

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 74

Session of  
2007

INTRODUCED BY GREENLEAF, TARTAGLIONE, BOSCOLA, STOUT, RAFFERTY,  
WONDERLING, WOZNIAK, RHOADES, ORIE, O'PAKE AND BROWNE,  
FEBRUARY 12, 2007

REFERRED TO JUDICIARY, FEBRUARY 12, 2007

AN ACT

1 Amending Titles 23 (Domestic Relations) and 42 (Judiciary and  
2 Judicial Procedure) of the Pennsylvania Consolidated  
3 Statutes, further providing for contempt for noncompliance  
4 with visitation or partial custody order and for child  
5 custody; and making conforming amendments.

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

8 Section 1. Section 4346, Chapter 53 and Subchapter A  
9 headings and sections 5301, 5302, 5303, 5304, 5305, 5306, 5307,  
10 5308, 5309, 5310, 5311, 5312, 5313 and 5314 of Title 23 of the  
11 Pennsylvania Consolidated Statutes are amended to read:

12 [§ 4346. Contempt for noncompliance with visitation or partial  
13 custody order.

14 (a) General rule.--A party who willfully fails to comply  
15 with any visitation or partial custody order may, as prescribed  
16 by general rule, be adjudged in contempt. Contempt shall be  
17 punishable by any one or more of the following:

18 (1) Imprisonment for a period not to exceed six months.

19 (2) A fine not to exceed \$500.

1 (3) Probation for a period not to exceed six months.

2 (4) An order for nonrenewal, suspension or denial of  
3 operating privilege pursuant to section 4355 (relating to  
4 denial or suspension of licenses).

5 (b) Condition for release.--An order committing a person to  
6 jail under this section shall specify the condition which, when  
7 fulfilled, will result in the release of the obligor.

8 CHAPTER 53

9 CUSTODY

10 SUBCHAPTER A

11 GENERAL PROVISIONS

12 § 5301. Declaration of policy.

13 The General Assembly declares that it is the public policy of  
14 this Commonwealth, when in the best interest of the child, to  
15 assure a reasonable and continuing contact of the child with  
16 both parents after a separation or dissolution of the marriage  
17 and the sharing of the rights and responsibilities of child  
18 rearing by both parents and continuing contact of the child or  
19 children with grandparents when a parent is deceased, divorced  
20 or separated.

21 § 5302. Definitions.

22 The following words and phrases when used in this subchapter  
23 shall have the meanings given to them in this section unless the  
24 context clearly indicates otherwise:

25 "Child." Any unemancipated person under 18 years of age.

26 "Legal custody." The legal right to make major decisions  
27 affecting the best interest of a minor child, including, but not  
28 limited to, medical, religious and educational decisions.

29 "Partial custody." The right to take possession of a child  
30 away from the custodial parent for a certain period of time.

1 "Physical custody." The actual physical possession and  
2 control of a child.

3 "Shared custody." An order awarding shared legal or shared  
4 physical custody, or both, of a child in such a way as to assure  
5 the child of frequent and continuing contact with and physical  
6 access to both parents.

7 "Visitation." The right to visit a child. The term does not  
8 include the right to remove a child from the custodial parent's  
9 control.

10 § 5303. Award of custody, partial custody or visitation.

11 (a) General rule.--

12 (1) In making an order for custody or partial custody,  
13 the court shall consider the preference of the child as well  
14 as any other factor which legitimately impacts the child's  
15 physical, intellectual and emotional well-being.

16 (2) In making an order for custody, partial custody or  
17 visitation to either parent, the court shall consider, among  
18 other factors, which parent is more likely to encourage,  
19 permit and allow frequent and continuing contact and physical  
20 access between the noncustodial parent and the child.

21 (3) The court shall consider each parent and adult  
22 household member's present and past violent or abusive  
23 conduct which may include, but is not limited to, abusive  
24 conduct as defined under the act of October 7, 1976

25 (P.L.1090, No.218), known as the Protection From Abuse Act.

26 (b) Consideration of criminal conviction.--If a parent has  
27 been convicted of or has pleaded guilty or no contest to an  
28 offense as set forth below, the court shall consider such  
29 criminal conduct and shall determine that the parent does not  
30 pose a threat of harm to the child before making an order of

1 custody, partial custody or visitation to that parent:

2 (1) 18 Pa.C.S. Ch. 25 (relating to criminal homicide);

3 (2) 18 Pa.C.S. § 2901 (relating to kidnapping);

4 (3) 18 Pa.C.S. § 2902 (relating to unlawful restraint);

5 (4) 18 Pa.C.S. § 3121 (relating to rape);

6 (5) 18 Pa.C.S. § 3122.1 (relating to statutory sexual  
7 assault);

8 (6) 18 Pa.C.S. § 3123 (relating to involuntary deviate  
9 sexual intercourse);

10 (7) 18 Pa.C.S. § 3124.1 (relating to sexual assault);

11 (8) 18 Pa.C.S. § 3125 (relating to aggravated indecent  
12 assault);

13 (9) 18 Pa.C.S. § 3126 (relating to indecent assault);

14 (10) 18 Pa.C.S. § 3127 (relating to indecent exposure);

15 (11) 18 Pa.C.S. § 4302 (relating to incest);

16 (12) 18 Pa.C.S. § 4304 (relating to endangering welfare  
17 of children);

18 (13) 18 Pa.C.S. § 5902(b) (relating to prostitution and  
19 related offenses); or

20 (14) 18 Pa.C.S. § 6312 (relating to sexual abuse of  
21 children).

22 (b.1) Consideration of criminal charge.--

23 (1) A parent who has obtained information under 42  
24 Pa.C.S. § 1904 (relating to availability of criminal charge  
25 information in child custody proceedings) of the charge filed  
26 against the other parent for an offense listed in paragraph  
27 (2) may move for a temporary custody order or to modify an  
28 existing custody, partial custody or visitation order. The  
29 temporary custody or modification hearing shall be scheduled  
30 expeditiously.

1           (2) In evaluating any request for temporary custody or  
2       modification of a custody, partial custody or visitation  
3       order, the court shall consider whether the parent who is or  
4       has been charged with an offense listed below poses a risk of  
5       harm to the child:

6           (i) 18 Pa.C.S. Ch. 25;

7           (ii) 18 Pa.C.S. § 2702 (relating to aggravated  
8       assault);

9           (iii) 18 Pa.C.S. § 2706 (relating to terroristic  
10       threats);

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

12          (v) 18 Pa.C.S. § 2901;

13          (vi) 18 Pa.C.S. § 2902;

14          (vii) 18 Pa.C.S. § 2903 (relating to false  
15       imprisonment);

16          (viii) 18 Pa.C.S. § 3121;

17          (ix) 18 Pa.C.S. § 3122.1;

18          (x) 18 Pa.C.S. § 3123;

19          (xi) 18 Pa.C.S. § 3124.1;

20          (xii) 18 Pa.C.S. § 3125;

21          (xiii) 18 Pa.C.S. § 3126;

22          (xiv) 18 Pa.C.S. § 3127;

23          (xv) 18 Pa.C.S. § 3301 (relating to arson and  
24       related offenses);

25          (xvi) 18 Pa.C.S. § 4302;

26          (xvii) 18 Pa.C.S. § 4304;

27          (xviii) 18 Pa.C.S. § 6312; and

28          (xix) 23 Pa.C.S. § 6114 (relating to contempt for  
29       violation of order or agreement).

30       (3) Failure to apply for information under 42 Pa.C.S. §

1 1904 or to act under this subsection shall not prejudice any  
2 parent in a custody or visitation proceeding.

3 (b.2) Parent convicted of murder.--No court shall award  
4 custody, partial custody or visitation to a parent who has been  
5 convicted of murder under 18 Pa.C.S. § 2502(a) (relating to  
6 murder of the first degree) of the other parent of the child who  
7 is the subject of the order, unless the child is of suitable age  
8 and consents to the order.

9 (c) Counseling.--In making a determination to award custody,  
10 partial custody or visitation pursuant to subsection (b), the  
11 court shall appoint a qualified professional to provide  
12 counseling to an offending parent described in subsection (b)  
13 and shall take testimony from that professional regarding the  
14 provision of such counseling prior to issuing any order of  
15 custody, partial custody or visitation. Counseling, required in  
16 accordance with this subsection, shall include a program of  
17 treatment or individual therapy designed to rehabilitate a  
18 parent which addresses, but is not limited to, issues regarding  
19 physical and sexual abuse, domestic violence, the psychology of  
20 the offender and the effects of abuse on the victim. If the  
21 court awards custody, partial custody or visitation to an  
22 offending parent described in subsection (b), the court may  
23 require subsequent periodic counseling and reports on the  
24 rehabilitation of the offending parent and the well-being of the  
25 child following an order relating to custody, partial custody or  
26 visitation. If, upon review of a subsequent report or reports,  
27 the court determines that the offending parent poses a threat of  
28 harm to the child, the court may schedule a hearing and modify  
29 the order of custody or visitation to protect the well-being of  
30 the child.

1 (d) Sole custody.--The court shall award sole custody when  
2 it is in the best interest of the child.

3 § 5304. Award of shared custody.

4 An order for shared custody may be awarded by the court when  
5 it is in the best interest of the child:

6 (1) upon application of one or both parents;

7 (2) when the parties have agreed to an award of shared  
8 custody; or

9 (3) in the discretion of the court.

10 § 5305. Counseling.

11 (a) General rule.--The court may require the parents to  
12 attend counseling sessions and may consider the recommendations  
13 of the counselors prior to awarding sole or shared custody.  
14 These counseling sessions may include, but shall not be limited  
15 to, discussions of the responsibilities and decisionmaking  
16 arrangements involved in both sole and shared custody and the  
17 suitability of each arrangement to the capabilities of each  
18 parent or both parents.

19 (b) Temporary custody.--The court may temporarily award  
20 custody to either parent or both parents pending resolution of  
21 any counseling.

22 (c) Report.--The court may require the counselor to submit a  
23 report if the court desires and within such reasonable time as  
24 the court determines.

25 § 5306. Plan for implementation of custody order.

26 The court, in its discretion, may require the parents to  
27 submit to the court a plan for the implementation of any custody  
28 order made under this subchapter. Upon the request of either  
29 parent or the court, the domestic relations section of the court  
30 or other party or agency approved by the court shall assist in

1 the formulation and implementation of the plan.

2 § 5307. Denial of custody under agreement or plan.

3 When the court declines to enter an order awarding custody  
4 either as agreed to by the parents or under the plan developed  
5 by the parents, the court shall state its reasons for denial on  
6 the record.

7 § 5308. Removal of party or child from jurisdiction.

8 If either party intends to or does remove himself or the  
9 child from this Commonwealth after a custody order has been  
10 made, the court, on its own motion or upon motion of either  
11 party, may review the existing custody order.

12 § 5309. Access to records and information.

13 (a) General rule.--Except as provided in subsections (b) and  
14 (c), each parent shall be provided access to all the medical,  
15 dental, religious or school records of the child, the residence  
16 address of the child and of the other parent and any other  
17 information that the court deems necessary.

18 (b) Court determination not to release information.--The  
19 court, in its discretion, may determine not to release any part  
20 or parts of the information in this section but in doing so must  
21 state its reason for denial on the record.

22 (c) Nondisclosure of confidential information.--The court  
23 shall not order that the address of a shelter for battered  
24 spouses and their dependent children or otherwise confidential  
25 information of a domestic violence counselor be disclosed to the  
26 defendant or his counsel or any party to the proceedings.

27 § 5310. Modification of existing custody orders.

28 Any order for the custody of the child of a marriage entered  
29 by a court in this Commonwealth or any state may, subject to the  
30 jurisdictional requirements set forth in Chapter 54 (relating to



1 uniform child custody jurisdiction and enforcement), be modified  
2 at any time to an order of shared custody in accordance with  
3 this subchapter.

4 § 5311. When parent deceased.

5 If a parent of an unmarried child is deceased, the parents or  
6 grandparents of the deceased parent may be granted reasonable  
7 partial custody or visitation rights, or both, to the unmarried  
8 child by the court upon a finding that partial custody or  
9 visitation rights, or both, would be in the best interest of the  
10 child and would not interfere with the parent-child  
11 relationship. The court shall consider the amount of personal  
12 contact between the parents or grandparents of the deceased  
13 parent and the child prior to the application.

14 § 5312. When parents' marriage is dissolved or parents are  
15 separated.

16 In all proceedings for dissolution, subsequent to the  
17 commencement of the proceeding and continuing thereafter or when  
18 parents have been separated for six months or more, the court  
19 may, upon application of the parent or grandparent of a party,  
20 grant reasonable partial custody or visitation rights, or both,  
21 to the unmarried child if it finds that visitation rights or  
22 partial custody, or both, would be in the best interest of the  
23 child and would not interfere with the parent-child  
24 relationship. The court shall consider the amount of personal  
25 contact between the parents or grandparents of the party and the  
26 child prior to the application.

27 § 5313. When grandparents may petition.

28 (a) Partial custody and visitation.--If an unmarried child  
29 has resided with his grandparents or great-grandparents for a  
30 period of 12 months or more and is subsequently removed from the

1 home by his parents, the grandparents or great-grandparents may  
2 petition the court for an order granting them reasonable partial  
3 custody or visitation rights, or both, to the child. The court  
4 shall grant the petition if it finds that visitation rights  
5 would be in the best interest of the child and would not  
6 interfere with the parent-child relationship.

7 (b) Physical and legal custody.--A grandparent has standing  
8 to bring a petition for physical and legal custody of a  
9 grandchild. If it is in the best interest of the child not to be  
10 in the custody of either parent and if it is in the best  
11 interest of the child to be in the custody of the grandparent,  
12 the court may award physical and legal custody to the  
13 grandparent. This subsection applies to a grandparent:

14 (1) who has genuine care and concern for the child;

15 (2) whose relationship with the child began with the  
16 consent of a parent of the child or pursuant to an order of  
17 court; and

18 (3) who for 12 months has assumed the role and  
19 responsibilities of the child's parent, providing for the  
20 physical, emotional and social needs of the child, or who  
21 assumes the responsibility for a child who has been  
22 determined to be a dependent child pursuant to 42 Pa.C.S. Ch.  
23 63 (relating to juvenile matters) or who assumes or deems it  
24 necessary to assume responsibility for a child who is  
25 substantially at risk due to parental abuse, neglect, drug or  
26 alcohol abuse or mental illness. The court may issue a  
27 temporary order pursuant to this section.

28 § 5314. Exception for adopted children.

29 Sections 5311 (relating to when parent deceased), 5312  
30 (relating to when parents' marriage is dissolved or parents are

1 separated) and 5313 (relating to when child has resided with  
2 grandparents) shall not apply if the child has been adopted by a  
3 person other than a stepparent or grandparent. Any visitation  
4 rights granted pursuant to this section prior to the adoption of  
5 the child shall be automatically terminated upon such adoption.]

6 Section 2. Section 5315 of Title 23, added November 29, 2006  
7 (P.L. , No.175), is amended to read:

8 [§ 5315. Court-appointed child custody health care or  
9 behavioral health practitioners.

10 No party to a child custody matter in which the court has  
11 appointed a licensed health care or behavioral health  
12 practitioner to assist the court by conducting an examination or  
13 evaluation of the parties involved or making a recommendation  
14 concerning a child custody agreement or order may be permitted  
15 to file a complaint against the practitioner with the  
16 practitioner's State licensing board prior to the final  
17 agreement or order being issued and for 60 days thereafter. As  
18 used in this section, "licensed health care or behavioral health  
19 practitioner" means a person who is licensed, certified,  
20 accredited or otherwise regulated by the Commonwealth to provide  
21 health care or behavioral health services.]

22 Section 3. Title 23 is amended by adding a chapter to read:

23 CHAPTER 53  
24 CHILD CUSTODY

25 Sec.

26 5321. Scope.

27 5321.1. Declaration of policy.

28 5322. Definitions.

29 5323. Award of custody or visitation.

30 5324. Standing for any form of physical custody, legal

1           custody or visitation.  
2   5325. Standing for partial physical custody and visitation.  
3   5326. Effect of adoption.  
4   5327. Presumption in cases concerning primary physical  
5       custody.  
6   5328. Factors to consider when awarding custody.  
7   5329. Consideration of criminal conviction.  
8   5330. Consideration of criminal charge.  
9   5331. Parenting plan.  
10   5332. Informational programs.  
11   5333. Counseling as part of order.  
12   5334. Guardian ad litem for child.  
13   5335. Counsel for child.  
14   5336. Access to records and information.  
15   5337. Relocation.  
16   5338. Modification of existing order.  
17   5339. Award of counsel fees, costs and expenses.  
18   5340. Court-appointed child custody health care or behavioral  
19       health practitioners.

20   § 5321. Scope.

21       This chapter applies to disputes relating to child custody  
22   and visitation matters.

23   § 5321.1. Declaration of policy.

24       The General Assembly declares that it is the public policy of  
25   this Commonwealth, when in the best interest of the child, to  
26   assure a reasonable and continuing contact of the child with  
27   both parents after a separation or dissolution of the marriage  
28   and the sharing of the rights and responsibilities of  
29   childrearing by both parents and continuing contact of the child  
30   or children with grandparents when a parent is deceased,

1 divorced or separated.

2 § 5322. Definitions.

3 The following words and phrases when used in this chapter  
4 shall have the meanings given to them in this section unless the  
5 context clearly indicates otherwise:

6 "Abuse." As defined in section 6102 (relating to  
7 definitions).

8 "Adult." An individual 18 years of age or older.

9 "Agency." Any organization, society, institution or other  
10 entity, including the county children and youth social service  
11 agency or court facility, which provides for the care of the  
12 child.

13 "Child." An unemancipated individual under 18 years of age.

14 "Legal custody." The right to make major decisions on behalf  
15 of the child, including, but not limited to, medical, religious  
16 and educational decisions.

17 "Parental duties." Includes meeting the physical, emotional  
18 and social needs of the child.

19 "Partial physical custody." The right to assume physical  
20 custody of the child for less than a majority of the time.

21 "Physical custody." The actual physical possession and  
22 control of a child.

23 "Primary physical custody." The right to assume physical  
24 custody of the child for the majority of time.

25 "Relocation." A change in a residence of the child which  
26 significantly impairs the ability of a nonrelocating party to  
27 exercise custodial rights.

28 "Shared legal custody." The right of more than one  
29 individual to legal custody of the child.

30 "Shared physical custody." The right of more than one

individual to assume physical custody of the child, each having approximately the same amount of physical custodial time with the child.

"Sole legal custody." The right of one individual to exclusive legal custody of the child.

"Sole physical custody." The right of one individual to exclusive physical custody of the child.

"Supervised visitation." Visitation in which an agency or an adult designated by the court or agreed upon by the parties monitors the interaction between the child and the individual with visitation rights.

"Visitation." The right to spend time with the child but not the right to remove the child from the care or control of a custodial party.

§ 5323. Award of custody or visitation.

(a) Types of award.--After considering the factors set forth in section 5328 (relating to factors to consider when awarding custody), the court may award any of the following types of custody and visitation if it is in the best interest of the child:

- (1) Sole legal custody.
- (2) Shared legal custody.
- (3) Sole physical custody.
- (4) Shared physical custody.
- (5) Primary physical custody.
- (6) Partial physical custody.
- (7) Visitation.
- (8) Supervised visitation.

(b) Interim award.--The court may issue an interim award of custody or visitation to a party who has standing under section

5324 (relating to standing for any form of physical custody,  
legal custody or visitation) or 5325 (relating to standing for  
partial physical custody and visitation), in the manner  
prescribed by the Pennsylvania Rules of Civil Procedure  
governing special relief in custody and visitation matters.

(c) Notice.--Any custody or visitation order shall include  
notice of a party's obligations under section 5337 (relating to  
relocation).

(d) Reasons for award.--The court shall state the reasons  
for its decision in the custody order. The reasons may be stated  
in narrative form.

(e) Safety conditions.--After considering the factors under  
section 5328(a)(6), if the court finds that there is an ongoing  
risk of harm to the child or an abused party and awards any form  
of custody or visitation 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 safety conditions designed to  
protect the child or the abused party.

(f) Enforcement.--In awarding custody or visitation, the  
court shall specify the terms and conditions of the award in  
sufficient detail to enable a party to enforce the court order  
through law enforcement authorities.

(g) Contempt for noncompliance with any custody or  
visitation order.--

(1) A party who willfully fails to comply with any  
custody or visitation order may, as prescribed by general  
rule, be adjudged in contempt. Contempt shall be punishable  
by any one or more of the following:

(i) Imprisonment for a period of not more than six  
months.

1           (ii) A fine of not more than \$500.

2           (iii) Probation for a period of not more than six  
3 months.

4           (iv) An order for nonrenewal, suspension or denial  
5 of operating privilege pursuant to section 4355 (relating  
6 to denial or suspension of licenses).

7           (v) Counsel fees and costs.

8           (2) An order committing an individual to jail under this  
9 section shall specify the condition which, when fulfilled,  
10 will result in the release of that individual.

11          (h) Parties in same residence.--Parties living separate and  
12 apart in the same residence may seek relief under this chapter,  
13 but any custody or visitation order made under such a  
14 circumstance shall be effective only upon:

15           (1) one party physically vacating the residence; or

16           (2) an order awarding one party exclusive possession of  
17 the residence.

18 § 5324. Standing for any form of physical custody, legal  
19 custody or visitation.

20          The following individuals may file an action under this  
21 chapter for any form of physical custody, legal custody or  
22 visitation:

23           (1) A parent of the child.

24           (2) A person who stands in loco parentis to the child.

25           (3) A grandparent of the child who is not in loco  
26 parentis to the child:

27           (i) whose relationship with the child began either  
28 with the consent of a parent of the child or pursuant to  
29 a court order;

30           (ii) who assumes or is willing to assume



responsibility for the child; and

(iii) when one of the following conditions is met:

(A) the child has been determined to be a dependent child pursuant to 42 Pa.C.S. Ch. 63 (relating to juvenile matters);

(B) the child is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or incapacity; or

(C) the child has for a period of at least 12 consecutive months resided with the grandparent, excluding brief temporary absences of the child from the home, and is removed from the home by the parents, in which case the action must be filed within six months after the removal of the child from the home.

§ 5325. Standing for partial physical custody and visitation.

In addition to situations set forth in section 5324 (relating to standing for any form of physical custody, legal custody or visitation), grandparents and great-grandparents may file an action under this chapter for partial physical custody or visitation in the following situations:

(1) where the parent of the child is deceased, a parent or grandparent of the deceased parent may file an action under this section;

(2) where the parents of the child have been separated for a period of at least six months or have commenced and continued a proceeding to dissolve their marriage; or

(3) when the child has for a period of at least 12 consecutive months resided with the grandparent or great-grandparent, excluding brief temporary absences of the child

1 from the home, and is removed from the home by the parents,  
2 an action must be filed within six months after the removal  
3 of the child from the home.

4 § 5326. Effect of adoption.

5 Any rights to seek physical custody, legal custody or  
6 visitation rights and any custody or visitation rights that have  
7 been granted under section 5324 (relating to standing for any  
8 form of physical custody, legal custody or visitation) or 5325  
9 (relating to standing for partial physical custody and  
10 visitation) to a grandparent or great-grandparent prior to the  
11 adoption of the child by an individual other than a stepparent,  
12 grandparent or great-grandparent shall be automatically  
13 terminated upon such adoption.

14 § 5327. Presumption in cases concerning primary physical  
15 custody.

16 (a) Between parents.--In any action regarding the custody of  
17 the child between the parents of the child, there shall be no  
18 presumption that custody should be awarded to a particular  
19 parent.

20 (b) Between a parent and third party.--In any action  
21 regarding the custody of the child between a parent of the child  
22 and a nonparent, there shall be a presumption that custody shall  
23 be awarded to the parent. The presumption in favor of the parent  
24 may be rebutted by clear and convincing evidence.

25 (c) Between third parties.--In any action regarding the  
26 custody of the child between a nonparent and another nonparent,  
27 there shall be no presumption that custody should be awarded to  
28 a particular party.

29 § 5328. Factors to consider when awarding custody.

30 (a) Factors.--In ordering any form of custody or visitation,

1 the court shall determine the best interest of the child by  
2 considering all relevant factors, including the following:

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

6 (2) The parental duties performed by each party on  
7 behalf of the child.

8 (3) The need for stability and continuity in the child's  
9 education, family life and community life.

10 (4) The availability of extended family.

11 (5) The child's sibling relationships.

12 (6) The present and past abuse committed by a party or  
13 member of the party's household and whether there is a  
14 continued risk of harm to the child or an abused party.

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

17 (8) The attempts of a parent to turn the child against  
18 the other parent.

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

22 (10) Which party is more likely to attend to the daily  
23 physical, emotional, developmental, educational and special  
24 needs of the child.

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

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

28 (13) The level of conflict between the parties and the  
29 willingness and ability of the parties to cooperate with one  
30 another. A party's effort to protect a child from abuse by

1 another party is not evidence of unwillingness or inability  
2 to cooperate with that party.

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

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

7 (16) Any other relevant factor.

8 (b) Grandparents and great-grandparents.--

9 (1) In ordering partial physical custody or visitation  
10 to a party who has standing under section 5325(1) or (2)  
11 (relating to standing for partial physical custody and  
12 visitation), the court shall consider the following:

13 (i) the amount of personal contact between the child  
14 and the party prior to the filing of the action;

15 (ii) whether the award interferes with any parent-  
16 child relationship; and

17 (iii) whether the award is in the best interest of  
18 the child.

19 (2) In ordering partial physical custody or visitation  
20 to a parent's parent or grandparent who has standing under  
21 section 5325(3), the court shall consider whether the award:

22 (i) interferes with any parent-child relationship;  
23 and

24 (ii) is in the best interest of the child.

25 § 5329. Consideration of criminal conviction.

26 (a) Offenses.--Where a party seeks any form of custody or  
27 visitation, the court shall consider whether that party or  
28 member of that party's household has been convicted of or has  
29 pleaded guilty or no contest to any of the following offenses or  
30 an offense in another jurisdiction equivalent to any of the

following offenses:

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

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

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

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

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. § 2910 (relating to luring a child into a  
motor vehicle or structure).

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. § 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

1 children).

2 18 Pa.C.S. § 5902(b) (relating to prostitution and  
3 related offenses).

4 18 Pa.C.S. § 5903(c) or (d) (relating to obscene and  
5 other sexual materials and performances).

6 18 Pa.C.S. § 6301 (relating to corruption of minors).

7 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

8 18 Pa.C.S. § 6318 (relating to unlawful contact with  
9 minor).

10 18 Pa.C.S. § 6320 (relating to sexual exploitation of  
11 children).

12 23 Pa.C.S. § 6114 (relating to contempt for violation of  
13 order or agreement).

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

16 75 Pa.C.S. Ch. 38 (relating to driving after imbibing  
17 alcohol or utilizing drugs).

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

24 (b) Parent convicted of murder.--No court shall award  
25 custody, partial custody or visitation to a parent who has been  
26 convicted of murder under 18 Pa.C.S. § 2502(a) (relating to  
27 murder) of the other parent of the child who is the subject of  
28 the order unless the child is of suitable age and consents to  
29 the order.

30 (c) Initial evaluation.--The court shall provide for an

1 evaluation to determine whether:

2 (1) the party or household member who committed an  
3 offense under subsection (a) poses a threat to the child; and

4 (2) counseling is necessary for that party or household  
5 member.

6 (d) Counseling.--

7 (1) Where the court determines under subsection (c) that  
8 counseling is necessary, it shall appoint a qualified  
9 professional specializing in treatment relating to the  
10 particular offense to provide counseling to the offending  
11 individual.

12 (2) Counseling may include a program of treatment or  
13 individual therapy designed to rehabilitate the offending  
14 individual which addresses, but is not limited to, issues  
15 regarding physical and sexual abuse, the psychology of the  
16 offender and the effects of the offense on the victim.

17 (e) Subsequent evaluation.--

18 (1) At any time during or subsequent to the counseling  
19 under subsection (d), the court may require another  
20 evaluation to determine whether further counseling is  
21 necessary.

22 (2) If the court awards custody or visitation to a party  
23 who committed an offense under subsection (a) or who shares a  
24 household with an individual who committed an offense under  
25 subsection (a), the court may require subsequent evaluations  
26 on the rehabilitation of the offending individual and the  
27 well-being of the child subsequent to the order. If upon  
28 review of a subsequent evaluation the court determines that  
29 the offending individual poses a threat of physical,  
30 emotional or psychological harm to the child, the court may

1 schedule a hearing to modify the custody or visitation order.

2 (f) Costs.--The court may order a party to pay all or part  
3 of the costs of the counseling and evaluations under this  
4 section.

5 § 5330. Consideration of criminal charge.

6 (a) Expedited hearing.--A party who has obtained information  
7 under 42 Pa.C.S. § 1904 (relating to availability of criminal  
8 charge information in child custody proceedings) or otherwise  
9 about a charge filed against the other party for an offense  
10 listed under section 5329(a) (relating to consideration of  
11 criminal conviction) may move for a temporary custody or  
12 visitation order or modification of an existing custody or  
13 visitation order. The court shall hold the hearing under this  
14 subsection in an expeditious manner.

15 (b) Risk of harm.--In evaluating any request under  
16 subsection (a), the court shall consider whether the party who  
17 is or has been charged with an offense set forth in section  
18 5329(a) poses a risk of physical, emotional or psychological  
19 harm to the child.

20 (c) No prejudice.--Failure to either apply for information  
21 under 42 Pa.C.S. § 1904 or act under this section shall not  
22 prejudice any party in a custody or visitation proceeding.

23 § 5331. Parenting plan.

24 (a) Purpose.--In a contested custody proceeding, the court  
25 shall require the parties to submit parenting plans for the care  
26 and custody of the child to aid the court in resolving the  
27 custody dispute. A parenting plan and the position of a party as  
28 set forth in that parenting plan shall not be admissible as  
29 evidence by another party.

30 (b) Contents.--A parenting plan shall include the following:



1           (1) The schedule for personal care and control of the  
2           child, including parenting time, holidays and vacations.

3           (2) The education and religious involvement, if any, of  
4           the child.

5           (3) The health care of the child.

6           (4) Child-care arrangements.

7           (5) Transportation arrangements.

8           (6) A procedure by which proposed changes, disputes and  
9           alleged breaches of the custody order may be adjudicated or  
10          otherwise resolved through mediation, arbitration or other  
11          means.

12          (7) Any matter specified by the court.

13          (8) Any other matter that serves the best interest of  
14          the child.

15   § 5332.   Informational programs.

16          (a) Attendance.--The court may direct the parties to attend  
17          informational programs concerning parental duties.

18          (b) Process not delayed.--Subsequent proceedings and the  
19          entry of any order or decree shall not be delayed because of the  
20          lack of participation in any informational program by one of the  
21          parties.

22          (c) Costs.--The court may order a party to pay all or part  
23          of the costs of the informational programs under this section.

24   § 5333.   Counseling as part of order.

25          (a) Attendance.--The court may, as part of a custody or  
26          visitation order, require the parties to attend counseling  
27          sessions.

28          (b) Abuse.--In situations involving abuse, the court may  
29          order individual counseling for the abuser but may not order the  
30          parties to attend joint counseling.

1     (c) Verification.--Each party's participation in the  
2     counseling sessions shall be verified by the counselor.

3     (d) Costs.--The court may order a party to pay all or part  
4     of the costs of the counseling sessions under this section.

5     § 5334. Guardian ad litem for child.

6     (a) Appointment.--The court may appoint a guardian ad litem  
7     for the child. The court shall specify the terms of the  
8     appointment, including the role, duties and scope of authority  
9     of the guardian ad litem.

10    (b) Investigation and report.--The guardian ad litem shall  
11    investigate and report to the court information relevant to the  
12    custody or visitation proceeding.

13    (c) Abuse.--If substantial allegations of abuse of the child  
14    are made, the court shall appoint a guardian ad litem for the  
15    child if:

16        (1) counsel for the child is not appointed under section  
17        5335 (relating to counsel for child); or

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

20    (d) Subject to examination.--A guardian ad litem who submits  
21    a report or makes a recommendation to the court shall be subject  
22    to examination by the parties.

23    (e) Costs.--The court may order a party to pay all or part  
24    of the costs of appointing a guardian ad litem under this  
25    section.

26    § 5335. Counsel for child.

27    (a) Appointment.--The court may appoint counsel to represent  
28    the child if the court determines that the appointment will  
29    assist in resolving the issues in the custody or visitation  
30    proceeding.

1     (b) Abuse.--Substantial allegations of abuse of the child  
2     constitute a reasonable basis for appointing counsel for the  
3     child.

4     (c) Not subject to examination.--Counsel appointed by the  
5     court for the child shall not be subject to examination unless  
6     such counsel testifies in the matter.

7     (d) Costs.--The court may order a party to pay all or part  
8     of the costs of appointing counsel for the child under this  
9     section.

10    § 5336. Access to records and information.

11    (a) General rule.--Except as provided in subsections (b) and  
12    (c):

13         (1) A party granted sole or shared legal custody under  
14         section 5323 (relating to award of custody or visitation)  
15         shall be provided access to:

16             (i) the medical, dental, religious and school  
17             records of the child;

18             (ii) the address of the child and any other party;  
19             and

20             (iii) any other information that the court deems  
21             necessary or proper.

22         (2) Upon request, a parent, party or entity possessing  
23         any information set forth in paragraph (1) shall provide it  
24         to any party granted sole or shared legal custody.

25    (b) Nondisclosure of confidential information.--The court  
26    shall not order the disclosure of any of the following  
27    information to any parent or party granted custody or  
28    visitation:

29         (1) The address of a victim of abuse.

30         (2) Confidential information from an abuse counselor or

1 shelter.

2 (3) Information protected under Chapter 67 (relating to  
3 domestic and sexual violence victim address confidentiality).

4 (4) Information independently protected from disclosure  
5 by the child's right to confidentiality under the act of July  
6 9, 1976 (P.L.817, No.143), known as the Mental Health  
7 Procedures Act, or any other statute.

8 (c) Other information.--The court may determine not to  
9 release information set forth in subsection (a), in which case  
10 it shall state the reason for its denial on the record.

11 § 5337. Relocation.

12 (a) Applicability.--This section applies to any proposed  
13 relocation.

14 (b) General rule.--No relocation shall occur unless:

15 (1) every individual who has custody or visitation  
16 rights to the child consents to the proposed relocation; or

17 (2) the court approves the proposed relocation.

18 (c) Notice.--

19 (1) The party proposing the relocation shall notify  
20 every other individual who has custody or visitation rights  
21 to the child.

22 (2) Reasonable notice shall be given no later than:

23 (i) the 60th day before the date of the proposed  
24 relocation; or

25 (ii) the 10th day after the date that the individual  
26 knows of the relocation, if:

27 (A) the individual did not know and could not  
28 reasonably have known of the relocation in sufficient  
29 time to comply with the 60-day notice; and

30 (B) it is not reasonably possible to delay the

1           date of relocation so as to comply with the 60-day  
2           notice.

3           (3) Except as provided by section 5336 (relating to  
4           access to records and information), the following  
5           information, if available, must be included with the notice  
6           of the proposed relocation:

7           (i) The address of the intended new residence.

8           (ii) The mailing address, if not the same as the  
9           address of the intended new residence.

10          (iii) The home telephone number of the intended new  
11          residence.

12          (iv) The name of the new school district and school.

13          (v) The date of the proposed relocation.

14          (vi) The reasons for the proposed relocation.

15          (vii) A proposal for a revised custody or visitation  
16          schedule.

17          (viii) Any other information which the party  
18          proposing the relocation deems appropriate.

19          (ix) A warning to the nonrelocating party that if  
20          the nonrelocating party does not file with the court an  
21          objection to the proposed relocation within 30 days after  
22          receipt of the notice, that party shall be foreclosed  
23          from objecting to the relocation.

24          (4) If any of the information set forth in paragraph (3)  
25          is not known when the notice is sent but is later made known  
26          to the party proposing the relocation, then that party shall  
27          promptly inform every individual who received notice under  
28          this subsection.

29          (d) Objection to proposed relocation.--

30          (1) A party entitled to receive notice may file with the

1 court an objection to the proposed relocation and seek a  
2 temporary or permanent order to prevent the relocation.

3 (2) An objection made under this subsection shall be  
4 filed with the court within 30 days of receipt of the  
5 proposed relocation notice.

6 (3) If notice of the proposed relocation has been  
7 properly given and no objection to the proposed relocation  
8 has been filed in court, then it shall be presumed that the  
9 nonrelocating party has consented to the proposed relocation.

10 (4) If a party entitled to notice does not file with the  
11 court an objection to the relocation within 30 days after  
12 receipt of the notice but later petitions the court for  
13 review of the custodial arrangements, the court shall not  
14 accept testimony challenging the relocation.

15 (e) Confirmation of relocation.--If no objection to the  
16 proposed relocation is filed under subsection (d), the party  
17 proposing the relocation may file the following with the court  
18 prior to the relocation:

19 (1) an affidavit stating that the party provided notice  
20 to every individual entitled to notice, the time to file an  
21 objection to the proposed relocation has passed and no  
22 individual entitled to receive notice has filed an objection  
23 to the proposed relocation;

24 (2) a petition to confirm the relocation and modify any  
25 existing custody or visitation order; and

26 (3) a proposed order containing the information set  
27 forth in subsection (c)(3).

28 (f) Hearing.--

29 (1) The court shall hold an expedited full hearing on  
30 the proposed relocation after a timely objection has been

1 filed and before the relocation occurs unless exigent  
2 circumstances exist, in which case the relocation may occur  
3 pending an expedited full hearing.

4 (2) If the court approves the proposed relocation, it  
5 shall:

6 (i) modify any existing custody or visitation order;

7 or

8 (ii) establish the terms and conditions of a custody  
9 or visitation order.

10 (g) Relocation factors.--In determining whether to grant a  
11 proposed relocation, the court shall consider the following  
12 factors:

13 (1) The nature, quality, extent of involvement and  
14 duration of the child's relationship with the party proposing  
15 to relocate and with the nonrelocating party, siblings and  
16 other significant persons in the child's life.

17 (2) The age, developmental stage, needs of the child and  
18 the likely impact the relocation will have on the child's  
19 physical, educational and emotional development, taking into  
20 consideration any special needs of the child.

21 (3) The feasibility of preserving the relationship  
22 between the nonrelocating party and the child through  
23 suitable custody arrangements, considering the logistics and  
24 financial circumstances of the parties.

25 (4) The child's preference, taking into consideration  
26 the age and maturity of the child.

27 (5) Whether there is an established pattern of conduct  
28 of either party to promote or thwart the relationship of the  
29 child and the other party.

30 (6) Whether the relocation will enhance the general

1 quality of life for the party seeking the relocation,  
2 including, but not limited to, financial or emotional benefit  
3 or educational opportunity.

4 (7) Whether the relocation will enhance the general  
5 quality of life for the child, including, but not limited to,  
6 financial or emotional benefit or educational opportunity.

7 (8) The reasons and motivation of each party for seeking  
8 or opposing the relocation.

9 (9) The present and past abuse committed by a party or  
10 member of the party's household and whether there is a  
11 continued risk of harm to the child or an abused party.

12 (10) Any other factor affecting the best interest of the  
13 child.

14 (h) Burden of proof.--

15 (1) The party proposing the relocation has the burden of  
16 establishing that the relocation will serve the best interest  
17 of the child as shown under the factors set forth in  
18 subsection (g).

19 (2) Each party has the burden of establishing the  
20 integrity of that party's motives in either seeking the  
21 relocation or seeking to prevent the relocation.

22 (i) Failure to provide reasonable notice.--The court may  
23 consider a failure to provide reasonable notice of a proposed  
24 relocation as:

25 (1) a factor in making a determination regarding the  
26 relocation;

27 (2) a factor in determining whether custody or  
28 visitation rights should be modified;

29 (3) a basis for ordering the return of the child to the  
30 nonrelocating party if the relocation has occurred without



1 reasonable notice;

2 (4) sufficient cause to order the party proposing the  
3 relocation to pay reasonable expenses and counsel fees  
4 incurred by the party objecting to the relocation; and

5 (5) a ground for contempt and the imposition of  
6 sanctions against the party proposing the relocation.

7 (j) Effect of relocation prior to hearing.--If a party  
8 relocates with the child prior to a full expedited hearing, the  
9 court shall not confer any presumption in favor of the  
10 relocation.

11 § 5338. Modification of existing order.

12 (a) Best interest of the child.--Upon petition, a court may  
13 modify a custody or visitation order to serve the best interest  
14 of the child.

15 (b) Applicability.--This section shall apply to any custody  
16 or visitation order entered by a court of this Commonwealth or  
17 any other state subject to the jurisdictional requirements set  
18 forth in Chapter 54 (relating to uniform child custody  
19 jurisdiction and enforcement).

20 § 5339. Award of counsel fees, costs and expenses.

21 Under this chapter, a court may award reasonable interim or  
22 final counsel fees, costs and expenses to a party if the court  
23 finds that the conduct of another party was obdurate, vexatious,  
24 repetitive or in bad faith.

25 § 5340. Court-appointed child custody health care or behavioral  
26 health practitioners.

27 No party to a child custody matter in which the court has  
28 appointed a licensed health care or behavioral health  
29 practitioner to assist the court by conducting an examination or  
30 evaluation of the parties involved or making a recommendation

1 concerning a child custody agreement or order may be permitted  
2 to file a complaint against the practitioner with the  
3 practitioner's State licensing board prior to the final  
4 agreement or order being issued and for 60 days thereafter. As  
5 used in this section, "licensed health care or behavioral health  
6 practitioner" means a person who is licensed, certified,  
7 accredited or otherwise regulated by the Commonwealth to provide  
8 health care or behavioral health services.

9 Section 4. Section 1904(b), (c) and (h) of Title 42 are  
10 amended to read:

11 § 1904. Availability of criminal charge information in child  
12 custody proceedings.

13 \* \* \*

14 (b) Criminal charges enumerated.--The criminal charge  
15 information that shall be available on the information system  
16 shall be limited to the offenses listed in 23 Pa.C.S. §  
17 [5303(b.1)(2) (relating to award of custody, partial custody or  
18 visitation)] 5329(a) (relating to consideration of criminal  
19 conviction).

20 (c) Application for access to criminal charge information.--  
21 To obtain information about charges covered in 23 Pa.C.S. §  
22 [5303(b.1)(2)] 5329(a), a parent who has been awarded custody,  
23 partial custody or visitation or who is a party to a custody  
24 proceeding must file an application for access to the  
25 information with the office of the prothonotary in the county  
26 where the proceeding or order was filed.

27 (1) A person who knowingly gives false information with  
28 the intent to gain information provided for under this  
29 section commits an offense under 18 Pa.C.S. § 4904(a)  
30 (relating to unsworn falsification to authorities).

1           (2) The application must be filed with the prothonotary  
2 by one of the following methods:

3           (i) In person, at the office of the prothonotary, by  
4 the parent who is filing the application. The applicant  
5 must have a valid form of photoidentification available  
6 for the inspection of the prothonotary.

7           (ii) By mailing a notarized application using first  
8 class mail.

9           (iii) By including the application with the original  
10 complaint, initial response or any other pleading or  
11 motion filed with the prothonotary.

12          (3) The Administrative Office shall develop the  
13 application for access to the criminal charge information  
14 system. The following information shall be included in the  
15 application:

16           (i) Docket number of original court filing.

17           (ii) Date of filing.

18           (iii) Date of birth of all children involved in the  
19 custody proceeding or order.

20           (iv) A personal access code.

21           (v) A notice to the parent that additional  
22 information relating to criminal history record  
23 information is available, as provided for in 18 Pa.C.S.  
24 Ch. 91 (relating to criminal history record information).

25           (vi) A statement verifying that:

26                (A) the person who is filing for access to the  
27 criminal charge information system is the actual  
28 person listed on the application;

29                (B) to the best of the applicant's knowledge and  
30 belief, all the information included in the

1 application is true and correct; and

2 (C) the applicant is a party to the custody  
3 proceeding or order that is listed on the  
4 application.

5 (vii) A warning as to the penalty under 18 Pa.C.S. §  
6 4904.

7 (viii) Any additional information that it is  
8 determined to be necessary to expedite the verification  
9 of the application and to provide access to the system,  
10 as determined by the Administrative Office.

11 (4) Applications shall be made available through county  
12 prothonotaries.

13 \* \* \*

14 (h) Information available to parent.--

15 (1) After applying and qualifying to obtain the criminal  
16 charge information provided by the system, a parent may  
17 request information by telephone as to whether the other  
18 parent has been charged with any offense listed in 23 Pa.C.S.  
19 § [5303(b.1)(2)] 5329(a).

20 (2) The parent shall also be entitled to criminal  
21 history record information as provided for in 18 Pa.C.S. Ch.  
22 91, and the parent shall be informed of the availability.

23 (3) Criminal charge information shall be retained on the  
24 system for the period of time as provided for the retention  
25 of criminal charges and records under 18 Pa.C.S. Ch. 91 and  
26 then only until the youngest child involved in the custody  
27 proceeding or order reaches 18 years of age. At no time shall  
28 information be retained on the system beyond what is  
29 permitted under 18 Pa.C.S. Ch. 91.

30 \* \* \*

1       Section 5.   A proceeding under 23 Pa.C.S. Ch. 53 which was  
2 commenced before the effective date of this section is governed  
3 by the law in effect at the time the proceeding was initiated.

4       Section 6.   This act shall take effect in 60 days.