



# Child Custody

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## What is child custody?

**Child Custody** is the legal right to keep, control, guard, and care for a minor child and includes the terms “legal custody” and “physical custody.” Pennsylvania law defines a minor child as any unemancipated individual less than 18 years of age.

## What is the difference between legal and physical custody?

When you file a custody action, the courts will generally determine legal custody and physical custody.

**Legal Custody** is the right to make major decisions on behalf of the child, including but not limited to: medical, dental, religious and educational decisions.

**Physical Custody** is defined as the actual physical possession and control of a child. In other words, who is the child living with or staying with at any given time?

## BEST INTERESTS OF THE CHILD

Courts use a legal standard called the “best interests of the child” when making decisions about legal and physical custody. In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following:

1. Which party is more likely to encourage and permit frequent and continuing contact between the child and another party.
2. The present and past abuse committed by a party or member of the party’s household, whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.
  - If the court finds that there is an ongoing risk of harm to the child or an abused party and awards any form of custody to a party who committed the abuse of who has a household member who committed the abuse, the court shall include in the custody order safety conditions designed to protect the child or abused party.

3. The parental duties performed by each party on behalf of 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 sibling relationships.
7. The well-reasoned preference of the child, based on the child's maturity and judgment.
8. The 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 child's daily physical, emotional, developmental, educational and special needs.
11. The proximity of the residences of the parties.
12. Each party's availability to care for the child or ability to make appropriate child care arrangements.
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.
17. A party's income is generally not a factor as long as the parent with the lower income can provide stability and meet the child's basic needs.

## **Are there different types of physical custody arrangements that a court can order?**

When deciding your case, there are many different custody arrangements that the court can determine is best for your child. A party in a custody case can be granted the following:

**Shared Physical Custody:** The right of more than one individual to assume physical custody of the child, each having significant periods of physical custody with the child.

**Primary Physical Custody:** The right to assume physical custody of the child for a majority of the time.

**Partial Physical Custody:** The right to assume physical custody of the child for less than majority of time. This could be anywhere from a few hours to an overnight.

**Sole Physical Custody:** The right of one individual to exclusive physical custody of the child. This arrangement is ordered when the other party is incarcerated or otherwise unable to parent.

**Supervised Physical Custody-Visitation:** Custodial time during which an agency or an adult designated by the court or agreed upon by the parties monitors the interactions between the child and individual with those rights.

**Custodial Parent:** The parent with whom the child lives the majority of the time.

**Non-Custodial Parent:** The parent who has either partial physical custody or supervised partial custody with the minor child.

## Other important custody terms

**Relocation:** Change in residence of the child which significantly impairs the ability of the non-relocating party to exercise custodial rights.

**Agency:** Any organization, society, institution, court facility or other entity which provides for the care of a child. The term does not include county children and youth services agency.

**Parental Duties:** Includes meeting the physical, emotional and social needs of the child.

**Pro Se:** When a party represents themselves, without the assistance of a licensed attorney. It may involve filing papers or appearing at a conference or hearing on your own.

**Petition:** A written request presented to the Court asking the Court to take some specific action on a case. If you file a petition, you will sometimes be called the "Petitioner." The other party may be referred to as "Respondent."

**Mediation:** The process by which a neutral mediator (either a lay person or lawyer) assists the parties in attempting to reach a mutually acceptable agreement on issues arising in a custody action. Any agreement reached in mediation must be based upon the voluntary decisions of the parties. The mediator does not make the decisions.

**Court Order:** A legal document signed by a Judge requiring a person to do something or requiring a person not to do something. A court order is THE LAW.

**Contempt of Court:** Willfully failing to follow a court order.

**Modification:** A change to an Order of Court. Court orders may be changed after a hearing or by agreement of the parties, but must always have a judge's signature. Custody orders may always be subject to change if it is in the child's best interest to do so.

**Emancipation:** Independent status granted to a child under the age of 18 who is married or has otherwise been determined by the Court to be independent of his or her parents.

## Who can file for custody?

Most of the time custody actions involve two parents. But, custody actions may also be brought by grandparents, great-grandparents, nonrelatives or the state.

- 1. Parents vs. Parents:** In cases where one parent files against another, there shall be no presumption that custody should be awarded to a particular parent. In other words, both parents stand on equal footing.

**Parents vs. Grandparents or Great-Grandparents:** In any child custody case between parents and a third party, including grandparents and great-grandparents, there is a presumption that custody shall be awarded to the parent. The presumption in favor of the parent may be rebutted by clear and convincing evidence.

Under Pennsylvania law, grandparents may file for primary physical custody or partial physical custody of a child. BUT grandparents or great-grandparents DO NOT have an automatic right to file for custody.

A Grandparent or Great-Grandparent may file for ANY form of physical or legal custody if:

- They are in loco parentis - have been acting like the child's parent for 12 consecutive months;

### OR

- They are not in loco parentis but satisfy the following requirements:
  1. The relationship began with the consent of a parent or under court order; **AND**
  2. The grandparent or great-grandparent assumes OR is willing to assume responsibility for the child, **AND**
  3. ONE of the following is met:
    - The child has been declared dependent by a judge;
    - The child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity; **OR**
    - The child resided with the grandparent or great-grandparent for at least 12 months and is removed from home by parents (IF THE GRANDPARENT OR GREAT-GRANDPARENT FILES FOR CUSTODY WITHIN SIX (6) MONTHS OF REMOVAL);

### OR

- They are able to prove all of the following:
  1. They are willing to assume responsibility for the child;
  2. They have sincere interest in the child, (determined based on the nature, quality, extent, and length of their involvement in the child's life); **AND**
  3. The parents no longer maintain control over the child.

A Grandparent or Great-Grandparent may file partial or supervised physical custody if:

1. A parent (grandparent's child) is deceased; or
2. The parents initiated a custody proceeding and do not agree whether the grandparents should have custody; or
3. The child resided with the grandparent or great-grandparent for twelve (12) months AND THE GRANDPARENT OR GREAT-GRANDPARENT FILES FOR CUSTODY WITHIN SIX (6) MONTHS OF REMOVAL.

**Note: Grandparent and Great-Grandparent custody is an important and complicated issue. You should speak with an attorney. You can call NPLS at 1-877-953-4250 to see what services are available in your county or contact your local bar association's lawyer referral program.**

- 2. Parents vs. Third parties:** Third parties can file for custody, partial custody, or supervised partial custody of a child. A third party may have custody rights when they have acted like a parent or stood "in loco parentis" (like a parent) for twelve (12) consecutive months. A third party may also have custody rights when the parents no longer maintain control over the child, and they have a sincere interest in the child's welfare and have or are willing to assume responsibility for the child. In determining whether there is a sincere interest in the child's welfare, a court will look at the nature, quality, extent, and length of the third party's involvement in the child's life.
- 3. Parents vs. the State:** The state may obtain custody of a child in three ways:
  1. By consent of the parent or guardian – not to exceed 30 days. If the county agency wishes to extend custody beyond 30 days, they must file a dependency action;
  2. Through a dependency action – when the county agency, usually the child protective services department, is able to prove that the child is currently without proper parental care or control and the care and control needed is not immediately available; or
  3. A delinquency adjudication – a criminal act by the child.

## When should I file for custody?

Sometimes parents can work out their differences. However, there are often situations that can only be resolved by the courts. You should consider filing a petition if:

1. You are being denied all contact with your child;
2. You or your children are survivors of domestic violence or any other form of abuse or neglect;
3. One parent is threatening to take your child and not give them back; or
4. One parent is planning on moving out of the county, state, or country with the child and you do not want the child to move.

**For additional information on when to file for custody, please review the frequently asked questions (FAQs) at the end of the child custody section.**

## **Are there situations where I may not want to file for custody?**

You may not want to file for custody if:

1. Your child is living with you, and you have been able to work out arrangements with the other parent, and the other parent is not likely to take and keep your child.
2. You are satisfied with your current custody arrangement. If you file you may be “opening the door” for the other parent. For example, if one parent has not seen the child for a long time and you file for custody, the court will likely grant partial custody or supervised partial custody rights to the other parent.
3. You already have a protection order that has a provision for custody that you are satisfied with. **REMEMBER**, the custody provision in your protection order expires the same time your protection order expires.

**For additional information on when to file for custody, please review the frequently asked questions (FAQs) at the end of the child custody section.**

## **In what county do I file for custody of my child?**

Child custody cases are filed in the county where the minor child has been living for a period of six (6) months, or since the child’s birth if the child is less than six (6) months old.

If you are the custodial parent and you and the child have not been residing in your current county for six (6) months, you may need to file in the county where you previously lived.

## **Where do I need to go to file for custody?**

Different counties have different child custody procedures. You should start by going to or calling the family court administrator’s office, the civil clerk of court or the Prothonotary’s office.

Please review the child custody insert in this handbook for specific information on where to file in your county.

## **Is there a fee for filing for custody?**

**Yes.** The filing fee may range from \$135 – \$170 dollars, depending on where you are filing.

However, if you are low-income, you may request a waiver of the fees by completing what is called an *In Forma Pauperis (IFP)* petition. If a judge grants your request, the IFP Order allows a low-income party to file their child custody paperwork for free. You will need to provide the Court with information concerning your monthly income and expenses in your petition.

Please review the child custody insert in this handbook for specific information on how to file an IFP petition.

## **What information do I need to file?**

### **What do I need to say in my custody paperwork?**

You are the Plaintiff and the other parent, third party or grandparent is the Defendant(s). This is the information you will need for your custody paperwork:

1. Your name and address;
2. The name and addresses of all the defendant(s);

**REMEMBER, even if your child is living with a grandparent and the other parent is not involved, you must also list him or her as a defendant.**

3. The name and birth date of the child, and with whom the child is currently living;
4. What relationship you have to the child: whether it be parent, grandparent etc.;
5. Whether you were married when the child was born. If you were married, state to whom you were married;
6. Every address at which the child has lived over the past five (5) years and with whom the child lived at each address;
7. Everyone currently living with you;
8. What relationship each defendant has to the child;
9. Everyone, to the best of your knowledge, currently living with the defendant(s);
10. If you have a custody order from the same county, a different county or a different state, you will need to write down the county and case number and attach a copy of the order to your custody paperwork;
11. Whether or not you or the children have been abused or neglected as evidenced by a protection order or letter from children and youth;
12. List every person on your custody paperwork that you believe has or may have rights to the child;

**An example of a person who may have rights to the child is a grandparent or third party, if the child lived with them and they acted like the child's parent for a significant period of time.**

13. List ANY criminal and/or abusive history of the party or any other adult living at the parties' residence; and
14. Finally, you will need to tell the court what custody plan you are suggesting for the child and why that plan is in the child's best interests. For example, if you want the court to order that you have primary physical custody, you must give some reasons why it is in the child's best interests.

**It is important to know that there are certain confidentiality requirements when filing your petition. DO NOT list social security numbers, financial account numbers, driver**

license numbers, state identification numbers, the names of children, or an abuse victim's contact information in your petition.

Depending on your county, NPLS may be able to assist you in your preparation of the necessary paperwork for your case. You can call NPLS at 1-877-953-4250 to see what services are available in your county. If no services are available, you can go to [PALawHELP.org](http://PALawHELP.org) select the "Children & Families" section, and then choose "Child Custody and Guardianship."

## **How is the Defendant notified that I filed for custody?**

After you file your custody paperwork, you are required to serve the other party. You will usually serve the other party by mail.

You **must** send the custody paperwork by certified mail, return receipt requested. In some counties, you should also send the custody paperwork by first class mail.

You **must** keep the green certified mailing card to prove you mailed the custody paperwork by certified mail.

**Although you may be able to obtain a waiver of the filing fees, you are responsible for the costs of serving the paperwork. Some counties prefer you send one copy by certified mail, return receipt requested, which is an extra fee. Postage costs range from approximately \$5 – \$11 for mailing. Again, refer to the insert for information about your county's procedures.**

You should serve the Defendant immediately after filing your papers. If you fail to serve the Defendant, your hearing may be continued or dismissed.

## **What if I or someone living in my home has been arrested, charged or convicted of a crime?**

Criminal arrests, charges and convictions are becoming a bigger and bigger part of child custody cases.

Pennsylvania changed its child custody law in January 2011. The new law requires that where a party seeks any form of custody, the court must consider whether that party or member of that party's household has been convicted of or has pleaded guilty or no contest to any of the offenses in the section below or an offense in a different state similar to the offenses below.

The court must consider the criminal conduct and determine that the party does not pose a threat of harm to the child before making any order of custody to that party.

Although all offenses are listed below, some of the most common offenses are:

- Protection Order Violations;
- DUI;
- Possession, sale, delivery or manufacture of drugs; and



- Terroristic Threats

## **CRIMINAL CONVICTIONS OR CHARGES BY YOU OR ANY MEMBER OF YOUR HOUSEHOLD THAT YOU MUST TELL THE COURT WHEN SEEKING ANY FORM OF CUSTODY:**

- Contempt for violation of a protection order or agreement;
- Driving under the influence of alcohol or controlled substance;
- Possession, sale, delivery, manufacturing or offering for sale any controlled substance or other drug or device;
- Criminal Homicide, Aggravated Assault, Terroristic Threats, Stalking, Kidnapping, Unlawful Restraint, or False Imprisonment;
- Luring a child into a motor vehicle or structure;
- Rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault, indecent exposure, sexual abuse of children, sexual exploitation of children, or incest;
- Sex offender registration non-compliance;
- Arson and related offenses;
- Concealing the death of a child;
- Corruption of minors, unlawful contact with a minor or Endangering the welfare of children;
- Trading, buying, selling or dealing infant children;
- Prostitution and related offenses;
- A finding of abuse by a Children and Youth Agency or similar agency in Pennsylvania or similar statute in another jurisdiction.

## **What happens after I file my custody paperwork? What is the difference between mediation and a custody conference?**

In most counties, you and the Defendant will attend a custody conference or mediation, or both, prior to going before a judge.

### **Mediation**

In some counties, you and the defendant will be directed to appear before a trained mediator. A mediator is either a lay person or an attorney. The mediator works with the parties to reach an agreement.

If you and the other party reach an agreement, the mediator will write down the agreement. A judge will sign your agreement making it an official child custody order. If the parties are unable to come to an agreement, your case will be scheduled for a child custody conference.

**If you are a victim of domestic violence, your county should allow you to skip mediation due to the domestic violence between you and the Defendant. You are not required to have a current PFA. You must certify that you have been a survivor of domestic violence recently, within the last 24 months.**

## **Custody Conference**

In other counties, you and the Defendant will be directed to appear at a child custody conference.

You will appear before a child custody hearing officer. The hearing officer is an attorney or judge. The hearing officer or judge will try to assist the parties in coming to a satisfactory custody arrangement for the child. Both parties may be represented by attorneys.

If you and the other party can come to an agreement, the hearing officer will write down the agreement and forward it to the court for approval and entry as an order.

If you and the Defendant are unable to come to an agreement, the hearing officer will ask you or your attorney questions and prepare a report. The hearing officer may recommend an interim order which may be entered by the court until the matter can be heard by a judge.

**The custody conference and mediation process may differ from county to county so please review the insert for specific information on your county.**

## **What is the Kids First Program or Co-Parenting Class?**

Every plaintiff and defendant IS REQUIRED to attend a parenting class. In some counties, if you fail to take the required parenting class, the court could dismiss your petition, hold you in contempt of court or deny periods of custody, partial custody, or supervised partial custody until you complete the required class.

The parenting class is different from county to county so please review the insert for specific information on your county's co-parenting class.

## **Do I need an attorney to represent me in my child custody case?**

Parties can represent themselves in child custody cases. Unfortunately, due to limited resources, North Penn Legal Services can only provide representation in a limited number of child custody cases. Your local office may be able to provide limited advice concerning your case. Please call 1-877-953-4250 to see what services may be available in your county.

If you would like a private attorney to represent you, you can contact your local bar association's lawyer referral service.

## **How can I prepare for my child custody conference?**

If you and the other parent have worked out an agreement, you can tell the child custody hearing officer. The hearing officer will take your agreement and make it into a custody order.

If you believe that you and the other parent will not be able to work out an agreement, you should be prepared to answer the following questions about yourself and the minor child:

1. Where are you living? Where is the child living? (if not with you) Do you rent or own? Who else is living with you? How many bedrooms do you have? Where is the minor child sleeping?

2. Information about the child's schooling or any special medical concerns about the child.
3. Your work schedule and child care arrangements.
4. If you don't work, information on how you are supporting the minor child.
5. If you are living with a boyfriend or girlfriend, are they employed? Where?
6. What custody arrangements you are looking for: primary physical custody, partial physical custody, or supervised partial custody?
7. What custody arrangements you are asking the Defendant to have: primary physical custody, partial physical custody, or supervised partial custody?
8. Any concerns about the Defendant and the children.
9. Any criminal convictions or charges.

In some counties, the child custody hearing officer may also hear from or review the following:

**The minor child.** If the child is over a certain age, the hearing officer may interview the child concerning their wishes about contact with either party.

**Counseling reports/therapist.** A hearing officer may review reports from or speak with the child's counselor if there are allegations that contact with one party may be harmful to the child.

**Children and Youth.** A hearing officer may review reports from or speak with a local children and youth caseworker about issues that may be relevant to the custody case.

## **What are the possible outcomes of the child custody conference?**

### **If the parties agree:**

If the parties are able to reach an agreement at the custody conference, an order of court may be dictated or signed. The order of court will state each parent's custodial rights.

### **What if I disagree with the recommendation of the hearing officer or am unable to agree with the other party?**

If both parties are seeking primary physical custody of the minor child, then your case will be scheduled for a full hearing before a judge. In some counties, the Court will enter an interim order until the case is heard by a judge.

If you disagree with the recommendation of an interim or final Order, you will have a right to request a hearing before a judge.

**The procedure to request a hearing before a judge may differ greatly from county to county so see your county insert for more information.**

## **CUSTODY TRIAL: What type of evidence will I need?**

The court looks at many factors impacting a child's physical, intellectual, moral and spiritual well-being, including, but not limited to:

1. **The custody arrangement of siblings.** Generally, courts prefer that brothers and sisters are raised together in one household.
2. **Who has been the primary caretaker of the child?** The court will look at who has been the person who has been the primary caretaker in the past and who has been meeting the child's day-to-day needs.
3. **The parents' new relationships.** If you, and/or the Defendant are dating, are there any concerns about him or her? Are there issues of domestic violence, criminal record, or drug or alcohol abuse? How does the significant other get along with the child?
4. **The parties' work schedules.** The court will consider the work schedules and the amount of time the parties have available to care for the child.
5. **Stability of the parties.** The court will consider the benefit of stability in a child's life, which includes the parties' ability to maintain a single home and provide a stable lifestyle.
6. **The parties' finances.** A common myth is that the person with more money will win the custody case. This is typically not true. The court will look at each party's ability to provide financial stability in the child's life by providing an adequate home and living environment for the child. The court can be concerned if, because of your low-income status, you are frequently evicted because you are unable to pay your rent.
7. **The accommodating parent.** The court will consider which parent will most likely allow and encourage the child frequent and continuing contact with the other parent.
8. **A party's past conduct.** Courts like to focus on present circumstances when making custody decisions. A party's past conduct will not be considered UNLESS it has a harmful current or future effect on a child.
9. **Abusive conduct.** The judge must consider each parent and adult household member's present or past violent or abusive conduct – regardless of the existence of a PFA.
10. The judge must consider whether a parent has been convicted of certain crimes, including DUI, violation of a PFA, kidnapping, incest and sexual abuse of the children.

**REMEMBER: The court will NOT consider if a parent is paying child support before making a determination concerning custody.**

## **What if I lose after a custody trial, can I appeal on my own?**

If you are unhappy with the judge's decision after a full custody trial, you have the right to appeal to the Superior Court of Pennsylvania within thirty (30) days after the date of the judge's order.

Appeals to the Superior court are very complicated and expensive. It is possible, but difficult

for a person to proceed in the appeal without an attorney due to the complexity of the legal documents that need to be filed, the filing deadlines and other requirements and fees.

If you are unhappy with an order, you should consult with an attorney to see whether or not you have any basis for an appeal and/or the likelihood an appeal would be successful or the best option in your case.

## **Can my custody order be changed?**

Child custody orders may be modified at any point in time until the child turns 18 years old. However, please be mindful that a Court may not consider a modification petition if you file one every few months, where there has been little to no change in the circumstances of the parties.

The Court will again use the “best interests of the child” standard to decide whether the requested modification should be granted. In filing a modification petition, you will generally go through the same procedures as in filing an initial complaint.

## **What if the Defendant fails to follow the order?**

Each party is required to comply with the custody order. A parent who breaks a court order also breaks the law. In other words, if one parent willfully disobeys or fails to comply with an existing custody order, the other parent may file paperwork asking the Court to punish disobeying parent. The paperwork is called a **Petition for Contempt**.

Under Pennsylvania law, if the judge decides that the custody order has been willfully and intentionally broken, the disobeying parent who broke the court order may be:

1. Put in jail for up to six (6) months;
2. Fined up to \$500;
3. Placed on Probation for up to six (6) months;
4. Have their motor vehicle operating privileges suspended; and/or
5. Pay court costs and attorneys fees.

**HOWEVER**, in child custody cases, this rarely, if ever occurs.

It is more likely in child custody cases that a judge may order other relief as deemed necessary to make up for the disobeying party’s behavior. For example, the judge may order make-up time if one parent withheld the child for their visitation with the other parent or modify exchange times if the parent constantly brings the child home late.

**The child custody insert may have additional information on the types of outcomes judges tend to order in your county when a person is found in contempt of violating a child custody order.**

## **What if the Defendant refuses to return the child after a visit and/or leaves the state with the child?**

People do not always act in the best interests of the child because child custody matters are very emotional. One parent may keep the child from the other parent without the other parent's consent. In these types of situations, you will need a judge to immediately review your custody case. Pennsylvania gives parents an opportunity to bring their emergency immediately before a Judge by filing a **Petition for Special Relief**. In some counties, you may be able to see a judge the same day. In other counties you may need to wait at least 5 days.

Pennsylvania law gives judges broad powers when an emergency occurs. After a party files a petition for special relief, a judge may direct a parent not to leave the state or county with the child. A judge can direct a party to return the child to the other parent. A judge may award temporary physical custody, partial physical custody or supervised partial custody to one parent on a temporary basis. A judge may do anything else he or she feels would be in the best interests of the child.

**The child custody insert may have additional information about the procedure that may be helpful for your county.**

## **The child lives with me and I want to move out of Pennsylvania or my county but the other party won't agree. Can I move anyway?**

A common problem occurs when the parent with whom the child lives wants to move, or relocate, with the child out of their county or out of the state and the other parent does not want them to.

YOU SHOULD SPEAK WITH A LAWYER IF YOU ARE THINKING OF MOVING WITH THE CHILD.

YOU SHOULD SPEAK WITH A LAWYER IF YOU OPPOSE THE OTHER PARTY MOVING WITH THE CHILD.

RELOCATION is defined as a change in a residence of the child which significantly impairs the ability of the nonrelocating parents to exercise custodial rights.

### **Relocation cannot occur unless:**

1. Every other person with custodial rights consents; **OR**
2. The court approves the proposed relocation.

## **Relocation Factors**

The court must consider the following factors, giving weighted consideration to those factors which affect the safety of the child:

1. The nature, quality, extent of involvement and duration of the child's relationships with the

party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.

2. The age, development, needs of the child and the likely impact relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.
3. The feasibility of preserving the relationships between the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.
4. The child's preference.
5. Whether there is an established pattern of conduct of either party to promote, or thwart the relationship of the child and the other party.
6. Whether relocation will enhance the general quality of life for the party seeking relocation, including, but not limited to: financial and emotional benefit or educational opportunity.
7. Whether the relocation will enhance the general quality of life for the child, including but not limited to, financial or emotional benefit or educational opportunity.
8. The reasons and motivations of each party for seeking or opposing relocation.
9. The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.
10. Any other best interest of the child factor.

## **The Relocation Notice**

**IMPORTANT - Notice, by certified mail with return receipt requested to the other party, MUST be given either sixty (60) days before relocation or within ten (10) days from the date the party knows of relocation.**

### **THE FOLLOWING INFORMATION MUST BE INCLUDED WITH THE NOTICE:**

1. The address of the intended new residence.
2. Mailing address.
3. Names and ages of the individuals in the new residence, including individuals who intend to live in the new residence.
4. The home telephone number of the intended new residence.
5. The name of the new school district and school.
6. The date of the proposed relocation.
7. The reasons for the proposed relocation.
8. Proposed revised custody schedule.
9. Other information.

10. You MUST also say the following in your notice: **\*\*\*IF YOU DO NOT FILE WITH THE COURT AN OBJECTION TO THIS PROPOSED RELOCATION WITHIN 30 DAYS AFTER RECEIPT OF THIS NOTICE, YOU WILL BE FORECLOSED (PREVENTED) FROM OBJECTING TO THE RELOCATION\*\*\***

## **Failure to provide notice:**

The court may consider failure to provide notice as:

1. A factor in making a determination;
2. A factor in determining whether custody rights should be modified;
3. A basis for ordering the return of the child to the nonrelocating party if the relocation has occurred without reasonable notice;
4. Sufficient cause to order the party proposing the relocation to pay reasonable expenses and counsel fees incurred by the objecting party; and
5. Ground for contempt and the imposition of sanctions.
6. Any consideration of a failure to provide reasonable notice...shall be subject to mitigation if the court determines that such failure was caused in whole, or in part, by abuse.

## **How to Object to Relocation:**

1. A party entitled to receive notice may file an objection with the court and seek a temporary or permanent order to prevent the relocation.
2. If the party objects to relocation, a hearing will be held.
3. The objection must be made by filing with the court a counter-affidavit.
4. The counter affidavit objection to relocation must be filed with the court thirty (30) from the date you received the certified letter notifying you of the relocation.

## **Failure to Object:**

If a party who has been given notice of relocation and does not object within thirty (30) days from receiving the notice but later petitions the court for a review of the custodial arrangement cannot present any testimony challenging the relocation at the hearing.

## **What does the relocating parent do when an objection is not filed?**

### **The relocating parent must:**

1. File an affidavit with the court confirming proper notice was given, thirty (30) days have passed and an objection has not been filed;
2. A petition to confirm the relocation details; and
3. a proposed order.



## What happens if the nonrelocating parent objects?

### What happens at a relocation hearing?

1. The court shall hold an expedited full evidentiary hearing on the proposed relocation.
2. The court may, on its own motion, hold an expedited full evidentiary hearing on the proposed relocation before the relocation occurs.
3. If the court finds that an emergency exists, the court may approve the relocation pending an expedited full evidentiary hearing.
4. Burden of Proof: The party proposing the relocation has the burden of establishing that the relocation will serve the best interests of the child.

**Note: It is very important for you to consult with an attorney prior to moving to a new county or out of the state. In some cases, if you move without consent of the other party or court permission, you could lose primary custody of the child and/or could face criminal charges for custodial interference.**

**REMEMBER, child custody cases are very fact specific and can be very complicated. This handbook is intended only as a guideline and informational packet to help you understand the court system in regard to custody cases. If your case is complicated, you should consider consulting with an attorney.**

**Unfortunately, due to limited resources, North Penn Legal Services can only provide representation in a limited number of child custody cases. Please call 1-877-953-4250 to see what services may be available in your county.**

## Frequently Asked Questions

**Isn't it true that I need to be the first one to file for custody?**

**OR**

**Does whoever files for custody first get what they are asking for?**

- You DO NOT need to be the first parent to file for custody.
- Custody cases are decided by a rule called the “best interests of the child.”
- The parent who files first DOES NOT get an advantage.
- It may be better NOT to file for custody. The custody process may give an otherwise uninvolved parent an opportunity to get back into the child's life.

**Are child custody and child support linked? In other words, if the other parent is not paying child support do I still need to let them see the child?**

- Child Support and Child Custody **ARE NOT** linked.
- You may be found in **contempt** of a Court Order if you withhold visits from the other parent because they have not been paying support.
- You **must also** pay child support even if you are not seeing your child.

### **The other parent cannot take my child around their new boyfriend or girlfriend right?**

- The court will not ban your child from visiting the other parent's boyfriend or girlfriend **unless** you can prove the girlfriend or boyfriend is dangerous, is likely to be a bad influence on the child, or that it is not in the child's best interests.
- The court trusts that neither parent would expose their child to mean and dangerous people.

### **Will the court system give the other parent partial custody rights even if they have not paid child support and have not seen the child for a long time?**

- Yes. A parent can see their child even if they fail to make child support payments.
- The law assumes that it is in the child's best interest to have a relationship with both parents.
- The court system may give him or her visitation unless you can show that having contact with the other parent is not in the child's best interest.
- The supervised partial custody may be supervised by an agency or third party.
- You may want to go back to court and request the other's parent's supervised partial custody with your child be reduced if the other parent does not make use of their court-ordered supervised partial custody.

### **Doesn't the court system always keep children with their mother?**

- The court system **will not** automatically give mothers custody of their children.
- The court system will decide who gets custody based on the best interests of the child.

### **Can the other parent go to the child's school or day care and pick them up if we do not have a Court Order?**

- Yes. Without a court order, either parent can go to the child's school or daycare and pick them up without questions.
- Each school and day care will likely have its own policy on to whom the child may be released.
- You should ask your child's school or day care provider what their policy is so you know what to expect and can take precautions if they are needed.

### **Will the court system help me force the other parent to visit their child?**

- No. Even if you get a Court Order granting partial physical custody or supervised partial custody to the other parent, the court system **will not** force him or her to visit your child.
- The court system **does not** have the ability to make someone be a good parent if they do not want to be one.

### **What happens if me and the other parent cannot follow the custody order?**

- If parenting issues continue to arise after the final custody order, a court can sometimes appoint a third-party parenting coordinator to provide recommendations.

### **Will the police help me get the child back from the other parent if we do not have a Court Order and the other parent refuses to return the child to me?**

- The police **cannot** force the other parent to return your child to you because there is not an Order of Court and you are both the parents.
- The police may talk with the both of you to reach a short-term agreement.
- You should **immediately** file for child custody to obtain a Court Order that will make very clear who can have the child on which days and at which times.

### **Do all child custody lawyers charge the same fee to represent clients?**

- NO. Some private child custody lawyers may ask you to pay a retainer. A retainer is when you pay money up front for a lawyer's services.
- Some child custody lawyers may not ask you to pay a retainer and may be willing to take reduced payments based on your income.
- If you feel you will be hiring a private lawyer, you should talk to a few different lawyers before choosing one. Many lawyers will do the first interview for free or for a reduced fee of \$25 – \$50. You should ask whether or not there will be a charge for the initial visit when you call.

### **Is there an easier way to prepare my child custody paperwork?**

- Go to [www.PALawHELP.org](http://www.PALawHELP.org) , then select the "Children & Families" section, and then choose "Child Custody and Guardianship."
- Or go to your local county website for information.

### **Can the Court force me to take a drug test, get a drug & alcohol evaluation, get a psychological evaluation, have my house inspected, or do anything else that feels like a violation of my rights?**

- Yes. The Court may require you to do any of the things mentioned above, and maybe even more like co-parenting, anger management classes or meet with a court-appointed attorney for the child called a Guardian Ad Litem.
- You MAY refuse to do these things. But, the Court CAN force you to do these things or face consequences like limiting the contact with your child or hold you in contempt.

### **What is Contempt?**

- A parent who **intentionally** and **willfully** breaks a court order breaks the law.
- A hearing will be scheduled in front of a judge. If a judge decides you have willfully and intentionally not followed the Court Order, you may be put in jail for up to six (6) months and/or fined up to \$1,000 **for each violation.**