

WHO DECIDES CUSTODY WHEN WE SEPARATE?



You and your partner, as the parents, are the best people to decide the custody arrangements of your child should you choose to separate. However, if the two of you do not agree, you may need the assistance of an attorney. This can easily be the most difficult type of litigation that you may ever address—emotionally and legally. It involves your children.

The words that you are always going to hear in custody court are: “What is in the best interest of the child?” The problem is that you and the other parent may not agree on what is in the best of interest of your child. Therefore, the only person left to decide this is a Judge.

There are two categories of custody:

Legal Custody

Legal custody is the obligation to consult with each other as to major decisions on behalf of the child, including, but not limited to, medical, religious, and educational issues. But for extenuating circumstances, legal custody is usually shared.

Physical Custody

Physical custody is the actual physical possession of the child. The different types of physical custody are as follows:

a. Primary Physical

Custody – There are 365 overnights in a calendar year. Primary physical custody means that you have more than ½ of the overnights in a calendar year.

b. Partial Physical

Custody – This occurs when you have less than ½ of the overnights in a calendar year.

c. Shared Physical

Custody – This is also referred to as “50/50.” There are 14 overnights every two weeks. Shared legal custody would mean that each party has seven of those overnights. This could be divided in any way. For example, it could be alternating weeks. Another example is two nights with one parent, two nights with the other parent, and alternating the next three nights.

d. Sole physical custody

– This is the right of one individual to exclusive physical custody of the child so that the other parent does not see the child.

Factors to Consider When Awarding Custody

The Pennsylvania legislature has set the factors that the Judge must consider when deciding custody. In any form of custody, the Court is required to address the “16” factors which led to their decision. They are as follows:

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 a member of the party’s household.
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’s 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.
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 residence of the parties.
12. Each party’s availability to care for the child or ability to make appropriate childcare arrangements.
13. The level of conflict between the parties and the ability of the parties to cooperate with one another.
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.

At What Age Will My Child’s Opinion Be Considered?

There is not a specific age at which the Court automatically considers the opinion of the child. As set forth in Title 23 Pa. C.S. §5328, the well-reasoned preference of a child, based on the child’s maturity and judgment, must be considered by the Judge. However, this is never the only deciding factor. It is up to the Court to decide the best interest of the child, and sometimes the child’s request might not be in their best interest.

Having the child testify should not be the goal of the parent as it is a very difficult and emotional experience for the child. It is ultimately up to the Judge to determine whether the opinion of the

child is well reasoned. For example, if a child only wants to stay at one parent’s home because they allow the child to not have any boundaries, the Court would not consider that as the best interest. The child must be able to offer a well-reasoned opinion for his or her decision.

At Liebmann Family

Law, we offer a free initial consultation because we think the relationship with your child is the most important issue you can address. Please give our office a call to schedule a time when we can meet and discuss the best way for you to proceed and to understand your rights (215-860-8200).

Each of the attorneys at Liebmann Family Law in Newtown, Bucks County has over 25 years’ experience in handling these issues. We appear in Bucks and the surrounding counties, including New Jersey. www.liebmannfamilylaw.com

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