

CAN I MOVE TO A NEW RESIDENCE WITH MY CHILD?

Maybe. No one may change the residence of the child if it will significantly impair the other parents ability to exercise custody UNLESS every person who has custody rights consents to the move OR the court issues an order approving the move.

WHAT IF A PARENT VIOLATES A CUSTODY ORDER?

If a party does not follow a court order, the other party to the action has the right to file a petition for contempt to be reviewed by the court. A person who disobeys a custody order may be held in contempt of court or charged with a crime. They may be jailed, fined, put on probation, suspended, denied their driver's licenses and/or ordered to pay counsel fees and costs.

CAN GRANDPARENTS GET CUSTODY?

Grandparents or great grandparents can ask for partial physical custody or supervised physical custody under the following circumstances:

- The child has lived with them for 12 consecutive months and is removed by the parent(s).
- The parent who they are related to has died.
- The parents must have commenced a proceeding for custody and do not agree as to whether grandparents should have custody.

Grandparents can ask for primary physical custody in some cases. For example, if the child has resided with the grandparent for at least 12 consecutive months and is removed by the parent or the child's health and safety is at risk.

TO APPLY FOR LEGAL HELP:

1-800-326-9177
or
apply.midpenn.org

For more information about MidPenn Legal Services go to:

www.midpenn.org



This pamphlet contains general legal information and not specific legal advice. Although the information is believed to accurate at the time of preparation, individual situations may require individual analysis, such that it may be advisable to consult with a lawyer. July 2023



MidPenn
LEGAL SERVICES

Custody & Visitation of Children



ABOUT US

MidPenn Legal Services is a non-profit, public interest law firm that provides high quality free civil legal services to low-income residents and survivors of domestic violence and sexual assault in 18 counties in Central Pennsylvania: Adams, Bedford, Berks, Blair, Centre, Clearfield, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Perry, Mifflin, Schuylkill & York counties.

TYPES OF CUSTODY ARRANGEMENTS

Legal Custody: Legal custody is typically shared between the parents (unless there is a compelling reason not to) or granted to just one of the parents.

The legal custodian determines major decisions which affect the children for things such as medical care and education and/or the ability of the parent/custodian to attend to any special needs. Minor day to day decisions are made by the parent having physical custody.

Physical Custody: Physical custody is where the child physically resides and when.

It can be defined by primary physical custody - the right to have the child the majority of the time; shared physical custody - parents share equal time with the child; partial physical custody - the right to have the child less than the majority of the time; and supervised physical custody - when periods of custody are supervised.

It is best if parents can agree on a custody schedule. What if parents can't agree? Most communities have mediation or counseling services that can help parents reach an agreement. If they still can't agree, the parents may have custody decided by the courts.

SHOULD A PARENT SEE A LAWYER IF THEY AGREE ON A CUSTODY SCHEDULE?

This is usually a good idea for two reasons:

1. A parent may want to make sure what his/her rights are before reaching an agreement. A fair, lasting agreement can best be reached when both parents understand their rights.
2. If both parties agree, the agreement can be entered as a legally binding court order, which can be enforced through court action if either party doesn't obey it.

WHAT IF THERE IS NO COURT ORDER?

If there is no custody order, both parents have equal rights to custody, and either can lawfully take physical possession of the child at anytime. Taking the child away without the other parent's consent can be held against you in court. If the other parent takes the child and you cannot work out an agreement for the return of the child, you can file a custody case and ask the judge to order the child returned to you.

WHAT HAPPENS IN COURT?

Either parent can file papers to initiate a custody action in court if they are unable to reach an agreement. The court may require the parents/parties to attend a mediation or conciliation, during which a third party mediator will help the parties negotiate an agreement.

If the parties/parents still cannot agree, a hearing before the judge will be scheduled. At the hearing, each party will have an opportunity to present their side of the situation and provide information regarding the 16 custody factors. The judge will then make a decision regarding both physical and legal custody.

HOW WILL THE JUDGE MAKE A DECISION?

The judge will make a decision based on the best interest of the child and will consider everything which affects these interests.

- Which parent is likely to permit contact with the other parent.
- Present and past abuse. Is there a continued risk of harm to the child?
- Parental duties performed by each parent.
- The stability a parent can offer the child.
- Availability of extended family.
- Sibling relationships.
- Preference of the child - based on the child's maturity and judgement.
- Attempts of parent to turn the child against the other parent.
- Parent's ability to meet the emotional needs of the child.
- Parent's ability to attend to child's needs, including any special needs.
- Distance between residences.
- Child-care arrangements.
- Level of conflict and willingness to cooperate.
- History of substance abuse of parent or household members.
- Mental and physical conditions of parent or household members.
- Other relevant factors.

CAN A CUSTODY ORDER BE CHANGED?

Yes. Custody orders are modifiable until the subject child reaches 18 years of age. At the request of either parent/party, a judge may change the terms of a custody order if it appears that it is in the best interest of the child.