODY ORDER?

A person who disobeys a custody order may be held in contempt of court or charged with a crime and may be jailed, fined, put on probation, suspended/denied their driver's license and/or ordered to pay counsel fees and costs.

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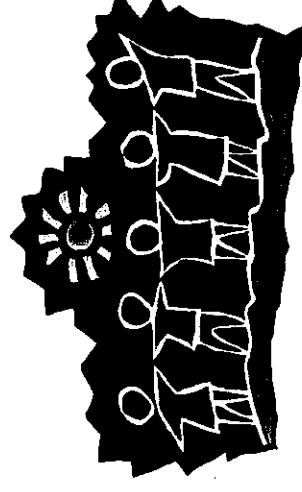
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# MidPenn Legal Services

# Custody and Visitation of Children



Pennsylvania  
**LEGAL AID** Networks, Inc.

This pamphlet contains general information and not specific legal advice. Although the information is believed accurate at the time of preparation, individual situations may require individual analysis, such that it may be advisable to consult with a lawyer. May 2011

When Parents do not live together, their most difficult and serious disagreements often involve their children. It is usually best, for both the parents and children, if the parents can agree on their own about a custody schedule, without involving lawyers and the courts. It is important for parents to remember that their problems are not the fault of their children. When trying to solve a disagreement about custody, the most important thing for parents to keep in mind is the best interest of the children.

### **WHAT KIND OF CUSTODY ARRANGEMENTS ARE THERE?**

There are two types of custody: Legal and Physical. Legal custody may be shared between the parents or granted to just one of the parents. The legal custodian determines major decisions which affect the children for things such as medical care, religious training and education. Minor day to day decisions are determined by the parent having physical custody.

Physical custody means the parent with whom the child is residing. There are various schedules that may be agreed upon for physical custody.

It is usually best if the parents can agree on a custody schedule. An agreement can provide for several different arrangements about where the children will live. Here are two examples:

- The children live with one parent the majority of the time, who has primary physical custody. The other parent may only have the right to supervised physical custody, which means they can only see the children if their interaction is monitored by an agency or designated adult OR the other parent may have partial physical custody, which means they have visits with the children without supervision for periods of time that are less than the other parents (ie alternating weekends)
- The children live with each parent for significant periods of time such as alternating weeks. This is called shared physical custody.

It is very unusual for a parent to be denied all contact with his or her children. A parent who does not have primary physical custody will generally have the right to partial physical custody or supervised physical custody.

### **WHAT IF PARENTS CAN'T AGREE?**

Most communities have mediation programs or counseling services that can help parents reach an agreement. If they still can't agree, either parent may go to an attorney for help in reaching an agreement. If that does not work, custody may have to be decided by the courts.

### **SHOULD A PARENT SEE A LAWYER EVEN IF SHE OR HE AGREES WITH THE OTHER PARENT ON THE CUSTODY SCHEDULE?**

This is usually a good idea for two reasons. First, a parent may want to make sure what his/her rights are before reaching an agreement. A fair, lasting agreement can best be reached when both parents understand their rights. Second, if both parties agree, the agreement can be entered as a legally binding court order, which can be enforced through court action if either party doesn't obey it.

### **WHAT IF THERE IS NO COURT ORDER?**

If there is no custody order, both parents have equal rights to custody, and either can lawfully take physical possession of the child at anytime. Taking the child away without the other parent's consent can be held against you in court, if that action was not reasonable. If the other parent takes the child and you cannot work out an agreement for the return of the child, you can file a custody case and ask the judge to order the child returned to you.

### **WHAT HAPPENS IN COURT?**

Either parent can begin a custody action in court. Either before or after a hearing is held, the judge may require the parents and the child to attend counseling or mediation sessions to try to work out an agreement, and the judge may consider the person's report in reaching a decision.

If the parents still can't agree, a hearing will be scheduled. At the hearing, each parent will be able to present his or her side of the story. Each parent can submit evidence and have witnesses testify. The judge will then make a decision on each parent's rights to the children.

### **HOW WILL THE JUDGE MAKE A DECISION?**

The judge will make a decision based on the best interest of the children and will consider everything which affects these interests. The court will give weighted consideration to factors which affect the children's safety. Specifically the court will look at all of these items:

- Which party is more likely to encourage, permit and continue contact with the other parent.
  - Present and past abuse, and whether there is a continued risk of harm to the child.
  - Parental duties performed by each parent.
  - The stability a parent can offer the child.
  - Availability of extended family.
  - Sibling relationships. (if there are any)
  - Well-reasoned preference of the child, based upon the child's maturity and judgment.
  - Attempts of a parent to turn the child against the other parent.
  - Which parent is more likely to meet the child's emotional needs.
  - Which parent is more likely to attend to the daily physical, emotional, developmental, educational, and special needs of the child.
  - The distance between residences.
  - Child-care arrangements.
  - Level of conflict and willingness to cooperate.
  - History of drug or alcohol abuse of parent or household member.
  - Mental and physical conditions of parent or household member
  - Anything else relevant.
- The court must also look at the criminal convictions and charges of a party and anyone else they live with. If a party or household member has a listed charge or conviction, such as drug conviction or DUI, then the court must determine if that person is a risk to the child and/or requires any treatment BEFORE entering a custody order. This means if you or anyone you live with has had a DUI or other specific criminal conviction in the past, you may not be able to see your child until you or they obtain an evaluation and receive a positive report by an evaluator. This would also apply to the other parent or party in the action and their household members.
- There is no age at which a child may pick which parent they want to live with or spend time with. The court will look at all the above factors in deciding this issue.