

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1639 Session of
2009

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KORTZ, FARRY AND MELIO, JUNE 8, 2009

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 4, 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11 the Pennsylvania Consolidated Statutes are repealed: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.†

~~Section 2. Section 5310 of Title 23, amended October 9, 2008 (P.L.1522, No.127), is repealed.~~



1 †§ 5310. Modification of existing custody orders.

2 Except as provided in 51 Pa.C.S. § 4109 (relating to child
3 custody proceedings during military deployment), any order for
4 the custody of the child of a marriage entered by a court in
5 this Commonwealth or any state may, subject to the
6 jurisdictional requirements set forth in Chapter 54 (relating to
7 uniform child custody jurisdiction and enforcement), be modified
8 at any time to an order of shared custody in accordance with
9 this subchapter.†



10 ~~Section 3. Sections 5311, 5312, 5313, 5314 and 5315 of Title~~
11 ~~23 are repealed.~~

12 †§ 5311. When parent deceased.

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

22 § 5312. When parents' marriage is dissolved or parents are
23 separated.

24 In all proceedings for dissolution, subsequent to the
25 commencement of the proceeding and continuing thereafter or when
26 parents have been separated for six months or more, the court
27 may, upon application of the parent or grandparent of a party,
28 grant reasonable partial custody or visitation rights, or both,
29 to the unmarried child if it finds that visitation rights or
30 partial custody, or both, would be in the best interest of the

1 child and would not interfere with the parent-child
2 relationship. The court shall consider the amount of personal
3 contact between the parents or grandparents of the party and the
4 child prior to the application.

5 § 5313. When grandparents may petition.

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

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

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

23 (2) whose relationship with the child began with the
24 consent of a parent of the child or pursuant to an order of
25 court; and

26 (3) who for 12 months has assumed the role and
27 responsibilities of the child's parent, providing for the
28 physical, emotional and social needs of the child, or who
29 assumes the responsibility for a child who has been
30 determined to be a dependent child pursuant to 42 Pa.C.S. Ch.

63 (relating to juvenile matters) or who assumes or deems it necessary to assume responsibility for a child who is substantially at risk due to parental abuse, neglect, drug or alcohol abuse or mental illness. The court may issue a temporary order pursuant to this section.

§ 5314. Exception for adopted children.

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

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

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

Section 4 2. Title 23 is amended by adding a chapter to read:

CHAPTER 53



CHILD CUSTODY

Sec.

5321. Scope of chapter.

~~5321.1. Declaration of policy.~~

5322. Definitions.

5323. Award of custody.

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

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

5326. Effect of adoption.

5327. Presumption in cases concerning primary physical custody.

5328. Factors to consider when awarding custody.

5329. Consideration of criminal conviction.

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5331. Parenting plan.

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5333. Counseling as part of order.

5334. Guardian ad litem for child.

5335. Counsel for child.

5336. Access to records and information.

5337. Relocation.

5338. Modification of existing order.

5339. Award of counsel fees, costs and expenses.

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

§ 5321. Scope of chapter.

This chapter applies to disputes relating to child custody
matters.

~~§ 5321.1. Declaration of policy.~~

~~The General Assembly declares that it is the public policy of this Commonwealth, when in the best interest of the child, that both parents share fully in the rights and responsibilities of raising the child upon separation or dissolution of marriage. It is further the policy of this Commonwealth to maximize the child's time with each parent to assure continuing emotional and physical connection of the child to both separated parents, and when a parent is deceased, divorces or separated, with the grandparents.~~

§ 5322. Definitions.

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

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

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

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

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

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

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

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

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

1 "Primary physical custody." The right to assume physical
2 custody of the child for the majority of time.

3 "Relocation." A change in a residence of the child which
4 significantly impairs the ability of a nonrelocating party to
5 exercise custodial rights.

6 "Shared legal custody." The right of more than one
7 individual to legal custody of the child.

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

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

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

15 "Supervised physical custody." Custodial time during which
16 an agency or an adult designated by the court or agreed upon by
17 the parties monitors the interaction between the child and the
18 individual with those rights.

19 § 5323. Award of custody.

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

24 (1) Shared physical custody.

25 (2) Primary physical custody.

26 (3) Partial physical custody.

27 (4) Sole physical custody.

28 (5) Supervised physical custody.

29 (6) Shared legal custody.

30 (7) Sole legal custody.

1 (b) Interim award.--The court may issue an interim award of
2 custody to a party who has standing under section 5324 (relating
3 to standing for any form of physical custody or legal custody)
4 or 5325 (relating to standing for partial physical custody and
5 supervised physical custody), in the manner prescribed by the
6 Pennsylvania Rules of Civil Procedure governing special relief
7 in custody matters.

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

10 (d) Reasons for award.--The court shall delineate the
11 reasons for its decision on the record in open court or in a
12 written opinion OR ORDER.

13 (e) Safety conditions.--After considering the factors under
14 section 5328(a)(2), if the court finds that there is an ongoing
15 risk of harm to the child or an abused party and awards any form
16 of custody to a party who committed the abuse or who has a
17 household member who committed the abuse, the court shall
18 include in the custody order safety conditions designed to
19 protect the child or the abused party.

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

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

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

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



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

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

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

7 (v) Counsel fees and costs.

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

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

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

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

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

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

22 (1) A parent of the child.

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

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

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

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

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

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

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

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

15 § 5325. Standing for partial physical custody and supervised
16 physical custody.

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

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

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

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

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

4 § 5326. Effect of adoption.

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

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

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

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

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

29 § 5328. Factors to consider when awarding custody.

30 (a) Factors.--In ordering any form of custody, the court

1 shall determine the best interest of the child by considering
2 all relevant factors, GIVING WEIGHTED CONSIDERATION TO THOSE
3 FACTORS WHICH AFFECT THE SAFETY OF THE CHILD, including the
4 following:

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

8 (2) The present and past abuse committed by a party or
9 member of the party's household, whether there is a continued
10 risk of harm to the child or an abused party and which party
11 can better provide adequate physical safeguards and
12 supervision of the child.

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

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

17 (5) The availability of extended family.

18 (6) The child's sibling relationships.

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

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

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

28 (10) Which party is more likely to attend to the daily
29 physical, emotional, developmental, educational and special
30 needs of the child.

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

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

4 (13) The level of conflict between the parties and the
5 willingness and ability of the parties to cooperate with one
6 another. A party's effort to protect a child from abuse by
7 another party is not evidence of unwillingness or inability
8 to cooperate with that party.

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

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

13 (16) Any other relevant factor.

14 (b) Gender neutral.--The court shall be gender neutral in
15 making a determination under subsection (a). No party shall
16 receive preference based solely upon gender in any award granted
17 under this chapter.

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

19 (1) In ordering partial physical custody or supervised
20 physical custody to a party who has standing under section
21 5325(1) or (2) (relating to standing for partial physical
22 custody and supervised physical custody), the court shall
23 consider the following:

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

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

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

30 (2) In ordering partial physical custody or supervised

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

4 (i) interferes with any parent-child relationship;

5 and

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

7 § 5329. Consideration of criminal conviction.

8 (a) Offenses.--Where a party seeks any form of custody, the
9 court shall consider whether that party or member of that

10 party's household has been convicted of or has pleaded guilty or

11 no contest to any of the following offenses or an offense in

12 another jurisdiction substantially equivalent to any of OFFENSES

13 IN THIS SECTION OR AN OFFENSE IN ANOTHER JURISDICTION

14 SUBSTANTIALLY EQUIVALENT TO ANY OF THE OFFENSES IN THIS SECTION.

15 THE COURT SHALL CONSIDER SUCH CONDUCT AND DETERMINE THAT THE

16 PARTY DOES NOT POSE A THREAT OF HARM TO THE CHILD BEFORE MAKING

17 AN ORDER OF CUSTODY, PARTIAL CUSTODY OR VISITATION TO THAT

18 PARENT WHEN CONSIDERING the following offenses:

19 18 Pa.C.S. Ch. 25 (relating to criminal homicide).

20 18 Pa.C.S. § 2702 (relating to aggravated assault).

21 18 Pa.C.S. § 2706 (relating to terroristic threats).

22 18 Pa.C.S. § 2709.1 (relating to stalking).

23 18 Pa.C.S. § 2901 (relating to kidnapping).

24 18 Pa.C.S. § 2902 (relating to unlawful restraint).

25 18 Pa.C.S. § 2903 (relating to false imprisonment).

26 18 Pa.C.S. § 2910 (relating to luring a child into a motor
27 vehicle or structure).

28 18 Pa.C.S. § 3121 (relating to rape).

29 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

30 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual

←

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1 intercourse).
2 18 Pa.C.S. § 3124.1 (relating to sexual assault).
3 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).
4 18 Pa.C.S. § 3126 (relating to indecent assault).
5 18 Pa.C.S. § 3127 (relating to indecent exposure).
6 18 Pa.C.S. § 3129 (relating to sexual intercourse with
7 animal).
8 18 Pa.C.S. § 3130 (relating to conduct relating to sex
9 offenders).
10 18 Pa.C.S. § 3301 (relating to arson and related offenses).
11 18 Pa.C.S. § 4302 (relating to incest).
12 18 Pa.C.S. § 4303 (relating to concealing death of child).
13 18 Pa.C.S. § 4304 (relating to endangering welfare of
14 children).
15 18 Pa.C.S. § 4305 (relating to dealing in infant children).
16 18 Pa.C.S. § 5902(b) (relating to prostitution and related
17 offenses).
18 18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other
19 sexual materials and performances).
20 18 Pa.C.S. § 6301 (relating to corruption of minors).
21 18 Pa.C.S. § 6312 (relating to sexual abuse of children).
22 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).
23 18 Pa.C.S. § 6320 (relating to sexual exploitation of
24 children).
25 Section 6114 (relating to contempt for violation of order or
26 agreement).
27 The former 75 Pa.C.S. § 3731 (relating to driving under
28 influence of alcohol or controlled substance).
29 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol
30 or utilizing drugs).

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

6 (b) Parent convicted of murder.--No court shall award
7 custody, partial custody or supervised physical custody to a
8 parent who has been convicted of murder under 18 Pa.C.S. §
9 2502(a) (relating to murder) of the other parent of the child
10 who is the subject of the order unless the child is of suitable
11 age and consents to the order.

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

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

16 (2) counseling is necessary for that party or household
17 member.

18 (d) Counseling.--

19 (1) Where the court determines under subsection (c) that
20 counseling is necessary, it shall appoint a qualified
21 professional specializing in treatment relating to the
22 particular offense to provide counseling to the offending
23 individual.

24 (2) Counseling may include a program of treatment or
25 individual therapy designed to rehabilitate the offending
26 individual which addresses, but is not limited to, issues
27 regarding physical and sexual abuse, the psychology of the
28 offender and the effects of the offense on the victim.

29 (e) Subsequent evaluation.--

30 (1) At any time during or subsequent to the counseling

1 under subsection (d), the court may require another
2 evaluation to determine whether further counseling is
3 necessary.

4 (2) If the court awards custody to a party who committed
5 an offense under subsection (a) or who shares a household
6 with an individual who committed an offense under subsection
7 (a), the court may require subsequent evaluations on the
8 rehabilitation of the offending individual and the well-being
9 of the child subsequent to the order. If upon review of a
10 subsequent evaluation the court determines that the offending
11 individual poses a threat of physical, emotional or
12 psychological harm to the child, the court may schedule a
13 hearing to modify the custody order.

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

17 § 5330. Consideration of criminal charge.

18 (a) Expedited hearing.--A party who has obtained information
19 under 42 Pa.C.S. § 1904 (relating to availability of criminal
20 charge information in child custody proceedings) or otherwise
21 about a charge filed against the other party for an offense
22 listed under section 5329(a) (relating to consideration of
23 criminal conviction) may move for a temporary custody order or
24 modification of an existing custody order. The court shall hold
25 the hearing under this subsection in an expeditious manner.

26 (b) Risk of harm.--In evaluating any request under
27 subsection (a), the court shall consider whether the party who
28 is or has been charged with an offense set forth in section
29 5329(a) poses a risk of physical, emotional or psychological
30 harm to the child.

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

4 § 5331. Parenting plan.

5 (a) Purpose.--In a contested custody proceeding, the court
6 ~~shall~~ MAY require the parties to submit parenting plans for the ←
7 care and custody of the child to aid the court in resolving the
8 custody dispute. A parenting plan and the position of a party as
9 set forth in that parenting plan shall not be admissible as
10 evidence by another party.

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

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

14 (2) The education and religious involvement, if any, of
15 the child.

16 (3) The health care of the child.

17 (4) Child-care arrangements.

18 (5) Transportation arrangements.

19 (6) A procedure by which proposed changes, disputes and
20 alleged breaches of the custody order may be adjudicated or
21 otherwise resolved through mediation, arbitration or other
22 means.

23 (7) Any matter specified by the court.

24 (8) Any other matter that serves the best interest of
25 the child.

26 THE COURT SHALL CONSIDER THE FINANCIAL RESOURCES OF THE PARTIES ←
27 WHEN THE COURT REQUIRES THE PARTIES TO SUBMIT PARENTING PLANS.

28 § 5332. Informational programs.

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

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

5 (c) Costs.--The court may order a party to pay all or part
6 of the costs of the informational programs under this section.
7 § 5333. Counseling as part of order.

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

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

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

15 (d) Costs.--The court may order a party to pay all or part
16 of the costs of the counseling sessions under this section.
17 § 5334. Guardian ad litem for child.

18 (a) Appointment.--The court may appoint a guardian ad litem
19 for the child. The court shall specify the terms of the
20 appointment, including the role, duties and scope of authority
21 of the guardian ad litem.

22 (b) Investigation and report.--The guardian ad litem shall
23 investigate and report to the court information relevant to the
24 custody proceeding.

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

28 (1) counsel for the child is not appointed under section
29 5335 (relating to counsel for child); or

30 (2) the court is satisfied that the relevant information

1 will be presented to the court only with such appointment.

2 ~~(d) Subject to examination. A guardian ad litem who submits~~ ←
3 ~~a report or makes a recommendation to the court shall be subject~~
4 ~~to examination by the parties.~~

5 (D) EVIDENCE SUBJECT TO EXAMINATION.-- ←

6 (1) A LAWYER APPOINTED AS GUARDIAN AD LITEM MAY NOT
7 TESTIFY EXCEPT AS AUTHORIZED BY RULE 3.7 OF THE RULES OF
8 PROFESSIONAL CONDUCT, BUT MAY MAKE LEGAL ARGUMENT BASED ON
9 RELEVANT EVIDENCE THAT SHALL BE SUBJECT TO EXAMINATION BY THE
10 PARTIES.

11 (2) A NONLAWYER APPOINTED AS GUARDIAN AD LITEM MAY
12 TESTIFY REGARDING AND MAY SUBMIT A REPORT REGARDING THE
13 GUARDIAN AD LITEM'S RECOMMENDATION RELATING TO THE CHILD'S
14 BEST INTEREST, WHICH SHALL BE SUBJECT TO EXAMINATION.

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

18 § 5335. Counsel for child.

19 (a) Appointment.--The court may appoint counsel to represent
20 the child if the court determines that the appointment will
21 assist in resolving the issues in the custody proceeding.

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

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

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

1 § 5336. Access to records and information.

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

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

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

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

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

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

16 (3) Upon request, a parent, party or entity possessing
17 any information set forth in paragraph (1) shall provide it
18 to any party granted sole or shared legal custody.

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

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

23 (2) Confidential information from an abuse counselor or
24 shelter.

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

27 (4) Information independently protected from disclosure
28 by the child's right to confidentiality under the act of July
29 9, 1976 (P.L.817, No.143), known as the Mental Health
30 Procedures Act, or any other statute.

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

4 § 5337. Relocation.

5 (a) Applicability.--This section applies to any proposed
6 relocation.

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

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

10 (2) the court approves the proposed relocation.

11 (c) Notice.--

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

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

15 (i) the 60th day before the date of the proposed
16 relocation; or

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

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

22 (B) it is not reasonably possible to delay the
23 date of relocation so as to comply with the 60-day
24 notice.

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

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

30 (ii) The mailing address, if not the same as the

address of the intended new residence.

(iii) The home telephone number of the intended new residence, if available.

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

(v) The date of the proposed relocation.

(vi) The reasons for the proposed relocation.

(vii) A proposal for a revised custody schedule.

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

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

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

(d) Objection to proposed relocation.--

(1) A party entitled to receive notice may file with the court an objection to the proposed relocation and seek a temporary or permanent order to prevent the relocation.

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

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

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

6 (e) Confirmation of relocation.--If no objection to the
7 proposed relocation is filed under subsection (d), the party
8 proposing the relocation may file the following with the court
9 prior to the relocation:

10 (1) an affidavit stating that the party provided notice
11 to every individual entitled to notice, the time to file an
12 objection to the proposed relocation has passed and no
13 individual entitled to receive notice has filed an objection
14 to the proposed relocation;

15 (2) a petition to confirm the relocation and modify any
16 existing custody order; and

17 (3) a proposed order containing the information set
18 forth in subsection (c) (3).

19 (f) Hearing.--

20 (1) The court shall hold an expedited full hearing on
21 the proposed relocation after a timely objection has been
22 filed and before the relocation occurs unless exigent
23 circumstances exist, in which case the relocation may occur
24 pending an expedited full hearing.

25 (2) If the court approves the proposed relocation, it
26 shall:

27 (i) modify any existing custody order; or

28 (ii) establish the terms and conditions of a custody
29 order.

30 (g) Relocation factors.--In determining whether to grant a

1 proposed relocation, the court shall consider the following
2 factors, GIVING WEIGHTED CONSIDERATION TO THOSE FACTORS WHICH
3 AFFECT THE SAFETY OF THE CHILD:

4 (1) The nature, quality, extent of involvement and
5 duration of the child's relationship with the party proposing
6 to relocate and with the nonrelocating party, siblings and
7 other significant persons in the child's life.

8 (2) The age, developmental stage, needs of the child and
9 the likely impact the relocation will have on the child's
10 physical, educational and emotional development, taking into
11 consideration any special needs of the child.

12 (3) The feasibility of preserving the relationship
13 between the nonrelocating party and the child through
14 suitable custody arrangements, considering the logistics and
15 financial circumstances of the parties.

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

18 (5) Whether there is an established pattern of conduct
19 of either party to promote or thwart the relationship of the
20 child and the other party.

21 (6) Whether the relocation will enhance the general
22 quality of life for the party seeking the relocation,
23 including, but not limited to, financial or emotional benefit
24 or educational opportunity.

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

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

30 (9) The present and past abuse committed by a party or

member of the party's household and whether there is a
continued risk of harm to the child or an abused party.

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

(h) Burden of proof.--

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

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

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

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

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

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

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

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

(j) MITIGATION.--ANY CONSIDERATION OF A FAILURE TO PROVIDE
REASONABLE NOTICE UNDER SUBSECTION (I) SHALL BE SUBJECT TO
MITIGATION IF THE COURT DETERMINES THAT SUCH FAILURE WAS CAUSED



1 IN WHOLE, OR IN PART, BY ABUSE.

2 (K) Effect of relocation prior to hearing.--If a party
3 relocates with the child prior to a full expedited hearing, the
4 court shall not confer any presumption in favor of the
5 relocation.

6 § 5338. Modification of existing order.

7 (a) Best interest of the child.--Upon petition, a court may
8 modify a custody order to serve the best interest of the child.

9 (b) Applicability.--This section shall apply to any custody
10 order entered by a court of this Commonwealth or any other state
11 subject to the jurisdictional requirements set forth in Chapter
12 54 (relating to uniform child custody jurisdiction and
13 enforcement).

14 § 5339. Award of counsel fees, costs and expenses.

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

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

21 No party to a child custody matter in which the court has
22 appointed a licensed health care or behavioral health
23 practitioner to assist the court by conducting an examination or
24 evaluation of the parties involved or making a recommendation
25 concerning a child custody agreement or order may be permitted
26 to file a complaint against the practitioner with the
27 practitioner's State licensing board prior to the final
28 agreement or order being issued and for 60 days thereafter. As
29 used in this section, "licensed health care or behavioral health
30 practitioner" means a person who is licensed, certified,

accredited or otherwise regulated by the Commonwealth to provide health care or behavioral health services.

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

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

* * *

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

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

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

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

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

1 (ii) By mailing a notarized application using first
2 class mail.

3 (iii) By including the application with the original
4 complaint, initial response or any other pleading or
5 motion filed with the prothonotary.

6 (3) The Administrative Office shall develop the
7 application for access to the criminal charge information
8 system. The following information shall be included in the
9 application:

10 (i) Docket number of original court filing.

11 (ii) Date of filing.

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

14 (iv) A personal access code.

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

19 (vi) A statement verifying that:

20 (A) the person who is filing for access to the
21 criminal charge information system is the actual
22 person listed on the application;

23 (B) to the best of the applicant's knowledge and
24 belief, all the information included in the
25 application is true and correct; and

26 (C) the applicant is a party to the custody
27 proceeding or order that is listed on the
28 application.

29 (vii) A warning as to the penalty under 18 Pa.C.S. §
30 4904.

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

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

* * *

(h) Information available to parent.--

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

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

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

* * *

Section ~~6~~ 4. A proceeding under the former provisions of 23 Pa.C.S. Ch. 53 which was commenced before the effective date of this section shall be governed by the law in effect at the time the proceeding was initiated.

Section ~~7~~ 5. This act shall take effect in 60 days.