

## **How is Child Custody Determined in Pennsylvania?**

Parents going through a divorce or separation will also have to face child custody issues. The most common question parents want answered is, how is custody is decided in Pennsylvania? Pursuant to Pennsylvania child custody laws, judges will enter a custody order according to what they determine to be in “the best interest of the child.”

### **What is in the “Best Interest of the Child?”**

The “best interest of the child” standard is based on sixteen (16) factors. A judge must give each of these 16 factors equal weight except for those that might affect the safety or welfare of the child. These 16 factors are:

- (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) The information set forth in section 5329.1(a) (relating to 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.
- (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.

According to Pennsylvania case law, there is a presumption that a shared physical custody schedule is in the best interest of the child. A judge will begin deliberations in a custody case with the presumption that physical custody will be shared. If you are pursuing a primary custody or sole custody schedule, you must convince the judge it is in the best interest of the child to deviate from that presumption. This presumption can be overcome by presenting factual evidence related to the 16 custody factors.

### **Different Types of Child Custody Arrangements**

After considering what is in the best interest of the child, the judge will then enter a custody order detailing the custody arrangement. Under Pennsylvania family law, there are two types of custody: physical custody and legal custody.

- physical custody, and
- legal custody.

#### **Physical Custody**

A party has physical custody when the child is physically in their care, i.e., the child lives with the party. There are five different types of physical custody.

1. Sole Custody - This is when one party has physical custody of the child/children all the time.
2. Primary Custody - This is when a party spends the majority of the time with the child, i.e., the party has physical custody more than half of the time. In general, when one parent has primary custody, the other parent will have partial custody or supervised custody, which is discussed below.
3. Shared Custody - This is when more than one party, typically both parents, will have significant periods of time with the child/children. It is important to note that shared custody does not necessarily mean a 50/50 split. There may be circumstances which make it impossible to have a 50/50 split between 2 parents.
4. Partial Custody - This is when a party has time with the child/children less than a majority of the time.
5. Supervised Custody - This is when an adult or an agency named by the court is present during the time a parent has with the child/children. The adult or agency employee monitors the interaction between the child/children and parent. The court typically orders supervised custody when a party is a danger to the child, i.e., the party has physically abused the child before.

## **Legal Custody**

The second type of custody is legal custody. This gives a party the right to make decisions related to education, religion and the medical treatment of the child.

Like physical custody, legal custody is further broken down into subcategories.

1. Sole Legal Custody - This is when one party makes all the major decisions for the child.
2. Shared Legal Custody - This means more than one party has the right to make major decisions for the child. When parties have shared legal custody, they must consult with each other before making major decisions relating to the child.

The vast majority of custody orders include shared legal custody. Sole custody is rarely awarded, except in instances where one party is incarcerated, suffers from severe drug addiction or mental health issues, or has unreasonably withheld consent to legal custody issues in the past.

### **Determining Custody Without a Court Order**

Not all custody cases are determined by a judge. If the parties are on good terms, they can often come to an agreement on the custody arrangement. In those cases, there is no need for the parties to actually appear in court.

However, it is always advisable to create a written record or agreement which contains the specific, agreed-upon terms. This can help avoid disputes later. It is best to have that agreement entered as a court order so that it's terms can be enforced in the event of non-compliance. Although the parties may be amicable at the present, custody disputes and disagreements often arise in the future.

### **Final Notes About Custody Cases**

In Pennsylvania, child custody issues can be decided on their own, without regard to related divorce, separation or support cases. In addition, child custody matters can be filed entirely on their own. A custody petition can be filed without a divorce complaint.

In Bucks County and most other surrounding counties, after a custody complaint is filed, parties will appear before a Family Master. A Family Master is an attorney who works for the County and specializes in these types of matters. The Family Master will try to resolve the matter by agreement so that a full hearing before a judge is not necessary. If the parties can come to an agreement, the Family Master will draft that agreement, have the parties sign the agreement and send it for a judge's signature so that it can become a custody order.

This booklet provides only basic explanations of child custody. Custody is one of the most complex, intricate and ongoing issues that arises in Pennsylvania family law. It is best to talk to an experienced Bucks County, Pennsylvania child custody lawyer about your custody case.