

Pennsylvania

CHILD CUSTODY GUIDE

Table of Contents

01

WHAT IS A CUSTODY ORDER?

01

WHERE SHOULD I FILE MY CUSTODY PETITION?

02

WHO MAY FILE FOR CUSTODY?

04

HOW DOES THE LAW DEFINE CUSTODY?

05

HOW DO I FILE FOR CUSTODY?

06

HOW DO I PREPARE FOR THE HEARING?

07

WHAT HAPPENS IN COURT?

09

HOW DOES THE COURT DECIDE CUSTODY?

13

WHAT IF I DISAGREE WITH THE COURT ORDER?

13

WHAT IF I WANT TO MOVE AWAY WITH MY CHILD?

13

WHERE CAN I TURN FOR MORE HELP?

What is a custody order?

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



People who file for custody and people they file against are referred to as “parties.” Each person is known as a “party.”

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 previously. 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

A parent of the child may file for any form of physical or legal custody.

"LOCO PARENTIS"

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. This typically means the child has lived with you.

GRANDPARENTS

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.

Who may file for custody?



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.

PHYSICAL CUSTODY

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 have 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 approved by the court monitors interaction between a party and the child.

SOLE

One party has physical custody all of the time.

LEGAL CUSTODY

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.

How do I file for custody?

WHAT DOES IS 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 (mailing address and physical 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?



BEFORE THE HEARING

In the lead-up to trial, avoid behaviors that could harm your case for custody, like bad-mouthing the other parent on social media or preventing them from communicating with the child.



HAVE A PLAN

When you walk into the courtroom, you should be prepared to articulate exactly what you are asking for in terms of child custody and present evidence as to why your proposal is in the best interest of the child. Have a custodial schedule prepared in advance that is reasonable, so the judge has something to consider when they prepare a ruling. But be realistic; judges seldom award one parent sole legal and physical custody absent extraordinary circumstances and will instead fashion a schedule they believe to be in the best interest of the child that involves both parties.



TESTIMONY

Each party may present their side and ask questions of the other side. You should 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. Be prepared to testify as to your work schedule, living situation (where you live, describe your residence, who you live with), activities with the child, your involvement with the child's school and extracurricular activities, the involvement of other family members, any medical issues the child may have, their diet, etc.



EVIDENCE

You may bring school or medical records or other important papers or photographs. You have the right to see everything that the other party wants to show the court. Bring three 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.



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. Here are some general guidelines:

PEOPLE IN COURT

Parents, with their lawyers, sit before the judge at separate tables.

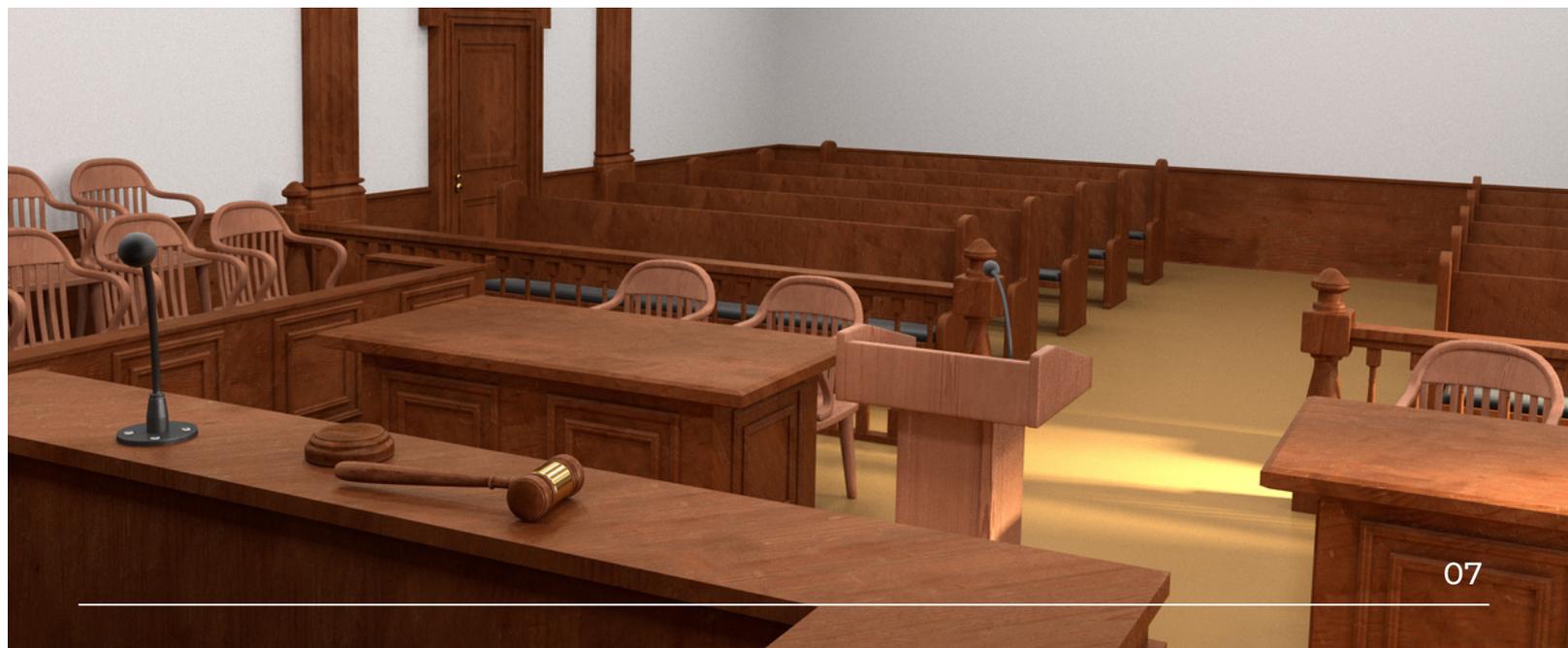
Other people in attendance include a bailiff, a court reporter, a prothonotary and witnesses.

Your trial could have a guardian ad litem, a child's attorney and an interpreter present.

Custody trials do not have juries.

You may invite adults to support you, but lawyers advise against bringing romantic partners unless discussed otherwise.

Children typically cannot attend trial, so arrange childcare in advance. (Some counties offer free on-site child care.)



PROCEDURES

Lawyers make statements to the court, talk to the judge, question witnesses (including both parents) and present evidence on behalf of their clients.



Parents who don't have lawyers must do all this on their own.

- The parent who filed the case, called the plaintiff, presents their side first, beginning with an optional opening statement.
- Then, the plaintiff answers questions from their attorney; if they don't have one, they give their testimony independently, like a short speech.
- Next, the plaintiff questions their witnesses (direct examination) and presents evidence to support the witnesses' claims.
- Afterward, the defendant has the chance to question the same witnesses through cross-examination. They try to gain information that pokes holes in the plaintiff's arguments or benefits their own. Some judges then allow the plaintiff to question the witnesses again (re-cross examination.)
- Once the plaintiff rests their case, the defendant takes the floor. They repeat the same process as above, starting with the optional opening statement.
- The child, depending on their age, may give private testimony to the judge on a day decided by the judge, unless both parents agree it would harm the child.
- The judge typically announces their decision using a written opinion. They typically must issue a decision within 15 days of the trial, but be prepared for it to take some additional time. In the meantime, parents follow the temporary orders in their case.

How does the court decide custody?

A judge or master, after holding a hearing, decides custody based on the best interests 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 the following 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.

How does the court decide custody?

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 childcare.

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.

ADDITIONAL TIPS:



WEAR BUSINESS CASUAL DRESS

No t-shirts, sandals, flip flops or ripped clothing.



ARRIVE EARLY

Allow yourself time to check in and find the courtroom.



BE RESPECTFUL

Treat everyone with respect, including court employees and the other parent.



ONLY SPEAK WHEN ASKED TO

Speak clearly; don't rush.



DON'T START ARGUMENTS WITH THE OTHER PARENT

Court is not the place to vent frustrations.



SET ASIDE PERSONAL ISSUES

Don't let personal issues interfere with what's best for your child.



AVOID GETTING OVERLY EMOTIONAL

Especially when the judge announces their decision.

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 a 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-day appeal from running. If your circumstances change after the order is entered, you always have the right to seek a modification of the order based upon the changed circumstances.

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. If the other parent does not agree, the court will schedule a hearing to decide if relocating is in the child's best interest.

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 reduced-fee programs through which 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.

If you cannot afford a lawyer, visit the website www.palawhelp.org for information about legal procedures in many of Pennsylvania's counties. This website also lists local resources.