

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1161 Session of
2001

INTRODUCED BY DENT, HELFRICK, SCARNATI, COSTA, ARMSTRONG,
TOMLINSON, ERICKSON, LAVALLE, BOSCOLA, WOZNIAK, STACK AND
LEMMOND, OCTOBER 19, 2001

REFERRED TO JUDICIARY, OCTOBER 19, 2001

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, further providing for declaration of
3 policy and for when parent deceased; providing for notice to
4 grandparent; further providing for exception for adopted
5 children; and making repeals.

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

8 Section 1. Sections 5301 and 5311 of Title 23 of the
9 Pennsylvania Consolidated Statutes are amended to read:

10 § 5301. Declaration of policy.

11 The General Assembly declares that it is the public policy of
12 this Commonwealth, when in the best interest of the child, to
13 assure a reasonable and continuing contact of the child with
14 both parents after a separation or dissolution of the marriage
15 and the sharing of the rights and responsibilities of child
16 rearing by both parents and continuing contact of the child or
17 children with grandparents when [a parent is deceased, divorced
18 or separated] continuing contact is in the best interest of the
19 child and it does not adversely affect the parent-child

1 relationship.

2 § 5311. [When parent deceased] Grandparent.

3 [If a parent of an unmarried child is deceased, the parents
4 or grandparents of the deceased parent]

5 (a) General rule.--A grandparent may be granted reasonable
6 partial custody or visitation rights, or both, to [the] an
7 unmarried minor child by the court upon a finding that partial
8 custody or visitation rights, or both, would be in the best
9 interest of the child and would not interfere with the parent-
10 child relationship. The court shall consider [the amount of
11 personal contact between the parents or grandparents of the
12 deceased parent and the child prior to the application.] all of
13 the following special factors in making an order concerning a
14 grandparent's partial custody or visitation rights, or both, to
15 the unmarried minor child:

16 (1) Whether the grandparent is a fit and proper person
17 to have partial custody or visitation rights, or both.

18 (2) Whether the grandparent has established ongoing
19 personal contact with the unmarried minor child or has
20 repeatedly made attempts to establish ongoing personal
21 contact with the unmarried minor child for at least 90 days
22 immediately prior to the application and was not permitted to
23 establish ongoing personal contact with the child as a result
24 of the direct action of one or both of the parents.

25 (3) Whether the partial custody or visitation rights, or
26 both, would interfere with any parent-child relationship or
27 with a parent's authority over the unmarried minor child.

28 (4) Whether there is reasonable cause to believe that
29 the unmarried minor child's physical and emotional health
30 would be endangered by partial custody or visitation rights,

1 or both, or the lack of these rights.

2 (5) The nature of the relationship between the
3 grandparent and the parent of the unmarried minor child
4 including any friction between the grandparent and the parent
5 and the effect any friction would have on the unmarried minor
6 child.

7 (6) The recommendation regarding partial custody or
8 visitation rights, or both, by any guardian ad litem
9 appointed for the unmarried minor child.

10 (7) Whether there is an alternative to allow the
11 grandparent to visit the unmarried minor child on an ongoing
12 basis.

13 (8) Whether the grandparent by clear and convincing
14 evidence has successfully rebutted the presumption that the
15 parent's decision to refuse the partial custody or visitation
16 rights, or both, was reasonable.

17 (9) Any preferences or wishes expressed by the unmarried
18 minor child.

19 (10) Whether the grandparent has made substantial
20 efforts at repairing any breach in the relations between the
21 parent and the grandparent.

22 (11) Whether the parent has denied partial custody or
23 visitation rights, or both, with finality.

24 (12) Any other factors the court may find appropriate or
25 relevant to the petition for partial custody or visitation
26 rights, or both.

27 (b) Expedited resolution of petition.--The court shall
28 establish a procedure for early, expedited and meaningful
29 resolution of petitions for visitation rights or partial custody
30 filed by a grandparent.

1 (c) Interference prohibited.--A parent shall not interfere
2 with partial custody or visitation rights, or both, granted by
3 the court to the grandparent.

4 (d) Modification of order.--Whenever it is in the best
5 interest of the unmarried minor child, the court may modify an
6 order granting or denying partial custody or visitation rights,
7 or both, to the grandparent.

8 (e) Burden of proof.--Grandparents shall have the burden of
9 proving by clear and convincing evidence that partial custody or
10 visitation rights, or both, are in the best interest of the
11 unmarried minor child under the special factors set forth in
12 subsection (a).

13 Section 2. Title 23 is amended by adding a section to read:
14 § 5311.1. Notice to grandparent.

15 (a) General rule.--Upon presentation of a petition prepared
16 pursuant to section 2701 (relating to contents of petition for
17 adoption), the court shall provide notice to the grandparent
18 having partial custody or visitation rights, or both, under
19 section 5311 (relating to grandparent).

20 (b) Contents of notice.--The notice to the grandparent shall
21 be in the following form:

22 To: (insert grandparent's name)

23 A petition has been filed with the court requesting the
24 adoption of your grandchild (insert grandchild's name) by
25 (insert petitioner's name). The court has set a hearing
26 to consider the adoption. The hearing will be held
27 (insert place, giving reference to exact room and
28 building number or designation) on (insert date) at
29 (insert time). If the court should decide to allow this
30 adoption any partial custody or visitation rights, or

1 both, you might have pursuant to 23 Pa.C.S. § 5311
2 (relating to grandparent) may be terminated.

3 Section 3. Section 5314 of Title 23 is amended to read:

4 § 5314. [Exception for adopted children.

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

12 Exceptions.

13 (a) Circumstances enumerated.--Section 5311 (relating to
14 grandparent) shall not apply in any one or more of the following
15 circumstances:

16 (1) The paternity of the putative father has not been
17 legally established and the putative father's parents are the
18 petitioners.

19 (2) Legal custody has been voluntarily surrendered by
20 the parent except for a surrender to a county children and
21 youth agency or child protective services agency.

22 (3) The unmarried minor child who is the subject of the
23 grandparent's application has been previously adopted by an
24 individual not related to the biological grandparent of the
25 unmarried minor child.

26 (b) Termination of rights upon adoption.--Any partial
27 custody or visitation rights, or both, granted under section
28 5311 prior to adoption of the unmarried minor child shall be
29 automatically terminated upon the adoption.

30 Section 4. The provisions of 23 Pa.C.S. §§ 5312 and 5313 are

1 repealed.

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