

and information concerning the child and the parties that legitimately impact the child are relevant. The weight given to each factor in any case will depend upon the unique facts and circumstances of that case.

How Much Weight or Effect Is Given to the Child's Preference?

The child's preference is one of many factors. The weight given to the child's preference will depend upon the child's age, competency and the reasons, communicated by the child, for the child's preference.

How Can I Locate an Attorney?

Call the Pennsylvania Bar Association Lawyer Referral Service toll free at 800-692-7375. Many counties have this same service at the local level. Look in your Yellow Pages under "attorneys" for more details.

Child Custody

What Types of Custody Are There?

There are two types of custody:

- Physical custody
- Legal custody.

Physical custody refers to the physical possession and control of the child.

Legal custody refers to the right to make major decisions (such as educational, medical, religious) on behalf of the child.

There are four types of physical custody:

- Primary
- Partial
- Visitation
- Shared

Primary physical custody refers to the party with whom the child primarily resides.

Partial physical custody refers to the right of the other party to take the child away from the primary custodian (usually for nights, weekends, vacations, etc.). Partial custody is for less than 50 percent of the time, with the court typically counting overnights in the definition of time.

Visitation is the right of a parent to visit (usually supervised) with the child at the child's primary residence or another

location, but does not include the right to remove the child from the primary custodian's control.

Shared custody is when the parents alternate physical custody of the children to assure regular, frequent contact with both parents.

Legal custody is most often shared between the parents, as both parents should consult before making major decisions on behalf of the child. It is rare that one parent is granted sole legal custody of a child.

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by the

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Special Note: This pamphlet has been issued to inform and not to advise. It is based on Pennsylvania law. The statements are general, and individual facts in a given case may alter their application or involve other laws not referred to here.

Do I Have To Consult the Non-Custodial Parent Before I Make Decisions?

When making major decisions on behalf of the child, the non-custodial parent must be consulted if there is an order giving the parents shared legal custody of the child. Even if there is no custody order, the non-custodial parent should be consulted; major decisions should be made by the parents together. If the parents are unable to make a decision concerning a major issue, either parent may file a petition seeking an order from the court.

Each parent is permitted to make normal day-to-day decisions on behalf of the child, while the child is in the parent's physical custody.

Does the Non-Custodial Parent Have Access to the Child's Medical and School Records?

Each parent is entitled to be provided access to the child's medical, dental, school and religious records. There is an exception in certain abuse cases when the child's address needs to remain private.

Is There a Relationship Between Seeing the Children and Paying Child Support?

Even if a parent is not complying with a support order, if there is a custody order allowing him/her to see the child, the parent must be permitted to exercise custody of the child. If there is a problem with the support, the parent should file a support complaint,

a petition to modify, or a contempt petition.

If a person who is obligated to pay support is not seeing the child, the person must still pay support. If there is a problem with the custody, the parent should file a custody complaint, a petition to modify or a petition for contempt.

When Is a Custody Order Modifiable?

A custody order is modifiable when a change in the custody arrangement is in the best interest of the child. There need not be a specific change of circumstances. The parent seeking to modify the order must show why the present order is no longer in the child's best interest.

What If the Custodial Parent Wants to Move From the Area With the Child?

Whether or not there is a custody order in place, if a custodial parent wants to relocate with the child, the custodial parent must either get the consent of the other party or get court approval.

To relocate with the child without the consent of the non-custodial parent, the custodial parent must notify the other party of the proposed relocation and provide certain information, such as the intended new address and school district, the date of the proposed relocation, and the names of individuals who would be living at the new location. This notification must give at least 60 days notice of the proposed relocation, and must also include a form by which the non-custodial parent may

object. There are limited exceptions to the 60-day notice requirement.

If the other parent does not object, the court may order the relocation. If the other party objects, a hearing will have to be held to determine if the move is in the best interests of the child. The court will consider a number of factors in deciding whether to approve the relocation, including the child's relationship with both parents, reasons for the move, reasons for the objecting parent's objections, and the impact of the move on the relationship of the child with the nonmoving parent. If the relocation is approved and there was no prior custody order, one will be entered. If the relocation is approved and there was a prior custody order, the court will modify the prior order.

Where Should the Action Be Brought If the Non-Custodial Parent and I Live in Different States (or Counties)?

The action should be brought in the home state of the child. This is the state (or county) in which the child has lived for the preceding six months. There are exceptions:

- If it is in the child's best interest that the action be brought in another state (or county) and the child and at least one parent have significant contacts within that state;
- If the child has been abandoned;
- If it is necessary to protect the child from mistreatment, abuse or neglect.

If the child was absent from the custodial parent's home state because someone wrongfully removed or kept the child, the custody action can still be brought in the custodial parent's home state.

What Constitutes an Emergency When Seeking Immediate Custody of a Child?

An emergency exists when the child's life, health or welfare is in immediate danger.

What Rights Do Grandparents Have in a Custody Case?

A grandparent may file a petition for physical and legal custody of a grandchild if the grandparent's relationship with the child began with the consent of the parents or by an order of court. The grandparent must also have assumed the responsibilities of the parent for 12 months or more or the child must be at risk due to abuse or neglect.

The court may give a grandparent custody where it is not in the child's best interest to be in the custody of either parent and it is in the child's best interest to be in the custody of the grandparent.

If the parents have been separated for six months or more, if there is a divorce action pending or if the child has resided with the grandparents for 12 months or more, the grandparents may obtain partial custody or visitation rights. If a parent is deceased, the parents of the deceased parent may also obtain partial custody or visitation rights.

The grandparents' partial custody or visitation must be in the child's best interest and must not interfere with the relationship between the child and the custodial parent.

What Are the Factors in a Custody Determination?

The standard in a custody action is the child's best interest. Therefore, all factors