

DOMESTIC RELATIONS CODE (23 PA.C.S.) AND JUDICIAL CODE (42
PA.C.S.) - OMNIBUS AMENDMENTS

Act of Apr. 15, 2024, P.L. 24, No. 8

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SB 55

AN ACT

Amending Titles 23 (Domestic Relations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in child custody, further providing for definitions, for award of custody, for factors to consider when awarding custody, for consideration of criminal conviction, for guardian ad litem for child, for counsel for child and for award of counsel fees, costs and expenses; and, in Administrative Office of Pennsylvania Courts, providing for child abuse and domestic abuse education and training program for judges and court personnel.

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

Section 1. The General Assembly finds and declares as follows:

(1) The Commonwealth has a duty to protect all children in this Commonwealth, and all three branches of the State government play important roles in fulfilling that duty.

(2) Domestic abuse is a pattern of abuse within the family or household and can include abuse of a partner, spouse, child or pet.

(3) Although abusers often use physical violence as one of the tactics to commit domestic abuse, these tactics are not necessarily physical or illegal.

(4) These tactics can include verbal, emotional, psychological and economic abuse, isolation, threats, controlling behaviors, monitoring, litigation abuse and threats to seek or demands for custody or joint custody to pressure the partner to return or punish the partner for leaving.

(5) The health and safety of all children in this Commonwealth must be the first priority in all decisions concerning child custody.

(6) It is the intent of the General Assembly to ensure that in all cases and controversies before the courts involving questions of child custody, the health, safety and welfare of the child are protected and regarded as issues of paramount importance.

Section 2. The definition of "abuse" in section 5322(a) of Title 23 of the Pennsylvania Consolidated Statutes is amended and the subsection is amended by adding definitions to read: § 5322. Definitions.

(a) This chapter.--The following words and phrases when used in this chapter shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Abuse." **As follows:**

(1) As defined in section 6102 (relating to definitions). **The term includes the crime of stalking pursuant to 18 Pa.C.S. § 2709.1 (relating to stalking).**

(2) The term does not include the justified use of force in self-protection or for the protection of other persons in accordance with 18 Pa.C.S. § 505 (relating to use of force in self-protection) by a party in response to abuse or domestic abuse by the other party.

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"Household member." A spouse or an individual who has been a spouse, an individual living as a spouse or who lived as a spouse, a parent or child, another individual related by consanguinity or affinity, a current or former sexual or intimate partner, an individual who shares biological parenthood or any other person, who is currently sharing a household with the child or a party.

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"Nonprofessional supervised physical custody." Custodial time during which an adult, designated by the court or agreed upon by the parties, monitors the interaction between the child and the individual with those rights.

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"Professional supervised physical custody." Custodial time during which a professional, with education and training on the dynamics of domestic violence, sexual assault, child abuse, trauma and the impact of domestic violence on children, oversees the interaction between the child and the individual with those custody rights and promotes the safety of the child during the interaction.

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"Safety of the child." The term includes, but is not limited to, the physical, emotional and psychological well-being of the child.

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"Temporary housing instability." A period not to exceed six months from the date of the last incident of abuse as determined by a court.

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Section 3. Sections 5323(e), 5328(a), 5329(a) and 5334(c) of Title 23 are amended and the sections are amended by adding subsections to read:

§ 5323. Award of custody.

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(e) Safety conditions.--

(1) After considering the factors under [section 5328(a)(2)] **sections 5328, 5329 (relating to consideration of criminal conviction), 5329.1 (relating to consideration of child abuse and involvement with protective services) and 5330 (relating to consideration of criminal charge)**, if the court finds [that there is an ongoing] **a history of abuse of the child or a household member by a party or a present** risk of harm to the child or an abused party and awards any form of custody to a party who committed the abuse or who has a household member who committed the abuse, the court shall include in the custody order:

(i) **The safety conditions [designed], restrictions or safeguards as reasonably necessary** to protect the child or the abused party.

(ii) **The reason for imposing the safety conditions, restrictions or safeguards, including an explanation why the safety conditions, restrictions or safeguards are in the best interest of the child or the abused party.**

(iii) **The reasons why unsupervised physical custody is in the best interest of the child if the court finds that past abuse was committed by a party.**

(2) If supervised contact is ordered, there shall be a review of the risk of harm and need for continued supervision upon petition of the party. The safety conditions, restrictions or safeguards may include any of the following:

- (i) Nonprofessional supervised physical custody.
- (ii) Professional supervised physical custody.
- (iii) Limitations on the time of day that physical custody is permitted or on the number of hours of physical custody and the maximum number of hours of physical custody permitted per day or per week.
- (iv) The appointment of a qualified professional specializing in programming relating to the history of abuse or risk of harm to provide batterer's intervention and harm prevention programming. Batterer's intervention and harm prevention programming may include programming designed to rehabilitate the offending individual, including prioritizing a batterer's intervention and harm prevention program, if available, or the impacts of physical, sexual or domestic abuse on the victim. The court may order an evaluation by the appointed qualified professional under this paragraph to determine whether additional programming is necessary.
- (v) Limitations on legal custody.
- (vi) Any other safety condition, restriction or safeguard as necessary to ensure the safety of the child or to protect a household member.

(e.1) Supervised physical custody.--If a court finds by a preponderance of the evidence that there is an ongoing risk of abuse of the child, there shall be a rebuttable presumption that the court shall only allow supervised physical custody between the child and the party who poses the risk of abuse. A court may find that an indicated report for physical or sexual abuse under Chapter 63 (relating to child protective services) is a basis for a finding of abuse under this subsection only after a de novo review of the circumstances leading to the indicated report. When awarding supervised physical custody under this subsection, the court shall favor professional supervised physical custody. The court may award nonprofessional supervised physical custody if:

- (1) the court determines that professional supervised physical custody is not available within a reasonable distance of the parties or the court determines that the party requiring supervised physical custody is unable to pay for the professional supervised physical custody; and
- (2) the court designates an adult to supervise the custodial visits who has appeared in person before the court, the individual executes an affidavit of accountability and the court makes finding, on the record, that the individual is capable of promoting the safety of the child.

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§ 5328. Factors to consider when awarding custody.

(a) Factors.--In ordering any form of custody, the court shall determine the best interest of the child by considering all relevant factors, giving **substantial** weighted consideration to [those] **the** factors **specified under paragraphs (1), (2), (2.1) and (2.2)** which affect the safety of the child, including the following:

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

(1) Which party is more likely to ensure the safety of the child.

(2) The present and past abuse committed by a party or member of the party's household, [whether there is a continued risk of harm to the child or an abused party and which party can better provide adequate physical safeguards and supervision of the child.] **which may include past or current protection from abuse or sexual violence protection orders where there has been a finding of abuse.**

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

(2.2) **Violent or assaultive behavior committed by a party.**

(2.3) **Which party is more likely to encourage and permit frequent and continuing contact between the child and another party if contact is consistent with the safety needs of the child.**

(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, **except if changes are necessary to protect the safety of the child or a party.**

(5) The availability of extended family.

(6) The child's sibling relationships.

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

(8) The attempts of a [parent] **party** to turn the child against the other [parent] **party**, except in cases of [domestic violence] **abuse** where reasonable safety measures are necessary to protect the **safety of the child** [from harm]. **A party's reasonable concerns for the safety of the child and the party's reasonable efforts to protect the child shall not be considered attempts to turn the child against the other party. A child's deficient or negative relationship with a party shall not be presumed to be caused by the other party.**

(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 residences of the parties.

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

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

(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.

(a.1) Exception.--A factor under subsection (a) shall not be adversely weighed against a party if the circumstances related to the factor were in response to abuse or necessary to protect the child or the abused party from harm and the party alleging abuse does not pose a risk to the safety of the child at the time of the custody hearing. Temporary housing

instability as a result of abuse shall not be considered against the party alleging abuse.

(a.2) Determination.--No single factor under subsection (a) shall by itself be determinative in the awarding of custody. The court shall examine the totality of the circumstances, giving weighted consideration to the factors that affect the safety of the child, when issuing a custody order that is in the best interest of the child.

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§ 5329. Consideration of criminal conviction.

(a) Offenses.--Where a party seeks any form of custody, the court shall consider whether that party or member of that party's household has been convicted of or has pleaded guilty or no contest to any of the offenses in this section or an offense in another jurisdiction substantially equivalent to any of the offenses in this section. The court shall consider such conduct and determine that the party does not pose a threat of harm to the child before making any order of custody to that party when considering the following offenses:

18 Pa.C.S. Ch. 25 (relating to criminal homicide).

18 Pa.C.S. § 2701 (relating to simple assault).

18 Pa.C.S. § 2702 (relating to aggravated assault).

18 Pa.C.S. § 2705 (relating to recklessly endangering another person).

18 Pa.C.S. § 2706 (relating to terroristic threats).

18 Pa.C.S. § 2709.1 (relating to stalking).

18 Pa.C.S. § 2718 (relating to strangulation).

18 Pa.C.S. § 2901 (relating to kidnapping).

18 Pa.C.S. § 2902 (relating to unlawful restraint).

18 Pa.C.S. § 2903 (relating to false imprisonment).

18 Pa.C.S. § 2904 (relating to interference with custody of children).

18 Pa.C.S. § 2910 (relating to luring a child into a motor vehicle or structure).

18 Pa.C.S. Ch. 30 (relating to human trafficking).

18 Pa.C.S. § 3121 (relating to rape).

18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

18 Pa.C.S. § 3124.1 (relating to sexual assault).

18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

18 Pa.C.S. § 3126 (relating to indecent assault).

18 Pa.C.S. § 3127 (relating to indecent exposure).

18 Pa.C.S. § 3129 (relating to sexual intercourse with animal).

18 Pa.C.S. § 3130 (relating to conduct relating to sex offenders).

18 Pa.C.S. § 3301 (relating to arson and related offenses).

18 Pa.C.S. § 4302 (relating to incest).

18 Pa.C.S. § 4303 (relating to concealing death of child).

18 Pa.C.S. § 4304 (relating to endangering welfare of children).

18 Pa.C.S. § 4305 (relating to dealing in infant children).

18 Pa.C.S. § 5533 (relating to cruelty to animal).

18 Pa.C.S. § 5534 (relating to aggravated cruelty to animal).

18 Pa.C.S. § 5543 (relating to animal fighting).

18 Pa.C.S. § 5544 (relating to possession of animal fighting paraphernalia).

18 Pa.C.S. § 5902(b) or (b.1) (relating to prostitution and related offenses).

18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other sexual materials and performances).

18 Pa.C.S. § 6301 (relating to corruption of minors).
18 Pa.C.S. § 6312 (relating to sexual abuse of children).
18 Pa.C.S. § 6318 (relating to unlawful contact with minor).
18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

Section 6114 (relating to contempt for violation of order or agreement).

The former 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance).

75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs).

Section 13(a)(1) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, to the extent that it prohibits the manufacture, sale or delivery, holding, offering for sale or possession of any controlled substance or other drug or device.

(a.1) Determination.--A criminal conviction specified under subsection (a) shall not by itself be determinative in the awarding of custody. The court shall examine the totality of the circumstances when issuing a custody order that is in the best interest of the child.

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§ 5334. Guardian ad litem for child.

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(c) Abuse.--If substantial allegations of abuse [of the child] are made, the court [shall] **may** appoint a guardian ad litem for the child if:

(1) counsel for the child is not appointed under section 5335 (relating to counsel for child); [or] **and**

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

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(f) Education and training.--A court appointing a guardian ad litem under this section shall make reasonable efforts to appoint a guardian ad litem who received evidence-based education and training relating to child abuse, including child sexual abuse, domestic abuse education and the effect of child sexual abuse and domestic abuse on children.

Section 4. Sections 5335(b) and 5339 of Title 23 are amended to read:

§ 5335. Counsel for child.

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(b) Abuse.--Substantial allegations of abuse [of the child] constitute a reasonable basis for appointing counsel for the child.

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§ 5339. Award of counsel fees, costs and expenses.

Under this chapter, a court may award reasonable interim or final counsel fees, costs and expenses to a party if the court finds that the conduct of another party was obdurate, vexatious, repetitive or in bad faith. **This section may not apply if that party engaged the judicial process in good faith to protect the child from harm.**

Section 5. Title 42 is amended by adding a section to read:
§ 1908. **Child abuse and domestic abuse education and training program for judges and court personnel.**

(a) Program.--The Administrative Office of Pennsylvania Courts may develop and implement an ongoing education and training program for judges, magisterial district judges and relevant court personnel, including guardians ad litem, counsel for children, masters and mediators regarding child abuse. The

education and training program shall include all aspects of the maltreatment of children, including all of the following:

- (1) Sexual abuse.
- (2) Physical abuse.
- (3) Psychological and emotional abuse.
- (4) Implicit and explicit bias.
- (5) Trauma and neglect.
- (6) The impact of child abuse and domestic violence on children.

(b) Best practices.--The education and training program under subsection (a) shall include the latest best practices from evidence-based, peer-reviewed research by recognized experts, including Statewide family violence experts, in the types of child abuse specified under subsection (a). The Administrative Office of Pennsylvania Courts shall design the education and training program under subsection (a) to educate and train relevant court personnel on all of the factors listed under 23 Pa.C.S. § 5328(a) (relating to factors to consider when awarding custody) and improve the ability of courts to make appropriate custody decisions that are in the best interest of the child, including education and training regarding the impact of child abuse, domestic abuse and trauma on a victim, specifically a child, and situations when one party attempts to turn a child against another party.

(c) Federal grant funding.--The Administrative Office of Pennsylvania Courts shall design the education and training program under subsection (a) to conform with the requirements for increased Federal grant funding under 34 U.S.C. § 10446(k) (relating to State grants).

Section 6. This act shall take effect in 120 days.

APPROVED--The 15th day of April, A.D. 2024.

JOSH SHAPIRO