

A photograph of the Statue of Liberty in the foreground, holding a golden torch. The background shows the New York City skyline with various skyscrapers under a blue sky with light clouds. The water of the harbor is visible at the bottom.

# Child Custody for Parents and Caregivers

## An Informational Guide for Immigrant Families

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*\*This flyer is for informational purposes only and should not take the place of legal advice specific to your case. You should speak with an attorney first as every situation is different.*

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# Child Custody Basics

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## What is child custody?

Custody refers to who has care and control of children. **Legal custody** is who gets to make major decisions about the child's education, health and religion. This can be sole (only one person) or shared (more than one person has a say in these major decisions). **Physical custody** is who has the child, and can be sole (only one person), shared (two or more people shared somewhat equal time with the child), primary (> 50% of the time), partial (<50 percent of the time) or supervised partial custody (some amount of time is spent with the child but it must be supervised by another person or the court).

## Why is it important to have a custody order?

In the event a parent/s are detained or deported, a child may be left behind in the care of a family member or other caregiver. Without an order, that person may not be able to provide proper care for the child, to consent to medical care or make educational decisions, or obtain a passport for the child and have the child travel out of the United States.

## Who has custody rights if there is no custody order?

If a custody order has never been entered in a court, both parents have equal rights to a child, even if the biological father's name is not on the child's birth certificate.

**IF THERE IS NO CUSTODY ORDER, BOTH PARENTS HAVE EQUAL RIGHTS TO THE CHILD. NO ONE CAN FORCE A PARENT TO GIVE A CHILD TO ANOTHER PARENT OR ANY OTHER PERSON WITHOUT A COURT ORDER.**

A father must acknowledge paternity if his name is not on the birth certificate, but even if a father is not named on a child's birth certificate, a person seeking custody must name both parents and both parents must be served and given a chance to participate in a custody proceeding. More information about paternity may be found here: <https://courts.phila.gov/pdf/brochures/dr/Paternity-Brochure.pdf>

## Who can file for custody of child?

In PA, only parents have the right to file for custody of a child, and grandparents often have the right to seek partial custody or primary custody, under certain circumstances. All other people do not, unless they can show they stand *in loco parentis* to the child, which means they have assumed the role a parent, with the parent(s)' consent. Whether a non-parent stands *in loco parentis* is often an issue the court must decide and is based on the specific facts of each case.

Other people who are caring for or are willing to care for a child and have a sustained, substantial and sincere interest in a child may file for custody if neither parent has custody and is unable to care for a child. This does not apply if there is a current dependency proceeding about the child.

Parents who are entering rehab, when the other parent is not able to care for a child or agrees with the plan, may appoint a temporary guardian for their child. This law is new to Pennsylvania. For more information on custody basics in PA see: <http://courts.phila.gov/pdf/brochures/dr/custody-brochure.pdf>

# Parent and Child Separation

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## What if one parent lives in different state or county or that parent's whereabouts are unknown?

A parent can still file for custody in Philadelphia if Philadelphia is the child's "home state" – usually that means the child has lived in the home state for at least the past 6 months, even if the other parent lives somewhere else, including outside of the United States. All information a person knows about the address of the biological parents must be put in a custody petition and all efforts must be made to serve the parents with the custody petition and notices to appear for a custody proceeding. If a parent's address or identity is not known, that must be put in the petition. If a parent resides somewhere where service is not possible either by a person or by mail, the person seeking custody must give the court this information and may ask to have a custody order entered even though that parent is not able to be served. A custody order may be obtained even if the child is not a U.S. citizen or has dual citizenship.

## What happens when a parent becomes unavailable?

This is a complicated question, there are many options, and each family's situation is different. If a parent is terminally ill, PA has a Stand-by Guardianship Act that allows a parent to designate a caregiver if the parent becomes too ill to care for a child or dies. For more information on stand-by guardianship see: <http://www.aidslawpa.org/get-help/legal-information/standbyguardianship/> Unfortunately, there is not currently a similar law for parents who become unavailable for other reasons, except treatment for drug and alcohol addiction. Parents who are entering rehab, when the other parent is not able to care for a child or agrees with the plan, may appoint a temporary guardian for their child. There is no simple way to designate a "temporary guardian" for a child, and Pennsylvania's custody law does not use that term. If a parent is detained or deported, the parent and the caregiver may try to sign a document granting the caregiver authority to make decisions regarding the child and to care for the child, or the caregiver may wish to file for custody.

If no one is available to care for the child, Philadelphia's Department of Human Services (DHS), or the local child welfare agency in your county (sometimes called Child Protective Services "CPS" or Children and Youth Services (CYS) may file a dependency petition to take emergency temporary custody. Your child may be placed in foster care, kinship care, a group home, or a residential treatment facility. There will be a court hearing, and you will have a right to an attorney. However, your ability to re-gain custody of your child may be limited if you are detained or deported. It is important that you seek the advice of a lawyer right away if your children are placed in the custody of DHS.

## What can a parent do to be prepared in the event of being detained or deported?

There are several things parents can do to be prepared, including think about who an appropriate caregiver would be in the event both parents are not available, have passports and other documents discussed below prepared so a family member or caregiver may properly care for a child, try to gather information about options, and have a plan. There is a lot of information regarding preparing a plan for your family here: [https://www.ilrc.org/sites/default/files/resources/family\\_preparedness\\_plan.pdf](https://www.ilrc.org/sites/default/files/resources/family_preparedness_plan.pdf)

# Department of Human Services (DHS) Involvement

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## How do I find out if my child is in DHS custody (“foster care”)?

If you are not sure if your child is in DHS custody, you can contact DHS at 215-683-6100 or 215-683-4DHS(4347).

## What does it mean if my child is in DHS Custody?

Children are removed from their homes when there is a concern about their safety. Immigration status should not be a factor in a DHS investigation, unless a parent is detained or in deportation proceedings, and the children do not have anyone to care for them.

In Philadelphia, the agency responsible for ensuring child safety is the City’s Department of Human Services, also known as “DHS”. If parents get detained or arrested, and there is no plan in place for a family member or friend to care for the children, DHS will get an emergency order for temporary custody from Family Court. After this emergency order is obtained, there will be a Court hearing within 72 hours. Parents have a right to a lawyer and to participate in these hearings. Non-English speaking parents have a right to an interpreter to assist them at the hearings.

## How do I find out about my Court case? Who is my lawyer?

### When is my Court hearing?

You can call Dependency Court Operations (DCO) at 1501 Arch Street, where all child welfare hearings are held, at 215-686-4119. DCO can give you contact information for your lawyer and tell you when your next hearing is. If you don’t have a lawyer, you can ask DCO how to get one.

## How does DHS decide where to place my child?

When possible, DHS will try to place your children with a family member or good friend. It is important that you speak with your DHS investigator or CUA case manager about family members and friends who might be willing to care for your child.

## How can I get my children back, after they are placed in DHS custody?

In most cases, the goal is to help you get your child back (“reunification”), and DHS must provide you with support to reunify. But, the law puts limits on how long DHS will work with you on reunification. If DHS rules out reunification, they will look for another permanent home for your child, usually through adoption or permanent legal custody (PLC).

While your children are in foster care, **you should visit with your child as much as possible**. You should also contact your child on a regular basis by phone, letter or cards. It is also important that you **work on your Family Service Plan (FSP) goals**, which vary case by case. You should also **stay in touch with your DHS worker, your agency worker, and your attorney**. It’s really important to tell everyone about your progress and also ask for help in meeting your goals when you need it. If you can’t call your DHS worker, you should write letters. Be sure to let your worker how you are doing, and also to ask the worker how your child is doing and what you

can do to help your child while you are apart. You have a right to **participate in planning for your child**. As much as you can, you should try to participate in medical, educational, and other decisions about your child.

## What Does Termination of Parental Rights (TPR) mean?

Termination of Parental Rights (TPR) is a legal decision a judge makes to forever end the parent/child relationship so that the child can be adopted. The adoptive parent then becomes the child's legal parent. Your parental rights can be terminated voluntarily (meaning you agree) or involuntarily (after a hearing where you disagree and the court decides).

## Can My Parental Rights Be Terminated Just Because I am Detained or Deported?

This is a complicated question. In general, the law requires evidence that (1) a parent is either unfit or unwilling to care for her child and (2) that it's in the child's best interest to grant TPR. The fact that a parent is detained or deported is not by itself evidence the parent is unfit or unwilling. The court will look carefully at the efforts you've made from detention or from abroad to meet your goals and maintain a relationship with your child.

If your child was taken into custody by DHS in Philadelphia, and you have questions about what to do, Community Legal Services may be able to help. CLS has a hotline for parents from 9am-5pm: 215-981-3765. More information about how to deal with DHS may be found here: <http://www.phila.gov/dhs/pdfs/DHS%20Parent%20Handbook%20LowRes.pdf>

# What Options are Available if Parent(s) are Detained or Deported?

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## Non-court options

A parent may wish for a family member or friend to care for their children if they become unavailable because of incarceration or deportation. Beware of paying a notary for a form that designates someone as a caregiver. Such a form may not be accepted by schools or doctors, and it is NOT a custody order and is NOT enforceable by a court, though it could be used as evidence to show what a parent intended or wished to have happen if the caregiver does file for custody.

The Philadelphia School District has a form to designate a person to have authority for decisions regarding a child. That form may be found here: <https://webapps1.philasd.org/downloads/tdm/EH-92.pdf>

A person caring for a child may be able to obtain public benefits for a child, including TANF and food stamps, and does not need a custody order to do so. More information on public benefits may be found here: <https://clsphila.org/get-help/cash-assistance>

**Pros:** This option may allow the non-parent family member or caregiver to have the authority to make decisions on a temporary emergency basis without actually being granted custody and having to go through the court. It could be used as evidence of parent/s' wishes if the caregiver does file in court.

**Cons:** The caregiver does not have a custody order, thus may not be permitted by a school, doctor or other provider to act on behalf of the child. It is not enforceable in court.

This option also may grant the caregiver *in loco parentis* status, and that person may be permitted to seek custody of the child even if the parent/s did not wish to have a custody order entered.

A medical or other provider may require a parent's authorization or a court order to proceed with parental consent to treatment. Some providers may accept a delegation of authority.

Although it may not be adequate in all situations, a sample form of guardianship may be found here: <https://philalegal.org/sites/default/files/attachments/2024-11/Sample%20Guardianship%20Form.pdf>

## Court options - Enter into a Formal Agreement with a Family Member or Caregiver

A parent may want to enter into a custody agreement with a family member or caregiver prior to or after being detained or deported. This may be an option, but parents should know an agreement may not be accepted without both parents' signatures (in most circumstances) and each person's signature must be notarized unless an attorney is preparing the agreement. There also must be an underlying petition for custody pending or filed at the same time as the agreement.

Here is information on paternity: <https://www.courts.phila.gov/pdf/brochures/dr/Paternity-Brochure.pdf>

**Pros:** Parties can be sure the family member or caregiver will have the authority to make decisions and act on behalf of the child, including obtaining a passport and authorizing travel.

**Cons:** Allowing a family member or caregiver to have any form of custody by a court order then clearly gives that person *in loco parentis* standing. If the family member or caregiver does not agree to return the child to a parent or to enter into a new custody agreement, it will be up to the court to decide who should have custody.

If a child's parents are not available for an agreement, a person who is caring for the child may file for custody at Family Court at 1501 Arch Street.

There are custody forms and filing assistance available every day from noon to 3:00 p.m. at the Family Court Help Center located on the 11<sup>th</sup> Floor. You may find the necessary forms for filing for custody and other information here: <http://courts.phila.gov/forms/>

In general, although there is no guarantee a court will not inquire about a party's immigration status, undocumented parents or caregivers may access the court and a party's immigration status should not be a factor in a custody matter unless a party is detained or in deportation proceedings.

People may get help filing custody petitions at the Family Court Help Center, located on the 11<sup>th</sup> Floor of the Family Court, 1501 Arch Street in Philadelphia, every day the Court is open from noon to 3 p.m.

# International Travel and Relocation

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In order to travel outside of the United States, a child needs a passport, and many airlines require both parents to be there, or that the person traveling with the child have a letter from the parent(s) authorizing that person to travel with the child.

Both parents must sign a passport application for a child, unless one parent or another party has SOLE legal custody. There is a special circumstance form to avoid this requirement but this option is very limited and hard to have approved. Parents should obtain their child/ren's passports as soon as possible to avoid problems with obtaining a passport in the future if they think it will be needed. It may also be helpful to have the child/ren's passports from the home country available if the child is a citizen from that country or has dual citizenship. All the above applies whether or not the father's name is on the birth certificate. More information about passports and links to apply may be found here:

<https://travel.state.gov/content/travel/en/passports/legal-matters/custody.html>

Parents and legal custodians of children may not relocate out of the jurisdiction if it will make difficult for any other parent or caregiver to exercise their custody of the child/ren. This means, even if there is no custody order, one parent or caregiver cannot remove a child without the other parent(s)' and caregiver's consent or with the court's permission. There is a very specific process that must be followed in PA regarding requests to relocate. If this process is not followed, the left-behind parent or custodian may file to have the child returned to this jurisdiction. There is an international custody agreement called the Hague Abduction Convention which the U.S. and 76 countries have signed. It can help a parent whose child has been taken abroad in violation of their parental rights. More information about international custody issues, and a list of countries which are signatories to the Convention, may be found here:

<https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction.html>

## Additional Resources

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Here are some places you may contact for help. There are very few free legal services organizations that are able to assist undocumented parents in custody matters. Some of the below organizations do not specialize in family law and may not be able to assist with custody but may be able to assist with other issues and provide general information.

Here are some more links which may be helpful:

- [https://www.ilrc.org/sites/default/files/resources/family\\_preparedness\\_plan-20180625.pdf](https://www.ilrc.org/sites/default/files/resources/family_preparedness_plan-20180625.pdf) -Family Preparedness Plan from the Immigrant Legal Resource Center
- <https://www.philadelphiabar.org/page/HomePage> - information on finding an attorney
- <https://www.justiceatworklegalaid.org/home-page> Justice at Work provides [free legal representation](#) on employment-related issues to eligible Pennsylvania workers. We also provide [community education](#) on legal rights for migrant and immigrant workers throughout the Commonwealth.
- <https://nscphila.org/> Nationalities Service Center provides comprehensive services for immigrants and refugees.
- <https://hiaspa.org/> HIAS Pennsylvania supports low-income immigrants of all backgrounds as they build new lives in our community. Through immigration legal services and an array of social services, we work to address their needs, defend their rights, and advocate for their equitable inclusion in American society.
- <https://clsphila.org/> Community Legal Services provides civil legal aid in a variety of matters
- <http://www.palawhelp.org/> - PA Law Help has a lot of useful information on civil legal matters.
- <https://philalegal.org/family-law-unit> - Philadelphia Legal Assistance provides civil legal aid in a variety of matters and here you can find videos regarding child custody, support and protection from abuse.

*DISCLAIMER: This packet is intended to give basic information under Pennsylvania law about custody of children and how to plan for and or deal with a change in circumstances due to a parent's sudden or expected absence or inability to care for her/his children and is not intended as legal advice. You should seek legal advice from an attorney.*

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