

Custody & Visitation

DEFINITIONS: The following terms are used in custody lawsuits

Parties - Individuals who are part of a custody lawsuit

Plaintiff - The person who starts the lawsuit

Defendant - The person who the Plaintiff is suing

Parent - Person who has an automatic right to claim legal and physical custody of a child based on birth or adoption

Third party - Any person who is not a natural or adoptive parent of the child who claims legal standing to assert a right to legal and physical custody of the child

Legal custody - Right to make major decisions on behalf of the child

Sole legal custody - Right of one individual to exclusive legal custody of the child

Shared legal custody - Right of more than one individual to legal custody of the child

Physical custody - Physical possession and control of the child

Sole physical custody - Right on one individual to exclusive physical custody of the child

Primary physical custody - Right to assume physical custody of the child for a majority of the time

Partial physical custody - Right to assume physical custody of the child for less than a majority of the time

Shared physical custody - Right of more than one individual to assume physical custody of the child, each having significant periods of physical custody of the child

Supervised physical custody - custodial time during which an agency or an adult designated by the court or agreed upon by the parties monitors interaction with the child

In loco parentis - A third party who has assumed physical custody of a child for a substantial period of time

Standing - The legal right to be a part of a custody suit

Jurisdiction - The proper court in which to sue

Best interest of the child - The standard the court applies in deciding what legal and physical custody rights parties to a custody action will have. There are 16 factors the court must consider in determining the "best interests of the child" if there is a dispute concerning legal and physical custody

1. Which party is more likely to encourage and permit contact of the child with another party
2. Present and past abuse of the child by a party or member of a party's household if there is a continued risk of harm and which party can better protect the child from possible harm in the future
3. Which party has historically met the physical, emotional and social needs of the child
4. Which party is more likely to provide for stability and continuity in the child's life
5. The availability of extended family relationships for the child
6. The child's sibling relationships
7. The "well-reasoned" preference of the child, based on the child's maturity and judgment

8. Attempts of a parent to turn the child against the other parent, except in cases of domestic violence where reasonable safety measures are required 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 distance of the residences of the parties
12. Each party's availability to care for the child or ability to make adequate child care arrangements
13. The level of conflict between the parties and ability of the parties to cooperate with one another, except in situations where a party is protecting a child from abuse
14. 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 a member of the party's household
16. Any other relevant factor

General Information

- Both parents have a right to have a relationship with their child, and a child has a right to have a relationship with both parents. Usually it is best for the child if both parents can agree about custody and partial custody. If you cannot agree and a custody complaint is filed, a judge will decide what he or she believes is in the child's best interest.
- Child support and custody are two separate issues. If the other parent fails to pay support, you may not refuse to allow contact by that parent with the child. Likewise, if the other parent refuses to allow contact, you may not stop paying support.
- A written agreement concerning a custody schedule, even if notarized, cannot be enforced by the police. If you reach an agreement for a custody schedule, we strongly urge you to turn your custody agreement into a court order. Contact our agency to see if we can help you do this.
- Sometimes it is best not to take legal action regarding a custody order. If you and the other parent agree on custody, there are no threats to take the child, or the other parent does not attempt to visit the child, it may be best not file a custody complaint and disrupt the present schedule. This is because the court will most likely give the other parent liberal periods of time with the child, such as every other weekend, holidays and a period of time in the summer. However, if the other parent is unhappy, they may file a petition to change the present schedule.
- Please note that if you are sued for custody/partial custody and an attorney represents the other party, call Northwestern Legal Services to see if we can represent you.
- If you leave the child with the other parent, a grandparent, or another third party on a "temporary" basis, even if you clearly state this in a written agreement, you may lose custody if the other party changes his or her mind and seeks to obtain custody through the Court. The Court values stability in a child's life, and will not disturb a child's living arrangement if the child is doing well in his or her current situation.

- If you file a custody action or someone files a custody action against you, under most circumstances, the custody action must be brought in the county where the child has resided for the last six months. However, a custody action may be filed in a county where the child is residing even if not for the last six months if you can show that the other county is inconvenient, such as, neither parent nor child resides there, or it is in the child's best interests that the matter be heard there. If a custody action has been brought against you in a county where the child has not lived for at least six months, you should obtain legal help to object to the case being heard in that county.
- It is up to each party to obey the custody order that comes from your conference or hearing. If the other parent is not following the order, you should keep track of the incidents and notify the parent in writing that you expect them to obey the order. If the violations are serious, such as the other parent refusing to bring the child back after a visit or not allowing your court ordered the visits, you may file a petition for civil contempt. If violations of the custody order continue, contact us for help. If the violations of the order are not serious, but are still a problem, it may be better to contact your county's custody office to explore alternatives to a court proceeding. Some counties have custody conciliators who will meet with both parties and try to mediate the problems.
- Sometimes circumstances change that require a modification to the custody order. If the changes are occasional, like changing a weekend visit so the other parent can take the child to a family reunion and the other parent agrees to the changes, you do not need to have the custody order changed. If the changes would affect the ability of a parent to see the child under the terms of the current order, such as one parent wants to move out of state, then a petition to modify the custody order must be filed with the court.
- Separated parents have automatic legal right, called standing, to request legal and physical custody of their child from the court in case of a dispute with the other parent. Third parties, such as an aunt or close family friend must prove special circumstances in order to obtain the right to seek court ordered custody. There are two situations in which third parties can seek standing (grandparents have additional options to establish standing described in our pamphlet on **Grandparent Custody Rights**):
 - This first is to convince the court that they are in loco parentis (in place of the parent) to the child. In loco parentis standing can be sought when a third party has assumed physical custody of the child and has acted as the child's primary caregiver for a substantial period of time. There is no set time period provided by law in order to establish in loco parentis standing. In loco parentis cannot be done in defiance of a parent's wishes and the parent/child relationship. Please note that if the parent is involved in the care of the child, in loco parentis cannot be used to establish standing to seek a custody order.
 - The second possible way for a third party to establish standing is provided by the Pennsylvania custody statute when the following three part test is met:
 1. The third party has assumed or is willing to assume physical custody of the child; and
 2. The third party has a sustained, substantial and sincere interest in the welfare of the child. The court will look at the nature of the involvement of the third party with the child in making a determination as to this factor; and
 3. Neither parent currently has any form of care or control over the child.

Once the third party has established standing to seek a custody order, the court must decide if it would be in the best interests of the child for the third party to have physical and, in some cases, legal custody rights and, if so, what those rights should be. To help the court make a decision it must consider certain 'factors' which can be summarized as follows as they relate to third parties:

- a) The extent and quality of the relationship between the third party and the child.
- b) Whether the third party is likely to interfere with the parental relationship or try to alienate the child from the parents.
- c) The mental and physical ability of the third party to care for the child.
- d) Any history of drug/alcohol or other abusive habits and/or conduct.
- e) The travel distance from the third party's home to that of the child's parents and other family members.
- f) The actual availability of the third party to care for the child and their ability to provide for the child's needs.
- g) The impact on sibling relationships of the child.
- h) The preferences of the child.
- i) Any other relevant factor.

**To apply for legal help, call Northwestern Legal Services
(800) 665-6957
In Erie area 452-6957
Or Apply online at WWW.NWLS.ORG**

We have attempted to insure the accuracy of the information in this pamphlet at the time it was created or revised. However, the law does change, sometimes quickly and unexpectedly. Therefore, you should consult an attorney before taking or refrain from any action based on the information in this pamphlet.



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