



# Pennsylvania Child Custody Guide

## What You Need to Know About the Pennsylvania Child Custody Laws

A practical guide to the laws governing child custody cases throughout Pennsylvania. Topics covered include types of child custody, how to commence a child custody action, Pennsylvania child custody procedures, factors considered in PA child custody determinations, parenting plans, and provisions for relocation under the Pennsylvania child custody law.

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## About the Author

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The Martin Law Firm provides quality legal representation for mothers, fathers and grandparents in PA child custody actions in Montgomery, Bucks, Delaware, Philadelphia and Chester Counties.

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## Introduction

The issue of child custody is one of the most difficult and emotionally draining family matters that a parent can face. Child custody is a legal term in court-ordered determinations of which parent your child lives with and the conditions for your child to visit the other parent.

In most cases, parents are able to reach an agreement about the best type of custody arrangement for them and their children without court intervention. Typically, parents feel that they are in a better position to decide what is the best arrangement for their family rather than a judge who does not know the parents nor the children involved. Any child custody agreement should always be reviewed by an attorney, signed by both parties, and filed with the appropriate court to ensure that the conditions of the agreement can be enforced. If parents are unable to reach a custodial agreement, court action may be necessary.

The stakes involved in child custody matters are high, and the laws and legal protocols involved can be complex and overwhelming for any parent. Anyone involved in a Pennsylvania child custody dispute should consult an experienced child custody attorney as soon as possible. An experienced child custody attorney can utilize his or her familiarity with the Pennsylvania child custody statute and relevant case law as well as vast negotiating experience in order to produce a resolution that is in the best interest of the children and the parties involved.

This Pennsylvania child custody guide is designed to present a basic overview of Pennsylvania's child custody laws. It is important to keep in mind that the facts and circumstances of each child custody case are unique, and it is always advisable to utilize the services of a skilled family law attorney with experience dealing with the PA child custody law.

## The Pennsylvania Child Custody Law

Pennsylvania child custody cases are governed by the PA Child Custody Law, Act 112 of 2010. This new law took effect on January 23, 2011, and it made significant modifications to the long-standing laws regarding child custody in the Commonwealth of Pennsylvania.

Current Pennsylvania law does not favor either the mother or the father. Instead, the courts utilize a list of statutory factors to determine what custody arrangement would be in the best interest of the child or children involved. Grandparents and other parties have a right to seek custody in Pennsylvania; however, there is a presumption in favor of the natural parents.

*"It is the public policy of this Commonwealth, when in the best interest of the child, to assure a reasonable and continuing contact of the child with both parents after a separation or dissolution of the marriage and the sharing of the rights and responsibilities of child rearing by both parents and continuing contact of the child or children with grandparents when a parent is deceased, divorced or separated." 23 Pa. C.S. § 5301, et seq.*

## Types of Child Custody

Pennsylvania child custody is comprised of physical custody and legal custody.

### Physical Custody

**Physical custody** is the actual physical possession and control of a minor child. Disputes over Pennsylvania child custody often include the amount of time per week, including overnights, that each parent gets to spend with the child.

A Pennsylvania court may award any of the following types of physical custody if it is in the best interest of the child: shared physical custody, primary physical custody, partial physical custody, sole physical custody or supervised physical custody.

**Shared physical custody** means the right of more than one individual to assume physical custody of the child, each having significant periods of physical custodial time with the child.

**Primary physical custody** means that one parent gets to spend the majority of custodial time with a minor child.

**Partial physical custody** is the right to assume physical custody of the child for less than a majority of the time.

**Sole physical custody** is the right of one individual to exclusive physical custody of the child.

**Supervised physical custody** is custodial time during which an agency or an adult designated by the court or agreed upon by the parties monitors the interaction between the child and the individual with those rights.

### Legal Custody

**Legal custody** is the right to make important decisions that impact your minor child. These important decisions include medical care for your child, education, religion, etc. Courts in Pennsylvania often grant shared legal custody unless the circumstances prevent the parents from being able to cooperate with each other with regard to these important decisions.

## Who May File for Custody

The Pennsylvania child custody law outlines and defines who may file for any form of physical or legal custody of a minor child. These individuals include a parent of the child, a person who stands *in loco parentis* to the child, or a grandparent of the child under certain conditions.

Although grandparents and other parties have a right to seek custody, there is a presumption under Pennsylvania law in favor of the natural parents.

## How to File for Child Custody in PA

A PA child custody action is commenced by filing a complaint with the county Court of Common Pleas. The complaint must conform to PA state and local rules. A claim for child custody may be raised in a divorce complaint, but a child custody action can also be raised in a separate complaint.

## Child Custody Procedures

Each county in Pennsylvania adopts local rules for the disposition of child custody actions. In Montgomery County, PA, the court will assign a mediator, and all parties will be required to attend a mediation orientation session. The parties will also be required to attend an educational seminar on the general responsibilities of separated/divorced parents or guardians.

Next, the parties and their respective child custody attorneys attend a custody conciliation conference. The purpose of this conference is to reach a mutual resolution and for the parties to agree on an order that is submitted to the court for a judge to sign. If this occurs, no further court appearance is necessary.

Custody cases that are not resolved by the conciliator are forwarded to the Court of Common Pleas for scheduling before a judge. At that point, a short list hearing/conference is scheduled before the judge at the county courthouse. This gives the parties another opportunity to work out their differences and to reach a custody agreement with judicial assistance. If the matter is not resolved at this conference, a full child custody hearing will be scheduled.



## Reasons for Custody Award

Pennsylvania law mandates that the court shall delineate the reasons for its decision on the record in open court or in a written opinion or order.

The factors to be considered by the court in any PA child custody case are spelled out in the PA child custody law. These factors are listed on the next page.

## Factors Considered When Awarding Custody in PA

When determining parents' custodial rights, a Pennsylvania court will make its determination based on the best interests of the child. Pennsylvania law, specifically 23 Pa.C.S.A. § 5328(a), sets forth the factors that the court must consider when determining child custody.

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 a party's household, whether there is 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.
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 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 the party's household.
15. The mental and physical condition of a party or member of a party's household.
16. Any other relevant factor.

*The Pennsylvania child custody law is gender neutral.*

*This means that in making a custody determination, no party shall receive preference based upon gender.*

## Parenting Plan

“In a contested custody proceeding, the court may require the parties to submit parenting plans for the care and custody of the child to aid the court in resolving the custody dispute.” 23 Pa.C.S.A. § 5331(a).

A parenting plan must include the following components:

1. The schedule for personal care and control of the child, including parenting time, holidays and vacations.
2. The education and religious involvement, if any, of the child.
3. The health care of the child.
4. Child-care arrangements.
5. Transportation arrangements.
6. A procedure by which proposed changes, disputes and alleged breaches of the custody order may be adjudicated or otherwise resolved through mediation, arbitration or other means.
7. Any matter specified by the court.
8. Any other matter that serves the best interest of the child.



## Relocation

The most significant change to the former child custody law in Pennsylvania is an addition to the statute addressing the modern issue of relocation. The new PA child custody law sets forth the procedure and standards for a relocation request.



## Relocation Procedure

Under the law, the party seeking to relocate must send notice as specified in the statute to every other party with custody rights. The notice must contain a proposed revised custody schedule and a counter-affidavit.

A party receiving such notice should immediately contact a local family law attorney. A party who objects to the terms of the relocation or the revised custody schedule must complete the counter-affidavit and file it with the proper court within 30 days. The trial court must then hold a hearing.

## Standards to Consider for a Request to Relocate

Recent Pennsylvania case law has clarified the legal standards that a PA court must consider when ruling on a request to relocate. Trial courts must consider the ten factors listed in Subsection 5337(h):

1. The nature, quality, extent of involvement and duration of the child's relationship with the party proposing to relocate and with the nonrelocating party, siblings and other significant persons in the child's life.
2. The age, developmental stage, needs of the child and the likely impact the relocation will have on the child's physical, educational and emotional development, taking into consideration any special needs of the child.
3. The feasibility of preserving the relationship with the nonrelocating party and the child through suitable custody arrangements, considering the logistics and financial circumstances of the parties.
4. The child's preference, taking into consideration the age and maturity of the child.
5. Whether there is an established pattern of conduct of either party to promote or thwart the relationship of the child and the other party.
6. Whether the relocation will enhance the general quality of life for the party seeking relocation, including, but not limited to, financial or emotional benefit or educational opportunity.
7. Whether the relocation will enhance the general quality of life for the child, including, but not limited to, financial or emotional benefit or educational opportunity.
8. The reasons and motivation of each party for seeking or opposing the relocation.
9. The present and past abuse committed by a party or member of the party's household and whether there is a continued risk of harm to the child or an abused party.
10. Any other factor affecting the best interest of the child.

## Quality Legal Representation

Child custody matters revolve around the most intimate and important issues possible for any parent. The stakes involved are extremely high, and the process can be emotionally draining and overwhelming for anyone unfamiliar with Pennsylvania family law. An experienced family law attorney should always be consulted when dealing with any PA child custody issue.

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*Contact The Martin Law Firm today at (215) 646-3980 to schedule a consultation, or visit our website [www.jbmartinlaw.com](http://www.jbmartinlaw.com) for more information.*



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