



## Child Custody - An Overview

The child custody and visitation landscape has changed. There is a decades' worth of research on the impact of divorce on families to guide divorcing parents. At the same time, these couples face increased pressures from society and the courts to work together to solve custody issues during a time when they are at their deepest emotional distance.

Divorcing parents need to learn the child custody and visitation options that are available to them and the legal standards applied to the different options. They need to balance that knowledge against an unflinching assessment of their ability to work with their former spouse to make a fully informed decision about their children's future. Most divorcing couples are ultimately able to agree on custody and visitation issues without the need for a court order. Knowledgeable advice and representation from an experienced family law attorney often makes the difference in reaching a fair, mutually satisfactory agreement. When an agreement cannot be reached, success at trial may depend on the early involvement of a family law attorney with an established track record in contested custody matters.

### Basic Custody Terms

Legally, the set of parental responsibilities regarding day-to-day care of the child as well as the rights to direct the child's activities and make decisions regarding the child's upbringing have been split into the separate categories of physical and legal custody for family law purposes.

- **Physical Custody** means the actual living arrangements of the child and the rights and responsibilities associated with daily childcare; and
- **Legal Custody** mean the responsibilities associated with raising a child and includes such questions as religious upbringing, school choice, medical care and issues like discipline, driving age and whether or not to attend summer camp.

### Common Custody Solutions

There are many options regarding the division of these rights and responsibilities between divorcing parents. Some options are available as part of an agreement and some options may be required by court order.

- **Sole Custody:** When sole physical custody is awarded or agreed upon, one parent has the exclusive, primary right to have the child live with him or her. That parent is then known as the *custodial parent* and the other parent becomes the *non-custodial parent*.

Sole physical *and* legal custody generally only occurs when there is a history of abuse and neglect. In such instances the non-custodial parent may be limited to restricted or supervised visitation. Currently, the most common type of sole custody is sole physical custody with joint legal custody including the grant of generous visitation for the non-custodial parent.

- **Joint Custody:** In joint custody, parents share responsibility for decision-making and/or for physical control and custody of the children. Couples may agree upon joint custody or the court may order it. Couples with joint physical custody usually share legal custody, but joint legal custody does not necessarily mean joint physical custody.
- **Split Custody:** A less popular resolution where each parent takes custody of different children.

- **"Nesting" or "Bird Nesting":** Children remain in the pre-divorce family home and the parents rotate residence in the home.
- **Shared Parenting:** Shared parenting is a relatively new concept in child custody, recently adopted in some states. Where recognized, shared parenting standards replace previously used custody and visitation rules, using a plan of cooperative parenting as a framework. Shared parenting involves both legal and physical custody. Children may spend equal time with both parents, though no pre-set formula as to how parents share responsibilities is in place. Parents jointly budget for the children's expenses, and each pay equitably for these expenses.



### **Custody in the Divorce Process**

Questions of custody usually first arise when a divorcing couple with children finally decides to separate. While some couples immediately reach an agreement for either short or long-term custody arrangements, others require court intervention for an intermediate or final decision. Custody is addressed throughout the divorce process in the following procedures:

- **Temporary Hearing:** Shortly after the initial papers are filed seeking termination of a marriage, the family court will hold a temporary hearing and then issue an order that controls the relationship of the parties until there is a final Divorce Decree. When custody is contested, the order creates a temporary custody solution. Unless there is evidence that doing so would not be in the best interest of the child, temporary custody is typically granted to the person who stays in the marital home. Temporary custody orders should have no bearing on which party will ultimately be awarded permanent custody. However, depending on the circumstances, the temporary custody order may indicate which parent the court thinks is the more suitable.
- **Custody and Mandatory Mediation:** Most states, including Pennsylvania, now require parties in a contested divorce to attempt mediation. Mediation is an alternative dispute resolution process where divorcing couples work with a specially trained neutral third party to try and resolve some or all of their disagreements. Couples may choose to reach mediated agreements on issues like child custody while keeping other issues like property division open for a judge to decide. Couples who resolve their custody disputes through mediation can include a provision in their final divorce agreement that makes it mandatory to return to as a means of resolving future custody and visitation disputes.
- **Custody Evaluations:** If the parties are unable to reach an agreement regarding custody, most courts will order a custody evaluation prior to trial. A court appointed mental health professional such as a psychologist or a social worker usually does the custody evaluation. The evaluation will include interviews with both parents and the involved children, observation of the children, conversations with teachers and possible psychological testing of both parents and the child. It usually takes four to six weeks to conclude a custody evaluation and courts will usually not enter a final determination without a completed evaluation.
- **Custody Trial:** Every state has statutes and procedures for the legal resolution of disputed child custody. While specific statutory standards differ from state to state, most courts decide contested custody cases based upon a determination of what arrangement is in the best interests of the child. Considerations that go into a best interests determination may include review of the child's age and attachment to the parent that has been the primary caretaker, parental physical and mental health, any history of domestic violence and the child's wishes depending upon the age of the child and the motivation for the preference.

### **Modifications**

Once custody has been established either through agreement or court order, parents may seek court involvement to modify the established arrangement if they cannot agree to a change. In order to support a request for a change the parent seeking the modification must show a substantial change in circumstances. Some states will only consider a request for modification within two years of an original custody determination if there is a showing that the child is endangered by the ordered custody arrangement. Additionally, states that follow the Uniform Child Custody Jurisdiction Act will only consider requests for modifications if they occur in the state where a child has an established residence in order to prevent forum shopping and custody motivated child removals. Courts give modification requests motivated by the relocation of one parent special consideration.

### **Conclusion**

The resolution of child custody and visitation disputes requires divorcing parents to act rationally in their child's best interests at a time when they are facing the overwhelming stress of divorce. Early involvement by a family law attorney with knowledge and experience of Pennsylvania's child custody laws will help. Advice from an experienced family law attorney will help you understand the options available to you in your particular situation and make a plan that will serve the best interests of you and your children.

We make it a point to be available to our clients, and we can often meet the day you call. We invite you to [contact](#) our family law and child custody attorneys today. Our address is 1908 Allen Street, Allentown, Pennsylvania, 18104. Our phone number is (610) 432-7040.