

## Child Custody

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 the children, if the parents can agree on their own about custody and visitation, 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 interests of the children.

### Custody agreements

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

- The children live with one parent, who has primary custody. The other parent may have partial physical custody (the right to take the children away from the custodial parent's home for a limited period of time).
- The children live with each parent for part of the time, for instance, on alternate weeks. This is called shared physical custody.

Most custody agreements also say who will make major decisions about the children for things such as medical care, religious training and education. This is called legal custody, which may be shared by the parents or exercised by just one of them.

It is very, 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.

### What if parents can't agree?

They should try again to work out a solution that is fair to both of them, but most of all best for the children. Some 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 doesn't work, custody may have to be decided by a court.

### Should a parent see a lawyer even if she or he agrees with the other parent on custody?

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 be reached when both parents understand their rights. Second, if both parties agree, a lawyer can have the agreement entered as a legally binding court order, which can be enforced through court action if either party doesn't obey.

### What if there is no court order?

An agreement about custody is fine as long as both parents are willing to follow it. The advantage of turning a custody agreement into a court order is that the court can force the parties to follow it.

If there is no custody order, both parents have an **equal** right to custody, and either can lawfully take physical possession of the child at any time. However, 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.

### What happens in the 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 sessions to try to work out an agreement, and the judge may consider the counselor's report in reaching a decision.

If the parents still cannot 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.

### How will the judge make a decision?

The judge will make a decision based on the best interests of the children and will consider everything which affects these interests. The judge will consider factors affecting the child's safety. A judge will also consider which party is more likely to encourage and permit frequent and continuing contact between the child and the other party.

You should know that as long as you have enough income to provide for the children's basic needs, a low income alone will not prevent you from getting custody.

The law requires that mothers and fathers be treated equally. Neither parent has an automatic advantage because of their sex.

### Can a custody order be changed?

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

## Can grandparents get custody?

Grandparents (great-grandparents also in some circumstances) can ask for partial physical custody

- If the child has lived with them for a period of 12 months or more; (if action is filed within 6 months of removal)
- If the parent to whom they are related has died; or
- If the parents are separated and have commenced a custody action

## In some cases a grandparent can ask the court for physical/legal custody of a child:

If the relationship began with the consent of a parent under a court order and the grandparent assumes or is willing to assume responsibility for the child and one of the following conditions is met:

- The child is dependent
- If the child is at risk because of abuse, neglect, drug or alcohol abuse, or mental illness on the part of the parents; **OR**
- If the child resided with the grandparent for at least 12 months and is removed from home by parents( if grandparent files for custody within 6 months of removal)

As always, the court will make its decision based upon the best interest of the child.

## Can other relatives get custody?

Yes, but only in special cases. Non-parents, such as aunts, uncles, or friends, can sue a parent for custody if they have been raising and supporting the child for a substantial period of time. 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 and Youth Services, or in some cases to a non-parent.

## What if a custody order is violated?

A person who disobeys any custody order may be held in contempt of court or charged with a crime and may be fined and/or jailed. The judge may also take away custody rights from someone who has disobeyed the court order. In some cases, particularly in emergencies when the child's safety is in danger, the police may be able to help.

**IF YOU don't know where your children are, call or write:**

Parent Locator Service  
PO Box 8018  
Harrisburg, PA 17105-8018  
Telephone: 717-783-3043

## REMEMBER

The law often changes. Each case is different. This pamphlet is meant to give you general information and not to give you specific legal advice.

Please use the information found in this brochure carefully since the law is constantly changing and the information may not accurately reflect any changes in the law that occurred following the creation and publication of the brochure.

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- Should a parent see a lawyer even if she or he agrees with the other parent on custody and visitation?
- What if there is no court order?
- What happens in court?

For more information on this issue and other topics visit:

**PA**LawHelp.org

This public information pamphlet was revised and updated by Neighborhood Legal Services.

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