

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 910

Session of
1977

INTRODUCED BY ZEARFOSS, REED, KNEPPER, WAGNER, WEIDNER, MEBUS,
FREIND AND POLITE, APRIL 20, 1977

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, APRIL 20, 1977

AN ACT

1 Providing for the determination of custody of children.

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

4 Section 1. Jurisdiction; commencement of proceeding.

5 (a) A court of this State competent to decide child custody
6 matters has jurisdiction to make a child custody determination
7 by initial or modification decree if:

8 (1) this State:

9 (i) is the home State of the child at the time of
10 commencement of the proceeding; or

11 (ii) had been the child's home State within six
12 months before commencement of the proceeding and the
13 child is absent from this State because of his removal or
14 retention by a person claiming his custody or for other
15 reason, and a parent or person acting as parent continues
16 to live in this State; or

17 (2) it is in the best interest of the child that a court

1 of this State assume jurisdiction because:

2 (i) the child and his parents, or the child and at
3 least one contestant, have a significant connection with
4 this State; and

5 (ii) there is available in this State substantial
6 evidence concerning the child's present or future care,
7 protection, training, and personal relationships; or

8 (3) the child is physically present in this State and:

9 (i) has been abandoned; or

10 (ii) it is necessary in an emergency to protect him
11 because he has been subjected to or threatened with
12 mistreatment or abuse or is neglected or dependent; or

13 (4) (i) no other state has jurisdiction under
14 prerequisites substantially in accordance with paragraphs
15 (1), (2) or (3), or another state has declined to
16 exercise jurisdiction on the ground that this State is
17 the more appropriate forum to determine custody of the
18 child; and

19 (ii) it is in his best interest that the court
20 assume jurisdiction.

21 (b) Except under paragraphs (3) and (4) of subsection (a),
22 physical presence in this State of the child, or of the child
23 and one of the contestants, is not alone sufficient to confer
24 jurisdiction on a court of this State to make a child custody
25 determination.

26 (c) Physical presence of the child, while desirable, is not
27 a prerequisite for jurisdiction to determine his custody.

28 (d) A child custody proceeding is commenced in the court of
29 common pleas:

30 (1) by a parent, by filing a petition;

(i) for dissolution or legal separation; or
(ii) for custody of the child in the county in which
he is a permanent resident or found; or

(2) by a person other than a parent, by filing a
petition for custody of the child in the county in which he
is a permanent resident or found, but only if he is not in
the physical custody of one of his parents.

(e) Notice of a child custody proceeding shall be given to
the child's parents, guardian, and custodian, who may appear, be
heard, and file a responsive pleading. The court, upon a showing
of good cause, may permit intervention of other interested
parties.

Section 2. Best interest of child.

(a) The court shall determine custody in accordance with the
best interest of the child. The court shall consider all
relevant factors including:

(1) the wishes of the child's parent or parents as to
his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child
with his parent or parents, his siblings, and any other
person who may significantly affect the child's best
interest;

(4) the child's adjustment to his home, school and
community; and

(5) the mental and physical health of all individuals
involved.

(b) The court shall not consider conduct of a proposed
custodian that does not affect his relationship to the child.

Section 3. Temporary orders.

1 (a) A party to a custody proceeding may move for a temporary
2 custody order. The motion must be supported by an affidavit as
3 provided in section 10. The court may award temporary custody
4 under the standards of section 2 after a hearing, or, if there
5 is no objection, solely on the basis of the affidavits.

6 (b) If a custody proceeding is dismissed, any temporary
7 custody order is vacated.

8 Section 4. Interviews.

9 (a) The court may interview the child in chambers to
10 ascertain the child's wishes as to his custodian and as to
11 visitation. The court may permit counsel to be present at the
12 interview. The court shall cause a record of the interview to be
13 made and to be part of the record in the case.

14 (b) The court may seek the advice of professional personnel,
15 whether or not employed by the court on a regular basis. The
16 advice given shall be in writing and made available by the court
17 to counsel upon request. Counsel may examine as a witness any
18 professional personnel consulted by the court.

19 Section 5. Investigations and reports.

20 (a) In contested custody proceedings, and in other custody
21 proceedings if a parent or the child's custodian so requests,
22 the court may order an investigation and report concerning
23 custodial arrangements for the child.

24 (b) In preparing his report concerning a child, the
25 investigator may consult any person who may have information
26 about the child and his potential custodial arrangements. Upon
27 order of the court, the investigator may refer the child to
28 professional personnel for diagnosis. The investigator may
29 consult with and obtain information from medical, psychiatric,
30 or other expert persons who have served the child in the past

1 without obtaining the consent of the parent or the child's
2 custodian; but the child's consent must be obtained if he has
3 reached the age of 16, unless the court finds that he lacks
4 mental capacity to consent. If the requirements of subsection
5 (c) are fulfilled, the investigator's report may be received in
6 evidence at the hearing.

7 (c) The court shall mail the investigator's report to
8 counsel and to any party not represented by counsel at least ten
9 days prior to the hearing. The investigator shall make available
10 to counsel and to any party not represented by counsel the
11 investigator's file of underlying data, and reports, complete
12 texts of diagnostic reports made to the investigator pursuant to
13 the provisions of subsection (b), and the names and addresses of
14 all persons whom the investigator has consulted. Any party to
15 the proceeding may call the investigator and any person whom he
16 has consulted for cross-examination. A party may not waive his
17 right of cross-examination prior to the hearing.

18 Section 6. Hearings.

19 (a) Custody proceedings shall receive priority in being set
20 for hearing.

21 (b) The court may tax as costs the payment of necessary
22 travel and other expenses incurred by any person whose presence
23 at the hearing the court deems necessary to determine the best
24 interest of the child.

25 (c) The court without a jury shall determine questions of
26 law and fact. If it finds that a public hearing may be
27 detrimental to the child's best interest, the court may exclude
28 the public from a custody hearing, but may admit any person who
29 has a direct and legitimate interest in the particular case or a
30 legitimate educational or research interest in the work of the

1 court.

2 (d) If the court finds it necessary to protect the child's
3 welfare that the record of any interview, report, investigation,
4 or testimony in a custody proceeding be kept secret, the court
5 may make an appropriate order sealing the record.

6 Section 7. Visitation.

7 (a) A parent not granted custody of the child is entitled to
8 reasonable visitation rights unless the court finds, after a
9 hearing, that visitation would endanger seriously the child's
10 physical, mental, moral or emotional health.

11 (b) The court may modify an order granting or denying
12 visitation rights whenever modification would serve the best
13 interest of the child; but the court shall not restrict a
14 parent's visitation rights unless it finds that the visitation
15 would endanger seriously the child's physical, mental, moral or
16 emotional health.

17 Section 8. Judicial supervision.

18 (a) Except as otherwise agreed by the parties in writing at
19 the time of the custody decree, the custodian may determine the
20 child's upbringing, including his education, health care, and
21 religious training, unless the court after hearing, finds, upon
22 motion by the noncustodial parent, that in the absence of a
23 specific limitation of the custodian's authority, the child's
24 physical health would be endangered or his emotional development
25 significantly impaired.

26 (b) If both parents or all contestants agree to the order,
27 or if the court finds that in the absence of the order the
28 child's physical health would be endangered or his emotional
29 development significantly impaired, the court may order the
30 Children's Bureau to exercise continuing supervision over the

1 case to assure that the custodial or visitation terms of the
2 decree are carried out.

3 Section 9. Modification.

4 (a) No motion to modify a custody decree may be made earlier
5 than two years after its date, unless the court permits it to be
6 made on the basis of affidavits that there is reason to believe
7 the child's present environment may endanger seriously his
8 physical, mental, moral or emotional health.

9 (b) If a court of this State has jurisdiction pursuant to
10 the Uniform Child Custody Jurisdiction Act, the court shall not
11 modify a prior custody decree unless it finds, upon the basis of
12 facts that have arisen since the prior decree or that were
13 unknown to the court at the time of entry of the prior decree,
14 that a change has occurred in the circumstances of the child or
15 his custodian, and that the modification is necessary to serve
16 the best interest of the child. In applying these standards the
17 court shall retain the custodian appointed pursuant to the prior
18 decree unless:

19 (1) the custodian agreed to the modification;

20 (2) the child has been integrated into the family of the
21 petitioner with consent of the custodian; or

22 (3) the child's present environment endangers seriously
23 his physical, mental, moral, or emotional health, and the
24 harm likely to be caused by a change of environment is
25 outweighed by its advantages to him.

26 (c) Attorney fees and costs shall be assessed against a
27 party seeking modification if the court finds that the
28 modification action is vexatious and constitutes harassment.

29 Section 10. Affidavit practice.

30 A party seeking a temporary custody order or modification of

1 a custody decree shall submit together with his moving paper an
2 affidavit setting forth facts supporting the requested order or
3 modification and shall give notice, together with a copy of his
4 affidavit, to other parties to the proceeding, who may file
5 opposing affidavits. The court shall deny the motion unless it
6 finds that adequate cause for hearing the motion is established
7 by the affidavits, in which case it shall set a date for hearing
8 on an order to show cause why the requested order or
9 modification should not be granted.

10 Section 11. Application.

11 (a) This act applies to all proceedings commenced on or
12 after its effective date.

13 (b) This act applies to all pending actions and proceedings
14 commenced prior to its effective date with respect to issues on
15 which a judgment has not been entered.

16 (c) This act applies to all proceedings commenced after its
17 effective date for the modification of a judgment or order
18 entered prior to the effective date of this act.

19 (d) In any action or proceeding in which an appeal was
20 pending prior to the effective date of this act, the law in
21 effect at the time of the order sustaining the appeal governs
22 the appeal, and any subsequent appeal.

23 Section 12. Repealer.

24 All acts and parts of acts are repealed insofar as they are
25 inconsistent with the provisions of this act.

26 Section 13. Effective date.

27 This act shall take effect January 1, 1978.