

## **Delta Guide to Child Custody Definitions and Concepts**

Below is a series of definitions related to Child Custody Cases.

**Child:** An unemancipated individual under 18 years of age.

**Legal custody:** The right to make major decisions on behalf of the child, including, but not limited to, medical, religious and educational decisions.

**Physical Custody:** The actual physical possession and control of a child.

**Primary physical custody:** The right to assume physical custody of the child for the majority of time meaning **Overnights** as defined here.

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

**Shared legal custody:** The right of more than one individual to legal custody of the child.

**Shared physical custody:** 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.

### **Children's Right to Decide:**

-The child's preference on custody arrangements can be considered by the court but depends on factors such as the age and maturity of the child and relationship to each parent/interested party. The older the child the more likely the court will consider the child's preferences.

### **Court Order:**

-This is a document issued by the Judge telling the parties to do things. It also is how the court communicates to the parties. The court can issue many different types of orders but the most important is a custody order.

-The custody order provides the custody rights of each parent or other person, such as a guardian or grandparent. These rights can vary specific or vague depending on what is required. For instance, the court can provide the date, time and location when each party has custody, when they can take the child on vacation and where the child can go to school and attend church.

-The best order is one that both parties agree to by consent. Many times, the parties create a draft custody agreement and the judge signs it making it a custody order. Custody orders must be followed or else the court can order sanctions against a violating party. Sanctions can include fines, lost custody or imprisonment.

### **Overnights:**

-This term refers to the location where the child sleeps during the year. The number of overnights that a child spends with a party is used to determine the type of physical custody each party has. For example, if each party has an equal number of overnights then they have shared custody. See **Partial Custody, Shared Custody** and **Primary Custody** definitions. **NOTE: The number of overnights determines which party pays/receives child support. Generally, the party with the most overnights receives child support and the other party pays it. Many fights occur because of this fact.**

### **Custody Players:**

-Parent/custodian: This is a person that has custody rights. A person other than a parent, such as a grandparent or friend, can obtain custody rights under certain circumstances.

-Judge: This is the person assigned to oversee the custody case and ensure that the best interests of the child are observed. This person decides all conflicts by the parties in court.

-Lawyer: Each party, including the child, can be represented by a lawyer.

-Psychologist: This professional can render an opinion to aid the court in deciding how to arrange custody.

### **Factors Considered When Deciding Custody:**

The primary concern of any court deciding custody of a child is "What is the best interest of the child?". In order to determine the answer to this question, the custody court will review a number of factors as follows:

**(a) Factors.-** In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving weighted consideration to those factors which affect the safety of the child, including the following:

(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 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.

### **Custody Process:**

-Each county in Pennsylvania has a process where the parties attempt to work out a custody agreement. It usually starts with the parties attending an education class on how to conduct parenting in a divided family with as little upset to the child as possible.

-Then the parties move to mediation where, with the help of a mediator, they try to come to a custody arrangement they both can live with and that this arrangement is transformed into a custody order.

-If mediation fails to result in an agreement, then the parties move to arbitration where a person, sometimes a judge, tries to get the parties to reach an agreement, and if no agreement is reached, they

fashion an interim custody order. Then if the parties do not like this agreement, they can ask the court for a custody trial.

-A custody trial is the final step in the process. A custody trial involves each party appearing in court in front of a judge or master and each party attempting to prove the custody arrangement that is in the best interest of the child. Witnesses and evidence are presented to the judge or master for this purpose. Most parties are represented by an attorney and the process can be emotionally exhausting for all involved and expensive. The judge can order that a psychological evaluation of the child and the parties be conducted to aid the court in making a custody decision. This can be expensive as well.