

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1693 Session of
1995

INTRODUCED BY D. W. SNYDER, DeLUCA, BUNT, BELARDI, STURLA,
FAIRCHILD, SATHER, GORDNER, DALEY, FICHTER, LUCYK, GEIST,
HERSHEY, BARLEY, DENT, RAYMOND, KENNEY, STISH, SCRIMENTI,
CLYMER, OLASZ, DEMPSEY, TRUE, E. Z. TAYLOR, FARGO, JADLOWIEC,
MICHLOVIC, ITKIN, ROONEY, WOZNIAK, VAN HORNE, TRELLO,
JOSEPHS, ROBINSON, ARMSTRONG, TIGUE, LYNCH, LAUGHLIN,
GIGLIOTTI, L. I. COHEN, RUBLEY, BAKER, BARD, STEELMAN, WALKO,
READSHAW, GRUPPO, B. SMITH, LEVDANSKY, HENNESSEY, MERRY,
STABACK, STERN, McCALL, SEMMEL, HORSEY, SERAFINI, YOUNGBLOOD,
SCHRODER, BROWNE, BELFANTI AND BOSCOLA, JUNE 6, 1995

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 13, 1996

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, PROVIDING FOR SUPPORT OBLIGATIONS OF <—
3 NURTURING PARENTS; further providing for visitation rights
4 and partial custody; and making repeals.

PREAMBLE <—

6 (1) IN ORDER TO PROTECT CHILDREN, TO SUPPORT FAMILIES
7 AND TO PREVENT PARENTS FROM BEING PENALIZED FOR HAVING
8 REMAINED IN THE HOME TO NURTURE CHILDREN, THE GENERAL
9 ASSEMBLY DECLARES AS A MATTER OF PUBLIC POLICY THAT, IN
10 CERTAIN CASES, IT IS NOT APPROPRIATE FOR A PARENT TO BE
11 ASSIGNED AN EARNING CAPACITY WHEN DETERMINING CHILD SUPPORT.

12 (2) BECAUSE PENNSYLVANIA COURTS HAVE DEVELOPED THE
13 NURTURING PARENT DOCTRINE TO RESOLVE DISPUTES BETWEEN PARENTS
14 REGARDING CHILD SUPPORT WHEN ONE PARENT WISHES TO STAY AT

HOME AND NURTURE A CHILD, THUS FORGOING GAINFUL EMPLOYMENT,
AND BECAUSE SUPPORT MATTERS GENERALLY ARE COMPLEX AND EACH
CASE UNIQUE, THE GENERAL ASSEMBLY FURTHER DECLARES THAT THE
PROPER PLACE TO DETERMINE THE ACTUAL ACCOUNT OF SUPPORT OWED
BY EACH PARENT IS THE COURTS.

(3) HOWEVER, PURSUANT TO ITS GRANT OF LEGISLATIVE POWER
UNDER ARTICLE II OF THE CONSTITUTION OF PENNSYLVANIA, THE
GENERAL ASSEMBLY HAS A ROLE TO PLAY IN SUPPORT MATTERS AND
MAY, THROUGH STATUTE, ESTABLISH FACTORS TO BE WEIGHED BY THE
COURTS IN DETERMINING WHETHER TO APPLY THE NURTURING PARENT
DOCTRINE AND TO SPECIFY WHEN THE NURTURING PARENT DOCTRINE
MAY NOT BE APPLIED.

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

~~Section 1. Sections 5301 and 5311 of Title 23 of the~~ <—
~~Pennsylvania Consolidated Statutes are amended to read:~~

SECTION 1. TITLE 23 OF THE PENNSYLVANIA CONSOLIDATED <—
STATUTES IS AMENDED BY ADDING A SECTION TO READ:

§ 4322.1. NURTURING PARENTS.

(A) DOCTRINE.--THE GENERAL ASSEMBLY RECOGNIZES THE NURTURING
PARENT DOCTRINE, UNDER WHICH:

(1) EARNING CAPACITY IS NOT ATTRIBUTED TO A PARENT WHO
FORGOES GAINFUL EMPLOYMENT OUTSIDE THE HOME IN ORDER TO STAY
AT HOME TO CARE FOR A CHILD; AND

(2) THAT PARENT IS EXCUSED FROM ANY SUPPORT OBLIGATION
FOR THE CHILD FOR WHOM CARE IS PROVIDED IN THE HOME.

(B) APPLICATION.--IN AN ACTION FOR SUPPORT OF A CHILD:

(1) A COURT MAY DECLARE A PARENT TO BE THE NURTURING
PARENT OF THE CHILD IF IT FINDS THAT THE PARENT HAS FORGONE
GAINFUL EMPLOYMENT OUTSIDE THE HOME IN ORDER TO CARE FOR THE

1 CHILD. IN MAKING A DETERMINATION UNDER THIS PARAGRAPH, THE
2 COURT SHALL CONSIDER ALL OF THE FOLLOWING:

3 (I) THE AGE AND MATURITY OF THE CHILD TO BE
4 NURTURED.

5 (II) THE AVAILABILITY OF OTHERS WHO MIGHT ASSIST THE
6 PARENT.

7 (III) THE AVAILABILITY OF OTHERS WHO MIGHT ASSIST
8 THE CHILD.

9 (IV) THE ADEQUACY OF AVAILABLE FINANCIAL RESOURCES
10 IF THE PARENT REMAINS AT HOME.

11 (V) THE PARENT'S DESIRE TO STAY AT HOME AND NURTURE
12 THE CHILD.

13 (2) IF THE COURT MAKES A DECLARATION UNDER PARAGRAPH
14 (1), ALL OF THE FOLLOWING APPLY:

15 (I) NO EARNING CAPACITY SHALL BE ATTRIBUTED TO THE
16 NURTURING PARENT.

17 (II) THE NURTURING PARENT SHALL NOT HAVE AN
18 OBLIGATION OF SUPPORT OF THE CHILD.

19 (C) LIMITATION.--THIS SECTION SHALL NOT APPLY TO A CHILD
20 BEING CARED FOR IN THE HOME OF A PARENT IF THE CHILD IS NOT THE
21 CHILD FOR WHOM SUPPORT IS SOUGHT.

22 SECTION 2. SECTIONS 5301, 5311, 5312 AND 5314 OF TITLE 23
23 ARE AMENDED TO READ:

24 § 5301. Declaration of policy.

25 The General Assembly declares that it is the public policy of
26 this Commonwealth, when in the best interest of the child, to
27 assure [a]:

28 (1) A reasonable and continuing contact of the child
29 with both parents after a separation or dissolution of the
30 marriage and the sharing of the rights and responsibilities

of child rearing by both parents [and continuing].

(2) Continuing contact of the child or children with grandparents when [a parent is deceased, divorced or separated] and continuing contact is in the best interest of the child and would not interfere with the parent-child relationship.

§ 5311. [When parent deceased] Grandparents.

[If a parent of an unmarried child is deceased, the parents or grandparents of the deceased parent] ~~(a) General rule.~~

Grandparents and great-grandparents may be granted reasonable [partial custody or] visitation rights[, or both,] to [the] an unmarried child by the court upon a finding that [partial custody or] visitation rights[, or both,] would be in the best interest of the child and would not interfere with the parent-child relationship. [The court shall consider the amount of personal contact between the parents or grandparents of the deceased parent and the child prior to the application.]

~~(b) Adoption. This section shall not apply if the child has been adopted by both a new mother and a new father who were previously unrelated to the child. Any visitation rights granted pursuant to this section prior to the adoption of the child shall be automatically terminated upon such adoption.~~

§ 5312. WHEN [PARENTS'] PARENTS ARE SEPARATED, MARRIAGE IS DISSOLVED OR [PARENTS ARE SEPARATED] PARENT IS DECEASED.

(A) SEPARATION OR DISSOLUTION.--IN ALL PROCEEDINGS FOR DISSOLUTION, SUBSEQUENT TO THE COMMENCEMENT OF THE PROCEEDING AND CONTINUING THEREAFTER OR WHEN PARENTS HAVE BEEN SEPARATED FOR SIX MONTHS OR MORE, THE COURT MAY, UPON APPLICATION OF THE PARENT OR GRANDPARENT OF A PARTY, GRANT REASONABLE PARTIAL

1 CUSTODY OR VISITATION RIGHTS, OR BOTH, TO THE UNMARRIED CHILD IF
2 IT FINDS THAT VISITATION RIGHTS OR PARTIAL CUSTODY, OR BOTH,
3 WOULD BE IN THE BEST INTEREST OF THE CHILD AND WOULD NOT
4 INTERFERE WITH THE PARENT-CHILD RELATIONSHIP. THE COURT SHALL
5 CONSIDER THE AMOUNT OF PERSONAL CONTACT BETWEEN THE PARENTS OR
6 GRANDPARENTS OF THE PARTY AND THE CHILD PRIOR TO THE
7 APPLICATION.

8 (B) DECEASED PARENT.--IF A PARENT OF AN UNMARRIED CHILD IS
9 DECEASED, THE PARENTS OR GRANDPARENTS OF THE DECEASED PARENT MAY
10 BE GRANTED REASONABLE PARTIAL CUSTODY OR VISITATION RIGHTS, OR
11 BOTH, TO THE UNMARRIED CHILD BY THE COURT UPON A FINDING THAT
12 PARTIAL CUSTODY OR VISITATION RIGHTS, OR BOTH, WOULD BE IN THE
13 BEST INTEREST OF THE CHILD AND WOULD NOT INTERFERE WITH THE
14 PARENT-CHILD RELATIONSHIP. THE COURT SHALL CONSIDER THE AMOUNT
15 OF PERSONAL CONTACT BETWEEN THE PARENTS OR GRANDPARENTS OF THE
16 DECEASED PARENT AND THE CHILD PRIOR TO THE APPLICATION.

17 § 5314. EXCEPTION FOR ADOPTED CHILDREN.

18 SECTIONS 5311 (RELATING TO [WHEN PARENT DECEASED]
19 GRANDPARENTS), 5312 (RELATING TO WHEN [PARENTS'] PARENTS ARE
20 SEPARATED, MARRIAGE IS DISSOLVED OR [PARENTS ARE SEPARATED]
21 PARENT IS DECEASED) AND 5313 (RELATING TO WHEN CHILD HAS RESIDED
22 WITH GRANDPARENTS) SHALL NOT APPLY IF THE CHILD HAS BEEN ADOPTED
23 BY [A PERSON OTHER THAN A STEPPARENT OR GRANDPARENT] BOTH A NEW
24 MOTHER AND A NEW FATHER WHO WERE PREVIOUSLY UNRELATED TO THE
25 CHILD. ANY VISITATION RIGHTS GRANTED PURSUANT TO THIS SECTION
26 PRIOR TO THE ADOPTION OF THE CHILD SHALL BE AUTOMATICALLY
27 TERMINATED UPON SUCH ADOPTION.

28 ~~Section 2. Sections 5312, 5313 and 5314 of Title 23 are~~ <—
29 ~~repealed.~~

30 Section 3. This act shall take effect in 60 days.