

CHILD CUSTODY IN PHILADELPHIA COUNTY

WHAT IS A CUSTODY ORDER?

A custody order is a written order signed by a judge. It defines the amount of time each party 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 called “parties.” Each is a “party.”

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.

WHO MAY FILE FOR CUSTODY IN PHILADELPHIA?

Jurisdiction – Generally, a child must have lived in Philadelphia for at least 6 months before the court will hear your case. Exceptions: if the child is under 6 months old, or for certain emergencies such as abandonment or abuse of the child or the child’s parent or sibling.

Standing – 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 with the consent of a parent or other legal custodian or under court order.

- 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 TO FILE FOR CUSTODY

Where do I go?

- If you prepare your own petition, file it with the Clerk of Court of Family Court at 1133 Chestnut Street. All custody forms with instructions are on the Philadelphia Bar Association's website at <http://www.philadelphiabar.org/page/FamilyLawSectionResources?appNum=1>.
- If you need help preparing your custody petition, go to the Intake Unit of Philadelphia Family Court. It is in Room M-6 at 34 S. 11th Street, Philadelphia, PA. Staff will help you prepare your petition. Bring 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.

What does it cost?

- It costs \$90.38 to file for custody.
- It costs an extra \$42.68 to file for emergency custody.
- Fees are different (or none) for other filings.

What if I cannot afford the filing fee? You may ask to be excused from paying the fee by filing a petition to proceed *In Forma Pauperis* (IFP). Ask for and fill out an IFP Petition. If you are on welfare, medical assistance or SSI, bring your welfare photo ID or proof that you receive these benefits. If you are not on welfare, medical assistance or SSI, bring proof of income.

What if I have an urgent situation? There are 2 ways to try to speed up your custody hearing:

- **Emergency Petition** – This is reserved for cases that must be addressed the same day, such as those involving extreme danger to the child. To file a Petition for Emergency Relief, you must already have one of the following petitions pending: Complaint for Custody, Petition to Modify, or a Petition for Contempt. A master will decide that day whether to grant your emergency petition. If you get emergency custody, the court will schedule a hearing in the very near future to hear testimony and receive evidence from both parties.

- **Expedited Petition** – If there is a matter that needs immediate court attention but is not an emergency, you may file a petition for an expedited hearing. Time-sensitive situations for which you may obtain an expedited hearing include when you believe the other party has been charged with a crime and is a risk to the child's safety, the child needs urgent medical or educational attention, you are being denied access to the child, or the other party has changed the terms of the custody arrangement without your agreement. In these situations, a master will decide whether to schedule an expedited hearing. You may only file expedited petitions on Monday, or if the court is closed on Monday, on Tuesday. You must also file one of the following petitions: Complaint for Custody, Petition to Modify, or Petition for Contempt.

What happens after I file? You and the opposing party will receive a notice by mail with a hearing date and must appear in court on that date. If you have filed an emergency petition, you will be told that day how to proceed. Be sure to follow the instructions.

HOW DOES THE COURT DECIDE CUSTODY?

A judge or master, after holding a hearing, decides the custody arrangement based on what is in 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 to consider:

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.

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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.

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 plans may be used in court. See Parenting Plan brochure for more detailed information.

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.

Witnesses – You may want to bring witnesses to testify on your behalf. Witnesses must present a subpoena to be admitted into the court. Ask any court employee at 34 S. 11th Street to get a subpoena. **Blue** subpoenas are for “friendly” witnesses; **Red** subpoenas are for witnesses who may not want to testify and may be enforced by court order. Give your witnesses the subpoena before the hearing date and have them show it to the security guard upon entering the courthouse.

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.

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Tests and evaluations – If you have concerns about the other party’s substance abuse, mental health, or home safety you may ask the court to order the following services:

- Drug test
- Mental Health Evaluation
- Home Investigation

Be prepared to tell the court why it should issue any of these orders.

WHAT HAPPENS IN COURT?

Custody cases are handled in several different ways, depending on many factors. At different points in your case, you may

- meet with a conference officer to see if you can reach an agreement;
- meet with a mediator, if there has not been domestic violence and there is no open DHS case for your family;
- meet with a master to see if you can agree;
- have a hearing before a master; or
- have a hearing before a judge.

Before your case is complete, you will have done one or more of these things.

Remember: An agreement made at court cannot become a court order until both parties and a judge sign it. Make sure you understand and agree with any agreement that you are asked to sign. Do NOT sign until you understand it fully and agree with it.

WHAT IF I DISAGREE WITH THE CUSTODY ORDER?

If a master or judge makes a decision in your case after a hearing, you have the right to appeal that decision. Read your order carefully to make sure that you do not miss any deadlines for appeal if you believe the decision is wrong.

- If you disagree with a master's proposed order after a hearing, you may file *exceptions* within 20 days after you receive the written recommendation. In your exceptions, you must explain in writing why you think the master’s proposal is wrong. Make sure the court receives your exceptions within 20 days. After you file, you will have a hearing before a judge. You must explain to the judge what the master did wrong.

- 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. If possible, you should talk to an attorney if you want to appeal to Superior Court. Remember, filing a request for reconsideration does not extend the 30 day time period for appealing to Superior Court.

WHAT IF THE OTHER PARTY VIOLATES THE ORDER?

If a party violates a custody order, you may file a petition for contempt and the court will schedule a hearing to decide whether the other party is in contempt and whether to issue sanctions, such as a fine or imprisonment, or to temporarily change the terms of the order until a full hearing is held on a petition to modify. A form and instructions are available on the Philadelphia Bar Association’s website.

WHAT IF I WANT TO MOVE AWAY WITH MY CHILD?

The 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. In limited circumstances, the party who plans to move may be permitted to give notice to the other party later than 60 days before the move, but at least 10 days prior to the move. The steps follow a required order and must have a particular structure. There are strict timelines for the entire process.

IS LEGAL HELP AVAILABLE?

Philadelphia Legal Assistance 215-981-3800
Philadelphia Bar Association Lawyer
Referral & Information Service 215-238-6333

You may download all custody forms with instructions from the Philadelphia Bar Association’s website at <http://www.philadelphiabar.org/page/FamilyLawSectionResources?appNum=1>.