
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1684 Session of
2023

INTRODUCED BY FLICK, PROBST, MADDEN, CABELL, KAUFER, WATRO,
ADAMS, VENKAT, CEPEDA-FREYTIZ, IRVIN, GIRAL, FLEMING,
BOROWSKI, SCHLEGEL, RYNCAVAGE, GILLEN, GUZMAN, KINSEY, GREEN,
E. NELSON, COOPER, WARNER, KHAN AND GREGORY,
SEPTEMBER 19, 2023

REFERRED TO COMMITTEE ON CHILDREN AND YOUTH, SEPTEMBER 19, 2023

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, in child custody, further providing
3 for definitions, for award of custody, for standing for
4 partial physical custody and supervised physical custody, for
5 presumption in cases concerning primary physical custody, for
6 factors to consider when awarding custody, for consideration
7 of criminal conviction and for parenting plan; and making
8 editorial changes.

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

11 Section 1. Section 5322 of Title 23 of the Pennsylvania
12 Consolidated Statutes is amended to read:

13 § 5322. Definitions.

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

17 "Abuse." As defined in section 6102 (relating to
18 definitions).

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

1 "Agency." Any organization, society, institution, court
2 facility or other entity which provides for the care of a child.
3 The term does not include a county children and youth social
4 service agency.

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

6 "Equal parenting time." As close as practicable to 50% of
7 time spent with each parent, but in no case exceeding 60% of
8 time spent with either parent.

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

12 "Parental duties." Includes meeting the physical, emotional
13 and social needs of the child.

14 ["Partial physical custody." The right to assume physical
15 custody of the child for less than a majority of the time.]

16 "Physical custody." The actual physical possession and
17 control of a child.

18 ["Primary physical custody." The right to assume physical
19 custody of the child for the majority of time.]

20 "Relocation." A change in a residence of the child which
21 significantly impairs the ability of a nonrelocating party to
22 exercise custodial rights.

23 "Shared legal custody." The right of more than one
24 individual to legal custody of the child.

25 "Shared physical custody." The right of more than one
26 individual to assume physical custody of the child[, each having
27 significant periods of physical custodial time with the child].

28 ["Sole legal custody." The right of one individual to
29 exclusive legal custody of the child.]

30 "Sole physical custody." The right of one individual to

1 exclusive physical custody of the child.]

2 "Supervised physical custody." Custodial time during which
3 an agency or an adult designated by the court or agreed upon by
4 the parties monitors the interaction between the child and the
5 individual with those rights.

6 (b) Other law.--In a statutory provision other than in this
7 chapter, when the term "visitation" is used in reference to
8 child custody, the term may be construed to mean[:

9 (1) partial physical custody;

10 (2) shared physical custody; or

11 (3) supervised physical custody.] shared or limited
12 physical custody, including supervised physical custody.

13 Section 2. Section 5323(a)(2) and (3), (b) and (d) of Title
14 23 are amended and the section is amended by adding subsections
15 to read:

16 § 5323. Award of custody.

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

21 * * *

22 [(2) Primary physical custody.

23 (3) Partial physical custody.]

24 * * *

25 [(b) Interim award.--The court may issue an interim award of
26 custody to a party who has standing under section 5324 (relating
27 to standing for any form of physical custody or legal custody)
28 or 5325 (relating to standing for partial physical custody and
29 supervised physical custody) in the manner prescribed by the
30 Pennsylvania Rules of Civil Procedure governing special relief

1 in custody matters.]

2 (b.1) Temporary custody orders.--

3 (1) A party to a custody proceeding may move for a
4 temporary custody order. The following apply:

5 (i) The motion must be supported by an affidavit as
6 provided in subsection (b.2).

7 (ii) The court may award temporary custody under the
8 standards of subsection (b.2) after a hearing or, if
9 there is no objection, solely on the basis of the
10 affidavits.

11 (iii) If the parties present a temporary custody
12 agreement and mutually agreed upon plan for parenting
13 time and the court confirms that the agreement is in the
14 best interest of the child, the agreement shall become
15 the temporary custody order of the court.

16 (2) Subject to subsection (b.2), in making an order for
17 temporary custody, there shall be a presumption, rebuttable
18 by clear and convincing evidence, that shared physical
19 custody, shared legal custody and equal parenting time are in
20 the best interest of the child.

21 (3) If a deviation from equal parenting time is
22 warranted, the court shall construct a parenting time
23 schedule which maximizes the time that each party has with
24 the child and is consistent with ensuring the best interest
25 of the child.

26 (4) Each temporary custody order shall include specific
27 findings of fact and conclusions of law, except when the
28 court confirms the agreement of the parties in accordance
29 with paragraph (1)(iii).

30 (5) A temporary custody order shall address the

1 circumstances in which a custody exchange will occur.

2 (6) Modification of a temporary custody order may be
3 sought if there is a material and substantial change in the
4 circumstances of the parties or child.

5 (7) If a proceeding for dissolution of marriage or legal
6 separation is dismissed, a temporary custody order is vacated
7 unless a party moves that the proceeding continue as a
8 custody proceeding and the court finds, after a hearing, that
9 the circumstances of the parties and the best interest of the
10 child require that a custody order be issued.

11 (8) If a custody proceeding that commenced in the
12 absence of a petition for dissolution of marriage or legal
13 separation is dismissed, a temporary custody order is
14 vacated.

15 (b.2) Affidavits, notice and hearing.--A party seeking a
16 temporary custody order under subsection (b.1) shall submit an
17 affidavit specifying facts supporting the requested order. The
18 following apply:

19 (1) The party shall give notice, together with a copy of
20 the affidavit, to other parties to the proceeding, who may
21 file opposing affidavits.

22 (2) The court shall deny the motion for the temporary
23 custody order unless the court finds that adequate cause for
24 hearing the motion is established by the affidavits, in which
25 case the court shall set a date for the hearing on an order
26 to show cause why the requested order should not be granted.

27 * * *

28 (d) Reasons for award.--The court shall delineate the
29 reasons for its decision [on the record in open court or] in an
30 award of custody, including an interim award, in a written

1 opinion or order. The opinion or order shall include, with
2 specificity, the reasons for any deviation from equal parenting
3 time.

4 * * *

5 Section 3. Sections 5325 heading and introductory paragraph,
6 5326, 5327 heading and (a), 5328(a) and (c), 5329(b), 5329.1(b)
7 (1) and (2) and 5331(c) of Title 23 are amended to read:

8 § 5325. [Standing] Grandparent standing for [partial] shared
9 physical custody and supervised physical custody.

10 In addition to situations set forth in section 5324 (relating
11 to standing for any form of physical custody or legal custody),
12 grandparents and great-grandparents may file an action under
13 this chapter for [partial] shared physical custody or supervised
14 physical custody in the following situations:

15 * * *

16 § 5326. Effect of adoption.

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

26 § 5327. [Presumption in cases concerning primary physical
27 custody.] Presumptions.

28 (a) Between parents.--In any action regarding the custody of
29 the child between the parents of the child, there shall be [no
30 presumption that custody should be awarded to a particular

1 parent.] a presumption, rebuttable by clear and convincing
2 evidence, that shared physical and legal custody and equal
3 parenting time is in the best interest of the child. The
4 presumption that shared physical and legal custody and equal
5 parenting time is in the best interest of the child under this
6 subsection may be rebutted if:

7 (1) the court finds by clear and convincing evidence
8 that joint custody is not in the best interest of the child;

9 (2) the parents have reached an agreement on all issues
10 related to the custody of the child; or

11 (3) one of the parents does not request shared physical
12 and legal custody or equal parenting time.

13 * * *

14 § 5328. Factors to consider when awarding custody.

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

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

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

28 (2.1) The information set forth in section 5329.1(a)
29 (relating to consideration of child abuse and involvement
30 with protective services).

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

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

5 (5) The availability of extended family.

6 (6) The child's sibling relationships.

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

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

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

16 (10) Which party is more likely to attend to the daily
17 physical, emotional, developmental, educational and special
18 needs of the child.

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

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

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

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

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

1 (16) Any other relevant factor.]
2 including past abuse committed by a party or member of the
3 party's household, the level of conflict between the parties and
4 the willingness and ability of the parties to cooperate with one
5 another.

6 * * *

7 (c) Grandparents and great-grandparents.--

8 (1) In ordering [partial] shared physical custody or
9 supervised physical custody to a party who has standing under
10 section 5325(1) or (2) (relating to grandparent standing for
11 [partial] shared physical custody and supervised physical
12 custody), 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] shared physical custody or
20 supervised physical custody to a parent's parent or
21 grandparent who has standing under section 5325(3), the court
22 shall consider whether the award:

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

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

26 § 5329. Consideration of criminal conviction.

27 * * *

28 (b) Parent convicted of murder.--No court shall award
29 [custody, partial custody or supervised physical] custody to a
30 parent who has been convicted of murder under 18 Pa.C.S. §

1 2502(a) (relating to murder) of the other parent of the child
2 who is the subject of the order unless the child is of suitable
3 age and consents to the order.

4 * * *

5 § 5329.1. Consideration of child abuse and involvement with
6 protective services.

7 * * *

8 (b) Cooperation.--The following apply:

9 (1) The Department of [Public Welfare] Human Services
10 and the county children and youth social service agency shall
11 fully cooperate with the court and assist the court in
12 fulfilling its duties under this section.

13 (2) The Department of [Public Welfare] Human Services
14 and the county children and youth social service agency shall
15 fully cooperate with the governing authority in order to
16 implement the provisions of this section.

17 * * *

18 § 5331. Parenting plan.

19 * * *

20 (c) Form.--If the court orders the parties to propose a
21 parenting plan, it shall be submitted to the court in
22 substantially the following form:

23 CAPTION

24 PARENTING PLAN

25 This parenting plan involves the following child/children:

26	Child's Name	Age	Where does this child live?
27	1.....	.....	.....
28	2.....	.....	.....
29	3.....	.....	.....

30 If you have children not addressed by this parenting plan, name

1 here:

2 Child's Name Age Where does this child live?

3 1.....

4 2.....

5 3.....

6 Legal Custody (who makes decisions about certain things):

7 Circle one

8 Diet..... Both parties decide together / Plaintiff /

9 Defendant

10 Religion..... Both parties decide together / Plaintiff /

11 Defendant

12 Medical Care... Both parties decide together / Plaintiff /

13 Defendant

14 Mental Health Care... Both parties decide together / Plaintiff /

15 Defendant

16 Discipline..... Both parents decide together / Plaintiff /

17 Defendant

18 Choice of School.... Both parents decide together / Plaintiff /

19 Defendant

20 Choice of Study..... Both parents decide together / Plaintiff /

21 Defendant

22 School Activities... Both parents decide together / Plaintiff /

23 Defendant

24 Sports Activities... Both parents decide together / Plaintiff /

25 Defendant

26 Additional Items... Both parents decide together / Plaintiff /

27 Defendant

28 Explain what process you will use to make decisions?

29 (For example, the parent confronted with or anticipating the

30 choice will call the other parent when the choice presents

1 itself, and the other parent must agree or disagree within 24
2 hours of any deadline)

3
4

5 Physical Custody (where the child/children live)

6 The child's/children's residence [is with] will be presumed to
7 be at the home of both parents. If the parties have agreed
8 otherwise, please state where the child/children
9 reside.....

10 Describe which days and which times of the day the
11 child/children will be with each person:

12 Sunday Monday Tuesday Wednesday Thursday Friday Saturday
13

14 Describe where and when the child/children will be dropped off
15 and/or picked up (day and time of day)?

16 Drop-Off

17 Where.....

18 When.....

19

20 Pick-Up

21 Where

22 When

23

24 If one of you doesn't show up, how long will the other
25 wait?.....

26 If there are any extraordinary costs (taxi, train, airplane,
27 etc.), who will pay for which costs?

28

29

30 HOLIDAYS

1	Where will the child/children stay?			
2	HOLIDAY	YEAR A	YEAR B	EVERY YEAR
3	Martin Luther King Day	.....	.....	.....
4	President's Day	.....	.....	.....
5	Easter	.....	.....	.....
6	Memorial Day	.....	.....	.....
7	Fourth of July	.....	.....	.....
8	Labor Day	.....	.....	.....
9	Yom Kippur	.....	.....	.....
10	Rosh Hashanah	.....	.....	.....
11	Thanksgiving	.....	.....	.....
12	Vacation after Thanksgiving	.....	.....	.....
13	Christmas Vacation	.....	.....	.....
14	Kwanzaa	.....	.....	.....
15	New Year's Eve/Day	.....	.....	.....
16	Spring Vacation	.....	.....	.....
17	Easter Sunday	.....	.....	.....
18	Child's Birthday	.....	.....	.....
19	Mother's Day	.....	.....	.....
20	Father's Day	.....	.....	.....
21	Other	.....	.....	.....
22	Other	.....	.....	.....
23	Other	.....	.....	.....
24	Summer Vacation Plans			
25	.....		
26	.....		
27	Special Activities or School Activities			
28	Will both of you attend?			
29	Child's Name	Activity	If not, which of you will attend?	
30	.....	.....	.....

1
2
3 Temporary changes to this parenting schedule
4 From time to time, one of you might want or need to rearrange
5 the parenting time schedule due to work, family or other events.
6 You can attempt to agree on these changes. If you cannot agree,
7 the parent receiving the request will make the final decision.
8 The parent asking for the change will ask.....in
9 person.....by letter/mail.....by phone
10 No later than
1112 hours..... 24 hours.... 1 week..... 1 month
12 The parent being asked for a change will reply
13 in person..... by letter/mail..... by phone
14 No later than
15 12 hours..... 24 hours..... 1 week..... 1 month
16 May parents contact one another?.....
17 When the child/children is/are with one of you, how may they
18 contact the other parent?.....
19
20 When and how maycontact the child?
21
22
23 In the event that proposed changes, disputes or alleged breaches
24 of this parenting plan and custody order are necessary or
25 desired, the parties agree that such changes will be addressed
26 by the following method (specify method of arbitration,
27 mediation, court action, etc.):
28
29
30 The following matter or matters as specified by the court:

1

2

3 Other (Anything else you want to agree on):

4

5

6

7 Date.....

Signature of Mother

9 Date.....

Signature of Father

10

11 Date.....

Signature of Witness

12

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