

Child Custody - The Process of Obtaining Custody of Your Children

Fighting for the custody of your children is not only heart-wrenching but can have life-long effects on the well-being of your children.

There are two types of custody. Physical custody is the actual physical possession and control of a child (a person under 18 years old). It refers to the person with whom the child lives, either all of the time or part of the time.

Legal custody is the right to make major decisions about the child, which typically include educational, religious, and medical decisions.

A parent can get sole custody of a child or parents can get shared custody. Shared custody is supposed to give the child frequent and continuing contact with and physical access to both parents. The judge can order shared custody if one or both parents asks for it or the parents agree to it or the judge decides that it is in the best interest of the child.

A parent can also be granted partial custody, which is when a non-custodial parent has the right to have the child live with him/her for a certain period of time.

When the judge issues a custody order, it will also address visitation in addition to legal and physical custody issues. Visitation is the right for the non-custodial parent to visit with the child.

What's the difference between partial custody and visitation?

Someone with visitation has the right to visit the child, but not the right to remove the child from the custodial parent's control.

Supervised visitation is the chance to visit with the child while in the presence of a third party who watches the interaction between the parent and child and reports back to the judge. Supervised visitation centers are not widely available. Where they do exist, visitation takes place at the facility, with staff on duty to observe and to help address safety concerns. A relative or friend may also oversee supervised visitation. For example, a father might have supervised visitation of his child at his sister's house, with his sister there to watch. Supervised visitation is only ordered in extreme cases.

Unlike visitation, someone with partial custody of a child has the right to take possession of a child, away from the custodial parent, for a certain period of time. For example, a parent may be awarded partial physical custody of a child for certain days during the week.

What are the advantages and disadvantages of getting a custody order?

There may be advantages to obtaining a custody order, including:

- Gaining access to your child if the other parent has control of the child;
- Having a fixed custody schedule (telling each parent when they can visit and/or take

- possession of the child) enforceable by the judge;
- The right to make legal decisions about your child; and
- The right to have your child live with you.

Without a custody order, it is possible that you may not have these legal rights, even if you're the parent that takes care of the child every day. But if you file for custody, the other parent may also request these rights and it will be up to the judge to decide.

If a court order is disobeyed by one party, the other party has the right to file a "Petition for Contempt". If the Judge finds that a party has disobeyed a court order, the Judge can put the party in jail and/or fine him or her, can order that party to pay the other side's attorney fees, and can order the misbehaving party to post a bond as a guarantee that the contempt will not happen again.

There are also many reasons people choose not to get a custody order from a court. Some people decide not to get a custody order because they don't want to get the courts involved. These people may have an informal agreement with the other parent that works well for them, or they may think that going to court will result in the other parent being awarded more custody or visitation rights than they are comfortable with. If you decide not to get a custody order, you and the other parent likely have an equal right to make decisions and decide on living arrangements. The exception to this is when paternity has not been established by an unmarried father.

A lawyer can help you evaluate whether getting a custody order is best under your particular circumstances.

Child Support and Child Custody

Pennsylvania considers child support and custody to be separate legal issues. You do not have to have a custody order to file for child support. Whether or not a parent pays child support will generally not alter his or her right to have custody of a child. Likewise, even if you do not have any custody or visitation you still have a duty to support your child. Additionally, filing for child support will not automatically establish custody.

Can I file for custody in Pennsylvania?

Generally, you can file for custody in Pennsylvania if your child has lived in PA for the last six months in a row. (Temporarily leaving the state, such as going on vacation, does not change anything.)

There are certain exceptions to this rule. You may be able to file in Pennsylvania even if your child has not lived in PA for the last six months if:

- Your child is less than six months old and has lived in PA since birth;
- Your child is in PA and it is necessary in an emergency to protect the child because you, your child, or the child's sibling are subjected to or threatened with abuse.; or
- Your child lived in PA for at least six months but:
Moved away from PA, although you must still be living there; and

he/she has not lived in any other state for 6 months in a row since leaving PA.

If you already have a custody order from another state and you want to change it, you will likely have to file a petition to change (modify) that order in the state where it was originally issued.

If you've recently moved to or fled to PA, a domestic violence organization or an experienced attorney should be able to help.

Who is entitled to seek custody?

The judge will make a custody order that he or she feels is in the best interest of the child. One or both of the child's parents may receive custody.

A non-parent who has acted in loco parentis (in place of the parent) may also receive custody or visitation. Non-parents within loco parentis status will generally have performed the duties that a parent usually performs - such as being the primary caretaker - for a significant period of time.

Can the child's grandparent get custody or visitation of the child?

Grandparents may seek custody and visitation rights under certain circumstances:

- If a child's parent has died, the deceased's parents or grandparents (the grandparents or great-grandparents of the child) may get partial custody and/or visitation rights;
- If a child's parents are unmarried, separated for six or more months, or have filed for divorce, the child's grandparent or great-grandparent may get partial custody and/or visitation rights;
- If a child has lived with a grandparent for a year or more before being removed by the child's parent(s), the grandparent may get partial custody and/or visitation; or
- If a grandparent has assumed the role of the child's parent for a year or more, and it is not in the best interest of the child to be in the custody of either parent, the grandparent may get physical and legal custody.

In all of the above cases, the judge will consider the amount of contact the grandparent had with the child in the past and the judge must believe that the custody or visitation to the grandparent is in the child's best interest. In addition, if you do not meet one of the above requirements but you have been acting in place of the child's parent (known as in loco parentis), you may be able to get custody.

If you are the child's uncle, aunt, cousin, etc., you can not usually get custody or visitation of the child, unless you have acted in place of the child's parent (in loco parentis). In that case, you may be able to get visitation rights or be awarded custody of the child.

How will a judge make a decision about custody?

Custody decisions are based on a "best interest of the child" standard. The best interest of the child is determined on a case-by-case basis. The judge will look at many factors to come up with an arrangement that s/he thinks is in the best interest of the child, including:

- Which parent is more likely to encourage, permit and allow frequent and continuing contact and physical access between the non-custodial parent and the child;
- The past or present abusive conduct of either parent and the past or present abusive conduct of any person living with either parent (such as a new spouse);
- Whether either parent has been charged or convicted of a crime that might endanger a child (e.g., criminal homicide, kidnapping, unlawful restraint, endangering the welfare of a child, or certain sex crimes).
- The preference of the child; and
- Any other factor that impacts the child's physical, intellectual and emotional well-being.

After a custody order is in place how can I get it changed?

Because custody is decided in the best interest of the child, an order is never permanent. If a custody order is already in place, either party can ask the judge to change it -- you can petition the court for a modification of custody.

To modify (change) a custody order, you will need to go to the court that gave you the order, even if you have moved. Generally, once a court has heard a case, that court will keep the case, even if you move to another state. If you have moved, you can ask the judge to change the jurisdiction (transfer the case) to the new state that you are in although this is often hard to do, especially if the other parent disagrees.

Modifying a custody order or changing the jurisdiction is often complicated and, as with all custody issues, it is recommend that you talk to a lawyer about this.

If there is a custody order in place, can I take my kids out of the state?

It depends on what your custody order says. The custody order may let you to take your children out of the state, prohibit you from taking them out of the state, or not say anything about it.

If you want to move out of state you will need to ask the judge to modify the custody order to reflect the move (i.e. change the visitation schedule or partial custody arrangement). Be aware that if you move or are planning to move, the other parent can request that the judge review (and possibly change) your custody order. The judge may also decide to review/ change the order even if the other parent doesn't request it. If you want to move, it is your responsibility to convince the judge that the move is in your child's best interest.

Some factors the judge may consider are:

- The potential advantages of the move;
- How likely it is that the move would improve the quality of life for you and your children;
- Whether the judge thinks you have a good reason for moving and that you are not just moving on a whim;
- Whether or not you have a good reason for wanting to move (and you are not moving to

- hurt the other parent);
- Whether or not the other parent has a good reason for objecting to the move (and that the reason is not to hurt you); and
 - The availability of realistic, substitute visitation arrangements for the other parent that will encourage an ongoing relationship between the children and the other parent.

These cases can be complicated, and it is strongly recommended that you get an attorney to help you, especially if the other parent does not want you to move.

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