



Family Law 101: Learning the Basics and Navigating the Virus

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Training Overview

- Custody
- Protection from Abuse
- Child Support
- Programs for Victims of Crime

Custody Actions



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Key Definitions

- **Legal Custody:** the right to make major decisions, including medical, religious and educational
 - may be sole or shared
 - Yates v. Yates, 963 A.2d 535 (Pa. Super. 2007)
- **Physical Custody:** The right to have physical possession and control of child
 - **Primary Custody:** The right to take possession of child for the majority of the time.
 - **Primary Caretaker Doctrine:** M.J.M. v. M.L.G., 63 A.3d 331 (Pa. Super. Ct. 2013)
 - **Partial Custody:** the right to take possession of child for less than a majority of the time

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Definitions, Cont.

- **Shared Physical Custody:** More than one person has significant periods of physical custody
- **Supervised Physical Custody:** The right to visit child
 - Does not include the right to remove child from agency's or designated adult's control
 - May be supervised by custodial parent, agency, or adult designated by the court
 - Often occurs at the Court Nursery

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Filing a Custody Action



Who can file? – Standing

- Parents have automatic standing for custody
 - Living in same household makes order unenforceable §5323 (h)
 - Living separate and apart: *Teodorski v. Teodorski*, 857 A.2d 194 (Pa. Super. 2003)
- Any one who falls under *loco parentis* (in place of parent):
 - Pa. R.C.P. 1915.1
 - Assumption of parental status
 - Discharge of parental duties
 - Cannot be in defiance of parent's wishes and the parent/child relationship

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3rd party standing

- parents have a *prima facie* right to primary physical custody
- Presumption in favor of parents: § 5327
- 3rd party must provide clear and convincing evidence
- *Jordan v. Jackson*, 876 A.2d 443 (Pa. Super. 2005)



Standing, Cont.

- Grandparents who do not fall under *loco parentis*
 - whose relationship with the child began with consent of parent or under court order
 - who assumes or is willing to assume responsibility for the child, and
 - meets one of the following conditions
 - the child is dependent,
 - the child is a risk due to parental abuse, drug/alcohol abuse or incapacity, or
 - the child resided with the grandparent for at least 12 consecutive months, and is removed by parent(s). Action must be filed w/in 6 months of removal

*Pa. R.C.P 1915.5 (Standing must be included in written order)

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Standing, Cont.

- Any 3rd party who can show the following by clear and convincing evidence may file a custody petition:
 - The individual has assumed or is willing to assume responsibility for the child
 - The individual has a sustained, substantial and sincere interest in the welfare of the child.
 - Neither parent has any form of care and control of the child.

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Initiating Custody Action

- ▶ Complaint for Primary, to Confirm, or for Partial
 - ▶ Pa. R.C.P. 1915.3; 1915.15
 - ▶ fee may be waived; *in forma pauperis* status
- ▶ Minor parents may file on their own
- ▶ Paternity Considerations
 - ▶ Father must have acknowledged paternity in order to file custody petition, usually
 - ▶ An acknowledgment of paternity is conclusive evidence of paternity. Can be revoked within 60 days.
 - ▶ 23 C.S. Sect. 5103



Custody Factors

23 Pa CS §5328(a)



What is Considered in Custody Judgments: The Custody Factors

- Which parent is more likely to encourage/allow frequent and continuing contact with the other parent
- Past and present abuse by party or household member, whether there is continued risk of harm to the child or abused party and which party can better provide safety and supervision for the child
- Parental duties performed by each parents
- The preference of the child
- Parental duties performed by each parent
- Need for stability and continuity in child's education, family life and community life

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Custody Factors, cont.

- Availability of extended family
- Child's sibling relationships
- Attempts of a parent to turn the child against the other parent, except in dv cases where safety measures necessary to protect child
- Which party more likely to maintain loving, stable, consistent and nurturing relationship with child
- Which party more likely to attend to daily physical, emotional, developmental, educational and special needs of child
- The proximity of residences of the parties
- Each party's availability to care for child or make appropriate child-care arrangements

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Custody Factors, cont.

- Which party more likely to attend to daily physical, emotional, developmental, educational and special needs of child
- The proximity of residences of the parties
- Each party's availability to care for child or make appropriate child-care arrangements
- Level of conflict between the parties and the willingness and ability of parties to cooperate
- History of drug or alcohol abuse of party or household member
- Mental and physical condition of party or household member
- Any other relevant factor

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What is Not Considered?

- The Court should not consider:
 - Income
 - Legal status in the country
 - Race of parents
 - Age of parents
 - Gender of parents
 - Sexual orientation
 - Prior negative behavior unless shown it will have current impact on child
- The Court must:
 - Give reasons for its custody decision on the record in open court, or in a written opinion or order

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Special Issues & Motions



The Impact of Criminal Convictions: 23 Pa.C.S. §5329

- When a party or *household member* of a party has been convicted of certain crimes, the Court **must** determine whether the offending party poses a threat of harm to the child.
- These crimes include:
 - Criminal homicide
 - Kidnapping, **endangering welfare of a child**, corruption of minors,
 - sex crimes
 - arson
 - DUI, and certain illegal drug crimes
 - Terroristic threats, stalking, aggravated assault, false imprisonment, unlawful restraint, and luring a child into a motor vehicle
 - Contempt of a court order or agreement**
 - Promoting Prostitution
 - strangulation** (8/6/2020)



Custody and criminal convictions

- 23 Pa CS 5329(c), (d), and (e)
 - Before the Court makes any award of custody in cases where a parent or their household member has been convicted of these crimes, the court must:
 - Provide for an evaluation to determine whether the party/household member poses a threat to the child and whether counseling is necessary
 - When counseling is necessary, court must appoint a qualified professional specializing in treatment relating to the particular offense
 - Court may require another evaluation to determine whether further counseling necessary
- 23 Pa CS 5330 – charges are basis for Mod

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Custody & Relocation §5337

- “Relocation”: a change in a residence of the child which significantly impairs the ability of a non-relocating party to exercise custodial rights.
- Every person with custodial rights must consent or the court must approve the relocation.
- Party seeking relocation has burden of establishing relocation will serve child’s best interest
- Primary physical custody must be decided before a relocation request.

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Modification

- Amend an existing custody order if it is in the child's best interest
- Must file a Petition to Modify
- Also useful for logistical changes

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Expedited Hearing

- ▶ **Motion for Expedited Listing:**
 - ▶ When party cannot wait for regularly scheduled proceeding, e.g. : child needs health insurance, to be registered in school, parent needs permission to travel with child.
 - ▶ Parent can also file an expedited if they are being denied all access to the child.
 - ▶ Must be accompanied by an underlying petition, if none is outstanding; may be filed only on Mondays
 - ▶ **Personal service**
 - ▶ The expedited hearing is w/in **3 months** and is very short
 - ▶ Court issues an interim custody order
- ▶ See 23 Pa CS 5323(b), 5330(a)



Emergency Petition

- ▶ Emergency custody petition
 - ▶ Appropriate for: cases of child abuse or neglect; child has been (or is about to be) removed out of Philadelphia; or one party is going to remove the child from the jurisdiction to a non-Hague country.
 - ▶ Must be filed with an underlying custody complaint, if none is outstanding.
 - ▶ Brief *ex parte* hearing is conducted on the day of filing. Hearing Officer may issue a temporary *ex parte* order.
 - ▶ Other party must be personally served before the next hearing, which will occur within ten days, with both parties participating. Hearing Officer may at that time issue an interim order.



Contempt & Enforcement

- ▶ File a Petition for Contempt of Custody \
- ▶ §5323(f) Order must be specific enough to enforce
- ▶ §5323(g) If Court finds party in contempt of a custody order:
 - 1) Imprisonment for less than 6 months
 - MUST have condition for release
 - 2) Probation for less than 6 months
 - 3) Monetary fine for less than \$500
 - 4) Denial or suspension of driver's license.
 - 5) Counsel fees and costs
 - §5339 may also be awarded when court finds party's conduct was obdurate, vexatious, repetitive or in bad faith



Custody & Dependency

- Dependency and Domestic Relations Court cannot both have jurisdiction at the same time
- Once Dependency action is dismissed or resolved, Domestic Relations may take jurisdiction
- Custody order are permitted to modify Dependency Orders

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Evidence in Child Custody Cases



Common Extrinsic Evidence in Custody

- Home Environment
- Police Reports
- Forensic Interviews/DHS Records
- School Records
- Child Medical Records
- Party Communications
- Diary or Calendar Notes
- Custody exchange log

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Text messages & social media

- Com v. Mangel, 2018 Pa. Super 57 (Pa. Super 2017)
- Com v. Koch, 39 A.3d 996 (Pa. Super 2011)
- Rule 901(b)(11) Evidence About A Writing, Posting, Communication, or Image on an Electronic Device or Medium.
 - (A) the testimony of a person with knowledge; or
 - (B) circumstantial evidence such as content or exclusivity of ownership, access, or possession of the device or account at the relevant time.

(effective October 1, 2020)

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Wire Tap Act, 18 Pa.C.S. §5701, et. al.

- It is a crime to intentionally intercept any private wire, electronic or oral communication.
- PA is a “two party consent state”
- Important exceptions:
 - No expectations of privacy
 - Imminent criminal conduct
 - Consent

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Child Testimony – Tender Years

Tender Years Exception: 42 Pa.C.S.A. § 5985.1

- An out-of-court statement
- made by a child victim or witness,
- who at the time the statement was made was 12 years of age or younger,
- describing
 - criminal homicide; assault; kidnapping; sexual offenses; burglary and other criminal intrusion; and robbery,
- not otherwise admissible by statute or rule of evidence,
- is admissible if....

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Tender Years, Cont.

- (1) the court finds, in an in camera hearing, that the evidence is relevant and that the time, content and circumstances of the statement provide sufficient indicia of reliability; and
- (2) the child either:
 - (i) testifies at the proceeding; or
 - (ii) is unavailable as a witness (because of emotional distress – the court makes this determination based on testimony of child or another person)

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Co-Parenting During a Pandemic

- Safety measures
- Conflicting philosophies
- Essential Workers
- At-risk family members
- Virtual learning
- Education law/parental liability

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Virtual Schooling Challenges

- Modify orders that are contingent on school
- Supervision and childcare
- Supplies & Technology
- Hybrid/in-person

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Newer Case Law & Pending Legislation



Interesting 2021 Decisions

- **Moore v. Moore**, No. 559 MDA 2020 (Pa. Super. March 24, 2021) – Judicial understanding of DV dynamics
 - Great language on how victim initiating contact with abuser is not uncommon in DV
 - Discussion of how abuser’s behavior was trending toward escalation
- **AM v. JLH**, No. 677 WDA 2020 (PA. Super. March 11, 2021) – What is eligible for modification.
 - Request to permit boyfriend of parent to contact children was denied
 - Contact with non-parent is not a form of custody
- **KIG v. JKG**, No. 2110 MDA 2019 (Pa. Super. March 18, 2021)– Child support is a child’s right
 - Parties cannot negotiate settlement that negates child support obligations
 - An agreement to end child support payments in exchange for custody is unenforceable

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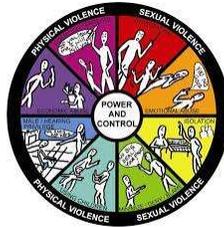


Legislation

- S.B. 78 – “Kayden’s Law”
 - Sen. Santarsiero & Sen. Baker
 - Mandatory custody restrictions if finding of abuse
- H.B. 823 – “squatter’s bill”
 - Rep. Martina White
 - Owner affidavit can evict ‘unauthorized’ occupant
- H.B. 1392 – Family Court Reform
 - Rep. Stan Saylor
 - Procedural changes: 1 family/1 judge, organized by complexity

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Protection from Abuse



Power and Control Wheel





Safety Planning

- Emotional
 - What does your support system look like?
 - Who you can talk to freely and openly to give you the support you need?
 - Are you interested in attending support groups or other group activities?
 - Are you interested in learning about therapy?
 - What activities do you do that help you feel good?
 - If you have to communicate with your partner, what is the safest way to do so?

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Safety Planning

- Physical Violence
 - Can you stay out of the bathroom and kitchen during an incident?
 - Do you have a code word or a safety plan or neighbors?
 - Do you have an escape/exit route?
 - Do you keep your keys and purse in the same location every day? Important papers?
 - Where will you go if you need to run?
 - Do you have a phone hidden?

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Safety Planning

- Considerations for Children
 - Do you have a code word or a safety plan with children or neighbors?
 - Talk to the children about not getting involved
 - Teach them how to call 911
 - Consider these for a plan when violent incidents occur
 - Hide
 - Run to neighbor, family member's house

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Protection from Abuse Act

- 23 PA.C.S. Section 6101

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Who can file?

- People who are related by blood or marriage (including separated or divorced)
- Parents and children, OBO's
- Other blood relatives and relatives through marriage or adoption
- Current or former sexual or intimate partners
- Includes dating relationships and same-sex relationships
- Other family relationships –case law

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PFA vs. PSVI

- Protection from Sexual Violence and Intimidation - 23 Pa.C.S.A. §62A03
 - No relationship requirement
- Sexual assault of adults and children
- Harassment of minors by adults
- Stalking of minors by adults

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PFA Definition of Abuse

- The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons that share biological parenthood:
 - (1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, rape, involuntary deviate sexual intercourse, sexual assault, statutory sexual assault, aggravated indecent assault, indecent assault or incest with or without a deadly weapon.

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PFA Definition of Abuse

- (2) Placing another in fear of imminent serious bodily injury
- (3) The infliction of false imprisonment pursuant to 18 Pa.C.S. 2903 (relating to false imprisonment)
- (4) Physically or sexually abusing minor children, including such terms as defined under Chapter 63 (relating to child protective services)

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PFA Definition of Abuse

- (5) Knowingly engaging in a course of conduct or repeatedly committing acts toward another person, including following the person, without proper authority, under circumstances which place a person in reasonable fear of bodily injury.

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Protection from Abuse Procedure

- Emergency PFA (Optional)
- Ex-Parte Hearing for Temporary Order
- “10-Day” Temporary Order
- Service
- Final Hearing
 - Consent
 - Default
 - Non-PFA Civil Consent Orders (County Specific)
- Final Order or Dismissal

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Temporary Order Relief

- May provide for:
 - Hearing only
 - Protection only
 - Eviction/exclusion under certain circumstances
 - No contact
 - Relinquishment of weapons
 - Custody, financial support and reimbursement of economic losses due to abuse

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Service Issues

- Must be personal service by anyone over 18 (not a party or related to party)
- Police can assist with service
- Person who serves abuser must fill out affidavit of service
- Victim must bring affidavit to court as proof of service
- If no service, go to court on hearing date and request more time to serve

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Weapon Relinquishment

- Temporary Weapon Relinquishment “Attachment A”
 - 23 PA C.S. §6107: Judge has discretion to order the Defendant to relinquish ALL firearms and to prohibit Defendant from acquiring or possessing any firearm for the duration of the temporary order.

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Weapon Relinquishment

- UPDATE to PFA Act 23 PA C.S. §6108(A)(7)(A.1):
 - (1) Final order after a hearing **MUST** order that Defendant is subject to the firearms and weapons prohibition relinquishment provision under (A)(7).
 - (2) Final agreement **MAY** order that Defendant is subject to the firearms and weapons prohibition relinquishment provision under (A)(7).

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Final PFA Order

- May be entered for any period of time up to 3 years
- Can file to extend BEFORE expiration but must show new incident of abuse or continued risk of harm

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PFA Violations

- Victim should keep a copy of PFA with them at all times
- If the abuser violates the order, call 911
 - After calling 911, the victim should call their attorney to report any violations
 - Write down details of the violations + D.C. #
 - After police report, follow-up with Domestic Violence Detective
- Also consider civil/criminal contempt (ICC), and petitions to extend and modify

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Language

- The person filing for support is called the plaintiff (payee) and the person ordered to pay the support is called the defendant (payor).



Who is entitled to child support?

- Anyone who is raising children can file.
 - Third-party custodians may file for child support against one or both of the parents.
 - The child must be under 18 or still in high school. (The court may also award child support for a special needs child over the age of 18.)
 - A parent can seek child support from the other parent regardless of the financial situation of each parent.

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Child Support Process

- Support Conference
 - Evidence of earnings and expenses (childcare, private school tuition, extracurricular activities of the children, medical expenses, utilities and mortgage/rental payments that the plaintiff makes)

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Obligation Determination

- The child(ren) have special, extraordinary expenses, such as medical expenses or private school tuition (fact specific).
- Physical custody (overnights)
- One party has unusually low living expenses because he or she shares living expenses with someone else.

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Obligation Determination

- The defendant has extraordinary expenses (medical bills/other children)
- Incurring debt to avoid obligations
- Plaintiffs can ask for sheriffs to sell defendant's belongings (enforcement)

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Support Guidelines

- To figure out a parent's net income, start with the monthly gross income and subtract:
 - federal, state, and local income taxes;
 - F.I.C.A. (Social Security) payments;
 - Unemployment compensation taxes and local services taxes;
 - payments to a retirement plan that the employer requires the parent to make;
 - mandatory union dues;
 - alimony paid to the other party.

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Support Guidelines

- Cash assistance and SSI benefits are not counted as income.
- The amount of child support owed by the parent who does not have custody depends on the percentage of the combined income that parent earns. (Formula)

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Paternity

- Denial of paternity
 - Marriage
 - Acting as parent for long period of time
- DNA Lab Test
- Cost of DNA testing



Child Support Process

- A hearing will be held in front of a hearing officer or master who will prepare an interim order.
- Either party may within 20 days after the mailing date file an appeal (“exceptions”).
- If neither party appeals, the interim order will become final.



Appeals

- If one party appeals, the parties will submit legal briefs and an argument will be held in a couple months.
- The parties must obey the interim order in the meantime.
- Procedure differs from county to county.

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Enforcement

- Issues during pandemic
 - More lump-sum payments and agreements
 - Prisons not accepting individuals for non-payment (lack on in-person hearings to determine incarceration)
- Wage attachments
- Drivers license suspension
- Passport suspension
- Hunting License Suspension

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Enforcement

- Bank account seizures
- Intercept tax refunds
- Career planning/Job Assistance
 - Lack of cooperation
 - Philadelphia keeping a list of particularly egregious violators
 - Phone/Virtual Hearings

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COVID Considerations

- Unemployment income IS income counted towards a child support obligation.
- Payee can ask for an increase even though it is the payor's petition.
- Earning capacities imputed more often since pandemic as many payors are not working as hard to find employment or return to employment.

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More Considerations

- Lump sum payments are typically not considered for child support. (Child tax credit/stimulus money/fact specific)
- Amendments
- Childcare concerns – custodial parent out of work
- Backlog/Issues with enforcement
- Retroactivity

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Pandemic Financial Relief

- DV and Stimulus payments
 - Demand letters
 - PFA financial remedy
- American Rescue Plan Act
 - Enacted in March 2021
 - Child Tax Credit
 - July 15
 - Annual advance on taxes
 - Max \$3,600 for age 6 and under, \$3,000 for 6-17

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Relief for Crime Victims

- Victims' Bill of Rights
- Crime Victims Compensation Program
- Address Confidentiality Program
- Housing protections (city ordinances)
- Court and Incarceration Notices
- Assistance with Victim-Impact Statements & other "courtside" assistance
- Immigration options

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Thank you!

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