

# 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 parent must be a party.

**Types of Physical custody** –Who has physical care and control of a child:

- **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.
- **Sole** - One party has physical custody all of the time.
- **Nonprofessional supervised physical custody** - Custodial time during which an adult, designated by the court or agreed upon by the parties, monitors the interaction between the child and the individual with those rights.
- **Professional supervised physical custody** - Custodial time during which a professional, with education and training on the dynamics of domestic violence, sexual assault, child abuse, trauma and the impact of domestic violence on children, oversees the interaction between the child and the individual with those custody rights and promotes the safety of the child during the interaction.

**Types of Legal custody** - Who can make medical, religious and education decisions for the child:

- **Shared** – The parties must agree on major decisions of 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**
  - A relationship with the child began with a parent’s consent or under a court order **AND** the parents:
    - ✓ Have started a custody proceeding **AND**
    - ✓ Do not agree as to whether the grandparent or great-grandparent should have partial physical custody **OR**
  - The child has lived with the grandparent for at least 12 consecutive months (not counting

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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.

- Anyone (any 3<sup>rd</sup> party) who establishes **ALL** of the following can file for any form of custody:
  - ✓ Willingness to assume responsibility for the child.
  - ✓ Has a sustained, substantial and sincere interest in the welfare of the child, and
  - ✓ Neither parent has any form of care and control of the child.

The above provision does not apply where there is a dependency proceeding, or the child has been found dependent.

## HOW TO FILE FOR CUSTODY

### Where do I go?

If you prepare your own petition, file it with the Clerk of Family Court on the 11<sup>th</sup> floor of the courthouse at 1501 Arch Street, Philadelphia, PA. All custody forms with instructions are on the Philadelphia Family Court's website under Court of Common Pleas-Domestic Relations at <https://www.courts.phila.gov/forms/>

- If you need help preparing your custody petition, you may go to the Intake Unit of Philadelphia Family Court on the 8<sup>th</sup> floor of the courthouse at 1501 Arch Street, Philadelphia, PA. Staff will help you prepare your petition. Bring important papers and information such as birth certificates for children, previous custody orders, protection from abuse orders, the opposing party's address, and social security numbers for all parties.
- You may also go to the Court's Help Center on the 11<sup>th</sup> Floor, which is open Monday-Friday, noon to 3 p.m.
- You will need to file three copies with the Court. These copies must be readacted which means that confidential information such as a child's name and date of birth, must be blacked out, or you can use the child's initials only. This form should also be completed. <https://www.pacourts.us/Storage/media/pdfs/20220103/205149-confidentialinformationformcif.pdf>

### What does it cost?

- It costs \$107.13 to file for custody.
- It costs an extra \$42.68 to file for emergency or an expedited petition for 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 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.

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

**Emergency Petition** – This is used for cases that must be addressed the same day, such as those involving imminent harm or extreme danger to the child. To file a Petition for Emergency Relief, you must have already filed or file with the emergency petition one of the following petitions: Complaint for Custody, Petition to Modify, or a Petition for Contempt. On the day you file, your Emergency Petition will be reviewed by a judge, who may hold an “ex-parte” (without the other party) hearing to determine if an emergency exists and if a temporary order is needed that day. If you get emergency custody, whether or not the court enters an emergency order that day, the court will schedule a hearing within the next week or two so the other party may be served, and to hear testimony and receive evidence from both parties. You will receive a Rule to Show Cause indicating the date and time of your hearing. The Rule and petition must be provided to the opposing party in person. This process is called “personal” service. You cannot do this yourself. It must be done by an adult who is not your relative or employee. The person who delivers it should fill out the affidavit of service, and you must bring it to the hearing with you.

**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. You may only file expedited petitions on Wednesday, or if the court is closed on a Wednesday, the next business day. Unless you have already done so, you must also file one of the following petitions: Complaint for Custody, Petition to Modify, or Petition for Contempt.

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You will receive a Rule to Show Cause indicating the date and time of your hearing. The Rule and petition must be provided to the opposing party in person. This process is called “personal” service. You cannot do this yourself. It must be done by an adult who is not your relative or employee. The person who delivers it should fill out the affidavit of service, and you must bring it to the hearing with you.

**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.

**WHAT IS MEDIATION?** Mediation is a way parties can resolve a custody matter with the help of a Mediator, a trained professional and a neutral third party who has been approved by the Court to conduct custody mediations. The mediator is NOT empowered to make decisions or issue/sign orders in your case. You may be ordered to attend a mandatory mediation session at Court prior to a custody hearing. Each session takes about 20-30 minutes and is held on the 7th Floor of Family Court at the Mediation unit. If you do not attend the mediation orientation, there may be serious consequences for you and your case. The only exception to this rule is if you or the child has been abused by the other party within the past 24 months; if you do not feel safe attending the orientation session due to abuse, you must let the Mediation Unit know.

If the parties are able to reach an agreement, the mediator can write up the agreement and the parties can see a Judge to have a brief hearing on the record explaining the terms of your agreement. If you choose, you can review the custody order with an attorney before you sign it. If you cannot reach an agreement, a hearing will be scheduled.

## HOW DOES THE COURT DECIDE CUSTODY?

A judge or hearing officer, 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 ensure the safety of the child.
- (2) The present and past abuse committed by a party or member of the party's household, which may

include past or current protection from abuse or sexual violence protection orders where there has been a finding of abuse.

(2.1) The information set forth in section 5329.1(a) (relating to consideration of child abuse and involvement with protective services).

(2.2) Violent or assaultive behavior committed by a party.

(2.3) The level of cooperation and conflict between the parties, including:

(i) which party is more likely to encourage and permit frequent and continuing contact between the child and the other party or parties if contact is consistent with the safety needs of the child; and

(ii) the attempts by a party to turn the child against the other party, except in cases of abuse where reasonable safety measures are necessary to protect the safety of the child. A party's good faith and reasonable effort to protect the safety of a child or self shall not be considered evidence of unwillingness or inability to cooperate with the other party. A party's reasonable concerns for the safety of the child and the party's reasonable efforts to protect the child shall not be considered attempts to turn the child against the other party. A child's deficient or negative relationship with a party shall not be presumed to be caused by the other party.

(3) A willingness and ability of a party to prioritize the needs of the child by providing appropriate care, stability and continuity for the child, considering the parental duties performed by the party on behalf of the child in the past and whether the party is willing and able to perform the duties in the future, and attend to the daily physical, emotional, developmental, educational and special needs of the child.

(4) The need for stability and continuity in the child's education, family life and community life, except if changes are necessary to protect the safety of the child or a party.

(5) The child's sibling and other familial relationships.

(6) The well-reasoned preference of the child, based on the child's developmental stage, maturity and judgment.

(7) The proximity of the residences of the parties.

(8) Each party's employment schedule and availability to care for the child or ability to make appropriate child-care arrangements.

(9) The history of drug or alcohol abuse of a party or member of a party's household.

(10) The mental and physical condition of a party or member of a party's household.

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(11) Any other relevant factor.

## What about criminal convictions and abuse

**history?** The court must also consider certain criminal convictions and abuse and determine whether they pose a threat to the child. This includes convictions and no contest pleas for violent crimes, including domestic abuse, but also DUI and drug-related offenses. You must file a Criminal Record/Abuse History Verification Form with your complaint and disclose whether you or any member of your household has a criminal or abuse record, and whether you are aware of any criminal record/abuse history of the other party or members of that party's household.

To find out if the other party or members of that party's household has any criminal convictions or pleas in Pennsylvania, go to <http://ujportal.pacourts.us/docketsheets/cp.aspx> and follow the instructions carefully.

If you later learn about criminal charges and believe those charges pose a risk to the child, you may file a complaint for custody or, if there is an existing custody order, a motion to modify custody.

## REBUTTABLE PRESUMPTION FOR SUPERVISED PARTIAL PHYSICAL CUSTODY

If a court finds by a preponderance of the evidence (meaning it is more likely than not) that there is an ongoing risk of abuse of the child, the court can only allow supervised physical custody between the child and the party who poses the risk of abuse.

The party can overcome this by showing there is NOT a risk of abuse.

An indicated report for physical or sexual abuse by child protective services (also known as DHS) is a basis for a finding of abuse only after a new review of the circumstances leading to the indicated report.

**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, such as criminal records printed from <http://ujportal.pacourts.us/docketsheets/cp.aspx>.

Make two copies of whatever you plan on giving to the court — the judge or hearing officer gets the original, the other side gets a copy and you keep a copy.

You have the right to see everything that the other side wants to show the court.

**Witnesses** – You may want to bring witnesses to testify on your behalf. If you have a witness who may not want to testify, you should serve them with a subpoena which may be enforced by the Court. Request a subpoena from the Office of the Clerk of Family Court on the 11<sup>th</sup> floor of 1501 Arch Street. Give your witnesses the subpoena before the hearing date. Subpoenas must be given to the other party a reasonable time in advance of the hearing. An adult can serve them on another adult, or they can be served by certified mail, return receipt requested.

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:

This brochure is meant to give you general information and not legal advice.

If your witness can't come to court, you may ask the judge to permit your witness to testify by telephone. You must ask by letter before the hearing date. Any letter sent to the Court must also be sent to the opposing party or their lawyer if they have one. Letters or affidavits from witnesses will not be accepted without the witness present.

**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. You may file a motion asking the court to order these services before your hearing.

## WHAT HAPPENS IN COURT?

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

- meet with a hearing officer to see if you can reach an agreement;
- have a hearing before a hearing officer; or
- have a hearing before a judge if there was no final agreement before a Hearing officer.

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 hearing officer 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 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.

## WHAT IF THE OTHER PARTY VIOLATES THE ORDER?

If a party violates a custody order, you may file a petition for contempt. 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 only if a petition to modify is also pending before the Court. 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.

For help with relocation, you can visit the Family Court Help Center on the 11th Floor, which is open Monday-Friday, noon to 3 p.m.

You can also find the necessary forms on the Philadelphia Family Court's website under Court of Common Pleas-Domestic Relations at <https://www.courts.phila.gov/forms/>

## IS LEGAL HELP AVAILABLE?

Philadelphia Legal Assistance  
215-981-3800  
[www.philalegal.org](http://www.philalegal.org)

Philadelphia Bar Association Lawyer  
Referral & Information Service  
215-238-6333  
[www.Philadelphiabarlawyers.com](http://www.Philadelphiabarlawyers.com)

You may download all custody forms from the Philadelphia Family Court's website under Court of Common Pleas-Domestic Relations at <https://www.courts.phila.gov/forms/>

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