

Myth:

A mother will usually retain custody of her children unless the father can prove she is "unfit."

Fact:

Under Pennsylvania law, there is no longer a presumption that a mother is a better parent. One factor a judge will consider is who has been the primary caretaker of the child and that can be either parent.

Myth:

At the age of fourteen (14), children are free to choose which parent to live with.

Fact:

There is no certain age at which a child can decide which parent to live with. The older the child is, the more a judge will consider the child's preference, but the decision is always up to the judge.

Myth:

Only the parent the child lives with during the week has legal and physical custody of the child.

Fact:

If there is no custody order both parents have equal rights to the child. Both parents have the right to make decisions for the child and either parent can take physical possession of the child at any time. Parents maintain equal rights to the child until a court order is granted and states otherwise.

Legal and physical custody are legal terms the court uses to describe the different types of custody the court can grant one or both parents.

Legal custody is the right to make important decisions about the child, such as medical and educational decisions. Joint legal custody is when both parents have this right. Sole legal custody is when only one parent has this right.

Physical custody describes who the child lives with and has the right to care for the child's everyday needs. There are several types of physical custody. Shared physical custody is when the child

has two homes and lives part of the time with one parent and part of the time with the other parent. Primary physical custody is when the court gives only one parent the right to have the child live with him/her most of the time. If one parent has primary custody, the court may give the other parent partial physical custody or visitation. Partial custody is when the child lives with the other parent, but stays with the other parent, such as on the weekends. Visitation is when a parent does not have any form of physical custody but has the right to spend time with the child.

**If you have specific questions about custody call MidPenn Legal Services:
1-800-326-9177**

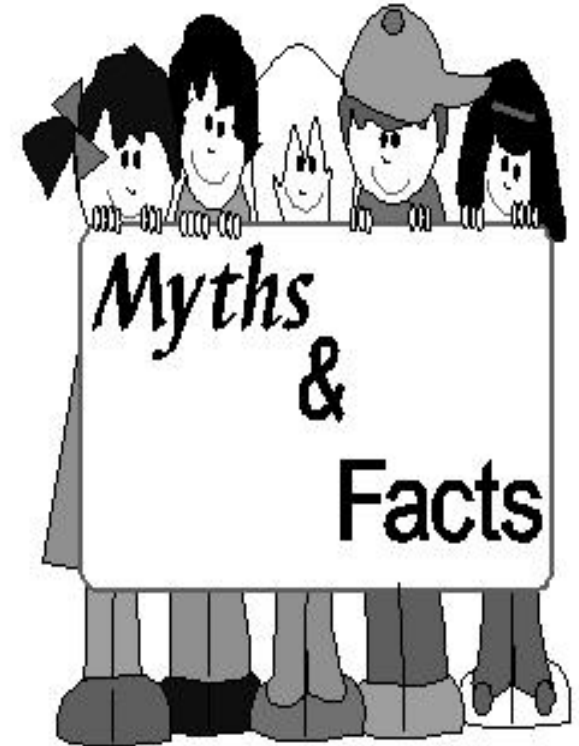
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MidPenn Legal Services

Custody:



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Introduction:

Often, people believe stories about custody law in Pennsylvania that are not true. They are **Myths**.

Myth:

The other parent and I agreed that the children will live with me. I need a court order to confirm this.

Fact:

If your child is living with you and you have been able to work out arrangements with the other parent and if the other parent isn't likely to take wrongfully take your child, you probably do not need to go to court to get a formal order setting out both parents' rights to custody and partial custody.

Myth:

If my child's other parent does not pay child support, I do not have to let him or her see our child,
OR

if I am not given visitation/partial custody rights, I do not have to pay child support.

Fact:

Under Pennsylvania law, the duty to pay child support and the right to maintain contact with one's child are NOT linked.

This means that even if you are not seeing your child, you still have to pay child support, and that a parent can see his or her child even if he/she fails to make child support payments.

Myth:

If I have a court order that grants the other parent partial custody/visitation rights, the court will force him or her to exercise them.

Fact:

The courts really do not have the ability to make someone be a parent if he/she does not want to be one. All the court can do is make someone pay child support. If the other parent fails to use his/her visitation rights for a long time, you might

want to ask the court to reduce or even terminate his/her visitation rights.

Myth:

The father's name must be on the birth certificate.

Fact:

It depends upon the marital status of the mother at the time of the child's birth.

If the mother of the child is married at the time of the child's birth, the mother's husband is assumed to be the father, unless both the mother and the mother's husband give written acknowledgment identifying another person as the true biological father.

If the mother of the child is not married at the time of the child's birth, the father of the child is identified on the birth certificate only if both parents have signed a voluntary acknowledgment of paternity or a court has determined who the father is. If the mother refuses to consent to the acknowledgment of paternity, the father will not be identified on the birth certificate. The father will not have any rights or responsibilities as the child's parent (visitation or child support) until a court determines that he is the father.

Myth:

A child must have the father's last name.

Fact:

A child may be given whatever name that the parents would like. The child's last name does not have to have any relationship to the last name of either parent. What to name a child is the right of both parents.

If the father is not legally identified when the child's birth certificate is submitted (about ten days after the birth), then the mother has the sole right to choose the child's name.

Myth:

All I have to do is tell the court that my child's other parent is using drugs and I will win my case.

Fact:

Custody cases are not different from any other

court case - you have to be able to prove any claims that you make. In order to keep the other parent from having partial custody rights, you would have to show that it would be harmful for your child to spend time with him or her.

The test in court is what is in the child's best interests and the court assumes that it is good for children to have contact with both parents, until proven otherwise.

Myth:

The other parent has no right to take our child around his/her girlfriend or boyfriend.

Fact:

Unless you can prove in court that this person is dangerous or harmful to your child, a judge will most likely trust that neither parent would expose the child to dangerous people.

Myth:

My child's other parent has not been around for the last few years. Now, he/she wants to see our child and I do not want him/her to. No court will give him/her visitation rights.

Fact:

For better or worse, the law presumes that it is best for a child to have a relationship with both parents. Therefore, unless you can show that having contact with the other parent will harm your child, the court will probably give him or her limited visitation or partial custody rights. The judge may agree to a temporary restricted schedule if the child has not seen the other parent for a long time.

Myth:

I need to file for custody quickly. Whoever files first gets what he/she is asking for.

Fact:

It does not matter who files the papers and gets your case before a judge. The judge will decide who gets custody based on the child's best interest.