
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1400 Session of
2015

INTRODUCED BY WOZNIAK, RESCHENTHALER, FONTANA, TEPLITZ,
BREWSTER, COSTA, DINNIMAN AND RAFFERTY, OCTOBER 25, 2016

REFERRED TO JUDICIARY, OCTOBER 25, 2016

AN ACT

1 Amending Titles 23 (Domestic Relations) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in child custody, further providing for factors to
4 consider when awarding custody, for guardian ad litem and for
5 counsel for child; in Administrative Office of Pennsylvania
6 Courts, providing for domestic violence education and
7 training program for judges and guardians ad litem; and, in
8 depositions and witnesses, further providing for rights and
9 services.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 5328(a) of Title 23 of the Pennsylvania
13 Consolidated Statutes is amended to read:

14 § 5328. Factors to consider when awarding custody.

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

20 (1) Which party is more likely to ensure the health and
21 safety of the child. There shall be a rebuttable presumption

1 that custody or visitation shall not be awarded to a parent
2 or party who jeopardizes the health and safety of the child.

3 [(1)] (1.1) Which party is more likely to encourage and
4 permit frequent and continuing contact between the child and
5 another party.

6 (2) The present and past abuse committed by a party or
7 member of the party's household, whether there is a continued
8 risk of harm to the child or an abused party and which party
9 can better provide adequate physical safeguards and
10 supervision of the child.

11 (2.1) The information set forth in section 5329.1(a)
12 (relating to consideration of child abuse and involvement
13 with protective services).

14 (3) The parental duties performed by each party on
15 behalf of the child.

16 (4) The need for stability and continuity in the child's
17 education, family life and community life.

18 (5) The availability of extended family.

19 (6) The child's sibling relationships.

20 (7) The well-reasoned preference of the child, based on
21 the child's maturity and judgment.

22 (8) The attempts of a parent to turn the child against
23 the other parent, except in cases of domestic violence where
24 reasonable safety measures are necessary to protect the child
25 from harm.

26 (9) Which party is more likely to maintain a loving,
27 stable, consistent and nurturing relationship with the child
28 adequate for the child's emotional needs.

29 (10) Which party is more likely to attend to the daily
30 physical, emotional, developmental, educational and special

1 needs of the child.

2 (11) The proximity of the residences of the parties.

3 (12) Each party's availability to care for the child or
4 ability to make appropriate child-care arrangements.

5 (13) The level of conflict between the parties and the
6 willingness and ability of the parties to cooperate with one
7 another. A party's effort to protect a child from abuse by
8 another party is not evidence of unwillingness or inability
9 to cooperate with that party.

10 (14) The history of drug or alcohol abuse of a party or
11 member of a party's household.

12 (15) The mental and physical condition of a party or
13 member of a party's household.

14 (15.1) Allegations of child abuse or a history of
15 domestic violence in the presence of the child. The following
16 apply:

17 (i) An evidentiary hearing limited to evidence
18 related to the issue of child abuse or domestic violence
19 shall be held if consideration is given under this
20 paragraph.

21 (ii) A parent's allegation of child abuse or
22 domestic violence, if made in good faith, shall not be a
23 factor that weighs against the parent in determining
24 custody or visitation.

25 (iii) If the court finds a pattern of domestic
26 violence or child abuse by a parent, the court shall
27 award custody of the child to the other parent or party
28 and shall only initially award supervised visitation to
29 the parent engaged in a pattern of violence or abusive
30 behavior.

1 (16) Any other relevant factor.

2 * * *

3 Section 2. Sections 5334(c) and 5335(b) of Title 23 are
4 amended to read:

5 § 5334. Guardian ad litem for child.

6 * * *

7 (c) Abuse.--If substantial allegations of abuse of the child
8 or substantial allegations of domestic violence which impacts
9 the child are made, the court shall appoint a guardian ad litem
10 for the child if:

11 (1) counsel for the child is not appointed under section
12 5335 (relating to counsel for child); or

13 (2) the court is satisfied that the relevant information
14 will be presented to the court only with such appointment.

15 * * *

16 § 5335. Counsel for child.

17 * * *

18 (b) Abuse.--Substantial allegations of abuse of the child
19 and substantial allegations of domestic violence which impacts
20 the child constitute a reasonable basis for appointing counsel
21 for the child.

22 * * *

23 Section 3. Title 42 is amended by adding a section to read:

24 § 1908. Domestic violence education and training program for
25 judges and guardians ad litem.

26 The Administrative Office of Pennsylvania Courts may develop
27 and implement ongoing education and training programs for
28 judges, including magisterial district judges and relevant
29 personnel, regarding child abuse and domestic violence and the
30 impact of child abuse and domestic violence on children. The

1 education and training program shall be offered at intervals of
2 no more than every three years and shall include, but not be
3 limited to, the latest best practices and research in child
4 abuse and domestic violence designed to improve the ability of
5 the court to recognize and respond to the impact of child abuse
6 and domestic violence on all victims, specifically children.

7 Section 4. Section 5983(a) of Title 42 is amended to read:
8 § 5983. Rights and services.

9 (a) Designation of persons to act on behalf of children.--
10 Courts of common pleas may designate one or more persons as a
11 child advocate to provide the following services on behalf of
12 children who are involved in criminal proceedings as victims or
13 material witnesses or children who are the subject of a custody
14 agreement or dispute and who are alleged to have been abused or
15 have been impacted by domestic violence:

16 (1) To explain, in language understood by the child, all
17 legal proceedings in which the child will be involved.

18 (2) As a friend of the court, to advise the judge,
19 whenever appropriate, of the child's ability to understand
20 and cooperate with any court proceedings.

21 (3) To assist or secure assistance for the child and the
22 child's family in coping with the emotional impact of the
23 crime and subsequent criminal proceedings in which the child
24 is involved.

25 * * *

26 Section 5. This act shall take effect in 60 days.