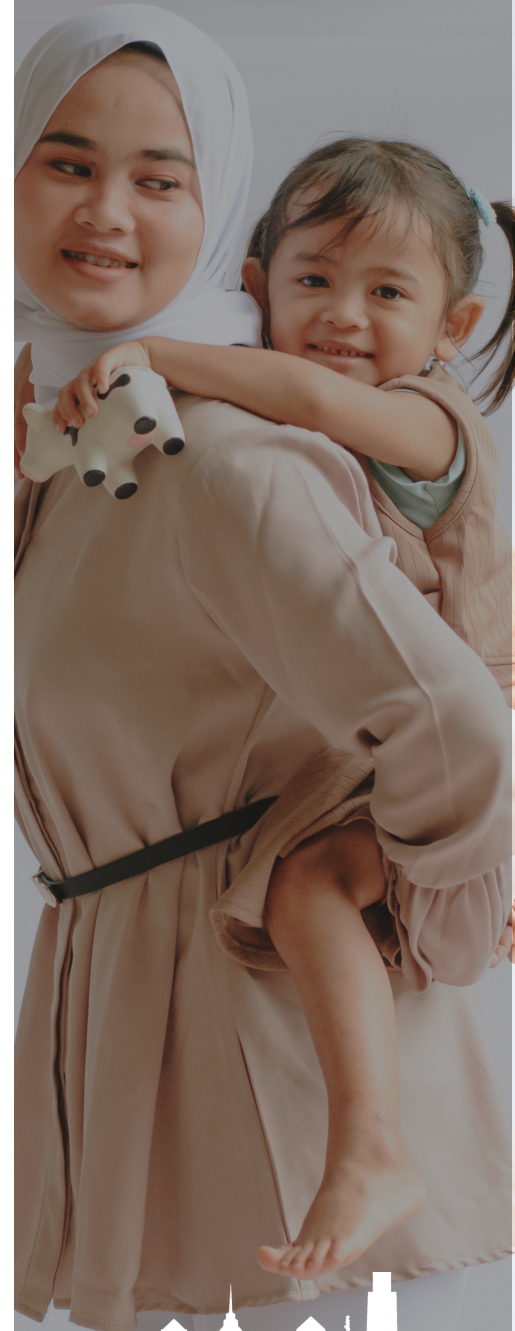


# Custody and Visitation Guide for Self-Represented Survivors of Domestic Violence

If you're a domestic violence survivor with children and don't have a lawyer, this guide can help you decide whether a divorce or custody case can help you. If so, it can help you follow the court rules and meet legal requirements, so you have the best chance at an outcome that is safe for you and your children.

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# Safety

The first goal of this guide is to keep you and your children as safe as possible. Almost all of the sections include information related to safety (see index below). This first section has some general information about safety.

Your best partner in creating a plan to keep you and your children safe is a domestic violence advocate. This process is called safety planning. The Philadelphia Domestic Violence Hotline will be able to help you.

Whatever you tell your advocate or your lawyer (if you have one) is confidential. They cannot share anything you tell them with others unless you give permission. This rule does not apply to social workers outside of a law office, therapists, and other professionals you may come in contact with. If you are concerned, you can ask the person you are speaking to about confidentiality. In general, unless there is confidentiality, a professional has to report to child protective services if they feel your children are in danger of serious abuse or neglect. If you do file a court case, what you tell others involved in the case, such as court clerks and mediators, may not be confidential. In fact, they may even be required to tell your former partner anything you say. Only you can decide what is safe for you to disclose. Talk to your advocate, or your lawyer, if you have one, about any safety or other concerns before deciding what to tell others.

A Protection From Abuse (PFA) Order can be an important tool to help keep you and your children safe. It can keep your former partner from having any contact with you or coming to your home or work. It can provide for temporary child custody and child support, can evict the abuser from your home under certain situations, and can order the abuser to relinquish weapons. Even though it can give you temporary custody of your children, PFA orders do expire and you may need to file for long-term custody through a separate court case. In addition, even if you ask the court to give you temporary custody, the court may deny your request.

To get help in obtaining a PFA order, you can reach out to the Legal Assistance resources on the back cover.



# Protection from Abuse (PFA) Versus Custody and Divorce

- Both in family court, but different cases
- A PFA short term, limited relief for child custody or child support, just for protection
- Custody and Divorce are long term orders that resolve whole relationships and all issues, not just protection
- PFA has one form while Custody and Divorce have several
- PFA has one or two hearings while Divorce and Custody is more complicated

Be sure you're using the right kind of case for what you need.

**For help with other safety concerns, see the pages indicated below:**

- Safety in seeking help with court case – p. #8
- Safe parenting plans – p. #13
- Safe [mediation/ADR] – p. #14 and #21
- Safety at hearings – p. #22
- Safety after the final order – p. #28

# Can the Court Help?

Not all problems are legal problems, and sometimes the court may not be able to do what you want. If you need a divorce, a court order saying who gets custody (and possibly visitation) of your children, an order requiring payment of child or spousal support, the court's permission to relocate with the children, establishing paternity, or a PFA order, the court can help.

## **The court CAN:**

- give you custody and set visitation (called partial physical custody or supervised partial physical custody),
- order support payments (including withholding the other parent's wages),
- enter a divorce,
- divide property and debts (in a divorce),
- grant permission to move with the children outside the area or to a new state,
- grant a PFA order, including restrictions on contact, or remove firearms from the home, and
- enforce PFA orders when the other parent has violated them.

## **The court CANNOT:**

- do anything the law doesn't allow,
- make your spouse or partner change,
- be an involved parent, or
- make your spouse or partner easier to get along with.

If what you need is on the CAN list, the court is generally the right place for you.

In some situations, though, you may need to think more before deciding to go to court.

First, if you came here from another state, this state may not be able to help you with a long-term custody order right away. If it is an emergency because you or the children are in danger, it may be possible to get a temporary custody order—see the Emergency Options section, below). For the court here to be able to enter a long-term custody order, the children must have lived here for at least six months (and a case must not have been filed in your old state). Until then, the court in the state where you lived before is usually where you have to go. These situations, especially regarding emergencies, can be very complicated, and legal advice from a skilled lawyer is urgently recommended. The Legal Resource Center on Violence Against Women can give you information about these issues and may even be able to help you find a lawyer. (Please note, the LRC helps victims of all genders.) You can reach the LRC at 800-556-4053.



Second, if you have any immigration concerns, seek advice from a lawyer before deciding whether court is your best choice. WomensLaw.org has information on organizations that can help. You can also try <https://hiaspa.org/> or <https://nscphila.org/>

Also, sometimes you may not want to go to court. If you and your children are currently safe, the abusive partner does not know where you are and it is unlikely they will try to take the children, you may be better off not filing for custody at the current time. This might be true especially if you do not want the other parent to have any custodial time with the children. Be aware that if you hide the children from the other parent you may be in danger of being charged with “custodial interference,” or parental kidnapping. If you are unsure of your situation, seek legal advice.

If you decide to go to court (or if your former partner files a court case and you must respond), help is available. Look at the back cover for resources and services in your area. Websites with helpful information and national resources are also listed.



# Before You Start

In the court case, you'll need to complete paperwork to give the court information about your family's situation, what you're asking from the court, and the reasons why you should get it. You'll also have to tell certain people about it. These people may include an intake person at the court who will assist with filing a PFA petition or custody complaint, the judge, a hearing officer, or a mediator.

This process will be stressful. You'll have to tell your story, probably several times to several people. Some will be sympathetic, some will be indifferent, and some may be hostile. Your former partner may have to be there at times. Do what you can to be emotionally prepared. Asking people in your community to provide support will be a huge help. If family and friends are not available, talk to a domestic violence advocate. There are agencies that can provide counseling and safety planning (resources on the back cover). Do things that make you feel good about yourself—strong and resilient. Don't be afraid to lean on support or seek professional help when you need it. You can do this.

Before you start, it will help to think about what you want and why. What kind of custody and visitation arrangement will be safe? Can you talk to the other parent about the children, or will that put you at risk of further abuse, harassment or physical harm? What restrictions on contact should be in place to keep you safe physically and emotionally? Are the children safe with the other parent? If you have concerns, is there an arrangement that would make you feel better about the other parent spending time with the children, such as supervised physical custody or supervised exchange (where other adult(s) would be present to help make sure it is safe)? If you can't get your first choice of parenting arrangement, do you have a back-up request? The first step is knowing what to ask for. And, be aware that you may not get what you request or the other party may get more time than you think is best for the child(ren).

Then gather as much information as you can that shows why you're making your requests. Most of the information will probably come from you and others who can talk about what has happened in your family. Make a list of people who know something about your family's situation. This may include other family, friends, neighbors, co-workers, doctors, and people from the children's school or activities.

Also, you may have to provide documents, especially if you'll be filing for custody. If you need to keep your address confidential on the paperwork the other party will see, you may do that, but the court will need an address where they can send mail to you. Start gathering documents like utility and credit card bills, bank statements, child care bills/receipts, health insurance and medical records (especially if you or the children have medical needs), mortgage or lease documents, and titles and registration for cars or other property. Documents for any auto, life, and home or renter insurance you have may also be needed.



If the police were ever called, you may want to get copies of any police reports. In Philadelphia, you can go to the police district where a police report for a domestic violence incident occurred and ask for a copy of the report for free. There is a policy that the Philadelphia Police Department must provide a domestic violence survivor with a copy of the report. You need to have the report number, or “DV-48 number, or the date, time and address of the incident. If you ever had a protection order or if there was ever a criminal case related to the violence, those documents would also be useful. If you received threatening or harassing messages by text or on social media, you should be ready to provide them as well. Voicemails or video recordings of threats or incidents should be included if you have them. Photos of any injuries or property damage can be very helpful, especially if they have timestamps.

You know your situation the best. So you’re in the best position to know what information you have or can get. But you can also go to the help center or reach out to one of the legal assistance organizations on the resource list if you have questions.

Finally, using this guide or help from your advocate, self-help center, or other resource, think about what you’ll be required to do for your case and plan for it. Will you need transportation? Will you need to arrange child care or time off work? Will you need support (say a friend or advocate) for hearings or other proceedings? Will you need to make copies and do you have a way to do that? Do you have a safety plan for each step of the process? Does that plan require you to ask the court for safety precautions for things like the Custody Hearing Officer process (explained under Hearings, p.22) or a parenting class, or to be excused from them if they’re not safe? If so, do you know how to make those requests? Try to think ahead about anything that might raise a concern for the safety and wellbeing of yourself or your children. Then plan what to do, as much as you can.



# Emergency Options

First, if you're in immediate danger or seriously injured, call 911. (This will likely mean law enforcement will be involved.)

Next, if you need help in leaving your partner, the Philadelphia Domestic Violence Hotline (866) 723-3014 is a good place to start. They can help with safety planning, provide support and advice about your options, and refer you to other services. There is a domestic violence shelter in Philadelphia. The Domestic Violence Hotline can help you figure out your options. If you don't want to leave (or aren't sure), the Philadelphia Domestic Violence Hotline is still a good source of information and support, and you can reach out to the organizations on the resource list. The Hotline and other resources can help you make a safety plan to help you and your family stay safe.

If you want a PFA order, you may wish to read the Protection from Abuse in Philadelphia brochure for more information. <https://www.courts.phila.gov/pdf/brochures/dr/pfa-Brochure.pdf>

You can get temporary custody of your children as part of an PFA order, as well as temporary child or spousal support and reimbursement of expenses that were a result of the abuse. You must be sure to ask for all the things you want when you file the petition for protection from abuse, and even though you ask for it the court may not grant it. This means you may have to also file for custody or child support separately.

If you had to flee to another state to escape the violence, or are considering fleeing, you may have some complex legal issues. Contact Women Against Abuse (215-686-7082), Philadelphia Legal Assistance (PLA) (215-981-3800), or the Legal Resource Center (800-556-4053) for help with these issues.

Finally, if you want to ask for immediate quick help from the court in the custody case, you have to file an emergency motion. Contact PLA or go to the Family Court Help Center which is open every day the Court is open from noon to 3:00 pm. It is on the 11th Floor of the Family Court at 1501 Arch Street. They can help explain what to include in the motion and options for an emergency hearing. The Help Center can't file the Emergency Petition for you but can give you information. You have to go to the 13th Floor, to the Custody Unit, to file an emergency motion. Be ready to show why your request can't wait and why it should be granted. (See below on Paperwork and Hearings.)



# People

Most people think of the judge when they think of a court, but during your case you'll meet a lot of other people, too. Each case is different, so you may not see all the people listed below, but these are common roles that may be part of your family court case:

- Judge: is in charge of the courtroom, will decide any issues you can't agree on, and may try to help you reach an agreement (some judges).
- Parties: you and your ex-partner or anyone else (e.g., a grandparent) who is named in a case (meaning their name is at the top of the first page of court papers as part of the name of the case).
- File clerk/Clerk of Court: is responsible for filing papers in the court case and keeping the court's file up-to-date and organized. In some courts, they may also help with tasks like scheduling hearings.
- Court clerk: sits in the courtroom during hearings, takes notes, and is responsible for keeping track of any exhibits submitted as evidence.
- Court reporter: in some courts, copies down everything that's said, by anyone, during a court hearing before a judge. Hearing Officer proceedings are recorded without a Court Reporter. Conferences are not recorded.
- Law clerk: is a lawyer who helps the judge with legal research, preparing cases, drafting orders, and other tasks assigned by the judge. The judge's law clerk or secretary is usually who parties or attorneys will talk to if there is a question about the case or if a party is making a request of the court, like asking for a continuance of a hearing.
- Sheriff's officers: provide security in the courtroom during hearings. In some places, this person may be employed by the court and in others by local law enforcement. In Philadelphia, there are Sheriffs in the Court as well as other court staff.
- Help Center staff: helps people who don't have lawyers with paperwork and court procedure. Philadelphia has a Help Center that assists with divorce in the mornings on Tuesdays and Thursdays for people with simple divorces that do not need property or debt to be divided. The Help Center staff cannot give you legal advice but can answer questions and explain the court process and how to file a complaint or petition to change a custody order. The Help Center can help parties with writing and filing petitions and motions and is open Monday-Friday from Noon to 3 pm.

- **Custody Hearing Officer:** although not a judge, this person will hear testimony and accept evidence from the parties. They will try to help the parties reach an agreement, which may become the custody order issued by the court. If the parties do not come to a full agreement, the Officer may take testimony, issue a temporary order, and schedule a date for a hearing before a judge. The Officer also may simply schedule a date with a judge without issuing a temporary order.
- **Mediator:** tries to help the parties reach an agreement as part of a voluntary process. The parties can try to reach an agreement, at least on some things, before going to court and asking the judge to decide the case. See below under Mediation for more information, as well as <https://philalegal.org/resources/consider-mediation>.
- **Guardian ad Litem or Child Advocate:** In Pennsylvania, the court can appoint a Guardian Ad Litem ("GAL"), or Child Advocate. A GAL and a Child Advocate have different roles and responsibilities. A GAL interviews parties, the child(ren) and other important people in the case and can make a report to the court. A Child Advocate is more like an attorney for the child, and basically speaks for the child. Their role can change depending on the court and the order appointing them, but generally, they provide information and sometimes recommendations to the court about each party's parenting and the children's well-being. They may interview the parties and the children, observe each parent with the children, visit each parent's home, and interview others who know the parents and children such as extended family, friends, teachers, etc. Payment for GALs and children's attorneys varies; in some courts, the state or county pays for them and in others, parents may be required to pay. In custody cases in Philadelphia, most of the time they are volunteers who do not get paid. The court can direct what each party must pay in its orders. It is important to know that in most cases what you tell these people and what they observe is not confidential and can be shared with others and written into reports and recommendations. When you meet with them, you can ask about how the information will be used and who can see it.
- **Third party/grandparent:** in some situations, a grandparent of a child or a different person who is not a parent can file for custody. The cases in which this is possible can be complicated, but usually it is when there is a risk of abuse or neglect of the child or the child has lived with the grandparents for more than a year and a parent has removed the child from that home. If someone other than a parent has filed for custody, and you think they may not have a right to, you may be able to file a motion to dismiss. You may wish to consult Legal Aid or a law office. For more information about this issue, see <https://www.courts.phila.gov/pdf/brochures/dr/custody-brochure.pdf>

# Words to Know

You'll hear a lot of legal terms used in your court case. This section explains some of the most important ones:

- **Jurisdiction:** The court's authority, or power. To decide a case, the court must have jurisdiction over the parties and their case. Cases like divorce, custody, protection from abuse, and child support belong in the Domestic Relations Division of Philadelphia Family Court. Which court can hear the case might be different if it is for custody, support, divorce or protection from abuse. For parties, the court usually has jurisdiction over parties who live in the state or county. If you and your ex-partner live in the same state, this is usually simple. But if you or your ex-partner moved to another state, it can be more difficult to determine which state can hear the case. If this is your situation, call Women Against Abuse, PLA, or the LRC for help. You also can watch an online video about interstate custody and domestic violence available at <https://www.womenslaw.org/laws/videos/custody-visitation-and-child-support/interstate-custody-and-domestic-violence>.
- **Best Interests of the Child:** The term used in most states for the basis of the court's decision in custody cases, that is, the court must award custody in the way that serves the child's best interests. It must give more consideration to factors which affect the safety of the child. (See below in section on Custody Standards.)
- **Legal custody:** who will make major decisions about big parenting issues such as medical care, education, and religion. It can be sole (only one parent makes these decisions) or shared (both parents make these decisions together).
- **Physical custody:** Physical custody refers to which parent or parents the children will live with. The parent(s) with physical custody take care of the children's day-to-day needs and make day-to-day decisions. There are five 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.

Courts may divide up legal and physical custody in different ways. For example, both parents may get legal custody (joint) but only one gets physical custody or gets significantly more time with the children.

- **Presumptions:** A presumption directs a particular decision by the court if certain facts are present. In Pennsylvania, there is no presumption between parents, but there is a presumption that children should be with a parent over a grandparent or other person unless that person proves it is clear the child's best interest would be served otherwise.
- **Standard of Proof:** The "standard of proof" means how much evidence you need to persuade the court that you should get what you ask for. You've probably heard of "beyond a reasonable doubt," which is the standard for a conviction in criminal cases and is very high. For family cases, the standard is usually a "preponderance of the evidence," which is much lower: it means you have to show your story is more likely true than not true. To say it another way, if "beyond a reasonable doubt" means being 99% sure, a "preponderance" is 51% or more likely than not. This is the standard used for Protection from Abuse cases. Pennsylvania uses "clear and convincing evidence" for certain things related to grandparents and other people other than the parents, which is between the other two standards.
- **Burden of Proof:** A party asking the court to do something usually has the "burden of proof," that is, they have to show why the court should give them what they want. For example, if you ask for custody, you have the "burden" of showing the court why the children will be better off with you than the other parent.
- **Child Support Guidelines:** Pennsylvania uses a chart that says how much child support should be paid based on the custody arrangement and the parents' incomes, with the goal that each child gets the amount of support they would if the parents lived together. Your and your ex-partner's individual incomes are compared to the guidelines amount to determine how responsibility for child support should be divided between each of you. For more information, see <https://www.courts.phila.gov/pdf/brochures/dr/child-support-brochure.pdf>



# Parenting Plans

Any time you are going to court, you should be prepared to say what you would like your custody arrangement, sometimes called a parenting plan, to be. A parenting plan is just what it sounds like—a plan for how you and your former partner will parent the children you have together until they're grown. The two main things to keep in mind are: (1) the plan must be safe, and (2) it must work for your family, taking into account work and school schedules, budget, children's ages and needs (e.g., medical, academic, extracurricular activities), transportation issues, and any other factor that affects the children and how you parent.

The court may call a Parenting Plan an Order or a Custody Order. A court may require the parties to submit a parenting plan during the custody case.

Things to consider include:

- Safety provisions specific to your ex-partner's behavior
- Regular schedule for where children live
- Holiday schedule
- Vacation time with each parent
- Exchange details, especially for safety, for instance in a public place with cameras, at a relative's house, or a school drop-off/pickup
- What happens if a parent doesn't show up for a visit
- Telephone/electronic contact between the parent who does not have custody and children
- Communication between parents, including any safeguards against harassment/verbal abuse; you can ask for the order to require that communication only be done using email or text, or using an app (for example, OurFamilyWizard)
- Childcare and/or extracurricular activities
- Travel with the children
- Relocation (moving to a new community or state)
- What to do in an emergency (including if any violence reoccurs)
- What to do if child resists or refuses a visit
- Who else may be present during visitation (or anyone who should not be allowed) and who may or may not care for the children
- Any activities with the children that are permitted or prohibited

# Agreements

Most family court cases end with an agreement, or settlement, between the parties. Often, they agree on the whole case, and sometimes they agree only on certain things. A settlement can happen anytime: before the case is filed, shortly after it's filed, during a required mediation (or other settlement process), before or during trial, and even after trial. It can be quicker and easier than preparing a case for trial and often gives the parties a result they like better than what a judge might decide.

Settlement in cases with domestic violence, however, can be a problem because of the power imbalance—it's often difficult for a survivor to negotiate on an equal level with the abusive former partner, and sometimes it's even dangerous. Also, a person who has been abusive may use custody or financial issues to try to keep control. Before talking about settlement with your former partner, be sure it's safe and that you're confident you can state your position and argue for what you want. Also, while you may feel pressured, you are never required to agree. But if you're concerned about being in that kind of situation with your former partner, you may not want to negotiate. An advocate may be able to help you think about whether it's safe to negotiate with the other parent.



# Paperwork

As you've probably guessed, a court case has a lot of paperwork.

Most of the forms you will need are available, along with instructions, on the court's website (<https://www.courts.phila.gov/common-pleas/family/dr/>, scroll down and click on "Forms") and at the help center. Some of the common papers are listed below:

- **Complaint for Custody:** The first paper filed in the case; the party who files it is called the plaintiff. It states basic facts and what the plaintiff wants the court to do. If the other parent has filed a complaint for custody against you, you do not need to file anything in response. If there is no custody order in place and you would like to obtain custody, you have to file your own complaint for custody.
- **Criminal Record/Abuse History Verification Form:** a checklist of possible crimes either party has been convicted of as well as any information about a history of domestic abuse; it must be filed with the complaint for custody.
- **Confidential information sheet:** a form with confidential identifying information for each party that is kept private by the court. It is not part of the public record. Information on the form includes social security numbers, bank account numbers, and drivers license numbers. If you have a PFA order, you may need to fill out the Abuse Victim Addendum as well.
- **Domestic Relations Information Sheet:** a form that lists basic information about everyone related to the case, including the parents, the children, and any caretaker other than the parents, as well as some information about any support claim. It must be filed with the complaint for custody. (Caretaker here means someone the child lives with other than the parents, not childcare or a babysitter.)
- **Proof of Service:** certain pleadings or motions in Pennsylvania must be served by handing the papers to the respondent in person, which is called "personal service". This must be done by an adult who is not a family member of the plaintiff. An "affidavit of service" must be submitted to the court at the time of the hearing. If personal service is necessary, the form/notice for hearing will say so at the top. For more information about service, see <https://www.pacourts.us/learn/representing-yourself/custody-proceedings>

- **Fee Waiver:** In Philadelphia Family Court, it costs \$107.13 to file for custody (and an extra \$42.68 to file for emergency custody). If you cannot afford it, 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 public assistance, medical assistance or SSI, bring your public assistance photo ID or proof that you receive these benefits. If you are not on public assistance, medical assistance or SSI, bring proof of income.
- **Motion:** A motion is the legal word for a paper asking the court to do something during the case, with a statement of why the court should grant the request.
- **Order:** The paper with the court's decision and ruling, saying what the parties are required to do. An order may decide just a motion or part of the case, or it may be the final order deciding the whole case.
- For custody cases, one party does not need to file an answer or a counterclaim to the other side's complaint or motions, but they can. If there is no custody order yet, and a party wants some form of custody, they must file their own complaint for custody.

After you file and your complaint has been processed, we strongly suggest that you set up an account with the court so you can track your family law cases online. PLA cannot access this system for you. <https://philalegal.org/resources/how-access-your-family-law-case-online>. If you do not have a computer to use for the paperwork, you may be able to use one at a public library (see <https://libwww.freelibrary.org/locations/> for a list of locations).



# Custody Standards

The Court looks at the best interest of the child when making custody decisions. Who has been caring for the child, who can keep the child safe, who has been abusive or kept the child from the other party are all things the court will look at. In Pennsylvania the court must consider 16 factors, with extra weight for those factors that affect the child's safety:

- (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.
  - (2.1) Consideration of child abuse and involvement with protective services.
- (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 daily physical, emotional, developmental, educational and special needs of the child.
- (11) The proximity of the residences of the parties.

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- (10) Which party is more likely to attend to the daily physical, emotional, developmental, educational and special needs of the child.
- (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.

You can learn more about these factors on the PLA website:

<https://philalegal.org/resources/understanding-best-interests-child>

# Relocation

If you are deciding whether to move out of your county, state or tribal lines with your children, or trying to retrieve your children when your former partner has taken them to another state, the laws are complicated. Such cases may involve criminal laws, relocation laws, and the Uniform Child Custody Jurisdiction and Enforcement Act (a law which determines where a custody case might take place) among others. For direct legal advice about your situation, it is important to contact a knowledgeable attorney in your state. There may be free Legal Aid or pro bono attorneys that can help you. This site may help you find one: <https://www.lsc.gov/about-lsc/what-legal-aid/get-legal-help>. You can also call the LRC at 800-556-4053.

Before deciding to relocate, you may wish to go somewhere safe within your state first, such as a domestic violence shelter, or to a friend or family member's home, so that you have the time and privacy to learn about the laws. There are at least four major legal issues to consider: 1) Is there an existing court order regarding your children? 2) What does your state relocation law say? 3) What does your state parental kidnapping law say? 4) And where will a custody case take place? A good attorney can help you understand the laws in your state or tribal jurisdiction and how they apply to your situation.



A party cannot relocate with children without the other parties' consent or the court's permission, even if there is no custody order. A move is considered to be a relocation if it will change the other party's ability to exercise their physical and legal custody. So, moving across the river to New Jersey might not be a relocation, but moving to western PA from Philadelphia would be. The court has to consider these factors when deciding if a party may relocate:

- (1) The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the non-relocating party, siblings and other significant persons in the child's life.
- (2) The age, developmental stage, needs of the child and the likely impact the 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 relationship between the non-relocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.
- (4) The child's preference, taking into consideration the age and maturity of the child.
- (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 the relocation will enhance the general quality of life for the party seeking the relocation, including, but not limited to, financial or 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 motivation of each party for seeking or opposing the 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 factor affecting the best interest of the child.

If you need to file a motion to relocate, be sure to say how each of these factors helps you show that moving is best for the children. If you need to oppose a motion, say how these factors show moving would be bad for the children.



# Mediation

Philadelphia does not have mandatory mediation, meaning parties do not have to go to mediation before a custody hearing. However, mediation can be a useful way to resolve custody disputes. Mediation is not usually used when there has been domestic violence, especially when one party does not feel safe with the other. Mediation has some important benefits: parties can see a mediator and if successful have a final order in much less time than it usually takes to have a hearing before a judge; the parties get to decide what the order says; and children do not have to testify. If you are interested in mediation, refer to the mediation resources on the last page.



# Hearings

A court hearing is likely what you think of when you hear “court.” During a hearing, the parties (and their lawyers, if they have them) go to the courtroom to appear before the judge. All custody proceedings in Philadelphia are back to being in person, but there may be an option for “virtual” or “remote” hearings, allowing for appearance by telephone or a videoconference if a party can’t appear in person. The parties, lawyers, and judge may simply talk about the case, or the court may take evidence—when the parties present information to support their side and to show why they should get what they ask for. Below is some general information and a description of common types of hearings.

**Court Layout:** The court has a seat for the judge, raised a little higher than the rest of the room, called the bench. Each side has a table in front of the judge. Next to the judge will be the witness stand. Some judges let the parties testify, speak to the court, from the table not the witness stand. There will also be seats for the court reporter, who transcribes what everyone says, the court clerk, and law clerk. The bailiff may sit or may stand and often moves around the courtroom. This part of the room is usually separated from the rest of the room by a low rail, called the bar. Only the parties and their lawyers are supposed to go past the bar; others sit in seats behind the bar (often called the “gallery”). The best way to get a good idea of how your court looks is to visit your court before your first hearing. Some of the courtrooms have room for a jury, but these are not used in Philadelphia custody cases.

**Etiquette:** This simply means manners, and courts prefer good manners. In a courtroom, this means standing when talking to the judge (unless you have a disability that makes it difficult for you to stand or the judge says it’s okay to sit), calling the judge “Your Honor” or “Judge,” not interrupting, and generally showing respect for the court and the process. You don’t need to dress up, but try to be neat and clean. Dressing like you are going to a job interview in a business office is usually a good idea. Most judges will ask the parties to remove any hats.

If you are fearful of being in the waiting room, you can request a Sheriff stay near you in the waiting area, and a Sheriff should be in the Courtroom when you have your proceeding.

## Hearing Officer Proceedings

Many courts hold a conference/hearing a month or so after the answer or response is filed to allow the court to issue any temporary orders that may be needed until a final decision is made (such as temporary custody and parenting time or child support), to see if the parties might be able to settle the case, and to identify all the issues in the case.

In Philadelphia, the first contact with the Court in a custody case is with the Hearing Officer. Custody Hearing Officers are not Judges, but they will take testimony on the record and swear you in. You will be able to present evidence. Three copies of your evidence should be brought with you: one for you, one for the court, and one for the other party. If you have videos or recordings, it is best to bring a flash drive with the item on it, though you may be permitted to play it from your device. Your evidence should not be written on or altered in any way. There are four outcomes to this proceeding:

1. If you and the other party can come to an agreement with the help of the Hearing Officer, then this agreement will be issued as an Order of Court and mailed to you in a few weeks.

2. If you and the other party cannot come to an agreement, but both of you agree which party has the child/children for most overnights and agree on who should have legal custody, then the Hearing Officer will take testimony and issue a Proposed Order. The proposed order will also take a few weeks to process.

After you get the proposed order, you can file exceptions within 20 days. Instructions will come attached to the Order. If you, or the other party, files exceptions, then the proposed order does not take effect and you will receive a date to have the case heard by a Judge.

3. If you and the other party disagree about who gets the child for the majority of overnights, for example, if both of you think they should have custody Monday-Friday, or you don't agree about legal custody, then the Hearing Officer has a choice to either: Issue no Order and send your case to be heard by a Judge. If no Order is issued and there is no custody order yet, you and the other side have equal rights to the child, however, neither of you are obligated to let the other party see the child. If there is a custody order already in place, you must follow the previously issued custody order OR, the Hearing Officer can take testimony and issue an interim (temporary) order, and schedule for a date with a Judge. You can expect this to be mailed in a few weeks. If an interim order is issued, you must follow it until your date with a Judge.

4. If the other party does not appear, then:

You can ask to have a "walk over" where the Hearing Officer walks the case over to the judge. The Judge will issue an Order that day. You should request this. It ends the case that day. Or the Hearing Officer can enter an Order that states what you request as a Proposed Order. This is less desirable because the other party will be able to object to the Order by filing exceptions.

If the child is not in your custody and you don't believe they knew about the court date, then the case can be continued for the Court to research the location of the other parent and children.

## Trial

The major proceeding in the case if the parties can't agree, when each side presents their evidence and argues for what they want. You may have seen jury trials in movies or TV shows, but juries are not used in family cases. The judge might first again see if the parties can agree, or try to narrow down the issues the parties don't agree on. Then each party will have the chance to present their testimony and evidence. Usually the party who filed first will testify first and present all their evidence. Once a party or witness testifies, the other side or their attorney can cross-examine the party or witness, which means asking them questions about their testimony. Then the party presents any other witnesses. After that, the other side gets to testify and present their witnesses and evidence. After all the evidence and testimony, the judge makes the decisions.

Generally speaking, if you have a hearing for a complaint for custody, the judge will be making a decision as to what custody order the parties shall have based on the best interest of the child factors. If you have a hearing for a petition to modify, the judge will be making a decision on how the custody order will be changed. If you have a hearing for a contempt petition, the Judge will be making a decision as to whether a party violated the custody order and will decide what the remedies will be. For expedited or emergency hearings, the judge will decide if the situation described in the petition warrants an order to be issued quickly or immediately. For relocation hearings, the Judge will make a decision on whether a relocation was improper or significantly impairs a party's ability to exercise their custodial rights.

Custody hearings in Philadelphia are scheduled for fairly short periods of time, and you might only get 30 minutes or so for your hearing. Hearings can sometimes be protracted or semi-protracted, which means that the custody matter is very complicated and the parties will be given more time than usual to present their arguments. A judge can order a case to be protracted, or a party can file a motion asking for a longer hearing.

For all judges' hearings, you will need to be prepared to present your argument to the court.

Sometimes the judge might want to hear from other witnesses, or see other evidence. If so, the judge might schedule another hearing to finish the case. The judge is supposed to state their decision and put the reasons on the record, going through the factors listed above and explaining their decision.



## Other Hearings

Other hearings may be when one party files a motion that the court must decide. These may look just like a trial, including evidence, except instead of the whole case, only a piece of it is decided. For example, the hearing may be to decide temporary custody while the rest of the case is happening. Other hearings may simply be a time for the judge to check in with the parties, especially if one or both has been ordered to do something. Finally, a hearing may be held if something new happens after the original case is over. (See below under “After the Final Order.”)

**IF YOU CAN'T MAKE YOUR HEARING:**  
**Call the court as soon as possible after you know that you can't be there. If you know in advance, ask about how to file a motion for a continuance, that is, to change the date of the hearing. Also ask how to get it decided as soon as possible. Like all other papers in court, you'll have to send a copy to the other side.**





# Appearing in Court

Arrive at least 30 minutes ahead of time and bring a copy of your paperwork. There may be a long line. You will be asked to show your paperwork to enter certain areas of the court house. Please dress appropriately for court as how you show up makes an impression. You should dress like you would for church or a job interview.

The Court nursery is closed. The Court is currently asking for children not to come to court unless the judge or hearing officer specifically orders the child to appear. Please write to the court in advance if you want to request that your children be permitted to attend. Otherwise you should make a plan for childcare.

You may not bring food or water, however, you may purchase food and water on the 2nd floor. Sharp or dangerous items may be confiscated or checked at the sheriff's desk.

If you wish for witnesses to appear, then you should let the court know in advance and ask if they should come in person or be available by phone. Check with the court in advance about how you should bring witnesses.



# Evidence

Evidence is a fancy word for information given to the court during the hearing. It usually comes from witnesses, people who tell what they saw or heard, or exhibits, such as documents or photos with information the court should know.

Some evidence is better than other evidence. You want information that is the most trustworthy or reliable. Judges want to hear testimony from people with first-hand knowledge—witnesses who actually saw and heard important events, not someone who heard about it later. Also, a letter from the person is usually not enough. The person needs to come to court to tell their story. You can use a subpoena (a court order to require the appearance of a witness) if the witness doesn't want to come or needs one to get time off work. The forms for a subpoena are available at the clerk's office in the family court or online:

<https://www.courts.phila.gov/pdf/forms/civil/Subpoena-Request-for-Attendance-10-200.pdf>

The information must be presented in the correct way for the judge to consider it. The judges and hearing officers in Philadelphia are very used to parties appearing without attorneys. Sometimes they will ask you questions to get all the information.

Even if you don't go to trial, it can be helpful to know what information you have and how it helps show you should get what you're asking for. For example, in mediation, your position will be stronger if you know the facts and reasons to support it.

Start by listing what you want from the court. Then go through the custody standards to see what you need to show to get what you want. Next, look through the lists of people and documents you made in the Before You Start section (p.#6). The people with information you need may be your witnesses if you go to trial or have a hearing on something they know about. Any documents, photos, voicemail or video recordings, texts, and social media posts may be used as exhibits. You can then check off each piece of information as it comes in to be sure you cover everything.

Parties can present many types of evidence. You need to have 3 copies of all your evidence, one for you, one for the other side, and one for the court. Pictures of your home, where the child sleeps, or of bruises or injuries caused by the other party might be very important. Parties may also present text messages or social media posts. It is often important to be able to tell the court dates of when certain things happened. It is usually a good idea to keep a calendar where you can keep notes of who had custody or other important events.

If one of the parties alleges drug use, or if drug use is suspected, the Judge or Hearing Officer may Order a drug test on the spot (be aware that in some cases, the court may order that both parents be drug tested).

# After the Final Order

Even after the final order, you may need to return to court. One common reason is that one party didn't obey the order, so the other party asks the court to enforce the order and punish the violation. This is called contempt of an order and is done by filing a petition for contempt. A hearing will then be held before a judge. If you are the one seeking enforcement, you should be ready to show how the other party violated the order and any steps you took to try to enforce the order. This is another time where notes on a calendar may be important so you can remember dates. You may want to ask the judge to make the order stronger or to include penalties for any future violations. If you are the one accused of disobeying the order, be ready to show that you complied with the order or that you had an important reason that excuses your behavior. If the reason is something that is likely to happen again, you may want to ask the court to change the order so you don't violate it again. In Pennsylvania, a party can be fined and even incarcerated for up to 6 months until they show they will comply with the order.

It is sometimes very difficult to enforce a custody order without going back to court and filing for contempt. Sometimes the police may help, but most often the police will not force one parent to give a child to the other parent even when there is a custody order, so it is often necessary to go back to court. The court can give you an order that says the police or sheriff's office are ordered to assist in returning the child to you. You can ask the court to put language in the order such as "law enforcement in whatever jurisdiction the child may be found are authorized to assist in returning the child" to you.

The other most common reason for returning to court is when the situation has changed and the order needs to be modified. This happens often since many events can change what a family needs: a party changes jobs and needs a different parenting time schedule, a child needs medical treatment or wants to participate in an activity that will affect the schedule, a child is not doing well in school or is struggling emotionally with the current plan. If the parties agree on any changes to the order, they can put the changes in writing (called a stipulation) and submit it to the court. If they don't agree, then the party that wants to change the order must file a motion called a Petition to Modify.

One common situation is if one party wants to move. If the other party agrees, then that's usually enough. It's best to put the agreement in writing and have the court issue a new order. If the other party doesn't agree, a motion has to be filed with the court. These cases can be difficult, so help from an attorney is often needed. For more information on relocation, refer to p.#19.

If a hearing officer or judge makes a final 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 hearing officer's proposed order after a hearing, you may file exceptions within 20 days after the proposed order is mailed to you. In your exceptions, you must explain in writing why you think the hearing officer'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 hearing officer 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.



# Resources and Services

If you decide to go to court (or if your spouse or partner files a court case and you must respond), help is available. A lawyer skilled in family law who understands domestic violence is the best source of help if you can afford it. Ask your domestic violence advocate or friends and family for a referral. Even if you can't afford a lawyer to help with the entire case, you may be able to hire one for part of the case.

If you can't afford to pay for an attorney, you can get advice and possibly an attorney to represent you from Philadelphia Legal Assistance or another legal aid organization or law school clinic. Even if they can't represent you through the entire case, they may be able to give legal advice. See the back cover for contact information.

The suggestions listed below under "Legal Assistance" may be able to help with limited legal advice from a lawyer or at least legal information about the court.

Other types of resources and services may help, too. They are listed below.

## **DOMESTIC VIOLENCE**

### **24 hour Philly DV Hotline**

1(866) 723-3014

- Will connect with shelter or emergency placement

### **Congreso**

(215) 763-8870 x1300

- Has emergency cell phones available on site for clients in imminent danger
- Crisis counselor can provide a smart phone with two months of talk and text

### **Women in Transition**

(215) 751-1111

- Group and individual therapy sessions
- Call to be added to the invite list

## **LEGAL ASSISTANCE**

### **Women Against Abuse Legal Center**

(215) 686-7082

Philadelphia Legal Assistance

(215) 981-3800

### **Seniorlaw Center**

(215) 988-1244

### **Legal Service Department of the Mazzoni Center**

(215) 563-0657

### **Legal Clinic for the Disabled**

(215) 587-3350

### **Philadelphia Bar Association Lawyer Referral and Information Service**

(215) 238-6333

## **MEDIATION RESOURCES:**

### **Good Shepherd Mediation**

<https://www.phillymediators.org/>

(215) 843-5413

### **Penn Law School Mediation Clinic**

<https://www.law.upenn.edu/clinic/mediation/>

(215) 898-8427

## **PARENTING CLASSES**

### **Modern Co Parenting**

<https://moderncoparentingcourse.com/court-approved-parenting-class/>

- \$40-\$55; 4, 6, and 8-hour courses available

### **Crittenton Family Support Center Parenting Collaborative**

\*Contact person: Jemetra Harvey-Gordon, [jgordon@ysiphila.org](mailto:jgordon@ysiphila.org)

## **THERAPY**

### **Joseph J. Peters Institute (JJPI)**

[www.jjpi.phmc.org](http://www.jjpi.phmc.org)

- Trauma therapy for people with Medicaid, specializing in sexual trauma and domestic violence
- Services for both adults and children

### **The Postpartum Stress Center**

[www.postpartumstress.com](http://www.postpartumstress.com)

- Therapy for postpartum patients/families

### **Consortium**

[www.consortiuminc.org](http://www.consortiuminc.org)

- Recovery-oriented community mental health center

### **Postpartum Support International**

24 hour hotline: 1(800) 944-4773, #1 Spanish, #2 English

Text: (503) 894-9453

- Online postpartum support groups

## **CHILDREN'S MENTAL HEALTH SERVICES**

### **Children's Crisis Treatment Center**

(215) 496-0707

- Outpatient family therapy, Trauma counseling, psychiatry, TSS support, therapeutic nursery for preschoolers with behavioral and emotional challenges
- Child must have CBH (medicaid) insurance

### **Ellwyn for evaluations**

(215) 895-5588

### **Gemma Services**

(215) 730-2326

\*Leave VM for callback

## EMPLOYMENT

### Careerlink

<https://www.pacareerlinkphl.org/>

- Career services, job training, job openings

### Virtual services

[info@pacareerlinkphl.org](mailto:info@pacareerlinkphl.org)

1(833)750-JOBS

### [www.70millionjobs.com](http://www.70millionjobs.com)

- Jobs that hire people with a criminal record, includes help with resumes and with the job search

### [firststepstaffing.com](http://firststepstaffing.com)

- Clients have to pass a drug test
- Can be placed with a job same day

## PARENTING

### Mobile app for new and expecting mothers; 24/7 telehealth support

<https://www.pacify.com/pdph/>

### HOPE Pregnancy Center

(267) 546-3600

- Clothing for newborns up to 24 m.o.
- Clothing is on a donation basis, so may not always be available
- Must be picked up from their physical location at Broad and Fairmount, Greater Exodus Church
- Clothing isn't washed before being distributed! Tell clients to wash before wearing!

## DIAPERS

### Belmont Diaper Alliance

Catholic Social Services, multiple locations



## **CAR SEAT**

### **CHOP Car Seat program**

<https://www.chop.edu/health-resources/child-safety-seat-program-chop>

## **FOOD STAMPS/CASH/MEDICAL ASSISTANCE**

### **Southwest Family Service Center**

6214 Grays Avenue

Philadelphia, PA 19142

(215) 724-8550

\*Call and ask for Mary Allen

## **FOOD ASSISTANCE**

### **Lasagna**

<https://lasagnalove.org/request/>

- Get a pan of lasagna delivered to client's home

### **City of Philadelphia Food Distribution Sites**

<https://www.phila.gov/food/>

## **BIRTH CERTIFICATES**

### **Casa del Carmen**

4400 Reese Street

Philadelphia, PA 19140

(267) 331-2500

9-11am and 1pm - 5pm

Mondays - Thursday

**THIS GUIDE IS NOT INTENDED TO PROVIDE LEGAL ADVICE. EVERY SITUATION IS DIFFERENT AND THIS GUIDE PROVIDES GENERAL INFORMATION.**

**THIS GUIDE WAS CREATED IN PARTNERSHIP WITH THE NATIONAL COUNCIL FOR FAMILY COURT AND JUVENILE JUDGES.**