

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1639 Session of
2009

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KORTZ, FARRY, MELIO AND CUTLER, JUNE 8, 2009

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 9, 2010

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, 5314 and 5315 of Title 23 of
11 the Pennsylvania Consolidated Statutes are repealed:

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:

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

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

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

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

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

10 CHAPTER 53

11 CUSTODY

12 SUBCHAPTER A

13 GENERAL PROVISIONS

14 § 5301. Declaration of policy.

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

23 § 5302. Definitions.

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

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

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

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

3 "Physical custody." The actual physical possession and
4 control of a child.

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

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

12 § 5303. Award of custody, partial custody or visitation.

13 (a) General rule.--

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

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

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

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

28 (b) Consideration of criminal conviction.--If a parent has
29 been convicted of or has pleaded guilty or no contest to an
30 offense as set forth below, the court shall consider such

1 criminal conduct and shall determine that the parent does not
2 pose a threat of harm to the child before making an order of
3 custody, partial custody or visitation to that parent:

- 4 (1) 18 Pa.C.S. Ch. 25 (relating to criminal homicide);
- 5 (2) 18 Pa.C.S. § 2901 (relating to kidnapping);
- 6 (3) 18 Pa.C.S. § 2902 (relating to unlawful restraint);
- 7 (4) 18 Pa.C.S. § 3121 (relating to rape);
- 8 (5) 18 Pa.C.S. § 3122.1 (relating to statutory sexual
9 assault);
- 10 (6) 18 Pa.C.S. § 3123 (relating to involuntary deviate
11 sexual intercourse);
- 12 (7) 18 Pa.C.S. § 3124.1 (relating to sexual assault);
- 13 (8) 18 Pa.C.S. § 3125 (relating to aggravated indecent
14 assault);
- 15 (9) 18 Pa.C.S. § 3126 (relating to indecent assault);
- 16 (10) 18 Pa.C.S. § 3127 (relating to indecent exposure);
- 17 (11) 18 Pa.C.S. § 4302 (relating to incest);
- 18 (12) 18 Pa.C.S. § 4304 (relating to endangering welfare
19 of children);
- 20 (13) 18 Pa.C.S. § 5902(b) (relating to prostitution and
21 related offenses); or
- 22 (14) 18 Pa.C.S. § 6312 (relating to sexual abuse of
23 children).

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

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

1 temporary custody or modification hearing shall be scheduled
2 expeditiously.

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

8 (i) 18 Pa.C.S. Ch. 25;

9 (ii) 18 Pa.C.S. § 2702 (relating to aggravated
10 assault);

11 (iii) 18 Pa.C.S. § 2706 (relating to terroristic
12 threats);

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

14 (v) 18 Pa.C.S. § 2901;

15 (vi) 18 Pa.C.S. § 2902;

16 (vii) 18 Pa.C.S. § 2903 (relating to false
17 imprisonment);

18 (viii) 18 Pa.C.S. § 3121;

19 (ix) 18 Pa.C.S. § 3122.1;

20 (x) 18 Pa.C.S. § 3123;

21 (xi) 18 Pa.C.S. § 3124.1;

22 (xii) 18 Pa.C.S. § 3125;

23 (xiii) 18 Pa.C.S. § 3126;

24 (xiv) 18 Pa.C.S. § 3127;

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

27 (xvi) 18 Pa.C.S. § 4302;

28 (xvii) 18 Pa.C.S. § 4304;

29 (xviii) 18 Pa.C.S. § 6312; and

30 (xix) 23 Pa.C.S. § 6114 (relating to contempt for

violation of order or agreement).

(3) Failure to apply for information under 42 Pa.C.S. § 1904 or to act under this subsection shall not prejudice any parent in a custody or visitation proceeding.

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

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

1 the order of custody or visitation to protect the well-being of
2 the child.

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

5 § 5304. Award of shared custody.

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

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

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

11 (3) in the discretion of the court.

12 § 5305. Counseling.

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

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

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

27 § 5306. Plan for implementation of custody order.

28 The court, in its discretion, may require the parents to
29 submit to the court a plan for the implementation of any custody
30 order made under this subchapter. Upon the request of either

parent or the court, the domestic relations section of the court or other party or agency approved by the court shall assist in the formulation and implementation of the plan.

§ 5307. Denial of custody under agreement or plan.

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

§ 5308. Removal of party or child from jurisdiction.

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

§ 5309. Access to records and information.

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

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

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

§ 5310. Modification of existing custody orders.

Except as provided in 51 Pa.C.S. § 4109 (relating to child

1 custody proceedings during military deployment), any order for
2 the custody of the child of a marriage entered by a court in
3 this Commonwealth or any state may, subject to the
4 jurisdictional requirements set forth in Chapter 54 (relating to
5 uniform child custody jurisdiction and enforcement), be modified
6 at any time to an order of shared custody in accordance with
7 this subchapter.

8 § 5311. When parent deceased.

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

18 § 5312. When parents' marriage is dissolved or parents are
19 separated.

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

1 § 5313. When grandparents may petition.

2 (a) Partial custody and visitation.--If an unmarried child
3 has resided with his grandparents or great-grandparents for a
4 period of 12 months or more and is subsequently removed from the
5 home by his parents, the grandparents or great-grandparents may
6 petition the court for an order granting them reasonable partial
7 custody or visitation rights, or both, to the child. The court
8 shall grant the petition if it finds that visitation rights
9 would be in the best interest of the child and would not
10 interfere with the parent-child relationship.

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

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

19 (2) whose relationship with the child began with the
20 consent of a parent of the child or pursuant to an order of
21 court; and

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

1 temporary order pursuant to this section.

2 § 5314. Exception for adopted children.

3 Sections 5311 (relating to when parent deceased), 5312
4 (relating to when parents' marriage is dissolved or parents are
5 separated) and 5313 (relating to when child has resided with
6 grandparents) shall not apply if the child has been adopted by a
7 person other than a stepparent or grandparent. Any visitation
8 rights granted pursuant to this section prior to the adoption of
9 the child shall be automatically terminated upon such adoption.

10 § 5315. Court-appointed child custody health care or behavioral
11 health practitioners.

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

24 Section 2. Title 23 is amended by adding a chapter to read:

25 CHAPTER 53

26 CHILD CUSTODY

27 Sec.

28 5321. Scope of chapter.

29 5322. Definitions.

30 5323. Award of custody.

1 5324. Standing for any form of physical custody or legal
2 custody.

3 5325. Standing for partial physical custody and supervised
4 physical custody.

5 5326. Effect of adoption.

6 5327. Presumption in cases concerning primary physical custody.

7 5328. Factors to consider when awarding custody.

8 5329. Consideration of criminal conviction.

9 5330. Consideration of criminal charge.

10 5331. Parenting plan.

11 5332. Informational programs.

12 5333. Counseling as part of order.

13 5334. Guardian ad litem for child.

14 5335. Counsel for child.

15 5336. Access to records and information.

16 5337. Relocation.

17 5338. Modification of existing order.

18 5339. Award of counsel fees, costs and expenses.

19 5340. Court-appointed child custody health care or behavioral
20 health practitioners.

21 § 5321. Scope of chapter.

22 This chapter applies to disputes relating to child custody
23 matters.

24 § 5322. Definitions.

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

28 "Abuse." As defined in section 6102 (relating to
29 definitions).

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

1 "Agency." Any organization, society, institution or other
2 entity, including the county children and youth social service
3 agency or court facility, which provides for the care of the
4 child.

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

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

9 "Parental duties." Includes meeting the physical, emotional
10 and social needs of the child.

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

13 "Physical custody." The actual physical possession and
14 control of a child.

15 "Primary physical custody." The right to assume physical
16 custody of the child for the majority of time.

17 "Relocation." A change in a residence of the child which
18 significantly impairs the ability of a nonrelocating party to
19 exercise custodial rights.

20 "Shared legal custody." The right of more than one
21 individual to legal custody of the child.

22 "Shared physical custody." The right of more than one
23 individual to assume physical custody of the child, each having
24 significant periods of physical custodial time with the child.

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

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

29 "Supervised physical custody." Custodial time during which
30 an agency or an adult designated by the court or agreed upon by

1 the parties monitors the interaction between the child and the
2 individual with those rights.

3 § 5323. Award of custody.

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

8 (1) Shared physical custody.

9 (2) Primary physical custody.

10 (3) Partial physical custody.

11 (4) Sole physical custody.

12 (5) Supervised physical custody.

13 (6) Shared legal custody.

14 (7) Sole legal custody.

15 (b) Interim award.--The court may issue an interim award of
16 custody to a party who has standing under section 5324 (relating
17 to standing for any form of physical custody or legal custody)
18 or 5325 (relating to standing for partial physical custody and
19 supervised physical custody), in the manner prescribed by the
20 Pennsylvania Rules of Civil Procedure governing special relief
21 in custody matters.

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

24 (d) Reasons for award.--The court shall delineate the
25 reasons for its decision on the record in open court or in a
26 written opinion or order.

27 (e) Safety conditions.--After considering the factors under
28 section 5328(a)(2), if the court finds that there is an ongoing
29 risk of harm to the child or an abused party and awards any form
30 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 safety conditions designed to protect the child or the abused party.

(f) Enforcement.--In awarding custody, 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 order.--

(1) A party who willfully fails to comply with any custody 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.

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

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

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

(v) Counsel fees and costs.

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

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

(1) one party physically vacating the residence; or

(2) an order awarding one party exclusive possession of

1 the residence.

2 § 5324. Standing for any form of physical custody or legal
3 custody.

4 The following individuals may file an action under this
5 chapter for any form of physical custody or legal custody:

6 (1) A parent of the child.

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

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

10 (i) whose relationship with the child began either
11 with the consent of a parent of the child or under a
12 court order;

13 (ii) who assumes or is willing to assume
14 responsibility for the child; and

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

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

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

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

29 § 5325. Standing for partial physical custody and supervised
30 physical custody.

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

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

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

12 (3) when the child has, for a period of at least 12
13 consecutive months, resided with the grandparent or great-
14 grandparent, excluding brief temporary absences of the child
15 from the home, and is removed from the home by the parents,
16 an action must be filed within six months after the removal
17 of the child from the home.

18 § 5326. Effect of adoption.

19 Any rights to seek physical custody or legal custody rights
20 and any custody rights that have been granted under section 5324
21 (relating to standing for any form of physical custody or legal
22 custody) or 5325 (relating to standing for partial physical
23 custody and supervised physical custody) to a grandparent or
24 great-grandparent prior to the adoption of the child by an
25 individual other than a stepparent, grandparent or great-
26 grandparent shall be automatically terminated upon such
27 adoption.

28 § 5327. Presumption in cases concerning primary physical
29 custody.

30 (a) Between parents.--In any action regarding the custody of

1 the child between the parents of the child, there shall be no
2 presumption that custody should be awarded to a particular
3 parent.

4 (b) Between a parent and third party.--In any action
5 regarding the custody of the child between a parent of the child
6 and a nonparent, there shall be a presumption that custody shall
7 be awarded to the parent. The presumption in favor of the parent
8 may be rebutted by clear and convincing evidence.

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

13 § 5328. Factors to consider when awarding custody.

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

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

22 (2) The present and past abuse committed by a party or
23 member of the party's household, whether there is a continued
24 risk of harm to the child or an abused party and which party
25 can better provide adequate physical safeguards and
26 supervision of the child.

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

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

1 (5) The availability of extended family.

2 (6) The child's sibling relationships.

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

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

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

12 (10) Which party is more likely to attend to the daily
13 physical, emotional, developmental, educational and special
14 needs of the child.

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

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

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

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

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

27 (16) Any other relevant factor.

28 (b) Gender neutral.--The court shall be gender neutral in
29 making a determination under subsection (a). No party shall
30 receive preference based solely upon gender in any award granted

under this chapter.

(c) Grandparents and great-grandparents.--

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

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

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

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

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

(i) interferes with any parent-child relationship;

and

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

§ 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 an order of custody, partial custody or visitation ANY ORDER OF CUSTODY to that parent when considering



1 the following offenses:

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

3 18 Pa.C.S. § 2702 (relating to aggravated assault).

4 18 Pa.C.S. § 2706 (relating to terroristic threats).

5 18 Pa.C.S. § 2709.1 (relating to stalking).

6 18 Pa.C.S. § 2901 (relating to kidnapping).

7 18 Pa.C.S. § 2902 (relating to unlawful restraint).

8 18 Pa.C.S. § 2903 (relating to false imprisonment).

9 18 Pa.C.S. § 2910 (relating to luring a child into a motor

10 vehicle or structure).

11 18 Pa.C.S. § 3121 (relating to rape).

12 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

13 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual

14 intercourse).

15 18 Pa.C.S. § 3124.1 (relating to sexual assault).

16 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

17 18 Pa.C.S. § 3126 (relating to indecent assault).

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

19 18 Pa.C.S. § 3129 (relating to sexual intercourse with

20 animal).

21 18 Pa.C.S. § 3130 (relating to conduct relating to sex

22 offenders).

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

24 18 Pa.C.S. § 4302 (relating to incest).

25 18 Pa.C.S. § 4303 (relating to concealing death of child).

26 18 Pa.C.S. § 4304 (relating to endangering welfare of

27 children).

28 18 Pa.C.S. § 4305 (relating to dealing in infant children).

29 18 Pa.C.S. § 5902(b) (relating to prostitution and related

30 offenses).

1 18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other
2 sexual materials and performances).

3 18 Pa.C.S. § 6301 (relating to corruption of minors).

4 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

5 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

6 18 Pa.C.S. § 6320 (relating to sexual exploitation of
7 children).

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

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

12 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol
13 or utilizing drugs).

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

19 (b) Parent convicted of murder.--No court shall award
20 custody, partial custody or supervised physical custody to a
21 parent who has been convicted of murder under 18 Pa.C.S. §
22 2502(a) (relating to murder) of the other parent of the child
23 who is the subject of the order unless the child is of suitable
24 age and consents to the order.

25 (c) Initial evaluation.--The court shall provide for an
26 evaluation to determine whether:

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

29 (2) counseling is necessary for that party or household
30 member.

1 (d) Counseling.--

2 (1) Where the court determines under subsection (c) that
3 counseling is necessary, it shall appoint a qualified
4 professional specializing in treatment relating to the
5 particular offense to provide counseling to the offending
6 individual.

7 (2) Counseling may include a program of treatment or
8 individual therapy designed to rehabilitate the offending
9 individual which addresses, but is not limited to, issues
10 regarding physical and sexual abuse, the psychology of the
11 offender and the effects of the offense on the victim.

12 (e) Subsequent evaluation.--

13 (1) At any time during or subsequent to the counseling
14 under subsection (d), the court may require another
15 evaluation to determine whether further counseling is
16 necessary.

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

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

30 § 5330. Consideration of criminal charge.

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

9 (b) Risk of harm.--In evaluating any request under
10 subsection (a), the court shall consider whether the party who
11 is or has been charged with an offense set forth in section
12 5329(a) poses a risk of physical, emotional or psychological
13 harm to the child.

14 (c) No prejudice.--Failure to either apply for information
15 under 42 Pa.C.S. § 1904 or act under this section shall not
16 prejudice any party in a custody proceeding.
17 § 5331. Parenting plan.

18 (a) Purpose.--In a contested custody proceeding, the court
19 may require the parties to submit parenting plans for the care
20 and custody of the child to aid the court in resolving the
21 custody dispute. A parenting plan and the position of a party as
22 set forth in that parenting plan shall not be admissible as
23 evidence by another party.

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

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

27 (2) The education and religious involvement, if any, of
28 the child.

29 (3) The health care of the child.

30 (4) Child-care arrangements.

- 1 (5) Transportation arrangements.
- 2 (6) A procedure by which proposed changes, disputes and
3 alleged breaches of the custody order may be adjudicated or
4 otherwise resolved through mediation, arbitration or other
5 means.
- 6 (7) Any matter specified by the court.
- 7 (8) Any other matter that serves the best interest of
8 the child.

9 ~~The court shall consider the financial resources of the parties~~ ←
10 ~~when the court requires the parties to submit parenting plans.~~

11 (C) FORM.--IF THE COURT ORDERS THE PARTIES TO PROPOSE A ←
12 PARENTING PLAN, IT SHALL BE SUBMITTED TO THE COURT IN
13 SUBSTANTIALLY THE FOLLOWING FORM:

14 CAPTION

15 PARENTING PLAN

16 THIS PARENTING PLAN INVOLVES THE FOLLOWING CHILD/CHILDREN:

	<u>CHILD'S NAME</u>	<u>AGE</u>	<u>WHERE DOES THIS CHILD LIVE?</u>
17			
18	<u>1.....</u>	<u>.....</u>	<u>.....</u>
19	<u>2.....</u>	<u>.....</u>	<u>.....</u>
20	<u>3.....</u>	<u>.....</u>	<u>.....</u>

21 IF YOU HAVE CHILDREN NOT ADDRESSED BY THIS PARENTING PLAN, NAME
22 HERE:

	<u>CHILD'S NAME</u>	<u>AGE</u>	<u>WHERE DOES THIS CHILD LIVE?</u>
23			
24	<u>1.....</u>	<u>.....</u>	<u>.....</u>
25	<u>2.....</u>	<u>.....</u>	<u>.....</u>
26	<u>3.....</u>	<u>.....</u>	<u>.....</u>

27 LEGAL CUSTODY (WHO MAKES DECISIONS ABOUT CERTAIN THINGS):

28 CIRCLE ONE

29 DIET..... BOTH PARTIES DECIDE TOGETHER / PLAINTIFF /
30 DEFENDANT

1 RELIGION..... BOTH PARTIES DECIDE TOGETHER / PLAINTIFF /
2 DEFENDANT
3 MEDICAL CARE... BOTH PARTIES DECIDE TOGETHER / PLAINTIFF /
4 DEFENDANT
5 MENTAL HEALTH CARE... BOTH PARTIES DECIDE TOGETHER / PLAINTIFF /
6 DEFENDANT
7 DISCIPLINE..... BOTH PARENTS DECIDE TOGETHER / PLAINTIFF /
8 DEFENDANT
9 CHOICE OF SCHOOL.... BOTH PARENTS DECIDE TOGETHER / PLAINTIFF /
10 DEFENDANT
11 CHOICE OF STUDY..... BOTH PARENTS DECIDE TOGETHER / PLAINTIFF /
12 DEFENDANT
13 SCHOOL ACTIVITIES... BOTH PARENTS DECIDE TOGETHER / PLAINTIFF /
14 DEFENDANT
15 SPORTS ACTIVITIES... BOTH PARENTS DECIDE TOGETHER / PLAINTIFF /
16 DEFENDANT
17 ADDITIONAL ITEMS... BOTH PARENTS DECIDE TOGETHER / PLAINTIFF /
18 DEFENDANT
19 EXPLAIN WHAT PROCESS YOU WILL USE TO MAKE DECISIONS?
20 (FOR EXAMPLE, THE PARENT CONFRONTED WITH OR ANTICIPATING THE
21 CHOICE WILL CALL THE OTHER PARENT WHEN THE CHOICE PRESENTS
22 ITSELF, AND THE OTHER PARENT MUST AGREE OR DISAGREE WITHIN 24
23 HOURS OF ANY DEADLINE)
24
25
26 PHYSICAL CUSTODY (WHERE THE CHILD/CHILDREN LIVE)
27 THE CHILD'S/CHILDREN'S RESIDENCE IS WITH.....
28 DESCRIBE WHICH DAYS AND WHICH TIMES OF THE DAY THE
29 CHILD/CHILDREN WILL BE WITH EACH PERSON:
30 SUNDAY MONDAY TUESDAY WEDNESDAY THURSDAY FRIDAY SATURDAY

1
2 DESCRIBE WHERE AND WHEN THE CHILD/CHILDREN WILL BE DROPPED OFF
3 AND/OR PICKED UP (DAY AND TIME OF DAY)?

4 DROP-OFF

5 WHERE

6 WHEN

7

8 PICK-UP

9 WHERE

10 WHEN

11

12 IF ONE OF YOU DOESN'T SHOW UP, HOW LONG WILL THE OTHER
13 WAIT?

14 IF THERE ARE ANY EXTRAORDINARY COSTS (TAXI, TRAIN, AIRPLANE,
15 ETC.), WHO WILL PAY FOR WHICH COSTS?

16

17

18 HOLIDAYS

19 WHERE WILL THE CHILD/CHILDREN STAY?

20 <u>HOLIDAY</u>	<u>YEAR A</u>	<u>YEAR B</u>	<u>EVERY YEAR</u>
-------------------	---------------	---------------	-------------------

21 <u>MARTIN LUTHER KING DAY</u>
----------------------------------	-------	-------	-------

22 <u>PRESIDENT'S DAY</u>
---------------------------	-------	-------	-------

23 <u>EASTER</u>
------------------	-------	-------	-------

24 <u>MEMORIAL DAY</u>
------------------------	-------	-------	-------

25 <u>FOURTH OF JULY</u>
--------------------------	-------	-------	-------

26 <u>LABOR DAY</u>
---------------------	-------	-------	-------

27 <u>YOM KIPPUR</u>
----------------------	-------	-------	-------

28 <u>ROSH HASHANAH</u>
-------------------------	-------	-------	-------

29 <u>THANKSGIVING</u>
------------------------	-------	-------	-------

30 <u>VACATION AFTER THANKSGIVING</u>
---------------------------------------	-------	-------	-------

1 CHRISTMAS VACATION
2 KWANZAA
3 NEW YEAR'S EVE/DAY
4 SPRING VACATION
5 EASTER SUNDAY
6 CHILD'S BIRTHDAY
7 MOTHER'S DAY
8 FATHER'S DAY
9 OTHER
10 OTHER
11 OTHER

12 SUMMER VACATION PLANS

13

14

15 SPECIAL ACTIVITIES OR SCHOOL ACTIVITIES

16 WILL BOTH OF YOU ATTEND?

17 CHILD'S NAME ACTIVITY IF NOT, WHICH OF YOU WILL ATTEND?

18
19
20

21 TEMPORARY CHANGES TO THIS PARENTING SCHEDULE

22 FROM TIME TO TIME, ONE OF YOU MIGHT WANT OR NEED TO REARRANGE

23 THE PARENTING TIME SCHEDULE DUE TO WORK, FAMILY OR OTHER EVENTS.

24 YOU CAN ATTEMPT TO AGREE ON THESE CHANGES. IF YOU CANNOT AGREE,

25 THE PARENT RECEIVING THE REQUEST WILL MAKE THE FINAL DECISION.

26 THE PARENT ASKING FOR THE CHANGE WILL ASK.....IN

27 PERSON.....BY LETTER/MAIL.....BY PHONE

28 NO LATER THAN

2912 HOURS..... 24 HOURS..... 1 WEEK..... 1 MONTH

30 THE PARENT BEING ASKED FOR A CHANGE WILL REPLY

1 § 5332. Informational programs.

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

4 (b) Process not delayed.--Subsequent proceedings and the
5 entry of any order or decree shall not be delayed because of the
6 lack of participation in any informational program by one of the
7 parties.

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

10 § 5333. Counseling as part of order.

11 (a) Attendance.--The court may, as part of a custody order,
12 require the parties to attend counseling sessions.

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

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

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

20 § 5334. Guardian ad litem for child.

21 ~~(a) Appointment.--The court may appoint a guardian ad litem~~ ←
22 ~~for the child. The court shall specify the terms of the~~
23 ~~appointment, including the role, duties and scope of authority~~
24 ~~of the guardian ad litem.~~

25 ~~(b) Investigation and report.--The guardian ad litem shall~~
26 ~~investigate and report to the court information relevant to the~~
27 ~~custody proceeding.~~

28 (A) APPOINTMENT.--THE COURT MAY ON ITS OWN MOTION OR THE ←
29 MOTION OF A PARTY APPOINT A GUARDIAN AD LITEM TO REPRESENT THE
30 CHILD IN THE ACTION. THE COURT MAY ASSESS THE COST UPON THE

1 PARTIES OR ANY OF THEM OR AS OTHERWISE PROVIDED BY LAW. THE
2 GUARDIAN AD LITEM MUST BE AN ATTORNEY AT LAW.

3 (B) POWERS AND DUTIES.--THE GUARDIAN AD LITEM SHALL BE
4 CHARGED WITH REPRESENTATION OF THE LEGAL INTERESTS AND THE BEST
5 INTERESTS OF THE CHILD DURING THE PROCEEDINGS AND SHALL DO ALL
6 OF THE FOLLOWING:

7 (1) MEET WITH THE CHILD AS SOON AS POSSIBLE FOLLOWING
8 THE APPOINTMENT, AND ON A REGULAR BASIS THEREAFTER IN A
9 MANNER APPROPRIATE TO THE CHILD'S AGE AND MATURITY.

10 (2) ON A TIMELY BASIS, BE GIVEN ACCESS TO RELEVANT COURT
11 AND COUNTY AGENCY RECORDS, REPORTS OF EXAMINATION OF THE
12 PARENTS OR OTHER CUSTODIAN OF THE CHILD AND MEDICAL,
13 PSYCHOLOGICAL AND SCHOOL RECORDS.

14 (3) PARTICIPATE IN ALL PROCEEDINGS.

15 (4) CONDUCT SUCH FURTHER INVESTIGATION NECESSARY TO
16 ASCERTAIN THE FACTS.

17 (5) INTERVIEW POTENTIAL WITNESSES, INCLUDING THE CHILD'S
18 PARENTS, CARETAKERS AND FOSTER PARENTS, IF ANY, EXAMINE AND
19 CROSS-EXAMINE WITNESSES AND PRESENT WITNESSES AND EVIDENCE
20 NECESSARY TO PROTECT THE BEST INTERESTS OF THE CHILD.

21 (6) MAKE SPECIFIC RECOMMENDATIONS TO THE COURT RELATING
22 TO THE BEST INTERESTS OF THE CHILD, INCLUDING ANY SERVICES
23 NECESSARY TO ADDRESS THE CHILD'S NEEDS AND SAFETY.

24 (7) EXPLAIN THE PROCEEDINGS TO THE CHILD TO THE EXTENT
25 APPROPRIATE GIVEN THE CHILD'S AGE, MENTAL CONDITION AND
26 EMOTIONAL CONDITION.

27 (8) ADVISE THE COURT OF THE CHILD'S WISHES TO THE EXTENT
28 THAT THEY CAN BE ASCERTAINED AND PRESENT TO THE COURT
29 WHATEVER EVIDENCE EXISTS TO SUPPORT THE CHILD'S WISHES. WHEN
30 APPROPRIATE BECAUSE OF THE AGE OR MENTAL AND EMOTIONAL

1 CONDITION OF THE CHILD, DETERMINE TO THE FULLEST EXTENT
2 POSSIBLE THE WISHES OF THE CHILD AND COMMUNICATE THIS
3 INFORMATION TO THE COURT. A DIFFERENCE BETWEEN THE CHILD'S
4 WISHES UNDER THIS PARAGRAPH AND THE RECOMMENDATIONS UNDER
5 PARAGRAPH (6) SHALL NOT BE CONSIDERED A CONFLICT OF INTEREST
6 FOR THE GUARDIAN AD LITEM.

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

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

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

14 ~~(d) Evidence subject to examination.~~ ←

15 ~~(1) A lawyer appointed as~~

16 (D) EVIDENCE SUBJECT TO EXAMINATION.--A guardian ad litem ←
17 may not testify except as authorized by Rule 3.7 of the Rules of
18 Professional Conduct, but may make legal argument based on
19 relevant evidence that shall be subject to examination by the
20 parties.

21 ~~(2) A nonlawyer appointed as guardian ad litem may~~ ←
22 ~~testify regarding and may submit a report regarding the~~
23 ~~guardian ad litem's recommendation relating to the child's~~
24 ~~best interest, which shall be subject to examination.~~

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

28 § 5335. Counsel for child.

29 (a) Appointment.--The court may appoint counsel to represent
30 the child if the court determines that the appointment will

assist in resolving the issues in the custody proceeding. IF A
CHILD HAS LEGAL COUNSEL AND A GUARDIAN AD LITEM, COUNSEL SHALL
REPRESENT THE LEGAL INTERESTS OF THE CHILD AND THE GUARDIAN AD
LITEM SHALL REPRESENT THE BEST INTERESTS OF THE CHILD.

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

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

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

§ 5336. Access to records and information.

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

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

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

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

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

(2) Access to any records and information pertaining to
the child may not be denied solely based upon a parent's
physical custody schedule.

(3) Upon request, a parent, party or entity possessing
any information set forth in paragraph (1) shall provide it

1 to any party granted sole or shared legal custody.

2 (b) Nondisclosure of confidential information.--The court
3 shall not order the disclosure of any of the following
4 information to any parent or party granted custody:

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

6 (2) Confidential information from an abuse counselor or
7 shelter.

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

10 (4) Information independently protected from disclosure
11 by the child's right to confidentiality under the act of July
12 9, 1976 (P.L.817, No.143), known as the Mental Health
13 Procedures Act, or any other statute.

14 (c) Other information.--The court may determine not to
15 release information set forth in subsection (a), in which case
16 it shall state the reason for its denial on the record.
17 § 5337. Relocation.

18 (a) Applicability.--This section applies to any proposed
19 relocation.

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

21 (1) every individual who has custody rights to the child
22 consents to the proposed relocation; or

23 (2) the court approves the proposed relocation.

24 (c) Notice.--

25 (1) The party proposing the relocation shall notify
26 every other individual who has custody rights to the child.

27 (2) ~~Reasonable notice~~ NOTICE, SENT BY CERTIFIED MAIL,
28 RETURN RECEIPT REQUESTED, shall be given no later than:

29 (i) the 60th day before the date of the proposed
30 relocation; or



1 (ii) the tenth day after the date that the
2 individual knows of the relocation, if:

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

6 (B) it is not reasonably possible to delay the
7 date of relocation so as to comply with the 60-day
8 notice.

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

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

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

16 (III) NAMES AND AGES OF THE INDIVIDUALS IN THE NEW ←
17 RESIDENCE, INCLUDING INDIVIDUALS WHO INTEND TO LIVE IN
18 THE NEW RESIDENCE.

19 ~~(iii)~~ (IV) The home telephone number of the ←
20 intended new residence, if available.

21 ~~(iv)~~ (V) The name of the new school district and ←
22 school.

23 ~~(v)~~ (VI) The date of the proposed relocation. ←

24 ~~(vi)~~ (VII) The reasons for the proposed relocation. ←

25 ~~(vii)~~ (VIII) A proposal for a revised custody ←
26 schedule.

27 ~~(viii)~~ (IX) Any other information which the party ←
28 proposing the relocation deems appropriate.

29 (X) A COUNTER-AFFIDAVIT AS PROVIDED UNDER SUBSECTION ←
30 (D) (1) WHICH CAN BE USED TO OBJECT TO THE PROPOSED

1 RELOCATION AND THE MODIFICATION OF A CUSTODY ORDER.

2 ~~(ix)~~ (XI) A warning to the nonrelocating party that ←
3 if the nonrelocating party does not file with the court
4 an objection to the proposed relocation within 30 days
5 after receipt of the notice, that party shall be
6 foreclosed from objecting to the relocation.

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

12 (d) Objection to proposed relocation.--

13 (1) A party entitled to receive notice may file with the
14 court an objection to the proposed relocation and seek a
15 temporary or permanent order to prevent the relocation. THE ←
16 NONRELOCATING PARTY SHALL HAVE THE OPPORTUNITY TO INDICATE
17 WHETHER HE OR SHE OBJECTS TO RELOCATION OR NOT, AND WHETHER
18 HE OR SHE OBJECTS TO MODIFICATION OF THE CUSTODY ORDER OR
19 NOT. IF THE PARTY OBJECTS TO EITHER RELOCATION OR
20 MODIFICATION OF THE CUSTODY ORDER, A HEARING SHALL BE HELD AS
21 PROVIDED IN SUBSECTION (G). THE OBJECTION SHALL BE MADE BY
22 COMPLETING AND RETURNING TO THE COURT A COUNTER-AFFIDAVIT,
23 WHICH SHALL BE VERIFIED SUBJECT TO PENALTIES UNDER 18 PA.C.S.
24 § 4904 (RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES), IN
25 SUBSTANTIALLY THE FOLLOWING FORM:

26 COUNTER-AFFIDAVIT REGARDING RELOCATION
27 THIS PROPOSAL OF RELOCATION INVOLVES THE FOLLOWING
28 CHILD/CHILDREN:

29 <u>CHILD'S NAME</u>	<u>AGE</u>	<u>CURRENTLY RESIDING AT:</u>
30

1 CHILD'S NAME AGE CURRENTLY RESIDING AT:
2
3 CHILD'S NAME AGE CURRENTLY RESIDING AT:
4
5 I HAVE RECEIVED A NOTICE OF PROPOSED RELOCATION AND
6 1. I DO NOT OBJECT TO THE RELOCATION AND I DO NOT OBJECT
7 TO THE MODIFICATION OF THE CUSTODY ORDER CONSISTENT WITH THE
8 PROPOSAL FOR REVISED CUSTODY SCHEDULE AS ATTACHED TO THE NOTICE.
9 2. I DO NOT OBJECT TO THE RELOCATION, BUT I DO OBJECT TO
10 MODIFICATION OF THE CUSTODY ORDER, AND I REQUEST THAT A HEARING
11 BE SCHEDULED:
12 A. PRIOR TO ALLOWING (NAME OF CHILD/CHILDREN) TO
13 RELOCATE.
14 B. AFTER THE CHILD/CHILDREN RELOCATE.
15 3. I DO OBJECT TO THE RELOCATION AND I DO OBJECT TO THE
16 MODIFICATION OF THE CUSTODY ORDER, AND I FURTHER REQUEST THAT A
17 HEARING BE HELD ON BOTH MATTERS PRIOR TO THE RELOCATION TAKING
18 PLACE.
19
20 I UNDERSTAND THAT IN ADDITION TO CHECKING (2) OR (3) ABOVE, I
21 MUST ALSO FILE THIS NOTICE WITH THE COURT IN WRITING AND SERVE
22 IT ON THE OTHER PARTY BY CERTIFIED MAIL, RETURN RECEIPT
23 REQUESTED. IF I FAIL TO DO SO WITHIN 30 DAYS OF MY RECEIPT OF
24 THE PROPOSED RELOCATION NOTICE, I SHALL BE FORECLOSED FROM
25 OBJECTING TO THE RELOCATION.
26
27 I VERIFY THAT THE STATEMENTS MADE IN THIS COUNTER-AFFIDAVIT ARE
28 TRUE AND CORRECT. I UNDERSTAND THAT FALSE STATEMENTS HEREIN ARE
29 MADE SUBJECT TO THE PENALTIES OF 18 PA.C.S. § 4904 (RELATING TO
30 UNSWORN FALSIFICATION TO AUTHORITIES).

1 DATE:

2

3

4 (2) An objection made under this subsection shall be
5 filed with the court within 30 days of receipt of the
6 proposed relocation notice, AND SERVED ON THE OTHER PARTY BY ←
7 CERTIFIED MAIL, RETURN RECEIPT REQUESTED.

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

12 (4) If a party ~~entitled to~~ WHO HAS BEEN GIVEN PROPER ←
13 notice does not file with the court an objection to the
14 relocation within 30 days after receipt of the notice but
15 later petitions the court for review of the custodial
16 arrangements, the court shall not accept testimony
17 challenging the relocation.

18 (e) Confirmation of relocation.--If no objection to the
19 proposed relocation is filed under subsection (d), the party
20 proposing the relocation ~~may~~ SHALL file the following with the ←
21 court prior to the relocation:

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

27 (2) PROOF THAT PROPER NOTICE WAS GIVEN IN THE FORM OF A ←
28 RETURN RECEIPT WITH THE SIGNATURE OF THE ADDRESSEE AND THE
29 FULL NOTICE THAT WAS SENT TO THE ADDRESSEE.

30 ~~(2)~~ (3) a petition to confirm the relocation and modify ←

1 any existing custody order; and

2 ~~(3)~~ (4) a proposed order containing the information set ←
3 forth in subsection (c)(3).

4 (F) MODIFICATION OF CUSTODY ORDER.--IF A COUNTER-AFFIDAVIT ←
5 REGARDING RELOCATION IS FILED WITH THE COURT WHICH INDICATES THE
6 NONRELOCATING PARTY BOTH HAS NO OBJECTION TO THE PROPOSED
7 RELOCATION AND NO OBJECTION TO THE MODIFICATION OF THE CUSTODY
8 ORDER CONSISTENT WITH THE PROPOSAL FOR REVISED CUSTODY SCHEDULE,
9 THE COURT MAY MODIFY THE EXISTING CUSTODY ORDER BY APPROVING THE
10 PROPOSAL FOR REVISED CUSTODY SCHEDULE SUBMITTED UNDER SECTION
11 5337(C) (VIII), AND SHALL SPECIFY THE METHOD BY WHICH ITS FUTURE
12 MODIFICATION CAN BE MADE IF DESIRED BY EITHER PARTY. IF A
13 COUNTER-AFFIDAVIT REGARDING RELOCATION IS FILED WITH THE COURT
14 WHICH INDICATES THE NONRELOCATING PARTY OBJECTS EITHER TO THE
15 PROPOSED RELOCATION OR TO THE MODIFICATION OF THE CUSTODY ORDER
16 CONSISTENT WITH THE PROPOSAL FOR REVISED CUSTODY SCHEDULE, THE
17 COURT SHALL MODIFY THE EXISTING CUSTODY ORDER ONLY AFTER HOLDING
18 A HEARING TO ESTABLISH THE TERMS AND CONDITIONS OF THE ORDER
19 PURSUANT TO THE RELOCATION INDICATING THE RIGHTS, IF ANY, OF THE
20 NONRELOCATING PARTIES. THE COURT SHALL DETERMINE WHETHER SUCH
21 HEARING SHOULD OCCUR EXPEDITIOUSLY PRIOR TO THE RELOCATION OF
22 THE CHILD OR CHILDREN, OR WHETHER IT CAN BE HELD AT A DATE
23 FOLLOWING RELOCATION.

24 ~~(f)~~ (G) Hearing.-- ←

25 (1) The court shall hold an expedited full hearing on
26 the proposed relocation after a timely objection has been
27 filed and before the relocation occurs unless exigent
28 circumstances exist, in which case the relocation may occur
29 pending an expedited full hearing.

30 (2) If the court approves the proposed relocation, it

1 shall:

2 (i) modify any existing custody order; or

3 (ii) establish the terms and conditions of a custody
4 order.

5 ~~(g)~~ (H) Relocation factors.--In determining whether to
6 grant a proposed relocation, the court shall consider the
7 following factors, giving weighted consideration to those
8 factors which affect the safety of the child:

9 (1) The nature, quality, extent of involvement and
10 duration of the child's relationship with the party proposing
11 to relocate and with the nonrelocating party, siblings and
12 other significant persons in the child's life.

13 (2) The age, developmental stage, needs of the child and
14 the likely impact the relocation will have on the child's
15 physical, educational and emotional development, taking into
16 consideration any special needs of the child.

17 (3) The feasibility of preserving the relationship
18 between the nonrelocating party and the child through
19 suitable custody arrangements, considering the logistics and
20 financial circumstances of the parties.

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

23 (5) Whether there is an established pattern of conduct
24 of either party to promote or thwart the relationship of the
25 child and the other party.

26 (6) Whether the relocation will enhance the general
27 quality of life for the party seeking the relocation,
28 including, but not limited to, financial or emotional benefit
29 or educational opportunity.

30 (7) Whether the relocation will enhance the general



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

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

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

8 (10) Any other factor affecting the best interest of the
9 child.

10 ~~(h)~~ (I) Burden of proof.--

11 (1) The party proposing the relocation has the burden of
12 establishing that the relocation will serve the best interest
13 of the child as shown under the factors set forth in
14 subsection (g).

15 (2) Each party has the burden of establishing the
16 integrity of that party's motives in either seeking the
17 relocation or seeking to prevent the relocation.

18 ~~(i)~~ (J) Failure to provide reasonable notice.--The court
19 may consider a failure to provide reasonable notice of a
20 proposed relocation as:

21 (1) a factor in making a determination regarding the
22 relocation;

23 (2) a factor in determining whether custody rights
24 should be modified;

25 (3) a basis for ordering the return of the child to the
26 nonrelocating party if the relocation has occurred without
27 reasonable notice;

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

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

3 ~~(j)~~ (K) Mitigation.--Any consideration of a failure to
4 provide reasonable notice under subsection (i) shall be subject
5 to mitigation if the court determines that such failure was
6 caused in whole, or in part, by abuse.

7 ~~(k)~~ (L) 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 order to serve the best interest of the child.

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

19 § 5339. Award of counsel fees, costs and expenses.

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

24 § 5340. Court-appointed child custody health care or behavioral
25 health practitioners.

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

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

8 Section 3. Section 1904(b), (c) and (h) of Title 42 are
9 amended to read:

10 § 1904. Availability of criminal charge information in child
11 custody proceedings.

12 * * *

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

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

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

30 (2) The application must be filed with the prothonotary

1 by one of the following methods:

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

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

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

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

15 (i) Docket number of original court filing.

16 (ii) Date of filing.

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

19 (iv) A personal access code.

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

24 (vi) A statement verifying that:

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

28 (B) to the best of the applicant's knowledge and
29 belief, all the information included in the
30 application is true and correct; and

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

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

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

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

12 * * *

13 (h) Information available to parent.--

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

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

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

29 * * *

30 Section 4. A proceeding under the former provisions of 23

1 Pa.C.S. Ch. 53 which was commenced before the effective date of
2 this section shall be governed by the law in effect at the time
3 the proceeding was initiated.

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